

1

Clearinghouse Rule 08-041

PROPOSED ORDER OF THE STATE OF WISCONSIN, DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF CORPORATE AND CONSUMER AFFAIRS ADOPTING RULES

2 The Wisconsin Department of Financial Institutions, Division of Corporate and Consumer
3 Services proposes an order to create ch. DFI—CCS 20 relating to video service franchise.

Analysis Prepared by the Department of Financial Institutions, Division of Corporate and Consumer Services

Statute(s) interpreted: s. 66.0420, Stats.

Statutory authority: ss. 66.0420(3)(f)4., 66.0420(13)(a) and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to s. 66.0420(13)(c), Stats., the department shall enforce s. 66.0420 except sub. (8).

Summary of proposed rule: The objective of the rule is to create ch. DFI—CCS 20. Pursuant to s. 66.0420(13)(a), Stats., the department shall promulgate rules for determining whether an applicant is legally, financially, and technically qualified to provide video service, and may promulgate rules interpreting or establishing procedures for s. 66.0420, Stats. The purpose of this rule is to set forth certain matters regarding definitions, filings, fees and reports, certificates, video franchise area descriptions, maps, amendments to maps and video franchise area descriptions, qualifications, and proceedings and hearings.

Summary of and preliminary comparison with existing or proposed federal regulation: Comparable franchise application processes and proceedings are set forth in 47CFR76.

Comparison with rules in adjacent states: Illinois has enacted video franchise area legislation but no rules regarding this legislation.

Summary of factual data and analytical methodologies: The department reviewed the legislative findings of 66.0420, Stats., reviewed the video service franchise statutes and rules of other states that have adopted similar legislation, contacted video service franchise regulators in other states, and applied its own experience in regulation of financial industries generally.

Analysis and supporting documentation used to determine effect on small business: The rule does not have a significant economic impact on small business. Mandates and proceedings addressed by the rule are the result of and set forth in 2007 Wisconsin Act 42 and ch. 227, subch. III, and not

the rule. The rule largely addresses filing matters or requests information otherwise already prepared for other agencies.

Agency Contact Persons

To obtain a copy of the proposed rule or fiscal estimate at no charge:

A copy of the proposed rule and fiscal estimate may be obtained at the department's website, www.wdfi.org or by contacting Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us.

To submit written comments regarding the proposed rule:

Written comments may be sent to Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us. Written comments must be received by the conclusion of the department's hearing regarding the proposed rule.

For questions regarding the agency's internal processing of the proposed rule:

Contact Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, 345 W. Washington Avenue, 5th Floor, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us.

For substantive questions on the rule:

Contact Cheryll Olson-Collins, Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Affairs, P.O. Box 7846, Madison, WI 53708-7846, tel. (608) 266-6810, e-mail cheryll.olsoncollins@dfi.state.wi.us or Ray Allen, Deputy Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Affairs, P.O. Box 7846, Madison, WI 53708-7846, tel. (608) 264-7950, e-mail ray.allen@dfi.state.wi.us.

For a copy of the department's hearing notice regarding this rule:

A copy of the department's hearing notice regarding the proposed rule may be obtained at the department's website, www.wdfi.org or by contacting Mark Schlei, Deputy General Counsel, Wisconsin Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705, e-mail mark.schlei@dfi.state.wi.us.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Corporate and Consumer Services adopts the following:

5 **CHAPTER DFI – CCS 20**

6 **VIDEO SERVICE FRANCHISE**

7 **DFI – CCS 20.01 Authority.** This chapter is adopted pursuant to ss. 66.0420(13) and
8 227.11(2), Stats.

9 **DFI – CCS 20.02 Definitions.** (1) In this chapter:

10 (a) “Administrator” means the administrator of the division of corporate and consumer services,
11 department of financial institutions.

12 (b) “Department” means the department of financial institutions.

13 (c) “Low-income household” means a household with income equal to or less than 200% of the
14 poverty line for a family of three as defined in 42 USC 9902(2).

15 **DFI-CCS 20.03 Filings.** (1) Documents regarding a video service franchise shall be filed with
16 the department as follows:

17 (a) By United States mail addressed to the Wisconsin Department of Financial Institutions,
18 Division of Corporate and Consumer Services, P.O. Box 7846, Madison, WI, 53707-7846; or

19 (b) In person or by delivery service to the Wisconsin Department of Financial Institutions, Division
20 of Corporate and Consumer Services, 345 W. Washington Avenue, 3rd Floor., Madison,
21 Wisconsin, 53703.

22 (2) At the time of filing, a filer may request a date-stamped copy of any document filed with the
23 department or make arrangements with the department for delivery to the filer of a date-stamped
24 copy of the document.

25 (3) If a fee is required for any filing, the fee shall be submitted with the filing in the form and
26 manner prescribed by the department.

(4) Documents regarding a video service franchise filed with the department shall be on forms prescribed by the department. The original and 7 copies shall be filed with the department.

(5). The department may reject any filing that is incomplete, fails to include a required fee, or does not comply with any requirements set forth in s. 66.0420, Stats., or this chapter.

(6) The department may void a filing if the instrument tendered for a required fee is returned by the institution upon which it was issued for insufficient funds or other similar reasons.

DFI-CCS 20.04 Annual fees and report. (1) If a video service provider has 10,000 or less subscribers, the annual fees shall be those set forth in s. 66.0420(3)(k)2., Stats.

(2) For all other video service providers, the first annual fee shall be \$5,000 and each subsequent annual fee shall be \$2,000.

(3) The holder of a video service franchise certificate shall submit with its annual fee a report to the department. The report shall accurately update and make current all information required in the application that has changed since the issuance of the certificate. The report shall also include the number of video service subscribers for each municipality within the video franchise area. The report shall be in a form and manner prescribed by the department.

DFI-CCS 20.05 Certificates. (1) If the department determines that an applicant is qualified to provide video service, the department shall issue a video service franchise certificate to the applicant as set forth in the application.

(2) The holder of a video service franchise certificate may transfer the certificate to any successor by filing a notice of transfer with the department and each affected municipality. The notice shall include the address of the successor's principal place of business and the names and titles of the successor's principal executive officers. The successor shall assume all regulatory rights and responsibilities of the holder transferring the certificate.

(3) A video service franchise certificate shall expire 10 years after the date of its issuance by the department.

(4) A holder of a video service franchise certificate may renew a certificate if the application and notification requirements of s. 66.0420, Stats., and this chapter are met prior to the expiration of the certificate. A renewed video service franchise certificate shall be for a period of 10 years unless the department determines that the video service provider is not legally, financially or technically qualified.

DFI-CCS 20.06 Video franchise area descriptions. (1) Video franchise areas shall be described in a manner sufficient to enable a person to determine whether or not a particular location falls within the video franchise area. If both a map and a description of a video franchise area are required, then the description of the video franchise area shall correspond to the map. A description shall be deemed insufficient if it merely refers to a map without a description of what the map represents.

Example: Any of the following descriptions would enable a person to determine whether a location falls within the described video franchise area: the entirety of the State of Wisconsin; the entirety of X county; all of X county north of Y highway; the city of Z; the A, B, and C subdivisions of Q city; or those portions of X county between river S and highway Y.

(2) A video franchise area description shall describe areas served by the video service provider pursuant to the video service franchise certificate and shall also describe areas served by the video service provider pursuant to a municipal contract or agreement.

DFI-CCS 20.07 Maps. (1) REQUEST. The department may request maps related to the video franchise area as is necessary for compliance with s. 66.0420, Stats., and this chapter.

(2) ACCURACY. Maps shall accurately depict the geographic area to be served by reference to governmental boundaries, streets, roads or geographical features.

(2) GENERAL REQUIREMENTS. A map shall include all of the following:

(a) The geographic map image.

(b) A scale indicator.

(c) A graphic indicating the direction north.

(d) A title indicating the map's purpose.

(e) A reference statement linking the map to the filing for which the map is submitted.

(f) A legend or key to any symbols on the geographic map image.

(g) Any additional information which may be useful to the video service subscribers, the department, governmental entities and others.

Example: The map may include geographic features such as waterways.

(3) GENERAL VIDEO FRANCHISE AREA REQUIREMENTS. The map of a video franchise area for a submitted map shall do all of the following:

(a) Delineate the video franchise area as one or more polygons. The polygons shall be closed on all sides.

(b) Identify area included in the video franchise area polygons through use of color fill, hash marks, hatching or similar graphic depiction.

(c) Contain a legend or key to any symbols used to depict the video franchise area. If hash marks are used to identify included areas of the video franchise area, the legend or key shall include that information.

(4) BOUNDARY DETAIL REQUIREMENTS FOR VIDEO FRANCHISE AREA.

(a) A map depicting a video franchise area that covers the entire area of one or more municipalities provides sufficient boundary detail if the map depicts the official boundaries of the covered municipality or municipalities. The official boundary shall be the boundary set or recognized by the municipalities depicted on the map.

(b) A map depicting a video franchise area that covers the entire area of one or more counties provides sufficient boundary detail if the map depicts the official boundaries of the covered counties. The official boundary shall be the boundary set or recognized by the counties depicted on the map.

(c) A map depicting a video franchise area that covers the entire area of the state provides sufficient boundary detail if the map depicts the official boundaries of the State.

(d) A map depicting any video franchise area that covers less than the entire area of a municipality or a county shall provide boundary detail as is necessary to comply with the requirements of s. 66.0420 and this chapter.

(5) FILINGS. A map depicting recognizable geographic territory and the video franchise area descriptions depicting the video franchise area shall be combined and filed as a final map document or image. A paper copy or an electronic copy of the map shall be submitted with each filing for which a map is required. The electronic copy shall be submitted in the form and manner prescribed by the department.

DFI-CCS 20.08 Map and video franchise area description amendments. A filer may amend a map or video franchise area description for reasons other than changes to the video franchise area boundaries. An amended map or video franchise area description shall be titled "Amended." An amended map or video franchise area description shall meet the requirements of and be filed in accordance with the requirements of this chapter.

Example: A filer may amend a map or video franchise area description to further identify landmarks within the described video franchise area such as street names.

DFI-CCS 20.09 Qualifications. (1) Factors that the department may consider for determining whether an applicant is legally, financially and technically qualified to provide video service include the following:

(a) That applicant is lawfully organized and is registered to conduct business in this state.

(b) That applicant has the expertise, equipment, infrastructure and personnel to construct and maintain the video service network for which it has requested a video service franchise certificate.

(c) That applicant has the financial resources to construct and maintain the video service network for which it has requested a video service franchise certificate.

(2) The applicant shall submit documentation, to the satisfaction of the department, to support its affirmation that it is legally, technically and financially qualified to provide video service.

DFI-CCS 20.10 Proceedings and hearings. (1) **GROUND.** Failure to comply with applicable federal and state statutes, regulations and rules, including failure to comply with any requirement regarding a video service franchise, may constitute grounds for the department to commence a proceeding or bring an action under s. 66.0420, Stats., including a revocation proceeding.

(2) **PLACE AND CONDUCT.** Unless otherwise ordered by the administrator, any proceeding or hearing shall be held at the department, shall be conducted and presided over by the administrator or such subordinate as may be designated to hear the matter, and shall be open to the public.

(3) **FORM OF PAPERS.** All pleadings, notices, orders and other papers filed in connection with any proceeding or hearing shall be printed or typewritten on paper 8 1/2 inches wide and 11 inches long, shall include the name and mailing address of the party and, if applicable, the party's representative, shall be dated, and shall be captioned:

BEFORE THE ADMINISTRATOR

WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS

DIVISION OF CORPORATE AND CONSUMER SERVICES

(4) FILING OF PAPERS. The original of any pleadings, notices, orders and other papers in connection with any proceeding or hearing shall be filed with the administrator, and a copy shall be served or furnished, as the case may be, to any other party to the proceeding. Papers shall be served by first class or certified mail addressed to any party or the party's representative at the party's or representative's last known post office address, or personally delivered to or served upon the party or the party's representative. Papers required to be filed with the administrator under this section shall be mailed by first class or certified mail or delivered to the Administrator, Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Services, 345 W. Washington Avenue, 3rd Floor, P.O. Box 7846, Madison, Wisconsin, 53707-7846.

(5) ANSWER IN CONTESTED CASES. The respondent shall make an answer to a notice in a contested case. The answer shall be received by the administrator by the time and date indicated in the notice. The answer shall contain a specific denial of each of the numbered paragraphs and contents of the notice which are controverted by the respondent, and a statement of any new matter constituting a defense or affecting the respondent's situation which the respondent wishes to have considered. The answer shall identify those numbered paragraphs and contents of the notice which are not controverted by the respondent. Every numbered paragraph and contents of the notice which are not controverted in the answer shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed. Failure to answer shall constitute a default, but such default may be excused upon proper showing and upon such terms as the administrator deems just.

163 (6) ORDERS. The effective date of an order issued by the administrator shall be the date it is
164 served, and service of the order shall be complete upon mailing by either United States first class
165 or certified mail.

166 (7) TRANSCRIPT. A copy of a transcript of any proceeding or hearing prepared by the
167 department shall be provided upon request and at a reasonable cost, as determined by the division,
168 to any party to the hearing. A copy of any transcript of any proceeding or hearing prepared by a
169 court reporting service shall be obtained from the service upon such terms and conditions as set by
170 the service.

171 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____

Cheryll Olson-Collins, Administrator
Wisconsin Department of Financial Institutions
Division of Corporate and Consumer Affairs