

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's Own Motion,  
directing **CableMax Communications** to show  
cause why it should not be found to be in  
violation of the Uniform Video Services Local  
Act, 2006 PA 480, MCL 484.3301 *et seq.*

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Case No. **U-16182**  
(e-file/paperless)

**INITIAL BRIEF OF THE  
MICHIGAN PUBLIC SERVICE COMMISSION STAFF**

**Procedural Background**

On January 11, 2010, the Michigan Public Service Commission issued a Show Cause Order against CableMax Communications for a number of alleged violations of the Uniform Video Services Local Franchise Act, 480 PA 2006, MCL 484.3301 *et seq* (the Act). The Commission directed CableMax Communications to file a response to those allegations by February 12, 2010. CableMax Communications did not file a response by February 12, 2010. However, on February 26, 2010, CableMax Communications did provide some documentation that purports to be franchise agreements for some communities.

A prehearing conference was held on March 9, 2010. Mr. Adam Bruski, attorney representing CableMax Communications appeared at the prehearing conference. Since CableMax Communications failed to provide notification to customers of the pre-hearing, it was agreed that a second pre-hearing would be scheduled for April 6, 2010. In addition, a schedule was set for CableMax to provide testimony by March 23, 2010 and Staff to provide testimony by April 13, 2010.

Both parties filed their respective testimony by the agreed scheduling dates. A cross-examination date was scheduled for April 27, 2010, but this date was later changed to May 26, 2010 while both parties continued to work towards a resolution.

On May 26, the testimony and exhibit of Staff witness Ryan McAnany was bound into the record. Also, the testimony of Matthew Killinger on behalf of CableMax Communications was bound into the record. In addition, a schedule was set for Staff to file a brief with its recommendations by June 16, 2010 and CableMax Communication to file a reply brief by June 30, 2010.

### **Argument**

#### **I. CableMax Communications has violated various provisions of the Act.**

Pursuant to § 2 of the Act, the Commission established a standardized form known as the Uniform Video Service Local Franchise Agreement to be used by each franchising entity. Sections 3 and 5 of the Act require video service providers to utilize this standardized agreement with certain options. McAnany testimony, p 3. Under § 10(5) of the Act, a video provider has ten business days to respond to a customer complaint under the dispute resolution process. McAnany testimony, p 5.

Staff received complaints from franchise entities for the lack of a franchise agreement with CableMax Communications. McAnany testimony, p 7. Staff also received 21 customer complaints relating to CableMax Communications service. McAnany testimony, Exhibit 1. These complaints were forwarded to CableMax Communications at various times in 2009. McAnany testimony, pp 6, 10. In addition to the 21 customers as shown in Exhibit 1 that had contacted Staff directly, CableMax's attorney stipulated to the fact that there were also another 87 customers that were due refunds in the total amount of \$3,952.50. 3 TR 36.

In the February 26 and March 4 filings by CableMax Communications, the company failed to provide copies of franchise agreements or responses to customer complaints that were previously sent to the company by Commission Staff. McAnany testimony, pp. 6, 8-10. CableMax Communications only provided two documents that were purportedly franchise agreements. However, as noted in the testimony of Mr. McAnany, one agreement was not the correct form, the Uniform Video Service Local Franchise Agreement (UVSLFA), while the other was the correct form but several required sections (that were to be filled in by both the provider and franchise entity) were left blank and the form was incomplete. McAnany testimony, p. 8. In addition, CableMax provided a copy of a letter from the Village of Unionville stating that they did not feel CableMax is in compliance with the Act and would not sign the agreement until their concerns were addressed. McAnany testimony, p. 8.

### **Monetary Penalties and Recommendations**

Pursuant to Section 14(1) of the Act, Staff recommends monetary penalties be imposed on CableMax Communications for these violations. In the Commission's January 11 Show Cause Order, the Commission highlighted five specific areas to be addressed by CableMax Communications. In order to provide recommendations for monetary penalties, Staff has combined some of the allegations due to their similar nature.

First, violations of MCL 484.3302(2) (entering into an Agreement) and MCL 484.3303(1) to MCL 484.3303(6) (entering into an Agreement and providing notice to franchise entities) have been combined. As it was stated in the Commission's Show Cause Order, there were seven franchise entities involved. Of the seven franchise entities, CableMax Communications did not provide any evidence to refute these violations for five of the seven franchise entities. For the two franchise entities that CableMax did provide some information, the first franchise agreement was not the correct form, and the document contained several errors

and blanks and no evidence was provided that the franchise entity consented to this agreement. The second agreement, while it was the correct form for the uniform agreement, contained several blanks and was not properly completed by the provider and contained no information for the franchise entity. Staff recommends that CableMax Communications should be charged with seven offenses.

Second, in regards to the violations of MCL 484.3306(1), which pertains to the designation and payment of franchise fees; as there is not enough evidence on the record to confirm this violation, Staff recommends that there be no charge assessed for this section of the Act.

Last, violations involving MCL 484.3310 (customer protections and dispute resolution procedures) and MCL 484.3310(5)(a) (requirement that providers respond to informal customer complaints within 10 days) have been combined. Staff received a total of 21 customer complaints. In addition, Staff later became aware of an additional 87 customers who are owed money. CableMax Communications has presented no evidence to date to refute these claims. Therefore, Staff recommends that each customer complaint be counted as an individual violation against CableMax Communications for a total of 108 violations.

In total, Staff recommends that CableMax Communications be charged with 115 violations of the Act. Staff recommends that CableMax Communications, pursuant to § (14)(1)(b) of the Act be ordered to pay \$500 for each offense. As such, Staff recommends that CableMax Communications be assessed a total of \$57,500.00 in monetary penalties. However, Staff would also recommend that if CableMax provides factual evidence and proof to the Commission within 30 days of the Commission's order, that all \$3,952.50 has been refunded to the appropriate customers, the assessment could then decrease to \$14,000.00 (based on \$500 for each of the 28 remaining offenses).

### **Franchise Agreement Violations**

No evidence was presented by CableMax Communications to indicate that there were any valid Uniform Video Services Local Franchise Agreements (Agreements) between franchise entities and CableMax Communications. Pursuant to § 14(1)(c), Staff recommends that any agreements that may exist should be revoked.

From the information presented, it does not appear that CableMax Communications is operating today, but in case they are still operating, Staff recommends that the Commission issue a cease and desist order, pursuant to § 14(1)(d) of the Act, to prevent CableMax Communications from providing video/cable services in Michigan. In addition, Staff recommends that Mr. Matthew Killinger and Mr. Mike Westley (primary shareholders/members) not be allowed to operate another cable company in Michigan.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE COMMISSION  
STAFF**

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Dated: June 16, 2010

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**PROOF OF SERVICE**

STATE OF MICHIGAN     )  
                                      ) ss  
COUNTY OF INGHAM     )

Linda Andreas, being first duly sworn, deposes and says that on **June 16, 2010**, she served a true copy of the **Initial Brief of the Michigan Public Service Commission Staff** upon the following parties by depositing the same in a United States postal depository enclosed in an envelope bearing postage fully prepaid, plainly addressed as follows:

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

Adam D. Bruski  
Lambert, Leser, Isackson, Cook & Giunta, P.C.  
240 W. Main Street, Ste. 1000  
Midland, MI 48640

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Linda Andreas

Subscribed and sworn to before me  
this 16th day of June, 2010.

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Tina L. Bibbs, Notary Public  
State of Michigan, County of Clinton  
Acting in the County of Ingham  
My Commission Expires: 11-13-2014