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RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: MDK) (Date: 2/26/07)

☒ ☞ Please transfer the drafting file for

2007 **2005 LRB** -0131 to the drafting file

for **2007 LRB** -1914

☞ The final version of the 2005 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

☞ For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--OR--

○ ☞ Please copy the drafting file for

2007 LRB _____ / ____ (include the version) and place it in the

drafting file for **2007 LRB** _____

☞ For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

☞ The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

Updated: 08/26/2004

Kunkel, Mark

From: Raschka, Adam
Sent: Tuesday, January 23, 2007 4:39 PM
To: Kunkel, Mark; Stolzenberg, John
Subject: LRB 0131 Revisions

Attachments: LRB 0131 Revisions.DOC

Gentleman,

Attached is a revised version of LRB 0131. The one minor change we discussed in the meeting regarding the repeal of 66.0419 has been addressed in the document with a couple of references to the statute as the "former" statute. These are highlighted in red throughout the document. I hope this isn't too confusing. Please advise if there is a better way to handle this.

LRB 0131
visions.DOC (94 KB)

Please give myself or Phil if you have any questions:

Adam - 608-513-9644
Phil - 920-265-6779

We look forward to your comments on Monday.

Adam

Adam Raschka
Office of Representative Phil Montgomery
Chair - Assembly Energy & Utilities Committee
608-266-5840

Attachment to Jan 23 email

1 ***The people of the state of Wisconsin, represented in senate and assembly, do***
2 ***enact as follows:***
3 **[NOTE: Need to conform terms -- division, section, chapter, paragraph, etc. to Wisconsin**
4 **law.]**
5 **SECTION 1.** 66.0419 of the statutes is repealed
6 **SECTION 2.** 66.0420 of the statutes is created to read:
7 **66.0420 Video service providers.**
8
9 (1) LEGISLATIVE FINDINGS.--
10 (a) The legislature finds that:
11 1. Video service brings important daily benefits to the residents of this state
12 by providing news, education and entertainment.
13 2. Uniform regulation of all video service providers by this state is necessary
14 to ensure citizens receive adequate and efficient video service and to protect and promote
15 the public health, safety and welfare.
16 3. Fair competition in the provision of video service will result in new and
17 more video programming choices for consumers in this state, and a number of providers
18 have stated their desire to provide that service.
19 4. The time-to-market interval is critical for new entrants seeking to compete
20 with incumbent providers.
21 5. This state's economy would be enhanced by additional investment in
22 communications and video programming infrastructure by existing and new providers of
23 video services.
24 6. Minimal regulation of all video service providers within a uniform
25 framework would promote such investment in communications and video programming
26 infrastructure.
27 7. Ensuring that existing providers of video services are subject to the same
28 regulatory requirements and procedures as new entrants to ensure fair competition among
29 all providers.
30 8. The continued development of this state's video service marketplace
31 within a framework that is fair and equitable to all providers and the promotion of

investment in communications and video infrastructure are matters of statewide concern, and regulation of wireline video systems is therefore exclusively reserved to the state government.

(b) In this section the legislature intends to:

1. Clarify the legislature's position on certain antitrust and franchise fee and other compensation issues which affect the cities, towns and villages of this state, which are related to the regulation of video services.

2. Clarify the policy of the legislature to vest authority to grant franchises to construct, operate and maintain wireline networks using the public rights-of-way to provide video service in the state.

3. Provide a regulatory framework by which all persons, existing providers and new entrants alike, can rapidly and expeditiously provide video service to residents of this state regardless of their jurisdictions or locations, which framework will serve to clarify the authority and obligations of those persons under rights-of-way laws of this state, encourage additional, significant infrastructure investment by all providers, and promote competitive entry into the video service marketplace.

4. Permit cities, towns and villages to impose franchise fees, subject to uniform rules on the manner in which such fees are imposed.

(2) CONSTRUCTION OF CHAPTER.--This chapter supersedes all provisions in existing laws to the extent that such provisions are inconsistent with the provisions of this chapter. This chapter occupies the entire field of franchising, licensing, permitting, contracting, and regulating concerning the provision of cable and video services as defined herein and also occupies the entire field concerning the placement of and the rights to place facilities for such cable and video services. This chapter controls and supersedes any state, municipal, or county resolution or ordinance that purports to address the subject matter of this chapter.

(2) [NEED TO RENUMBER SECTIONS OF 66.0420 AND INTERNAL CROSS-REFERENCES] DEFINITIONS. In this section (a) "Basic local exchange service" has the meaning given in s. 196.01 (1g).

(b) "Incumbent Cable Operator" means a person who, on the effective date of this paragraph, is providing cable or video service under a franchise, franchise extension, expired

franchise or ordinance granted under former s. 66.0419 (3) (b).

(c) "Video service provider" means a person who either:

1. is not an incumbent cable operator or an affiliate, successor, or assign of an incumbent cable operator and who is certified by the department as a video service provider under sub. (2); or

2. is an incumbent cable operator or an affiliate, successor, or assign of an incumbent cable operator who elects to convert its municipality-granted franchises to a state-issued video service franchise under sub. (2).

(d) "Video service provider fee" means the fee paid by video service providers under sub. (5).

(e) "Department" means the department of financial institutions.

(f)

1. "Gross receipts" means all revenues actually received by and paid to the video service provider by subscribers residing within a Municipality for video service. Gross Receipts shall be computed in accordance with Generally Accepted Accounting Principles ("GAAP") and shall include the following:

a. Recurring charges for video service;

b. Event-based charges for video service, including pay-per-view and video-on-demand charges;

c. Rental of set top boxes and other video service equipment;

d. Service charges related to the provision of video service, including activation, installation, repair, and maintenance charges; and

e. Administrative charges related to the provision of video service including service order and service termination charges.

2. Notwithstanding subd. 1., "gross receipts" does not include any of the following:

a. Discounts, refunds, and other price adjustments that reduce the amount of compensation received by a video service provider;

b. Uncollectible fees, provided that all or part of uncollectible fees which are written off as bad debt but subsequently collected, less expenses of collections, shall be included in the Gross Revenues in the period collected;

c. Late payment charges;

d. Maintenance charges;

e. Amounts billed to video service subscribers to recover taxes, fees, surcharges or assessments of general applicability or otherwise collected by a video service provider from video service subscribers for passthrough to any federal, state or local government agency, including the video service provider fees and the FCC user fee;

f. Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive video service from the seller of those assets or surplus equipment;

g. Charges, other than those described in subd. 1., that are aggregated or bundled with amounts described in subd. 1. and billed to video service subscribers, including but not limited to any revenues received by a video service provider or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing, if a video service provider can reasonably identify such charges on books and records kept in the regular course of business or by other reasonable means;

h. Fees for PEG or I-Net support, if any, collected from subscribers; or

i. Reimbursement by programmers of marketing costs actually incurred by the provider.

(h) "Household" means consistent with the United States Census Bureau, a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

(i) "Low income household" means those residential households whose annual household income is less than $35,000 based on the United States Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.

(j) "Municipality" means a city, village, or town.

(k) "Video Programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

(l) "Video Service" means any video programming service, cable service, or open-video

service provided through facilities located at least in part in public rights-of-way, without regard to delivery technology, including Internet protocol technology or other technology. "Video Service" does not include any of the following:

1. Video programming provided by a commercial mobile radio service provider, as defined in s. 196.01 (2g).

2. Video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or any other service offered over the public Internet.

(m) "Video Service Network" means wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service, without regard to delivery technology, including Internet protocol technology or any successor technology. The term "video service network" shall include cable systems.

(n) "Cable operator" has the meaning given in 47 U.S.C. s. 522(5).

(o) "Cable service" has the meaning given in 47 U.S.C. s. 522(6).

(p) "Cable system" has the meaning given in 47 U.S.C. s. 522(7).

(q) "Franchise fee" has the meaning given in 47 U.S.C. s. 542(g), and includes any compensation required under s. 66.0425.

(r) "Public, educational or governmental access facilities" or "PEG" has he meaning in 47 U.S.C. s. 522(16).

(2) AUTHORITY TO PROVIDE VIDEO SERVICE.

(a) FRANCHISE REQUIRED.--

(1) Except as provided in subsection (2), a person may not provide video service in the state without first obtaining a state-issued video service franchise under this section. A person seeking to provide video service shall file an application with the Department for a state-issued video service franchise as provided in paragraph b.

(2) As of the effective date of this act, no existing franchise or ordinance issued under former s. 66.0419(3)(b) shall be renewed or extended upon its expiration date. At any time after the effective date of this act, a video service provider, including an incumbent cable operator, may (i) continue to provide service under the terms and conditions of its franchise, franchise extension, ordinance, or other authorization until its expiration, or (ii) automatically convert any or all such franchise(s) or ordinance(s) into a state-issued video service franchise governed by the terms of this act. If a video service

provider, including an incumbent cable operator, chooses to convert its franchise(s), ordinance(s) or other authorization to a state-issued video service franchise, the ordinance or franchise or other authorization granted under former s. 66.0419 (3) (b) shall terminate upon issuance of the state-issued video service franchise. The terms of such state-issued video service franchise shall be as provided in this act and shall preempt and supersede the terms and conditions of the franchise, franchise extension, expired franchise or ordinance or other authorization previously granted by the relevant municipality under former s. 66.0419(3)(b). Upon termination of such franchise, franchise extension, expired franchise or ordinance or other authorization, the municipality shall, at the request of a video service provider, including the incumbent cable operator, surrender, return, or take such other action as may be necessary to nullify any bond, letter or credit, or similar instrument intended to secure the performance of a video service provider, including the incumbent cable operator, under such franchise, franchise extension, expired franchise or ordinance.

(b) CONTENTS OF APPLICATION.--The contents of a state-issued video service franchise application shall be limited to an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming:

(1) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering video service;

(2) that the applicant agrees to comply with the provisions of this act and all applicable federal statutes and regulations;

(3) the location and telephone number of the applicant's principal place of business, the names of the principal executive officers of the applicant, and the names of any persons authorized to represent the applicant before the Department;

(4) that the applicant is legally, financially, and technically qualified to provide video service;

(5) a description of the franchise area(s) within the State to be served; and

(6) the date on which the applicant will commence providing video service in the area(s) identified under subdivision (5).

(c) SERVICE UPON MUNICIPALITY. – A copy of the application shall be served upon

any municipality covered by the application at the same time it is filed with the Department. The municipality shall notify the applicant, in writing, of the percentage of any franchise fee paid by, and the number of PEG channels provided by, an incumbent cable operator in that municipality. The requirement to pay a video service provider fee under paragraph (5) shall take effect on the later of 45 days from the receipt of the notice from the municipality or when the video service provider first makes video service available to a customer in that municipality. The requirement to provide PEG access channels under paragraph (4) shall take effect on the later of 90 days from the receipt of notice from the municipality or when the video service provider first makes video service available to a customer in that municipality. If the municipality fails to so notify the video service provider of either the franchise fee percentage or the PEG access channels, the video service provider shall be exempt from such requirements until the municipality provides such notice. If the municipality fails to so notify the video service provider as described above, then all video service providers, including the incumbent cable operator, shall similarly be exempt from such requirements until the municipality provides such notice.

(d) GRANT OF FRANCHISE.-- A state-issued video service franchise shall contain a grant of authority to construct, operate, maintain and repair a video service network to provide video service in each franchise area described in the affidavit submitted pursuant to subsection (b).

(e) DEADLINE FOR DEPARTMENT ACTION ON APPLICATION.--

(1) The Department shall notify in writing an applicant within 10 business days of the filing of a state-issued video service franchise application as to whether the submitted application is complete. If it is not complete, the Department shall state in its notice the reasons the application is incomplete.

(2) The Department shall have 10 business days after submission of a complete state-issued video service franchise application to act upon the application.

(3) If the Department fails to render a final decision on a state-issued video service franchise application within 10 business days, then, unless the applicant withdraws its application or agrees with the Department to an extension of time, the application shall automatically be deemed approved.

(f) NOTICE. A video service provider shall provide notice to the municipality and the Department no later than 10 business days prior to providing video service in that municipality under a state-issued franchise.

1 (g) TERMINATION OF FRANCHISE.--A state-issued video service franchise does not expire,
2 but may be terminated by the video service provider by submitting thirty days notice to the
3 Department.
4 (h) NOTIFICATION OF MODIFICATIONS.--If any information in the franchise agreement
5 changes, the video service provider shall notify the Department within ten (10) business days.
6
7 **(3)** FRANCHISING AUTHORITY. (a) For purposes of 47 USC 521 et seq., the state is
8 the exclusive franchising authority for video service providers in this state. No municipality may
9 require a video service provider to obtain a franchise to provide video service or impose any fee
10 or requirement on a video service provider, including any requirement to deploy facilities or
11 equipment of any requirement regarding rates for video service, except as specifically provided
12 for in this Act.
13 **(4)** PUBLIC, EDUCATIONAL AND GOVERNMENT CHANNELS. (a) Subject to
14 paragraph (c) below, a video service provider shall provide the same number of PEG channels as
15 a municipality is currently receiving on the effective date of this act. If a municipality is not
16 receiving PEG channels under an existing franchise, or its franchise has expired, a municipality
17 may require a video service provider or incumbent cable operator providing video or cable
18 service in such municipality to designate up to three (3) channels for public, educational, or
19 government (PEG) use if such municipality has a population of at least 50,000, and up to two (2)
20 PEG channels if such municipality has a population of less than 50,000; provided, however, that
21 the foregoing limits shall constitute the total number of PEG channels that may be designated on
22 all video service or cable networks that share a common headend or video hub office, regardless
23 of the number of Municipalities served by such headend or video hub office, and the populations
24 of all Municipalities served by such video service or cable networks shall be aggregated for
25 purposes of applying these limits. A video service provider or incumbent cable operator may
26 provide such PEG channels on any service tier viewed by more than 50% of its customers. All
27 video service providers and incumbent cable operators serving a municipality shall be required to
28 provide the same number of PEG access channels.
29 (b) Notwithstanding any franchise or ordinance granted by a municipality, this section,
30 rather than the franchise or ordinance, shall apply to the designation of PEG access channels and
31 the provision of institutional network or equivalent capacity by an incumbent cable operator

1 operating under such franchise or ordinance; provided, however, that if such franchise or
2 ordinance requires fewer PEG access channels than the applicable limit specified in paragraph
3 (a), the requirement in the franchise or ordinance shall apply in lieu of such limit; provided
4 further, that the incumbent cable operator may nonetheless be required to activate additional
5 PEG channel(s), up to such limit, to the extent the municipality certifies that such additional
6 channel(s) will be substantially utilized.

7 (c) Any PEG channel designated pursuant to this section that is not substantially utilized
8 by the municipality shall no longer be made available to the municipality, but may be
9 programmed at the video service provider or incumbent cable operator's discretion. At such
10 time as the municipality can certify that a channel that has been reclaimed by a video service
11 provider or incumbent cable operator under this paragraph will be substantially utilized, the
12 video service provider or incumbent cable operator shall restore the reclaimed channel within
13 one hundred and twenty (120) days, but shall be under no obligation to carry that channel on any
14 specified tier of service.

15 (d) For purposes of this section, a PEG channel shall be considered "substantially
16 utilized" when 12 hours are programmed on that channel each calendar day and at least 80% of
17 that programming is non-repeat and locally-produced.

18 (e) Except as set forth in this section, a municipality may not require a video service
19 provider or incumbent cable operator to provide any funds, services, programming, facilities, or
20 equipment related to public, educational, or governmental use of channel capacity. The
21 operation of any PEG access channel provided pursuant to this section and the production of any
22 programming that appears on each such channel shall be the sole responsibility of the
23 municipality receiving the benefit of such channel, and the video service provider or incumbent
24 cable operator shall bear only the responsibility for the transmission of the programming on each
25 such channel to subscribers.

26 (f) The municipality must ensure that all transmissions of content and programming
27 provided by or arranged by them to be transmitted over a PEG channel by a video service
28 provider or incumbent cable operator are provided and submitted to the video service provider or
29 incumbent cable operator in a manner or form that is capable of being accepted and transmitted
30 by such video service provider or incumbent cable operator over its network without further
31 alteration or change in the content or transmission signal, and which is compatible with the

technology or protocol, including IPTV, utilized by the provider to deliver video service.

(g) The municipality shall make the programming of any PEG access channel available to all video service providers and incumbent cable operators in such municipality in a nondiscriminatory manner. Each video service provider or incumbent cable operator shall be responsible for providing the connectivity to the municipality's PEG access channel distribution point up to the first 200 feet. Where technically necessary and feasible, video service providers and incumbent cable operators in the same municipality shall use reasonable efforts and shall negotiate in good faith to interconnect their networks on mutually acceptable rates, terms, and conditions for the purpose of transmitting PEG programming within such municipality. The entity requesting interconnection shall be responsible for any costs for such interconnection, including signal transmission from the origination point to the point of interconnection. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection.

(h) No state agency or any municipality may require a video service provider or incumbent cable operator to provide any institutional network or equivalent capacity on its video service or cable network.

(5) VIDEO SERVICE PROVIDER FEE. (a) Notwithstanding s. 66.0611, a video service provider shall, on a quarterly calendar basis, calculate and pay to the municipality a video service provider fee based on the percentage of the video service provider's gross revenues that is specified in par. (b). A video service provider shall remit the fee to the municipality no later than 45 days after the end of each quarter.

(b) The percentage applied to a video service provider's gross receipts under par. (a) shall be 5 percent or one of the following, whichever is less.

1. The percentage of gross revenues that the incumbent cable operator was required to pay as a franchise fee to the municipality on the date of enactment.

2. If more than one cable operator pays a franchise fee to the municipality based on gross revenues on the date of enactment, the lowest such percentage.

(c) 1. A municipality may, upon reasonable written request but no more than once with respect to any given three year period, review the business records of the holder of a state-issued video service franchise to the extent necessary to ensure proper and accurate payment of the video service provider fee.

2. Neither the municipality nor the video service provider may bring any suit arising out of or relating to the video service provider fee amounts allegedly due to the municipality, unless the parties have first participated in and completed good-faith settlement discussions. All negotiations pursuant to this section shall be strictly confidential and shall be treated as compromise and settlement negotiations for purposes of any future litigation.

3. Any suit with respect to a dispute arising out of or relating to the amount of the video service provider fee paid or allegedly due must be filed by the municipality or by the video service provider seeking a refund of an alleged overpayment, in a court of competent jurisdiction within three (3) years following the end of the calendar quarter to which the disputed amount relates; provided, however, that such time period may be extended by written agreement between the municipality and the video service provider, and shall automatically be extended by the period of time of the settlement negotiations described in paragraph 2.

4. Each party shall bear its own costs incurred in connection with any and all of the activities and procedures set forth in this section.

(d) A video service provider may identify and collect the amount of a video service provider fee as a separate line item on subscriber bills.

(e) The video service provider fee allowed by this section is in lieu of any permit fee, encroachment fee, degradation fee or other fee assessed on a state-issued video service franchise holder for its occupation of or work within the public rights-of-way.

(6) DISCRIMINATION PROHIBITED. (a) Subject to paragraph (b), no video service provider shall deny access to video service to any group of potential residential subscribers in the franchise area because of the race or income of the residents in the local area in which the group resides.

(b) It is a defense to an alleged violation of paragraph (a) of this section if the video service provider has met either of the following conditions:

1. Within three years of the date it began providing video service under this act, at least twenty-five percent of households with access to the provider's video service are low-income households.

2. Within five years of the date it began providing video service under this act and from that point forward, at least thirty percent of the households with access to the provider's video service are low-income households.

[MOVED DEFINITIONS TO 66.0420(1) ABOVE] [MERGED SEC. 7 INTO SEC. 6] (c) A video

1 service provider that uses telecommunications facilities to provide video service and has more than five
2 hundred thousand telephone access lines in this state shall provide access to its video service to a number of
3 households equal to:
4 1. At least twenty-five percent of the households in its telecommunications service area in the state
5 within three years after the date it began providing video service under this act;
6 2. Not less than fifty percent of these households within six years after the date it began providing
7 video service under this act. A video service provider is not required to meet the fifty percent requirement of
8 this section until two years after at least thirty percent of the households with access to the video service
9 provider's video service subscribe to the service for six consecutive months
10 (d) Each video service provider described in subsection (c) shall file an annual report with the
11 Department regarding the progress that has been made towards compliance with this section.
12 (e) Except for satellite service, a video service provider may satisfy the requirements of this section
13 through the use of alternative technology that offers service, functionality, and content demonstrably similar
14 to the service, functionality, and content provided through the provider's video service network. The
15 technology used to comply with the requirements of this paragraph shall include local public, educational
16 and government channels and messages over the emergency alert system.
17 (f) A video service provider may apply to the department for a waiver of or for an
18 extension of time to meet the requirements of this Section, if 1 or more of the following apply:
19 1. The inability to obtain access to public and private rights-of-way under reasonable
20 terms and conditions.
21 2. Developments or buildings not being subject to competition because of existing
22 exclusive service arrangements.
23 3. Developments or buildings being inaccessible using reasonable technical solutions
24 under commercially reasonable terms and conditions.
25 4. Natural disasters.
26 5. Factors beyond the control of the video service provider.
27 (g) The Department may grant the waiver or extension only if the provider has made
28 substantial and continuous effort to meet the requirements of this section. If an extension is
29 granted, the department shall establish a new compliance deadline. If a waiver is granted, the
30 department shall specify the requirement or requirements waived.
31 (h) Notwithstanding any other provision of this Act, a video service provider using

telecommunications facilities to provide video service is not obligated to provide such service outside the provider's existing telecommunications service area, and a video service provider that was an incumbent cable operator on the date of enactment is not obligated to provide such service outside of the area in which the incumbent cable operator provides cable service at the time it obtains the state-issued video service franchise.

(i) Notwithstanding any other provision of this Act, a video service provider shall not be required to comply with, and a local unit of government or the department may not impose or enforce, any mandatory build-out or deployment provisions or schedules, except as required by this Section.

(8) TRANSFERS/ASSIGNMENT OF STATE-ISSUED VIDEO SERVICE FRANCHISE.-- A state-issued video service franchise is fully transferable to any successor-in-interest to the holder whether such successor-in-interest arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction. A notice of transfer shall be promptly filed with the department and the affected Municipalities within ten (10) days of the completion of such transfer, but neither the department nor any municipality or any other local government entity shall have any authority to review or require approval of any transfer of a state-issued video service franchise, regardless of whether the transfer arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction.

(9) COMPLIANCE ENFORCEMENT.-- An affected municipality, video service provider or incumbent cable operator may bring an action in any court of competent jurisdiction to enforce any requirement under this Act, and the court shall have exclusive jurisdiction to enforce any such requirement or settle such dispute. Should a video service provider be found by a court of competent jurisdiction to be in noncompliance with the requirements of this Act, the court shall issue an order to the video service provider directing a cure for such noncompliance within a specified reasonable period of time.

(10) CUSTOMER SERVICE STANDARDS. Upon 90 days' notice, a municipality may require a video service provider to adopt the customer service requirements set forth in 47 C.F.R. Section 76.309(c) in its provision of video service. Neither the Department nor any municipality shall have the authority to enact or adopt additional or different customer service requirements that are specific to the provision of video service. No video service provider will be subject to any customer service requirements if there are two or more persons offering cable or video

service, excluding direct-to-home satellite service, in the relevant municipality, or if the video service provider is subject to effective competition as defined in 47 C.F.R. Section 76.905 in such municipality.

(11) LIMITATION ON RATE REGULATION. Neither the State, any instrumentality of the State, the Department, nor any municipality shall regulate the rates charged for any video service or cable service by a video service provider or incumbent cable operator in any municipality in which two or more unaffiliated video service providers or incumbent cable operators are providing cable or video service. Any such rate regulation shall automatically cease upon the date that two or more unaffiliated video service providers or incumbent cable operators are providing cable or video service, regardless of whether the affected video service provider or incumbent cable operator has sought a determination of effective competition from the Federal Communications Commission.

(12) MUNICIPAL CABLE SYSTEM COSTS. (a) Except for costs for any of the following, a municipality that owns and operates a cable system, or an entity owned or operated, in whole or in part, by such a municipality, may not require nonsubscribers of the cable system to pay any of the costs of the cable system:

1. Public, educational, and governmental access channels.

2. Debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of a cable system.

3. The provision of broadband service by the cable system, if the requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

(am) Paragraph (a) does not apply to a municipality that, on March 1, 2004, was providing cable service to the public.

(b) Paragraph (a) does not apply to a municipality if all of the following conditions apply:

1. On November 1, 2003, the public service commission has determined that the municipality is an alternative telecommunications utility under s. 196.203.

2. A majority of the governing board of the municipality votes to submit the question of supporting the operation of a cable system by the municipality to the electors in an advisory referendum and a majority of the voters in the municipality voting at the advisory referendum vote to support the operation of a cable system by the municipality.

SECTION **3.** 66.0421 (title) of the statutes is amended to read:

66.0421 (title) **Access to cable and video service.**

SECTION **4.** 66.0421 (1) (c) of the statutes is created to read:

66.0421 **(1)** (c) "video service provider" has the meaning given in s. 66.0420 (1) (c).

SECTION **5.** 66.0421 (1) (d) of the statutes is created to read:

660421 **(1)** (d) "Video service" has the meaning given in s. 66.0420 (1) (i).

SECTION **6.** 66.0421 (2) of the statutes is amended to read:

66.0421 **(2)** INTERFERENCE PROHIBITED. The owner or manager of a multiunit dwelling under common ownership, control or management or of a mobile home park or the association or board of directors of a condominium may not prevent a cable operator <u>or video service provider</u> from providing cable <u>or video</u> service to a subscriber who is a resident of the multiunit dwelling, mobile home park or of the condominium or interfere with a cable operator <u>or video service provider</u> providing cable <u>or video</u> service to a subscriber who is a resident of the multiunit dwelling, mobile home park or of the condominium.

SECTION **7.** 660421 (3) of the statutes is amended to read:

66.0421 **(3)** INSTALLATION IN MULTIUNIT BUILDING. Before installation, a cable operator <u>or video service provider</u> shall consult with the owner or manager of a multiunit dwelling or with the association or board of directors of a condominium to establish the points of attachment to the building and the methods of wiring. A cable operator <u>or video service provider</u> shall install facilities to provide cable <u>or video</u> service in a safe and orderly manner and in a manner designed to minimize adverse effects to the aesthetics of the multiunit dwelling or condominium. Facilities installed to provide cable <u>or video</u> service may not impair public safety, damage fire protection systems or impair fire-resistive construction or components of a multiunit dwelling or condominium.

SECTION **8.** 66.0421 (4) of the statutes is amended to read:

66.0421 **(4)** REPAIR RESPONSIBILITY. A cable operator <u>or video service provider</u> is responsible for any repairs to a building required because of the construction, installation, disconnection or servicing of facilities to provide cable <u>or video</u> service.

SECTION **9.** 66.0422 (title) of the statutes is amended to read:

66.0422 (title) **Cable television, <u>video service</u>, telecommunications, and broadband facilities.**

SECTION **10.** 66.0422 (1) (d) of the statutes is created to read:

66.0422 **(1)** (d) "Video service" has the meaning given in s. 66.0420 (1) (i).

SECTION **11.** 66.0422 (2) (intro.) of the statutes is amended to read:

66.0422 **(2)** (intro.) Except as provided in subs. (3), (3d), (3m), and (3n), no local government may enact an ordinance or adopt a resolution authorizing the local government to construct, own or operate any facility for providing cable service, video service, telecommunications service, or broadband service, directly or indirectly, to the public, unless all of the following are satisfied:

SECTION **12.** 66.0422 (3) (b) of the statutes is amended to read:

66.0422 **(3)** (b) A majority of the governing board of the local government votes to submit the question of supporting the operation of the facility for providing cable service, video service, telecommunications service, or Internet access service, directly or indirectly to the public, by the local government to the electors in an advisory referendum and a majority of the voters in the local government voting at the advisory referendum vote to support operation of such a facility by the local government.

SECTION **13.** 196.195 (5) of the statutes is amended to read:

196.195 **(5)** COMMISSION ACTIONS. If after the proceedings under subs. (2), (3) and (4) the commission has determined that effective competition exists in the market for the telecommunications service which justifies a lesser degree of regulation and that lesser regulation in that market will serve the public interest, the commission may, by order, suspend any of the following provisions of law, except as provided under subs. (7) and (8): ch. 201 and s. 196.02 (2); s. 196.05; s. 196.06; s.197.07; s 196.09; s. 196.10; s 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s. 196.194; s. 196.196 (1) or (5); s. 196.20; **[**~~s. 196.204 (7)~~;**]** s. 196.21; s. 196.22; s. 196.26; s. 196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s 196.604; s. 196.77; s.196.78; s. 196.79; and s. 196.805.

SECTION **14.** 196.204 (7) of the statutes is repealed.

(END)

MDK notes on Jan 23 attachment

Definitions

"Cable operator" [CO] has the meaning given in 47 U.S.C. s. 522(5).

> "the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;"
>
> > 66.0419 (2) (b) "Cable operator" means any person who provides ***cable service*** over a ***cable television system*** and who:
> >
> > > 1. Directly or through one or more ***affiliates*** owns a significant interest in the ***cable television system***; or
> > >
> > > > 66.0419 (2) (a) "Affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership control with such person.
> > >
> > > 2. Otherwise controls or is responsible for, through any arrangement, the management and operation of the ***cable television system***.

"Cable service" [CS] has the meaning given in 47 U.S.C. s. 522(6).

> "the term "cable service" means-- (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;"
>
> > "the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station" 47 USC 522 (20)
> >
> > "the term "other programming service" means information that a cable operator makes available to all subscribers generally;" 47 USC 522 (14)
> >
> > > 66.0419 (2) (c) "Cable service" means:
> > >
> > > > 1. The one-way transmission to subscribers of ***video programming*** or of ***other programming service***; and
> > > >
> > > > 2. Subscriber interaction, if any, which is required for the selection of such ***video programming*** or ***other programming service***.

66.0419 (2) (h) "Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

66.0419 (2) (g) "Other programming service" means information which a cable operator makes available to all subscribers generally.

"Cable system" [CSys] has the meaning given in 47 U.S.C. s. 522(7).

"the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of this Act [47 USCS §§ 201 et seq.], except that such facility shall be considered a cable system (other than for purposes of section 621(c)) [47 USCS § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title [47 USCS § 573] or (E) any facilities of any electric utility used solely for operating its electric utility systems;"

66.0419 (2) (d) "Cable television system" means a facility which consists of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide cable service which includes ***video programming*** and which is provided to multiple subscribers within a community. "Cable television system" does not include any of the following:

1. A facility which serves only to retransmit the television signals of one or more television broadcast stations.

2. A facility that serves only subscribers in one or more multiunit dwellings under common ownership, control or management unless such facility uses any public right-of-way.

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 USC 201 to 222, except that the facility is a cable television system to the extent that the facility is used in transmission of video programming directly to subscribers.

4. Any facility of any electric utility used solely for operating its electric utility system.

"Department" means the department of financial institutions.

"Franchise fee" has the meaning given in 47 U.S.C. s. 542(g), and includes any compensation required under s. 66.0425.

66.0419 (2) (e) "Franchise fee" means any fee, assessment or other compensation which a municipality requires a cable operator to pay, with respect to the operation of cable television systems, solely because of the cable operator's status as such, and includes any compensation required under s. 66.0425.

66.0425 Privileges in streets.

(1) In this section, "privilege" means the authority to place an obstruction or excavation beyond a lot line, or within a highway in a town, village, or city, other than by general ordinance affecting the whole public.

(2) A person may apply to a town or village board or the common council of a city for a privilege. A privilege may be granted if the applicant assumes primary liability for damages to person or property by reason of the granting of the privilege, is obligated to remove an obstruction or excavation upon 10 days' notice by the state or the municipality and waives the right to contest in any manner the validity of this section or the amount of compensation charged. The grantor of the privilege may require the applicant to file a bond that does not exceed $10,000; that runs to the town, village, or city and to 3rd parties that may be injured; and that secures the performance of the conditions specified in this subsection. If there is no established lot line and the application is accompanied by a blue print, the town or village board or the common council of the city may impose any conditions on the privilege that it considers advisable.

(3) Compensation for a privilege shall be paid into the general fund and shall be fixed by the governing body of a city, village or town or by the designee of the governing body.

(4) The holder of a privilege is not entitled to damages for removal of an obstruction or excavation, and if the holder does not remove the obstruction or excavation upon due notice, it shall be removed at the holder's expense.

(5) Third parties whose rights are interfered with by the granting of a privilege have a right of action against the holder of the privilege only.

(6) Subsections (1) to (5) do not apply to telecommunications carriers, as defined in s. 196.01 (8m),

telecommunications utilities, as defined in s. 196.01 (10), alternative telecommunications utilities, as defined in s. 196.01 (1d), public service corporations, or cooperatives organized under ch. 185 to render or furnish gas, light, heat, or power, or to cooperatives organized under ch. 185 or 193 to render or furnish telecommunications service, but the carriers, utilities, corporations and associations shall secure a permit from the proper official for temporary obstructions or excavations in a highway and are liable for all injuries to person or property caused by the obstructions or excavations.

So, the specified entities do not pay compensation for privilege?

(7) This section does not apply to an obstruction or excavation that is in place for less than 90 days, and for which a permit has been granted by the proper official.

(8) This section applies to an obstruction or excavation by a city, village or town in any street, alley, or public place belonging to any other municipality.

(9) Any person who violates this section may be fined not less than $25 nor more than $500 or imprisoned for not less than 10 days nor more than 6 months or both.

(10) A privilege may be granted only as provided in this section.

"Franchise fee" defined. For the purposes of this section—

(1) the term "franchise fee" includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such;

(2) the term "franchise fee" does not include—

(A) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

(B) in the case of any franchise in effect on the date of the enactment of this title [enacted Oct. 30, 1984], payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;

(C) in the case of any franchise granted after such date of enactment [enacted Oct. 30, 1984], capital costs which are required by the franchise to be

incurred by the cable operator for public, educational, or governmental access facilities;

(D) requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(E) any fee imposed under title 17, United States Code.

Title 17 is copyrights.

1. "Gross receipts" means all revenues actually received by and paid to the video service provider [VSP] by subscribers residing within a municipality for video service [VS]. Gross Receipts shall be computed in accordance with Generally Accepted Accounting Principles ("GAAP") and shall include the following:

Move accounting requirement elsewhere?

a. Recurring charges for video service [VS]

b. Event-based charges for video service [VS], including pay-per-view and video-on-demand charges;

c. Rental of set top boxes and other video service [VS] equipment;

d. Service charges related to the provision of video service [VS], including activation, installation, repair, and maintenance charges; and

e. Administrative charges related to the provision of video service [VS] including service order and service termination charges.

Notwithstanding subd. 1., "gross receipts" does not include any of the following:

a. Discounts, refunds, and other price adjustments that reduce the amount of compensation received by a video service provider [VSP];

b. Uncollectible fees, provided that all or part of uncollectible fees which are written off as bad debt but subsequently collected, less expenses of collections, shall be included in the Gross Revenues in the period collected;

Move calculation requirement elsewhere?

c. Late payment charges;

d. Maintenance charges;

e. Amounts billed to video service [VS] subscribers to recover taxes, fees, surcharges or assessments of general applicability or otherwise collected by a video service provider [VSP] from video service [VS] subscribers for pass through to any federal, state or local government agency, including the video

service provider fees [VSPFs] and the FCC user fee;

What is FCC user fee?

f. Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive video service [VS] from the seller of those assets or surplus equipment;

g. Charges, other than those described in subd. 1., that are aggregated or bundled with amounts described in subd. 1. and billed to video service [VS] subscribers, including but not limited to any revenues received by a video service provider [VSP] or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing, if a video service provider [VSP] can reasonably identify such charges on books and records kept in the regular course of business or by other reasonable means;

Define "telecommunications service"?

h. Fees for PEG or I-Net support, if any, collected from subscribers; or

What is I-Net?

I-Net: A data, video and/or voice network used by US government, schools and non-profit institutions (hence called an Institutional Network or I-Net). An I-Net is typically provided by cable companies as a condition of franchise approval for use of the public right-of-way. The infrastructure of an I-Net may comprise twisted pair cabling, coaxial cabling and/or optical fibre.

http://www.dest.gov.au/sectors/school_education/publications_resources/innovative_bandwidth_arrangements/glossary.htm

Institutional Network (I-Net). A private, dedicated network built and/or operated by a cable TV system for local schools, businesses or government.

http://www.ppc-online.com/training/glossary/index.php?pageNum=1

i. Reimbursement by programmers of marketing costs actually incurred by the provider [VSP].

"Household" means consistent with the United States Census Bureau, a house, an apartment, a mobile home, a group of rooms, or a single room that is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

ord enacted

Why say "consistent with" U.S. Census Bureau? Delete as not necessary? Separate living quarters?

"Incumbent Cable Operator" [ICO] means a person who, on the effective date of this paragraph, is providing cable or video service under a franchise, franchise extension, expired franchise or ordinance granted under former s. 66.0419 (3) (b).

> 66.0419 (3) (b) allows a municipality (i.e., city, village, or town) to grant or revoke one or more franchises for constructing and operating a cable television system and to govern operation any franchise granted.

"Low income household" means those residential households whose annual household income is less than $35,000 based on the United States Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.

Why the references to U.S. Census Bureau estimates and adjustments?

"Municipality" means a city, village, or town.

"Public, educational or governmental access facilities" or "PEG" has he meaning in 47 U.S.C. s. 522(16).

> "the term "public, educational, or governmental access facilities" means—
>
> (A) channel capacity designated for public, educational, or governmental use; and
>
> (B) facilities and equipment for the use of such channel capacity;"

"Video programming" [VP] means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

"Video Service" [VS] means any video programming[VP] service, cable service [CS], or open-video service [how is open-VS different from VS] provided through facilities located at least in part in public rights-of-way, without regard to delivery technology, including Internet protocol technology or other technology. "Video Service" does not include any of the following:

Using defined term [VS] in definition of term [VS]? (same mistake in LRB-0131/1)

1. Video programming provided by a commercial mobile radio service provider [CMRSP], as defined in s. 196.01 (2g).

2. Video programming [VP] provided solely as part of and via a service that enables users to access content, information, electronic mail, or any other service offered over the public Internet.

"Video Service Network" [VSN] means wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service [VS], without regard to delivery technology, including Internet protocol technology or any successor

technology. The term "video service network" shall include cable systems [CSs].

"Video service provider" [VSP] means a person who either:

define affiliate

1. is not an incumbent cable operator [ICO] or an affiliate, successor, or assign of an incumbent cable operator [ICO] and who is certified by the department as a video service provider [VSP] under sub. (2); or

2. is an incumbent cable operator [ICO] or an affiliate, successor, or assign of an incumbent cable operator [ICO] who elects to convert its municipality-granted franchises to a state-issued video service franchise under sub. (2).

"Video service provider fee" [VSPF] means the fee paid by video service providers [VSPs] under sub. (5).

(2) AUTHORITY TO PROVIDE VIDEO SERVICE.

(a) FRANCHISE REQUIRED.

(1) Except as provided in subsection (2), a person may not provide video service [VS] in the state without first obtaining a state-issued video service franchise [VSF] under this section. A person seeking to provide video service shall file an application with the Department for a state-issued video service franchise as provided in paragraph b.

(2) As of the effective date of this act, no existing franchise or ordinance issued under former s. 66.0419 (3) (b) shall be renewed or extended upon its expiration date. At any time after the effective date of this act, a video service provider [VSP], including an incumbent cable operator [ICO], may

(i) continue to provide service under the terms and conditions of its franchise, franchise extension, ordinance, or other authorization until its expiration, or

(ii) automatically convert any or all such franchise(s) or ordinance(s) into a state-issued video service franchise [VSF] governed by the terms of this act.

If a video service provider [VSP], including an incumbent cable operator [ICO], chooses to convert its franchise(s), ordinance(s) or other authorization to a state-issued video service franchise [VSF], the ordinance or franchise or other authorization granted under former s. 66.0419 (3) (b) shall terminate upon issuance of the state-issued video service franchise [VSF].

Why the reference to ordinance? Not proper to say ordinance issued under s. 66.0419 (3) (b)?

The terms of such state-issued video service franchise [VSF] shall be as provided in this act and shall preempt and supersede the terms and conditions of the franchise, franchise extension, expired franchise or ordinance or other authorization previously granted by the relevant municipality under former s. 66.0419 (3) (b).

Upon termination of such franchise, franchise extension, expired franchise or ordinance or other authorization, the municipality shall, at the request of a video service provider [VSP], including the incumbent cable operator [ICO], surrender, return, or take such other action as may be necessary to nullify any bond, letter or credit, or similar instrument intended to secure the performance of a video service provider [VSP], including the incumbent cable operator [ICO], under such franchise, franchise extension, expired franchise or ordinance.

(b) CONTENTS OF APPLICATION. The contents of a state-issued video service franchise [VSF] application shall be limited to an affidavit submitted by the applicant and signed by an officer or general partner of the applicant affirming:

General partner?

(1) that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering video service [VS];

(2) that the applicant agrees to comply with the provisions of this act and all applicable federal statutes and regulations;

(3) the location and telephone number of the applicant's principal place of business, the names of the principal executive officers of the applicant, and the names of any persons authorized to represent the applicant before the Department;

(4) that the applicant is legally, financially, and technically qualified to provide video service [VS];

(5) a description of the franchise area(s) within the State to be served; and

(6) the date on which the applicant will commence providing video service [VS] in the area(s) identified under subdivision (5).

(c) SERVICE UPON MUNICIPALITY. A copy of the application shall be served upon any municipality covered by the application at the same time it is filed with the Department.

The municipality shall notify the applicant, in writing, of the percentage of any franchise fee paid by, and the number of PEG channels provided by, an incumbent cable operator [ICO] in that municipality.

Percentage of franchise fee?

The requirement to pay a video service provider fee [VSPF] under paragraph (5) shall take effect on the later of 45 days from the receipt of the notice from the municipality or when the video service provider [VSP] first makes video service [VS] available to a customer in that municipality.

The requirement to provide PEG access channels under paragraph (4) shall take effect on the later of 90 days from the receipt of notice from the municipality or when the video service provider [VSP] first makes video service [VS] available to a customer in that municipality.

If the municipality fails to so notify the video service provider [VSP] of either the franchise fee percentage or the PEG access channels, the video service provider [VSP] shall be exempt from such requirements until the municipality provides such notice.

Exempt from what requirements?

If the municipality fails to so notify the video service provider [VSP] as described above, then all video service providers [VSPs] , including the incumbent cable operator [ICO], shall similarly be exempt from such requirements until the municipality provides such notice.

All which VSPs?

(d) GRANT OF FRANCHISE. A state-issued video service franchise [VSF] shall contain a grant of authority to construct, operate, maintain and repair a video service [VS] network to provide video service [VS] in each franchise area described in the affidavit submitted pursuant to subsection (b).

Shall contain? Is that something Department writes into a franchise, or is that the legal effect of the granting of the franchise?

Shouldn't franchise identify the munis, service areas, etc.?

(e) DEADLINE FOR DEPARTMENT ACTION ON APPLICATION.

(1) The Department shall notify in writing an applicant within 10 business days of the filing of a state-issued video service franchise [VSF] application as to whether the submitted application is complete. If it is not complete, the Department shall state in its notice the reasons the application is incomplete.

(2) The Department shall have 10 business days after submission of a complete state-issued video service franchise [VSF] application to act upon the application.

(3) If the Department fails to render a final decision on a state-issued video service franchise [VSF] application within 10 business days, then, unless the applicant withdraws its application or agrees with the Department to an extension of time, the application shall automatically be deemed approved.

What are grounds for Department's decision? E.g., on what grounds may Department deny an application?

(f) NOTICE. A video service provider [VSP] shall provide notice to the municipality and the Department no later than 10 business days prior to providing video service [VS] in that municipality under a state-issued franchise.

(g) TERMINATION OF FRANCHISE. A state-issued video service franchise [VSF] does not expire, but may be terminated by the video service provider by submitting thirty days notice to the Department.

No grounds for revoking franchise? What about transfers to new owners upon, for example, sale of VSP? → See below

(h) NOTIFICATION OF MODIFICATIONS. If any information in the franchise agreement changes, the video service provider shall notify the Department within ten (10) business days.

What franchise agreement?

(3) FRANCHISING AUTHORITY. (a) For purposes of 47 USC 521 et seq., the state is the exclusive franchising authority for video service providers [VSPs] in this state. No municipality may require a video service provider [VSP] to obtain a franchise to provide video service [VS] or impose any fee or requirement on a video service provider [VSP], including any requirement to deploy facilities or equipment of any requirement regarding rates for video service, except as specifically provided for in this Act.

Revise reference to 47 USC 521 to 561?

(4) PUBLIC, EDUCATIONAL AND GOVERNMENT CHANNELS.

(a) Subject to paragraph (c) below, a video service provider [VSP] shall provide the same number of PEG channels as a municipality is currently receiving on the effective date of this act.

If a municipality is not receiving PEG channels under an existing franchise, or its franchise has expired, a municipality may require a video service provider [VSP] or incumbent cable operator [ICO] providing video or cable service in such municipality to designate up to three (3) channels for public, educational, or government (PEG) use if such municipality has a population of at least 50,000, and up to two (2) PEG channels if such municipality has a population of less than 50,000;

Mechanics of requiring designation of PEG channels? "Existing" as of effective date of act? To whom and when does it apply? When does muni's authority terminate? Requirements are not included in a franchise agreement?

provided, however, that the foregoing limits shall constitute the total number of PEG channels that may be designated on all video service [VS] or cable networks that share a common headend or video hub office, regardless of the number of Municipalities served by such headend or video hub office, and the populations of all Municipalities served by such video service [VS] or cable networks shall be aggregated for purposes of applying these limits.

A video service provider [VSP] or incumbent cable operator [ICO] may provide such PEG channels on any service tier viewed by more than 50% of its customers.

All video service providers and incumbent cable operators serving a municipality shall be required to provide the same number of PEG access channels.

Cable networks? What are they? What's a headend or video hub office?

What's a service tier?

(b) Notwithstanding any franchise or ordinance granted by a municipality, this section, rather than the franchise or ordinance, shall apply to the designation of PEG access channels and the provision of institutional network or equivalent capacity by an incumbent cable operator [ICO] operating under such franchise or ordinance;

Why the reference to institutional network?

provided, however, that if such franchise or ordinance requires fewer PEG access channels than the applicable limit specified in paragraph (a), the requirement in the franchise or ordinance shall apply in lieu of such limit;

provided further, that the incumbent cable operator [ICO] may nonetheless be required to activate additional PEG channel(s), up to such limit, to the extent the municipality certifies that such additional channel(s) will be substantially utilized.

How does above relate to fact that state is exclusive franchising authority under bill? If ICO elects to continue under franchise, does franchise supercede bill's PEG requirements?

How does muni "certify" above? What if there's a dispute over the certification? Who resolves?

(c) Any PEG channel designated pursuant to this section that is not substantially utilized by the municipality shall no longer be made available to the municipality, but may be programmed at the video service provider [VSP] or incumbent cable operator's [ICO's] discretion. At such time as the municipality can certify that a channel that has been reclaimed by a video service provider [VSP] or incumbent cable operator [ICO] under this paragraph will be substantially utilized, the video service provider or incumbent cable operator shall restore the reclaimed channel within one hundred and twenty (120) days, but shall be under no obligation to carry that channel on any specified tier of service.

What does "substantially utilized" mean? [See below.] Get rid of passive command (shall no longer be made available)?

Certify that channel has been reclaimed? Certify to who? What does certify mean?

What is a tier of service? Is the intent that the muni can't specify the channel that is designated? (is that what "specified" means?)

Note: if VSP is defined to include ICO, why keep referring to both throughout the draft?

(d) For purposes of this section, a PEG channel shall be considered "substantially utilized" when 12 hours are programmed on that channel each calendar day and at least 80% of that programming is non-repeat and locally-produced.

(e) Except as set forth in this section, a municipality may not require a video service provider [VSP] or incumbent cable operator [ICO] to provide any funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity.

Consistent reference to PEG?

The operation of any PEG access channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the municipality receiving the benefit of such channel, and the video service provider [VSP] or incumbent cable operator [ICO] shall bear only the responsibility for the transmission of the programming on each such channel to subscribers.

(f) The municipality must ensure that all transmissions of content and programming provided by or arranged by them to be transmitted over a PEG channel by a video service provider [VSP] or incumbent cable operator [ICO] are provided and submitted to the video service provider [VSP] or incumbent cable operator [ICO] in a manner or form that is capable of being accepted and transmitted by such video service provider [VSP] or incumbent cable operator [ICO] over its network without further alteration or change in the content or transmission signal, and which is compatible with the technology or protocol, including IPTV, utilized by the provider to deliver video service.

What follows if muni doesn't do above?

What is IPTV?

> IPTV (Internet Protocol Television) is a system where a digital television service is delivered using the Internet Protocol over a network infrastructure, which may include delivery by a broadband connection. For residential users, IPTV is often provided in conjunction with Video on Demand and may be bundled with Internet services such as Web access and VoIP. The commercial bundling of IPTV, VoIP and Internet access is referred to as a Triple Play. Adding the mobile voice service leads to the Quadruple Play denomination. IPTV is typically supplied by a broadband operator using a closed network infrastructure. This closed network approach is in competition with the delivery of TV content over the public Internet. This type of delivery is widely called TV over Internet or Internet Television. In businesses, IPTV may be used to deliver television content over corporate LANs and business networks. Perhaps a simpler definition of IPTV would be television content that, instead of being delivered through traditional formats and cabling, is received by the viewer through the technologies used for computer networks.
>
> http://en.wikipedia.org/wiki/IPTV

(g) The municipality shall make the programming of any PEG access channel available to all video service providers [VSPs] and incumbent cable operators [ICOs] in such municipality in a nondiscriminatory manner. Each video service provider [VSP] or incumbent cable operator [ICO] shall be responsible for providing the connectivity to the municipality's PEG access channel distribution point up to the first 200 feet.

What does command regarding 200 feet mean? The "first" what?

Where technically necessary and feasible, video service providers [VSPs] and incumbent cable operators [ICOs] in the same municipality shall use reasonable efforts and shall negotiate in good faith to interconnect their networks on mutually acceptable rates, terms, and conditions for the purpose of transmitting PEG programming within such municipality.

Where is duty to retransmit stated? What does retransmit mean?

What are the consequences if VSP or ICO does not act in good faith? Who resolves?

The entity requesting interconnection shall be responsible for any costs for such interconnection, including signal transmission from the origination point to the point of interconnection. Interconnection may be accomplished by direct cable microwave link, satellite, or other reasonable method of connection.

Where is the duty to interconnect stated? Why is interconnection required?

(h) No state agency or any municipality may require a video service provider [VSP] or incumbent cable operator [ICO] to provide any institutional network or equivalent capacity on its video service or cable network.

What is an institutional network?

Note: another reference to "cable network". How different from video service network?

Use word other than "agency" to broaden applicability of prohibition?

(5) VIDEO SERVICE PROVIDER FEE.

(a) Notwithstanding s. 66.0611, a video service provider [VSP] shall, on a quarterly calendar basis, calculate and pay to the municipality a video service provider fee [VSPF] based on the percentage of the video service provider's [VSP's] gross revenues that is specified in par. (b). A video service provider [VSP] shall remit the fee to the municipality no later than 45 days after the end of each quarter.

> 66.0611 Political subdivisions prohibited from levying tax on incomes. No county, city, village, town, or other unit of government authorized to levy taxes may assess, levy or collect any tax on income, or measured by income, and any tax so assessed or levied is void.

(b) The percentage applied to a video service provider's [VSP's] gross receipts under par. (a) shall be 5 percent or one of the following, whichever is less.

> 1. The percentage of gross revenues that the incumbent cable operator [ICO] was required to pay as a franchise fee to the municipality on the date of enactment.
>
> ***What if no ICO paid a fee? Is that a possibility? I.e., is every municipality in the state receiving a fee from an ICO on eff. date of bill?***
>
> ***If the VSO is an ICO, then the ICO stays the same, or does fee decrease under 2. below? In other words, how do requirements apply if VSO is an ICO?***
>
> 2. If more than one cable operator pays a franchise fee to the municipality based on gross revenues on the date of enactment, the lowest such percentage.

(c) 1. A municipality may, upon reasonable written request but no more than once with respect to any given three year period, review the business records of the holder of a state-issued video service franchise [VSF] to the extent necessary to ensure proper and accurate payment of the video service provider fee [VSPF].

> ***If the limit is once per 3 years, why add "reasonable" as requirement?***

2. Neither the municipality nor the video service provider [VSP] may bring any suit arising out of or relating to the video service provider fee [VSPF] amounts allegedly due to the municipality, unless the parties have first participated in and completed good-faith settlement discussions.

Is "settlement" the right word if negotiations are pre-law suit?

All negotiations pursuant to this section shall be strictly confidential and shall be treated as compromise and settlement negotiations for purposes of any future litigation.

"Strictly" confidential versus confidential?

What does treatment as compromise and settlement mean?

3. Any suit with respect to a dispute arising out of or relating to the amount of the video service provider fee [VSPF] paid or allegedly due must be filed by the municipality or by the video service provider [VSP] seeking a refund of an alleged overpayment, in a court of competent jurisdiction within three (3) years following the end of the calendar quarter to which the disputed amount relates;

Delete "competent jurisdiction"?

provided, however, that such time period may be extended by written agreement between the municipality and the video service provider [VSP], and shall automatically be extended by the period of time of the settlement negotiations described in paragraph 2.

Settlement negotiations pre-law suit?

4. Each party shall bear its own costs incurred in connection with any and all of the activities and procedures set forth in this section.

Is above limited to attorney fees and costs associated with action? What if muni prevails in court? No costs awarded?

(d) A video service provider [VSP] may identify and collect the amount of a video service provider fee [VSPF] as a separate line item on subscriber bills.

(e) The video service provider fee [VSPF] allowed by this section is in lieu of any permit fee, encroachment fee, degradation fee or other fee assessed on a state-issued video service franchise holder for its occupation of or work within the public rights-of-way.

What is intent of "in lieu"? Prohibiting any other fee by muni? Relationship to compensation under s. 66.0425?

(6) DISCRIMINATION PROHIBITED

(a) Subject to paragraph (b), no video service provider [VSP] shall deny access to video service [VS] to any group of potential residential subscribers in the franchise area because of the race or income of the residents in the local area in which the group resides.

Has "franchise area" been used consistently?

(b) It is a defense to an alleged violation of paragraph (a) of this section if the video service provider [VSP] has met either of the following conditions:

Defense? To lawsuit? Is defense right way to say this? What is intent?

1. Within three years of the date it began providing video service [VS] under this act, at least twenty-five percent of households with access to the provider's video service are low-income households.

What about ICOs? They provided service before act.

2. Within five years of the date it began providing video service under this act and from that point forward, at least thirty percent of the households with access to the provider's video service are low-income households.

If comply with above, no action for violation of (a) can be brought? Any constitutional objections to that result?

(c) A video service provider [VSP] that uses telecommunications facilities to provide video service [VS] and has more than five hundred thousand telephone access lines in this state shall provide access to its video service [VS] to a number of households equal to:

What is a telecommunications facility?

What are consequences if VSP does not satisfy below requirements?

What does provide access mean? Different than having a specified number of actual customers?

1. At least twenty-five percent of the households in its telecommunications service area in the state within three years after the date it began providing video service [VS] under this act;

What is a telecommunications service area?

How apply to ICOs that were providing VS before act?

2. Not less than fifty percent of these households within six years after the date it began providing video service [VS] under this act. A video service provider [VSP] is not required to meet the fifty percent requirement of this section until two years after at least thirty percent of the households with access to the video service provider's video service subscribe to the service for six consecutive months.

How does 1st sentence relate to 2nd sentence? 2nd sentence trumps 6-year command in 1st sentence?

(d) Each video service provider [VSP] described in subsection (c) shall file an annual report with the Department regarding the progress that has been made towards compliance with this section.

(e) Except for satellite service, a video service provider [VSP] may satisfy the requirements of this section through the use of alternative technology that offers service, functionality, and content demonstrably similar to the service, functionality, and content provided through the provider's video service network.

So the command to provide access to VS can be satisfied by something other than a VS network, but you can't use satellites?

The technology used to comply with the requirements of this paragraph shall include local public, educational and government channels and messages over the emergency alert system.

What is logical relationship to rest of paragraph? Consistency in references to PEG?

(f) A video service provider [VSP] may apply to the department for a waiver of or for an extension of time to meet the requirements of this Section, if 1 or more of the following apply:

Waiver applies to nondiscrim in (a)?

1. The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.

2. Developments or buildings not being subject to competition because of existing exclusive service arrangements.

3. Developments or buildings being inaccessible using reasonable technical solutions under commercially reasonable terms and conditions.

4. Natural disasters.

5. Factors beyond the control of the video service provider [VSP].

(g) The Department may grant the waiver or extension only if the provider has made substantial and continuous effort to meet the requirements of this section. If

an extension is granted, the department shall establish a new compliance deadline. If a waiver is granted, the department shall specify the requirement or requirements waived.

(h) Notwithstanding any other provision of this Act, a video service provider [VSP] using telecommunications facilities to provide video service [VS] is not obligated to provide such service [VS] outside the provider's existing telecommunications service area, and a video service provider [VSP] that was an incumbent cable operator [ICO] on the date of enactment is not obligated to provide such service outside of the area in which the incumbent cable operator provides cable service at the time it obtains the state-issued video service franchise.

What is a telecommunications service area? Existing as of what date?

Logical relationship to rest of section?

(i) Notwithstanding any other provision of this Act, a video service provider [VSP] shall not be required to comply with, and a local unit of government or the department may not impose or enforce, any mandatory build-out or deployment provisions or schedules, except as required by this Section.

What is a build-out or deployment?

(8) TRANSFERS/ASSIGNMENT OF STATE-ISSUED VIDEO SERVICE FRANCHISE.

A state-issued video service franchise [VSF] is fully transferable to any successor-in-interest to the holder whether such successor-in-interest arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction.

A notice of transfer shall be promptly filed with the department and the affected Municipalities within ten (10) days of the completion of such transfer, but neither the department nor any municipality or any other local government entity shall have any authority to review or require approval of any transfer of a state-issued video service franchise [VSF], regardless of whether the transfer arises through merger, sale, assignment, restructuring, change of control, or any other type of transaction.

(9) COMPLIANCE ENFORCEMENT.

An affected municipality, video service provider [VSP] or incumbent cable operator [ICO] may bring an action in any court of competent jurisdiction to enforce any requirement under this Act, and the court shall have exclusive jurisdiction to enforce any such requirement or settle such dispute.

Eliminate "competent jurisdiction"? Why add "exclusive jurisdiction"? Is the point the Department has no enforcement power?

Should a video service provider [VSP] be found by a court of competent jurisdiction to be in noncompliance with the requirements of this Act, the court shall issue an order to the video service provider directing a cure for such noncompliance within a specified reasonable period of time.

Why necessary to limit court power?

(10) CUSTOMER SERVICE STANDARDS.

Upon 90 days' notice, a municipality may require a video service provider [VSP] to adopt the customer service requirements set forth in 47 C.F.R. Section 76.309(c) in its provision of video service.

See CFR in separate document.

Limit to fed regs as of eff. date, or incorporate subsequent revisions?

Fed regs allow more stringent requirements, but bill should limit to requirements set forth in par. (c) of fed regs? [Yes, see below]

Neither the Department nor any municipality shall have the authority to enact or adopt additional or different customer service requirements that are specific to the provision of video service [VS].

No video service provider [VSP] will be subject to any customer service requirements if there are two or more persons offering cable or video service, excluding direct-to-home satellite service, in the relevant municipality, or if the video service provider [VSP] is subject to effective competition as defined in 47 C.F.R. Section 76.905 in such municipality.

Why distinguish between cable and video service?

What is direct-to-home satellite service?

What if fed reg changes?

(11) LIMITATION ON RATE REGULATION

Neither the State, any instrumentality of the State, the Department, nor any municipality shall regulate the rates charged for any video service [VS] or cable service [CS] by a video service provider [VSP] or incumbent cable operator [ICO] in any municipality in which two or more unaffiliated video service providers [VSPs] or incumbent cable operators [ICOs] are providing cable [CS] or video service [VS].

What does "unaffiliated" mean?

Why distinguish between CS and VS?

Any such rate regulation shall automatically cease upon the date that two or more unaffiliated video service providers or incumbent cable operators are providing cable or video service, regardless of whether the affected video service provider or incumbent cable operator has sought a determination of effective competition from the Federal Communications Commission.

"Automatically"? So rate reg okay until conditions described above are satisfied. But who determines when conditions are satisfied? What if there is a dispute over whether conditions are satisfied?

(12) MUNICIPAL CABLE SYSTEM COSTS.

Same as s. 66.0419 (3m) under current law.

New definitions okay to use in current law provision?

Okay to refer only to cable service?

(a) Except for costs for any of the following, a municipality that owns and operates a cable system, or an entity owned or operated, in whole or in part, by such a municipality, may not require nonsubscribers of the cable system to pay any of the costs of the cable system:

1. Public, educational, and governmental access channels.

2. Debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of a cable system.

3. The provision of broadband service by the cable system, if the requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

(am) Paragraph (a) does not apply to a municipality that, on March 1, 2004, was providing cable service to the public.

(b) Paragraph (a) does not apply to a municipality if all of the following conditions apply:

1. On November 1, 2003, the public service commission has determined that the municipality is an alternative telecommunications utility under s. 196.203.

2. A majority of the governing board of the municipality votes to submit the question of supporting the operation of a cable system by the municipality to the electors in an advisory referendum and a majority of the voters in the municipality voting at the advisory referendum vote to support the operation of a cable system by the municipality.

Sections 66.0421 and 66.0422 are amended to refer to VS in addition to CS.

Why continue the distinction between VS and CS?

Section 196.204 (7) is repealed.

196.204 (7) (a) Except for public service information such as time and temperature or directory information, a telecommunications utility may not provide electronically published news, feature or entertainment material of the type generally published in newspapers or offered in a broadcast service, or electronic advertising services, except through an electronic publishing subsidiary or affiliate. A telecommunications utility may, without editing content, resell news, feature or entertainment material of the type generally published in newspapers or offered in a broadcast service, if the material is purchased from an

unaffiliated entity or from an electronic publishing subsidiary or affiliate that makes the material available to all other persons under the same rates, terms and conditions.

196.204 (7) (b) contains exceptions.