

## 2007 DRAFTING REQUEST

### Bill

Received: **11/05/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Jay**

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

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Arbitration between cable and networks

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### Instructions:

See Attached companion to 07-3316

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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>
/?	rnelson2 11/06/2007	bkraft 11/06/2007		_____			
/P1			rschluet 11/06/2007	_____	cduerst 11/06/2007		
/1	rnelson2 11/07/2007	lkunkel 11/07/2007	rschluet 11/07/2007	_____	mbarman 11/07/2007		
	rnelson2 11/20/2007	bkraft 11/20/2007		_____			

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/2			rschluet _____ 11/20/2007 _____		lparisi 11/20/2007		
/3	rnelson2 11/26/2007	bkraft 11/26/2007	rschluet _____ 11/26/2007 _____		cduerst 11/26/2007	sbasford 11/26/2007	

FE Sent For:

*No*

<END>

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			11/20/2007	_____	11/20/2007		
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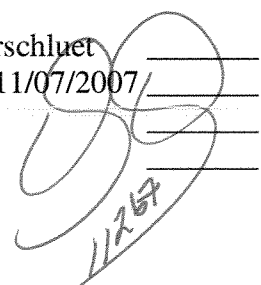
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11/2/07

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

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13 bjk 11/26

rschlue \_\_\_\_\_  
11/20/2007 \_\_\_\_\_

lparisi \_\_\_\_\_  
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*11/2 call from Eric, fix as suggested in notes*

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/P1			rschluet 11/06/2007		cduerst 11/06/2007		

*1/mk 11/7*

*Handwritten signatures and initials, including "NW" and "ENDS" in a box.*

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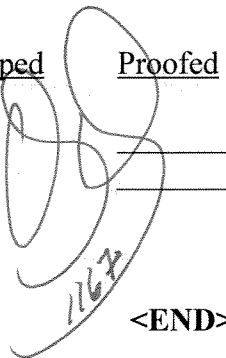
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/?	rnelson2						
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1/Pl bjk 11/6



FE Sent For:

<END>

Today

2007 - 2008 LEGISLATURE

346/P1  
LRB-3316/P2  
RPN:bk:rwn  
e  
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION ✓

SAV ✓

regen.

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

---

***Analysis by the Legislative Reference Bureau***

This bill allows a person who creates video programming for cable televisions systems to seek arbitration if that video programming creator believes that a cable operator has not treated the video programming creator in a fair, reasonable, and nondiscriminatory manner concerning the proposed amount to be paid for the addition or renewal of a cable channel to the cable operator's cable television system. The video programming creator must give the cable 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. Each party then submits their final offer regarding the addition or renewal of a cable channel to the arbitrator chosen by association. If one of the parties does not submit a final offer, the arbitrator may only consider information provided by the other party 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 operator for the addition or renewal of the disputed cable channel that most closely approximates the fair market value of that disputed cable channel. In addition, the

arbitrator must choose the remaining terms and conditions of the final offer of the person who first requested the 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 cable operators.** (1) In this section:

3           (a) "Basic cable service" means the lowest-priced category of cable service for  
4           which a separate rate is charged and that includes the retransmissions of local  
5           television broadcast signals.

      \*\*\*NOTE: I added "lowest-priced" to distinguish this from extended basic.

6           (b) "Cable operator" means any person who provides cable service over a cable  
7           television system and who meets any of the following conditions:

8           1. Directly or through one or more affiliates or subsidiaries, owns a significant  
9           interest in the cable television system.

10          2. Controls or is responsible for the management and operation of the cable  
11          television system.

12          (c) "Cable programmer" means a person engaged in the production, creation,  
13          or wholesale distribution of video programming who is not affiliated with a cable  
14          operator and who offers a cable channel that competes in the same programming  
15          category as a cable channel owned by a cable operator.

16          (d) "Cable service" means a service that includes all of the following:

17          1. The one-way transmission to subscribers of video programming or of other  
18          programming services.

19          2. Subscriber interaction, if any, that is required for the selection of the video  
20          programming or information that a cable operator makes available to all subscribers.

1 (e) “Cable television system” means a facility that consists of a set of closed  
2 transmission paths and associated signal generation, reception, and control  
3 equipment designed to provide cable service that includes video programming and  
4 that is provided to multiple subscribers within a community. “Cable television  
5 system” does not include any of the following:

\*\*\*\*NOTE: Does the language “that includes video programming” add anything to  
this definition, since “cable service” mentions video programming?

6 1. A facility that serves only to retransmit the television signals of one or more  
7 television broadcast stations.

8 2. A facility that serves only subscribers in one or more multiunit dwellings  
9 under common ownership, control, or management unless such facility uses any  
10 public right-of-way.

11 3. A facility of a common carrier that is subject, in whole or in part, to 47 USC  
12 201 to 222, except that the facility is a cable television system to the extent that the  
13 facility is used in the transmission of video programming directly to subscribers.

14 4. Any facility of any electric utility used solely for operating its electric utility  
15 system.

16 (f) “Extended basic cable service” means a category of cable service for which  
17 a separate rate is charged and that is higher priced and has a larger number of cable  
18 channels than basic cable service.

19 (g) “Final offer” means a proposed contract for the addition or renewal, for not  
20 less than 3 years, on a cable operator’s cable television system, of a cable channel  
21 owned by a cable programmer.

\*\*\*\*NOTE: I deleted the definition of “multichannel video programming distributor”  
because it is no longer used in the draft. Why the three-year language? It seems  
unnecessary and not related to the intent of this draft. What if one party’s “final offer”  
is for two years?

1 (h) "Programming category" means programming that predominantly contains  
2 only one of the following types of content:

3 1. Sports.

4 2. News and public affairs.

5 3. Music videos.

6 4. Consumer purchasing.

7 5. Religious.

8 6. Pay-per-view.

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

10 (2) (a) If a cable programmer believes that a cable operator has not treated the  
11 cable programmer in a fair, reasonable, and nondiscriminatory manner concerning  
12 the amount proposed to be paid by the cable operator for the addition or renewal of  
13 a cable channel that is owned by the cable programmer, the cable programmer may  
14 request arbitration regarding that treatment. The cable programmer shall submit  
15 a written notice to the cable operator within 90 days after the most recent alleged  
16 unfair, unreasonable, or discriminatory treatment that the cable programmer will  
17 request arbitration.

\*\*\*\*NOTE: The remainder of this draft seems to be about coming to an agreement  
about price, not other terms and conditions, so I narrowed this section to that issue. OK?

18 (b) If a dispute between a cable operator and a cable programmer is not resolved  
19 within 10 days after submission of the notice under par. (a), either party may file a  
20 written request for arbitration with the American Arbitration Association. The  
21 party making the request shall include a copy of the final offer made by the  
22 requesting party to the other party. The association shall notify the other party in  
23 writing of the demand for arbitration, provide that party with a copy of the submitted

1 final offer, and inform that party that they must provide the association with that  
2 party's final offer within 5 days of receipt of the notice. If there is no response to the  
3 notice of arbitration within the 5-day period, the arbitrator shall consider only the  
4 information provided by the party who made the request when making his or her  
5 decision.

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

9 (d) The arbitrator may require the parties to submit relevant evidence that is  
10 in their possession or control, but the arbitrator may not share that evidence with  
11 the opposing party. To determine the fair market value of the addition or renewal  
12 of the disputed cable channel, the arbitrator shall consider any relevant evidence,  
13 including all of the following:

14 1. Current or previous contracts between the cable programmer and other cable  
15 operators.

16 2. Offers made between the cable programmer and other cable operators.

17 3. Current or previous contracts for the disputed cable channel with other cable  
18 operators.

19 4. Price, terms, and conditions that the cable programmer has with other cable  
20 operators for carrying the cable programmer's channels.

21 5. Rating, advertising rates, and other indicators of the relative value of the  
22 disputed cable channel.

23 6. The extent of the national carriage of the cable programmer's channels.

24 7. Whether the cable operator and the cable programmer have pursued, in the  
25 past 5 years, the same programming categories from 3rd parties.

1 8. Other evidence of the value of the disputed cable channel.

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

4 (f) The arbitrator shall choose the proposed amount to be paid by the cable  
5 operator for the addition or renewal of the disputed cable channel that most closely  
6 approximates the fair market value of the addition or renewal of the disputed cable  
7 channel. The arbitrator shall accept the remaining terms, conditions, and form of  
8 the final offer of the party that filed the written request for arbitration.

\*\*\*\*NOTE: The final sentence in this paragraph seems to imply that the person that requests the arbitrator first wins on all of the conditions except price. Is that what you want? Why not have the arbitrator use the terms and conditions of the final offer from the one that he or she accepted based on price?

9 (3) The arbitrator shall make a decision within 120 days after the request for  
10 arbitration was received by the American Arbitration Association. If the arbitrator  
11 determines that a party's conduct during the course of the arbitration was  
12 unreasonable, the arbitrator may require that party to pay all or some of the other  
13 party's costs and expenses, including reasonable attorney fees.

\*\*\*\*NOTE: Sub. (2) (c) requires the arbitrator to follow "expedited commercial arbitration procedures," so the first sentence may not be appropriate.

14 (4) The award of the arbitrator may be confirmed as provided in s. 788.09 by  
15 the circuit court of a county in which the cable operator conducts business.

16 (END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

3406/P1/dn  
LRB-3316/P2dn  
RPN:bk:nwn

November 6, 2007

L stay

I still have some questions about this draft that I imbedded in the draft as notes where the question arose, so I left this draft as a preliminary one. I added an analysis for your review.

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Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.wisconsin.gov

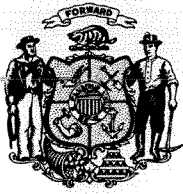
**DRAFTER'S NOTE  
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LRB-3406/P1dn  
RPN:bk:rs

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Phone: (608) 267-7511  
E-mail: [robert.nelson@legis.wisconsin.gov](mailto:robert.nelson@legis.wisconsin.gov)



TODAY

stays

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2007 Bill

Reven

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7 channel. The arbitrator shall accept the remaining terms, conditions, and form of  
8 the final offer of the party that ~~filed the written request for arbitration.~~ *the arbitrator determines is most reasonable*

\*\*\*\*NOTE: The final sentence in this paragraph seems to imply that the person that requests the arbitrator first wins on all of the conditions except price. Is that what you want? Why not have the arbitrator use the terms and conditions of the final offer from the one that he or she accepted based on price?

9 (3) The arbitrator shall make a decision within 120 days after the request for  
10 arbitration was received by the American Arbitration Association. If the arbitrator  
11 determines that a party's conduct during the course of the arbitration was  
12 unreasonable, the arbitrator may require that party to pay all or some of the other  
13 party's costs and expenses, including reasonable attorney fees.

\*\*\*\*NOTE: Sub. (2) (c) requires the arbitrator to follow "expedited commercial arbitration procedures," so the first sentence may not be appropriate.

14 (4) The award of the arbitrator may be confirmed as provided in s. 788.09 by  
15 the circuit court of a county in which the cable operator conducts business.

16 (END)



This AM  
11/20

2007 - 2008 LEGISLATURE

3406/2  
LRB-~~3316/2~~  
RPN:bk:nwn  
stay

2007 BILL

SAV

regen. cat.

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.

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*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

**BILL**

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 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

**BILL**

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.

**BILL****SECTION 1**

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  
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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

**BILL**

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  
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5             **(3)** If the arbitrator determines that a party’s conduct during the course of the  
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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.

11   **(END)**



Today 11/28  
State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3406/2

RPN:bk:rs

3  
le  
stays

## 2007 BILL

SA ✓

regen. cat.

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**BILL**

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**BILL**

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**BILL****SECTION 1**

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**Nelson, Robert P.**

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**From:** Wadd, Jay  
**Sent:** Monday, November 26, 2007 12:48 PM  
**To:** Nelson, Robert P.  
**Subject:** RE: FAN Bill Draft

3406/3

Bob,

Is this jacketed or can you jacket for introduction in the Senate?

Thanks,

Jay

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**From:** Nelson, Robert P.  
**Sent:** Tuesday, November 20, 2007 1:03 PM  
**To:** Wadd, Jay  
**Subject:** RE: FAN Bill Draft

Sure.  
<< File: 07-3406/2 >>

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**From:** Wadd, Jay  
**Sent:** Tuesday, November 20, 2007 1:01 PM  
**To:** Nelson, Robert P.  
**Subject:** FAN Bill Draft

Bob,

Can you email me a copy of LRB 3406/2?

Thanks.

Jay