

The Ten Disappointments of Cable Deregulation In Michigan



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MI-NATOA is the Michigan Chapter of the National Association of Telecommunications Officers and Advisors (NATOA). This professional organization is dedicated to helping its members improve cable and telecommunications service throughout Michigan. It works with local government agencies to provide up-to-date information of both local and national legislation to help maximize the effective use of cable and telecommunications systems. MakeCableBETTER.org is a partner web site for MI-NATOA focusing on providing information about cable issues to the public at-large, and to urge lawmakers to reverse the problems created by Michigan's deregulation of the cable industry in 2006. For more information, visit www.mi-natoa.org or www.MakeCableBetter.org.

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Have your cable rates gone up recently? Have you tried to call your cable company only to hear an endless string of recorded voices? And what about the programming – are your favorite channels getting easier to find, or do you feel lost every time you pick up your remote? If these problems sound familiar, you're not alone. Cable complaints have skyrocketed in Michigan since the industry was deregulated by our state legislature in the final days of 2006. Cable's deregulation – and the cause of the disappointments that soon followed -- came in the form of 2006 Public Act 480.

The Backdrop

For more than four decades prior to the passage of Public Act 480 in 2006, cable's monopoly power¹ had been regulated by local elected officials: cable's rates, service, construction practices and customer notices were regularly monitored by local governments so the industry's monopoly status could be kept in check.²

Local regulation worked well. But in 2006, the telecommunications industry suggested through campaign contributions and otherwise³ that it was time to pursue a new path in Michigan: if local regulation were eliminated, the telephone companies argued, more video service providers would enter the market. More providers, in turn, would mean that cable competition would flourish, prices would fall, and customer service would be fostered. The telephone companies were also quick to claim that more competition would mean more jobs and investment for our state.⁴ Taken together, it all *seemed* to make sense.

Everyone loved the idea of creating more competition for cable. Even cable warmed to the notion once it became clear that local officials would no longer be looking over the industry's shoulder. So, with the support of the telephone companies being loudly voiced and with a silent nod coming from the cable companies, the idea of deregulating the cable industry in Michigan picked up momentum – so much, in fact, that the decades of challenges with cable were soon forgotten.

The Ten Disappointments of Cable Deregulation in Michigan

Disappointment #1:

There is No Objective Way to Fully Measure the Failures of PA 480

Disappointment #2:

Widespread Competition for Cable Companies Has Not Developed

Disappointment #3:

PA 480 Deregulated the Cable Industry Before Competition Really Developed

Disappointment #4:

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Cable's Customer Service Has Plummeted to All-Time Lows Since PA 480 Was Passed

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Disappointment #9:

PA 480 Has Dramatically Increased Litigation

Disappointment #10:

Bills Designed to Correct Some of These Problems Haven't Moved

The Experiment

While everyone loved the idea of creating more competition for cable companies, deregulation of the industry was also a radical departure from a proven method of keeping cable issues under control. For example, PA 480 immediately required a local government to issue a video franchise to any person who requested one, regardless of experience or qualifications. PA 480 also eliminated local government's ability to regulate cable's basic tier prices.⁵ Similarly, local officials could no longer require new cable providers to serve all areas of their community,⁶ nor could local officials continue to mediate the cable complaints that their residents were raising.⁷ In fact, PA 480's deregulation of cable stripped local governments of almost all of the tools that experience had proved necessary to keep cable issues under control.⁸ PA 480 was passed with the best intentions. With the benefit of two years of hindsight, however, it's now clear that several critical elements are missing from PA 480. As an unfortunate result, customers have been left with more complaints, higher prices and deepening disappointments – not the new era of cable competition that PA 480 once promised.

Disappointment #1: There is No Objective Way to Fully Measure the Failures of PA 480

PA 480's primary objective was to “promote competition in providing video services in [Michigan].” To accomplish this feat, the Act was premised on the theory that deregulation of the cable business would quickly create competition. Despite the critical nature of this assumption, however, the 2006 law made very little mention of how much competition was to be expected, whether that goal was realistic, and the deadline when the competition was to be achieved.

In fact, only two goals are actually set out in the law. First, Section 9(3) of the Act requires a company that has “more than 1,000,000 access lines in the state” and which uses “telecommunications facilities to provide video services” (*i.e.*, read “AT&T”) to “provide access to its video service to a number of households equal to at least 25% of the households in the video service provider's telecommunications service area in the state.”

Here's the non-lawyer translation: AT&T has to offer video service to at least 25% of the number of homes in Michigan that can receive AT&T's phone service. The quota is to be achieved “within 3 years of the date it began providing video service under this act.”⁹

The second goal of the Act: all video providers are to deliver service on a non-discriminatory basis, and regardless of race or income.¹⁰ It might seem that a statute shouldn't have to require such a thing; but an early objective of AT&T's plan was to provide service coverage to roughly 90% of its “high value customers”¹¹ but to only about 5% of its “low value” customers – so lawmakers were wise to require AT&T to offer its video service to everyone.

In order to keep track of PA 480's modest goals, AT&T is required to file “an annual report with [local governments] and the commission regarding the progress that has been made to-

ward compliance“ with the directives.¹²

So how's AT&T coming with its non-discriminatory, 25% buildout? That's a good question. Unfortunately, no one has a good answer. Apparently, the MPSC doesn't track the number of homes within AT&T's service territory, so calculating the 25% buildout quota will be difficult. Equally troubling is that the Act doesn't even require each video service provider to identify the communities in which a video franchise is held, or the areas in each of those communities where service is actually being offered.¹³ That means that any submitted information will be difficult to verify.

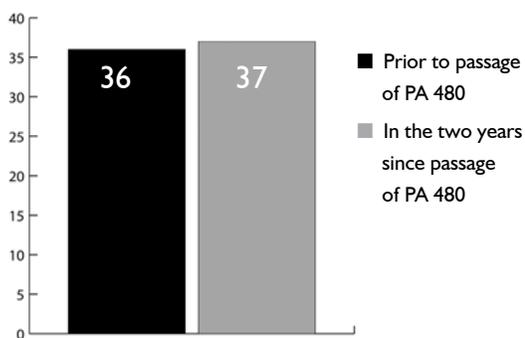
When PA 480 was being considered, the industry also promised thousands of new jobs to Michigan residents and hundreds of millions of dollars in new investment¹⁴ – jobs and investment which are also incapable of verification. Add it all up, and there were plenty of promises in PA 480 – but none that were specific, measurable or time-based. Unfortunately, that means that nearly anyone can claim almost anything as it relates to PA 480 – a situation which has fostered many creative, pro-PA 480 press releases by the industry, but an environment where serious policy debates over objective data can not occur.

Fortunately, Michigan's cable customers don't have to be left in the dark about whether the industry will meet the Act's modest goals. The Michigan Public Service Commission (“MPSC”) is required to provide annual reports to the governor and legislature which include “information on the status of competition in the state and recommendations on any needed legislation.”¹⁵ In order to compile these reports, “a video service provider shall submit to the commission any information requested by the commission necessary for the preparation of the annual report ...” The MPSC is minimally empowered to request information from each video service provider as to the communities in which that provider holds a franchise, the specific areas in each community where service is available, and the household income for each community. But the MPSC could also ask for more. For example, *decreasing* prices and *improved* customer service also provide some evidence of developing competition. Therefore, the MPSC could gather information related to the provider's price increases, the number of complaints the operator has received (measured on a fair and consistent basis) and the provider's third-party customer service scores for the prior year. All the MPSC needs to do is ask, and then report the results.

Disappointment #2: Widespread Competition for Cable Companies Has Not Developed

PA 480 immediately deregulated the cable industry based on the theory that widespread competition for big cable companies would soon follow. With the benefit of two years of hindsight, however, we now know that the dream of statewide cable competition amounted to a triumph of hope over experience.

CHART 1. Number of video service providers offering service in Michigan



Before PA 480 was enacted, 36 different companies held franchises in Michigan. This graph shows that now, two years later, there are 37 companies, a net service-provider increase of only one company.

Consider the following snapshots:

- Before PA 480 was enacted, 36 different companies held franchises to offer cable service in the state. Two years after PA 480 was passed, 37 actually offer video service — a net service-provider increase of just one company (AT&T) since the industry was deregulated and opened to all franchise applicants.¹⁶ See Chart 1

- Of the 36 pre-Act cable providers in the state, at least two are now facing significant financial challenges. Broad-stripe, LLC recently filed for Chapter 11 reorganization in the US Bankruptcy Court for the District of Delaware.¹⁷ Charter Communications, Michigan’s second-largest cable provider, is reportedly drowning in debt. That company has a market value of about \$57 Million, but debt exceeding \$21 Billion¹⁸

- Before PA 480 was passed, about 58 Michigan communities enjoyed wireline cable competition.¹⁹ Most of that pre-Act competition was located in southeast Michigan, and was (and is) delivered through a video provider named WOW! Two years after the Act was passed, just 125 communities have had one new provider file for a video franchise²⁰

- Finally, it’s starting to sound like AT&T won’t be offering its video service in many more Michigan communities any time soon. In a January 28, 2009 earnings conference call, the company announced that it was reducing its capital expenditure in 2009 and that the remaining capital will be devoted primarily to the Southeast part of the U.S., not to Michigan. According to the company’s CFO, “one area that certainly we want to expand the build in is in the Southeast. I think that’s an area where, frankly, we will benefit from having a strong video product to bundle with our other offers. So, you’ll see us do much more build and turn up in the Southeast as we go forward over the next year or two.”²²

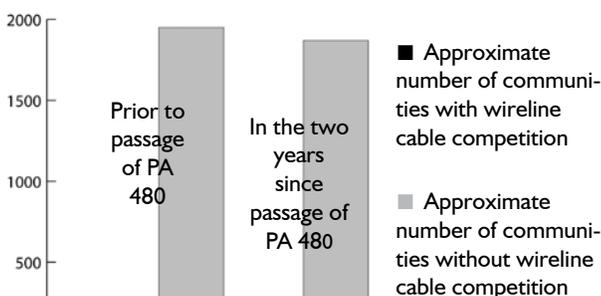
The snail-like pace at which cable competition has developed over the last two years is an unfortunate showing. It is proof, however, that market forces drive competition in cable, not deregulation. And while portions of a handful of communities can now enjoy the benefits of wireline cable competition, more than 1,800 Michigan communities – and more importantly, the cable customers in those communities – are still left stranded two years after PA 480 was passed, and will probably never see any real cable competition.

CHART 2. AT&T’s video buildout in one Michigan township

Zip Code	2 Months After Video Franchise Issued	6 Months After Video Franchise Issued	20 Months After Video Franchise Issued
48329	NO	NO	NO
48329	YES	YES	YES
48329	NO	NO	NO
48327	NO	NO	NO
48329	NO	NO	NO
48329	NO	NO	NO
48327	NO	NO	NO
48329	NO	NO	NO
48327	NO	NO	YES
48327	NO	NO	NO
48327	NO	YES	YES
48328	NO	NO	NO
48328	NO	YES	YES
48328	NO	NO	NO
48328	NO	NO	NO
48328	NO	NO	NO
48328	NO	YES	YES
48327	NO	NO	NO
48327	NO	NO	NO
48327	NO	NO	NO
	~5%	~20%	~35%

Many communities that issued a video franchise to AT&T nearly two years ago are still waiting for AT&T’s buildout to be complete. Here’s the experience of one large Michigan township. This history has been gathered by checking for the availability of the company’s service at residential addresses located throughout the community.²¹ The graph shows what has happened after two, six and twenty months after the video franchising was issued. Nearly two years after the video franchise was issued, AT&T’s buildout of the community is estimated to be only 35% complete.

CHART 3. Number of communities with and without wireline cable competition



This graph shows how before and after PA480, there is no big change in the number of communities with or without wireline cable competition.

Disappointment #3: PA 480 Deregulated the Cable Industry Before Competition Really Developed

Competition for cable companies is developing much too slowly. Unfortunately, the sluggish pace of that development has revealed a major problem with PA 480: even though cable competition still doesn't exist in 9 out of every 10 Michigan communities, PA 480 immediately deregulated cable's monopoly in every one of Michigan's 2,000 cities, villages and townships. Therefore, in 1,800 Michigan communities there is no remaining rate regulation, no customer service enforcement, and no ability to require a cable operator to explain changes in rates and services. In those 1,800 Michigan communities, cable operators have quickly shuttered local customer service offices, canceled performance and construction bonds, and the companies regularly resist requests from local officials to cablecast local emergency alert messages.

With the benefit of hindsight, it now appears that PA 480 should have deregulated the cable industry only after widespread competition actually developed. PA 480 amounts to an early release program for an industry that should have remained under house arrest. Sadly, the early deregulation of the industry means that cable's now unregulated market power can bear down on Michigan's residents.

Disappointment #4: Video Service Prices Have Hit All- Time Highs Since PA 480 Was Passed

PA 480 promised new competition for big cable companies and the possibility of lower prices. But widespread competition hasn't taken hold in Michigan – and neither have lower cable prices.

PA 480 was touted as a consumer-friendly law. Ironically, however, PA 480 prohibits local governments from regulating cable's rates. According to the Act: "A franchising entity shall not . . . impose any provision regulating prices charged by video service providers."²³

Comcast, our state's dominant cable provider, celebrated the one year anniversary of its newly-deregulated status by raising "lifeline basic" service prices by 25% in many Michigan communities.²⁴ Many other service tier and equipment prices also jumped between 9% - 25%.²⁵ Unfortunately, that wasn't the end of Comcast's 2008 price hikes. In the Fall of 2008, Comcast again raised prices by nearly 4% in many areas. Incredibly, these massive price hikes came just after the cost of the entertainment/recreation index increased by less than 1 percent in 2007 and less than 2% in 2008.²⁶ Comcast customers in Michigan felt the blow. But the news wasn't all bad – at least not for Comcast. Its net income for the third quarter of 2008 was up 38%.²⁸

The Federal Communications Commission recently took note of cable's ever-skyrocketing prices. If new rate regulations were adopted, however, it appears PA 480 would prevent local governments from imposing those price protections for the benefit of Michigan's residents. While many claimed that deregulation would lead to more competition and lower prices, Michigan's cable customers now know better: they are paying much higher prices for their video services than before PA 480 was passed.

Disappointment #5: Cable's Customer Service Has Plummeted to All-Time Lows Since PA 480 Was Passed

Since our state's deregulation of cable in 2006, competition has been slow to develop and video prices have skyrocketed. Equally troubling is the very rapid deterioration in cable's customer service.

Comcast and Charter—the two dominant cable operators in our state—have recently turned in customer satisfaction scores that are abysmal by any standard. In fact, those two cable operators were the lowest-scoring companies in the lowest-scoring industry as measured in 2007 by the American Customer Satisfaction Index.²⁹ In May, 2008, the airline industry slipped past cable and displayed poorer scores – but Comcast's own customer satisfaction still dropped to the lowest point on record.³⁰

Such poor customer service would not have been tolerated by local officials. Prior to deregulation in our state, local governments often adopted minimum standards in customer service as proposed by the Federal Communications Commission.³¹ Those regulations generally required cable representatives to answer calls within 30 seconds, to fix outages within a defined period of time, and to have company and contractor vehicles clearly marked, among many others. Such customer service regulations were developed and enforced by local governments after many years of hearing cable company complaints.

As with other aspects of local regulation, however, PA 480 eviscerated local officials' ability to regulate the service that their residents receive from cable. And as with the abolition of price regulations, cable operators were quick to celebrate the elimination of customer service standards. Many local customer service offices were quickly closed. Some cable companies now insist that customers drive more than 15 – 45 minutes one way if equipment needs to be repaired or if service is terminated. As for telephone hold times, a wait of 10, 15 or even 30 minutes is not uncommon. Michigan's Attorney General noted the spike in cable and video service provider complaints in 2007. Such complaints now rank as the second-largest category of discontent as measured by the AG.³² The MPSC recently noted a large increase in cable complaints, too. Among the most prevalent were those involving billing issues; public, education and government access channel issues; problems with Charter's channels "freezing;" and changes in channel lineups.³³

In its most recent annual report, the MPSC asked the legislature to extend the MPSC's authority to collect up to \$1,000,000 per year from Michigan's cable customers.³⁴ This

cable customer expense is intended to reflect the Commission's operational overhead for cable issues. There is no doubt that the Commission has dealt with a number of cable problems over the last two years: in 2008, for example, the MPSC fielded a little more than 1,000 customer complaints.³⁵ A handful of formal complaints were also pending at the end of last year.³⁶ Unfortunately, cable's rapidly-deteriorating customer service requires more than just a reaction to cable complaints when customers call. Instead, a pro-active customer service standard should be developed and actively enforced by the Commission. The regulation and enforcement of customer service standards were tasks assumed by local governments prior to the passage of PA 480, and responsibilities that local officials pursued without additional charges being placed on customers' bills. Now that the responsibility of customer service enforcement has been stripped from local governments and the MPSC is collecting a fee for its oversight role, it is important that the Commission actively engage customer service issues so that the post-PA 480 declines in customer satisfaction can be reversed.

Sadly, and as with cable's skyrocketing prices that can no longer be regulated locally, challenges to improve cable's customer service were just made more daunting by PA 480.

Disappointment #6: Deregulation of the Cable Industry Has Threatened the Existence of PEG Programming

Public, education, and government access ("PEG") programming is one of the last well-focused mass mediums still available for the public's use. PEG programming increases the transparency of local government, allows parents to stay connected with their children's schools, permits the elderly and those with mobility problems to attend a local service, and provides a 21st-century soapbox for an active discussion of community issues. As with nearly every other channel on the lineup, PEG isn't valued by some – but to others, PEG is considered priceless. In an era where radio, television broadcasters and newspapers continue to merge into ever-larger conglomerates, it's important to keep a channel open for the community to communicate – and PEG does just that.

Nevertheless, the deregulation of the cable industry has threatened PEG's very existence. Multiple disputes have arisen over the amount of PEG funding that may be required of video providers under the Act.³⁷ In January of 2008, Comcast attempted to move all PEG programming from its lifeline basic service to a digital tier, a move that would have made PEG more expensive for some³⁸ and not available at all to thousands of Michigan's residents.³⁹ Fortunately, a US District Court judge halted Comcast's attempt to move PEG to the company's "digital desert."⁴⁰ But that ruling did not put an end to the issue.

Comcast is not alone on its attack on PEG. AT&T has im-

posed its own "PEG Solution" on PEG programmers. AT&T's "Solution" – i.e., a solution to a problem that doesn't otherwise exist – utilizes a different transmission path and results in different programming functionality than that offered by AT&T to broadcasters.⁴¹

Sadly, the industry's attack on PEG programming would not have been possible without the state's deregulation of the

PA 480 deregulated the cable business everyplace in Michigan before cable competition got a foothold *anyplace* in Michigan.

video providers. To this point, PEG programmers have successfully defended their ground – but they lack the resources of the big cable and telephone companies that they have regularly been asked to confront. Without immediate intervention by lawmakers, PEG may soon become another valuable public asset lost to the industry.

Disappointment #7: Promised Jobs Haven't Materialized

Shortly before PA 480 was passed, AT&T publicly promised that the deregulation of the video business would create more competition which would, in turn, create 2,000 jobs and mean \$620 Million in new investment for our state.⁴² Turning a back on such a promise – particularly given the economic challenges our state now faces – would have been a difficult thing for any legislator to do. Lawmakers followed through on their end of the bargain when they deregulated the video business. Unfortunately, there's little evidence that the jobs and investment promised by the industry in return have actually materialized.

In the case of any long-term increase in jobs, the Communications Workers of America recently noted that "AT&T has hired temporary workers as well as contractors who do not even live in this state in their efforts to complete the U-Verse build."⁴³ AT&T has also admitted as much. On January 28, 2009, the company's CFO said that the telephone giant would be slowing down its rollout of its video service because "it allows us to manage the build and the rollout of markets in a smoother fashion with our current resources and force. And so, it allows us to complete this build and this investment and this cycle without a lot of *ups and downs* in terms of the force required and the resources required to do it."⁴⁴

It's now becoming clear that the sort of jobs promised by AT&T when PA 480 was passed were primarily short-term construction jobs – crews that might even be moved from one state to the next as construction occurs. Those aren't the sort of jobs that Michigan needs or legislators had in mind when they deregulated the cable business. Relevant, too, is AT&T's recent announcement that it would cut 12,000 more full time jobs from its payroll across its service territory – job cuts that are in addition to the 4,000 lay-

offs the company had already announced in April, 2008.⁴⁵

And what about the other cable providers? In 2008, Comcast cut 120 high-paying, full-time jobs from its Midwest division headquarters, previously located in Southfield.⁴⁶ As part of Comcast's consolidation, the division offices are now located out of state.

The news related to infrastructure investment is not much better. AT&T has repeatedly missed its buildout targets since its video deployment project was first announced,⁴⁷ and the company recently said that it would reduce company-wide capital expenditure by

agreed to by the cable operator — were focused on delivering adequate customer service to local residents and a certain minimum level of infrastructure and local investment.

Since Michigan's deregulation of cable, however, franchise agreements are no longer negotiated. Instead, local governments are required to utilize a perfunctory state-mandated franchise form and to issue a video franchise to any party that requests one, regardless of the requestor's qualifications or capabilities. A very limited level of customer service can be sought under the state-mandated deregulation.⁴⁹ Perhaps

most importantly, the commitments previously negotiated with and agreed to by cable operators were extinguished under PA 480 — put differently, the Act permitted cable

operators to simply walk away from their prior customer service and infrastructure obligations.

It's not every day that a back can be turned on a costly commitment — so cable operators wasted no time in taking advantage of their newly-deregulated status. Many operators quickly shuttered customer service offices; this has led to reduced levels of commercial building occupancy and lower tax revenues for local governments. Because cable's previous "store to the door" policy has been rendered an unnecessary offer by the Act, many cable companies now insist that customers drive extended distances to return or replace equipment if a problem occurs. That means fewer service trucks in a video provider's fleet, and a reduction in local sales of fuel, maintenance, food and other items because the cable company no longer has the same local presence. Government affairs staffs have been slashed by cable operators, a situation which has led to higher unemployment and lower payrolls.

The hidden costs of the Act are impossible to fully measure. But those costs are real, and many of them are being shouldered by local economies.

Disappointment #9: PA 480 Has Dramatically Increased Litigation

Litigation can be time consuming and expensive, and is understandably viewed as a last resort by many. Even so, PA 480 has created a situation where more franchise-related litigation has occurred in Michigan in the past two years than in the two decades prior. The cost of litigation eventually has to come out of someone's pocket — in this case, it will ultimately come from cable customers and taxpayers who, in another twist of irony, are often the same people wearing different hats.

Before the deregulation of cable in Michigan, a video provider and a local government were required by federal law to negotiate a franchise agreement and a franchise renewal. Both processes were subject to well-defined provisions of federal law.⁵⁰ Similarly, if a video service provider wanted to amend its franchise agreement, a federally-defined procedure also ex-

Cable companies' prices, customer service and market power should be kept in check through a combination of market-driven competition and local regulation.

10% - 15% for 2009.⁴⁸ Charter's recent failure to make an interest payment to bondholders when due means that capital investment suffered in 2008 as well.

In fairness, it might be said that no one anticipated the full extent of our nation's economic downturn, and that the economy — and not the failures of Michigan's deregulation of cable — are to blame for any shortfalls in job creation or investment. Even if such a generous view were applied, however, it's still the case that Michigan's residents have been left without any promise of cable deregulation having been fulfilled. Widespread cable competition does not exist in our state, prices have gone up, customer service has gone down, and jobs and investment have failed to materialize. Any spin that is otherwise applied by telephone and cable companies has to be viewed with a good deal of skepticism.

Disappointment #8: PA 480 has Damaged Local Economies

PA 480 was supposed to create jobs and investment for our state. It now appears that those promises will be left largely unfulfilled. In the meantime, however, it is clear that the deregulation of the cable industry has damaged our local economies.

Before Michigan's deregulation of cable, franchise agreements were negotiated between local governments and cable operators. Negotiated agreements regularly required local customer service offices, for example, and public, educational, and government ("PEG") programming commitments. A cable operator had to maintain a staff adequately sized to respond to local government officials and to the complaints routed through those officials. Additionally, negotiated franchise agreements often required a cable operator to maintain a trained staff and the equipment necessary to promptly fix service outages. If local officials were willing to concede a local customer service office, a cable operator would regularly promise to pick up equipment when a customer had a problem or wanted to disconnect service (i.e., cable operators agreed to bring the "store to the door"). These types of franchise requirements — all of which were regularly negotiated with and

isted.⁵¹ Federal law required the parties to communicate with each other. Once the negotiation was complete, each party would have a pretty good understanding of the relative commitments and responsibilities.

Under PA 480, though, no negotiation occurs; in fact, the process leaves little room for any meaningful communication.⁵² Many provisions of the Act are vague, and there is very little precedent available to influence a party's own interpretation of the law. Perhaps most importantly, PA 480 stripped local governments of the authority to enforce the franchises that those local governments had issued. Instead, the MPSC is expected to resolve video provider / franchising entity disputes pursuant to a resolution process that Michigan's state legislature has not yet adopted.⁵³

As you might expect, it's hard to resolve a debate when the rules of engagement haven't even been developed. As a disappointing result, local governments have been required to seek the courts' intervention to resolve some of the many disputes that have been created by the Act. In 2008 alone, three separate lawsuits were required:

- Meridian Township and other communities⁵⁴ sued to prevent Comcast from moving public, educational, and governmental ("PEG") access channels from Comcast's lifeline basic tier to its higher priced digital service tier. In response, a United States District Court Judge halted the planned channel relocation.⁵⁵

- In August, the City of Saline brought an action against the incumbent cable company to enforce the city's right to collect a fee in support of PEG programming under the Act.⁵⁶ The lawsuit was resolved soon thereafter, and the operator is now paying PEG fees. Toward the end of 2008, the City of Flint sued to enforce its ability to collect franchise fees on certain portions of the cable provider's gross revenue, as Flint believes it is entitled to do under the Act.⁵⁷ That lawsuit remains pending.

- One more lawsuit has already been filed in the first month of 2009. On January 27, the City of Lansing sued AT&T in state court, contending that AT&T will not dedicate a separate and distinct position on its video lineup to each of the city's PEG channels, as Lansing believes is required by the Act.

Several other disputes remain unresolved. Comcast and the City of Detroit apparently remain at odds over the payment of PEG fees,⁵⁸ as do Comcast and the Cities of Romulus⁵⁹ and Adrian.⁶⁰ AT&T has also reserved its right to challenge the collection and payment of PEG fees, suggesting to some that another dispute may be brewing in that area, too.

Prior to 2006, the negotiation of a franchise agreement could take many months. Nevertheless, the resulting agreement typically governed the parties' relationship for 10 – 15 years, and the communication required by the process left the parties with a clear understanding of their relative rights and obligations. In fact, the federal process worked so well that there is just one reported court case involving a provider and a local government that arose in Michigan between 1989 and 2006 which involved the issuance of a new cable franchise, the renewal of a cable franchise, or a franchise fee dispute.⁶¹ Unfortunately, a formerly-stable process has since been thrown into disarray by the Act – and the resulting litigation has imposed another hidden cost of deregulation on cable customers and taxpayers.

Disappointment #10: Bills Designed to Correct Some Of These Problems Haven't Moved

Many bills to correct these problems have been introduced in the Michigan state legislature since PA 480 was enacted. All, however, failed to be passed in Michigan's last legislative session, and several even failed to garner any serious discussion. Two of the bills—House Bill 5048 and Senate Bill 637—related to the still-unresolved process which is intended to empower the MPSC to resolve disputes between video providers and franchising entities. Others—HBs 5693 and 5667, and SB 1235—are intended to restrict the cable operators' ability to move public, educational and government access programming off the cable operators' basic service tiers. Still others—HB 5047 and SB 636—attempted to ensure that communities receive compensation for the in-kind services that were lost when existing franchise agreements with cable operators were invalidated under PA 480.

The last two years have been very busy and particularly challenging for state legislators; they have been required to tackle massive policies related to energy, health care, tax policy and many others. Nevertheless, most Michigan households value video service just below their essential services but well above the other discretionary categories. Cable is a material part of many household budgets, and a service relied upon for both entertainment and critical public information. Cable deregulation quickly created many problems for Michigan's residents, but those problems can be reversed just as easily. In any case, the disappointments created by our state's current cable policy should not be ignored because they will likely not go away without legislative intervention.

The Best Intentions

PA 480 was passed with the best intentions. Cable competition was supposed to get jump-started by the new statute. In turn, cable prices were to decline and customer service was to improve. Unfortunately, just the opposite picture has taken shape. PA 480 deregulated the cable industry everywhere in Michigan before cable competition gained a foothold anywhere in the state. As a consequence, cable companies have increased their prices at an exponential pace when compared to the consumer price index, customer service has slipped and complaints continue to mount. The jobs and investment pledged by the industry when PA 480 was considered do not appear to have developed, and any claims to the contrary are incapable of verification.

While there is a desperate need to correct certain elements of the Act, it now appears that PA 480 may need more than a tune-up: the disappointments of deregulation raise fair questions about whether the Act should be repealed in its entirety. While this picture isn't pleasant, the situation can be corrected. Our state legislators can adopt a vision that considers both the short term problems with the Act and the long-term propriety of the statute.

With respect to near term issues, regulators and lawmakers should:

- State lawmakers should immediately reinstate local officials' right to adopt and enforce customer service and consumer protection laws tailored to the needs of local constituents. Cable customers deserve much better service than they have received since deregulation;
- State lawmakers should immediately require all video service providers to treat public, educational and government access channels in a manner identical to the treatment offered to any broadcaster. While PEG is not highly valued by some, PEG is considered priceless by others – it is a public asset that should not be lost to the industry;
- State lawmakers should immediately adopt a process for resolving disputes between a video service provider and a local franchising entity that is fair to all of the participants. Cable customers and taxpayers are the parties that ultimately bear the cost of litigation created by the Act. If PA 480's shortcomings are considered correctable, a fair dispute resolution procedure must be made part of the mix;
- State lawmakers should immediately clarify that all local governments may collect a 2% fee from the video provider if a government wishes to provide public, educational, or government access programming to its residents. This is a small price to maintain the community-specific interactions that PEG creates.

With the benefit of two years of hindsight, it is also time to consider whether deregulation of cable is in the best long-term interest of Michigan's residents. If cable competition continues to develop at the sluggish pace experienced over the last 24 months, Michigan's residents will continue to suffer skyrocketing prices and poor customer service.

With respect to the stabilization of long-term cable policy in Michigan, regulators and lawmakers should:

- Require each provider to make a public disclosure of the communities and the areas in each such community where that provider actually offers video service;
- Require each company to provide a detailed report to the Michigan Public Service Commission and to each local franchising entity which identifies the price increases taken by that operator in the prior year and all third-party customer service scores that have been issued for the company on a state-wide or national basis;
- Require each provider to annually identify on a fair and consistent basis the number and type of each of the full time jobs devoted to providing video services in the state;
- Require each provider to annually identify on a fair and consistent basis the amount of capital investment made to provide video services in the state;
- Repeal PA 480 if AT&T's obligation under the Act to offer video service to at least 25% of the households in its telecommunications footprint is not met by May, 2010;
- Repeal PA 480 if fewer than 50% of the households in Michigan have access to wireline video competition by December 31, 2010.

This report addressed the harms of Michigan's Public Act 480 of 2006. It showed that these costly issues have greatly outweighed adding one video service provider, a provider which could have very well obtained local franchise agreements via the previous method. In fact, it was invited and welcomed to do so by Michigan municipalities. Lawmakers are urged to reverse the problems created by Michigan's deregulation of the cable industry.

End Notes

1. Cable operators steadfastly argue that their business is not a "monopoly." Competition, they assert, is found in the form of direct broadcast satellite services, and even from video rental stores. Even the Michigan Public Service Commission seems a bit drawn in by this argument, as the MPSC reports that satellite service "may be viewed as another competitor in video service," even though such service was neither created nor forwarded by PA 480. Even if one were to give the benefit of the doubt and consider satellite service a competitor, cable still controls nearly 70 percent of the multi-channel video market, and remains the only provider that can deliver video, telephone service, and high speed Internet access over the same wire in most of the markets it serves. See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report at ¶ 6 (Rel. Jan. 16, 2009) (available at www.fcc.gov). Additionally, certain benefits of competition – like materially lower prices – are only achieved when cable faces competition from a wireline competitor: "competition" from satellite companies does not have the same impact on prices. See, e.g., *id.* at ¶ 4, and U.S. General Accounting Office, (Telecommunications: Subscriber Rates and Competition in the Cable Television Industry), GAO-04-262T at 6 (rel. March 25, 2004).
2. In some of these areas, the regulatory pendulum has swung both ways over the forty-year-plus period of time. For example, Congress prevented local governments from regulating cable's rates in 1984. When cable appeared to have abused its pricing power, however, federal law re-established local governments as rate regulators in 1992. The federal Cable Act vests local franchising authorities with substantial regulatory discretion. However, the federal Cable Act also protects the interests of cable providers against things like an unreasonable refusal to award a competitive franchise and an unreasonable refusal to renew a franchise. The federal Cable Act can be found at 47 U.S.C. Section 521 *et seq.*
3. In the election cycle when PA 480 was considered, political action committees representing cable and telephone companies spent more than a half-million dollars on political contributions alone. That's 50% more than GM, Ford, and Chrysler spent in the same cycle, combined. See, Michigan Campaign Finance Network, Top 150 Michigan PACs (available at www.mcfn.org). A group called "Consumers for Cable Choice" also popped up during the consideration of PA 480. However, according to one third-party observer, "Consumers for Cable Choice describe themselves as 'an alliance of consumer organizations across the nation committed to the development of a competitive, vibrant cable communications market' but it is in actual fact an Astroturf organization. Consumers for Cable Choice president Bob Johnson . . . acknowledged having received \$75,000 in startup funds from Verizon this summer and 'a commensurate amount' from SBC." See, www.Sourcewatch.org.
4. AT&T press release: *AT&T to Invest \$620 Million and Hire 2,000 Workers to Bring Video Competition to Michigan Consumers* (November 30, 2006). The company issued the press release days before PA 480 was taken up for a vote by the Michigan legislature. The story is available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=23225>.
5. Act Section 3(8).
6. *Id.*
7. Act Section 10(3).
8. Act Section 3(8).
9. Act Section 9(3).
10. Like with other requirements, the Act provides AT&T with an unusual amount of latitude with respect to when its video service will be made available to lower income areas. The obligation to provide service on a non-discriminatory basis can be met by the company if, "[w]ithin 3 years of the date it began offering video service under this act, at least 25% of households with access to the provider's video service are low-income households" (i.e., households with less than \$35,000 in annual income). Alternatively, the obligation can also be met if "within 5 years of the date it began providing video service . . . at least 30% of the households with access to the provider's video service are low-income households." Essentially, then, the Act automatically provides a two year extension on the low-income household deadline in return for a quota that increases by just 5%. See Act Section 9(2)(a) & (b).

11. "Project Lightspeed" was the name given to SBC/AT&T's Internet protocol video product before being named "U-verse." For a discussion of the "high value" customers the project intended to serve, see, e.g., <http://www.soe.ucsc.edu/classes/ee230/Winter06/SBC%20Lightspeed%20Presentation.ppt> at slide 12.
12. Act Section 9(4).
13. While the Act does not expressly require video providers to volunteer the communities and areas that they serve, the Act does permit such information to be gathered. At Section 12(2) of the Act, the Michigan Public Service Commission is required to provide an annual report to the governor and legislature on the state of video competition in Michigan. That same section of the Act requires a video services provider "to submit to the commission any information requested by the commission necessary for the preparation of the annual report . . ."
14. AT&T press release: *AT&T to Invest \$620 Million and Hire 2,000 Workers to Bring Video Competition to Michigan Consumers* (November 30, 2006). The company issued the press release days before PA 480 was taken up for a vote by the legislature. The story is available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=23225>.
15. Act Section 12(b).
16. The MPSC's 2009 report on the Status of Competition for Video Services in Michigan ("2009 MPSC Report") notes that no new providers began to offer video services in Michigan in 2008. Only one new provider (AT&T) actually began to offer services in 2007. The 2009 MPSC Report is available at http://www.michigan.gov/documents/mpsc/Status_of_Competition_for_Video_Services_Report_2008_265417_7.pdf.
17. Case No. 09-10006 (filed January 2, 2009).
18. See, e.g., *Charter Misses \$74 mln in Debt Interest Payments* (January 16, 2009). Available at <http://www.tradingmarkets.com/site/news/Stock%20News/2128597/?relatestories=1>.
19. 2009 MPSC Report at p. 11.
20. An annual report issued by the MPSC attempts to track the level of post-Act cable competition in our state. However, it's difficult to tell from the 2009 MPSC Report just how many communities have actually seen a second video provider enter their community since the Act was passed. At one point, the 2009 MPSC Report suggests that the number is 125 (top of page 12); at another, 101 (chart, middle of page 12); and at another, something around 170 or something just short of 80 (chart, MPSC report page 18). Separately, AT&T now claims that it is now providing service to portions of 230 communities. See, e.g., *Cable Competition Means Consumers Must Look At All Their Options* (January 10, 2009). Available at http://www.mlive.com/news/jackson/index.ssf/2009/01/cable_competition_means_consum.html. In any case, fewer than 1 out of 10 Michigan cities, townships and villages have a community-wide choice in wireline cable providers.
21. Street addresses have been edited to protect the privacy of the homeowners.
22. AT&T Q4 2008 Earnings Call Transcript quoting CFO Rick Linder (January 28, 2009). Available at <http://www.seekingalpha.com>.
23. *Id.*
24. In the communities of Keego Harbor, Orchard Lake, Southfield, Sylvan Lake and West Bloomfield Township, for example, the price of Comcast's lifeline basic service was raised from \$11.25 per month to \$14.99, a price hike of 33% per month.
25. In Auburn Hills, Clarkston, Independence Township, Lake Orion Township, Oakland Township and Orion Township, for example, Comcast raised the price of its "digital classic" service from \$11.95 per month to \$14.95 per month, a monthly rate increase of 25%.
26. CPI-Recreation can be viewed at <http://www.bls.gov/news.release/cpi.nr0.htm>.
27. The third quarter 2008 was the last financial report available from the company at the time when this report was authored. An overview of Comcast's financial achievements for the quarter is available at <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&iD=1218842&highlight=>
28. See, e.g., *FCC's Martin Assails Cable Before Exit* (January 20, 2009) (noting that cable prices are 50% higher than when cable rates were regulated in 1992, even after being adjusted for inflation). Available at http://www.twweek.com/news/2009/01/fccs_martin_assails_cable_befo.php.
29. The ACSI analysis can be viewed at www.theacsi.org. Click on "ACSI Scores and Commentary," then "Scores by Industry," and finally "Cable and Satellite TV."
30. *Id.*
31. The FCC's standards, which local governments may enforce under federal law, are found at 47 C.F.R. Section 76.309.
32. The AG noted that the category "Telecommunications and Cable or Satellite TV" rose to the number two spot because of "increased complaints about cable/satellite TV services." The 2007 Top 10 Consumer Complaints list is available at <http://www.michigan.gov/ag/0,1607,7-164--185866--,00.html>.
33. MPSC 2009 Report at p. 8.
34. MPSC 2009 Report at p. 23.
35. *Id.* at 7.
36. *Id.* at 10.
37. See, e.g., the City of Detroit Complaint against Comcast, MPSC Docket No. U-15329; the Romulus complaint against Comcast, MPSC Docket No. U-15439; the Adrian complaint against Comcast, MPSC Docket No. U-15427; the Rogers City complaint against Charter, U-15527; and the Saline complaint against Comcast, Washtenaw Circuit Court Case No. 08-794-CZ.
38. See, e.g., Order dated January 14, 2008, *City of Dearborn, Charter Twp. of Meridian and Sharon Gillette v. Comcast of Michigan, Inc. and Comcast of the South*, USDC ED Mich. case no. 08-10156 (filed Jan. 11, 2008).
39. Under Comcast's plan, PEG would not have been available to Comcast's lifeline basic customers unless those customers chose to obtain additional equipment from the company. See, *id.*
40. *Id.*
41. See, e.g., Verified Complaint of the Alliance for Community Media Seeking Declaratory Ruling, MPSC Docket No. U-15366 (filed Aug. 13, 2007) (the MPSC dismissed the complaint, finding that the Alliance for Community Media lacked standing despite the claim that its members operate 120 PEG studios throughout Michigan and produce more than 1 million hours worth of PEG programming per year).
42. AT&T press release: *AT&T to Invest \$620 Million and Hire 2,000 Workers to Bring Video Competition to Michigan Consumers* (November 30, 2006). The company issued the press release days before PA 480 was considered by the legislature. The story is available at <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=23225>.
43. See, <http://www.cwa1298.org> (with related press release dated October 8, 2008; viewed on January 20, 2009).
44. Emphasis supplied. The transcript is available at <http://www.seekingalpha.com>.
45. In fairness, AT&T did announce the move of 300 call center jobs to Michigan in the fall of 2008, and the company credited the Act with that development. Digging just below the surface reveals, however, that there was more to the story than was first mentioned. First, it appears that AT&T decided to move the jobs to Michigan only after it received a \$1 million MEGA grant from the Michigan Economic Development Corporation. See, e.g., *Press Release: Granholm Announces Three Companies Expanding in Wayne County, Creating 902 New Jobs* (Sept. 23, 2008) (available at <http://www.themedc.org/News-Media>). Second, the 300 jobs claimed by AT&T to have been created by the Act were credited by the MEDC to AT&T Internet Services, Inc., a joint venture the company has with Yahoo!-- not to the company's video services. According to the MEDC, the jobs related to a call center "that will take inbound calls for High Speed Internet (DSL) customers in need of assistance with their Internet services." *Id.* Details like these, which lie just below the surface of positive company spin, suggest that job creation claims made by the industry might amount to little more than an employment shell game, particularly when such claims can not be verified independently.
46. R. Fernandez, *Comcast Restructuring Eliminates a Division, Philadelphia Inquirer* (July 4, 2008).
47. AT&T's original plan was to have its video service reach 18 million households across its footprint by the end of 2007. In fact, the company reached 17 million living units by the end of 2008. Compare, Project Lightspeed presentation at slide 22 (available at <http://www.soe.ucsc.edu/classes/ee230/Winter06/SBC%20Lightspeed%20Presentation.ppt>) with AT&T Q4 results (transcript available at <http://www.seekingalpha.com>).
48. See, e.g., *AP, AT&T Expects Single-Digit 2009 Revenue Growth*, available at http://seattlepi.nwsource.com/business/1700ap_att_outlook.html.
49. Under the state-mandated franchise agreement, a video service provider is required to comply with the FCC's customer service requirements. A franchising authority may not have any authority to enforce the customer service requirements, though, because PA 480 designates the MPSC as the forum for the resolution of disputes between a franchising entity and a video service provider.
50. For the procedure related to the issuance of cable franchises, see 47 U.S.C. Section 541. For the renewal of cable franchises, see 47 U.S.C. Section 546.
51. See, 47 U.S.C. Section 545.
52. Within just fifteen days, Act Section 3(2) requires a franchising authority to determine and communicate whether a franchise application is complete. "A franchising entity shall have 30 days after the submission date of a complete franchise agreement to approve the agreement." Act Section 3(3).
53. According to Act Section 10(3), "[t]he 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 . . . between a provider and a franchising entity . . ." The MPSC submitted a proposed resolution process by the date required by the Act; to this point, however, the Michigan legislature has not acted on the MPSC's recommendation. Therefore, it has been difficult for disputes between franchising entities and video service providers to be resolved at the MPSC, because the process is unclear; instead, courts have had to shoulder an increased caseload of complaints related to the Act.
54. Bloomfield Township, the City of Dearborn, and the City of Warren are also parties in the Meridian Township v. Comcast matter. See, *City of Dearborn Charter Township of Meridian and Sharon Gillette v. Comcast of Michigan III, Inc. and Comcast of the South, Inc.*, Case No. 2:08-cv-10156 (USDC ED Mich).
55. *Id.*, Order dated January 14, 2008.
56. *City of Saline v. Comcast of the South, Inc.*, Case No. 08-794-CZ (Washtenaw County Trial Court).
57. *City of Flint v. Comcast of Flint, Inc.*, USDC ED Mich. case no. 2:08-cv-14871 (filed Nov. 20, 2008).
58. MPSC Docket No. U-15329.
59. MPSC Docket No. U-15439.
60. MPSC Docket No. U-15427.
61. See, *City Communications v. City of Detroit*, 888 F.2d 1081 (USDC ED Mich. 1989) (involved an unsuccessful bidder to install a cable system in the City of Detroit).

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