



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa0918/1
MDK:bjk:nwn

**ASSEMBLY AMENDMENT 1,
TO SENATE AMENDMENT 13,
TO 2007 ASSEMBLY BILL 207**

December 11, 2007 – Offered by Representatives HEBL, GARTHWAITE, BLACK, STEINBRINK, SEIDEL, SHERIDAN, MOLEPSKE, HILGENBERG, VRUWINK, SMITH and KRUSICK.

- 1 At the locations indicated, amend the amendment as follows:
- 2 **1.** Page 2, line 2: delete “operator.” and substitute “operator.”.
- 3 **2.** Page 2, line 3: before that line insert:
- 4 “(5s) ARBITRATION REQUIREMENTS. (a) In this subsection:
- 5 1. “Final offer” means a proposed contract for the addition or renewal, for not
- 6 less than 3 years, on a multichannel video programming distributor’s television
- 7 system, of a video channel owned by a video programmer.
- 8 2. “Multichannel video programming distributor” has the meaning given in 47
- 9 USC 522 (13), and includes interim cable operators and video service providers.
- 10 3. “Programming category” means programming that predominantly contains
- 11 only one type of content, including collegiate athletics.

1 4. “Video programmer” means a person engaged in the production, creation, or
2 wholesale distribution of video programming who is not affiliated with a
3 multichannel video programming distributor and who offers a video channel that
4 competes in the same programming category as a video channel owned by a
5 multichannel video programming distributor.

6 (b) 1. If a video programmer believes that a multichannel video programming
7 distributor has not treated the video programmer in a fair, reasonable, and
8 nondiscriminatory manner concerning the amount proposed to be paid by the
9 multichannel video programming distributor for the addition or renewal of a video
10 channel that is owned by the video programmer, the video programmer may request
11 arbitration regarding that treatment. The video programmer shall submit a written
12 notice to the multichannel video programming distributor within 90 days after the
13 most recent alleged unfair, unreasonable, or discriminatory treatment that the video
14 programmer will request arbitration.

15 2. If a dispute between a multichannel video programming distributor and a
16 video programmer is not resolved within 10 days after submission of the notice under
17 subd. 1., either party may file a written request for arbitration with the American
18 Arbitration Association. The party making the request shall include a copy of that
19 party’s final offer. The association shall notify the other party in writing of the
20 demand for arbitration, provide that party with a copy of the submitted final offer,
21 and inform that party that they must provide the association with that party’s final
22 offer within 5 days of receipt of the notice. If there is no final offer submitted in
23 response to the notice of arbitration within the 5-day period, the arbitrator shall
24 consider only the information provided by the party who made the request for
25 arbitration when making his or her decision.

1 3. The arbitration shall be decided by one arbitrator chosen as provided by the
2 American Arbitration Association, following expedited commercial arbitration
3 procedures.

4 4. The arbitrator may require the parties to submit relevant evidence that is
5 in their possession or control, but the arbitrator may not share that evidence with
6 the opposing party. To determine the fair market value of the addition or renewal
7 of the disputed video channel, the arbitrator shall consider any relevant evidence,
8 including all of the following:

9 a. Current or previous contracts between the video programmer and other
10 multichannel video programming distributors.

11 b. Offers made between the video programmer and other multichannel video
12 programming distributors.

13 c. Current or previous contracts for the disputed video channel with other
14 multichannel video programming distributors.

15 d. Price, terms, and conditions that the video programmer has with other
16 multichannel video programming distributors for carrying the video programmer's
17 channels.

18 e. Rating, advertising rates, and other indicators of the relative value of the
19 disputed video channel.

20 f. The extent of the national carriage of the video programmer's channels.

21 g. Whether the multichannel video programming distributor and the video
22 programmer have pursued, in the past 5 years, the same programming categories
23 from 3rd parties.

24 h. Other evidence of the value of the disputed video channel.

1 5. The arbitrator may not consider any offers that were made prior to the final
2 offers submitted to the arbitrator.

3 6. The arbitrator shall choose the proposed amount to be paid by the
4 multichannel video programming distributor for the addition or renewal of the
5 disputed video channel that most closely approximates the fair market value of the
6 addition or renewal of the disputed video channel. The arbitrator shall accept the
7 remaining terms, conditions, and form of the final offer of the party that filed the
8 written request for arbitration.

9 (c) If the arbitrator determines that a party's conduct during the course of the
10 arbitration was unreasonable, the arbitrator may require that party to pay all or
11 some of the other party's costs and expenses, including reasonable attorney fees.

12 (d) The award of the arbitrator may be confirmed as provided in s. 788.09 by
13 the circuit court of a county in which the multichannel video programming
14 distributor conducts business.”.

15 2m. Page 30, line 3: after “(7) (e),” insert “and except for sub. (5s),”.

16 3m. Page 30, line 5: delete “section. If” and substitute “section, and if”.

17 4m. Page 30, line 10: on lines 10 and 12, delete “sub. (8)” and substitute “subs.
18 (5s) and (8).”.”.

19 **(END)**