



07-1914

**Kunkel, Mark**

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**From:** Kunkel, Mark  
**Sent:** Monday, January 29, 2007 4:38 PM  
**To:** Raschka, Adam; Stolzenberg, John  
**Subject:** Questions re: video service franchise bill

**Attachments:** Video Service Questions.doc

Attached is a Word document with some questions regarding the proposal. If any of my questions are unclear, I would be happy to discuss them in detail.

Please let me know how you want to proceed. As we move forward, I will put this project at the top of my "to do" list.



Video Service  
Questions.doc (4...

Attachment to  
Jan. 29 email

## **Definitions**

1. As defined, I don't see how "cable service" is different from "video service". "Cable service" has the meaning given under federal law, which is, in part, the one-way transmission to subscribers of "video programming", which is defined as programming comparable to programming provided by a broadcast television station. The draft defines "video service" as, in part and with certain exceptions: 1) "video programming", 2) "cable service", or 3) "open-video service". Under the draft, the definition of "video programming" is comparable to the federal definition. ("Open-video service" is not defined.) In essence, "video service" and "cable service" are both defined to mean programming comparable to broadcast television. If they are the same thing, there's no need to use 2 different terms. Is the distinction only that different entities provide the service? If so, it would be less confusing if only one term for the service is used.
2. Depending on how the issue described above is resolved, I want to make sure that the definitions of "cable system" and "video service network" are consistent.
3. In general, note that if a video service provider (VSP) is defined to include an incumbent cable operator (ICO), then there is no need to say "including an ICO" when you refer to a VSO. See also subs. (9) and (11), which refer to VSPs and ICOs. Or are some of the references to ICOs throughout the bill intended to refer to ICOs that have not elected to be regulated as VSOs? If so, perhaps the references should be clarified.
4. As noted above, "open-video service" is not defined and I don't know what it means. (I should have flagged this issue in LRB-0131/1.)
5. Why does the definition of "incumbent cable operator" refer to both "cable service" and "video service"?
6. The term "cable operator" is only used once in the draft, at sub. (5) (b) 2., and I wonder if that reference should be instead to "incumbent cable operator", rather than "cable operator". If "cable operator" is not used, no definition is necessary.
7. The definition of "incumbent cable operator" refers to an ordinance granted under s. 66.0419 (3) (b). I would refer instead to a franchise granted under an ordinance enacted under that statute.
8. The draft refers to "affiliates" and "unaffiliated entity", but does not define those terms. See, for example, sub. (11). Is it okay to use the definition in s. 66.0419 (2) (a)?
9. In subd. 2. e. of the definition of "gross receipts", there is a reference to an FCC user fee. What is that? Also, subd. 2. g. refers to "telecommunications service". Should that term be defined to have the meaning given in s. 196.01 (9m)? In addition, subd. 2. h. refers to "I-Net" support. Is that industry jargon for "institutional network"? ("Institutional network" is used in sub. (4) (b) and (h).) If so, "institutional network" should be used instead, as well as defined.

10. I will probably move the requirement to use GAAP out of the definition of "gross receipts" and put it elsewhere. (In general, we prefer not to include substantive duties in definitions.)

11. The defined terms regarding public, educational, and governmental access channels are not used with grammatical consistency throughout the draft. I would probably define 2 terms, such as "PEG channels" and "PEG facilities", and use those terms throughout the draft.

### ***Franchises***

12. In general, I want to make sure I understand the new franchising regime. **ICOs:** As I understand it, an ICO can continue to provide video service under a franchise granted under current law, or it can extinguish that franchise and obtain a new franchise under the bill. Regardless of whether an ICO chooses to extinguish a franchise under current law, the franchises under current law will be phased out, because no new franchises can be issued under current law, and no existing franchises can be renewed or extended under current law. Therefore, if an ICO opts to continue a franchise under current law, the ICO will eventually have to obtain a franchise under the bill when the current law franchise expires. **Non-ICOs:** A person that is not an ICO must obtain a franchise under the bill to provide video service. Is the foregoing correct?

13. Does DFI actually issue a piece of paper to a VSP that constitutes the franchise? What is contained in that piece of paper? For example, are the PEG requirements set forth in the franchise, or are they set forth only in the statutes? Also, is the franchise area set forth in the franchise, or only in the application for the franchise?

14. Subsection (2) (h) refers to a "franchise agreement" (which is the only reference to "franchise agreement" in the draft). Is that the same thing as the franchise?

15. What are the grounds for DFI to issue or refuse to issue a franchise? Also, DFI has no authority to revoke a franchise, correct?

16. Are all franchise fees under current law based on a percentage of revenues? The definition does not make this clear, but this seems to be assumed for purposes of sub. (2) (c).

17. Under sub. (2) (c), if a municipality fails to notify an applicant about fee or PEG requirements, the applicant, and no other VSP, has to pay a fee or satisfy PEG requirements until the municipality provides notice. What if a municipality provides notice for one VSP, and fails to provide notice for a subsequent 2nd VSP? Does this suspend the requirements for the first VSP until the municipality provides notice for the 2nd VSP?

### ***PEG channels***

18. If a municipality receives PEG channels on the effective date of the bill, all VSPs serving that municipality must provide PEG channels in the same number that the municipality is receiving. If the municipality does not receive any PEG channels, then, if the municipality has a population of 50,000 or more, VSPs must provide for 3 PEG channels and if the municipality has a population of less than 50,000, VSPs must provide 2 PEG channels. What if a municipality grows in population (or loses population) after the effective date of the bill? Does the required number of channels change? Also, if the foregoing rules are correct, I don't think that you need to also provide that each VSP must provide the same number of PEG channels, because that will necessarily result from the application of the rules.

19. There is an exception to the above rules for VSPs that share the same "headend" or "video hub office." I don't know what these terms mean and I don't understand how the exception works.

20. There are 2 additional exceptions to the above rules:

First, sub. (4) (b) states that if a franchise in effect on the effective date of the bill requires a smaller number of PEG channels in a municipality, then the smaller number is the number required for all VSPs serving that municipality. Is that correct? However, sub. (4) (b) also requires activation of additional channels under certain circumstances, but I do not understand this additional requirement.

Second, if a PEG channel required under the foregoing rules is not substantially utilized, then VSPs may program the channel for other purposes. However, if a municipality certifies that the channel will be substantially utilized, a VSP that has reprogrammed the channel must restore the PEG channel. There is a test for determining whether a channel is substantially utilized. However, I'm not sure what constitutes "certification" by a municipality. Perhaps a different word should be used? Also, how are dispute over utilization resolved? In general, because it does not appear that DFI has any enforcement authority, must a municipality (or VSP) go to court to resolve the dispute?

21. Subsection (4) (a) says that a VSP "may" provide a PEG channel on a service tier that is viewed by more than 50% of its customers. Should "may" be "shall"? Also, I'm not sure what a "service tier" is. ("Tier of service" is also referenced in sub. (4) (c).) Also, does the 50% rule apply continuously? In other words, if a given service tier is viewed by less than 50% on the effective date of the bill, and is viewed by more than 50 % at some time after the effective date, the rule would apply at that time?

22. How does the 50% rule relate to sub. (4) (c), which provides that a VSP is under no obligation to carry a reclaimed PEG channel on any specified tier of service? Also, I'm assuming you want to express the idea that a VSP, and not a municipality, gets to decide where to put a reclaimed PEG channel. Is that correct?

23. Subsection (4) (b) mentions "institutional network". How is that different from PEG channels?
24. Subsection (4) (f) mentions "IPTV". I'm not sure what that is and it should be defined or there should be some elaboration. Also, what follows if a municipality fails to comply with sub. (4) (f)? I realize that a VSP could seek a court order requiring compliance, but do you intend to allow or require anything else?
25. I don't understand the first 200 feet connectivity rule in sub. (4) (g). Please elaborate. Regarding the interconnection requirements, is it correct to say that VSPs are required to transmit the PEG programming made available by a municipality? I'm asking because I'm not quite sure who is required to do what with respect to the PEG channels and programs. For example, sub. (4) (g) refers to an entity requesting interconnection. Who would request interconnection from whom and why? Also, what are the consequences if a VSP does not negotiate in good faith, etc.?

### *Fees*

26. Subsection (5) (b) 1. refers to the percentage of gross revenues that an ICO is required to pay a municipality. Are all municipalities currently receiving such fees from ICOs? If not, then the draft should supply a rule for determining a fee for a municipality that does not currently receive a fee.
27. Is it possible that 2 ICOs are currently paying fees to the same municipality, but based on different percentages? If so, is the intended result the ICO that is paying the higher percentage gets to pay the other ICO's lower percentage?
28. Subsection (5) (c) 1., appears to establish the rule that audits are limited to no more than once per 3 year period. Unless I'm mistaken, I would delete "reasonable" because that term doesn't add anything of substance.
29. In sub. (5) (c) 2., it seems odd to refer to "settlement" negotiations in advance of the filing of an action. Perhaps a different term can be used? Also, I'm not a litigator and I don't know what is intended by saying that negotiations shall be treated as compromise and settlement negotiations for purposes of any future litigation. Can you elaborate?
30. Why specify that the negotiations must be "strictly confidential"? Is the intent to specify that the Open Records Law does not apply to release of material related to the negotiation?
31. Is the intent of sub. (5) (c) 4. to deny attorney fees and costs to either side, in the event of litigation, regardless of who prevails?
32. I'm not sure what is supposed to be achieved by sub. (5) (e). Does this provision trump a municipality's right to compensation under s. 66.0425? How does that square

with definition of "franchise fee", which includes compensation required under s. 66.0425?

### ***Discrimination***

33. Regarding sub. (6) (a), where is the franchise area specified? In the franchise granted by DFI, or in the application? Under what circumstances can the franchise area change?

34. The "defense" in sub. (6) (b) is limited to low-income allegations and is not relevant to race allegations, correct? (Also, I don't think "defense" is the right word. I think you mean instead that there is no violation of sub. (6) (a) if sub. (6) (b) is satisfied.) In addition, the operative low income requirements are stated in sub. (6) (b), and sub. (6) (a) imposes no substantive requirements regarding low income. Therefore, I would limit sub. (6) (a) to race, and state the low income requirements in sub. (6) (b).

35. In sub. (6) (c) (intro.), how should "telecommunications facility" be defined? In sub. (6) (c) 1., what is the "telecommunications service area"? (These terms are also used in sub. (6) (h).) Also, what does it mean to "provide access"? Do you mean that a VSP has to actually have the requisite number of customers, or that it should be able to serve potential customers in such numbers?

36. It appears that the 2nd sentence in sub. (6) (c) 2. makes the first sentence irrelevant. Why not get rid of the first sentence?

37. What consequences should follow if a VSP does not satisfy sub. (6) (c)?

38. The time limits in sub. (6) (c) are based on when a VSP begins to provide video service under the bill. What about a VSP that is an ICO that was providing cable service prior to the effective date of the bill?

39. The report required in sub. (6) (d) is limited to compliance with sub. (6) (b), and not sub. (6) (a), correct? Likewise, the waiver in sub. (6) (f) applies only to sub. (6) (b), correct?

40. I don't understand sub. (6) (e). Why mention alternative technology? And how does the 2nd sentence relate to the first?

41. Why is it necessary to "notwithstanding" the rest of the bill in sub. (6) (h) and (i)? Under what circumstances would other provisions of the bill lead to the result that is otherwise forbidden?

42. What is meant by "mandatory build-out or deployment" in sub. (6) (i)?

### ***Compliance and enforcement***

43. Under current drafting practices, we refer to circuit courts, rather than courts of competent jurisdiction. Also, circuit courts have exclusive jurisdiction, so there's no need to specify this. However, maybe your intent is to limit DFI's jurisdiction? If so, that intent should be more clearly expressed.

#### ***Customer service standards***

44. Is your intent to limit the standards to what is included in 47 CFR s. 76.309 (c) as of the effective date of the bill, or do you want to incorporate future changes to the federal regulation?

45. Why is necessary to refer to both video and cable service in sub. (10)? Also, direct-to-home satellite service is a type of "video service", correct? (In order to be a type of "video service", direct-to-home must be provided through facilities located in part in the public rights-of-way.)

#### ***Limitation on rate regulation***

46. In sub. (11), who determines when automatic termination occurs? A court, and not DFI, must resolve a dispute over this issue, correct?

#### ***Municipal cable system costs***

47. Why not amend s. 66.0419 (3m) to refer to video service, and delete the references to cable service? Why should the statute (and other statutes) continue to distinguish between video and cable service?

#### ***Legislative findings***

48. Under our current drafting practices, legislative findings are generally only included in a bill to rebut an argument that a bill is unconstitutional. Your bill could be subject to an attack that it violates the home rule amendment of the constitution. Therefore, it would be appropriate to add a statement that the bill is an enactment of statewide concern to provide for uniform regulation. However, most of the legislative intent language in sub. (1) is not appropriate for this purpose and I cannot include it.

## Kunkel, Mark

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**From:** Raschka, Adam  
**Sent:** Monday, February 05, 2007 12:26 PM  
**To:** Kunkel, Mark  
**Subject:** Response to your questions on LRB 0131

**Attachments:** Responses to LRB Drafter's notes.02.02.07.DOC



Responses to LRB  
Drafter's not...

I'll give you a call this afternoon.

Adam Raschka

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

A Hadmont to  
Feb. 5 email

**Definitions**

1. As defined, I don't see how "cable service" is different from "video service". "Cable service" has the meaning given under federal law, which is, in part, the one-way transmission to subscribers of "video programming", which is defined as programming comparable to programming provided by a broadcast television station. The draft defines "video service" as, in part and with certain exceptions: 1) "video programming", 2) "cable service", or 3) "open-video service". Under the draft, the definition of "video programming" is comparable to the federal definition. ("Open-video service" is not defined.) In essence, "video service" and "cable service" are both defined to mean programming comparable to broadcast television. If they are the same thing, there's no need to use 2 different terms. Is the distinction only that different entities provide the service? If so, it would be less confusing if only one term for the service is used.

**Response:** "Video service" is a broader definition than cable and ensures that any provider offering video programming over the public rights-of-way must obtain a franchise prior to offering that service, regardless of whether the provider agrees that the service is a "cable service" under federal law. Additionally, it is important to maintain both terms because some incumbent cable operators will choose to remain under their existing franchises rather than the new state-issued franchise (see 3 below).

But video service is the same thing as cable service?

2. Depending on how the issue described above is resolved, I want to make sure that the definitions of "cable system" and "video service network" are consistent.

**Response:** See above.

3. In general, note that if a video service provider (VSP) is defined to include an incumbent cable operator (ICO), then there is no need to say "including an ICO" when you refer to a VSO. See also subs. (9) and (11), which refer to VSPs and ICOs. Or are some of the references to ICOs throughout the bill intended to refer to ICOs that have not elected to be regulated as VSOs? If so, perhaps the references should be clarified.

**Response:** The definition of "video service provider" includes only an incumbent cable operator that converts its municipal franchise to a state-issued video service franchise. The references to "incumbent cable operator" in subs (9) and (11) are meant to encompass incumbent cable operators that have not converted their franchises and so are not VSPs.

4. As noted above, "open-video service" is not defined and I don't know what it means. (I should have flagged this issue in LRB-0131/1.)

**Response:** The term "Open video service" should be changed to "open video system" and has the meaning given in (47 U.S.C. § 573.

- not really defined in fed code  
- check (ATV franchise?)

5. Why does the definition of "incumbent cable operator" refer to both "cable service" and "video service"?

**Response:** *AT&T has argued that use of switched video technology to deliver video programming takes the service outside the definition of "cable service." If AT&T is correct, then to the extent an incumbent cable operator chose to deliver programming using that technology, it would be offering a "video service," not a "cable service."*

*check CATV treatise ?*

6. The term "cable operator" is only used once in the draft, at sub. (5) (b) 2., and I wonder if that reference should be instead to "incumbent cable operator", rather than "cable operator". If "cable operator" is not used, no definition is necessary.

**Response:** *You are correct; the reference in 5(b)(2) should be to the "incumbent cable operator."*

7. The definition of "incumbent cable operator" refers to an ordinance granted under s. 66.0419 (3) (b). I would refer instead to a franchise granted under an ordinance enacted under that statute.

**Response:** *Incumbent cable operators' current franchises have been granted in numerous ways, not all pursuant to ordinances. Therefore, we suggest retaining the current language.*

*no ordinances are granted under 66.0419(3)(b)  
— I think they missed a pt ?*

8. The draft refers to "affiliates" and "unaffiliated entity", but does not define those terms. See, for example, sub. (11). Is it okay to use the definition in s. 66.0419 (2) (a)?

**Response:** *Yes.*

9. In subd. 2. e. of the definition of "gross receipts", there is a reference to an FCC user fee. What is that? Also, subd. 2. g. refers to "telecommunications service". Should that term be defined to have the meaning given in s. 196.01 (9m)? In addition, subd. 2. h. refers to "I-Net" support. Is that industry jargon for "institutional network"? ("Institutional network" is used in sub. (4) (b) and (h).) If so, "institutional network" should be used instead, as well as defined.

**Response:**

*-- The FCC user fee is a regulatory fee assessed by the FCC on cable operators on a per subscriber basis. Section 9 of the Communications Act of 1934 (47 U.S.C. § 159) requires the FCC to collect regulatory fees to recover the regulatory costs associated with its enforcement, policy and rulemaking activities.*

-- "Telecommunications service" should be defined by reference to Wis. Stats. 196.01(9m).

-- An "I-Net" is an "institutional network." An I-Net is a separate network or capacity on a cable system provided by cable operators to local governments, generally as a condition of a municipal franchise agreement. The I-Net connects government, educational and community institutions. Federal law defines an "institutional network as "a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers." 47 U.S.C. § 531(f).

10. I will probably move the requirement to use GAAP out of the definition of "gross receipts" and put it elsewhere. (In general, we prefer not to include substantive duties in definitions.)

**Response:** We suggest adding it to Sub. 5, as a new subsection (f), as follows:

**(f) All determinations and computations made under this subsection shall be pursuant to generally accepted accounting principles ("GAAP").**

11. The defined terms regarding public, educational, and governmental access channels are not used with grammatical consistency throughout the draft. I would probably define 2 terms, such as "PEG channels" and "PEG facilities", and use those terms throughout the draft.

**Response:** While the terms "PEG channel" and "PEG access channel" should be made consistent, the term "PEG programming" is meant to be distinct. The term "PEG facilities" is not used in the bill except to note the federal definition.

→ elaborate on distinction?

### **Franchises**

12. In general, I want to make sure I understand the new franchising regime. **ICOs:** As I understand it, an ICO can continue to provide video service under a franchise granted under current law, or it can extinguish that franchise and obtain a new franchise under the bill. Regardless of whether an ICO chooses to extinguish a franchise under current law, the franchises under current law will be phased out, because no new franchises can be issued under current law, and no existing franchises can be renewed or extended under current law. Therefore, if an ICO opts to continue a franchise under current law, the ICO will eventually have to obtain a franchise under the bill when the current law franchise expires. **Non-ICOs:** A person that is not an ICO must obtain a franchise under the bill to provide video service. Is the foregoing correct?

**Response:** *Yes, this is correct.*

13. Does DFI actually issue a piece of paper to a VSP that constitutes the franchise? What is contained in that piece of paper? For example, are the PEG requirements set forth in the franchise, or are they set forth only in the statutes? Also, is the franchise area set forth in the franchise, or only in the application for the franchise?

**Response:** *Yes, the DCI would issue a piece of paper that includes the grant of authority and references the franchise area described in the application, specifically conditioned on compliance with the statute and accuracy of the franchise application information. It would not repeat the PEG or other statutory requirements nor would it impose any additional obligations.*

14. Subsection (2) (h) refers to a "franchise agreement" (which is the only reference to "franchise agreement" in the draft). Is that the same thing as the franchise?

**Response:** *It instead should refer to "franchise application."*

15. What are the grounds for DFI to issue or refuse to issue a franchise? Also, DFI has no authority to revoke a franchise, correct?

**Response:** *The DFI must issue the franchise if the information is accurate and complete. It may refuse to issue a franchise for incomplete information or for failure to comply with the requirements of the statute (e.g., refusal to state the necessary items in the affidavit). The DFI has no authority under the draft to revoke the franchise except pursuant to court order.*

16. Are all franchise fees under current law based on a percentage of revenues? The definition does not make this clear, but this seems to be assumed for purposes of sub. (2) (c).

**Response:** *Most franchise fees under current law are based on a percentage of revenue. They are not required to be assessed in this manner, but however they are assessed, must comply with the cap established by federal law on franchise fees of five percent of gross revenues from cable service. See 47 U.S.C. § 542(b) ("the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues from the operation of the cable system to provide cable services.")*

17. Under sub. (2) (c), if a municipality fails to notify an applicant about fee or PEG requirements, the applicant, and no other VSP, has to pay a fee or satisfy PEG

requirements until the municipality provides notice. What if a municipality provides notice for one VSP, and fails to provide notice for a subsequent 2nd VSP? Does this suspend the requirements for the first VSP until the municipality provides notice for the 2nd VSP?

***Response: Yes. Each time the municipality fails to notify a VSP of the required fee and PEG channels, the requirement is suspended for all VSPs and incumbent cable operators in the municipality (in order to preserve a level playing field).***

### ***PEG channels***

18. If a municipality receives PEG channels on the effective date of the bill, all VSPs serving that municipality must provide PEG channels in the same number that the municipality is receiving. If the municipality does not receive any PEG channels, then, if the municipality has a population of 50,000 or more, VSPs must provide for 3 PEG channels and if the municipality has a population of less than 50,000, VSPs must provide 2 PEG channels. What if a municipality grows in population (or loses population) after the effective date of the bill? Does the required number of channels change? Also, if the foregoing rules are correct, I don't think that you need to also provide that each VSP must provide the same number of PEG channels, because that will necessarily result from the application of the rules.

***Response: The requirement that all VSPs and incumbent cable operators provide the same number of PEG channels is critical, because many incumbent cable operators have terms in their franchise agreements that allow the municipality to increase periodically the number of PEG channels, such that the PEG obligation could become disparate over time. The required number of channels would change as the population of a municipality changes.***

19. There is an exception to the above rules for VSPs that share the same "headend" or "video hub office." I don't know what these terms mean and I don't understand how the exception works.

***Response: A "headend" (term used by traditional cable operator) or "video hub office" (term used by AT&T) is a facility from which providers distribute programming to subscribers in a particular community. Under this exception, if multiple communities are served by the same headend, the total number of PEG channels on the channel line-up shall be as provided in this section; each municipality does not get its own allotment. For example, if a headend serves three municipalities, each with a population of 20,000, the total number of PEG channels on the channel line-up is three (aggregated population is over 50,000 so three PEG channels), not six (each municipality does not get two PEG channels of its own). "Headend" is used in various sections of the federal Cable Act, see 47 U.S.C. §§ 522(1), 534, 535, but it is not defined there. Likewise, we do not think a definition is necessary or appropriate here.***

20. There are 2 additional exceptions to the above rules:

First, sub. (4) (b) states that if a franchise in effect on the effective date of the bill requires a smaller number of PEG channels in a municipality, then the smaller number is the number required for all VSPs serving that municipality. Is that correct? However, sub. (4) (b) also requires activation of additional channels under certain circumstances, but I do not understand this additional requirement.

***Response: This exception provides for the situation in which a municipality currently only needs and has required a smaller number of PEG channels than the statute would allow, on the theory that if the municipality needed more PEG channels it would have already requested them of the incumbent and there is no need to force the provider to give up channel capacity in the absence of a demonstrated need. However, to the extent a municipality certifies that it does in fact need the channels (by showing those channels would be substantially utilized), it can get them.***

Second, if a PEG channel required under the foregoing rules is not substantially utilized, then VSPs may program the channel for other purposes. However, if a municipality certifies that the channel will be substantially utilized, a VSP that has reprogrammed the channel must restore the PEG channel. There is a test for determining whether a channel is substantially utilized. However, I'm not sure what constitutes "certification" by a municipality. Perhaps a different word should be used? Also, how are dispute over utilization resolved? In general, because it does not appear that DFI has any enforcement authority, must a municipality (or VSP) go to court to resolve the dispute?

***Response: "Certification" is the term commonly used. It would require only that the municipality submit a sworn statement that it has programming that meets the requirements. Disputes over utilization should be easily resolved by the parties themselves; the only questions (how many hours per day, whether the programming is excessively repetitive) are fairly easily verifiable. If necessary, the parties could go to court to resolve the dispute (same procedure as generally exists today).***

21. Subsection (4) (a) says that a VSP "may" provide a PEG channel on a service tier that is viewed by more than 50% of its customers. Should "may" be "shall"? Also, I'm not sure what a "service tier" is. ("Tier of service" is also referenced in sub. (4) (c).) Also, does the 50% rule apply continuously? In other words, if a given service tier is viewed by less than 50% on the effective date of the bill, and is viewed by more than 50 % at some time after the effective date, the rule would apply at that time?

***Response: The "may" should be "shall." A "tier" of service is a defined under federal law as a group of channels offered together for a set price. See 47 U.S.C. §§ 522(3), (17) (defining "service tier"), and this definition could be incorporated by reference if you believe necessary. The 50% requirement would apply continuously; if subscription***

*to a particular tier dropped below 50% of subscribers, the PEG channels would have to be moved to a different tier.*

22. How does the 50% rule relate to sub. (4) (c), which provides that a VSP is under no obligation to carry a reclaimed PEG channel on any specified tier of service? Also, I'm assuming you want to express the idea that a VSP, and not a municipality, gets to decide where to put a reclaimed PEG channel. Is that correct?

***Response: Yes. If the municipality loses the PEG channel by failing to program it, then even if the channel is reclaimed, the provider has no obligation to place it on a tier reaching 50% of subscribers. This is because it is extremely costly and disruptive to move channels on such tiers.***

23. Subsection (4) (b) mentions "institutional network". How is that different from PEG channels?

***Response: See response to Q9, above. Generally, an institutional network is used by the municipality for its own internal purposes and communications needs, while PEG channels are used by the municipality to provide programming to community residents.***

24. Subsection (4) (f) mentions "IPTV". I'm not sure what that is and it should be defined or there should be some elaboration. Also, what follows if a municipality fails to comply with sub. (4) (f)? I realize that a VSP could seek a court order requiring compliance, but do you intend to allow or require anything else?

***Response: "IPTV" is short for "Internet protocol television." Internet protocol (IP) is a technical set of standard conventions governing the means by which data packets travel to their destination. AT&T delivers video programming using IP. Traditional cable operators use a mix of IP and other transmission protocols in their networks. All compliance enforcement under the bill is intended to be addressed by section 9.***

25. I don't understand the first 200 feet connectivity rule in sub. (4) (g). Please elaborate. Regarding the interconnection requirements, is it correct to say that VSPs are required to transmit the PEG programming made available by a municipality? I'm asking because I'm not quite sure who is required to do what with respect to the PEG channels and programs. For example, sub. (4) (g) refers to an entity requesting interconnection. Who would request interconnection from whom and why? Also, what are the consequences if a VSP does not negotiate in good faith, etc.?

***Response: The "first 200 feet" language is a limit on the physical amount of plant that a provider is required to provide for the transmission of PEG programming from a studio or PEG programming distribution point to the video service network. The VSPs***

*must transmit any PEG programming the municipality provides; they are prohibited by federal law from altering it and federal law provides that distributors have no liability for any PEG programming content. See 47 U.S.C. § 531(e). However, the distributors are not required to produce the programming themselves (as municipalities today sometimes require).*

*Regarding interconnection, the most likely scenario is that a new entrant would seek interconnection with the incumbent operator's network to obtain access to a municipality's PEG programming rather than extend its own network to the municipality's PEG distribution point. Failure to comply with the requirement of the Act would lead to enforcement under section 9.*

### *Fees*

26. Subsection (5) (b) 1. refers to the percentage of gross revenues that an ICO is required to pay a municipality. Are all municipalities currently receiving such fees from ICOs? If not, then the draft should supply a rule for determining a fee for a municipality that does not currently receive a fee.

*Response: The majority of municipalities currently receive franchise fees from incumbent cable operators. We suggest the following language for determining a fee for a municipality that does not currently receive a fee:*

*In any municipality where no franchise fee applied on the date of enactment of this Act, such municipality may, upon 90 days notice to all video service providers elect to impose a video service provider fee, but in no event may such fee exceed 5% of a video service provider's gross revenues.*

27. Is it possible that 2 ICOs are currently paying fees to the same municipality, but based on different percentages? If so, is the intended result the ICO that is paying the higher percentage gets to pay the other ICO's lower percentage?

*Response: It is possible that incumbent cable operators serving the same municipality could be paying a different percentage, although that happens relatively rarely. The bill would not affect those payments, unless the ICO chose to convert its franchise to the state-issued franchise. In that case, if there were another ICO paying at a lower percentage, the ICO converting to the state-issued franchise would, as a VSP, pay that lower rate.*

28. Subsection (5)(c) 1., appears to establish the rule that audits are limited to no more than once per 3 year period. Unless I'm mistaken, I would delete "reasonable" because that term doesn't add anything of substance.

***Response: The term "reasonable" is meant both to suggest that reasonable notice must be given and to limit the not-uncommon occurrence of a municipality auditing a provider for various reasons unrelated to a desire to ensure proper payment.***

29. In sub. (5)(c) 2., it seems odd to refer to "settlement" negotiations in advance of the filing of an action. Perhaps a different term can be used? Also, I'm not a litigator and I don't know what is intended by saying that negotiations shall be treated as compromise and settlement negotiations for purposes of any future litigation. Can you elaborate?

***Response: The term "settlement" is meant to refer to the settling of the dispute over whether additional franchise fees are due to be paid or refunded. The language regarding treatment of the discussions for purposes of future litigation means, briefly, that offers or concessions made in those negotiations cannot be used against a party in court as evidence.***

30. Why specify that the negotiations must be "strictly confidential"? Is the intent to specify that the Open Records Law does not apply to release of material related to the negotiation?

***Response: The intent is to ensure that the parties can engage in good faith negotiations without fear that any compromise offers made will be used against them should settlement not be reached.***

31. Is the intent of sub. (5) (c) 4. to deny attorney fees and costs to either side, in the event of litigation, regardless of who prevails?

***Response: Yes.***

32. I'm not sure what is supposed to be achieved by sub. (5) (e). Does this provision trump a municipality's right to compensation under s. 66.0425? How does that square with definition of "franchise fee", which includes compensation required under s. 66.0425?

***Response: The intent of 5(e) is to ensure that municipalities do not attempt to collect additional fees (as sometimes occurs now) in the name of rights-of-way "permitting fees" or others. The video service provider fee is the entire compensation a municipality is to receive for a video service provider's occupation and use of the rights-of-way. This fee trumps a municipality's right to compensation under 66.0425. The video service provider fee is the "franchise fee" equivalent for video service providers.***

***Discrimination***

33. Regarding sub. (6) (a), where is the franchise area specified? In the franchise granted by DFI, or in the application? Under what circumstances can the franchise area change?

**Response:** *The franchise area is specified by the applicant in the affidavit. See 2(b)(5). It can be changed by the VSP. See 2(h). The DFI would not need or be authorized to approve such changes.*

34. The "defense" in sub. (6) (b) is limited to low-income allegations and is not relevant to race allegations, correct? (Also, I don't think "defense" is the right word. I think you mean instead that there is no violation of sub. (6) (a) if sub. (6) (b) is satisfied.) In addition, the operative low income requirements are stated in sub. (6) (b), and sub. (6) (a) imposes no substantive requirements regarding low income. Therefore, I would limit sub. (6) (a) to race, and state the low income requirements in sub. (6) (b).

**Response:** *Sub. 6(b) deals only with income, not race, correct. Sub. 6(b) is meant to serve as a "defense" to 6(a). It is still possible that a violation of 6(a) could be found even if 6(b) was satisfied. Sub. 6(a) is the affirmative prohibition on redlining. It must therefore cover both race and income (by contrast, federal law only prohibits discrimination on the basis of income -- see 47 U.S.C. § 541(a)(3)).*

35. In sub. (6) (c) (intro.), how should "telecommunications facility" be defined? In sub. (6) (c) 1., what is the "telecommunications service area"? (These terms are also used in sub. (6) (h).) Also, what does it mean to "provide access"? Do you mean that a VSP has to actually have the requisite number of customers, or that it should be able to serve potential customers in such numbers?

**Response:** *"Telecommunications facilities" are facilities used to provide telecommunications service. The "telecommunications service area" means a telecommunication's utility's basic local exchange service boundaries on file with the public service commission. [Note: "basic local exchange service" is defined in Wis. Stats 196.01.] The requirement that the VSP "provide access" to the video service means that it must be available to that household for purchase; it does not require that the customers actually purchase the service.*

36. It appears that the 2nd sentence in sub. (6) (c) 2. makes the first sentence irrelevant. Why not get rid of the first sentence?

**Response:** *The second sentence does not render the first sentence irrelevant; it simply provides for an extension of time to meet the requirement of the first sentence until a service reaches a certain subscriber threshold.*

37. What consequences should follow if a VSP does not satisfy sub. (6) (c)?

**Response: Enforcement of the Act is governed by Section 9. We would have no objection to adding the Attorney General as an entity with standing to bring an action under section 9.**

38. The time limits in sub. (6) (c) are based on when a VSP begins to provide video service under the bill. What about a VSP that is an ICO that was providing cable service prior to the effective date of the bill?

**Response: For the foreseeable future, ICOs will not be subject to 6(c) because they do not have more than 500,000 telephone access lines in the state. In any event, ICOs generally already have fully built out their systems under franchise requirements.**

39. The report required in sub. (6) (d) is limited to compliance with sub. (6) (b), and not sub. (6) (a), correct? Likewise, the waiver in sub. (6) (f) applies only to sub. (6) (b), correct?

**Response: The reporting requirement in 6(d) applies only to 6(c). The waiver requirement extends to compliance with both 6(b) and 6(c).**

↳ (b) is a defense!

40. I don't understand sub. (6) (e). Why mention alternative technology? And how does the 2nd sentence relate to the first?

**Response: Subsection 6(e) addresses the situation in which a VSP seeks to meet its anti-redlining and deployment requirements by striking a deal with an alternate provider (e.g., WiMax) rather than extend its video service network to the required households. It provides that such alternate technology must both offer comparable service, and that the service must agree to comply with PEG obligations and emergency alert requirements, even if that technology provider would not otherwise be subject to such obligations.**

41. Why is it necessary to "notwithstanding" the rest of the bill in sub. (6) (h) and (i)? Under what circumstances would other provisions of the bill lead to the result that is otherwise forbidden?

**Response: Section 6(h) reaffirms that regardless of buildout or anti-redlining requirements, a VSP that is a telecommunications carrier is not required to offer service beyond its telecommunications service area. Section 6(i) clarifies that a local government may not use any rights-of-way management authority remaining under the bill to impose additional or different build-out requirements.**

42. What is meant by "mandatory build-out or deployment" in sub. (6) (i)?

***Response: A “build-out” or “deployment” requirement is one requiring a provider to construct its facilities to a particular geographic area or on a particular timetable. The intent of this paragraph is to ensure that municipalities can no longer impose such requirements.***

### ***Compliance and enforcement***

43. Under current drafting practices, we refer to circuit courts, rather than courts of competent jurisdiction. Also, circuit courts have exclusive jurisdiction, so there's no need to specify this. However, maybe your intent is to limit DFI's jurisdiction? If so, that intent should be more clearly expressed.

***Response: Substituting references to “circuit courts” is fine. References to “exclusive jurisdiction” were meant to clarify that the court, not the Department or municipality, has the authority to adjudicate the dispute.***

### ***Customer service standards***

44. Is your intent to limit the standards to what is included in 47 CFR s. 76.309 (c) as of the effective date of the bill, or do you want to incorporate future changes to the federal regulation?

***Response: VSPs should comply with the FCC’s customer service standards, as they may be amended (including future changes).***

45. Why is necessary to refer to both video and cable service in sub. (10)? Also, direct-to-home satellite service is a type of "video service", correct? (In order to be a type of "video service", direct-to-home must be provided through facilities located in part in the public rights-of-way.)

***Response: The section refers to both “video” and “cable” service because there may be two providers in town, one VSP offering video service and one ICO offering cable service. A direct-to-home satellite service is not video service because it does not utilize public rights-of-way to provide service.***

### ***Limitation on rate regulation***

46. In sub. (11), who determines when automatic termination occurs? A court, and not DFI, must resolve a dispute over this issue, correct?

***Response: A VSP or ICO may determine when there are two competitors within a municipality triggering rate deregulation. Should there be a dispute over this issue, it would have to be resolved in court.***

***Municipal cable system costs***

47. Why not amend s. 66.0419 (3m) to refer to video service, and delete the references to cable service? Why should the statute (and other statutes) continue to distinguish between video and cable service?

***Response: "Cable service" is the operative term under federal law, as well as the term used in existing franchise agreements. Since both services will continue to be offered in the state, both terms should be used in this subsection.***

***Legislative findings***

48. Under our current drafting practices, legislative findings are generally only included in a bill to rebut an argument that a bill is unconstitutional. Your bill could be subject to an attack that it violates the home rule amendment of the constitution. Therefore, it would be appropriate to add a statement that the bill is an enactment of statewide concern to provide for uniform regulation. However, most of the legislative intent language in sub. (1) is not appropriate for this purpose and I cannot include it.

***Response: Each of the proposed legislative findings is designed to buttress the argument that video regulation is a matter of statewide concern, thus protecting the bill against a constitutional attack.***

## Kunkel, Mark

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**From:** Stolzenberg, John  
**Sent:** Wednesday, February 07, 2007 12:32 PM  
**To:** Raschka, Adam  
**Cc:** Kunkel, Mark  
**Subject:** Questions on video franchising drafting instructions

**Attachments:** Video Services and Providers chart.doc

Adam,

Here are my questions on the video franchising drafting instructions. These are in addition to those posed by Mark Kunkel. I will refer to Mark's questions and responses to his questions by his item number.

### *(2) Definitions*

1. While the responses to Mark's questions helped clarify many of the definitions in the bill on different types of services and providers, I'm still not totally clear on the differences between them. I've summarized my understanding of the types of video services and providers and their basic regulation under the bill in the attached chart. I intentionally did not use the terms in the bill in this chart to try to get at the underlying distinguishing features of the services and providers. Boldface providers are subject to the state franchise requirements in the bill. Is this a correct representation of your intent?
2. The definition of "low income household" includes a specific dollar amount based on US Census Bureau estimates. Can you provide a citation or web link to these estimates? Also, the use of the phrase "through January 1, 2007" at the end of this definition implies that there will be no adjustments in the income level in this definition after that date. Do you mean "after January 1, 2007"? Will the Department of Financial Institutions (DFI) be responsible for making any adjustments under this definition?
3. The federal definition of "cable system" in 47 USC 522 (7) replaces the state definition of "cable television system" in s. 66.0419 (2) (d). The federal definition differs slightly from this state definition. Is your intent in using the federal definition to pick up these differences or to merely use a comparable federal definition in light of the repeal by the bill of s. 66.0419 (2) (d)?

### *(2) Authority to provide video service (franchises)*

4. What processes will incumbent cable operator follow to either convert an existing local franchise [for simplicity, I omit here and below references to local ordinances] to a state franchise before the local franchise expires or to receive a state franchise upon the expiration of its local franchise? The "automatically convert" language in (a) (2) suggests that the operator will not need to submit an application to DFI under the specified circumstances. If an application is required in either these circumstances, it's not clear to me that the provisions in (c) work, especially with respect to the timing of when the PEG access channels must be provided and the video service provider fee must be paid. Said another way, if an operator is already providing service in a municipality, shouldn't the transition from the local to the state franchise be seamless and with no delay?
5. What's the intended effect of (d) on a video service provider's obligations under s. 66.0425, Stats.? (The response to Mark's item 32 addresses the effect of the local fee exemption in (5) (e) on fees under s. 66.0425.)

6. The response to Mark's item 15 states that the DFI must issue the franchise if the information in the application is accurate and complete. Part of an application must affirm that the applicant is "legally, financially, and technically qualified to provide video service." Since there is potentially some subjectivity in applying these qualifications, do you intend DFI to establish standards for determining these qualifications? If so, do you intend DFI to apply the standards when it is reviewing an application?
7. If a video service provider modifies its franchise application, then it appears that while DFI will be notified of the modification under (h), DFI is not required under the bill to review and act on the modified application under (e). Is this your intent? Will a provider have to comply with any other provisions in the bill, such as (c) Service upon municipality, if a modification extends the service area of its video service into a new municipality? (See also the response to Mark's item 33.)

### (3) Franchising authority

8. Our preferred drafting style is to not use general cross references such as the text at the end of (3) that reads "except as specifically provided for in this Act." Can you list which provisions in the bill you want this exemption to cover?

### (5) Video service provider fee

9. As drafted, all of the video service provider fee is paid to the municipality in which the video service is provided. Is your intent to not provide any funding or staff to DFI for administering state franchises under the bill?

### (6) Discrimination prohibited

10. As drafted, (6) applies to any video service provider who is an incumbent cable operator that has elected to convert to a state video franchise. Is that your intent?
11. In the defense provisions in (b), what area must the stated percentage of low-income households with access to the provider's video service be located in? The provider's statewide franchise area, the franchise area within the affected municipality, or some other area?

### (9) Compliance enforcement

12. Is the reference to a court issuing an order directing a "cure" intended to authorize standard remedies, such as an order requiring a provider to pay a franchise fee or take other actions? What else does a cure include or exclude, such as payment of a forfeiture or attorney fees? It appears that it does not include enhanced penalties if the egregious conduct was willful or intentional. Is that your intent?

### (10) Customer service standards

13. Is the phrase "customer service requirements" in the second and third sentences limited to the types of requirements in 47 CFR 76.309 (c) or is it intended to include all types of consumer protection requirements, including other FCC requirements, such as those in 47 CFR 76.1602, 76.1603 and 76.1619, or consumer protection or other trade requirements established by the Department of Agricultural, Trade, and Consumer Protection? See also the questions on cross references below, which include some consumer protection statutes.

Treatment of cross references to repealed definitions in s. 66.0419

14. The definitions of "cable operator," "cable service," and "cable television system" in s. 66.0419 (2) (b), (c) and (d) are referenced in other sections in the statutes. See ss. 11.01 (17g), 70.111 (25), 100.209 (2) (b) and (c), 196.04 (4) (a) 1., and 196.85 (1m) (b). Should these provisions be either repealed or modified, or should the s. 66.0419 terms be replaced with either the corresponding federal definitions specified in the bill or broader terms that also include video services that are not cable services, video service providers that are not cable operators or video service networks that are not cable [television] systems?

#### Treatment of ch. 196, Stats., definitions and cross references

15. Section 196.01 (1p) specifies a definition of "cable television service" based upon the provision of video programming regulated under 47 USC 521 to 559. This term is used both in ch.196 and referenced in the other chapters. See, for example, ss. 100.195 (1) (h) 1., 196.01 (1g), (1r) and (9m), 196.203 (3) (b) and (d), [196.204 (7) (d) 2.c.and d. – both repealed by the bill], 196.50 (1) (b) 2. e. and (1) (c), and 943.46 (1) (a). As with the definitions in s. 66.0419 addressed in the previous item, how should the bill treat the provisions in and out ch. 196 that reference this definition of "cable television service"?



Video Services and  
Providers c...

Let me know if you have any questions on my questions given above.

John

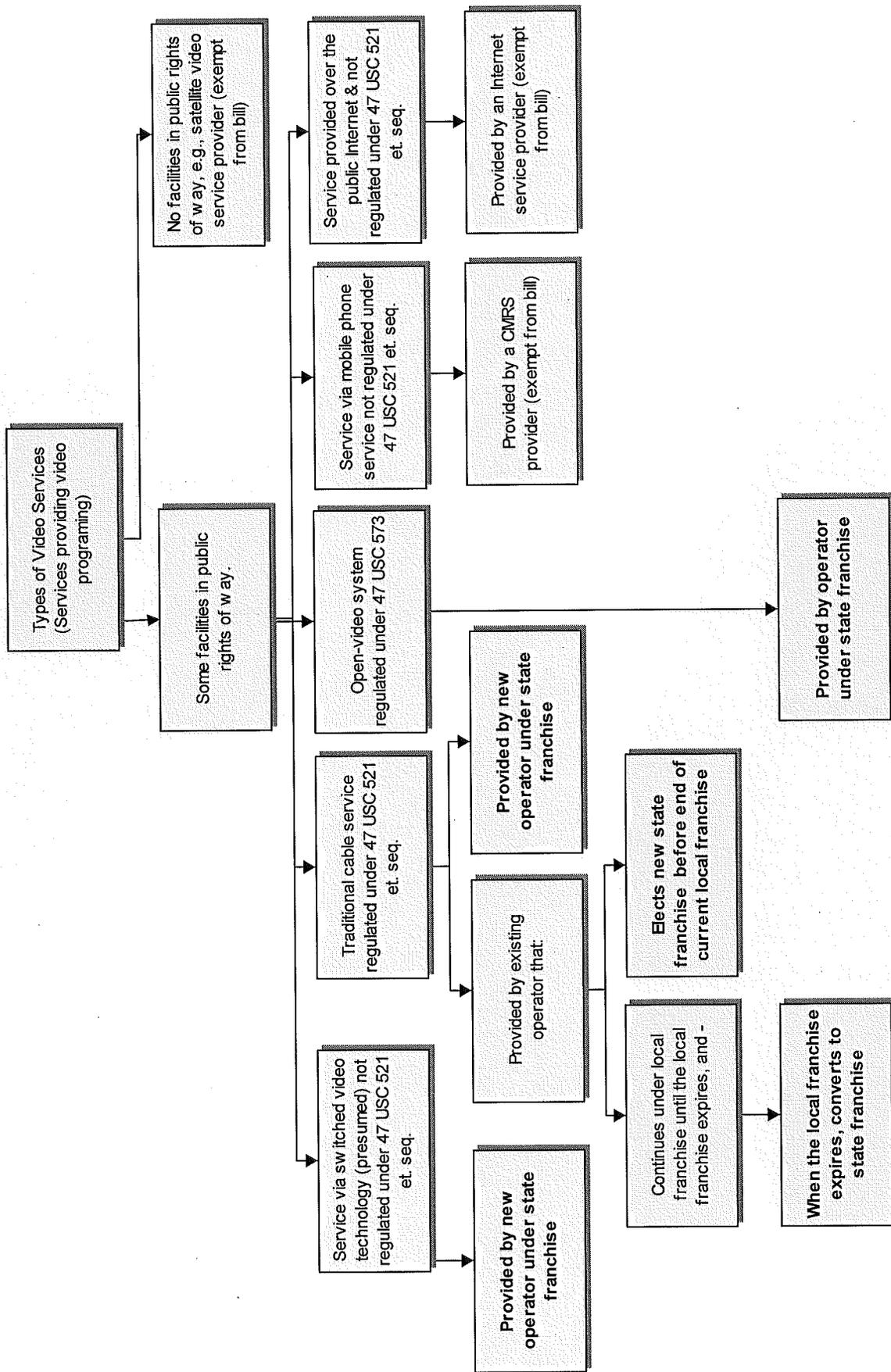
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John Stolzenberg  
Legislative Council  
266-2988

Attachment to Feb 7 email

## Video Services and Providers

Boldface providers are subject to the state franchise requirements in the bill.



## Kunkel, Mark

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**From:** Raschka, Adam  
**Sent:** Monday, February 12, 2007 3:49 PM  
**To:** Kunkel, Mark  
**Subject:** Answers to the second round of questions. 14 and 15 coming tomorrow

**Attachments:** Answers to second set of LRB questions.doc



Answers to second  
set of LRB q...

Attachment to Feb 12 email

## RESPONSE TO QUESTIONS ON VIDEO FRANCHISING DRAFTING INSTRUCTIONS

### (2) Definitions

1. While the responses to Mark's questions helped clarify many of the definitions in the bill on different types of services and providers, I'm still not totally clear on the differences between them. I've summarized my understanding of the types of video services and providers and their basic regulation under the bill in the attached chart. I intentionally did not use the terms in the bill in this chart to try to get at the underlying distinguishing features of the services and providers. Boldface providers are subject to the state franchise requirements in the bill. Is this a correct representation of your intent?

**Response:** *Yes, with one clarification. The bill does not "presume" or take any position with respect to whether 47 U.S.C. 521, et seq. applies to switched video or video programming provided over the public Internet. The bill applies to any provider of video programming over wireline facilities, regardless of the applicability of 47 U.S.C. 521, et seq.*

2. The definition of "low income household" includes a specific dollar amount based on US Census Bureau estimates. Can you provide a citation or web link to these estimates? Also, the use of the phrase "through January 1, 2007" at the end of this definition implies that there will be no adjustments in the income level in this definition after that date. Do you mean "after January 1, 2007"? Will the Department of Financial Institutions (DFI) be responsible for making any adjustments under this definition?

**Response:** *There is not a readily available website or citation for this specific US Census Bureau data. Although the Census Bureau publishes some data of more general interest on its website, it also sells other detailed data sets & products. The data necessary to determine compliance with the proposed bill falls into this later category. General information about the U.S. Census Income data can be found at <http://www.census.gov/hhes/www/income/income.html>.*

*With respect to part 2 of the question, it is necessary to have a baseline data set from which to gauge compliance with the low-income requirements of the bill. Since compliance with the low-income requirements set forth in (6) will be measured from the date of passage of this bill, it is reasonable to use US Census data that is adjusted for 2007. There would be no additional adjustments to the income level described in the definition.*

3. The federal definition of "cable system" in 47 USC 522 (7) replaces the state definition of "cable television system" in s. 66.0419 (2) (d). The federal definition differs slightly from this state definition. Is your intent in using the

federal definition to pick up these differences or to merely use a comparable federal definition in light of the repeal by the bill of s. 66.0419 (2) (d)?

**Response:** *The intent is to ensure that the state law definition is consistent with the federal law definition.*

(2) Authority to provide video service (franchises)

4. What processes will incumbent cable operator follow to either convert an existing local franchise [for simplicity, I omit here and below references to local ordinances] to a state franchise before the local franchise expires or to receive a state franchise upon the expiration of its local franchise? The "automatically convert" language in (a) (2) suggests that the operator will not need to submit an application to DFI under the specified circumstances. If an application is required in either these circumstances, it's not clear to me that the provisions in (c) work, especially with respect to the timing of when the PEG access channels must be provided and the video service provider fee must be paid. Said another way, if an operator is already providing service in a municipality, shouldn't the transition from the local to the state franchise be seamless and with no delay?

**Response:** *The intent is for the incumbent cable operator to file its application just like a new entrant. Note that (2)(a) 2. provides that the termination of the former local franchise occurs upon grant of the state-issued franchise to the incumbent cable operator. Thus, the incumbent seamlessly transitions from the old municipal franchise to the new state franchise. There would be no disruption in service. Perhaps removing the word: "automatically" would remove any confusion?*

*The application process described herein should work for incumbents as well as new entrants. In the case of incumbents, it just so happens that the PEG provision and notice of franchise fee will be already completed.*

5. What's the intended effect of (d) on a video service provider's obligations under s. 66.0425, Stats.? (The response to Mark's item 32 addresses the effect of the local fee exemption in (5) (e) on fees under s. 66.0425.)

**Response:** *The combined effect of (2)(d), (3) and 5(e) would be to replace the permitting and fee obligations of s. 66.0425.*

6. The response to Mark's item 15 states that the DFI must issue the franchise if the information in the application is accurate and complete. Part of an application must affirm that the applicant is "legally, financially, and technically qualified to provide video service." Since there is potentially some subjectivity in applying these qualifications, do you intend DFI to establish standards for determining these qualifications? If so, do you intend DFI to apply the standards when it is reviewing an application?

**Response: No, DFI should not establish standards. All that is required is a self-certification statement from the applicant.**

7. If a video service provider modifies its franchise application, then it appears that while DFI will be notified of the modification under (h), DFI is not required under the bill to review and act on the modified application under (e). Is this your intent? Will a provider have to comply with any other provisions in the bill, such as (c) Service upon municipality, if a modification extends the service area of its video service into a new municipality? (See also the response to Mark's item 33.)

**Response: The DFI is not required to act on a modified application. If the provider expands or reduces its service area then it will be required to provide notice to the municipalities that are affected.**

(3) Franchising authority

8. Our preferred drafting style is to not use general cross references such as the text at the end of (3) that reads "except as specifically provided for in this Act." Can you list which provisions in the bill you want this exemption to cover?

**Response: The provisions allowing a municipality to impose a fee or requirement on a video service provider, and that would therefore continue to be permissible, are: the authority under (4) to require PEG channel capacity; the authority under (5) to require a video service provider fee; the authority under (5)(c) to audit business records to ensure accurate payment of the video service provider fee, and the authority under (10) to require compliance with FCC customer service standards. Because under the bill, the term "video service provider" includes a cable operator that continues under its existing local franchise, the language in (3) should be amended to clarify that the preemption extends only to those video service providers that obtain a state-issued video service authorization.**

(5) Video service provider fee

9. As drafted, all of the video service provider fee is paid to the municipality in which the video service is provided. Is your intent to not provide any funding or staff to DFI for administering state franchises under the bill?

**Response: There is no intent to provide additional funding or staff to DFI. The process should mainly be a paper certification process (similar to registering a corporation). We do not anticipate that the DFI will need to promulgate any rules.**

(6) Discrimination prohibited

10. As drafted, (6) applies to any video service provider who is an incumbent cable operator that has elected to convert to a state video franchise. Is that your intent?

***Response: 6(a) and (b) apply to all. 6(c) only applies to telecommunications companies that have the required number of access lines.***

11. In the defense provisions in (b), what area must the stated percentage of low-income households with access to the provider's video service be located in? The provider's statewide franchise area, the franchise area within the affected municipality, or some other area?

***Response: The provider's statewide franchise area.***

(9) Compliance enforcement

12. Is the reference to a court issuing an order directing a "cure" intended to authorize standard remedies, such as an order requiring a provider to pay a franchise fee or take other actions? What else does a cure include or exclude, such as payment of a forfeiture or attorney fees? It appears that it does not include enhanced penalties if the egregious conduct was willful or intentional. Is that your intent?

***Response: The intent is for standard remedies. There should be no requirement to pay attorneys fees nor should there be enhanced penalties.***

(10) Customer service standards

13. Is the phrase "customer service requirements" in the second and third sentences limited to the types of requirements in 47 CFR 76.309 (c) or is it intended to include all types of consumer protection requirements, including other FCC requirements, such as those in 47 CFR 76.1602, 76.1603 and 76.1619, or consumer protection or other trade requirements established by the Department of Agricultural, Trade, and Consumer Protection? See also the questions on cross references below, which include some consumer protection statutes.

***Response: The customer service requirements should be limited to 47 CFR 76.309(c). The DATCP's consumer protection or other requirements generally applicable to all businesses would not be affected by the bill.***