WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2007 Senate Bill 107	Senate Substitute Amendment 1 and Senate Amendments 1, 2, and 3, 4, and 5 to Senate Substitute Amendment 1
Memo published: **November 5, 2007**	*Contacts*: **David L. Lovell, Senior Analyst (266-1537)** **John Stolzenberg, Chief of Research Services (266-2988)**

2007 Senate Bill 107 replaces municipal franchising of cable television service with a streamlined state franchising process for video services offered by cable service providers and telecommunications providers. This new process reduces the state's and municipalities' roles in regulating those services.

2007 Assembly Bill 207 is the companion bill to SB 107. Assembly Substitute Amendment 1 to AB 207 is identical to Senate Substitute Amendment 1 to SB 107. The Senate amendments to SSA 1 to SB 107 summarized in this Memo correspond to Assembly amendments to ASA 1 to AB 107 as shown in the following table. There are no Senate amendments that correspond to Assembly Amendments 20 and 28 to ASA 1 to AB 207.

Senate Amendments to Senate Substitute Amendment 1 Recommended by the Senate Committee on Commerce, Utilities and Rail	Corresponding Assembly Amendments to Assembly Substitute Amendment 1 Adopted by the Assembly
SA 1	Identical to AA 8
SA 2	Identical to AA 2
SA 3	Identical to AA 1
SA 4	Identical to AA 9, except that AA 9 does not contain appropriations to the Department of Financial Institutions
SA 5	Identical to AA 5

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

SENATE SUBSTITUTE AMENDMENT 1

Legislative Findings

The substitute amendment replaces the current statement of legislative findings and intent in current municipal franchising law with eight legislative findings relating to the purposes of the state video franchising framework created by the substitute amendment. These purposes are summarized in the last finding as follows:

> This section is an enactment of statewide concern for the purpose of providing uniform regulation of video service that promotes investment in communications and video infrastructures in the continued development of the state's video service marketplace within a framework that is fair and equitable to all providers. [Proposed s. 66.0420 (1) (h).]

Applicability

The substitute amendment applies to "video programming" and "video service" provided by "video service providers." "Video programming" is defined as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." "Video service" is defined, effectively, as video programming provided by a cable service provider or a telecommunications service provider through wireline-based facilities. "Video service" does ***not*** include video programming provided by cellular telephone, satellite, broadcast television, or Internet access. A "video service provider" is any person that holds a state video franchise, or a successor or assign of such a person.

State Franchising

The substitute amendment specifies that the state is the exclusive franchising authority for video service providers in Wisconsin under federal cable law. It phases out existing municipal franchise agreements by prohibiting their renewal and allowing cable operators to terminate them prior to their expiration. It further prohibits municipalities from requiring video service providers to obtain new municipal franchises. In their place, it requires video service providers to obtain a state franchise that applies statewide. An incumbent cable operator may choose to continue operating under an existing municipal franchise for the remaining life of that franchise; the substitute amendment refers to these as "interim cable operators."[1]

---

[1] Because an interim cable operator does not hold a state franchise, it is not included in the term "video service provider." Consequently, provisions of the substitute amendment that refer only to video service providers do not apply to interim cable operators.

Authority to Provide Video Service

Application for Franchise

The substitute amendment requires that, in general, a person who intends to provide video service in this state must apply to the Department of Financial Institutions (DFI) for a franchise. The application consists of specified information and certifications and must be accompanied by a $1,000 application fee. Among other things, the applicant must certify that it is legally, financially, and technically qualified to provide video service and must specify the services it will provide and the areas in which it intends to provide video service (its "video franchise area").

DFI must notify the applicant whether the application is complete within 15 business days of receiving an application.

Within 15 business days of receiving a complete application, the DFI must determine whether the applicant is legally, financially, and technically qualified to provide the service. If it determines the applicant is qualified, it must issue the applicant a franchise; if it determines the applicant is not qualified, it must reject the application and state its reasons in writing. If the DFI fails to issue the franchise in the required time, it will be considered to have issued the franchise unless the applicant withdraws the application or agrees to an extension of DFI's review period.

In the case of an application by a telecommunications utility or a "qualified cable operator," it is presumed that the applicant is legally, financially, and technically qualified. "Qualified cable operator" is defined as any of the following: a cable operator that has provided cable service in this state for at least three years and has never had a franchise revoked by a municipality or an affiliate of such a cable operator, or a cable operator that, on the date of application, is one of the 10 largest video service providers in the United States or the parent company of such a cable operator.

Application Update

A video service provider must provide an update of information in its application to the DFI within 10 business days of any change to that information. If the change involves an expansion of its video franchise area, the video service provider must inform the DFI of the change as soon as practicable after determining to make the change, but no less than 10 business days before commencing service in the expanded area.

For most categories of information, an update must be accompanied by a fee of $100.

Transfer of Franchise

Under the substitute amendment, a video service provider may transfer its franchise to any successor-in-interest. It must inform the DFI of the transfer no later than 10 days after the transfer is complete. The new video service provider must provide to the DFI the contact information and certifications required in a franchise application, but the substitute amendment does not specify a timeframe for this requirement. Neither the DFI nor any municipality has authority to review or approve a transfer of a franchise.

Franchise Expiration and Revocation

A franchise does not expire unless the franchise holder terminates it.

DFI may revoke a video service franchise if it determines that the video service provider has "willfully and knowingly repeatedly failed to substantially meet a material requirement" of the statewide video franchise statute created by the substitute amendment, unless the DFI has granted the video service operator a waiver from the requirement. The DFI may not commence a revocation proceeding without first providing the video service provider with notice and an opportunity to cure any alleged violation. DFI's revocation proceeding must be a contested case, a quasi-judicial proceeding that includes such elements as sworn testimony, cross-examination, and the creation of a formal record that can be appealed to court.

Notices to Municipalities

Under the substitute amendment, an applicant for a state franchise must provide a copy of its application to each municipality in its video franchise area at the time that it submits the application to the DFI. Similarly, a video service provider must provide copies of any application information updates (including expansions of its video franchise area) to the municipalities and provide municipalities information related to the transfer of a franchise.

A video service provider must provide a municipality notice 10 days prior to commencing service in the municipality.

Notices by Municipalities

If a municipality that has a cable franchise agreement in effect on the effective date of the law receives a notice that a video service provider will commence providing service within its territory, the municipality must provide a written notice to the video service provider, within 10 business days of receiving the notice, stating the following: (1) the number of public, educational, or governmental (PEG) channels the incumbent cable operator is required to provide in the municipality; and (2) the "percentage of revenues" that the incumbent cable operator is required to pay the municipality as franchise fees. The same requirement applies when a municipality receives notice that a video service provider has expanded its video service area to include the municipality.

Video Service Provider Fee

Imposition and Amount of Fee

The substitute amendment requires that video service providers make quarterly payments to the municipalities in which they provide service equal to not more than 5% of the provider's gross receipts for that quarter. If, on the effective date of the law, a cable operator is paying a franchise fee that is less than 5% of gross receipts, the new fee will be that lower percentage; if more than one cable operator is providing cable service in a municipality and are all paying fees less than 5%, the new fee is the lowest of those fees.

In the substitute amendment, "gross receipts" means all revenues received by a video service provider from subscribers in a municipality for video service. It explicitly ***includes***: recurring charges for video service; event-based charges (e.g., pay-per-view); equipment rental (e.g., set top boxes); service charges (for, e.g., activation, installation, repair, and maintenance); and administrative charges. It explicitly ***excludes***: discounts, refunds, and other price adjustments; uncollectible fees (those written off as bad debt but later collected are included, less the expense of collection); late payment charges; maintenance charges; amounts billed to recover taxes, fees, surcharges, or assessments; revenue from the sale of certain capital assets or surplus equipment; charges for nonvideo services that are bundled with video services; and reimbursement by programmers of marketing costs actually incurred by the video service provider.

Fee payments are due no later than 45 days after the close of a calendar quarter. In general, the video service provider's obligation to pay the fee commences in the quarter in which it commences service. If a municipality fails to notify the video service provider of the percentage of franchise fees and number of PEG channels required under prior cable franchise agreements within the 10-day deadline set by the substitute amendment, described earlier, the video service provider's obligation commences in the quarter that includes the 45th day after the municipality provides that notice.

In a number of provisions, the substitute amendment prohibits a municipality from imposing any fee or charge on a video service provider beyond the video service provider fee. Since these provisions do not mention interim cable operators, it appears that the prohibition on additional fees does not apply in their case.

Enforcement of Fee and Other Provisions

The substitute amendment allows a municipality to review a video service provider's records to ensure proper and accurate payment of the fee, but limit this review to no more than once in any three-year period. The parties must complete good-faith settlement discussions regarding any dispute regarding the amount of a fee before either party may bring an action regarding the disputed fee.

In any subsequent litigation, these negotiations will be treated as compromise negotiations under the state courts' rules of evidence. The effect of this treatment is that any settlement offer made during the negotiations may not be used as evidence that the dispute over the fee is valid or as evidence regarding the amount of the disputed fee.

Unless the parties agree otherwise, any action that is brought must be commenced within three years of the quarter to which the disputed amount relates. Neither party may recover the costs it incurs in the course of such litigation.

All determinations and calculations regarding video service provider fees must be made using generally accepted accounting practices. Also, the substitute amendment specifically allows video service providers to itemize on customers' bills the amount billed to recover the fee.

PEG Channels

Requirement; Number of PEG Channels

The substitute amendment requires a video service provider to make available to a municipality in which it provides service channels for noncommercial PEG programming. If an incumbent cable operator is providing channel capacity for PEG channels to a municipality under a cable franchise immediately before the substitute amendment's effective date, the municipality must require each interim cable operator or video service provider that provides video service in the municipality to provide channel capacity for the same number of PEG channels for which channel capacity is provided immediately before the effective date.

In general, if no incumbent cable operator is providing PEG channel capacity under a cable franchise prior to the effective date, then for a municipality with a population of 50,000 or more, each provider must provide three PEG channels and, for a municipality with a population less than 50,000, each must provide two PEG channels.

An exception applies if no incumbent cable operator is providing PEG channel capacity under a franchise prior to the effective date and a particular interim cable operator or video service provider distributes programming to more than one municipality from a single headend or hub office. In this instance, the operator or provider is required to provide the number of PEG channels to those municipalities collectively corresponding to their collective population. If the collective population is 50,000 or more, the municipalities collectively may not require capacity for more than three PEG channels. If the collective population is less than 50,000, not more than two PEG channels may be required.

In a municipality where there is no incumbent cable operator, the video service provider must make the PEG channels available beginning on the date that it commences service in the municipality. If there is an incumbent cable operator, and the municipality is therefore required to notify the video service provider of the number of PEG channels the incumbent provides to it, the video service provider must make the PEG channels available on the date that it commences service in the municipality or the 90th day after it receives the notice, whichever is later.

If a municipality does not substantially utilize a PEG channel, the interim cable operator or video service provider may reprogram that channel. A municipality is substantially utilizing a channel if it provides 40 or more hours of programming on the channel each week, at least 60% of which is locally produced programming. A municipality may regain the use of a PEG channel that has been reprogrammed by certifying to the video service provider that it will substantially utilize the channel.

A video service provider or interim cable operator must make PEG channels available on any service tier that is viewed by more than 50% of its customers. If a PEG channel was reprogrammed due to the failure of the municipality to substantially utilize the channel and later restored to a PEG function, the operator or provider may provide the restored channel on any service tier.

Operation of PEG Channels; Transmission of PEG Programming to Provider's Network

The substitute amendment provides that municipalities are responsible for virtually all aspects of operating PEG channels. An interim cable operator or video service provider is required to provide only the first 200 feet of transmission line needed to connect its network to one distribution point used by the municipality to transmit PEG programming for the PEG channel.

Beyond this, municipalities may not require a video service provider or interim cable operator to provide any funds, services, programming, facilities, or equipment related to PEG channel operation. It is the municipality's responsibility to do all of the following:

- Operate the channel and produce or obtain the programming.
- Ensure that all programming is submitted to the operator or provider in a form the operator or provider can broadcast with no manipulation or modification.
- Make all programming for a PEG channel available to all operators and providers operating in the municipality in a nondiscriminatory manner.

Interconnection of Video Service Providers' Networks

The substitute amendment requires that, if there is more than one interim cable operator or video service provider in a municipality and the interconnection of their networks "is technically necessary and feasible for the transmission of programming of any PEG channel," the two providers must negotiate in good faith for interconnection on mutually acceptable terms, rates, and conditions. The provider who requests interconnection is responsible for interconnection costs, including the cost of transmitting programming from its origination point to the interconnection point.

Public Rights-Of-Way

Under current law, a number of statutes govern the use of public rights-of-way by various entities. In particular, s. 66.0425, Stats., establishes the requirement that a person, other than public utilities and cooperatives that provide a utility service, obtain a municipal permit for the privilege to engage in construction in public rights-of-way, and addresses compensation to the municipality, performance bonds, liability, and third parties' interests. Also, s. 182.017, Stats., provides that the authority for public utilities and cooperatives and other entities that provide a utility service to occupy public rights-of-way is subject to a number of statutes and to "reasonable regulations made by any city, village or town through which the transmission lines or system may pass…."

The substitute amendment provides that, notwithstanding s. 66.0425 and except as provided in s. 182.017, as amended by the substitute amendment, municipalities may not impose any fee or requirement on a video service provider relating to the construction of a video service network. It also states that, as long as a video service provider pays the required video service provider fee, "the municipality may not require the video service provider to pay any compensation under s. 66.0425, or, notwithstanding s. 182.017, any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way."

In a separate provision, the substitute amendment states that: "[a] video franchise issued by the [DFI] authorizes a video service provider to occupy the public rights-of-way and to construct, operate, maintain, and repair a video service network to provide video service in the video franchise area."

Under amended s. 182.017, a municipality may impose reasonable regulations on the occupation and use of public rights-of-way by video service providers, other than any permit fees or other charges for use of public rights-of-way. A municipality may also impose such regulations on an interim cable operator though, again, the limitation on permit fees and other charges does not apply to these operators.

The substitute amendment requires that, if a municipality requires a permit for the occupation or use of its public rights-of-way, the municipality must approve or deny a permit application within 60 days of receiving the application. If the municipality fails to meet this deadline, the permit is deemed to be approved by the municipality. If the municipality denies a permit application, it must present its reasons for the denial in writing.

Any entity whose occupation and use of public rights-of-way is subject to s. 182.017 (video service providers and others), may complain to the Public Service Commission (PSC) if it believes that a municipality has imposed an unreasonable regulation on its occupation and use of public rights-of-way. The PSC must review such a complaint and, if it determines that the regulation is unreasonable, void the regulation.[2] The substitute amendment allows the PSC to assess the complaining party for the cost of the review.

Consumer Protection

The Federal Communications Commission's (FCC) regulations require each cable operator to meet, among other customer service standards, the following "customer service obligations": (1) provide a telephone access line, a customer service center, and bill payment locations that meet specified requirements; (2) meet specified performance standards for performing installations and responding to outages and service calls; and (3) issue refund checks and service credits within specified periods. [47 C.F.R. s. 76.309.]

Current s. 100.209, Stats., requires a cable operator to: (1) give a subscriber specified credits for service interruptions; (2) prevent disconnection of cable service for failure to pay a bill until the unpaid bill is at least 45 days past due; and (3) specify time periods for a cable operator to repair cable service and to provide notice for instituting a rate increase, deleting a program service, or disconnecting a subscriber. This statute also explicitly states that it does not prohibit the Department of Agriculture, Trade, and Consumer Protection (DATCP) or a municipality from establishing by rule or ordinance, respectively, regulations that expand these subscriber rights.

The substitute amendment establishes that, if there is only one video service provider in a municipality, the municipality may require a video service provider to comply with the FCC's "customer service obligations," described above, but precludes the DFI and municipalities from

[2] The PSC has, in ch. PSC 130, Wis. Adm. Code, promulgated standards for determining whether a municipality's regulations of a utility's use or occupation of the public rights-of-way is unreasonable.

imposing additional or different customer service standards that are specific to the provision of video service.

If there is more than one video service provider in a municipality or if a sole provider is subject to "effective competition," as defined in federal regulations, the substitute amendment establishes that these video service providers may not be subjected to any "customer service standards."[3] The substitute amendment provides an exception to this limitation for customer service standards promulgated by rule by DATCP.

The substitute amendment repeals the current law on cable subscriber rights in s. 100.209, Stats.

The substitute amendment does not address or amend the cable subscriber privacy protections in state or federal law.

The substitute amendment also prohibits any municipality from imposing on any video service provider any requirement relating to the provision of video service. This prohibition would include requirements relating to consumer protection.

Access To Service ("Build-Out")

The substitute amendment's requirements on access to service apply only to a "large telecommunications video service provider" (LTVSP). This type of provider is a video service provider that uses facilities for providing telecommunications service also to provide video service and that, on January 1, 2007, had more than 500,000 residential customer access (or telephone) lines in the state. Only AT&T Wisconsin had this many residential access lines on that date.

The substitute amendment requires a LTVSP to provide access to its video service to the following percentages of households within its residential local exchange service area:

- Not less than 35% nor later than three years after the date on which the LTVSP began providing video service under its state franchise.
- Not less than 50% nor later than five years after the date on which the LTVSP began providing video service under its state franchise, or no later than two years after at least 30% of households with access to the LTVSP's video service subscribe to the service for six consecutive months, whichever occurs later.

An LTVSP must file an annual report with the DFI regarding its progress in complying with these requirements.

An LTVSP may apply to the DFI for an extension of any time limit specified in these requirements or for a waiver from the requirements. DFI must grant the extension or waiver if the

[3] Neither the substitute amendment nor the FCC's regulations define the term "customer service standards." However, since the FCC identifies its service standards and disclosure requirements in 47 C.F.R. ss. 76.309, 76.1602, 76.1603, and 76.1619 as "customer service standards," an argument can be made that this prohibition applies to the types of standards and requirements identified in these FCC regulations.

provider demonstrates to the department's satisfaction that the provider has made "substantial and continuous efforts" to comply with the requirements and that the extension or waiver is necessary due to one or more of the following factors: (1) the provider's inability to obtain access to rights-of-way under reasonable terms and conditions; (2) developments and buildings that are not subject to competition because of exclusive service arrangements or are not accessible using reasonable technical solutions under commercially reasonable terms and conditions; (3) natural disasters; and (4) other factors beyond the control of the provider.

An LTVSP may satisfy these requirements through the use of an alternative technology, other than satellite service, that does all the following: (1) offers service, functionality, and content demonstrably similar to that provided through the provider's video service network; and (2) provides access to PEG channels and messages broadcast over the emergency alert system.

The substitute amendment also establishes that, notwithstanding any of the above provisions, a telecommunications video service provider of any size is not required to provide video service outside its residential local exchange service area, and a video service provider that is an incumbent cable operator is not required to provide video service outside the area in which the operator provided service at the time DFI issued a video service franchise to the operator.

Discrimination

The substitute amendment establishes that no video service provider may deny access to video service to any group of potential residential customers in the provider's video franchise area because of the race or income of the residents in the local area in which the group resides.

The substitute amendment specifies a defense to an alleged violation of the above prohibition based on income if the video service provider has met either of the following conditions:

- No later than three years after the date on which the provider began providing video service under its state franchise, at least 25% of households with access to the provider's video service are low-income households.
- No later than five years after the date on which the provider began providing video service under its state franchise, at least 30% of households with access to the provider's video service are low-income households.

A "low-income household" is defined to be any individual or group of individuals living together as one economic unit in a household whose aggregate annual income is not more than $35,000, as identified by the U.S. Census Bureau as of January 1, 2007.

The substitute amendment applies the provisions on extensions described in the preceding discussion of access to service to the defenses identified above. It also applies the provisions on alternative technologies and limitations on geographic service territory specified in the preceding discussion of access to service to the prohibition on discrimination and the related defenses identified above.

Regulation of Rates

Federal law expresses a preference for competition over regulation of cable service rates, and prohibits rate regulation if the FCC has determined that the market in question is subject to effective competition. In the absence of effective competition, a franchising authority may regulate rates for basic service only, including programming on the cable operator's basic programming tier. All other rates are subject to FCC regulations. [47 U.S.C. s. 543.]

The substitute amendment provides that neither DFI nor a municipality may regulate the rates of a video service provider under a state franchise or an interim cable operator under a municipal franchise if at least two unaffiliated providers or operators provide service in a municipality. This limitation applies regardless of whether the affected operator or provider has sought a determination by the FCC regarding effective competition.

The substitute amendment is silent on rate regulation where there is only one interim cable operator or video service provider. The result, it appears, is that no state or municipal entity has authority to regulate rates in this instance.

Institutional Networks

The substitute amendment provides that, notwithstanding any ordinance or franchise agreement in effect on the effective date of this law, no state agency or municipality may require an interim cable operator or video service provider to provide any institutional network or equivalent capacity on its network. "Institutional network" is defined as a network that connects governmental, educational, and community institutions.

Local Broadcast Stations

Under federal law, cable operators are required to carry the signal of local commercial television stations and qualified low power stations. This law sets certain limits on this requirement, gives priority to the carriage of commercial stations over low power stations, and imposes requirements regarding the content to be carried, signal quality, and like matters.

The substitute amendment provides that broadcast stations may require noncable video service providers to carry their signals to the same extent that they may require cable operators to do so under current federal law. It requires that the noncable video service provider transmit the signal without degradation, but allow it to do so by technology different than that used by the broadcast station. It also prohibits the noncable video service provider from discriminating among broadcast stations and programming providers and from deleting, changing, or altering a copyright identification that is part of a broadcast station's signal.

Rule-Making Limited

The substitute amendment specifies that, notwithstanding the statute that gives an agency general authority to promulgate rules to interpret any statute it implements or enforces, the DFI may not promulgate rules interpreting the statewide video franchise statute created by the substitute amendment. It provides an exception to this prohibition, directing the DFI to promulgate rules for determining whether a video service provider, other than a telecommunications utility or qualified cable operator, is legally, financially, and technically qualified to provide video service.

Enforcement

The substitute amendment authorizes a municipality, interim cable operator, or video service provider that is affected by a failure to comply with the statewide video franchise statute created by the substitute amendment to bring an action in circuit court. The court is directed to order compliance with the law, but the substitute amendment is silent regarding the recovery of damages. No party to a suit may recover its costs of prosecuting or defending the suit.

In addition, the Department of Justice (DOJ) may enforce the provisions of this new statute. The substitute amendment does not specify penalties for violations of the new law, nor does ch. 66, Stats., in which the law is numbered. In the absence of any specified penalty, civil violations are punishable by a forfeiture of not more than $200. [s. 939.61 (1), Stats.]

Terminology and Conforming Amendments

The substitute amendment changes many references throughout the statutes from "cable service" to "video service" and from "cable operator" to "video service provider." It also conforms various statutes to the new state video service franchising framework and corrects a number of minor technical errors in the bill and, in one instance, rewords a provision to ensure the intended effect.

Effective Date

The substitute amendment takes effect on the day after its date of publication, pursuant to s. 991.11, Stats.

SENATE AMENDMENT 1, REGARDING CUSTOMER PRIVACY

Current law imposes certain obligations and prohibitions on cable operators designed to protect the privacy of cable service customers. In particular, no person may, without written permission provided within the preceding two years, collect or release various information regarding customers. In addition, cable operators must make available to cable customers, at no cost, equipment to prevent the transmission to the cable operator of information from the customer's equipment. The law imposes a forfeiture of up to $100,000 for certain violations and allows additional private remedies.

Senate Amendment 1 applies the prohibitions on the collection or release of customer information and the penalties and private remedies to "multichannel video providers," which is defined to include cable operators, video service providers, and "multichannel video programming providers," a term used in federal law which includes satellite video service providers.

SENATE AMENDMENT 2, REGARDING VIDEO SERVICE PROVIDER FEES

Most current municipal cable franchise agreements in Wisconsin require cable operators to pay franchise fees to the municipality equal, in most cases, to 5% of the cable operator's gross receipts attributable to its provision of service in that municipality, and the substitute amendment continues this requirement, in general.

The substitute amendment establishes a definition of "gross receipts" for purposes of the video service provider fee. Senate Amendment 2 modifies this definition by: (1) adding revenues received

from the provision of home shopping or similar programming and from advertising (with a formula for the allocation of revenues from advertising under regional or national contracts and exceptions for advertising refunds, rebates, and discounts); (2) clarifying that maintenance charges paid by video service subscribers for video services are included; and (3) making a technical change in the terminology.

The substitute amendment provides that, unless the parties agree otherwise, any action that is brought to enforce payment of a video service provider fee must be commenced within three years of the quarter to which the disputed amount relates. The amendment extends this time limit to four years.

SENATE AMENDMENT 3, REGARDING CONSUMER PROTECTION

The substitute amendment repeals s. 100.209, Stats., *Video Service Subscriber Rights*. This section is summarized above in the description of the substitute amendment, under "Consumer Protection."

Senate Amendment 3 restores s. 100.209, and applies it to video service provided by "multichannel video providers." These providers are defined to include cable operators, video service providers, and "multichannel video programming providers," a term used in federal law which includes satellite video service providers. The amendment repeals the authority of municipalities to adopt ordinances that supplement the statutory standards.

The amendment modifies one of the standards in current s. 100.209. Under current law, when a subscriber notifies the cable operator of a service interruption that is not caused by the cable operator and that lasts for more than four hours in one day, the cable operator is required to give the subscriber credit for each hour that service was interrupted. The amendment modifies this requirement to apply to service outages that last for more than 24 hours.

SENATE AMENDMENT 4, REGARDING VARIOUS SUBJECTS

Senate Amendment 4 makes a number of changes in the substitute amendment.

In the presumptive determination by the DFI that a telecommunications utility or a qualified cable operator applying for a video service franchise is legally, financially, and technically qualified to provide video service, the amendment applies this determination to a "large telecommunications video service provider" rather than a "telecommunications utility." The amendment also modifies two elements of the definition of "qualified cable operator" used in this provision by: (1) changing the description of cable operators in this state from those that have provided service to those that have been providing service (that is, limiting it to current cable operators); and (2) changing the test for a cable operator being one of the 10 largest video service providers in the United States.

The amendment raises the application fee for a video service franchise from $1,000 to $2,000.

The amendment modifies the provisions regarding revocation of a franchise by: (1) deleting "willfully and knowingly" from the description of the violations that are grounds for revocation; and (2) replacing the statement that a revocation proceeding is a contested case under ch. 227, Stats., with a description of some of the procedural elements of a contested case.

The amendment revises the duties of interim cable operators and video service providers in transmitting PEG programming from a PEG access channel's origination point to the provider's headend or video hub office and the related duties of municipalities, as follows:

- For an origination point existing on the substitute amendment's effective date, the operator or provider is required to provide transmission capacity sufficient to make these connections.
    - A municipality must permit the operator or provider to determine the most economically and technologically efficient means of providing this transmission capacity.
- If a municipality requests that such a preexisting PEG access channel origination point be relocated, the operator or provider is required to provide the first 200 feet of transmission line necessary to connect its headend or video hub office to the origination point, and the municipality is required to pay for the costs of construction of the relocated transmission line beyond the first 200 feet, other than the costs associated with the transmission of PEG programming over the line.
- A municipality is liable for any construction costs associated with additional origination points, other than the costs associated with the transmission of PEG programming "over such line."
- An operator or provider may recover its costs to provide transmission capacity under the above provisions by identifying and collecting a "PEG Transport Fee" as a separate line item on customer bills.

The amendment requires that, when a video service provider modifies its video franchises area, it must apply for a new franchise. It further requires that, when a video service provider transfers its franchise to another entity, that entity must apply for a new franchise and comply with related notice requirements.

The amendment specifies that the DFI, rather than the DOJ, shall enforce most provisions of the new franchise statute, with the exception that the DATCP shall enforce the provisions relating to discrimination and access to service. It prohibits the DATCP from promulgating rules interpreting the discrimination or access provisions.

The amendment increases the appropriation of program revenues to DFI for its general program operations by $100,000 for fiscal year 2007-08 and by $100,000 for fiscal year 2008-09.

SENATE AMENDMENT 5, REGARDING PEG CHANNEL MONETARY SUPPORT

Senate Amendment 5 continues any obligations to provide monetary support for PEG channels that exist under a municipal cable franchise in effect on the effective date of the substitute amendment. If the incumbent cable operator with such an obligation terminates the franchise by switching to a state video service franchise, its obligation continues until three years after the effective date or until the date on which the franchise would have expired, whichever is earlier. If the incumbent cable operator does not terminate the franchise, the obligation continues until the expiration of the franchise.

The amendment requires that any new video service provider in a municipality that receives PEG support must also provide PEG support and establishes a formula for determining an amount of support that is proportional to the support provided by the incumbent provider.

LEGISLATIVE HISTORY

On April 18, 2007, the Senate Committee on Commerce, Utilities, and Rail took the following actions:

- Introduced Senate Substitute Amendment 1.
- Introduced and recommended adoption of Senate Amendments 1, 2, 3, 4, and 5 to Senate Substitute Amendment 1.
- Recommended adoption of Senate Substitute Amendment 1, as amended.
- Recommended passage of Senate Bill 107, as amended.

JES:DLL:ty:jal