

S T A T E O F M I C H I G A N
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,		
directing CableMax Communications to show)	
cause why it should not be found to be in)	Case No. U-16182
violation of the Uniform Video Services Local)	
Act, 2006 PA 480, MCL 484.3301 <i>et seq.</i>)	
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QUALIFICATIONS AND DIRECT TESTIMONY OF
RYAN MCANANY
MICHIGAN PUBLIC SERVICE COMMISSION

April 13, 2010

QUALIFICATIONS OF RYAN MCANANY
CASE NUMBER U-16182
PART I

1 Q. Please state your name and business address for the record.

2 A. My name is Ryan McAnany and my business address is 6545 Mercantile Way,
3 Lansing, Michigan 48911.

4 Q. By who are you employed?

5 A. I am employed by the Michigan Public Service Commission as a Video Franchise
6 Specialist in the Telecommunications Division.

7 Q. What is your educational background?

8 A. I have a Bachelor of Arts Degree (double major) in Political Science and
9 Interdisciplinary Studies in Social Sciences with a preference in Public Policy. I
10 also have a Master of Arts in Public Administration and Public Policy. Both
11 degrees are from Michigan State University, East Lansing, Michigan.

12 Q. What is your professional work experience?

13 A. Beginning in January of 2005, I became a Departmental Analyst working in the
14 Telecommunications Division at the Michigan Public Service Commission. I
15 have worked in the video franchise area since Public Act 480 of 2006 (the
16 Uniform Video Services Local Franchise Act) took effect. I serve as the video
17 franchise specialist for the Commission.

18 Q. Have you previously testified before this Commission?

19 A. Yes. I testified before the Commission in 2006 in Case No. U-14975, in the
20 matter of the complaint and request for declaratory ruling of the Michigan
21 Communications Carriers Association, CMC Telecom, Inc., and Grid4
22 Communications, Inc., against Michigan Bell Telephone Company, d/b/a AT&T

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1 Michigan, to require AT&T Michigan to afford complainants wholesale rates
2 consistent with applicable law.

3 Q. On whose behalf was your testimony prepared?

4 A. My testimony was prepared on behalf of the Michigan Public Service
5 Commission.

6 Q. Are you familiar with this proceeding before the Commission?

7 A. Yes, I am familiar with this case.

DIRECT TESTIMONY OF RYAN MCANANY
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PART II

1 Q. What is the purpose of your testimony?

2 A. The purpose of my testimony is to provide Staff's analysis of CableMax
3 Communications compliance with the Uniform Video Services Local Franchise
4 Act.

5 Q. Are you familiar with Public Act 480 of 2006?

6 A. Yes, I am familiar with the Act.

7 Q. When did the Act become effective?

8 A. Public Act 480 of 2006 became effective on January 1, 2007.

9 Q. Does the Act require a standard franchise agreement for video providers and
10 franchise entities?

11 A. Yes. Pursuant to Section 2 of the Act, the Commission established a standardized
12 form on January 30, 2007, in Case No. U-15169, known as the Uniform Video
13 Service Local Franchise Agreement to be used by each franchising entity in the
14 state of Michigan. The Commission ordered that the form be used without
15 substantive or procedural changes for all video service local franchise agreements
16 in the state of Michigan.

17 Q. When are video providers required to use the Uniform Video Service Local
18 Franchise Agreement?

19 A. Pursuant to Section 3 of the Act, before video service providers begin to offer
20 video services within the boundaries of local units of government, the video
21 provider shall enter into or possess the state issued franchise agreement. In
22 addition, Section 5 of the Act provides video providers with franchise agreement
23 options, but specifically states that as of the effective date of the Act, no existing

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1 franchise agreement with a franchising entity shall be renewed or extended upon
2 the expiration date of the agreement.

3 Q. How does the Commission inform video providers about the Uniform Video
4 Service Local Franchise Agreement?

5 A. The Commission has a specific video/cable web page. All information, including
6 laws, the Uniform Video Service Local Franchise Agreement, dispute resolution
7 process, etc., can be found on that web page.

8 Q. What is the process for requesting a Uniform Video Service Local Franchise
9 Agreement from a franchise entity?

10 A. A video provider would go to the Commission's video web page and locate the
11 Agreement. The video provider would then follow the Agreement instructions
12 and complete all portions that are related to the provider. Once completed, the
13 video provider then sends the Agreement to the franchise entity. Pursuant to the
14 Act, as well as the Agreement, the franchise entity has specific time parameters
15 for which it is to complete the Agreement. If the franchise entity fails to adhere to
16 those time parameters, an Attachment 3 would be submitted by the provider to
17 both the Commission and the franchise entity.

18 Q. What is an Attachment 3?

19 A. Pursuant to Section 3(3) of the Act, "A franchise entity shall have 30 days after
20 the submission date of a complete franchise agreement to approve the agreement.
21 If the franchise entity does not notify the provider regarding the completeness of
22 the franchise agreement or approve the franchise agreement within the time
23 periods required under this subsection, the franchise agreement shall be

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1 considered complete and the franchise agreement approved.” An Attachment 3
2 essentially acknowledges that the Agreement was sent to the franchise entity on a
3 specified date, and has now exceeded the 30 day period, and therefore the
4 Agreement now becomes a true Agreement. The Attachment 3 is completed by
5 the provider and sent to both the Commission and the franchise entity.

6 Q. Are providers allowed to make changes to their Agreement?

7 A. Yes. However, the changes must be made in accordance with the Act;
8 specifically Section 3(4) – Section 3(6). If any information in the franchise
9 agreement changes the provider must submit a timely notice to the franchise
10 entity of that change. In addition, if the Agreement is transferred, then a notice of
11 transfer must be filed within 15 days of the completion of the transfer. Lastly, if
12 the Agreement is terminated or the franchise area footprint modified, the provider
13 must submit notice to the franchise entity. For changes, a provider would
14 complete and submit an Attachment 2.

15 Q. Does the Act provide a dispute resolution process for issues between customers
16 vs. providers, providers vs. providers, and providers vs. franchise entity?

17 A. Yes. PA 480 as amended by Public Act 4 of 2009 and provides a detailed dispute
18 resolution process. This law, as well as the dispute resolution process can be
19 found on the Commission’s video page:

20 <http://www.michigan.gov/mpsc/0,1607,7-159-49641---,00.html>.

21 Q. When did the Commission Staff become aware of issues with CableMax?

22 A. On December 7, 2009, Staff began receiving an unusually high number of
23 complaints related to CableMax Communications. Complaints were related to

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1 complete service outage, partial to complete outage of channel line-ups, lack of
2 notification from the provider stating any upcoming changes, company phone
3 number no longer in service, and the problems happening in several communities.

4 Q. Did CableMax contact the Commission to provide notification of
5 changes/terminations that took place in their footprint area?

6 A. No. CableMax did not contact the Commission to inform that they may be going
7 out of business or that they were removing channels from their line-ups. To my
8 knowledge, CableMax made no contact with the Commission.

9 Q. What steps did Staff take upon receiving complaints related to CableMax
10 Communications?

11 A. Staff followed the standard complaint procedures. However, when we forwarded
12 complaints to the CableMax contact person, it was then that we discovered that
13 she had been dismissed from the company. At that time, Staff notified the
14 CableMax contact person that Staff would no longer be able to send complaints to
15 her since she did not represent the company any longer. Staff attempted to
16 contact CableMax officials regarding these complaints, but found the telephone
17 number (888-308-8782) was no longer in service. Staff also attempted to contact
18 CableMax at their Brutus office (231-529-1102) but that number also stated that it
19 was no longer in service. As a result, Staff was no longer able to forward
20 complaints to the company.

21 Q. What date was it that Staff learned of the non-serviceable phone numbers?

22 A. December 9, 2009.

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1 Q. Were the complaints only from customers, or did franchise entities also file
2 complaints?

3 A. Complaints were received from both customers and franchise entities. As the
4 Staff began receiving more customer complaints, Staff contacted the communities
5 in which those customers lived in. Staff was then made aware of concerns and
6 complaints from the franchise entities. Complaints/concerns expressed by the
7 franchise entities included the company operating in communities without a
8 franchise agreement, failure to pay franchise fees, and failure to notify franchise
9 entities of changes and termination of service.

10 Q. According to the Commission's January 11, 2010 Show Cause Order, CableMax
11 was directed to provide information regarding the alleged violations by February
12 12, 2010. Is that Correct?

13 A. Yes. That is correct. According to the Commission's records, CableMax did not
14 supply this information on February 12, 2010. CableMax did submit information
15 on February 26, 2010, March 4, 2010, and testimony on March 23, 2010.

16 Q. Did CableMax address all of the allegations specified in the Commission's
17 January 11, 2010 order?

18 A. CableMax did not file a response on the February 12, 2010 deadline set by the
19 Commission. However, CableMax filed a 30 page document on February 26,
20 2010 as directed by the Commission. This appears to be copies of franchise
21 agreements. On March 4, 2010 CableMax filed 42 page verified response to the
22 Commission order. And on March 23, Pre-filed Direct Testimony of Matthew
23 Killinger was filed.

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1 Q. What franchise agreements were filed by CableMax on February 26, 2010?

2 A. CableMax provided a document that purports to be the franchise agreement with
3 the Village of Akron, dated on September 18, 2008. This agreement is not the
4 Commission approved Uniform Video Service Local Franchise Agreement. The
5 language in the attached agreement states that it is "Considered and approved this
6 16th day of August, 2005". However, the agreement is partially signed and dated
7 on "9-18-08". This agreement does not indicate that it was properly accepted
8 since there are blank spaces for the signatures and dates. According to the
9 Department of Energy, Labor, & Economic Growth's Corporation Division
10 Database, CableMax Communications LLC was not even formed until August 1,
11 2008.

12 CableMax also submitted a franchise agreement for the Village of Unionville.
13 The agreement submitted is the Uniform Video Service Local Franchise
14 Agreement; however, there are several sections that are blank and are supposed to
15 be filled by both the provider and franchise entity.

16 Q. Do you have any other information available related to these two agreements?

17 A. In the February 26, 2010 filing by CableMax a copy of a letter that the Village of
18 Unionville sent to CableMax is attached stating that they feel CableMax is not in
19 compliance with Public Act 480 and will not sign it until their concerns have been
20 resolved.

21 Q. What additional information was filed by CableMax on March 4, 2010?

22 A. CableMax filed a statement that they sent copies of the Uniform Video Service
23 Local Franchise Agreement to Brutus Township and Maple River Township.

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1 However, CableMax did not provide copies of these agreements to the
2 Commission; instead, the company only provided copies of certified mail receipts.
3 While the company states that neither community responded to the submission of
4 the Agreements, CableMax failed to provide the franchise entities and the
5 Commission with the Attachment 3's as specified on Page 1 of the Uniform
6 Video Service Local Franchise Agreement instructions. CableMax also filed a
7 statement that they were servicing the areas of Fine Lake, Mesick, Kaleva, and
8 Nashville. However, CableMax did not provide any franchise agreements for
9 these communities.

10 Q. Did CableMax have a duty to inform local franchise authorities of changes in
11 franchise agreements?

12 A. Yes, Section 3 of Public Act 480 specifically states the providers' responsibilities
13 for changes related to transfers, terminations, etc., as does the language in the
14 Uniform Video Service Local Franchise Agreement. In fact, Attachment 2 of the
15 Uniform Video Service Local Franchise Agreement provides the company with
16 such forms.

17 Q. Did CableMax notify the Commission of its intent to discontinue services?

18 A. CableMax made no informal or formal notice to the Commission prior to shutting
19 down its services. The company did not contact the Commission before
20 disconnecting its phone lines and the Commission Staff attempted to contact
21 CableMax and found disconnected numbers for CableMax.

22 Q. From the information provided, does it appear that CableMax paid franchise fees
23 to any municipality?

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1 A. CableMax states (March 4, 2010 filing) that none of the franchise agreements
2 provided for a franchise fee to be paid. While Staff questions if there were even
3 franchise agreements in some communities, and what those actual franchise
4 agreements may be, Staff would note that the Uniform Video Service Local
5 Franchise Agreement that CableMax supplied a copy to the Commission for the
6 Village of Unionville did in fact have 5% filled in as a franchise fee. Pursuant to
7 Public Act 480, specifically Sections 3 and 5, the Act clearly states that any
8 provider wishing to provide service in a franchise entity must obtain a franchise
9 agreement. It is the franchise entity that determines the amount of franchise and
10 PEG fees.

11 Q. Did CableMax follow the Act's dispute resolution process?

12 A. Staff forwarded complaints to CableMax and they did not respond within the 10
13 day timeframe set forth in the Act. When Staff contacted the company, Staff was
14 informed by the CableMax employee who was previously handling complaints
15 that she no longer worked for the company. Staff then stopped sending
16 complaints to CableMax as we did not have a contact person any longer. Exhibit
17 1 indicates the complaints that Commission Staff has received regarding
18 CableMax Communications.

19 Q. Did CableMax provide notice to its customers of discontinuance of services?

20 A. While CableMax has made mention that it has notified customers, it does not
21 make specific mention or proof as to the advance notice that it gave to its
22 customers or the type of notice.

23 Q. Does Staff have an idea of how many customers are affected?

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1 A. No, there is conflicting information on customer numbers. In the response
2 information provided by CableMax to the Commission, the company states less
3 than 100 customers. However, in Mr. Killinger's testimony, he states around 180,
4 but he isn't sure. However, on September 15, 2009, Mr. Killinger provided a
5 customer count number that is between these two numbers to the Commission in
6 response to the Video Service Provider Assessment Report for 2010 Calculation.
7 The customer count number is confidential information.

8 Q. What is Staff's position on the information that was filed by CableMax?

9 A. It is Staff's position that insufficient information was filed by CableMax to
10 substantiate that they had valid video franchise agreements in place and that they
11 have complied with the dispute resolution process as required by the Video
12 Franchise Act.

13 Q. Does this conclude your testimony?

14 A. Yes it does.

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EXHIBITS OF
RYAN MCANANY
MICHIGAN PUBLIC SERVICE COMMISSION

April 13, 2010

**CableMax Communications Customer Complaints Filed with MPSC Staff
 12/2009 - 2010**

Customer	Date Filed w/ MPSC Staff	Date Forwarded to Company	Date of Company's Response
A	12/07/09	12/09/09	No Response
B	12/07/09	12/07/09	No Response
C	12/07/09	12/07/09	No Response
D	12/08/08	12/08/08	No Response
E	12/08/09	12/08/09	12/09/09 (employee no long works for CableMax)
F	12/09/09	12/09/09	No Response
G	12/10/09	Did not send	*
H	12/10/09	Did not send	*
I	12/10/09	Did not send	*
J	12/10/09	Did not send	*
K	12/10/09	Did not send	*
L	12/10/09	Did not send	*
M	12/11/09	Did not send	*
N	12/14/09	Did not send	*
O	12/15/09	Did not send	*
P	12/16/09	Did not send	*
Q	12/17/09	Did not send	*
R	01/04/10	Did not send	*
S	01/19/10	Did not send	*
T	01/28/10	Did not send	*
U	01/28/10	Did not send	*

*Complaint was not forwarded to CableMax as MPSC did not have a contact person to send complaints to.

(Note: MPSC Staff provided all complaints to CableMax attorney pursuant to a request filed with Staff AG Counsel on March 3, 2010.)

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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STATE OF MICHIGAN)	
)	Case No. U-16182
County of Ingham)	

PROOF OF SERVICE

Cindy Stephens, being duly sworn, deposes and says that on April 13, 2010, A.D., she emailed a copy of the attached MPSC Testimony and Exhibits to the persons as shown on the attached list.

Cindy Stephens

Subscribed to before me this
13th day of April, 2010

Lisa Felice
Notary Public, Eaton County
Acting in Ingham County, Michigan
My Commission expires April 15, 2014

Michael A. Figliomeni
McCurdy, Wotila & Porteous
120 W. Harris Street
Cadillac, MI 49601

CASE NO. U-16182

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