

2007 SENATE BILL 343

November 28, 2007 – Introduced by Senators HANSEN, KANAVAS, DECKER, BRESKE, ROESSLER, LASSA, PLALE and RISSER, cosponsored by Representatives RHOADES, SUDER, SOLETSKI, VAN ROY, TAUCHEN, M. WILLIAMS, KERKMAN, HUBLER, SEIDEL, SHERIDAN, SINICKI, NELSON, KESSLER, JESKEWITZ, BIES, MURTHA and MUSSER. Referred to Committee on Commerce, Utilities and Rail.

1 **AN ACT** *to create* 788.30 of the statutes; **relating to:** arbitration in situations
2 involving cable and satellite television system operators and creators of video
3 programming.

Analysis by the Legislative Reference Bureau

This bill allows a person who creates video programming for cable or satellite television systems (video programmer) to seek arbitration if that video programmer believes that a cable or satellite television system operator has not treated the video programmer in a fair, reasonable, and nondiscriminatory manner concerning the proposed amount to be paid for the addition or renewal of a video channel to the cable or satellite operator's television system. The video programmer must give the cable or satellite television system operator notice of the intent to seek arbitration. If the parties do not resolve the dispute within 10 days after the notice is sent, either party may file a written request for arbitration with the American Arbitration Association. The requesting party must submit their final offer regarding the addition or renewal of a video channel to the arbitrator chosen by the association. If the other party does not submit a final offer, in response to a notice of arbitration, the arbitrator may only consider information provided by the party requesting arbitration when making his or her decision.

The arbitrator may require the parties to submit additional evidence, but he or she may not share the evidence submitted by one party with the opposing party. The arbitrator may not review any offers made by the parties other than their submitted final offers. The arbitrator must choose the proposed amount to be paid by the cable

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or satellite television system operator for the addition or renewal of the disputed video channel that most closely approximates the fair market value of that disputed video channel. In addition, the arbitrator must choose the remaining terms and conditions of the final offer of the party that submitted the request for arbitration.

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

1 **SECTION 1.** 788.30 of the statutes is created to read:

2 **788.30 Arbitration regarding television system operators. (1)** In this
3 section:

4 (a) “Final offer” means a proposed contract for the addition or renewal, for not
5 less than 3 years, on a multichannel video programming distributor’s television
6 system, of a video channel owned by a video programmer.

7 (b) “Multichannel video programming distributor” has the meaning given in 47
8 USC 522 (13), and includes cable and satellite television system operators.

9 (c) “Programming category” means programming that predominantly contains
10 only one of the following types of content:

11 1. Sports.

12 2. News and public affairs.

13 3. Music videos.

14 4. Consumer purchasing.

15 5. Religious.

16 6. Pay-per-view.

17 7. Entertainment, other than those listed in subds. 1. to 6.

18 (d) “Video programmer” means a person engaged in the production, creation,
19 or wholesale distribution of video programming who is not affiliated with a
20 multichannel video programming distributor and who offers a video channel that

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1 competes in the same programming category as a video channel owned by a
2 multichannel video programming distributor.

3 (2) (a) If a video programmer believes that a multichannel video programming
4 distributor has not treated the video programmer in a fair, reasonable, and
5 nondiscriminatory manner concerning the amount proposed to be paid by the
6 multichannel video programming distributor for the addition or renewal of a video
7 channel that is owned by the video programmer, the video programmer may request
8 arbitration regarding that treatment. The video programmer shall submit a written
9 notice to the multichannel video programming distributor within 90 days after the
10 most recent alleged unfair, unreasonable, or discriminatory treatment that the video
11 programmer will request arbitration.

12 (b) If a dispute between a multichannel video programming distributor and a
13 video programmer is not resolved within 10 days after submission of the notice under
14 par. (a), either party may file a written request for arbitration with the American
15 Arbitration Association. The party making the request shall include a copy of that
16 party's final offer. The association shall notify the other party in writing of the
17 demand for arbitration, provide that party with a copy of the submitted final offer,
18 and inform that party that they must provide the association with that party's final
19 offer within 5 days of receipt of the notice. If there is no final offer submitted in
20 response to the notice of arbitration within the 5-day period, the arbitrator shall
21 consider only the information provided by the party who made the request for
22 arbitration when making his or her decision.

23 (c) The arbitration shall be decided by one arbitrator chosen as provided by the
24 American Arbitration Association, following expedited commercial arbitration
25 procedures.

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1 (d) The arbitrator may require the parties to submit relevant evidence that is
2 in their possession or control, but the arbitrator may not share that evidence with
3 the opposing party. To determine the fair market value of the addition or renewal
4 of the disputed video channel, the arbitrator shall consider any relevant evidence,
5 including all of the following:

6 1. Current or previous contracts between the video programmer and other
7 multichannel video programming distributors.

8 2. Offers made between the video programmer and other multichannel video
9 programming distributors.

10 3. Current or previous contracts for the disputed video channel with other
11 multichannel video programming distributors.

12 4. Price, terms, and conditions that the video programmer has with other
13 multichannel video programming distributors for carrying the video programmer's
14 channels.

15 5. Rating, advertising rates, and other indicators of the relative value of the
16 disputed video channel.

17 6. The extent of the national carriage of the video programmer's channels.

18 7. Whether the multichannel video programming distributor and the video
19 programmer have pursued, in the past 5 years, the same programming categories
20 from 3rd parties.

21 8. Other evidence of the value of the disputed video channel.

22 (e) The arbitrator may not consider any offers that were made prior to the final
23 offers submitted to the arbitrator.

24 (f) The arbitrator shall choose the proposed amount to be paid by the
25 multichannel video programming distributor for the addition or renewal of the

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1 disputed video channel that most closely approximates the fair market value of the
2 addition or renewal of the disputed video channel. The arbitrator shall accept the
3 remaining terms, conditions, and form of the final offer of the party that filed the
4 written request for arbitration.

5 **(3)** If the arbitrator determines that a party's conduct during the course of the
6 arbitration was unreasonable, the arbitrator may require that party to pay all or
7 some of the other party's costs and expenses, including reasonable attorney fees.

8 **(4)** The award of the arbitrator may be confirmed as provided in s. 788.09 by
9 the circuit court of a county in which the multichannel video programming
10 distributor conducts business.

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(END)