

**Joint Committee for
Review of
Administrative Rules**

**Report to the Legislature on
Administrative Rule PSC 160.18(10)**

Produced pursuant to section 227.26(2)(g), Stats.

Introduction

Two issues are raised by this bill: 1) should wireless telephone providers be required to contribute to the Universal Service Fund and 2) if so, should the state permit wireless providers to have a separate surcharge on customer bills for contributions to the Universal Service Fund?

Description of the Rule

Administrative Rule PSC 160.18(10) was promulgated by the Public Service Commission and governs the participation of wireless telephone providers in the Universal Service Fund.

The Universal Service Fund was created to further the goal of providing access to telecommunications services throughout the state. All telecommunications providers are required to contribute to the universal service fund. Section 196.218(3), Stats. This requirement applies to wireless providers as well. Section 196.202(2), Stats.

Administrative Rule PSC 160.18(10) provides, "The commission shall obtain the information necessary to process the assessment of commercial mobile radio

service providers and shall mail bills to such providers within 90 days of May 1, 2000. These bills will include assessments back to the effective date of May 1, 2000.”

The effective date of this provision was May 1, 2000.

The Public Service Commission revised its rules governing the Universal Service Fund through Clearinghouse Rule 99-019. The Legislature reviewed this proposed rule in January and February 2000. During the review period, the Senate Committee on Health, Utilities, Veterans and Military Affairs and the Joint Committee on Information Policy and Technology requested modifications to the rule so that wireless telephone providers would be subject to participation in the Universal Service Fund for the first time.

The Public Service Commission agreed to make the requested modification, resulting in the language quoted above.

Action by the Joint Committee for Review of Administrative Rules

Wireless providers objected to their participation in the Universal Service Fund and asked the JCRAR to suspend the portion of PSC 160.18(10) that contained the effective date for participation of wireless providers in the Universal Service Fund. The wireless providers stated that they did not object to participating in the Universal Service Fund, but wished to have the ability to have a surcharge on customer bills for contributions to the fund.

The JCRAR held a public hearing and executive session on this issue on October 11, 2000. The committee voted to partially suspend PSC 160.18(10). The original language of the code is quoted below, with the portion suspended by the

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

The vote to partially suspend PSC 160.18(10) was 8-1.

Once the JCRAR suspends all or part of a rule, the committee must introduce legislation in both the Senate and Assembly to uphold the suspension. Section 227.26(2)(f), Stats.

In this case, the committee voted to introduce two, slightly different, bills.

On November 15, 2000, the JCRAR voted to introduce 2001 LRB 0748. Current law prohibits all telecommunications providers from establishing surcharges on their bills for contributions to the Universal Service Fund. This bill provides that wireless telephone providers (but not other providers) may establish a surcharge on customer bills for that portion of the bill that collects contributions to the Universal Service Fund. The committee vote was 5-4.

The JCRAR also voted to introduce 2001 LRB 0747. This bill provides that *all* telecommunications providers can establish a surcharge on customer bills for contributions to the Universal Service Fund. The committee vote was 5-4.

Arguments Presented For and Against the Rule

The Joint Committee partially suspended PSC 160.18(10) after hearing the following arguments at the public hearing.

Arguments in Favor of Suspending the Rule

- If wireless providers contribute to the Universal Service Fund, they should be allowed to have a surcharge on customer bills for these contributions because the industry is new and these contributions constitute an impediment to establishment of the wireless business. Wireless telephone is an emerging telecommunications market. While this market is growing, wireless telephone is still generally viewed as an adjunct to wireline service. Adjunct services are especially vulnerable to basic rate increases and service limitations. Users are more likely to abandon or limit use of an adjunct service if basic rates increase or services are reduced or limited, than they are to abandon primary wireline service under the same circumstances. Since providers may not recover their universal service fund assessment through a surcharge, in order to recover that amount they must either increase basic rates or absorb the expense of the assessment. Section 196.218(3)(e), Stats.; Wis. Admin. Code § PSC 160.15. Since adjunct services are especially sensitive to rate increases and service limitations, such increases, or slower deployment of coverage areas because of reduced net revenues, could decrease consumer use of wireless telephone services. This negatively affects the development of competition, consumer choice, and infrastructure development.
- State law prohibits all telecommunications providers from establishing a surcharge on customer bills for contributions to the Universal Service Fund. Wireless providers argue that if they are not allowed to have a surcharge on customer bills, this constitutes rate regulation by the state and that federal law does not permit such regulation of wireless providers.

Arguments Against Suspending the Rule

- Wireless telephone providers should contribute to the Universal Service Fund on the same basis as all other telecommunications providers. This means that 1) wireless providers should contribute to the fund and 2) wireless providers should not have special statutory language that allows them, but not other telecommunications providers, to have a surcharge on customer bills for Universal Service Fund contributions.
- The Federal Communications Commission and several federal Courts of Appeals have determined that contributions to a Universal Service Fund do not constitute rate regulation and therefore do not violate federal law. The Wisconsin Public Service Commission has decided that the state statute prohibiting surcharges does not prescribe, set or fix rates. That statutory provision deals with how a customer is billed, not what a customer is billed. Under this statute, wireless providers are free to pass on to customers their contributions to the Universal Service Fund. In the view of the Public Service Commission there is no rate regulation and therefore no violation of federal law.

Statutory Basis for the Joint Committee's Objection

The Joint Committee voted to partially suspend PSC 160.18(10) pursuant to s. 227.26(2)(d), Stats, and for the reason enumerated in s. 227.19(4)(d)6, Stats., "arbitrariness and capriciousness, or imposition of an undue hardship."

The rule imposes an undue hardship on the wireless telephone industry by imposing additional expenses on the industry at a time when the industry is sensitive

to rate increases. Such increases, or slower deployment of coverage areas because of reduced net revenues, could decrease consumer use of wireless telephones. This might negatively affect the development of competition, consumer choice, and infrastructure development.