

# Legislative Analysis



## DISPUTE RESOLUTION PROCEDURES UNDER THE NEW VIDEO FRANCHISING ACT

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### House Bill 5048

**Sponsor: Rep. Frank Accavitti, Jr.**  
**Committee: Energy and Technology**

**Complete to 2-19-08**

### A SUMMARY OF HOUSE BILL 5048 AS INTRODUCED 7-24-07

The bill would adopt resolution procedures for disputes arising under the Uniform Video Services Local Franchise Act, Public Act 480 of 2006, MCL 484.3301 et seq. ("Video Act"). The bill would (1) revise requirements concerning a provider's obligations to notify its customers of its dispute resolution processes and (2) put in place procedures requiring the PSC to review disputes of three kinds:

- Customer complaints against providers not resolved by the provider's dispute resolution process.
- Disputes between providers and franchising entities (local units of governments).
- Disputes between providers.

PSC dispute resolution proposal. The Video Act directed the Public Service Commission ("PSC") to propose dispute resolution procedures by June 1, 2007 to be added to the act. The Commission issued an order on January 9, 2007 in Case No. U-15168 seeking public comment, and proposed dispute resolution procedures in May 2007, which can be viewed on the PSC website at [www.michigan.gov/documents/mpsc/dispute\\_resolution\\_198239\\_7.pdf](http://www.michigan.gov/documents/mpsc/dispute_resolution_198239_7.pdf).

Accordingly, the bill would delete the act's requirement that the PSC submit a proposal to the Legislature, as this has already been done.

Customer notification/provider dispute resolution process. Under Section 10(3) of the Video Act, providers are already supposed to have a dispute resolution process and a local or toll-free number for customer service in place. In addition, a provider must notify customers about its dispute resolution procedure. Under the bill, the provider would have to notify customers about dispute resolution at least *annually* and include the dispute resolution process on its website.

[The bill does not adopt the portion of the PSC proposal that would require the customer service number to be visibly identified and placed on the customer's bill or that the dispute resolution process be "reasonably easy to locate" on the provider's website.]

Required steps before a customer could file a complaint with the PSC. Under Section 10(4) of the bill, before a customer could file a complaint with the PSC, the customer

would have to first attempt to resolve it under the provider's own dispute resolution process. If the dispute "cannot be resolved by the provider's process," the customer could file a complaint with the PSC. The provider would have to provide the customer with the PSC's toll-free customer service number and website address.

[It unclear whether a customer would be required to exhaust all options under a provider's dispute resolution procedure—including perhaps submitting a dispute to binding arbitration or bringing a lawsuit against a provider—before it could bring a complaint to the PSC. It is also unclear whether there would be any role for the PSC after an arbitrator or court award was issued if a customer did, in fact, take the provider's own procedures as far as they could go.]

Customer complaints to the PSC. The bill would require the PSC to first process customer complaints against providers informally. If the dispute wasn't resolved informally, the customer would have to file a formal complaint meeting the technical requirements described below.

- Informal procedures. Upon receiving a complaint, the PSC would forward the complaint to the provider and attempt to mediate a resolution informally. The provider would have 10 business days to respond and offer a resolution. If this informal process did not resolve the dispute, the customer could file a formal complaint.
- Formal procedures. A formal complaint would have to (1) be in writing; (2) state the section or sections of the Video Act that the customer alleges the provider has violated; (3) provide sufficient facts to support the allegations; and (4) describe the exact relief sought from the provider. The complaint would have to comply with technical procedural requirements set forth in Section 203 of the Michigan Telecommunications Act (MCL 484.2203). Among other things, complaints filed under that section are required to provide all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely. [It is unclear whether typical customer complaints such as overbilling or service interruptions would constitute violations of the act that could be alleged in a formal complaint.]
- Complaints involving \$5,000 or less. In cases of complaints involving \$5,000 or less, a mediator would be appointed within seven days of the date the complaint was filed.
- Complaints involving more than \$5,000. Cases involving more than \$5,000 would be handled as a contested case as under Section 203 of the Michigan Telecommunications Act (MCL 484.2203).

Local government complaints/provider-provider complaints. Disputes between a provider and a franchising entity (local unit of government) or between two or more providers would be handled as follows:

- Informal procedures. The PSC would first attempt to resolve the dispute through an informal resolution procedure. If a provider or franchising entity believes that

a violation of the act *or* the franchising agreement has occurred, either could begin an informal complaint procedure with the PSC by (1) filing a written notice of the dispute identifying the nature of the dispute, (2) requiring an informal dispute resolution; and (3) serving the notice of the dispute on the other party. PSC staff would then attempt to mediate the dispute informally. If a satisfactory resolution is not achieved, any party could file a formal complaint.

- Formal complaints. A formal complaint would have to (1) be in writing; (2) state the section or sections of the Video Act *or* the franchise agreement that the party alleges the provider has violated; (3) provide sufficient facts to support the allegations; and (4) describe the relief requested. The party's attorney would have to submit a formal complaint in writing to the PSC that contained all of the information, testimony, exhibits, or other documents and information within the party's possession on which the party intends to rely to support the complaint. For a period of 60 days after the complaint is filed, the parties would attempt alternative means of resolving the complaint, but if they do not agree on the alternative method within 10 days, the PSC would order mediation.
- Recommended settlements. Within 60 days from the mediation order, the mediator would issue a recommended settlement. Each party would have seven days to accept or reject the recommended settlement in writing. If accepted, the recommended settlement would become the PSC's final order in the contested case. If a party rejects the proposed settlement, or fails to respond within seven days, the complaint would proceed to a contested case hearing in the same manner as provided under Section 203 of the Michigan Telecommunications Act.
- Contested cases. A party that rejected a recommended settlement would have to pay the opposing party's actual costs for the contested case, including attorney's fees, unless the PSC's final order was more favorable than the recommended settlement by at least 10 percent. Recommended settlements could not be disclosed to individual commissioners until they have issued their final order.

## **BACKGROUND INFORMATION:**

The PSC report dated February 1, 2008, entitled *Status of Competition for Video Services in Michigan*, describes the complaints and inquiries handled by the PSC since the new act took effect. During 2007, the Commission received seven formal complaints regarding issues between providers and franchise entities (local governmental units). Of the seven formal complaints that were filed and docketed, four are now closed and three (involving the cities of Detroit, Romulus, and Adrian) are open but have not been ruled on pending adoption of procedures by the legislature.

The Commission has also received hundreds of individual customer complaints (518 against Comcast, 105 against Charter, and 17 against WOW!).

## **FISCAL IMPACT:**

The Uniform Video Local Services Franchise Act, MCL 484.3306(13), imposes an assessment on video service providers based on the PSC's costs for administering the act.

The cost of the assessment is prorated among the providers based on the number of subscribers, with the aggregate amount of the assessment not to exceed \$1.0 million.

The bill provides that before a customer can file a complaint concerning a service provider with the PSC, the complaint would have to first be filed with the service provider and attempted to be resolved through the provider's dispute resolution process. In the past year, the PSC has received hundreds of customer complaints concerning channel line-up, billing issues, service outages, and other miscellaneous issues. Generally, it has attempted to resolve these complaints informally following the process it recommended in May 2007, which is substantially similar to the process established in the bill. To the extent that the volume of complaints and past practices continue as they have over the course of the previous year, the bill would likely have no significant fiscal impact on the PSC. However, because the bill establishes a formal dispute resolution process in statute, the behavior of customers, service providers, and the PSC could change.

Complaints that were previously heard by the PSC may no longer be "ripe" for review under the bill, i.e. service providers may wish to resolve complaints through their established dispute resolution process, rather than through the PSC, resulting in fewer complaints filed with the PSC. To the extent this occurs, the bill could lower the PSC's cost to administer the act, thereby reducing the amount assessed against service providers. Alternatively, the number of complaints received by the PSC could increase as a result of customers' increased awareness of the process and the role of the PSC. This would increase the PSC's administrative costs related to the act. However, because the FY 2007-08 enacted appropriation (as well as the FY 2008-09 Executive Recommendation) for the video franchise assessment is at the statutory maximum of \$1.0 million, any additional costs borne by the PSC as a result of the bill would not result in increased funding for the PSC through the video franchise assessments.

Reportedly, most local units, in their role as a franchising entity, are handling complaints internally, rather than through the PSC, as they did prior to the enactment of the act. To the extent the bill shifts this burden from local units to the PSC, local units could realize some cost savings.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.