



MICHIGAN TOWNSHIPS ASSOCIATION



MICHIGAN  
MUNICIPAL  
LEAGUE

## **Analysis of House Bill 6456 (H-2): Still a Bad Bill**

***Abrogation of All Existing Franchise Agreements.*** HB 6456 (H-2) would allow cable companies to terminate their franchise contracts at any time. Cable franchise contracts have been negotiated in good faith and should be honored until they expire.

- **One-sided Contract Abrogation Unfair, Unprecedented, and May Be Unlawful.** It is grossly unfair, and unprecedented, to allow one party to unilaterally walk away from a contract agreement that had been freely agreed to by both parties – and it may be unconstitutional. Lawsuits challenging this provision could bog down implementation of the state franchising approach.
- **What Happens to PEG & I-Net Support?** Local franchise requirements for PEG and I-Net support, free Internet service for schools, libraries, senior centers and other nonprofit organizations, as well as customer service and other community benefits would be tossed aside. Due to this, communities may have to close PEG stations, lose their I-Net systems, or reduce other services.

**Solution:** Amend HB 6456 (H-2) to eliminate abrogation of all existing contracts. See attached amendment #1.

### ***Revenue Impacts for Local Communities and PEG Channels.***

PEG channels are an important tool used by many local communities to broadcast council meetings, community events and local interest programming. Police and fire agencies depend on PEG stations to broadcast crime tips, fire safety educational programs, Most Wanted posters, emergency alerts and other public safety programming. "I-Net" refers to telecommunications lines connecting schools, libraries, and other public buildings for the exclusive use of the local agencies. Local communities are currently able to negotiate the set-aside of PEG channels and funding support for both PEG and I-Net services with cable providers as part of their local franchise agreement.

- **METRO Act Revenue Impact.** HB 6456 (H-2) in Sec 6 subsection (11), would allow a phone provider a direct METRO Act credit toward franchise fees under Sec 6 subsection (1), minus a property tax credit found under the METRO Act in which the PSC may grant. In essence, if the PSC didn't grant this full METRO Act credit, or the phone company did not apply for this property tax credit, then the phone company could simply deduct the amount of the METRO Act credit from the current franchise fees received by the community. Not only would this

scenario reduce franchise fees, but the local community would NOT get any revenue from the new provider until they reach a market penetration of approximately 15% to 30% in that local community (this would vary depending on community). And, more importantly, under that scenario, for each cable customer that the new phone provider would pick up before they met that market penetration threshold, the local community would lose cable franchise fees. Local communities receive approximately \$22 million in annual METRO Act fees. No explanation has been given as to why local community revenues need to be leveraged in this manner.

- **Reductions of In-kind Services to Local Communities.** Due to the possibility of the immediate franchise contract termination by current cable companies, local communities could have a significant negative revenue impact of approximately \$25 to \$35 million of in-kind services. To replace these services will have a certain fiscal impact on local communities and local residents. Some of these services include installation of lines to municipal and school buildings, cable and broadband service to municipalities and schools, and local emergency alert systems for municipalities to use.
- **PEG Channel Impact.** HB 6456 (H-2) would impact local public, education and government (PEG) community television operations in many different ways - some clear, some ambiguous. Although the phrase "public, education, and government access channels" is used frequently, a clarifying definition for what is meant by this term is absent from Section 1 (Definitions). The bill establishes an ambiguous "utilization" threshold for PEG channel retention (8 hrs of "programming"/day for 3 consecutive months) that appears to be potentially problematic as the scope is well beyond what most local cable franchises might contemplate. A PEG signal interconnection provision that places a technology and cost burden on the PEG provider is inappropriate - particularly as no such cost burden appears to be imposed on broadcast or other content providers. This item alone presents a huge problem for PEG centers around the state.
- **Limited Stations and Inadequate Funding.** HB 6456 (H-2) would allow a community that already has PEG stations under an existing cable franchise to retain the same number of stations under a new provider. But it limits communities that do not have a PEG station to a maximum of three PEG stations - a one-size-fits-all approach that is unfair to growing communities that could make active use of local broadcast opportunities. The bill would also limit funding for both PEG and "I-Net" to only 1% of a provider's general revenues. Use of the funds would be limited to capital expenses. The funds would not be available for administrative or operating expenses.
- **Franchise Fee Revenues.** HB 6456 (H-2) would not provide an increase in revenues to local communities, as provided in Section 6, subsection (1).
- **Solutions:**
  - Amend HB 6456 (H-2) to delete Sec 6 subsection (11). See attached amendment #2.
  - Eliminate language to allow current cable providers to terminate franchise contracts, and amend the legislation to allow for new providers to

continue to provide in-kind services. See attached amendment #1. And allow the continued provision of in-kind services. See attached amendment #3.

- Amend HB 6456 (H-2) to maintain current PEG funding and structure. See attached amendment #4.

***Increased State Bureaucracy/Decreased Consumer Protection:***

The Michigan Public Service Commission would be the regulatory franchising agency charged with this new responsibility under the bill. The problem with this approach is that the MPSC does not have adequate resources or experience to handle local complaints. Local governments have handled cable complaints of their citizens for decades, and can effectively and efficiently mediate disagreements between providers and constituents.

**Solution: State Franchise Should be Locally Issued and Locally Enforced.** The Legislature and the telephone companies could avoid creating a new state bureaucracy and speed implementation of new services by amending the bill to provide for local issuance and local enforcement of a state franchise. Let the state franchise set the rules, including time limits on franchise issuance – but require that the local agency actually issue the agreement. The benefits of this approach are:

- **All the issues are local.** Rights of way, numbers of Public, Education and Government (PEG) stations, I-Net support, and customer service – all of these are local issues that cannot adequately be addressed by a state agency. Providers must deal with local agencies to resolve them. Local issuance and local enforcement of a state franchise would establish the process for providers to work face-to-face with the communities to which they want to provide service.
- **Local agencies have expertise.** Local agencies already have decades of experience in local permitting, customer service and community-specific needs. State agencies could never replicate the hands-on assistance local agencies can provide to a company that wants to do business in a community.

See attached amendment #5

***Inadequate Build-out Would Allow Cherry-Picking:***

House Bill 6456 (H-2) would allow cherry-picking and red-lining anywhere on a house-to-house basis, or a block-to-block basis. The bill would only require 25% build out in three years and 50% build out in six years in the entire statewide service area, which could be satisfied in one region of the state. Current franchise contracts have a strong non-discriminatory standard that guarantees ALL residents receive service, or at least all residents within generally a 20-25 homes per linear road mile. There are no 'build-out' requirements for Verizon or small phone or cable providers in the bill. This would only broaden the digital divide.

**Solution:** Amend HB 6456 (H-2) to include a 'build-out' requirement to assure that local residents who live within a reasonable density receive service and competition within a reasonable time frame. See attached amendment #6.

## **AMENDMENT #1**

### **MML & MTA FRANCHISE ABROGATION AMENDMENT**

**Delete Sec. 5 (line 3 of page 11 through line 3 of page 12) and insert.**

#### **Sec. 5**

An incumbent video provider may, in its discretion, elect to terminate its negotiated franchise and obtain a uniform video service local franchise agreement upon:

- 1) Providing the relevant franchise authority with written notice of its election consistent with the requirements of Section 2 (3) (elements of uniform franchise provisions) on or after the date that another video service provider within the franchise area operating pursuant to a uniform video service local franchise agreement is offering a video service to more than 30 percent of residential households within such operator's franchise area.
  - a. For purpose of this section, only wireline video services offering shall be included in the calculation of percent of residential households being passed.
- 2) The following terms of the incumbent video providers franchise shall continue to be provided by an incumbent video provider that was furnishing services pursuant to its municipal cable franchise as of the effective date of this Act.
  - a. Build out and non discrimination – An incumbent's obligations to build out its service territory and not engage in discriminatory actions shall survive so long as the incumbent providers offers services within the franchised area.
  - b. Institutional network capacity, however defined or referred to in the municipal cable franchise but generally referring to a private line data network capacity for use by the municipality for noncommercial purposes, shall continue to be provided at the same capacity as was provided to the municipality prior to the date of the termination, and
  - c. Cable services to community public buildings, such as municipal buildings and public schools, shall continue to be provided to the same extent provided immediately prior to the date of the termination. Such cable service generally refers to the existing cable drop connections to such facilities and the tier of cable service provided pursuant to the franchise at the time of the termination.

**AMENDMENT #2**

**MML & MTA METRO ACT AMENDMENT**

Amend page 16, line 15, by striking out all of subsection (11) and relettering the remaining subdivisions.

**AMENDMENT #3**

**MML & MTA IN-KIND SERVICES AMENDMENT**

Amend page 6, following line 13, by inserting:

“(t) A requirement that the new video service provider shall continue all in-kind service obligation that were contained in its last cable franchise agreement or consent agreement from the franchising entity entered before the effective date of this act.”

## AMENDMENT # 4

### MML & MTA PEG AMENDMENT

**Delete Section 4 paragraphs (1) through (6) (line 1 on page 8 through line 14 on page 9) and insert the following**

#### Section 4 PEG/I-NET REQUIREMENTS-

1) All providers which obtain franchises pursuant to this Act shall provide channel capacity and financial support for public, educational, and governmental use as set forth below no later than 180 days after a request by a franchising entity in which the video service provider is providing services:

- i) The greater of: 3 PEG channels or that number of PEG channels provided by any cable operator providing service in the franchised area as of the effective date of this Act; and
- ii) The greater of: 2% of gross revenues or the value, on a per subscriber basis, of all monetary grants or in-kind services or facilities for public, educational, or governmental access facilities provided by any cable operator in the franchise area in the calendar year preceding the date of enactment of this Act.. All such funds shall be available for any permitted use under Federal law.

2) The content to be provided over any PEG access channel pursuant to this section shall be the responsibility of the franchising entity receiving the benefit of such capacity. The franchisee bears the responsibility for the transmission of such content in a form akin to commercial broadcast television.

3) (A) A provider franchised under this Act shall ensure that any public, educational, or governmental programming carried by the cable operator under this section within a franchise area is available to all of its subscribers in such franchise area.

(B) The production of any programming provided under this subsection shall be the responsibility of the franchising entity.

(C) A provider shall be responsible for the transmission from the signal origination point (or points) of the programming, or from the point of interconnection with another cable operator under subparagraph (D), to the cable operator's subscribers, of any public, educational, or governmental programming produced by or for the franchising entity and carried by the cable operator pursuant to this section.

(D) Unless two video providers otherwise agree to the terms for interconnection and cost sharing, such providers shall, if at least one of the operators is providing cable service in the franchise area pursuant to a franchise under this section, comply with regulations prescribed by the Commission providing for--

`(i) the interconnection between two cable operators in a franchise area for transmission of public, educational, or governmental programming, without material deterioration in signal quality or functionality; and

`(ii) The reasonable allocation of the costs of such interconnection between such cable operators.

`(E) A provider shall display the program information for public, educational, or governmental programming carried under this subsection in any print or electronic program guide in the same manner in which it displays program information for other video programming in the franchise area. The cable operator shall not omit such public, educational, or governmental programming from any navigational device, guide, or menu containing other video programming that is available to subscribers in the franchise area.

## **AMENDMENT #5**

### **MML & MTA LOCAL ENFORCEMENT AMENDMENT**

Amend page 24, following line 3, by inserting:

Sec. 15. (1) The holder of a franchise shall comply with all local ordinances adopted by the franchising entity which make the local franchising entity the initial enforcement agency of this act. No ordinance shall be more strict than federal law or any provisions under this act. The franchising entity shall enforce all customer service standards, all right-of-way standards, all PEG channel standards, and all build-out standards.

(2) The franchising entity shall enforce all of the customer service and protection standards of this act with respect to complaints received from residents within the franchising entity's jurisdiction. The franchising entity shall adopt a customer service ordinance that was contained in its last cable franchise agreement or consent agreement from the franchising entity entered before the effective date of this act.

(3) The franchising entity shall, by ordinance or resolution, provide a schedule of penalties for any material breach by a holder of a local franchise of this section. No monetary penalties shall be assessed for a material breach if it is out of the reasonable control of the holder. Further, no monetary penalties may be imposed prior to January 1, 2007. Any schedule of monetary penalties adopted pursuant to this section shall in no event exceed five hundred dollars (\$500) for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of a material breach. However, if a material breach of this section has occurred, and the franchising entity has provided notice and a fine or penalty has been assessed, and if a subsequent material breach of the same nature occurs within 12 months, the penalties may be increased by the franchising entity to a maximum of one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach. If a third or further material breach of the same nature occurs within those same 12 months, and the franchising entity has provided notice and a fine or penalty has been assessed, the penalties may be increased to a maximum of two thousand five hundred dollars (\$2,500) for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach. With respect to video providers subject to a franchise or license, any monetary penalties assessed under this section shall be reduced dollar-for-dollar to the extent any liquidated damage or penalty provision of a current cable television ordinance, franchise contract, or license agreement imposes a monetary obligation upon a video provider for the same customer service failures, and no other monetary damages may be assessed.

(4) The franchising entity shall give the video provider written notice of any alleged material breaches of the consumer service standards of this division and allow the video provider at least 30 days from receipt of the notice to remedy the specified material breach.

(5) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day within the jurisdiction of each franchising entity that any material breach has not been remedied by the video provider, irrespective of the number of customers affected.

(6) Any interested person may seek judicial review of a decision of the franchising entity in a court of appropriate jurisdiction.

(7) Any interested person may seek a review from the Michigan Public Service Commission of a decision of the franchising entity under Sec. 14.

(8) This section shall not preclude a party affected by this section from utilizing any judicial remedy available to that party without regard to this section.

(9) For purposes of this section, "material breach" means any substantial and repeated failure of a video service provider to comply with service quality and other standards.

**AMENDMENT #6**

**MML & MTA BUILD-OUT AMENDMENT**

**At line 25 on page 7, insert a “.” after “providers” and strike the remaining text on line 25, 26 and 27.**

**Insert at line 12 on page 6.**

(T) “A requirement that the provider comply with the buildout requirements of Section 16.”

**Insert at the end of the bill**

Section 16 – Reasonable Build-out requirements

(A) SCHEDULE.— A video service provider that is affiliated with an incumbent local exchange carrier or an affiliate thereof shall make its video system capable of providing cable service to all households in the franchise entity in accordance with the following schedule:

“(i) To all of the occupied households in an initial service area identified by the provider under the notice required in Section 3 within no less than 10 months after the date of the grant of the uniform video service local franchise agreement

“(ii) To not less than 65 percent of the households in the franchise entity within no more than 3 years after the date of the effective date of the franchise agreement.

“(iii) To not less than 80 percent of such households in the franchise entity within no more than 7 years after the effective date of the uniform video service local franchise agreement

“(B) SPARSELY POPULATED AREAS.—In determining compliance with the percentages required under this paragraph, the total number of households required to be served in any franchise entity shall be reduced by the number of households in any geographic part of the franchise entity in which there are fewer than 20 households per square mile.

“(C) MONITORING AND INSPECTION.—A franchising entity shall have the right to monitor and inspect the deployment of video services by such video provider. The provider shall submit semiannual progress reports detailing the current provision of cable services in accordance with the deployment schedule established pursuant to this Section and the cable operator’s deployment plan.

“(D) ENFORCEMENT.—If the franchise entity determines that a video provider violated this Section or Section 9 (non-discrimination) it may—

“(1) may assess a civil penalty in such amount as may be authorized under State law for the franchising entity in which the violation occurred for violation of its anti discrimination laws; and

“(2)(i) revoke the uniform video service local franchise agreement standard franchise if it determines, after notice and an opportunity for a hearing, that the video service provider has willfully violated this section; or

“(ii) bring a civil action against the provider in any court of competent jurisdiction for damages, an order directing the provider to rectify the noncompliance, or other appropriate relief. 5