

TESTIMONY
CONCERNING THE UNIVERSAL SERVICE FUND RULES:
TEMPORARY DELAY OF THE COMMENCEMENT
DATE FOR THE ASSESSMENT OF WIRELESS PROVIDERS
UNDER THE STATE UNIVERSAL SERVICE FUND

BEFORE THE
JOINT COMMITTEE FOR REVIEW
OF ADMINISTRATIVE RULES

Peter L. Gardon
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, s.c.
P.O. Box 2018
Madison, WI 53701-2018
608-229-2200 - Telephone

October 11, 2000

INTRODUCTION

My name is Peter Gardon. I am a shareholder with Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. A substantial portion of my practice involves the representation of telecommunications and energy companies in proceedings before the Public Service Commission of Wisconsin ("Commission"), as well as other state agencies. I also have served as special counsel on behalf of the State of Wisconsin in several matters.

I was involved in the discussions relating to the creation of Wisconsin's Information Superhighway legislation, 1993 Wisconsin Act 496. In addition, I was involved in the creation and implementation of the universal service fund rules as promulgated by the Commission in 1996 and have participated in the proceedings related to the review of those rules.

In the most recent *Biennial Review of Universal Service Fund Rules in Wisconsin Administrative Code Chapter PSC 160*, Docket No. 1-AC-166, the Commission amended § PSC 160.18, Wis. Admin. Code, to subject wireless providers to universal service fund assessments. However, the Wisconsin universal service statute, § 196.218(3)(e), Stats., and the similar Commission regulation, § PSC 160.15, Wis. Admin. Code, if applied to Commercial Mobile Radio Service ("CMRS" or "wireless") providers, would contravene federal law by forbidding CMRS providers from passing through universal service contributions to their customers. If wireless carriers must make universal service contributions, a state cannot regulate a wireless provider's rates by forbidding carriers from passing such contributions through to their customers. Moreover, requiring state

universal service contributions from CMRS carriers without permitting them to pass those contributions on to their customers is not in the interest of Wisconsin consumers or the development of a competitive and viable wireless industry in Wisconsin.

Consequently, before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended. Amendments to these provisions will help mitigate the legal and policy concerns surrounding the assessment of wireless providers and ensure that the public interest will be served. Moreover, amendments will allow Wisconsin to avoid running afoul of the federal law that prohibits states from regulating the rates of wireless providers.

I. FORBIDDING WIRELESS CARRIERS FROM PASSING THROUGH UNIVERSAL SERVICE FUND CONTRIBUTIONS CONSTITUTES IMPERMISSIBLE RATE REGULATION AND VIOLATES FEDERAL LAW.

Section 196.218, Stats., of the Wisconsin universal service statute and § PSC 160.15, Wis. Admin. Code, of the Commission's regulations, as applied to CMRS providers, preclude wireless providers from placing a surcharge on customer bills for the contributions paid into the state universal service fund. Section 196.218(3)(e) Stats., provides, in pertinent part:

... a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

Section PSC 160.15, Wis. Admin. Code, provides:

Telecommunications providers may not establish a surcharge on customer bills for contributing to or recovering any portion of the providers' payment of universal service fund obligations.

However, state and local governments are prohibited from regulating the entry of or the rates charged by wireless providers. A state's prohibition of a wireless carrier's imposition of a specific charge on its customers' bills violates 47 U.S.C. § 332(c)(3)(A)'s prohibition on rate regulation.¹

Section 196.218(3)(e), Stats., and § PSC 160.150, Wis. Admin. Code, are the type of state regulation of CMRS practices which have a direct and significant effect on CMRS rates. These provisions explicitly forbid CMRS providers from imposing certain "surcharges" on their customers' bills and address what may be placed on the customer's invoice. The obvious intention of these provisions is to govern what CMRS providers can and cannot charge to customers, which is clear rate regulation.

Section 332(c)(3)(A) provides for a procedure whereby a state, if it believes either that market conditions will not offer protection from unjust CMRS rates or that CMRS

¹ 47 U.S.C. § 332(c)(3)(A) of the Telecommunications Act of 1996 (47 U.S.C. § 332 (c)(3)(A)), in pertinent part, provides:

(3) State preemption. (A) Notwithstanding sections 152(b) and 221(b) [47 U.S.C. §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence in this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that-

- (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or
- (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State

has become a substitute for the landline telephone exchange service in the state, may petition the FCC for authority to regulate CMRS rates. However, Wisconsin has filed no such petition and, thus, has no authority to regulate wireless rates as § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, would purport to do.

Accordingly, wireless providers properly can be assessed universal service fund contributions in Wisconsin only if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended so that wireless providers are not prohibited from passing through their universal service fund contributions to customers. Since this circumstance has not occurred, the commencement date for the assessment of wireless providers under the state universal service fund should be delayed until § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended.

Specifically, the Joint Committee should suspend that portion of § PSC 160.18(10), Wis. Admin. Code, which establishes the date that the assessment of wireless providers is to commence. The Joint Committee should suspend the language of the rule indicated in red-line:

~~"The commission shall obtain the information necessary to process the assessment of commercial mobile radio service providers." and shall mail bills to such providers within 90 days of May 1, 2000. These bills will include assessments back to the effective date of May 1, 2000."~~

In addition to suspending a portion of § PSC 160.18(10), Wis. Admin. Code, the Joint Committee should request the Commission to temporarily delay the commencement date for the assessment of wireless providers until January 1, 2002, pending amendments to § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code.

It should be noted that the proposed delay in the commencement date for the assessment of wireless providers would exempt only *wireless providers* from contributing to the universal service fund and only for a *temporary* period of time. Once § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended to permit wireless providers to pass their universal service fund contributions on to their customers, the assessment of wireless providers would commence. Moreover, temporarily delaying the commencement date for the assessment of wireless providers would not affect overall contributions to the universal service fund or the universal service fund programs. The Commission simply would recalculate contribution amounts due, pursuant to § 196.218(3), Stats., temporarily exempting wireless providers from the calculation.

II. RECENT CASES CONFIRM THAT A STATE CANNOT REGULATE THE RATES OF CMRS PROVIDERS.

The position in Section I that prohibiting wireless providers from passing through their universal service fund contributions to customers under § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, violates § 332(c)(3)(A), is independent of and unrelated to the determinations made in three court decisions permitting the assessment of wireless providers.² In other words, even if those cases were decided correctly, they do not answer, refute, or deal in any way with the position that § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, as applied to wireless providers, violate federal

² See *Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.*, 149 F.3d 1058 (10th Cir. 1998); *Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*, 168 F.3d 1332 (D.C. Cir. 1999); and *Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission*, 183 F.3d 393 (5th Cir. 1999).

law if wireless providers are required to pay into the universal service fund without also being permitted to pass those contributions on to their customers.

Furthermore, these cases explicitly found that states may require universal service contributions from wireless providers *as long as it does not constitute the regulation of rates*.³ For example, in *Texas Office of Public Utility Counsel, et al. v. FCC*, 183 F.3d 393 (5th Cir. 1999), the United States Court of Appeals for the Fifth Circuit noted that pursuant to the FCC's reading of § 332(c)(3)(A), "states retain the ability to compel universal service contributions as long as it does not constitute regulation of rates . . ." *Id.*, at 432. Stated otherwise, where a state's imposition of universal service fund requirements on CMRS providers constitutes a regulation of rates, as it would if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are applied to wireless providers, federal law is violated. Consequently, these cases are consistent with and not contrary to the position stated in Section I that, under federal law, Wisconsin cannot require wireless providers to contribute to the universal service fund *and* prohibit them from passing through the universal service fund contribution to their customers under § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code. Such a prohibition constitutes rate regulation under 47 U.S.C. § 332(c)(3)(A).

³ This holding is not discussed in Messrs. Stolzenberg's and Schmidt's Memorandum to Senator Jauch and Representative Hutchinson, dated January 19, 2000.

III. IT IS NOT IN THE PUBLIC INTEREST TO IMPOSE UNIVERSAL SERVICE FUND CONTRIBUTION REQUIREMENTS ON WIRELESS PROVIDERS WITHOUT PERMITTING WIRELESS PROVIDERS TO PASS THOSE CONTRIBUTIONS ON TO THEIR CUSTOMERS.

The imposition of universal service fund assessments on CMRS providers in Wisconsin, without permitting them to pass those contributions on to their customers, would be detrimental to the public interest because such an assessment artificially will decrease wireless usage by adversely affecting competitive rates. Decreased wireless usage, in turn, discourages the development of wireless as a replacement for landline services. Until wireless succeeds as such a replacement, it will not compete for local exchange customers.

The wireless marketplace currently is one of the most robustly competitive segments of the telecommunications industry. Indeed, the highly competitive nature of the wireless market in recent years has led to lower prices and more choices for American consumers, including the residents of Wisconsin. Although wireless competition is vigorous and subscriber growth is accelerating rapidly, the wireless industry is extremely vulnerable to price increases since they offer "complementary" services. Most Americans still perceive wireless service as a complement to fixed landline service, not as a substitute. The primary reason is price. Despite dramatic price reductions in the recent past, wireless service remains more expensive than fixed landline service.

As a more expensive, complementary service -- notwithstanding recent and dramatic price reductions -- wireless providers are extremely vulnerable to price increases of any kind. Simply put, price increases such as those brought about by

universal service assessments artificially suppress demand for wireless services because the benefit of a call no longer outweighs the higher cost of the call. The universal service assessment imposes a cost increase on the "bottom line" of a wireless customer's bill.

Such cost increases, whatever their source, acutely are felt in emerging telecommunications markets. Specifically, studies have shown that wireless services have a much higher elasticity of demand than landline services.⁴ Consumers are more likely to forgo using their wireless phone in response to price increases than they are in response to increased local rates. Until wireless service represents a true alternative to local exchange offerings, this demand disparity is unlikely to change.

If the demand for wireless services decreases, the likelihood that wireless services will compete directly with landline services decreases as well. The Commission recognized that since competition for local exchange customers results in lower prices and better services, the public interest is not served if wireless growth is stymied. Unless the volume of wireless usage increases and wireless rates are decreased further, thereby reducing the landline/wireless price differential, competition for the local exchange customer will not develop. Thus, any attempt to impose universal service fund assessments upon CMRS providers without permitting them to pass those contributions on to their customers undermines the clear public interest in wireless services offering genuine competition for local exchange services.

⁴ See Jerry A. Hausman, *Valuing the Effect of Regulation on New Services in Telecommunications in Economic Activity: Microeconomics* (1997), at 1 (Brookings Institution); *Taxation by Telecommunications Regulation in Tax Policy and the Economy*, National Bureau of Economic Research.

CONCLUSION

The operation of § PSC 160.18, Wis. Admin. Code, in conjunction with § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, which prohibit the establishment of a surcharge on customer bills concerning universal service fund assessments, violates federal law. Accordingly, a portion of § PSC 160.18(10), Wis. Admin. Code, should be suspended to permit the Commission to temporarily delay the commencement date for the assessment of wireless providers until § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, can be amended to remedy the conflict with federal law. Moreover, the Joint Committee specifically should request the Commission to temporarily delay the commencement date for the assessment of wireless providers until January 1, 2002, pending the required amendments.

I thank you for the opportunity to provide this testimony.

MADISON\67886SLM:SLH 10/10/00

DATE: October 11, 2000

TO: Members of the Joint Committee for Review of Administrative Rules

FROM: Airadigm Communications
Ameritech Cellular
CenturyTel
Midwest Wireless
Nextel
Rural Cellular d/b/a UNICEL
Sprint PCS
United States Cellular Corporation
Wisconsin State Telecommunications Association

RE: Temporary Delay of the Commencement Date for the Assessment of Wireless Providers Under the State Universal Service Fund.

I. Executive Summary.

A recent amendment to § PSC 160.18, Wis. Admin. Code, which requires wireless providers to contribute to the state universal service fund, conflicts with federal law under Wisconsin's current statutory scheme. Specifically, the operation of newly amended § PSC 160.18, Wis. Admin. Code, in conjunction with § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, which prohibit the establishment of a surcharge on customer bills concerning universal service fund assessments, violates 47 U.S.C. § 332(c)(3)(A), which prohibits states from regulating the rates of wireless providers.

To remedy this conflict with federal law, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their universal service fund contributions on to their customers. Moreover, until the amendments are enacted, the Joint Committee for Review of Administrative Rules ("Joint Committee") should suspend a portion of § PSC 160.18(10), Wis. Admin. Code, to permit the Commission to temporarily delay the commencement date for the assessment of wireless providers to avoid the conflict with federal law.

The proposed delay in the commencement date for the assessment of wireless providers would exempt only *wireless providers* from contributing to the universal service fund and only for a *temporary* period of time. Moreover, the proposed delay would not affect overall contributions to the universal service fund or the universal service fund programs.

Assessing wireless providers under the state universal service fund, without permitting wireless providers to pass those contributions on to their customers, artificially will decrease wireless usage due to less competitive rates. The public interest will not be served if wireless growth is stymied.

II. Introduction.

Section PSC 160.18, Wis. Admin. Code, recently was amended to subject wireless providers to universal service fund assessments. However, the operation of § PSC 160.18, Wis. Admin. Code, in conjunction with § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, which prohibit the establishment of a surcharge on customer bills concerning universal service fund assessments, violates federal law. Accordingly, this memorandum describes why it is necessary that the Joint Committee suspend a portion of § PSC 160.18(10), Wis. Admin. Code, and request the Public Service Commission of Wisconsin ("Commission") to temporarily delay the commencement date for the assessment of wireless providers, until § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, can be amended to remedy the conflict with federal law.

The wireless industry is experiencing vigorous competition and subscriber growth is accelerating rapidly. However, the wireless industry is extremely vulnerable to price increases since they offer "complementary" services. Assessing wireless providers under the universal service fund, without permitting wireless providers to pass those contributions on to their customers, artificially will decrease wireless usage due to less competitive rates. If the demand for wireless service decreases, the likelihood that wireless service will compete directly with landline services decreases as well. This lack of competition will have an especially negative effect in rural areas of the state where wireless communications will be the most likely alternative to landline services. The public interest will not be served if wireless growth is stymied.

Accordingly, before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their universal service fund contributions on to their customers. Amendments to these provisions will help mitigate the legal and policy concerns surrounding the assessment of wireless providers and ensure that the public interest will be served. Moreover, amendments will allow Wisconsin to avoid running afoul of the federal law that prohibits states from regulating the rates of wireless providers.

III. Issues.

Before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their universal service fund contributions on to their customers and, thereby, remedy any violation of federal law. Moreover, amendments to § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, are necessary to ensure that competition in this developing industry remains vibrant and continues its growth.

A. Legal Issues.

Section PSC 160.18, Wis. Admin. Code, as amended, requires wireless providers to contribute to the universal service fund. Section 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, however, prohibit wireless providers from establishing a surcharge on customer bills concerning universal service fund assessments. Specifically, § 196.218(3)(e), Stats., provides:¹

Except as provided in s. 196.196(2)(d), a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

Section 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, in conjunction with § PSC 160.18, Wis. Admin. Code, impose a form of rate regulation by prohibiting wireless providers from establishing surcharges on customers' bills to collect contributions required under the universal service fund. Unless these provisions are amended, Wisconsin will be in direct conflict with federal law since the Commission would be regulating the rates of wireless providers.

Federal law prohibits the regulation of rates of commercial mobile radio service providers. Section 47 U.S.C. § 332(c)(3)(A), in part, states:

(3) State preemption. (A) Notwithstanding sections 152(b) and 221(b) [47 U.S.C. §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this

¹ Section PSC 160.15, Wis. Admin. Code, similarly provides: "Telecommunications providers may not establish a surcharge on customers bills for contributing to or recovering any portion of the provider's payment of universal service fund obligations."

paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. . . .

Section 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, as applied to wireless providers, violate federal law by regulating the prices and charges of wireless providers. These provisions explicitly forbid wireless providers from imposing certain charges on their customers' bills and limit what properly may be placed on a customer's invoice. The clear intention of these provisions is to govern what wireless providers can and cannot charge customers, which is clear rate regulation.

The fact that § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, violate the federal law prohibiting rate regulation of wireless providers is independent of and not governed in any way by the recent cases which have concluded that requiring wireless providers to pay a universal service fund assessment is not, in and of itself, prohibited by 47 U.S.C. § 332(c)(3)(A). Not discussed in Messrs. Stolzenberg's and Schmidt's Memorandum to Senator Jauch and Representative Hutchinson, dated January 19, 2000, is the fact that those cases confirm that where a state's imposition of universal service fund requirements on wireless providers constitutes a regulation of rates, as it would if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are applied to wireless providers, federal law is violated. Moreover, none of those cases dealt with a state statute that prohibited the pass through to customers of universal service fund assessments. In fact, in other states that assess wireless providers under a universal service fund, wireless providers explicitly are allowed -- or required -- to pass through such charges to their customers. Before wireless providers are assessed under the fund in Wisconsin, the relevant Wisconsin Statutes and regulations must be amended to similarly allow wireless providers to establish a surcharge on their customers' bills to recover contributions required under the universal service fund.

B. Policy Issues.

The imposition of universal service fund assessments on wireless providers in Wisconsin, without permitting wireless providers to pass those contributions on to their customers, would be detrimental to the public interest because such an assessment artificially would decrease wireless usage due to less competitive rates. Wireless competition in Wisconsin is vigorous and subscriber growth is accelerating rapidly.

However, wireless providers are extremely vulnerable to price increases of any kind since they offer "complementary" services. Cost increases, whatever their source, are acutely felt in emerging telecommunications markets such as wireless. Increased prices only will stifle the potential of competition between wireless services and landline services.

If the demand for wireless service decreases, the likelihood that wireless service will compete directly with landline services decreases as well. Competition for local exchange customers will result in lower prices and better service. The public interest will not be served if wireless growth is stymied.

IV. Necessary Action By the Joint Committee.

To implement legislative intent to assess wireless providers in accordance with federal law, § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their assessment under the universal service fund through to their customers as a surcharge on bills. Moreover, until these provisions are amended, a portion of § PSC 160.18(10), Wis. Admin. Code, should be suspended to permit the Commission to temporarily delay the commencement of wireless providers' contributions to the universal service fund.

It should be noted that the proposed delay in the commencement date for the assessment of wireless providers would exempt only *wireless providers* from contributing to the universal service fund and only for a *temporary* period of time. Once § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended to permit wireless providers to pass their universal service fund contributions on to their customers, the assessment of wireless providers would commence. Moreover, temporarily delaying the commencement date for the assessment of wireless providers would not affect overall contributions to the universal service fund or the universal service fund programs. The Commission simply would recalculate contribution amounts due, pursuant to § 196.218(3), Stats., temporarily exempting wireless providers from the calculation.

Pursuant to § 227.26, Stats., the Joint Committee may suspend a portion of § PSC 160.18, Wis. Admin. Code, to permit the Commission to temporarily delay the commencement date for the assessment of wireless providers. Specifically, we request that the Joint Committee suspend that

portion of § PSC 160.18(10), Wis. Admin. Code, indicated in red-line below, which establishes the date that the assessment of wireless providers is to commence.

The commission shall obtain the information necessary to process the assessment of commercial mobile radio service providers ~~and shall mail bills to such providers within 90 days of May 1, 2000. These bills will include assessments back to the effective date of May 1, 2000.~~

In addition to suspending this red-lined language, we ask that the Joint Committee request the Commission to temporarily delay the commencement date for the assessment of wireless providers until January 1, 2002, pending amendments to § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, to permit wireless providers to pass their universal service fund contributions on to their customers.

V. Conclusion.

For the reasons set forth above, § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended before the assessment of wireless providers under § PSC 160.18, Wis. Admin. Code, commences. Without such amendments, Wisconsin will be in violation of federal law and the competitive well-being of the wireless industry will be threatened. Accordingly, we request that the Joint Committee suspend a portion of § PSC 160.18(10), Wis. Admin. Code, to permit the Commission to temporarily delay the commencement date for the assessment of wireless providers under the state universal service fund until January 1, 2002.

Wisconsin State Telecommunications Association, Inc.

JOHN KLATT, President
MICHAEL D. JENSEN, Vice President
RAY J. RIORDAN, J.D. CAE
Executive Vice President and General Counsel



6602 NORMANDY LANE
MADISON, WISCONSIN 53719
PHONE: (608) 833-8866
FAX: (608) 833-2676
E-mail: wsta@tds.net
Website: <http://www.wsta-net.org>

October 11, 2000

TO: Members of the Joint Committee for Review of Administrative Rules

FROM: Airadigm Communications
Ameritech Cellular
CenturyTel
Midwest Wireless
Nextel
Rural Cellular d/b/a UNICEL
Sprint PCS
United States Cellular Corporation
Wisconsin State Telecommunications Association

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To remedy this conflict with federal law, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their universal service fund contributions on to their customers. Moreover, until the amendments are enacted, the Joint Committee for Review of Administrative Rules ("Joint Committee") should suspend a portion of § PSC 160.18(10), Wis. Admin. Code, to permit the Commission to temporarily delay the

DIRECTORS:
PAUL D. BERG, Camp Douglas
DAVID A. BYERS, Mount Horeb
CHRISTINE CELLEY, Milwaukee
ROGER L. HERMSEN, Abrams

MICHAEL D. JENSEN, Amery
RHONDA J. JOHNSON, Milwaukee
JOHN KLATT, Luck
DIANA LaPOINTE, Oxford
DAVID J. LULL, Blue River

AL MAHNKE, Wittenberg
DANIEL W. MATSON, Sun Prairie
LARRY PUTZSTUCK, Appleton
LOUIS D. REILLY III, Madison
DUANE W. RING, JR., La Crosse

PATRICK D. RIORDAN, Pulaski
TODD C. SCHAFER, Clintonville
ROBERT J. SCHULZE, Little Chute
THOMAS R. SQUIRES, Manawa
DEAN W. VOEKS, Madison

commencement date for the assessment of wireless providers to avoid the conflict with federal law.

The proposed delay in the commencement date for the assessment of wireless providers would exempt only *wireless providers* from contributing to the universal service fund and only for a *temporary* period of time. Moreover, the proposed delay would not affect overall contributions to the universal service fund or the universal service fund programs.

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II. Introduction.

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The wireless industry is experiencing vigorous competition and subscriber growth is accelerating rapidly. However, the wireless industry is extremely vulnerable to price increases since they offer "complementary" services. Assessing wireless providers under the universal service fund, without permitting wireless providers to pass those contributions on to their customers, artificially will decrease wireless usage due to less competitive rates. If the demand for wireless service decreases, the likelihood that wireless service will compete directly with landline services decreases as well. This lack of competition will have an especially negative effect in rural areas of the state where wireless communications will be the most likely alternative to landline services. The public interest will not be served if wireless growth is stymied.

Accordingly, before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their universal service fund contributions on to

their customers. Amendments to these provisions will help mitigate the legal and policy concerns surrounding the assessment of wireless providers and ensure that the public interest will be served. Moreover, amendments will allow Wisconsin to avoid running afoul of the federal law that prohibits states from regulating the rates of wireless providers.

III. Issues.

Before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their universal service fund contributions on to their customers and, thereby, remedy any violation of federal law. Moreover, amendments to § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, are necessary to ensure that competition in this developing industry remains vibrant and continues its growth.

A. Legal Issues.

Section PSC 160.18, Wis. Admin. Code, as amended, requires wireless providers to contribute to the universal service fund. Section 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, however, prohibit wireless providers from establishing a surcharge on customer bills concerning universal service fund assessments. Specifically, § 196.218(3)(e), Stats., provides:¹

Except as provided in s. 196.196(2)(d), a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

Section 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, in conjunction with § PSC 160.18, Wis. Admin. Code, impose a form of rate regulation by prohibiting wireless providers from establishing surcharges on customers' bills to collect contributions required under the universal service fund. Unless these provisions are amended, Wisconsin will be in direct conflict with federal law since the Commission would be regulating the rates of wireless providers.

Federal law prohibits the regulation of rates of commercial mobile radio service providers. Section 47 U.S.C. § 332(c)(3)(A), in part, states:

¹ Section PSC 160.15, Wis. Admin. Code, similarly provides: "Telecommunications providers may not establish a surcharge on customers bills for contributing to or recovering any portion of the provider's payment of universal service fund obligations."

(3) State preemption. (A) Notwithstanding sections 152(b) and 221(b) [47 U.S.C. §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. . . .

Section 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, as applied to wireless providers, violate federal law by regulating the prices and charges of wireless providers. These provisions explicitly forbid wireless providers from imposing certain charges on their customers' bills and limit what properly may be placed on a customer's invoice. The clear intention of these provisions is to govern what wireless providers can and cannot charge customers, which is clear rate regulation.

The fact that § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, violate the federal law prohibiting rate regulation of wireless providers is independent of and not governed in any way by the recent cases which have concluded that requiring wireless providers to pay a universal service fund assessment is not, in and of itself, prohibited by 47 U.S.C. § 332(c)(3)(A). Not discussed in Messrs. Stolzenberg's and Schmidt's Memorandum to Senator Jauch and Representative Hutchinson, dated January 19, 2000, is the fact that those cases confirm that where a state's imposition of universal service fund requirements on wireless providers constitutes a regulation of rates, as it would if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are applied to wireless providers, federal law is violated. Moreover, none of those cases dealt with a state statute that prohibited the pass through to customers of universal service fund assessments. In fact, in other states that assess wireless providers under a universal service fund, wireless providers explicitly are allowed -- or required -- to pass through such charges to their customers. Before wireless providers are assessed under the fund in Wisconsin, the relevant Wisconsin Statutes and regulations must be amended to similarly allow wireless providers to establish a surcharge on their customers' bills to recover contributions required under the universal service fund.

B. Policy Issues.

The imposition of universal service fund assessments on wireless providers in Wisconsin, without permitting wireless providers to pass those contributions on to their customers, would be detrimental to the

public interest because such an assessment artificially would decrease wireless usage due to less competitive rates. Wireless competition in Wisconsin is vigorous and subscriber growth is accelerating rapidly.

However, wireless providers are extremely vulnerable to price increases of any kind since they offer "complementary" services. Cost increases, whatever their source, are acutely felt in emerging telecommunications markets such as wireless. Increased prices only will stifle the potential of competition between wireless services and landline services.

If the demand for wireless service decreases, the likelihood that wireless service will compete directly with landline services decreases as well. Competition for local exchange customers will result in lower prices and better service. The public interest will not be served if wireless growth is stymied.

IV. Necessary Action By the Joint Committee.

To implement legislative intent to assess wireless providers in accordance with federal law, § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their assessment under the universal service fund through to their customers as a surcharge on bills. Moreover, until these provisions are amended, a portion of § PSC 160.18(10), Wis. Admin. Code, should be suspended to permit the Commission to temporarily delay the commencement of wireless providers' contributions to the universal service fund.

It should be noted that the proposed delay in the commencement date for the assessment of wireless providers would exempt only *wireless providers* from contributing to the universal service fund and only for a *temporary* period of time. Once § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended to permit wireless providers to pass their universal service fund contributions on to their customers, the assessment of wireless providers would commence. Moreover, temporarily delaying the commencement date for the assessment of wireless providers would not affect overall contributions to the universal service fund or the universal service fund programs. The Commission simply would recalculate contribution amounts due, pursuant to § 196.218(3), Stats., temporarily exempting wireless providers from the calculation.

Pursuant to § 227.26, Stats., the Joint Committee may suspend a portion of § PSC 160.18, Wis. Admin. Code, to permit the Commission to temporarily delay the commencement date for the assessment of wireless providers. Specifically, we request that the Joint Committee suspend that portion of § PSC 160.18(10), Wis. Admin. Code, indicated in red-line below, which establishes the date that the assessment of wireless providers is to commence.

The commission shall obtain the information necessary to process the assessment of commercial mobile radio service providers ~~and shall mail bills to such providers within 90 days of May 1, 2000. These bills will include assessments back to the effective date of May 1, 2000.~~

In addition to suspending this red-lined language, we ask that the Joint Committee request the Commission to temporarily delay the commencement date for the assessment of wireless providers until January 1, 2002, pending amendments to § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, to permit wireless providers to pass their universal service fund contributions on to their customers.

V. Conclusion.

For the reasons set forth above, § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended before the assessment of wireless providers under § PSC 160.18, Wis. Admin. Code, commences. Without such amendments, Wisconsin will be in violation of federal law and the competitive well-being of the wireless industry will be threatened. Accordingly, we request that the Joint Committee suspend a portion of § PSC 160.18(10), Wis. Admin. Code, to permit the Commission to temporarily delay the commencement date for the assessment of wireless providers under the state universal service fund until January 1, 2002.



BOB JAUCH

WISCONSIN STATE SENATOR

October 5, 2000

Senator Judy Robson, Co-Chair
JCRAR
15 South
State Capitol
Madison, WI 53702

Representative Glenn Grothman, Co-Chair
JCRAR
15 North
State Capitol
Madison, WI 53702

RE: JCRAR review of PSC 160

Dear Senator Robson and Representative Grothman:


As co-chair of the Joint Committee on Information Policy and Technology, I was deeply involved in securing modifications to PSC 160 which require the collection of USF assessments from commercial mobile radio service (CMRS) providers, more commonly known as cellular or wireless providers. I am disturbed to learn that some wireless providers are attempting to manipulate JCRAR into relieving wireless carriers from their obligation to support the universal service fund.

The issues justifying the collection of USF assessments from wireless carriers have already been thoroughly evaluated by one Senate standing committee and one joint committee after two separate public hearings. It was the overwhelming bipartisan consensus of both committees that Wisconsin law and simple fairness require the collection of USF assessments from wireless carriers. Nothing has happened since the PSC modified the rule in February that justifies an additional legislative review of the rule.

In January 2000, as part of legislative review of the proposed PSC 160, both JCIPT and the Senate Committee on Health, Utilities, Veterans and Military Affairs, chaired by Senator Moen, held separate public hearings on the proposed rule. Sen. Moen's committee voted 6-1 to request PSC to modify the rule to require USF assessments on wireless carriers. On February 7, 2000, Sen. Moen communicated his committee's request in a letter to the PSC. In addition, it was the unanimous, bipartisan consensus of JCIPT to concur in that request. I personally worked closely with the PSC to seek modification of the rule. On February 14, 2000, JCIPT co-chair Rep. David Hutchison and I wrote to PSC to express our support for requiring wireless carriers to pay the USF assessment.

Home Address: 5271 South Maple Drive, Poplar, Wisconsin 54864-9126

Capitol Address: P.O. Box 7882, Madison, Wisconsin 53707-7882 • (608) 266-3510 • Fax (608) 266-3580 • E-mail: sen.jauch@legis.state.wi.us

 Printed on recycled paper with soy-based ink.

On February 17, 2000, the PSC approved our request and voted to include wireless carriers in the USF assessment.

After such thorough review and consideration, some wireless carriers are now seeking to make an end run around the legislative approval of PSC 160 by now asking JCRAR to suspend the rule. Their arguments for suspension of the rule are simply without merit. In short, they argue that, because they are not allowed to itemize the USF assessment on their customers' bills, that somehow transforms the assessment into a regulation of rates that would be illegal under federal law. To the contrary, the FCC and three federal courts have already ruled that state USF assessments do *not* constitute prohibited rate regulation. The wireless lobby cannot cite one court decision that upholds their position. Instead, they rely on legal hair-splitting that has no legal or factual significance.

Further, the wireless carriers argue the rule should be suspended and a bill should be introduced that would change state law so that wireless carriers could itemize the USF assessment on their customers' bills. In other words, the wireless lobby would have you believe they would be perfectly happy to pay the USF assessment as long as they can itemize it. I suggest you be highly skeptical of their intentions. At the time Sen. Moen's committee and JCIPT requested PSC to modify the proposed rule, the wireless carriers' lobbyists fanned out across the Capitol to adamantly oppose their inclusion in the USF assessment.

What we have here is a special interest group who is simply unwilling to compete on a level playing field with their competitors in the telecommunications industry. The wireless providers have not presented any cogent, reasoned justification for exempting them from the USF assessment, other than they simply do not want to have to pay it.

It is highly unusual, from the perspective of legislative process, for a special interest to seek JCRAR suspension of an administrative rule after the rule has so recently undergone such thorough legislative review by not one but two standing committees. The arguments raised by the wireless providers for exempting them from the USF assessments are political, although they are couched in legal terms. If the wireless lobby feels their legal arguments have any merit, why haven't they aired their grievances in court? The fact they have chosen to pursue relief in the legislative rather than judicial sphere makes me doubt they have any confidence themselves in the merit of their legal arguments.

Since the PSC approved PSC 160 in February, there has been absolutely no change in circumstances or the law to the justify suspension of the rule. The wireless carriers had ample opportunity to make their case to the legislature. They were wrong on both the facts and the law. Since nothing new has happened since PSC approved the rule, the wireless lobby should not be allowed another kick at the cat.

The law could not be more clear. Under Wisconsin law, state USF assessments on wireless carriers are required to the extent not preempted by federal law. The FCC and three federal courts have ruled that state USF assessments on wireless carriers are legal and are *not* preempted by federal law. State statutes require the PSC to collect USF

assessments from telecommunications providers, including wireless carriers, unless the PSC determines that it is not in the public interest to do so. Consistent with state law, the PSC has decided to collect the USF assessments from wireless carriers. The claims of wireless carriers that Wisconsin law constitutes rate regulation are simply unfounded.

PSC 160 has already received thorough legislative review. Both the law and simple fairness dictate that wireless providers should compete on the same level playing field as other telecommunications providers.

It is my intention to testify on October 11, 2000, against any effort to suspend any part of PSC 160. I hope the members of JCRAR will not allow the wireless lobby to be unfairly exempted from the USF assessments.

Sincerely,



Bob Jauch

Cc: Members, JCRAR
Members, JCIP
Members, Senate Committee on Health, Utilities, Veterans and Military Affairs

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

November 16, 2000

BY INTER-D

Ms. Ave Bie
Chair, Public Service Commission
610 North Whitney Way
Madison, Wisconsin

Re: Administrative Rule PSC 160.18(10)


Dear Ms. Bie:

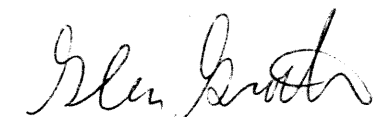
We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on November 15, 2000. At that meeting, the JCRAR voted to introduce legislation to uphold the committee's October 11, 2000 partial suspension of administrative rule PSC 160.18(10) (relating to the inclusion of wireless telephone providers in the universal service fund). This action was required by section 227.26(2)(f), *stats*.

The committee voted to introduce two bills. LRB 0747/1 permits all telecommunications providers to establish surcharges on customer bills to collect the contributions those providers make to the universal service fund. LRB 0748/1 permits only wireless telephone providers to establish a surcharge.

Copies of these bill drafts are attached for your reference.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

SENATOR JUDITH B. ROBSON
 CO-CHAIR
 PO BOX 7882
 MADISON, WI 53707-7882
 (608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
 CO-CHAIR
 P● BOX 8952
 MADISON, WI 53708-8952
 (608) 264-8486

**JOINT COMMITTEE FOR
 REVIEW OF ADMINISTRATIVE RULES**

Motion Form

Last Modified May 2000

Date 11/15/00 Location 201 SE

Moved by Grothman, Seconded by Gunderson

THAT, pursuant to § 227.26(2)(f), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules introduce ~~LRB 0747/1~~ ~~LRB 0748/1~~ (strike one) to uphold the committee's October 11, 2000 partial suspension of administrative rule PSC 160.18(10).

0748/1
 Robson
 Grothman

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON		✓	
2. Senator GROBSCHMIDT		✓	
* 3. Senator SHIBLISKI	✓		
* 4. Senator WELCH	✓		
* 5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON		✓	
8. Representative SERATTI	✓		
9. Representative KREUSER			
10. Representative BLACK		✓	
Totals	5	4	

Y
 Y
 N
 Y
 Y
 Y
 Y
 N
 S-211

Motion Carried Motion Failed

* by polling

5 4

5-4

SENATOR JUDITH B. ROBSON
Co-CHAIR



REPRESENTATIVE GLENN GROTHMAN
Co-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

October 11, 2000

Ave Bie, Chairperson
Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854

Dear Chairperson Bie:

The Joint Committee for the Review of Administrative Rules met in Executive Session on October 11, 2000 and adopted the following motion:

Chapter PSC 160

Relating to Universal Service Support Funding and Programs.

Moved by Senator Robson, seconded by Representative Grothman that, pursuant to s. 227.26(2)(d), Stats., and for the reason set forth in ss. 227.19(4)(d) 6, stats., the Joint Committee for Review of Administrative Rules suspends all the words following "providers" in Chapter PSC 160.18(10).

Ayes: (8) Representatives Grothman, Gunderson,
and Kreuser ; Senators Robson, Grobschmidt, Shibilski*,
Schultz and Welch.

Noes: (1) Representative Black

Absent: (2) Senator Shibilski, Representative Seratti

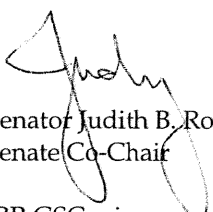
Motion Carried: Extension Granted.

8 Ayes, 1 No, 2 Absent.

*voted by paper ballot

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

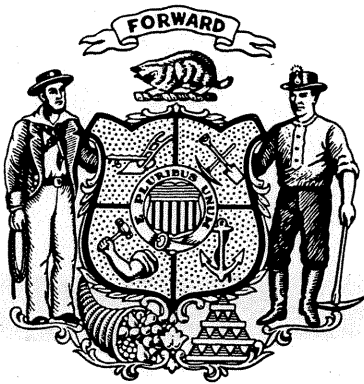

Senator Judith B. Robson
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson

END



END

CRIME VICTIMS RIGHTS BOARD
EMERGENCY ADMINISTRATIVE RULES

CVRB 1.01 Purpose. The purpose of this chapter is to establish procedures for the review of complaints made to the crime victims' rights board. This chapter interprets the provisions of ss. 950.09 and 950.095, Stats., and also interprets the provisions of ch. 227, Stats., concerning the conduct of proceedings under this chapter.

CVRB 1.02 Definitions. In this chapter:

- (1) "Board" means the crime victims' rights board.
- (2) "Chairperson" means the chairperson of the board.
- (3) "Complainant" means the individual filing a complaint with the board.
- (4) "Complaint" means a written, sworn complaint made to the board regarding a violation of the rights of a crime victim.
- (5) "Department" means the department of justice.
- (6) "Involved party" means an individual who participated in the mediation process as provided in s. 950.08(3), Stats.
- (7) "Mediator" means an employe of the department who has sought to mediate or has actually mediated a complaint made to the department as provided in s. 950.08(3), Stats.
- (8) "Party" means the complainant, the respondent, or both.
- (9) "Probable cause" means a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.
- (10) "Respondent" means the individual identified in the complaint as the subject of the complaint.
- (11) "Victim" has the meaning given in s. 950.02(4)(a), Stats.

CVRB 1.03 Delegation of responsibilities. The board may delegate its responsibilities in ss. CVRB 1.05 to 1.07 to an appropriate designee.

CVRB 1.04 Filing. (1) All written statements of a party's position submitted to the board, including but not limited to the complaint and the answer, shall be signed by the person preparing the statement. A party shall verify that the contents of each filing

submitted by that party or on that party's behalf are true and correct to the best of the party's knowledge and shall sign the filing.

(2) All complaints shall be prepared on a complaint form obtained from the mediator. The completed complaint shall be returned to the board at the address provided on the form.

(3) A complaint may be filed by any involved party. The board may not take any action provided by s. 950.09(2), Stats., other than seeking equitable relief as provided by s. 950.09(2)(c), Stats., unless the complaint is filed by a victim or a victim has signed the complaint indicating that he or she consents to the filing of the complaint by the involved party.

(4) The board may consider issuing a report or recommendation as provided by s. 950.09(3), Stats., in response to a complaint filed by an involved party without endorsement by a victim. The board may consider a complaint filed under this subsection, and may issue a report or recommendation as provided by s. 950.09(3), Stats., without making a probable cause determination.

(5) The board may consider complaints alleging violations of victims' rights that occurred on or after December 1, 1998. The board may not consider alleged conduct that occurred more than three years from the date the complainant knew or should have known of a violation of the rights of a victim. The board may consider issuing reports or recommendations as provided by s. 950.09(3), Stats., relating to conduct that occurred prior to December 1, 1998 or more than three years before a complaint was filed with the board or the board was otherwise notified of the conduct.

CVRB 1.05 Probable cause determination. (1) Upon receipt of the complaint, the board shall contact the mediator and request verification that the substance of the complaint has been presented to the department and that the department has completed its action as required by ss. 950.08(3) and 950.09(2), Stats.

(2) If the substance of the complaint has not been presented to the department, the board shall advise the complainant of the complainant's obligation to present the substance of the complaint to the department before filing a complaint with the board.

(3) If the department has not completed its action as provided in s. 950.08(3), Stats., the board shall return the complaint form to the complainant and shall advise the complainant that the board cannot review the complaint until the department has completed its action.

(4) If the department has completed its action as provided in s. 950.08(3), Stats., the mediator shall provide the board with information on the mediation process and its outcome. This information may take the form of a memorandum, other written documentation, or both.

(5) A complaint that names an employee of the department as a respondent need not be presented to the department before being presented to the board.

(6) The board shall provide a copy of the complaint, with a cover letter, to the respondent and invite the respondent to submit an answer to the complaint. The board shall provide a copy of this letter to the complainant. If the respondent submits an answer, the board shall provide a copy of the answer to the complainant.

(7) The board shall determine probable cause at its next regularly scheduled meeting or at a meeting called by the chairperson. Upon a vote of the board, the board may deliberate and vote on the probable cause determination in closed session.

(8) In making the probable cause determination, the board may consider all relevant information, including but not limited to:

(a) the complaint

(b) the answer

(c) the information provided by the mediator pursuant to sub. (3) of this section.

(9) The board shall notify the parties and the mediator of its probable cause determination.

(a) If the board finds probable cause, the board shall advise the parties of their right to request a hearing on the complaint.

(b) A finding of no probable cause is a final decision of the board. If the board finds no probable cause, the board shall provide notice to the parties of the right to seek judicial review pursuant to ch. 227, Stats.

CVRB 1.06 Investigations. (1) The board may conduct an investigation of any complaint which meets the probable cause standards under this chapter. The board may request responses to written questions, participation in a personal or telephonic interview with the board, and written documentation. The board may consider a party's refusal to cooperate with the board's investigation in making its determination on the complaint.

(2) The board may request a party to sign a limited release to enable the board to obtain records for which a release is required. A party who is asked to sign a release may request a protective order from the board limiting the disclosure of any such records outside the board's process.

(3) Following its investigation and prior to the hearing, the board shall provide copies to the parties of any documentation obtained during its investigation that is not subject to a protective order prohibiting such distribution.

CVRB 1.07 Hearings. (1) A hearing may be requested by any party or by the board. A party may appear in person or by telephone at the hearing, or may submit a written statement of position on the complaint in place of a personal appearance.

(2) A party who chooses not to appear at the hearing shall notify the board not later than two weeks prior to the hearing of this intent. A party who chooses to submit a written statement shall submit that statement to the board not later than one week prior to the scheduled hearing date.

(3) One month prior to the hearing, or at another date determined by the board, the parties may provide the board with the following:

(a) a list of witnesses whom the party wishes to have the board subpoena for the hearing. Subpoenas may also be issued in accordance with s. 227.45(6m), Stats.

(b) a list of questions for the board to ask another party or witness at the hearing.

(4) The board, or its designee, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing.

(5) The parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, and to present evidence. Questioning of a party by another party is not favored and may be limited by the board consistent with s. 227.45(6), Stats.

(6) The board may set reasonable time limits for testimony and may limit the number of witnesses called by a party. No party may require the mediator to testify as a witness at the hearing.

(7) Proof of a violation of the rights of a crime victim shall be made by clear and convincing evidence. "Clear and convincing evidence" means evidence which satisfies and convinces the board, because of its greater weight, that a violation occurred.

(8) A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence. Testimony will not be transcribed unless a party requests a transcript and pays any costs required to prepare the transcript. The board shall prepare a transcript, at its own expense, in the event a party seeks judicial review of the board's decision.

(9) The board may vote to hold the hearing in closed session pursuant to s. 19.85(1)(f), Stats. Parties and their counsel or another advocate, including a family member, shall be permitted to be present during the entire hearing.

(10) Witnesses subpoenaed at the request of a party or the board shall be entitled to compensation from the board for attendance and travel as provided in ch. 885, Stats.

CVRB 1.08 Decisions. (1) At the close of the hearing, the board shall meet for purposes of deliberating on the complaint. Upon a vote of the board, the board may deliberate in closed session as provided by s. 19.85(1)(a), Stats.

(2) Within 30 days of the close of the hearing, or by another date established by the board, the board's legal counsel shall prepare a written proposed decision for the board, including findings of fact, conclusions of law, and remedy, and shall provide the proposed decision to the board.

(3) The board shall consider the proposed decision at its next regularly scheduled meeting or at a meeting called by the chairperson. The board may amend any portion of the recommended decision prior to approving the final decision. Upon a vote of the board, the board may conduct its discussion of the final decision in closed session as provided by s. 19.85(1)(a), Stats.

(4) The board shall provide the final decision to the parties along with a notice of the right to request rehearing or seek judicial review under ch. 227, Stats.

(5) If no hearing has been held, the board shall make its final decision under the process provided in sub. (2) and (3) of this section.

CVRB 1.09 Rehearing. (1) A party aggrieved by the final decision may file a written request for rehearing with the board within 20 days of the date the final decision is provided to the parties.

(2) The request for rehearing shall include a detailed statement of the grounds for the request, including the material error of fact or law, or newly discovered evidence, that in the party's view warrants a rehearing. If the request is based on newly discovered evidence, the party shall state why the evidence could not have been previously discovered through reasonably diligent effort.

(3) The board may grant a rehearing on the basis of one or more of the following:

(a) A material error of law.

(b) A material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the original decision which could not have been previously discovered through reasonably diligent efforts by the parties.

(4) The board shall determine whether to grant the request for rehearing at its next regularly scheduled meeting or at a meeting called by the chairperson. If the board grants rehearing, it shall follow the procedures in s. CVRB 1.07 in conducting the rehearing.

CVRB 1.10 Judicial Review. Judicial review of the board's final decision is governed by ss. 227.52 to 227.59, Stats.

CVRB 1.11 Miscellaneous provisions. (1) **RELIEF FROM DEADLINES.** The board may grant a party's request for reasonable extension of the deadlines set forth in this chapter.

(2) **NON-RETALIATION.** In this subsection, "person" means any individual, corporation, association, business enterprise or other legal entity either public or private. "Person" also includes the state, any political subdivision of the state, and any department or agency of the state or its subdivisions.

(a) No person may discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with the board.

(b) No person may discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with the board.

(c) An individual who believes a violation of this subdivision has been committed may file a complaint with the equal rights division of the department of workforce development or the personnel commission as provided in ss. 111.39 and 230.45, Stats.

(3) **COERCION PROHIBITED.** Any form of coercion to discourage or prevent an involved party, or a representative acting on behalf of that involved party, from exercising any of the rights under these rules or ch. 950, Stats. is prohibited.

(4) **REPRESENTATION.** A party may be represented throughout these proceedings, including at hearing, by counsel or by another advocate.



STATE OF WISCONSIN
CRIME VICTIM RIGHTS BOARD

MAR 17 2000

Kenneth Kratz, Chair
Penny Beernsten
Charles McGee
Wendy Gehl
Nancy Stewart

Jennifer Belich, Program Assistant

Mail Address
Crime Victim Rights Board
P.O. Box 7951
Madison, WI 53707-7951
Telephone: 414//525-1698

WebSite
<http://www.doj.state.wi.us/cvs/cvrb.htm>

March 16, 2000

Senator Judith Robson
Senate Co-Chair
Joint Committee for Review of Administrative Rules
P.O. Box 7882
Madison, WI 53707-7882

Representative Glenn Grothman
Assembly Co-Chair
Joint Committee for Review of Administrative Rules
P.O. Box 8952
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

By this letter, the Crime Victims Rights Board requests a 60-day extension of its emergency rule, CVRB 1, which was published on September 17, 1999. The emergency rule has previously been extended 60 days and will expire on April 14, 2000. The Board referred the final draft of its permanent rule, Clearinghouse Rule No. 99-153, to the Legislature on March 10, 2000. An additional 60-day extension will allow the Board's emergency rule to remain in effect during the period of committee review of this final draft rule.

This extension is needed to enable the Board to continue to address the threat to public welfare posed by violations of the rights of crime victims. The Crime Victims Rights Board was created by 1997 Wisconsin Act 181, effective December 1, 1998, to enforce victims' rights established by Wis. Const. Art. I, § 9m, adopted in 1993. The Board's process, as authorized by Wis. Stat. § 950.09, represents the only remedy available to victims of crime who have not been provided with the rights guaranteed to them by the Wisconsin Constitution and the Wisconsin statutes. Since the publication of CVRB 1 as an emergency rule, the Board has received several complaints alleging violations of the rights of crime victims. Unless CVRB 1 remains in effect, the Board will be unable to fulfill its obligations to these complainants under Wis. Stat. § 950.09.

A copy of CVRB 1 is attached to this letter. Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "Ken Kratz / ket". The signature is written in a cursive style.

Kenneth R. Kratz
Chairperson, Crime Victims Rights Board

KRK:ket

Enclosure

c: Crime Victims Rights Board (w/o encl.)

Jim Kreuser

State Representative
64th Assembly District



April 13, 2000

Senator Judy Robson, C-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, WI 53703

Representative Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol
Madison, WI 53703

Dear Senator Robson and Representative Grothman,

As you are aware, due to a conflicting meeting in my district I was unable to attend the Tuesday, April 11, 2000 committee meeting of the Joint Committee for Review of Administrative Rules. If I had been in attendance I would have voted in the following manner:

Emergency Rule CVRB 1 – in favor of the extension

Emergency Rule HFS 50 – in favor of the extension

CR 99-150 – in favor of suspending the rule

If you have any questions relating to this matter please don't hesitate to contact my office at 6-5504.

Sincerely,

A handwritten signature in black ink that reads "Jim".

Jim Kreuser
State Representative
64th Assembly District

JK/nk



P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 12, 2000

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 11, 2000 and adopted the following motions:

Emergency Rule CVRB 1

Relating to the rights of crime victims. Extension of the effective period of this emergency rule by **60 days** by the request of the Crime Victims Rights Board. *Second Consideration.*

Moved by Representative Grothman, seconded by Representative Black that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule CRVB 1 by 60 days, at the request of the Crime Victims Rights Board recommended, Ayes 9, Noes 0, Absent 1

Ayes: (9) Representatives Grothman, Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (1) Representative Kreuser

Emergency Rule HFS 50

Relating to: Adoption Assistance Extension of the effective period of this emergency rule by **60 days**, at the request of the Department of Health and Family Services. *First Consideration.*

Moved by Representative Grothman, seconded by Senator Robson that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule HFS 50 by 60 days, at the request of the Department of Health and Family Services. recommended, Ayes 7, Noes 2, Absent 1

Ayes: (7) Representatives Grothman, Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, and Shibilski

Noes: (2) Senators Schultz and Welch.

Absent: (1) Representative Kreuser

CR 99-150

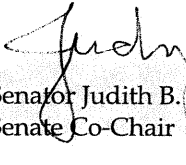
Relating to express advocacy. Objection recommended by the Assembly Committee on Campaigns and Elections and the Senate Committee on Economic Development, Housing and Government Operations.

Moved by Senator Robson, seconded by Senator Welch that pursuant to Section 227.19(4)(d)6, Stats., the Joint Committee for Review of Administrative Rules concurs in the objection of the Senate Committee on Economic Development, Housing and Government Operations and the Assembly Committee on Campaigns and Elections. Recommended, Ayes 9, Noes 0, Absent 1

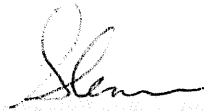
Ayes: (9) Representatives Grothman, Gunderson,
Seratti, and Black; Senators Robson, Grobschmidt, and Shibilski
Noes: (0)
Absent: (1) Representative Kreuser

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to these emergency rules.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

BW:GG:mjg

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 7882
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

April 12, 2000

Kenneth R. Kratz, Chairperson
Crime Victims Rights Board
P.O. Box 7951
Madison, WI 53707-7951

Dear Chairperson Kratz:

The Joint Committee for the Review of Administrative Rules met in Executive Session on April 11, 2000 and adopted the following motion:

Emergency Rule CVRB 1

Relating to: the rights of crime victims. Extension of the effective period of this emergency rule by 60 days by the Crime Victims Rights Board.

Moved by Representative Grothman, seconded by Representative Black that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule CRVB 1 by 60 days, at the request of the Crime Victims Rights Board recommended, Ayes 9, Noes 0, Absent 1

Ayes: (9) Representatives Grothman, Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (1) Representative Kreuser

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Judith Robson
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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MADISON, WI 53707-7882
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 24, 2000

Kenneth R. Kratz, Chairperson
Crime Victims Rights Board
P.O. Box 7951
Madison, WI 53707-7951

Dear Chairperson Kratz:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 20, 2000 and adopted the following motions:

Emergency Rule CVRB 1

Relating to: the rights of crime victims. Extension of the effective period of this emergency rule by 60 days by the Crime Victims Rights Board.

Moved by Representative Grothman, seconded by Representative Gunderson, that pursuant to Section 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rules CVRB 1 by 60 days, at the request of the Crime Victims Rights Board recommended, Ayes 10, Noes 0, Absent 0

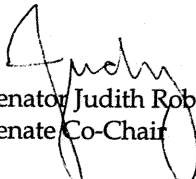
Ayes: (10) Representatives Grothman, Gunderson, Seratti, Kreuser, and Black; Senators Robson, Grobschmidt*, Shibilski*, Darling* and Welch.

Noes: (0)


*voted by phone or paper ballot

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

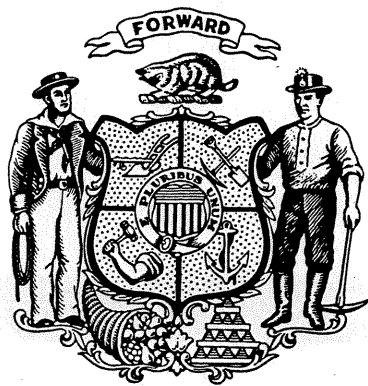

Senator Judith Robson
Senate Co-Chair

JBR:GSG:mjg


Representative Glenn Grothman
Assembly Co-Chair

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson

END



END

SENATOR JUDITH B. ROBSON
CO-CHAIR



6
REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

June 23, 2000

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on June 21, 2000 and adopted the following motions:

Emergency Rule DPI 24

Relating to state aid for achievement guarantee contracts and aid for debt service. Submitted by the Department of Public Instruction.

Moved by Representative Grothman, seconded by Senator Shibilski that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of PI 24 by 35 days, at the request of the Department of Public Instruction.

Ayes: (9) Representatives Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (1) Representative Grothman

Absent: (0)

Motion Carried: Extension Granted.
9 Ayes, 1 No, 0 Absent.

Emergency Rule DPI 44

Relating to alternative education grants. Submitted by the Department of Public Instruction.

Moved by Representative Grothman, seconded by Senator Shibilski that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of PI 44 by 35 days, at the request of the Department of Public Instruction.

Ayes: (9) Representatives Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (1) Representative Grothman

Absent: (0)

Motion Carried: Extension Granted.
9 Ayes, 1 No, 0 Absent.

Emergency Rule Comm 47.53

Relating to appeals of decision issued under the PECFA program. Submitted by the Department of Commerce.

Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of Comm 47.53 by 60 days, at the request of the Department of Commerce.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (0)

Motion Carried: Extension Granted.
10 Ayes, 0 Noes, 0 Absent.

Emergency Rule Trans 4

Relating to requiring the use of a fully allocated cost methodology when evaluating bids solicited for transit service in a competitive process. Submitted by the Department of Transportation.

Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of Trans 4 by 60 days, at the request of the Department of Transportation.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (0)

Motion Carried: Extension Granted.
10 Ayes, 0 Noes, 0 Absent.

Emergency Rule TCS 16

Relating to grants to students. Submitted by the Wisconsin Technical College Board.

Moved by Senator Robson, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of TCS 16 by 60 days, at the request of the Wisconsin Technical College Board, except for the second TCS 16.02(2) relating to eligibility and TCS 16.06 relating to deferment. JCRAR will also communicate with the standing committees that the appeal process in ss. 16.08 should be in rule form.

Ayes: (8) Representatives Gunderson, Seratti, and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (2) Grothman and Kreuser

Absent: (0)

Motion Carried: Extension Granted.
8 Ayes, 2 Noes, 0 Absent.

Emergency Rule HFS 10

Relating to familycare. Submitted by the Department of Health and Family Services.

Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of HFS 10 by 60 days, at the request of the Department of Health and Family Services.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (0)

Emergency Rule HFS 12 and App. A

Relating to caregiver background checks. Submitted by the Department of Health and Family Services.

Moved by Representative Grothman, seconded by Senator Welch that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of HFS 12 by 51 days, at the request of the Department of Health and Family Services.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (0)

ATCP 134.06

Relating to residential rental practices. Public testimony taken on the rights of a landlord in withholding security deposits.

Moved by Senator Welch, seconded by Representative Gunderson that, pursuant to s. 227.26(2)(b), Stats., the Joint Committee for Review of Administrative Rules finds that the Note following s. ATCP 134.06 (3) (c) meets the definition of a rule and directs the Department of Agriculture, Trade, and Consumer Protection to promulgate the Note as an emergency rule under s. 227.24 (1) (a), Stats., within 30 days of June 21, 2000.

Ayes: (10) Representatives Grothman, Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (0)

Absent: (0)

Motion Carried
10 Ayes, 0 Noes, 0 Absent

Moved by Representative Grothman, seconded by Senator Welch that, the Joint Committee for Review of Administrative Rules finds that the Note following s. ATCP 134.06 (3) (c) does not express what should be the state of Wisconsin's policy with regard to carpet cleaning and security deposits.

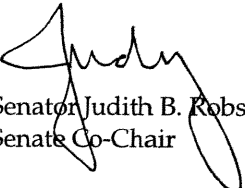
Ayes: (6) Representatives Grothman, Gunderson, and Kreuser; Senators Robson, Shibilski, Schultz and Welch.
Noes: (4) Representatives Seratti and Black; Senators Grobschmidt and Robson


Absent: (0)

Motion Carried
6 Ayes, 4 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to these emergency rules.

Sincerely,


Senator Judith B. Robson
Senate Co-Chair


Representative Glenn Grothman
Assembly Co-Chair

BW:GG:mjg

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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MADISON, WI 53707-7882
(608) 266-2253

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

June 23, 2000

Dr. John Benson, Superintendent
Department of Public Instruction
125 S. Webster Street
Madison, WI 53707

Dear Superintendent Benson:

The Joint Committee for the Review of Administrative Rules met in Executive Session on June 21, 2000 and adopted the following motions:

Emergency Rule DPI 24

Relating to state aid for achievement guarantee contracts and aid for debt service. Submitted by the Department of Public Instruction.

Moved by Representative Grothman, seconded by Senator Shibilski that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of PI 24 by 35 days, at the request of the Department of Public Instruction.

Ayes: (9) Representatives Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (1) Representative Grothman

Absent: (0)

Motion Carried: Extension Granted.

9 Ayes, 1 No, 0 Absent.

Emergency Rule DPI 44

Relating to alternative education grants. Submitted by the Department of Public Instruction.

Moved by Representative Grothman, seconded by Senator Shibilski that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of PI 44 by 35 days, at the request of the Department of Public Instruction.

Ayes: (9) Representatives Gunderson, Seratti, Kreuser and Black; Senators Robson, Grobschmidt, Shibilski, Schultz and Welch.

Noes: (1) Representative Grothman

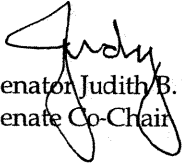
Absent: (0)

Motion Carried: Extension Granted.

9 Ayes, 1 No, 0 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson