

2007 DRAFTING REQUEST

Senate Amendment (SA-SSA(LRBs0062/1)-SB107)

Received: 04/17/2007

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: john.stolzenberg@legis.wisconsin.gov
david.lovell@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Miscellaneous changes (PEG transmission and other issues)

Instructions:

See Attached

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>
/?							
/1	mkunkel 04/17/2007	jdyer 04/18/2007	jfrantze 04/18/2007	_____	lparisi 04/18/2007	lparisi 04/18/2007	
/2	chanaman 04/18/2007	jdyer 04/18/2007	jfrantze 04/18/2007	_____	cduerst 04/18/2007	cduerst 04/18/2007	

FE Sent For:

<END>

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/?		<i>2 4/18 jld</i>					
/1	mkunkel 04/17/2007	jdye 04/18/2007	jfrantze 04/18/2007		lparisi 04/18/2007	lparisi 04/18/2007	

FE Sent For:

Jb
4/18
Jb/RS
4/18
END

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/?	mkunkel	1 4/18 jcd	J	J/R	4/18		

FE Sent For:

<END>

Kunkel, Mark

From: Venskus, Katy
Sent: Tuesday, April 17, 2007 11:55 AM
To: Kunkel, Mark
Subject: FW: AB 207-SB 107 final changes
Attachments: AB 207-SB 107 final changes.doc

From: Hermes, Ron - Office of Governor Jim Doyle [mailto:Ron.Hermes@gov.state.wi.us]
Sent: Tuesday, April 17, 2007 11:47 AM
To: Venskus, Katy
Subject: AB 207-SB 107 final changes

Here you go.

+ item 4 g
CRRa 0313/1

delete & sub lines

P. 8, l. 20

1. Definition of Video Service Franchise Area (page 14, lines 10-12)

(w) "Video franchise area" means the area or areas described in an application for a video service franchise under sub. (3) (d) 2., as approved by the department or the area or areas described in an application for a modification of a video service.

P. 11, l. 8

2. Application for Video Service Franchise to be submitted to DFI for approval (pages 16-17 of AB 207)

(d) Application. An applicant for a video service franchise shall submit an application to the department that consists of all of the following:

1. The location and telephone number of the applicant's principal place of business, the names of the principal executive officers of the applicant, and the names of any persons authorized to represent the applicant before the department.

2. A description of the area or areas of the state in which the applicant intends to provide video service.

3. The date on which the applicant intends to begin providing video service in the video franchise area.

4. An affidavit signed by an officer or general partner of the applicant that affirms all of the following:

a. That the applicant has filed or will timely file with the FCC all forms required by the FCC in advance of offering video service.

b. That the applicant agrees to comply with this section and all applicable federal statutes and regulations.

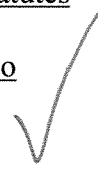
c. That the applicant is legally, financially, and technically qualified to provide video service.

5. A description of the proposed services to be provided.

6. An application fee of \$2,000.00 per applicant. There shall be no fee if pursuant to (3)(j), the applicant files an update to the information described in (3)(d)1. If, pursuant to (3)(j), the applicant updates information required in (3)(d)(2), (3)(d)(3) or (3)(d)(4), the fee shall be \$100.00. The secretary of the department shall bring an action in any court of record to recover any fees that are due and owing under this section.

review

only diff.



→ add to (13)(c)

P. 12 l. 20

3. DFI Review of Applications for Video Service Franchise (page 18, lines 6-15)

(f) Department duties. 1. No later than 15 business days after the filing of an application, the department shall notify the applicant in writing as to whether the application is complete and, if the department has determined that the application is not complete, the department shall state the reasons for the determination.

2. No later than 10 15 business days after the filing of an application that the department has determined is complete, the department shall determine if an applicant is legally, financially, and technically qualified to provide video service. If the department determines that an applicant is legally, financially, and technically qualified to provide video service, the department shall issue a video service franchise to the applicant. If the department determines that an applicant is not legally, financially, and technically qualified to provide video service then the department shall reject the application and shall state the reasons for the determination. If the department fails to make a determination, the department shall be considered to have issued a video service

franchise to the applicant, unless the applicant withdraws the application or agrees with the department to an extension of time.

3. Entities that are either a large telecommunications video service provider as defined in 66.0420(2)(p), or a Qualified Cable Operator shall be deemed legally, financially, and technically qualified to provide video service under (3) (f) 2. Qualified Cable Operator means (1) a cable operator, or an affiliate thereof, that has been providing video service in Wisconsin for at least three (3) years as of the date of filing the application and has not had a franchise revoked, or (2) a cable operator that, individually or together with its affiliates or parent company, on the date that such cable operator applies for a video service franchise, is one of the 10 largest cable television operators in the United States as determined by (a) data collected and reported by the Federal Communications Commission or (b) information available to the public through a national trade association representing cable television operators. The department shall promulgate rules for determining the legal, financial, and technical qualifications for any applicant that does not meet the above standards.

QCO
P 8 23

review
X

4. Expiration and Revocation of Video Service Franchise (Page 18-19)

(i) *Expiration and revocation of video service franchise.*

1. A video service franchise issued to a video service provider does not expire, unless the video service provider gives 30 days' advance notice to the department that the video service provider intends to terminate the video service franchise. If a video service provider gives such notice, the video service franchise shall expire on the termination date stated in the notice.

2. A video service franchise issued to a video service provider may be revoked by the department if the department determines that the video service provider has repeatedly failed to substantially meet a material requirement imposed upon it by this section, and the department has not otherwise acquiesced in such non-compliance through a waiver; provided, however, the department must provide the video service provider written notice of its intention to revoke the franchise (including the reason therefore) and afford the video service provider a reasonable opportunity to cure any alleged violation before any revocation proceeding is commenced. The department must, before revoking any video service franchise, afford a video service provider full due process which, at a minimum, must include a proceeding before a hearing officer during which the video service provider must be afforded the opportunity for full participation, including the right to be represented by counsel, to introduce evidence, to require the production of evidence, and to question or cross-examine witnesses under oath. A transcript shall be made of any such hearing. A video service provider may appeal the decision of the department to any court of competent jurisdiction.

review
✓

5. Modifications to Video Service Franchise (Page 19, lines 3-10) – Delete (see #1 above)

P 14
P 14

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26
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6. Transfer of Video Service Franchise (Page 29, lines 24-25 and Page 30, lines 1-5)

No later than 15 days after the transfer is completed, the person originally issued the video service franchise shall comply with the application requirements of sub. (3)(d) and shall provide notice to any municipality in which the person has provided video service. Page 30, delete lines 3-5. — P 26 line 11-15

why apply again?

7. Discrimination: Access to Services (Page 26—27) Transfer enforcement authority of this section to DATCP.

enforcement of sub (8)

8. Enforcement (Page 30, Lines 16-17) Delete and replace lines 16-17 with the following.

P 22
l. 1

(13) (c) Notwithstanding any other provision of this section, and in addition to any remedy or penalty specifically set forth in this section:

1. The department of financial institutions shall enforce this section. Actions to enjoin violations of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive.
2. No action may be commenced under this section more than 3 years after the occurrence of the unlawful act or practice which is the subject of the action. No injunction may be issued under this section which would conflict with general or special orders of the department or any statute, rule or regulation of the United States or of this state.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa0321/1
MDK:.....

O-NOTE

Jld

*WED
4/18
10am*

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT (LRBs0062/1),
TO 2007 SENATE BILL 107**

1 At the locations indicated, amend the substitute amendment as follows: ✓

2 1. Page 8, line 4: delete "has provided" and substitute "has been providing". ✓

3 2. Page 8, line 9: delete lines 9 to 11 ✓ and substitute *NO* *FF*

4 *NO* *FF* "individually or together with its affiliates or parent company, is one of the ✓
5 largest cable operators in the United States as determined by data collected and
6 reported by the FCC or determined by information available to the public through
7 a national trade association representing cable operators."

8 3. Page 8, line 20: delete lines 20 to 22 ✓ and substitute:

9 "(w) "Video franchise area" means the area or areas described in an application
10 for a video service franchise under sub. (3) (d) 2." ✓

11 4. Page 9, line 22: after "par. (c)" insert "and sub. (11)". ✓

1 **5.** Page 12, line 1: delete "\$1,000" and substitute "\$2,000," or, if the applicant
2 is applying for a modified video service franchise as required under par. (j), an
3 application fee of \$100".

4 **6.** Page 13, line 10: delete "telecommunications utility" and substitute "large
5 telecommunications video service provider".

6 **7.** Page 13, line 14: delete "telecommunications utility" and substitute "large
7 telecommunications video service provider".

8 **8.** Page 14, line 6: delete "willfully and knowingly".

9 **9.** Page 14, line 12: delete the material beginning with "A revocation" and
10 ending with line 13 and substitute "Ch. 227." or no #

11 **#6** "The department must, before revoking any video service franchise, afford a
12 video service provider full due process which, at a minimum, must include a
13 proceeding before a hearing officer during which the video service provider must be
14 afforded the opportunity for full participation, including the right to be represented
15 by counsel, to introduce evidence, to require the production of evidence, and to
16 question or cross-examine witnesses under oath. A transcript shall be made of any
17 such hearing. A video service provider may bring an action to appeal the decision of
18 the department."

19 **10.** Page 14, line 19: delete lines 19 to 21 and substitute "no #
20 "video service, the video service provider shall apply to the department for a
21 modified video service franchise under par. (d). A video service".

22 **11.** Page 14, line 23: delete "2.,".

23 **12.** Page 22, line 8: delete that line and substitute:

INSERT 18-22 ✓

1 "8) DISCRIMINATION; ACCESS TO SERVICES. (ag) *Definition*. In this subsection,
2 "department" means the department of agriculture, trade and consumer protection.

3 (am) *Discrimination prohibited*. 1. No".

4 **13.** Page 23, line 10: delete "(a) 2." and substitute "(am) 2."

5 **14.** Page 26, line 9: delete lines 9 to 15 and substitute *see 13*

6 **13.** "No later than 15 days after the transfer is complete, the successor-in-interest
7 shall apply for a video service franchise under sub. (3) (d) and comply with sub. (3)
8 (e) 1. The successor-in-interest may provide video service in the video franchise
9 area during the period that the department reviews the application."

10 **15.** Page 26, line 17: delete "department" and substitute "department of
11 financial institutions".

12 **16.** Page 26, line 18: before the period insert "and the department of
13 agriculture, trade and consumer protection may not promulgate rules interpreting
14 or establishing procedures for sub. (8)".

15 **17.** Page 27, line 1: delete lines 1 and 2 and substitute:

16 "(c) The department shall enforce this section, except sub. (8). The department
17 may bring an action to recover any fees that are due and owing under this section or
18 to enjoin a violation of this section, except sub. (8), or any rule promulgated under
19 sub. (3) (f) 4. An action shall be commenced under this paragraph within 3 years after
20 the occurrence of the unlawful act or practice or be barred."

21

(END)

d-note
↓

#

INSERT 18-22

1 #. Page 18, line 22: delete the material beginning with that line and ending
2 with page 19, line 3, and substitute:

3 “(d) *Duties of interim cable providers and video service providers.* 1. If a
4 municipality requires an interim cable operator or video service provider to provide
5 capacity for PEG channels under par. (a), the interim cable operator or video service
6 provider shall be required to provide transmission capacity sufficient to connect the
7 interim cable operator’s or video service provider’s headend or video hub office to the
8 municipality’s PEG access channel origination points existing as of the effective date
9 of this subdivision [revisor inserts date]. A municipality shall permit the interim
10 cable operator or video service provider to determine the most economically and
11 technologically efficient means of providing such transmission capacity. If a
12 municipality requests that such a PEG access channel origination point be relocated,
13 the interim cable operator or video service provider shall be required to provide only
14 the first 200 feet of transmission line that is necessary to connect the interim cable
15 operator or video service provider’s headend or video hub office to such origination
16 point. A municipality shall be liable for the costs of construction of such a
17 transmission line beyond the first 200 feet and for any construction costs associated
18 with additional origination points, but not for the costs associated with the
19 transmission of PEG programming over such line. The interim cable operator or
20 video service provider may recover its costs to provide transmission capacity under
21 this subdivision by identifying and collecting a “PEG Transport Fee” as a separate
22 line item on customer bills.” ✓

~~WDA~~

END of INSERT 18-22

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0321/1dn

MDK:.....

date

jld

Sen. Plale:

The following comments refer to items in the attachment to Katy Venskus's email to me dated April 17.

1. I had difficulty determining how item 1, which provides a new definition for "video service franchise area," relates to item 5, which would delete proposed s. 66.0420 (3) (j), which deals with modifications of information submitted in an application for a video service franchise. I'm also confused because item 2 includes new text that continues to refer to proposed s. 66.0420 (3) (j). I assume that you want to continue to require a video franchise holder to modify certain information and pay the \$100 fee for most modifications. In addition, I'm guessing that you want to require the holder of a video service franchise to apply for a modified video service franchise rather than simply notify DFI about the modification if the holder wants modify the video franchise area. I drafted the amendment accordingly. However, note that I included a new definition for "video service franchise area" that differs from the definition in item 1 because I don't know what legal impact you are trying to achieve with the definition in item 1. Let me know if you need any changes to what I drafted. *
2. Regarding item 2, note that I included a reference to DFI's power to collect fees in proposed s. 66.0420 (13) (c). *
3. I rephrased some of the language in item 4. As for the transcript that is required, who should be required to pay for it? Also, note that, under our current drafting style, we no longer refer to a "court of competent jurisdiction." Instead, I provided that a video service provider may bring an action to appeal a decision by DFI. *
4. Regarding item 6, I assume that the successor-in-interest should apply for a video service franchise, not the entity that was originally issued the franchise. Also, I assume that you want to allow the successor-in-interest to provide video service while DFI reviews the application, but that DFI can ultimately determine not to issue a franchise to the successor-in-interest. *
5. Regarding item 7, in addition to adding references to DATCP in proposed s. 66.0420 (8), I added a reference to DATCP in proposed s. 66.0420 (13) (a). *
6. I made changes to the language in item 8. I don't think it's necessary to include the language that I omitted. Please contact me if you want explain your rationale for including what I omitted. *

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
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LRBa0321/1dn
MDK:jld:jf

April 18, 2007

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6. I made changes to the language in item 8. I don't think it's necessary to include the language that I omitted. Please contact me if you want explain your rationale for including what I omitted.

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Phone: (608) 266-0131
E-mail: mark.kunkel@legis.wisconsin.gov



NOW

remr

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT (LRBs0062/1),
TO 2007 SENATE BILL 107**

MOVE { # Page 5, line 9: delete
"Department" and subst. 4 to
"Except as provided in
sub. (8) (ag), "department"

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 8, line 4: delete "has provided" and substitute "has been providing".
- 3 **2.** Page 8, line 9: delete lines 9 to 11 and substitute "individually or together
- 4 with its affiliates or parent company, is one of the 10 largest cable operators in the
- 5 United States as determined by data collected and reported by the FCC or
- 6 determined by information available to the public through a national trade
- 7 association representing cable operators."
- 8 **3.** Page 8, line 20: delete lines 20 to 22 and substitute:
- 9 "(w) "Video franchise area" means the area or areas described in an application
- 10 for a video service franchise under sub. (3) (d) 2."
- 11 **4.** Page 9, line 22: after "par. (c)" insert "and sub. (11)".

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5 telecommunications video service provider".

6 **7.** Page 13, line 14: delete "telecommunications utility" and substitute "large
7 telecommunications video service provider".

8 **8.** Page 14, line 6: delete "willfully and knowingly".

9 **9.** Page 14, line 12: delete the material beginning with "A revocation" and
10 ending with "ch. 227." on line 13 and substitute "The department must, before
11 revoking any video service franchise, afford a video service provider full due process
12 that, at a minimum, must include a proceeding before a hearing officer during which
13 the video service provider must be afforded the opportunity for full participation,
14 including the right to be represented by counsel, to introduce evidence, to require the
15 production of evidence, and to question or cross-examine witnesses under oath. A
16 transcript shall be made of any such hearing. A video service provider may bring an
17 action to appeal the decision of the department."

18 **10.** Page 14, line 19: delete lines 19 to 21 and substitute "video service, the
19 video service provider shall apply to the department for a modified video service
20 franchise under par. (d). A video service".

21 **11.** Page 14, line 23: delete "2.,".

22 **12.** Page 18, line 22: delete the material beginning with that line and ending
23 with page 19, line 3, and substitute:

1 “(d) *Duties of interim cable providers and video service providers.* 1. If a
2 municipality requires an interim cable operator or video service provider to provide
3 capacity for PEG channels under par. (a), the interim cable operator or video service
4 provider shall be required to provide transmission capacity sufficient to connect the
5 interim cable operator’s or video service provider’s headend or video hub office to the
6 municipality’s PEG access channel origination points existing as of the effective date
7 of this subdivision [revisor inserts date]. A municipality shall permit the interim
8 cable operator or video service provider to determine the most economically and
9 technologically efficient means of providing such transmission capacity. If a
10 municipality requests that such a PEG access channel origination point be relocated,
11 the interim cable operator or video service provider shall be required to provide only
12 the first 200 feet of transmission line that is necessary to connect the interim cable
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14 point. A municipality shall be liable for the costs of construction of such a
15 transmission line beyond the first 200 feet and for any construction costs associated
16 with additional origination points, but not for the costs associated with the
17 transmission of PEG programming over such line. The interim cable operator or
18 video service provider may recover its costs to provide transmission capacity under
19 this subdivision by identifying and collecting a “PEG Transport Fee” as a separate
20 line item on customer bills.”.

21 **13.** Page 22, line 8: delete that line and substitute:

22 “(8) DISCRIMINATION; ACCESS TO SERVICES. (ag) *Definition.* In this subsection,
23 “department” means the department of agriculture, trade and consumer protection.

24 (am) *Discrimination prohibited.* 1. No”.

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14. Page 23, line 10: delete "(a) 2." and substitute "(am) 2."

15. Page 26, line 9: delete lines 9 to 15 and substitute "No later than 15 days after the transfer is complete, the successor-in-interest shall apply for a video service franchise under sub. (3) (d) and comply with sub. (3) (e) 1. The successor-in-interest may provide video service in the video franchise area during the period that the department reviews the application."

16. Page 26, line 17: delete "department" and substitute "department of financial institutions".

17. Page 26, line 18: before the period insert "and the department of agriculture, trade and consumer protection may not promulgate rules interpreting or establishing procedures for sub. (8)".

18. Page 27, line 1: delete lines 1 and 2 and substitute:

"(c) The department shall enforce this section, except sub. (8). The department may bring an action to recover any fees that are due and owing under this section or to enjoin a violation of this section, except sub. (8), or any rule promulgated under sub. (3) (f) 4. An action shall be commenced under this paragraph within 3 years after the occurrence of the unlawful act or practice or be barred."

18

(END)

MS 4-17 ✓

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0321/lins
MDK:jld:jf

1 Insert 4-17

2 1. Page 42, line 2: after that line insert:

3 "SECTION 69m. Fiscal changes.

4 *hard → a* In the schedule under section 20.005 (3) of the statutes for the appropriation
number
5 to the department of financial institutions under section 20.144 (1) (g) of the statutes,
6 as affected by the acts of 2007, the dollar amount is increased by \$100,000 for fiscal
7 year 2007-08 and the dollar amount is increased by \$100,000 for fiscal year 2008-09
8 *increase funding* to for the purpose for which the appropriation is made.

← INSERT B (to Ins 4-17)

INS A
(to Ins 4-17)

(end ins 4-17)

See

2005

Nonstat File Sequence: **DDD**

LRB 20321 / 1

MDK: _____

\$\$\$ CHANGE

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → \$change

For the budget action phrase, execute: create → action: → *NS: → 92XX

For the text, execute: create → text: → *NS: → \$change

2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9200 department code.

SECTION # [92] **Appropriation changes;**

INS A
↓

(#1) MDK (1) ← hard number

..... In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of financial institutions

under section 20. 144 (1) (g) of the statutes, as affected by the acts of 2005, and 2007 the dollar amount is in creased by \$

*

cal year 2005-06 and the dollar amount is in creased by \$, 20,000 for fiscal year 2006-07 to in crease funding

for the ~~purpose~~ purposes for which the appropriation is made ~~to~~ to

⊙

* Use the 2nd alternative if the purpose of the increase or decrease is more limited than the purpose or purposes of the appropriation as currently shown in the text of ch. 20, stats.

(end ins A)

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # _____ . Effective date

(#1) () This act takes effect on

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # 70m ✓ . Effective dates;

..... This act takes effect on the day after publication, except as follows:

INS B →
 (1) ← hard NO #
 SECTION 69m (2) of this act
 of the statutes takes effect on the day after publication of the
 2007-09 biennial budget act."

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the **9400** department code.

SECTION 94 _____ . Effective dates;

(#1) () The treatment of sections of the statutes takes effect on

(end ins B)