

1 SECTION 8. 100.209 of the statutes is repealed and recreated to read:

2 **100.209 Cable and video service standards; privacy protection. (1)**

3 DEFINITIONS. In this section:

4 ****NOTE: I still need to determine whether any definitions, in addition to the definitions below, are necessary for this section.

5 (a) "Basic cable or video service" has the meaning given in s. 66.0420 (2) (b).

6 (b) "Cable or video provider" means a person that provides cable or video service, except that "cable or video provider" does not include a landlord whose provision of basic ^{cable} or video service is limited to providing only broadcast video programming to a single-family home or other residential dwelling consisting of four units or less.

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8
9 ****NOTE: The proposal includes the following under the above definition: "a master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology." However, doesn't the above definition capture everybody? Also, the reference to "video programming" is odd because the term isn't defined.

****NOTE: Why is the landlord exception limited to 4 units or less? Is it okay for a landlord that provides service to 5 units to be subject to this section?

****NOTE: The proposal also defines "franchise," which has the meaning given under 47 USC 522 (9), but that term is only used in the following provision, which I don't think is necessary: "This [section] applies to all cable and video providers in the State, including but not limited to those operating under a local franchise as that term is used in 47 USC 522 (9), and those operating under a state-issued authorization pursuant to this [section]." The foregoing provision is not necessary because, as drafted, it is obvious that this section applies to the entities mentioned. Therefore, the definition of "franchise" is not necessary.

****NOTE: Should "broadcast video programming" be defined? Note that "video programming" is defined in s. 66.0420 (2) (u).

10 (c) "Cable or video service" means "cable service" as defined in s. 66.0420 (2) (f)
11 or "video service" as defined in s. 66.0420 (2) (v).

****NOTE: I think a definition for the above is necessary, but I'm not sure whether the above definition works, as use of public rights-of-way is a component of the definition of "video service." Perhaps that component can be removed from the definition. Please advise.

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

****NOTE: The proposal defines "local unit of government" to include the above, plus a county. I don't think it's necessary to include counties. Is that okay?

1 (e) "Normal business hours" means, with respect to a business, those hours
2 during which most similar businesses in the geographic area of a municipality are
3 open to serve customers. In all cases, "normal business hours" must include some
4 evening hours at least one night per week or some weekend hours.

****NOTE: The 2nd sentence is actually a substantive requirement that should be moved elsewhere.

****NOTE: Why is it necessary to refer to "the geographic area" of a municipality? What is a geographic area and how is it determined?

5 (f) "Normal operating conditions" means, with respect to a cable or video
6 provider, those service conditions that are within the control of the cable or video
7 provider. "Normal operating conditions" includes special promotions; pay-per-view
8 events; rate increases; regular, peak, or seasonal demand periods; and maintenance
9 or upgrade of a video service network. "Normal operating conditions" does not
10 include natural disasters, civil disturbances, power outages, telephone network
11 outages, or severe or unusual weather conditions.

****NOTE: Regarding the 2nd sentence, is "condition" the right word to describe the specified examples that are included in the definition?

12 (g) "Service interruption" means the loss of picture or sound on one or more
13 cable or video service or on one or more cable or video channels.

****NOTE: The above is confusing and should be revised.

14 (h) "Service line drop" means the point of connection between a premises and
15 the cable or video network that enables the premises to receive cable service or video
16 service.

17 (i) "Video service network" has the meaning given in s. 66.0420 (2) (z).

18 (2) APPLICABILITY. Notwithstanding sub. (1) (b), a cable or video provider that
19 provides cable or video service through a master antenna television, satellite master

1 antenna television, direct broadcast satellite, or multipoint distribution service is
2 subject to this section only to the extent permitted by federal law.

***NOTE: What does federal law say regarding the above entities? Are they subject to this section?

3 (3) GENERAL CUSTOMER SERVICE STANDARDS. (a) *In general*. Cable or video
4 providers shall establish general standards related to customer service, including
5 relating to all of the following:

- 6 1. Installation, disconnection, service, and repair obligations.
- 7 2. Appointment hours and employee identification requirements.
- 8 3. Customer service telephone numbers and hours.
- 9 4. Procedures for billing, charges, deposits, refunds, and credits.
- 10 5. Procedures for termination of service.
- 11 6. Notice of deletion of programming service.
- 12 7. Changes related to transmission of programming.
- 13 8. Changes or increases in rates.
- 14 9. The use and availability of parental control or lock-out devices.
- 15 10. If applicable, the use and availability of an A/B switch.

***NOTE: What's an A/B switch? Should it be defined?

16 11. Complaint and bill dispute resolution procedures.

17 12. Rights and remedies available to consumers if the cable or video provider
18 does not materially meet their customer service standards.

19 13. Special services for customers with visual, hearing, or mobility disabilities.

20 (b) *Public availability*. A cable or video provider shall make available to the
21 public, and display clearly and conspicuously on its Internet website, the cable or
22 video providers' rates for each level of service, rules, and regulations, and the
23 standards established under par. (a). If a promotional price or a price for a specified

1 period of time is offered, the cable or video provider shall clearly and conspicuously
2 display the promotional price or price for the specified period of time together with
3 the price that applies at the end of the promotional period or specified period of time.
4 The cable or video provider shall provide this information upon request.

***NOTE: I'm not sure what "this information" is supposed to refer to in the last sentence. Is it all the information described in the paragraph? Isn't that redundant, given that the 1st sentence requires the information be made available to the public?

5 (c) *Notice.* A cable or video provider shall provide notice concerning its general
6 customer service standards to all customers. The notice shall be offered when service
7 is first activated and annually thereafter. The information in the notice shall include
8 all of the standards established under par. (a) and all of the following:

9 1. A listing of services offered by the cable or video provider, which clearly
10 describes programming for all services and all levels of service.

11 2. The rates for all services and levels of service.

12 3. Telephone numbers through which customers may subscribe to, change, or
13 terminate service, request customer service, or seek general or billing information.

14 4. Instructions on the use of the cable or video services.

15 5. A description of rights and remedies that the cable or video provider shall
16 make available to their customers if the cable or video provider does not materially
17 meet the general customer service standards described in this paragraph.

18 (4) GENERAL CUSTOMER SERVICE OBLIGATIONS. (a) A cable or video provider shall
19 render reasonably efficient service, promptly make repairs, and interrupt service
20 only as necessary and for good cause, during periods of minimum use of the system
21 and for no more than 24 hours.

22 (b) All service representatives or any other person who contacts customers or
23 potential customers on behalf of a cable or video provider shall have a visible

1 identification card with their name and photograph and shall orally identify
2 themselves upon first contact with a customer. Customer service representatives
3 shall orally identify themselves to callers immediately following the greeting during
4 each telephone contact with the public.

5 (c) A cable or video provider shall do one of the following:

6 1. Maintain a customer service facility within the boundaries of a municipality
7 staffed by customer service representatives that have the capacity to accept
8 payment; adjust bills; respond to repair, installation, reconnection, disconnection, or
9 other service calls; and distribute or receive converter boxes, remote control units,
10 digital stereo units, or other equipment related to the provision of cable or video
11 service.

****NOTE: The above applies to which municipality? Each municipality in which
service is provided?

12 2. Provide customers with bill payment facilities through retail, financial, or
13 other commercial institutions located within the boundaries of a municipality.

****NOTE: Same question as above: which municipality?

14 3. Provide an address, toll-free telephone number, or electronic address to
15 accept bill payments and correspondence, and provide secure collection boxes that
16 receive bill payments and returned equipment and that provide a printed receipt
17 when items are deposited.

18 4. Provide an address, toll-free telephone number, or electronic address to
19 accept bill payments and correspondence, and provide a method for customers to
20 return equipment to the cable or video provider at no cost to the customer.

21 (5) CUSTOMER CONTACTS. In each contact with a customer, the service
22 representatives of a cable or video provider, or any other person who contacts
23 customers or potential customers on behalf of the cable or video provider, shall state

1 the estimated cost of the service, repair, or installation orally prior to delivery of the
2 service or before any work is performed, and shall provide the customer with an oral
3 statement of the total charges before terminating the telephone call or other contact
4 in which a service is ordered, whether in person or over the Internet, and shall
5 provide a written statement of the total charges before leaving the location at which
6 the work was performed. If the cost of service is a promotional price or is for a limited
7 period of time, the cost of service at the end of the promotion or limited period of time
8 shall be disclosed.

9 (6) NOTICES. A cable or video provider shall provide customers a minimum of
10 30 days' written notice before increasing rates or eliminating transmission of
11 programming and shall submit the notice to the municipality in advance of
12 distribution to customers, except that if the elimination of transmission of
13 programming is outside the control of the cable or video provider, the cable or video
14 provider shall use reasonable efforts to provide as much as notice as possible and any
15 rate decrease related to the elimination of transmission of programming shall be
16 applied to the date of the change.

X ****NOTE: Is it clearer to say say the rate decrease shall be applied "as of" the date
of the change?

17 (7) RECEPTION. A cable or video provider shall provide clear visual and audio
18 reception that meets or exceeds applicable federal communications commission
19 technical standards. If a customer experiences poor video or audio reception due to
20 the equipment of the cable or video provider, the cable or video provider shall
21 promptly repair the problem at its own expense.

22 (8) BILLS, PAYMENT AND TERMINATION. (a) A cable or video provider shall render
23 monthly bills that are clear, accurate, and understandable.

1 (b) Every residential customer who pays bills directly to a cable or video
2 provider shall have at least 28 days from the date of the bill to pay the listed charges.

3 (c) A cable or video provider shall promptly post customer payments. If payment
4 is sent by United States mail, payment is considered paid on the date it is
5 postmarked.

6 (d) A cable or video provider may not terminate residential service for
7 nonpayment of a bill unless the cable or video provider furnishes notice of the
8 delinquency and impending termination at least 21 days prior to the proposed
9 termination. Notice of proposed termination shall be mailed, postage prepaid, to the
10 customer to whom service is billed. Notice of proposed termination shall not be
11 mailed until the 29th day after the date of the bill for services. Notice of delinquency
12 and impending termination may be part of a billing statement only if the notice is
13 presented in a different color than the bill and is designed to be conspicuous. A cable
14 or video provider may not assess a late fee prior to the 29th day after the date of the
15 bill for service.

****NOTE: Shouldn't the requirement for mailing a bill postage prepaid be elaborated? Is the idea that the cable or video provider must provide an envelope that is postage prepaid that the customer may use to remit the bill?

16 (e) A cable or video provider shall include with every notice of impending
17 termination the name and address of customer; the amount of delinquency; the date
18 on which payment is required to avoid termination; and the telephone number of the
19 cable or video provider's service representative to make payment arrangements and
20 to provide additional information about any charges for failure to return equipment
21 and for reconnection. No customer may be charged a fee for termination or
22 disconnection of service, regardless of whether the customer or the cable or video
23 provider initiated termination or disconnection.

1 (f) A cable or video provider may terminate service only on those days when the
2 customer is able to reach, in person or by telephone, a service representative of the
3 cable or video provider.

4 (g) Any service terminated by a cable or video provider without good cause shall
5 be restored without any reconnection fee, charge, or penalty. Good cause for
6 termination includes failure to pay a bill by the date specified in the notice of
7 impending termination, payment by check for which there are insufficient funds,
8 theft of service, abuse of equipment or personnel, or other similar subscriber actions.

9 (h) A cable or video provider shall cease charging a customer for any or all
10 services within one business day after it receives a request to immediately terminate
11 service or on the day requested by the customer if such a date is at least 5 days from
12 the date requested by the customer. Nothing in this paragraph shall prohibit a cable
13 or video provider from billing for charges that the customer incurs prior to the date
14 of termination. A cable or video provider shall issue a credit, a refund, or return a
15 deposit within 10 business days after the close of the customer's billing cycle
16 following the request for termination or the return of equipment, if any, whichever
17 is later.

18 (i) A cable or video provider shall allow its customers or subscribers to
19 disconnect their service at any time within the first 60 days after subscribing to or
20 upgrading the service. Within such 60-day period, a cable or video provider shall not
21 charge or impose any fees or penalties on the customer or subscriber for
22 disconnecting service, including any installation charge or early termination charge,
23 except that a cable or video provider may impose a charge or fee to offset any rebates
24 or credits received by the customer or subscriber, and may impose monthly service

1 or maintenance charges, including pay-per-view and premium services charges,
2 during such 60-day period.

****NOTE: The proposal refers to customer or subscriber in the 1st sentence. If there is no difference in meaning, why not use only one term throughout the substitute amendment?

3 (j) A cable and video provider shall guarantee customer satisfaction for new or
4 upgraded service and the customer shall receive a pro-rata credit in an amount equal
5 to the pro-rata charge for the remaining days of service being disconnected or
6 replaced upon the customers request if the customer is dissatisfied with the service
7 and requests to discontinue the service within the first 60 days after subscribing to
8 the upgraded service.

9 (9) RESPONSE TO CUSTOMER INQUIRIES. (a) A cable or video provider shall
10 maintain a toll-free telephone access line that is available to customers 24 hours a
11 day, seven days a week, to accept calls regarding installation, termination, service,
12 and complaints. Trained, knowledgeable, and qualified service representatives of a cable
13 or video provider shall be available to respond to customer telephone inquiries
14 during normal business hours. Customer service representatives shall be able to
15 provide credits, waive fees, schedule appointments, and change billing cycles. Any
16 difficulties that cannot be resolved by the customer service representatives shall be
17 referred to a supervisor who shall make best efforts to resolve the issue immediately.
18 If the supervisor does not resolve the issue to the customer's satisfaction, the
19 customer shall be informed of the cable or video provider's complaint procedures and
20 procedures for billing dispute resolution, and given a description of the rights and
21 remedies available to customers to enforce the terms of this section, including the
22 customer's rights to have the complaint reviewed by the municipality to request
23 mediation, and to review in a court of competent jurisdiction.

****NOTE: In the last sentence, which municipality? Also, does the last sentence create the right of a municipality to review the complaint, or is that stated elsewhere? If it is not stated elsewhere, it should be stated more clearly here.

1 (b) After normal business hours, the toll-free telephone access line specified
2 in par. (a) may be answered by a service or an automated response system, including
3 an answering machine. Inquiries received by telephone or electronic mail after
4 normal business hours shall be responded to by a trained service representative on
5 the next business day. A cable or video provider shall respond to a written billing
6 inquiry within 10 days of receipt of the inquiry.

****NOTE: Regarding references to trained service representatives throughout the substitute amendment, what constitutes training?

Percent
7 (c) A cable or video provider shall provide customers seeking nonstandard
8 installations with a total installation cost estimate and an estimated date of
9 completion. The actual charge to the customer may not exceed 110% of the estimated
10 cost without the written consent of the customer.

11 (d) If a cable or video provider receives notice that an unsafe condition exists
12 with respect to its equipment, the cable or video provider shall investigate such
13 condition immediately, and shall take such measures as are necessary to remove or
14 eliminate the unsafe condition. The cable or video provider shall inform the
15 municipality promptly, but no later than 2 hours after it receives notification of an
16 unsafe condition that it has not remedied.

****NOTE: Which municipality?

17 (e) 1. Except as provided in subd. 2., under normal operating conditions,
18 telephone answer time by a cable or video provider's customer representative,
19 including wait time, may not exceed 130 seconds when the connection is made.
20 Except as provided in subd. 2., if the call needs to be transferred, transfer time shall
21 not exceed 130 seconds.

percent

1 2. The standards under subd. 1. shall be met no less than 90% of the time under
2 normal operating conditions, measured on a quarterly basis.

3 (f) Under normal operating conditions, a cable or video provider's customers
4 may not receive a busy signal more than 3% of the time.

****NOTE: I rephrased the above. However, how is compliance measured? Three percent of what time?

5 (10) INSTALLATIONS, OUTAGES, AND SERVICE CALLS. Under normal operating
6 conditions, a cable or video provider shall meet each of the following standards no
7 less than 95% of the time measured on a quarterly basis:

****NOTE: Ninety-five percent of what time?

8 (a) Standard installations shall be performed within 7 business days after an
9 order has been placed. For purposes of this paragraph, "standard installations"
10 means those installations that are located no more than 125 feet away from the cable
11 or video provider's existing distribution system.

12 (b) Excluding conditions beyond the control of the cable or video provider, the
13 cable or video provider shall begin working on service interruptions promptly and in
14 no event later than 24 hours after the service interruption is reported by the
15 customer or otherwise becomes known to the cable or video providers. A cable or
16 video provider shall begin actions to correct other service problems the next business
17 day after notification of the service problem and correct the problem within 48 hours
18 after the service interruption is reported by the customer.

****NOTE: The proposal has quotation marks around "service interruptions." I'm not sure why.

x

****NOTE: The 2nd sentence of the proposal repeated the 95% quarterly compliance requirement that is stated in sub. (10) (intro.). It's not necessary to repeat that requirement. However, because it wasn't repeated for the 1st sentence, I want to make sure that it should apply to the 1st sentence.

percent

1 (c) A cable or video provider shall schedule appointments with customers for
 2 installations, service calls, and other installation activities for a specific time, or
 3 within a time block that does not exceed 4 hours, during evening, weekend, or normal
 4 business hours, except that a cable or video provider may otherwise schedule such
 5 appointments as specified by the customer for the customer's convenience.

****NOTE: I did not use the term "appointment window" because I don't think it helps clarify the meaning of what is required above.

****NOTE: "Evening, weekend, and normal business hours" covers every hour of the week. Why is the phrase used?

****NOTE: I rephrased the exception. Is it okay?

6 (d) A cable or video provider may not cancel an appointment with a customer
 7 after 5:00 p.m. on the business day prior to the scheduled appointment. If a cable or
 8 video provider's representative is running late for an appointment with a customer
 9 and is not be able to keep the appointment as scheduled, the cable or video provider
 10 shall contact the customer and, as necessary, reschedule the appointment at a time
 11 that is convenient for the customer, even if the rescheduled appointment is not
 12 within normal business hours.

13 (11) PUBLIC BENEFIT OBLIGATION. (a) In this subsection, "eligible building"
 14 means a building used by a municipality for governmental purposes, a public library,
 15 or a public primary or secondary school, including a charter school.

****NOTE: The proposal refers to a building owned or leased by a municipality. See my change above. Is my language okay?

****NOTE: Regarding schools, I assume you want to include charter schools. Also, as drafted, administrative buildings used by school boards are not eligible buildings. Is that okay?

16 (b) Except as otherwise provided in this subsection, a cable or video operator
 17 shall provide a free service line drop and free basic cable or video service to all current
 18 and future eligible buildings within the cable or video operator's footprint. Such

Handwritten notes and arrows:
 - An arrow points from the word "operator" in line 16 to the word "provider" written below.
 - Another arrow points from the word "operator's" in line 18 to the word "provider's" written below.
 - A large curved arrow spans from the word "operator" in line 16 down to the word "operator's" in line 18.
 - There are several other small arrows and scribbles in the right margin.

1 service shall be used in a manner consistent with the government purpose for the
2 eligible building and shall not be resold.

X
****NOTE: Which cable or video operators does this apply to? The Illinois law says
that it applies to those that offer service pursuant to "the Cable and Video Competition
Law of 2007, the Illinois Municipal Code, or the Counties Code." Can I assume that it
should apply only to entities that are issued a video service franchise, or that continue
their municipally granted franchises? If so, I will make appropriate changes to the above.

****NOTE: What is a "footprint"? "Video service area" can't be used here, as this
section could apply to persons other than video service franchisees, correct?

****NOTE: What does it mean to say that the service will be used consistent with
the public purpose? ✓

3 (c) Paragraph (b) only applies to those cable or video providers whose cable
4 service or video service systems pass eligible buildings and whose cable or video
5 service is generally available to residential subscribers in the municipality in which
6 the eligible building is located.

****NOTE: Is the meaning of "pass" clear? ✓

7 (d) The burden of providing service required under par. (b) at an eligible
8 building shall be shared by all cable and video providers whose systems pass the
9 eligible buildings and shall be shared in an equitable and competitively neutral
10 manner. The cable or video providers operating in a municipality shall determine
11 amongst themselves who will provide the service to eligible building required under
12 par. (b). If the cable or video providers are unable to reach agreement on the
13 determination, the municipality in which the eligible building is located shall
14 determine which cable or video providers must serve the eligible building. A
15 municipality may not require duplicative installations by more than one cable or
16 video provider at an eligible building.

****NOTE: In the proposal, the prohibition on duplicative installations has a more
general application, but, in my opinion, is more vaguely stated. Is my last sentence okay?

17 (e) A municipality shall bear the costs of any inside wiring, or video equipment
18 costs, that are incurred in providing service required under par. (b) at an eligible

1 building, if such costs are not ordinarily provided as part of a cable or video provider's
2 basic offering.

****NOTE: What is a "basic offering"?

3 (12) REPORTS. (a) After offering cable or video service for one year, a cable or
4 video provider shall make an annual report to the department, the municipality, and
5 the department of justice regarding its compliance with this section. The report shall
6 also identify the number of complaints the cable or video provider received during
7 the prior year in the state and specify the number of such complaints related to each
8 of the following:

provider

X

****NOTE: In addition to the information about complaints, I'm not sure what else
should be included in the report. The proposal says that a cable or video operator shall
report that "it is meeting" the requirements of the section, which I rephrased. What
exactly does the report have to cover, in addition to the information about complaints?

****NOTE: How does the above apply to persons already offering cable or video
service of the effective date of the substitute amendment?

- 9 1. Billing, charges, refunds, or credits.
- 10 2. Installation or termination of service.
- 11 3. Quality of service and repair.
- 12 4. Programming.
- 13 5 Other complaints not specified in subs. 1. to 4.

14 (b) A cable or video provider shall provide, upon request by a municipality in
15 which service is offered or the department of justice, an annual public report that
16 includes performance data regarding compliance with subs. (9) (e) and (f) and (10)
17 (a) and (b). The performance data shall be disaggregated for each requesting
18 municipality or exchange in which the cable or video provider has customers.

****NOTE: The proposal is confusing regarding when the above reporting
requirement applies. The proposal says "thereafter," which somehow refers back to the
annual report required under par. (a). However, I'm not sure what "thereafter" is
supposed to accomplish. Also, is the report only required if a municipality or DOJ request
it? Or should it be submitted to DOJ, regardless of whether DOJ requests it? What about

DATCP? And if the report is only required when requested, how can it be an annual report?

***NOTE: The proposal calls the report a "public" report. Should the above require DOJ or a municipality to make the report available to the public?

***NOTE: The 2nd sentence is confusing. I don't know what it means. As for "requesting," that probably only refers to a municipality, but why does the above mention an exchange? And what if DOJ requests the report? The 2nd sentence doesn't apply?

1 (13) RATES; CHARGES; CONTRACTS. (a) To the extent consistent with federal law:

***NOTE: Why mention federal law?

provider

2

3 1. A cable or video operator shall offer the lowest-cost basic cable or video
4 service as a stand-alone service to residential customers at reasonable rates. A cable
5 or video provider shall not require the subscription to any service other than the
6 lowest-cost basic service or to any telecommunications or information service, as a
7 condition of access to cable or video service, including programming offered on a per
8 channel or per program basis. A cable or video provider shall not discriminate
9 between subscribers to the lowest-cost basic service, subscribers to other cable
10 services or video services, and other subscribers with regard to the rates charged for
11 cable or video programming offered on a per channel or per program basis.

11

12 2. A cable or video operator shall ensure that charges for changes in a
13 subscriber's selection of services or equipment shall be based on the cost of such
14 change and shall not exceed nominal amounts if the system's configuration permits
15 changes in service tier selection to be effected solely by coded entry on a computer
16 terminal or by other similarly simple method.

provider

16

17 3. A cable or video operator shall have a rate structure for the provision of cable
18 or video service that is uniform throughout the area within the boundaries of a
19 municipality, except that a cable or video operator may provide bulk discounts to
20 multiple dwelling units or reasonable discounts to senior citizens or other
economically disadvantaged groups.

provider

1 4. A cable or video provider may not charge a subscriber for any service or
2 equipment that the subscriber has not affirmatively requested by name. For
3 purposes of this subdivision, a subscriber's failure to refuse a cable or video
4 provider's proposal to provide service or equipment is not an affirmative request for
5 such service or equipment.

****NOTE: Regarding requesting equipment by name, does this mean the name brand of the equipment, or the name of the equipment in general? Suppose a subscriber wants a DVR box. Should the subscriber have to know the name brand?

6 (b) No contract or service offering cable services or video services or any bundle
7 including such services may be for a term longer than one year. Any contract or
8 service offering with a term of service that contains an early termination fee shall
9 limit the early termination fee to not more than the amount of the discount reflected
10 in the price for cable services or video services for the period during which the
11 consumer benefited from the discount.

****NOTE: Is the meaning of the 2nd sentence clear?

12 (14) IMPAIRED CUSTOMERS. A cable or video provider may not discriminate in the
13 provision of services for the hearing and visually impaired and shall comply with 47
14 USC 613. A cable or video provider shall deliver and pick up, or provide customers
15 with prepaid shipping and packaging for the return of, converters and other
16 necessary equipment at the home of customers with disabilities. A cable or video
17 provider shall provide free use of a converter or remote control unit to mobility
18 impaired customers.

****NOTE: Why is it necessary to require compliance with federal law?

19 (15) OBSCENE OR INDECENT PROGRAMMING. (a) To the extent consistent with
20 federal law, a cable or video provider shall comply with 47 USC 532 (h) and (j). A
21 cable or video provider may not exercise any editorial control over any video
22 programming provided pursuant to this section, or in any other way consider the

1 content of such programming, except that a cable or video provider may refuse to
 2 transmit any leased access program or portion of a leased access program which
 3 contains obscenity, indecency, or nudity and may consider such content to the
 4 minimum extent necessary to establish a reasonable price for the commercial use of
 5 designated channel capacity by a person that is not an affiliate of the cable or video
 6 operator. A cable or video provider may enforce prospectively a written and
 7 published policy of prohibiting programming that the cable or video provider
 8 reasonably believes describes or depicts sexual or excretory activities or organs in a
 9 patently offensive manner as measured by contemporary community standards.

****NOTE: In the 1st sentence, why is it necessary to: 1) require compliance with federal law; and 2) require compliance with federal law only to the extent consistent with federal law? Is the 2nd issue intended to cover the possibility that the federal statutes are unconstitutional?

****NOTE: In the 2nd sentence, what does "provided pursuant to this section" mean? What does "consider" mean? "Consider" in what context? Should "leased access program" be defined?

****NOTE: FYI 47 USC 532 (h) states: Cable service unprotected by Constitution. Any cable service offered pursuant to this section shall not be provided, or shall be provided subject to conditions, if such cable service in the judgment of the franchising authority or the cable operator is obscene, or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States. This subsection shall permit a cable operator to enforce prospectively a written and published policy of prohibiting programming that the cable operator reasonably believes describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards.

****NOTE: FYI 47 USC 532 (j) states: Single channel access to indecent programming.

(1) Within 120 days following the date of the enactment [enacted Oct. 5, 1992] of this subsection, the Commission shall promulgate regulations designed to limit the access of children to indecent programming, as defined by Commission regulations, and which cable operators have not voluntarily prohibited under subsection (h) by--

→ (A) requiring cable operators to place on a single channel all indecent programs, as identified by program providers, intended for carriage on channels designated for commercial use under this section;

(B) requiring cable operators to block such single channel unless the subscriber requests access to such channel in writing; and

→ (C) requiring programmers to inform cable operators if the program would be indecent as defined by Commission regulations.

(2) Cable operators shall comply with the regulations promulgated pursuant to paragraph (1).

*lps:
indent
to write
up with
(B)*

1 (b) Upon customer request, a cable or video provider shall, without charge, fully
2 scramble or otherwise fully block the audio and video programming of each channel
3 carrying such programming so that a person who is not a subscriber does not receive
4 the channel or programming.

****NOTE: Which programming is "such programming"? Should it refer to the programming specified in par. (c)?

5 (c) In providing sexually explicit adult programming or other programming
6 that is indecent on any channel of a cable or video provider's service that is primarily
7 dedicated to sexually-oriented programming, the cable or video provider shall fully
8 scramble or otherwise fully block the video and audio portion of such channel so that
9 ~~one not a subscriber~~ ^{person nonsubscriber} to such channel or programming does not receive it.

10 (d) For purposes of pars. (b) and (c), "scramble" means to rearrange the content
11 of the signal of programming so that the programming cannot be viewed or heard in
12 an understandable manner.

13 (16) SERVICE AVAILABILITY LISTING. A cable or video provider shall maintain a
14 listing, specific to the level of street address, of the areas where its cable or video
15 services are available. A cable or video provider shall inform customers who inquire
16 about purchasing cable or video service about whether the service is currently
17 available to them at their specific location.

****NOTE: Why is it necessary to require the above?

18 (17) PRIVACY PROTECTIONS. A cable or video provider may not disclose the name,
19 address, telephone number, or other personally identifying information of a cable
20 service or video service customer to be used in mailing lists or to be used for other
21 commercial purposes not reasonably related to the conduct of its business, unless the
22 cable or video provider has provided to the customer a notice, separately or included
23 in any other customer service notice, that clearly and conspicuously describes the

1 customer's ability to prohibit the disclosure. A cable or video provider shall provide
2 an address and telephone number for a customer to use without toll charge to prevent
3 disclosure of the customer's name and address in mailing lists or for other
4 commercial purposes not reasonably related to the conduct of its business to other
5 businesses or affiliates of the cable or video provider. A cable or video provider shall
6 comply with all other privacy laws, including 47 USC 551, that are in effect on the
7 effective date of this subsection [revisor inserts date].

****NOTE: I recommend deleting the last sentence. It isn't necessary to require
compliance with federal or other privacy laws. The laws themselves require compliance.
Furthermore, the limitation to laws in effect on the effective date is confusing.

8 (18) CONSUMER COMPLAINTS; MEDIATION. A cable or video provider shall
9 implement an informal process for handling inquiries from municipalities and
10 customers concerning billing issues, service issues, privacy concerns, and other
11 consumer complaints. If an issue is not resolved through such informal process, a
12 municipality or customer may request nonbinding mediation with the cable or video
13 provider, with each party bearing its own costs of such mediation. Selection of a
14 mediator shall be by mutual agreement and preference shall be given to mediation
15 services that do not charge a consumer for their services. If the informal process does
16 not produce a satisfactory result to the customer or municipality, enforcement may
17 be pursued as provided in sub. (19) (e).

18 (19) ENFORCEMENT. (a) The department may enforce this section. A
19 municipality may enforce this section with respect to complaints received from
20 residents within the municipality's jurisdiction, but the municipality may not
21 impose or require compliance with any additional or different customer service or
22 performance standards than those specified in this section.

****NOTE: You may want DATCP's input on whether any changes are necessary to
bolster DATCP's enforcement authority.

1 (b) A municipality may enact an ordinance that provides a schedule of
2 forfeitures for any material violation of this section by cable or video providers that
3 are in addition to the penalties provided under this section, except as follows:

****NOTE: Under Wisconsin law, municipalities may impose forfeitures, which are assessed in a civil proceeding. Only the state may impose a fine in a criminal proceeding. Therefore, I changed the proposal's reference "monetary penalties" to "forfeitures."

****NOTE: The above refers to penalties that are in addition to the penalties provided under the section. However, other than the credits required under sub. (20), it does not appear that any other penalties are created. Under s. 100.26, a person who violates s. 100.209 is subject to criminal penalties of a fine of no more than \$200, no more than 6 months imprisonment, or both. Do you want additional penalties to apply? If not, the reference to additional penalties should probably be eliminated.

4 1. No forfeitures may be assessed for a material violation if it is out of the
5 reasonable control of a cable or video provider or its affiliate.

6 2. The forfeitures shall apply on a competitively neutral basis to all providers
7 of cable service or video service within the municipality's jurisdiction.

8 3. The forfeitures may not exceed \$750 for each day of the material violation,
9 and may not exceed \$25,000 for each occurrence of a material violation per customer.

10 (c) The department or a municipality shall give a cable or video provider
11 written notice of any alleged material violations of this section and allow such
12 provider at least 30 days from receipt of the notice to remedy the specified material
13 violation.

14 (d) For purposes of this subsection, "material violation" means any substantial
15 failure of a cable or video provider to comply with this section and, for purposes of
16 assessing forfeitures, a material violation is considered to have occurred for each day
17 that a material violation has not been remedied by a cable service or video service
18 provider after the expiration of the period specified in par. (c) in each municipality's
19 jurisdiction, regardless of the number of customers affected.

****NOTE: Why does the above refer to "each" municipality's jurisdiction? Why is the number of customers affected mentioned, if the number is not relevant?

1 (e) The department and, subject to sub. (18), a municipality or customer may
2 bring an action against a cable or video provider for violation of this section. A cable
3 or video provider may bring an action to review a municipality's assessment of
4 forfeitures against the cable or video provider. A municipality is immune from civil
5 liability for its acts or omissions related to the enforcement or review of any terms,
6 conditions, or rights under this section, except that a court may require the return
7 of any forfeiture that the municipality incorrectly assessed against a cable or video
8 provider.

****NOTE: Does a customer have to be injured, or otherwise affected, by a violation in order to bring an action? Should a municipality be limited to bringing an action for violations that affect customers within its jurisdiction?

****NOTE: Paragraphs (b), (c), and (d) refer to "material violations" (rather than "material breaches," which is used in the proposal). However, par. (e) refers to "violation." Is that okay?

9 **(20) CREDITS.** (a) A cable or video provider shall credit customers for violations
10 of this section in the amounts specified in par. (b). The credits shall be applied on the
11 statement issued to the customer for the next monthly billing cycle following the
12 violation or following the discovery of the violation. A cable or video provider is
13 responsible for providing the credits and a customer is not required to request the
14 credit. If a customer is no longer taking service from a cable or video provider, the
15 cable or video provider shall refund the credit amount to the customer by check
16 within 30 days of the termination of service. A municipality may enact an ordinance
17 that requires a cable or video provider to give credits directly to customers for
18 violating this section, if the ordinance applies on a competitively neutral basis to all
19 cable or video providers in the municipality's jurisdiction, and except that the credits
20 may not exceed the credits specified in par. (b).

1 (b) A cable or video provider shall give customers the following credits for the
2 following violations of this section:

3 1. Failure to provide notice of customer service standards upon initiation of
4 service, \$25⁰⁰.

5 2. Failure to install service within 7 days, waiver of 50^{percent} of the installation fee
6 or the monthly fee for the lowest-cost basic service, whichever is greater.

7 3. Failure to install service within 14 days, waiver of 100^{percent} of the installation
8 fee or the monthly fee for the lowest-cost basic service, whichever is greater.

9 4. Failure to remedy service interruptions or poor video or audio service quality
10 within 48 hours, a pro-rata credit of total regular monthly charges equal to the
11 number of days of the service interruption.

12 5. Failure to keep an appointment or to notify the customer prior to the close
13 of business on the business day prior to the scheduled appointment, \$25⁰⁰.

14 6. Violation of privacy protections, \$150⁰⁰.

15 7. Failure to comply with scrambling requirements, \$50⁰⁰ per month.

16 8. Violation of customer service and billing standards in sub. (8) or (9), \$25⁰⁰
17 per violation.

18 9. Violation of the bundling requirements in sub. (13) (a) 1., \$25⁰⁰ per month.

****NOTE: Which of the requirements under sub. (13) (a) 1. are the bundling requirements, or are they all bundling requirements? If they are all bundling requirements, then the above should refer only to sub. (13) (a) 1.

X ****NOTE: It may be advisable to revise subs. 1. to 8. to refer to statutory numbers, as is done in subd. 9.

19 **SECTION 9.** 182.017 (1) of the statutes is amended to read:

20 182.017 (1) RIGHT-OF-WAY FOR. Any domestic corporation organized to furnish
21 telegraph or telecommunications service or transmit heat, power or electric current
22 to the public or for public purposes, ~~an~~ any independent system operator, as defined

1 in s. 196.485 (1) (d), ~~an~~ any independent transmission owner, as defined in s. 196.485
 2 (1) (dm), ~~or a~~ any cooperative association organized under ch. 185 or 193 to furnish
 3 telegraph or telecommunications service ~~or a~~ any cooperative organized under ch.
 4 185 to transmit heat, power or electric current to its members, any municipally
 5 regulated cable operator, as defined in s. 66.0420 (3) (om), and any video service
 6 franchisee, as defined in s. 66.0420 (2) (y) may, subject to ss. 30.44 (3m), 30.45, 86.16
 7 and 196.491 (3) (d) 3m. and to reasonable regulations made by any city, village or
 8 town through which its transmission lines or systems may pass, construct and
 9 maintain such lines or systems with all necessary appurtenances in, across or
 10 beneath any public highway or bridge or any stream or body of water, or upon any
 11 lands of any owner consenting thereto, and for such purpose may acquire lands or
 12 the necessary easements; and may connect and operate its lines or system with other
 13 lines or systems devoted to like business, within or without this state, and charge
 14 reasonable rates for the transmission and delivery of messages or the furnishing of
 15 heat, power or electric light.

History: 1971 c. 40; 1975 c. 68, 199; 1979 c. 34, 323; 1985 a. 297 s. 76; 1989 a. 31; 1993 a. 213, 246, 371; 1997 a. 204; 2005 a. 441.

16 **SECTION 10.** 196.85 (1m) (d) of the statutes is created to read:
 17 196.85 (1m) (d) For the purpose of direct assessment under sub. (1) of expenses
 18 incurred by the commission in connection with its activities under s. 66.0420, the
 19 term "public utility" includes an applicant for a video service franchise, as defined
 20 in s. 66.0420 (2) (x), or a video service franchisee, as defined in s. 66.0420 (2) (y).

21 (END)

D-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0128/P1dn

MDK: *kjf*

Date

Sen. Vinehout:

This preliminary draft is based on the proposal that you submitted, which itself is based on Illinois law. The draft contains NOTES that either explain how the draft is different than the proposal, or include questions about the proposal.

X ← In addition to the NOTES, please note the following about this draft:

1. Regarding use of public rights-of-way, I removed the proposal's provisions and instead amended s. 182.017 (1) to ensure that cable operators and video service franchisees are both subject to reasonable regulation by a municipality. Note also that s. 66.0420 (3) (a) refers to a municipality's authority of public rights-of-way. In addition, s. 66.0420 (4) (c) 6. requires an applicant for a video service franchise to provide adequate assurance that it can repair damage to public rights-of-way.
2. Except for those other statutes addressed in the draft, I have not yet determined whether changes to other statutes are necessary. For example, ch. 196 must be revised to ensure that any payment under s. 66.0420 (9) (c) 5. that is deposited in the universal service fund is used only for any purposes that you want to specify. Also, I need to determine whether there are requirements under Wisconsin law that are similar to s. 21-1201 of the Illinois law, which prohibits interference with multiple-unit dwellings.
3. Do you want to delay the effective date of the substitute amendment?
4. The severability provision (i.e., s. 16 of the proposal) is not necessary because s. 990.001 (11), stats., allows for severability.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0128/P1dn
MDK:kjf:nwn

October 18, 2007

Sen. Vinehout:

This preliminary draft is based on the proposal that you submitted, which itself is based on Illinois law. The draft contains NOTES that either explain how the draft is different than the proposal, or include questions about the proposal.

In addition to the NOTES, please note the following about this draft:

1. Regarding use of public rights-of-way, I removed the proposal's provisions and instead amended s. 182.017 (1) to ensure that cable operators and video service franchisees are both subject to reasonable regulation by a municipality. Note also that s. 66.0420 (3) (a) refers to a municipality's authority of public rights-of-way. In addition, s. 66.0420 (4) (c) 6. requires an applicant for a video service franchise to provide adequate assurance that it can repair damage to public rights-of-way.
2. Except for those other statutes addressed in the draft, I have not yet determined whether changes to other statutes are necessary. For example, ch. 196 must be revised to ensure that any payment under s. 66.0420 (9) (c) 5. that is deposited in the universal service fund is used only for any purposes that you want to specify. Also, I need to determine whether there are requirements under Wisconsin law that are similar to s. 21-1201 of the Illinois law, which prohibits interference with multiple-unit dwellings.
3. Do you want to delay the effective date of the substitute amendment?
4. The severability provision (i.e., s. 16 of the proposal) is not necessary because s. 990.001 (11), stats., allows for severability.

Mark D. Kunkel
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Kunkel, Mark

From: Nilsestuen, Joel
Sent: Friday, November 02, 2007 1:08 PM
To: Lovell, David; Kunkel, Mark
Subject: Barry's answer bonanza

Answers to the questions that arose this morning:

✓ Pg 60, In 6: "leased access program" Federal term from '92 Cable Act that is a third party programmer who leases a whole channel i.e. extended infomercials. Not many in WI

✓ Pg 61, In 1-4: I'd like to substitute w/ "Upon customer request, a cable or video provider shall, without charge, fully scramble or otherwise fully block the audio and video programming of a channel." Primitive scramblers blocked only video. I'd like a customer to be able to block any channel they subscribe to in their package.

✓ Pg 58, In 1: According to Barry, states can only regulate the basic service tier and not expanded basic and equipment, so the qualification may be needed.

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use David's language or leave as is

leave as is

I left as is.

Kunkel, Mark

From: Lovell, David
Sent: Friday, November 02, 2007 1:54 PM
To: Nilsestuen, Joel; Kunkel, Mark
Subject: RE: Barry's anwer bonanza

See notes below

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

From: Nilsestuen, Joel
Sent: Friday, November 02, 2007 1:08 PM
To: Lovell, David; Kunkel, Mark
Subject: Barry's anwer bonanza

Answers to the questions that arose this morning:

Pg 60, ln 6: "leased access program" Federal term from '92 Cable Act that is a third party programmer who leases a whole channel i.e. extended infomercials. Not many in WI

It turns out the language in the Illinois law is straight out of 47 USC s. 532 (c) (2). Unfortunately, while that section defines "scramble," it does not define "leased access program." Here's some language from that section:

47 USC s. 532

(b) Designation of channel capacity for commercial use

(1) A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

...

(c) Use of channel capacity by unaffiliated persons; editorial control; restriction on service; rules on rates, terms, and conditions

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) of this section for commercial use, the cable operator shall establish, consistent with the purpose of this section and with rules prescribed by the Commission under paragraph (4), the price, terms, and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system.

(2) A cable operator shall not exercise any editorial control over any video programming provided pursuant to this section, or in any other way consider the content of such programming, except that a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and may consider such content to the minimum extent necessary to establish a reasonable price for the commercial use of designated channel capacity by an unaffiliated person.

We could leave it as it is, since it is identical to (c) (2), above. Alternatively, based on the language in (c) (1), above, we could redraft p. 60, l. 4-6 as:

"... or in any other way consider the content of the programming in determining whether to transmit the programming,

except that a *multichannel program whatever we called it* may refuse to transmit programming for a person unaffiliated with the *multichannel whatever* under 47 USC 532 (b) if the programming contains ..."

Pg 61, ln 1-4: I'd like to substitute w/ "Upon customer request, a cable or video provider shall, without charge, fully scramble or otherwise fully block the audio and video programming of a channel." Primitive scramblers blocked only video. I'd like a customer to be able to block any channel they subscribe to in their package.

Good -- this is essentially what I told Mark.

Pg 58, ln 1: According to Barry, states can only regulate the basic service tier and not expanded basic and equipment, so the qualification may be needed.

So, do we leave it as drafted and say, in essence, "here are our requirements, if you can show that any of them are preempted by federal law we don't mean it"?

The alternative is to sift through the federal law, figure out what is and is not preempted, and carefully redraft this and the other provisions where this language appears to include only requirements that are not preempted. I don't think we have the luxury of the time to do the latter, so we may have to settle for the former, as Illinois did.

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Kunkel, Mark

From: Lovell, David
Sent: Friday, November 02, 2007 3:29 PM
To: Kunkel, Mark
Cc: Stolzenberg, John; Nilsestuen, Joel
Subject: "Exchange" defined

Wis. Stats. -- no definition, but it is used rather frequently, nonetheless

Wis. Adm. Code:

PSC 165.02 (12) "Exchange" means a unit established by a telecommunications utility for the administration of telecommunications service in a specified area which usually embraces a city, town, or village and its environs. It consists of one or more central offices, remote switching units, or pair gain devices or both together with associated plant used in furnishing telecommunications service in that area.

Newton's Telecom Dictionary:

A geographic area in which there is a uniform set of charges for telephone service.

Personally, I would go with either the approach in the Stats. or the dictionary definition.

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537