

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Business Impact Analysis

**Rule Subject:** Customer Access to Subscription Video Services  
**Adm. Code Reference:** ATCP 123  
**Rules Clearinghouse #:** 08-067  
**DATCP Docket #:** 08-R-03

### *Background*

2007 Wisconsin Act 42 eliminates municipal franchising of cable television services and creates a new state system for franchising and regulating “video service providers” (including but not limited to cable television service providers). The act regulates subscription video services provided, under a state franchise, via cable or local telephone lines. Among other things, the act does all of the following (see s. 66.0420(8), Stats.):

- Prohibits a state-franchised video service provider from denying access to a “group” of potential customers based on race or income. A provider has a defense against a claim of discrimination based on income if, within 3 years after the provider first offered video services, at least 30% of the households with access to the provider’s video service are “low-income households.” The Department of Agriculture, Trade and Consumer Protection (“DATCP”) may extend the applicable time period, at the request of a video service provider.
- Requires a state-franchised “large telecommunications video service provider” to do all of the following, unless DATCP grants a waiver or extension:
  - Provide video service access to at least 35 percent of the households in each of the provider’s basic local exchange service areas within the state franchise area no later than 3 years after the provider first offers video service.
  - Provide video service access to at least 50 percent of the households within each basic local exchange service area not more than 5 years after the provider first offers video service in that area, or not more than 2 years after at least 30 percent of the households with access have subscribed for at least 6 consecutive months, whichever occurs later.
- Requires a state-franchised “large telecommunications service provider” to file an annual report with DATCP regarding the provider’s progress in complying with minimum access requirements.

- Allows a video service provider to satisfy access requirements with an alternative technology (other than satellite service) that offers the same basic service, function and content features offered by the provider's normal video service network.
- Provides that a telecommunications video service provider is not required to provide video service outside its basic local exchange service area.
- Provides that an incumbent cable service provider is not required to provide video service outside the area in which it provided cable television service when it first received a state franchise.

Act 42, as passed by the Legislature, gave DATCP very limited authority to adopt rules interpreting the access and anti-discrimination provisions of the new video services law. The Governor's partial veto effectively expanded DATCP's rulemaking authority to interpret those provisions. In his veto message, the Governor stated: "It is imperative that the state agencies responsible for ...enforcing the anti-discrimination provisions have the ability to interpret these statutes through administrative rule."

### ***Rule Content***

This rule incorporates and clarifies certain video service access and anti-discrimination provisions contained in Act 42. This rule does all of the following:

- Clarifies that a "group" means 2 or more households. A video service provider denies access to a "group" if it denies access to all of the households comprising that "group."
- Defines "household" consistent with current statutes.
- Defines "low-income household" as a household with a combined annual income equal to less than 200% of the federal poverty level for a family of 3.
- Clarifies that a video service provider provides video service "access" to a household if the provider is able to provide video service to that household using the provider's normal service network or an equivalent alternative technology, regardless of whether any customer has ordered the service.
- Spells out the procedure by which a video service provider may ask DATCP to waive or extend the deadline for complying with a minimum access requirement:
  - A provider must submit a request in writing, in hard-copy and electronic form. The request must justify the proposed waiver or extension, based on statutory criteria, and must include facts and evidence supporting the justification. DATCP may request relevant supplementary information.

- Within 30 business days after DATCP receives a written request, it must issue a proposed order granting the request, denying the request, or granting the request in modified form. DATCP must issue a press release announcing the proposed order and inviting public comment. DATCP may hold one or more public hearings on the proposed order.
- Within 60 business days after DATCP issues a proposed order, DATCP must issue a final order. If the final order differs from the proposed order, DATCP must explain the reasons for difference.
- Clarifies that a “large telecommunications service provider” must file its required annual progress report with DATCP by January 31 of each calendar year, beginning with the first calendar year after the provider first provides video service under a state franchise. The provider must provide annual progress reports until DATCP makes a written determination that the provider has met applicable minimum access requirements.

In a separate rule-making proceeding (*Clearinghouse Rule No. 08-027*), DATCP has proposed a definition of “video service” that would also apply to this rule. That definition is identical to the definition in s. 66.0420(1)(y), Stats. This rule also incorporates new statutory definitions created by 2007 Wis. Act 42.

### ***Business Impact***

2007 Act 42 will have a major impact on video service providers in Wisconsin. This rule merely interprets and clarifies portions of Act 42 related to customer access to video services, and discrimination in providing access. This rule does not add any substantive requirements or prohibitions, beyond what is already contained in Act 42.

None of the video service providers affected by Act 42 or this rule are small businesses, so this rule will have no impact on small business. For the most part, this rule will have a positive impact on video service providers, because it will clarify requirements and procedures under Act 42.

### ***Steps to Assist Small Business***

None of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for “small businesses.”

### ***Conclusion***

This rule clarifies portions of 2007 Wisconsin Act 42 relating to customer access to subscription video services. This rule does not add any substantive requirements or prohibitions, beyond what is already contained in Act 42. This rule will have few, if any, negative effects on business. This rule will have no effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2008

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
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