

Major Decision on 2006 Michigan Cable Law

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The Federal District Court in Detroit on July 10 issued a major decision on cable franchising. This will be of particular interest to Michigan municipalities (A) with pre-2007 cable franchises, or in other words, those which pre-date Michigan's 2006 video legislation, and (B) which are approached by a cable operator seeking a "uniform franchise" going forward. It may also (C) help Michigan municipalities which adopted a "uniform franchise" under the legislation, especially if they preserved their rights regarding challenges to it.

The decision may be of interest to municipalities in other states, such as where provisions of their franchises which pre-date recent state franchise legislation were abolished.

The decision [IS AVAILABLE HERE](#). It (1) preserves provisions of pre-2007 franchises different from Michigan's "uniform franchise", such as those relating to PEG channels or requiring a cable company to provide in-kind services (free cable service to city buildings, running a PEG studio) which the 2006 legislation purported to modify and abolish, and (2) restores municipalities ability to deny state "uniform franchise" applications so that they can instead negotiate franchises with different (and presumably more favorable) terms.

The decision came in the City of Detroit's suit against Comcast which challenged portions of Michigan's 2006 video legislation. We represent the City in this case.

The 2006 legislation, while retaining municipalities as the "franchising authority", had considerably weakened that role by: purporting to require municipalities to use (without modification) a uniform franchise created by the state; giving municipalities only 30 days to approve a franchise proposal; not apparently providing any ability to deny a proposal; deeming "approved" any application not timely acted on; and, modifying existing franchises to conform to the state's uniform franchise.

On these points the decision says "The Court . . . finds invalid on federal preemption grounds the provisions of the Michigan Act addressing the modification of existing franchise agreements and barring enforcement [of] provisions relating to public, government, and education channels...

The Court also finds that the state attorney general has offered a construction of the [Michigan] Act that avoids a conflict with the state constitution, that is, that municipalities may refuse to approve a franchise renewal application and negotiate acceptable terms with the cable provider, without the [state uniform franchise] automatically taking effect."

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