

☞ **07hr\_SC-CUR\_sb0107\_pt14**



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**

**Status of Amendments to 2007 AB 207 and 2007 SB 107**

Subject	Assembly Amendments to AB 207	Senate Amendments to SB 107
<b><i>Substitute Amendment</i></b>		
<ul style="list-style-type: none"> <li>Clean up &amp; technical based on LC list, version 2</li> </ul>	Instructions submitted to LRB	
<b><i>Simple Amendments</i></b>		
<ul style="list-style-type: none"> <li>Local broadcast station must carry rights; high definition digital broadcast signals carriage without degradation; programming and local station nondiscrimination; and copyright identification alteration. [Wisconsin Broadcasters]</li> </ul>	LRBa0226/1	
<ul style="list-style-type: none"> <li>Build out applicability based on large telecommunications video service provider's access lines on 1/1/07. [CenturyTel]</li> </ul>	LRBa0227/1	
<ul style="list-style-type: none"> <li>Accelerated build out requirements for AT&amp;T. [CWA]</li> </ul>	LRBa0228/1	
<ul style="list-style-type: none"> <li>Restore "cable television subscriber rights," s. 100.209. [Montgomery &amp; Plale]</li> </ul>	Instructions submitted to LRB	

Prepared by:  
John Stolzenberg and David L. Lovell,  
Legislative Council



# WISCONSIN STATE LEGISLATURE





**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

<b>2007 Assembly Bill 207</b>	<b>Engrossed Assembly Bill 207</b>
<i>Memo published:</i> October 29, 2007 <i>Contacts:</i> John Stolzenberg, Chief of Research Services (266-2988) David L. Lovell, Senior Analyst (266-1537)	

2007 Assembly Bill 207 replaces municipal franchising of cable television service with a streamlined state franchising process for video services offered by cable service providers and telecommunications providers. This new process reduces the state's and municipalities' roles in regulating those services.

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

2007 Senate Bill 107 is the companion bill to Assembly Bill 207. Assembly Substitute Amendment 1 to Assembly Bill 207 is identical to Senate Substitute Amendment 1 to Senate Bill 107. The Assembly amendments to Assembly Substitute Amendment 1 to Assembly Bill 207 correspond to the following Senate amendments to Senate Substitute Amendment 1 to Senate Bill 107:

<b>Assembly Amendments (AA) to Assembly Substitute Amendment 1 Adopted by the Assembly</b>	<b>Corresponding Senate Amendments (SA) to Senate Substitute Amendment 1 Recommended by the Senate Committee on Commerce, Utilities and Rail</b>
AA 1	Identical to SA 3
AA 2	Identical to SA 2
AA 5	Identical to SA 5
AA 8	Identical to SA 1
AA 9	Identical to SA 4, except SA 4 contains appropriations to the Department of Financial Institutions
AA 20	No corresponding SA
AA 28	No corresponding SA

### Legislative Findings

The engrossed bill replaces the current statement of legislative findings and intent in current municipal franchising law with eight legislative findings relating to the purposes of the state video franchising framework created by the engrossed bill. These purposes are summarized in the last finding as follows:

This section is an enactment of statewide concern for the purpose of providing uniform regulation of video service that promotes investment in communications and video infrastructures and the continued development of the state's video service marketplace within a framework that is fair and equitable to all providers. [Proposed s. 66.0420 (1) (h).]

### Applicability

The engrossed bill applies to "video programming" and "video service" provided by "video service providers" and cable service provided by "interim cable operators." "Video programming" is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." "Video service" is defined, effectively, as video programming provided by a cable service provider or a telecommunications service provider through wireline-based facilities. "Video service" does *not* include video programming provided by cellular telephone, satellite, broadcast television, or Internet access. A "video service provider" is any person that holds a state video franchise, or a successor or assign of such a person. An "interim cable operator" is an incumbent cable operator that continues to provide cable service under an existing municipal franchise for the remaining life of that franchise.<sup>1</sup>

### State Franchising

The engrossed bill specifies that the state is the exclusive franchising authority for video service providers in Wisconsin under federal cable law. It phases out existing municipal franchise agreements by prohibiting their renewal and allowing cable operators to terminate them prior to their expiration. It further prohibits municipalities from requiring video service providers to obtain new municipal franchises. In their place, it requires video service providers to obtain a state franchise that applies statewide. An incumbent cable operator may choose to continue operating under an existing municipal franchise as an interim cable operator for the remaining life of that franchise.

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

---

<sup>1</sup>Because an interim cable operator does not hold a state franchise, it is not included in the term "video service provider." Consequently, provisions of the engrossed bill that refer only to video service providers do not apply to interim cable operators.

## *Authority to Provide Video Service*

### *Application for Franchise*

The engrossed bill requires that, in general, a person who intends to provide video service in this state must apply to the Department of Financial Institutions (DFI) for a franchise. The application consists of specified information and certifications and must be accompanied by a \$2,000 application fee. Among other things, the applicant must certify that it is legally, financially, and technically qualified to provide video service and must specify the services it will provide and the areas in which it intends to provide video service (its "video franchise area").

DFI must notify the applicant whether the application is complete within 15 business days of receiving an application.

Within 15 business days of receiving a complete application, the DFI must determine whether the applicant is legally, financially, and technically qualified to provide the service. If it determines the applicant is qualified, it must issue the applicant a franchise; if it determines the applicant is not qualified, it must reject the application and state its reasons in writing. If the DFI fails to issue the franchise in the required time, it will be considered to have issued the franchise unless the applicant withdraws the application or agrees to an extension of DFI's review period.

In the case of an application by a "large telecommunications utility" or a "qualified cable operator," it is presumed that the applicant is legally, financially, and technically qualified. "Large telecommunications utility" is defined as a telecommunications video service provider that on January 1, 2007, had more than 500,000 residential access (or telephone) lines in Wisconsin or an affiliate of such a provider.<sup>2</sup> "Qualified cable operator" is defined as any of the following: a cable operator that has been providing cable service in this state for at least three years and has never had a franchise revoked by a municipality or an affiliate of such a cable operator; or a cable operator that, on the date of application, is one of the 10 largest video service providers in the United States individually or together with its affiliates or parent company.

### *Application Update*

A video service provider must provide an update of information in its application to the DFI within 10 business days of any change to that information. If the change involves an expansion of its video franchise area, the video service provider must apply for a modified franchise.

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

### *Transfer of Franchise*

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

---

<sup>2</sup> The only entity that meets this definition is AT&T Wisconsin.

application to each municipality in its video franchise area. The successor-in-interest may provide video service in the video franchise area while DFI reviews the application.

### ***Franchise Expiration and Revocation***

A franchise does not expire unless the franchise holder terminates it.

DFI may revoke a video service franchise if it determines that the video service provider has "repeatedly failed to substantially meet a material requirement" of the statewide video franchise statute created by the engrossed bill, unless the DFI has granted the video service operator a waiver from the requirement. The DFI may not commence a revocation proceeding without first providing the video service provider with notice and an opportunity to cure any alleged violation. DFI's revocation proceeding must afford the provider full due process that includes a proceeding before a hearing officer, including such elements as sworn testimony, cross-examination under oath, and the creation of a transcript. The engrossed bill also establishes that a video service provider may bring an action to appeal the DFI's decision in a revocation proceeding.

### ***Notices to Municipalities***

Under the engrossed bill, an applicant for a state franchise must provide a copy of its application to each municipality in its video franchise area at the time that it submits the application to the DFI. Similarly, a video service provider must provide copies of any application information updates (including expansions of its video franchise area) to the municipalities and provide municipalities information related to the transfer of a franchise.

A video service provider must provide a municipality notice 10 days prior to commencing service in the municipality.

### ***Notices by Municipalities***

If a municipality that has a cable franchise agreement in effect on the effective date of the law receives a notice that a video service provider will commence providing service within its territory, the municipality must provide a written notice to the video service provider, within 10 business days of receiving the notice, stating the following: (1) the number of public, educational, or governmental (PEG) channels the incumbent cable operator is required to provide in the municipality; (2) the amount and type of monetary support for access facilities for all PEG channels required of incumbent cable operators; and (3) the "percentage of revenues" that the incumbent cable operator is required to pay the municipality as franchise fees. The same requirement applies when a municipality receives notice that a video service provider has expanded its video service area to include the municipality.

### **Fees, In General**

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

of any cost-based permit fee for the occupation and use of public rights-of-way from any other compensation that is due to the municipality, including the video service provider fee.

### *Video Service Provider Fee*

#### *Imposition and Amount of Fee*

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

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

In the engrossed bill, "gross receipts" means all revenues received by a video service provider from subscribers in a municipality for video service and from advertising. It explicitly *includes*: recurring charges for video service; event-based charges (e.g., pay-per-view); equipment rental (e.g., set top boxes); service charges (for, e.g., activation, installation, repair, and maintenance); revenues received from the provision of home shopping or similar programming; revenues from advertising (with a formula for the allocation of revenues from advertising under regional or national contracts and exceptions for advertising refunds, rebates, and discounts); and administrative charges. It explicitly *excludes*: discounts, refunds, and other price adjustments; uncollectible fees (those written off as bad debt but later collected are included, less the expense of collection); late payment charges; maintenance charges; amounts billed to recover taxes, fees, surcharges, or assessments; revenue from the sale of certain capital assets or surplus equipment; charges for nonvideo services that are bundled with video services; and reimbursement by programmers of marketing costs actually incurred by the video service provider.

#### *Fee Payments*

Fee payments are due no later than 45 days after the close of a calendar quarter. In general, the video service provider's obligation to pay the fee commences in the quarter in which it commences service. If a municipality fails to notify the video service provider of the percentage of franchise fees and number of PEG channels required under prior cable franchise agreements within the 10-day deadline set by the engrossed bill, described earlier, the video service provider's obligation commences in the quarter that includes the 45<sup>th</sup> day after the municipality provides that notice.

### ***Enforcement of Fee and Other Provisions***

The engrossed bill allows a municipality to review a video service provider's records to ensure proper and accurate payment of the fee, but limits this review to no more than once in any three-year period. The parties must complete good-faith settlement discussions regarding any dispute regarding the amount of a fee before either party may bring an action regarding the disputed fee.

In any subsequent litigation, these negotiations will be treated as compromise negotiations under the state courts' rules of evidence. The effect of this treatment is that any settlement offer made during the negotiations may not be used as evidence that the dispute over the fee is valid or as evidence regarding the amount of the disputed fee.

Unless the parties agree otherwise, any action that is brought must be commenced within four years of the quarter to which the disputed amount relates. Neither party may recover the costs it incurs in the course of such litigation.

All determinations and calculations regarding video service provider fees must be made using generally accepted accounting practices. Also, the engrossed bill specifically allows video service providers to itemize on customers' bills the amount billed to recover the fee.

### **PEG Channels**

#### ***Requirement; Number of PEG Channels***

The engrossed bill requires a video service provider to make available to a municipality in which it provides service channels for noncommercial PEG programming. If an incumbent cable operator is providing channel capacity for PEG channels to a municipality under a cable franchise immediately before the engrossed bill's effective date, the municipality must require each interim cable operator or video service provider that provides video service in the municipality to provide channel capacity for the same number of PEG channels for which channel capacity is provided immediately before the effective date.

In general, if no incumbent cable operator is providing PEG channel capacity under a cable franchise immediately before the effective date, then for a municipality with a population of 50,000 or more, the municipality may require each provider to provide up to three PEG channels and, for a municipality with a population less than 50,000, each may be required to provide two PEG channels.

An exception applies if no incumbent cable operator is providing PEG channel capacity under a franchise prior to the effective date and a particular interim cable operator or video service provider distributes programming to more than one municipality from a single headend or hub office. In this instance, the operator or provider is required to provide the number of PEG channels to those municipalities collectively corresponding to their collective population. If the collective population is 50,000 or more, the municipalities collectively may not require capacity for more than three PEG channels. If the collective population is less than 50,000, not more than two PEG channels may be required.

***PEG Channel Availability; Substantial Channel Utilization; Service Tier***

In a municipality where there is no incumbent cable operator, the video service provider must make the PEG channels available beginning on the date that it commences service in the municipality. If there is an incumbent cable operator, and the municipality is therefore required to notify the video service provider of the number of PEG channels the incumbent provides to it, the video service provider must make the PEG channels available on the date that it commences service in the municipality or the 90<sup>th</sup> day after it receives the notice, whichever is later.

If a municipality does not substantially utilize a PEG channel, the interim cable operator or video service provider may reprogram that channel. A municipality is substantially utilizing a channel if it provides 40 or more hours of programming on the channel each week, at least 60% of which is locally produced programming. A municipality may regain the use of a PEG channel that has been reprogrammed by certifying to the video service provider that it will substantially utilize the channel.

An interim cable operator or video service provider must make PEG channels available on any service tier that is viewed by more than 50% of its customers. If a PEG channel was reprogrammed due to the failure of the municipality to substantially utilize the channel and later restored to a PEG function, the operator or provider may provide the restored channel on any service tier.

***Operation of PEG Channels; Transmission of PEG Programming to Provider's Network***

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

- For an origination point existing on the engrossed bill's effective date, the operator or provider is required to provide transmission capacity sufficient to make these connections.
  - A municipality must permit the operator or provider to determine the most economically and technologically efficient means of providing this transmission capacity.
- If a municipality requests that such a pre-existing PEG access channel origination point be relocated, the operator or provider is required to provide the first 200 feet of transmission line necessary to connect its headend or video hub office to the origination point, and the municipality is required to pay for the costs of construction of the relocated transmission line beyond the first 200 feet, other than the costs associated with the transmission of PEG programming over the line.
- A municipality is liable for any construction costs associated with additional origination points, other than the costs associated with the transmission of PEG programming "over such line."
- An operator or provider may recover its costs to provide transmission capacity under the above provisions by identifying and collecting a "PEG Transport Fee" as a separate line item on customer bills.

In addition, municipalities may not require an interim cable operator or video service provider to provide any funds, services, programming, facilities, or equipment related to PEG channel operation. It is the municipality's responsibility to do all of the following:

- Operate the channel and produce or obtain the programming.
- Ensure that all programming is submitted to the operator or provider in a form the operator or provider can broadcast with no manipulation or modification.
- Make all programming for a PEG channel available to all operators and providers operating in the municipality in a nondiscriminatory manner.

#### ***PEG Channel Monetary Support***

The engrossed bill continues any obligations to provide monetary support for PEG channels that exist under a municipal cable franchise in effect on the effective date of the substitute amendment. If the incumbent cable operator with such an obligation terminates the franchise by switching to a state video service franchise, its obligation continues until three years after the bill's effective date or until the date on which the municipal cable franchise would have expired, whichever is earlier. If the incumbent cable operator does not terminate the franchise, the obligation continues until the expiration of the franchise.

The engrossed bill requires that any new video service provider in a municipality that receives PEG support described in the preceding paragraph, must also provide PEG support and establishes a formula for determining an amount of support that is proportional to the support provided by the incumbent provider with the most subscribers in the municipality on the bill's effective date.

#### ***Interconnection of Video Service Providers' Networks***

The engrossed bill requires that, if there is more than one interim cable operator or video service provider in a municipality and the interconnection of their networks "is technically necessary and feasible for the transmission of programming of any PEG channel," the two providers must negotiate in good faith for interconnection on mutually acceptable terms, rates, and conditions. The provider who requests interconnection is responsible for interconnection costs, including the cost of transmitting programming from its origination point to the interconnection point.

#### **Public Rights-Of-Way**

##### ***Use of Rights-of-Way and General Requirements***

Under current law, a number of statutes govern the use of public rights-of-way by various entities. In particular, s. 66.0425, Stats., establishes the requirement that a person, other than public utilities and cooperatives that provide a utility service, obtain a municipal permit for the privilege to engage in construction in public rights-of-way, and addresses compensation to the municipality, performance bonds, liability, and third parties' interests. Also, s. 182.017, Stats., provides that the authority for public utilities and cooperatives and other entities that provide a utility service to occupy public rights-of-way is subject to a number of statutes and to "reasonable regulations made by any city, village or town through which the transmission lines or system may pass...."

The engrossed bill provides that, notwithstanding s. 66.0425 and except as provided in s. 182.017, as amended by the engrossed bill, municipalities may not impose any fee or requirement on a video service provider relating to the construction of a video service network. It also states that, as long as a video service provider pays the required video service provider fee, "the municipality may not require the video service provider to pay any compensation under s. 66.0425, or, notwithstanding s. 182.017, any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way."

In a separate provision, the engrossed bill states that: "[a] video franchise issued by the [DFI] authorizes a video service provider to occupy the public rights-of-way and to construct, operate, maintain, and repair a video service network to provide video service in the video franchise area."

***Regulation Under s. 182.017, Stats.***

Under s. 182.017, as amended by the engrossed bill, a municipality may impose reasonable regulations, including fees, on the occupation and use of public rights-of-way by video service providers, interim cable operators, and others. If a rights-of-way permit fee is cost-based, a video service provider may deduct the amount of the fee from the video service provider fee or any other compensation that the provider must pay to the municipality.

Any entity whose occupation and use of public rights-of-way is subject to this section may complain to the Public Service Commission (PSC) if it believes that a municipality has imposed an unreasonable regulation on its occupation and use of public rights-of-way. The PSC must review such a complaint and, if it determines that the regulation is unreasonable, void the regulation.<sup>3</sup> The engrossed bill allows the PSC to assess the complaining party for the cost of the review.

The engrossed bill requires that, if a municipality requires a permit for the occupation or use of its public rights-of-way, the municipality must approve or deny a permit application within 60 days of receiving the application. If the municipality fails to meet this deadline, the permit is deemed to be approved by the municipality. If the municipality denies a permit application, it must present its reasons for the denial in writing.

***Guidance on Reasonable and Unreasonable Municipal Regulations Under s. 182.017***

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

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

---

<sup>3</sup> The PSC has, in ch. PSC 130, Wis. Adm. Code, promulgated standards for determining whether a municipality's regulations of a utility's use or occupation of the public rights-of-way is unreasonable.

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

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

- The regulation has the effect of creating a moratorium on the placement of company lines or systems or on the entrance into the municipality of a video service provider.
- The regulation is inconsistent with the purposes of the statewide video franchise statute. The legislative findings at the beginning of the statutes include a statement of these purposes.

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

- Through a preexcavation permit fee, for a function identified above with an asterisk.
- Only from the company that is responsible for causing the municipality to incur the costs, for a function identified above with a + sign.

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

### Consumer Protection

#### *Video Service Subscriber Rights*

Current s. 100.209, Stats., *Video Service Subscriber Rights*, requires a cable operator to: (1) give a subscriber specified credits for service interruptions; (2) prevent disconnection of cable service for

failure to pay a bill until the unpaid bill is at least 45 days past due; and (3) specify time periods for a cable operator to repair cable service and to provide notice for instituting a rate increase, deleting a program service, or disconnecting a subscriber. This statute also explicitly states that it does not prohibit the Department of Agriculture, Trade, and Consumer Protection (DATCP) or a municipality from establishing by rule or ordinance, respectively, regulations that expand these subscriber rights.

The engrossed bill applies the video service subscriber rights statute to video service provided by "multichannel video providers." These providers are defined to include cable operators, video service providers, and "multichannel video programming providers," a term used in federal law which includes satellite video service providers. The engrossed bill repeals the authority of municipalities to adopt ordinances under this statute that supplement the statutory standards.

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

#### *Customer Service Standards*

The Federal Communications Commission's (FCC) regulations require each cable operator to meet, among other customer service standards, the following "customer service obligations": (1) provide a telephone access line, a customer service center, and bill payment locations that meet specified requirements; (2) meet specified performance standards for performing installations and responding to outages and service calls; and (3) issue refund checks and service credits within specified periods. [47 C.F.R. s. 76.309.]

The engrossed bill establishes that, if there is only one video service provider in a municipality, the municipality may require a video service provider to comply with the FCC's "customer service obligations," described in the preceding paragraph, but precludes the DFI and municipalities from imposing additional or different customer service standards that are specific to the provision of video service.

If there is more than one video service provider in a municipality or if a sole provider is subject to "effective competition," as defined in federal regulations, the engrossed bill establishes that these video service providers may not be subjected to any "customer service standards."<sup>4</sup> The engrossed bill provides an exception to this limitation for customer service standards promulgated by rule by DATCP.

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

---

<sup>4</sup> Neither the engrossed bill nor the FCC's regulations define the term "customer service standards." However, since the FCC identifies its service standards and disclosure requirements in 47 C.F.R. ss. 76.309, 76.1602, 76.1603, and 76.1619 as "customer service standards," an argument can be made that this prohibition applies to the types of standards and requirements identified in these FCC regulations.

### *Customer Privacy*

Current s. 134.43, Stats., imposes certain obligations and prohibitions on cable operators designed to protect the privacy of cable service customers. In particular, no person may, without written permission provided within the preceding two years, collect or release various information regarding customers. In addition, cable operators must make available to cable customers, at no cost, equipment to prevent the transmission to the cable operator of information from the customer's equipment. The law imposes a forfeiture of up to \$100,000 for repeat violations and allows additional private remedies.

The engrossed bill applies the prohibitions on the collection or release of customer information and the penalties and private remedies in this statute to "multichannel video providers," which is defined to include cable operators, video service providers, and "multichannel video programming providers," a term used in federal law which includes satellite video service providers.

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

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

#### *Access*

The engrossed bill's requirements on access to service apply only to a "large telecommunications video service provider" (LTVSP). This type of provider is a video service provider that uses the same facilities for providing telecommunications service also to provide video service and that, on January 1, 2007, had more than 500,000 residential customer access (or telephone) lines in the state or an affiliate of such a provider.<sup>5</sup>

The engrossed bill requires an LTVSP to provide access to its video service to the following percentages of households within its residential local exchange service area in the specified timeframes:

- At least 35% no later than three years after the date on which the LTVSP began providing video service under its state franchise.
- At least 50% no later than five years after the date on which the LTVSP began providing video service under its state franchise, or no later than two years after at least 30% of households with access to the LTVSP's video service subscribe to the service for six consecutive months, whichever occurs later.

An LTVSP must file an annual report with the DFI regarding its progress in complying with these requirements.

---

<sup>5</sup> The only entity that meets this definition is AT&T Wisconsin.

### **Discrimination**

The engrossed bill establishes that no video service provider may deny access to video service to any group of potential residential customers in the provider's video franchise area because of the race or income of the residents in the local area in which the group resides.

The engrossed bill specifies a defense to an alleged violation of the above prohibition based on income if the video service provider has met either of the following conditions:

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

A "low-income household" is defined to be any individual or group of individuals living together as one economic unit in a household whose aggregate annual income is not more than \$35,000, as identified by the U.S. Census Bureau as of January 1, 2007.

### ***Extensions and Waivers; Alternative Technologies***

A video service provider, including an LTVSP, may apply to DATCP for an extension of any time limit specified in these access and discrimination requirements or for a waiver from the requirements. DATCP must grant the extension or waiver if the provider demonstrates to the department's satisfaction that the provider has made "substantial and continuous efforts" to comply with the requirements and that the extension or waiver is necessary due to one or more of the following factors: (1) the provider's inability to obtain access to rights-of-way under reasonable terms and conditions; (2) developments and buildings that are not subject to competition because of exclusive service arrangements or are not accessible using reasonable technical solutions under commercially reasonable terms and conditions; (3) natural disasters; and (4) other factors beyond the control of the provider.

A video service provider, may satisfy these requirements through the use of an alternative technology, other than satellite service, that does all the following: (1) offers service, functionality, and content demonstrably similar to that provided through the provider's video service network; and (2) provides access to PEG channels and messages broadcast over the emergency alert system.

### ***Geographic Service Area***

The engrossed bill also establishes that, notwithstanding any of the above provisions, a telecommunications video service provider of any size is not required to provide video service outside its residential local exchange service area, and a video service provider that is an incumbent cable

operator is not required to provide video service outside the area in which the operator provided service at the time the "department" issued a video service franchise to the operator.<sup>6</sup>

### **Regulation of Rates**

Federal law expresses a preference for competition over regulation of cable service rates, and prohibits rate regulation if the FCC has determined that the market in question is subject to effective competition. In the absence of effective competition, a franchising authority may regulate rates for basic service only, including programming on the cable operator's basic programming tier. All other rates are subject to FCC regulations. [47 U.S.C. s. 543.]

The engrossed bill provides that neither DFI nor a municipality may regulate the rates of a video service provider under a state franchise or an interim cable operator under a municipal franchise if at least two unaffiliated providers or operators provide service in a municipality. This limitation applies regardless of whether the affected operator or provider has sought a determination by the FCC regarding effective competition.

The engrossed bill is silent on rate regulation where there is only one interim cable operator or video service provider. Given the general prohibition described under "State Franchising" on a municipality regulating rates, unless specifically authorizes in the engrossed bill, and the limitation on DFI's rule-making authority described below, it appears, that no state or municipal entity has authority to regulate rates in this instance.

### **Institutional Networks**

The engrossed bill provides that, notwithstanding any ordinance or franchise agreement in effect on the effective date of this law, no state agency or municipality may require an interim cable operator or video service provider to provide any institutional network or equivalent capacity on its network. "Institutional network" is defined as a network that connects governmental, educational, and community institutions.

### **Local Broadcast Stations**

Under federal law, cable operators are required to carry the signal of local commercial television stations and qualified low power stations. This law sets certain limits on this requirement, gives priority to the carriage of commercial stations over low power stations, and imposes requirements regarding the content to be carried, signal quality, and like matters.

The engrossed bill provides that broadcast stations may require noncable video service providers to carry their signals to the same extent that they may require cable operators to do so under current federal law. It requires that the noncable video service provider transmit the signal without degradation, but allow it to do so by technology different than that used by the broadcast station. It also prohibits the noncable video service provider from discriminating among broadcast stations and programming

---

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

providers and from deleting, changing, or altering a copyright identification that is part of a broadcast station's signal.

### **Rule-Making Limited**

The engrossed bill specifies that, notwithstanding the statute that gives an agency general authority to promulgate rules to interpret any statute it implements or enforces, the DFI may not promulgate rules interpreting the statewide video franchise statute created by the engrossed bill. It provides an exception to this prohibition, directing the DFI to promulgate rules for determining whether a video service provider, other than a telecommunications utility or qualified cable operator, is legally, financially, and technically qualified to provide video service.

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

### **Enforcement**

The engrossed bill authorizes a municipality, interim cable operator, or video service provider that is affected by a failure to comply with the statewide video franchise statute created by the engrossed bill to bring an action in circuit court. The court is directed to order compliance with the law, but the engrossed bill is silent regarding the recovery of damages. No party to a suit may recover its costs of prosecuting or defending the suit.

DFI may enforce most of the provisions of the new video franchising statute with the exception that the DATCP shall enforce the provisions relating to discrimination and access to service. The engrossed bill does not specify penalties for violations of the new law, nor does ch. 66, Stats., in which the law is numbered. In the absence of any specified penalty, civil violations are punishable by a forfeiture of not more than \$200. [s. 939.61 (1), Stats.]

### **Terminology and Conforming Amendments**

The engrossed bill changes many references throughout the statutes from "cable service" to "video service" and from "cable operator" to "video service provider." It also conforms various statutes to the new state video service franchising framework.

### **Effective Date**

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

### **Legislative History**

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

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

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

On May 9, 2007, the Assembly passed Assembly Bill 207, as amended, by a vote of Ayes, 56; Noes, 28. The Senate Chief Clerk directed that the bill be engrossed on May 18, 2007.

JES:DLL:jb:ty;wu





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**

Chair of the Board  
TOM WALKER  
Mid-West Family Broadcasting  
Madison

Vice Chair - TV/Chair Elect  
DOUC KIEL  
Journal Broadcast Group  
Milwaukee

Vice Chair - Radio  
WENDY OBERG  
Zoe Communications  
Shell Lake

Treasurer  
AL LANCASTER  
WSAW-TV  
Wausau

Secretary  
TOM KOSER  
WAQE AM/FM & WJMC AM/FM  
Rice Lake

Immediate Past Chair  
ROGER UTNEHMER  
DoorCountyDailyNews.com  
Sturgeon Bay

**DIRECTORS**

GREGG ALBERT  
WJQQ AM/FM  
Tomahawk

EDWARD ALLEN III  
WDOR AM/FM  
Sturgeon Bay

ELLIS BROMBERG  
WMVS-TV/WMTV-TV  
Milwaukee

JULI BUEHLER  
WLUK-TV  
Green Bay

SCOTT CHORSKI  
WKBT-TV  
La Crosse

BILL HURWITZ  
WMCS-AM/WJZI-FM/WLUM-FM  
Milwaukee

KIRA LAFOND  
Entercom  
Milwaukee

DEAN MAYTAC  
WISN-TV  
Milwaukee

BOB MILLER  
Discover Mediaworks  
Madison

JEFF ROBINSON  
WVRQ AM/FM/WPRE/WOPC  
Viroqua/Prairie du Chien

DON ROSETTE  
WMCS-AM  
Milwaukee

JILL SOMMERS  
WISC-TV/My Madison TV  
Madison

**Wisconsin Broadcasters Association**

**Issues for 2007 Session**

**1 – Video Franchise Bill – Non-Degradation of Signal and Must Carry/Retransmission**

The Wisconsin Legislature will soon consider a major bill allowing the telecommunication industry to provide video and audio services to Wisconsin residents. This bill can have many positive benefits for consumers.

However, the bill as currently drafted does not contain any guarantees for consumers that the high quality signal they are accustomed to receiving from local broadcasters will be retransmitted without any degradation of the signal. It also does not guarantee that viewers will have access to the local channels they are used to watching.

The WBA supports the concept contained in this bill ONLY if language is added

- 1 – Ensuring the non-degradation of broadcast signal, and
- 2 – Requiring a must carry/retransmission consent regime for broadcast similar to that required of cable systems.

The Michigan bill which is cited as a model for this legislation DOES contain these assurances.

**2 – Sales Tax on Advertising**

WBA is adamantly opposed to any attempts to extend Wisconsin's sales tax to advertising services. A tax increase of this magnitude would have a dramatically negative impact on our state economy. A study commissioned by the WBA in 2003 shows that a sales tax on just the production and placement of in-state advertising would result in a net loss to our economy of \$109,700,000 per year and a net loss of 1,451 jobs!

Other states, like Florida, that have tried to tax advertising have quickly realized their mistake and repealed the tax.

**3 – Direct to Consumer Advertising**

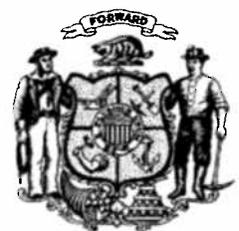
There are some policy-makers who believe that direct-to-consumer advertising of products such as prescription drugs should be limited or banned. WBA strongly opposes such proposals as prior restraint of commercial free speech. Consumers cannot obtain prescription drugs without first visiting a doctor's office, and more information about possible new cures for a patient's condition cannot be a bad thing. The industry has already adopted voluntary guidelines regarding the content and tone of prescription drug ads.

**4 – Public Service**

Radio and Television stations across Wisconsin have contributed \$270 million to their communities through fund-raising efforts and donations of air-time for public service announcements during 2005. 100% of television broadcasters and 99% of radio stations joined in to make this enormous contribution possible.



# WISCONSIN STATE LEGISLATURE





PROPOSED LANGUAGE FOR AMENDING THE PROPOSED VIDEO  
FRANCHISE BILL:

Insert in the appropriate place in the bill, the following,

"Any non profit public affairs broadcasting network that holds a contract with the State of Wisconsin for coverage of the Legislative, Executive and Judicial branches of State government either shall be granted mandatory carriage from, or may request retransmission consent with, all cable operators and video service providers.

become AB 207,  
companion to SB 107

Explanation:

This language would assure that the broadcast coverage of the State Legislative, Executive and Judicial Branches of government by WisconsinEYE, the current contract holder with the State of Wisconsin for such services, are carried by all cable companies and potential video service providers under AB \_\_\_ & SB \_\_\_ (LRB 1914/3). Fees are not mandatory for carriage but would be dependent on negotiations between WisconsinEYE and the providers. In regard to any potential fees, the State of Wisconsin's contract with WisconsinEYE requires that its programming be offered on a "non discriminatory, non exclusionary basis".



# Video Competition Act Concerns Addressed By Adopted Assembly Energy and Utilities Committee Amendments

**Concern:** Consumer protection standards will be reduced.

**Solution:** Simple Amendment LRBA0294/2 applies the state consumer protection standards in the statutory “cable television subscriber rights,” to video service providers, interim cable operators, and “multichannel video programming distributors”—including satellite service providers for the first time in history.

**Concern:** Some municipal revenues will decrease unless the definition of “Gross Revenues” is expanded to include advertising and home shopping network revenue.

**Solution:** Simple Amendment LRBA0292/1 modifies the definition of “gross receipts,” which is used to determine video service provider fees to include revenues from the provision of advertising and home shopping or similar programming, and from maintenance charges.

**Concern:** Public, Educational, and Government (PEG) Channels won’t be able to meet the requirements designed to ensure they are being substantially utilized.

**Solution:** Substitute Amendment LRBs0061/1 modifies the “substantially utilized” test for a PEG channel to require at least 40 hours of programming each week; and at least 60% of programming is locally produced, irrespective of whether this local programming is repeated.

**Concern:** Municipalities will lose control over their right-of-ways.

**Solution:** Substitute Amendment LRBs0061/1 applies the right-of-way law applicable to public utilities and comparable corporations to video service providers and interim cable operators.

**Concern:** New providers might not carry locally-broadcast stations.

**Solution:** Substitute Amendment LRBs0061/1 authorizes a local broadcast station to impose “must carry” signal carriage and retransmission requirements on noncable video service providers comparable to requirements that it may impose on cable operators under federal law.

**Concern:** The Department of Financial Institutions will incur additional costs for administration of the Video Competition Act.

**Solution:** Simple Amendment LRBA0313/1 requires an applicant for a state video service franchise to pay a onetime \$2,000 application fee to the Department of Financial Institutions (DFI). Modifications to an existing contract require an administrative fee of \$100 for most changes in application information. These fees have been added to offset departmental costs.

**Concern:** DFI will not have authority to create rules or impose penalties on video service providers.

**Solution:** The Substitute Amendment requires that as a condition of granting a state video service franchise, DFI is required to determine that an applicant is legally, financially, and technically qualified to provide video service. Additionally, LRBs0061/1 authorizes DFI to revoke a state video service franchise if the video service provider has willfully, knowingly, and repeatedly failed to substantially meet a material requirement imposed under the video franchise statute. The amendment also allows DFI limited rule-making authority.

*Please contact Representative Montgomery’s office at 266-5841 with any additional questions or concerns.*

Right of way fees -

Permit fees

Can now be subtracted from franchise fee. This will ensure

fees are ~~owed~~ for purposes ~~of~~ relating to video franchise.



## **Consumer Protection:**

Wisconsin cable consumers have benefited from some of the strongest customer service standards and protections in the country for years. Illinois' passage of their state cable franchise legislation marks the first state consumer protections have been made available to Illinois subscribers; therefore, they had some significant ground to make-up.

Under Wisconsin Statute 100.209, typically referred to as the Cable Subscriber Bill of Rights, cable consumers are guaranteed certain rights such as refunds on their cable bill for service outages. In fact, the proposed Wisconsin legislation goes a step further than the Illinois legislation by including satellite customers in the Cable Subscriber Bill of Rights once again putting Wisconsin in the forefront of consumer protection.

In terms of enforcement of consumer protection provisions, it is important to note two important facts. First, opponents like to point out that the Attorney General (AG) in Illinois has enforcement authority over the consumer protection provisions and in Wisconsin we do not provide the same authority to the AG. The reason for this is years ago we transferred consumer protection duties out of the AG's office over to the Department of Trade and Consumer Protection; therefore, the AG in Wisconsin doesn't have authority over consumer protection issues.

Second, it is true that the bill prohibits local governments from establishing by rule or ordinance their own customer service standards; however, if a video provider decides to remain in their current franchise agreement they are still bound by local authorities. It is imperative that we have uniform statewide customer service standards for those who have a statewide franchise agreement.

It is important to note, however, that the intent of this legislation is to remove barriers to market entry so that new providers arrive to provide competition to existing providers. The Cable Subscriber Bill of Rights exists because most providers are currently operating under virtual monopolies. As more cable and video service providers enter the market, competition will be the greatest incentive for a business to provide excellent customer service, rather than creating an environment of regulatory uncertainty and adding another layer of government red-tape.

## **Support for Public Access TV:**

Assembly Bill 207 requires video service providers to have public, educational and government (PEG) channel capacity available on their networks. Current channels remain intact and new entrants must provide the same number of channels as the incumbent.

Consumers are paying for these channels so it's important these channels are being utilized. The original bill stated that each channel had to have 12 hours of programming, 80% of which was locally produced and non-repeating. This threshold was substantially reduced by the committee to 40 hours per week, 60% locally produced and the non-repeating language has been struck from the bill.

Cable customers in Wisconsin currently pay a monthly franchise fee of up to 5%, based on a video providers' gross receipts, which is a line-item on their bill and is paid to the municipalities. Many communities use this fee to support their general budget; others use it to fund their public access channels. Some communities charge consumers a reduced fee or no fee at all and this remains their option.

The bill preserves the right for communities to collect this fee from both cable and video service providers while ensuring the fee will never touch the state coffers.

As stated above, many Wisconsin communities use the franchise fee paid by customers to fund their public access channels. A handful of communities in Wisconsin have a dedicated PEG fee. In an April 4, 2007 e-mail to the legislature, the Wisconsin Association of Public, Educational and Government Access Channels stated, *"Of our 40 members, 18 WAPC member stations receive dedicated PEG funding. Four cities have dedicated PEG support higher than 1%."*

Wisconsin currently has roughly 800 cable franchises. By the Association's own assessment, 18 of these 800 franchises have a PEG fee and four of these 800 franchises have a fee higher than 1%. Opponents want to mirror Illinois by requiring a 1% PEG fee across state at a time when only a handful of communities receive any dedicated PEG fee at all. This blanket approach doesn't make any sense.

Assembly Bill 207 in its current form is the result of compromise. One of the biggest compromises made was to allow the few municipalities that have already been collecting an additional PEG fee to continue to collect their fee for three years. This window will allow them to transition to a different funding source and perhaps rely on the franchise fee as a funding source as many communities are currently doing.

Assembly Bill 207 is about bringing the cost of cable down by facilitating market entry. By adding an additional 1% fee on to the bills of cable customers, meaning 6% of each cable bill would be paid in municipal taxes, in addition to sales tax, perhaps more customers would be driven to satellite television, which does not carry PEG channels or collect a franchise fee from the satellite customer.

Again, existing and new providers alike will need to carry existing PEG channels in Wisconsin. The Illinois bill mandates that the PEG channels be streamed with six megahertz of capacity—which requires so much bandwidth that a cable provider could provide up to 5 High Definition (HD) channels. If consumer demand in Wisconsin would provide a competitive advantage for a provider to stream the PEG channel over six megahertz of capacity, the provider would certainly be welcomed to do so.

### **Managing Public Rights of Way:**

Local governments can pass any reasonable ordinance or restriction they feel necessary to govern the placement of video equipment. In addition, they can establish a specific permitting process for work done by video service providers. They may in addition, require fees for work done in the rights of way; any fees paid will then be deducted from the next franchise fee

payment. This change will ensure that no municipality is victimized by and irresponsible provider who is unable or unwilling to make a franchise fee payment later on.

**In-kind Services:**

Cable providers have been providing complimentary services to schools for years now as a community service. When other opportunities to provide service arise, it is up to the provider to determine if it can sustain the service costs.

It is in the companies' best interest to provide this service because consumers tend to favor good community stewards, but it is not the state government's role to mandate a service.

Also, more government regulations in this area may threaten smaller, start-up companies from entering a market.



## **Wisconsin Broadcasters Association**

### ***Issues for 2007 Session***

#### **1 – Video Franchise Bill – Non-Degradation of Signal and Must Carry/Retransmission**

The Wisconsin Legislature will soon consider a major bill allowing the telecommunication industry to provide video and audio services to Wisconsin residents. This bill can have many positive benefits for consumers.

However, the bill as currently drafted does not contain any guarantees for consumers that the high quality signal they are accustomed to receiving from local broadcasters will be retransmitted without any degradation of the signal. It also does not guarantee that viewers will have access to the local channels they are used to watching.

The WBA supports the concept contained in this bill ONLY if language is added

- 1 – Ensuring the non-degradation of broadcast signal, and
- 2 – Requiring a must carry/retransmission consent regime for broadcast similar to that required of cable systems.

The Michigan bill which is cited as a model for this legislation DOES contain these assurances.

#### **2 – Sales Tax on Advertising**

WBA is adamantly opposed to any attempts to extend Wisconsin's sales tax to advertising services. A tax increase of this magnitude would have a dramatically negative impact on our state economy. A study commissioned by the WBA in 2003 shows that a sales tax on just the production and placement of in-state advertising would result in a net loss to our economy of \$109,700,000 per year and a net loss of 1,451 jobs!

Other states, like Florida, that have tried to tax advertising have quickly realized their mistake and repealed the tax.

#### **3 – Direct to Consumer Advertising**

There are some policy-makers who believe that direct-to-consumer advertising of products such as prescription drugs should be limited or banned. WBA strongly opposed such proposals as prior restraint of commercial free speech. Consumers cannot obtain prescription drugs without first visiting a doctor's office, and more information about possible new cures for a patient's condition cannot be a bad thing. The industry has already adopted voluntary guidelines regarding the content and tone of prescription drug ads.

#### **4 – Public Service**

Radio and Television stations across Wisconsin have contributed \$270 million to their communities through fund-raising efforts and donations of air-time for public service announcements during 2005. 100% of television broadcasters and 99% of radio stations joined in to make this enormous contribution possible.

## Michigan Video Franchise Legislation

### Section 4

(7) Except as otherwise provided in subsection (8), a provider shall provide subscribers access to the signals of the local broadcast television station licensed by the federal communications commission to serve those subscribers over the air. This section does not apply to a low power station unless the station is a qualified low power station as defined under 47 USC 534(h)(2). A provider is required to only carry digital broadcast signals to the extent that a broadcast television station has the right under federal law or regulation to demand carriage of the digital broadcast signals by a cable operator on a cable system.

(8) To facilitate access by subscribers of a video service provider to the signals of local broadcast stations under this section, a station either shall be granted mandatory carriage or may request retransmission consent with the provider.

(9) A provider shall transmit, without degradation, the signals a local broadcast station delivers to the provider. A provider is not required to provide a television station valuable consideration in exchange for carriage.

(10) A provider shall not do either of the following:

(a) Discriminate among or between broadcast stations and programming providers with respect to transmission of their signals, taking into account any consideration afforded the provider by the programming provider or broadcast station. In no event shall the signal quality as retransmitted by the provider be required to be superior to the signal quality of the broadcast stations as received by the provider from the broadcast television station.

(b) Delete, change, or alter a copyright identification transmitted as part of a broadcast station's signal.

(11) A provider shall not be required to utilize the same or similar reception technology as the broadcast stations or programming providers.

Skip 12, as it doesn't relate to our purposes...

(13) Subsections (7) to (11) apply only to a video service provider that delivers video programming in a video service area where the provider is not regulated as a cable operator under federal law.

1 compatible with the technology or protocol utilized by the provider  
2 to deliver services.

3 (4) A video service provider may request that an incumbent  
4 video provider interconnect with its video system for the sole  
5 purpose of providing access to video programming that is being  
6 provided over public, education, and government channels for a  
7 franchising entity that is served by both providers. Where  
8 technically feasible, interconnection shall be allowed under an  
9 agreement of the parties. The video service provider and incumbent  
10 video provider shall negotiate in good faith and may not  
11 unreasonably withhold interconnection. Interconnection may be  
12 accomplished by any reasonable method as agreed to by the  
13 providers. The requesting video service provider shall pay the  
14 construction, operation, maintenance, and other costs arising out  
15 of the interconnection, including the reasonable costs incurred by  
16 the incumbent provider.

17 (5) The person producing the broadcasts is solely responsible  
18 for all content provided over designated public, education, or  
19 government channels. A video service provider shall not exercise  
20 any editorial control over any programming on any channel designed  
21 for public, education, or government use.

22 (6) A video service provider is not subject to any civil or  
23 criminal liability for any program carried on any channel  
24 designated for public, education, or government use. 

 25 (7) Except as otherwise provided in subsection (8), a provider  
26 shall provide subscribers access to the signals of the local  
27 broadcast television station licensed by the federal communications

1 commission to serve those subscribers over the air. This section  
2 does not apply to a low power station unless the station is a  
3 qualified low power station as defined under 47 USC 534(h)(2). A  
4 provider is required to only carry digital broadcast signals to the  
5 extent that a broadcast television station has the right under  
6 federal law or regulation to demand carriage of the digital  
7 broadcast signals by a cable operator on a cable system.

8 (8) To facilitate access by subscribers of a video service  
9 provider to the signals of local broadcast stations under this  
10 section, a station either shall be granted mandatory carriage or  
11 may request retransmission consent with the provider.

12 (9) A provider shall transmit, without degradation, the  
13 signals a local broadcast station delivers to the provider. A  
14 provider is not required to provide a television station valuable  
15 consideration in exchange for carriage.

16 (10) A provider shall not do either of the following:

17 (a) Discriminate among or between broadcast stations and  
18 programming providers with respect to transmission of their  
19 signals, taking into account any consideration afforded the  
20 provider by the programming provider or broadcast station. In no  
21 event shall the signal quality as retransmitted by the provider be  
22 required to be superior to the signal quality of the broadcast  
23 stations as received by the provider from the broadcast television  
24 station.

25 (b) Delete, change, or alter a copyright identification  
26 transmitted as part of a broadcast station's signal.

27 (11) A provider shall not be required to utilize the same or

1 similar reception technology as the broadcast stations or  
2 programming providers.

3 (12) A public, education, or government channel shall only be  
4 used for noncommercial purposes.

5 (13) Subsections (7) to (11) apply only to a video service  
6 provider that delivers video programming in a video service area  
7 where the provider is not regulated as a cable operator under  
8 federal law.

9 (14) If a franchising entity seeks to utilize capacity  
10 designated under subsection (1) or an agreement under section 13 to  
11 provide access to video programming over 1 or more public,  
12 governmental, and education channels, the franchising entity shall  
13 give the provider a written request specifying the number of  
14 channels in actual use on the incumbent video provider's system or  
15 specified in the agreement entered into under section 13. The video  
16 service provider shall have 90 days to begin providing access as  
17 requested by the franchising entity.

18 Sec. 5. (1) As of the effective date of this act, no existing  
19 franchise agreement with a franchising entity shall be renewed or  
20 extended upon the expiration date of the agreement.

21 (2) The incumbent video provider, at its option, may continue  
22 to provide video services to the franchising entity by electing to  
23 do 1 of the following:

24 (a) Terminate the existing franchise agreement before the  
25 expiration date of the agreement and enter into a new franchise  
26 under a uniform video service local franchise agreement.

27 (b) Continue under the existing franchise agreement amended to

1 include only those provisions required under a uniform video  
2 service local franchise.

3 (c) Continue to operate under the terms of an expired  
4 franchise until a uniform video service local franchise agreement  
5 takes effect. An incumbent video provider has 120 days after the  
6 effective date of this act to file for a uniform video service  
7 local franchise agreement.

8 (3) On the effective date of this act, any provisions of an  
9 existing franchise that are inconsistent with or in addition to the  
10 provisions of a uniform video service local franchise agreement are  
11 unreasonable and unenforceable by the franchising entity.

12 (4) If a franchising entity authorizes 2 or more video service  
13 providers through an existing franchise, a uniform video service  
14 local franchise agreement, or an agreement under section 13, the  
15 franchising entity shall not enforce any term, condition, or  
16 requirement of any franchise agreement that is more burdensome than  
17 the terms, conditions, or requirements contained in another  
18 franchise agreement.

19 Sec. 6. (1) A video service provider shall calculate and pay  
20 an annual video service provider fee to the franchising entity. The  
21 fee shall be 1 of the following:

22 (a) If there is an existing franchise agreement, an amount  
23 equal to the percentage of gross revenues paid to the franchising  
24 entity by the incumbent video provider with the largest number of  
25 subscribers in the franchising entity.

26 (b) At the expiration of an existing franchise agreement or if  
27 there is no existing franchise agreement, an amount equal to the

1 percentage of gross revenues as established by the franchising  
2 entity not to exceed 5% and shall be applicable to all providers.

3 (2) The fee due under subsection (1) shall be due on a  
4 quarterly basis and paid within 45 days after the close of the  
5 quarter. Each payment shall include a statement explaining the  
6 basis for the calculation of the fee.

7 (3) The franchising entity shall not demand any additional  
8 fees or charges from a provider and shall not demand the use of any  
9 other calculation method other than allowed under this act.

10 (4) For purposes of this section, "gross revenues" means all  
11 consideration of any kind or nature, including, without limitation,  
12 cash, credits, property, and in-kind contributions received by the  
13 provider from subscribers for the provision of video service by the  
14 video service provider within the jurisdiction of the franchising  
15 entity. Gross revenues shall include all of the following:

16 (a) All charges and fees paid by subscribers for the provision  
17 of video service, including equipment rental, late fees,  
18 insufficient funds fees, fees attributable to video service when  
19 sold individually or as part of a package or bundle, or  
20 functionally integrated, with services other than video service.

21 (b) Any franchise fee imposed on the provider that is passed  
22 on to subscribers.

23 (c) Compensation received by the provider for promotion or  
24 exhibition of any products or services over the video service.

25 (d) Revenue received by the provider as compensation for  
26 carriage of video programming on that provider's video service.

27 (e) All revenue derived from compensation arrangements for

1 advertising attributable to the local franchise area.

2 (f) Any advertising commissions paid to an affiliated third  
3 party for video service advertising.

4 (5) Gross revenues do not include any of the following:

5 (a) Any revenue not actually received, even if billed, such as  
6 bad debt net of any recoveries of bad debt.

7 (b) Refunds, rebates, credits, or discounts to subscribers or  
8 a municipality to the extent not already offset by subdivision (a)  
9 and to the extent the refund, rebate, credit, or discount is  
10 attributable to the video service.

11 (c) Any revenues received by the provider or its affiliates  
12 from the provision of services or capabilities other than video  
13 service, including telecommunications services, information  
14 services, and services, capabilities, and applications that may be  
15 sold as part of a package or bundle, or functionally integrated,  
16 with video service.

17 (d) Any revenues received by the provider or its affiliates  
18 for the provision of directory or internet advertising, including  
19 yellow pages, white pages, banner advertisement, and electronic  
20 publishing.

21 (e) Any amounts attributable to the provision of video service  
22 to customers at no charge, including the provision of such service  
23 to public institutions without charge.

24 (f) Any tax, fee, or assessment of general applicability  
25 imposed on the customer or the transaction by a federal, state, or  
26 local government or any other governmental entity, collected by the  
27 provider, and required to be remitted to the taxing entity,

1 including sales and use taxes.

2 (g) Any forgone revenue from the provision of video service at  
3 no charge to any person, except that any forgone revenue exchanged  
4 for trades, barter, services, or other items of value shall be  
5 included in gross revenue.

6 (h) Sales of capital assets or surplus equipment.

7 (i) Reimbursement by programmers of marketing costs actually  
8 incurred by the provider for the introduction of new programming.

9 (j) The sale of video service for resale to the extent the  
10 purchaser certifies in writing that it will resell the service and  
11 pay a franchise fee with respect to the service.

12 (6) In the case of a video service that is bundled or  
13 integrated functionally with other services, capabilities, or  
14 applications, the portion of the video provider's revenue  
15 attributable to the other services, capabilities, or applications  
16 shall be included in gross revenue unless the provider can  
17 reasonably identify the division or exclusion of the revenue from  
18 its books and records that are kept in the regular course of  
19 business.

20 (7) Revenue of an affiliate shall be included in the  
21 calculation of gross revenues to the extent the treatment of the  
22 revenue as revenue of the affiliate has the effect of evading the  
23 payment of franchise fees which would otherwise be paid for video  
24 service.

25 (8) In addition to the fee required under subsection (1), a  
26 video service provider shall pay to the franchising entity as  
27 support for the cost of public, education, and government access

House Bill No. 6456 as amended December 12, 2006

1 facilities <<and services>> an annual fee equal to 1 of the following:

2 (a) If there is an existing franchise on the effective date of  
3 this act, the fee paid to the franchising entity by the incumbent  
4 video provider with the largest number of cable service subscribers  
5 in the franchising entity as determined by the existing franchise  
6 agreement.

7 (b) At the expiration of the existing franchise agreement, the  
8 amount required under subdivision (a) not to exceed 2% of gross  
9 revenues.

10 (c) If there is no existing franchise agreement, a percentage  
11 of gross revenues as established by the franchising entity not to  
12 exceed 2% to be determined by a community need assessment.

13 (d) An amount agreed to by the franchising entity and the  
14 video service provider.

15 (9) The fee required under subsection (8) shall be applicable  
16 to all providers.

17 <<(10) The fee due under subsection (8) shall be due on a quarterly  
18 basis and paid within 45 days after the close of the quarter. Each  
19 payment shall include a statement explaining the basis for the  
20 calculation of the fee.>>

21 (11) A video service provider is entitled to a credit applied  
22 toward the fees due under subsection (1) for all funds allocated to  
23 the franchising entity from annual maintenance fees paid by the  
24 provider for use of public rights-of-way, minus any property tax  
25 credit allowed under section 8 of the metropolitan extension  
26 telecommunications rights-of-way oversight act, 2002 PA 48, MCL  
27 484.3108. The credits shall be applied on a monthly pro rata basis  
beginning in the first month of each calendar year in which the  
franchising entity receives its allocation of funds. The credit

1 allowed under this subsection shall be calculated by multiplying  
2 the number of linear feet occupied by the provider in the public  
3 rights-of-way of the franchising entity by the lesser of 5 cents or  
4 the amount assessed under the metropolitan extension  
5 telecommunications right-of-way oversight act, 2002 PA 48, MCL  
6 484.3101 to 484.3120. A video service provider is not eligible for  
7 a credit under this subsection unless the provider has taken all  
8 property tax credits allowed under the metropolitan extension  
9 telecommunications right-of-way oversight act, 2002 PA 48, MCL  
10 484.3101 to 484.3120.

11 (12) All determinations and computations made under this  
12 section shall be pursuant to generally accepted accounting  
13 principles.

14 (13) The commission within 30 days after the enactment into  
15 law of any appropriation to it shall ascertain the amount of the  
16 appropriation attributable to the actual costs to the commission in  
17 exercising its duties under this act and shall be assessed against  
18 each video service provider doing business in this state. Each  
19 provider shall pay a portion of the total assessment in the same  
20 proportion that its number of subscribers for the preceding  
21 calendar year bears to the total number of video service  
22 subscribers in the state. The first assessment made under this act  
23 shall be based on the commission's estimated number of subscribers  
24 for each provider in the year that the appropriation is made. The  
25 total assessment under this subsection shall not exceed  
26 \$1,000,000.00 annually. This subsection does not apply after  
27 December 31, 2009.

1           Sec. 7. (1) No more than every 24 months, a franchising entity  
2 may perform reasonable audits of the video service provider's  
3 calculation of the fees paid under section 6 to the franchising  
4 entity during the preceding 24-month period only. All records  
5 reasonably necessary for the audits shall be made available by the  
6 provider at the location where the records are kept in the ordinary  
7 course of business. The franchising entity and the video service  
8 provider shall each be responsible for their respective costs of  
9 the audit. Any additional amount due verified by the franchising  
10 entity shall be paid by the provider within 30 days of the  
11 franchising entity's submission of an invoice for the sum. If the  
12 sum exceeds 5% of the total fees which the audit determines should  
13 have been paid for the 24-month period, the provider shall pay the  
14 franchising entity's reasonable costs of the audit.

15           (2) Any claims by a franchising entity that fees have not been  
16 paid as required under section 6, and any claims for refunds or  
17 other corrections to the remittance of the provider, shall be made  
18 within 3 years from the date the compensation is remitted.

19           (3) Any video service provider may identify and collect as a  
20 separate line item on the regular monthly bill of each subscriber  
21 an amount equal to the percentage established under section 6(1)  
22 applied against the amount of the subscriber's monthly bill.

23           (4) A video service provider may identify and collect as a  
24 separate line item on the regular monthly bill of each subscriber  
25 an amount equal to the percentage established under section 6(8)  
26 applied against the amount of the subscriber's monthly bill.

27           Sec. 8. (1) A franchising entity shall allow a video service

1 provider to install, construct, and maintain a video service or  
2 communications network within a public right-of-way and shall  
3 provide the provider with open, comparable, nondiscriminatory, and  
4 competitively neutral access to the public right-of-way.

5 (2) A franchising entity may not discriminate against a video  
6 service provider to provide video service for any of the following:

7 (a) The authorization or placement of a video service or  
8 communications network in public rights-of-way.

9 (b) Access to a building owned by a governmental entity.

10 (c) A municipal utility pole attachment.

11 (3) A franchising entity may impose on a video service  
12 provider a permit fee only to the extent it imposes such a fee on  
13 incumbent video providers, and any fee shall not exceed the actual,  
14 direct costs incurred by the franchising entity for issuing the  
15 relevant permit. A fee under this section shall not be levied if  
16 the video service provider already has paid a permit fee of any  
17 kind in connection with the same activity that would otherwise be  
18 covered by the permit fee under this section or is otherwise  
19 authorized by law or contract to place the facilities used by the  
20 video service provider in the public rights-of-way or for general  
21 revenue purposes.

22 Sec. 9. (1) A video service provider shall not deny access to  
23 service to any group of potential residential subscribers because  
24 of the race or income of the residents in the local area in which  
25 the group resides.

26 (2) It is a defense to an alleged violation of subsection (1)  
27 if the provider has met either of the following conditions:

1 (a) Within 3 years of the date it began providing video  
2 service under this act, at least 25% of households with access to  
3 the provider's video service are low-income households.

4 (b) Within 5 years of the date it began providing video  
5 service under this act and from that point forward, at least 30% of  
6 the households with access to the provider's video service are low-  
7 income households.

8 (3) If a video services provider is using telecommunication  
9 facilities to provide video services and has more than 1,000,000  
10 telecommunication access lines in this state, the provider shall  
11 provide access to its video service to a number of households equal  
12 to at least 25% of the households in the provider's  
13 telecommunication service area in the state within 3 years of the  
14 date it began providing video service under this act and to a  
15 number not less than 50% of these households within 6 years. A  
16 video service provider is not required to meet the 50% requirement  
17 in this subsection until 2 years after at least 30% of the  
18 households with access to the provider's video service subscribe to  
19 the service for 6 consecutive months.

20 (4) Each provider shall file an annual report with the  
21 franchising entity and the commission regarding the progress that  
22 has been made toward compliance with subsections (2) and (3).

23 (5) Except for satellite service, a video service provider may  
24 satisfy the requirements of this section through the use of  
25 alternative technology that offers service, functionality, and  
26 content, which is demonstrably similar to that provided through the  
27 provider's video service system and may include a technology that

1 does not require the use of any public right-of-way. The technology  
2 utilized to comply with the requirements of this section shall  
3 include local public, education, and government channels and  
4 messages over the emergency alert system as required under section  
5 4.

6 (6) A video service provider may apply to the franchising  
7 entity, and, in the case of subsection (3), the commission, for a  
8 waiver of or for an extension of time to meet the requirements of  
9 this section if 1 or more of the following apply:

10 (a) The inability to obtain access to public and private  
11 rights-of-way under reasonable terms and conditions.

12 (b) Developments or buildings not being subject to competition  
13 because of existing exclusive service arrangements.

14 (c) Developments or buildings being inaccessible using  
15 reasonable technical solutions under commercial reasonable terms  
16 and conditions.

17 (d) Natural disasters.

18 (e) Factors beyond the control of the provider.

19 (7) The franchising entity or commission may grant the waiver  
20 or extension only if the provider has made substantial and  
21 continuous effort to meet the requirements of this section. If an  
22 extension is granted, the franchising entity or commission shall  
23 establish a new compliance deadline. If a waiver is granted, the  
24 franchising entity or commission shall specify the requirement or  
25 requirements waived.

26 (8) Notwithstanding any other provision of this act, a video  
27 service provider using telephone facilities to provide video

1 service is not obligated to provide such service outside the  
2 provider's existing telephone exchange boundaries.

3 (9) Notwithstanding any other provision of this act, a video  
4 service provider shall not be required to comply with, and a  
5 franchising entity may not impose or enforce, any mandatory build-  
6 out or deployment provisions, schedules, or requirements except as  
7 required by this section.

8 Sec. 10. (1) A video service provider shall not do in  
9 connection with the providing of video services to its subscribers  
10 and the commission may enforce compliance with any of the following  
11 to the extent that the activities are not covered by section  
12 2(3)(l):

13 (a) Make a statement or representation, including the omission  
14 of material information, regarding the rates, terms, or conditions  
15 of providing video service that is false, misleading, or deceptive.  
16 As used in this subdivision, "material information" includes, but  
17 is not limited to, all applicable fees, taxes, and charges that  
18 will be billed to the subscriber, regardless of whether the fees,  
19 taxes, or charges are authorized by state or federal law.

20 (b) Charge a customer for a subscribed service for which the  
21 customer did not make an initial affirmative order. Failure to  
22 refuse an offered or proposed subscribed service is not an  
23 affirmative order for the service.

24 (c) If a customer has canceled a service, charge the customer  
25 for service provided after the effective date the service was  
26 canceled.

27 (d) Cause a probability of confusion or a misunderstanding as

1 to the legal rights, obligations, or remedies of a party to a  
2 transaction by making a false, deceptive, or misleading statement  
3 or by failing to inform the customer of a material fact, the  
4 omission of which is deceptive or misleading.

5 (e) Represent or imply that the subject of a transaction will  
6 be provided promptly, or at a specified time, or within a  
7 reasonable time, if the provider knows or has reason to know that  
8 it will not be so provided.

9 (f) Cause coercion and duress as a result of the time and  
10 nature of a sales presentation.

11 (2) Each video service provider shall establish a dispute  
12 resolution process for its customers. Each provider shall maintain  
13 a local or toll-free telephone number for customer service contact.

14 (3) The commission shall submit to the legislature no later  
15 than June 1, 2007 a proposed process to be added to this act that  
16 would allow the commission to review disputes which are not  
17 resolved under subsection (2), disputes between a provider and a  
18 franchising entity, and disputes between providers.

19 (4) Each provider shall notify its customers of the dispute  
20 resolution process created under this section.

21 Sec. 11. (1) Except under the terms of a mandatory protective  
22 order, trade secrets and commercial or financial information  
23 submitted under this act to the franchising entity or commission  
24 are exempt from the freedom of information act, 1976 PA 442, MCL  
25 15.231 to 15.246.

26 (2) If information is disclosed under a mandatory protective  
27 order, then the franchising entity or commission may use the

1 information for the purpose for which it is required, but the  
2 information shall remain confidential.

3 (3) There is a rebuttable presumption that costs studies,  
4 customer usage data, marketing studies and plans, and contracts are  
5 trade secrets or commercial or financial information protected  
6 under subsection (1). The burden of removing the presumption under  
7 this subsection is with the party seeking to have the information  
8 disclosed.

9 Sec. 12. (1) The commission's authority to administer this act  
10 is limited to the powers and duties explicitly provided for under  
11 this act, and the commission shall not have the authority to  
12 regulate or control a provider under this act as a public utility.

13 (2) The commission shall file a report with the governor and  
14 legislature by February 1 of each year that shall include  
15 information on the status of competition for video services in this  
16 state and recommendations for any needed legislation. A video  
17 service provider shall submit to the commission any information  
18 requested by the commission necessary for the preparation of the  
19 annual report required under this subsection. The obligation of a  
20 video service provider under this subsection is limited to the  
21 submission of information generated or gathered in the normal  
22 course of business.

23 Sec. 13. This act does not prohibit a local unit of government  
24 and a video service provider from entering into a voluntary  
25 franchise agreement that includes terms and conditions different  
26 than those required under this act, including, but not limited to,  
27 a reduction in the franchise fee in return for the video service

1 provider making available to the franchising entity services,  
2 equipment, capabilities, or other valuable consideration. This  
3 section does not apply unless for each provider servicing the  
4 franchise entity it is technically feasible and commercially  
5 practicable to comply with similar terms and conditions in the  
6 franchise agreement and it is offered to the other provider.

7       Sec. 14. (1) After notice and hearing, if the commission finds  
8 that a person has violated this act, the commission shall order  
9 remedies and penalties to protect and make whole persons who have  
10 suffered damages as a result of the violation, including, but not  
11 limited to, 1 or more of the following:

12       (a) Except as otherwise provided under subdivision (b), order  
13 the person to pay a fine for the first offense of not less than  
14 \$1,000.00 or more than \$20,000.00. For a second and any subsequent  
15 offense, the commission shall order the person to pay a fine of not  
16 less than \$2,000.00 or more than \$40,000.00.

17       (b) If the video service provider has less than 250,000  
18 telecommunication access lines in this state, order the person to  
19 pay a fine for the first offense of not less than \$200.00 or more  
20 than \$500.00. For a second and any subsequent offense, the  
21 commission shall order the person to pay a fine of not less than  
22 \$500.00 or more than \$1,000.00.

23       (c) If the person has received a uniform video service local  
24 franchise, revoke the franchise.

25       (d) Issue cease and desist orders.

26       (2) Notwithstanding subsection (1), a fine shall not be  
27 imposed for a violation of this act if the provider has otherwise

1 fully complied with this act and shows that the violation was an  
2 unintentional and bona fide error notwithstanding the maintenance  
3 of procedures reasonably adopted to avoid the error. Examples of a  
4 bona fide error include clerical, calculation, computer  
5 malfunction, programming, or printing errors. An error in legal  
6 judgment with respect to a person's obligations under this act is  
7 not a bona fide error. The burden of proving that a violation was  
8 an unintentional and bona fide error is on the provider.

9 (3) If the commission finds that a party's complaint or  
10 defense filed under this section is frivolous, the commission shall  
11 award to the prevailing party costs, including reasonable attorney  
12 fees, against the nonprevailing party and their attorney.

13 (4) Any party of interest shall have the same rights to appeal  
14 and review an order or finding of the commission under this act as  
15 provided under the Michigan telecommunications act, 1991 PA 179,  
16 MCL 484.2101 to 484.2604.

17 Enacting section 1. This act takes effect January 1, 2007.

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 6456

A bill to provide for uniform video service local franchises; to promote competition in providing video services in this state; to ensure local control of rights-of-way; to provide for fees payable to local units of government; to provide for local programming; to prescribe the powers and duties of certain state and local agencies and officials; and to provide for penalties.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) This act shall be known and may be cited as the  
2 "uniform video services local franchise act".

3           (2) As used in this act:

4           (a) "Cable operator" means that term as defined in 47 USC  
5 522(5).

6           (b) "Cable service" means that term as defined in 47 USC  
7 522(6).

House Bill No. 6456 as amended December 12, 2006

1 (c) "Cable system" means that term as defined in 47 USC  
2 522(7).

3 (d) "Commission" means the Michigan public service commission.

4 (e) "Franchising entity" means the local unit of government in  
5 which a provider offers video services through a franchise

6 << >>.

7 (f) "Household" means a house, an apartment, a mobile home, or  
8 any other structure or part of a structure intended for residential  
9 occupancy as separate living quarters.

10 (g) "Incumbent video provider" means a cable operator serving  
11 cable subscribers or a telecommunication provider providing video  
12 services through the provider's existing telephone exchange  
13 boundaries in a particular franchise area within a local unit of  
14 government on the effective date of this act.

15 (h) "IPTV" means internet protocol television.

16 (i) "Local unit of government" means a city, village, or  
17 township.

18 (j) "Low-income household" means a household with an average  
19 annual household income of less than \$35,000.00 as determined by  
20 the most recent decennial census.

21 (k) "Open video system" or "OVS" means that term as defined in  
22 47 USC 573.

23 (l) "Person" means an individual, corporation, association,  
24 partnership, governmental entity, or any other legal entity.

25 (m) "Public rights-of-way" means the area on, below, or above  
26 a public roadway, highway, street, public sidewalk, alley,  
27 waterway, or utility easements dedicated for compatible uses.

House Bill No. 6456 as amended December 12, 2006

1           (n) "Uniform video service local franchise agreement" or  
2 "franchise agreement" means the franchise agreement required under  
3 this act to be the operating agreement between each franchising  
4 entity and video provider in this state.

5           (o) "Video programming" means that term as defined in 47 USC  
6 522(20).

7           (p) "Video service" means video programming, cable services,  
8 IPTV, or OVS provided through facilities located at least in part  
9 in the public rights-of-way without regard to delivery technology,  
10 including internet protocol technology. This definition does not  
11 include any video programming provided by <<

12

13

14

15

>> a

16 commercial mobile service provider defined in 47 USC 332(d) or  
17 provided solely as part of, and via, a service that enables users  
18 to access content, information, electronic mail, or other services  
19 offered over the public internet.

20           (q) "Video service provider" or "provider" means a person  
21 authorized under this act to provide video service.

22           (r) "Video service provider fee" means the amount paid by a  
23 video service provider or incumbent video provider under section 6.

24           Sec. 2. (1) No later than 30 days from the effective date of  
25 this act, the commission shall issue an order establishing the  
26 standardized form for the uniform video service local franchise  
27 agreement to be used by each franchising entity in this state.

1           (2) Except as otherwise provided by this act, a person shall  
2 not provide video services in any local unit of government without  
3 first obtaining a uniform video service local franchise as provided  
4 under section 3.

5           (3) The uniform video service local franchise agreement  
6 created under subsection (1) shall include all of the following  
7 provisions:

8           (a) The name of the provider.

9           (b) The address and telephone number of the provider's  
10 principal place of business.

11           (c) The name of the provider's principal executive officers  
12 and any persons authorized to represent the provider before the  
13 franchising entity and the commission.

14           (d) If the provider is not an incumbent video provider, the  
15 date on which the provider expects to provide video services in the  
16 area identified under subdivision (e).

17           (e) An exact description of the video service area footprint  
18 to be served, as identified by a geographic information system  
19 digital boundary meeting or exceeding national map accuracy  
20 standards. For providers with 1,000,000 or more access lines in  
21 this state using telecommunication facilities to provide video  
22 services, the footprint shall be identified in terms of entire wire  
23 centers or exchanges. An incumbent video provider satisfies this  
24 requirement by allowing a franchising entity to seek right-of-way  
25 related information comparable to that required by a permit under  
26 the metropolitan extension telecommunications rights-of-way  
27 oversight act, 2002 PA 48, MCL 484.3101 to 484.3120, as set forth

1 in its last cable franchise or consent agreement from the  
2 franchising entity entered before the effective date of this act.

3 (f) A requirement that the provider pay the video service  
4 provider fees required under section 6.

5 (g) A requirement that the provider file in a timely manner  
6 with the federal communications commission all forms required by  
7 that agency in advance of offering video service in this state.

8 (h) A requirement that the provider agrees to comply with all  
9 valid and enforceable federal and state statutes and regulations.

10 (i) A requirement that the provider agrees to comply with all  
11 valid and enforceable local regulations regarding the use and  
12 occupation of public rights-of-way in the delivery of the video  
13 service, including the police powers of the franchising entity.

14 (j) A requirement that the provider comply with all federal  
15 communications commission requirements involving the distribution  
16 and notification of federal, state, and local emergency messages  
17 over the emergency alert system applicable to cable operators.

18 (k) A requirement that the provider comply with the public,  
19 education, and government programming requirements of section 4.

20 (l) A requirement that the provider comply with all customer  
21 service rules of the federal communications commission under 47 CFR  
22 76.309(c) applicable to cable operators and applicable provisions  
23 of the Michigan consumers protection act, 1976 PA 331, MCL 445.901  
24 to 445.922.

25 (m) A requirement that the provider comply with the consumer  
26 privacy requirements of 47 USC 551 applicable to cable operators.

27 (n) A requirement that the provider comply with in-home wiring

1 and consumer premises wiring rules of the federal communications  
2 commission applicable to cable operators.

3 (o) A requirement that an incumbent video provider comply with  
4 the terms which provide insurance for right-of-way related  
5 activities that are contained in its last cable franchise or  
6 consent agreement from the franchising entity entered before the  
7 effective date of this act.

8 (p) A grant of authority by the franchising entity to provide  
9 video service in the video service area footprint as described  
10 under subdivision (e).

11 (q) A grant of authority by the franchising entity to use and  
12 occupy the public rights-of-way in the delivery of the video  
13 service, subject to the laws of this state and the police powers of  
14 the franchising entity.

15 (r) A requirement that the parties to the agreement are  
16 subject to the provisions of this act.

17 (s) The penalties provided for under section 14.

18 Sec. 3. (1) Before offering video services within the  
19 boundaries of a local unit of government the video provider shall  
20 enter into or possess a franchise agreement with the local unit of  
21 government as required by this act.

22 (2) A franchising entity shall notify the provider as to  
23 whether the submitted franchise agreement is complete as required  
24 by this act within 15 business days after the date that the  
25 franchise agreement is filed. If the franchise agreement is not  
26 complete, the franchising entity shall state in its notice the  
27 reasons the franchise agreement is incomplete.

1           (3) A franchising entity shall have 30 days after the  
2 submission date of a complete franchise agreement to approve the  
3 agreement. If the franchising entity does not notify the provider  
4 regarding the completeness of the franchise agreement or approve  
5 the franchise agreement within the time periods required under this  
6 subsection, the franchise agreement shall be considered complete  
7 and the franchise agreement approved.

8           (4) The uniform video service local franchise agreement issued  
9 by a franchising entity or an existing franchise of an incumbent  
10 video service provider is fully transferable to any successor in  
11 interest to the provider to which it is initially granted. A notice  
12 of transfer shall be filed with the franchising entity within 15  
13 days of the completion of the transfer.

14           (5) The uniform video service local franchise agreement issued  
15 by a franchising entity may be terminated or the video service area  
16 footprint may be modified, except as provided under section 9, by  
17 the provider by submitting notice to the franchising entity.

18           (6) If any of the information contained in the franchise  
19 agreement changes, the provider shall timely notify the franchising  
20 entity.

21           (7) The uniform video service local franchise shall be for a  
22 period of 10 years from the date it is issued. Before the  
23 expiration of the initial franchise agreement or any subsequent  
24 renewals, the provider may apply for an additional 10-year renewal  
25 under this section.

26           (8) As a condition to obtaining or holding a franchise, a  
27 franchising entity shall not require a video service provider to

1 obtain any other franchise, assess any other fee or charge, or  
2 impose any other franchise requirement than is allowed under this  
3 act. For purposes of this subsection, a franchise requirement  
4 includes, but is not limited to, a provision regulating rates  
5 charged by video service providers, requiring the video service  
6 providers to satisfy any build-out requirements, or a requirement  
7 for the deployment of any facilities or equipment.

8       Sec. 4. (1) A video service provider shall designate a  
9 sufficient amount of capacity on its network to provide for the  
10 same number of public, education, and government access channels  
11 that are in actual use on the incumbent video provider system on  
12 the effective date of this act or as provided under subsection  
13 (14).

14       (2) Any public, education, or government channel provided  
15 under this section that is not utilized by the franchising entity  
16 for at least 8 hours per day for 3 consecutive months may no longer  
17 be made available to the franchising entity and may be programmed  
18 at the provider's discretion. At such time as the franchising  
19 entity can certify a schedule for at least 8 hours of daily  
20 programming for a period of 3 consecutive months, the provider  
21 shall restore the previously reallocated channel.

22       (3) The franchising entity shall ensure that all  
23 transmissions, content, or programming to be retransmitted by a  
24 video service provider is provided in a manner or form that is  
25 capable of being accepted and retransmitted by a provider, without  
26 requirement for additional alteration or change in the content by  
27 the provider, over the particular network of the provider, which is

## COMPETITIVE REGULATORY PARITY LEGISLATION

The summary below briefly outlines the proposed changes to Wisconsin Statutes Chapter 196 which would bring about a significant degree of regulatory parity in telecommunication services in Wisconsin. Important aspects of the proposed legislation include the following:

- Creates regulatory parity among telecommunications entities by establishing an effective regulatory scheme for broader range of “communications services” and “communication service providers.”
- Levels the regulatory playing field for all providers of telecommunication services and places them on comparable footing with one another.
  - Telecommunication service providers no longer “public utilities.” § 196.01(5)(a).
  - During x year “rate transition period,” a provider of “basic telecommunications service” (sole service voice grade access) may increase its monthly charge by x every 12 months. Basic telecommunications service fully deregulated after the rate transition period. § 196.211(4)-(5).
  - Nonbasic telecommunications service fully deregulated immediately. § 196.211(3)
- Provides for certification and regulation of all “communication” service (telecommunications, information, video, broadband, advanced and IP) providers with respect to customer and market protection. §§ 196.212; 196.50(2).
- Provides mechanism for ILECs to obtain relief from provider of last resort obligations. § 196.501.
- Scope of PSC Jurisdiction:
  - No jurisdiction over nonbasic telecommunications service and, after rate transition period, no jurisdiction over basic telecommunications and communications service, except:
    - Federal authority re interconnection, resale, UNEs, mediation and arbitration delegated to states. § 196.211(6).
    - Property access and facility interconnection requirements under § 196.04 (telecommunications only).
    - Enforce settlement agreements. § 196.212(1).
    - Protect customer privacy under § 196.209.
    - Maintain universal service fund under § 196.218.

- Certify communication service providers under § 196.50(2).
- Determine providers of last resort for local exchange service. § 196.501.
- Establish rates charged by ILEC to pay telephone providers. § 196.212(6).
- Rules and orders within PSC's jurisdiction must promote cost minimization, technological, customer benefit and competitive goals. § 196.211(7).
- PSC required to eliminate unnecessary rules. § 196.211(8).
- DATCAP would continue to regulate business practices of telecommunications service and communications service providers.



FROM :PCTC

FAX NO. :7153394512

Oct. 18 2007 11:39AM P1/1

TO BEN

608-256-6222 fax

CATV System

**PCTC**

PO Box 108  
Phillips, WI 54555

(715) 339-2151 - Telephone    Manager John Mess  
(715) 339-4512 - Fax  
E-Mail:

*updated  
10-19-07*

Headend / Local System Name

**Price County TelCom**

PO Box 108  
Phillips, WI 54555

(715) 339-2151 -Telephone  
(715) 339-4512 - Fax

Total Customers:

*610*

Ad Director: (No Ad Insertion)

Ad Telephone

Ad Fax:

Locations Served

Customer Count

Eik-T, PRICE

30

Phillips-C, PRICE

~~700~~ - 580

*John Mess*

CATV System

**Niagara Community TV Cooperative**

1081 Main Street #1  
Niagara, WI 54151

(715) 251-1526 - Telephone    Manager Linda Weber  
(715) 251-1527 - Fax  
E-Mail: ntvcoop@borderlandnet.net

*updated 11-6-07*

Headend / Local System Name

**Niagara Community TV Cooperative**

1081 Main Street #1  
Niagara, WI 54151

(715) 251-1526 - Telephone  
(715) 251-1527 - Fax

Total Customers: 626

Ad Director: Linda Weber  
Ad Telephone (715) 251-1526  
Ad Fax: (715) 251-1527

Locations Served

Niagara-C, MARINETTE

Customer Count

~~600~~ 626

*Updated  
10-19-07*

CATV System

**Merrimac Communications**

327 Palisade Street  
Merrimac, WI 53561

(608) 493-9470 - Telephone    Manager Bart Olson  
(608) 493-9470 - Fax  
E-Mail: bart@merr.com

Headend / Local System Name

**Merrimac Area Cable**

327 Palisade Street  
Merrimac, WI 53561

(608) 493-9470 -Telephone  
(608) 493-9470 - Fax

Total Customers: *651*

Ad Director: (No Ad Insertion)

Ad Telephone

Ad Fax:

Locations Served

Customer Count

Caledonia-T, COLUMBIA	27	<i>✓</i>
Merrimac-T, SAUK	352	<i>357</i>
Merrimac-V, SAUK	162	<i>154</i>
Prairie Du Sac-T, SAUK	19	<i>33</i>
Sumpter-T, SAUK	59	<i>81</i>

CATV System

### Manawa Telecom Cable TV

131 2nd Street  
Manawa, WI 54949

(920) 596-2700 - Telephone    Manager Brian Squires  
(920) 596-3775 - Fax  
E-Mail: [briansquires@wolfnet.net](mailto:briansquires@wolfnet.net)

*bquires*

*Done  
up dated  
10-19-07*

Headend / Local System Name

### Manawa Cable TV

131 2nd Street  
Manawa, WI 54949

(920) 596-2700 -Telephone  
(920) 596-3775 - Fax

Total Customers: 631

Ad Director: Tom Squires  
Ad Telephone (920) 596-2700  
Ad Fax: (920) 596-3775

Locations Served

Customer Count

Manawa-C, WAUPACA

~~541~~ 631 10-1-2007

CATV System

## Vision Communications, LLC.

PO Box 47

(715) 263-2755 - Telephone     Manager Mark Anderson

Clear Lake, WI 54005

(715) 472-2707 - Fax

E-Mail: ~~jkhatt@clearlake.wi~~ *mark.anderson@cltcomm.net*

Headend / Local System Name

### Vision Communications, LLC.

PO Box 47

(715) 263-2755 - Telephone

Clear Lake, WI 54005

~~(715) 472-2707 - Fax~~

Total Customers:

**728**

**715 263-2267**

*updated  
10-23-07*

Ad Director: (No Ad Insertion)

Ad Telephone (715) 263-2755

Ad Fax: ~~(715) 472-2707~~ **715-263-2267**

Locations Served

Customer Count

Clear Lake-V, POLK

~~744~~ **292**

Grantsburg-V, BURNETT

~~2~~ **436**

CATV System

**Wittenberg Cable TV Co., Inc**

104 W. Walker Street  
Wittenberg, WI 54499

(715) 253-2828 - Telephone ~~Manager~~ Al Mahnke  
(715) 253-3497 - Fax  
E-Mail: mahnka@wittenbergnet.net

*Vice President +  
General Manager*

Headend / Local System Name

**Wittenberg Cable TV Co., Inc**

104 W. Walker Street  
Wittenberg, WI 54499

(715) 253-2828 - Telephone  
(715) 253-3497 - Fax

Total Customers:

*775*

Ad Director: (No Ad Insertion)

Ad Telephone

Ad Fax:

Locations Served

Customer Count

Bevent-T, MARATHON	45
Eland-V, SHAWANO	62
Elderon-T, MARATHON	61
Elderon-V, MARATHON	58
Franzen-T, MARATHON	25
Pike Lake-T, MARATHON	Included in Reid
Reid-T, MARATHON	74
Wittenberg-T, SHAWANO	61
Wittenberg-V, SHAWANO	310

*Tipton-V Shawano 79*

CATV System

**Karban TV Systems, Inc.** 493

73A South Stevens Street  
Rhineland, WI 54501

(715) ~~650~~-7613 - Telephone    Manager John Karban  
(715) 277-2339 - Fax  
E-Mail:

*Updated  
10-19-07*

Headend / Local System Name

**Karban TV Systems, Inc.**

73A South Stevens Street  
Rhineland, WI 54501

493  
(715) ~~550~~-7613 - Telephone  
(715) 277-2339 - Fax

Total Customers: 801

Ad Director:  
Ad Telephone  
Ad Fax:

Locations Served

Customer Count

Boulder Junction-T, VILAS  
Land O'Lakes-T, VILAS  
Mercer-T, IRON  
Three Lakes-T, ONEIDA

149  
71  
181  
400

*To - BRV*

*608 256 6222*

*FROM - JOHN*

*1 CALL*

*ONLY PHONE # CORRECTION*

*THANK - YOU*

*JOK*

CATV System

**Chippewa Valley Cable, Inc.**

318 3rd Avenue West  
Durand, WI 54736

(715) 672-5966 - Telephone    Manager Christy Berger  
(715) 672-4344 - Fax  
E-Mail: christyb@nelson-tel.net

*Updated  
10-30-07*

Headend / Local System Name

**Chippewa Valley Cable, Inc.**

318 3rd Avenue West  
Durand, WI 54376

(715) 672-5966 - Telephone  
(715) 672-4344 - Fax

Total Customers:

*2114*

Ad Director: (No Ad Insertion)

Ad Telephone

Ad Fax:

Locations Served

Customer Count

Arkansaw T, <del>MONROE</del> Pepin	144	<i>149</i>
Durand-C, PEPIN	753	<i>795</i>
Eau Galle-T, DUNN	68	<i>69</i>
Gilmanton-T, BUFFALO	34	<i>36</i>
Mondovi-C, BUFFALO	907	<i>887</i>
Plum City-V, PIERCE	179	<i>178</i>

CATV System

**Howard Cable**

PO Box 127  
Peshtigo, WI 54157

*715.582-1141*

~~(715) 582-1140~~ - Telephone  
- Fax

Manager Howard Lock

E-Mail: cableone@new.rr.com

*✓ Done*  
*updated*  
*10-19-07*

Headend / Local System Name

**Howard Cable**

PO Box 127  
Peshtigo, WI 54157

*715.582-1141*

~~(715) 582-1140~~ - Telephone

- Fax

Total Customers:

Ad Director: (No Ad Insertion)

Ad Telephone

Ad Fax:

Locations Served

Crivitz-V, MARINETTE

Customer Count

~~215~~ *261*

# Regional Telecommunications Commission

Suite 1500  
1000 North Water Street  
Milwaukee, Wisconsin 53202  
Phone: 414-347-7089  
Fax: 414-347-7670  
[Bob.chernow@rbcdain.com](mailto:Bob.chernow@rbcdain.com)

FEBRUARY 7, 2007

The Regional Telecommunications Commission (RTC) is made up of 33 member and associate municipalities. We negotiate master cable and video contracts for our communities that can be adjusted for local needs, such as PEG. We have also created regional rights of way and restoration guides and ordinances.

***Our communities have the highest concentration of current cable/video subscribers in Wisconsin.***

We understand that the Senate and Assembly are considering special legislation that will let AT&T bypass our communities and that will violate our Time Warner Cable contracts and our local rights of way.

Our concerns are several:

- 1- We do not want our communities red lined on a racial or economic basis.
- 2- We want our 5% franchise fee for our rights of way.
- 3- We want to continue support to our local PEG channels.
- 4- We need to retain local control over our rights of way because:
  - a. There is a public safety issue for installed equipment. For example, an AT&T cabinet blew up in Houston, Texas, taking out part of an alley. We do not yet know what caused this.
  - b. Local oversight is needed to prevent problems of criminal trespass and the interception of sewer and waterlines. For example, the DOT gave the right for a private carrier to use its right of way, but did no supervision. Several sewer and water lines were broken in Madison. In Greenfield, a contractor broke down a fence on a business property to get to the State's right of way.

- c. Most utilities now contract out construction, but do not supervise the builders who often do not coordinate with our communities.
- d. When citizens have legitimate complaints about public utilities, they go through our local commissions or municipalities. Is the Public Service Commission set up and staffed to take over this chore? Currently this is done by people who serve as non-paid volunteers or are elected locally.

We also want to make clear the following:

- 1- Our communities want competition. Our relationship with Time Warner Cable is often strained and we do not like the yearly price hikes. We sought out COMCAST and MARCUS to serve our communities, but were turned down. We sped through the application of DIGITAL ACCESS in six months (and would have done so sooner if their attorney moved faster). We **sought out** AT&T when we heard that they wanted to serve our communities. Our idea was that we would create a single basic contract that could be used in our region, but which could be adjusted for PEG if a community needed something special.

We bargained in good faith, but found ourselves making all the compromises. The local AT&T people had no authority to compromise, but took their instructions from their Texas Headquarters. Indeed, we concluded that a Marketing Plan created in San Antonio directed AT&T's negotiations. Despite this, we suggested that many of the financial requirements placed on Time Warner Cable (such as bonding, insurance) might not be required by AT&T if they were able to use this coverage from their other operations.

- 2- AT&T decided to flaunt the law and illegally start their operations in video without a franchise contract. The City of Milwaukee is suing them. Our communities are joining in support of the City.
- 3- AT&T has threatened that they can accomplish what they want through Wisconsin's Senate and Assembly. We believe that they will try. In states like Texas, they spent a reputed \$7 to \$8 million to buy a statewide cable program.

We want competition, but we need to honor our contracts with Time Warner Cable. For public safety reasons, we need to retain our local rights of way.

Help us continue to serve our communities.

Bob Chernow, Chair

# Regional Telecommunications Commission

Suite 1500  
1000 North Water Street  
Milwaukee, Wisconsin 53202  
Phone: 414-347-7089  
Fax: 414-347-7670  
E/Mail: [bob.chernow@rbcdain.com](mailto:bob.chernow@rbcdain.com)

## Regional Telecommunication Commission Members

1. ~~Village of Bayside\*~~
2. ~~City of Brookfield~~
3. ~~Village of Brown Deer\*~~
4. ~~Village of Butler~~
5. City of Cudahy
6. ~~Village of Elm Grove~~
7. ~~Village of Fox Point\*~~
8. ~~City of Franklin~~
9. Village of Germantown
10. ~~City of Glendale\*~~
11. Village of Greendale
12. ~~City of Greenfield~~
13. ~~Village of Hales Corners~~
14. ~~Village of Hartland~~
15. ~~Village of Menomonee Falls~~
16. ~~City of Mequon~~
17. ~~City of Milwaukee\*\*~~
18. ~~City of Muskego~~
19. City of New Berlin
20. ~~City of Oak Creek~~
21. ~~City of Pewaukee~~
22. ~~City of Racine~~
23. Village of River Hills\*
24. Village of Saukville
25. ~~Village of Shorewood\*~~
26. ~~City of South Milwaukee~~
27. ~~Village of Sussex~~
28. Village of Thiensville
29. City of Waukesha
30. City of Wauwatosa
31. Village of West Milwaukee
32. Village of Whitefish Bay
33. City of West Allis works with the RTC co-operatively

^^Contract may differ. City owns its transmission piping.

^Also members of North Shore Cable Commission



MKE = until 2017

**NEW FRANCHISEE:** The franchisee is not the current City cable franchisee. It is an affiliate. The current franchisee is the parent company, Time Warner Entertainment Company, LP ("TWE"). In order to avoid going through a lengthy transfer approval process, TWE has provided a parental guaranty as a part of the franchise agreement.

**RENEWAL FRANCHISE TERM** is 17 years commencing January 1, 2000.

**LEVEL PLAYING FIELD:** A new "most favored nations" clause will enable the City to take advantage of more favorable terms in subsequent Time Warner franchises in the surrounding area. Conversely, Time Warner can demand the same franchise terms in subsequent competitive cable TV franchises granted by the City. In addition, the franchisee agrees to provide the City with the same services and equipment provided by the franchisee in adjacent communities.

**5% FRANCHISE FEE:** The franchise fee continues to be 5% of the franchise-defined gross annual revenue, which now includes program guide revenue.

**INITIAL SYSTEM UPGRADE:** The franchisee agrees to upgrade its current system by completing extensive deployment of fiber optics no later than July 2000. The upgraded system will increase the number of analog video channels to 79 from the current 68. It will allow for the future interactive services and equipment, digital audio and video services, and high speed Internet Access.

**UNIVERSAL SERVICE:** The franchisee agrees to make service available to more persons in the City at "standard" installation rates, rather than charging higher "custom" installation rates to commercial or multiple-dwelling buildings. The definition of a standard installation is expanded from 125 to 175 feet in length.

**DOWNTOWN SERVICE INSTALLATION** provisions will make cable service available at standard installation rates to virtually all in a defined "hard-to-construct" area.

**PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS** support for local community TV includes four channels available immediately for community use. At least two additional channels are available in the future at the City's request. The City will manage one government channel; three channels are for educational and public access community use. The City will solicit bids from parties interested in managing the public and educational access programs. The franchisee will provide a PEG Grant of \$5.342 million at the time the franchise agreement is signed. The franchisee has agreed not to credit the PEG Grant or any other access support against the 5% franchise fee.

✓  
C-Span  
W/ Eye not PEG

**PERFORMANCE GUARANTEES AND REMEDIES** entitle the City to recover specified monetary penalties in case of certain failures by the franchisee to comply with franchise terms. In case of material breach, the City may seek to amend any provision of the franchise; seek money damages; or, revoke the franchise. The City may also cancel the franchise agreement, for convenience and without cause, during the first 30 days of the franchise term, in which case renewal franchise negotiations would resume. The intent of the cancellation provision is to ensure delivery by the franchisee of the PEG Grant.

**FRANCHISEE EQUAL OPPORTUNITY PROGRAMS** include a franchisee commitment to a Disadvantaged Business Enterprise ("DBE") contracting goal of 18% for discretionary purchases. The City Clerk must agree to the definition of "discretionary spending." In addition, the franchisee will maintain a \$200,000 revolving loan program for qualified borrowers certified as DBE's under the Joint Certification Program operated by the City, the County and the Milwaukee Sewage District. Finally, the franchisee will provide \$545,000 during the franchise term through an expanded college scholarship program for Milwaukee residents who are students.

Click here to download the text of the Cable Ordinance, Chapter 99, Milwaukee Code of Ordinances ("MCO")

**ORDINANCE REQUIREMENTS ARE UNIVERSALLY APPLICABLE** to this renewal franchise and any other cable television franchise granted by the City. Each franchise agreement will incorporate, by reference, the ordinance terms.

**REFERENCES TO THE FEDERAL CABLE ACT** in Title 47 update all provisions of the current ordinance.

**FRANCHISE ADMINISTRATION** will be transferred to the Office of the City Clerk from the Department of Administration.

**DEFINITION OF GROSS REVENUE** now includes revenue from the sale of program guides (which had been excluded from franchise fees under the current franchise) and consideration received from programmers, including monetary and non-monetary consideration paid by new programmers who buy their way onto the cable system.

**DEFINITION OF STANDARD INSTALLATION** increases a franchisee's obligation to provide service at standard installation rates from the current 125 to 175 feet from the right-of-way.

**NEW FRANCHISE APPLICATION PROVISIONS** spell out the application process for the non-exclusive grant of an initial franchise, a renewal franchise, the modification of a franchise and the transfer of a franchise. This section is mainly procedural in nature, however the definition of a "transfer" now comports with the state statutory definition found in section 66.082(5), Stats. This means that no City approval is required for transfers of less than 40% of a franchise.

**MAXIMUM FRANCHISE TERM** of any cable TV franchise is 17 years.

**MAXIMUM FRANCHISE FEE** is the maximum allowable under federal law.

**A NEW DISADVANTAGED BUSINESS ENTERPRISE PROVISION** replaces the current MBE/WBE provisions.

**RIGHT-OF-WAY OCCUPANCY** must satisfy the general right-of-way provisions of Chapter 115, MCO, including the payment of permitting fees in addition to franchise fees.

**PROCESS TO DESIGNATE ACCESS MANAGER** contemplates either a designation by the City Clerk of an access manager subject to the approval of the Common Council or a solicitation and RFP process prior to the designation of the manager.

**NEW CONSUMER PROTECTION PROVISIONS** significantly increase the authority of the City to respond to consumer complaints about providers of cable services. The federal cable act allows the City to exercise such authority. The section includes a provision limiting administrative collection charges to the recovery of the franchisee's reasonable and necessary cost of collecting late subscriber payments.

**NEW REPORTS AND RECORDS PROVISIONS** are now organized in a single section after an extensive review and reorganization of the current provisions. A new Proprietary Information section sets forth a procedure allowing the city access to records that the franchisee maintains are proprietary in nature.

**NEW THEFT OF SERVICE AND TAMPERING PROVISIONS** more closely replicate the state law provisions in this area.

#### Related Matters

**MINIMUM \$10,000 FRANCHISE APPLICATION FEE** in Section 81-16, MCO, is part of a Chapter 99 obligation to reimburse the City for costs associated with processing an application for an initial franchise, a renewal franchise, a modification of a franchise or a

franchise transfer.

**\$50,000 CASH SECURITY DEPOSIT AND ACCUMULATED INTEREST** will be available for future use by the City to fund the cost of retaining consultants and outside attorneys to assist the city in the event of a future proposal to transfer the franchise.

Print :: Close



# WISCONSIN STATE LEGISLATURE

