



State of Wisconsin
Tommy G. Thompson, Governor

AB33

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

February 1, 2001

To: Senator Bob Jauch, Co-Chair
Representative Mark Pettis, Co-Chair
Joint Committee on Information Policy and Technology

From: William L. Oemichen, Administrator
Division of Trade and Consumer Protection

Subject: Assembly Bills 32 and 33, relating to Universal Service Fund Surcharges

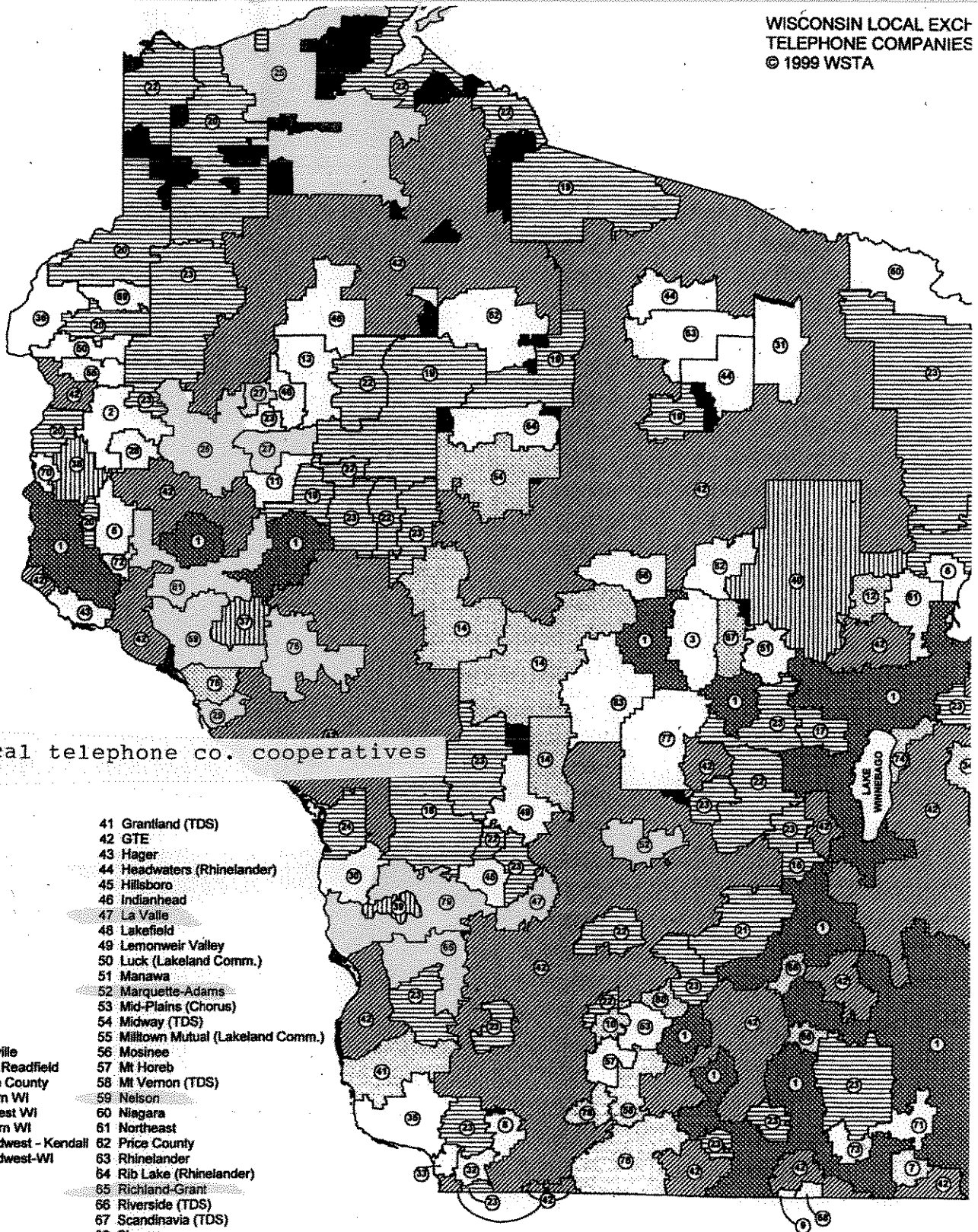
Thank you for providing the Department of Agriculture, Trade and Consumer Protection with the opportunity to testify on AB 32 and 33. We offer several potential changes to the proposed legislation.

First, the Department of Agriculture, Trade and Consumer Protection does not regulate prices charged by telecommunications providers. However, we do regulate how the agreement for provision of telecommunication services is reached between the consumer and telecommunications provider through Wisconsin Administrative Code ATCP 123. Among other important provisions, this rule rules require that consumers be notified in advance of price increases, and given ample opportunity to cancel the contract so that the consumer can move to a different telecommunications provider. We are concerned this legislation authorizes a price increase without prior notice to the consumer. For this reason, we would request the legislation be amended to require compliance with Wisconsin Administrative Code ATCP 123 if the Universal Service Fund surcharge is to be added to consumers' telephone bill.

Second, the Department is concerned this legislation does not specifically limit the amount that can be collected from consumers to only that amount due to the Universal Service Fund. The Department urges the Committee to limit the surcharge amount charged to the no more than the actual amount of the surcharge paid by the telecommunications provider. In this way, we want to prevent "hidden charges" from being included in this surcharge line item.

Finally, to limit consumer confusion over the addition of the surcharge, we recommend the surcharge be similarly identified in plain English on all Wisconsin telephone bills.

Thank you again for the opportunity to testify on Assembly Bills 32 and 33.



local telephone co. cooperatives

- | | | |
|--|-------------------------------------|----------------|
| 1 Ameritech | 41 Grantland (TDS) | 81 West WI |
| 2 Amery | 42 GTE | 82 Wittenberg |
| 3 Amherst | 43 Hager | 83 Wood County |
| 4 Badger (TDS) | 44 Headwaters (Rhineland) | |
| 5 Baldwin | 45 Hillsboro | |
| 6 Bayland | 46 Indianhead | |
| 7 BB&W (TDS) | 47 La Valle | |
| 8 Belmont (Lynch) | 48 Lakefield | |
| 9 Bergen | 49 Lemonweir Valley | |
| 10 Black Earth (TDS) | 50 Luck (Lakeland Comm.) | |
| 11 Bloomer | 51 Manawa | |
| 12 Bonduel (TDS) | 52 Marquette-Adams | |
| 13 Bruce | 53 Mid-Plains (Chorus) | |
| 14 Central State (TDS) | 54 Midway (TDS) | |
| 15 CenturyTel of F-B-A | 55 Milltown Mutual (Lakeland Comm.) | |
| 16 CenturyTel of Forestville | 56 Mosinee | |
| 17 CenturyTel of Larsen Readfield | 57 Mt Horeb | |
| 18 CenturyTel of Monroe County | 58 Mt Vernon (TDS) | |
| 19 CenturyTel of Northern WI | 59 Nelson | |
| 20 CenturyTel of Northwest WI | 60 Niagara | |
| 21 CenturyTel of Southern WI | 61 Northeast | |
| 22 CenturyTel of The Midwest - Kendall | 62 Price County | |
| 23 CenturyTel of The Midwest-WI | 63 Rhineland | |
| 24 CenturyTel of WI | 64 Rib Lake (Rhineland) | |
| 25 Chequamegon | 65 Richland-Grant | |
| 26 Chibardun | 66 Riverside (TDS) | |
| 27 Citizens | 67 Scandinavia (TDS) | |
| 28 Clear Lake | 68 Sharon | |
| 29 Cochrane | 69 Siren | |
| 30 Coon Valley | 70 Somerset | |
| 31 Crandon (Rhineland) | 71 Southeast | |
| 32 Cuba City (Lynch) | 72 Spring Valley | |
| 33 Dickeyville (Chorus) | 73 State Long Distance | |
| 34 Eastcoast (TDS) | 74 Stockbridge & Sherwood (TDS) | |
| 35 Farmers (Chorus) | 75 Tenney (TDS) | |
| 36 Farmers Independent | 76 Tri-County | |
| 37 Frontier of Mondovi | 77 Union | |
| 38 Frontier of St. Croix | 78 Utelco Inc (TDS) | |
| 39 Frontier of Viroqua | 79 Vernon | |
| 40 Frontier of WI | 80 Waunakee (TDS) | |

	AMERITEC
	GTE
	TDS TELEC
	FRONTIER
	CENTURYI
	OTHER INC
	UNASSIGN

Korbitz, Adam

From: Schmidt, Dan
Sent: Tuesday, February 06, 2001 3:28 PM
To: Korbitz, Adam
Subject: FW: s. 196.218 questions

Adam:

Apparently, prior determinations of exemptions have only been made under the first sentence of s.196.218 (3) b. (see below)

Dan

Daniel W. Schmidt

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-----Original Message-----

From: Nelson, Paul *PSC
Sent: Tuesday, February 06, 2001 3:16 PM
To: Schmidt, Dan
Subject: s. 196.218 questions

As far as our staff can recall, the only other time the Commission may have used the s. 196.218(3)(b) "public interest" exemption was in setting a minimum amount of intrastate revenues that would trigger an assessment invoice from us. That limit was set so that companies with less than \$200,000 in intrastate revenues would not have to pay into the fund.

S. 196.218(3)(b) appears to have been part of the original provisions contained in 1993 Act 496.



**WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM**

TO: REPRESENTATIVE MARK PETTIS

FROM: Ronald Sklansky, Senior Staff Attorney

RE: Legislative Consideration of 2001 Assembly Bills 32 and 33

DATE: February 7, 2001

This memorandum, prepared at your request, responds to a question you have raised regarding the legislative consideration of 2001 Assembly Bills 32 and 33, relating to Universal Service Fund (USF) surcharges on customer bills. Specifically, you have asked for a discussion of the procedure by which the Assembly will consider the bills under the Legislature's 2001 session schedule.

On October 11, 2000, the Joint Committee for Review of Administrative Rules (JCRAR) suspended a portion of s. PSC 160.18 (10). In general, the rule required the Public Service Commission to send bills to commercial mobile radio service providers for collection of USF contributions. On November 15, 2000, JCRAR adopted motions to introduce legislation to sustain its rule suspension. Because this legislation could not be taken up in the 1999 session of the Legislature, the suspension-sustaining bills, Assembly Bills 32 and 33, were introduced in the 2001 session according to s. 227.26 (2) (j), Stats. The bills were introduced on January 19, 2001, and were referred to the Joint Committee on Information Policy and Technology.

Section 227.26 (2) (h), Stats., provides that a bill introduced by JCRAR following a rule suspension must receive expedited consideration. If a committee to which a bill is referred makes no report within 30 days after referral, the bill must be considered reported without recommendation. Consequently, if the Joint Committee on Information Policy and Technology were to take no action on Assembly Bills 32 and 33, the bills would be considered reported without recommendation on February 18, 2001. The statute also provides that no later than 40 days after referral, the bills must be placed on the calendar of the Assembly, according to its rule governing the placement of proposals on the calendar. In this case, the 40th day after referral of Assembly Bills 32 and 33 is February 28, 2001. (For additional information on this process, see Assembly Rules 15 (6) and 33 (7).)

According to Senate Joint Resolution 1, the Assembly will be in session on February 13, 14 and 15 of this year. Thus, in order to comply strictly with s. 227.26 (2) (h), Stats., Assembly Bills 32 and 33

should be calendared no later than February 15, unless a skeleton session with a calendar occurs on another date on or before February 28.

Companion bills to Assembly Bills 32 and 33 also were introduced by JCRAR in the Senate. These bills, 2001 Senate Bills 20 and 21, were referred to a Senate standing committee on January 19, 2001, and are subject to the same expedited procedure described above. Further, if either of these bills is passed by the Senate, the Assembly must consider the proposal under the expedited procedure. [See s. 227.26 (2) (h), Stats.]

If I can be of any further assistance in this matter, please feel free to contact me.

RS:wu

***TESTIMONY IN SUPPORT OF
2001 ASSEMBLY BILL 33***

**BEFORE THE
JOINT COMMITTEE ON INFORMATION POLICY**

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

February 8, 2001

INTRODUCTION

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

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

I am testifying in support of 2001 Assembly Bill 33, which amends § 196.218(3)(e), Stats., to allow telecommunications providers, including Commercial Mobile Radio Service ("CMRS" or "wireless") providers, to establish a surcharge on customer bills to collect the contributions that telecommunications providers are required to make to the state universal service fund. This amendment addresses the policy concerns surrounding the assessment of wireless providers, remedies a state statutory conflict with federal law, and ensures that all telecommunications providers are accorded similar treatment on this issue.

This issue arose as a result of the Commission's amendment of § PSC 160.18, Wis. Admin. Code, to subject wireless providers to universal service fund assessments, in

the most recent *Biennial Review of Universal Service Fund Rules in Wisconsin Administrative Code Chapter PSC 160*, Docket No. 1-AC-166. The Wisconsin universal service statute, § 196.218(3)(e), Stats., and the similar Commission regulation, § PSC 160.15, Wis. Admin. Code, if applied to CMRS providers, would contravene federal law by forbidding CMRS providers from passing through universal service contributions to their customers. If wireless carriers must make universal service contributions, a state cannot regulate a wireless provider's rates by forbidding carriers from passing such contributions through to their customers. Moreover, requiring state universal service contributions from CMRS providers without permitting them to pass those contributions on to their customers is not in the interest of Wisconsin consumers or the development of a competitive and viable wireless industry in Wisconsin.

Consequently, before the assessment of wireless providers can commence, § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended. Pending those amendments, on October 11, 2000, the Joint Committee for Review of Administrative Rules ("Joint Committee") suspended a portion of § PSC 160.18(10), Wis. Admin. Code, to permit the Public Service Commission of Wisconsin ("Commission") to temporarily suspend the assessment of wireless providers to avoid the conflict with federal law. By Order, dated November 7, 2000, the Commission temporarily suspended the assessment of wireless providers under the state universal service fund until January 2002 ("Order").

The amendment proposed in 2001 Assembly Bill 33 will help mitigate the legal and policy concerns surrounding the assessment of wireless providers and ensure that the

public interest will be served. Moreover, the amendment will allow Wisconsin to avoid running afoul of the federal law that prohibits states from regulating the rates of wireless providers.

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

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

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

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

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

However, state and local governments are prohibited from regulating the entry of *or the rates charged* by wireless providers. A state's prohibition of a wireless carrier's

imposition of a specific charge on its customers' bills violates 47 U.S.C. § 332(c)(3)(A)'s prohibition on rate regulation.¹

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

Section 332(c)(3)(A) provides for a procedure whereby a state, if it believes either that market conditions will not offer protection from unjust CMRS rates or that CMRS has become a substitute for the landline telephone exchange service in the state, may petition the FCC for authority to regulate CMRS rates. However, Wisconsin has filed no

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

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

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

such petition and, thus, has no authority to regulate wireless rates as § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, would purport to do.

Accordingly, wireless providers properly can be assessed universal service fund contributions in Wisconsin only if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are amended so that wireless providers are not prohibited from passing through their universal service fund contributions to customers. 2001 Assembly Bill 33 amends § 196.218(3)(e), Stats., to allow a telecommunications provider, including a wireless provider, to establish a surcharge on customer bills to collect the contributions that the telecommunications provider is required to make to the universal service fund.² 2001 Assembly Bill 33, thereby, remedies the state statutory conflict with federal law and ensures that all telecommunications providers are accorded similar treatment on this issue.

The Joint Committee facilitated the passage of amendments to resolve the conflict between § 196.219(3), Stats., and § PSC 160.15, Wis. Admin. Code, and federal law by suspending a portion of § PSC 160.18(10), Wis. Admin. Code, to permit the Commission to temporarily suspend the assessment of wireless providers. In accordance with the Joint Committee's action, the Commission, in its November 7, 2000 Order, temporarily

² § PSC 160.15, Wis. Admin. Code, similarly would have to be amended.

suspended the assessment of wireless providers under the state universal service fund until January 2002.³

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

The position in Section I that prohibiting wireless providers from passing through their universal service fund contributions to customers under § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, violates § 332(c)(3)(A), is independent of and unrelated to the determinations made in three court decisions permitting the assessment of wireless providers.⁴ In other words, even if those cases were decided correctly, they do not answer, refute, or deal in any way with the position that § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, as applied to wireless providers, violate federal law if wireless providers are required to pay into the universal service fund without also being permitted to pass those contributions on to their customers.

Furthermore, these cases explicitly found that states may require universal service contributions from wireless providers *as long as it does not constitute the regulation of rates*. For example, in *Texas Office of Public Utility Counsel, et al. v. FCC*, 183 F.3d 393 (5th Cir. 1999), the United States Court of Appeals for the Fifth Circuit noted that pursuant to the FCC's reading of § 332(c)(3)(A), "states retain the ability to compel universal service contributions as long as it does not constitute regulation of rates . . ."

³ The temporary suspension in the assessment of wireless providers exempts only *wireless providers* from contributing to the universal service fund and only for a *temporary* period of time. Moreover, the temporary suspension does not affect overall contributions to the universal service fund or the universal service fund programs.

⁴ See *Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.*, 149 F.3d 1058 (10th Cir. 1998); *Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*, 168 F.3d 1332 (D.C. Cir. 1999); and *Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission*, 183 F.3d 393 (5th Cir. 1999).

Id., at 432. Stated otherwise, where a state's imposition of universal service fund requirements on CMRS providers constitutes a regulation of rates, as it would if § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, are applied to wireless providers, federal law is violated. Consequently, these cases are consistent with and not contrary to the position stated in Section I that, under federal law, Wisconsin cannot require wireless providers to contribute to the universal service fund *and* prohibit them from passing through the universal service fund contribution to their customers under § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code. Such a prohibition constitutes rate regulation under 47 U.S.C. § 332(c)(3)(A).

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

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

The wireless marketplace currently is one of the most robustly competitive segments of the telecommunications industry. Indeed, the highly competitive nature of the wireless market in recent years has led to lower prices and more choices for American consumers, including the residents of Wisconsin. Although wireless competition is

vigorous and subscriber growth is accelerating rapidly, the wireless industry is extremely vulnerable to price increases since they offer "complementary" services. Most Americans still perceive wireless service as a complement to fixed landline service, not as a substitute. The primary reason is price. Despite dramatic price reductions in the recent past, wireless service remains more expensive than fixed landline service.

As a more expensive, complementary service -- notwithstanding recent and dramatic price reductions -- wireless providers are extremely vulnerable to price increases of any kind. Simply put, price increases such as those brought about by universal service assessments artificially suppress demand for wireless services because the benefit of a call no longer outweighs the higher cost of the call. The universal service assessment imposes a cost increase on the "bottom line" of a wireless customer's bill.

Such cost increases, whatever their source, acutely are felt in emerging telecommunications markets. Specifically, studies have shown that wireless services have a much higher elasticity of demand than landline services.⁵ Consumers are more likely to forgo using their wireless phone in response to price increases than they are in response to increased local rates. Until wireless service represents a true alternative to local exchange offerings, this demand disparity is unlikely to change.

If the demand for wireless services decreases, the likelihood that wireless services will compete directly with landline services decreases as well. Competition for local

⁵ See Jerry A. Hausman, *Valuing the Effect of Regulation on New Services in Telecommunications in Economic Activity: Microeconomics* (1997), at 1 (Brookings Institution); *Taxation by Telecommunications Regulation in Tax Policy and the Economy*, National Bureau of Economic Research.

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

As the Commission concluded in its Order:

CMRS is an emerging telecommunications market. While this market is growing, CMRS 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. Wis. Stat. § 196.218(3)(e); 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 CMRS. This negatively affects the development of competition, consumer choice, and infrastructure development.

(Order, at 1-2).

IV. THE LEGISLATURE SHOULD AMEND SECTION 196.218(3)(e), STATS., AS PROPOSED IN 2001 ASSEMBLY BILL 33.

To implement legislative intent to assess wireless providers in accordance with federal law, § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended to permit wireless providers to pass their assessment under the universal service fund through to their customers as a surcharge on bills. 2001 Assembly Bill 33 will do just that; it will allow telecommunications providers, including wireless providers, to establish a surcharge on customer bills to collect the contributions that telecommunications providers are required to make to the state universal service fund. 2001 Assembly Bill 33, thereby, addresses the policy concerns surrounding the assessment of wireless providers, remedies the state statutory conflict with federal law, and ensures that all telecommunications providers are accorded similar treatment on this issue.

CONCLUSION

The operation of § PSC 160.18, Wis. Admin. Code, in conjunction with § 196.218(3), Stats., and § PSC 160.15, Wis. Admin. Code, which prohibit the establishment of a surcharge on customer bills concerning universal service fund assessments, violates federal law. Accordingly, § 196.218(3)(e), Stats., and § PSC 160.15, Wis. Admin. Code, should be amended before the assessment of wireless providers under § PSC 160.18, Wis. Admin. Code, recommences in January 2002. Without such amendments, Wisconsin will be in violation of federal law and the

competitive well-being of the wireless industry will be threatened. Consequently, we request that 2001 Assembly Bill 33 be approved.

I thank you for the opportunity to provide this testimony.

MADISON\75839SLM:SLH 02/08/01

**Testimony of Public Service Commission member Joe Mettner
Before the Joint Committee on Information Policy and Technology
February 8, 2001**

I am testifying before the Joint Committee today as the dissenting voice among the Public Service Commission's members with respect to the issue of imposing state Universal Service Fund (USF) assessments on wireless telecommunications providers. The purpose of my testimony is to address appropriately considered federal legal restrictions concerning wireless USF assessments where state commissions may choose to proceed with such assessments. I also would like to raise issues of equity and competitive neutrality which I believe are implicated in any state's choice to assess wireless providers for USF payments. Finally, I would like to offer for the committee's consideration certain practical observations concerning the proposed legislation which permits USF surcharges on the part of some (or all) service providers.

Prior to its removal from the applicable provisions of the Administrative Code, PSC 160.18(1)(b) predicated wireless USF assessments upon a showing that certain wireless services are a substitute for landline telephone service for a substantial portion of the communications in this state. In February, 2000 the PSC voted 2-1 to remove this provision at the request of Senator Moen, as a result of his Senate Committee's disposition of Clearinghouse Rule 99-019. New sec. PSC 160.18(10) was added to the Commission's USF rules to provide for USF assessment of wireless providers within 90 days of May 1, 2000, the effective date of the PSC-approved rule changes.

In a letter dated October 11, 2000 the co-chairs of the Joint Committee for the Review of Administrative Rules indicated that committee's adoption of a motion effectively suspending the particular language added to PSC 160.18(10) which required assessment of USF fees for wireless providers within 90 days of May 1, 2000.

As the rule now reads, no administratively imposed finding of "substantial substitutability" must precede assessments of wireless providers for state USF fees, but the affirmative mandate to assess wireless providers is also no longer in effect. As a result, the PSC ordered the suspension of assessments of USF fees against wireless providers, effective for November, 2000 through January, 2002. This, it was thought at the time, would permit the legislature the opportunity to resolve lingering policy concerns over the manner in which state law might accommodate wireless contributions to the state USF.

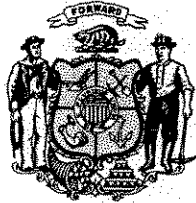
May wireless providers be assessed for USF contributions in Wisconsin? Yes, under the appropriate circumstances, they can. Under s. 196.202 (2), Stats., commercial radio service providers may be required to contribute to the state USF under s. 196.218, Stats., but *only to the extent not preempted by federal law*. Whether or not a predicate finding of "substitutability" of wireless for landline services remains any longer in PSC 160, it is still found in the federal statutes at 47 U.S.C. 332©(3)A, and such a finding must be made before a state may require wireless contributions to a state USF. It is true that Federal courts have found that section 332©(3)A may not necessarily conflict with s. 254

of the Telecommunications Act of 1996, which permits state adoption of regulations to provide for in-state universal service mechanisms not inconsistent with federal law. These decisions, and FCC determinations, do not *compel* assessment of wireless providers for state USF contributions, certainly they do not in Wisconsin. I would argue, and I have successfully on two occasions with my colleagues, that the "substitutability" finding found in 47 U.S.C. s. 332©(3)(A) should be read in harmony with s. 254 of TRA '96. If one accepts this reading of the federal law, in conjunction with s. 196.202(2), Stats., *assessments of wireless providers for Wisconsin USF contributions are, and should be, preempted unless the substitutability finding is made.*

The state's universal service fund is a mechanism to subsidize land-line services, which has until recently been funded by contributions from land-line providers. It is difficult to see why wireless technologies, or any other non-land-line technology for that matter, should contribute to the state USF, where those non-land-line services are not currently permitted to receive subsidies under the state's USF programs. In Section 6 of its Third Universal Service Report and Order, at paragraph 145, the FCC made a key finding with respect to 47 U.S.C s. 332©(3)(A) – *that the statute acts as both a sword and a shield with respect to a provider's obligations to fund, and commensurate eligibility for USF subsidies.* More specifically, once a finding of substitutability for land-line services has been made by a state commission, the FCC has indicated that wireless providers may not be denied "eligible telecommunications carrier" (ETC) status where they otherwise meet all other applicable requirements under 47 U.S.C. sec. 214(e) (1) & (2), which govern state commission approval for conferring ETC status to providers.

Why is ETC status so important to wireless providers? Because without it they may not receive subsidies under federal USF high-cost assistance programs. Not surprisingly, the required regulatory findings necessary to attain ETC status are nearly identical to those which federal statutes require as the predicate to state assessments against wireless providers for their in-state USF programs. Obligation to pay into the fund should match eligibility to receive service subsidies from the fund under any theory of competitive or technological neutrality. It is also important to note that the FCC has just finalized these clarifications concerning wireless ETC status during the past year, and since then several wireless providers have achieved ETC designations before the Kansas, Wyoming, Delaware, and Minnesota regulatory commissions.

I would ask the committee to consider one final point as it considers legislation conferring the simple permissive ability for providers to surcharge their customers for USF assessment liabilities. In what manner will the surcharges be imposed? For example, will each customer's monthly bill receive a volumetric percentage-based surcharge, or will the surcharge be based upon a potentially regressive flat per-line charge? The PSC has received a certain volume of complaints from customers confused by fluctuating expansions and contractions in federal USF charges on their bills, and I urge the committee to consider your deliberations to be an important chance to provide guidance in this area to the telco providers



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
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February 12, 2001

The Honorable Bob Jauch
Senate Co-Chairperson
Joint Committee on Information Policy
State Capitol, Room 313 South
Madison, WI 53702

Representative Mark Pettis
Assembly Co-Chairperson
Joint Committee on Information Policy
State Capitol, Room 5 North
Madison, WI 53702

Re: AB 32 and AB 33

Dear Senator Jauch and Representative Pettis:

At the February 8th hearing of the Joint Committee on Information Policy Senator Lazich requested that the Commission provide the committee with information concerning potential surcharges for in-state Universal Service Fund (USF) programs, should that surcharge be calculated a flat monthly charge per customer.

Table 1 in the attachment summarizes possible configurations of per-line surcharges for representative local exchange companies (LECs).

As was emphasized in testimony during the February 8th hearing, there are several alternative methods by which land-line and wireless providers could implement surcharges to recover their in-state USF liabilities. For example, certain interexchange carriers (long distance companies) recover their liabilities under federal USF programs from customers on a volumetric or usage-sensitive basis.

As a representative example, AT&T once charged a flat monthly fee per customer to recover the company's liabilities under the federal USF. AT&T now charges a percentage of the interstate and international charges appearing on a customer bill. This percentage has ranged between 8.9% and 9.9%.

If Wisconsin providers were to recover state USF liabilities from customers as a percentage of the customer bill, an indicator of customer impact can be estimated by using the Commission's current assessment rates as applied to providers. Table 2 in the attachment outlines these percentages. This type of surcharge would recover from customers proportionate to the manner in which a customer's usage contributes to the provider's assessment. Because the USF assessments are revenue based, the higher a customer's bill, the more the provider will pay to the USF for that customer.

Of course, any combination of fixed and usage-based methods of implementing USF surcharges is also possible. It should be emphasized that these calculations are speculative and do not

The Honorable Bob Jauch
Joint Committee on Information Policy
Page 2

represent any binding methodology by which the depicted providers, or any provider, may be permitted to establish USF surcharges.

If you or any members of the committee should have further questions, please contact me at 266-1245, or Paul Nelson, the Commission's Legislative Liaison, at 266-1383.

Sincerely,

Joseph P. Mettner
Commissioner

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Enclosure

cc: Members of the Joint Committee on Information Policy
Dan Schmidt

TABLE 1

**Public Service Commission of Wisconsin
Potential Per-Line Charges for Universal Service Fund Costs For Four Sample
Local Exchange Companies¹**

COMPANY (PSC UTILITY NUMBER)	TOTAL ANNUAL REVENUES FOR USF ASSESSMENT PURPOSES²	NUMBER OF ACCESS LINES³	ESTIMATED MONTHLY PER LINE SURCHARGE FOR PSC USF PROGRAM⁴	ESTIMATED MONTHLY PER LINE SURCHARGE FOR ALL USF PROGRAMS⁵
Amery (150)	\$1,708,978	6,829	\$0.06	\$0.16
Belmont (450)	\$373,284	879	\$0.11	\$0.28
Verizon North (2180)	\$217,716,952	525,110	\$0.01	\$0.03
Southeast Telco. TDS (5570)	\$3,821,402	10,037	\$0.10	\$0.24

TABLE 2

Potential USF Assessments as a Percentage of Customer Bills

USF program areas	Potential surcharge amounts to be applied to customer bills
PSC USF Programs	.371 %
TEACH	.459 %
UW System	.039 %
DPI Badger Link	.074 %
TOTAL	.943 %

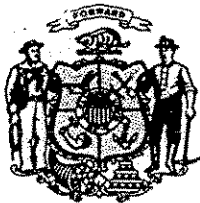
¹ The four local exchange companies included in this small sample represent a range of the very small to large companies that file annual report data publicly. Many other local exchange companies file their annual report data with the PSC confidentially. Similar cost analysis cannot be reported publicly for those companies.

² Per 1999 Annual Report

³ Per 1999 Annual Report, Business and Residential Lines

⁴ The FY 01 appropriation for the Public Service Commission USF programs is \$6.9 million. Programs funded by the PSC USF include LifeLine, LinkUp, Telecommunications Equipment Purchase Program, Public Interest Payphone, High Rate Assistance, Telemedicine Grants, Non-Profit Access Grants, etc.

⁵ The FY 01 appropriation of \$20.3 million for all USF programs includes funding for TEACH, telecommunications services provided to specified UW-System campuses, the Department of Public Instruction BadgerLink program, and the PSC USF programs.



Public Service Commission of Wisconsin

Ave M. Bie, Chairperson
Joseph P. Mettner, Commissioner
John H. Farrow, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

March 27, 2000

TO: Senator Rodney Moen

FROM: Joyce S. Mahan
Assistant General Counsel

RE: Biennial Review of Universal Service Fund Rules in
Wis. Admin. Code Ch. PSC 160

I-AC-166

This reflects the opinion of the Office of General Counsel and was the basis for the vote by the majority approving the rule language submitted to your committee.

RELEVANT LAW

47 U.S.C. § 254(f)

(f) ...Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State...

Wis. Stat. § 196.218(3)(a)1.

(a)1. Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund.....

47 U.S.C. § 332(c)(3)(A)

(A) ...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services....

Wis. Stat. § 196.202(2)

(2) A commercial mobile radio service provider is not subject to ch. 200 or this chapter, except a commercial mobile radio service provider is subject to s. 196.218(3) to the extent not preempted by federal law.....

Wis. Stat. § 196.218(3)(e)

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

QUESTION

Does the surcharge prohibition found in s. 196.218(3)(e), Wis. Stat. constitute rate regulation of commercial mobile radio service providers (CMRS) which is prohibited under federal law?

BRIEF ANSWER

No, the surcharge prohibition is not rate regulation.

DISCUSSION

In its *First Report and Order on Universal Service Issues* (May 8, 1997) the FCC stated that 47 U.S.C. § 332(c)(3)(A) does not prohibit states from assessing CMRS for universal service. It states that universal service contribution requirements are regulation of "other terms and conditions" of CMRS rather than of "entry or rates." This was repeated in the FCC's *Fourth Order on Reconsideration* (December 30, 1997).

In a declaratory ruling case¹ that was appealed to the DC Circuit Court of Appeals², the FCC refers to Congressional legislative history and cites a House Report where the meaning of "terms and conditions" was explained³. In that report the House Committee states that matters such as "...customer billing information and practices and billing disputes and other consumer protection issues..." are included in "terms and conditions."

While it is true that none of the recent court cases dealt specifically with a state statute that prohibited a surcharge, they did discuss related matters. For example, the DC Circuit Court of Appeals case cites the FCC's interpretation of the "rates charged by" language in 47 U.S.C. § 332(c)(3)(A).⁴ The FCC interprets that language to "prohibit states from prescribing, setting or fixing rates."

Additionally, the DC Court of Appeals specifically dealt with the argument that assessment of CMRS providers is rate regulation because it impacts their cost of doing business, which could impact the rates charged to customers. The court stated:

One might say the same thing about local siting laws or state consumer protection laws. Yet a House Committee cited these laws as examples of the variety of permissible regulation of the "other terms and conditions."....To equate state action that may increase the cost of doing business with rate regulation would, the Commission reasonably concluded, forbid nearly all forms of state regulation, a result at odds with the "other terms and conditions" portion of the first sentence [of 47 U.S.C. § 332(c)(3)(A)].⁴

¹ *In the Matter of Petition of Pittencrieff Communications, Inc.* (October 2, 1997)

² *Cellular Telecomms. Indus. Ass'n. v. FCC*, 168 F.3d 1332

³ *Pittencrieff* at par. 16

⁴ *Cellular* at 1336

It is my opinion that the surcharge statute is not rate regulation since it does not prescribe, set or fix rates. It does not prohibit "the passthrough to customers of the universal service fund assessment." The surcharge statute regulates the billing method, not what may be billed. It only deals with how a customer is billed, not what a customer is billed. Billing practices are "other terms and conditions" and may be regulated by states. CMRS providers have complete freedom to recover the assessment through their rates or to choose not to pass the cost on to customers. The only thing they cannot do is use a surcharge mechanism. If they want to pass the assessment cost on to customers, they must do so through their rates. However, what their rates are is entirely up to them and is not regulated.

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Senator Robert J. Gauch,

We understand that our local municipality wants to impose a 2% gross revenues tax on local, wireless and long distance providers.

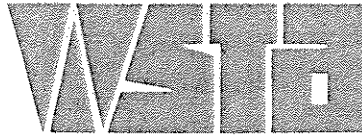
We are dead set against this tax as we are carrying a heavy enough load of taxes already.

Sincerely,

Catherine & Frank Bachelada
414 Red Pine Ave.
Cameron, Mo. 64822

Wisconsin State Telecommunications Association, Inc.

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



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Assembly Bills 32 and 33 Universal Service Fund Surcharges

I'm Ray Riordan, Executive Vice President of WSTA. WSTA supports AB 33 and opposes AB 32 and the proposed amendments to AB 32.

All incumbent telephone companies are assessed through the Universal Service Fund for the costs of the USF programs, TEACH programs, UW Systems, and DPI Badgerlink. Telephone companies are allowed to raise their rates immediately after the assessment rate has been determined to recover the assessments for only the latter three programs. These companies can only recover the assessment for the USF program only after securing a general rate increase by petition or from the PSC.

The Public Service Commission has extended the USF assessments to include wireless telecommunications providers. In October the Joint Committee on Review of Administrative Rules and the PSC suspended those assessments with the hope that the legislature will remove a legal impediment to such assessments. Peter Gardon will discuss that.

The telephone companies have problems with the present system. First, there is a delay in recovering the assessment for the USF programs because they do not have general rate increases every year. Second, the USF assessment has increased substantially. Each year since its inception, the cost of the program was between \$2.5 and \$2.9 million. For fiscal year 2001 it has jumped to over \$6.8 million.

Third, the companies' rates jump up and down in their recovery of the assessments for the TEACH, UW Systems, and DPI Badgerlink programs. For example, Baldwin Telephone Company has had five increases or decreases since December 1998. Several others have had four. Their customers don't have any idea why the rates are so sporadic.

Fourth, these programs are social programs. We don't think it is appropriate to hide the fact that the customers are paying for such social programs. It's unfair to the customer. There is a federal Universal Service program and the fee for that is listed on your telephone bills.

In conclusion, WSTA, its wireline and wireless members, request you approve AB 33 and vote against AB 32 and its proposed amendments.

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

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THOMAS R. SQUIRES, Manawa
DEAN W. VOEKS, Madison

Handwritten:
LAWSON
672

Universal Service Fund Expenditures 1996 - 2001

Year	1996	1997	1998	1999	2000	2001
Equipment Purchase	\$ 276,810	\$ 342,350	\$ 271,705	\$ 604,387	\$ 770,000	\$ 1,550,000
Rate Shock Mitigation	649,870	61,318	28,251	14,160	-	-
Rate Ceiling	1,412,116	1,504,961	1,471,494	1,337,884	1,125,000	1,400,000
Institutional Discount	67,846	278,031				
Lifeline	162,556	325,081	332,279	299,651	401,000	1,750,000
Link-up	120,775	170,036	170,972	207,280	211,000	450,000
Voice Mail for Homeless			-	-	-	20,000
Outreach for low-income						250,000
Newsline for blind			111,000	35,000	43,500	45,500
Non-profit groups						500,000
Medical Equipment						500,000
Public Interest Payphones						100,000
Two-line Voice Carryover						10,000
Provider of last resort						-
Eligible Telecom Carrier						-
Advanced Telecom Services						-
Other		1,400				
Administration	79,676	133,433	124,971	141,755	140,000	250,000
Total Expenditures	\$ 2,769,649	\$ 2,816,610	\$ 2,510,672	\$ 2,640,117	\$ 2,690,500	\$ 6,825,500

**TEACH Appropriations
1997-2001**

	Fiscal Year 97-98	Fiscal Year 98-99	Additional Appropriations 98-99	Fiscal Year 99-00	Fiscal Year 00-01
TEACH Appropriations					
Direct to TEACH	\$ 6,335,700	\$ 3,980,700	\$ 8,998,900	\$ 10,268,600	\$ 10,268,600
Through Joint Finance	2,000,000		1,997,300	3,267,100	3,267,100
Teach Total	-	8,335,700		10,996,200	13,535,700
UW-System	\$ 1,008,000	864,000		864,000	864,000
DPI BadgerLink				<u>836,000</u>	<u>1,700,000</u>
Total Appropriations	\$ 1,008,000	\$ 9,199,700	\$ 3,980,700	\$ 12,696,200	\$ 16,099,700

USF ASSESSMENT

COMPANY	USF		TEACH		UW		DPI		TOTAL	
	FUND	ASSESSMENT	PROGRAM	ASSESSMENT	SYSTEMS	ASSESSMENT	BADGER	LINK	2001	ASSESSMENTS
Amery	\$	6,336.00	\$	7,848.00	\$	684.00	\$	1,260.00	\$	16,128.00
Badger Telecom		12,540.00		19,356.00		Included in Teach		Included in Teach		31,896.00
Baldwin		720.00		6,828.00		588.00		1,104.00		9,240.00
Black Earth		2,388.00		3,684.00		Included in Teach		Included in Teach		6,072.00
Central State, WI		22,128.00		34,188.00		Included in Teach		Included in Teach		56,316.00
Chequamegon		13,608.00		16,848.00		1,464.00		2,712.00		34,632.00
Chibardun		9,348.00		11,580.00		1,008.00		1,860.00		23,796.00
Clear Lake		1,956.00		2,424.00		216.00		396.00		4,992.00
CTC Telecom		9,684.00		11,988.00		1,044.00		1,932.00		24,648.00
Frontier		38,292.00		47,412.00		4,116.00		7,632.00		97,452.00
Luck		2,736.00		3,396.00		300.00		552.00		6,984.00
Mt. Vernon		15,372.00		23,736.00		Included in Teach		Included in Teach		39,108.00
Marquette-Adams		6,240.00		7,728.00		672.00		1,248.00		15,888.00
Milltown		3,012.00		3,732.00		324.00		600.00		7,668.00
Mount Horeb		11,076.00		13,704.00		1,188.00		2,208.00		28,176.00
Southeast - TDS		14,160.00		17,532.00		1,524.00		2,820.00		36,036.00
Union		8,244.00		10,212.00		888.00		1,644.00		20,988.00
UTELCO		26,232.00		40,524.00		Included in Teach		Included in Teach		66,756.00
Waunakee		9,072.00		14,016.00		Included in Teach		Included in Teach		23,088.00
Wood County		34,128.00		42,252.00		3,672.00		6,804.00		86,856.00

PSC PROGRAMS PAID FOR BY USF ASSESSMENTS

Telecommunications Equipment Purchase Program (TEPP)– Provides assistance to individuals with disabilities to purchase needed telecommunications equipment.

* **Rate Shock Mitigation** – Ensures that sudden rate increases do not adversely affect customers.

High Rate Ceiling Credits – Assures that rates in high-cost areas remain affordable.

* **Institutional Discount Program** – Provides discounts for schools, libraries and hospitals for certain telecommunications services.

Lifeline Service – Provides discounts on basic telephone service to low-income customers.

Link-Up Service – Provides discounts on connection charges for low-income customers.

Voicemail for Homeless – Provides a method of contacting homeless people and others with telephone service.

Outreach to Low-Income – Provides funds to promote increased participation in the USF low-income programs.

News Line for the Blind – Provides funding to allow blind persons access to audio news stories by telephone.

Non-Profit Groups Access Programs for Projects – Allows non-profit organizations to have funds for programs and projects that will facilitate access to telecommunications services.

Medical Telecommunications Equipment Program – Provides assistance for clinics and hospitals in using advanced telecommunications.

Public Interest Pay Telephones – Ensures payphones are available where needed.

Second Line for Two Line Voice Carryover – Provides a second line for use with telecommunications devices for the deaf (TTYs or TDDs)

* **Provider of Last Resort** – Allows the PSC to hold an auction for the provider of last resort status and may provide USF compensation to the provider selected for that role.

* **Eligible Telecommunications Carrier (ETC)** – This PSC may use the provider of last resort process to determine a ETC, and payments from the USF to the designated ETC may arise.

* **Advanced Services Assistance** – Ensures that customers requiring such services can obtain advanced services no matter where those customers are located in Wisconsin.

Administration – This includes handling assessments, miscellaneous printing, promotional materials, educational activities, travel reimbursement for members of the USF Council, interpreters for the deaf at meetings, assistance from DOR in verifying Lifeline and Link-Up applicants.

NOTE: * Indicates no funding allotted for 2001, but allocation will be made if requested.

TEACH PROGRAMS PAID FOR BY USF ASSESSMENTS

Video and Data Links – Provides funding for public school districts, CESAs, public library boards, private schools and colleges, tribal colleges and technical college districts to obtain video and data links.

Foreign Language Instruction Grants – Funds Internet use and video-based distance learning educational technologies in support of foreign language instruction in grades K-6.

Educational Technology Block Grants – Public school districts and Milwaukee charter schools governed by the UW-Milwaukee and City Council of Milwaukee are eligible for funds to accelerate their investment in educational technology.

Training and Technical Assistance Grants – Provides grants for training teachers, educational staff, librarians, students and library patrons in the use of educational technology.

Wiring Loans – Makes funds available to school districts and library boards to upgrade electrical wiring and install computer network wiring.

UW-SYSTEM PROGRAM PAID FOR BY USF ASSESSMENTS

Makes funds available to the UW-System for telecommunications equipment.

DPI BADGERLINK PROGRAM PAID FOR BY USF ASSESSMENTS

Makes funds available to the Badgerlink Network for telecommunications equipment.

RELEVANT STATUTORY, REGULATORY, AND ORDER PROVISIONS

1. 2001 Assembly Bill 33 would amend § 196.218(3)(e), Stats., as follows:

~~Except as provided in s. 196.196(2)(d), a~~A
telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.
2. Section 196.218(30)(e), Stats., presently provides::

Except as provided in s. 196.196(2)(d), a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.
3. § PSC 160.15, Wis. Admin. Code, provides:

Telecommunications providers may not establish a surcharge on customer bills for contributing to or recovering any portion of the providers' payment of universal service fund obligations.
4. 47 U.S.C. § 332(c)(3)(A) prohibits state and local governments from regulating the entry of or *the rates charged* by wireless providers and, in pertinent part, provides:

(3) State preemption. (A) Notwithstanding sections 152(b) and 221(b) [47 U.S.C. §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. . . .
5. Section PSC 160.18, Wis. Admin. Code, with the language that was stricken by the Joint Committee for Review of Administrative Rules indicated in red-line, provides:
 - (1) Each assessed provider shall pay the amount of its assessment to the universal service fund. Assessed providers include all telecommunications providers operating within Wisconsin, except those

with intrastate gross telecommunications revenues of less than \$200,000 during the proceeding calendar year.

* * * *

- (10) 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.~~
6. The Commission, in its November 7, 2000 Order temporarily suspending the assessment of wireless providers under the state universal service fund until January 2002, stated:

CMRS is an emerging telecommunications market. While this market is growing, CMRS 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. Wis. Stat. § 196.218(3)(e); 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 CMRS. This negatively affects the development of competition, consumer choice, and infrastructure development.

(Order, at 1-2).