

Report From Agency

**PROPOSED ORDER OF THE STATE OF WISCONSIN,
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF CORPORATE
AND CONSUMER AFFAIRS
ADOPTING RULES**

2 The Wisconsin Department of Financial Institutions, Division of Corporate and Consumer
3 Services proposes an order to create ch. DFI—CCS 20 relating to video service franchise.

Analysis Prepared by the Department of Financial Institutions, Division of Corporate and Consumer Services

Statute(s) interpreted: s. 66.0420, Stats.

Statutory authority: ss. 66.0420(3)(f)4., 66.0420(13)(a) and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to s. 66.0420(13)(c), Stats., the department shall enforce s. 66.0420 except sub. (8).

Summary of proposed rule: The objective of the rule is to create ch. DFI—CCS 20. Pursuant to s. 66.0420(13)(a), Stats., the department shall promulgate rules for determining whether an applicant is legally, financially, and technically qualified to provide video service, and may promulgate rules interpreting or establishing procedures for s. 66.0420, Stats. The purpose of this rule is to set forth certain matters regarding definitions, filings, fees and reports, certificates, video franchise area descriptions, maps, amendments to maps and video franchise area descriptions, qualifications, and proceedings and hearings.

Summary of and preliminary comparison with existing or proposed federal regulation: Comparable franchise application processes and proceedings are set forth in 47CFR76.

Comparison with rules in adjacent states: Illinois has enacted video franchise area legislation but no rules regarding this legislation.

Summary of factual data and analytical methodologies: The department reviewed the legislative findings of 66.0420, Stats., reviewed the video service franchise statutes and rules of other states that have adopted similar legislation, contacted video service franchise regulators in other states, and applied its own experience in regulation of financial industries generally.

Analysis and supporting documentation used to determine effect on small business: The rule does not have a significant economic impact on small business. Mandates and proceedings addressed by the rule are the result of and set forth in 2007 Wisconsin Act 42 and ch. 227, subch.

III, and not the rule. The rule largely addresses filing matters or requests information otherwise already prepared for other agencies.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge:

A copy of the proposed rule and fiscal estimate may be obtained at the department's website, www.wdfi.org or by contacting Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us.

To submit written comments regarding the proposed rule:

Written comments may be sent to Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For questions regarding the agency's internal processing of the proposed rule:

Contact Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, 5th Floor, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us.

For substantive questions on the rule:

Contact Cheryll Olson-Collins, Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Affairs, P.O. Box 7846, Madison, WI 53708-7846, tel. (608) 266-6810, e-mail cheryll.olsoncollins@dfi.state.wi.us or Ray Allen, Deputy Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Affairs, P.O. Box 7846, Madison, WI 53708-7846, tel. (608) 264-7950, e-mail ray.allen@dfi.state.wi.us.

For a copy of the department's hearing notice regarding this rule:

A copy of the department's hearing notice regarding the proposed rule may be obtained at the department's website, www.wdfi.org or by contacting Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Corporate and Consumer Services adopts the following:

5 **CHAPTER DFI – CCS 20**

6 **VIDEO SERVICE FRANCHISE**

7 **DFI – CCS 20.01 Authority.** This chapter is adopted pursuant to ss. 66.0420(13) and
8 227.11(2), Stats.

9 **DFI – CCS 20.02 Definitions.** In this chapter:

10 (1) “Administrator” means the administrator of the division of corporate and consumer services,
11 department of financial institutions.

12 (2) “Department” means the department of financial institutions.

13 (3) “Low-income household” means a household with income equal to or less than 200% of the
14 poverty line for a family of three as defined in 42 USC 9902(2).

15 **DFI-CCS 20.03 Filings.** (1) Documents regarding a video service franchise shall be filed with
16 the department as follows:

17 (a) By United States mail addressed to the Wisconsin Department of Financial Institutions,
18 Division of Corporate and Consumer Services, P.O. Box 7846, Madison, WI, 53707-7846; or

19 (b) In person or by delivery service to the Wisconsin Department of Financial Institutions,
20 Division of Corporate and Consumer Services, 345 W. Washington Avenue, 3rd Floor., Madison,
21 Wisconsin, 53703.

22 (2) At the time of filing, a filer may request a date-stamped copy of any document filed with the
23 department or make arrangements with the department for delivery to the filer of a date-stamped
24 copy of the document.

25 (3) If a fee is required for any filing, the fee shall be submitted with the filing in the form and
26 manner prescribed by the department.

27 (4) Documents regarding a video service franchise filed with the department shall be on forms
28 prescribed by the department. The original and 7 copies shall be filed with the department.

29 **Note:** Forms may be obtained by contacting the department at Department of Financial
30 Institutions, Division of Corporate and Consumer Services, Video Franchise Section, P.O. Box
31 7846, Madison, WI 53707-7846, or at www.wdfi.org.

32 (5). The department may reject any filing that is incomplete, fails to include a required fee, or
33 does not comply with any requirements set forth in s. 66.0420, Stats., or this chapter.

34 (6) The department may void a filing if the instrument tendered for a required fee is returned by
35 the institution upon which it was issued for insufficient funds or other similar reasons.

36 **DFI-CCS 20.04 Annual fees and report. (1)** If a video service provider has 10,000 or less
37 subscribers, the annual fees shall be those set forth in s. 66.0420(3)(k)2., Stats.

38 (2) For all other video service providers, the first annual fee shall be \$5,000 and each subsequent
39 annual fee shall be \$2,000.

40 (3) The holder of a video service franchise shall submit with its annual fee a report to the
41 department. The report shall accurately update and make current all information required in the
42 application that has changed since the issuance of the video service franchise. The report shall
43 also include the number of video service subscribers for each municipality within the video
44 franchise area. The report shall be in a form and manner prescribed by the department.

45 **Note:** Forms may be obtained by contacting the department at Department of Financial
46 Institutions, Division of Corporate and Consumer Services, Video Franchise Section, P.O. Box
47 7846, Madison, WI 53707-7846, or at www.wdfi.org.

48 **DFI-CCS 20.05 Certificates.** (1) If the department determines that an applicant is qualified to
49 provide video service, the department shall issue a video service franchise to the applicant as set
50 forth in the application.

51 (2) The holder of a video service franchise may transfer the franchise to any successor by filing a
52 notice of transfer with the department and each affected municipality and complying with the
53 requirements of s. 66.0420(11), Stats. The notice shall include the address of the successor's
54 principal place of business and the names and titles of the successor's principal executive
55 officers. The successor shall assume all regulatory rights and responsibilities of the holder
56 transferring the franchise.

57 (3) A video service franchise shall expire 10 years after the date of its issuance by the
58 department.

59 (4) A holder of a video service franchise may renew a franchise if the application and
60 notification requirements of s. 66.0420, Stats., and this chapter are met prior to the expiration of
61 the franchise. A renewed video service franchise shall be for a period of 10 years unless the
62 department determines that the video service provider is not legally, financially or technically
63 qualified.

64 **DFI-CCS 20.06 Video franchise area descriptions.** (1) Video franchise areas shall be
65 described in a manner sufficient to enable a person to determine whether or not a particular
66 location falls within the video franchise area. If both a map and a description of a video
67 franchise area are required, then the description of the video franchise area shall correspond to
68 the map. A description shall be deemed insufficient if it merely refers to a map without a
69 description of what the map represents.

70 Example: Any of the following descriptions would enable a person to determine whether a
71 location falls within the described video franchise area: the entirety of the State of Wisconsin; the
72 entirety of X county; all of X county north of Y highway; the city of Z; the A, B, and C
73 subdivisions of Q city; or those portions of X county between river S and highway Y.

74 (2) A video franchise area description shall delineate areas served by the video service provider
75 pursuant to the video service franchise. The video service provider shall also describe areas
76 served by the video service provider pursuant to a municipal contract or agreement.

77 **DFI-CCS 20.07 Maps.** (1) REQUEST. The department may request maps related to the video
78 franchise area as is necessary for compliance with s. 66.0420, Stats., and this chapter.

79 (2) ACCURACY. Maps shall accurately depict the geographic area to be served by reference to
80 governmental boundaries, streets, roads or geographical features.

81 (3) GENERAL REQUIREMENTS. A map shall include all of the following:

82 (a) The geographic map image.

83 (b) A scale indicator.

84 (c) A graphic indicating the direction north.

85 (d) A title indicating the map's purpose.

86 (e) A reference statement linking the map to the filing for which the map is submitted.

87 (f) A legend or key to any symbols on the geographic map image.

88 (g) Any additional information which may be useful to the video service subscribers, the
89 department, governmental entities and others.

90 Example: The map may include geographic features such as waterways.

91 (4) GENERAL VIDEO FRANCHISE AREA REQUIREMENTS. The map of a video franchise
92 area for a submitted map shall do all of the following:

93 (a) Delineate the video franchise area as one or more polygons. The polygons shall be closed on
94 all sides.

95 (b) Identify area included in the video franchise area polygons through use of color fill, hash
96 marks, hatching or similar graphic depiction.

97 (c) Contain a legend or key to any symbols used to depict the video franchise area. If hash marks
98 are used to identify included areas of the video franchise area, the legend or key shall include
99 that information.

100 **(5) BOUNDARY DETAIL REQUIREMENTS FOR VIDEO FRANCHISE AREA.**

101 (a) A map depicting a video franchise area that covers the entire area of one or more
102 municipalities provides sufficient boundary detail if the map depicts the official boundaries of
103 the covered municipality or municipalities.

104 (b) A map depicting a video franchise area that covers the entire area of one or more counties
105 provides sufficient boundary detail if the map depicts the official boundaries of the covered
106 counties.

107 (c) A map depicting a video franchise area that covers the entire area of the state provides
108 sufficient boundary detail if the map depicts the official boundaries of the State.

109 (d) A map depicting any video franchise area that covers less than the entire area of a
110 municipality or a county shall provide boundary detail as is necessary to comply with the
111 requirements of s. 66.0420, Stats., and this chapter.

112 **(6) FILINGS.** A map depicting recognizable geographic territory and the video franchise area
113 descriptions depicting the video franchise area shall be combined and filed as a final map
114 document or image. A paper copy or an electronic copy of the map shall be submitted with each

115 filing for which a map is required. The electronic copy shall be submitted in the form and
116 manner prescribed by the department.

117 **Note:** Forms may be obtained by contacting the department at Department of Financial
118 Institutions, Division of Corporate and Consumer Services, Video Franchise Section, P.O. Box
119 7846, Madison, WI 53707-7846, or at www.wdfi.org.

120 **DFI-CCS 20.08 Map and video franchise area description amendments.** A filer may amend a
121 map or video franchise area description for reasons other than changes to the video franchise area
122 boundaries. An amended map or video franchise area description shall be titled "Amended." An
123 amended map or video franchise area description shall meet the requirements of and be filed in
124 accordance with the requirements of this chapter.

125 Example: A filer may amend a map or video franchise area description to further identify
126 landmarks within the described video franchise area such as street names.

127 **DFI-CCS 20.09 Qualifications.** (1) Factors that the department may consider for determining
128 whether an applicant is legally, financially and technically qualified to provide video service
129 include the following:

130 (a) That the applicant is lawfully organized and is registered to conduct business in this state.

131 (b) That the applicant has the expertise, equipment, infrastructure and personnel to construct and
132 maintain the video service network for which it has requested a video service franchise.

133 (c) That the applicant has the financial resources to construct and maintain the video service
134 network for which it has requested a video service franchise.

135 (2) An applicant shall submit documentation, to the satisfaction of the department, to support its
136 affirmation that it is legally, technically and financially qualified to provide video service.

137 **DFI-CCS 20.10 Proceedings and hearings. (1) GROUNDS.** Failure to comply with applicable
138 federal and state statutes, regulations and rules, including failure to comply with any requirement
139 regarding a video service franchise, may constitute grounds for the department to commence a
140 proceeding or bring an action under s. 66.0420, Stats., including a revocation proceeding under s.
141 66.0420(3)(i)2., Stats., and an action under s. 66.0420(13)(c), Stats.

142 **(2) PLACE AND CONDUCT.** Unless otherwise ordered by the administrator, any proceeding or
143 hearing shall be held at the department, shall be conducted and presided over by the
144 administrator or such subordinate as may be designated to hear the matter, and shall be open to
145 the public.

146 **(3) FORM OF PAPERS.** All pleadings, notices, orders and other papers filed in connection with
147 any proceeding or hearing shall be printed or typewritten on paper 8 1/2 inches wide and 11
148 inches long, shall include the name and mailing address of the party and, if applicable, the
149 party's representative, shall be dated, and shall be captioned:

150 **BEFORE THE ADMINISTRATOR**

151 **WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS**

152 **DIVISION OF CORPORATE AND CONSUMER SERVICES**

153 **(4) FILING OF PAPERS.** The original of any pleadings, notices, orders and other papers in
154 connection with any proceeding or hearing shall be filed with the administrator, and a copy shall
155 be served or furnished, as the case may be, to any other party to the proceeding. Papers shall be
156 served by first class or certified mail addressed to any party or the party's representative at the
157 party's or representative's last known post office address, or personally delivered to or served
158 upon the party or the party's representative. Papers required to be filed with the administrator
159 under this section shall be mailed by first class or certified mail or delivered to the Administrator,

160 Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Services,
161 345 W. Washington Avenue, 3rd Floor, P.O. Box 7846, Madison, Wisconsin, 53707-7846.

162 (5) ANSWER IN CONTESTED CASES. The respondent shall make an answer to a notice in a
163 contested case. The answer shall be received by the administrator by the time and date indicated
164 in the notice. The answer shall contain a specific denial of each of the numbered paragraphs and
165 contents of the notice which are controverted by the respondent, and a statement of any new
166 matter constituting a defense or affecting the respondent's situation which the respondent wishes
167 to have considered. The answer shall identify those numbered paragraphs and contents of the
168 notice which are not controverted by the respondent. Every numbered paragraph and contents of
169 the notice which are not controverted in the answer shall be taken as true, but new matter in the
170 answer shall be deemed controverted without any reply being served or filed. Failure to answer
171 shall constitute a default, but such default may be excused upon proper showing and upon such
172 terms as the administrator deems just.

173 (6) ORDERS. The effective date of an order issued by the administrator shall be the date it is
174 served, and service of the order shall be complete upon mailing by either United States first class
175 or certified mail.

176 (7) TRANSCRIPT. A copy of a transcript of any proceeding or hearing prepared by the
177 department shall be provided upon request and at a reasonable cost, as determined by the
178 division, to any party to the hearing. A copy of any transcript of any proceeding or hearing
179 prepared by a court reporting service shall be obtained from the service upon such terms and
180 conditions as set by the service.

181 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____

Cheryll Olson-Collins, Administrator
Wisconsin Department of Financial Institutions
Division of Corporate and Consumer Affairs