

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 seventh 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 2013 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 2013.

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 2013 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 dispute resolution 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 of requirements in Section 9 of the Act (deployment of services) and provides for the monitoring of the providers' 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.

On December 5, 2013 staff emailed Section 9 compliance information to all 44 video/cable providers, requesting that they submit information by December 20, 2013. Several attempts were made to obtain the information necessary to draft this report, however, Martell Cable Service, Inc., and MediaGate Digital did not respond with the requested information. A vast majority of the providers did comply with the statute, allowing for a reasonably complete view of the status of competition for video services in Michigan to be provided in this report. The Commission staff will make continuing attempts to obtain the outstanding information from all providers. The Commission has the authority to order remedies and penalties for violations of the Act, and has found cause to do so in the past. The Commission will continue to monitor the responsiveness of the providers in order to ensure that the necessary information is submitted timely by Michigan providers.

B. Outreach and Customer Education

During 2012 the Commission Staff developed and implemented a new communications plan that included a key constituent outreach component including the dissemination of consumer education materials related to video services in Michigan. Throughout 2013, Staff from the Commission attended more than 70 consumer outreach events throughout Michigan. Staff reached Delta, Marquette and Houghton counties in the Upper Peninsula, as well as the majority of the thumb and southern half of the Lower Peninsula. Among other events, staff attended utility-sponsored Customer Assistance Days, State and County Fairs, Project Connects, Energy Forums and the 13th Annual Capitol Area Senior Activities Fair. These activities allowed Commission Staff to engage directly with Michigan citizens and provide them with Consumer Tips, answer questions about utility and cable matters, as well as resolve disputes with providers. In addition to its presence at traditional outreach events, the

Commission Staff distributed relevant and timely consumer education tips via press release, social media and email. Consumer Tips are posted on the MPSC website.²

Staff estimates that over 9,096 Michigan constituents attended outreach events and that the video/cable Consumer Tips Sheet was distributed to more than 2,247 constituents. Staff also distributed Consumer Tips to over 1,700 Michigan municipalities regarding the video/cable complaint resolution process for customer vs. cable provider, and municipality vs. cable provider.³ The Commission continues to alert subscribers with relevant and timely consumer education tips through its listserv.⁴ Through this outreach initiative, the listserv has increased subscribership from 1,567 to 2,299.

Updates and enhancements are continually being made to the Commission's video franchise webpage.⁵ 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 video/cable providers offering service as well as 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 Interactive Broadband Map.⁶ 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.⁷

² http://www.michigan.gov/mpsc/0,4639,7-159-16368_16408---,00.html

³ The Consumer Tips were sent with the annual survey notification letter on October 28, 2013 to every municipality in Michigan.

⁴ Service Quality Division (SQD) implemented an email listserv where constituents can subscribe to automatically receive important consumer alerts and information.

⁵ <http://www.michigan.gov/mpsc/0,1607,7-159-49641---,00.html>

⁶ <http://connectmi.org/>

⁷ 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.

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

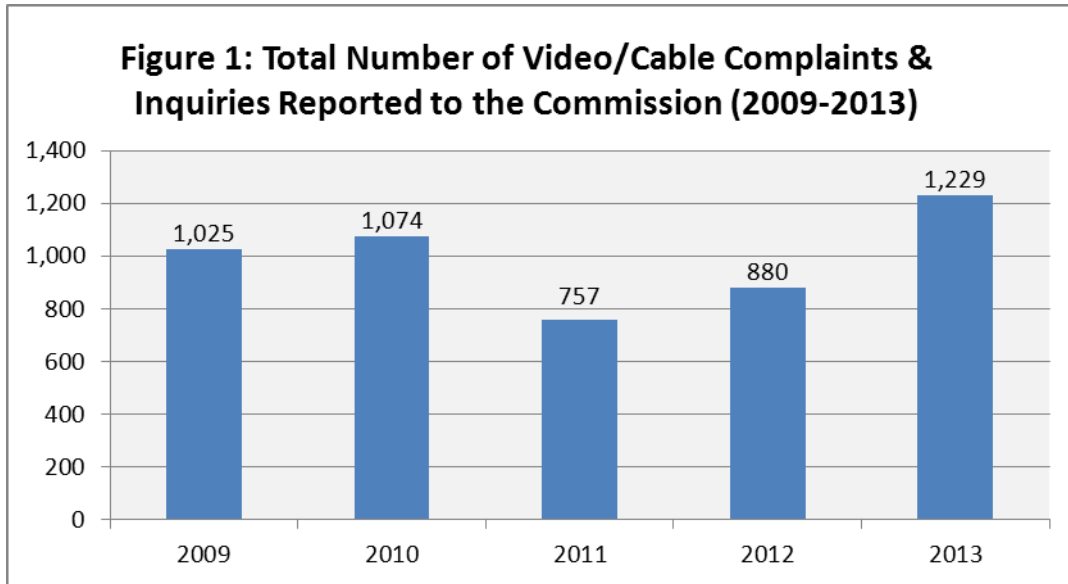
Complaints and inquiries are communicated by calling the Commission's toll-free and general telephone lines, fax, mail, online complaint form, and customers who walk into one of the Commission's offices. The video/cable franchising section also receives referrals from the Governor's office, legislative staff, the Attorney General's office, the Director of the Department of Licensing and Regulatory Affairs, 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 representative for resolution. The Commission follows the dispute resolution process as set forth in Public Act 4 of 2009.

1. Informal/Formal Customer Complaints

The Commission received 1,229 video/cable customer complaints and inquiries from January 1, 2013 to December 31, 2013, which is up from 880 in 2012 – a 40 percent increase.

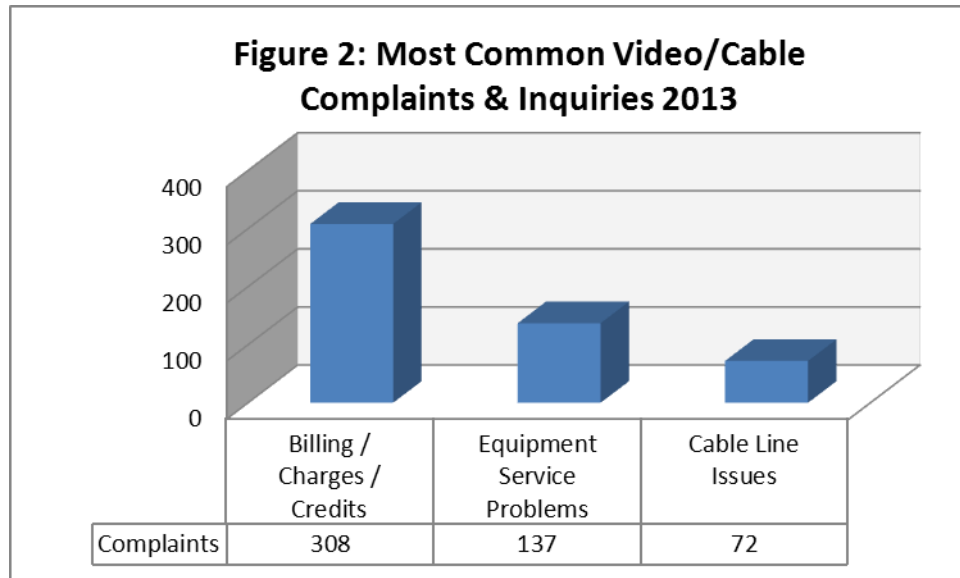
Figure 1 below shows the number of video/cable complaints and inquiries filed at the Commission over the past five years (2009 – 2013):



Source: MPSC Complaint Data

The 1,229 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.

The Commission continues to assist customers on a variety of issues concerning billing, equipment service problems, cable line issues, customer service, and request for service – among others. Figure 2 provides a listing of the most common types of video/cable complaints and inquiries filed with the Commission in 2013:



Source: MPSC Complaint Data

The Commission received video/cable complaints and inquiries from customers of 10 different cable providers. The three providers with the most complaints and inquiries filed with the Commission were Comcast (57 percent), Wide Open West (14 percent), and Charter (13 percent).

Customers who remain dissatisfied with the informal complaint process have the option to file a formal complaint pursuant to the Act. There were seven formal customer complaints filed in 2013, four of which were mediated and led to the issuance of Commission orders, two were withdrawn by the customer, and one is currently pending.

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

This past year the Commission received 12 informal complaints between franchise entities and video/cable providers, 10 of which were successfully mediated by Commission Staff, and two are still pending. Issues raised in these complaints involved franchise agreements, Public, Education, and Government (PEG) fees, quality of service, rights of way, and competition.

II. 2013 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, 2013.

Although the franchise entity survey is not mandatory and not required by the Act, the Commission believes it is important to continue collecting information from municipalities across Michigan regarding the video/cable environment in their communities. Notification letters were sent to over 1,700 municipalities throughout Michigan informing them of the location and availability of the survey, and encouraging communities to respond. The Commission also included two Video Franchise Consumer Tips, one that describes the dispute process for customers to file a video/cable complaint, and one for municipalities to file a complaint against a cable provider.

Of the more than 1,700 municipalities that the survey notification letters were sent to, 388 communities responded. This is an increase of nine communities when compared to 2012, and an increase of 110 responses from 2011. The compiled responses serve as a cross-section of information necessary for analyzing video/cable service and competition in Michigan. The Commission believes it is important to include this information in this report; however, the

to rise. It is important to note that satellite providers are not required to have franchise agreements with franchise entities and are not required to report to the Commission. 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, 78 percent indicated they no longer receive video/cable complaints. The Commission has informed municipalities about Public Act 4 of 2009 resulting in 76 percent of the respondents stating they are specifically aware of Public Act 4 of 2009 by title, while 80 percent of responding municipalities indicated they are aware the Commission can assist customers, franchise entities, and providers that have video/cable inquiries and/or complaints.

The four most frequent complaints received by municipalities are service equipment issues/outages, customer service, rates,¹¹ and billing issues. Although less frequently, municipalities also received various other complaints.¹² In 2013, 94 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

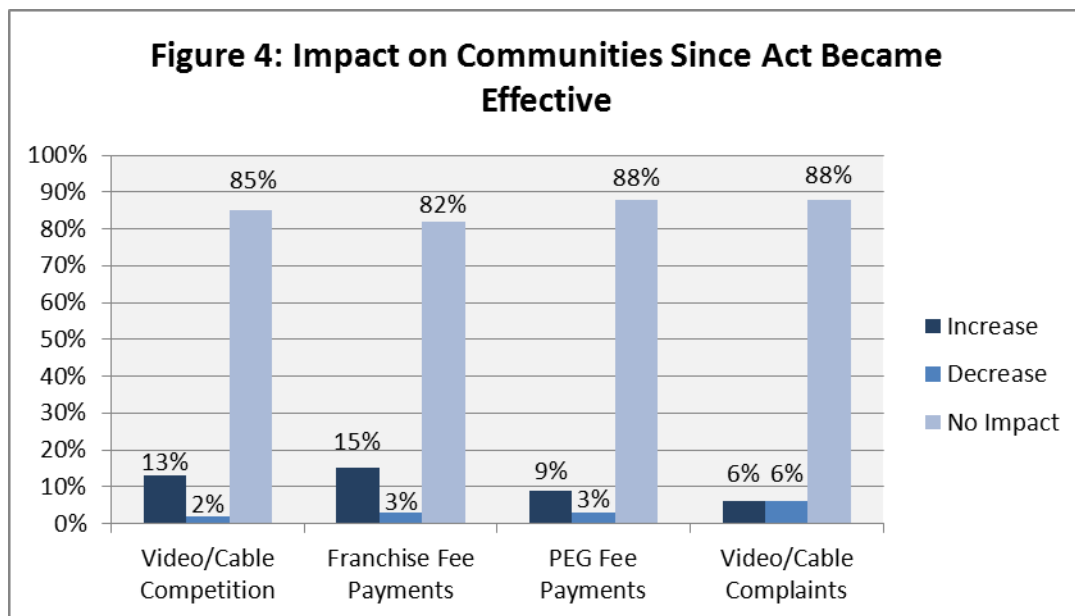
Municipalities were surveyed on the impacts they have witnessed within their communities since the Act took effect. Similar to previous years, the impacts that were highlighted are: Video/Cable Competition, Franchise Fee Payments, Government Programming

among the municipality responses. This response rate represents approximately 22 percent of all of Michigan's municipalities.

¹¹ 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.

¹² "Other" complaints received included: availability/no service, channel line-up/programming, lack of competition/monopoly, unburied cable, PEG issues, maintenance issue, and no local facility.

(PEG) Fee Payments, and Video/Cable Complaints. Figure 4 displays community responses relative to the four categories since the Act became effective.



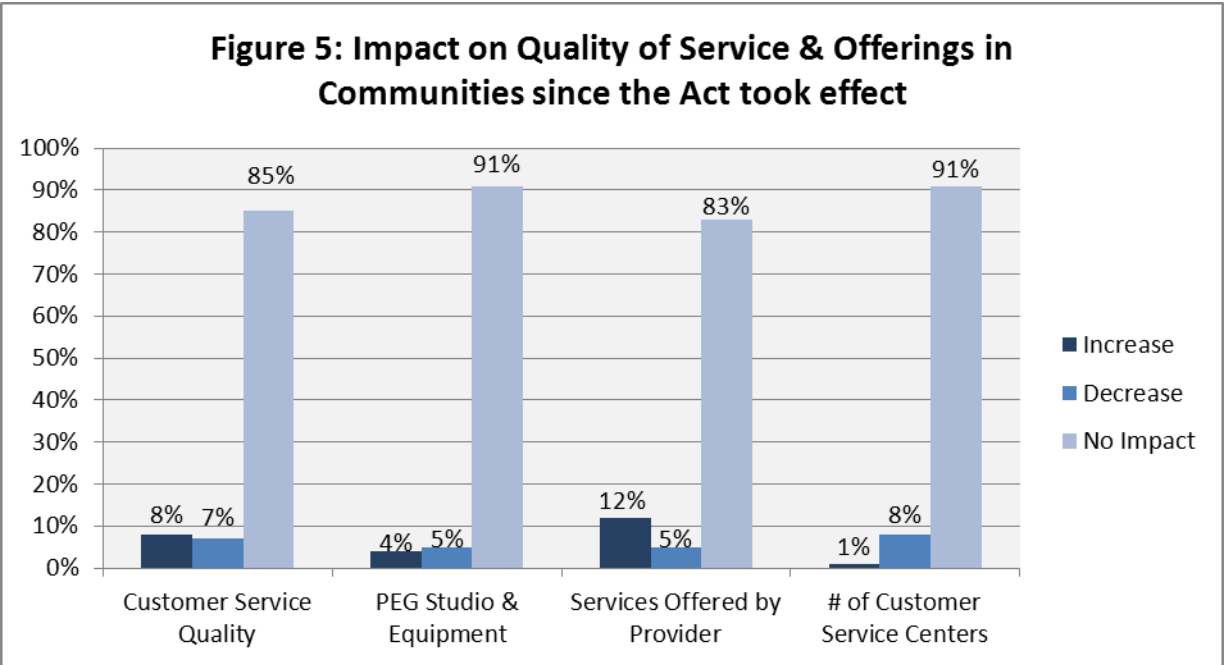
Source: MPSC Franchise Entity Survey

Similar to previous years, a high percentage of communities that responded reported no impact in each of the four categories.¹³ Only two percent of responding municipalities reported a decrease in Video/Cable Competition compared to 13 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 perceived to occur throughout their communities during 2013 regarding Customer Service Quality, PEG Studio and Equipment, Services Offered by Provider, and the Number of Customer Service Centers. Figure 5 reflects those responses from the municipalities.

¹³ 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 and make the assumption that this is representative of the entire state.



Source: MPSC Franchise Entity Survey

In 2013, a large percentage of municipalities reported “no impact” in each of the four categories since the Act took effect. Twelve percent of communities that responded reported that there has been an increase in services offered by the provider since the Act took effect.

Municipalities also provided feedback regarding whether a PEG channel is available. Based on the responses received, 49 percent of municipalities indicated their community has a designated PEG channel.

5. Franchise Entities’ Suggestions or Comments

Franchise entities were provided the opportunity to offer any comments, recommendations, and/or suggestions.¹⁴ A low percentage of franchise entities responded with comments, however, the comments received are summarized in Appendix A attached to this report.

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.

B. Providers' Responses to the Commission Survey

In 2013, the Commission continued to use its electronic survey to gather responses from providers. The survey notification letter was sent by email on December 2, 2013 to providers of video/cable service in Michigan. A total of 44 providers were sent the notification letter. Two new cable providers entered the market in 2013,¹⁵ and with the merging of companies, closure of others and some no longer providing video/cable services¹⁶ there are now a total of 44 video/cable providers offering service in Michigan compared to 47 providers in 2012.

Springcom, Inc., Star Video, Waldron Communication Company, and Westphalia Broadband, Inc. (dba Comlink) declined to provide certain information requested on the survey. Martell Cable Service, Inc., and MediaGate Digital did not submit any information for 2013.¹⁷

1. Video/Cable Subscribers

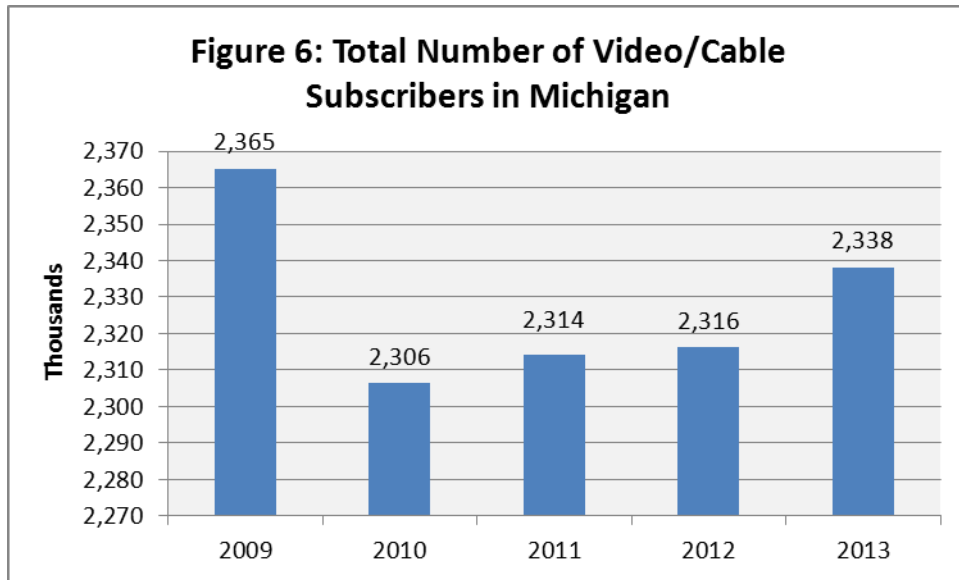
During 2013, 2,338,067¹⁸ video/cable customers were reported for Michigan. This is an increase of 21,870 customers compared to the 2,316,197 video/cable customers reported in 2012. Figure 6 shows the evolution in video/cable subscribership since 2009:

¹⁵ Mutual Data Services and Sand Creek Telephone Company.

¹⁶ Blanchard Cable, Inc. and Spectrum Broadband no longer provide video/cable service, Carr Communications/Carr Telephone and Drenthe Telephone merged with other companies, and Upper Peninsula Communications closed.

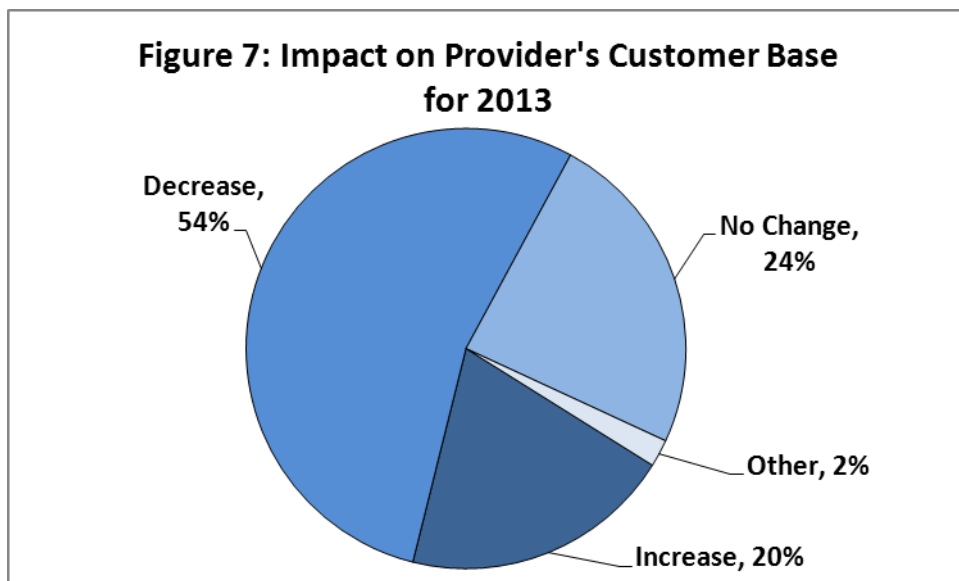
¹⁷ These providers complied with the MPSC Provider Survey in previous years.

¹⁸ This represents subscribership from 41 of the 44 providers per the MPSC Provider Survey. Two cable providers did not respond and one refused to supply the requested data; therefore, subscriber information was generated from the assessment information gathered in August for those providers only. 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.



Source: MPSC Provider Survey

Even though there was an increase of video/cable customers in Michigan compared to 2012, over half of responding providers reported an overall decrease in the number of subscribers served, including two of the top three largest providers offering service in Michigan. The number of municipalities reporting two or more providers of video/cable service has also increased. Figure 7 shows the trends in providers' customer bases in 2013.

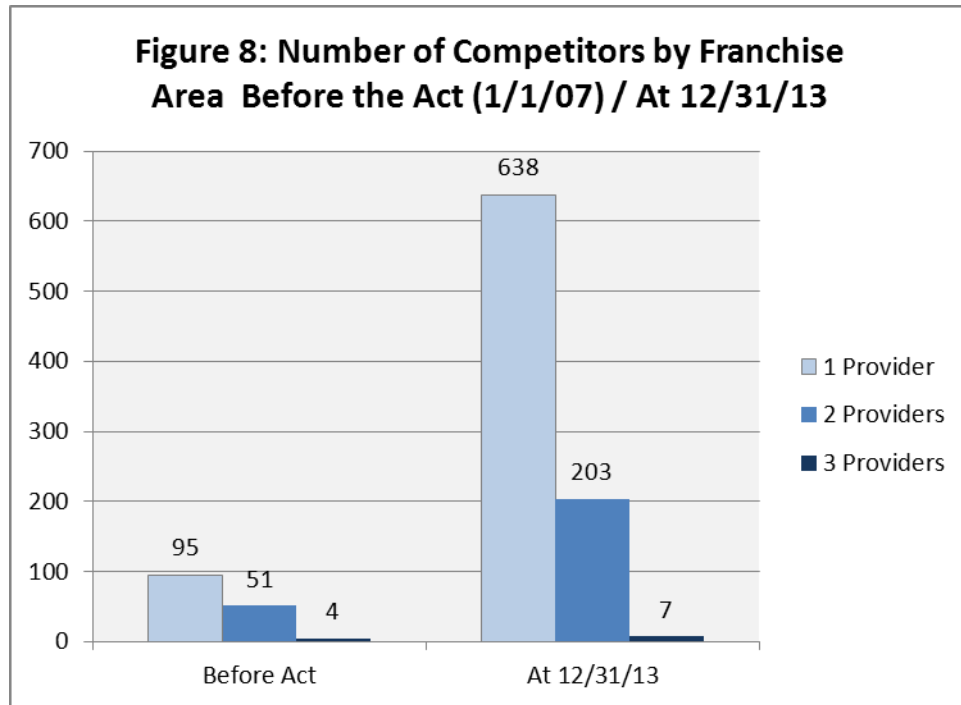


Source: MPSC Provider Survey

2. Video/Cable Competition

Overall, there are currently 1,969 franchise agreements in existence in Michigan (both individual franchise agreements 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 2012, this represents a decrease of 22 total franchise agreements. One potential reason for the decrease in total franchise agreements is the lack of response to the survey from two cable providers. Another potential factor may be that three cable companies are no longer providing video service. Of the 1,969 existing franchise agreements, 1,494 are classified as the Uniform Video Service Local Franchise Agreement, an increase of 93 from the previous year.

Consistent with previous years, the Commission asked providers to submit information regarding the competition encountered in their franchise areas. Providers submitted information on the number of competing providers encountered in their specific franchise areas before 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.



Source: MPSC Provider Survey

3. Disputes

Only three providers reported having an informal or formal dispute with a franchise entity regarding an Agreement. The disputes involved Franchise Fees, PEG and other franchise agreement matters.

4. Investment in Michigan

Similar to previous years, the Commission requested information from providers regarding how many dollars they have invested in Michigan. Twenty six of the 42 video/cable providers reported a monetary amount of investment in the Michigan video/cable market during 2013. The 26 providers that provided information reported investing a total of \$420,962,976.

5. Cable Providers' Comments

As with the franchise entity survey, cable providers were also given the opportunity to provide comments/suggestions. Very few of the providers that responded included comments. The comments that were received included that continued increases in retransmission fees makes

it difficult to compete, the net effect of the Act for cable subscribers has been increased rates, most channels are now broadcasted in both digital and analog formats, the emergency alert system has been upgraded and they have performed end of line testing to improve cable quality.

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 four areas for consideration.

The first matter concerns the Commission's ability to continue administering the Act. Section 15 of the Act as amended in 2009 provides for the Commission to recover its actual costs in exercising its duties under the Act by an assessment on each video service provider doing business in Michigan. Section 15 states as follows:

Sec. 15. (1) Effective January 1, 2010, the commission within 30 days after the enactment into law of any appropriation to it shall ascertain the amount of the appropriation attributable to the actual costs to the commission in exercising its duties under this act and that amount shall be assessed against each video service provider doing business in this state. Each provider shall pay a portion of the total assessment in the same proportion that its number of subscribers for the preceding calendar year bears to the total number of video service subscribers in the state. The total assessment under this section shall not exceed \$1,000,000.00 annually.

(2) For the state fiscal year commencing October 1, 2009 and annually thereafter, there shall be deducted from any amount to be assessed under subsection (1) an amount equal to the difference by which the actual expenditures of the commission attributable to exercising its duties under this act for the previous fiscal year are less than the amount assessed against each video service provider in the previous fiscal year. The deductions shall be made in the same proportion as the original assessment in subsection (1).

(3) All money paid into the state treasury by a video service provider under subsection (1) shall be credited to a special account, to be utilized solely to finance the cost to the commission of exercising its duties under this act.

(4) This section does not apply after December 31, 2015.

Section 15 sunsets on December 31, 2015, and the Commission strongly recommends that the Legislature take action to extend the sunset date found in Section 15. Extending the sunset date

would allow for the Commission to have adequate funding to continue to carry out its responsibilities under this Act.

Second, the Commission recommends that 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 respondents to provide timely and accurate year-end information to the Commission. This narrow timeline to receive information from respondents and thoroughly analyze that information so that the Commission can provide a report to the Legislature by February 1 forces the Commission to rely on estimates in some areas instead of actual numbers.

Third, 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.

Fourth, 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 to 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.

Subscribership and investment in Michigan has continued to rise as well as the number of complaints received by MPSC video franchise staff. In 2013, an increase in mediation requests and formal complaints from customers were reported. 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.

The emergence of new providers is a positive sign for the video services industry in the state of Michigan. The number of providers reporting other competitors within their franchise areas continues to increase. Municipalities also report that the number of franchise agreements containing two or more providers within their community has increased since 2006 PA 480. Figure 8 shows an increase in the number of competitive providers in franchise areas since the Act took effect.

As the Act enters its eighth year of existence, the surveys continue to be the strongest tool for gathering information. Although several attempts were made to obtain completed surveys from all of the providers, in 2013 Martell Cable Service, Inc., and MediaGate Digital did not respond with the requested information. The vast majority of the providers did comply with the

statute and provide the requested information, allowing for a reasonably complete view of the status of competition for video services in Michigan to be provided in this report. The Commission will continue to monitor the responsiveness of the providers in order to ensure that the necessary information is submitted timely by Michigan providers.

APPENDIX A

Franchise Entities' Suggestions or Comments

Franchise entities were provided the opportunity to offer any comments, recommendations, and/or suggestions.¹⁹ A low percentage of franchise entities responded with comments, however, the comments received are summarized below.

One area of concern municipalities referenced is the lack of cable service for more rural areas. Municipalities expressed interest in having their entire townships wired for cable service for customers and to benefit growing businesses in rural communities. They indicated cable providers are refusing to expand service due to low population density, unless potential customers pay the cost, or a lack of interest in providing service on the part of the cable provider.

Some communities commented PEG channels function poorly. They requested the Act be modified to clarify PEG fee funding and establish its availability at the franchising entities' request in the uniform franchise agreement language, and allow PEG fees to bring video and internet services to areas not served by any broadband service.

Some municipalities requested the Act be repealed, thereby returning authority to the local jurisdictions. They voiced opposition to the Act indicating even though it increased competition, overall customer service has declined. Some municipalities do not believe their residents received benefits from the Act, stating quality of products and service seem unaffected and prices continue to rise.

Another concern for some municipalities is lack of competition. Some indicated that while the Act was meant to invite competition, improve customer service, and expand technological advancements, customer service disappointments continue. Communities continue

to push for competition to drive down prices and force upgrading of service delivery equipment to improve substandard service. Other comments expressed that state franchise reform did not create consumer options. Instead, service expansion occurred in certain areas due to wireless technologies, for which local governments have little control or funding (i.e., no right of way fees).

Communities also commented on cable providers' responsibilities. Comments indicated that even though the franchise rates increase, the services provided remain unchanged. Costs are rising significantly making the service unaffordable for some customers.

¹⁹ These recommendations and suggestions are the sole opinion of some of the franchise entities and do not necessarily reflect the views of the Commission.