

Today @ 3PM, if possible

D-NOTE

§ M66 § RNT

-4955/PI

DOA:.....Holden - PSC enforcement authority regarding telecommunications providers

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

RM
NOT
PUN

INSERT 1A ✓

Gen

INSERT 1-H ✓

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

✓ STATE GOVERNMENT
PUBLIC UTILITY REGULATION

✓ two

Under current law, telecommunications utilities and providers are subject to certain requirements regarding the protection of consumers, including other telecommunications utilities and providers that use their services. There are several provisions for enforcing these requirements, including the following ~~text~~. First, the ~~public service commission~~ PSC, on its own motion or upon a complaint filed by a consumer, may take administrative action or commence civil actions against telecommunications utilities and providers to enforce these requirements. This bill provides that the PSC has jurisdiction in its own name or on behalf of consumers to take such actions. The bill also clarifies that the PSC's authority to take administrative action includes initiating a contested case.

Second, under current law, the PSC may bring an action in court for injunctive relief for compelling compliance with the requirements, for compelling refunds of any moneys collected in violation of the requirements, or for any other relief under the public utility statutes. This bill also allows the PSC to take administrative action, in addition to bringing an action in court, for compelling compliance with the requirements or for compelling refunds. In addition, the bill allows the PSC to take

administrative action or bring an action in court for any other appropriate relief, instead of just any other relief under the public utility statutes. Also, the bill allows the PSC to directly impose forfeitures for violations of the requirements.

Third, under current law, the PSC may request the attorney general to bring an action in court to require a telecommunications utility or provider to compensate any person for any pecuniary loss caused by failure to comply with the requirements. Under this bill, in addition to requesting the attorney general to bring such an action, the PSC may take administrative action, including initiating a contested case, or bring its own action in court to require such compensation.

47 Furthermore

Finally, the bill makes other changes to the enforcement authority of the PSC, including the following:

1. Under current law, the PSC may investigate whether rates, tolls, charges, schedules, or joint rates are unjust, unreasonable, insufficient, unjustly discriminatory or preferential, or unlawful and order that reasonable rates, tolls, charges, schedules, or joint rates be imposed, observed, or followed in the future. With respect to telecommunications providers, this bill also allows the PSC to order reasonable compensation for persons injured by reason of rates, tolls, charges, schedules, or joint rates of telecommunications providers that are investigated.

2. Under current law, public utilities and certain other entities, such as telecommunications providers, that violate laws enforced by the PSC, PSC orders, and certain other requirements are subject to a forfeiture of between \$25 and \$5,000, for each day of violation, which is imposed by a court. Under this bill, the PSC may also impose such a forfeiture against a telecommunications provider by administrative action.

3. Under current law, the PSC is required to inquire into neglect or violation of laws by public utilities and telecommunications carriers, enforce such laws, and report all violations to the attorney general. This bill also allows the PSC to take administrative action and institute and prosecute all necessary actions and proceedings for enforcing all laws relating to telecommunications providers or telecommunications carriers, and for the punishment of all violations.

INSERT 2A

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

Fix Component

and local

INSERT 2-1

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 196.219 (4) (a) of the statutes is amended to read:
- 2 196.219 (4) (a) ~~On the commission's own motion or upon complaint filed by the~~
- 3 ~~consumer, the~~ The commission, in its own name or on behalf of consumers, shall have
- 4 jurisdiction to take administrative action, including initiating a contested case, or to

1 commence civil actions against telecommunications utilities or providers to enforce
2 this section.

3 SECTION 2. 196.219 (4) (b) ^X of the statutes is amended to read:

4 196.219 (4) (b) The commission, in its own name or on behalf of consumers,
5 may, at its discretion, take administrative action, including initiating a contested
6 case, or institute in any court of competent jurisdiction a proceeding against a
7 telecommunications utility or provider for injunctive relief, to compel compliance
8 with this section, to compel the accounting and refund of any moneys collected in
9 violation of this section, or for any other appropriate relief permitted under this
10 chapter. The commission may directly impose forfeitures for violations of this
11 section.

12 SECTION 3. 196.219 (4m) (b) of the statutes is amended to read:

13 196.219 (4m) (b) ~~Upon request of the commission, the attorney general may~~
14 The commission may take administrative action, including initiating a contested
15 case, or bring an action to require a telecommunications utility or provider to
16 compensate any person for any pecuniary loss caused by the failure of the utility or
17 provider to comply with this section. Upon the request of the commission, the
18 attorney general may bring an action specified in this paragraph.

19 SECTION 4. 196.22 ^X of the statutes is amended to read:

20 196.22 **Discrimination forbidden.** No public utility may charge, demand,
21 collect, or receive more or less compensation for any service performed by it within
22 the state, or for any service in connection therewith, than is specified in the schedules
23 for the service filed under s. 196.19, including schedules of joint rates, as may at the
24 time be in force, or demand, collect, or receive any rate, toll, or charge not specified

INSERT 3-18 ✓

INSERT 4-11 ✓

1 in the schedule. Payments made for violations of this chapter by telecommunications
2 providers are not contrary to this section.

3 SECTION 5. 196.37 (1) ✓ of the statutes is amended to read:

4 196.37 (1) If, after an investigation under this chapter or ch. 197, the
5 commission finds rates, tolls, charges, schedules, or joint rates to be unjust,
6 unreasonable, insufficient, or unjustly discriminatory or preferential, or otherwise
7 unreasonable or unlawful, the commission shall determine and order reasonable
8 rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed
9 in the future and, with respect to rates, tolls, charges, schedules, or joint rates of
10 telecommunications providers, may determine and order reasonable compensation
11 for persons injured by reason of such rates, tolls, charges, schedules, or joint rates.

12 SECTION 6. 196.44 (1) ✗ of the statutes is renumbered 196.44 (1) (a).

13 SECTION 7. 196.44 (1) (b) ✗ of the statutes is created to read:

14 196.44 (1) (b) The commission may take administrative action and institute
15 and prosecute all necessary actions or proceedings for the enforcement of all laws
16 relating to telecommunications providers and for the punishment of all violations.

17 SECTION 8. 196.499 (12) (am) ✗ of the statutes is created to read:

18 196.499 (12) (am) The commission may take administrative action and
19 institute and prosecute all necessary actions or proceedings for the enforcement of
20 all laws relating to telecommunications carriers and for the punishment of all
21 violations.

INSERT 4-21 ✓

22 SECTION 9. 196.66 (1) ✗ of the statutes is amended to read:

23 196.66 (1) GENERAL FORFEITURE; FAILURE TO OBEY. If any public utility violates
24 this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for
25 which a penalty has not been provided, or fails, neglects, or refuses to obey any lawful

INSERT 4-16 ✓

1 requirement or order of the commission or the governing body of a municipality or
2 a sanitary commission or any judgment or decree of any court upon its application,
3 for every violation, failure, or refusal the public utility shall forfeit not less than \$25
4 nor more than \$5,000. The commission may impose a forfeiture against a
5 telecommunications provider under this section by administrative action.

6 SECTION 10. 196.66 (3) (b) (intro.)^X of the statutes is amended to read:

7 196.66 (3) (b) (intro.) ~~A~~ The commission or a court imposing a forfeiture on a
8 public utility or telecommunications provider or an agent, director, officer, or
9 employee of a public utility or telecommunications provider under this chapter shall
10 consider all of the following in determining the amount of the forfeiture:

11 SECTION ~~9342~~[#] Initial applicability public service commission. and (6)

12 (1) ENFORCEMENT AUTHORITY. The treatment of sections 196.219 (4) (b), 196.499
13 (12) (am), and 196.66 (1) and (3) (b) (intro.) of the statutes first applies to violations
14 occurring on the effective date of this ~~subsection~~^{paragraph}.

15 INSERT 5-14 ✓

(END)

PUBLIC SERVICE COMMISSION (CS)

INSERT 5-10 ✓

INSERT 5-11 ✓

D-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4955/P1dn

RNK:n:...

JLD
MDK + MGG

Representative Montgomery:

One of the instructions for this draft under the heading of "Consumer Protection" relates to "contract acceptance(?)". That instruction was made in two parts. After receiving some clarification from John Stolzenberg, I believe that the language created in this draft in proposed s. 100.207 (3m) satisfies the intent of both parts of the instruction. Please let me know if you believe any additional language is needed.

With regard to the instruction concerning encryption, I have placed the encryption prohibition in chapter 100 because I have assumed that you intended that this prohibition be administered by DATCP. If this was not your intention, please let me know and I will redraft accordingly.

It is possible that a court might conclude that the prohibition created in this draft relating to encryption is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

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Section VI (A) (1) (d) of the instructions refer to requiring a telecommunications provider to provide records regarding s. 100.207, stats., to the PSC, in addition to DATCP, without a subpoena. However, the PSC does not enforce s. 100.207. ✓ Therefore, I'm not sure why you want such a requirement, and I haven't included the requirement in this version of the draft.

I haven't determined yet whether the penalty provisions of ch. 196, ✓ stats., must be changed to apply to telecommunications providers who are subject to information collection authority that is created for the PSC in this bill. I will make appropriate changes in the next version of the draft.

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INSERT MGG/P1 dn
(from insert 2-1, p. 5 of inserts)

services provided by ✓

providers

INSERT 1-1:

1 retail and wholesale telecommunications service standards; telecommunications
2 access rates; enforcement authority of the public service commission regarding
3 telecommunications providers; construction and ownership of telecommunications
4 facilities by local units of government; ~~protection of~~ telecommunications consumers;
5 authority of the public service commission regarding area codes and telephone
6 numbers and telecommunications-related decisions, orders, and rules; granting ✓
7 rule-making authority; making an appropriation; and providing penalties ✓

INSERT 1A:

This bill creates a wireless 911 board that makes grants for providing 911 wireless emergency telephone service. The grants are funded by a surcharge paid by wireless customers. These provisions are discussed below. The bill also does all of the following with respect to the regulation of telecommunications providers, which are also discussed below: 1) requires the public service commission (PSC) to establish retail and wholesale service standards; 2) allows the PSC to order access rates for certain telecommunications utilities; 3) makes changes to the PSC's enforcement authority; 4) restricts ownership or construction of telecommunications facilities by local units of government; 5) makes changes to the telecommunications consumer protection law; and 6) makes various other changes.

911 wireless emergency telephone service.

The provisions of LRB-4975 and an analysis will be included in a subsequent version of this draft.

Retail and wholesale service standards

An analysis of these provisions will be included in a subsequent version of this draft.

Access rates

An analysis of these provisions will be included in a subsequent version of this draft.

PSC enforcement authority

INSERT 2A:

An analysis of other changes to the PSC's enforcement authority will be included in a subsequent version of this draft.



INS 2A CONT

Local government construction and ownership of telecommunications facilities

An analysis of these provisions will be included in a subsequent version of this draft.

sub sub

restrictions on telecommunications providers in initiating telecommunications consumer protection law service

This bill provides that a telecommunications provider may not provide a telecommunications service to a person unless the telecommunications provider reasonably believes that the person knowingly consented to receive the service. The telecommunications provider must also confirm, before providing the telecommunications service, that the person knowingly consented to receive the service. The bill also requires that the telecommunications provider inform the person that he or she may, before the service is activated, withdraw his or her consent to receive the service and requires that the telecommunications provider inform the person of the manner by which that consent may be withdrawn.

~~An analysis of other changes will be included in a subsequent version of this draft.~~

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Other changes

telecommunications

The bill prohibits the provider of any broadcast audio or video service or any cable television service from transmitting from this state any programming that is encrypted in such a manner that the programming may not be recorded by the recipient of the programming for the recipient's personal use. Current federal law specifies the extent to which a recipient may record programming for personal use.

An analysis of other changes will be included in a subsequent version of this draft.

INSERT 2-1:

SECTION 1. 20.155 (1) (Ls) of the statutes is created to read:

20.155 (1) (Ls) *Telecommunications provider payments.* All moneys received from payments by telecommunications providers under s. 196.37 (2) for purposes determined by the commission under s. 196.37 (2).

SECTION 2. 100.2065 of the statutes is created to read:

100.2065 Encryption of audio and video programming prohibited. (1)

In this section:

(a) "Broadcast service" has the meaning given in s. 196.01 (1m).

(b) "Cable television service" has the meaning given s. 196.01 (1p).

telecommunications

1 (2) No person who provides a broadcast service or a cable television/service may
2 transmit from this state programming that is encrypted in such a manner that the
3 programming may not be recorded by a recipient of the programming for the
4 recipient's personal use, unless the personal use is prohibited under federal law.

5 Fix Components SECTION 3. 100.207 (1) of the statutes is ^{renumbered 100.207 (1) (intro.) and} amended to read:

6 100.207 (1) DEFINITION. In this section, "telecommunications:

7 (b) "Telecommunications service" has the meaning given in s. 196.01 (9m).

8 History: 1993 a. 496; 1995 a. 27. SECTION 4. 100.207 (1) (a) of the statutes is created to read:

9 100.207 (1) (a) "Telecommunications provider" has the meaning given in s.
10 196.01 (8p).

11 SECTION 5. 100.207 (3g) of the statutes is created to read:

12 100.207 (3g) BILLING FOR OTHER SERVICES. (a) A telecommunications provider
13 may not bill a customer for any goods or services, other than telecommunications
14 service provided by the telecommunications provider, unless all of the following apply:

15 1 The telecommunications provider reasonably believes that the person
16 knowingly consented to the billing.

17 2 The telecommunications provider confirms with the person, before providing
18 the telecommunications service, that the person knowingly consented to the billing.

19 (b) If a customer consents to being billed under par. (a), all of the following shall
20 apply:

21 1. The telecommunications provider shall provide the billing for the other goods
22 or services in a separate document from the billing for the telecommunications

23 service or shall otherwise separate the ² two billings in a manner approved by the
24 department.

1 2. The telecommunications provider shall provide a detailed itemized listing
2 of the charges for the goods ^{or} and services if requested to do so by the customer.

3 **SECTION 6.** 100.207 (3m) of the statutes is created to read:

4 100.207 (3m) TELECOMMUNICATIONS SERVICE CONFIRMATION. A
5 telecommunications provider may not provide a telecommunications service to a
6 person unless all of the following apply:

7 (a) The telecommunications provider reasonably believes that the person
8 knowingly consented to receive the service.

9 (b) The telecommunications provider confirms with the person, before
10 providing the telecommunications service, that the person knowingly consented to
11 receive the service.

12 (c) At the time ^{that} the telecommunications provider provides confirmation under
13 par. (b), the telecommunications provider informs the person that he or she may,
14 before the service is activated, withdraw his or her consent to receive the service and
15 informs the person of the manner by which that consent may be withdrawn.

16 **SECTION 7.** 100.207 (5g) of the statutes is created to read:

17 100.207 (5g) RESTRICTIONS ON CONTRACTS. No telecommunications provider may
18 place in a contract entered into with a customer located in this state a clause that
19 provides that a law of ^a state other than this state applies to the parties or terms of the
20 contract or the rights and remedies under the contract.

21 **SECTION 8.** 100.207 (5m) of the statutes is created to read:

22 100.207 (5m) RECORD REQUIREMENTS. Any person who provides
23 telecommunications service to any person in this state shall maintain each billing
24 and collection record that is made in providing the telecommunication service for a
25 period of 10 years beginning on the date that the record is made.

1 SECTION 9. 100.207 (6) (bg) of the statutes is created to read:

2 100.207 (6) (bg) 1. Any person who has been served with a department
3 complaint, notice, order, or other process as authorized in s. 93.18 (5) shall be subject
4 to the department's authority and jurisdiction, as limited by subd. 1.

5 2. The department's jurisdiction may not exceed the jurisdiction granted to
6 courts under s. 815.05.

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~~***NOTE~~ Doesn't DATCP already have inspection authority which does not
require a subpoena under s. 93.15 (2) and under s. 100.18 (11) (c), which is
cross-referenced in s. 100.207 (6) (b) 2.? Due to this, we have not "drafted" point VI A
1. d. which is found on page 10 of the Task Force Recommendations as it relates to DATCP
authority.

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7 SECTION 10. 100.207 (6) (br) of the statutes is created to read:

8 100.207 (6) (br) Any person who fails to comply with a subpoena, order, or civil
9 investigative demand that is served upon the person for the purposes of
10 administering or enforcing this section or for the purpose of conducting an
11 investigation under this section may be coerced to comply as provided in s. 885.12.

12 SECTION 11. 196.02 (13) of the statutes is created to read:

13 196.02 (13) TELEPHONE NUMBERS AND AREA CODES. To the extent authorized
14 under federal law, the commission has jurisdiction to supervise and regulate
15 telephone numbers and area codes used by any telecommunications provider in this
16 state and to do all things necessary and convenient to such jurisdiction. The
17 commission may withhold from public inspection any information obtained from a
18 telecommunications provider under this subsection that would aid a competitor of
19 the telecommunications provider.

****NOTE: The above language is based on s. 196.02 (1), stats., which establishes the
PSC's jurisdiction over public utilities.

20 SECTION 12. 196.025 (1m) of the statutes is created to read:

1 196.025 (1m) In making all telecommunications-related decisions and orders,
 2 including rate setting and rule-making orders, the commission shall promote the
 3 availability of high quality telecommunications services at reasonable rates,
 4 facilitate the development of competitive markets for local telecommunications
 5 services, protect the public against monopolies, and ensure the effective regulation
 6 of large price-regulated telecommunications utilities that have control or market
 7 power over essential telecommunications facilities.

8 **SECTION 13.** 196.196 (1) (g) 1. a. of the statutes is amended to read:

9 196.196 (1) (g) 1. a. The goal to be achieved, which may include promoting
 10 competition, service quality, infrastructure deployment, economic development,
 11 consumer choice, productivity, efficiency, quality of life, societal goals, or universal
 12 service.

History: 1993 a. 496; 1999 a. 29, 85; 2001 a. 16.

13 **SECTION 14.** 196.196 (5) (f) 1. g. of the statutes is created to read:

14 196.196 (5) (f) 1. g. Competition for telecommunications services throughout
 15 the state.

16 **SECTION 15.** 196.196 (5) (f) 4. of the statutes is created to read:

17 196.196 (5) (f) 4. The commission may require a telecommunications provider
 18 or cable television ^{telecommunications} service provider to submit to the commission any information that
 19 the commission determines is necessary to prepare the report under subd. 1. The
 20 commission may withhold from public inspection any information obtained under
 21 this subdivision that would aid a competitor of a telecommunications provider or
 22 cable television ^{telecommunications} service provider.

****NOTE: Note that "cable television service provider" is defined as "a person who provides one or more telecommunications services but who, during the previous taxable year, received at least 90% of his or her gross income in the particular television franchise area in which telecommunication services are provided from the operation of a cable television system subject in whole or in part to 47 USC 521 to 559." See s. 196.01 (1r),

stats. Is that okay, or do you want to also refer to a person who only provides cable television service? (Note that cable television service is not a telecommunications service. See s. 196.01 (9m), stats.)

check A

1 SECTION 16. 196.196 (6) of the statutes is created to read:

2 196.196 (6) PENALTY. A price-regulated telecommunications utility that
3 provides inadequate service or makes insufficient investment may be required to
4 forfeit no more than the dollar value of the decrease in rates that would result from
5 applying a penalty mechanism of 5 percentage points and an incentive mechanism
6 of zero percentage points under sub. (1) (c) 1. The commission may impose a
7 forfeiture under this subsection by administrative action.

as affected by 2001 Wisconsin Act 16,

8 SECTION 17. 196.202 (2) of the statutes is renumbered 196.202 (2) (intro.) and
9 amended to read:

10 196.202 (2) (intro.) SCOPE OF REGULATION. A commercial mobile radio service
11 provider is not subject to ch. 201 or this chapter, except as provided in sub. (5), and
12 except that as follows:

13 (a) A commercial mobile radio service provider is subject to s. 196.218 (3) if the
14 commission promulgates rules that designate commercial mobile radio service
15 providers as eligible to receive universal service funding under both the federal and
16 state universal service fund programs. If the commission promulgates such rules,
17 a commercial mobile radio service provider shall respond, subject to the protection
18 of the commercial mobile radio service provider's competitive information, to all
19 reasonable requests for information about its operations in this state from the
20 commission necessary to administer the universal service fund.

History: 1985 a. 297; 1987 a. 27; 1991 a. 39; 1993 a. 36, 496; 1997 a. 2, 140, 218; 1999 a. 32, 150; 2001 a. 16.

21 SECTION 18. 196.202 (2) (b) of the statutes is created to read:

22 196.202 (2) (b) A commercial mobile radio service provider is subject to ss.
23 196.02 (13) and 196.196 (5) (f) 4.

1 SECTION 19. 196.203 (6) of the statutes is created to read:

2 196.203 (6) An alternative telecommunications utility is subject to ss. 196.02
3 (13) and 196.196 (5) (f) 4.

****NOTE: The instructions don't mention including alternative telecommunications utilities under the PSC's authority for telephone numbers and area codes. However, I thought I would include them for the sake of consistency. Is that okay?

4 SECTION 20. 196.219 (1) (c) of the statutes is created to read:

5 196.219 (1) (c) "Wholesale services" include preordering, ordering and
6 provisioning, maintenance and repair, network performance, unbundled elements,
7 operator services and directory assistance, system performance, service center
8 availability, and billing. The commission may, by order, modify the definition under
9 this paragraph. If the commission issues an order under this paragraph, the
10 commission shall promulgate rules that modify the definition.

****NOTE: Because the PSC must submit proposed rules to the legislative council staff by July 1, 2005, I think the result is that the PSC may not issue an order after that date. Is that your intent?

11 SECTION 21. 196.219 (2m) (title) of the statutes is amended to read:

12 196.219 (2m) (title) ACCESS SERVICES AND RATES.

History: 1993 a. 496; 1997 a. 218; 2001 a. 16.

13 SECTION 22. 196.219 (2m) of the statutes is renumbered 196.219 (2m) (a).

14 SECTION 23. 196.219 (2m) (b) of the statutes is created to read:

15 196.219 (2m) (b) 1. In this paragraph, "access order" means the March 23, 1993,
16 order of the commission on intrastate access costs and charges in docket number
17 05-TR-103.

18 2. Except as provided in subd. 3., the commission may investigate, determine,
19 and order intrastate access rates of a telecommunications utility if the utility's
20 intrastate originating and terminating access rates exceed any of the following:

* ****NOTE: The statutes don't refer to "earnings review(?)". Therefore, I don't want to use that term because I don't know what it means. Is the above okay?

1 a. After July 1, 2004, 150% of the benchmark rate levels established in the
2 access order.

3 b. After July 1, 2006, 125% of the benchmark rate levels established in the
4 access order.

5 c. After July 1, 2008, 100% of the benchmark rate levels established in the
6 access order.

7 3. Subdivision 2. [✓] does not apply to any of the following:

8 a. A telecommunications utility regulated under s. 196.196. [✓]

9 b. A telecommunications utility whose intrastate access rates are established
10 under s. 196.195 (12). [✓]

11 c. A telecommunications utility whose intrastate access rates have been
12 reviewed and approved by the commission after September 1, 1994, and before the
13 effective date of this subdivision ^{3.c.} paragraph [revisor inserts date].

* ****NOTE: September 1, 1994, is the general effective date of 1993 Wisconsin Act
496.

14 SECTION 24. 196.219 (3) (p) [✓] of the statutes is created to read:

15 196.219 (3) (p) Fail to provide wholesale services to another
16 telecommunications provider on the same terms and conditions that the
17 telecommunications utility or telecommunications provider receives from any other
18 telecommunications provider, except that, if a telecommunications utility or
19 telecommunications provider receives wholesale services on different terms and
20 conditions from different telecommunications providers, the telecommunications
21 utility or telecommunications provider shall provide wholesale services on the terms
22 and conditions that it receives from another telecommunications provider that result
23 in the highest quality of wholesale service.

1 **SECTION 25.** 196.219 (3m) of the statutes is created to read:

2 **196.219 (3m) RETAIL AND WHOLESALE SERVICE STANDARDS.** (a) *Definitions.* In this

3 subsection:

4 1. "Repeat trouble report" means a trouble report by a retail or wholesale
5 customer who has previously made a trouble report regarding the same retail or
6 wholesale service.

7 2. "Retail service" means basic residential and business telecommunications
8 service.

9 3. "Trouble report" means a report to a telecommunications provider by a retail
10 or wholesale customer about a problem regarding a retail or wholesale service
11 provided by the telecommunications provider.

12 (b) *Retail service standards.* 1. No later than 90 days after the effective date
13 of this subdivision [revisor inserts date], the commission shall, by order, establish
14 standards that require a telecommunications provider specified in subd. 2. to do all
15 of the following:

16 a. Initiate retail service in response to orders in a timely manner.

17 b. Repair retail service outages in a timely manner.

18 c. Minimize the frequency of repeat trouble reports.

19 d. Minimize missed retail service repair appointments.

20 e. Minimize retail service customer waiting time during calls to the
21 telecommunications provider's service center.

22 f. Comply with any other requirement specified by the commission relating to
23 retail service quality.

24 2. The standards under subd. 1. shall apply to a telecommunications utility
25 with more than 500,000 access lines in this state. The commission may, by order,

1 specify other telecommunications providers who provide local exchange service that
2 must comply with the standards if the commission finds that such a
3 telecommunications provider has engaged in a demonstrated pattern of poor retail
4 service or intentional misconduct related to retail service.

5 3. The commission may, by order, require a telecommunications provider that
6 must comply with the standards under subd. 1. to issue credits specified in the order
7 to retail service customers who are affected by the telecommunications provider's
8 failure to comply with the standards.

9 (c) *Wholesale service standards*.[✓] 1. No later than 90 days after the effective date
10 of this subdivision[✓] [revisor inserts date], the commission shall, by order, establish
11 standards that require a telecommunications utility specified in the order[✓] to do all
12 of the following:

- 13 a. Initiate wholesale service in response to orders in a timely manner.
- 14 b. Repair wholesale service outages in a timely manner.
- 15 c. Minimize the frequency of repeat trouble reports.
- 16 d. Comply with any other requirement specified by the commission relating to
17 wholesale service quality.

18 2. After issuing the order under subd. 1.[✓], the commission may issue an order
19 specifying additional telecommunications utilities that must comply with the
20 standards under subd. 1.[✓]

21 (d) *Rule making*.[✓] The commission shall promulgate rules that implement the
22 requirements of the orders under pars. (b) and (c).[✓]

23 **SECTION 26.** 196.219 (3s)[✓] of the statutes is created to read:

24 196.219 (3s) **REMEDIAL ORDERS**.[✓] The commission may issue an order requiring
25 that, if a telecommunications provider determines that it has failed to comply with

1 a requirement of this section that is specified in the order, the telecommunications
2 provider must provide its retail or wholesale service customers who are affected by
3 the failure with a billing credit or other remedy specified in the order.

****NOTE: The instructions refer to customers. The above specifies both retail and
wholesale customers. Is that okay?

4 **INSERT 3-18:**

5 **SECTION 27.** 196.219 (6) of the statutes is created to read:

6 196.219 (6) PENALTIES. (a) Except as provided in par. (b), a telecommunications
7 provider that violates this section may be required to forfeit not more than \$30,000,
8 or 0.00825% of the telecommunications provider's annual gross operating revenues
9 from intrastate telecommunications service, whichever is greater, for each offense.
10 Each day of continued violation constitutes a separate offense.

****NOTE: I added the reference to "annual" revenues and the language regarding
each day of violation. Is that okay?

11 (b) A small telecommunications utility that violates this section may be
12 required to forfeit not more than \$5,000 for each offense. Each day of continued
13 violation constitutes a separate offense.

****NOTE: I added the language regarding each day of violation. Is that okay?

14 (c) A court imposing a forfeiture on a telecommunications provider under this
15 subsection shall consider all of the following in determining the amount of the
16 forfeiture:

- 17 1. The appropriateness of the forfeiture to the volume of business of the
- 18 telecommunications provider.
- 19 2. The gravity of the violation.
- 20 3. Any good faith attempt to achieve compliance after the telecommunications
- 21 provider receives notice of the violation.

22 **INSERT 4-11:**



INS 4-11

1 **SECTION 28.** 196.37 (2) of the statutes is amended to read:

2 196.37 (2) If the commission finds that any measurement, regulation, practice,

3 act or service is unjust, unreasonable, insufficient, preferential, unjustly

4 discriminatory or otherwise unreasonable or unlawful, or that any service is

5 inadequate, or that any service which reasonably can be demanded cannot be

6 obtained, the commission shall determine and make any just and reasonable order

7 relating to a measurement, regulation, practice, act or service to be furnished,

8 imposed, observed and followed in the future. An order under this subsection against

9 a telecommunications provider may require the telecommunications provider to

10 make payments in amounts specified in the order to persons affected by the

11 measurement, regulation, practice, act, or service or to the commission. The

12 commission may use any payment received under this subsection for any purpose

13 determined by the commission relating to maintaining or improving

14 telecommunications service quality, including compensating persons who are

15 affected by the measurement, regulation, practice, act, or service.

✓ ****NOTE: Is the above language okay? Note also the appropriation created in s.
20.155 (1) (Ls).

INSERT 4-16:

17 **SECTION 29.** 196.499 (1) (b) of the statutes is amended to read:

18 196.499 (1) (b) A telecommunications carrier shall be treated under ss. 196.02

19 (13), 196.196 (5) (f) 4., 196.209, 196.218 (8) and 196.219 as a telecommunications

20 provider.

History: 1993 a. 496; 1997 a. 27, 218.

INSERT 4-21:

22 **SECTION 30.** 196.50 (4) (title) of the statutes is amended to read:



1 196.50 (4) (title) ~~MUNICIPALITY~~ [✓] LOCAL GOVERNMENTAL UNITS AND MUNICIPALITIES
2 RESTRAINED.

3 History: 1977 c. 418; 1983 a. 53; 1985 a. 297 ss. 52 to 54, 76; 1993 [✓] a. 496; 1995 a. 409; 1999 a. 150 s. 672.

3 **SECTION 31.** 196.50 (4) [✓] of the statutes is renumbered 196.50 (4) (b) and
4 amended to read:

5 196.50 (4) (b) No municipality may construct any public utility if there is in
6 operation under an indeterminate permit in the municipality a public utility
7 engaged in similar service ^{plain} ~~other than a telecommunications service~~, unless it secures
8 from the commission a declaration, after a public hearing of all parties interested,
9 that public convenience and necessity require the municipal public utility and unless
10 the requirements of par. (c) are satisfied.

11 **SECTION 32.** 196.50 (4) (a) [✓] of the statutes is created to read:

12 196.50 (4) (a) In this subsection: [✓]

13 1. "Commencement of construction" has the meaning given in s. [✓] 196.491 (1) (b).

 ****NOTE: The above term is used in par. (c) 2. [✓]

14 2. "Local governmental unit" means a town, village, city, county, or special
15 purpose district, a subunit of a town, village, city, county, or special purpose district,
16 or any combination of a town, village, city, county, special purpose district, or such
17 a subunit.

18 3. [✓] "Telecommunications facility" means any plant or equipment used to provide
19 a telecommunications service to the public by wire, fiber optics, radio signal, or other
20 means.

 ****NOTE: The instructions provide that a telecommunications facility includes a
transmission facility. Because the definition of "telecommunications service" includes
conveying and forwarding voice, data, and other information, I don't think it's necessary
to refer to a transmission facility. However, if you have something else in mind, please
let me know. Also note that the references to wire, fiber optics, radio signal, or other
means are based on the definition of "transmission facility" in 2001 AB [✓] 518. Is that okay? *

21 **SECTION 33.** 196.50 (4) (c) [✓] of the statutes is created to read:

1 196.50 (4) (c) 1. Except as provided in subd. 2., a local governmental unit may
2 not construct or own a telecommunications facility, unless all of the following are
3 satisfied:

4 a. The local governmental unit leases the telecommunications facility to a
5 telecommunications provider that is not owned or controlled by any local
6 governmental unit.

7 b. Before beginning construction or taking ownership of the
8 telecommunications facility, whichever occurs first, the local governmental unit
9 submits to the commission a financing plan and budget for constructing or owning
10 the telecommunications facility. The information submitted under this subdivision^{1.b.}
11 shall be open to public inspection.

12 c. The lease specified in subd. 1. a. is approved at a referendum pursuant to this
13 subdivision. The governing body of each town, village, city, county, or special purpose
14 district that comprises the local governmental unit or that has a subunit^{that} which
15 comprises the local governmental unit may adopt a resolution calling for a
16 referendum under this subdivision on whether that local governmental entity or
17 subunit should construct or purchase a telecommunications facility and enter into
18 a lease specified in subd. 1. a. The referendum shall be held at the next succeeding
19 spring election or general election to be held not earlier than 42 days after the
20 adoption of the resolution. The referendum question shall be substantially as
21 follows: "Shall the [name of town, village, city, county, special purpose district, or
22 subunit] [construct or purchase] a telecommunications facility for the purpose of
23 leasing that facility to a private telecommunications provider?" If a majority of the
24 electors of each town, village, city, county, or special purpose district that comprises
25 the local governmental unit or that has a subunit^{that} which comprises the local

1 governmental unit who vote in the referendum vote "Yes," the local governmental
2 unit may enter into the lease specified in subd. 1. a. ✓, provided the local governmental
3 unit complies with subd. 1. b. ✓

4 2. Subdivision 1. does not apply to a telecommunications facility that is owned
5 or on which construction has commenced before the effective date of this ✓ subdivision
6 [revisor inserts date].

****NOTE: I'm assuming you don't want the prohibition to apply if a local
governmental unit already owns or begins to construct a telecommunications facility. Is
that correct?

7 **INSERT 5-10:**

8 **SECTION 34.** 198.12 (6) ✓ of the statutes is amended to read:

9 198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF
10 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire
11 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b) ✓, to
12 construct any utility or portion thereof to operate, in whole or in part, in the district,
13 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where
14 applicable, to construct any addition to or extension of any such utility, and to own,
15 acquire and construct any water power and hydroelectric power plant, within or
16 without the district, to be operated in connection with any such utility, and to
17 operate, maintain and conduct such utility and water power and hydroelectric power
18 plant and system both within and without the district, and to furnish, deliver and
19 sell to the public and to any municipality and to the state and any state institution
20 heat, light and power service and any other service, commodity or facility which may
21 be produced or furnished thereby, and to charge and collect rates, tolls and charges
22 for the same. For said purposes the district is granted and shall have and exercise
23 the right freely to use and occupy any public highway, street, way or place reasonably

1 necessary to be used or occupied for the maintenance and operation of such utility
2 or any part thereof, subject, however, to such local police regulations as may be
3 imposed by any ordinance adopted by the governing body of the municipality in
4 which such highway, street, way or place is located.

History: 1975 c. 147 s. 54; 1979 c. 89, 323; 1981 c. 390; 1993 a. 184; 1995 a. 158; 1997 a. 27.
History: 1977 c. 418; 1983 a. 53; 1985 a. 297 ss. 52 to 54, 76; 1993 a. 496; 1995 a. 409; 1999 a. 150 s. 672.

5 **SECTION 35.** 198.22 (6) of the statutes is amended to read:

6 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF
7 STREETS. The district shall have power and authority to own, acquire, and, subject
8 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any
9 water utility or portion thereof, to operate, in whole or in part, in the district and to
10 construct any addition or extension to any such utility. For such purpose the district
11 is granted and shall have and exercise the right freely to use and occupy any public
12 highway, street, way or place reasonably necessary to be used or occupied for the
13 construction, operation or maintenance of such utility or any part thereof, subject,
14 however, to the obligation of the district to replace said grounds in the same condition
15 as they previously were in.

History: 1971 c. 108 ss. 5, 6; 1971 c. 125 s. 523; 1971 c. 164; 1979 c. 323; 1985 a. 29; 1991 a. 316; 1993 a. 184; 1997 a. 254; 1999 a. 150 s. 672.

16 **SECTION 36.** 227.01 (13) (cm) of the statutes is created to read:

17 227.01 (13) (cm) Is an order under s. 196.219 (1) (c), (3m) (b) or (c), or (3s).

18 **SECTION 37. Nonstatutory provisions.**

19 (1) WHOLESALE AND RETAIL SERVICE RULES. The public service commission shall
20 submit in proposed form the rules required under section 196.219 (3m) (d) of the
21 statutes, as created by this act, to the legislative council staff under section 227.15
22 (1) of the statutes no later than July 1, 2005.

23 (2) RULES DEFINING "WHOLESALE SERVICE". If the public service commission issues
24 an order under section 196.219 (1) (c) of the statutes, as created by this act, the

1 commission shall submit in proposed form the rules required under section 196.219
2 (1) (c) of the statutes, as created by this act, to the legislative council staff under
3 section 227.15 (1) of the statutes no later than July 1, 2005.

4 **INSERT 5-11:**

SERVICE ← (CS)

5 (1) TELECOMMUNICATIONS BILLING. The treatment of sections 100.207 (3g), (3m),
6 and (5g) of the statutes first applies to contracts entered into, extended,
7 modified, or renewed on the effective date of this subsection.

8 (2) ENFORCEMENT AUTHORITY; DEPARTMENT OF AGRICULTURE, TRADE, AND CONSUMER
9 PROTECTION. The treatment of section 100.207 (6) (bg) 1. and (br) of the statutes first
10 applies to subpoenas, orders, civil investigative demands, complaints, notices,
11 orders, or other processes that are serviced on the effective date of this subsection.

12 **INSERT 5-14:**

13 (b) The treatment of section 196.37 (2) of the statutes first applies to orders
14 made on the effective date of this paragraph.

15 (c) The treatment of section 196.196 (6) of the statutes first applies to
16 inadequate service provided or insufficient investment made on the effective date
17 of this paragraph.

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4955/insanl
MGG:.....

INS MGG ANL
(to INS 2-A)

Restrictions on telecommunications providers in ^{check A} billing other services

This bill provides that a telecommunications provider may not bill a customer for goods or services that are not ^a telecommunications services unless the telecommunications provider reasonably believes that the customer knowingly consents to receive the bill and the provider confirms that consent with the ~~customer~~ ^{customer}. If a customer consents, the bill requires that the telecommunications provider separate the bill between the billing for telecommunication services and the billing for the other goods or services. Finally, if requested to do so by a customer who has consented to being billed for the other goods or services, the telecommunications provider shall provide a detailed itemized listing of the charges for those goods or services.

(end ins MGG ANL)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4955/P1dn
RNK/MDK/MCG:jld:pg

February 21, 2002

Representative Montgomery:

One of the instructions for this draft under the heading of "Consumer Protection" relates to "contract acceptance." That instruction was made in two parts. After receiving some clarification from John Stolzenberg, I believe that the language created in this draft in proposed s. 100.207 (3m) satisfies the intent of both parts of the instruction. Please let me know if you believe any additional language is needed.

With regard to the instruction concerning encryption, I have placed the encryption prohibition in chapter 100 because I have assumed that you intended that this prohibition be administered by DATCP. If this was not your intention, please let me know and I will redraft accordingly.

It is possible that a court might conclude that the prohibition created in this draft relating to encryption is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Section VI (A) (1) (d) of the instructions refer to requiring a telecommunications provider to provide records regarding s. 100.207, stats., to the PSC, in addition to DATCP, without a subpoena. However, the PSC does not enforce s. 100.207. Therefore, I'm not sure why you want such a requirement, and I haven't included the requirement in this version of the draft.

I haven't determined yet whether the penalty provisions of ch. 196, stats., must be changed to apply to telecommunications providers who are subject to information collection authority that is created for the PSC in this bill. I will make appropriate changes in the next version of the draft.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Doesn't DATCP already have inspection authority which does not require a subpoena under s. 93.15 (2) and under s. 100.18 (11) (c), which is cross-referenced in s. 100.207 (6) (b) 2.? Due to this, we have not "drafted" point VI A 1. d. which is found on page 10 of the Task Force Recommendations as it relates to DATCP authority.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

100194

ger cat

INSERT
1-10

1 AN ACT *to renumber* 196.219 (2m) and 196.44 (1); *to renumber and amend*
2 100.207 (1), 196.202 (2) and 196.50 (4); *to amend* 196.196 (1) (g) 1. a., 196.219
3 (2m) (title), 196.219 (4) (a), 196.219 (4) (b), 196.22, 196.37 (1), 196.37 (2),
4 196.499 (1) (b), 196.50 (4) (title), 196.66 (1), 196.66 (3) (b) (intro.), 198.12 (6) and
5 198.22 (6); and *to create* 20.155 (1) (Ls), 100.2065, 100.207 (1) (a), 100.207 (3g),
6 100.207 (3m), 100.207 (5g), 100.207 (5m), 100.207 (6) (bg), 100.207 (6) (br),
7 196.02 (13), 196.025 (1m), 196.196 (5) (f) 1. g., 196.196 (5) (f) 4., 196.196 (6),
8 196.202 (2) (b), 196.203 (6), 196.219 (1) (c), 196.219 (2m) (b), 196.219 (3) (p),
9 196.219 (3m), 196.219 (3s), 196.219 (6), 196.44 (1) (b), 196.499 (12) (am), 196.50
10 (4) (a), 196.50 (4) (c) and 227.01 (13) (cm) of the statutes; **relating to:** retail and
11 wholesale telecommunications service standards; telecommunications access
12 rates; enforcement authority of the public service commission regarding
13 telecommunications providers; construction and ownership of
14 telecommunications facilities by local units of government; services provided by
15 telecommunications providers; authority of the public service commission

providing an exemption from rule-making procedures;

1 regarding area codes and telephone numbers and telecommunications-related
 2 decisions, orders, and rules; granting rule-making authority; making ~~the~~
 3 appropriation; and providing penalties.

Analysis by the Legislative Reference Bureau

This bill creates a wireless 911 board that makes grants for providing 911 wireless emergency telephone service. The grants are funded by a surcharge paid by wireless customers. These provisions are discussed below. The bill also does all of the following with respect to the regulation of telecommunications providers, which are ~~also~~ discussed below: 1) requires the public service commission (PSC) to establish retail and wholesale service standards; 2) allows the PSC to order access rates for certain telecommunications utilities; 3) makes changes to the PSC's enforcement authority; 4) restricts ownership or construction of telecommunications facilities by local units of government; 5) makes changes to the telecommunications consumer protection law; and 6) makes various other changes.

911 wireless emergency telephone service.

The provisions of LRB-4975 and an analysis will be included in a subsequent version of this draft.

Retail and wholesale service standards

An analysis of these provisions will be included in a subsequent version of this draft.

Access rates

An analysis of these provisions will be included in a subsequent version of this draft.

PSC enforcement authority

Under current law, telecommunications utilities and providers are subject to certain requirements regarding the protection of consumers, including other telecommunications utilities and providers that use their services. There are several provisions for enforcing these requirements, including the following two. First, PSC, on its own motion or upon a complaint filed by a consumer, may take administrative action or commence civil actions against telecommunications utilities and providers to enforce these requirements. This bill provides that the PSC has jurisdiction in its own name or on behalf of consumers to take such actions. The bill also clarifies that the PSC's authority to take administrative action includes initiating a contested case.

Second, under current law, the PSC may bring an action in court for injunctive relief for compelling compliance with the requirements, for compelling refunds of any moneys collected in violation of the requirements, or for any other relief under the public utility statutes. This bill ~~also~~ allows the PSC to take administrative action, in addition to bringing an action in court, for compelling compliance with the requirements or for compelling refunds. In addition, the bill allows the PSC to take

(F)

and restrictions on contracts

administrative action or bring an action in court for any other appropriate relief, instead of just any other relief under the public utility statutes. Also, the bill allows the PSC to directly impose forfeitures for violations of the requirements.

Furthermore, the bill makes other changes to the enforcement authority of the PSC, including the following:

1. Under current law, the PSC may investigate whether rates, tolls, charges, schedules, or joint rates are unjust, unreasonable, insufficient, unjustly discriminatory or preferential, or unlawful and order that reasonable rates, tolls, charges, schedules, or joint rates be imposed, observed, or followed in the future. With respect to telecommunications providers, this bill also allows the PSC to order reasonable compensation for persons injured by reason of rates, tolls, charges, schedules, or joint rates of telecommunications providers that are investigated.

2. Under current law, public utilities and certain other entities, such as telecommunications providers, that violate laws enforced by the PSC, PSC orders, and certain other requirements are subject to a forfeiture of between \$25 and \$5,000, for each day of violation, which is imposed by a court. Under this bill, the PSC may also impose such a forfeiture against a telecommunications provider by administrative action.

3. Under current law, the PSC is required to inquire into neglect or violation of laws by public utilities and telecommunications carriers, enforce such laws, and report all violations to the attorney general. This bill also allows the PSC to take administrative action and institute and prosecute all necessary actions and proceedings for enforcing all laws relating to telecommunications providers or telecommunications carriers, and for the punishment of all violations.

An analysis of other changes to the PSC's enforcement authority will be included in a subsequent version of this draft.

Local government construction and ownership of telecommunications facilities

An analysis of these provisions will be included in a subsequent version of this draft.

Restrictions on telecommunications providers in initiating service

This bill provides that a telecommunications provider may not provide a telecommunications service to a person unless the telecommunications provider reasonably believes that the person knowingly consented to receive the service. The telecommunications provider must also confirm, before providing the telecommunications service, that the person knowingly consented to receive the service. The bill also requires that the telecommunications provider inform the person that he or she may, before the service is activated, withdraw his or her consent to receive the service and requires that the telecommunications provider inform the person of the manner by which that consent may be withdrawn.

Restrictions on telecommunications providers in billing other services

This bill provides that a telecommunications provider may not bill a customer for goods or services that are not telecommunications services, unless the telecommunications provider reasonably believes that the customer knowingly consents to receive the bill and the provider confirms that consent with the customer.

*Insert
Analysis RK*

*provided by that
telecommunications
provider*

distinguish on
 If a customer consents, the bill requires that the telecommunications provider ~~separate~~ the bill between the billing for telecommunication services and the billing for the other goods or services. Finally, if requested to do so by a customer who has consented to being billed for the other goods or services, the telecommunications provider shall provide a detailed itemized listing of the charges for those goods or services.

Other changes

The bill prohibits the provider of any broadcast audio or video service or any cable television telecommunications service from transmitting from this state any programming that is encrypted in such a manner that the programming may not be recorded by the recipient of the programming for the recipient's personal use. Current federal law specifies the extent to which a recipient may record programming for personal use.

An analysis of other changes will be included in a subsequent version of this draft.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 4-1

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 20.155 (1) (Ls) of the statutes is created to read:

2 20.155 (1) (Ls) *Telecommunications provider payments*. All moneys received
3 from payments by telecommunications providers under s. 196.37 (2) for purposes
4 determined by the commission under s. 196.37 (2).

5 SECTION 2. 100.2065 of the statutes is created to read:

6 **100.2065 Encryption of audio and video programming prohibited. (1)**

7 In this section:

8 (a) "Broadcast service" has the meaning given in s. 196.01 (1m).

9 (b) "Cable television service" has the meaning given s. 196.01 (1p).

10 (2) No person who provides a broadcast service or a cable television

11 ~~telecommunications~~ service may transmit from this state programming that is

12 encrypted in such a manner that the programming may not be recorded by a recipient

1 of the programming for the recipient's personal use, unless the personal use is
2 prohibited under federal law.

3 SECTION 3. 100.207 (1) of the statutes is renumbered 100.207 (1) (intro.) and
4 amended to read:

5 100.207 (1) DEFINITION. ^(intro.) In this section, ~~“telecommunications:~~

6 (b) “Telecommunications service” has the meaning given in s. 196.01 (9m).

7 SECTION 4. 100.207 (1) (a) of the statutes is created to read:

8 100.207 (1) (a) “Telecommunications provider” has the meaning given in s.
9 196.01 (8p).

10 SECTION 5. 100.207 (3g) of the statutes is created to read:

11 100.207 (3g) BILLING FOR OTHER SERVICES. (a) A telecommunications provider
12 may not bill a customer for any goods or services, other than telecommunications
13 service provided by the telecommunications provider, unless all of the following
14 apply:

15 1. The telecommunications provider reasonably believes that the person
16 knowingly consented to the billing.

17 2. The telecommunications provider confirms with the person, before providing
18 the telecommunications service, that the person knowingly consented to the billing.

19 (b) If a customer consents to being billed under par. (a), all of the following shall
20 apply:

21 1. The telecommunications provider shall ~~provide~~ ^{distinguish} the billing for the other goods
22 or services ~~in a separate document~~ from the billing for the telecommunications
23 service ~~or shall otherwise separate the 2 billings~~ ^{conspicuous} in a manner approved by the
24 department.

1 2. The telecommunications provider shall provide a detailed itemized listing
2 of the charges for the goods or services if requested to do so by the customer.

3 **SECTION 6.** 100.207 (3m) of the statutes is created to read:

4 100.207 (3m) TELECOMMUNICATIONS SERVICE CONFIRMATION. A
5 telecommunications provider may not provide a telecommunications service to a
6 person unless all of the following apply:

7 (a) The telecommunications provider reasonably believes that the person
8 knowingly consented to receive the service.

9 (b) The telecommunications provider confirms with the person, before
10 providing the telecommunications service, that the person knowingly consented to
11 receive the service.

12 (c) At the time that the telecommunications provider provides confirmation
13 under par. (b), the telecommunications provider informs the person that he or she
14 may, before the service is activated, withdraw his or her consent to receive the service
15 and informs the person of the manner by which that consent may be withdrawn.

16 **SECTION 7.** 100.207 (5g) of the statutes is created to read:

17 100.207 (5g) RESTRICTIONS ON CONTRACTS. No telecommunications provider
18 may place in a contract entered into with a customer located in this state a clause that
19 provides that a law of a state other than this state applies to the parties or terms of
20 the contract or the rights and remedies under the contract.

21 **SECTION 8.** 100.207 (5m) of the statutes is created to read:

22 100.207 (5m) RECORD REQUIREMENTS. Any person who provides
23 telecommunications service to any person in this state shall maintain each billing
24 and collection record that is made in providing the telecommunication service for a
25 period of 10 years beginning on the date that the record is made.

INSERT 7-11

1 SECTION 9. 100.207 (6) (bg) of the statutes is created to read:

2 100.207 (6) (bg) 1. Any person who has been served with a department
3 complaint, notice, order, or other process as authorized in s. 93.18 (5) shall be subject
4 to the department's authority and jurisdiction, as limited by subd. 2.

5 2. The department's jurisdiction may not exceed the jurisdiction granted to
6 courts under s. 815.05.

7 SECTION 10. 100.207 (6) (br) of the statutes is created to read:

8 100.207 (6) (br) Any person who fails to comply with a subpoena, order, or civil
9 investigative demand that is served upon the person for the purposes of
10 administering or enforcing this section or for the purpose of conducting an
11 investigation under this section may be coerced to comply as provided in s. 885.12.

12 SECTION 11. 196.02 (13) of the statutes is created to read:

13 196.02 (13) TELEPHONE NUMBERS AND AREA CODES. To the extent authorized
14 under federal law, the commission has jurisdiction to supervise and regulate
15 telephone numbers and area codes used by any telecommunications provider in this
16 state and to do all things necessary and convenient to such jurisdiction. The
17 commission may withhold from public inspection any information obtained from a
18 telecommunications provider under this subsection that would aid a competitor of
19 the telecommunications provider.

****NOTE: The above language is based on s. 196.02 (1), stats. which establishes the
PSC's jurisdiction over public utilities.

20 SECTION 12. 196.025 (1m) of the statutes is created to read:

21 196.025 (1m) In making all telecommunications-related decisions and orders,
22 including rate setting and rule-making orders, the commission shall promote the
23 availability of high quality telecommunications services at reasonable rates,

1 facilitate the development of competitive markets for local telecommunications
2 services, protect the public against monopolies, and ensure the effective regulation
3 of large price-regulated telecommunications utilities that have control or market
4 power over essential telecommunications facilities.

5 **SECTION 13.** 196.196 (1) (g) 1. a. of the statutes is amended to read:

6 196.196 (1) (g) 1. a. The goal to be achieved, which may include promoting
7 competition, service quality, infrastructure deployment, economic development,
8 consumer choice, productivity, efficiency, quality of life, societal goals, or universal
9 service.

10 **SECTION 14.** 196.196 (5) (f) 1. g. of the statutes is created to read:

11 196.196 (5) (f) 1. g. Competition for telecommunications services throughout
12 the state.

13 **SECTION 15.** 196.196 (5) (f) 4. of the statutes is created to read:

14 196.196 (5) (f) 4. The commission may require a telecommunications provider
15 or cable television ~~telecommunications~~ ^{or provider of} service provider to submit to the commission
16 any information that the commission determines is necessary to prepare the report
17 under subd. 1. The commission may withhold from public inspection any
18 information obtained under this subdivision that would aid a competitor of a
19 telecommunications provider or ^{provider of} cable television ~~telecommunications~~ service
20 provider.

****NOTE: Note that "cable television telecommunications service provider" is defined as "a person who provides one or more telecommunications services but who, during the previous taxable year, received at least 90% of his or her gross income in the particular television franchise area in which telecommunication services are provided from the operation of a cable television system subject in whole or in part to 47 USC 521 to 559." See s. 196.01 (1r), stats. Is that okay, or do you want to also refer to a person who only provides cable television service? (Note that cable television service is not a telecommunications service. See s. 196.01 (9m), stats.)

21 **SECTION 16.** 196.196 (6) of the statutes is created to read:

1 196.196 (6) PENALTY. A price-regulated telecommunications utility that
2 provides inadequate service or makes insufficient investment may be required to
3 forfeit no more than the dollar value of the decrease in rates that would result from
4 applying a penalty mechanism of 5 percentage points and an incentive mechanism
5 of zero percentage points under sub. (1) (c) 1. The commission may impose a
6 forfeiture under this subsection by administrative action.

7 **SECTION 17.** 196.202 (2) of the statutes, as affected by 2001 Wisconsin Act 16,
8 is renumbered 196.202 (2) (intro.) and amended to read:

9 196.202 (2) SCOPE OF REGULATION. (intro.) A commercial mobile radio service
10 provider is not subject to ch. 201 or this chapter, except as provided in sub. (5), and
11 except that as follows:

12 (a) A commercial mobile radio service provider is subject to s. 196.218 (3) if the
13 commission promulgates rules that designate commercial mobile radio service
14 providers as eligible to receive universal service funding under both the federal and
15 state universal service fund programs. If the commission promulgates such rules,
16 a commercial mobile radio service provider shall respond, subject to the protection
17 of the commercial mobile radio service provider's competitive information, to all
18 reasonable requests for information about its operations in this state from the
19 commission necessary to administer the universal service fund.

20 **SECTION 18.** 196.202 (2) (b) of the statutes is created to read:

21 196.202 (2) (b) A commercial mobile radio service provider is subject to ss.
22 196.02 (13) and 196.196 (5) (f) 4.

23 **SECTION 19.** 196.203 (6) of the statutes is created to read:

24 196.203 (6) An alternative telecommunications utility is subject to ss. 196.02
25 (13) and 196.196 (5) (f) 4.

~~****NOTE: The instructions don't mention including alternative telecommunications utilities under the PSC's authority for telephone numbers and area codes. However, I thought I would include them for the sake of consistency. Is that okay?~~

1 SECTION 20. 196.219 (1) (c) of the statutes is created to read:

2 196.219 (1) (c) "Wholesale services" include preordering, ordering and
3 provisioning, maintenance and repair, network performance, unbundled elements,
4 operator services and directory assistance, system performance, service center
5 availability, and billing. The commission may, by order, modify the definition under
6 this paragraph. ~~If the commission issues an order under this paragraph, the~~
7 ~~commission shall promulgate rules that modify the definition.~~

~~****NOTE: Because the PSC must submit proposed rules to the legislative council staff by July 1, 2005, I think the result is that the PSC may not issue an order after that date. Is that your intent?~~

8 SECTION 21. 196.219 (2m) (title) of the statutes is amended to read:

9 196.219 (2m) (title) ACCESS SERVICES AND RATES.

10 SECTION 22. 196.219 (2m) of the statutes is renumbered 196.219 (2m) (a).

11 SECTION 23. 196.219 (2m) (b) of the statutes is created to read:

12 196.219 (2m) (b) 1. In this paragraph, "access order" means the March 23, 1993,
13 order of the commission on intrastate access costs and charges in docket number
14 05-TR-103.

15 2. Except as provided in subd. 3., the commission ~~may~~ ^{shall} investigate, determine,
16 and order ~~intrastate access rates~~ of a telecommunications utility if the utility's
17 intrastate originating and terminating access rates exceed any of the following:

~~****NOTE: The statutes don't refer to "earnings reviews." Therefore, I don't want to use that term because I don't know what it means. Is the above okay?~~

18 a. After July 1, 2004, 150% of the benchmark rate levels established in the
19 access order.

1 tolls, and charges

1 b. After July 1, 2006, 125% of the benchmark rate levels established in the
2 access order.

3 c. After July 1, 2008, 100% of the benchmark rate levels established in the
4 access order.

5 3. Subdivision 2. does not apply to any of the following:

6 a. A telecommunications utility regulated under s. 196.196.

7 b. A telecommunications utility whose intrastate access rates are established
8 under s. 196.195 (12).

9 c. A telecommunications utility whose intrastate access rates have been
10 reviewed and approved by the commission after September 1, 1994 and before the
11 effective date of this subd. 3. c. [revisor inserts date].

496 ~~****NOTE: September 1, 1994, is the general effective date of 1993 Wisconsin Act~~

12 **SECTION 24.** 196.219 (3) (p) of the statutes is created to read:

13 196.219 (3) (p) Fail to provide wholesale services to another
14 telecommunications provider on the same terms and conditions that the
15 telecommunications utility or telecommunications provider receives from any other
16 telecommunications provider, except that, if a telecommunications utility or
17 telecommunications provider receives wholesale services on different terms and
18 conditions from different telecommunications providers, the telecommunications
19 utility or telecommunications provider shall provide wholesale services on the terms
20 and conditions that it receives from another telecommunications provider that result
21 in the highest quality of wholesale service.

22 **SECTION 25.** 196.219 (3m) of the statutes is created to read:

1 196.219 (3m) RETAIL AND WHOLESALE SERVICE STANDARDS. (a) *Definitions*. In this
2 subsection:

3 1. “Repeat trouble report” means a trouble report by a retail or wholesale
4 customer who has previously made a trouble report regarding the same retail or
5 wholesale service.

6 2. “Retail service” means basic residential and business telecommunications
7 service.

8 3. “Trouble report” means a report to a telecommunications provider by a retail
9 or wholesale customer about a problem regarding a retail or wholesale service
10 provided by the telecommunications provider.

11 (b) *Retail service standards*. 1. No later than 90 days after the effective date
12 of this subdivision [revisor inserts date], the commission shall, by order, establish
13 standards that require a telecommunications provider specified in subd. 2. to do all
14 of the following:

15 a. Initiate retail service in response to orders in a timely manner.

16 b. Repair retail service outages in a timely manner.

17 c. Minimize the frequency of repeat trouble reports.

18 d. Minimize missed retail service repair appointments.

19 e. Minimize retail service customer waiting time during calls to the
20 telecommunications provider’s service center.

21 f. Comply with any other requirement specified by the commission relating to
22 retail service quality.

23 2. The standards under subd. 1. shall apply to a telecommunications utility
24 with more than 500,000 access lines in this state. The commission may, by order,
25 specify other telecommunications providers who provide local exchange service that

1 must comply with the standards if the commission finds that such a
2 telecommunications provider has engaged in a demonstrated pattern of poor retail
3 service or intentional misconduct related to retail service.

4 3. The commission may, by order, require a telecommunications provider that
5 must comply with the standards under subd. 1. to issue credits specified in the order
6 to retail service customers who are affected by the telecommunications provider's
7 failure to comply with the standards.

8 (c) *Wholesale service standards.* 1. No later than 90 days after the effective date
9 of this subdivision ... [revisor inserts date], the commission shall, by order, establish
10 standards that require a telecommunications utility specified in the order to do all
11 of the following:

- 12 a. Initiate wholesale service in response to orders in a timely manner.
13 b. Repair wholesale service outages in a timely manner.
14 c. Minimize the frequency of repeat trouble reports.
15 d. Comply with any other requirement specified by the commission relating to
16 wholesale service quality.

17 2. After issuing the order under subd. 1., the commission may issue an order
18 specifying additional telecommunications utilities that must comply with the
19 standards under subd. 1.

20 (d) *Rule making.* The commission ~~shall~~ ^{may} promulgate rules that implement the
21 requirements of the orders under pars. (b) and (c).

22 **SECTION 26.** 196.219 (3s) of the statutes is created to read:

23 196.219 (3s) REMEDIAL ORDERS. The commission may issue an order requiring
24 that, if a telecommunications provider determines that it has failed to comply with
25 a requirement of this section that is specified in the order, the telecommunications

1 provider must provide its ^{consumers} ~~retail or wholesale service~~ customers who are affected by
2 the failure with a billing credit or other remedy specified in the order.

~~***NOTE: The instructions refer to customers. The above specifies both retail and
wholesale customers. Is that okay?~~

3 **SECTION 27.** 196.219 (4) (a) of the statutes is amended to read:

4 196.219 (4) (a) ~~On the commission's own motion or upon complaint filed by the~~
5 ~~consumer, the~~ The commission, in its own name or on behalf of consumers, shall have
6 jurisdiction to take administrative action, including initiating a contested case, or to
7 commence civil actions against telecommunications utilities or providers to enforce
8 this section.

9 **SECTION 28.** 196.219 (4) (b) of the statutes is amended to read:

10 196.219 (4) (b) The commission, in its own name or on behalf of consumers,
11 ~~may, at its discretion, take administrative action, including initiating a contested~~
12 ~~case, or~~ institute in any court of competent jurisdiction a proceeding against a
13 telecommunications utility or provider for injunctive relief, to compel compliance
14 with this section, to compel the accounting and refund of any moneys collected in
15 violation of this section, or for any other appropriate relief permitted under this
16 ~~chapter.~~ The commission may directly impose forfeitures for violations of this
17 section.

18 **SECTION 29.** 196.219 (6) of the statutes is created to read:

19 196.219 (6) PENALTIES. (a) Except as provided in par. (b), a telecommunications
20 provider that violates this section may be required to forfeit not more than \$30,000,
21 or 0.00825% of the telecommunications provider's annual gross operating revenues
22 from intrastate telecommunications service, whichever is greater, for each offense.
23 Each day of continued violation constitutes a separate offense.

****NOTE: I added the reference to "annual" revenues and the language regarding each day of violation. Is that okay?

1 (b) A small telecommunications utility that violates this section may be
2 required to forfeit not more than \$5,000 for each offense. Each day of continued
3 violation constitutes a separate offense.

****NOTE: I added the language regarding each day of violation. Is that okay?

4 (c) A court imposing a forfeiture on a telecommunications provider under this
5 subsection shall consider all of the following in determining the amount of the
6 forfeiture:

7 1. The appropriateness of the forfeiture to the volume of business of the
8 telecommunications provider.

9 2. The gravity of the violation.

10 3. Any good faith attempt to achieve compliance after the telecommunications
11 provider receives notice of the violation.

12 **SECTION 30.** 196.22 of the statutes is amended to read:

13 **196.22 Discrimination forbidden.** No public utility may charge, demand,
14 collect, or receive more or less compensation for any service performed by it within
15 the state, or for any service in connection therewith, than is specified in the schedules
16 for the service filed under s. 196.19, including schedules of joint rates, as may at the
17 time be in force, or demand, collect, or receive any rate, toll, or charge not specified
18 in the schedule. Payments made for violations of this chapter by telecommunications
19 providers are not contrary to this section.

20 **SECTION 31.** 196.37 (1) of the statutes is amended to read:

21 196.37 (1) If, after an investigation under this chapter or ch. 197, the
22 commission finds rates, tolls, charges, schedules, or joint rates to be unjust,
23 unreasonable, insufficient, or unjustly discriminatory or preferential, or otherwise

1 unreasonable or unlawful, the commission shall determine and order reasonable
2 rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed
3 in the future and, with respect to rates, tolls, charges, schedules, or joint rates of
4 telecommunications providers, may determine and order reasonable compensation
5 for persons injured by reason of such rates, tolls, charges, schedules, or joint rates.

6 SECTION 32. 196.37 (2) of the statutes is amended to read:

7 196.37 (2) If the commission finds that any measurement, regulation, practice,
8 act¹ or service is unjust, unreasonable, insufficient, preferential, unjustly
9 discriminatory² or otherwise unreasonable or unlawful, or that any service is
10 inadequate, or that any service which reasonably can be demanded cannot be
11 obtained, the commission shall determine and make any just and reasonable order
12 relating to a measurement, regulation, practice, act³ or service to be furnished,
13 imposed, observed⁴ and followed in the future. An order under this subsection against
14 a telecommunications provider may require the telecommunications provider to
15 make payments in amounts specified in the order to persons affected by the
16 measurement, regulation, practice, act, or service or to the commission. The
17 commission may use any payment received under this subsection for any purpose
18 determined by the commission relating to maintaining or improving
19 telecommunications service quality, including compensating persons who are
20 affected by the measurement, regulation, practice, act, or service.

***NOTE. Is the above language okay? Note also the appropriation created in s.
20.155(1)(Ls).

21 SECTION 33. 196.44 (1) of the statutes is renumbered 196.44 (1) (a).

22 SECTION 34. 196.44 (1) (b) of the statutes is created to read:

1 196.44 (1) (b) The commission may take administrative action and institute
2 and prosecute all necessary actions or proceedings for the enforcement of all laws
3 relating to telecommunications providers and for the punishment of all violations.

4 **SECTION 35.** 196.499 (1) (b) of the statutes is amended to read:

5 196.499 (1) (b) A telecommunications carrier shall be treated under ss. 196.02
6 (13), 196.196 (5) (f) 4., 196.209, 196.218 (8) and 196.219 as a telecommunications
7 provider.

8 **SECTION 36.** 196.499 (12) (am) of the statutes is created to read:

9 196.499 (12) (am) The commission may take administrative action and
10 institute and prosecute all necessary actions or proceedings for the enforcement of
11 all laws relating to telecommunications carriers and for the punishment of all
12 violations.

13 **SECTION 37.** 196.50 (4) (title) of the statutes is amended to read:

14 196.50 (4) (title) MUNICIPALITY LOCAL GOVERNMENTAL UNITS AND MUNICIPALITIES
15 RESTRAINED.

16 **SECTION 38.** 196.50 (4) of the statutes is renumbered 196.50 (4) (b) and
17 amended to read:

18 196.50 (4) (b) No municipality may construct any public utility if there is in
19 operation under an indeterminate permit in the municipality a public utility
20 engaged in similar service ~~other than a telecommunications service~~, unless it secures
21 from the commission a declaration, after a public hearing of all parties interested,
22 that public convenience and necessity require the municipal public utility and unless
23 the requirements of par. (c) are satisfied.

24 **SECTION 39.** 196.50 (4) (a) of the statutes is created to read:

25 196.50 (4) (a) In this subsection:

1 1. “Commencement of construction” has the meaning given in s. 196.491 (1) (b).

 ***NOTE: The above term is used in par. (c) 2.

2 2. “Local governmental unit” means a town, village, city, county, or special
3 purpose district, a subunit of a town, village, city, county, or special purpose district,
4 or any combination of a town, village, city, county, special purpose district, or such
5 a subunit.

6 3. “Telecommunications facility” means any plant or equipment used to provide
7 a telecommunications service to the public by wire, fiber optics, radio signal, or other
8 means.

 ***NOTE: The instructions provide that a telecommunications facility includes a
transmission facility. Because the definition of “telecommunications service” includes
conveying and forwarding voice, data, and other information, I don't think it's necessary
to refer to a transmission facility. However, if you have something else in mind, please
let me know. Also note that the references to wire, fiber optics, radio signal, or other
means are based on the definition of “transmission facility” in 2001 AB-518. Is that okay?

9 **SECTION 40.** 196.50 (4) (c) of the statutes is created to read:

10 196.50 (4) (c) 1. Except as provided in subd. 2., a local governmental unit may
11 not construct or own a telecommunications facility, unless all of the following are
12 satisfied:

13 a. The local governmental unit leases the telecommunications facility to a
14 telecommunications provider that is not owned or controlled by any local
15 governmental unit.

16 b. Before beginning construction or taking ownership of the
17 telecommunications facility, whichever occurs first, the local governmental unit
18 submits to the commission a financing plan and budget for constructing or owning
19 the telecommunications facility. The information submitted under this subd. 1. b.
20 shall be open to public inspection.

1 c. The lease specified in subd. 1. a. is approved at a referendum pursuant to this
 2 subdivision. The governing body of each town, village, city, county, or special purpose
 3 district that comprises the local governmental unit or that has a subunit that
 4 comprises the local governmental unit may adopt a resolution calling for a
 5 referendum under this subdivision on whether that local governmental entity or
 6 subunit should construct or purchase a telecommunications facility and enter into
 7 a lease specified in subd. 1. a. The referendum shall be held at the next succeeding
 8 spring election or general election to be held not earlier than 42 days after the
 9 adoption of the resolution. The referendum question shall be substantially as
 10 follows: "Shall the [name of town, village, city, county, special purpose district, or
 11 subunit] [construct or purchase] a telecommunications facility for the purpose of
 12 leasing that facility to a private telecommunications provider?" If a majority of the
 13 electors of each town, village, city, county, or special purpose district that comprises
 14 the local governmental unit or that has a subunit that comprises the local
 15 governmental unit who vote in the referendum vote "Yes," the local governmental
 16 unit may enter into the lease specified in subd. 1. a., provided the local governmental
 17 unit complies with subd. 1. b.

18 2. Subdivision 1. does not apply to a telecommunications facility that is owned
 19 or on which construction has commenced before the effective date of this subdivision
 20 [revisor inserts date].

***NOTE: I'm assuming you don't want the prohibition to apply if a local
 governmental unit already owns or begins to construct a telecommunications facility. Is
 that correct?

21 SECTION 41. 196.66 (1) of the statutes is amended to read:

22 196.66 (1) GENERAL FORFEITURE; FAILURE TO OBEY. If any public utility violates
 23 this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for

*or telecommunications
 provider*

*until 5 years after the effective
 date of this subdivision [revisor inserts
 date]*

1 which a penalty has not been provided, or fails, neglects, or refuses to obey any lawful
2 requirement or order of the commission or the governing body of a municipality or
3 a sanitary commission or any judgment or decree of any court upon its application,
4 for every violation, failure, or refusal the public utility shall forfeit not less than \$25
5 nor more than \$5,000. The commission may impose a forfeiture against a
6 telecommunications provider under this section by administrative action.

7 SECTION 42. 196.66 (3) (b) (intro.) of the statutes is amended to read:

8 196.66 (3) (b) (intro.) ~~A~~ The commission or a court imposing a forfeiture on a
9 public utility or telecommunications provider or an agent, director, officer, or
10 employee of a public utility or telecommunications provider under this chapter shall
11 consider all of the following in determining the amount of the forfeiture:

12 SECTION 43. 198.12 (6) of the statutes is amended to read:

13 198.12 (6) UTILITIES, ACQUIRE, CONSTRUCT, OPERATE; WATER POWER; SALE OF
14 SERVICE; USE OF STREETS. The district shall have power and authority to own, acquire
15 and, subject to the restrictions applying to a municipality under s. 196.50 (4) (b), to
16 construct any utility or portion thereof to operate, in whole or in part, in the district,
17 and to own, acquire and, subject to ss. 196.01 to 196.53 and 196.59 to 196.76 where
18 applicable, to construct any addition to or extension of any such utility, and to own,
19 acquire and construct any water power and hydroelectric power plant, within or
20 without the district, to be operated in connection with any such utility, and to
21 operate, maintain and conduct such utility and water power and hydroelectric power
22 plant and system both within and without the district, and to furnish, deliver and
23 sell to the public and to any municipality and to the state and any state institution
24 heat, light and power service and any other service, commodity or facility which may
25 be produced or furnished thereby, and to charge and collect rates, tolls and charges

1 for the same. For said purposes the district is granted and shall have and exercise
2 the right freely to use and occupy any public highway, street, way or place reasonably
3 necessary to be used or occupied for the maintenance and operation of such utility
4 or any part thereof, subject, however, to such local police regulations as may be
5 imposed by any ordinance adopted by the governing body of the municipality in
6 which such highway, street, way or place is located.

7 **SECTION 44.** 198.22 (6) of the statutes is amended to read:

8 198.22 (6) ACQUISITION; CONSTRUCTION; OPERATION; SALE OF SERVICE; USE OF
9 STREETS. The district shall have power and authority to own, acquire, and, subject
10 to the restrictions applying to a municipality under s. 196.50 (4) (b), to construct any
11 water utility or portion thereof, to operate, in whole or in part, in the district and to
12 construct any addition or extension to any such utility. For such purpose the district
13 is granted and shall have and exercise the right freely to use and occupy any public
14 highway, street, way or place reasonably necessary to be used or occupied for the
15 construction, operation or maintenance of such utility or any part thereof, subject,
16 however, to the obligation of the district to replace said grounds in the same condition
17 as they previously were in.

18 **SECTION 45.** 227.01 (13) (cm) of the statutes is created to read:

19 227.01 (13) (cm) Is an order under s. 196.219 (1) (c), (3m) (b) or (c), or (3s).

20 **SECTION 46. Nonstatutory provisions.** *stet*

21 (1) ^{key} WHOLESALE AND RETAIL SERVICE RULES. The public service commission shall
22 submit in proposed form the rules required under section 196.219 (3m) (d) of the
23 statutes, as created by this act, to the legislative council staff under section 227.15
24 (1) of the statutes no later than July 1, 2005.

INSERT 21-20

1 (2) RULES DEFINING "WHOLESALE SERVICE". If the public service commission issues
2 an order under section 196.219 (1) (c) of the statutes, as created by this act, the
3 commission shall submit in proposed form the rules required under section 196.219
4 (1) (c) of the statutes, as created by this act, to the legislative council staff under
5 section 227.15 (1) of the statutes no later than July 1, 2005.

6 **SECTION 47. Initial applicability.**

7 (1) TELECOMMUNICATIONS SERVICE. The treatment of section 100.207 (3g), (3m),
8 and (5g) of the statutes first applies to contracts entered into, extended, modified, or
9 renewed on the effective date of this subsection.

10 (2) ENFORCEMENT AUTHORITY; PUBLIC SERVICE COMMISSION.

11 (a) The treatment of sections 196.219 (4) (b) and (6), 196.499 (12) (am), and
12 196.66 (1) and (3) (b) (intro.) of the statutes first applies to violations occurring on
13 the effective date of this paragraph.

14 (b) The treatment of section 196.37 (2) of the statutes first applies to orders
15 made on the effective date of this paragraph

16 (c) The treatment of section 196.196 (6) of the statutes first applies to
17 inadequate service provided or insufficient investment made on the effective date of
18 this paragraph.

19 (END)

INSERT 4-1
(cont'd):

1 SECTION 4. 20.143 (3) (js) of the statutes is created to read:

2 20.143 (3) (js) *Public agency and wireless provider grants*. Forty-eight and
3 three-fourths percent of all moneys received under s. 146.70 (3m) (d) 3. for the
4 wireless 911 board to make grants to public agencies under s. 146.70 (3m) (b) 1. and
5 to wireless providers under s. 146.70 (3m) (b) 3.

6 SECTION 5. 20.143 (3) (kv) of the statutes is created to read:

7 20.143 (3) (kv) *Public agency grants*. All moneys transferred from the
8 appropriation account under par. (jm) for the wireless 911 board to make grants to
9 public agencies under s. 146.70 (3m) (b) 1.

END OF INSERT 4-1

10 INSERT
7-11:

SECTION 6. 146.70 (3m) of the statutes is created to read:

11 146.70 (3m) WIRELESS PROVIDERS. (a) *Definitions*. In this subsection:

12 1. "Board" means the wireless 911 board.

13 2. "Federal wireless orders" means the orders of the federal communications
14 commission regarding 911 emergency services for wireless telephone users in FCC
15 docket no. 94-102.

16 3. "Wireless provider" means a commercial mobile radio service provider, as
17 defined in s. 196.01 (2g), that is subject to the federal wireless orders.

18 (b) *Grants*. 1. From the appropriations under s. 20.143 (3) (js) and (kv), the
19 board shall make grants to public agencies that operate public safety answering
20 points for eligible expenses under par. (c). A public agency is eligible for a grant
21 under this subdivision only if the board determines that the public agency is
22 providing, or has begun to implement, 911 emergency services for wireless telephone
23 users and has complied with the federal wireless orders. The total amount in grants
24 that a public agency may receive under this subdivision may not exceed 50% of the
25 public agency's total eligible expenses under par. (c).

INSERT A3-17

INSECT 7-11 (cont'd.)

1 2. From the appropriation under s. 20.143 (3) (jm), the board shall make grants
2 to wireless providers for actual expenses incurred by wireless providers to upgrade,
3 purchase, lease, program, install, test, operate, or maintain all data, hardware, and
4 software necessary to comply with the federal wireless orders.

5 3. If the board determines that there are insufficient funds in the appropriation
6 account under s. 20.143 (3) (jm) to make a grant under subd. 2., and the board has
7 not ~~made~~ ^{paid} a grant under subd. 1. ^{or an installment under subd. 4.} in the preceding 3 months, the board may make the
8 grant to the wireless provider from the appropriation account under s. 20.143 (3) (js).
9 If the board makes a grant under this subdivision, the board shall, as soon as
10 practicable, transfer moneys from the appropriation account under s. 20.143 (3) (jm)
11 to the appropriation account under s. 20.143 (3) (kv) in an amount equal to the
12 amount of the grant.

****NOTE: The 3-month requirement corresponds to the language in the instructions regarding funds that have not been encumbered for more than 3 months. I think my 3-month requirement expresses the same idea in a simpler way. Is it okay?

13 4. If the board determines that there are insufficient funds in an appropriation
14 to make a grant under this paragraph, the board may make the grant in
15 installments.

****NOTE: The above corresponds to the instruction regarding prorating grants. I think "installments" is a little clearer. Is that okay?

16 5. The board shall contract for independent audits of applications for grants
17 under this paragraph. An applicant shall provide an auditor with any relevant
18 confidential business information.

19 (c) *Public agency eligible expenses.* 1. ~~Except as provided in subd. 2,~~ a public
20 agency may receive a grant under par. (b) 1. for actual expenses that the public
21 agency directly and primarily incurred for leasing, purchasing, operating, or

INSERT 7-1 (cont'd):

1 maintaining a public safety answering point, including expenses for all of the
2 following: wireless

3 a. Necessary network equipment, computer hardware and software, database
4 equipment, and radio and telephone equipment, that are physically located within
5 the public safety answering point.

***NOTE: I'm assuming that all of the above must be physically located within the public safety answering point.

6 b. Training operators of a public safety answering point.

7 c. Network costs for delivery of calls from a wireless provider to a public safety
8 answering point.

Except for a public agency may not receive a grant under par. (b) 1.

9 2. Expenses under subd. 1. do not include expenses for any of the following:

10 a. Emergency service dispatch, including personnel, training, equipment,
11 software, records management, radio communications, and mobile data network
12 systems.

***NOTE: The instructions include an exception to the above for eligible expenses identified in subd. 1. I don't understand the intent for such an exception. Can you clarify your meaning?

13 b. Vehicles and equipment in vehicles.

14 c. Communications equipment and software used to communicate with
15 vehicles.

16 d. Real estate and improvements to real estate, other than improvements
17 necessary to maintain the security of a public safety answering point.

18 e. Salaries and benefits of operators of a public safety answering point.

19 (d) Wireless surcharge. 1. Each wireless provider shall impose a surcharge of
20 50 cents per month for each telephone number that has a billable address in this state
21 and shall identify the surcharge on a customer's bill on a separate line that is
22 identified as "Wisconsin Wireless 911 Surcharge." The board may promulgate rules

INSERT 7-1 (cont'd):

1 that increase or decrease the surcharge, except that the board may not increase the
2 surcharge more than once per year, any increase must be uniform statewide and may
3 not exceed 10 cents, and the surcharge may not exceed \$1.

~~****NOTE: Because the bill does not create a fund, I didn't refer to a "Wisconsin
Wireless 911 Fund".~~

~~****NOTE: I'm assuming that the board should promulgate rules if it wants to
increase or decrease the surcharge.~~

4 2. A wireless provider may not prorate the surcharge and shall collect the entire
5 amount of the surcharge for a month of partial service.

6 3. The board shall promulgate rules establishing requirements for wireless
7 providers to collect the surcharge from their customers beginning with the first bills
8 issued after July 1, 2002. Except as provided in subd. 4., a wireless provider shall
9 pay the surcharges to the board no more than 60 days after the end of the calendar
10 month in which the surcharges are collected. The board shall bring an action to
11 collect a surcharge that is not paid by a customer and the customer's wireless
12 provider is not liable for the unpaid surcharge.

~~****NOTE: The instructions refer to a collection form and policy. I'm not sure what
that means, so I referred to requirements instead.~~

13 4. Wireless providers may retain ~~no more than~~ 2% of the surcharges collected
14 in fiscal year 2002-03 for reimbursing costs related to collecting the surcharge,
15 including reprogramming billing systems. The joint committee on finance may allow

16 wireless providers to retain no more than 2% of the surcharges collected in a
17 subsequent fiscal year if, no more than 60 days before the beginning of the fiscal year,
18 the joint committee on finance determines that there is a demonstrated need for
19 reimbursing the costs related to collecting the surcharge. If the joint committee on
20 finance approves allowing wireless providers to retain surcharges under this
21 subdivision, the joint committee on finance shall provide a copy of the minutes

INSECT 7-1 (cont'd):

1 containing the approval to the revisor of statutes, who shall publish the approval in
2 the Wisconsin Administrative Register.

****NOTE: The above allows the joint committee on finance to decide at any time whether to allow wireless providers to retain surcharges. Therefore, the committee could decide against such an allowance in one fiscal year, but decide in favor of the allowance in a subsequent fiscal year. Is that okay, or do you want the committee to decide once and for all whether to allow wireless providers to retain surcharges?

****NOTE: In fiscal year 2002-03, wireless providers may retain "no more than" 2%. Is that your intent, or should they be allowed to retain the entire 2%?

3 (e) *Confidentiality of information.* The board may withhold from public
4 inspection any information that would aid a competitor of a wireless provider in
5 competition with the wireless provider. The board shall establish procedures for
6 internal management that prohibit members of the board from having access to
7 confidential business information submitted by wireless providers.

8 (f) *Public information.* The board shall promulgate rules establishing
9 requirements and procedures for informing the public about the purpose and uses
10 of the surcharge required under this subsection. The rules shall require the board
11 to maintain a toll-free telephone number to provide such information to the public
12 and require wireless providers to identify the toll-free number on bills and direct
13 customers to contact the board regarding questions about the surcharge.

14 (g) *Other charges prohibited.* No city, village, town, county, or state agency, as
15 defined in s. 16.375 (1), except the board, may require a wireless provider to collect
16 or pay a surcharge or fee related to wireless emergency telephone service.

17 (h) *Liability exemption.* A wireless provider shall not be liable to any person
18 who uses a wireless emergency telephone number system for which a grant is made
19 under par. (b).

20 (i) *Report to governor and legislature.* Annually, the board shall submit a report
21 to the governor, and to the chief clerk of each house of the legislature for distribution

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4955/P2ins
MDK:.....

A

INSERT 3-17:

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4. "Wireless public safety answering point" means a facility to which a call on a wireless provider's system is initially routed for response, and on which a public agency directly dispatches the appropriate emergency service provider, relays a message to the appropriate emergency service provider, or transfers the call to the appropriate emergency services provider.

LRB-4955

Insert Analysis RK

(A)

~~Restrictions on contracts for telecommunications services~~
also

This bill prohibits a telecommunications provider from placing in a contract to provide telecommunications services ~~that~~ a clause that provides that the laws of any state apply to the parties or terms of the contract or to any right or remedy under the contract.

other than this state

(end of insert)

INSERT 4-1: continued

1 15.155 (5) WIRELESS 911 BOARD. (a) There is created a wireless 911 board
2 attached to the department of commerce under s. 15.03 consisting of the following
3 members:

4 1. One representative to the assembly, appointed by the speaker of the
5 assembly.

6 2. One representative to the assembly, appointed by the assembly minority
7 leader.

8 3. One senator, appointed by the president of the senate.

9 4. One senator, appointed by the senate minority leader.

10 5. Four persons who represent the interests of commercial mobile radio service
11 providers, as defined in s. 196.01 (2g), appointed by the governor.

12 6. Four persons who represent the interests of public agencies, as defined in s.
13 146.70 (1) (f), appointed by the governor.

14 (b) The members appointed under ~~par. (a)~~ 5. and 6. shall serve 3-year terms and
15 may not serve more than 2 consecutive terms.

16 SECTION 2. 20.143 (3) (je) of the statutes is created to read:

17 20.143 (3) (je) *Wireless 911 board general program operations.* Two and
18 one-half percent of all moneys received under s. 146.70 (3m) (d) 3. for general
19 program operations of the wireless 911 board, including contracting for audits under
20 s. 146.70 (3m) (b) 5.

21 SECTION 3. 20.143 (3) (jm) of the statutes is created to read:

22 20.143 (3) (jm) *Wireless provider grants.* Forty-eight and three-fourths
23 percent of all moneys received under s. 146.70 (3m) (d) 3. for the wireless 911 board
24 to make grants to wireless providers under s. 146.70 (3m) (b) 2. and to make transfers
25 to the appropriation under par. (kv) as provided under s. 146.70 (3m) (b) 3.

or public safety agencies,
as defined in s. 146.70 (1) (g)
par. (a)
that operate public safety answering points, as defined in s. 146.70 (1) (gm)