

Cable Franchising & PA 480 of 2006

History

- Local governments have been regulating cable since the technology first appeared in the 1950's
- Cable system, officially adopted by Congress in 1984, has survived two significant Communication Act amendments
- The Federal Cable Act split regulatory responsibilities between the federal government and local governments.

New Michigan Video Franchising System: PA 480 2006

- Why this legislation? Telephone companies did not like the negotiations associated with the traditional cable franchising process
- They pushed at the state and federal levels to “streamline” the traditional franchising process
- Cable operators: “If phone companies get it, we should too”
- PA 480 of 2006 brings Saturn’s “NO HAGGLE” policy to video franchising - it was suppose to eliminate the negotiation process
- MPSC adopted the Uniform Franchise which all communities are required to use; it renders all inconsistent provisions in existing franchises “unreasonable and unenforceable” and establishes strict deadlines local governments must follow to process franchise applications

Top Ten Changes Imposed by PA 480 of 2006

1. Local governments cannot require a “provider” to actually provide service
2. Right-of-way requirements lost from current franchise
3. No build-out requirements
4. Franchise fees calculated differently, payment timing changes, audit rights
5. reduced
6. Previous in-kind services may have to be paid for by local government
7. Local governments must program PEG channels 8 hrs/day for 3 consecutive months to keep the PEG channel
8. Uniform Franchises may be freely assigned
9. PEG programming must be produced by party other than provider and delivered by producer
10. Local governments subject to MPSC jurisdiction
11. Local governments cannot enforce any conflicting provisions

Summary of PA 480 Concepts

- Uniform Franchise is about 7 pages
- Communities must use MPSC-issued Uniform Franchise (unless community and provider agree otherwise)
- Local government must strictly adhere to deadlines established by PA 480 of 2006
- Act's definition of gross revenues is fairly broad - may increase franchisee fee payments
- Local governments with franchises that expired Jan. 1, 2007 may be able to claim an additional 2% PEG of gross revenue for PEG purposes
- Broad police power authority retained
- Local governments fill out the franchise fee on the uniform agreement - fee can be 0-5%
- Local governments must itemize all existing PEG costs and in-kind services and convert that number into a defensible PEG number percentage on the uniform agreement

Uniform Franchise Timing

Depends on the state of local government's current franchise

12. Expired Franchises:

- May not extend or renew
- Cable company applied for Uniform Franchise by May 1, 2007
- If you have an expired franchise, please call David Worthams at (517) 908-0303

13. Mid-term Franchises - Cable operator can, at will:

- Terminate existing franchise, replace with Uniform Franchise
- Amend existing franchise to conform to Uniform Franchise
- Continue under expired franchise until Uniform Franchise takes effect
- Negotiate new, mutually agreeable franchise differing from franchise and Uniform Franchise

Uniform Franchise Procedure

- Provider sends Uniform Franchise to clerk (RRR or overnight)
- 15 business days after filing - must inform applicant whether application is complete
- 30 days after submission - must complete franchise to approve by council
- If not approved within 30 days - deemed approved by Operation-of-Law

This Legislative Brief is derived from presentation materials of Jon D. Kreucher, attorney, Howard & Howard (JKreucher@howardandhoward.com). His presentation was part of a League hot topic seminar held February, 2007.