

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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February 28, 2007

Rep. Montgomery:

The purpose of this drafter's note is to describe the differences between this version and the previous version. ***However, please note the questions that I raise in items 3, 11, 15, 19, 24, and 25.*** Also, note that I discussed the issue of municipal authority with our local government drafting attorney (Marc Shovers), and he thinks proposed s. 66.0420 (4) and (7) (g) are sufficient to prevent municipalities from imposing fees on, or otherwise regulating, video service providers, except as provided under the bill.

Legislative findings

1. I added language to proposed s. 66.0420 (1) to help rebut an argument that the bill unconstitutionally impairs contracts (i.e., municipally granted franchises). Based on my review of the case law on impairment of contracts, it appears that a court is more likely to uphold legislation if a legitimate state policy is clearly articulated in the legislation. Therefore, I added language to articulate the policy reasons for the bill.

Definitions

2. The following definitions are changed: "incumbent cable operator," "low-income household," "PEG channel," "video service," and "video service network." Also, the reference to PEG broadcasting is deleted from the definition of "gross receipts."

3. The definition of "institutional network" is changed. Note, however, that I did not use the definition provided because that definition has logical problems. Proposed s. 66.0420 (6) prohibits state agencies and municipalities from requiring interim cable operators and video service providers to provide institutional networks. Therefore, it doesn't make sense to define "institutional network" as something that is provided by a cable operator. ***Is my definition okay?***

4. The definition of "video franchise area" is changed, as well as a reference to such area in proposed s. 66.0420 (3) (d) 2.

5. Although we didn't discuss it at our meeting on February 20, based on discussions with John Stolzenberg of the Legislative Council, I made changes to the definitions of "service tier" and "video service franchise."

6. I eliminated definitions from proposed s. 66.0420 (8) (b), and created definitions for "basic local exchange service area," "large telecommunications video service provider,"

and “telecommunications video service provider” in proposed s. 66.0420 (2). I revised the duties in proposed s. 66.0420 (8) (b) so that they apply to “large telecommunications video service providers.” Also note that the reference to the bill’s effective date is eliminated from the definition of “basic local exchange service area.”

Authority to provide video service

7. Proposed s. 66.0420 (3) (c) is a new paragraph that creates an exception for certain persons to provide video service before they are issued a video service franchise.

8. I revised s. 66.0420 (3) (e) and (j) (as well as the definition of “video franchise area”) to account for expansions to the video franchise area.

9. In proposed s. 66.0420 (3) (e) 2. b., the deadline is changed from 30 business days to 10 business days.

Franchising authority

10. I changed proposed s. 66.0420 (4) to specify the types of requirements and fees that municipalities may not impose on video service providers.

11. At the meeting on February 20, I mistakenly stated that the proposal’s sub. (6) (i) is not included in the bill. I now realize that proposed s. 66.0420 (4) prohibits a municipality from requiring a video service provider to deploy facilities or equipment. ***Does proposed s. 66.0420 (4) address your concerns on deployment and build-outs?*** (I didn’t mention build-outs in proposed s. 66.0420 (4) because I think the reference to “deployment” covers this issue.)

PEG channels

12. Instead of saying that video service providers and interim cable operators “provide PEG channels,” the bill is revised to say that such entities “provide channel capacity for PEG channels.” See proposed s. 66.0420 (3) (e) 2. b. and (5) (a), (b), (c) 3., and (d).

13. The interconnection language in proposed s. 66.0420 (5) (d) 2. is changed as requested.

14. The interconnection requirements under proposed s. 66.0420 (5) (d) 2. are changed.

15. I revised proposed s. 66.0420 (5) (a) 4. to refer to the initial applicability of the duty to provide “any additional channel capacity for PEG channels that are required by municipalities” under the bill. I think the revision ensures the initial applicability does not apply to channel capacity for PEG channels that is currently being provided by incumbent cable operators. ***Is that okay?***

16. The “first 200 feet” rule is revised in proposed s. 66.0420 (5) (d) 1.

Video service provider fee

17. The statute of limitations in proposed s. 66.0420 (7) (e) 2. is revised to refer to the calendar quarter to which a dispute relates, rather than to the completion of negotiations.

Discrimination; access

18. Under proposed s. 66.0420 (8) (c), DFI can grant a waiver for complying with the access requirements under proposed s. 66.0420 (8) (b), but cannot waive the prohibition against discrimination based on race or income under proposed s. 66.0420 (8) (a). (The previous version allowed DFI to waive the income discrimination prohibition.) However, note that, as under the previous version, this version allows DFI to extend the deadlines in the income discrimination defense.

19. Proposed s. 66.0420 (8) (e) is intended to correspond to the proposal's sub. (6) (h). However, what if a video service provider, when applying for a video service franchise, included an area in the video service franchise area that is outside the areas specified in proposed s. 66.0420 (8) (e)? As drafted, it would appear that the video service provider may not be required to provide video service in those areas, even though the video service provider itself included the areas in the video service franchise area. ***Is that okay?***

Customer service standards

20. I added the last sentence to proposed s. 66.0420 (9) (b), which creates an exception for DATCP rules.

Limitation on rate regulation

21. Proposed s. 66.0420 (10) is revised to apply to DFI. I also added the second sentence.

Cross references

22. ***In general:*** Except as noted below, I revised other statutes so that they refer to "video service providers" and "video service networks," rather than to "cable operators" or "cable television systems." In addition, for purposes of the other statutes, I defined "video service providers" to mean both "interim cable operators" and "video service providers" as defined in the bill.

23. ***Retail sales tax:*** Because s. 77.52 (2) (a) 12. depends upon a unique definition of "cable television system," I did not affect that definition. (The definition is set forth at s. 77.52 (2) (am).) Instead, I revised s. 77.52 (2) (a) 12. to also refer to "video service."

24. ***Unfair billing (s. 100.195):*** I think that there is a mistake in current law, in that s. 100.195 (1) (c) 2. should refer to "television service," rather than "cable television service." My reason is that "television service" is defined in s. 100.195 (1) (h), but is not otherwise used in s. 100.195. Therefore, I fixed the mistake in s. 100.195 (1) (c) 2. ***Is that okay?*** Also, as requested, I defined "television service" to include video service as defined in the bill.

25. ***Privacy (s. 134.43):*** I have not received further instructions on how you want to treat s. 134.43. Therefore, I did not make any changes. ***Do you wish to make changes to s. 134.43?***

26. ***Chapter 196:*** I am uncertain as to how you want to deal with ch. 196. I changed the term "cable television service" to "cable service" as defined under federal law. See

my repeal and recreation of s. 196.01 (1p) and related changes in ss. 196.01 (1g) and (9m) and 196.203 (3) (b) (intro.) and 2., (c), (d), and (e) 1. (intro.).

27. *Connection of facilities (s. 196.04 (4)):* I replaced “cable operator” with “video service provider,” which is defined in s. 196.01 (12r) to mean both “interim cable operators” and “video service providers” as defined in the bill.

28. *Cable television telecommunications service providers (s. 196.203):* I did not affect the definition of “cable television telecommunications service provider” in s. 196.01 (1r), which is used in s. 196.01 (1d) (a). In addition, the following statutes mistakenly refer to a “cable telecommunications service provider,” and I corrected them to refer instead to a “cable television telecommunications service provider”: ss. 20.395 (3) (jh), 25.40 (1) (a) 4m., and 196.203 (1m). In addition, I did not affect the use of the term “cable television system” in ss. 196.01 (1r) and 196.203 (1m) (which are the only two uses of that term in ch. 196). However, as noted above, I changed references in s. 196.203 from “cable television service” to “cable service.”

29. *Competing public utilities, etc. (s. 196.50):* In s. 196.50 (1) (b) 2. e., I replaced “cable television service” with “video service,” which is defined in s. 196.01 (12g) to have the meaning as defined in the bill.

30. *Assessments (s. 196.85):* In s. 196.85 (1m) (b), I replaced “cable operator” with “video service provider,” which is defined in s. 196.01 (12r) to mean both “interim cable operators” and “video service providers” as defined in the bill.

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