



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Appendix G

Date Transfer Requested: 04/13/2007 (Per: MDK)




The 2007 drafting file for
LRBa0226/1 (transferred)
LRBa0227/1 (transferred)
LRBa0228/1 (transferred)
LRBa0259/1 (transferred)
LRBa0283/2 (transferred)
LRBa0285/1 (transferred)



LRBa0291/1 (transferred)

where used to create ...
LRB 07s0061

 The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as an appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2007 DRAFTING REQUEST**Assembly Amendment (AA-AB207)**Received: **04/12/2007**Received By: **mkunkel**Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**By/Representing: **Adam**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: **Rep.Montgomery@legis.wisconsin.gov**Carbon copy (CC:) to: **david.lovell@legis.wisconsin.gov**
john.stolzenberg@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Application requirements, modifications, and franchise revocations

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 04/12/2007	jdyer 04/13/2007	nmatzke 04/13/2007	_____	mbarman 04/13/2007	mbarman 04/13/2007	

FE Sent For:

<END>

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/?	mkunkel	1 ⁴ / ₁₃ jcd	nwn 4/13	<u>nwn</u> <u>4/13</u>			

FE Sent For:

<END>

Kunkel, Mark

From: Raschka, Adam
Sent: Thursday, April 12, 2007 4:26 PM
To: Kunkel, Mark
Cc: Lovell, David; Stolzenberg, John; Venskus, Katy
Subject: Instructions

Attachments: Video amendments.04.12.07.doc; ad revenue language.doc

Mark,

The first attached document has two components. 1). DFI language. 2). Rights-of-Way language, which may now be moot now that you sent us a draft which looks to address this topic.

The second document is a gross receipts amendment in lieu of a0288/1 which we just received. Sorry we didn't get this new language to you sooner.



Video
amendments.04.12.07.dnlanguage.doc (27 KB)

ad revenue

Thanks for all of your work on this.

If you ever need to get hold of me with a question and I am not at my desk, feel free to call my cell 608-513-9644.

Adam

*- assume that
20.144(1)(g)
is appr. for fees
rec'd?*

[For DFI's concerns regarding application & revocation process]

To page 16, starting on line 20, make the following changes:

(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 \$1,000.00 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.

Add to p.19 line 10 instead?

Service area

date

affidavit

Principal Place of Bus., etc

To page 18, lines 6-15, make the following changes:

(f) *Department duties*. 1. No later than 10 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. and, if the department fails to make a determination do so, 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. Persons that are either a Telecommunications utility, as defined in s. 196.01(10), or a Qualified Cable Operator shall automatically 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, or its parent, that, as of the date of filing the application, is one of the ten (10) largest video service providers in the United States measured by total video service subscribers nationally. The department shall promulgate rules for determining the legal, financial, and technical qualifications of an applicant that is neither a Telecommunications utility, as defined in s. 196.01(10) or a Qualified Cable Operator.

cable

Starting on page 18, line 23, make the following changes:

*move to
p 30 after
line 8*

(i) Expiration and revocation of video service franchise.

Except as provided in subd. 2.
1. A video service franchise issued to a video service provider does not expire, unless the video service provider gives 30 day's 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.

*no
(changed
location)*

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 willfully and knowingly 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.

To Address Right of Way Concerns:

On Page 34, before line 7, add the following:

Section 28.5. 182.017 of the statutes is amended to read:

182.017 Transmission lines; privileges; damages.

(1) Right-of-way for. Any domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, an independent system operator, as defined in s. 196.485 (1) (d), an independent transmission owner, as defined in s. 196.485 (1) (dm), or a cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service or a cooperative organized under ch. 185 to transmit heat, power or electric current to its members, or a video service provider, as defined under s. 66.020(2)(zg), may, subject to ss. 30.44 (3m), 30.45, 86.16 and 196.491 (3) (d) 3m. and to reasonable regulations made by any city, village or town through which its transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge or any stream or body of water, or upon any lands of any owner consenting thereto, and for such purpose may acquire lands or the necessary easements; and may connect and operate its lines or system with other lines or systems devoted to like business, within or without this state, and charge reasonable rates for the transmission and delivery of messages or the furnishing of heat, power or electric light.

... [remainder of 182.017 remains unchanged but a new paragraphs (8) & (9) are added]

(8) Commission review. Upon complaint made by any corporation described in subd 1., the public service commission shall set a hearing and if it finds a regulation by any city, village or town under subd.1 to be unreasonable, the regulation shall be void.

(9) Time for permits. If pursuant to subd. 1, any city, village or town establishes a permit process, the city village, or town must either approve or deny a permit application within 60 days of receipt. If the city, village or town denies such a permit application, it must provide a written explanation of the reasons for such denial at the same time that it denies the application.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa0291/1

MDK:n:...

O-NOTE

jld

ASSEMBLY AMENDMENT,
TO 2007 ASSEMBLY BILL 207

Friday
4/13
10 am

1 At the locations indicated, amend the bill as follows: ✓

2 1. Page 2, line 2: before the period insert "and granting rule-making
3 authority". ✓

4 2. Page 14, line 2: after that line insert:

5 ✓ "(sm) "Qualified cable operator" means any of the following:

6 1. A cable operator that has provided cable service in this state for at least 3 ✓
7 years prior to applying for a video service franchise and that has never had a cable
8 franchise revoked by a municipality.

9 2. An affiliate of a cable operator specified in subd. 1. ✓

10 3. A cable operator that, on the date that it applies for a video service franchise,
11 is one of the ✓ 10 largest video service providers in the United States ✓ as measured by
12 the total number of video service subscribers nationally.

13 4. A parent corporation of a cable operator specified in ✓ subd. 3."

1 **3.** Page 14, line 6: after that line insert:

2 “(um) “Telecommunications utility”[✓] has the meaning given in s. 196.01 (10).[✓]”.

3 **4.** Page 17, line 12: after that line insert:

4 “5. A description of the services that the applicant proposes to provide.[✓]

5 6. An application fee of \$1,000.”[✓]

6 **5.** Page 18, line 6: delete “10 business days” and substitute “15 business days”.

7 **6.** Page 18, line 10: delete lines[✓] 10 to 15 and substitute:

8 “2. No later than[✓] 15 business days after the filing of an application that the
9 department[✓] has determined is complete, the department shall determine whether
10 an applicant is legally, financially, and technically qualified to provide video service.

11 If the department determines that an applicant is legally, financially, and technically
12 qualified to provide video service, the department shall issue a video service
13 franchise to the applicant. If the department determines that an applicant is not
14 legally, financially, and technically qualified to provide video service, the department
15 shall reject the application and shall state the reasons for the determination. If the
16 department fails to make the determination, the department shall be considered to
17 have issued a video service franchise to the applicant, unless the applicant
18 withdraws the application or agrees with the department to an extension of time.[✓]

19 3. If an applicant is a telecommunications utility or qualified cable operator,
20 the department shall determine that the applicant is legally, financially, and
21 technically qualified to provide video service. The department[✓] shall promulgate
22 rules for determining whether an applicant that is not a[✓] telecommunications utility
23 or qualified cable operator[✓] is legally, financially, and technically qualified to provide
24 video service.”.

1 **7.** Page 18, line 23: delete that line and substitute:

2 “(i) *Expiration and revocation of video service franchise.* 1. Except as provided
3 in subd. 2., a video service franchise issued to a”.

4 **8.** Page 19, line 2: after that line insert:

5 “2. The department may revoke a video service franchise issued to a video
6 service provider if the department determines that the video service provider has
7 willfully and knowingly repeatedly failed to substantially meet a material
8 requirement imposed upon it by this section and the department has not otherwise
9 acquiesced in such noncompliance through a waiver. Before commencing a
10 revocation proceeding, the department shall provide the video service provider
11 written notice of the department’s intention to revoke the franchise and the
12 department’s reasons for the revocation and afford the video service provider a
13 reasonable opportunity to cure any alleged violation. Before revoking a video service
14 franchise, the department shall afford a video service provider full due process,
15 including a proceeding before a hearing officer during which the video service
16 provider is afforded the opportunity for full participation, including the right to be
17 represented by counsel, introduce evidence, require the production of evidence, and
18 question or cross-examine witnesses under oath. A transcript shall be made of any
19 proceeding or hearing under this subdivision. A decision of the department is subject
20 to judicial review under ch. 227.”.

21 **9.** Page 19, line 10: after the period insert “A video service provider that makes
22 a notification regarding a change in the information specified in par. (d) 2., 3., 4., or
23 5., shall include with the notification a fee of \$100. No fee is required for a notification
24 regarding a change in the information specified in par. (d) 1.”.

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

LRBa0291/1dn

MDK:.....

date

JLD

Rep. Montgomery:

Please note the following about this amendment:

1. I assume that DFI's appropriation under s. 20.144 (1) (g) will account for the application and information modification fees that are received. If that assumption is not correct, you may need to create a new appropriation to account for the fees. Also note that I moved the information modification fee to page 19, line 10 of the bill. In addition, I required payment of a \$100 fee if a video service provider modifies a description of proposed services. *
2. In the definition of "qualified cable operator," I used the term "parent corporation," rather than "parent." Is that okay, or should the definition refer to some other type of business entity that owns a cable operator?
3. The revocation language raises several issues. What is the meaning of "willfully and knowingly"? Why not "knowingly" without "willfully"? Does "repeatedly" mean more than once, or some number greater than more than once? What is a "material" requirement? Must DFI explicitly waive noncompliance, or is it possible to infer that DFI has waived noncompliance? Who is responsible for the transcript? Who pays for the transcript? Also note that I referred to the availability of judicial review under ch. 227.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0291/1dn
MDK:jld:nwn

April 13, 2007

Rep. Montgomery:

Please note the following about this amendment:

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State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa0291/1
MDK:jld:nwn

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TO 2007 ASSEMBLY BILL 207**

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