



2009 ASSEMBLY BILL 606

December 8, 2009 – Introduced by Representatives HEBL, SINICKI, SMITH, MOLEPSKE JR., BLACK, BERCEAU, TURNER, HINTZ, POPE-ROBERTS, ROYS, STEINBRINK, KESSLER, POCAN, HILGENBERG, HIXSON, VAN AKKEREN, SCHNEIDER, BENEDICT, VRUWINK, BIES, HUBLER, SHERMAN, GARTHWAITE, PARISI, A. WILLIAMS and HRAYCHUCK, cosponsored by Senators VINEHOUT, MILLER, ROBSON, RISSER and CARPENTER. Referred to Committee on Energy and Utilities.

1 **AN ACT** *to repeal* 66.0420 (2) (g), 66.0420 (3) (c), 66.0420 (7) (a) 2m. and 66.0420
2 (7) (b); *to renumber and amend* 66.0420 (3) (i); *to amend* 20.115 (1) (jb),
3 20.155 (1) (title), 20.155 (1) (g), 66.0420 (3) (a), 66.0420 (3) (d) (intro.), 66.0420
4 (3) (d) 1., 66.0420 (3) (e) 1., 66.0420 (3) (e) 2. b., 66.0420 (3) (f) (title), 66.0420
5 (3) (f) 1., 66.0420 (3) (f) 2., 66.0420 (3) (f) 4., 66.0420 (3) (g), 66.0420 (3) (h),
6 66.0420 (3) (j), 66.0420 (5) (a) 3., 66.0420 (5) (b) 1. a., 66.0420 (5) (b) 2., 66.0420
7 (5) (d) 1., 66.0420 (7) (a) 1., 66.0420 (7) (e) 2., 66.0420 (7) (em) (title), 66.0420
8 (7) (em) 1., 66.0420 (7) (em) 2., 66.0420 (7) (em) 3., 66.0420 (7) (em) 4., 66.0420
9 (7) (f), 66.0420 (8) (e), 66.0420 (10), 66.0420 (11), 66.0420 (13) (a), 66.0420 (13)
10 (b), 66.0420 (13) (c), 100.209 (title), 100.209 (1) (c), 100.209 (2) (a), 100.209 (3),
11 100.209 (4) (a), 100.209 (4) (b), 100.261 (3) (c), 196.44 (1) and 196.44 (2); *to*
12 *repeal and recreate* 66.0420 (3) (i) (title), 66.0420 (3) (k), 66.0420 (5) (c) 3. a.,
13 66.0420 (8) (b) and 66.0420 (9); and *to create* 20.155 (1) (k), 66.0420 (2) (fm),
14 66.0420 (2) (q), 66.0420 (3) (i) 1. to 3., 66.0420 (3) (L), 66.0420 (5) (d) 3. and 4.,

ASSEMBLY BILL 606

1 66.0420 (5e), 66.0420 (7) (em) 5., 66.0420 (8g), 66.0420 (8r), 66.0420 (13) (d),
2 66.0420 (14), 100.209 (1) (b), 100.209 (1) (e), 100.209 (2m) and 196.85 (1m) (e)
3 of the statutes; **relating to:** the regulation of video service providers and
4 interim cable operators, granting rule-making authority, making an
5 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, with certain exceptions, a person may not provide video service unless the Department of Financial Institutions (DFI) has issued a video service franchise to the person. The prohibition was enacted as part of 2007 Wisconsin Act 42, which made substantial changes to the regulation of cable television service. Current law defines “video service,” in general, as cable television service, and other service comparable to programming service provided by a television broadcast station, that is provided through facilities located, at least in part, in public rights-of-way. Current law refers to a person who is granted a video service franchise as a “video service provider.” One of the exceptions to the prohibition applies to a person operating under a cable television franchise granted by a municipality before the enactment of 2007 Wisconsin Act 42. Current law allows such a person to elect to continue to provide cable television service until the franchise expires. Upon expiration of the municipally granted franchise, the person must apply to DFI for a video service franchise. Current law refers to a person who elects to operate under a municipally granted cable television franchise until the franchise’s expiration as an “interim cable operator.”

This bill transfers DFI’s duties regarding video service franchises and video service providers to the Public Service Commission (PSC). In addition, the bill allows the PSC to bill a franchise applicant or video service provider for the expenses incurred by the PSC regarding an application and other matters under the PSC’s jurisdiction regarding the applicant or provider. The PSC has similar authority under current law to bill a public utility for the costs incurred by the PSC in regulating the public utility.

In addition, the bill requires a video service provider to apply to the PSC to renew a video service franchise every five years. Current law does not require renewal of a video service franchise. The PSC may not renew a video service franchise under the bill if the PSC determines that the video service provider has exhibited a pattern of noncompliance with requirements under current law relating to video service, including state consumer protection requirements, as well as regulations of the Federal Communications Commission (FCC) that are described below. Also, the bill allows the PSC to revoke a video service franchise if the PSC makes the same determination. Under current law, DFI may revoke a video service

ASSEMBLY BILL 606

franchise if DFI determines that a video service provider fails to substantially meet a material requirement imposed by the DFI.

The bill also allows a municipality to require a video service provider that provides service in the municipality a quarterly video service fee of no more than 5 percent of the provider's gross receipts. Under current law, under certain circumstances, a municipality may be limited to a percentage that is less than 5 percent. In addition, the bill repeals a provision created by 2007 Wisconsin Act 42 that allows a video service provider to deduct right-of-way permit fees imposed by a municipality from any other compensation that is due to the municipality, including the video service fee.

Current law requires certain video service providers that use telecommunications facilities to provide video service to comply with two deadlines for providing access to their video service. The deadlines apply if the video service provider had more than 500,000 basic local exchange access lines in this state on January 1, 2007. The first deadline requires such a video service provider to provide access to 35 percent of households within the provider's basic local exchange service area no later than three years after beginning to provide video service. The second deadline requires such a video service provider to provide access to 50 percent of such households no later than five years after beginning to provide video service, or no later than two years after at least 30 percent of households with access to the provider's video service subscribe to the service for six consecutive months, whichever is later. Under certain circumstances, the Department of Agriculture, Trade and Consumer Protection (DATCP) can grant an extension or waiver of the deadlines. This bill eliminates the foregoing deadlines and creates a new deadline. Under the bill such a video service provider must provide access to 90 percent of such households no later than 18 months after the bill's effective date. A video service provider that fails to meet the deadline must pay \$20,000,000 to the PSC, which must use the money to make grants to assist in the deployment of broadband service to underserved areas of the state. As under current law, under certain circumstances, DATCP can grant an extension or waiver of the deadline.

Current law prohibits municipalities from requiring video service providers and interim cable operators to provide monetary support for access facilities for public, educational, and governmental access channels (PEG channels) after January 1, 2011. The amount of monetary support that a municipality may require before that date is generally based on the amount of support that a municipality required prior to the enactment of 2007 Wisconsin Act 42. This bill changes current law so that it refers to support for PEG channels, rather than to monetary support for access facilities for PEG channels. The bill also allows a municipality to require, beginning on January 1, 2011, video service providers and interim cable operators to pay a fee for the purpose of supporting PEG channels. The fee, which must be set by ordinance, may be equal to no more than 1 percent of a video service provider's or interim cable operator's annual gross receipts. The bill also makes video service providers and interim cable operators responsible for making any changes to PEG channel content or programming that are necessary for compatibility with their service delivery technology or protocol. Under current law, municipalities that

ASSEMBLY BILL 606

provide PEG channel programming are responsible for such changes. The bill also requires video service providers and interim cable operators to provide channel capacity for PEG channels with accessibility, functionality, and audio and visual quality that is at least equivalent to certain commercial channels. In addition, the bill requires video service providers and interim cable operators to do the following: 1) provide channel capacity for PEG channels so that it is viewable by subscribers without additional service or equipment charges; 2) provide such channel capacity on a service tier that is viewable by 100 percent of customers, rather than by more than 50 percent, which is required under current law; and 3) provide facilities adequate to carry signals for PEG channels without material degradation, alteration, or removal of PEG channel content. Also, the bill imposes requirements on the channel numbers used for PEG channels and clarifies duties under current law regarding the relocation of origination points for PEG channels. Additionally, the bill eliminates the authority of a video service provider or interim cable operator to provide certain restored PEG channel capacity on any service tier.

Current law also requires video service providers to pay annual fees to DFI. If a video service provider has 10,000 or less subscribers, the first annual fee is \$2,000 and each subsequent fee is \$100. Current law also requires video service providers to pay a \$100 fee for notifying DFI about certain changes in information previously provided to DFI. This bill eliminates the fee for information changes, and also requires video service providers to pay annual fees to DATCP, rather than to DFI. Under current law, DATCP enforces certain video service consumer protection requirements. Under the bill, a video service provider with 10,000 or less in-state subscribers must pay an annual fee of \$4,500 to DATCP, and a video service provider with more than 10,000 in-state subscribers must pay an annual fee of \$50,000 to DATCP. In addition, the bill allows DATCP to adjust the amount of the fees by rule as necessary to cover administrative and enforcement costs. The bill also authorizes the creation of 5.0 FTE positions in DATCP for enforcing the video service consumer protection requirements. In addition, the bill requires DATCP to enforce certain prohibitions under current law regarding discrimination based on race or income in providing video service. Current law does not specify the state agency that enforces such prohibitions.

In addition, current law authorizes municipalities to require video service providers to comply, upon 90 days' advance notice, with regulations of the FCC regarding office hours and telephone availability; service installations, outages, and calls; and deadlines for refunds and service credits. However, a municipality is prohibited from requiring such compliance if more than one person offers video service in a municipality, or if a video service provider is subject to effective competition, as determined under FCC regulations. This bill eliminates the foregoing requirements and requires instead that video service providers comply with the foregoing FCC regulations, and that DATCP enforce compliance. In addition, the bill requires video service providers to comply with, and DATCP to enforce, additional FCC regulations regarding all of the following: 1) providing information about products, services, channels, prices, installation and service maintenance policies, and billing and complaint procedures; 2) providing advance

ASSEMBLY BILL 606

written notice about changes to rates, programming services, and channel positions; and 3) providing clear, concise, and understandable bills, itemizing bills, and responding to billing complaints. Also, the bill allows a municipality to adopt or enact an ordinance or resolution requiring a video service provider to comply with the foregoing FCC regulations, as well as video service consumer protection requirements under state law enforced by DATCP. As a result, a municipality may enforce the same requirements as DATCP.

Finally, the bill does all of the following:

1. Requires a video service provider to carry a channel designated by WisconsinEye, which operates a nonprofit, statewide public affairs channel, or a successor to WisconsinEye specified by the PSC. A video service provider must carry the channel at no cost to WisconsinEye or such a successor. Also, the channel must be carried on the lowest cost service tier.

2. Requires the PSC to promulgate rules allowing a customer to return video service equipment to a video service provider at no cost to the customer, but only if the customer returns the equipment by a deadline specified in the rules.

3. Requires a video service provider to maintain at least one customer service facility within this state. The facility staff must have the capacity to accept payments; adjust bills; respond to repair, installation, reconnection, disconnection, and other service calls; and distribute and receive video service equipment.

4. Allows for the recovery of costs and attorney fees in certain actions regarding disputes over video service provider fees, as well as in actions to enforce the bill's requirements.

5. Changes one of the video service consumer protection requirements under current law so that certain repairs must be made within 24 hours after service interruptions are reported. Current law imposes a 72-hour deadline.

6. Subjects a person who violates video service requirements to a forfeiture of not more than \$1,000 for each offense and not more than \$10,000 for each occurrence.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (1) (jb) of the statutes is amended to read:

2 20.115 (1) (jb) *Consumer protection, information, and education.* The amounts
3 in the schedule for consumer protection and consumer information and education.
4 All moneys received under ~~s. ss. 66.0420 (3) (k) and~~ 100.261 (3) (b) shall be credited
5 to this appropriation account, subject to the limit under s. 100.261 (3) (c).

6 **SECTION 2.** 20.155 (1) (title) of the statutes is amended to read:

ASSEMBLY BILL 606**SECTION 2**

20.155 (1) (title) REGULATION OF PUBLIC UTILITIES AND VIDEO SERVICE PROVIDERS.

SECTION 3. 20.155 (1) (g) of the statutes is amended to read:

20.155 (1) (g) *Utility* Public utility and video service provider regulation. The amounts in the schedule for the regulation of utilities and video service providers. Ninety percent of all moneys received by the commission under s. 196.85, 196.855, or 201.10 (3) shall be credited to this appropriation. Ninety percent of all receipts from the sale of miscellaneous printed reports and other copied material, the cost of which was originally paid under this paragraph, shall be credited to this appropriation.

SECTION 4. 20.155 (1) (k) of the statutes is created to read:

20.155 (1) (k) *Broadband grants*. All moneys received under s. 66.0420 (8) (b) for making grants under s. 66.0420 (8) (b).

SECTION 5. 66.0420 (2) (fm) of the statutes is created to read:

66.0420 (2) (fm) “Commission” means the public service commission.

SECTION 6. 66.0420 (2) (g) of the statutes is repealed.

SECTION 7. 66.0420 (2) (q) of the statutes is created to read:

66.0420 (2) (q) “Local commercial television station” has the meaning given in 47 USC 534 (h) (1).

SECTION 8. 66.0420 (3) (a) of the statutes is amended to read:

66.0420 (3) (a) *In general*. Except for an interim cable operator, and except as provided in par. (c) and sub. (11), no person may provide video service in this state unless the ~~department~~ commission has issued a video service franchise to the person and the person has provided the notice required under par. (h).

SECTION 9. 66.0420 (3) (c) of the statutes is repealed.

SECTION 10. 66.0420 (3) (d) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 606

1 66.0420 (3) (d) *Application.* (intro.) An applicant for a video service franchise
2 shall submit an application to the department commission that consists of all of the
3 following:

4 **SECTION 11.** 66.0420 (3) (d) 1. of the statutes is amended to read:

5 66.0420 (3) (d) 1. The location and telephone number of the applicant's
6 principal place of business, the names of the principal executive officers of the
7 applicant, and the names of any persons authorized to represent the applicant before
8 the department commission.

9 **SECTION 12.** 66.0420 (3) (e) 1. of the statutes is amended to read:

10 66.0420 (3) (e) 1. At the time that an applicant submits an application under
11 par. (d), or a video service provider submits a notification regarding a modification
12 to an application under par. (j), to the department commission, the applicant or video
13 service provider shall serve a copy of the application or notification on each
14 municipality in the video franchise area.

15 **SECTION 13.** 66.0420 (3) (e) 2. b. of the statutes is amended to read:

16 66.0420 (3) (e) 2. b. If a municipality specified in subd. 2. a. has granted any
17 cable franchise that is in effect immediately before January 9, 2008, the municipality
18 shall, no later than 10 business days after receipt of the copy, notify the applicant in
19 writing of the number of PEG channels for which incumbent cable operators are
20 required to provide channel capacity in the municipality, the amount and type of
21 monetary support for access facilities for PEG channels required of incumbent cable
22 operators as described in sub. (7) (em) 1. to 4., and the percentage of revenues that
23 incumbent cable operators are required to pay the municipality as franchise fees.

24 **SECTION 14.** 66.0420 (3) (f) (title) of the statutes is amended to read:

25 66.0420 (3) (f) (title) *Department Commission duties.*

ASSEMBLY BILL 606

SECTION 15. 66.0420 (3) (f) 1. of the statutes is amended to read:

66.0420 **(3)** (f) 1. After the filing of an application, the ~~department~~ commission shall notify the applicant in writing as to whether the application is complete and, if the ~~department~~ commission has determined that the application is not complete, the ~~department~~ commission shall state the reasons for the determination.

SECTION 16. 66.0420 (3) (f) 2. of the statutes is amended to read:

66.0420 **(3)** (f) 2. After the filing of an application that the ~~department~~ commission has determined is complete, the ~~department~~ commission shall determine whether an applicant is legally, financially, and technically qualified to provide video service. If the ~~department~~ commission determines that an applicant is legally, financially, and technically qualified to provide video service, the ~~department~~ commission shall issue a video service franchise to the applicant. If the ~~department~~ commission determines that an applicant is not legally, financially, and technically qualified to provide video service, the ~~department~~ commission shall reject the application and shall state the reasons for the determination.

SECTION 17. 66.0420 (3) (f) 4. of the statutes is amended to read:

66.0420 **(3)** (f) 4. The ~~department~~ commission shall promulgate rules for determining whether an applicant is legally, financially, and technically qualified to provide video service.

SECTION 18. 66.0420 (3) (g) of the statutes is amended to read:

66.0420 **(3)** (g) *Effect of video service franchise.* A video service franchise issued by the ~~department~~ commission 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.

SECTION 19. 66.0420 (3) (h) of the statutes is amended to read:

ASSEMBLY BILL 606

1 66.0420 (3) (h) *Notice before providing service.* No later than 10 business days
2 before providing video service in a municipality in a video franchise area, a video
3 service provider shall provide notice to the department commission and the
4 municipality.

5 **SECTION 20.** 66.0420 (3) (i) (title) of the statutes is repealed and recreated to
6 read:

7 66.0420 (3) (i) (title) *Renewal; revocation.*

8 **SECTION 21.** 66.0420 (3) (i) of the statutes is renumbered 66.0420 (3) (i) 4. and
9 amended to read:

10 66.0420 (3) (i) 4. The department commission may revoke a video service
11 franchise issued to a video service provider if the department commission
12 determines that the video service provider has failed to substantially meet a material
13 requirement imposed upon it by the department. ~~Before commencing a revocation~~
14 ~~proceeding, the department shall provide the video service provider written notice~~
15 ~~of the department's intention to revoke the franchise and the department's reasons~~
16 ~~for the revocation and afford the video service provider a reasonable opportunity to~~
17 ~~cure any alleged violation. The department must, before revoking any video service~~
18 ~~franchise, afford a video service provider full due process that, at a minimum, must~~
19 ~~include a proceeding before a hearing officer during which the video service provider~~
20 ~~must be afforded the opportunity for full participation, including the right to be~~
21 ~~represented by counsel, to introduce evidence, to require the production of evidence,~~
22 ~~and to question or cross-examine witnesses under oath. A transcript shall be made~~
23 ~~of any such hearing. A video service provider may bring an action to appeal the~~
24 ~~decision of the department~~ exhibited a pattern of noncompliance with one or more
25 requirements or prohibitions under this section, ch. 100, any rule promulgated under

ASSEMBLY BILL 606**SECTION 21**

1 s. 100.20 (2), any order issued under s. 100.20 (3), or 47 CFR 76.309, 76.1602,
2 76.1603, or 76.1619. A revocation is a contested case under ch. 227.

3 **SECTION 22.** 66.0420 (3) (i) 1. to 3. of the statutes are created to read:

4 66.0420 (3) (i) 1. A video service provider shall apply to the commission to
5 renew its video service franchise every 5 years. The commission may not renew a
6 video service franchise if the commission determines that the applicant exhibited a
7 pattern of noncompliance with one or more requirements or prohibitions under this
8 section, ch. 100, any rule promulgated under s. 100.20 (2), any order issued under
9 s. 100.20 (3), or 47 CFR 76.309, 76.1602, 76.1603, or 76.1619.

10 2. If the commission does not renew the video service franchise of an applicant
11 for renewal, the commission shall notify the applicant and state the reasons for not
12 renewing the video service franchise. The video service franchise shall terminate on
13 the date specified in the notification.

14 3. If a video service provider gives at least 30 days' advance notice to the
15 commission that the video service provider intends to terminate the video service
16 franchise, the video service franchise shall expire on the termination date specified
17 in the notice.

18 **SECTION 23.** 66.0420 (3) (j) of the statutes is amended to read:

19 66.0420 (3) (j) *Modifications.* If there is any change in the information included
20 in an application filed by a video service provider under this subsection, the video
21 service provider shall notify the department commission and update the information
22 within 10 business days after the change, except that if the video service provider
23 determines to expand the area or areas of the state in which the video service
24 provider intends to provide video service, the video service provider shall apply to the
25 department commission for a modified video service franchise under par. (d). A video

ASSEMBLY BILL 606

1 ~~service provider that makes a notification regarding a change in the information~~
2 ~~specified in par. (d) 3., 4., or 5., shall include with the notification a fee of \$100. No~~
3 ~~fee is required for a notification regarding a change in the information specified in~~
4 ~~par. (d) 1.~~

5 **SECTION 24.** 66.0420 (3) (k) of the statutes is repealed and recreated to read:

6 66.0420 **(3)** (k) *Annual fees.* Upon issuance of a video service franchise to a
7 video service provider, and annually thereafter, a video service provider with more
8 than 10,000 in-state subscribers shall pay a fee of \$50,000, and a video service
9 provider with 10,000 or less in-state subscribers shall pay a fee of \$4,500, to the
10 department of agriculture, trade and consumer protection, except that the
11 department may, by rule, adjust the amount of a fee as necessary to cover the
12 department's costs in administering and enforcing sub. (8) and s. 100.209.

13 **SECTION 25.** 66.0420 (3) (L) of the statutes is created to read:

14 66.0420 **(3)** (L) *Commission expenses.* The commission shall bill under s.
15 196.85 (1) an applicant for a video service franchise or a video service provider any
16 expense incurred by the commission with respect to an application or any other
17 matter under the commission's jurisdiction regarding the applicant or video service
18 provider.

19 **SECTION 26.** 66.0420 (5) (a) 3. of the statutes is amended to read:

20 66.0420 **(5)** (a) 3. An interim cable operator or video service provider shall
21 provide any channel capacity for PEG channels required under this paragraph on
22 any a service tier that is viewed by ~~more than 50~~ 100 percent of the interim cable
23 operator's or video service provider's customers.

24 **SECTION 27.** 66.0420 (5) (b) 1. a. of the statutes is amended to read:

ASSEMBLY BILL 606

1 66.0420 (5) (b) 1. a. Notwithstanding par. (a), an interim cable operator or video
2 service provider may reprogram for any other purpose any channel capacity provided
3 for a PEG channel required by a municipality under par. (a) if the PEG channel is
4 not substantially utilized by the municipality. If the municipality certifies to the
5 interim cable operator or video service provider that reprogrammed channel capacity
6 for a PEG channel will be substantially utilized by the municipality, the interim cable
7 operator or video service provider shall, no later than 120 days after receipt of the
8 certification, restore the channel capacity for the PEG channel. Notwithstanding
9 ~~par. (a) 3., an interim cable operator or video service provider may provide restored~~
10 ~~channel capacity for a PEG channel on any service tier.~~

11 **SECTION 28.** 66.0420 (5) (b) 2. of the statutes is amended to read:

12 66.0420 (5) (b) 2. Notwithstanding par. (a), if a municipality fails to provide the
13 notice specified in sub. (3) (e) 2. before the deadline specified in sub. (3) (e) 2., no
14 interim cable operator or video service provider is required to provide channel
15 capacity for any PEG channel, or monetary support for access facilities for PEG
16 channels pursuant to sub. (7) (em) 1. to 4., until the 90th day after the municipality
17 provides such notice.

18 **SECTION 29.** 66.0420 (5) (c) 3. a. of the statutes is repealed and recreated to
19 read:

20 66.0420 (5) (c) 3. a. If a municipality produces or maintains PEG channel
21 content or programming in a manner or form that is compatible with the interim
22 cable operator's or video service provider's video service network and that permits
23 the interim cable operator or video service provider to comply with the requirements
24 of par. (d) 3., the municipality shall submit the content or programming to the
25 interim cable operator or video service provider in that manner or form. If the

ASSEMBLY BILL 606

1 municipality does not produce or maintain PEG channel content or programming in
2 such manner or form, the interim cable operator or video service provider shall be
3 responsible at its sole cost for any changes in the manner or form of the transmission
4 that are necessary to make PEG channel content or programming compatible with
5 the technology or protocol used by the interim cable operator or video service
6 provider to deliver services. If an interim cable operator or video service provider is
7 required to make such changes to the manner or form of the transmission, the
8 municipality shall provide reasonable access to the interim cable operator or video
9 service provider that allows the interim cable operator or video service provider to
10 transmit the PEG channel programming in an economical manner subject to the
11 requirements of par. (d) 3.

12 **SECTION 30.** 66.0420 (5) (d) 1. of the statutes is amended to read:

13 66.0420 (5) (d) 1. If a municipality requires an interim cable operator or video
14 service provider to provide capacity for PEG channels under par. (a), the interim
15 cable operator or video service provider shall be required to provide equipment and
16 transmission capacity sufficient to connect the interim cable operator's or video
17 service provider's headend or video hub office, or transmission facilities to the
18 municipality's PEG access channel origination points existing as of January 9, 2008.
19 A municipality shall permit the interim cable operator or video service provider to
20 determine the most economically and technologically efficient means of providing
21 such equipment and transmission capacity. If a municipality requests that such a
22 PEG access channel origination point be relocated, the interim cable operator or
23 video service provider shall be required to provide only the first 200 feet of
24 transmission line beginning at the relocated origination point that is necessary to
25 connect the relocated origination point to the interim cable operator or video service

ASSEMBLY BILL 606

1 provider's headend or video hub office ~~to such origination point, or transmission~~
2 facilities. A municipality shall be liable for the costs of construction of such a
3 transmission line beyond the first 200 feet from the relocated origination point to the
4 headend, video hub office, or transmission facilities and for any construction costs
5 associated with additional origination points, but not for the costs associated with
6 the transmission of PEG programming over such line. The interim cable operator
7 or video service provider may recover its costs to provide equipment and
8 transmission capacity under this subdivision by identifying and collecting a "PEG
9 Transport Fee" as a separate line item on customer bills.

10 **SECTION 31.** 66.0420 (5) (d) 3. and 4. of the statutes are created to read:

11 66.0420 (5) (d) 3. If a municipality requires an interim cable operator or video
12 service provider to provide channel capacity for PEG channels under par. (a), the
13 interim cable operator or video service provider shall provide the channel capacity
14 with accessibility, functionality, and audio and visual quality that is at least
15 equivalent to accessibility, functionality, and audio and visual quality for channel
16 capacity that is used for one of the following:

17 a. Local commercial television stations that the interim cable operator or video
18 service provider is required to carry under federal law.

19 b. The primary signal of the network-affiliated commercial television stations
20 carried on the video service network of the interim cable operator or video service
21 provider, if federal law does not require the interim cable operator or video service
22 provider to carry local commercial television stations.

23 4. If a municipality requires an interim cable operator or video service provider
24 to provide channel capacity for PEG channels under par. (a), all of the following
25 apply:

ASSEMBLY BILL 606

1 a. The interim cable operator or video service provider shall provide the
2 channel capacity on channel numbers that are within 10 numerically of the channel
3 number of any local commercial television station or network-affiliated commercial
4 television station specified in subd. 3. a. or b.

5 b. The interim cable operator or video service provider shall provide the
6 channel capacity so that it is viewable by every subscriber of the interim cable
7 operator or video service provider without additional service or equipment charges.

8 c. The interim cable operator or video service provider shall provide facilities
9 adequate to carry signals for the PEG channels from the origination point of the
10 signals to subscribers without material degradation, alteration, or removal of
11 content.

12 **SECTION 32.** 66.0420 (5e) of the statutes is created to read:

13 **66.0420 (5e) STATEWIDE PUBLIC AFFAIRS CHANNEL.** A video service provider shall
14 carry a channel designated by WisconsinEye, or a successor specified by the
15 commission that operates a nonprofit statewide public affairs channel for
16 nonpartisan coverage of civic and community life in the state, including state
17 government activities in Madison, at no cost to WisconsinEye or such a successor.
18 A video service provider shall carry the channel on its lowest cost service tier.

19 **SECTION 33.** 66.0420 (7) (a) 1. of the statutes is amended to read:

20 **66.0420 (7) (a) 1.** Notwithstanding s. 66.0611 and except as provided in subds.
21 sub. 2. and 2m., a video service provider shall, on a quarterly calendar basis,
22 calculate and pay to each municipality in which the video service provider provides
23 video service a video service provider fee equal to the percentage, as specified by each
24 municipality, no more than 5 percent of the video service provider's gross receipts
25 ~~that is specified in par. (b) and the monetary support for access facilities for PEG~~

ASSEMBLY BILL 606

1 channels ~~described in~~ required under par. (em). A video service provider shall remit
2 the fee to the municipality no later than 45 days after the end of each quarter. Except
3 as provided in subd. 2. ~~or par. (b) 1.~~, if the municipality is not required to provide
4 notice under sub. (3) (e) 2., the duty to remit the fee first applies to the quarter in
5 which the video service provider begins to provide service in the municipality, and,
6 if the municipality is required to provide notice under sub. (3) (e) 2., the duty to remit
7 the fee first applies to the quarter in which the video service provider begins to
8 provide service in the municipality or to the quarter that includes the 45th day after
9 the video service provider receives the municipality's notice, whichever quarter is
10 later.

11 **SECTION 34.** 66.0420 (7) (a) 2m. of the statutes is repealed.

12 **SECTION 35.** 66.0420 (7) (b) of the statutes is repealed.

13 **SECTION 36.** 66.0420 (7) (e) 2. of the statutes is amended to read:

14 66.0420 (7) (e) 2. An action regarding a dispute over the amount of a video
15 service provider fee paid or allegedly due under this subsection shall be commenced
16 within 4 years following the end of the calendar quarter to which the disputed
17 amount relates or be barred, unless the parties agree in writing to an extension of
18 time. Notwithstanding ss. s. 814.01, 814.02, 814.03, and 814.035, no costs may be
19 ~~allowed in the action to either~~ the prevailing party may recover costs and reasonable
20 attorney fees in the action.

21 **SECTION 37.** 66.0420 (7) (em) (title) of the statutes is amended to read:

22 66.0420 (7) (em) (title) *PEG channel ~~monetary~~ support.*

23 **SECTION 38.** 66.0420 (7) (em) 1. of the statutes is amended to read:

24 66.0420 (7) (em) 1. This subdivision applies to an incumbent cable operator
25 whose cable franchise is terminated under sub. (3) (b) 2. b. The obligation that is

ASSEMBLY BILL 606

1 actually imposed by a municipality prior to April 18, 2007, on such an incumbent
2 cable operator to provide ~~monetary~~ support ~~for access facilities~~ for PEG channels and
3 that is contained in a cable franchise existing on January 9, 2008, shall continue
4 until January 1, 2011.

5 **SECTION 39.** 66.0420 (7) (em) 2. of the statutes is amended to read:

6 66.0420 (7) (em) 2. The duty of an interim cable operator to provide ~~monetary~~
7 support ~~for access facilities~~ for PEG channels that is contained in a cable franchise
8 existing on January 9, 2008, shall continue until January 1, 2011.

9 **SECTION 40.** 66.0420 (7) (em) 3. of the statutes is amended to read:

10 66.0420 (7) (em) 3. Each video service provider providing video service in a
11 municipality shall have the same obligation to provide ~~monetary~~ support ~~for access~~
12 facilities for PEG channels as the incumbent cable operator with the most
13 subscribers in the municipality as of January 9, 2008. To the extent that such
14 incumbent cable operator provides such support in the form of a percentage of gross
15 revenues or a per subscriber fee, any other video service provider shall pay the same
16 percentage of gross revenues or per subscriber fee to the municipality as the
17 incumbent cable operator. To the extent that such incumbent cable operator provides
18 such support in the form of a lump sum payment without an offset to its franchise
19 fee or video service provider fee, any other video service provider that commences
20 service in the municipality shall pay the municipality a sum equal to the pro rata
21 amount of such lump sum payment based on its proportion of video service customers
22 in such municipality. The obligation to provide ~~monetary~~ support required under
23 this subdivision shall continue until January 1, 2011.

24 **SECTION 41.** 66.0420 (7) (em) 4. of the statutes is amended to read:

ASSEMBLY BILL 606

1 66.0420 (7) (em) 4. For purposes of ~~this paragraph~~ subd. 3., the proportion of
2 video service customers of a video service provider shall be determined based on the
3 relative number of subscribers as of the end of the prior calendar year as reported
4 by all incumbent cable operators and holders of video service authorizations.

5 **SECTION 42.** 66.0420 (7) (em) 5. of the statutes is created to read:

6 66.0420 (7) (em) 5. A municipality may, by ordinance, for the purpose of
7 supporting PEG channels, require an interim cable operator or video service
8 provider to pay the municipality, beginning on January 1, 2011, a fee equal to no more
9 than 1 percent of the interim cable operator's or video service provider's annual gross
10 receipts. If an interim cable operator pays a franchise fee to a municipality, the
11 interim cable operator shall pay any fee required under this subdivision at the time
12 that the interim cable operator pays the franchise fee to the municipality. A video
13 service provider shall pay a fee required under this subdivision at the time that the
14 video service provider pays a video service provider fee to the municipality.

15 **SECTION 43.** 66.0420 (7) (f) of the statutes is amended to read:

16 66.0420 (7) (f) *Itemization.* A video service provider may identify and collect
17 the amount related to a video service provider fee and any fee imposed for monetary
18 support for access facilities for PEG channels as described in required under par.
19 (em) as a separate line item on customer bills.

20 **SECTION 44.** 66.0420 (8) (b) of the statutes is repealed and recreated to read:

21 66.0420 (8) (b) *Access to service.* If a large telecommunications video service
22 provider does not provide access to its video service to at least 90 percent of the
23 households in the large telecommunications service video provider's
24 telecommunications service area by the first day of the 18th month beginning after
25 the effective date of this paragraph [LRB inserts date], the large

ASSEMBLY BILL 606

telecommunications video service provider shall pay to the commission, no later than the 19th month beginning after the effective date of this paragraph [LRB inserts date], a sum of \$20,000,000. If a large telecommunications video service provider pays the sum, the commission shall use the sum to make grants to persons to assist in the deployment of broadband service to underserved areas in this state. The commission shall promulgate rules establishing requirements and procedures for making the grants.

SECTION 45. 66.0420 (8) (e) of the statutes is amended to read:

66.0420 **(8)** (e) *Limitations.* Notwithstanding any other provision of this section, a telecommunications video service provider is not required to provide video service outside the provider's basic 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 incumbent cable operator provided cable service at the time the ~~department of financial institutions~~ commission issued a video service franchise to the incumbent cable operator.

SECTION 46. 66.0420 (8g) of the statutes is created to read:

66.0420 **(8g)** EQUIPMENT RETURNS. The commission shall promulgate rules that allow a customer, at no cost to the customer, to return to a video service provider, by a deadline specified in the rules, equipment necessary for receiving video service that the video service provider has provided the customer.

SECTION 47. 66.0420 (8r) of the statutes is created to read:

66.0420 **(8r)** CUSTOMER SERVICE CENTERS. A video service provider shall maintain at least one customer service facility within this state that is staffed by customer service representatives with the capacity to accept payments; adjust bills; respond to repair, installation, reconnection, disconnection, and other service calls;

ASSEMBLY BILL 606

1 and distribute and receive converter boxes, remote control units, digital stereo units,
2 and other equipment necessary for receiving video service.

3 **SECTION 48.** 66.0420 (9) of the statutes is repealed and recreated to read:

4 66.0420 (9) MUNICIPAL ENFORCEMENT. A municipality may adopt or enact, and
5 enforce, an ordinance or resolution requiring a video service provider to comply with
6 s. 100.209 and any rules promulgated by the department of agriculture, trade and
7 consumer protection under s. 100.209. In an action to enforce an ordinance or
8 resolution, a municipality may, notwithstanding s. 814.01, recover costs and
9 reasonable attorney fees.

10 **SECTION 49.** 66.0420 (10) of the statutes is amended to read:

11 66.0420 (10) LIMITATION ON RATE REGULATION. The ~~department~~ commission or
12 a municipality may not regulate the rates charged for any video service by an interim
13 cable operator or video service provider that provides video service in a municipality
14 if at least one other interim cable operator or video service provider is providing video
15 service in the municipality and the other interim cable operator or video service
16 provider is not an affiliate of the interim cable operator or video service provider.
17 This subsection applies regardless of whether any affected interim cable operator or
18 video service provider has sought a determination from the FCC regarding effective
19 competition under 47 CFR 76.905.

20 **SECTION 50.** 66.0420 (11) of the statutes is amended to read:

21 66.0420 (11) TRANSFER OF VIDEO SERVICE FRANCHISE. A person who is issued a
22 video service franchise may transfer the video service franchise to any
23 successor-in-interest, including a successor-in-interest that arises through
24 merger, sale, assignment, restructuring, change of control, or any other transaction.
25 No later than 15 days after the transfer is complete, the successor-in-interest shall

ASSEMBLY BILL 606

1 apply for a video service franchise under sub. (3) (d) and comply with sub. (3) (e) 1.
2 The successor-in-interest may provide video service in the video franchise area
3 during the period that the ~~department~~ commission reviews the application.

4 **SECTION 51.** 66.0420 (13) (a) of the statutes is amended to read:

5 66.0420 (13) (a) The ~~department of financial institutions~~ commission may
6 promulgate rules interpreting or establishing procedures for this section and the
7 department of agriculture, trade and consumer protection may promulgate rules
8 interpreting or establishing procedures for sub. (8).

9 **SECTION 52.** 66.0420 (13) (b) of the statutes is amended to read:

10 66.0420 (13) (b) Except as provided in sub. (7) (e), a municipality, interim cable
11 operator, or video service provider that is affected by a failure to comply with this
12 section may bring an action to enforce this section. If a court finds that a
13 municipality, interim cable operator, or video service provider has not complied with
14 this section, the court shall order the municipality, interim cable operator, or video
15 service provider to comply with this section. Notwithstanding ss. s. 814.01, 814.02,
16 814.03, and 814.035, no costs may be allowed in an action under this paragraph to
17 any party the prevailing party may recover costs and reasonable attorney fees in the
18 action.

19 **SECTION 53.** 66.0420 (13) (c) of the statutes is amended to read:

20 66.0420 (13) (c) The ~~department~~ commission shall enforce this section, except
21 sub. (8). The ~~department~~ commission may bring an action to recover any fees that
22 are due and owing under this section or to enjoin a violation of this section, except
23 sub. (8), or any rule promulgated under sub. (3) (f) 4. An action shall be commenced
24 under this paragraph within 3 years after the occurrence of the unlawful act or
25 practice or be barred.

ASSEMBLY BILL 606**SECTION 54**

SECTION 54. 66.0420 (13) (d) of the statutes is created to read:

66.0420 **(13)** (d) The department of agriculture, trade and consumer protection may bring an action to enjoin a violation of sub. (8) or any rule interpreting or establishing procedures for sub. (8).

SECTION 55. 66.0420 (14) of the statutes is created to read:

66.0420 **(14)** PENALTY. A person who violates this section may be required to forfeit not more than \$1,000 for each offense and not more than \$10,000 for each occurrence.

SECTION 56. 100.209 (title) of the statutes is amended to read:

100.209 (title) **Video programming service subscriber rights; customer service standards for video service providers.**

SECTION 57. 100.209 (1) (b) of the statutes is created to read:

100.209 **(1)** (b) “Federal regulations” mean 47 CFR 76.309, 76.1602, 76.1603, and 76.1619.

SECTION 58. 100.209 (1) (c) of the statutes is amended to read:

100.209 **(1)** (c) “Multichannel video provider” means an interim cable operator, as defined in s. 66.0420 (2) (n), video service provider, ~~as defined in s. 66.0420 (2) (zg),~~ or multichannel video programming distributor, as defined in 47 USC 522 (13).

SECTION 59. 100.209 (1) (e) of the statutes is created to read:

100.209 **(1)** (e) “Video service provider” has the meaning given in s. 66.0420 (2) (zg).

SECTION 60. 100.209 (2) (a) of the statutes is amended to read:

100.209 **(2)** (a) A multichannel video provider shall repair video programming service within ~~72~~ 24 hours after a subscriber reports a service interruption or requests the repair if the service interruption is not the result of a natural disaster.

ASSEMBLY BILL 606

SECTION 61. 100.209 (2m) of the statutes is created to read:

100.209 **(2m)** CUSTOMER SERVICE STANDARDS. A video service provider, including a video service provider that is not a cable operator, shall comply with the customer service standards specified for cable operators in the federal regulations. Notwithstanding the advance written notice specified in the federal regulations, a video service provider's duty to comply with this subsection begins on the effective date of this subsection [LRB inserts date].

SECTION 62. 100.209 (3) of the statutes is amended to read:

100.209 **(3)** RULES AND ORDERS ALLOWED. This section does not prohibit the department from promulgating a rule or from issuing an order consistent with its authority under this chapter that gives a subscriber greater rights than the rights under sub. (2) or (2m).

SECTION 63. 100.209 (4) (a) of the statutes is amended to read:

100.209 **(4)** (a) A person who violates sub. (2) or (2m) may be required to forfeit not more than \$1,000 for each offense and not more than \$10,000 for each occurrence. Failure to give a notice required under sub. (2) (c) or (d) to more than one subscriber shall be considered to be one offense.

SECTION 64. 100.209 (4) (b) of the statutes is amended to read:

100.209 **(4)** (b) The department ~~and the~~ district attorneys of this state, and, as provided under s. 66.0420 (9), municipalities, as defined in s. 66.0420 (2) (r), have concurrent authority to institute civil proceedings under this section.

SECTION 65. 100.261 (3) (c) of the statutes is amended to read:

100.261 **(3)** (c) The amount credited under par. (b) to the appropriation account under s. 20.115 (1) (jb) may not exceed \$185,000 in each fiscal year.

SECTION 66. 196.44 (1) of the statutes is amended to read:

ASSEMBLY BILL 606**SECTION 66**

1 196.44 (1) DUTY OF COMMISSION. The commission shall inquire into the neglect
2 or violation of the laws of this state by public utilities and of s. 66.0420, except for s.
3 66.0420 (8), by video service providers, or by their officers, agents or employees or by
4 persons operating public utilities or video service providers, and shall enforce s.
5 66.0420, except s. 66.0420 (8), and all laws relating to public utilities, and report all
6 violations to the attorney general.

7 **SECTION 67.** 196.44 (2) of the statutes is amended to read:

8 196.44 (2) DUTIES OF ATTORNEY GENERAL AND DISTRICT ATTORNEYS. Upon request
9 of the commission, the attorney general or the district attorney of the proper county
10 shall aid in any investigation, hearing or trial had under this chapter, and shall
11 institute and prosecute all necessary actions or proceedings for the enforcement of
12 s. 66.0420, except s. 66.0420 (8), and all laws relating to public utilities or
13 telecommunications providers, and for the punishment of all violations.

14 **SECTION 68.** 196.85 (1m) (e) of the statutes is created to read:

15 196.85 (1m) (e) For the purpose of direct assessment under sub. (1) of expenses
16 incurred by the commission in connection with its activities under s. 66.0420, the
17 term “public utility” includes an applicant for a video service franchise, as defined
18 in s. 66.0420 (2) (z), or a video service provider, as defined in s. 66.0420 (2) (zg).

19 **SECTION 69. Nonstatutory provisions.**

20 (1) Any matter pending with the department of financial institutions on the
21 effective date of this subsection that relates to the regulation of video service
22 providers under section 66.0420 of the statutes is transferred to the public service
23 commission and all materials submitted to or actions taken by the department with
24 respect to the pending matter are considered as having been submitted to or taken
25 by the commission.

ASSEMBLY BILL 606

1 (2) All rules promulgated, and all orders issued, by the department of financial
2 institutions relating to the regulation of video service providers under section
3 66.0420 of the statutes that are in effect on the effective date of this subsection shall
4 become rules and orders of the public service commission and shall remain in effect
5 until their specified expiration dates or until amended, repealed, or rescinded by the
6 commission.

7 **SECTION 70. Fiscal changes.**

8 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
9 to the public service commission under section 20.155 (1) (g) of the statutes, as
10 affected by the acts of 2009, the dollar amount is increased by \$100,000 for the first
11 fiscal year, and the dollar amount is increased by \$100,000 for the second year, of the
12 fiscal biennium in which this subsection takes effect for the purposes for which the
13 appropriation is made.

14 (2) In the schedule under section 20.005 (3) of the statutes for the appropriation
15 to the department of agriculture, trade and consumer protection under section
16 20.115 (1) (jb) of the statutes, as affected by the acts of 2009, the dollar amount is
17 increased by \$325,000 for the first fiscal year, and the dollar amount is increased by
18 \$325,000 for the second fiscal year, of the fiscal biennium in which this subsection
19 takes effect to increase the authorized FTE positions for the department by 5.0 PR
20 positions for the purpose of carrying out the department's duties under section
21 100.209 of the statutes.

22 (3) In the schedule under section 20.005 (3) of the statutes for the appropriation
23 to the department of financial institutions under section 20.144 (1) (g) of the statutes,
24 as affected by the acts of 2009, the dollar amount is decreased by \$100,000 for the first
25 fiscal year of the fiscal biennium in which this subsection takes effect, and the dollar

ASSEMBLY BILL 606

1 amount is decreased by \$100,000 for the second fiscal year of the fiscal biennium in
2 which this subsection takes effect, for the purposes for which the appropriation is
3 made.

SECTION 71. Initial applicability.

4
5 (1) The treatment of section 66.0420 (3) (i) 4. of the statutes first applies to
6 revocation proceedings commenced on the effective date of this subsection.

7 (2) The treatment of section 66.0420 (5) (d) 1. of the statutes first applies to
8 relocations requested on the effective date of this subsection.

9 (3) The treatment of section 66.0420 (7) (a) 2m. of the statutes first applies to
10 compensation that is paid to a municipality on the effective date of this subsection.

11 (4) The treatment of section 66.0420 (7) (e) 2. and (13) (b) of the statutes first
12 applies to actions commenced on the effective date of this subsection.

13 (5) The treatment of section 66.0420 (13) (d) and (14) of the statutes first applies
14 to violations occurring on the effective date of this subsection.

15 **SECTION 72. Effective dates.** This act takes effect on the day after publication,
16 except as follows:

17 (1) The treatment of sections 66.0420 (5) (a) 3. and (b) 1. a. and 100.209 (title),
18 (1) (b), (2m), (3), and (4) (a) of the statutes takes effect on the first day of the 4th month
19 beginning after publication.

20 (END)