WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2007 Assembly Bill 207	Engrossed Assembly Bill 207 and Senate Amendments 1, 3, 13, 14, 19, and 21
Memo published: **November 13, 2007**	*Contacts*: **John Stolzenberg, Chief of Research Services (266-2988)** **David L. Lovell, Senior Analyst (266-1537)**

2007 Assembly Bill 207 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.

Engrossed Assembly Bill 207 is the version of Assembly Bill 207 passed by the Assembly. It consists of Assembly Substitute Amendment 1 to Assembly Bill 207, as amended by Assembly Amendments 1, 2, 5, 8, 9, 20, and 28 to Assembly Substitute Amendment 1.

2007 Senate Bill 107 is the companion bill to Assembly Bill 207. See the Legislative Council Amendment Memo on Senate Bill 107 for a summary of amendments to that bill and how those amendments compare to Assembly Substitute Amendment 1 to Assembly Bill 207 and amendments to that substitute amendment.

ENGROSSED BILL

Legislative Findings

The engrossed bill 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 engrossed bill. 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 and 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).]

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

Applicability

The engrossed bill applies to "video programming" and "video service" provided by "video service providers" and cable service provided by "interim cable operators." "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. An "interim cable operator" is an incumbent cable operator that continues to provide cable service under an existing municipal franchise for the remaining life of that franchise.[1]

State Franchising

The engrossed bill 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 as an interim cable operator for the remaining life of that franchise.

The engrossed bill prohibits a municipality from imposing on a video service provider any requirement relating to the construction of a video service network or the provision of video services, including any requirement to deploy facilities or equipment or any requirement regarding rates for video service, except as specifically authorized under the engrossed bill.

Authority to Provide Video Service

Application for Franchise

The engrossed bill 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 $2,000 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

[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 engrossed bill that refer only to video service providers do not apply to interim cable operators.

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 "large telecommunications video service provider" or a "qualified cable operator," it is presumed that the applicant is legally, financially, and technically qualified. A "large telecommunications video service provider" is a video service provider that uses the same 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 or an affiliate of such a provider.[2] "Qualified cable operator" is defined as any of the following: a cable operator that has been providing 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 individually or together with its affiliates or parent company.

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 apply for a modified franchise.

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

Transfer of Franchise

Under the engrossed bill, a video service provider may transfer its franchise to any successor-in-interest through any transaction such as a merger or sale. No later than 15 days after the transfer is complete, the successor-in-interest must apply for a video franchise and provide a copy of the application to each municipality in its video franchise area. The successor-in-interest may provide video service in the video franchise area while DFI reviews the application.

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 "repeatedly failed to substantially meet a material requirement" of the statewide video franchise statute created by the engrossed bill, 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 afford the provider full due process that includes a proceeding before a hearing officer, including such elements as sworn testimony, cross-examination under oath, and the creation of a

[2] The only entity that meets this definition is AT&T Wisconsin.

transcript. The engrossed bill also establishes that a video service provider may bring an action to appeal the DFI's decision in a revocation proceeding.

Notices to Municipalities

Under the engrossed bill, 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; (2) the amount and type of monetary support for access facilities for all PEG channels required of incumbent cable operators; and (3) 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.

Fees, In General

The engrossed bill prohibits a municipality from imposing on a video service provider any fee, except as explicitly authorized under the engrossed bill. The fees authorized under the engrossed bill, which are described in later sections of this memo, are the video service provider fee, PEG channel monetary support, and fees that are part of any "reasonable regulation" of the video service provider's occupation and use of public rights-of-way. However, a video service provider may deduct the amount of any cost-based permit fee for the occupation and use of public rights-of-way from any other compensation that is due to the municipality, including the video service provider fee.

Video Service Provider Fee

Imposition and Amount of Fee

The engrossed bill requires that video service providers pay a video service provider fee to the municipalities in which they provide service. The amount of the fee is a percentage of the provider's gross receipts for that quarter. The percentage is the least of the following:

- 5%.

- If no incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues to the municipality immediately before the effective date of the engrossed bill, a percentage specified by the municipality, but not more than 5%.

- If an incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues, that percentage.

- If more than one incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues, the lowest of such percentages.

In the engrossed bill, "gross receipts" means all revenues received by a video service provider from subscribers in a municipality for video service and from advertising. 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); revenues received from the provision of home shopping or similar programming; revenues 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); 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; 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

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 engrossed bill, described earlier, the video service provider's obligation commences in the quarter that includes the 45th day after the municipality provides that notice.

Enforcement of Fee and Other Provisions

The engrossed bill allows a municipality to review a video service provider's records to ensure proper and accurate payment of the fee, but limits 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 four 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 engrossed bill 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 engrossed bill 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 engrossed bill'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 immediately before the effective date, then for a municipality with a population of 50,000 or more, the municipality may require each provider to provide up to three PEG channels and, for a municipality with a population less than 50,000, each may be required to 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.

PEG Channel Availability; Substantial Channel Utilization; Service Tier

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.

An interim cable operator or video service provider 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

Under the engrossed bill, interim cable operators and video service providers must transmit PEG programming from a PEG access channel's origination point to the provider's headend or video hub office, and municipalities must share in the costs of construction of transmission facilities pursuant to the following provisions:

- For an origination point existing on the engrossed bill'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 pre-existing 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.

In addition, municipalities may not require an interim cable operator or video service provider 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.

PEG Channel Monetary Support

The engrossed bill 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 engrossed bill. 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 bill's effective date or until the date on which the municipal cable 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 engrossed bill requires that any new video service provider in a municipality that receives PEG support described in the preceding paragraph, 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 with the most subscribers in the municipality on the bill's effective date.

Interconnection of Video Service Providers' Networks

The engrossed bill 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

Use of Rights-of-Way and General Requirements

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 engrossed bill provides that, notwithstanding s. 66.0425 and except as provided in s. 182.017, as amended by the engrossed bill, 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 engrossed bill 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."

Regulation Under s. 182.017, Stats.

Under s. 182.017, as amended by the engrossed bill, a municipality may impose reasonable regulations, including fees, on the occupation and use of public rights-of-way by video service providers, interim cable operators, and others. If a rights-of-way permit fee is cost-based, a video

service provider may deduct the amount of the fee from the video service provider fee or any other compensation that the provider must pay to the municipality.

Any entity whose occupation and use of public rights-of-way is subject to this section 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.[3] The engrossed bill allows the PSC to assess the complaining party for the cost of the review.

The engrossed bill 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.

Guidance on Reasonable and Unreasonable Municipal Regulations Under s. 182.017

The engrossed bill provides guidance on acceptable rights-of-way permit fees by specifying criteria for the PSC's review of a complaint on whether a municipal rights-of-way regulation imposing a permit fee or other municipal cost recovery is unreasonable. These criteria are identical to the criteria in s. PSC 130.05, Wis. Adm. Code, that the PSC currently uses to determine whether a municipal rights-of-way permit fee or charge for a utility is unreasonable.

Specifically, the engrossed bill establishes that a municipal regulation is ***unreasonable*** if it requires a company to pay: (1) the municipality's member fees assessed under the "Diggers Hotline" system; or (2) more than the actual cost of functions undertaken by the municipality to manage company access to and use of municipal rights-of-way. These management functions include all of the following:

- Registering companies, including the gathering and recording of information necessary to conduct business with a company.*
- Issuing, processing, and verifying excavation or other company permit applications, including supplemental applications.* This function excludes any activity that results in the company paying the municipality's member fees assessed under the Diggers Hotline system.
- Inspecting company job sites and restoration projects.*
- Maintaining, supporting, protecting, or moving company equipment during work in municipal rights-of-way.+
- Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.+
- Revoking company permits.+
- Maintenance of databases.*

[3] 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.

- Scheduling and coordinating highway, street, and right-of-way work relevant to a company permit.

In addition, a municipal regulation is ***unreasonable*** if any of the following applies:

- The regulation has the effect of creating a moratorium on the placement of company lines or systems or on the entrance into the municipality of a video service provider.

- The regulation is inconsistent with the purposes of the statewide video franchise statute. The legislative findings at the beginning of the statutes include a statement of these purposes.

The engrossed bill specifies that it is ***reasonable*** for a municipal regulation to provide for the recovery of costs as follows:

- Through a preexcavation permit fee, for a function identified above with an asterisk.

- Only from the company that is responsible for causing the municipality to incur the costs, for a function identified above with a + sign.

In addition, the engrossed bill creates a rebuttable presumption that a municipal regulation is ***reasonable*** if the PSC determines that a pre-existing municipal regulation or community standards is substantially the same as the municipal regulation complained of. For purposes of this comparison, the pre-existing regulation or community standard must have been in effect on January 1, 2007, and immediately prior to the bill's effective date. Such a community standard may be demonstrated through "consistent practice and custom" in the municipality.

Consumer Protection

Video Service Subscriber Rights

Current s. 100.209, Stats., *Video Service Subscriber Rights*, 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 engrossed bill applies the video service subscriber rights statute 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 engrossed bill repeals the authority of municipalities to adopt ordinances under this statute that supplement the statutory standards.

The engrossed bill also modifies one of the standards in the video service subscriber rights statute. Under this 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 engrossed bill modifies this requirement to apply to service outages that last for more than 24 hours.

Customer Service Standards

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.]

The engrossed bill 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 in the preceding paragraph, but precludes the DFI and municipalities from 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 engrossed bill establishes that these video service providers may not be subjected to any "customer service standards."[4] The engrossed bill provides an exception to this limitation for customer service standards promulgated by rule by DATCP.

As noted above under "State Franchising," the engrossed bill also prohibits any municipality from imposing on any video service provider any requirement relating to the provision of video service. This general prohibition would include requirements relating to consumer protection.

Customer Privacy

Current s. 134.43, Stats., 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 repeat violations and allows additional private remedies.

The engrossed bill applies the prohibitions on the collection or release of customer information and the penalties and private remedies in this statute 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.

---

[4] Neither the engrossed bill 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.

The engrossed bill also exempts any multichannel video provider that provides video programming via Internet protocol technology, such as a telecommunications utility, from the requirement to provide the lockout equipment described above.

Access To Service ("Build-Out") and Discrimination

Access

The engrossed bill's requirements on access to service apply only to a large telecommunications video service provider (LTVSP).[5] The engrossed bill requires an LTVSP to provide access to its video service to the following percentages of households within its residential local exchange service area in the specified timeframes:

- At least 35% no later than three years after the date on which the LTVSP began providing video service under its state franchise.
- At least 50% no 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 DATCP regarding its progress in complying with these requirements.

Discrimination

The engrossed bill 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 engrossed bill 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.

---

[5] The definition of an LTVSP is specified above, under "Authority to Provide Service, Application for Franchise." As previously noted, the only entity that meets this definition is AT&T Wisconsin.

Extensions and Waivers; Alternative Technologies

A video service provider, including an LTVSP, may apply to DATCP for an extension of any time limit specified in these access and discrimination requirements or for a waiver from the requirements. DATCP must grant the extension or waiver if the 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.

A video service provider, 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.

Geographic Service Area

The engrossed bill 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 the "department" issued a video service franchise to the operator.[6]

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 engrossed bill 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 engrossed bill is silent on rate regulation where there is only one interim cable operator or video service provider. Given the general prohibition described under "State Franchising" on a municipality regulating rates, unless specifically authorizes in the engrossed bill, and the limitation on

[6] The engrossed bill refers to the "department" in this provision, which is defined for purposes of s. 66.0420 (8) to be DATCP. It appears this should be a reference to DFI.

DFI's rule-making authority described below, it appears that no state or municipal entity has authority to regulate rates in this instance.

Institutional Networks

The engrossed bill 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 engrossed bill 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 engrossed bill 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 engrossed bill. 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.

The engrossed bill also prohibits DATCP from promulgating rules interpreting the discrimination and access provisions in the video franchising statute.

Enforcement

The engrossed bill 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 engrossed bill to bring an action in circuit court. The court is directed to order compliance with the law, but the engrossed bill is silent regarding the recovery of damages. No party to a suit may recover its costs of prosecuting or defending the suit.

DFI may enforce most of the provisions of the new video franchising statute with the exception that the DATCP shall enforce the provisions relating to discrimination and access to service. The

engrossed bill 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 engrossed bill 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.

Effective Date

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

SENATE AMENDMENT 1

Senate Amendment 1 makes the following changes to the engrossed bill:

- Corrects a particular reference to the department that issues video service franchises to be DFI. Under the definitions in the engrossed bill applicable in this provision, "department" is DATCP.

- Increases the appropriation of program revenues to DFI for its general program operations by $100,000 for fiscal year 2007-08 and by $100,000 for fiscal year 2008-09.

SENATE AMENDMENT 3

The engrossed bill requires an applicant for a video service franchise to submit to DFI an application fee of $2,000, or, if the applicant is applying for a modified franchise, an application fee of $100. Senate Amendment 3 requires each video service provider to also pay an annual fee of $2,000 to DFI, starting one year after issuance of the video service franchise to the provider.

SENATE AMENDMENT 13

Senate Amendment 13 applies where an incumbent cable operator has entered into an agreement with an institution or college campus within the University of Wisconsin System that is in effect on the bill's effective date, and the agreement requires the incumbent cable operator to broadcast University of Wisconsin events on one of its channels. If these conditions are met, the amendment requires any video service provider that provides video service in the area in which the events are broadcast by the incumbent cable operator, upon the request of the institution or college campus, to enter into an agreement with the institution or college campus that requires the video service provider to provide the same service on the same terms and conditions as the agreement between the institution or college campus and the incumbent cable operator.

Based upon initial research by Legislative Council staff such an agreement is presently in place between the incumbent cable operator and the University of Wisconsin – Whitewater campus.

SENATE AMENDMENT 14

The engrossed bill continues any obligations to provide monetary support for PEG channels that exist under a municipal cable franchise in effect on the bill's effective date. For an incumbent cable operator that terminates its municipal franchise by switching to a state video service franchise, its obligation continues until three years after the bill's effective date or until the date on which the municipal cable franchise would have expired, whichever is earlier. For an incumbent cable operator that does not terminate its municipal franchise (an interim cable operator), the obligation continues until the expiration of the municipal franchise. For a new video service provider in a municipality that receives PEG support from an incumbent cable operator, the new provider must also provide PEG support that is proportional to the support provided by the incumbent cable operator with the most subscribers in the municipality on the bill's effective date, for as long as that incumbent cable operator is required to provide PEG support.

Senate Amendment 14 provides that for all three types of providers identified in the preceding paragraph (an incumbent cable operator converting to a state video franchise, an interim cable operator continuing under a municipal franchise, and a new video service provider in a municipality previously receiving PEG support), the obligation to provide monetary support for PEG channels expires three years after the bill's effective date.

SENATE AMENDMENT 19

Under the engrossed bill, a municipality may impose reasonable regulations, including fees, on the occupation and use of public rights-of-way by video service providers, interim cable operators, and others. Any of these entities subject to such municipal regulations may complain to the PSC that the municipal regulation is unreasonable. The PSC must review these complaints and, if it determines that the regulation is unreasonable, the regulation shall be void. The engrossed bill also provides guidance on whether particular municipal regulations are reasonable or unreasonable.

Senate Amendment 19 establishes that notwithstanding most of the guidance in the engrossed bill on the reasonableness of municipal rights-of-way regulations the PSC may not find a regulation of the aesthetics of any component of a video service network[7] unreasonable if the regulation has a reasonable and clearly defined aesthetic objective or is necessary to maintain the value of adjoining or nearby private property. The amendment applies to regulations created by a municipality before or after the bill's effective date.

Examples of regulations that could be directed towards the aesthetics of a component of a video service network are regulations that specify the location, screening, or color of a video service network cabinet located on the terrace between a curb and sidewalk or that require network cables to be buried underground.

---

[7] Under the engrossed bill, video service networks include networks used to provide cable service.

SENATE AMENDMENT 21

The engrossed bill requires an applicant for a video service franchise to submit to DFI an application fee of $2,000, or, if the applicant is applying for a modified franchise, an application fee of $100. Senate Amendment 21 requires, in general, each video service provider to also pay an annual fee of $2,000 to DFI, starting one year after issuance of the video service franchise to the provider. If a video service provider has 10,000 or less subscribers, the first annual fee under the amendment is $2,000 and each subsequent annual fee is $100.

LEGISLATIVE HISTORY

On April 17, 2007, the Assembly Committee on Energy and Utilities took the following actions on Assembly Bill 207: offered Assembly Substitute Amendment 1 and Assembly Amendments 1, 2, and 3 to Assembly Engrossed bill 1; recommended adoption of Assembly Amendments 1, 2, and 3 to Assembly Substitute Amendment 1 on separate votes of Ayes, 10; Noes, 0; recommended adoption of Assembly Substitute Amendment 1, as amended, by a vote of Ayes, 9; Noes, 1; and recommended passage of Assembly Bill 207, as amended, by a vote of Ayes, 9; Noes, 1.

On April 24, 2007, the following amendments to Assembly Substitute Amendment 1 were offered: Assembly Amendment 5 by Representatives Moulton and Wood, Assembly Amendment 8 by Representatives Mason and Montgomery, Assembly Amendment 9 by Representative Montgomery, Assembly Amendment 20 by Representatives Stone and Montgomery, and Assembly Amendment 28 by Representatives Gottlieb and Montgomery.

On April 24, 2007, the Assembly adopted the following amendments to Assembly Substitute Amendment 1: Assembly Amendment 1 by a vote of Ayes, 96; Noes, 0; Assembly Amendment 2 by a vote of Ayes, 96; Noes, 0; Assembly Amendment 5 by a vote of Ayes, 82; Noes, 14; Assembly Amendment 8 by a vote of Ayes, 96; Noes, 0; Assembly Amendment 9 by a vote of Ayes, 96; Noes, 0; Assembly Amendment 20 by a vote of Ayes, 80; Noes, 16; and Assembly Amendment 28 by a vote of Ayes, 49; Noes, 47. The Assembly adopted Assembly Substitute Amendment 1, as amended, on April 24, 2007 by a vote of Ayes, 55; Noes, 41.

On May 9, 2007, the Assembly passed Assembly Bill 207, as amended, by a vote of Ayes, 66; Noes, 28. The Senate Chief Clerk directed that the bill be engrossed on May 18, 2007.

On October 31, 2007, the Joint Committee on Finance introduced and recommended adoption of Senate Amendment 1 by a vote of Ayes, 16; Noes, 0; and recommended passage of Assembly Bill 207, as amended, by a vote of Ayes, 13; Noes, 3.

On November 8, 2007, the following Senate amendments to Assembly Bill 207 were offered: Senate Amendment 3 by Senators Miller, et al, Senate Amendment 13 by Senators Lassa, et al, Senate Amendment 14 by Senators Plale, et al, Senate Amendment 19 by Senators Carpenter, et al, and Senate Amendment 21 by Senator Grothman.

On November 8, 2007, the Senate adopted the following amendments to Assembly Bill 207: Senate Amendment 1 by a voice vote; Senate Amendment 3 by a vote of Ayes, 17; Noes, 16; Senate Amendment 13 by a vote of Ayes, 17, Noes, 16; Senate Amendment 14 by a vote of Ayes, 33; Noes, 0;

Senate Amendment 19 by a voice vote and Senate Amendment 21 by a voice vote. On November 8, 2007, the Senate concurred in Assembly Bill 207, as amended, by a vote of Ayes, 23; Noes 9.

JES:DLL:jb:ty:ksm