

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

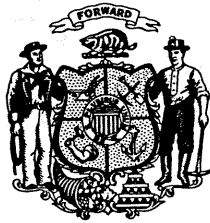
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RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-041

AN ORDER to repeal PSC 164 (title) and 164.02; to renumber PSC 164.03 and 164.04; to renumber and amend PSC 100.01, 164.01 (title) and 164.01; to amend PSC 2.71, 2.72 (intro.) and (2), 12.02 (4), 100.01 (title), 165.10 (4), 166.07 and 174.01 (1) and (2); and to create PSC 100.01 (intro.) and (2), 165.02 (14m) and (19g), 165.11, 165.12 and chapter PSC 176, relating to telecommunications and to miscellaneous rule wording changes, abandonment of facilities and services by a utility, agreements with affiliates, issuance of securities, mergers and other reorganizations and nondiscrimination.

Submitted by **PUBLIC SERVICE COMMISSION**

03-10-99 RECEIVED BY LEGISLATIVE COUNCIL.
03-30-99 REPORT SENT TO AGENCY.

RS:WF:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO

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CLEARINGHOUSE RULE 99-041

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. The last sentence of s. PSC 2.71 is explanatory in nature and should be placed in a note following the section. [See s. 1.01 (9), Manual.]
- b. Introductory material preferably should include a phrase such as "any of the following" or "all of the following" in order to clearly state requirements to the reader. This structure allows additions or subtractions to the subunits following the introduction without having to amend the word "or" or the word "and" that stands prior to the concluding subunit. In any case, in s. PSC 165.11 (3), the introduction should conclude with a colon and the phrase "both (a) and (b) below" should be deleted. If the phrase "all of the following" is included in the introduction, par. (a) 3. should conclude with a period. The entire rule should be reviewed regarding this issue. [See s. 1.03 (8), Manual.]
- c. Sections PSC 165.12 (3) and 176.03 allow the Public Service Commission to grant variances from provisions of the Wisconsin Administrative Code. The rules should contain some sort of standard by which to measure the legitimacy of a variance. For example, a standard for a variance could provide that the alternative procedure must achieve the same goals as the rule provision that is avoided.
- d. In s. PSC 176.06 (1), the first sentence is an introduction and should conclude with a colon. The second sentence can be placed in a separate subsection.

e. In s. PSC 176.08 (1), the word “will” should be replaced with “shall.” [See s. 1.01 (2), Manual.]

f. In s. PSC 176.16, subs. (2) to (5) define various terms. The definitions should be placed in sub. (1), in alphabetical order and preceded by the introduction “In this section:”. The defined terms should be included in pars. (a) to (d) and the remaining subsections should be renumbered accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The phrase “the affiliated interest subchapter” in s. PSC 176.01 should be replaced with “subchapter II.” [See s. 1.07 (2), Manual.]

b. In s. PSC 176.02 (12), the second notation “s.” should be deleted, since the citation uses the disjunctive word “or.” [See s. 1.07 (2), Manual.] The entire rule should be reviewed for this method of citation. Also, since the term “telecommunications service” is defined in sub. (13), it is unnecessary to include the phrase “, as defined in s. 196.01 (9m), Stats.,”.

c. Section 184.15, Stats., was renumbered to be s. 200.15, Stats., by 1997 Wisconsin Act 140. The renumbering of this statute should be made in s. PSC 176.09 and in the analysis to the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. It appears that the word “or” in s. PSC 176.06 (1) (h) 1. should be replaced with the word “of.”

b. Section PSC 176.06 (1) (h) 3. is unclear.

c. In s. PSC 176.10 (3), the sentence would be clearer if the phrase “issued, including” were replaced by the word “issued;” and if the second occurrence of the word “including” were replaced by the word “and.”

DATE MAILED
MARCH 9, 1999

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Rules Governing Affiliated Interest
Transactions and Financial Transactions of Telecommunications
Utilities and to Make Other Miscellaneous Amendments to Rules

1-AC-147

Public Hearing Date: April 12, 1999 at 1:30 P.M.
Public Hearing Location: Amnicon Falls Hearing Room
1st floor
Public Service Commission
610 N. Whitney Way
Madison, WI

Comments Due: April 23, 1999 by noon
FAX Due: April 22, 1999 by noon
Address Comments To: Lynda L. Dorr, Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854
FAX (608) 266-3957

NOTICE OF HEARING

The Wisconsin Public Service Commission proposes an order to repeal PSC 164(title) and 164.02; to renumber PSC 164.03 and 164.04; to renumber and amend PSC 100.01, 164.01(title) and 164.01; to amend PSC 2.71, 2.72(intro.), 2.72(2), 12.02(4), 100.01(title), 165.10(4), 166.07, 174.01(1) and (2); and to create PSC 100.01(intro.), 100.01(2), 165.02(14m), 165.02(19g), 165.11, 165.12, and 176, relating to telecommunications and: miscellaneous rule wording changes, abandonment of facilities and services by a utility, agreements with affiliates, issuance of securities, mergers and other reorganizations, and nondiscrimination.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The analysis is set forth as Attachment A hereto.

TEXT OF PROPOSED RULES

The text of the proposed rules is set forth as Attachment B hereto.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

At the time of this notice, there are 83 local exchange companies in Wisconsin, 78 of which are small telecommunications utilities, which are small businesses under s. 196.216, Stats., for purposes of s. 227.114, Stats. Some of these proposed rules may have an effect on small telecommunications utilities. For example, the effect of the revision of s. PSC 174.01(2), which makes the statutorily required change to use total capital structure instead of utility capital structure, is expected to result in fewer investigations of small telecommunications utilities. Further, in some areas the rules specify that the Commission will consider issues that are particularly important to small telecommunications utilities. For example, among the issues the Commission may consider when reviewing an agreement between a utility and its affiliate is that the costs of separation, such as separate staffing, are generally greater for small telecommunications utilities than larger telecommunications utilities. When considering whether any investigation is necessary, the cost associated with Commission requirements will be considered in relation to the benefit expected to be achieved by limiting possible cross-subsidization or preventing discrimination. In this manner the rules allow the Commission to apply less stringent compliance requirements for small telecommunications utilities and a means of limiting further investigation.

In other areas, measures which reduce the impact on small businesses were adopted into the rules and applied to all those to which the rules apply. For example, overall the rules have attempted to limit the amount of information necessary in a filing, allowing for specific information to be requested at a later date if necessary. This should ease the impact on all telecommunications utilities, including small telecommunications utilities, by providing that the additional information need only be provided in the cases where that additional information is specifically needed.

Finally, attempts have been made to avoid differences between how things are reported to the federal government and how they are reported to the Commission, thus easing such reporting. Additional methods for avoiding hearings in certain cases are included, and routine requirements for agreements to be filed with the Commission are waived for smaller transactions.

The agency has considered all the methods in s. 227.114(2), Stats., for reducing the impact of the rules on small telecommunications utilities and finds incorporating any further measures would be contrary to the statutory objectives that are the basis for the proposed rules.

FISCAL ESTIMATE

These rules will have no fiscal impact on the agency or on any other state or local units of government as shown on the attached Fiscal Estimate Form (Attachment C). No additional fiscal burden will be imposed on the state or on small businesses as a result of these proposed rules.

ENVIRONMENTAL ANALYSIS

This is a Type III action under s. PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention.

Docket 1-AC-147

Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Commission will hold a public hearing on these proposed rules in the **Amnicon Falls Hearing Room**, at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on **April 12, 1999 at 1:30 P.M.** This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

WRITTEN COMMENTS

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until **April 23, 1999 at noon (April 22, 1999 at noon, if filed by fax).**

All written comments must include a reference on the filing to docket 1-AC-147. **File by one mode only.**

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1. Industry parties should submit **an original and 15 copies.** Members of the general public need **only file an original.** File by **April 23, 1999, at noon.**

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet **MUST** state **"Official Filing,"** the docket number (1-AC-147), and the number of pages (limited to 20 pages for fax comments). File by **April 22, 1999, at noon.**

CONTACT PERSONS

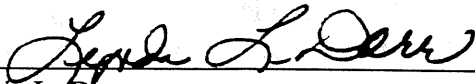
Questions regarding this matter should be directed to Anne Wiecki, Telecommunications Division, at (608) 267-0913, or by email at wiecka@psc.state.wi.us. Hearing-or speech-impaired individuals may also use the Commission's TTY number, (608) 267-1479.

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The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact Anne Wiecki, as indicated in the previous paragraph, as soon as possible.

Dated at Madison, Wisconsin March 4, 1999

By the Commission.



Lynda L. Dorr
Secretary to the Commission

LLD:JSM:AWW:reb:g:\notice\pending\I-AC-147

ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Statutory authority: ss. 196.02(1) and (3), 196.215(5)(b)2., 196.219(3)(h), and 227.11(2), Stats.

Statutes interpreted: ss. 184.15, 196.20(1m), 196.204, 196.215(5)(b), 196.219, 196.52, 196.525, 196.79, 196.805, and 196.81, Stats.

Related federal statutes and regulations: 47 USC 251, 252 and 272; and 47 CFR 32 and 64.

The material in this rule packet can be broken down into three main categories. The first category is clarifying reorganization and miscellaneous wording changes made necessary by 1993 Wisconsin Act 496. The second category is abandonment of facilities and discontinuance of service by telecommunications utilities. The third category is financial-related matters such as transactions between telecommunications utilities and their affiliates, security issuances, and reorganizations or mergers. Details concerning each of these categories follows.

Miscellaneous Wording Changes and Reorganization

1993 Wisconsin Act 496 included miscellaneous changes which made language changes in various administrative rules necessary. For example, s. 196.595(1)(c), Stats., regarding advertising practices no longer includes telecommunications utilities in the statutory definition of "public utility" so a change is necessary in the rule which implements that statute. Additionally, language is updated to use the term "telecommunications" instead of "telephone" and cross-references are revised. Finally, some clarifying reorganization is done.

Provisions in this rule packet:

- Revise s. PSC 12.02(3) to exempt telecommunications utilities from the advertising rules, thereby conforming to the statute.
- Remove the reference to telecommunications utilities in ch. PSC 100 (Affiliated Transactions) and provides a cross-reference to the new ch. PSC 176, which specifically addresses such transactions in the telecommunications industry.
- Reorganize the administrative code by moving procedures for rate changes by small telecommunications companies from ch. PSC 164 (Filing of Information by Telephone Companies) to ch. PSC 174 (Small Telecommunications Utility). Also moves a provision on the maintenance of records about discounted rates to employees from ch. PSC 164 (Filing of Information by Telephone Companies) to ch. PSC 165 (Standards for Telecommunications Service) where other provisions about records which companies should keep are found.

Abandonment of Facilities and Discontinuance of Service

1993 Wisconsin Act 496 changed the requirements related to the discontinuance of service by a telecommunications utility (s. 196.20 and s. 196.81, Stats.), but did not change the requirements associated with the abandonment of facilities (s. 196.81, Stats.).

Section 196.20(1m)(b), Stats., provides notice requirements for discontinuance of any service by a telecommunications utility without specifying how much notice is required. (However, the Commission must determine whether the discontinuance is authorized under the statutes within 30 days.) Section 196.20(1m)(d), Stats., provides that the Commission will determine when and under what conditions a telecommunications utility may discontinue basic local service, basic intrastate long distance service, or any element of universal service. In a slightly different vein, s. 196.499(4), Stats., requires 60 days prior notice for discontinuance of basic intrastate long distance service by telecommunications carriers (long distance providers who do not provide basic local service, except as resellers).

Provisions in this rule packet:

- Move the Commission rules relating to abandonment of facilities from s. PSC 2.71 to new s. PSC 165.11, which is located in a chapter that deals exclusively with telecommunications, in order to separately discuss the abandonment of facilities and the discontinuance of services. Despite certain wording and structural changes, except for the portion which provides for a hearing through the submission of written documents, no substantive changes are intended by the movement or re-wording of ss. PSC 165.11(1), (2), and (3)(a)2.
- Reiterate the Commission's authority over abandonment of facilities and clarifies that the public interest standard is evaluated under s. 196.03(6), Stats.
- Provide that a hearing concerning abandonment of facilities may involve personal testimony or written documents, or both.
- Provide additional options under which the Commission may dispense with a hearing associated with the abandonment of facilities. The additional options are:
 - When there are no actual or known potential customers in the area served by the facilities.
 - When there are duplicate facilities capable of providing the same services in the area served by the facilities.
 - When there are no objections within a certain period after a notice mentioning the possibility of waiver is mailed or if the Commission finds that exceptional circumstances exist.
- Clarifies when the abandonment procedures apply.

- Clarifies that if a utility no longer provides services using its own facilities because it sold those facilities, it may be required to acquire facilities in the future to continue providing services. In particular, this clarification is made to address a possible sale-leaseback scenario where a utility sells its facilities and provides services using leased facilities.
- Move the Commission rules relating to the discontinuance of any telecommunications service from s. PSC 2.71 to new s. PSC 165.12, which is in a chapter that deals exclusively with telecommunications.
- Require advance notice of service discontinuance to affected customers and provision of the proposed notice to the Commission in advance of issuance. This advance notice allows the Commission to assure uninterrupted provision of any element of universal service and to prepare to answer questions about the discontinuance.
- List the information to be included in notices. This includes a description of the service, identification of available replacement services and contact names at the utility and the Commission.
- Collect the information necessary to determine if the service discontinuance is authorized under the statutes.
- Provide a cross-reference to ss. PSC 160.13 and PSC 160.14 which relate to the discontinuance of basic local service, basic intrastate long distance service or any element of universal service.

Financial Related Matters

General Considerations

As a result of 1993 Wisconsin Act 496, the Commission has multiple avenues for certifying providers of telecommunications services. In general, incumbent providers retain their certification according to s. 196.50, Stats., and are subject to all provisions of ch. 196 and ch. 184, Stats. However, under partial deregulation or alternative forms of regulation, the Commission can suspend numerous provisions of law for particular utilities. Additionally, alternative telecommunications utilities, certified under s. 196.203, Stats., are exempt from all provisions ch. 196 and ch. 184, Stats., unless the Commission determines that the public interest requires the imposition of identified provisions. Finally, telecommunications carriers (long distance providers) certified under s. 196.499, Stats., are only subject to certain identified provisions.

Accordingly, the applicable provisions of the statutes can change from utility to utility. To reflect this, most of these rules identify that they are applicable only to entities subject to certain named statutes. Each entity will have to look to the provisions of its certification and other orders of the Commission, such as partial deregulation orders, to determine whether or not various parts of the rules apply to that entity.

Affiliated Agreements

As a result of 1993 Wisconsin Act 496, s. 196.52(3)(b), Stats., provides that prior Commission approval is no longer required for telecommunications utilities to enter into agreements with affiliates. However, telecommunications utilities are still required to file such affiliated agreements with the Commission and the agreements are subject to the Commission's supervisory jurisdiction to limit cross-subsidization and prohibit discrimination.

Additionally, according to s. 196.525, Stats., telecommunications utilities may now lend funds to affiliates, officers, and directors. Previously, these loans were prohibited except for under very limited circumstances that were to be specified in Commission rules. Since these loans involve agreements between affiliated entities and persons, the s. 196.52, Stats., affiliated interest provisions also apply.

Provisions in this rule packet:

- Create a new ch. PSC 176 applicable only to telecommunications utilities: Subchapter One creates definitions and allows limited and temporary variance from the rules by the Commission; Subchapter Two covers transactions between telecommunications utilities and affiliates; Subchapter Three covers the issuance of securities; Subchapter Four covers reorganizations, consolidations, mergers and acquisitions; and Subchapter Five covers discrimination.
- Clarify in definitions that, while allowable, any loans to officers or directors are also arrangements with affiliates and are therefore subject to notice requirements as well as cross-subsidy and discrimination supervision.
- Require that agreements be in writing or be reduced to a written description, with a limited exception for services provided pursuant to tariffs or Commission approved agreements. This exception does not apply if the details of the agreement make it appear that the service will only be used by the affiliate.
- Identify which agreements must be automatically filed with the Commission based on the size of the utility and the dollar value of the agreement, and requires that other agreements or information be available upon request.
- Require agreements that must be filed automatically to be filed within 30 days after the agreement becomes effective.
- Identify the information to be filed. This includes the terms of the agreement such as methods used to determine transfer pricing, methods used to allocate costs, and identification of the parties to the agreement.
- Require certification that the valuation of transactions in the agreement is in accordance with one of five listed methods. Utilities are also given the option of identifying why none of the five listed valuation methods are used. The listed valuation methods parallel the Federal

Communications Commission (FCC) rules in 47 CFR 32.27, although some specifics are slightly different. The differences are:

- The federal rules do not require that when valuation is based on a tariff or interconnection agreement, there must be at least one nonaffiliated subscriber under the tariff or one nonaffiliated individual contract with the same terms as the interconnection agreement. However, the rule language prevents a distortion in the valuation due to the tariff (for example) being so narrow that the affiliate will be the only subscriber.
 - The federal rules use the terms “services” and “assets” while this rule refers only to “transactions.” Use of this term is to clarify that both tangibles and intangibles are included. While this language is considered to be equivalent to the federal language, it was used to avoid confusion over the inclusion of intangibles.
 - The federal rules exempt companies that use average schedules rather than actual costs from using these valuation methods for federal purposes. However, these companies are still subject to the Commission’s supervisory jurisdiction.
 - The federal rules do not allow use of a different valuation method and an explanation of why one of the listed methods was not used. However, the rule language allows additional flexibility to the industry and prevents differences between what must be reported to the federal government and what must be reported to the state since it would allow the use of a future federally approved valuation method without requiring an amendment to this rule.
- Require a statement that a good faith determination of fair market value was made when that is all or part of the basis for a valuation. This requirement parallels FCC rules in 47 CFR 32.27 (b) and (c).
 - Provide a list of types of transactions identified as having a greater risk for cross-subsidy or discrimination and requires an officer to identify if the agreement allows any of those types of transactions. The rule also allows for explanations as to why the officer believes the agreement complies with cross-subsidy and nondiscrimination requirements, even if it does allow those types of transactions. auth?
 - List some of the issues the Commission may consider when reviewing information about agreements with affiliates. These issues include economies of scale and scope, separation costs, the relative size of the telecommunications utility and the potential for cross-subsidy or discrimination based on the type of activity.

Securities and Reorganizations, Consolidations, Mergers, and Acquisitions

As a result of 1993 Wisconsin Act 496, “telecommunications utilities” were removed from the definition of public service corporations which must obtain prior Commission approval before issuing any securities. However, s. 184.15, Stats., created Commission notice requirements for

certain telecommunications utilities that issue securities, provides for monitoring of the capital structure of certain telecommunications utilities, and describes some circumstances under which the Commission may consider restricting a telecommunications utility's ability to pay dividends.

Likewise, changes were made as to Commission authority over reorganizations, in s. 196.79, Stats., and consolidations, mergers, and acquisitions, in s. 196.80 and s. 196.805, Stats. Prior approval of reorganizations, consolidations, mergers, and acquisitions is no longer required, but is replaced with notification requirements related to the Commission's continuing supervisory jurisdiction over such transactions.

Finally, s. 196.215(1)(am), Stats., was revised to define an "equity thin" utility on the basis of its total capital and s. 196.215 (5) (c), Stats., was revised to define "building capital" on the basis of total capital. Both definitions are used for determining whether the Commission or consumers may initiate a rate review for a small telecommunications utility. Section PSC 174.01(2), which establishes the target rate of return used in rate reviews and which was formerly based on a utility capital basis, is revised to match the statutory provisions and reflect the calculation of the target earnings on a total capital basis rather than a utility capital basis. Revisions to that chapter are merely to clarify and conform to the statute. No review of other issues or consideration of other changes occurred.

Provisions in this rule packet:

- Establish security issuance reporting requirements for telecommunications utilities subject to rate of return regulation. The information collected will allow monitoring of capital structure, and review for possible cross-subsidy and discrimination issues.
- Collect information concerning whether the securities issued were associated with a government sponsored loan program. This information relates to the Commission's supervisory jurisdiction as a telecommunications utility's capital is less likely to be impaired even with high levels of debt if the interest rate on the debt is very low and if relatively easy repayment terms exist (as are typically associated with government sponsored loan programs). In the converse, where the securities are used for purposes which have uncertain or more risky revenue or expenses associated with them, only smaller levels of debt can be safely handled.
- Explain the Commission's authority and process concerning security issuances.
- Clarify that while some telecommunications utility security issuances are not subject to the filing requirements of this section, the Commission can still obtain information regarding those security issuances in order to meet its supervisory obligations.
- Establish filing requirements related to reorganizations, consolidations, mergers, and acquisitions. Collects information regarding how the transaction was structured, the associated accounting treatment, the legal entities involved, their certification status, and whether services will be continued.

- Explain the Commission's authority and process concerning such transactions.
- Revise s. PSC 174.01(2) to reflect calculation of target earnings on a total capital basis, thereby conforming to the statute.
- Revise s. PSC 174.01(1) to indicate that the target rates of return calculated under that section are not binding on any other earnings or revenue requirement calculations or evaluations performed by the Commission.

Consumer Protection

As a result of 1993 Wisconsin Act 496, s. 196.219, Stats., concerning the protection of telecommunications consumers, was created. In particular, s. 196.219(3)(h), Stats., prohibits a telecommunications utility or any other telecommunications provider from giving preference to or discriminating in favor of its own retail department or the retail department of an affiliate in the provision of regulated services. This prohibition applies to the extent prohibited by the FCC or by rules established by this Commission. After Act 496 was passed, the federal Telecommunications Act of 1996 was enacted and includes both similar and additional nondiscrimination requirements.

Provisions in this rule packet:

- Clarify what will be considered a retail department.
- Clarify that each act of providing an service, product or facility must be in compliance with federal and state statutes and regulations, FCC orders, and Commission orders in effect at the time they are actually provided.

SECTION 1. PSC 2.71 is amended to read:

PSC 2.71 Abandonment or discontinuance of public utility service. No abandonment or discontinuance of facilities or service of gas, electric, ~~telephone~~, or water utilities shall be made without commission authority (s. 196.81, Stats.). A hearing will be held upon an application to abandon or discontinue service or facilities except in cases where it is accompanied by a map indicating location of facilities to be abandoned or facilities from which service is to be discontinued as well as all service locations thereon and a statement that all actual or potential subscribers or consumers have either consented to or waived objection to such abandonment or discontinuance. If such information is furnished, the commission may dispense with a hearing. See ss. PSC 165.11 and 165.12 for rules regarding abandonment of telecommunications facilities and discontinuance of telecommunications services.

SECTION 2. PSC 2.72 (intro.) is amended to read:

PSC 2.72 Sale of utility; reports; assessments. In all cases where the purchase and sale of a complete utility property involves an abandonment of service and the dissolution of the selling utility, it shall be a condition to the commission's approval of the purchase of such utility property, where commission approval is applicable, that the purchasing utility shall assume the following obligations of the selling utility and shall be responsible:

SECTION 3. PSC 2.72(2) is amended to read:

(2) For all charges which are due or may become due from the selling utility under the provisions of s. 196.85 (2)(a), Stats., relating to the current part-year public utility operations;

SECTION 4. PSC 12.02(4) is amended to read:

(4) "Public utility" has the meaning ~~set forth~~ given in s. 196.595(1)(c), Stats. "Public utility" does not include a sewer or water service, ~~or~~ a cooperative association organized under ch. 185, Stats., or a telecommunications utility.

SECTION 5. PSC 100.01(title) is amended to read:

PSC 100.01 (title) ~~Person defined.~~ Definitions.

SECTION 6. PSC 100.01(intro.) is created to read:

PSC 100.01(intro.) In this chapter:

SECTION 7. PSC 100.01 is renumbered PSC 100.01(1) and amended to read:

(1) ~~Under s. 196.52 (2), Stats., the term "person" includes trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers and, partnerships.~~ "Person" has the meaning given in s. 196.52(1), Stats. This definition should be observed in filing information in response to this order.

SECTION 8. PSC 100.01(2) is created to read:

(2) "Public utility" has the meaning given in s. 196.01(5), Stats., but does not include a telecommunications utility.

Note: Rules for transactions between a telecommunications utility and an affiliate are in ch. PSC 176.

SECTION 9. Chapter PSC 164(title) is repealed.

SECTION 10. PSC 164.01(title) and 164.01 are renumbered PSC 165.035(title) and 165.035 and amended to read:

PSC 165.035 Filing of information. Discounted rates or free services to employes, pensioners and officers. Any ~~public telecommunications utility engaged in furnishing telephone service~~ which determines to furnish service to its employes, pensioners, and officers at no charge or at charges less than those prescribed in its published schedules or tariffs, as provided in s. 196.60 (2), Stats., ~~as amended by ch. 499, laws of 1963,~~ shall maintain, and render to inform the public service commission of Wisconsin as hereinafter prescribed of upon request, records regarding the conditions and circumstances under which it the service will be furnished.

SECTION 11. PSC 164.02 is repealed.

SECTION 12. PSC 164.03 and PSC 164.04 are renumbered PSC 174.02 and PSC 174.03.

SECTION 13. PSC 165.02(14m) is created to read:

(14m) "Known potential customers or subscribers" means those customers or subscribers who have pending service requests for a telecommunications service.

SECTION 14. PSC 165.02(19g) is created to read:

(19g) "Responsible officer" means an officer of the legal entity who has the authority to perform the action at issue.

Change

SECTION 15. PSC 165.10(4) is amended to read:

(4) If a telecommunications utility proposes the exclusive nonutility merchandising of a service or product being provided under tariff, the commission shall ~~not~~ consider the filing as a proposal for ~~abandonment~~ discontinuance of service pursuant to s. ~~196.81~~ 196.20 (1m), Stats., and subject to s. PSC 165.12. ~~(See also s. PSC 2.71).~~

SECTION 16. PSC 165.11 and 165.12 are created to read:

PSC 165.11 Abandonment of telecommunications facilities. (1) As provided in s. 196.81, Stats., no telecommunications utility may abandon telecommunications facilities without prior commission approval.

(2) Except as provided in sub. (3), a hearing shall be held concerning any application to abandon facilities. In this section, "hearing" means a process including personal testimony or written comments, or both, that provides the opportunity to present evidence and to rebut or offer countervailing evidence.

(S)

196.26

(3) The commission may waive a hearing if no one objects within 20 days of the date on which a notice of investigation mentioning the possibility of hearing waiver is mailed by the commission. If any objection to waiver is raised, the commission may still waive a hearing if it finds that exceptional circumstances warrant the waiver, or if it finds that the application to abandon facilities includes both (a) and (b) below. *(S)*

(a) A map indicating the location of facilities to be abandoned and the area served by those facilities, and a statement by a responsible officer that:

(S)
Map
change

1. The applicant utility has no existing or known potential customers or subscribers in the area served by the facilities;

all
of the
following

2. All of the applicant utility's existing or known potential customers or subscribers in the area served by the facilities have either consented to or waived objection to such abandonment; or

(S)

3. Duplicate facilities capable of providing the current services are available to provide those services in the area served by the facilities to be abandoned; and

(b) Any additional information the commission determines is necessary to decide whether to waive a hearing.

(4) This section applies when facilities are totally removed from service or when a utility sells facilities to an entity that is not subject to ss. 196.20, 196.204, 196.219 and 196.81, Stats. If the selling utility continues to provide the same services in the area served by the facilities that it provided before the sale but is not using its own facilities to do so, it bears the continuing obligation to provide any services which are not authorized to be discontinued under s. 196.20(1m), Stats., including the duty, as necessary, to acquire or build facilities or to take any other steps necessary to continue to provide such services. If the selling utility will not continue

to provide the same services in the area served by the facilities that it provided before the sale, the service discontinuance is subject to s. 196.20(1m), Stats., and s. PSC 165.12.

(5) This section does not apply to routine upgrades and plant replacements.

(6) The commission may not approve a request by a telecommunications utility to abandon a right-of-way unless the requirements of s. 196.81(2), Stats., are met.

(7) Pursuant to s. 196.81(1), Stats., in granting its approval of an application to abandon facilities, the commission may impose any term, condition, or requirement it deems necessary to protect the public interest as determined under s. 196.03(6), Stats.

PSC 165.12 Discontinuance of a telecommunications service. (1) In order to discontinue a telecommunications service to an exchange or part of an exchange under s. 196.20(1m)(a), Stats., a telecommunications utility shall: *→ do all of the following*

(a) Not less than 30 days before the effective date of the discontinuance, notify each affected customer subscribing to the service about the service discontinuance by means of a bill insert over one complete billing cycle, using the utility's usual insertion and mailing procedures. If customer bills are not rendered monthly in envelopes, or as an alternative to a bill insert, the utility may furnish the information to customers by a special mailing or by a message in the information portion of a bill;

(b) Not less than 30 days before the effective date of the discontinuance, publish a notice of service discontinuance in the daily or weekly newspaper having the greatest general circulation within the affected exchange or part of an exchange;

(c) File with the commission:

1. Not less than 21 days before providing the notices in pars. (a) and (b), a copy of any notice of service discontinuance proposed for issuance or publication pursuant to this subsection, and any information that the utility believes is necessary in order for the commission to assess the adequacy of any notice, including but not limited to 2

a. A statement as to whether the utility considers this service to be a basic local exchange service, a basic message telecommunications service or an element of universal service;

b. The reason for the service discontinuance; and

c. The number and class of customers affected;

2. Not more than 10 days after the effective date of the service discontinuance, an affidavit of compliance with this subsection; and

3. On or before the effective date of the service discontinuance, the necessary tariff amendments. 3

(d) Provide any additional notice required by the commission to ensure complete and adequate notice of the service discontinuance. If such additional notice is required and the commission finds that it is warranted under the circumstances, the commission may require delay of the effective date of the service discontinuance. Such a delay cannot be for more than 5 30 days following the date on which the additional notice is provided.

Note: In order to avoid delays, the commission encourages telecommunications utilities to file notices well in advance of the initial issuance or publication date so that the commission can determine whether any additional notice is required.

(2) Any notice of service discontinuance mailed to customers or published in a newspaper pursuant to sub. (1) shall include at least the following:

(a) A description of each service to be discontinued and of any replacement service offered or to be offered in the area by the telecommunications utility discontinuing the service or any other telecommunications provider, whether the replacement service is the same as or similar to the service to be discontinued;

(b) Identification of the exchange or part of the exchange to which the described service will be discontinued; and

(c) The name and address of the telecommunications utility providing notice, the name, title, phone number and facsimile number of a contact person at the utility, the commission's mailing address, the telephone number and e-mail address of a contact person named by the commission staff, and a statement that questions or comments may be directed to the utility or to the commission representative;

Note: Utilities should call the telecommunications division to obtain the name of the appropriate contact person for a particular notice.

(3) Notwithstanding the notice requirements under sub. (1), the commission may shorten the notice requirements if exceptional circumstances warrant such a change.

(4) Pursuant to s. 196.20(1m)(c), Stats., within 30 days after the date of publication of the notice, the commission may, on its own motion or on the application of any person, including other telecommunications providers, initiate an investigation to determine if the service discontinuance is authorized under s. 196.20(1m), Stats. Following a hearing, the commission may order continued provision of any service not authorized to be discontinued.

(5) The commission shall determine when and under what conditions a telecommunications utility may discontinue basic local exchange service, basic message telecommunications service, or any element of universal service to an exchange or part of an exchange. A proposal to discontinue any such service is also subject to s. PSC 160.13 or s. PSC 160.14, or both.

Note: PSC 160.13 and 160.14 may require a 60-day notice rather than the 30-day notice required under this section.

A proposal by a telecommunications carrier to abandon basic message telecommunications service to an exchange or part of an exchange is subject to s. 196.499, Stats., and s. PSC 160.14, which require a 60-day notice.

SECTION 17. PSC 166.07 is amended to read:

PSC 166.07 Accompanying statement. All maps filed with the commission shall be accompanied by a statement of undertaking to serve on a sheet 8 ½ x 11 inches in size in the following form:

"The attached map, dated _____, delineates the boundary and territory of the _____ exchange in which the _____ ~~Telephone Company telecommunications utility~~ telecommunications utility now serves and will serve the public. The ~~Telephone Company telecommunications utility~~ undertakes, subject to its extension rules and filed tariffs, to make extensions of its lines and service at any time when such service may be requested or demanded by any person located within such territory as designated on such map.

~~"The _____ Telephone Company will not extend its lines and service beyond the territory and exchange boundary defined on the attached map, except~~

~~(a) to serve persons located in the territory designated as open on such map.~~

~~(b) to continue service to customers presently located in foreign exchange territory as indicated on such map.~~

“Nothing in this undertaking is intended to limit the power of the Public Service Commission to direct the furnishing of service where the same is found to be required to meet the demands of public convenience and necessity.”

By _____
 Dates: _____

SECTION 18. PSC 174.01(1) and (2) are amended to read:

(1) Method of calculation. The target rate of return for a small telecommunications utility for purposes of establishing a rate of return range under s. 196.215(5)(b)3., Stats., shall be calculated by adding Moody's average of yields on Baa public utility bonds, expressed in percent, to the base percentage set in sub. (2). Nothing in this section is intended to prohibit the commission from using a capital structure or a rate of return different from what is shown in or calculated under this section when determining the appropriate revenue requirements or evaluating the earnings levels for a small telecommunications utility for purposes other than s. 196.215(5)(b)3., Stats.

(2) Percentages. The percentage to be used for calculating the target rate of return for a small telecommunications utility shall be set by calculating the percentage of the small telecommunications utility's common stock equity in its ~~utility~~-total capital structure. The percentages for calculating the target rate of return are set forth in the following table:

Common Stock Equity	<u>Base Percentage</u>
70% or more	3.65%
65% to 69.99%	4.15%
60% to 64.99%	4.65%
55% to 59.99%	5.15%
50% to 54.99%	5.65%
45% to 49.99%	6.15%
40% to 44.99%	6.65%
35% to 39.99%	7.65%
30% to 34.99%	8.15%
25% to 29.99%	8.65%

SECTION 19. PSC 176 is created to read:

**TELECOMMUNICATIONS UTILITIES: TRANSACTIONS WITH AFFILIATES;
SECURITIES ISSUANCE; REORGANIZATIONS, CONSOLIDATIONS, MERGERS OR
ACQUISITIONS, AND DISCRIMINATION**

**Subchapter I – Purpose, Definitions, and
Variance from the Rules**

PSC 176.01 Purpose
PSC 176.02 Definitions
PSC 176.03 Variance from the rules

PSC 176.10 Filing Requirements
PSC 176.11 Commission Procedures

**Subchapter II – Transactions Between a
Telecommunications Utility and an Affiliate**

PSC 176.04 Applicability
PSC 176.05 Form and Filing Requirements
PSC 176.06 Information in Filing
PSC 176.07 Effect of Noncompliance
PSC 176.08 Commission Procedures

**Subchapter IV-Reorganization, Consolidation,
Merger, or Acquisition**

PSC 176.12 Applicability
PSC 176.13 Filing and Information Requirements
PSC 176.14 Commission Jurisdiction and
Procedures

Subchapter III – Securities Issuance

PSC 176.09 Applicability

Subchapter V - Discrimination

PSC 176.15 Applicability
PSC 176.16 Discrimination Prohibited

SUBCHAPTER I – PURPOSE, DEFINITIONS, AND VARIANCE FROM THE RULES

176.01 Purpose. The purpose of this chapter is to set forth form and filing requirements concerning transactions between a telecommunications utility and an affiliate; telecommunications utility securities issuances; and telecommunications utility reorganizations, consolidations, mergers, or acquisitions. The chapter also provides procedural information about the commission's consideration of these matters. Finally, the chapter addresses discrimination by a telecommunications utility or any other telecommunications provider, and the effect of noncompliance with the affiliated interest subchapter. *cf. also Subch. 176.06(2) subch. I*

176.02 Definitions. (1) "Administrative service" includes business processes of a support nature which do not directly impact the provision of telecommunications services including executive, planning, accounts and finance, external relations, human resources, legal, procurement, safety, insurance and general office supplies; and information management including the planning, development, testing, implementation and maintenance of separate databases and computer application systems not associated with regulated services or facilities. "Administrative service" does not include use of an official services network or access to customer databases associated with regulated services.

(2) "Affiliate" means any person, as defined in s. 196.52 (1), Stats., that has any affiliated interest relationship, as defined in s. 196.52 (1) (a) to (h), Stats., with respect to a telecommunications utility.

(3) "Affiliated interest contract or arrangement" means any contract or arrangement between a telecommunications utility and one or more affiliates.

(4) "Contract or arrangement" has the meaning given in s. 196.52(3)(a), Stats., and includes but is not limited to loans by a telecommunications utility to any of its officers or directors.

(5) "Consolidation, merger or acquisition" means any of the actions listed in s. 196.805(2), Stats.

(6) "Official services network" means a telecommunications utility's business network which is used to manage the operation of local exchange services by performing various support functions such as connecting directory assistance operators in different LATAs with customers.

(7) "Property" shall be construed in its broadest sense, and shall include any tangible or intangible property and any title or associated rights of ownership, leasehold or use that are capable of transfer.

(8) "Responsible officer" means an officer of the legal entity who has the authority to perform the action at issue.

(9) "Reorganization" means any change of legal structure, organization, or by-laws that results in a change of the regulatory status of any telecommunications services or facilities, or the exchange of stock for stock of an affiliated entity including the formation of a holding company. "Reorganization" includes reorganization under 11 USC 1101-1146 or an assignment for the benefit of creditors under ch. 128, Stats.

(10) "Right" shall be construed in its broadest sense, and shall include any intangible rights that are held or exercisable pursuant to statute, rule or order or that are cognizable in law or equity.

(11) "Securities" means capital stock and evidences of indebtedness of a telecommunications utility, not including any obligation falling due one year or less after its date and bearing a date not later than the day of sale.

(12) "Service" shall be construed in its broadest sense, and includes but is not limited to the furnishing of telecommunications service, ~~as defined in s. 196.01(9m), Stats.~~, pursuant to tariffs filed under either s. 196.19 or s. 196.194 (1), Stats.

(13) "Telecommunications service" has the meaning given in s. 196.01(9m), Stats.

176.03 Variance from the rules. Exceptional or unusual situations may warrant limited or temporary variance from the rules in this chapter. Upon due investigation of the facts and circumstances involved, the commission may adopt requirements as to any individual telecommunications utility or other telecommunications provider which shall be lesser, greater, other or different than those provided in this chapter.

SUBCHAPTER II –TRANSACTIONS BETWEEN A TELECOMMUNICATIONS UTILITY AND AN AFFILIATE

176.04 Applicability. This subchapter applies to any affiliated interest contract or arrangement involving any telecommunications utility subject to, or made subject to, s. 196.52, Stats.

176.05 Form and filing requirements.

(1) (a) All affiliated interest contracts or arrangements shall be in or reduced to writing unless all of the following criteria are satisfied:

1. An affiliate procures a telecommunications service pursuant to a tariff of the telecommunications utility filed under either s. 196.19 or s. 196.194 (1), Stats.;
2. The service procured is not so customized or unique as to price, terms or conditions as to make the affiliate the only practical subscriber for the service; and
3. For the entire time period for which the affiliate subscribes to the service, the utility has obtained at least one nonaffiliate subscriber to the service or at least one nonaffiliate individual contract with the same terms.

Note: An affiliated interest contract or arrangement which did not need to be in writing at its inception may later need to be put in writing if the above criteria are no longer met; for example, if the only nonaffiliate subscriber ends its subscription to the service. It may then also need to be filed with the commission pursuant to sub. (2)(a).

(b) All written affiliated interest contracts shall be executed by the parties bound by the contract.

(c) All affiliated interest arrangements reduced to writing shall be verified by a responsible officer of at least one of the participating parties. The written description shall include a statement of the persons involved; the nature of the transaction arranged; and the service, property, right or thing being provided, purchased, sold, leased, exchanged or furnished.

(2) (a) All affiliated interest contracts or arrangements in or reduced to writing shall be filed with the commission within 30 days after the date the contract or arrangement becomes effective, except that this requirement shall not apply to: *does*

1. Any contract or arrangement where the amount of consideration involved is not in excess of the smaller of \$25,000 or 5 percent of the total common stock equity of the telecommunications utility. *whichever is smaller? 196.52 (3)(b)*

2. For a telecommunications utility whose intrastate gross operating revenues in the previous calendar year exceeded \$100,000,000, any contract or arrangement the value of which does not exceed \$100,000.

But see (3)(b) & (5)(b)

(b) Regularly recurring payments under a general or continuing contract or arrangement which aggregate a greater annual amount may not be broken down into a series of transactions to come within the exemptions under par. (a).

(3) Upon request of the commission, a telecommunications utility shall file any affiliated interest contract or arrangement not otherwise required to be in writing or filed with the commission pursuant to subs. (1) and (2).

(4) Upon request of the commission, any information on any affiliated interest contract or arrangement shall be made available to the commission if, in its judgment, such information is necessary in order to enforce s. 196.204 or s. 196.219, Stats.

(5) An original and one copy of the contract or arrangement to be filed pursuant to the requirements of this section shall be filed with the secretary of the commission.

Note: The address for the commission is: 610 N. Whitney Way, P.O. Box 7854, Madison WI 53707-7854.

176.06 Information in filing.

(1) The following information shall be included in any filing made pursuant to s. PSC 176.05: Information can be provided through reference to documents previously filed with the commission where circumstances have not changed.

filed under this

- (a) A copy of the affiliated interest contract or arrangement;
- (b) The name, place of business, legal mailing address and personal or corporate relationships of each party to the contract or arrangement;
- (c) If not contained in the contract or arrangement:
 - 1. A description of the service, property, right, or thing covered, and the party providing it;
 - 2. A description of the transfer price, with a determination of the cost of the service, right, property or thing being transferred including labor, materials, supplies, overhead, return on equity, and discount or markup;
 - 3. The method used to allocate joint or common costs; and
 - 4. The method used to distribute time of shared officers or employees.
- (d) Organizational charts or diagrams, as revised, showing all entities, legal or otherwise, affiliated with the parties to the contract or arrangement;
- (e) An executive organization chart or general description, as revised, showing all lines of authority;
- (f) A list of the officers and directors of each party to the contract;
- (g) A statement signed by a responsible officer of at least one of the participating parties certifying that:
 - 1. All transactions covered by the affiliated interest contract or arrangement are valued using one of the following means or that the filing includes an explanation of what valuation method is used and why one of the following valuations is not used:
 - a. Valuation based on a tariff rate or an approved agreement pursuant to 47 USC 251 or 252 which also has at least one nonaffiliated subscriber or nonaffiliated individual contract with the same terms.
 - b. Valuation based on prevailing price, where similar transactions with third parties encompass greater than 50 percent of all transactions.
 - c. Valuation based on the higher of fully distributed cost or fair market value, for transactions from the utility to the affiliate.
 - d. Valuation based on the lower of fully distributed cost or fair market value, for transactions from the affiliate to the utility.
 - e. Valuation based on fully distributed costs, for services received by a telecommunications utility from an affiliate that exists solely to provide services to members of that utility's corporate family.
 - 2. Where applicable, a good faith determination of fair market value was made before valuing the transaction.
- (h) A statement signed by a responsible officer of at least one of the participating parties that identifies if the contract or arrangement allows for any of the following types of transactions:
 - 1. Joint ownership between the telecommunications utility and an affiliate of any telecommunications facilities or the land and buildings where those facilities are located.
 - 2. Sharing between the telecommunications utility and an affiliate of operating, installation or maintenance functions associated with telecommunications facilities.
 - 3. Use of telecommunications facilities when such use is not available to and being utilized by nonaffiliates.
 - 4. Transfer of ownership from the utility to an affiliate of any telecommunications facilities without the transfer opportunity also being made available to nonaffiliated entities in a nondiscriminatory manner.

5. Sharing between the utility and an affiliate of officers, directors or employees.
6. An affiliate obtaining credit under an arrangement that would permit the creditor, upon default, to have recourse to the assets of the telecommunications utility of which it is an affiliate.
7. Provision to an affiliate of any service, property, right or thing other than an administrative service that is not also made available to nonaffiliated entities in a nondiscriminatory manner.

Note: Identification of these types of transactions is required because they possess a greater risk of cross-subsidization or discrimination than other transactions, but the facts and circumstances of each case must be considered individually.

Examples of "any service, property, right or thing other than administrative service" include but are not limited to: the use of an official services network, the use of customer databases associated with regulated services or facilities, the provision of joint marketing, and the provision of billing and collection services. "Administrative service" is defined in s. PSC 176.02(1).

(2) A responsible officer may also include a description or explanation as to why he or she believes the contract or arrangement complies with s. 196.204 or §. 196.219, Stats., or both.

176.07 Effect of noncompliance. For purposes of enforcing ss. 196.204 and 196.219, Stats., every affiliated interest contract or arrangement involving a telecommunications utility and one or more affiliates shall be void and unenforceable if it is not either exempt under s. PSC 176.05 or in compliance with ss. PSC 176.05, 176.06, and 176.16.

176.08 Commission procedures. (1) Based on the facts and circumstances of each affiliated interest contract or arrangement, the commission will determine if further investigation is necessary to enforce s. 196.204, Stats. or §. 196.219, Stats., or both. (5) Shall

(2) In its review of an affiliated interest contract or arrangement, the commission may consider issues such as:

(a) The savings that can result from economies of scale and scope and the increased costs that can result from separated operations, compared to the benefit expected to be achieved from limiting possible cross-subsidization or preventing discrimination.

(b) The proportionally higher separation and opportunity costs a small telecommunications utility may experience when compared to such costs for a large telecommunications utility.

(c) The generally lower potential for cross-subsidization or discrimination when providing administrative services to an affiliate than when providing network services to an affiliate.

(3) Nothing in this chapter shall preclude the commission from obtaining any information concerning any affiliated interest contract or arrangement if, in the commission's judgment, such information is necessary in order to enforce ss. 196.204 and 196.219, Stats.

SUBCHAPTER III – SECURITIES ISSUANCE

4 **176.09 Applicability.** This subchapter applies to any telecommunications utility subject to, or made subject to, s. 184.15, Stats.

200.15 **176.10 Filing requirements.** Within 10 business days after the issuance of any securities by a telecommunications utility subject to rate-of-return regulation, the issuing telecommunications utility shall file a notice with the commission containing the following:

- (1) The amount and character of the securities;
- (2) The purpose for which the securities were issued, including any nonutility purposes, and an allocation of the security proceeds between utility and nonutility purposes;
- (3) The terms on which the securities were issued, including a detailed description and a detailed statement of the value of any property or services already received or to be received as payment for the securities; including ^{and} an indication of any property or services already received or to be received, the cost of which is to be reimbursed by the telecommunications utility by the proceeds of the securities issuance;
- (4) A statement of the assets and liabilities of the telecommunications utility immediately following the issuance of the securities; and
- (5) A statement as to whether the securities were issued:
 - (a) In connection with loans for rural telecommunications facilities made pursuant to the rural electrification act of 1936 (7 USC 901), as amended;
 - (b) By a corporation organized under ch. 185, Stats., for purposes of furnishing telecommunications service in rural areas;
 - (c) In connection with a rural utilities service economic development loan or grant made pursuant to the rural electrification act of 1936 (7 USC 901), as amended and, if so, a description of the associated nonutility investments made or to be made, identification of the amount of the proceeds used or to be used, and identification of any third party involved; or
 - (d) In connection with any similar government sponsored or guaranteed telecommunications grant or loan program.

176.11 Commission procedures. (1) Based on the facts and circumstances of each telecommunications utility, the commission shall monitor capital structure and determine whether to open an investigation. Such investigation may consider issues of cross-subsidization, consumer protection, capital impairment, equity-thin status, and dividend restrictions, as provided for in ss. 184.15, 196.204, and 196.219, Stats.

(2) Nothing in this chapter shall preclude the commission from obtaining any information on any capital stock or evidence of indebtedness of a telecommunications utility including those exempted from the definition of securities in s. PSC 176.02(11) and those about which no notice under s. PSC 176.10 need be filed if, in the commission's judgment, such information is necessary in order to monitor or investigate under s. 184.15, ~~s.~~ 196.204, or ~~s.~~ 196.219, Stats. X

SUBCHAPTER IV – REORGANIZATION, CONSOLIDATION, MERGER, OR ACQUISITION

176.12 Applicability. (1) This subchapter applies to any telecommunications utility subject to s. 196.79 or ~~s.~~ 196.805, Stats., or both.

(2) If a reorganization, consolidation, merger or acquisition involves a telecommunications utility selling facilities to an entity that is not subject to ss. 196.20, 196.204, 196.219, and 196.81, Stats., or results in facilities being totally removed from service, the abandonment of facilities is subject to s. 196.81, Stats., and s. PSC 165.11.

176.13 Filing and information requirements. (1) As required under ss. 196.79 (2) and 196.805 (1), Stats, a telecommunications utility shall file a notice with the commission not more than 10 business days after completion of any reorganization, consolidation, merger, or acquisition. For purposes of this section, "completion" of a reorganization includes confirmation of a plan of reorganization under 11 USC 1129 or a court settlement of the account in an assignment for the benefit of creditors under ch. 128, Stats.

(2) The notice shall contain the following:

(a) The date of and a description of the reorganization, consolidation, merger, or acquisition.

(b) A description of the corporate or other legal entities involved, including the names of any surviving legal entities, the type of business in which each is engaged and their relationships to each other, a list of the officers and directors of any surviving legal entities, and a description of how the transaction was accomplished.

(c) The accounting and recording of the transaction in journal entry form, or a statement of the assets, liabilities and equity before and after the transaction including but not limited to any acquisition adjustment amount as described in 47 CFR 32.2005(a) or special dividend relating to the transaction.

(d) A description of any liabilities or assets, tangible or intangible, transferred to or from the telecommunications utility in connection with the transaction.

(e) The certification status of each entity involved in the transaction that will own telecommunications facilities in Wisconsin after the transaction, or a description of the arrangements that have been made to obtain certification in Wisconsin.

(f) A statement as to whether the transaction involves a utility selling telecommunications facilities to an entity that is not subject to ss. 196.20, 196.204, 196.219, and 196.81, Stats., or results in facilities being totally removed from service. If so, the abandonment of facilities is subject to s. 196.81, Stats., and s. PSC 165.11.

(g) A statement from a responsible officer of each entity involved in the transaction as to whether, after the transaction, it will continue to offer the same telecommunications services it offered before the transaction in all areas of the state that it served before the transaction. If not, any service discontinuance is subject to s. 196.20(1m), Stats., and s. PSC 165.12.

(3) Copies of the organizational documents associated with the reorganization, consolidation, merger, or acquisition shall be made available to the commission upon request. Such organizational documents include but are not limited to the following:

(a) Articles of incorporation or related amendments of any surviving legal entities;

(b) By-laws of any surviving legal entities;

(c) Applicable articles of merger or similar documents;

(d) Applicable purchase or lease agreements; and

(e) Confirmed plan of reorganization under 11 USC 1129 or court settlement of the account in an assignment for the benefit of creditors under ch. 128, Stats.

176.14 Commission jurisdiction and procedures. (1) The commission retains supervisory jurisdiction as necessary to enforce ss. 196.204 and 196.219, Stats. This may include opening an investigation and issuing an order if necessary.

(2) Nothing in this chapter shall preclude the commission from obtaining any information on any reorganization, consolidation, merger, or acquisition involving a telecommunications utility if, in the commission's judgment, such information is necessary in order to exercise its supervisory jurisdiction.

SUBCHAPTER V - DISCRIMINATION

176.15 Applicability. This subchapter applies to any telecommunications utility and any other telecommunications provider subject to, or made subject to, s. 196.219, Stats.

176.16 Discrimination prohibited. This section implements s. 196.219(3)(h), Stats.

(1) As provided in s. 196.219(3)(h), Stats.:

(a) With respect to its regulated services, a telecommunications utility shall not discriminate or give preference to an affiliate, to the utility's own retail department, or to an affiliate's retail department in the provision of services, products or facilities; and

(b) With respect to its offering of local exchange services, any other telecommunications provider shall not discriminate or give preference to an affiliate, to the provider's own retail department, or to an affiliate's retail department in the provision of services, products or facilities.

(2) In this section, "services" includes information associated with regulated services or local exchange services, and "facilities" includes standards and computer software related to facilities associated with regulated services or local exchange services. In this section, "customer" includes the retail department of a utility or any other telecommunication provider.

(3) In this section, "provision of a service, product or facility" shall be construed broadly. The provision of a service or product includes the creation of arrangements necessary for or related to the delivery to a customer of a specific service or product, and each instance of delivery of the service or product. The provision of a facility includes any design, installation, maintenance, or repair of a facility.

(4) A telecommunications utility's own retail department includes its means of performing nonutility merchandising activities under s. PSC 165.10. Any other telecommunications provider's own retail department includes its means of retailing services, products or facilities other than local exchange services, products or facilities.

(5) The retail department of a telecommunication utility's affiliate or any other telecommunications provider's affiliate includes the affiliate's means of retailing any services, products or facilities.

(6) Each provision of a service, product, or facility by a telecommunications utility or any other telecommunications provider shall be in compliance with all relevant federal and state statutes, federal and state regulations, federal communications commission orders and commission orders.

In
s. 16.11
alpha

1997 Session

LRB or Bill No./Adm. Rule No.

1-AC-147

Amendment No. if Applicable

 ORIGINAL UPDATED CORRECTED SUPPLEMENTAL**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

Subject

Rules Regarding Affiliated Agreements, Financial Matters, Consumer Protection and Other Matters Relating to Telecommunications Utilities

Fiscal EffectState: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Decrease CostsLocal: No local government costs
1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts
Fund Sources Affected GPR FED PRO PRS SEG SEG-S**Affected Ch. 20 Appropriations**

20.155(l)(g)

Assumptions Used in Arriving at Fiscal Estimate

These rules will have no fiscal impact on the agency or on any other state or local governments. No additional fiscal burden will be imposed on small business as a result of these proposed rules.

Long-Range Fiscal Implications

None.

Agency/Prepared by: (Name & Phone No.)

PSC/Gordon Grant 267-9086

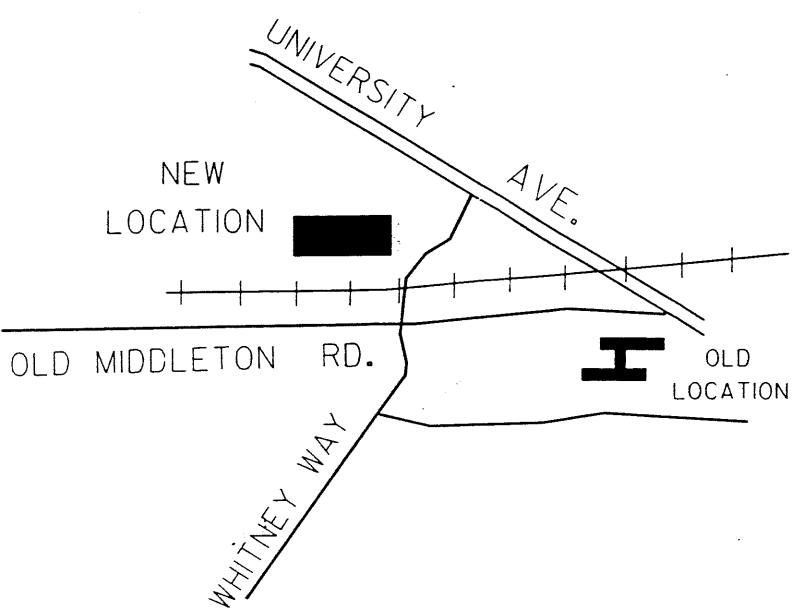
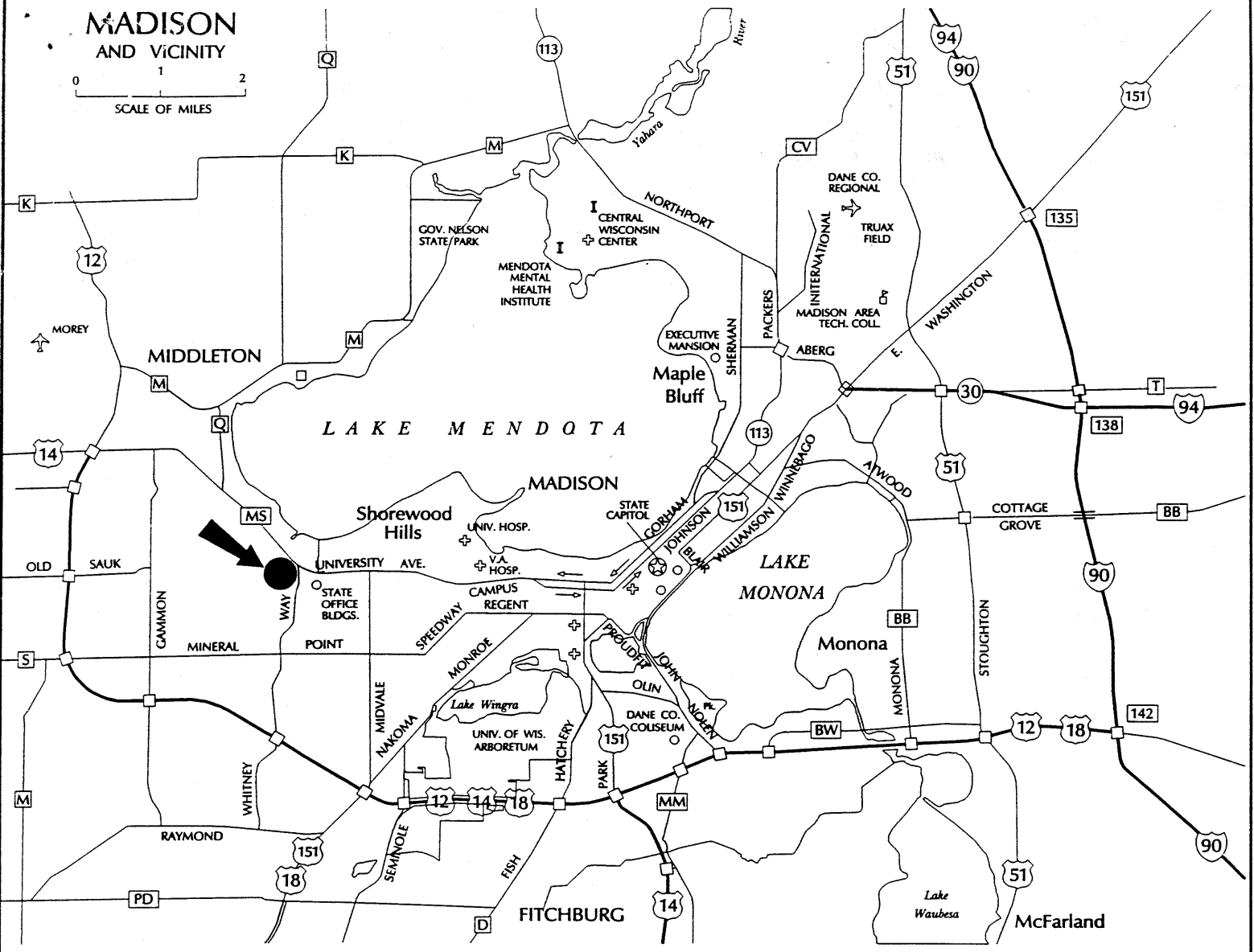
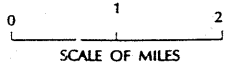
Authorized Signature/Telephone No.

Gordon Grant

Date

10/23/98

**MADISON
AND VICINITY**



**NEW LOCATION
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COMMISSION
OF WISCONSIN**

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