



Federal Court Hears Cable Franchise Dispute

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Many municipalities in Michigan have recently received requests from their cable operators to start formal cable franchise renewal procedures under the Federal Cable Act, 47 USC § 521 et seq. Although federal law sets renewal procedures that provide for extensive local review of franchise agreements, Michigan law prohibits such local review. This conflict between federal and state cable franchise law has now reached federal court.

Background

The Federal Cable Act creates formal and informal procedures to review and renew cable franchises. The formal procedure requires a local evaluation of future cable needs and review of the cable operator's performance under the existing franchise, among other things, in accordance with a particular timeline. See 47 USC § 546. Both the formal and informal procedures allow local review of cable franchises.

In 2006, Michigan adopted the Uniform Video Services Local Franchise Act, Public Act 480 of 2006, MCL 484.3301 et seq. ("Act 480"). Act 480 creates a uniform, statewide cable franchise agreement and effectively eliminates municipal-level cable franchise negotiations. Importantly, Act 480 prohibits franchise renewals other than renewals of the uniform franchise. MCL 484.3305.

The Federal Cable Act and Act 480 are plainly contrary to one another. While the Federal Cable Act creates a detailed method for renewing franchises, Act 480 prohibits renewals of franchises that pre-date Act 480 altogether.

Federal Lawsuit

In 2010, the City of Detroit sued cable operator Comcast in the United States District Court for the Eastern District of Michigan. (Case No. 2:10-cv-12427.) The lawsuit centers on whether Act 480 is invalid either because it is preempted by the Federal Cable Act or because it violates the Michigan Constitution, which reserves franchise matters to

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local governmental units. On December 19, 2011, the court heard oral arguments regarding these legal issues. As of the date of this article, the court had not yet issued its ruling.

The court's decision will likely determine whether Act 480 is unenforceable to the extent that it prohibits franchise renewals. A decision is expected in early 2012. Until a decision is rendered, the state of the law remains uncertain.

Municipalities should consult with their legal counsel if they receive franchise renewal requests from cable operators to determine the best approach for the municipality and its residents.
