

**Wisconsin's State Cable Franchise Law
2007 Act 42 as amended in 2019
Quick Facts**



Passage: 2007 Act 42 went into effect in 2008. The 2019-2020 budget amended the video service provider (VSP) fee provision in the law, reducing the fee VSPs pay to municipalities for the use of the ROW.

Effect: Act 42 ended the local cable franchising process, which required cable companies to meet community needs and interests and pass performance reviews, and instead instituted a state franchise, which does not require responsiveness to local needs. All local franchises were voided, unless a cable operator wanted to stay with a local franchise. None did. Many provisions typically found in local franchises were taken out of the state franchise, the terms for which are laid out in the statutes. State franchises are renewable every 10 years with a simple reapplication to the State Department of Financial Institutions.

Act 42 froze certain local franchise provisions as they existed prior to January 9, 2008 specifically:

- The franchise fee percentage a city was collecting from cable television operators in 2007 remained the same unless no fee had been collected. Then a municipality could institute up to a 5% franchise fee on video gross revenues – called a “video service provider (VSP) fee.”
 - **2019 change:** VSP fees, which are capped at 5% in federal law, are now capped at 4% in state law beginning in 2021. The cap is phased in over two years. In 2020, the cap is 4.5%. All municipalities lose 1% point of video gross revenues beginning in 2021. So if a municipality assessed a 3% fee on VSPs in 2007, it will be a 2% fee in 2021. The law makes up for the loss in revenue from Video Service Providers by replacing it with a subsidy from the State of Wisconsin. \$5 million was set aside in the 2019-2020 budget to subsidize the loss in revenue to municipalities.
- The number of PEG access channels a city is provided was frozen unless a city had no PEG channels then it would qualify for a channel(s) as long as the number of access channels provided out of a single headend or hubsite did not exceed 2 access channels serving one or more municipalities with a total population of under 50,000 or 3 access channels serving one or more municipalities with a total population over 50,000. Since headends and hubsites serve large regions, this provision has prevented municipalities who have wanted to start a PEG channel from getting PEG channel.
- The amount of dedicated PEG fees (collected by VSPs through subscriber monthly bills) remained the same until January 2011 when they terminated completely. These fees had generally helped defray the cost of PEG video production equipment, but larger cities had also negotiated with VSPs to use these fees for operating costs. Several media centers have closed due to the loss of PEG fees: Milwaukee MATA Community Media, WYOU – Madison (though a channel remains), West Allis Community Media Center, River Falls Community Television, and northern suburban Milwaukee PEG channels to name a few.
- The number and location of PEG TV program origination sites that video service providers were required to maintain was frozen. The cost of moving or adding an origination point was shifted to municipalities. Origination sites are where local programs or live meetings are inserted and go “upstream” into the video service provider’s system.

Act 42 shifted the cost of community TV almost entirely to municipalities:

- Support for Community TV must come entirely out of VSP fees and a municipality’s general fund since PEG fees were outlawed. Federal law had anticipated that franchise fees (VSP fees) would be used for PEG operating costs and PEG fees would be used for facilities and equipment. Recently, the FCC reaffirmed this arrangement in a Report & Order, saying that local franchising authorities could require video service providers to pay PEG fees to

support the capital needs of PEG centers in excess of the cap of 5% it placed on in-kind support and franchise fees based on its read of the Cable Act.

- If a PEG origination point needs to be moved or a new location is needed, the municipality is required to pay for the construction of the transmission line. (The law did say that the video service provider is required to pay for the construction of the first 200' of transmission line in the case of a moved origination point, but DFI has interpreted that provision to mean the first 200' from a headend, rendering that provision meaningless.)
- Municipalities must purchase specific transmission equipment that will output its program signal "in a manner and form that is capable of being accepted and transmitted by the video provider." Video service providers had frequently provided the transmission equipment and lines needed by a community.
- Municipalities must provide programming to all video service providers.
- Community TV centers, government buildings and school buildings can be charged for cable TV service. Previously, cable TV service in public buildings was provided at no cost by the cable operator. Since Act 42, VSPs have charged for cable television service in public buildings.

Municipal rights

- In an attempt to compensate for the loss of revenue, Governor Doyle vetoed the word "noncommercial" from the statute, hoping to enable PEG access channels to carry advertising to replace the revenue lost when PEG fees end. Some stations experimented with this and failed, since PEG channels have no way to find out the size of their viewership or the demographics of their viewership – both things needed by potential advertisers. Viewers also protested to media centers about ads, thinking it was contrary to the mission of the channel. In addition, attorneys specializing in the field believe that PEG channels are required in federal law to be noncommercial, so ads on PEG would likely be found to be illegal in a court case.
- Municipalities may audit video service provider books to ensure they are receiving the proper amount of video service provider fees and may recover fees going back 4 years

The law further lightened the Community TV burden on video service providers by:

- Enabling video providers to provide transmission capacity for PEG channels "in the most economical and technologically efficient means." This has led to poor transmission standards.
- Eliminating all penalties for insufficient or poor transmission of PEG channels.
- Enabling the video service provider to place PEG channels on any tier that "that is viewed by more than 50% of... customers." Federal law requires PEG channels to be placed on the basic tier of service that 100% of subscribers can view.

The law added programming requirement on Community TV:

- PEG channels must be "substantially utilized:" Channels must be programmed at least 40 hours per week with 60% (24 hours) of locally produced programming or the video service provider can take back the channel. Municipalities can certify that the channel will be substantially utilized and get a channel back, but this channel does not have to be viewable by more than 50% of video subscribers.

Federal law expected local governments to be advocates for their community's needs and interests in franchise negotiations with cable operators. Wisconsin's local governments are no longer in a position to do this now that the state is the franchising authority. State government needs to take up this responsibility.

"Quick Facts" is intended as a brief summary of the provisions most directly related to Community TV and does not purport to cover all provisions and nuances of the law. WCM has other handouts that provide a line-by-line description of the law. Contact Mary Cardona, WCM Executive Director, 608-215-5594 exec@wisconsincommunitymedia.com