



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

The New Law Relating to State-Issued Franchises for Video Service Providers (2007 Wisconsin Act 42)

2007 Wisconsin Act 42 (the Act) replaces municipal franchising of cable television service with a streamlined state franchising process for video service offered by cable service providers and telecommunications providers. Major provisions of the Act include the following:

- A person may not offer video service by a land-based technology (i.e., other than satellite) without a franchise issued by the Department of Financial Institutions (DFI). An incumbent cable service provider may continue operating under its existing municipal franchise until that franchise expires.
- A video service provider must provide all of the following to each municipality in which it offers video service:
 - A video service provider fee. The amount of the fee is, generally, the amount of any fee paid by an incumbent cable operator on the effective date, but not more than 5% of the video service provider's gross revenues generated in the municipality.
 - Capacity on the video service provider's system for the broadcast of public, educational, and governmental (PEG) channels. The number of channels that must be provided is, generally, the number of channels that an incumbent cable operator provides on the effective date.
 - If a municipality receives monetary support for access facilities for PEG channels from an incumbent cable operator, the same obligation for a period of three years from the effective date.
- Municipalities may impose reasonable regulations, including reasonable fees, on the use of their public rights-of-way by video service providers, certain public utilities, and other entities that provide utility-type services. The Public Service Commission (PSC) must review a municipal regulation that an entity subject to the regulation believes is unreasonable, and void any regulation that it finds is unreasonable.
- The Act applies pre-existing cable service subscriber rights and privacy standards in state law to all video service providers and to satellite service providers.
- The Department of Agriculture, Trade, and Consumer Protection (DATCP) retains its current powers and duties for the setting and enforcement of video customer service standards; municipalities may enforce customer service standards under limited circumstances.
- A video service provider may not discriminate on the basis of income or race; a large telecommunications-based video service provider must meet certain standards for the proportion of a municipality's residents who have access to its system.

LEGISLATIVE FINDINGS

The Act replaces the statement of legislative findings and intent in the prior municipal franchising law with eight legislative findings relating to the purposes of the state video franchising framework created by the Act. 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 and the continued development of the state's video service marketplace within a framework that is fair and equitable to all providers.
[s. 66.0420 (1) (h), Stats.]

APPLICABILITY

The Act applies to “video programming” and “video service” provided by “video service providers” and cable service provided by “interim cable operators.” “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. An “interim cable operator” is an incumbent cable operator that continues to provide cable service under an existing municipal franchise for the remaining life of that franchise. 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 Act that refer only to video service providers do not apply to interim cable operators.

STATE FRANCHISING

The Act specifies that the state is the exclusive franchising authority under federal cable law for video service providers in Wisconsin. 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 (cities, villages, and towns) from requiring video service providers to obtain new municipal franchises. In their place, it requires a video service provider to obtain a single state franchise that applies in the portions of the state specified in the franchise application. An incumbent cable operator may choose to continue operating under an existing municipal franchise as an interim cable operator for the remaining life of that franchise.

AUTHORITY TO PROVIDE VIDEO SERVICE

APPLICATION FOR FRANCHISE

In general, a person who intends to provide video service in this state must apply to the DFI for a franchise. 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”).

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.

ANNUAL FEE

Beginning one year after it obtains a franchise from the DFI, a video service provider must pay an annual fee to the DFI. For a video service provider that has 10,000 or fewer subscribers, the first fee it pays is \$2,000 and subsequent fees are \$100. The Act does not specify the amount of the fee that video service providers that have more than 10,000 subscribers must pay.

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 apply for a modified franchise. If the change involves a modification of the date on which it will start services, its qualifications, or its proposed service, the provider’s notification must include a payment of a \$100 fee.

TRANSFER OF FRANCHISE

A video service provider may transfer its franchise to any successor-in-interest through any transaction such as a merger or sale. No later than 15 days after the transfer is complete, the successor-in-interest must apply to the DFI for a video franchise. The successor-in-interest may provide video service in the video franchise area while DFI reviews the application.

FRANCHISE REVOCATION

The DFI may revoke a video service franchise if it determines that the video service provider has failed to substantially meet a material requirement imposed upon it by the DFI. 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. The revocation proceeding must afford the provider full due process that includes a proceeding before a hearing officer, including such elements as sworn testimony, cross-examination under oath, and the creation of a transcript. The Act also states that a video service provider may bring an action to appeal the DFI’s decision in a revocation proceeding.

NOTICES TO MUNICIPALITIES

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 Act 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 PEG channels the incumbent cable operator is required to provide in the municipality; (2) the amount and type of monetary support required of incumbent cable operators for access facilities for all PEG channels; and (3) 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 Act requires that video service providers pay a video service provider fee to the municipalities in which they provide service. The amount of the fee is a percentage of the provider's gross receipts generated in the municipality. The percentage is the least of the following:

- 5%.
- If no incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues to the municipality immediately before the effective date of the Act, a percentage specified by the municipality, but not more than 5%.
- If an incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues, that percentage.
- If more than one incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues, the lowest of such percentages.

“Gross receipts” means all revenues received by a video service provider from subscribers in a municipality for video service and from advertising. 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); revenues received from the provision of home shopping or similar programming; revenues 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); 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; 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

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 Act, described earlier, the video service provider's obligation to pay the fee commences in the quarter that includes the 45th day after the municipality provides that notice.

ENFORCEMENT OF FEE AND OTHER PROVISIONS

The Act allows a municipality to review a video service provider's records to ensure proper and accurate payment of the fee. The parties must complete good-faith settlement discussions with respect to any dispute concerning 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 state court rules of evidence, meaning 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 four 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 Act specifically allows video service providers to itemize on customers' bills the amount billed to recover the fee.

A video service provider may deduct the amount of any cost-based permit fee for the occupation and use of public rights-of-way from any other compensation that is due to the municipality, including the video service provider fee.

PEG CHANNELS

REQUIREMENT; NUMBER OF PEG CHANNELS

The Act requires a video service provider to make channels for PEG programming available to a municipality in which it provides service. If an incumbent cable operator is providing channel capacity for PEG channels to a municipality under a cable franchise immediately before the Act'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 immediately before the effective date, a municipality with a population of 50,000 or more may require each provider to provide up to three PEG channels and a municipality with a population less than 50,000 may require each provider to 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 video hub office. In this instance, the operator or provider is required to provide the number of PEG channels to those municipalities corresponding to their collective population. If the collective population is 50,000 or more, the municipalities together may not require capacity for more than three PEG channels. If the collective population is less than 50,000, they may not require more than two PEG channels.

PEG CHANNEL AVAILABILITY; SUBSTANTIAL CHANNEL UTILIZATION; SERVICE TIER

In a municipality where there is no incumbent cable operator, a video service provider must make the PEG channels available beginning on the date on which 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 on which 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.

An interim cable operator or video service provider 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

Under the Act, interim cable operators and video service providers must transmit PEG programming from a PEG access channel's origination point to the provider's headend or video hub office, and municipalities must share in the costs of construction of transmission facilities pursuant to the following provisions:

- For an origination point existing on the Act'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 pre-existing 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.

In addition, municipalities may not require an interim cable operator or video service provider 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.

PEG CHANNEL MONETARY SUPPORT

The Act requires that an incumbent cable operator continue to provide any monetary support for access facilities for PEG channels that it was required to provide on the effective date of the Act. This obligation extends for three years from the effective date of the Act. It applies regardless of whether the incumbent terminates its municipal franchise, switching to a state franchise, and regardless of the termination date of its municipal franchise.

The Act requires any new video service provider to provide monetary support for PEG access facilities that is proportional to the monetary support that the incumbent cable operator in the same municipality with the most subscribers was required to provide on the effective date of the Act. This obligation extends for three years from the effective date of the Act.

The effect of these provisions is that monetary support for PEG access facilities will continue for three years. The ending date is expressed in the Act as “the first day of the 36th month after the effective date of this subdivision.” The effective date is January 9, 2008, so PEG support will end on February 1, 2011.

INTERCONNECTION OF VIDEO SERVICE PROVIDERS' NETWORKS

The Act 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

USE OF RIGHTS-OF-WAY AND GENERAL REQUIREMENTS

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 specified statutes and to “reasonable regulations made by any city, village or town through which the transmission lines or system may pass....”

The Act provides that, “a municipality may require the video service provider to pay any compensation under s. 66.0425, or, except as provided in a regulation under 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 Act 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.”

REGULATION UNDER S. 182.017, STATS.

The Act adds video service providers and interim cable operators to the list of entities to which s. 182.017 applies. The Act allows a video service provider to deduct the amount of a cost-based fee under a regulation under this section from its video service provider fee.

Any entity whose occupation and use of public rights-of-way is subject to this section may complain to the 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 the complaint and, if it determines that the regulation is unreasonable, void the regulation. The Act allows the PSC to assess the complaining party for the cost of the review.

The Act provides 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 state its reasons for the denial in writing.

GUIDANCE ON REASONABLE AND UNREASONABLE MUNICIPAL REGULATIONS UNDER S. 182.017

The Act provides guidance on acceptable right-of-way permit fees by specifying criteria for the PSC's review of a complaint on whether a municipal right-of-way regulation imposing a permit fee or other municipal cost recovery is unreasonable. These criteria are identical to the criteria in s. PSC 130.05, Wis. Adm. Code, that the PSC currently uses to determine whether a municipal right-of-way permit fee or charge for a utility is unreasonable.

Specifically, the Act establishes that a municipal regulation is ***unreasonable*** if any of the following applies:

- The regulation has the effect of creating a moratorium on the placement of company lines or systems or on the entrance into the municipality of a video service provider.
- The regulation is inconsistent with the purposes of the statewide video franchise statute. The legislative findings at the beginning of the statute includes a statement of these purposes.

In addition, a municipal regulation is ***unreasonable*** if it requires a company to pay: (1) the municipality's member fees assessed under the "Diggers Hotline" system; or (2) more than the actual cost of functions undertaken by the municipality to manage company access to and use of municipal rights-of-way. These management functions include all of the following:

1. Registering companies, including the gathering and recording of information necessary to conduct business with a company.
2. Issuing, processing, and verifying excavation or other company permit applications, including supplemental applications. This function excludes any activity that results in the company paying the municipality's member fees assessed under the Diggers Hotline system.
3. Inspecting company job sites and restoration projects.
4. Maintaining, supporting, protecting, or moving company equipment during work in municipal rights-of-way.
5. Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.
6. Revoking company permits.
7. Maintenance of databases.
8. Scheduling and coordinating highway, street, and right-of-way work relevant to a company permit.

The Act specifies that it is ***reasonable*** for a municipal regulation to provide for the recovery of costs as follows:

- Through a preexcavation permit fee, for functions 1., 2., 3., and 7., in the preceding list.

- Only from the company that is responsible for causing the municipality to incur the costs, for functions 4., 5., and 6., in the preceding list.

In addition, the Act creates a rebuttable presumption that a municipal regulation is **reasonable** if the PSC determines that a pre-existing municipal regulation or community standard is substantially the same as the municipal regulation complained of. For purposes of this comparison, the pre-existing regulation or community standard must have been in effect on January 1, 2007, and immediately prior to the bill's effective date. Such a community standard may be demonstrated through "consistent practice and custom" in the municipality.

CONSUMER PROTECTION

VIDEO SERVICE SUBSCRIBER RIGHTS

Section 100.209, Stats., *Video Service Subscriber Rights*, 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. Under prior law, this statute also explicitly stated that it did not prohibit DATCP or a municipality from establishing by rule or ordinance, respectively, regulations that expand these subscriber rights.

The Act applies the video service subscriber rights statute 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 Act repeals the authority of municipalities to adopt ordinances under this statute that supplement the statutory standards.

CUSTOMER SERVICE STANDARDS

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.]

The Act establishes that, if there is only one video service provider in a municipality, the municipality may require the video service provider to comply with the FCC's "customer service obligations," described in the preceding paragraph, but precludes the DFI and municipalities from 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 Act establishes that these video service providers may not be subjected to any "customer service standards." The Act provides an exception to this limitation for customer service standards promulgated by rule by DATCP. Neither the Act 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.

CUSTOMER PRIVACY

Section 134.43, Stats., 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 repeat violations and allows additional private remedies.

The Act applies the prohibitions on the collection or release of customer information and the penalties and private remedies in this statute to “multichannel video providers,” which is defined to include cable operators, video service providers, and “multichannel video programming providers,” explained under “video service subscriber rights” providers.

The Act also exempts any multichannel video provider that provides video programming via Internet protocol technology, such as a telecommunications utility, from the requirement to provide the lockout equipment described above.

ACCESS TO SERVICE (“BUILD-OUT”) AND DISCRIMINATION

ACCESS

The Act’s requirements on access to service apply only to a large telecommunications video service provider (LTVSP). An LTVSP is a video service provider that uses the same 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 or an affiliate of such a provider. The only entity that meets this definition is AT&T Wisconsin.

The Act requires an LTVSP to provide access to its video service to the following percentages of households within its residential local exchange service area in the specified timeframes:

- At least 35% no later than three years after the date on which the LTVSP began providing video service under its state franchise.
- At least 50% no 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 DATCP regarding its progress in complying with these requirements.

DISCRIMINATION

The Act 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 Act specifies a defense to an alleged violation of the above prohibition based on income if, no later than three years after the date on which the video service 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.

EXTENSIONS AND WAIVERS; ALTERNATIVE TECHNOLOGIES

A video service provider, including an LTVSP, may apply to DATCP for an extension of any time limit specified in these access and discrimination requirements or for a waiver from the requirements. DATCP must grant the extension or waiver if the 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.

A video service provider 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.

GEOGRAPHIC SERVICE AREA

The Act 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 geographic service area, for basic residential phone service, 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 the DFI issued a video service franchise to the operator.

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.

The Act 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 Act is silent on rate regulation where there is only one interim cable operator or video service provider.

OTHER PROVISIONS

INSTITUTIONAL NETWORKS

The Act provides that, notwithstanding any ordinance or franchise agreement in effect on the effective date of the Act, 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 Act 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.

CONTRACTS TO BROADCAST UNIVERSITY OF WISCONSIN EVENTS

At least one campus of the University of Wisconsin (UW) System (the UW Whitewater campus) has a contract with the incumbent cable operator to broadcast UW events on one of its channels. The Act requires that a UW System institution or college campus that has such an agreement with the incumbent cable operator may require any new video service provider to enter into an equivalent agreement with it.

RULE-MAKING

The Act states that the DFI may promulgate rules interpreting the statewide video franchise statute created by the Act. It requires 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.

The Act also provides that the DATCP may promulgate rules interpreting the discrimination and access provisions in the video franchise statute.

ENFORCEMENT

The Act 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 Act to

bring an action in circuit court. The court is directed to order compliance with the law, but the Act is silent regarding the recovery of damages. No party to a suit may recover its costs of prosecuting or defending the suit.

The DFI may enforce most of the provisions of the new video franchising statute with the exception that DATCP shall enforce the provisions relating to discrimination and access to service. The Act 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 Act 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.

EFFECTIVE DATE

2007 Wisconsin Act 42 takes effect on January 9, 2008.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by ***David L. Lovell, Senior Analyst, and John Stolzenberg, Chief of Research Services, on January 15, 2008; revised on September 14, 2009.***

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