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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**



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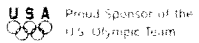
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2007 – 2008 LEGISLATURE

2007 ASSEMBLY BILL ____

January __, 2007 – Introduced by Representatives

Referred to Committee on _____

- 1 **AN ACT** *to create* 66.0420 of the statutes; **relating to:** local government
- 2 franchising authority over competitive cable television and video services providers who
- 3 use public rights-of-way to provide services to the public.

Analysis by the Legislative Reference Bureau

TO BE INSERTED

**The people of the state of Wisconsin, represented in senate and assembly, do enact
as follows:**

1 **SECTION 1.** 66.0420 of the statutes is created to read:

2 66.0420 **Streamlined video franchises.** (1) **PURPOSE.** The purpose of this
3 section is to streamline the video franchising approval process, promote regulatory parity
4 among competing cable television and video service providers, and increase choice for
5 Wisconsin consumers. It is not the intent of this section to limit in any way the authority
6 of municipalities to franchise cable television and video services delivered using wireline
7 networks located in whole or in part in public rights-of-way.

8 (2) **TITLE.** This section may be cited as the "Streamlined Video Franchising Act
9 of 2007."

10 (3) **LEGISLATIVE FINDINGS.** (a) The Legislature finds that:

11 1. Wisconsin's economy could be enhanced by investment in new
12 communications and video programming infrastructure, including fiber optic and internet
13 protocol technologies, if such investments are made state-wide and are available to all
14 Wisconsin's citizens.

15 2. Communications services, including cable and video services, bring
16 important daily benefits to Wisconsin's citizens by providing news, education and
17 entertainment. Many times the vehicles for providing these services, as well as
18 addressing public safety and homeland security needs at the local level, are the PEG
19 channels carried on the cable system.

20 3. Competitive cable and video service providers are capable of providing
21 new video programming services and increased competition to consumers in the state, so

1 long as the terms for providing these services are comparable for similar providers;
2 consumer protection laws fully protect the rights of Wisconsin citizens; and such services
3 are made available to all citizens in a reasonable amount of time so that Wisconsin does
4 not become a state of information service “haves and have nots.”

5 4. There has been only minimal competitive entry into the facilities-based
6 video programming market since 1996, even though incumbent local exchange carriers
7 (“ILECs”) have been free to provide cable service within their service territories since
8 1996. Further, other states that have adopted streamlined franchising bills have not seen
9 significant investments by the ILECs to offer competitive services, but rather have seen
10 most streamlined franchises obtained by incumbent cable operators whose local
11 franchises have expired, a practice that brings no advantages in terms of improved service
12 or competition.

13 5. Cable franchises and associated build-out requirements will not serve to
14 deter new competitors from seeking to provide services in Wisconsin. State streamlined
15 franchising laws with buildout requirements have been passed in Virginia, New Jersey
16 and California. The rate of entry for competitive franchises in those states is as high, if
17 not higher, than the rate of entry in states with no buildout requirements.

18 6. Some providers of video services have challenged the applicability of
19 cable franchise requirements, stating that, by virtue of their ILEC status, they have a pre-
20 existing right of access to the public rights-of-way. The legislature finds that absent a
21 cable or video franchise, no provider has the right to access this state’s rights-of-way to
22 provide such services.

1 7. There are consumer benefits to be obtained by clarifying that all entities
2 using the rights-of-way to provide cable or video services must have a local cable
3 franchise.

4 8. The legislature reaffirms its finding under s. 66.0419(1)(a)6., that
5 “Regulation of cable television services by cities, towns and villages is necessary to
6 ensure citizens adequate and efficient cable television service and to protect and promote
7 public health, safety and welfare.”

8 (4) DEFINITIONS. In this section, unless explicitly stated, all terms shall have the
9 same meaning as that provided in the federal cable act (47 U.S.C. s. 521 et seq.) or as
10 previously defined by the legislature in s. 66.0419(2):

11 (a) “Competitive cable service provider” means (i) a person authorized to provide
12 cable service over a cable system other than the incumbent cable operator providing
13 service in the area to be served by the competitive cable service provider; or (ii) a cable
14 operator authorized to provide cable services over a cable system in areas where it does
15 not have an existing franchise agreement as of the effective date of this section.

16 (b). “Competitive video service provider” means a person authorized to
17 provide video service that is not a cable operator. The facilities of a competitive video
18 service provider shall not be considered a cable system.

19 (c) “Competitive cable service provider fee” means the amount paid by a
20 competitive cable service provider pursuant to subsection (8).

21 (d) “Competitive video service provider fee” means the amount paid by a
22 competitive video service provider pursuant to subsection (8).

1 (e) “Gross revenue” means all consideration of any kind or nature including
2 cash, credits, property, and in-kind contributions (services or goods) received by a cable
3 or video service provider from the provision of cable or video service within a franchise
4 area including:

5 1. All charges and fees paid by subscribers for the provision of cable or
6 video service, including fees attributable to video service when that service is sold
7 individually or as part of a package or bundle, or is functionally integrated with services
8 other than video service;

9 2. Revenue received by a cable or video service provider as compensation
10 for carriage of video programming on the provider’s system;

11 3. Compensation received by a cable or video service provider as
12 compensation for promotion or exhibition of any product or service on the provider’s
13 video service, such as a home shopping or similar channel; and

14 4. All revenue derived by a cable or video service provider pursuant to a
15 compensation arrangement for advertising derived from the operation of the provider’s
16 cable service or video service within a franchise area, including a pro rata portion of any
17 such revenue that is paid based on a broader area of service;

18 5. The gross revenue of an affiliate to the extent the exclusion of the
19 affiliate’s gross revenue would have the effect of permitting the cable or video service
20 provider to evade the payment of franchise fees for revenues attributable to the franchise
21 area of the franchising authority imposing the fee.

22 6. In the case of a cable or video service that is bundled with other services,
23 gross revenue shall include only the revenue attributable to the video service, which shall

1 be reflected on the books and records of the video service provider kept in the regular
2 course of business. If the bundled services are offered at a discount from the stand-alone
3 price of the bundled services, then for purposes of determining gross revenue, the
4 discount shall be applied proportionately to the bundled services. For example, assume
5 that the provider's non-bundled stand-alone price for video service, local telephone
6 service, and internet access service, and long-distance service is \$40, \$30, \$20 and \$10,
7 respectively, for a total of \$100. If the provider offers these services at a bundled rate of
8 \$80, a twenty percent (20%) discount from the rates that would apply to the services if
9 purchased individually, the discount would be applied proportionately so that the
10 provider's gross revenues for the provision of video service would be deemed to be \$32
11 (\$40 less 20% of \$40). Notwithstanding the foregoing, if any portion of the product
12 bundle is rate-regulated by the public service commission and cannot, therefore, be
13 discounted by the provider, the discount is to be applied proportionately among the
14 services that are not so regulated. Thus, in the above example, assuming that the local
15 telephone service is so regulated, the provider's gross revenues for the provision of video
16 service would be deemed to be \$28.40 (\$40 less 29% of \$40).

17 (f) "Gross revenue" does not include:

- 18 1. Any revenue not actually received, even if billed, such as bad debts, net of
19 any recoveries of bad debts;
- 20 2. Refunds, rebates, credits, or discounts to subscribers or a municipality to
21 the extent not already excluded under this subsection;

1 3. Any revenues received by a cable or video service provider or its affiliates
2 from the provision of services or capabilities other than cable or video service including:
3 voice, internet access, or other applications that are not cable or video service;

4 4. Revenue received from the provision of services, capabilities, and
5 applications other than cable or video service that are sold or provided as part of a
6 package or bundle of services or capabilities, or that are functionally integrated with
7 video service, subject to reasonable allocation of package or bundle revenues pursuant to
8 par. (e) 6.;

9 5. Any revenues received by a cable or video service provider or its affiliates
10 for the provision of directory or internet advertising, including yellow pages, white pages,
11 banner advertisement, and electronic publishing;

12 6. Any costs attributable to the provision of video services to subscribers at
13 no charge, including the provision of such services to public institutions without charge;

14 7. Any revenue paid by subscribers to a home shopping programmer directly
15 from the sale of merchandise through any home shopping channel offered as part of the
16 video service provider's video services, but not excluding any commissions that are paid
17 to the video service provider as compensation for promotion or exhibition of any product
18 or service on the provider's video service, such as a home shopping or similar channel;

19 8. Any revenue forgone from the provision of video service at no charge to
20 any person other than forgone revenue exchanged for trades, barter, services, or other
21 items of value;

22 9. Any revenue from the sale of capital assets or surplus equipment;

1 10. Reimbursement paid by programmers for marketing costs actually
2 incurred by a cable or video service provider for the introduction of new programming; or

3 11. Any revenue from the sale of video services for resale to the extent that
4 the purchaser pays any applicable franchise fee with respect thereto.

5 (g) "Provider" means person or group that provides cable or video services using
6 a wireline network located in whole or in part in public rights-of-way.

7 (h) "PEG" means public, educational and governmental.

8 (i) "Video service" means video programming services provided through wireline
9 facilities located at least in part in the public rights-of-way without regard to delivery
10 technology, including internet protocol technology, whether or not such services are
11 classified as "cable service."

12 **(5) AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE.** (a) Any
13 entity providing video or cable services over wireline facilities located in whole or in part
14 within the public rights-of-way shall obtain a franchise as described in this section.

15 (b) To the extent required by applicable law, any franchise granted pursuant to
16 this section shall constitute a "franchise" for purposes of 47 U.S.C. s. 541(b)(1).

17 (c) Municipalities shall remain as the franchising authority for all incumbent and
18 competitive cable and video service providers who serve that municipality.

19 (d) An applicant for a franchise may seek to negotiate a franchise with the
20 municipality in which the applicant seeks to provide service, or may avail itself of the
21 streamlined franchising process provided for in subsection (6).

22 **(6) STREAMLINED VIDEO FRANCHISING PROCESS.** (a) A franchise applicant may
23 avail itself of a streamlined process for franchising. To obtain a franchise for cable and

1 video services in a franchise area using that streamlined process, a person or group shall
2 file with the franchising authority an application containing the information and
3 representations contained in this subsection and subsection (7).

4 (b) A franchising authority must act to approve or deny such a franchise
5 application within 120 days, unless the requesting party and the franchising authority
6 agree to an extension of time.

7 (c) A party that has been denied a franchise may seek review of the denial as
8 provided in the federal cable act (47 U.S.C. s. 541).

9 (d) If the franchising authority fails to render a final decision on any completed
10 application within 120 days, unless that period is extended by mutual consent of the
11 parties, the requesting party may petition for a franchise from the secretary of state.

12 (e) Within ten days after such a petition (unless the municipality in which the
13 applicant seeks to provide services either grants or denies such application before the
14 secretary may act), the secretary of state, on behalf of the municipality, shall issue a
15 franchise subject to the provisions of this section if it finds that the application meets the
16 minimal requirements outlined in subsection (7).

17 (f) Any franchise shall be construed to authorize the construction of a cable or
18 video service system (i) over public rights-of-way and (ii) through easements that are
19 within the area to be served by the cable or video service system and that have been
20 dedicated for compatible uses.

21 **(7) MINIMUM REQUIREMENTS FOR FRANCHISE APPLICATION UNDER**
22 **STREAMLINED PROCESS.** (a) An application under this section shall include:

- 1 1. The name under which such person or group is offering or intends to offer
2 service;
- 3 2. The names and business addresses of the directors and principal executive
4 officers, or the persons performing similar functions, of such person or group;
- 5 3. The location of such person or group's principal business office;
- 6 4. The name, business address, electronic mail address, and telephone and fax
7 number of such person or group's local agent;
- 8 5. A declaration by such person or group that such person or group is eligible
9 under this section to obtain a franchise;
- 10 6. An identification of the franchise area in which such person or group seeks
11 authority to offer cable or video service pursuant to such certification, which franchise
12 area shall be the entirety of a franchise area in which a cable operator is, on the date of
13 the filing of such application, authorized to provide cable service within the municipality;
- 14 7. A declaration by such person or group that they will comply with all the
15 requirements of this section;
- 16 8. A declaration by the person or group that the person or group will comply with
17 the rights-of-way requirements of the franchising authority in accordance with this
18 section; and
- 19 9. A declaration by the person or group that (i) the person or group will comply
20 with all federal, state, and local consumer protection and customer service rules; and (ii)
21 the person or group agrees that such standards may be enforced by the franchising
22 authority or any entity having standing to bring such enforcement actions.

1 (b) A franchising authority shall take final action to approve or deny any
2 completed application for an additional franchise within 120 days. A completed
3 application shall be one that contains such information as is reasonably required by the
4 franchising authority and which addresses the community's current needs and interests as
5 defined by this section.

6 (8) FRANCHISE FEE. Notwithstanding s. 66.0611, a provider receiving a franchise
7 through the streamlined process under this section shall, at the franchising authority's
8 request, pay to the franchising authority a franchise fee of up to 5 percent of such
9 operator's gross revenues from the provision of cable or video services. Such payment
10 shall be assessed and collected in a manner consistent with section 47 U.S.C s. 542 and
11 the definitions of gross revenues and franchise fee in this section.

12 (9) PEG REQUIREMENTS. (a) An incumbent or competitive cable provider or a
13 competitive video provider receiving a franchise through the streamlined process
14 specified in this section shall provide channel capacity and financial support for PEG use
15 as set forth below no later than 180 days after a request by a municipality in which the
16 cable or video service provider is providing services:

17 1. The greater of: three PEG channels or the largest number of PEG channels
18 provided by any cable operator providing service in the franchised area as of the effective
19 date of this section; and

20 2. The greater of: three percent of gross revenues or the greatest value, on a
21 per subscriber basis, of all monetary grants or in-kind services or facilities for PEG access
22 facilities provided by any cable operator in the franchise area in the calendar year

1 preceding the effective date of this section. All such funds shall be available for any
2 purposes permitted under federal law.

3 (b) An incumbent or competitive cable provider or a competitive video provider
4 receiving a franchise through the streamlined process specified in subsection (7) shall
5 ensure that any PEG programming carried by the applicant is available to all subscribers
6 in the franchise area.

7 (c) The content to be provided over any PEG access channel pursuant to this
8 section shall be the responsibility of the municipality or county receiving the benefit of
9 such capacity.

10 (d) The production of any programming provided under this subsection shall be
11 the responsibility of the franchising authority or its delegee.

12 (e) The competitive cable or video provider bears the responsibility for providing
13 at an origination point a composite video and audio signal consistent with the federal
14 communications commission NTSC transmission standard. The competitive cable or
15 video provider shall also be responsible for the transmission of the programming from the
16 signal origination point (or points), or from the point of interconnection with another
17 franchised cable or video provider, to its subscribers, of any PEG programming produced
18 by or for the franchising authority and carried by the cable operator pursuant to this
19 section.

20 (f) Unless all providers otherwise agree to the terms for interconnection and cost
21 sharing, each provider shall bear its own expenses for the interconnection between two
22 providers in a franchise area for transmission of PEG, without material deterioration in
23 signal quality or functionality

1 (g) Each provider shall display the program information for specific PEG
2 programs carried under this subsection in any print or electronic program guide in the
3 same manner in which it displays program information for other video programs in the
4 franchise area. No provider shall omit such PEG programming from any navigational
5 device, guide, or menu containing other video programming that is available to
6 subscribers in the franchise area.

7 **(10) CONNECTIONS TO GOVERNMENT BUILDINGS.** All providers franchised under
8 this section shall agree, at a minimum, to install and retain or provide, without charge,
9 one service outlet activated for basic cable service and basic internet access at no less
10 than broadband speed, as that term is defined by the federal communications commission,
11 to any and all fire stations, public schools, police stations, public libraries, and other such
12 buildings used for municipal purposes within the franchise area.

13 **(11) CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS.** (a) Any
14 provider authorized under this section to provide cable or video service in a franchise
15 area shall comply with the consumer protection and customer service standards
16 established by the federal communications commission under 47 U.S.C. s. 552(b), as well
17 as with any applicable state or local standards.

18 (b) Any provider with more than 1,000 subscribers shall maintain a local office
19 within the franchise area.

20 **(12) MONITORING AND INSPECTION.** (a) A franchising authority shall have the
21 right to monitor and inspect the deployment of cable or video services by a provider.

1 (b) The provider shall submit semiannual progress reports detailing its provision
2 of cable or video services during the preceding six months and comparing its progress in
3 that respect with the deployment schedule established pursuant to this section.

4 (c) All progress reports provided to a franchise authority under this subsection
5 shall qualify as a trade secret as defined in s. 134.90 (1) (c) and shall be kept confidential
6 by the franchising authority.

7 **(13) ENFORCEMENT.** A franchising authority shall have the right to impose, after
8 making a determination that the provider has violated any provision of this section:

9 (a) A civil penalty for each day of default in an amount not to exceed \$10.00 per
10 subscriber served by the provider within the franchised area in which the violation
11 occurred and where the provider cured the default upon notice. No such penalty under
12 this paragraph shall exceed \$500 a day.

13 (b) Upon a finding of a willful violation that is not cured, after notice and an
14 opportunity for a hearing before the governing body of the franchise authority or its
15 designee, the revocation of the franchise.

16 (c) A civil action against the provider in any court of competent jurisdiction for
17 damages, an order directing the provider to rectify the noncompliance, or other
18 appropriate relief.

19 **(14) TERM.** A franchise under this section shall be effective for a term of seven
20 years and no renewal shall be for a term longer than seven years.

21 **(15) RENEWAL.** (a) A franchise under this section shall be renewed pursuant to
22 applicable law, but each franchisee, as a condition of accepting a franchise, agrees to
23 participate in a public hearing. The hearing shall afford the public the opportunity to

1 participate for the purpose of identifying cable-related community needs and interests and
2 assessing the franchisee's performance, including but not limited to its compliance with
3 the requirements of this section. The franchisee shall provide notice to its subscribers of
4 the hearing at least 30 days prior to the hearing.

5 (b) Over the time between renewals, community needs will change and grow. A
6 franchising authority may therefore require a provider to increase the channel capacity
7 designated for public, educational, or governmental use, and the channel capacity
8 designated for such use on any institutional networks required by the greater of 1 channel
9 or 10 percent of the public, educational, or governmental channel capacity required of
10 that operator prior to the increase.

11 **(16) AUDIT AUTHORITY.** (a) An applicant shall maintain a file of records open to
12 public inspection in accordance with applicable federal communications commission
13 rules and regulations. Upon reasonable written request, but no more than once in any 12-
14 month period, the franchising authority may review the business records of the applicant
15 and any affiliates to the extent reasonably necessary to ensure payment of the fees
16 required by this section.

17 (b) An applicant agrees that to the extent that the review under this subsection
18 identifies an underpayment of more than five percent of any fee required by this section
19 for the period of review, the applicant shall reimburse the franchising authority for the
20 reasonable costs of any such review conducted, including any expenses incurred in
21 engaging experts to assist in the determination of such underpayment.

1 **(17) EMERGENCY ALERT SYSTEM.** (a) An applicant agrees to install and maintain
2 for use by the franchising authority an emergency alert system meeting all applicable
3 requirements of federal law and to provide use of the system for local alerts.

4 **(18) PRIVACY.** A provider shall protect the privacy rights of all its subscribers as
5 provided for in 47 U.S.C. s. 551 with respect to all cable or video services offered.

6 **(19) UNIFORM PRICING.** A provider shall offer uniform pricing for cable or video
7 services within the franchise area, consistent with the terms of 47 U.S.C. s. 543,
8 regardless of the classification of such services.

9 **(20) BUILD-OUT OBLIGATIONS.** (a) A competitive cable or video service provider
10 or an affiliate thereof shall make its cable or video system capable of providing cable or
11 video service to all households in the franchise area in accordance with the following
12 schedule:

13 1. To not less than 20 percent of the households in the franchise area within no
14 less than 18 months after the date of the grant of franchise.

15 2. To not less than 50 percent of the households in the franchise area within no
16 more than 5 years after the date of the grant of franchise.

17 3. To not less than 100 percent of such households in the franchise area within no
18 more than 7 years after the date of the grant of franchise.

19 (b) In determining compliance with the percentages required under this
20 subsection, the total number of households required to be served in the franchise area
21 shall be reduced by the number of households in any geographic part of the franchise area
22 in which there are fewer than 20 households per square mile.

1 **(21) NO IMPACT ON FEES AND TAXATION.** Nothing in this section shall be
2 construed to modify, impair, or supersede, or authorize the modification, impairment, or
3 supersession of, any State or local law pertaining to taxation or to fees charged for
4 services rendered, such as right-of-way permit fees.

5 **(22) IMPACT ON INCUMBENT CABLE PROVIDERS. (a)** An incumbent cable or
6 video provider may, in its discretion, elect to terminate its negotiated franchise and obtain
7 a streamlined franchise as provided for in subsection (6) upon:

8 1. Providing the relevant franchise authority with at least 60 days' written notice
9 of its election consistent with the requirements of subsection (7) on or after the date that
10 another provider within the franchise area operating pursuant to a streamlined franchise
11 granted under this section is offering a cable or video service to more than 30 percent of
12 residential households within such incumbent provider's franchise area.

13 2. For purpose of this section, only wireline cable or video service offerings shall
14 be included in the calculation of percentage of residential households being passed.

15 **(b)** The following terms of an incumbent cable or video provider's franchise
16 applying as of the effective date of this section shall continue to be binding and
17 enforceable upon the incumbent.

18 1. An incumbent's obligations to build out its service territory and not engage in
19 discriminatory actions shall survive as long as the incumbent provider offers services
20 within the franchised area.

21 2. Institutional network capacity, however defined or referred to in the municipal
22 cable franchise but generally referring to a communication network which is constructed or
23 operated by the cable operator and which is generally available only to subscribers who are

1 not residential subscribers, shall continue to be provided under the same terms as prior to
2 the date of the termination.

3 3. Cable services to community public buildings, such as municipal buildings
4 and public schools, shall continue to be provided under the same terms as prior to the
5 date of the termination. Such cable service generally refers to the existing cable drop
6 connections to such facilities and the tier of cable service provided pursuant to the
7 franchise at the time of the termination.

8 (c) If only one cable or video service operator is operating in the franchise
9 area and is doing so under a streamlined franchise issued pursuant to this section, the
10 franchising authority shall have the right, by giving written notice to the operator, to
11 terminate the streamlined franchise and require that the operator obtain a franchise under
12 the renewal provisions of 47 U.S.C. s. 546 within one year of receiving the written notice.





CURTIS A. WITYNSKI
Assistant Director

Please see new and improved
language on pages 11-13
regarding PEG requirements



League of Wisconsin Municipalities

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14 deter new competitors from seeking to provide services in Wisconsin. State streamlined
15 franchising laws with buildout requirements have been passed in Virginia, New Jersey
16 and California. The rate of entry for competitive franchises in those states is as high, if
17 not higher, than the rate of entry in states with no buildout requirements.

18 6. Some providers of video services have challenged the applicability of
19 cable franchise requirements, stating that, by virtue of their ILEC status, they have a pre-
20 existing right of access to the public rights-of-way. The legislature finds that absent a
21 cable or video franchise, no provider has the right to access this state’s rights-of-way to
22 provide such services.

1 7. There are consumer benefits to be obtained by clarifying that all entities
2 using the rights-of-way to provide cable or video services must have a local cable
3 franchise.

4 8. The legislature reaffirms its finding under s. 66.0419(1)(a)6., that
5 “Regulation of cable television services by cities, towns and villages is necessary to
6 ensure citizens adequate and efficient cable television service and to protect and promote
7 public health, safety and welfare.”

8 (4) DEFINITIONS. In this section, unless explicitly stated, all terms shall have the
9 same meaning as that provided in the federal cable act (47 U.S.C. s. 521 et seq.) or as
10 previously defined by the legislature in s. 66.0419(2):

11 (a) “Competitive cable service provider” means (i) a person authorized to provide
12 cable service over a cable system other than the incumbent cable operator providing
13 service in the area to be served by the competitive cable service provider; or (ii) a cable
14 operator authorized to provide cable services over a cable system in areas where it does
15 not have an existing franchise agreement as of the effective date of this section.

16 (b). “Competitive video service provider” means a person authorized to
17 provide video service that is not a cable operator. The facilities of a competitive video
18 service provider shall not be considered a cable system.

19 (c) “Competitive cable service provider fee” means the amount paid by a
20 competitive cable service provider pursuant to subsection (8).

21 (d) “Competitive video service provider fee” means the amount paid by a
22 competitive video service provider pursuant to subsection (8).

1 (e) "Gross revenue" means all consideration of any kind or nature including
2 cash, credits, property, and in-kind contributions (services or goods) received by a cable
3 or video service provider from the provision of cable or video service within a franchise
4 area including:

5 1. All charges and fees paid by subscribers for the provision of cable or
6 video service, including fees attributable to video service when that service is sold
7 individually or as part of a package or bundle, or is functionally integrated with services
8 other than video service;

9 2. Revenue received by a cable or video service provider as compensation
10 for carriage of video programming on the provider's system;

11 3. Compensation received by a cable or video service provider as
12 compensation for promotion or exhibition of any product or service on the provider's
13 video service, such as a home shopping or similar channel; and

14 4. All revenue derived by a cable or video service provider pursuant to a
15 compensation arrangement for advertising derived from the operation of the provider's
16 cable service or video service within a franchise area, including a pro rata portion of any
17 such revenue that is paid based on a broader area of service;

18 5. The gross revenue of an affiliate to the extent the exclusion of the
19 affiliate's gross revenue would have the effect of permitting the cable or video service
20 provider to evade the payment of franchise fees for revenues attributable to the franchise
21 area of the franchising authority imposing the fee.

22 6. In the case of a cable or video service that is bundled with other services,
23 gross revenue shall include only the revenue attributable to the video service, which shall

1 be reflected on the books and records of the video service provider kept in the regular
2 course of business. If the bundled services are offered at a discount from the stand-alone
3 price of the bundled services, then for purposes of determining gross revenue, the
4 discount shall be applied proportionately to the bundled services. For example, assume
5 that the provider's non-bundled stand-alone price for video service, local telephone
6 service, and internet access service, and long-distance service is \$40, \$30, \$20 and \$10,
7 respectively, for a total of \$100. If the provider offers these services at a bundled rate of
8 \$80, a twenty percent (20%) discount from the rates that would apply to the services if
9 purchased individually, the discount would be applied proportionately so that the
10 provider's gross revenues for the provision of video service would be deemed to be \$32
11 (\$40 less 20% of \$40). Notwithstanding the foregoing, if any portion of the product
12 bundle is rate-regulated by the public service commission and cannot, therefore, be
13 discounted by the provider, the discount is to be applied proportionately among the
14 services that are not so regulated. Thus, in the above example, assuming that the local
15 telephone service is so regulated, the provider's gross revenues for the provision of video
16 service would be deemed to be \$28.40 (\$40 less 29% of \$40).

17 (f) "Gross revenue" does not include:

- 18 1. Any revenue not actually received, even if billed, such as bad debts, net of
19 any recoveries of bad debts;
- 20 2. Refunds, rebates, credits, or discounts to subscribers or a municipality to
21 the extent not already excluded under this subsection;

1 3. Any revenues received by a cable or video service provider or its affiliates
2 from the provision of services or capabilities other than cable or video service including:
3 voice, internet access, or other applications that are not cable or video service;

4 4. Revenue received from the provision of services, capabilities, and
5 applications other than cable or video service that are sold or provided as part of a
6 package or bundle of services or capabilities, or that are functionally integrated with
7 video service, subject to reasonable allocation of package or bundle revenues pursuant to
8 par. (e) 6.;

9 5. Any revenues received by a cable or video service provider or its affiliates
10 for the provision of directory or internet advertising, including yellow pages, white pages,
11 banner advertisement, and electronic publishing;

12 6. Any costs attributable to the provision of video services to subscribers at
13 no charge, including the provision of such services to public institutions without charge;

14 7. Any revenue paid by subscribers to a home shopping programmer directly
15 from the sale of merchandise through any home shopping channel offered as part of the
16 video service provider's video services, but not excluding any commissions that are paid
17 to the video service provider as compensation for promotion or exhibition of any product
18 or service on the provider's video service, such as a home shopping or similar channel;

19 8. Any revenue forgone from the provision of video service at no charge to
20 any person other than forgone revenue exchanged for trades, barter, services, or other
21 items of value;

22 9. Any revenue from the sale of capital assets or surplus equipment;

1 10. Reimbursement paid by programmers for marketing costs actually
2 incurred by a cable or video service provider for the introduction of new programming; or

3 11. Any revenue from the sale of video services for resale to the extent that
4 the purchaser pays any applicable franchise fee with respect thereto.

5 (g) "Provider" means person or group that provides cable or video services using
6 a wireline network located in whole or in part in public rights-of-way.

7 (h) "PEG" means public, educational and governmental.

8 (i) "Video service" means video programming services provided through wireline
9 facilities located at least in part in the public rights-of-way without regard to delivery
10 technology, including internet protocol technology, whether or not such services are
11 classified as "cable service."

12 (5) AUTHORIZATION TO PROVIDE CABLE SERVICE OR VIDEO SERVICE. (a) Any
13 entity providing video or cable services over wireline facilities located in whole or in part
14 within the public rights-of-way shall obtain a franchise as described in this section.

15 (b) To the extent required by applicable law, any franchise granted pursuant to
16 this section shall constitute a "franchise" for purposes of 47 U.S.C. s. 541(b)(1).

17 (c) Municipalities shall remain as the franchising authority for all incumbent and
18 competitive cable and video service providers who serve that municipality.

19 (d) An applicant for a franchise may seek to negotiate a franchise with the
20 municipality in which the applicant seeks to provide service, or may avail itself of the
21 streamlined franchising process provided for in subsection (6).

22 (6) STREAMLINED VIDEO FRANCHISING PROCESS. (a) A franchise applicant may
23 avail itself of a streamlined process for franchising. To obtain a franchise for cable and

1 video services in a franchise area using that streamlined process, a person or group shall
2 file with the franchising authority an application containing the information and
3 representations contained in this subsection and subsection (7).

4 (b) A franchising authority must act to approve or deny such a franchise
5 application within 120 days, unless the requesting party and the franchising authority
6 agree to an extension of time.

7 (c) A party that has been denied a franchise may seek review of the denial as
8 provided in the federal cable act (47 U.S.C. s. 541).

9 (d) If the franchising authority fails to render a final decision on any completed
10 application within 120 days, unless that period is extended by mutual consent of the
11 parties, the requesting party may petition for a franchise from the secretary of state.

12 (e) Within ten days after such a petition (unless the municipality in which the
13 applicant seeks to provide services either grants or denies such application before the
14 secretary may act), the secretary of state, on behalf of the municipality, shall issue a
15 franchise subject to the provisions of this section if it finds that the application meets the
16 minimal requirements outlined in subsection (7).

17 (f) Any franchise shall be construed to authorize the construction of a cable or
18 video service system (i) over public rights-of-way and (ii) through easements that are
19 within the area to be served by the cable or video service system and that have been
20 dedicated for compatible uses.

21 **(7) MINIMUM REQUIREMENTS FOR FRANCHISE APPLICATION UNDER**
22 **STREAMLINED PROCESS. (a)** An application under this section shall include:

- 1 1. The name under which such person or group is offering or intends to offer
2 service;
- 3 2. The names and business addresses of the directors and principal executive
4 officers, or the persons performing similar functions, of such person or group;
- 5 3. The location of such person or group's principal business office;
- 6 4. The name, business address, electronic mail address, and telephone and fax
7 number of such person or group's local agent;
- 8 5. A declaration by such person or group that such person or group is eligible
9 under this section to obtain a franchise;
- 10 6. An identification of the franchise area in which such person or group seeks
11 authority to offer cable or video service pursuant to such certification, which franchise
12 area shall be the entirety of a franchise area in which a cable operator is, on the date of
13 the filing of such application, authorized to provide cable service within the municipality;
- 14 7. A declaration by such person or group that they will comply with all the
15 requirements of this section;
- 16 8. A declaration by the person or group that the person or group will comply with
17 the rights-of-way requirements of the franchising authority in accordance with this
18 section; and
- 19 9. A declaration by the person or group that (i) the person or group will comply
20 with all federal, state, and local consumer protection and customer service rules; and (ii)
21 the person or group agrees that such standards may be enforced by the franchising
22 authority or any entity having standing to bring such enforcement actions.

1 (b) A franchising authority shall take final action to approve or deny any
2 completed application for an additional franchise within 120 days. A completed
3 application shall be one that contains such information as is reasonably required by the
4 franchising authority and which addresses the community's current needs and interests as
5 defined by this section.

6 (8) FRANCHISE FEE. Notwithstanding s. 66.0611, a provider receiving a franchise
7 through the streamlined process under this section shall, at the franchising authority's
8 request, pay to the franchising authority a franchise fee of up to 5 percent of such
9 operator's gross revenues from the provision of cable or video services. Such payment
10 shall be assessed and collected in a manner consistent with section 47 U.S.C s. 542 and
11 the definitions of gross revenues and franchise fee in this section.

12 (9) PEG REQUIREMENTS. (a) An incumbent or competitive cable provider or a
13 competitive video provider receiving a franchise through the streamlined process
14 specified in this section shall provide channel capacity and financial support for PEG use
15 as set forth below no later than 180 days after a request by a municipality in which the
16 cable or video service provider is providing services:

17 1. The greater of: three PEG channels or the largest number of PEG channels
18 provided by any cable operator providing service in the franchised area as of the effective
19 date of this section; and

20 2. The greater of: three percent of gross revenues or the greatest value, on a
21 per subscriber basis, of all monetary grants or in-kind services or facilities for PEG access
22 facilities provided by any cable operator in the franchise area in the calendar year

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1 preceding the effective date of this section. All such funds shall be available for any
2 purposes permitted under federal law.

3 (b) An incumbent or competitive cable provider or a competitive video provider
4 receiving a franchise through the streamlined process specified in subsection (7) shall
5 ensure that any PEG programming carried by the applicant is available to all subscribers
6 in the franchise area on the basic tier.

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7 (c) ~~The content to be provided over any PEG access channel~~ Designating a
8 channelholder pursuant to this section shall be the responsibility of the municipality or
9 county receiving the benefit of such capacity. Program producers are solely
10 responsible for the content of programming.

11 (d) The production of any programming provided under this subsection shall be
12 the responsibility of the franchising authority or its delegee.

13 (e) The competitive cable or video provider bears the responsibility for providing
14 at an origination point a composite video and audio signal consistent with the federal
15 communications commission NTSC transmission standard. The competitive cable or
16 video provider shall also be responsible for the transmission of the programming from the
17 signal origination point (or points), or from the point of interconnection with another
18 franchised cable or video provider, to its subscribers, of any PEG programming produced
19 by or for the franchising authority and carried by the cable operator pursuant to this
20 section.

21 (f) Unless all providers otherwise agree to the terms for interconnection and cost
22 sharing, each provider shall bear its own expenses for the interconnection between two

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1 providers in a franchise area for transmission of PEG, without material deterioration in
2 signal quality or functionality

3 (g) Each provider shall display the program information for specific PEG
4 programs carried under this subsection in any print or electronic program guide in the
5 same manner in which it displays program information for other video programs in the
6 franchise area. No provider shall omit such PEG programming from any navigational
7 device, guide, or menu containing other video programming that is available to
8 subscribers in the franchise area.

9 (h) The PEG channels shall all be carried on the basic service
10 tier. To the extent feasible, the PEG channels shall not be separated
11 numerically from other channels carried on the basic service tier and
12 the channel numbers for the PEG channels shall be the same channel
13 numbers used by the incumbent cable operator unless prohibited by
14 federal law. After the initial designation of PEG channel numbers, the
15 channel numbers shall not be changed without the agreement of the
16 local entity unless the change is required by federal law.

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17 (i) If the video provider carries licensed programming beyond
18 the jurisdiction for which it was purchased, the video service provider
19 shall pay the incremental increase in cost of the license.

20 (j) The PEG channels shall be used only for noncommercial
21 purposes. However, advertising, underwriting, or sponsorship
22 recognition may be carried on the channels for the purpose of funding
23 PEG-related activities.

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1 **(10) CONNECTIONS TO GOVERNMENT BUILDINGS.** All providers franchised under
2 this section shall agree, at a minimum, to install and retain or provide, without charge,
3 one service outlet activated for basic cable service and basic internet access at no less
4 than broadband speed, as that term is defined by the federal communications commission,
5 to any and all fire stations, public schools, police stations, public libraries, and other such
6 buildings used for municipal purposes within the franchise area.

7 **(11) CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS.** (a) Any
8 provider authorized under this section to provide cable or video service in a franchise
9 area shall comply with the consumer protection and customer service standards
10 established by the federal communications commission under 47 U.S.C. s. 552(b), as well
11 as with any applicable state or local standards.

12 (b) Any provider with more than 1,000 subscribers shall maintain a local office
13 within the franchise area.

14 **(12) MONITORING AND INSPECTION.** (a) A franchising authority shall have the
15 right to monitor and inspect the deployment of cable or video services by a provider.

16 (b) The provider shall submit semiannual progress reports detailing its provision
17 of cable or video services during the preceding six months and comparing its progress in
18 that respect with the deployment schedule established pursuant to this section.

19 (c) All progress reports provided to a franchise authority under this subsection
20 shall qualify as a trade secret as defined in s. 134.90 (1) (c) and shall be kept confidential
21 by the franchising authority.

22 **(13) ENFORCEMENT.** A franchising authority shall have the right to impose, after
23 making a determination that the provider has violated any provision of this section:

1 (a) A civil penalty for each day of default in an amount not to exceed \$10.00 per
2 subscriber served by the provider within the franchised area in which the violation
3 occurred and where the provider cured the default upon notice. No such penalty under
4 this paragraph shall exceed \$500 a day.

5 (b) Upon a finding of a willful violation that is not cured, after notice and an
6 opportunity for a hearing before the governing body of the franchise authority or its
7 designee, the revocation of the franchise.

8 (c) A civil action against the provider in any court of competent jurisdiction for
9 damages, an order directing the provider to rectify the noncompliance, or other
10 appropriate relief.

11 **(14) TERM.** A franchise under this section shall be effective for a term of seven
12 years and no renewal shall be for a term longer than seven years.

13 **(15) RENEWAL.** (a) A franchise under this section shall be renewed pursuant to
14 applicable law, but each franchisee, as a condition of accepting a franchise, agrees to
15 participate in a public hearing. The hearing shall afford the public the opportunity to
16 participate for the purpose of identifying cable-related community needs and interests and
17 assessing the franchisee's performance, including but not limited to its compliance with
18 the requirements of this section. The franchisee shall provide notice to its subscribers of
19 the hearing at least 30 days prior to the hearing.

20 (b) Over the time between renewals, community needs will change and grow. A
21 franchising authority may therefore require a provider to increase the channel capacity
22 designated for public, educational, or governmental use, and the channel capacity
23 designated for such use on any institutional networks required by the greater of 1 channel

1 or 10 percent of the public, educational, or governmental channel capacity required of
2 that operator prior to the increase.

3 (16) AUDIT AUTHORITY. (a) An applicant shall maintain a file of records open to
4 public inspection in accordance with applicable federal communications commission
5 rules and regulations. Upon reasonable written request, but no more than once in any 12-
6 month period, the franchising authority may review the business records of the applicant
7 and any affiliates to the extent reasonably necessary to ensure payment of the fees
8 required by this section.

9 (b) An applicant agrees that to the extent that the review under this subsection
10 identifies an underpayment of more than five percent of any fee required by this section
11 for the period of review, the applicant shall reimburse the franchising authority for the
12 reasonable costs of any such review conducted, including any expenses incurred in
13 engaging experts to assist in the determination of such underpayment.

14 (17) EMERGENCY ALERT SYSTEM. (a) An applicant agrees to install and maintain
15 for use by the franchising authority an emergency alert system meeting all applicable
16 requirements of federal law and to provide use of the system for local alerts.

17 (18) PRIVACY. A provider shall protect the privacy rights of all its subscribers as
18 provided for in 47 U.S.C. s. 551 with respect to all cable or video services offered.

19 (19) UNIFORM PRICING. A provider shall offer uniform pricing for cable or video
20 services within the franchise area, consistent with the terms of 47 U.S.C. s. 543,
21 regardless of the classification of such services.

22 (20) BUILD-OUT OBLIGATIONS. (a) A competitive cable or video service provider
23 or an affiliate thereof shall make its cable or video system capable of providing cable or

1 video service to all households in the franchise area in accordance with the following
2 schedule:

3 1. To not less than 20 percent of the households in the franchise area within no
4 less than 18 months after the date of the grant of franchise.

5 2. To not less than 50 percent of the households in the franchise area within no
6 more than 5 years after the date of the grant of franchise.

7 3. To not less than 100 percent of such households in the franchise area within no
8 more than 7 years after the date of the grant of franchise.

9 (b) In determining compliance with the percentages required under this
10 subsection, the total number of households required to be served in the franchise area
11 shall be reduced by the number of households in any geographic part of the franchise area
12 in which there are fewer than 20 households per square mile.

13 (21) NO IMPACT ON FEES AND TAXATION. Nothing in this section shall be
14 construed to modify, impair, or supersede, or authorize the modification, impairment, or
15 supersession of, any State or local law pertaining to taxation or to fees charged for
16 services rendered, such as right-of-way permit fees.

17 (22) IMPACT ON INCUMBENT CABLE PROVIDERS. (a) An incumbent cable or
18 video provider may, in its discretion, elect to terminate its negotiated franchise and obtain
19 a streamlined franchise as provided for in subsection (6) upon:

20 1. Providing the relevant franchise authority with at least 60 days' written notice
21 of its election consistent with the requirements of subsection (7) on or after the date that
22 another provider within the franchise area operating pursuant to a streamlined franchise

1 granted under this section is offering a cable or video service to more than 30 percent of
2 residential households within such incumbent provider's franchise area.

3 2. For purpose of this section, only wireline cable or video service offerings shall
4 be included in the calculation of percentage of residential households being passed.

5 (b) The following terms of an incumbent cable or video provider's franchise
6 applying as of the effective date of this section shall continue to be binding and
7 enforceable upon the incumbent.

8 1. An incumbent's obligations to build out its service territory and not engage in
9 discriminatory actions shall survive as long as the incumbent provider offers services
10 within the franchised area.

11 2. Institutional network capacity, however defined or referred to in the municipal
12 cable franchise but generally referring to a communication network which is constructed or
13 operated by the cable operator and which is generally available only to subscribers who are
14 not residential subscribers, shall continue to be provided under the same terms as prior to
15 the date of the termination.

16 3. Cable services to community public buildings, such as municipal buildings
17 and public schools, shall continue to be provided under the same terms as prior to the
18 date of the termination. Such cable service generally refers to the existing cable drop
19 connections to such facilities and the tier of cable service provided pursuant to the
20 franchise at the time of the termination.

21 (c) If only one cable or video service operator is operating in the franchise
22 area and is doing so under a streamlined franchise issued pursuant to this section, the
23 franchising authority shall have the right, by giving written notice to the operator, to

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- 1 terminate the streamlined franchise and require that the operator obtain a franchise under
- 2 the renewal provisions of 47 U.S.C. s. 546 within one year of receiving the written notice.



I. Amendments Proposed at the March 27 hearing, organized by topic

A. Franchises – basic structure of bill

1. Apply Milwaukee/AT&T agreement to the bills. (City of Milwaukee)

B. Franchising Process

1. Provide discretion to Department of Financial Institutions (DFI) to promulgate rules, review a franchise application, and revoke a franchise. (Department of Agriculture, Trade, and Consumer Protection (DATCP) and DFI)
2. Provide standards for granting and revoking a franchise. (DFI)
3. Modify the franchise review process:
 - a. Require DFI to determine completeness of an application within 15 days.
 - a. Provide DFI an additional 15 days to determine if the business is legally, financially and technically qualified provide video service, once an application is complete
 - a. (DFI)
4. Establish a process for DFI to revoke a franchise or prevent the transfer of an existing franchise provider or transferee has a track record of poor service for non-payment of fees for other indications that the provider has violated the law. (DFI)
5. Designated portion of the video provider fees for payment to the state to fund the review a franchise applications and consumer complaint processing. (DFI)
6. Require current cable operators to honor existing contracts with municipalities until competition exists within the community (League of Wisconsin Municipalities, Wisconsin Alliance of Cities, and Wisconsin Association of PEG – hereafter “Municipal Assns.”)
7. Establish a once every 10-year review and renewal process so that a franchise may be terminated where the video service provider has willfully and repeatedly violated federal, state or local law or regulations. (Municipal Assns.)
8. Require franchise applicants to submit evidence of their financial, technical, and legal qualifications. Such evidence must be thoroughly reviewed and considered before a franchise is granted. Eliminate the “approval by inaction” provision. (Municipal Assns.)

C. Consumer Protection

1. Retain s. 100.209 and amend it to:
 - a. Also apply to “video service” and “video service providers.” (DATCP)
 - a. Remove the authority for municipalities to enact additional consumer protection ordinances. (DATCP)

2. Require video providers to comply with all applicable state, federal and local customer service standards and customer privacy laws. Permit local governments to maintain and enforce existing local standards pertaining to incumbent cable operators until the incumbent is subject to competition within the franchise area. Authorize DATCP to establish enforcement mechanisms to enforce applicable state and federal consumer protection and customer privacy laws and regulations. (Municipal Assns.)
3. Apply consumer protections to satellite television and Internet access services. (Barry Orton)

D. PEG Channels

1. Require video providers to either pay municipalities 1% of gross receipts or match PEG financial commitments under the incumbent's franchise agreement, whichever is greater. (Municipal Assns.)
2. Eliminate the provision that allows providers to take back PEG channels that are not "substantially utilized." (Municipal Assns.)
3. Require the video service provider to carry PEG programming to the headend or the video hub at its expense and to interconnect with its competitor's network where necessary to make PEG programming available to all subscribers via a quality signal. (Municipal Assns.)
4. Require video service providers to continue the long-standing practice of providing free video service connections and basic service to local schools and government buildings. (Municipal Assns.)
- 5.

E. Franchise Fees

1. Authorize review of the video service provider's financial records once every two years to reconcile the time periods in the bills for disputing a payment of fees and reviewing a provider's financial records. (DFI)
2. Include advertising and other non-subscriber revenues in the definition of gross receipts. (Municipal Assns.)
3. Require video service providers to pay reasonable fees for audits if there is an underpayment of 5% or greater. (Municipal Assns.)
4. Apply "non weight, pro rate" rule in determining gross receipts from the sale of video services bundled with other services. (City of Milwaukee)
- 5.

F. Public Rights-of-Way

1. Make clear that municipal authority over rights-of-way is preserved, including the right to collect street opening permit fees and require performance bonds and other management tools. (Municipal Assns.)

G. Access to Service (Build-Out)

1. Replace access to service/build out provisions with North Carolina's access provisions. (DATCP)
2. Amend the access to service provisions to ensure "redlining" does not occur. (DFI)

Prepared by:

John Stolzenberg, Chief of Research Services

David L. Lovell, Senior Analyst

Wisconsin Legislative Council Staff

March 29, 2007

Definition of gross receipts → Ad revenue

Rites of way → control of process
→ fees for excavation

Assess damage fees →

↳ what if

A/E - legislative intent
challenges → court
competitor

Build-out

exceptions to low income requirement

recoup legal fees for court action if municipality wins

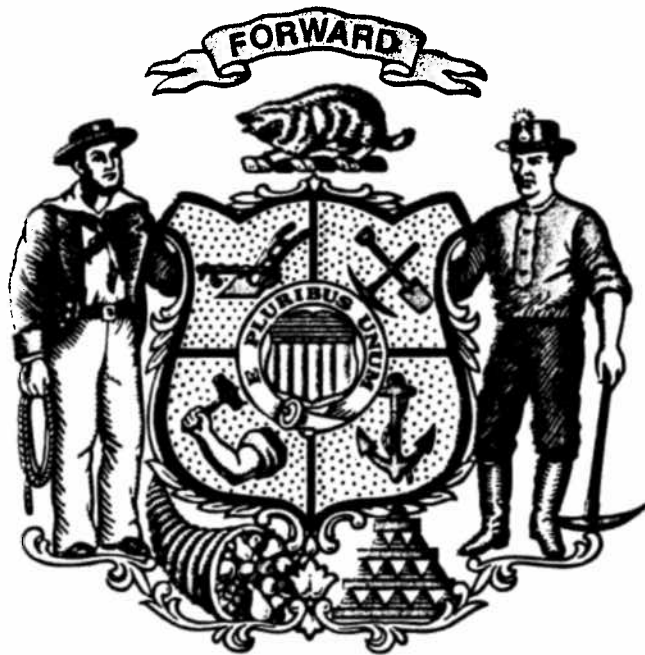
↳ length of perpetuity

↳ free draft = Telco. Act

Gross Receipts w/ Ad Revenue

↳ No less money

↳ Upstreaming from ATT



3/29/2007

I. Clean up and Technical Amendments

- A. Page 9, line 4: What should happen to s. 66.0419 (4) and (5) under the bills? The title and remaining subsections of s. 66.0419 are renumbered or repealed, but these subsections are left as orphans. [Already raised with Mark Kunkel]
- B. Page 11, line 21 and page 12, line 7: Maintenance charges are both included in "gross receipts" and excluded from "gross receipts" on these lines. What should be their treatment?
- C. Page 14, line 5: Add "council"? or delete "committee"?
- D. Page 16, lines 14-19: Until these providers get their franchise, they are operating illegally. Possible solutions: 1) delay effective date of 66.0420 (3) (a) by 2 months; or 2) add "(b) 3. and" after "par." on page 15, line 11.
- E. Page 18, line 20: Should the "10 days" be "10 business days"? Business days are used for time periods elsewhere in the draft.
- F. Page 19, line 5: Insert "days" after "business".
- G. Page 19, lines 6 to 8: Delete "the area or areas of the state in which the video service provider intends to provide video service" and substitute "its video franchise area".
- H. Page 19, line 13: The bills do not address the relation of the video franchising statute with a public utility's use of public rights-of-way under ss. 182.017 and 196.58 (and ch. PSC 130). Should the notwithstanding clause on this line be expanded to cover these statutes, or should they be treated in another way?
- I. Page 23, lines 11 to 13: These lines appear to require a provider to provide the first 200 feet of transmission line for each PEG channel that the municipality operates. If the intent of these lines is to limit a provider's responsibility to the first 200 feet of transmission line to 1 distribution point for all PEG channels operated by a municipality, this text should be clarified.
- J. Page 23, line 22: Insert a comma after "cable".
- K. Page 26, lines 4 to 7: Does the 3-year limit to commence an action work in conjunction with the once-every-three-years limit on inspection of the provider's books?
- L. Page 33, line 22: The bills do not update the terminology in the cable subscriber privacy statute, s. 134.43. Should s. 134.43 be repealed or amended to include all video services?

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Requested Amendments to 2007 AB 2007 and SB 107

X Proposed Amendments at the March 27 Hearing – Accepted at March 29 Meeting

A. Department of Agriculture, Trade, and Consumer Protection (DATCP)

1. Retain s. 100.209 and amend it to:
 - a. Also apply to “video service” and “video service providers.”
 - b. Remove the authority for municipalities to enact additional consumer protection ordinances.
 - c. Change 4 hour standard in s. 100.209 (2) (bm) to 24 hours.

B. Wisconsin Broadcasters (James Hall and John Carmichael)

1. Allow local TV broadcast stations to determine or negotiate must carry programs. [No written testimony; amendment drafted]
2. Require high definition digital broadcast signals to be carried by video service providers as a digital signal. [No written testimony; amendment drafted.]

II. Proposed Amendments at the March 27 Hearing – Hold for Further Discussion Per March 29 Meeting

A. Department of Agriculture, Trade, and Consumer Protection (DATCP)

1. Replace discrimination provisions with North Carolina's access provisions. [See written testimony.]
2. Provide discretion to Department of Financial Institutions (DFI) to promulgate rules, review a franchise application, and revoke a franchise.
 - a. Provide standards for granting and revoking a franchise. — NO

B. DFI — Governor

1. Authorize DFI and DATCP to promulgate rules to implement the statute.
2. Modify the franchise review process:
 - a. Require DFI to determine completeness of an application within 15 days. — OK
 - b. Provide DFI an additional 15 days to determine if the business is legally, financially and technically qualified provide video service, once an application is complete. — see above
3. Establish a process for DFI to revoke a franchise or prevent the transfer of an existing franchise provider or transferee has a track record of poor service for non-payment of fees for other indications that the provider has violated the law.

¹ Differs from previous version by addition of DOR comments, item II. F. on page 2.

→ on an annual basis

4. Authorize review of the video service provider's financial records once every two years to reconcile the time periods in the bills for disputing a payment of fees and reviewing a provider's financial records.
5. Designate portion of the video provider fees for payment to the state to fund the review a franchise applications and consumer complaint processing.

C. League of Wisconsin Municipalities, Wisconsin Alliance of Cities, and Wisconsin Association of Public, Education, and Government (PEG) Channels

1. Make clear that municipal authority over rights-of-way is preserved, including the right to collect street opening permit fees and require performance bonds and other management tools. [Hold for LC memo.]
2. Require video providers to either pay municipalities 1% of gross receipts or match PEG financial commitments under the incumbent's franchise agreement, whichever is greater.
3. Eliminate the provision that allows providers to take back PEG channels that are not "substantially utilized."
4. Require the video service provider to carry PEG programming to the headend or the video hub at its expense and to interconnect with its competitor's network where necessary to make PEG programming available to all subscribers via a quality signal.
5. Establish a once every 10-year review and renewal process so that a franchise may be terminated where the video service provider has willfully and repeatedly violated federal, state or local law or regulations.
6. Require franchise applicants to submit evidence of their financial, technical, and legal qualifications. Such evidence must be thoroughly reviewed and considered before a franchise is granted. Eliminate the "approval by inaction" provision. [See DFI recommendations.]

D. City of Milwaukee (Grant Langley)

1. Apply "non weight, pro rate" rule in determining gross receipts from the sale of video services bundled with other services.

E. Barry Orton

1. Apply consumer protections to satellite television and Internet access services. [Hold satellite portion for LC memo.]

F. Department of Revenue (March 26 memo to Joe Kreye, LRB) – Not Yet Discussed

1. Allocation of equipment for telephone property taxes.

Page 33, lines 7-12. Equipment, e.g., fiber optic cable, used to provide telecommunications services may also be used to provide video services. The bill is not clear as to whether such equipment would be subject to telephone property taxes, exempt or whether its value should be allocated.

2. "Video service" definition.

Page 14, lines 15-24. For sales and use tax purposes, the effect of the bill is unclear because the definition of "video service" is unclear. One part of the definition of "video service" conflicts with another part of the definition. "Video service" includes video programming and

other services that are “provided through facilities located at least in part in public rights-of-way, without regard to delivery technology, including Internet protocol technology or any other technology.” However, “video service” excludes “video programming provided solely as part of and via a service offered over the public Internet.” Thus, it is unclear whether “video service” includes video programming provided via the Internet.

3. “Video service” definition; use of “solely.”

Page 14, line 22. The meaning of the term “solely”, as used above, is also unclear. Since telephone service Internet access, and television would be provided over the same broadband connection, it is unclear what video programming would be provided solely. It is not clear whether the intent of the bill is to exclude video programming services from the definition of “video service” if the video programming services are provided as a part of package Internet access services. However, as the bill is written, if the video programming service is provided along with any service over the Internet, the video programming service does not meet the definition of video service, regardless of the insignificance of the other service provided.

4. “Video programming” definition.

Page 14, lines 13-14. The definition of “video programming is unclear because it is not clear what is meant by “programming provided by, or generally considered comparable to programming provided by, a television broadcast station.” Does this include programming that a television broadcast station is not allowed to broadcast due to prohibited content? Does it require that the programming be a variety of programming such as a television broadcast station would provide, or would a single event, such as a concert or sporting event, be generally considered comparable to programming provided by a television broadcast station?

III. Proposed Amendments at the March 27 Hearing – Rejected at September 29 Meeting

A. DFI

1. Do not repeal existing consumer protections. [See DATCP proposal.]
2. Amend the access to service provisions to ensure “redlining” does not occur. [See DATCP proposal.]

B. League of Wisconsin Municipalities, Wisconsin Alliance of Cities, and Wisconsin Association of PEG Channels

1. Require current cable operators to honor existing contracts with municipalities until competition exists within the community.
2. Include advertising and other non-subscriber revenues in the definition of gross receipts.
3. Require video service providers to continue the long-standing practice of providing free video service connections and basic service to local schools and government buildings.
4. Require video providers to comply with all applicable state, federal and local customer service standards and customer privacy laws. Permit local governments to maintain and enforce existing local standards pertaining to incumbent cable operators until the incumbent is subject to competition within the franchise area. Authorize DATCP to establish enforcement mechanisms to enforce applicable state and federal consumer protection and customer privacy laws and regulations. [Address via DATCP recommendations.]

5. Require video service providers to pay reasonable fees for audits if there is an underpayment of 5% or greater.

C. City of Milwaukee (Grant Langley)

1. Apply Milwaukee/AT&T agreement to the bills.

D. Regional Telecommunications Commission (Bob Chernow)

1. Require bond as condition of franchise. [No written testimony; needs confirmation with speaker.]

E. Darian Stucker

1. Assign a different state agency, other than DFI, the responsibility to administer the regulations.

IV. Requested Staff Work

A. LFB supplemental fiscal estimate.

B. LC memo on antidiscrimination provisions in the bills and North Carolina antidiscrimination provisions recommended by DATCP, including enforcement under s. 100.20, Stats.

C. LC memo on authority of state to apply state consumer protections to satellite TV providers.

D. LC memo on multistate law comparison on franchise approval and revocation processes and agency funding. Include Missouri, California, and Texas laws.

E. LC memo on options for dealing with right-of-way issues.

F. LC list of drafting instructions and drafted amendments.

G. LC contact CenturyTel regarding "large telecommunications video service provider" status.

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WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2007 Senate Bill 107	Senate Substitute Amendment 1 and Senate Amendments 1, 2, and 3, 4, and 5 to Senate Substitute Amendment 1
<i>Memo published: April 23, 2007</i>	<i>Contacts: David L. Lovell, Senior Analyst (266-1537) John Stolzenberg, Chief of Research Services (266-2988)</i>

2007 Senate Bill 107 replaces municipal franchising of cable television service with a streamlined state franchising process for video services offered by cable service providers and telecommunications providers. This new process reduces the state's and municipalities' roles in regulating those services.

2007 Assembly Bill 207 is the companion bill to SB 107. Assembly Substitute Amendment 1 to AB 207 is identical to Senate Substitute Amendment 1 to SB 107. The Senate amendments to SSA 1 to SB 107 summarized in this Memo correspond to Assembly amendments to ASA 1 to AB 107 as shown in the following table. There are no Senate amendments that correspond to Assembly Amendments 20 and 28 to ASA 1 to AB 207.

Senate Amendments to Senate Substitute Amendment 1 Recommended by the Senate Committee on Commerce, Utilities and Rail	Corresponding Assembly Amendments to Assembly Substitute Amendment 1 Adopted by the Assembly
SA 1	Identical to AA 8
SA 2	Identical to AA 2
SA 3	Identical to AA 1
SA 4	Identical to AA 9, except that AA 9 does not contain appropriations to the Department of Financial Institutions
SA 5	Identical to AA 5

SENATE SUBSTITUTE AMENDMENT 1

Legislative Findings

The substitute amendment replaces the current statement of legislative findings and intent in current municipal franchising law with eight legislative findings relating to the purposes of the state video franchising framework created by the substitute amendment. These purposes are summarized in the last finding as follows:

This section is an enactment of statewide concern for the purpose of providing uniform regulation of video service that promotes investment in communications and video infrastructures in the continued development of the state's video service marketplace within a framework that is fair and equitable to all providers. [Proposed s. 66.0420 (1) (h).]

Applicability

The substitute amendment applies to "video programming" and "video service" provided by "video service providers." "Video programming" is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." "Video service" is defined, effectively, as video programming provided by a cable service provider or a telecommunications service provider through wireline-based facilities. "Video service" does *not* include video programming provided by cellular telephone, satellite, broadcast television, or Internet access. A "video service provider" is any person that holds a state video franchise, or a successor or assign of such a person.

State Franchising

The substitute amendment specifies that the state is the exclusive franchising authority for video service providers in Wisconsin under federal cable law. It phases out existing municipal franchise agreements by prohibiting their renewal and allowing cable operators to terminate them prior to their expiration. It further prohibits municipalities from requiring video service providers to obtain new municipal franchises. In their place, it requires video service providers to obtain a state franchise that applies statewide. An incumbent cable operator may choose to continue operating under an existing municipal franchise for the remaining life of that franchise; the substitute amendment refers to these as "interim cable operators."¹

¹ Because an interim cable operator does not hold a state franchise, it is not included in the term "video service provider." Consequently, provisions of the substitute amendment that refer only to video service providers do not apply to interim cable operators.

Authority to Provide Video Service

Application for Franchise

The substitute amendment requires 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. The application consists of specified information and certifications and must be accompanied by a \$1,000 application fee. Among other things, the applicant must certify that it is legally, financially, and technically qualified to provide video service and must specify the services it will provide and the areas in which it intends to provide video service (its "video franchise area").

DFI must notify the applicant whether the application is complete within 15 business days of receiving an application.

Within 15 business 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. If the DFI fails to issue the franchise in the required time, it will be considered to have issued the franchise unless the applicant withdraws the application or agrees to an extension of DFI's review period.

In the case of an application by a telecommunications utility or a "qualified cable operator," it is presumed that the applicant is legally, financially, and technically qualified. "Qualified cable operator" is defined as any of the following: 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.

Application Update

A video service provider must provide an update of information in its application to the DFI within 10 business days of any change to that information. If the change involves an expansion of its video franchise area, the video service provider must inform the DFI of the change as soon as practicable after determining to make the change, but no less than 10 business days before commencing service in the expanded area.

For most categories of information, an update must be accompanied by a fee of \$100.

Transfer of Franchise

Under the substitute amendment, a video service provider may transfer its franchise to any successor-in-interest. It must inform the DFI of the transfer no later than 10 days after the transfer is complete. The new video service provider must provide to the DFI the contact information and certifications required in a franchise application, but the substitute amendment does not specify a timeframe for this requirement. Neither the DFI nor any municipality has authority to review or approve a transfer of a franchise.

Franchise Expiration and Revocation

A franchise does not expire unless the franchise holder terminates it.

DFI may 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 substitute amendment, unless the DFI has granted the video service operator a waiver from the requirement. 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. DFI’s revocation proceeding must 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.

Notices to Municipalities

Under the substitute amendment, an applicant for a state franchise must provide a copy of its application to each municipality in its video franchise area at the time that it submits the application to the DFI. Similarly, a video service provider must provide copies of any application information updates (including expansions of its video franchise area) to the municipalities and provide municipalities information related to the transfer of a franchise.

A video service provider must provide a municipality notice 10 days prior to commencing service in the municipality.

Notices by Municipalities

If a municipality that has a cable franchise agreement in effect on the effective date of the law receives a notice that a video service provider will commence providing service within its territory, the municipality must provide a written notice to the video service provider, within 10 business days of receiving the notice, stating the following: (1) the number of public, educational, or governmental (PEG) channels the incumbent cable operator is required to provide in the municipality; and (2) the “percentage of revenues” that the incumbent cable operator is required to pay the municipality as franchise fees. The same requirement applies when a municipality receives notice that a video service provider has expanded its video service area to include the municipality.

Video Service Provider Fee

Imposition and Amount of Fee

The substitute amendment requires that video service providers make quarterly payments to the municipalities in which they provide service equal to not more than 5% of the provider’s gross receipts for that quarter. If, on the effective date of the law, a cable operator is paying a franchise fee that is less than 5% of gross receipts, the new fee will be that lower percentage; if more than one cable operator is providing cable service in a municipality and are all paying fees less than 5%, the new fee is the lowest of those fees.

In the substitute amendment, "gross receipts" means all revenues received by a video service provider from subscribers in a municipality for video service. It explicitly *includes*: recurring charges for video service; event-based charges (e.g., pay-per-view); equipment rental (e.g., set top boxes); service charges (for, e.g., activation, installation, repair, and maintenance); and administrative charges. It explicitly *excludes*: discounts, refunds, and other price adjustments; uncollectible fees (those written off as bad debt but later collected are included, less the expense of collection); late payment charges; maintenance charges; amounts billed to recover taxes, fees, surcharges, or assessments; revenue from the sale of certain capital assets or surplus equipment; charges for nonvideo services that are bundled with video services; and reimbursement by programmers of marketing costs actually incurred by the video service provider.

Fee payments are due no later than 45 days after the close of a calendar quarter. In general, the video service provider's obligation to pay the fee commences in the quarter in which it commences service. If a municipality fails to notify the video service provider of the percentage of franchise fees and number of PEG channels required under prior cable franchise agreements within the 10-day deadline set by the substitute amendment, described earlier, the video service provider's obligation commences in the quarter that includes the 45th day after the municipality provides that notice.

In a number of provisions, the substitute amendment prohibits a municipality from imposing any fee or charge on a video service provider beyond the video service provider fee. Since these provisions do not mention interim cable operators, it appears that the prohibition on additional fees does not apply in their case.

Enforcement of Fee and Other Provisions

The substitute amendment allows a municipality to review a video service provider's records to ensure proper and accurate payment of the fee, but limit this review to no more than once in any three-year period. The parties must complete good-faith settlement discussions regarding any dispute regarding the amount of a fee before either party may bring an action regarding the disputed fee.

In any subsequent litigation, these negotiations will be treated as compromise negotiations under the state courts' rules of evidence. The effect of this treatment is that any settlement offer made during the negotiations may not be used as evidence that the dispute over the fee is valid or as evidence regarding the amount of the disputed fee.

Unless the parties agree otherwise, any action that is brought must be commenced within three years of the quarter to which the disputed amount relates. Neither party may recover the costs it incurs in the course of such litigation.

All determinations and calculations regarding video service provider fees must be made using generally accepted accounting practices. Also, the substitute amendment specifically allows video service providers to itemize on customers' bills the amount billed to recover the fee.

PEG Channels

Requirement; Number of PEG Channels

The substitute amendment requires a video service provider to make available to a municipality in which it provides service channels for noncommercial PEG programming. If an incumbent cable operator is providing channel capacity for PEG channels to a municipality under a cable franchise immediately before the substitute amendment's effective date, the municipality must require each interim cable operator or video service provider that provides video service in the municipality to provide channel capacity for the same number of PEG channels for which channel capacity is provided immediately before the effective date.

In general, if no incumbent cable operator is providing PEG channel capacity under a cable franchise prior to the effective date, then for a municipality with a population of 50,000 or more, each provider must provide three PEG channels and, for a municipality with a population less than 50,000, each must provide two PEG channels.

An exception applies if no incumbent cable operator is providing PEG channel capacity under a franchise prior to the effective date and a particular interim cable operator or video service provider distributes programming to more than one municipality from a single headend or hub office. In this instance, the operator or provider is required to provide the number of PEG channels to those municipalities collectively corresponding to their collective population. If the collective population is 50,000 or more, the municipalities collectively may not require capacity for more than three PEG channels. If the collective population is less than 50,000, not more than two PEG channels may be required.

In a municipality where there is no incumbent cable operator, the video service provider must make the PEG channels available beginning on the date that it commences service in the municipality. If there is an incumbent cable operator, and the municipality is therefore required to notify the video service provider of the number of PEG channels the incumbent provides to it, the video service provider must make the PEG channels available on the date that it commences service in the municipality or the 90th day after it receives the notice, whichever is later.

If a municipality does not substantially utilize a PEG channel, the interim cable operator or video service provider may reprogram that channel. A municipality is substantially utilizing a channel if it provides 40 or more hours of programming on the channel each week, at least 60% of which is locally produced programming. A municipality may regain the use of a PEG channel that has been reprogrammed by certifying to the video service provider that it will substantially utilize the channel.

A video service provider or interim cable operator must make PEG channels available on any service tier that is viewed by more than 50% of its customers. If a PEG channel was reprogrammed due to the failure of the municipality to substantially utilize the channel and later restored to a PEG function, the operator or provider may provide the restored channel on any service tier.

Operation of PEG Channels; Transmission of PEG Programming to Provider's Network

The substitute amendment provides that municipalities are responsible for virtually all aspects of operating PEG channels. An interim cable operator or video service provider is required to provide only the first 200 feet of transmission line needed to connect its network to one distribution point used by the municipality to transmit PEG programming for the PEG channel.

Beyond this, municipalities may not require a video service provider or interim cable operator to provide any funds, services, programming, facilities, or equipment related to PEG channel operation. It is the municipality's responsibility to do all of the following:

- Operate the channel and produce or obtain the programming.
- Ensure that all programming is submitted to the operator or provider in a form the operator or provider can broadcast with no manipulation or modification.
- Make all programming for a PEG channel available to all operators and providers operating in the municipality in a nondiscriminatory manner.

Interconnection of Video Service Providers' Networks

The substitute amendment requires that, if there is more than one interim cable operator or video service provider in a municipality and the interconnection of their networks "is technically necessary and feasible for the transmission of programming of any PEG channel," the two providers must negotiate in good faith for interconnection on mutually acceptable terms, rates, and conditions. The provider who requests interconnection is responsible for interconnection costs, including the cost of transmitting programming from its origination point to the interconnection point.

Public Rights-Of-Way

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 and other entities 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 substitute amendment provides that, notwithstanding s. 66.0425 and except as provided in s. 182.017, as amended by the substitute amendment, municipalities may not impose any fee or requirement on a video service provider relating to the construction of a video service network. It also states 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, notwithstanding s. 182.017, any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way."

In a separate provision, the substitute amendment states 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.”

Under amended s. 182.017, a municipality may impose reasonable regulations on the occupation and use of public rights-of-way by video service providers, other than any permit fees or other charges for use of public rights-of-way. A municipality may also impose such regulations on an interim cable operator though, again, the limitation on permit fees and other charges does not apply to these operators.

The substitute amendment requires that, if a municipality requires a permit for the occupation or use of its public rights-of-way, 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.

Any entity whose occupation and use of public rights-of-way is subject to s. 182.017 (video service providers and others), may 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 rights-of-way. The PSC must review such a complaint and, if it determines that the regulation is unreasonable, void the regulation.² The substitute amendment allows the PSC to assess the complaining party for the cost of the review.

Consumer Protection

The Federal Communications Commission’s (FCC) regulations require each cable operator to meet, among other customer service standards, the following “customer service obligations”: (1) provide a telephone access line, a customer service center, and bill payment locations that meet specified requirements; (2) meet specified performance standards for performing installations and responding to outages and service calls; and (3) issue refund checks and service credits within specified periods. [47 C.F.R. s. 76.309.]

Current s. 100.209, Stats., requires a cable operator to: (1) give a subscriber specified credits for service interruptions; (2) prevent disconnection of cable service for failure to pay a bill until the unpaid bill is at least 45 days past due; and (3) specify time periods for a cable operator to repair cable service and to provide notice for instituting a rate increase, deleting a program service, or disconnecting a subscriber. This statute also explicitly states that it does not prohibit the Department of Agriculture, Trade, and Consumer Protection (DATCP) or a municipality from establishing by rule or ordinance, respectively, regulations that expand these subscriber rights.

The substitute amendment establishes that, if there is only one video service provider in a municipality, the municipality may require a video service provider to comply with the FCC’s “customer service obligations,” described above, but precludes the DFI and municipalities from

² 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 rights-of-way is unreasonable.

imposing additional or different customer service standards that are specific to the provision of video service.

If there is more than one video service provider in a municipality or if a sole provider is subject to "effective competition," as defined in federal regulations, the substitute amendment establishes that these video service providers may not be subjected to any "customer service standards."³ The substitute amendment provides an exception to this limitation for customer service standards promulgated by rule by DATCP.

The substitute amendment repeals the current law on cable subscriber rights in s. 100.209, Stats.

The substitute amendment does not address or amend the cable subscriber privacy protections in state or federal law.

The substitute amendment also prohibits any municipality from imposing on any video service provider any requirement relating to the provision of video service. This prohibition would include requirements relating to consumer protection.

Access To Service ("Build-Out")

The substitute amendment's requirements on access to service apply only to a "large telecommunications video service provider" (LTVSP). This type of provider is a video service provider that uses facilities for providing telecommunications service also to provide video service and that, on January 1, 2007, had more than 500,000 residential customer access (or telephone) lines in the state. Only AT&T Wisconsin had this many residential access lines on that date.

The substitute amendment requires a LTVSP to provide access to its video service to the following percentages of households within its residential local exchange service area:

- Not less than 35% nor later than three years after the date on which the LTVSP began providing video service under its state franchise.
- Not less than 50% nor later than five 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.

An LTVSP must file an annual report with the DFI regarding its progress in complying with these requirements.

An LTVSP may apply to the DFI for an extension of any time limit specified in these requirements or for a waiver from the requirements. DFI must grant the extension or waiver if the

³ Neither the substitute amendment nor the FCC's regulations define the term "customer service standards." However, since the FCC identifies its service standards and disclosure requirements in 47 C.F.R. ss. 76.309, 76.1602, 76.1603, and 76.1619 as "customer service standards," an argument can be made that this prohibition applies to the types of standards and requirements identified in these FCC regulations.

provider demonstrates to the department's satisfaction that the provider has made "substantial and continuous efforts" to comply with the requirements and that the extension or waiver is necessary due to one or more of the following factors: (1) the provider's inability to obtain access to rights-of-way under reasonable terms and conditions; (2) developments and buildings that are not subject to competition because of exclusive service arrangements or are not accessible using reasonable technical solutions under commercially reasonable terms and conditions; (3) natural disasters; and (4) other factors beyond the control of the provider.

An LTVSP may satisfy these requirements through the use of an alternative technology, other than satellite service, that does all the following: (1) offers service, functionality, and content demonstrably similar to that provided through the provider's video service network; and (2) provides access to PEG channels and messages broadcast over the emergency alert system.

The substitute amendment also establishes that, notwithstanding any of the above provisions, a telecommunications video service provider of any size is not required to provide video service outside its residential local exchange service area, and a video service provider that is an incumbent cable operator is not required to provide video service outside the area in which the operator provided service at the time DFI issued a video service franchise to the operator.

Discrimination

The substitute amendment establishes that no video service provider may deny access to video service to any group of potential residential customers in the provider's video franchise area because of the race or income of the residents in the local area in which the group resides.

The substitute amendment specifies a defense to an alleged violation of the above prohibition based on income if the video service provider has met either of the following conditions:

- No later than three years after the date on which the provider began providing video service under its state franchise, at least 25% of households with access to the provider's video service are low-income households.
- No later than five years after the date on which the provider began providing video service under its state franchise, at least 30% of households with access to the provider's video service are low-income households.

A "low-income household" is defined to be any individual or group of individuals living together as one economic unit in a household whose aggregate annual income is not more than \$35,000, as identified by the U.S. Census Bureau as of January 1, 2007.

The substitute amendment applies the provisions on extensions described in the preceding discussion of access to service to the defenses identified above. It also applies the provisions on alternative technologies and limitations on geographic service territory specified in the preceding discussion of access to service to the prohibition on discrimination and the related defenses identified above.

Regulation of Rates

Federal law expresses a preference for competition over regulation of cable service rates, and prohibits rate regulation if the FCC has determined that the market in question is subject to effective competition. In the absence of effective competition, a franchising authority may regulate rates for basic service only, including programming on the cable operator's basic programming tier. All other rates are subject to FCC regulations. [47 U.S.C. s. 543.]

The substitute amendment provides that neither DFI nor a municipality may regulate the rates of a video service provider under a state franchise or an interim cable operator under a municipal franchise if at least two unaffiliated providers or operators provide service in a municipality. This limitation applies regardless of whether the affected operator or provider has sought a determination by the FCC regarding effective competition.

The substitute amendment is silent on rate regulation where there is only one interim cable operator or video service provider. The result, it appears, is that no state or municipal entity has authority to regulate rates in this instance.

Institutional Networks

The substitute amendment provides that, notwithstanding any ordinance or franchise agreement in effect on the effective date of this law, no state agency or municipality may require an interim cable operator or video service provider to provide any institutional network or equivalent capacity on its network. "Institutional network" is defined as a network that connects governmental, educational, and community institutions.

Local Broadcast Stations

Under federal law, cable operators are required to carry the signal of local commercial television stations and qualified low power stations. This law 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 amendment provides 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. It requires 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. It also prohibits 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 substitute amendment specifies 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 substitute amendment. It provides 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.

Enforcement

The substitute amendment authorizes a municipality, interim cable operator, or video service provider that is affected by a failure to comply with the statewide video franchise statute created by the substitute amendment to bring an action in circuit court. The court is directed to order compliance with the law, but the substitute amendment is silent regarding the recovery of damages. No party to a suit may recover its costs of prosecuting or defending the suit.

In addition, the Department of Justice (DOJ) may enforce the provisions of this new statute. The substitute amendment does not specify penalties for violations of the new law, nor does ch. 66, Stats., in which the law is numbered. In the absence of any specified penalty, civil violations are punishable by a forfeiture of not more than \$200. [s. 939.61 (1), Stats.]

Terminology and Conforming Amendments

The substitute amendment changes many references throughout the statutes from "cable service" to "video service" and from "cable operator" to "video service provider." It also conforms various statutes to the new state video service franchising framework and corrects a number of minor technical errors in the bill and, in one instance, rewords a provision to ensure the intended effect.

Effective Date

The substitute amendment takes effect on the day after its date of publication, pursuant to s. 991.11, Stats.

SENATE AMENDMENT 1, REGARDING CUSTOMER PRIVACY

Current law imposes certain obligations and prohibitions on cable operators designed to protect the privacy of cable service customers. In particular, no person may, without written permission provided within the preceding two years, collect or release various information regarding customers. In addition, cable operators must make available to cable customers, at no cost, equipment to prevent the transmission to the cable operator of information from the customer's equipment. The law imposes a forfeiture of up to \$100,000 for certain violations and allows additional private remedies.

Senate Amendment 1 applies the prohibitions on the collection or release of customer information and the penalties and private remedies to "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.

SENATE AMENDMENT 2, REGARDING VIDEO SERVICE PROVIDER FEES

Most 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 substitute amendment continues this requirement, in general.

The substitute amendment establishes a definition of "gross receipts" for purposes of the video service provider fee. Senate Amendment 2 modifies this definition by: (1) adding 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 exceptions for advertising refunds, rebates, and discounts); (2) clarifying that maintenance charges paid by video service subscribers for video services are included; and (3) making a technical change in the terminology.

The substitute amendment provides 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. The amendment extends this time limit to four years.

SENATE AMENDMENT 3, REGARDING CONSUMER PROTECTION

The substitute amendment repeals s. 100.209, Stats., *Video Service Subscriber Rights*. This section is summarized above in the description of the substitute amendment, under "Consumer Protection."

Senate Amendment 3 restores s. 100.209, and applies it to video service provided by "multichannel video providers." These providers are 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 amendment repeals the authority of municipalities to adopt ordinances that supplement the statutory standards.

The amendment modifies 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 amendment modifies this requirement to apply to service outages that last for more than 24 hours.

SENATE AMENDMENT 4, REGARDING VARIOUS SUBJECTS

Senate Amendment 4 makes a number of changes in the substitute amendment.

In the presumptive determination by the DFI that a telecommunications utility or a qualified cable operator applying for a video service franchise is legally, financially, and technically qualified to provide video service, the amendment applies this determination to a "large telecommunications video service provider" rather than a "telecommunications utility." The amendment also modifies two elements of the definition of "qualified cable operator" used in this provision by: (1) changing the description of cable operators in this state from those that have provided service to those that have been providing service (that is, limiting it to current cable operators); and (2) changing the test for a cable operator being one of the 10 largest video service providers in the United States.

The amendment raises the application fee for a video service franchise from \$1,000 to \$2,000.

The amendment modifies the provisions regarding revocation of a franchise by: (1) deleting "willfully and knowingly" from the description of the violations that are grounds for revocation; and (2) replacing the statement that a revocation proceeding is a contested case under ch. 227, Stats., with a description of some of the procedural elements of a contested case.

The amendment revises the duties of interim cable operators and video service providers in transmitting PEG programming from a PEG access channel's origination point to the provider's headend or video hub office and the related duties of municipalities, as follows:

- For an origination point existing on the substitute amendment's effective date, the operator or provider is required to provide transmission capacity sufficient to make these connections.
 - A municipality must permit the operator or provider to determine the most economically and technologically efficient means of providing this transmission capacity.
- If a municipality requests that such a preexisting PEG access channel origination point be relocated, the operator or provider is required to provide the first 200 feet of transmission line necessary to connect its headend or video hub office to the origination point, and the municipality is required to pay for the costs of construction of the relocated transmission line beyond the first 200 feet, other than the costs associated with the transmission of PEG programming over the line.
- A municipality is liable for any construction costs associated with additional origination points, other than the costs associated with the transmission of PEG programming "over such line."
- An operator or provider may recover its costs to provide transmission capacity under the above provisions by identifying and collecting a "PEG Transport Fee" as a separate line item on customer bills.

The amendment requires that, when a video service provider modifies its video franchises area, it must apply for a new franchise. It further requires that, when a video service provider transfers its franchise to another entity, that entity must apply for a new franchise and comply with related notice requirements.

The amendment specifies that the DFI, rather than the DOJ, shall enforce most provisions of the new franchise statute, with the exception that the DATCP shall enforce the provisions relating to discrimination and access to service. It prohibits the DATCP from promulgating rules interpreting the discrimination or access provisions.

The amendment adds appropriations language to authorize the DFI to spend the revenues it collects in franchise application and modification fees.

SENATE AMENDMENT 5, REGARDING PEG CHANNEL MONETARY SUPPORT

Senate Amendment 5 continues any obligations to provide monetary support for PEG channels that exist under a municipal cable franchise in effect on the effective date of the substitute amendment. If the incumbent cable operator with such an obligation terminates the franchise by switching to a state video service franchise, its obligation continues until three years after the effective date or until the date on which the franchise would have expired, whichever is earlier. If the incumbent cable operator does not terminate the franchise, the obligation continues until the expiration of the franchise.

The amendment requires that any new video service provider in a municipality that receives PEG support must also provide PEG support and establishes a formula for determining an amount of support that is proportional to the support provided by the incumbent provider.

LEGISLATIVE HISTORY

On April 18, 2007, the Senate Committee on Commerce, Utilities, and Rail took the following actions:

- Introduced Senate Substitute Amendment 1.
- Introduced and recommended adoption of Senate Amendments 1, 2, 3, 4, and 5 to Senate Substitute Amendment 1.
- Recommended adoption of Senate Substitute Amendment 1, as amended.
- Recommended passage of Senate Bill 107, as amended.

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