

WAPC



Wisconsin Association of PEG Channels

Serving the needs of public, education, and government cable access television stations since 1998.

Date: September 28, 2009

To: WAPC Members

From: Mary Cardona, Executive Director

Re: Rep. Hebl's remedial state video franchising legislation

Rep. Hebl (D- Sun Prairie) released LRB-0945/7 on Friday September 25. This bill remedies provisions in Act 42 that have already or will soon harm PEG stations throughout Wisconsin in a way that puts the future viability of PEG into serious question.

This bill also strengthens consumer protection provisions, restores a measure of enforcement ability to municipalities, moves responsibility for video services to the Public Service Commission from the Department of Financial Institutions, and provides strong encouragement for expansion of broadband in Wisconsin.

Rep. Hebl is now looking for co-sponsors. Please contact your representative in the assembly and ask them to co-sponsor Rep. Hebl's bill! This link will lead to contact information:
<http://www.legis.wisconsin.gov/w3asp/waml/waml.aspx>

The following summary is intended as a guide to help you through a read of the bill. First, however, a review of what remains the same for PEG.

PEG-related provisions of Act 42 that do not change

Video service providers must continue to provide PEG channel capacity that existed before January 9, 2008. The Act's provisions make it unlikely that municipalities will ever be able to require additional PEG channels. (Section (5)(a))

Video service providers may reprogram PEG channels that do not meet the "substantial utilization" requirement, the definition of which remains unchanged. To restore a channel, municipalities must certify that they will be able to meet the substantial utilization requirement. (Section (5)(b))

All notice requirements municipalities must follow to receive the video provider fee, PEG fee, and channel capacity remain. (Section (5)(b) 2.)

Municipalities may not require any support for PEG except as spelled out in Wisconsin state law. (Section (5)(c))

Municipalities are required to make PEG programming available to operators "in a nondiscriminatory manner." ((5)(c) 3. b.)

Municipalities are responsible for the construction cost of transmission lines after the first 200 feet from an origination point if the origination point is moved. Municipalities also continue to be fully responsible for the cost of any additional origination lines. (Section (5)(d))

Current PEG fees end January 1, 2011. (Section (7)(em))

PEG-related provisions in Rep. Hebl's bill that would change current law

The following sections from LRB-0945/7 (Rep. Hebl's bill) are relevant to PEG. Changes from current law are emphasized with underlining. Please refer to the bill for actual language.

Section 26 (page 11 lines 19 – 23)

PEG channel capacity shall be provided on a service tier that is viewed by 100 percent of subscribers rather than more than 50%.

Section 27 (page 11 line 24 – page 12 line 10)

If a PEG channel is not substantially utilized and an operator reprograms it and later restores it because a municipality has certified that it will meet the substantial utilization standard, the operator may no longer place that restored PEG channel on any service tier it wants.

Section 29 (page 12 line 18 – page 13 line 11)

If a video service provider uses a video format on its system that is incompatible with the format a PEG station uses, it is no longer the municipality's responsibility to make the PEG signal compatible with the video service provider's system.

Section 30 (page 13 line 12 – page 13 line 21)

The video service provider is responsible for transmitting PEG programming by providing both the transmitting equipment and transmission line capacity to origination points existing as of January 9, 2008.

Section 30 (page 13 line 21 – page 14 line 9)

The change in this section simply clarifies the intent of the legislature in Act 42 by making it clear that if an origination line is MOVED, the video service provider is responsible for the construction costs of the first 200 feet beginning from the origination point and the municipality is responsible for any remaining construction costs to connect to the cable operator's facilities.

Section 31 (page 14 lines 10 – 22)

Video service providers shall provide PEG channel capacity that is equivalent to the capacity provided to local commercial television stations in terms of accessibility, functionality, and audio and visual quality.

Section 31 (page 14 line 23 – page 15 line 11)

Video service providers shall provide PEG channel capacity a) within 10 channel numbers of local commercial stations, b) viewable by every subscriber without additional service or equipment charges, and c) without any material degradation, alteration, or removal of content from the origination point.

Section 33 (page 15 line 19 – page 16 line 10; Section 35 repeals old language that froze fee amounts)

Municipalities may collect a video service provider fee of no more than 5% of the provider's gross receipts as specified by each municipality.

Section 34 (page 16 line 11)

Cost-based permit fees charged to video service providers may no longer be deducted from the video service provider fee, enabling the 5% video service provider fee to remain whole.

Section 38 (page 17 lines 1 – 10)

Beginning on January 1, 2011, a municipality, by ordinance, for the purposes of supporting PEG channels, may require video service providers to pay a fee equal to no more than 1 percent of the provider's annual gross receipts.

Section 39 (page 17 line 11 – 15)

The fee required for the support of PEG channels may be shown as a separate line item on customer bills. Language describing the fee as support for access facilities for PEG channels is deleted.

Other provisions in Rep. Hebl's bill that would change current law

Places the responsibility for video services regulation with the Public Service Commission

Sections 2, 3, 5, 6, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 23, 41, 45, 46, 47, 49, 62, 63, 64, 65

The responsible agency for state video franchising is changed from the Department of Financial Institutions to the Public Service Commission (PSC). The PSC may bill video service providers for expenses. (Section 25)

Expands consumer-friendly provisions and allows municipalities to enforce consumer protection provisions

Sections 42, 43, 44, 56, 57

Municipalities may adopt and enforce requirements to comply with the State of Wisconsin statute section 100.209 called the "Video programming service subscriber rights" provision, which governs repair deadlines, credits for outages, advance notice of program service changes, and rate increases and disconnections. Section 100.209 would be strengthened with the requirement that multichannel video providers shall repair service interruptions not caused by a natural disaster within 24, not 72 hours, as current law requires. Section 100.209 would restore federal cable consumer protection regulations for all video service providers. These regulations require consumer-friendly service in the areas of telephone customer service, response time to service and installation requests, appointments, refunds and credits. The incorporated federal regulations also require video providers to provide written information to customers at the time of installation about company services, policies, and complaint resolution. These regulations also describe billing format standards and the resolution of billing disputes. In addition, the bill requires the PSC to create a rule that would allow customers to return equipment at no cost to the video service provider by a set deadline. Each video service provider is also required to maintain at least one customer service facility in the state able to handle walk-in customers.

Strengthens the municipal position in dispute settlements and creates penalties

Sections 36, 48, 50, 51, 60, 62

The prevailing party may recover costs and reasonable attorney's fees over disputes about compliance with any section of the law and with the payment of video service provider fees after good faith settlement discussions. Municipalities may bring an action to enforce consumer protections described in sub. (9). DATCP may bring an action to enjoin a violation of sub. (8) or any rule based on sub. (8) regarding build-out. The PSC may investigate and enforce all other provisions. The penalty for a violation is not more than \$1,000 for each offense and not more than \$10,000 for each occurrence.

Changes grounds and procedures for revocation

Section 21

Under Act 42, a video franchise can be revoked if a video service provider has "failed to substantially meet a material requirement imposed upon it by the department" and after a proceeding before a hearing officer and appeals process. Under *proposed* language, a video service provider's franchise can be revoked if it has "exhibited a pattern of noncompliance" with requirements under this section (66.0420), Wisconsin statutes ch. 100 (Marketing and Trade Practices), or federal cable regulations (consumer protection provisions) and after a proceeding following the rules of a "contested case" laid out under ch. 227 (Administrative Procedure and Review).

Requires operators to renew their franchises more frequently

Section 22

DFI has, by rule, set video franchise renewals for every ten years. Rep. Hebl's bill changes it to every five years.

Requires carriage of Wisconsin Eye

Section 32

Video providers are required to carry Wisconsin Eye on the lowest cost service tier.

Encourages broadband build-out

Sections 4 and 40

Act 42's section 8 (b) is repealed. Current law requires large telecommunications video providers to make video service available to a maximum of 50% of the households in its "basic local exchange service area" within 5 years or no later than two years after at least 30% of households with access to the video provider's video service subscribe to it for six consecutive months, whichever is later. Rep. Hebl's bill recreates this section to give large telecommunications video service providers the option of either providing access to its video service to 90% of its "telecommunications service area" within 18 months of the effective date of the legislation or pay \$20 million into a fund for broadband grants no later than the 19th month beginning after the effective date of the legislation. The PSC would use the sum to "assist in the deployment of broadband service to underserved areas in this state." As under current law, DATCP may grant extensions and waivers of the deadline.

Increases the appropriation to the PSC and DATCP, and decreases the appropriation to DFI

Section 66

The appropriation to the PSC is increased by \$100,000 in the first fiscal year and by \$100,000 for the second year. The appropriation to DATCP is increased by \$325,000 for the first fiscal year and by \$325,000 for the second fiscal year to increase the FTE positions for DATCP by 5.0 PR positions for the purpose of carrying out the department's duties under section 100.209 (consumer protection). The appropriation to DFI is decreased by \$100,000 the first fiscal year and by \$100,000 for the second fiscal year.

Increases annual fees on video service providers, some of which would go into a consumer protection, information, and education fund

Sections 1, 23, 24,

State video franchise annual fees collected would be credited to a Department of Agriculture, Trade, and Consumer Protection (DATCP) account used for consumer protection and consumer information and education, that is maximized at \$185,000 per year. A video service provider with more than 10,000 in-state subscribers would pay an annual fee of \$50,000. This fee is currently set at \$2,000. A video service provider with less than 10,000 in-state subscribers would pay an annual fee of \$4,500. This fee is now set at \$100. Rep. Hebl's bill eliminates filing fees for service area modifications.

Definitions

Sections 7, 53, 54, 55

These sections define "local commercial television station," "federal regulations," "multichannel video provider," and "video service provider."

Housekeeping

Sections 9, 13, 28, 37, 58, 59, and 61

These sections make non-substantive changes to make sections compatible with new language and numbering or deletes dated passages no longer relevant.

Effective dates

Section 67 and 68

The act would take effect on the day after publication except that the requirements that PEG be viewable by 100% of video subscribers and that restored PEG channels be located in the same area as all other PEG channels, and compliance with federal cable regulations would take effect on the first day of the 4th month beginning after publication.