

**2007 DRAFTING REQUEST**

**Assembly Amendment (AA-SA13-AB207)**

Received: 11/28/2007

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Hebl (608) 266-7678**

By/Representing: **John Vander Meer**

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.Hebl@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Add arbitration requirements for channels that carry collegiate athletics

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**Instructions:**

See Attached

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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>
/?	mkunkel 11/28/2007	bkraft 11/29/2007		_____			
/1			nmatzke 11/29/2007	_____	cduerst 11/29/2007	cduerst 11/29/2007	

FE Sent For:

<END>

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/?	mkunkel	1 bjk 11/29	nwn 11/29	nwn/rs 11/29			

FE Sent For:

<END>

2007 <sup>7</sup> Date (time) needed

Fri  
11-30  
NOON

LRBa 0918, 1  
MDR: bjk:

AMENDMENT

→ O-NOTE

See form AMENDMENTS — COMPONENTS & ITEMS.

§ A AMENDMENT

TO S AMENDMENT 13 (LRBa 1),

~~TO S A SUBSTITUTE AMENDMENT (LRBs 1),~~

TO 2005 SB SJR SR AB AJR AR 207 (LRB- 1)

2007

At the locations indicated, amend the amendment as follows:  
(fill ONLY if "engrossed ...." or "as shown by .....")

#. Page 2, line 2: delete operator and substitute operator

#. Page 2, line 3: before that line insert:

#. Page ..., line ...:

#. Page ..., line ...:

#. Page ..., line ...:

D-note

**SENATE BILL 343**

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:*

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

~~788.30~~ Arbitration regarding television system operators. (1) In this

Subsection section:

1. (a) "Final offer" means a proposed contract for the addition or renewal, for not less than 3 years, on a multichannel video programming distributor's television system, of a video channel owned by a video programmer.

2. (b) "Multichannel video programming distributor" has the meaning given in 47 USC 522 (13), and includes ~~cable and satellite television system operators~~.

3. (c) "Programming category" means programming that predominantly contains only one of the following types of content:

1. Sports.
2. News and public affairs.
3. Music videos.
4. Consumer purchasing.
5. Religious.
6. Pay-per-view.
7. Entertainment, other than those listed in subsds. 1. to 6.

4. (d) "Video programmer" means a person engaged in the production, creation, or wholesale distribution of video programming who is not affiliated with a multichannel video programming distributor and who offers a video channel that

requirements (BF) CS

(5S) BF CS

interim cable operators

including Collegiate athletics

and video service providers

## SENATE BILL 343

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

3 <sup>(b) 1.</sup> ~~(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 <sup>2. (b)</sup> ~~(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 <sup>par. (a)</sup> ~~(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 <sup>3. (e)</sup> ~~(e)~~ The arbitration shall be decided by one arbitrator chosen as provided by the  
24 American Arbitration Association, following expedited commercial arbitration  
25 procedures.

SENATE BILL 343

1 <sup>4.</sup> (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 <sup>5.</sup> (1) Current or previous contracts between the video programmer and other  
 7 multichannel video programming distributors.

8 <sup>6.</sup> (2) Offers made between the video programmer and other multichannel video  
 9 programming distributors.

10 <sup>7.</sup> (3) Current or previous contracts for the disputed video channel with other  
 11 multichannel video programming distributors.

12 <sup>8.</sup> (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 <sup>9.</sup> (5) Rating, advertising rates, and other indicators of the relative value of the  
 16 disputed video channel.

17 <sup>10.</sup> (6) The extent of the national carriage of the video programmer's channels.

18 <sup>11.</sup> (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 <sup>12.</sup> (8) Other evidence of the value of the disputed video channel.

22 <sup>13.</sup> (e) The arbitrator may not consider any offers that were made prior to the final  
 23 offers submitted to the arbitrator.

24 <sup>14.</sup> (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

SENATE BILL 343

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       (c) (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       (d) (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)

(fr2) (2 mo) Page 30, line 3 after (7)(c) insert  
and except for sub. (5s) and

(fr2) (4 mo) Page 30, line 10: at lines 10  
and 12 delete subo (8) and  
substitute subso (5s) and (8)

(fr2) (3 mo) Page 30, line 5 delete section 0 If  
and substitute section, and if

(END)

D-note

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

LRBa0918/1dn

MDK.....

Lbjk

Date

Rep. Hebl:

This amendment is based on SB 343, which deals with arbitration. Please note the following:

1. I changed SB 343's definition of "multichannel video programming distributor" to specify that it includes interim cable operators and video service providers. I also deleted the reference to satellite system operators. However, that deletion should have no substantive effect, as satellite system operators are included via the cross reference to the federal definition.
2. I changed the definition of "programming category" so that it refers to any type of programming, including collegiate athletics.
3. I excepted the arbitration provisions from the enforcement requirements in AB 207. Because the arbitration provisions contain their own enforcement requirements, there is no need to proceed under the other enforcement requirements in AB 207.

Mark D. Kunkel  
Senior Legislative Attorney  
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E-mail: mark.kunkel@legis.wisconsin.gov

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

LRBa0918/1dn  
MDK:bjk:nwn

November 29, 2007

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