DEPARTMENT OF JUSTICE
Antitrust Division

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Representative Phil Montgomery
Chair
Committee on Energy and Utilities
Room 129 West
P.O. Box 8953
Madison, WI 53708

Senator Jeffrey Plale
Chair
Committee on Commerce, Utilities and Rail
Room 313 South
P.O. Box 7882
Madison, WI 53707-7882

Re: A.B. 207 and S.B. 107

Dear Representative Montgomery and Senator Plale:

I write to express the views of the Antitrust Division of the U.S. Department of Justice[1] regarding A.B. 207 and S.B. 107.[2] We applaud the State of Wisconsin's efforts to ensure that the local cable-television franchising system benefits consumers by allowing additional video-service providers to enter the market. Recent efforts in other states to improve the efficiency of the cable franchise process have already yielded significant consumer benefits.

Consumers typically are best served when market forces determine where and when competitors enter. Regulatory restrictions that make it difficult for companies to enter markets tend to shield incumbents from competition and lead to higher costs, reduced innovation, and diminished choices for consumers. We believe that such restrictions should be avoided except where necessary to protect other compelling public policy goals, and even then should be tailored as narrowly as possible to limit the impact on competition.

Cable television consumers would be better served if franchising restrictions did not prevent the market from creating a wider selection of providers. Additional competition from

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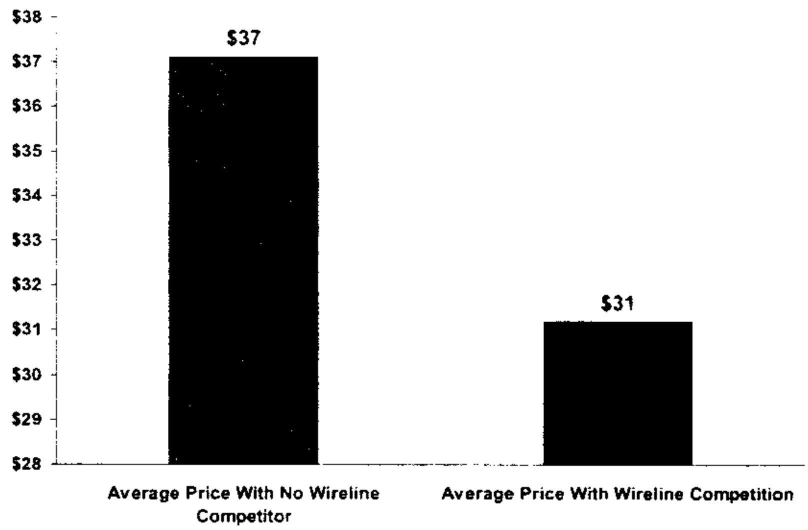
[1]The Department is one of the federal agencies responsible for enforcing the antitrust laws and protecting competition.

[2]A.B. 207, 98th Leg., Reg. Sess. (Wis. 2007); S.B. 107, 98th Leg., Reg. Sess. (Wis. 2007).

wireline video providers, including the telephone companies, has the potential to provide lower prices, better quality services, and more innovation to consumers.[3] *See* Figure 1.

Figure 1: Average Cable Rates in Areas With and Without Wireline Competition. 2001



Graph based upon data from GAO report titled, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, Rep. No. GAO-04-8 (2003) (change derived from GAO model parameters evaluated at reported mean observation of average cable price).

For example, a survey conducted last year in Texas suggests that Verizon, which had begun offering its FiOS service in some parts of the state, was able to achieve significant market share within a few months of entry.[4] The customers who reported switching providers did so primarily

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[3]*See* Gen. Accounting Office, *Issues Related to Competition and Subscriber Rates in Cable Television Industry*, Rep. No. GAO-04-8, at 9 (2003); *see also* Jerry Ellig & Jerry Brito, *Video Killed the Franchise Star: The Consumer Cost of Cable Franchising and Proposed Policy Alternatives* 12 (2006) (stating "[e]conomic research demonstrates conclusively that wireline competition leads to lower prices and improved quality"), *available at* http://www.mercatus.org/repository/docLib/20060818_Brito_Ellig_Video_Franchising_Final_WP_PDF_Aug_2006.pdf.

[4]*See* American Consumer Institute, *Does Cable Competition Really Work? A Survey of Cable TV Subscribers in Texas* 10 (2006), *available at* http://www.theamericanconsumer.org/Consumers%20Saving%20from%20Competition.pdf.

in order to obtain better quality, better packaging, better pricing, and better programming.[5] Overall, the survey found that increased competition was generating more than $2 million in annual consumer benefits in the few areas where video competition had taken hold.[6]

Delays in the cable-television franchising process can also negatively impact the roll-out of higher-speed broadband Internet services to consumers. Some new video providers, such as the telephone companies, are providing video services over upgraded networks that support voice, video, and higher-speed broadband services. Because the revenues from offering video factor into the profitability these upgrades, a delay in receiving a cable television franchise can cause new entrants to postpone modernizing their networks.

Consumer gains in both video and broadband services are more likely to be realized if franchising authorities do not impose restrictions on entry beyond those necessary to protect the public interest. Evidence suggests this has not always been the case.[7] For example, some local franchising authorities have taken a long time to process applications for franchises, made demands for goods and services (such as landscaping) that are unrelated to the provision of video services, or imposed build-out requirements that have unnecessarily discouraged competitive entry. The Federal Communications Commission recently said this conduct can create unreasonable barriers to entry into the provision of video services.[8]

Municipalities have legitimate interests in preserving the integrity of public rights of way. However, this interest generally does not justify regulations that impede competition in the provision of video programming or broadband services. Consequently, the Department believes that consumers will benefit from legislation that:

(A) establishes standard, enforceable time frames as well as a statewide process for acting on franchise applications;

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[5]*Id.* at 12, Fig. 2.

[6]*Id.* at 3. According to the survey, 48% of the consumers who switched providers reported savings that averaged more than $20 per month. *Id.* at 11.

[7]*See* Notice of Proposed Rulemaking, *In re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 20 F.C.C.R. 18581, 18584-85 (2005) (citations omitted).

[8]*See* Report and Order and Further Notice of Proposed Rulemaking, *In re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, FCC 06-180 (rel. Mar. 5, 2007).

(B) establishes objective criteria for determining what, if any, concessions localities may demand; and

(C) addresses the standard that local franchise authorities should apply in deciding whether to approve service areas proposed by new entrants.[9]

The current bills, A.B. 207 and S.B. 107, address these issues by providing a state-wide franchising process with a requirement that the Department of Financial Institutions act on a completed application within 10 business days. These provisions appear likely to benefit Wisconsin consumers.

A number of states have passed similar legislation. For example, in 2005, Texas passed a statewide franchising bill.[10] The Texas law moves cable television franchising authority from the municipalities to the Texas Public Utilities Commission (TPUC) and requires the TPUC to act on a completed franchise application within 17 business days of receipt.[11] Texas has no build-out requirements, although franchisees are prohibited from denying service based on the income level of an area.[12]

The current local cable-television franchising process can block the entry of new video competitors and slow the introduction of higher-speed broadband services. The Department applauds the State of Wisconsin's efforts to improve this process and enhance competition. As in most industries, limiting barriers to entry for video-service providers will benefit consumers by reducing costs, encouraging innovation, and broadening consumer choice.

Yours sincerely,

Thomas O. Barnett

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[9]In considering any mandated build-out requirements imposed by local cable franchising authorities, the legislature should take into account their potential entry-deterring effects. As a result, the legislature should consider whether such requirements should be imposed at all or, if so, only where necessary to prevent income discrimination.

[10]Tex. Util. Code Ann. §§ 66.001 et seq. (2005).

[11]*Id.* § 66.003.

[12]*Id.* § 66.007.