

☞ **07hr_SC-CUR_sb0107_pt05b**



Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Commerce, Utilities, and Rail (SC-CUR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



Office of the Mayor

David J. Cieslewicz

Room 403
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703-3345
PH 608 266 4611
FAX 608 267 8671
TTY/Textnet 866 704 2340
mayor@cityofmadison.com

MEMORANDUM

To: Madison Legislative Delegation
From: Mayor Dave Cieslewicz
Date: April 16, 2007
Re: AB 207 / SB 107 and Amendments
Statewide Video Franchising

*Jeff
Please note our
Mayor's concerns
re: SB 107
M. Adams*

My office has had an opportunity to review the Amendments to the Statewide Video Franchising bill, AB 207 / SB 107. The bill is still significantly flawed and, unless the changes discussed in the balance of this memorandum are incorporated, the City of Madison will strongly oppose it.

The bill takes away the current system of funding for Public, Education and Government (PEG) programming. PEG channels provide access to residents to their local government. These channels are an electronic means of keeping local government open, transparent and accountable by broadcasting local government meetings to residents. PEG channels are an electronic town square and have become an important part of our Democracy. The loss of PEG funding incorporated in the bill as currently drafted, therefore, is an assault on open and accountable government, at a time when our residents most demand such openness and accountability.

As a result of the loss of PEG funding, Madison's City Channel 12 may very well cease existing - at least in the manner in which it currently exists. We anticipate that this bill will result in a reduction of approximately \$398,000. In the current environment where local government budgets are subject to levy limits, cities like Madison are quite limited in their ability to offset such losses of non-levy revenues. Therefore, the cause of open government will undoubtedly be jeopardized because we will not be able to restore this funding. Accordingly, I ask that you please work to amend the bill to include PEG funding.

The bill also grants video service providers a benefit not afforded to other businesses: they are exempt

April 17, 2007

Page 2

from any fees associated with the occupation and use of the public right of way. Those interests that are advocating for this bill --such as large corporations like AT&T-- can afford the relatively low fees charged for staff time needed to accommodate their use of the public right of way. Subjecting these businesses to modest fees is only fair. Accordingly, I ask that you please work to amend the bill to eliminate this fee exemption.

Other aspects of the amendments are acceptable in the sense that they essentially get us back to current law with regard to restoring local regulation authority over the right of way, providing consumer protection language, and broadening the definition of "gross revenues" from which the franchise fee is derived. However, without the aforementioned changes, the bill is unacceptable.





CITIZEN ACTION OF WISCONSIN

Organizing people to make Wisconsin
a better place to live and work

April 16, 2007

Senator Jeffrey Plale
State Capitol
Room 313 South
P.O. Box 7882
Madison WI 53707-7882

SB107?

Dear Senator Jeffrey Plale:

The current debate over cable competition is critical to Wisconsin consumers – your constituents - and making sure that they get what they want: better service, lower prices, and more choices.

As the state's largest public interest group, with over 85,000 members and 100 diverse groups as our base, Citizen Action of Wisconsin's core mission is public advocacy. Our members have consistently told us that their cable bills are too high, they have no choice of providers, and customer service falls far short of other industries. We firmly believe that opening the doors to competition is the best way to lower subscriber fees, raise service standards, and encourage the spread of new technologies and services to every corner of Wisconsin.

The current regulatory system of local cable monopolies is broken beyond repair, and it's time to look for a sound alternative. Cable rates in Wisconsin have risen nearly 90 percent over the last decade, with some communities seeing rate hikes of as much as 300 percent.

Statewide video franchising, already adopted in 11 other states, is that sound alternative. Just as competition has benefited consumers in long distance telephone service, cellular phone service, internet service and e-mail, the framework for competition laid out in the Wisconsin Video Competition Act will lead to lower prices, better service, and more choices.

While competition is a strong force for protecting consumers, it's important to note that this act does not give video service providers carte blanche. The bill:

- Secures the ability of local governments to maintain existing health, safety, and public welfare authority over rights-of-way;
- Prohibits discrimination on basis of race or income;
- Provides build-out requirements for new entrants;

www.citizenactionwi.org

Formerly Wisconsin Citizen Action

912 N. Hawley Road, 2nd Floor South
Milwaukee, WI 53213-3222
414-476-4501
414-302-4619 fax

1202 Williamson Street, Suite B
Madison, WI 53703-4830
608 256-1250
608 256-1177 fax

1642 Western Avenue
Green Bay, WI 54303-2544
920 496-1188
920 498-1008 fax

1128 First Avenue
Eau Claire, WI 54703-5203
715 832-2201
715 832-2306 fax



competition will spur hundreds of millions in economic investment in Wisconsin, create 1,500 or more jobs directly and spur much more indirect economic growth and job creation. That's yet another reason that video competition has our strong support.

As lawmakers continue to develop this legislation, we are sure there will continue to be discussion related to the availability of PEG channels. Citizen Action is a strong supporter of PEG channel programming, and would like to see public access to PEG channels preserved as we move toward a state video franchise system.

As lawmakers continue to fine-tune this legislation in the coming weeks, we are also sure there will be continuing discussion of consumer protections. We hope that the consumer protections laid out in the measure can be fine-tuned in a way that maintains existing protections until competition takes firm hold.

Consumers respectfully ask that you act swiftly. A recent study shows that cable customers stand to save as much as \$149 a year on their cable bills if competition is allowed. With 1.4 million cable consumers in Wisconsin, every month that goes by without cable reform costs Wisconsin consumers tens of millions of dollars in lost savings on their monthly bills. As we've seen in other industries, when all companies big and small are allowed to compete on a level playing field to offer the best service at the best price, consumers are the real winners.

Now is the time to act on this important consumer issue, and we hope that we can count on you to support statewide cable competition as we work with lawmakers to fine-tune the measure throughout the legislative process.

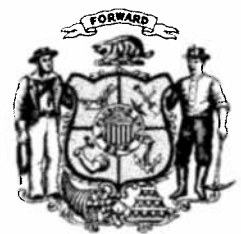
Sincerely,

A handwritten signature in black ink, appearing to read "RAK -".

Dr. Robert Kraig
Citizen Action of Wisconsin



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: ASSEMBLY COMMITTEE ON ENERGY AND UTILITIES
SENATE COMMITTEE ON COMMERCE, UTILITIES, AND RAIL

FROM: David L. Lovell, Senior Analyst, and John Stolzenberg, Chief of Research Services

RE: Description of Draft Amendments to 2007 Assembly Bill 207 and 2007 Senate Bill 107,
Relating to Regulation of Video Service Providers

DATE: April 16, 2007

This memorandum describes in full identical draft substitute amendments (“the substitute amendments”) to 2007 Assembly Bill 207 and 2007 Senate Bill 107 (“the bills”), relating to regulation of video service providers, and two simple amendments to the substitute amendments, all of which were prepared at the direction of Chairs Montgomery and Plale. The memorandum describes only as much of the bills as is needed to describe the amendments. For an overview of the changes the substitute amendments make to the bills, in outline format, see our April 13, 2007 memorandum to you, *Overview of Draft Amendments to 2007 Assembly Bill 207 and 2007 Senate Bill 107, Relating to Regulation of Cable Television and Video Service Providers*. For a full description of the bills, see our March 26, 2007 memoranda to you, *2007 Assembly Bill 207 and 2007 Senate Bill 107, Relating to Regulation of Video Service Providers; Overview of Major Provisions*, and *2007 Assembly Bill 207 and 2007 Senate Bill 107, Relating to Regulation of Video Service Providers; Background and Summary*.

SUBSTITUTE AMENDMENTS: LRBs0061/1 AND LRBs0062/1¹

Authority to Provide Video Service

Application for Franchise

The bills require that, in general, a person who intends to provide video service in this state must apply to the Department of Financial Institutions (DFI) for a franchise, and specify information and certifications that must be included in the application. Among other things, the applicant must certify

¹ LRBs0061/1 is an Assembly substitute amendment to Assembly Bill 207. LRBs0062/1 is a Senate substitute amendment to Senate Bill 107.

that it is legally, financially, and technically qualified to provide video service. The substitute amendments add requirements that the application include a description of the service that the applicant will provide and that the application be accompanied by a \$1,000 application fee. The bills require that a video service provider update its original application information if the information changes. The substitute amendments require that updates of most categories of information be accompanied by a \$100 fee.

The bills require that the DFI notify the applicant whether the application is complete within 10 business days of receiving an application and issue a franchise to the applicant within 10 business days of receiving an application that it determines is complete. If the DFI fails to issue the franchise in the required time, it will be considered to have issued the franchise.

The substitute amendments extend the deadline for the DFI to notify the applicant whether the application is complete from 10 to 15 business days. Within 15 days of receiving a complete application, the DFI must determine whether the applicant is legally, financially, and technically qualified to provide the service. If it determines the applicant is qualified, it must issue the applicant a franchise; if it determines the applicant is not qualified, it must reject the application and state its reasons in writing.

In the case of an application by a telecommunications utility or a qualified cable operator, the DFI, in reviewing whether the applicant is qualified, must find that it is qualified. "Qualified cable operator" is defined as a cable operator that has provided cable service in this state for at least three years and has never had a franchise revoked by a municipality or an affiliate of such a cable operator, or a cable operator that, on the date of application, is one of the 10 largest video service providers in the United States or the parent company of such a cable operator.²

Revocation of Franchise

The bills do not include any provision for the revocation of a franchise.

The substitute amendments authorize the DFI to revoke a video service franchise if it determines that the video service provider has "willfully and knowingly repeatedly failed to substantially meet a material requirement" of the statewide video franchise statute created by the bills, unless the DFI has granted the video service operator a waiver from the requirement.³ The DFI may not commence a revocation proceeding without first providing the video service provider with notice and an opportunity to cure any alleged violation. The substitute amendments specify that a revocation proceeding will be a contested case, a quasi-judicial proceeding that includes such elements as sworn testimony, cross-examination and the creation of a formal record that can be appealed to court.

² This effectively exempts this category of applicants from DFI's review of its qualifications. It appears that all of the potential applicants identified in hearings on the bills are telecommunications utilities or qualified cable operators.

³ The provisions of the bills that likely would be considered "material requirements" include those regarding PEG channels, video service provider fees, discrimination, and access to service. Since provisions of the bills relating to the use of public rights-of-way are not contained within the statewide video franchise statute itself, violations of these provisions would not be grounds for revocation of a franchise. Similarly, violations of consumer protection laws and customer service standards enforced by the Department of Agriculture, Trade and Consumer Protection (DATCP) would not be grounds for revocation, although it appears that violations of federal customer service standards, as enforced by municipalities, might be.

Definition of "Video Service Provider"

The bills define "video service provider" as a person who is issued a statewide video service franchise, including an affiliate, successor, or assign of such a person. The substitute amendments delete affiliates from this definition. This change is largely technical, made to prevent a broader meaning than intended in certain circumstances.

PEG Channels

In most cases, current municipal cable franchise agreements in Wisconsin require cable operators to provide channel capacity to municipalities for two or three public, educational, and governmental (PEG) channels, and the bills continue this requirement, in general. However, the bills specify that a video service provider may reprogram channel capacity it has provided for a PEG channel if the municipality does not substantially utilize the channel. The bills define "substantially utilize" as providing 12 hours or more of programming each calendar day, at least 80% of which is locally produced and not repeated.

The substitute amendments specify that a PEG channel is substantially utilized if the municipality provides 40 hours or more of programming each week, at least 60% of which is locally produced, irrespective of whether the programming is repeated.

Public Rights-Of-Way

Current Law

Under current law, a number of statutes govern the use of public rights-of-way by various entities. In particular, s. 66.0425, Stats., establishes the requirement that a person, other than public utilities and cooperatives that provide a utility service, obtain a municipal permit for the privilege to engage in construction in public rights-of-way, and addresses compensation to the municipality, performance bonds, liability, and third parties' interests. Also, s. 182.017, Stats., provides that the authority for public utilities and cooperatives that provide a utility service to occupy public rights-of-way is subject to a number of statutes and to "reasonable regulations made by any city, village or town through which the transmission lines or system may pass...."

The Bills

The bills provide that, notwithstanding s. 66.0425, municipalities may not impose any fee or requirement on a video service provider relating to the construction of a video service network. They also state that, as long as a video service provider pays the required video service provider fee, "the municipality may not require the video service provider to pay any compensation under s. 66.0425, or any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way." The bills are silent with regard to s. 182.017 and other statutes that address occupation and use of public rights-of-way.

In a separate provision, the bills state that "[a] video franchise issued by the [DFI] authorizes a video service provider to occupy the public rights-of-way and to construct, operate, maintain, and repair a video service network to provide video service in the video franchise area."

The Substitute Amendments

The substitute amendments retain the provisions of the bills that limit the authority of municipalities to impose fees and other restrictions on video service providers' use of public rights-of-way, but apply s. 182.017 to video service providers notwithstanding those provisions. The result is that, under the substitute amendments, s. 182.017 applies to, and allows municipalities to impose reasonable regulations on the occupation and use of public rights-of-way by video service providers. The substitute amendments make one exception to that, which is to prohibit municipalities from imposing permit fees or other charges on video service providers for use of public rights-of-way.

The substitute amendments require that, if a municipality requires a permit for the occupation or use of its public rights-of-way that the municipality must approve or deny a permit application within 60 days of receiving the application. If the municipality fails to meet this deadline, the permit is deemed to be approved by the municipality. If the municipality denies a permit application, it must present its reasons for the denial in writing.

The substitute amendments allows any entity whose occupation and use of public rights-of-way is subject to s. 182.017 (video service providers and others) to complain to the Public Service Commission (PSC) if it believes that a municipality has imposed an unreasonable regulation on its occupation and use of public right-of-way. The PSC must review such a complaint and, if it determines that the regulation is unreasonable, void the regulation.⁴ The substitute amendments allow the PSC to assess the complaining party for the cost of the review.

Access To Service ("Build-Out")

"Large Telecommunications Video Service Provider"

The bills define "large telecommunications video service provider" (LTVSP) as a telecommunications video service provider (i.e., a video service provider that provides its service over telecommunications facilities) that has more than 500,000 basic local exchange access lines (i.e., residential customers) in this state. The only entity that meets this definition is AT&T, Inc.

The substitute amendments modify this definition to refer to a telecommunications video service provider that, ***on January 1, 2007, had*** 500,000 residential access lines. The result is that the term will include only AT&T even if another telecommunications video service provider grows to the point of having 500,000 residential access lines at some time in the future.

Build-Out Requirement

The bills require an LTVSP (AT&T) to provide access to its video service to the following percentages of households within its residential local exchange service area:

- Not less than 25% nor later than three years after the date on which the LTVSP began providing video service under its state franchise.

⁴ The PSC has, in ch. PSC 130, Wis. Adm. Code, promulgated standards for determining whether a municipality's regulations of a utility's use or occupation of the public right-of-way is unreasonable.

- Not less than 50% nor later than six years after the date on which the LTVSP began providing video service under its state franchise, or no later than two years after at least 30% of households with access to the LTVSP's video service subscribe to the service for six consecutive months, whichever occurs later.

The substitute amendments increase the first of these requirements from 25% to 35% of households and change the second requirement to apply after five years, rather than after six years.

Local Broadcast Stations

Under federal law, cable operators are required to carry the signal of local commercial television stations and qualified low power stations. The statute sets certain limits on this requirement, gives priority to the carriage of commercial stations over low power stations, and imposes requirements regarding the content to be carried, signal quality, and like matters.

The substitute amendments provide that broadcast stations may require noncable video service providers to carry their signals to the same extent that they may require cable operators to do so under current federal law. They require that the noncable video service provider transmit the signal without degradation, but allow it to do so by technology different than that used by the broadcast station. They also prohibit the noncable video service provider from discriminating among broadcast stations and programming providers and from deleting, changing, or altering a copyright identification that is part of a broadcast station's signal.

Rule-Making Limited

The bills specify that, notwithstanding the statute that gives an agency general authority to promulgate rules to interpret any statute it implements or enforces, the DFI may not promulgate rules interpreting the statewide video franchise statute created by the bills. The substitute amendments provide an exception to this prohibition, directing the DFI to promulgate rules for determining whether a video service provider, other than a telecommunications utility or qualified cable operator, is legally, financially, and technically qualified to provide video service.

Technical Corrections

The substitute amendments correct a number of minor technical errors in the bills and, in one instance, reword a provision to ensure the intended effect.

SIMPLE AMENDMENTS REGARDING VIDEO SERVICE PROVIDER FEES: LRBa0292/1 AND LRBa0296/1⁵

In most cases, current municipal cable franchise agreements in Wisconsin require cable operators to pay franchise fees to the municipality equal, in most cases, to 5% of the cable operator's gross receipts attributable to its provision of service in that municipality, and the bills continue this requirement, in general.

⁵ LRBa0292/1 is an Assembly amendment to the Assembly substitute amendment. LRBa0296/1 is a Senate amendment to the Senate substitute amendment.

The bills establish a definition of “gross receipts” for purposes of this fee. LRBa0292/1 and LRBa0296/1 modify this definition by: (a) deleting the limitation of the term to receipts paid “by subscribers residing within the municipality”; (b) adding to the definition revenues received from the provision of home shopping or similar programming and from advertising (with a formula for the allocation of revenues from advertising under regional or national contracts); and (c) other, technical changes.

The bills provide that, unless the parties agree otherwise, any action that is brought to enforce payment of a video service provider fee must be commenced within three years of the quarter to which the disputed amount relates. LRBa0292/1 and LRBa0296/1 extend the time limit to four years.

SIMPLE AMENDMENTS REGARDING CONSUMER PROTECTION: LRBa0294/2 AND LRBa0297/2⁶

Current s. 100.209, Stats., *Video Service Subscriber Rights*, establishes certain standards for cable service, which are enforced by the Department of Agriculture, Trade, and Consumer Protection (DATCP). In addition, under s. 100.209, the DATCP and municipalities may adopt and enforce rules or ordinances that supplement the requirements of the statute. The bills repeal this section.

LRBa0294/2 and LRBa0297/2 restore s. 100.209 and applies it to video service provided by “multichannel video providers,” which is defined to include cable operators, video service providers, and “multichannel video programming providers,” a term used in federal law which includes satellite video service providers. The amendments repeal the authority of municipalities to adopt ordinances that supplement the statutory standards.

LRBa0294/2 and LRBa0297/2 modify one of the standards in current s. 100.209. Under current law, when a subscriber notifies the cable operator of a service interruption that is not caused by the cable operator and that lasts for more than four hours in one day, the cable operator is required to give the subscriber credit for each hour that service was interrupted. The amendments modify this requirement to apply to service outages that last for more than 24 hours.

If you have questions regarding the bills or the amendments described in this memorandum, please contact us at the Legislative Council staff offices.

DLL:JES:jal

⁶ LRBa0294/2 is an Assembly amendment to the Assembly substitute amendment. LRBa0297/2 is a Senate amendment to the Senate substitute amendment.

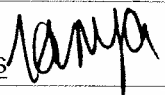




MEMO
CITY OF FITCHBURG

ADMINISTRATIVE OFFICES

5520 LACY ROAD
FITCHBURG WI 53711
(608) 270-4201
FAX: (608) 270-4212

To:	Governor Doyle, Lt. Governor Lawton, Sen. Erpenbach, Rep. Pope-Roberts, Rep. Berceau, Sen. Risser, Sen. Plale, Rep. Montgomery, Dane County Board Members, League of Wisconsin Municipalities, Wisconsin Alliance of Cities, and Wisconsin Association of PEG Channels
From:	Tanya O'Malley, Deputy City Clerk tanya.o'malley@city.fitchburg.wi.us 
Date:	4/25/2007
Subject:	City of Fitchburg Resolution R-41-07

At the direction of the City of Fitchburg Common Council, I am forwarding a copy of Resolution R-41-07 Opposing Assembly Bill 207 and Senate Bill 107: Proposed State Video Franchising Legislation. The Common Council voted by a roll call vote at its regular meeting on April 24, 2007. The Common Council Members voted as follows:

Steve Arnold – Aye
Richard Bloomquist – Aye
William Horns – Aye
Andrew Potts – Aye
Darren Stucker – Aye
Roger Tesch – Aye
Jason Williams – Aye
Jay Allen – Aye

The City of Fitchburg Common Council adopted Resolution R-41-07 on April 24, 2007.

Thank you!

Mayor Thomas Clauder
Introduced by

Broadband Telecommunications Director
Prepared by

Broadband Telecommunications Commission
Referred to

April 4, 2007
Date

RESOLUTION R-41-07

Opposing Assembly Bill 207 and Senate Bill 107
Proposed State Video Franchising Legislation

WHEREAS, The City of Fitchburg welcomes broadband, cable, video services and TV competition and has acted to encourage such competition by creating an OVS (Open Video System) Franchise; and

WHEREAS, The City of Fitchburg has maintained a regulatory role over the basic tier of video services, resulting in an unusually affordable tier (\$8.19) and has overseen a high level of video services with local ROW control, and PEG TV support, and has intervened when appropriate for consumer advocacy; and

WHEREAS, the City of Fitchburg has 25 years of experience working with video franchisees to best serve the people of the community; and

WHEREAS, on March 27, two legislative committees held a hearing on AB 207 and SB 107, bills aimed at bringing video competition to Wisconsin consumers at the cost to Wisconsin citizens of local consumer protections, local public, education and government access channels and local regulation; and

WHEREAS, video competition will be coming to Milwaukee without AB 207 or SB 107, thanks to an interim agreement in a lawsuit against AT&T; and

WHEREAS, the communities of Amherst, Abrams, Cochrane, Coon Valley, Cameron, Cable, Hillsboro, La Valle, Camp Douglas, Oxford, Blue River, Union, Westby, La Crosse, Mount Horeb and Strum already enjoy video competition without AB 207 and SB 107; and

WHEREAS, Verizon has easily obtained local franchises covering nearly 8 million U.S. households, and AT&T has franchises covering 60 percent of its national footprint; and

WHEREAS, access from the video subscriber's living room to the actions of local government, community schools, area organizations, youth groups and religious services are at risk under AB 207 and SB 107; and

WHEREAS, AB 207 and SB 107 would impose crippling regulation on local public, educational and government access channels; and

WHEREAS, changes made in committee have not fully resolved problems with AB 207 and SB 107; and

WHEREAS, AB 207 and SB 107 would eliminate or undermine local control of rights of way; eliminate or undermine in-kind support that public, educational and governmental channels receive from cable and video providers; reduce franchise-fee revenues; eliminate dedicated PEG support fees, and eliminate cablecast technical standards; and

WHEREAS, none of these community resources need be sacrificed in the name of a goal that everyone in Wisconsin seeks: broadband, TV, cable and video competition based on fair rules and on a level playing field; and

WHEREAS, federal law requires cable companies to provide public, educational and governmental (PEG) channel support according to community needs, and there is no reason all cable, TV and video providers cannot be held to the same standard;

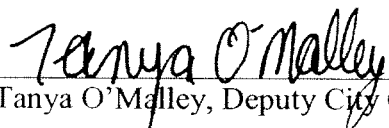
NOW THEREFORE BE IT RESOLVED that the Common Council of the City of Fitchburg urges the Wisconsin Legislature to reject AB 207 and SB 107, and enact legislation maintaining local control over video providers while ensuring a level playing field for competition; and


BE IT FURTHER RESOLVED, that the Common Council of the City of Fitchburg recommends adoption of the language of the interim agreement between the City of Milwaukee and AT&T as a framework to maintain local control and encourage competition; and

BE IT FURTHER RESOLVED, that the Common Council of the City of Fitchburg in the alternative urges the Wisconsin Legislature to support and adopt the amendments to proposed AB 207 and SB 107 as recommended in the March 26, 2007 memorandum from the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities and the Wisconsin Association of PEG Channels to preserve local control over video providers and local rights of way.

BE IT FURTHER RESOLVED, by the Fitchburg Common Council that the City Clerk forward copies of this resolution to Gov. James Doyle, Lt. Gov. Barbara Lawton, Sen. Jon Erpenbach; Rep. Sondy Pope-Roberts; Rep. Terese Berceau; Sen. Fred A. Risser; Sen. Jeff Plale and Rep. Phil Montgomery; the Dane County Board; the League of Wisconsin Municipalities; the Wisconsin Alliance of Cities and the Wisconsin Association of PEG Channels.

Adopted this 24th day of April, 2007.


Tanya O'Malley, Deputy City Clerk


Thomas Clauder, Mayor





April 26, 2007

Senator Jeffrey Plale
7th District
Room 313 South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

SB 107?

Dear Senator Plale:

Enclosed please find Resolution 4932 passed by the River Falls City Council on April 24, 2007. As you can see, the City Council opposes Assembly Bill 207 and Senate Bill 207. If you have any questions regarding this resolution, please contact the Dawn Wills, Cable Coordinator for the City of River Falls. You can reach her at 715-425-5400 or email RFCTV@RFCITY.ORG.

Thank you for your support in regard to this very important issue.

Sincerely,

Kristi McKahan
Executive Secretary
City of River Falls

Enclosure

RESOLUTION NO. 4932

A RESOLUTION OPPOSING ASSEMBLY BILL 207 AND SENATE BILL 107 PROPOSED STATE VIDEO FRANCHISING LEGISLATION

WHEREAS, AB 207/SB 107, has been introduced in the Wisconsin State Legislature with provision that would prohibit Wisconsin municipalities from continuing existing funding mechanisms for Public, Education, and Government (PEG) Access television such as River Falls Community Television; and

WHEREAS, the services and programming provided by River Falls Community Television are an important part of open government in River Falls and are valued by both the City of River Falls and River Falls public; and

WHEREAS, the existing PEG funding arrangement between the City of River Falls and Comcast Cable allows River Falls Community Television to maintain its level of service while reducing pressures on local property taxes; and

WHEREAS, AB 107/SB 207 would eliminate or undermine local control of rights of ways, eliminate in-kind support that PEG channels receive from cable companies to transmit their signal, reduce franchise fee revenue, eliminate dedicated PEG support fees, impose impossible content requirements and eliminate cablecast technical standards; and

WHEREAS, this legislation would deprive local citizens of the ability to address issues and request recourse locally by moving all customer support services to the state level; and

WHEREAS, the City of River Falls encourages competition in the delivery of cable services, and believes River Falls residents benefit from market competition that occurs within the existing legislative and regulatory structure of local franchising; and

WHEREAS, passage of AB 207/SB 107 as written would force the City of River Falls, as well as municipalities across the state to either shut down these vital community voices or raise local property taxes to make up the funding shortfall,

NOW, THEREFORE, LET BE IT RESOLVED By the **Common Council of the City of River Falls**, that AB 207/SB 107 would negatively impact the City of River Falls and its residents; and

FURTHER BE IT RESOLVED by the **Common Council** that the City of River Falls opposes AB 207 and SB 107, and urge its Wisconsin State Legislature to oppose these bills or any similar legislation that does not preserve PEG funding, technical support of PEG and PEG content.

RESOLUTION NO. 4932

Page 2

April 24, 2007

FURTHER BE IT RESOLVED by the Common Council in the alternative urges the Wisconsin State Legislature to support and adopt the amendments to proposed AB 207/SB 107 as recommended in the March 26, 2007 memorandum from the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities and the Wisconsin Association of PEG Channels to preserve local control over video providers and local rights of way.

BE IT FURTHER RESOLVED by the Common Council that the City Clerk forward copies of this resolution to Sen. Sheila Harsdorf, Rep. Kitty Rhoades, Sen. Jeff Plale and Rep. Phil Montgomery, the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities and the Wisconsin Association of PEG Channels

Dated this 24th day of April, 2007.

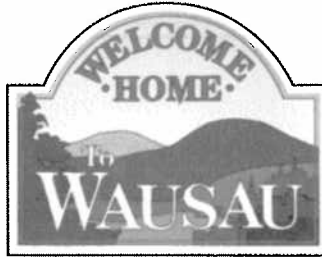
CITY OF RIVER FALLS

By: Don Richards
Don Richards, Mayor

Attest:

By: Julie Bergstrom
Julie Bergstrom





Office of the Mayor

James E Tipple

April 30, 2007

State Senator Jeffrey Plale
7th Senate District
Room 313 South - State Capitol
P.O. Box 7882
Madison, WI 53707-7882

SUBJECT: Opposing 2007 Assembly Bill 207 and 2007 Senate Bill 107
RE: Proposed Video Franchising Legislation

Dear Senator Plale:

The Wausau Common Council, at its April 24, 2007 meeting, adopted the enclosed resolution which **opposes** Assembly Bill 207 and Senate Bill 107, legislation that could eliminate and undermine local control of rights-of-way, reduce local franchise fee revenues, eliminate dedicated public, education and government programming support, and have other detrimental effects on our local cable franchising ability.

When this legislation reaches the Senate floor, I would strongly urge you to vote against the proposal.

Should you have questions regarding any of the above or the enclosed, please contact me at 715-261-6800.

Sincerely,

A handwritten signature in black ink that reads "James E. Tipple".

James E. Tipple, Mayor
City of Wausau

cc: Ed Huck, Wisconsin Alliance of Cities
Dan Thompson, League of Wisconsin Municipalities

PlaleSB207AB107Oppose2007LegCommRes4.24

Kelly Michaels-Saager, City Clerk
Customer Service Supervisor
ksaager@mail.ci.wausau.wi.us



Mary Goede
Deputy City Clerk
mgoede@mail.ci.wausau.wi.us

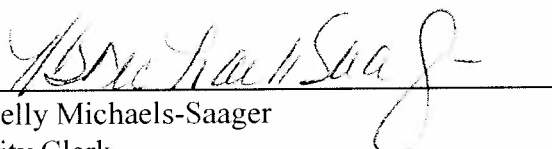
CLERK CUSTOMER SERVICE

CERTIFICATION

I, Kelly Michaels-Saager, do hereby certify that I am the duly qualified and acting City Clerk of and for the City of Wausau, Marathon County, Wisconsin. Acting in that capacity, I do further certify that the accompanying Resolution is a true and correct copy of a Resolution of the Legislative Committee opposing Asembly Bill 207 and Senate Bill 107 - Proposed Video Franchising Legislation, which was duly adopted by the City of Wausau Common Council on April 24, 2007.

Dated this 26th day of April, 2007

City of Wausau, Marathon County, Wisconsin.



Kelly Michaels-Saager
City Clerk
Wausau, Wisconsin

SEAL

CITY OF WAUSAU, 407 Grant Street, Wausau, WI 54403

RESOLUTION OF LEGISLATIVE COMMITTEE

Opposing Assembly Bill 207 and Senate Bill 107—Proposed Video Franchising Legislation.

Committee Approved 4-0

Fiscal Impact: None

File Number: 07-0416

Date Introduced: April 24, 2007

WHEREAS, LRB-1914/3, now known as AB207/SB107, the “Video Competition Act,” has been introduced in the Wisconsin State Legislature; and

WHEREAS, the proposed legislation imposes an unfunded state mandate upon the City of Wausau by reducing franchise fees (through a definitional change) which are paid to the City of Wausau; and

WHEREAS, the proposed provisions of the legislation would prohibit Wisconsin municipalities from continuing existing funding mechanisms for public, educational, and government (PEG) access television; and

WHEREAS, the proposed legislation unnecessarily adds additional responsibilities and financial liabilities to the State of Wisconsin which is already experiencing significant budget deficits; and

WHEREAS, the proposed legislation decimates local regulation, control, and custody of our rights-of-way; and

WHEREAS, the proposed legislation reduces the openness and transparency of government through the reduction in funding for and possible elimination of PEG access; and

WHEREAS, the proposed legislation substantially and negatively impacts consumer protections and recourse as contained in traditional cable franchise agreements; and

WHEREAS, the proposed legislation causes taxpayers within our community to subsidize the installation of AT&T equipment and lines by preventing the City of Wausau from collecting permitting fees due and payable by any other public or private entity for the use of the City’s rights-of-way; and

WHEREAS, the proposed legislation would eliminate and undermine local control of rights-of-way, eliminate or undermine in-kind support that PEG channels receive from cable and video providers, reduce franchise fee revenues, eliminate dedicated PEG support fees, impose impossible programming requirements, and eliminate cablecast technical standards; and

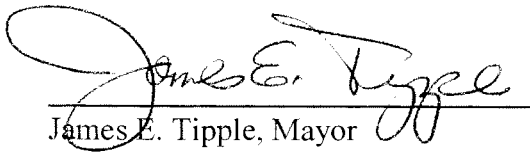
WHEREAS, the City of Wausau is willing to support competition if City control of its rights-of-way is maintained as well as the City's ability to collect PEG funding, now therefore.

BE IT RESOLVED, by the Common Council of the City of Wausau urges the Wisconsin Legislature to reject the proposed legislation, and enact legislation maintaining local control over video providers while insuring a level playing field for competition, and

BE IT FURTHER RESOLVED, that the Common Council of the City of Wausau in the alternative, urges the Wisconsin Legislature to support and adopt the amendments to the proposed legislation as recommended in the March 26, 2007, memorandum from the League of Wisconsin Municipalities, the Wisconsin Alliance of Cities, and the Wisconsin Association of PEG channels to preserve local control over video providers and local rights-of-way, and

BE IT FURTHER RESOLVED, by the Common Council of the City of Wausau that the City Clerk forward copies of this resolution to State Senator Glenn Grothman; State Representative Pat Strachota; the sponsors of the proposed legislation; State Senator Jeff Plale, and State Representative Phil Montgomery; the League of Wisconsin Municipalities; the Wisconsin Alliance of Cities; and the Wisconsin Association of PEG Channels.

Approved:


James E. Tipple, Mayor





DEPARTMENT OF JUSTICE

Antitrust Division

THOMAS O. BARNETT

Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: <http://www.usdoj.gov/atr>

April 30, 2007

Representative Phil Montgomery
Chair
Committee on Energy and Utilities
Room 129 West
P.O. Box 8953
Madison, WI 53708

Senator Jeffrey Pale
Chair
Committee on Commerce, Utilities and Rail
Room 313 South
P.O. Box 7882
Madison, WI 53707-7882

Re: A.B. 207 and S.B. 107

Dear Representative Montgomery and Senator Pale:

I write to express the views of the Antitrust Division of the U.S. Department of Justice¹ regarding A.B. 207 and S.B. 107.² We applaud the State of Wisconsin's efforts to ensure that the local cable-television franchising system benefits consumers by allowing additional video-service providers to enter the market. Recent efforts in other states to improve the efficiency of the cable franchise process have already yielded significant consumer benefits.

Consumers typically are best served when market forces determine where and when competitors enter. Regulatory restrictions that make it difficult for companies to enter markets tend to shield incumbents from competition and lead to higher costs, reduced innovation, and diminished choices for consumers. We believe that such restrictions should be avoided except where necessary to protect other compelling public policy goals, and even then should be tailored as narrowly as possible to limit the impact on competition.

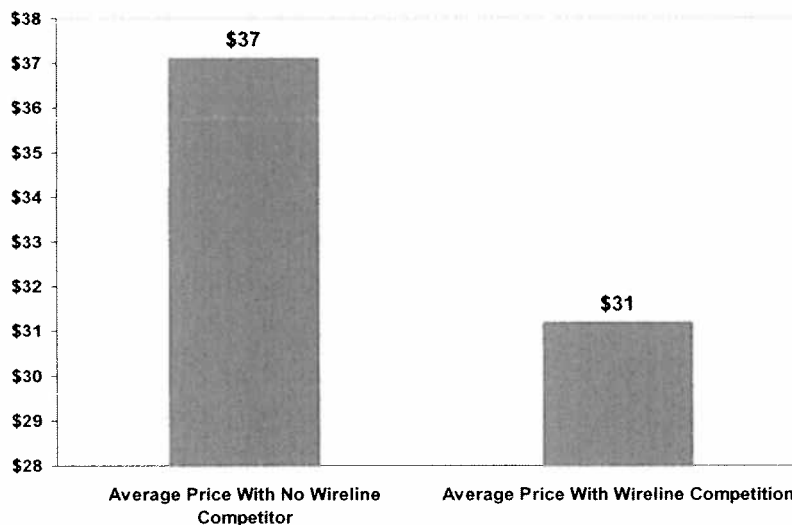
Cable television consumers would be better served if franchising restrictions did not prevent the market from creating a wider selection of providers. Additional competition from

¹The Department is one of the federal agencies responsible for enforcing the antitrust laws and protecting competition.

²A.B. 207, 98th Leg., Reg. Sess. (Wis. 2007); S.B. 107, 98th Leg., Reg. Sess. (Wis. 2007).

wireline video providers, including the telephone companies, has the potential to provide lower prices, better quality services, and more innovation to consumers.³ See Figure 1.

Figure 1: Average Cable Rates in Areas With and Without Wireline Competition, 2001



Graph based upon data from GAO report titled, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, Rep. No. GAO-04-8 (2003) (change derived from GAO model parameters evaluated at reported mean observation of average cable price).

For example, a survey conducted last year in Texas suggests that Verizon, which had begun offering its FiOS service in some parts of the state, was able to achieve significant market share within a few months of entry.⁴ The customers who reported switching providers did so primarily

³See Gen. Accounting Office, *Issues Related to Competition and Subscriber Rates in Cable Television Industry*, Rep. No. GAO-04-8, at 9 (2003); see also Jerry Ellig & Jerry Brito, *Video Killed the Franchise Star: The Consumer Cost of Cable Franchising and Proposed Policy Alternatives* 12 (2006) (stating “[e]conomic research demonstrates conclusively that wireline competition leads to lower prices and improved quality”), available at http://www.mercatus.org/repository/docLib/20060818_Brito_Ellig_Video_Franchising_Final_WP_PDF_Aug_2006.pdf.

⁴See American Consumer Institute, *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas* 10 (2006), available at <http://www.theamericanconsumer.org/Consumers%20Saving%20from%20Competition.pdf>.

in order to obtain better quality, better packaging, better pricing, and better programming.⁵ Overall, the survey found that increased competition was generating more than \$2 million in annual consumer benefits in the few areas where video competition had taken hold.⁶

Delays in the cable-television franchising process can also negatively impact the roll-out of higher-speed broadband Internet services to consumers. Some new video providers, such as the telephone companies, are providing video services over upgraded networks that support voice, video, and higher-speed broadband services. Because the revenues from offering video factor into the profitability these upgrades, a delay in receiving a cable television franchise can cause new entrants to postpone modernizing their networks.

Consumer gains in both video and broadband services are more likely to be realized if franchising authorities do not impose restrictions on entry beyond those necessary to protect the public interest. Evidence suggests this has not always been the case.⁷ For example, some local franchising authorities have taken a long time to process applications for franchises, made demands for goods and services (such as landscaping) that are unrelated to the provision of video services, or imposed build-out requirements that have unnecessarily discouraged competitive entry. The Federal Communications Commission recently said this conduct can create unreasonable barriers to entry into the provision of video services.⁸

Municipalities have legitimate interests in preserving the integrity of public rights of way. However, this interest generally does not justify regulations that impede competition in the provision of video programming or broadband services. Consequently, the Department believes that consumers will benefit from legislation that:

(A) establishes standard, enforceable time frames as well as a statewide process for acting on franchise applications;

⁵*Id.* at 12, Fig. 2.

⁶*Id.* at 3. According to the survey, 48% of the consumers who switched providers reported savings that averaged more than \$20 per month. *Id.* at 11.

⁷See Notice of Proposed Rulemaking, *In re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 20 F.C.C.R. 18581, 18584-85 (2005) (citations omitted).

⁸See Report and Order and Further Notice of Proposed Rulemaking, *In re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, FCC 06-180 (rel. Mar. 5, 2007).

(B) establishes objective criteria for determining what, if any, concessions localities may demand; and

(C) addresses the standard that local franchise authorities should apply in deciding whether to approve service areas proposed by new entrants.⁹

The current bills, A.B. 207 and S.B. 107, address these issues by providing a state-wide franchising process with a requirement that the Department of Financial Institutions act on a completed application within 10 business days. These provisions appear likely to benefit Wisconsin consumers.

A number of states have passed similar legislation. For example, in 2005, Texas passed a statewide franchising bill.¹⁰ The Texas law moves cable television franchising authority from the municipalities to the Texas Public Utilities Commission (TPUC) and requires the TPUC to act on a completed franchise application within 17 business days of receipt.¹¹ Texas has no build-out requirements, although franchisees are prohibited from denying service based on the income level of an area.¹²

The current local cable-television franchising process can block the entry of new video competitors and slow the introduction of higher-speed broadband services. The Department applauds the State of Wisconsin's efforts to improve this process and enhance competition. As in most industries, limiting barriers to entry for video-service providers will benefit consumers by reducing costs, encouraging innovation, and broadening consumer choice.

Yours sincerely,



Thomas O. Barnett

⁹In considering any mandated build-out requirements imposed by local cable franchising authorities, the legislature should take into account their potential entry-detering effects. As a result, the legislature should consider whether such requirements should be imposed at all or, if so, only where necessary to prevent income discrimination.

¹⁰Tex. Util. Code Ann. §§ 66.001 et seq. (2005).

¹¹*Id.* § 66.003.

¹²*Id.* § 66.007.