

**2007 DRAFTING REQUEST**

**Bill**

Received: **03/09/2007**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-7505**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Plale@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Video service provider franchises

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**Instructions:**

Prepare companion bill to LRB-1914

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 03/09/2007	csicilia 03/09/2007		_____			S&L Tax
/1			rschluet 03/09/2007	_____	mbarman 03/09/2007	mbarman 03/12/2007	

FE Sent For:

<END>

→ At Intro.

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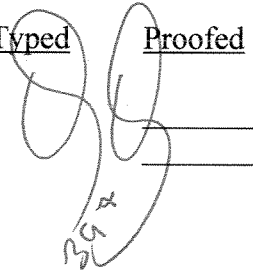
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FE Sent For:

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1914/3

MDK:cjs/rs

-2192/1

Bn Monday  
3/12

O-NOTE

slays

AM NOT  
RUN

Companion  
Bill -  
No change

2007 BILL

Gen Cat

1 AN ACT *to repeal* 60.23 (24), 66.0419 (title), (1), (2) and (3), 66.0421 (1) (a),  
2 66.0421 (1) (b), 66.0422 (1) (a), 100.209, 196.04 (4) (a) 1. and 196.204 (7); *to*  
3 *renumber* 196.04 (4) (a) 2. a. to e.; *to renumber and amend* 66.0419 (3m) and  
4 943.46 (1) (a); *to consolidate, renumber and amend* 196.04 (4) (a) (intro.)  
5 and 2. (intro.); *to amend* 11.01 (17g), 20.395 (3) (jh), 25.40 (1) (a) 4m., 66.0421  
6 (title), 66.0421 (2), 66.0421 (3), 66.0421 (4), 66.0422 (title), 66.0422 (2) (intro.),  
7 66.0422 (3) (b), 66.0422 (3n), 70.111 (25), 76.80 (3), 77.52 (2) (a) 12., 100.195 (1)  
8 (c) 2., 165.25 (4) (ar), 196.01 (1g), 196.01 (9m), 196.04 (4) (b), 196.195 (5),  
9 196.203 (1m), 196.203 (3) (b) (intro.), 196.203 (3) (b) 2., 196.203 (3) (c), 196.203  
10 (3) (d), 196.203 (3) (e) 1. (intro.), 196.50 (1) (b) 2. e., 196.50 (1) (c), 196.85 (1m)  
11 (b), 943.46 (title), 943.46 (2) (a), 943.46 (2) (b), 943.46 (2) (c), 943.46 (2) (d),  
12 943.46 (2) (e), 943.46 (2) (f), 943.46 (2) (g) and 943.46 (5); *to repeal and*  
13 *recreate* 100.195 (1) (h) 1. and 196.01 (1p); and *to create* 66.0420, 66.0421 (1)  
14 (c), 66.0421 (1) (d), 66.0422 (1) (d), 196.01 (12g), 196.01 (12r), 943.46 (1) (d) and

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1           943.46 (1) (e) of the statutes; **relating to:** regulation of cable television and  
2           video service providers.

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*Analysis by the Legislative Reference Bureau*

Current federal law generally prohibits a person from providing cable service without a cable franchise. Under current federal and state law, cable service is defined, in part, as the one-way transmission of "video programming," which is defined as programming provided by, or generally considered comparable to, programming provided by a television broadcast station. Current federal law allows either states or municipalities to grant cable franchises to persons who provide cable service, which are referred to as "cable operators." Under current state law, municipalities (i.e., cities, villages, and towns) grant or revoke franchises. In addition, current state law allows a municipality to require a cable operator to pay a franchise fee to the municipality that is based on the operator's income or gross revenues.

This bill repeals state law authorizing municipalities to grant cable franchises to cable operators. Instead, the bill requires a person who provides "video service" to obtain a video service franchise from the Department of Financial Institutions (DFI). The bill defines "video service" as any video programming service, cable service, or service provided by certain "open video systems," without regard to delivery technology, but only if the service is provided through facilities that are located, at least in part, in public rights-of-way. (An "open video system" is system regulated under federal law that combines features of cable television and telecommunications systems.) The bill's definitions of "video programming" and "cable service" are comparable to the definitions under current law described above. As a result, video service includes both the one-way and two-way transmission of video programming. However, the following types of video programming are excluded from the definition of "video service": 1) video programming provided by wireless telephone companies; and 2) video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, and other services offered over the public Internet.

Under the bill, if a person has not been issued a cable franchise under current law, the person may not provide video service unless DFI issues a video service franchise to the person. The bill allows a cable operator who has been issued a cable franchise under current law to provide cable service under the cable franchise until the cable franchise expires, or apply to DFI for a video service franchise. The bill refers to a cable operator who elects to provide cable service until the expiration of a cable franchise as an "interim cable operator." Upon the expiration of a cable franchise, an interim cable operator must apply to DFI for a video service franchise in order to continue to provide cable service. If a cable operator elects to apply for a video service franchise before the expiration of its cable franchise, the bill provides that the cable franchise terminates upon DFI's issuance of a video service franchise. Also, if a cable operator's cable franchise expired before the effective date of the bill

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and the cable operator was providing cable service immediately before the bill's effective date, the bill allows such a cable operator to continue to provide cable service. However, the cable operator must apply for a video service franchise by a deadline that is approximately one month after the bill's effective date.

**Application process.** The bill requires an applicant for a video service franchise to submit an application to DFI that consists of certain business information about the applicant and an affidavit affirming that the applicant will comply with federal filing requirements, as well as state and federal laws regarding video service. In addition, the applicant must describe the areas of the state in which the applicant intends to provide video service, which the bill defines as the "video franchise area," as well as the dates on which the applicant intends to begin providing service in such areas.

At the time an applicant submits an application, the applicant must serve a copy of the application on each municipality in the video franchise area. If such a municipality has granted a cable franchise to a cable operator under current law, the municipality must, not later than ten business days after receipt of the copy, notify the applicant of the following: 1) the percentage of revenues that cable operators are required to pay the municipality as franchise fees under current law; and 2) the number of "PEG channels" for which cable operators are required by the municipality to provide channel capacity. The bill defines "PEG channel" as a channel designated for noncommercial public, educational, or governmental use.

No later than ten business days after receipt of an application, DFI must notify the applicant as to whether the application is complete. No later than ten business days after receipt of an application that DFI determines is complete, DFI must issue a video service franchise to the applicant. If DFI fails to meet this deadline, the bill provides that DFI is considered to have issued a video service franchise to the applicant, unless the applicant withdraws the application or agrees with DFI for an extension of time. The bill refers to a person to whom DFI issues, or is considered to have issued, a video service franchise as a "video service provider."

**Video service franchises.** A video service franchise under the bill authorizes a video service provider to occupy public rights-of-way and construct, operate, maintain, and repair a video service network in the video franchise area. A video service franchise does not expire, unless a video service provider gives 30 days' advance notice to DFI that the video service provider intends to terminate the video service franchise. A video service provider may transfer a video service franchise to any successor-in-interest, including a successor-in-interest that arises through merger, sale, assignment, restructuring, change of control, or any other transaction. A video service provider and a transferee must notify DFI and affected municipalities about the transfer, but the bill prohibits DFI and municipalities from reviewing or approving the transfer.

**Video service franchise fees.** The bill requires a video service provider to pay a fee on a quarterly calendar basis to each municipality in which the video service provider provides video service. The bill refers to the fee as a "video service franchise fee." The amount of the video service franchise fee is based on a percentage of the video service service provider's "gross receipts," which is defined in the bill. If no

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cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to 5 percent of the video service provider's gross receipts, or a lesser percentage specified by the municipality. If only one cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to that percentage or 5 percent, whichever is less. If more than one cable operator was required under current law to pay a franchise fee based on a percentage of gross revenues to a municipality on the effective date of the bill, a video service provider must pay a video service franchise fee to the municipality that is equal to the lowest such percentage or 5 percent, whichever is less.

As noted above, no later than ten business days after a municipality is served a copy of a video service provider's application for a video service franchise, the municipality must notify the video service provider of the percentage of revenues that cable operators are required to pay the municipality as franchise fees under current law. If a municipality is not required to make such a notification, the video service provider's duty to pay a video service franchise fee first applies to the quarter in which the video service provider begins to provide video service in the municipality. If the municipality is required to make such a notification, and makes the notification before the deadline, the video service provider's duty first applies to the quarter in which the video service provider begins to provide video service, or the quarter that includes the 45th day after the video service provider receives the notification, whichever is later. If the municipality fails to comply with the deadline, a video service provider is not required to pay a video service provider fee until the 45th day after the end of the quarter in which the municipality ultimately provides the notification, and no other video service provider or interim cable operator is required to pay a video service provider fee or franchise fee until the same date.

The bill allows municipalities to review the business records of a video service provider no more than once in any three-year period for the purpose of ensuring proper and accurate payment of a video service provider fee. The bill prohibits a video service provider or municipality from bringing an action in court regarding the amount of a video service provider fee until the parties have completed good faith settlement negotiations. In addition, an action regarding a dispute over such an amount must be commenced within three years following the calendar quarter to which the disputed amount relates, or is barred, unless the parties agree to an extension of time.

**PEG channels.** The bill imposes limitations on the number of PEG channels for which a municipality may require a video service provider to provide channel capacity. If, immediately before the effective date of the bill, a municipality required a cable operator to provide channel capacity for a specified number of PEG channels, the municipality must require all video service providers and interim cable operators to provide channel capacity for that specified number of PEG channels. If a municipality did not require a cable operator to provide such channel capacity, then

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the number of PEG channels for which a municipality may require channel capacity depends on the population of the municipality. If the municipality's population is 50,000 or more, the municipality may require each video service provider and interim cable operator to provide channel capacity for up to three PEG channels. If the municipality's population is less than 50,000, the municipality may require each video service provider and interim cable operator to provide channel capacity for up to two PEG channels. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video hub office, the bill requires the populations of the municipalities to be aggregated for the purpose of applying the foregoing requirements.

The bill includes requirements for determining when the duty of a video service provider to provide channel capacity for PEG channels first applies. As noted above, no later than ten business days after a municipality is served a copy of a video service provider's application for a video service franchise, the municipality must notify the video service provider of the number of PEG channels for which cable operators are required provide channel capacity. In general, the duty of a video service provider begins on the date on which the video service provider begins to provide video service in the municipality, or on the 90th day after the video service provider receives the municipality's notice, whichever is later. However, if a municipality fails to comply with the ten-business-day deadline, no video service provider or interim cable operator is required to provide channel capacity for PEG channels until the 90th day after the municipality ultimately provides the notice.

The bill also allows video service providers and interim cable operators to reprogram channel capacity for PEG channels that is not substantially utilized, as determined under the bill, by a municipality. Under certain circumstances, the bill allows a municipality to require the restoration of channel capacity for PEG channels.

The bill creates other requirements for PEG channels, including the following: 1) the bill prohibits municipalities from requiring video service providers and interim cable operators from providing funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity; 2) the bill imposes specified duties on municipalities regarding the provision of content and programming PEG channels; 3) the bill imposes limits on the amount of transmission line that a video service provider or interim cable operator may be required to provide for making a connection to the municipality's PEG channel programming distribution point; and 4) the bill imposes requirements on video service providers and interim cable operators regarding interconnection that is necessary for transmitting PEG channel programming.

***Discrimination and access.*** In general, the bill prohibits a video service provider from denying access to video service to any group of potential residential customers in a video franchise area because of the race or income of the residents in the local area in which the group resides. The bill creates a defense against an alleged violation of the prohibition regarding income for a video service provider if either of the following are satisfied: 1) no later than three years after the video service provider begins to provide video service, at least 25 percent of households



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with access to the video service provider's video service are low-income households; or 2) no later than five years after the video service provider begins to provide video service, at least 30 percent of households with access to the video service provider's video service are low-income households. The bill defines "low-income household" as a household whose aggregate income is not more than \$35,000, as identified by the United States Census Bureau as of January 1, 2007. Under certain circumstances, the bill allows DFI to grant a video service provider an extension of the time limits specified in the defense.

The bill also imposes access requirements on certain video service providers that use telecommunications facilities to provide video service. The access requirements apply if a video service provider has more than 500,000 basic local exchange access lines in the state. No later than three years after such a video service provider begins to provide video service, the video service provider must provide access to its video service to not less than 25 percent of the households within the video service provider's basic local exchange area that is on file with the Public Service Commission (PSC). In addition, no later than six years after such a video service provider begins to provide video service, or no later than two years after at least 30 percent of households with access to such a video service provider's video service subscribe to the service for six consecutive months, whichever occurs later, the video service provider must provide access to its video service to not less than 50 percent of the households within the video service provider's basic local exchange area that is on file with the PSC. Such a video service provider must file annual reports with DFI regarding progress in complying with the access requirements. Under certain circumstances, the bill allows DFI to grant such a video service provider an extension of the foregoing time limits or a waiver from the need to comply with the foregoing requirements.

**Customer service standards.** Except as noted below, the bill allows a municipality, upon 90 days' advance notice, to require a video service provider to comply with certain customer service standards set forth in regulations promulgated by the Federal Communications Commission (FCC). The bill prohibits DFI and municipalities from imposing any additional or different customer service standards. In addition, the bill provides that, except for customer service standards promulgated by rule by the Department of Agriculture, Trade and Consumer Protection (DATCP), a video service provider in a municipality may not be subject to any customer service standards if at least one other person offers video or cable service in the municipality, or if the video service provider is subject to effective competition, as determined under FCC regulations. If one of the foregoing conditions is satisfied, a municipality may not impose the FCC customer service standards mentioned above.

**Rate regulation.** The bill prohibits DFI and municipalities from regulating video or cable service rates of video service providers or interim cable operators that provide service in a municipality if at least one other unaffiliated video service provider or interim cable operator serves the municipality.

**Municipal authority.** The bill provides that, for purposes of federal law, the state is the exclusive franchising authority for video service providers in this state.

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In addition, the bill prohibits municipalities from requiring a video service provider to obtain a franchise to provide video service or imposing on video service providers any fee or requirement relating to the construction of a video service network or the provision of video service, except as otherwise authorized under the bill. Also, the bill provides that, if a video service provider pays video service provider fees to a municipality as required under the bill, the municipality may not require the video service provider to pay any compensation allowed under current law for obstructions or excavations, or pay any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way.

**Rule making and enforcement.** The bill prohibits DFI from promulgating any rules interpreting the bill's provisions, or establishing procedures for the bill's requirements. The bill allows a municipality, video service provider, or interim cable operator that is affected by a failure to comply with the bill to bring an action in court to enforce the bill. (Court actions regarding disputes over video service provider fees are subject to additional requirements discussed above.) In addition, the bill allows the Department of Justice to bring an action to enforce the bill.

**Other provisions.** The bill also does all of the following:

1. The bill allows certain persons to provide video service before they are issued a video service franchise. The persons who are allowed to do so are persons, other than cable operators, who provide video service and who apply to DFI for a video service franchise no later than approximately one month after the bill's effective date.
2. The bill requires a video service provider to give at least ten days advance notice to a municipality before providing video service in the municipality.
3. The bill requires a video service provider to notify DFI about any changes in the information included in an application for a video service franchise, including any expansions of a video franchise area.
4. The bill prohibits state agencies and municipalities from requiring video service providers and interim cable operators to provide institutional networks or equivalent capacity. The bill defines "institutional network" as a network that connects governmental, educational, and community institutions.
5. The bill repeals requirements enforced by DATCP and district attorneys regarding cable television subscriber rights regarding service interruptions and disconnections, repairs, program service deletions, and rate increases.
6. The bill repeals a prohibition under current law on the provision of electronically published news, feature and entertainment material, and electronic advertising service by certain telecommunications utilities.
7. The bill changes other requirements under current law that apply or refer to cable television or cable operators so that they also apply or refer to video service or video service providers. Such requirements include the following: 1) requirements applicable to access to cable service in multiunit dwellings, mobile home parks, and condominiums; 2) requirements applicable to a municipality's construction, ownership, or operation of facilities for providing cable service, telecommunications service, or broadband service; 3) exemptions related to the telephone company tax and the personal property tax; 4) the sales and use tax on the sale of cable television

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system services; 5) certain requirements enforced by the PSC regarding extensions by utilities and cable operators over the rights-of-way of other utilities and cable operators; and 6) theft of cable service.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 11.01 (17g) of the statutes is amended to read:

2           11.01 (17g) "Public access channel" means a PEG channel that is required  
3 under a franchise granted under s. 66.0419 (3) (b) by a city, village, or town to a cable  
4 operator, as defined in s. 66.0419 (2) (b), and, as defined in s. 66.0420 (2) (s), that is  
5 used for public access purposes, but does not include a PEG channel that is used for  
6 governmental or educational purposes.

7           **SECTION 2.** 20.395 (3) (jh) of the statutes is amended to read:

8           20.395 (3) (jh) *Utility facilities within highway rights-of-way, state funds.*  
9 From the general fund, all moneys received from telecommunications providers, as  
10 defined in s. 196.01 (8p), or cable television telecommunications service providers,  
11 as defined in s. 196.01 (1r), for activities related to locating, accommodating,  
12 operating, or maintaining utility facilities within highway rights-of-way, for such  
13 purposes.

14           **SECTION 3.** 25.40 (1) (a) 4m. of the statutes is amended to read:

15           25.40 (1) (a) 4m. Moneys received from telecommunications providers or cable  
16 television telecommunications service providers that are deposited in the general  
17 fund and credited to the appropriation account under s. 20.395 (3) (jh).

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1           **SECTION 4.** 60.23 (24) of the statutes is repealed.

2           **SECTION 5.** 66.0419 (title), (1), (2) and (3) of the statutes are repealed.

3           **SECTION 6.** 66.0419 (3m) of the statutes is renumbered 66.0420 (12), and  
4 66.0420 (12) (title), (a) and (b) 2., as renumbered, are amended to read:

5           66.0420 **(12)** (title) ~~MUNICIPAL CABLE TELEVISION SYSTEM COSTS.~~ (a) Except for  
6 costs for any of the following, a municipality that owns and operates a cable television  
7 system, or an entity owned or operated, in whole or in part, by such a municipality,  
8 may not require nonsubscribers of the cable television system to pay any of the costs  
9 of the cable television system:

- 10           1. ~~Public, educational, and governmental access~~ PEG channels.
- 11           2. Debt service on bonds issued under s. 66.0619 to finance the construction,  
12 renovation, or expansion of a cable television system.
- 13           3. The provision of broadband service by the cable television system, if the  
14 requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

15           (b) 2. A majority of the governing board of the municipality votes to submit the  
16 question of supporting the operation of a cable television system by the municipality  
17 to the electors in an advisory referendum and a majority of the voters in the  
18 municipality voting at the advisory referendum vote to support the operation of a  
19 cable television system by the municipality.

20           **SECTION 7.** 66.0420 of the statutes is created to read:

21           **66.0420 Video service.** (1) **LEGISLATIVE FINDINGS.** The legislature finds all  
22 of the following:

23           (a) Video service brings important daily benefits to state residents by providing  
24 news, education, and entertainment.