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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Commerce, Utilities, and Rail (SC-CUR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Gigi Godwin (LRB) (November/2011)

Communications

Local 4603

6511 W. BLUEMOUND RD.
MILWAUKEE, WI 53213-4090

(414) 258-4010

(414) 258-9440 — Recording

(414) 258-8542 — FAX



Workers of America

(AFFILIATED WITH AFL-CIO)

42

November 1, 2007

Dear Senator Plale,

The Communications Workers of America Local 4603 recently passed a motion at our October Membership Meeting opposing AB207 and SB107 (The Wisconsin Video Competition Act), pending before the Wisconsin Legislature because of deficiencies in the bill.

While we fully understand the importance of Statewide Video Franchising, the proposed legislation has a significant number of flaws which need to be addressed, especially when compared to the video bill recently passed in the State of Illinois.

CWA Local 4603 believes the current language should be strengthened in a number of areas to better protect the rights of consumers and workers in Wisconsin.

We believe stronger language is needed in the following areas.

- There are few, if any sanctions with any teeth to them should a Video provider fail to meet any of the requirements laid out in the Act. The Illinois Act calls for penalties of \$30,000 per offense and a cumulative maximum penalty of \$500,000 per year. AB 207 limits penalties to \$1000.00.
- Franchises are granted in perpetuity under the proposed legislation. There is no sunset, or renewal restriction, although providers may cancel their franchise at any time with only a 30 day notice. By contrast, the Illinois bill requires all franchises be renewed every 6 years.
- There are no requirements in the bill regarding minimum levels of speed for broadband internet service or mandating the percentage of access to households. The Illinois bill provides a minimum speed of 200kbps and that a telecommunications video service provider that serves more the 1,000,000 telecommunications access lines shall either provide broadband Internet access to 90% of households or pay 15 million dollars to the Digital Divide Elimination Infrastructure Fund.

- Income discrimination may be allowed under the Wisconsin bill as long as the low income build-out quotas are being met. This could allow Video Providers to cherry pick neighborhoods. The Illinois bill does not allow for any type of income discrimination and mandates within three years of receiving a state franchise, 30% of households with access to a telecommunications video service provider's services shall be low-income households within 3 designated market areas.
- We also would like to see a commitment from AT&T to keep our existing family supporting jobs in Wisconsin. We have lost hundreds of these jobs to other States in recent years.

CWA Local 4603 would like to see the current bill amended to incorporate these changes. Your support would be greatly appreciated in making these positive changes.

Please feel free to contact me at 414 258-4010 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "G. Walls".

George Walls, President
CWA Local 4603

cc:
Executive Board
file

**COMPARISON OF WISCONSIN AND ILLINOIS LEGISLATION
RELATING TO STATEWIDE FRANCHISING FOR
VIDEO SERVICE PROVIDERS**

SUBJECT	ENGROSSED 2007 WISCONSIN ASSEMBLY BILL 207 (AB 207)	ILLINOIS ACT 095-0009 (THE ACT)
CONSUMER PROTECTION		
Customer Service Standards	<p>If there is only one video service provider in a municipality, the municipality may require the provider to comply with specified federal cable customer service obligations, but the DFI and municipalities may not impose additional or different customer service standards.</p> <p>If there is more than one video service provider in a municipality, or if the provider is subject to "effective competition," these providers may not be subject to any customer service standards, other than the subscriber rights described above and rules of the Department of Agriculture, Trade, and Consumer Protection (DATCP).</p>	<p>A video service provider must establish general customer service standards, and make the standards available to all customers. The Act provides detailed guidance on the substance of the standards under the following headings:</p> <ul style="list-style-type: none"> • general customer service obligations. • bills, payment, and termination. • response to customer inquiries. • installations, outages, and service calls. • public benefit obligation. <p>The Act contains additional, detailed provisions prohibiting practices such as requiring customers to purchase more than basic service or to purchase bundled services, establishing various requirements regarding rate structures, and other matters.</p>
Broadband Internet Service	No provision.*	<p>A telecommunications video service provider that serves more than 1,000,000 telecommunications access lines in the state shall either:</p> <ul style="list-style-type: none"> • provide broadband Internet access to 90% of households. <p>pay \$15,000,000 to the Digital Divide Elimination Infrastructure Fund.</p>

ADDITIONAL NOTES FROM CWA LOCAL 4603

* As related to Broadband Internet Service, the Illinois Act calls for service at a speed of no less than 200Kbps.

** Although Assembly Bill 207 does not call for specific penalties it does incorporate State Statute Section 100.209(4), which calls for penalties of up to \$1,000. however, this is still plainly, not up to the standard set by the Illinois bill.

*** All Franchise agreements in Illinois expire on October 1st, 2013. In Wisconsin the agreement is granted in perpetuity.

**COMPARISON OF WISCONSIN AND ILLINOIS LEGISLATION
RELATING TO STATEWIDE FRANCHISING FOR
VIDEO SERVICE PROVIDERS**

SUBJECT	ENGROSSED 2007 WISCONSIN ASSEMBLY BILL 207 (AB 207)	ILLINOIS ACT 095-0009 (THE ACT)
PENALTIES	None. **	<p>In general, the penalty for each offense is not more than the greater of \$30,000 or 0.00825% of the video service provider's gross revenues.</p> <p>Each day of offense is a separate violation, except that collective penalties may not exceed \$500,000 per year.</p> <p>A video service provider's franchise may be suspended or revoked if it fails to achieve compliance in a reasonable time.</p>
SUNSET	<p>No provision. ***</p> <p>A video service provider may not discriminate on the basis of race or income.</p> <p>It is a defense to an allegation of discrimination on the basis of income if the percentage of households with access to a video service provider's service is as follows:</p> <ul style="list-style-type: none"> • 25% within three years of receiving the state franchise. • 30% within five years of receiving the state franchise. 	<p>October 1, 2013.</p> <p>A video service provider may not discriminate on the basis of race or income.</p> <p>Within three years of receiving a state franchise, 30% of households with access to a telecommunications video service provider's services shall be low-income households. This obligation is "distributed, as the [provider] determines, within three designated market areas..." Compliance is measured by each telecommunications exchange. In each exchange, a telecommunications video service provider must provide access to a percentage of low-income households that is at least equal to the percentage of the total low-income households within that exchange.</p> <p>A video service provider may not terminate or modify its video service area footprint so as to discriminate on the basis of race or income.</p>



City Of Stevens Point
1515 Strongs Avenue
Stevens Point, WI 54481-3594
FAX 715-346-1498



Telecommunications
2442 Sims Avenue
Stevens Point, WI 54481
715-346-1535
FAX 715-346-1582

November 2, 2007

Milwaukee-area Senators and Mayor Barrett,

A story I read in the Milwaukee Journal Sentinel, (<http://www.jsonline.com/story/index.aspx?id=681233>) about AB207/SB107 stated that, "the bill would not apply to Milwaukee, which negotiated and signed a separate pact with telecommunications and cable companies."

I have seen nothing in the bill that would make me think Milwaukee would be exempt from it. If Milwaukee had knowledge that it is exempt from the state bill, I'm sure Stevens Point and other cities would love to know how that can be, because we also have existing agreements with TV providers, and those existing agreements, like Milwaukee's recent agreement with AT&T, contain certain provisions that are good for our residents and absent in the state's bill.

However, as far as we can tell, incumbent TV providers, including AT&T in Milwaukee, are free to apply for a state franchise as soon as the bill becomes law, and then our agreements become null and void.

I asked Telecommunications Attorney Anita Gallucci about this today, and she concurred that there is no exemption in the bill for Milwaukee. I contacted the Journal Sentinel writer who wrote the story, and he is looking into the issue further.

Stevens Point, and other cities in Wisconsin, once looked to the Milwaukee/AT&T agreement as a decent model for state franchising - not as good as the Illinois law, but as good for our residents as it is for Milwaukee's. In a week or so, however, Milwaukee's agreement with AT&T could be null and void.

Before you lose everything the City of Milwaukee worked to get in its agreement, I hope you will work to amend AB207/SB107 to include provisions like those in the Illinois law - a 1% fee to purchase equipment for local PEG TV channels, better customer service standards, better buildout provisions, better protection for city management of rights-of-way, and time limits for state-issued franchises, among others.

Thank you for your consideration,

John Quirk
Community TV, channel 3
and Web Site Coordinator,
City of Stevens Point
ph (715) 346-1535
fax (715) 346-1582
2442 Sims Ave.
Stevens Point, WI 54481
Web Site: StevensPoint.com/TV





The Wisconsin Broadcasters Association fosters and promotes the development of the arts of aural and visual broadcastings in all its forms...

President

MICHELLE VETTERKIND, CAE

Vice President - Administration

LINDA BAUN

OFFICERS

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Mid-West Family Broadcasting
Madison

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WLUK-TV
Green Bay

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WKBT-TV
La Crosse

BILL HURWITZ

WMCS-AM/WIZI-FM/WLUM-FM
Milwaukee

KIRA LAFOND

Entercom
Milwaukee

DEAN MAYTAG

WISN-TV
Milwaukee

BOB MILLER

Discover Mediaworks
Madison

JEFF ROBINSON

WVRQ AM/FM/WPRE/WQPC
Viroqua/Prairie du Chien

DON ROSETTE

WMCS-AM
Milwaukee

JILL SOMMERS

WISC-TV/My Madison TV
Madison

MEMO

November 5, 2007

To: Wisconsin State Senators

From: Wisconsin Broadcasters Association (WBA)

RE: **AB 207**

Companion to SB 107

We write today to ask for your support of the Broadcaster's language included in AB 207.

This language assures that 2 concerns of the WBA are fully addressed:

1 – The language will require that digital signals are not degraded for retransmission. Broadcasters have invested heavily in digital technology in order to meet the Federal requirement for all HDTV by 2009. Video service providers should not be able to retransmit this signal at a lesser quality. Consumers deserve the signal quality they are accustomed to receiving direct from the broadcaster.

2 – The language will assure that consumers will have access from the video service provider to all local broadcast television stations. The language is identical to what is currently in place for cable providers. Video service providers would have to carry the broadcaster's signal or seek retransmission consent from them.

The bill came from the Assembly with these provisions intact and was reported out of the Senate Committee on Commerce, Utilities, and Rail unanimously and reported to the Floor by the Joint Finance Committee on a 13-3 vote.

As long as these provisions remain in the bill, the WBA is in full support of AB 207.

Please support the bill without amendments.

If you have any questions, please feel free to call our representative, Bob Welch, at 608-819-0150.

Thanks for your support!



November 6, 2007

State Senator Jeff Plale
State Capitol, Room 313 South
Madison, WI 53707

Dear Senator Plale:

competition
to SB 107

We are writing to express our concern with some key aspects of the way Assembly Bill 207 is currently drafted. While we are supportive of the goal of the bill to increase cable competition, there are still some changes that should be made to protect consumers, municipalities and community access stations.

As you may be aware, Senators Mark Miller and Kathleen Vinehout are planning on offering a series of amendments to AB 207. We urge you to consider supporting these amendments as they will make cable choice possible without hurting consumers, our communities, and local access stations.

Here is a basic description of some of the issues we have concerns on AB207:

Consumer Protection:

- *Discrimination* – AB 207 allows a video service provider to pull out of less profitable regions to serve more lucrative markets as long as it meets service thresholds, which are easily met through servicing Milwaukee, Fox Valley, and Madison suburbs. Ultimately AB 207 should include provisions to ensure for high-quality cable service to Wisconsin's low-income and rural areas.
- *Consumer Issues* – Maintain *all* existing state and federal laws regarding consumer protection including: 47 USC 76.309, 76.1602, and 76.1619.

Regulation/Enforcement:

- AB 207 prohibits promulgating rules except with regard to whether a video service provider is qualified to offer service. DFI should have this authority in the final version of AB 207.
- DATCP should have rule-making authority to compel compliance on concerning discrimination and access.
- Fees are insufficient to cover agency costs. The costs are then either passed onto taxpayers (instead of users) or customers receive lesser protections.
- The cost of regulation of the cable industry should be borne by the franchisees just like any other regulated business.

PEG Funding:

- AB 207 should contain a true 3-year sunset, which provides for 3-year extension of PEG fees or termination of franchise, whichever comes first.

- This sunset should include all in-kind contributions (i.e. facilities for production, broadcast) in the final version of the franchise agreement.
- Include a dedicated 1 percent Public, Education and Government fee to support these important community resources.

Local Right of Way:

- Video service providers should not be able to deduct cost-based fees from the franchise fee it pays a municipality.
- Language regarding municipal regulation should be clarified to allow municipalities to exercise reasonable control of rights of way.

Expiration on Statewide Franchises

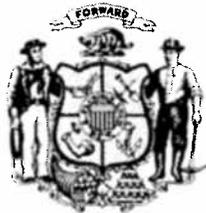
- AB 207 does not place any limit on the length of franchises. We believe a 10-year length limit is a reasonable length to ensure this legislation is having its intended effect.

Thank you for your consideration of these important issues. Please let us know if there is anything we can do to clarify our concerns about AB 207.

Sincerely,

John J. Vander Meer
Legislative Aide
Representative Gary Hebl





Wisconsin State Legislature

November 6, 2007

State Senator Jeff Plale
State Capitol, Room 313 South
Madison, WI 53707

Dear Senator Plale:

companion
to SB 107

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Thank you for your consideration of these important issues. Please let us know if there is anything we can do to clarify our concerns about AB 207.

Sincerely,

GARY HEBL
State Representative
46th Assembly District

TERRY VAN AKKEREN
State Representative
26th Assembly District

FRED KESSLER
State Representative
12th Assembly District

SONDY POPE-ROBERTS
State Representative
79th Assembly District

MARK POCAN
State Representative
78th Assembly District

STEVE HILGENBERG
State Representative
51st Assembly District

SPENCER BLACK
State Representative
77th Assembly District

GARY SHERMAN
State Representative
74th Assembly District

BOBBY GRONEMUS
State Representative
91st Assembly District

CHRIS SINICKI
State Representative
20th Assembly District

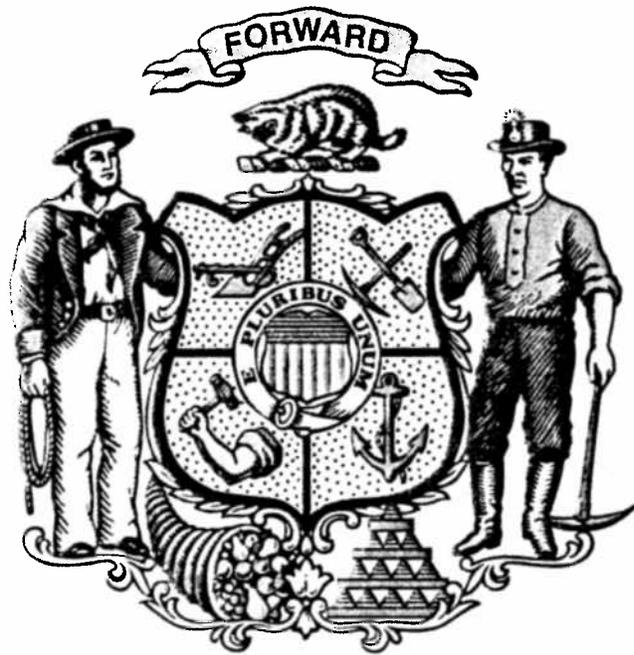
GORDON HINTZ
State Representative
54th Assembly District

TONY STASKUNAS
State Representative
15th Assembly District

PHIL GARTHWAITE
State Representative
49th Assembly District

AMY SUE VRUWINK
State Representative
70th Assembly District

LOUIS MOLEPSKE, JR.
State Representative
71st Assembly District





To: Wisconsin State Senate

**From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Ed Huck, Executive Director, Wisconsin Alliance of Cities**

Date: November 7, 2007

Re: Improving the Cable Deregulation Bill by Supporting Amendments Making it More Like the Illinois Cable Law

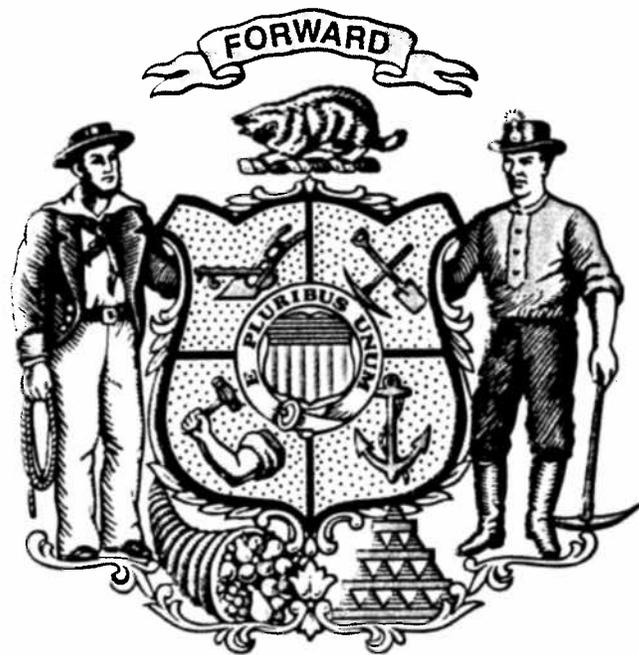
Amendment to SB 107

The League of Wisconsin Municipalities and the Wisconsin Alliance of Cities support amendments to AB 207 being offered by members that would improve the bill by making it more like the AT&T endorsed Illinois cable law. The amendments make reasonable changes modeled after the Illinois Cable law that protect consumers, support public access television, and allow municipalities to recover the cost of supervising cable providers' use of the rights-of-way.

At a minimum, we urge you to vote "yes" on LRB 07a0804, an amendment being offered by Sen. Vinehout that deletes language allowing cable providers to reduce the amount of any right-of-way permit fee from the franchise fee they pay municipalities. Municipalities charge right-of-way permit fees to cover the cost of inspecting and regulating the installation of cable lines and telecommunication infrastructure in the public right-of-way. The cost of managing the public rights-of-way should be borne by cable subscribers not property taxpayers. Cable providers are using the rights-of-way to make a profit. Taxpayers should be fully reimbursed for this privilege.

Don't sell Municipal property taxpayers short. Improve AB 207 by adopting LRB 07a0804.

Thanks for considering our comments on this important legislation.





PEGGY KRUSICK
STATE REPRESENTATIVE

November 7, 2007

Senator Jeff Plale
State Capitol, 313 South
Hand-Delivered

COMPENION
TO SB 107

Dear Jeff:

Thank you for your efforts to make Wisconsin's cable-video television market more competitive through passage of Assembly Bill 207. While I support the intent of AB 207, there are still some outstanding concerns with this legislation that should be addressed before it is sent to the Governor's desk. To that end, I would appreciate if you would seriously consider making the following changes, as well as others, to AB 207 in order to protect homeowners, consumers, municipalities and schools.

Protecting Property Values and Neighborhood Aesthetics

Video service curbside cabinets can be very large and unsightly. These cabinets are often likened to refrigerators, because they are about 5 feet high, 3 ½ feet wide and 2 feet deep.

As currently drafted, AB 207 provides no guarantee that a municipality can regulate the aesthetics of a video service curbside cabinet, unless the municipality already has an ordinance or longstanding community standard in effect that provides for these very specific types of regulations. In fact, the deadline engrossed AB 207 establishes for enacting a municipal ordinance to regulate the aesthetics of video service curbside cabinets already passed over 10 months ago.

Please amend AB 207 to:

- provide every Wisconsin municipality the authority to require that video service cabinets be placed out of plain sight or screened with shrubs or bushes if necessary to protect property values or neighborhood aesthetics. Passage of an amendment similar to the one Tony Staskunas and I offered in the Assembly (AA 29 to ASA 1 to AB 207) would provide this local authority.

Protecting Consumers

Customer Service Standards

In general, AB 207 only requires video service providers to comply with limited customer service standards.

Negative Billing

AB 207 does not prohibit video service providers from engaging in negative option billing, which are sales practices that require a consumer to pay for services that he or she did not order and does not want. If this is not changed, video service providers would be the only industry in the state not prohibited from negative option billing.

Service Outage Credits

Under current law, if cable television service is out for more than 4 hours in a 1 day period, the cable operator must give the customer a credit for each hour the service is out. AB 207 weakens this requirement by only requiring video, cable television or satellite service providers to give customers a credit after their service is out for more than 24 hours.

Please amend AB 207 to:

- prohibit video service providers from engaging in negative option billing.
- require video, cable television or satellite service providers to give customers a credit for service outages of more than 4 hours in a 1 day period.
- require video service providers to establish general customer service standards as provided by Senate Substitute Amendment 1 to Assembly Bill 207.

Protecting Municipalities and Schools

AB 207 in effect prohibits a municipality from charging rights-of-way permit fees to a video service provider by allowing the provider to deduct these fees from its franchise payments to the municipality. Municipalities use permit fee revenue to pay for the proper placement and safe inspection of utility boxes, as well as pavement cuts and other costs for providing businesses access to the public right-of-way. Prohibiting municipalities from charging fees to recoup these costs could result in increased property taxes or a reduction in public services.

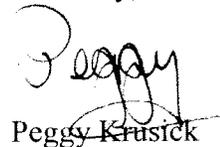
AB 207 does not require video service providers to continue providing free service connections and free basic service to schools and government buildings.

Please amend AB 207 to:

- allow municipalities to exercise reasonable control over rights-of-way.
- require video service providers to provide free service connections or free basic service to all public buildings, including public libraries and public schools.

Thanks for your consideration of these requests. Please feel free to contact me if you have any questions.

Sincerely,



Peggy Krusick



Venskus, Katy

From: Konopacki, Larry
Sent: Wednesday, December 05, 2007 5:10 PM
To: Venskus, Katy
Cc: Stolzenberg, John; Lovell, David
Subject: UW channels

COMPEXION
TO SB 107

Hi Katy,

You asked whether Senate Amendment 13 to **AB 207** is a valid exercise of the state's franchising authority. The answer seems to depend on the type of programming that is carried on a "UW channel" that would be required to be carried by a video service provider. As you know, 47 U.S.C. s. 531 gives a franchising authority the power to require cable providers to carry certain public, educational, or governmental (PEG) channels. A franchising authority only has very limited authority to require cable providers to carry programming that does not qualify as PEG programming, none of which would appear to apply to this case. Therefore, I believe that the state can only do this if the programming that would be required to be carried qualifies as PEG programming.

In this case, the only UW programming that I am aware of that fits under Amendment 13 is the UW-Whitewater channel UWW-19. According to its website, this channel hosts student video production work, including live coverage of intercollegiate sports, news, documentaries, public affairs, entertainment, arts, information, and other types of programming, with students participating in various on-screen and off-screen roles under the supervision of UWW faculty and professional staff. It seems reasonable to argue that this programming serves an educational purpose and that much of this programming serves a public/governmental purpose.

The federal code does not provide us much guidance about what the limits of "public, educational, or governmental" purposes are. In one case, a cable operator argued that a program in which political candidates shared their views was "commercial" in nature and therefore the cable operator could not be required to cablecast it. [*Moss v. Cablevision Sys. Corp.*, 22 F. Supp. 2d 1 (E.D.N.Y. 1998).] The court disagreed and said political speech is not commercial, but in doing so may have outlined a limit on the PEG designation. The court seemed to accept the idea that "commercial" programming would be outside the scope of PEG programming, and thus a franchising authority can probably not require a cable operator to carry commercial programming under a PEG mandate. I do not know if a court could be convinced by a cable operator that the UWW-19 programming is commercial programming, but it seems unlikely based on what I know about the content. However, if the UWW-19 channel is taking in advertising revenues and other funding, buying programming, and/or participating in other commercial activities, this analysis may change.

Thank you Katy, and please do not hesitate to pass on any additional questions you may have.

Larry

Larry Konopacki
Wisconsin Legislative Council
608-267-0683
larry.konopacki@legis.wisconsin.gov

→ UWW 19 has some agreement which requires Charter subscriptions in dorms
→ requires service





WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JEFF PLALE AND REPRESENTATIVE PHIL MONTGOMERY

FROM: David L. Loyall, Senior Analyst, and John Stutzenberg, Chief of Research Services

RE: Partial Vetoes of 2007 Assembly Bill 207 (2007 Wisconsin Act 42), Relating to the Regulation of Video Service Providers

DATE: January 22, 2008

Companion to
SB 107

This memorandum describes the partial vetoes made by Governor James Doyle in signing 2007 Assembly Bill 207 (the bill), relating to the regulation of video service providers, as 2007 Wisconsin Act 42 (the Act). A copy of the Governor's veto message, which provides his rationale for each veto, is attached.

The Act replaces municipal franchising of cable television service with a streamlined state franchise process for video service offered by cable service providers and by telecommunications providers. For an overview of the Act see the Legislative Council Act Memo for Act 42; for a detailed summary of the Act's provisions see Legislative Council Information Memorandum 08-01.

State Video Franchise

Administrative Deadlines

The bill requires that the Department of Financial Institutions (DFI) determine whether an application for a state franchise is complete within 15 days of receiving the application. It also requires that the DFI determine, within 15 days of determining that an application is complete, whether an applicant is legally, financially, and technically qualified to provide video service.

The Governor vetoed the two 15-day deadlines.

Determination of Applicant's Qualifications

The bill provides that, if it determines that an applicant is legally, financially, and technically qualified to provide video service, the DFI must issue a franchise to the applicant. It specifies that the DFI will be considered to have issued a franchise if it fails to make this determination.

The Governor vetoed the provision specifying that the DFI will be considered to have issued a franchise if it fails to determine whether an applicant is a legally, financially, and technically qualified to provide video service.

Presumption of Qualification of Certain Video Service Providers

The bill specifies that the DFI shall determine that a large telecommunications video service provider or a qualified cable operator that applies for a state franchise *is* legally, financially, and technically qualified to provide video service. A "large telecommunications video service provider" is a video service provider that uses the same facilities for providing telecommunications service also to provide video service and that, on January 1, 2007, had more than 500,000 basic local exchange access (or telephone) lines in the state, or an affiliate of such a provider. A "qualified cable operator" is any of the following: a cable operator that has been providing cable service in the state for at least three years and has never had a franchise revoked by a municipality; an affiliate of such a cable operator; or a cable operator that, on the date of application, is one of the 10 largest video service providers in the United States, individually or together with its affiliates or parent company.

The Governor vetoed this provision.

Expiration of State Franchise

The bill specifies that a state-issued video franchise does not expire, except at the request of the franchise holder.

The Governor vetoed this provision.

Revocation of State Franchise

The bill specifies that the DFI may revoke a state franchise issued to a video service provider if it determines that the video service provider "has repeatedly failed to substantially meet a material requirement imposed by this section and the department has not otherwise acquiesced in such noncompliance through a waiver."

The Governor vetoed the words "repeatedly" and "by this section and," and the last clause of the quoted phrase, regarding DFI acquiescence to noncompliance through a waiver. The resulting language states that the DFI may revoke a franchise if it determines that the video service provider "has failed to substantially meet a material requirement imposed upon it by the [DFI]."

State Fees

The bill requires that an applicant for a state franchise pay an application fee of \$2,000 and that a franchise holder pay a fee of \$100 when it makes specified modifications to its franchise. In addition, the bill requires a franchise holder to pay an annual fee, beginning in the year after issuance of the franchise. For a video service provider that has more than 10,000 subscribers, the bill specifies that the annual fee is \$2,000; for other video service providers, it specifies that the first annual fee is \$2,000 and subsequent annual fees are \$100.

The Governor vetoed the language requiring application fees but did not veto the fee that accompanies franchise modifications. He retained the annual fee but deleted the language specifying that the fee for video service providers that have more than 10,000 subscribers be \$2,000.

Municipal Powers

General

The bill specifies that the state is the exclusive franchising authority for video service providers and prohibits a municipality from requiring a video service provider to obtain a municipal franchise to provide video service in the municipality. In addition, the bill provides that, notwithstanding certain statutes relating to the use of public rights-of-way, a municipality may not impose on a video service provider any fee or requirement relating to the construction of the video service network or the provision of video service, except as specifically authorized by the bill.

The Governor retained the portions of this provision that specify that the state is the exclusive franchising authority and that prohibit a municipality from requiring a video service provider to obtain a municipal franchise, but vetoed the remainder of this provision.

Fees

Under prior law, a municipality could impose a variety of fees on a video service provider. Through their franchise agreements, municipalities routinely imposed franchise fees and fees to support operation of public, educational, and governmental (PEG) channels. Also, under s. 66.0425, Stats., municipalities could impose fees for the use or occupation of public rights-of-way and, under s. 182.017, Stats., a municipality could impose reasonable regulations on the use or occupation of public rights-of-way, including reasonable fees.

The bill does the following:

1. Creates a video service provider fee that a video service provider must pay to a municipality in which it provides video service.
2. Specifies that, if the video service provider pays this fee to a municipality, the municipality may not require the video service provider to pay any compensation under s. 66.0425 or, except as provided in a regulation under s. 182.017, any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way.
3. Provides that, if a municipality requires a video service provider to pay a cost-based permit fee under a regulation under s. 182.017, the video service provider may deduct the amount of that fee from any other compensation that is due to the municipality, including the video service provider fee.

The Governor vetoed the language described in 2. above, in such a way as to explicitly authorize a municipality to require a video service provider to pay compensation under s. 66.425. As partially vetoed, this provision read as follows:

66.0420 (7) (g) other fees. a municipality may require the video service provider to pay any compensation under s. 66.0425, or, except as provided in a regulation under s. 182.017 (1r), any permit fee, encroachment fee, degradation fee, or any other fee. for the occupation of or work within public rights-of-way.¹

The Governor did *not* veto the authority of a video service provider to deduct the amount of any cost-based fee from any other compensation that is due to the municipality, described in 3., above.

Public Rights-of-Way

Under prior law [s. 182.017, Stats.], a municipality could impose reasonable regulations on the use or occupation of public rights-of-way by electric and telecommunications utilities and cooperatives and similar entities. The bill expands this provision to apply also to video service providers. The bill also provides that any entity whose occupation and use of the public rights-of-way is subject to such a regulation may complain to the Public Service Commission (PSC) that the regulation is unreasonable. It specifies, however, that the PSC may not find a regulation of the aesthetics of any component of a video service network unreasonable if the regulation has a reasonable and clearly defined aesthetic objective or is necessary to maintain the value of adjoining or nearby private property.

The Governor vetoed the language prohibiting the PSC from finding regulations based on aesthetics to be unreasonable.

Inspection of Books

The bill authorizes a municipality to inspect the books of a video service provider to ensure proper and accurate payment of a video service provider fee. It may do so “upon reasonable written request, but no more than once in any three-year period.”

The Governor vetoed the words “but no more than once in any three-year period.”

Public, Educational, and Governmental (PEG) Channels

The bill defines “PEG channel” as “a channel designated for noncommercial public, educational, or governmental use.”

The Governor vetoed the word “noncommercial” from this definition.

Discrimination

The bill establishes that a video service provider may not deny access to video service to any group of potential residential customers in the provider’s video service franchise area because of the race or income of the residents in the local area in which the group resides. It specifies a defense to

¹ The lack of capitalization is a result of the partial veto.

alleged discrimination based on income if the video service provider has met either of the following conditions:

- No later than three years after the date on which the provider began providing video service under its state franchise, at least 25% of households with access to the provider's video service are low-income households.
- No later than five years after the date on which the provider began providing video service under its state franchise, at least 30% of households with access to the provider's video service are low-income households.

The Governor vetoed this defense to consist of a single condition, being that no later than three years after the date on which the provider began providing video service under its state franchise, at least 30% of households with access to the provider's video service are low-income households.

The bill defines "low-income household" as "any individual or group of individuals living together as one economic unit in the household whose aggregate annual income is not more than \$35,000, as identified by the United States Census Bureau as of January 1, 2007." The Governor vetoed this definition.

Consumer Protection

The bill modifies one of the standards in the video service subscriber rights statute (s. 100.209, Stats.). Under prior law, when a subscriber notified a cable operator of a service interruption that is not caused by the cable operator and that lasts for more than four hours in one day, the cable operator was required to give the subscriber credit for each hour that service was interrupted. The bill modifies this requirement to apply to service outages lasting for more than 24 hours.

The Governor vetoed this change to the video service subscriber rights statute.

Rule-Making Authority

The bill specifies that, notwithstanding the statute that gives an agency general authority to promulgate rules to interpret any statute it implements or enforces, with one exception, the DFI may not promulgate rules interpreting the statewide video franchise statute created by the bill. It also prohibits the Department of Agriculture Trade and Consumer Protection (DATCP) from promulgating rules interpreting the discrimination in access provisions of the video franchise statute.

The Governor vetoed this provision so as to explicitly authorize the DFI and DATCP to promulgate rules interpreting the respective statutes.

If you have questions regarding 2007 Wisconsin Act 42 or the Governor's vetoes of 2007 Assembly Bill 207, please contact either of us at the Legislative Council staff offices.

DLLEJES:ty

Attachment



JIM DOYLE
GOVERNOR
STATE OF WISCONSIN

December 21, 2007

TO THE HONORABLE MEMBERS OF THE ASSEMBLY:

I have approved Assembly Bill 207 as 2007 Wisconsin Act 42 and have deposited it in the Office of the Secretary of State. I have exercised the partial veto to ensure that consumer protection and customer service standards are protected and to provide for the fair treatment of municipalities and their taxpayers while supporting the right of Wisconsin citizens to cable competition. In particular, I have thoroughly reviewed the measure as it relates to customer service standards and consumer rights to ensure that Wisconsin continues as a leader in protecting the consumer.

Assembly Bill 207 establishes a state process, in lieu of the current process at the municipal level, for granting franchises for the provision of video services to the public. The bill establishes certain requirements related to the following: the relationship between the state franchise agreement and federal telecommunications law; the interaction of franchisees with municipalities on issues such as compensation for video services access and use of rights of way and support for public, educational and government access channels; and the provision of customer service standards and consumer rights.

I am partially vetoing section 8 as it relates to the expiration of a franchise. The intent of my veto is to allow the Department of Financial Institutions (DFI) to promulgate an administrative rule setting the renewal term for the franchise. By allowing franchises to expire and establishing a renewal process and criteria, the public is served by providing more accountability of the service provider and the state.

I am partially vetoing section 8 as it relates to the 15-day requirement for processing the franchise application. First, I am partially vetoing the requirement that DFI has 15 days to review the application. Second, I am partially vetoing the provision that if no determination is made within 15 days, the application is automatically approved. I object to the timeline for approval being written into the law. Placing a time limit on the process pre-judges that all applications will be similar and that investigation of facts may not, in some cases, take additional time. This veto will allow the department to serve both the public and the providers by allowing for both a complete and timely review of applications.

I am partially vetoing section 8 as it relates to the automatic approval of a franchise for large video service providers. I believe that all applicants for a franchise should work through a common application process. As such, all providers would be required to prove that they are legally, financially and technically able to provide service in the

designated service area. Much of the discussion surrounding this legislation centered on allowing greater competition in the video service market. This partial veto ensures that all entrants into the market go through the same process, thus leveling the playing field, which furthers the goal of increased competition.

I am partially vetoing section 8 as it relates to the revocation of a franchise. The veto is designed to allow DFI to more completely define the requirements for franchise revocation through the administrative rule process. A more thorough definition of the revocation requirement will better serve both consumers and providers by adding clarity to these standards.

I am partially vetoing section 8 as it relates to the prohibition on municipalities from charging a fee for the use of or occupation on public rights-of-way. I object to this prohibition directed toward municipalities which provides special treatment to one industry and does not recognize and thus compensate the public for the cost of establishing and maintaining public rights-of-way.

I am partially vetoing section 8 as it relates to the 3-year limit on the review of the financial records of the service provider to allow municipalities to review records as needed. If there is a dispute on the amount of funding being provided, it is in the best interest of all parties to have that dispute settled in a timely manner.

I am partially vetoing section 8 as it relates to the prohibition on DFI and the Department of Agriculture, Trade and Consumer Protection from promulgating rules. It is imperative that the state agencies responsible for implementing the state franchise and enforcing anti-discrimination provisions have the ability to interpret these statutes through administrative rule.

I am partially vetoing section 8 as it relates to a video service provider's defense against not meeting the prohibition for income discrimination by establishing statutory standards of service provisions to low-income households. The intent of the veto is to raise the standard to be achieved more quickly. This veto will allow service providers to use a defense against allegations of discrimination based on income by showing that 30 percent of subscribers are low-income households within 3 years, two years earlier than originally provided in the bill. The effect of the veto will be to accelerate the provision of service to low-income households.

I am partially vetoing section 8 as it relates to the definition of a low-income household. The effect is to allow DFI to define low-income household through administrative rule. As written, the bill provides a definition that does not take into account factors such as inflation or household size. Such a definition is inconsistent with the definition of low-income in other programs.

I am partially vetoing section 8 as it relates to the definition of public, educational and government channel usage. As written, the bill states that such channels are defined as noncommercial. By striking noncommercial, I am giving public, educational and governmental channels the ability to air revenue-generating commercial programming.

I am partially vetoing section 8 as it relates to the application and annual fees. The effect is to allow DFI to set the fees through rule which allows the fees to better fit the scope of the specific conditions of an application.

I am partially vetoing section 27p as it relates to credit for service outage. My intent is that the bill reflects the current law standard that if service is interrupted for more than 4 hours in any one day, the video service provider must give subscribers credit for that outage. As passed, the bill would have allowed interruptions of up to 24 hours without providing credit and would have eroded one of the primary statutory consumer protections.

I am partially vetoing section 35 as it relates to Public Service Commission review of municipal regulation of the occupation and use of public rights-of-way. The provision prohibits the Commission from finding unreasonable any municipal regulation on aesthetics of a network under certain conditions. The intent of this partial veto is to delete this prohibition and allow the Commission to review the regulation and make a determination based on the merits.

I also carefully reviewed Assembly Bill 207 as it relates to public, educational and governmental channels in light of the concerns raised by interested parties on this matter. The bill requires that these channels continue as long as minimum criteria are met. Financial support of these channels by video service providers ends after three years under the bill. The intent of the bill is that the payment to the municipalities by video service providers of up to five percent of their gross receipts provides sufficient compensation for this access right.

While I did not exercise my partial veto authority in this part of the bill, I remain concerned about maintaining balance between the interests served by public, educational and governmental channels and video service providers. I urge the Legislature to review this issue and consider follow-up legislation to address any remaining concerns.

I believe the partial vetoes I have made to AB 207 help to make it a stronger bill for consumers while promoting competition in Wisconsin.

Respectfully submitted,

JIM DOYLE
Governor