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FILED/ACCEPTED

AUG 7 2012

Federal Communications Commission
Office of the Secretary

Received & Inspected
JUL 17 2012
FCC Mail Room

July 11, 2012

William Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Petition of Time Warner Cable, Inc. for Determination of Effective Competition, dated June 12, 2012
FCC File no. CSR-8662-E, FCC Docket no. MB 12-171

Dear Attorney Lake,

The above-referenced Petition contains a caption which names the City of Waukesha and a number of neighboring municipalities within the State of Wisconsin as parties. The Petition requests a finding that the cable television system of Time Warner Cable, Inc. is subject to effective competition. Please be advised that the City of Waukesha is not a proper party to the action. By state statute, the State of Wisconsin is the sole franchising authority for the state. Since the State of Wisconsin is not named as a party in the caption, the Petition does not appear to name any franchising authority as a party in interest. An explanation follows.

Section 66.0420(4) of the Wisconsin Statutes, effective January 9, 2008, states as follows:

(4) Franchising Authority. For purposes of 47 USC 521 to 573, the state is the exclusive franchising authority for video service providers in this state. No municipality may require a video service provider to obtain a franchise to provide video service.

Wis. Stat. §66.0420(4) (2009-10); 2007 Wis. Legis. Act 42. The term "Video service providers" include providers of cable services, Wis. Stat. §66.0420(2)(y). The State of Wisconsin has therefore expressly precluded municipalities from acting as franchising authorities. The statute establishes a statewide franchising procedure administered by the State Department of Financial Institutions. Wis. Stat. §66.0420(3)(a)—(k).



The Petitioner applied for a Wisconsin statewide franchise on February 21, 2008, and was granted an Interim Franchise by the State of Wisconsin on February 26, 2008. The aforesaid documents are attached to this letter as Exhibits 1 and 2, respectively, and are hereby incorporated by reference as if fully set forth herein. Also attached and labeled as Exhibit 3 is a copy of Wisconsin Statute 66.0420.

The Petitioner appears to acknowledge the City is no longer a franchising authority in the second footnote of its Petition, where it states as follows:

To the extent that franchising responsibilities of any political subdivision covered by this petition have been reassigned to another governmental body, *e.g.*, pursuant to legislation providing for state-issued franchises, then that political subdivision is no longer an LFA and obviously would no longer have rate regulatory authority.

Petition at 2, n.2 (June 12, 2012).

By operation of Wis. Stat. §66.0420 and the State of Wisconsin's grant of a statewide franchise to the Petitioner, the City is no longer a franchising authority. The City therefore cannot exercise regulatory jurisdiction over cable rates under 47 U.S.C. §543(a)(3) and cannot be considered a party in interest.

Since the only franchising authority in Wisconsin is the State, the true party in interest with respect to the Petition is the State of Wisconsin. Although the Petitioner's Certificate of Service lists the State Department of Financial Institutions and therefore may comply with the pleading requirements set forth in 47 CFR §76.7(a)(3), it is cause for concern that the Petition's caption fails to name the State of Wisconsin as a party. The Petitioner chose to name specific party respondents in a caption on the Petition's cover; having done so, it should list at least one actual party in interest to comply with basic tenets of due process. It may be in the best interests of the parties for the FCC to delay further action on the Petition to give the Petitioner time to do so.

Submitted this 11th day of July, 2012, on behalf of the City of Waukesha.

Curt R. Meitz
City Attorney

By: Miles Eastman
Miles Eastman
Assistant City Attorney



Verification of Submission

I, Miles Eastman, hereby certify that, pursuant to 47 CFR §76.6(a)(4), I have read the attached submission dated July 11, 2012, and to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose.

Executed this 11th day of July, 2012.



Miles Eastman
Assistant City Attorney
City of Waukesha

City of Waukesha
City Attorney's Office
201 Delafield St.
Waukesha, WI 53188
262/524-3520
262/650-2569 (Fax)

Exhibit 1

**Time Warner Cable
Application for State Issued Certificate of Franchise
Authority
Department of Financial Institutions
Wisconsin State Statutes Section 66.0420**

Regulatory Contact:

Bev Greenberg, VP Public Affairs
Time Warner Cable – Wisconsin
1320 N. Dr. Martin Luther King Jr. Drive
Milwaukee, WI 53212
414-277-4190

Sec. 66.0420,
Wis. Stats.

State of Wisconsin
DEPARTMENT OF FINANCIAL INSTITUTIONS



STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY (SICFA)
APPLICATION
Title Page

Applicant: Time Warner Cable

Authorized Company Representative

Name: John F. Herbert, Jr.	Title: President, Wisconsin Division	
Address: 1320 N. Dr. Martin Luther King Drive		
City: Milwaukee	State: WI	Zip Code: 53212
Telephone: 414-277-4034	Fax: 414-277-8049	Email Address: jack.herbert@twcable.com

Regulatory Contact

Name: Bev Greenberg	Title: VP, Public Affairs	
Address: 1320 N. Dr. Martin Luther King Drive		
City: Milwaukee	State: WI	Zip Code: 53212
Telephone: 414-277-4190	Fax: 414-277-8049	Email Address: bev.greenberg@twcable.com

Emergency Contact

Name: Celeste Flynn	Title: Director, Public Affairs	
Address: 1320 N. Dr. Martin Luther King Drive		
City: Milwaukee	State: WI	Zip Code: 53212
Telephone: 414-277-4193	Fax: 414-277-8049	Email Address: celeste.flynn@twcable.com

NOTICE: Pursuant to Section 66.0420 Wis. Stats., this form may be used to apply for a State-Issued Certificate of Franchise Authority. Information requested may be used for secondary purposes. Hearing-impaired may call 608-266-8818 for TTY. This document can be made available in alternate formats upon request to qualifying individuals with disabilities.

STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY (SICFA)
APPLICATION

Applicant Name Time Warner Cable

1. A. Check applicable category:

- Cable Service Provider
- Video Service Provider
- Cable and Video Service Provider

B. If you are filing an amendment to an existing SICFA, please check one or more of the following amendment categories in this filing:

- Change in type of provider (Cable, Video, or Cable and Video)
- Name change (Additional d/b/a's or New Name)
- Expansion of service area footprint
- Transfer in ownership/control
- Other (provide explanation)

2. Provide the following information:

Principal Business Street Address One Time Warner Center, North Tower 17th Floor		
City New York	State NY	Zip Code 10019
Business Telephone Number 212-364-8200		Fax Number
Email Address n/a		
Mailing Street Address, if different from principal business address 290 Harbor Drive, Legal Dept		
City Stamford	State CT	Zip Code 06902

Provide the name and title of Applicant's principal executive officers (add additional page if necessary):

Name see attached	Title
Name	Title
Name	Title
Name	Title

STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY (SICFA)
APPLICATION

Applicant Name Time Warner Cable

3. Enter one principal name and any d/b/a's or affiliates that will operate under this SICFA. *(NOTE: The certificated name can be the Applicant's legal name, a d/b/a, or an assumed name as long as the requested name(s) is properly registered to do business within the State of Wisconsin. The SICFA holder should use only the name(s) and/or d/b/a(s) granted in its SICFA on all bills, advertisements or communications with the public or the Department of Financial Institutions (DFI). Name changes require an amendment to an existing SICFA). Add additional pages if necessary.*

Principal Name	Time Warner Entertainment Company, L.P. d/b/a Time Warner Cable, by itself, and on behalf of its subsidiaries
D/B/A or affiliate	Century Venture Corp. d/b/a Time Warner Cable
D/B/A or affiliate	Time Warner Cable of Southeastern Wisconsin, L.P. d/b/a Time Warner Cable
D/B/A or affiliate	Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable
D/B/A or affiliate	

4. Provide the date(s) the Applicant intends to begin providing cable/video service in each Service Area Footprint identified. immediately
5. Attach a clear, complete and definitive description of the requested Service Area Footprint (SAF) for any municipality (ies) and/or unincorporated area(s) with the State of Wisconsin. *(SAF descriptions shall include one or more of the following descriptions: state line, county line(s), municipality/city limit(s), subdivision(s), roadway(s), street(s), block(s), street address(s), and boundaries, or a detailed map(s) properly highlighted and labeled.)* Expansions to SAF's shall be made by filing an amendment to an existing SICFA. The amendment shall require a clear, complete and definitive description of the expansion of the SAF. (For SAF amendments, include the existing certificated SAF as well as any requested revisions to that existing SAF.)
6. The Applicant shall agree to provide the DFI with written notification when terminating its SICFA. The Applicant shall also agree to provide DFI with a copy of any order or ruling issued by a court of competent jurisdiction or the Federal Communications Commission (FCC) that either modifies or revokes its SICFA or makes it ineligible to hold a SICFA pursuant to the standards laid out in section 66.0420 Wisconsin Statutes. The Applicant shall make an affirmative statement that it agrees to provide written notification of termination and copies of orders or ruling issued by a court of competent jurisdiction or the FCC concerning its SICFA.

STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY (SICFA)
APPLICATION

Applicant Name Time Warner Cable

- 7. The applicant shall attest that the entity is legally, financially, and technically qualified to provide cable/video service in compliance with Wisconsin Statutes 66.0420 (3) (d) 4.c.
- 8. The applicant shall attest that the entity has complied with Wisconsin Statutes 66.0420 (3) (e) regarding service upon municipalities.

Authorized Signature John F. Herbert Jr. Date 2-21-2008
Printed Name John F. Herbert Jr. Title President, Wisconsin Division

Exhibit 2



MAR 04 2008

State of Wisconsin
Department of Financial Institutions

Jim Doyle, Governor

Lorrie Keating Heinemann, Secretary

February 29, 2008

BEV GREENBERG
TIME WARNER CABLE – WISCONSIN
1320 N DR MARTIN LUTHER KING JR DR
MILWAUKEE WI 53212

RE: State-Issued Certificate of Franchise Authority (SIFCA)

Enclosed please find your Interim State-Issued Certificate of Authority (SIFCA).

As you are aware, the Department may request additional information before issuing your final Certificate of Authority. The final SIFCA will be issued once the rules promulgation process has been completed.

If you have any questions please feel free to contact me directly at the number below.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Allen".

Ray Allen
Deputy Administrator
Division of Corporate and Consumer Services
608 264 7950

Cc Cheryl Olson-Collins

DFICORP
SICFA
2008

United States of America
State of Wisconsin



DEPARTMENT OF FINANCIAL INSTITUTIONS

**INTERIM
STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY
for**

**TIME WARNER ENTERTAINMENT COMPANY, L.P.
d/b/a
TIME WARNER CABLE**

The State of Wisconsin hereby grants to said entity an Interim Certificate of Authority under Chapter 66.0420 of the Wisconsin Statutes, to provide cable and/or video service in such authorized areas as applied for in their initial application

This Certificate is effective as of February 26, 2008

*IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the official seal
of the Department on February 29, 2008*



A handwritten signature in black ink, appearing to read "Ray Allen".

*RAY ALLEN, Deputy Administrator
Division of Corporate & Consumer Services
Department of Financial Institutions*

Exhibit 3

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not more than \$10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a village, city or county inspector, employee or agent in the performance of his or her duties under this section.

2. Gives false information to a village, city or county inspector, employee or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employee or agent.

History: 1983 a. 203; 1987 a. 27 ss. 1217oc, 3200 (24); 1993 a. 27; 1995 a. 27 s. 9126 (19); 1999 a. 150 s. 293; Stats. 1999 s. 66.0417; 2007 a. 20 s. 9121 (6) (a).

66.0420 Video service. (1) LEGISLATIVE FINDINGS. The legislature finds all of the following:

(a) Video service brings important daily benefits to state residents by providing news, education, and entertainment.

(b) Uniform regulation of all video service providers by this state is necessary to ensure that state residents receive adequate and efficient video service and to protect and promote the public health, safety, and welfare.

(c) Fair competition in the provision of video service will result in new and more video programming choices for consumers in this state, and a number of providers have stated their desire to provide that service.

(d) Timely entry into the market is critical for new entrants seeking to compete with existing providers.

(e) This state's economy would be enhanced by additional investment in communications and video programming infrastructure by existing and new providers of video service.

(f) Minimal regulation of all providers of video service within a uniform framework will promote the investment described in par. (e).

(g) Ensuring that existing providers of video service are subject to the same regulatory requirements and procedures as new entrants will ensure fair competition among all providers.

(h) 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 this state's video service marketplace within a framework that is fair and equitable to all providers.

(2) DEFINITIONS. In this section:

(a) "Affiliate," when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with such person.

(b) "Basic local exchange service area" means the area on file with the public service commission in which a telecommunications video service provider provides basic local exchange service, as defined in s. 196.01 (1g).

(c) "Cable franchise" means a franchise granted under s. 66.0419 (3) (b), 2005 stats.

(d) "Cable operator" has the meaning given in 47 USC 522 (5).

(e) "Cable service" has the meaning given in 47 USC 522 (6).

(f) "Cable system" has the meaning given in 47 USC 522 (7).

(g) Except as provided in sub. (8) (ag), "department" means the department of financial institutions.

(h) "FCC" means the federal communications commission.

(i) "Franchise fee" has the meaning given in 47 USC 542 (g), and includes any compensation required under s. 66.0425.

(j) 1. "Gross receipts" means all revenues received by and paid to a video service provider by subscribers residing within a munic-

ipality for video service, or received from advertisers, including all of the following:

a. Recurring charges for video service.

b. Event-based charges for video service, including pay-per-view and video-on-demand charges.

c. Rental of set top boxes and other video service equipment.

d. Service charges related to the provision of video service, including activation, installation, repair, and maintenance charges.

e. Administrative charges related to the provision of video service, including service order and service termination charges.

f. Revenues received from the provision of home shopping or similar programming.

g. All revenue, except for refunds, rebates, and discounts, derived by the video service provider for advertising over its video service network to subscribers within a municipality. If such revenue is derived under a regional or national compensation contract or arrangement between the video service provider and one or more advertisers or advertising representatives, the amount of revenue derived for a municipality shall be determined by multiplying the total revenue derived under the contract or arrangement by the percentage resulting from dividing the number of subscribers in the municipality by the total number of regional or national subscribers that potentially receive the advertising under the contract or arrangement.

2. Notwithstanding subd. 1., "gross receipts" does not include any of the following:

a. Discounts, refunds, and other price adjustments that reduce the amount of compensation received by a video service provider.

b. Uncollectible fees, except that any uncollectible fees that are written off as bad debt but subsequently collected shall be included as gross receipts in the period collected, less the expenses of collection.

c. Late payment charges.

e. Amounts billed to video service subscribers to recover taxes, fees, surcharges or assessments of general applicability or otherwise collected by a video service provider from video service subscribers for pass through to any federal, state, or local government agency, including video service provider fees and regulatory fees paid to the FCC under 47 USC 159.

f. Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive video service from the seller of those assets or surplus equipment.

g. Charges, other than those described in subd. 1., that are aggregated or bundled with amounts described in subd. 1., including but not limited to any revenues received by a video service provider or its affiliates for telecommunications services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing, if a video service provider can reasonably identify such charges on books and records kept in the regular course of business or by other reasonable means.

h. Reimbursement by programmers of marketing costs actually incurred by a video service provider.

(k) "Household" means a house, apartment, mobile home, group of rooms, or single room that is intended for occupancy as separate living quarters. For purposes of this paragraph, "separate living quarters" are those in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

(L) "Incumbent cable operator" means a person who, immediately before the effective date of this paragraph, was providing cable service under a cable franchise, expired cable franchise, or cable franchise extension, or under an ordinance or resolution adopted or enacted by a municipality.

(m) "Institutional network" means a network that connects governmental, educational, and community institutions.

(n) "Interim cable operator" means an incumbent cable operator that elects to continue to provide cable service under a cable franchise as specified in sub. (3) (b) 2. a.

(p) "Large telecommunications video service provider" means a telecommunications video service provider that, on January 1, 2007, had more than 500,000 basic local exchange access lines in this state or an affiliate of such a telecommunication video service provider.

(r) "Municipality" means a city, village, or town.

(s) "PEG channel" means a channel designated for public, educational, or governmental use.

(sm) "Qualified cable operator" means any of the following:

1. A cable operator that has been providing cable service in this state for at least 3 years prior to applying for a video service franchise and that has never had a cable franchise revoked by a municipality.

2. An affiliate of a cable operator specified in subd. 1.

3. A cable operator that, on the date that it applies for a video service franchise, individually or together with its affiliates or parent company, is one of the 10 largest cable operators in the United States as determined by data collected and reported by the FCC or determined by information available to the public through a national trade association representing cable operators.

(t) "Service tier" means a category of video service for which a separate rate is charged.

(u) "State agency" means any board, commission, department, or office in the state government.

(um) "Telecommunications utility" has the meaning given in s. 196.01 (10).

(v) "Telecommunications video service provider" means a video service provider that uses facilities for providing telecommunications service, as defined in s. 196.01 (9m), also to provide video service.

(w) "Video franchise area" means the area or areas described in an application for a video service franchise under sub. (3) (d) 2.

(x) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(y) "Video service" means any video programming service, cable service, or service provided via an open video system that complies with 47 USC 573, that is provided through facilities located at least in part in public rights-of-way, without regard to delivery technology, including Internet protocol technology or any other technology. "Video service" does not include any of the following:

1. Video programming provided by a commercial mobile radio service provider, as defined in s. 196.01 (2g).

2. Video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or any other service offered over the public Internet.

(z) "Video service franchise" means a franchise issued under sub. (3) (f) 2.

(zb) "Video service network" means wireline facilities, or any component thereof, located at least in part in the public right-of-way that deliver video service, without regard to delivery technology, including Internet protocol technology or any other technology. "Video service network" includes a cable system.

(zg) "Video service provider" means a person, including an incumbent cable operator, who is issued a video service franchise or a successor or assign of such a person.

(zm) "Video service provider fee" means the fee paid by a video service provider under sub. (7).

(3) **AUTHORITY TO PROVIDE VIDEO SERVICE.** (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 has issued a video service franchise to

the person and the person has provided the notice required under par. (h).

(b) *Incumbent cable operators.* 1. A municipality may not renew or extend the cable franchise of an incumbent cable operator that expires after January 9, 2008.

2. An incumbent cable operator may do one of the following:

a. Continue to provide cable service as an interim cable operator until the cable franchise expires.

b. Apply for a video service franchise. If an incumbent cable operator applies for a video service franchise, the cable franchise shall terminate and have no effect upon issuance of the video service franchise. Upon termination of the cable franchise, the municipality that granted the franchise shall, at the request of the incumbent cable operator, surrender, return, or take such other action as may be necessary to nullify any bond, letter of credit, or similar instrument intended to secure the performance of the incumbent cable operator under the cable franchise.

3. An incumbent cable operator whose cable franchise expires after January 9, 2008, may not, after expiration of the cable franchise, provide video service in this state unless the incumbent cable operator applies for a video service franchise under subd. 2. b. and, upon issuance of the video service franchise, provides the notice required under par. (h). An incumbent cable operator whose cable franchise expired before January 9, 2008, and who was providing cable service immediately before the effective date of this subdivision, may continue to provide cable service if, no later than March 1, 2008, the incumbent cable operator applies for a video service franchise under subd. 2. b.

(c) *Other providers.* A person, other than an incumbent cable operator, who was providing video service immediately before January 9, 2008, may provide video service without a video service franchise issued by the department. This paragraph ceases to apply to such a person if the person does not apply for a video service franchise no later than March 1, 2008.

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

1. The location and telephone number of the applicant's principal place of business, the names of the principal executive officers of the applicant, and the names of any persons authorized to represent the applicant before the department.

2. A description of the area or areas of the state in which the applicant intends to provide video service.

3. The date on which the applicant intends to begin providing video service in the video franchise area.

4. An affidavit signed by an officer or general partner of the applicant that affirms all of the following:

a. That the applicant has filed or will timely file with the FCC all forms required by the FCC in advance of offering video service.

b. That the applicant agrees to comply with this section and all applicable federal statutes and regulations.

c. That the applicant is legally, financially, and technically qualified to provide video service.

5. A description of the services that the applicant proposes to provide.

(e) *Service upon municipalities.* 1. At the time that an applicant submits an application under par. (d), or a video service provider submits a notification regarding a modification to an application under par. (j), to the department, the applicant or video service provider shall serve a copy of the application or notification on each municipality in the video franchise area.

2. a. This subdivision applies only to a municipality that, under subd. 1., is served a copy of an application or that, under subd. 1., is served a copy of a notification relating to an expansion of the area or areas of the state in which a video service provider intends to provide video service, if the municipality has not pre-

viously been served a copy of an application under subd. 1. by that video service provider.

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

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

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

4. The department shall promulgate rules for determining whether an applicant is legally, financially, and technically qualified to provide video service.

(g) *Effect of video service franchise.* A video service franchise issued by the department 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.

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

(i) *Expiration and revocation of video service franchise.* The department may revoke a video service franchise issued to a video service provider if the department determines that the video service provider has failed to substantially meet a material requirement imposed upon it by the department. Before commencing a revocation proceeding, the department shall provide the video service provider written notice of the department's intention to revoke the franchise and the department's reasons for the revocation and afford the video service provider a reasonable opportunity to cure any alleged violation. The department must, before revoking any video service franchise, afford a video service provider full due process that, at a minimum, must include a proceeding before a hearing officer during which the video service provider must be afforded the opportunity for full participation, including the right to be represented by counsel, to introduce evidence, to require the production of evidence, and to question or cross-examine witnesses under oath. A transcript shall be made of any such hearing. A video service provider may bring an action to appeal the decision of the department.

(j) *Modifications.* If there is any change in the information included in an application filed by a video service provider under this subsection, the video service provider shall notify the department and update the information within 10 business days after the change, except that if the video service provider determines to expand the area or areas of the state in which the video service provider intends to provide video service, the video service provider shall apply to the department for a modified video service franchise under par. (d). A video service provider that makes a notification regarding a change in the information specified in par. (d) 3., 4., or 5., shall include with the notification a fee of \$100. No

fee is required for a notification regarding a change in the information specified in par. (d) 1.

(k) *Annual fee.* 1. A video service provider shall pay an annual fee.

2. If a video service provider has 10,000 or less subscribers, the first annual fee required under subd. 1. shall be \$2,000 and each subsequent annual fee shall be \$100.

(4) *FRANCHISING AUTHORITY.* For purposes of 47 USC 521 to 573, the state is the exclusive franchising authority for video service providers in this state. No municipality may require a video service provider to obtain a franchise to provide video service.

(5) *PEG CHANNELS.* (a) *Maximum number of PEG channels.* 1. If an incumbent cable operator is providing channel capacity for PEG channels to a municipality under a cable franchise in effect immediately before January 9, 2008, the municipality shall 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 January 9, 2008.

2. a. Except as provided in subd. 2. b. and c., if no incumbent cable operator is providing channel capacity for PEG channels to a municipality under a cable franchise that is in effect immediately before January 9, 2008, then, if the municipality has a population of 50,000 or more, the municipality may require each interim cable operator and video service provider that provides video service in the municipality to provide channel capacity for up to 3 PEG channels, and, if the municipality has a population of less than 50,000, the municipality may require each interim cable operator and video service provider that provides video service in the municipality to provide channel capacity for no more than 2 PEG channels.

b. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video hub office and the aggregate population of the municipalities is 50,000 or more, the municipalities may not require the interim cable operator or video service provider to provide, in the aggregate, channel capacity for more than 3 PEG channels under subd. 2. a.

c. If an interim cable operator or video service provider distributes video programming to more than one municipality through a single headend or video hub office and the aggregate population of the municipalities is less than 50,000, the municipalities may not require the interim cable operator or video service provider to provide, in the aggregate, channel capacity for more than 2 PEG channels under subd. 2. a.

3. An interim cable operator or video service provider shall provide any channel capacity for PEG channels required under this paragraph on any service tier that is viewed by more than 50 percent of the interim cable operator's or video service provider's customers.

4. If a municipality is not required to provide notice to a video service provider under sub. (3) (e) 2., the video service provider's duty to provide any additional channel capacity for PEG channels that is required by the municipality under this paragraph first applies on the date that the video service provider begins to provide service in the municipality, and, if the municipality is required to provide notice under sub. (3) (e) 2., the video service provider's duty to provide any such additional channel capacity first applies on the date that the video service provider begins to provide video service in the municipality or on the 90th day after the video service provider receives the municipality's notice, whichever is later.

(b) *Exceptions.* 1. a. Notwithstanding par. (a), an interim cable operator or video service provider may reprogram for any other purpose any channel capacity provided for a PEG channel required by a municipality under par. (a) if the PEG channel is not substantially utilized by the municipality. If the municipality certifies to the interim cable operator or video service provider that reprogrammed channel capacity for a PEG channel will be sub-

stantially utilized by the municipality, the interim cable operator or video service provider shall, no later than 120 days after receipt of the certification, restore the channel capacity for the PEG channel. Notwithstanding par. (a) 3., an interim cable operator or video service provider may provide restored channel capacity for a PEG channel on any service tier.

b. For purposes of this subdivision, a PEG channel is substantially utilized by a municipality if the municipality provides 40 hours or more of programming on the PEG channel each week and at least 60 percent of that programming is locally produced.

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

(c) *Powers and duties of municipalities.* 1. Except as otherwise required under pars. (a) and (d) and sub. (7) (em), a municipality may not require an interim cable operator or video service provider to provide any funds, services, programming, facilities, or equipment related to public, educational, or governmental use of channel capacity.

2. The operation of any PEG channel for which a municipality requires an interim cable operator or video service provider to provide channel capacity under par. (a), and the production of any programming appearing on such a PEG channel, shall be the sole responsibility of the municipality and, except as provided in par. (d) 1., the interim cable operator or video service provider shall bear only the responsibility to transmit programming appearing on the PEG channel.

3. A municipality that requires an interim cable operator or video service provider to provide channel capacity for a PEG channel under par. (a) shall do all of the following:

a. Ensure that all content and programming that the municipality provides or arranges to provide for transmission on the PEG channel is submitted to the interim cable operator or video service provider in a manner and form that is capable of being accepted and transmitted by the interim cable operator or video service provider over its video service network without changing the content or transmission signal and that is compatible with the technology or protocol, including Internet protocol television, utilized by the interim cable operator or video service provider to deliver video service.

b. Make the content and programming that the municipality provides or arranges to provide for transmission on a PEG channel available in a nondiscriminatory manner to all interim cable operators and video service providers that provide video service in the municipality.

(d) *Duties of interim cable providers and video service providers.* 1. If a municipality requires an interim cable operator or video service provider to provide capacity for PEG channels under par. (a), the interim cable operator or video service provider shall be required to provide transmission capacity sufficient to connect the interim cable operator's or video service provider's headend or video hub office to the municipality's PEG access channel origination points existing as of January 9, 2008. A municipality shall permit the interim cable operator or video service provider to determine the most economically and technologically efficient means of providing such transmission capacity. If a municipality requests that such a PEG access channel origination point be relocated, the interim cable operator or video service provider shall be required to provide only the first 200 feet of transmission line that is necessary to connect the interim cable operator or video service provider's headend or video hub office to such origination point. A municipality shall be liable for the costs of construction of such a transmission line beyond the first 200 feet and for any construction costs associated with additional

origination points, but not for the costs associated with the transmission of PEG programming over such line. The interim cable operator or video service provider may recover its costs to provide transmission capacity under this subdivision by identifying and collecting a "PEG Transport Fee" as a separate line item on customer bills.

2. If the interconnection of the video service networks of interim cable operators or video service providers is technically necessary and feasible for the transmission of programming for any PEG channel for which channel capacity is required by a municipality under par. (a), the interim cable operators and video service providers shall negotiate in good faith for interconnection on mutually acceptable rates, terms, and conditions, except that an interim cable operator or video service provider who requests interconnection is responsible for interconnection costs, including the cost of transmitting programming from its origination point to the interconnection point. Interconnection may be accomplished by direct cable, microwave link, satellite, or any other reasonable method.

(5m) *CONTRACTS WITH UNIVERSITY OF WISCONSIN CAMPUSES.* If an incumbent cable operator has entered into an agreement with an institution or college campus within the University of Wisconsin System that is in effect on January 9, 2008, and that requires the incumbent cable operator to broadcast University of Wisconsin events on one of its channels, any video service provider that provides video service in the area in which the events are broadcast by the incumbent cable operator shall, upon the request of the institution or college campus, enter into an agreement with the institution or college campus that requires the video service provider to provide the same service on the same terms and conditions as the agreement between the institution or college campus and the incumbent cable operator.

(6) *INSTITUTIONAL NETWORKS.* Notwithstanding any franchise, ordinance, or resolution in effect on January 9, 2008, 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 video service network.

(7) *VIDEO SERVICE PROVIDER FEE.* (a) *Duty to pay fee.* 1. Notwithstanding s. 66.0611 and except as provided in subds. 2. and 2m., a video service provider shall, on a quarterly calendar basis, calculate and pay to each municipality in which the video service provider provides video service a video service provider fee equal to the percentage of the video service provider's gross receipts that is specified in par. (b) and the monetary support for access facilities for PEG channels described in par. (em). A video service provider shall remit the fee to the municipality no later than 45 days after the end of each quarter. Except as provided in subd. 2. or par. (b) 1., if the municipality is not required to provide notice under sub. (3) (e) 2., the duty to remit the fee first applies to the quarter in which the video service provider begins to provide service in the municipality, and, if the municipality is required to provide notice under sub. (3) (e) 2., the duty to remit the fee first applies to the quarter in which the video service provider begins to provide service in the municipality or to the quarter that includes the 45th day after the video service provider receives the municipality's notice, whichever quarter is later.

2. If a municipality fails to provide the notice specified in sub. (3) (e) 2. before the deadline specified in sub. (3) (e) 2., no video service provider is required to pay a video service provider fee, and no interim cable operator is required to pay a franchise fee, to the municipality until the 45th day after the end of the quarter in which the municipality provides the notice specified in sub. (3) (e) 2.

2m. If a municipality requires a video service provider to pay a cost-based permit fee under a regulation under s. 182.017 (1r), the video service provider may deduct the amount of the fee from any other compensation that is due to the municipality including the video service provider fee under subd. 1.

(b) *Amount of fee.* The percentage applied to a video service provider's gross receipts under par. (a) 1. for each municipality shall be 5 percent or one of the following percentages, whichever is less:

1. If no incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues to the municipality immediately before January 9, 2008, the municipality may specify a percentage of no more than 5 percent. The duty of a video service provider to pay the municipality a video service fee equal to such percentage shall first apply to the quarter that includes the 45th day after the municipality provides notice of the percentage to the video service provider.

2. If an incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues to the municipality immediately before January 9, 2008, that percentage.

3. If more than one incumbent cable operator was required to pay a franchise fee equal to a percentage of gross revenues to the municipality immediately before January 9, 2008, the lowest such percentage.

(c) *Generally accepted accounting principles.* All determinations and computations made under this subsection shall be made pursuant to generally accepted accounting principles.

(d) *Record review.* A municipality may, upon reasonable written request, for the purpose of ensuring proper and accurate payment of a video service provider fee, review the business records of a video service provider that is required to pay the municipality a video service provider fee.

(e) *Actions to enforce payment.* 1. A municipality or a video service provider may not bring an action concerning the amount of a video service provider fee allegedly due to the municipality unless the parties have first participated in and completed good faith settlement discussions. For purposes of any future litigation, all negotiations pursuant to this paragraph shall be treated as compromise negotiations under s. 904.08.

2. An action regarding a dispute over the amount of a video service provider fee paid or allegedly due under this subsection shall be commenced within 4 years following the end of the calendar quarter to which the disputed amount relates or be barred, unless the parties agree in writing to an extension of time. Notwithstanding ss. 814.01, 814.02, 814.03, and 814.035, no costs may be allowed in the action to either party.

(em) *PEG channel monetary support.* 1. This subdivision applies to an incumbent cable operator whose cable franchise is terminated under sub. (3) (b) 2. b. The obligation that is actually imposed by a municipality prior to April 18, 2007, on such an incumbent cable operator to provide monetary support for access facilities for PEG channels and that is contained in a cable franchise existing on January 9, 2008, shall continue until January 1, 2011.

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

3. Each video service provider providing video service in a municipality shall have the same obligation to provide monetary support for access facilities for PEG channels as the incumbent cable operator with the most subscribers in the municipality as of January 9, 2008. To the extent that such incumbent cable operator provides such support in the form of a percentage of gross revenues or a per subscriber fee, any other video service provider shall pay the same percentage of gross revenues or per subscriber fee to the municipality as the incumbent cable operator. To the extent that such incumbent cable operator provides such support in the form of a lump sum payment without an offset to its franchise fee or video service provider fee, any other video service provider that commences service in the municipality shall pay the municipality a sum equal to the pro rata amount of such lump sum payment based on its proportion of video service customers in such municipi-

pality. The obligation to provide monetary support required under this subdivision shall continue until January 1, 2011.

4. For purposes of this paragraph, the proportion of video service customers of a video service provider shall be determined based on the relative number of subscribers as of the end of the prior calendar year as reported by all incumbent cable operators and holders of video service authorizations.

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

(g) *Other fees.* 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 (1r), any permit fee, encroachment fee, degradation fee, or any other fee, for the occupation of or work within public rights-of-way.

(8) **DISCRIMINATION; ACCESS TO SERVICES.** (ag) *Definition.* In this subsection, "department" means the department of agriculture, trade and consumer protection.

(am) *Discrimination prohibited.* 1. No video service provider may deny access to video service to any group of potential residential customers in the video service provider's video franchise area because of the race or income of the residents in the local area in which the group resides.

2. It is a defense to an alleged violation of subd. 1. based on income if the video service provider has met the following:

a. No later than 3 years after the date on which the video service provider began providing video service under this section, at least 30 percent of the households with access to the video service provider's video service are low-income households.

(b) *Access.* 1. A large telecommunications video service provider shall provide access to its video service to the following percentages of households within the large telecommunications video service provider's basic local exchange service area:

a. Not less than 35 percent no later than 3 years after the date on which the large telecommunications video service provider began providing video service under this section.

b. Not less than 50 percent no later than 5 years after the date on which the large telecommunications video service provider began providing video service under this section, or no later than 2 years after at least 30 percent of households with access to the large telecommunications video service provider's video service subscribe to the service for 6 consecutive months, whichever occurs later.

2. A large telecommunications video service provider shall file an annual report with the department regarding the large telecommunications video service provider's progress in complying with subd. 1.

(c) *Extensions and waivers.* A video service provider may apply to the department for an extension of any time limit specified in par. (am) 2. or (b) or a waiver of a requirement to comply with par. (b). The department shall grant the extension or waiver if the video service provider demonstrates to the satisfaction of the department that the video service provider has made substantial and continuous efforts to comply with the requirements of this subsection and that the extension or waiver is necessary due to one or more of the following factors:

1. The video service provider's inability to obtain access to public and private rights-of-way under reasonable terms and conditions.

2. Developments and buildings that are not subject to competition because of exclusive service arrangements.

3. Developments and buildings that are not accessible using reasonable technical solutions under commercially reasonable terms and conditions.

4. Natural disasters.

5. Other factors beyond the control of the video service provider.

(d) *Alternative technologies.* A video service provider may satisfy the requirements of this subsection through the use of an alternative technology, other than satellite service, that does all of the following:

1. Offers service, functionality, and content demonstrably similar to the service, functionality, and content provided through the video service provider's video service network.

2. Provides access to PEG channels and messages broadcast over the emergency alert system.

(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 issued a video service franchise to the incumbent cable operator.

(9) **CUSTOMER SERVICE STANDARDS.** (a) Except as provided in par. (b), upon 90 days' advance notice, a municipality may require a video service provider to comply with the customer service standards specified in 47 CFR 76.309 (c) in its provision of video service. Neither the department nor any municipality shall have the authority to impose additional or different customer service standards that are specific to the provision of video service.

(b) Except as provided in s. 100.209, no video service provider that provides video service in a municipality may be subject to any customer service standards if there is at least one other person offering cable or video service in the municipality or if the video service provider is subject to effective competition, as determined under 47 CFR 76.905, in the municipality. This paragraph does not apply to any customer service standards promulgated by rule by the department of agriculture, trade and consumer protection.

(9m) **LOCAL BROADCAST STATIONS.** (a) In this subsection, a "noncable video service provider" means a video service provider that is not a cable operator.

(b) If a local broadcast station is authorized to exercise against a cable operator the right to require mandatory carriage under 47 USC 534, or the right to grant or withhold retransmission consent under 47 USC 325 (b), the local broadcast station may exercise the same right against a noncable video service provider to the same extent as the local broadcast station may exercise such right against a cable operator under federal law.

(c) A noncable video service provider shall transmit, without degradation, the signals that a local broadcast station delivers to the noncable video service provider, but is not required to utilize the same or similar reception technology as the local broadcast station or the programming providers of the local broadcast station.

(d) A noncable video service provider may not do any of the following:

1. Discriminate among or between local broadcast stations, or programming providers of local broadcast stations, with respect to the transmission of their signals.

2. Delete, change, or alter a copyright identification transmitted as part of a local broadcast station's signal.

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

(11) **TRANSFER OF VIDEO SERVICE FRANCHISE.** A person who is issued a video service franchise may transfer the video service franchise to any successor-in-interest, including a successor-in-interest that arises through merger, sale, assignment, restructuring, change of control, or any other transaction. No later than 15 days after the transfer is complete, the successor-in-interest shall apply for a video service franchise under sub. (3) (d) and comply with sub. (3) (e) 1. The successor-in-interest may provide video service in the video franchise area during the period that the department reviews the application.

(12) **MUNICIPAL CABLE SYSTEM COSTS.** (a) Except for costs for any of the following, a municipality that owns and operates a cable system, or an entity owned or operated, in whole or in part, by such a municipality, may not require nonsubscribers of the cable system to pay any of the costs of the cable system:

1. PEG channels.

2. Debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of a cable system.

3. The provision of broadband service by the cable system, if the requirements of s. 66.0422 (3d) (a), (b), or (c) are satisfied.

(am) Paragraph (a) does not apply to a municipality that, on March 1, 2004, was providing cable service to the public.

(b) Paragraph (a) does not apply to a municipality if all of the following conditions apply:

1. On November 1, 2003, the public service commission has determined that the municipality is an alternative telecommunications utility under s. 196.203.

2. A majority of the governing board of the municipality votes to submit the question of supporting the operation of a cable system by the municipality to the electors in an advisory referendum and a majority of the voters in the municipality voting at the advisory referendum vote to support the operation of a cable system by the municipality.

(13) **RULE-MAKING; ENFORCEMENT.** (a) The department of financial institutions may promulgate rules interpreting or establishing procedures for this section and the department of agriculture, trade and consumer protection may promulgate rules interpreting or establishing procedures for sub. (8).

(b) Except as provided in sub. (7) (e), a municipality, interim cable operator, or video service provider that is affected by a failure to comply with this section may bring an action to enforce this section. If a court finds that a municipality, interim cable operator, or video service provider has not complied with this section, the court shall order the municipality, interim cable operator, or video service provider to comply with this section. Notwithstanding ss. 814.01, 814.02, 814.03, and 814.035, no costs may be allowed in an action under this paragraph to any party.

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

History: 2007 a. 42 ss. 6, 8; 2009 a. 178, 180.

Cross-reference: See also ch. DFI-CCS 20, Wis. adm. code.

66.0421 Access to video service. (1) **DEFINITIONS.** (c) "Video service" has the meaning given in s. 66.0420 (2) (y).

(d) "Video service provider" has the meaning given in s. 66.0420 (2) (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

(2) **INTERFERENCE PROHIBITED.** The owner or manager of a multiunit dwelling under common ownership, control or management or of a mobile home park or the association or board of directors of a condominium may not prevent a video service provider from providing video service to a subscriber who is a resident of the multiunit dwelling, mobile home park or of the condominium or interfere with a video service provider providing video service