Vote Record

Committee on Transportation and Information Infrastructure

Date: 3/3/04

Bill Number: SB 302

Moved by: Kedzie Seconded by: Leibham

Motion: INTRO & ADOPT SUB 1 SB 302

Committee Member	Aye	No	Absent	Not Voting
Senator Joseph Leibham, Chair	☒	☐	☐	☐
Senator Ted Kanavas	☒	☐	☐	☐
Senator Neal Kedzie	☒	☐	☐	☐
Senator Roger Breske	☐	☒	☐	☐
Senator Mark Meyer	☐	☒	☐	☐
Totals:	3	2		

☒ Motion Carried ☐ Motion Failed

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Senator Roger Breske	☐	☒	☐	☐
Senator Mark Meyer	☐	☒	☐	☐
Totals:	3	2		

☒ Motion Carried ☐ Motion Failed

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Senate Bill 302

exempting broadband Internet service from regulation by the Public Service Commission and local governments, requiring telecommunications utilities to provide unbundled network elements, and price regulation of telecommunications utilities. (FE)

Organization		These organizations have reported lobbying on this proposal:	Place pointer on icon to display comments, click icon to display prior comments		
Profile	Interests		Date Notified	Position	Comments
		American Civil Liberties Union of Wisconsin Inc	11/7/2003		
		AT&T Corporation	11/12/2003		
		Citizens Utility Board	2/16/2004		
		Kenosha County	11/4/2003		
		League of Wisconsin Municipalities	11/21/2003		
		McLeod USA	11/6/2003		
		SBC-Wisconsin	11/20/2003		
		Sprint Communications Company LP	11/20/2003		
		TDS Telecommunications Corporation	11/14/2003		
		Time Warner Telecom	11/6/2003		
		Verizon Communications	11/12/2003		
		Wisconsin Cable Communications Association	11/4/2003		

		Wisconsin Counties Association	2/20/2004		
●	●	Wisconsin Customers for Affordable Local and Long Distance Service	11/5/2003		
●	●	Wisconsin Economic Development Association	11/4/2003		
●	●	Wisconsin State Telecommunications Association	11/4/2003		
●	●	WorldCom Inc	11/18/2003		

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Proposal Number 302 (enter proposal number)

Legislative Session 2003 Regular Session

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Testimony of
Glen Post, CEO and Chairman of the Board for CenturyTel
Before the Senate Commerce Committee
February 24, 2004

EXECUTIVE SUMMARY:

Introduction

CenturyTel is a leading provider of telecommunications services in rural communities in 22 states. Many of our service territories are represented by members of this committee, including Louisiana, Mississippi, Montana, Nevada, Oregon, Texas and Washington State. Our principal business focus is providing high quality telephone, long distance, Internet, broadband and advanced services in rural and small urban markets. We also use IP technology in our network today, and offer IP-based voice services to small business and enterprise customers. The majority of our three million customers and 7,000 employees live and work in the very areas that we believe have the most critical stake in the issues we will discuss today.

Voice Over Internet Protocol – The Most Recent Sign that the Telecommunications World is Changing

Technology and market forces are driving our industry faster than regulations have been able to adapt. Voice Over Internet Protocol is an exciting new service that signals that the way our country communicates is becoming increasingly varied and that the pace of change will accelerate even more. It is an exciting time in our country's telecommunications development, but also a time of great uncertainty for the country's local phone companies and their investors. Our ability to invest in our network and bring high quality services to our customers is now controlled to a great degree by increasingly volatile regulatory decisions, an out-dated regulatory environment that no longer reflects reality, and government-managed competition whose rules are unevenly applied to market participants.

The Facts About Rural Markets and Voice Over IP

We have all heard plenty about Voice Over IP in the last few months. But lost in the avalanche of news stories and advertisements by those promoting the technology is one critical, but seldom-mentioned fact: VoIP service providers cannot deliver their services without utilizing and relying upon someone else's network. Their ability to compete depends in large part on the network in which we have invested to make broadband connections available to rural America. They do not concern themselves with the capital-intensive task of building and maintaining a broadband-capable network that universally serves all customers. We cannot lose sight of this fact as we consider the effect that the regulatory treatment of VoIP will have on the continued availability of telecommunications service in all markets.

The Important Role of Intercarrier Compensation

Intercarrier compensation issues must be addressed in the VOIP debate. Access charges are nothing more than legally required payments for use of another carrier's network. They play a critical role in keeping local rates affordable, encouraging investment in the telecommunications infrastructure investment that drives a huge portion of our national economy and promoting interconnection between carriers. At their foundation is common sense recognition that all customers benefit when all customers are connected to the public switched telephone network. In order for all customers to be connected, carriers must compensate each other fairly, and end-user rates must be affordable.

A Commitment to Universal Service

The question that we must ask ourselves is whether VoIP will bridge the digital divide between rural and urban America, or make it wider? If the universal service issues surrounding VOIP are not properly addressed, it will be the latter.
Our country's commitment to universal service must be renewed and strengthened. Without it, customers who live in rural areas face the real risk of being left behind as our nation's communications network continues to evolve. For this reason, there is no question in my mind that all voice service providers, including VOIP providers such as Pulver.com and Vonage must contribute to universal service funding.

The Government's Role in Preserving Key Social Objectives

Some regulators already have discussed applying "a light touch" when it comes to regulating VOIP. But, should a "light touch" mean no social or economic responsibility? I fear such an approach not only will subject consumers to second-class service – such as no E-911, or access for people with disabilities. But even more troubling, it will in time undermine the high quality service and near-ubiquitous deployment that this country has worked long and hard to achieve – service and coverage that is the envy of other nations.

From a consumer standpoint, there is nothing wrong with demanding some level of accountability from all providers. There is no downside for consumers if all providers shoulder their fair share for supporting the network, assume law enforcement and national security responsibilities, and comply with 911 requirements, numbering resource conservation, and disabilities access obligations.

Consumers Deserve a Robust Market Where ALL Competitors Can Compete Freely

Voice Over IP is an exciting technology that highlights the need for a broad revisiting of the Nation's communications policy. We need to move beyond government-managed competition that rewards those who make no network investment while handcuffing those who do. We should allow the local phone companies to bring our longstanding commitment to the community, to innovation, and to customer service to the 21st century communications marketplace. State and federal policy makers must understand that a new world brings new challenges, such as encouraging infrastructure investment in an uncertain environment, and preserving important social objectives such as universal service, emergency services, and access for law enforcement.

Conclusion

VoIP must be considered in the broader context of all the fundamental changes that are underway in the new telecommunications marketplace—and reform must take place for the rules governing all competitors today. Hopefully, today's hearing will advance that effort.

TED KANAVAS

STATE SENATOR

Date: **Wednesday, March 3, 2004**

To: **Members of the Senate Transportation and Information Infrastructure Commitee**

From: **Senator Ted Kanavas**

Re: **Testimony in support of SB 302 – The Broadband Deployment Act**

Thank you Chairman Leibham and committee members for the opportunity to submit testimony in support of Senate Bill 302 (SB 302), The Broadband Deployment Act.

One of the most important keys to the future and long-term economic growth of Wisconsin is how well, and how fast we as a state and a nation can catch up with our world economic competitors in the deployment and adoption of a truly high-speed broadband infrastructure.

Broadband deployment, competition and adoption must be a top priority for Wisconsin, and its leaders. Broadband holds unbridled promise and potential to drive Wisconsin's economic future.

Most experts agree that any attempt to regulate broadband technologies under the same scheme that is used to regulate traditional telephone service has a stifling on the deployment of a ubiquitous broadband infrastructure. It is my contention that this regulatory threat "acts as a sword of Damolces" above the neck of advancements and investment in future broadband technology.

This future investment broadband and information technology will be the fuel for Wisconsin's economic engine as our economy move into the innovation economy.

Currently, Information Technology (IT) accounts for 7% of our nation's economy, yet IT produces nearly 28% of our nations Gross Domestic Product (GDP).

It has been estimated that a ubiquitous broadband infrastructure would account for an increase in the nation's GDP up to $500 million annually, and create 1.2 million jobs nationwide.

Wisconsin's share of the potential job growth has been estimated by Citizens for a Sound Economy to be nearly 20,0000 new high paying information technology jobs. These

-more-

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numbers show the true potential of what widespread adoption of broadband technologies can mean for Wisconsin and its citizens.

Since my first day in the Legislature I have worked to develop solutions for current generation and next generation high-speed data communications (broadband) rollout.

SB 302 and its companion Assembly Bill 672 (AB 672) is one step forward in creating a regulatory certain environment for all broadband providers. This certainty will allow providers to rollout current technologies faster and develop the next wave or "next generation" technologies that will deliver communication speeds in excess of 100 megabits per second (mbps) in the near future.

Representative Scott Jensen and I have worked hard to develop bill that creates a favorable regulatory climate, reaffirm the legislature's support for local telephone competition, and set a course for future broadband deployment. .

Today, I am asking for your support of Senate Substitute Amendment 1 to SB 302, which was developed based on concerns raised by telecommunications and broadband service providers and other members of the public during an Assembly hearing held on AB 672.

In the last few months Verizon Communications has committed to spending $1 billion to deploy broadband technologies around the nation. I firmly believe that this substitute amendment to SB 302 will announce to broadband providers around the nation that Wisconsin is the state where they should invest in high-speed data networks.

Again, I would like to thank the committee for their interest and attention today and I ask for your support of the substitute amendment and SB 302 as amended.

Attached to this testimony are an information sheet on The Broadband Deployment Act of 2003 and a Legislative Council Memo for your reference

The primary objective of the Broadband Deployment Act Of 2003 is to:

Create a reliable regulatory framework for Broadband Deployment

"In order to make sure the economy grows, we must bring the promise of broadband technology to millions of Americas."

"The private sector will deploy broadband. But government at all levels should remove hurdles that slow the pace of deployment."
President George W. Bush
August 13, 2002 Waco Economic Summit

- It is widely accepted that excess and onerous government regulation stifles innovation. This bill will eliminate the current uncertain regulatory climate, which has had a detrimental impact in broadband deployment, competition and adoption

- This bill will allow the private sector to work to develop broadband solutions for current generation and next generation high-speed data communications (broadband) deployment in a regulatory certain environment

- This legislation intends to create a similar regulatory environment for broadband deployment to that currently enjoyed by the cellular telephone industry. This environment has allowed cellular technology to be deployed statewide, giving consumers numerous choices of providers, pricing and service plans as well as telephones and features

- In the absence of a coherent federal broadband policy it is imperative for states like Wisconsin to develop its own consistent regulatory policy. Wisconsin lags behind most of the nation in broadband deployment and adoption, a statewide broadband policy and regulatory certainty will spur new investment and build-out of broadband technologies

"By deregulating broadband as the prime avenue of interstate commerce, untouchable by state regulators, Congress can ignite a new boom even more far-reaching than the first Internet boom. But by continuing current

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR TED KANAVAS AND REPRESENTATIVE SCOTT JENSEN

FROM: David L. Lovell, Senior Analyst, and John Stolzenberg, Chief of Research Services

RE: LRBs0406/1 and LRBs0389/2, Identical Draft Substitute Amendments to 2003 Senate Bill 302 and Assembly Bill 672, Relating to Deregulation of Broadband Services

DATE: March 2, 2004

This memorandum summarizes LRBs0406/1 and LRBs0389/2, identical draft substitute amendments to 2003 Senate Bill 302 and Assembly Bill 672, respectively, your bills deregulating broadband services. The memorandum is in two parts: the first part describes the substitute amendments; the second part points out provisions of the substitute amendments that respond to concerns raised in public hearing.

THE SUBSTITUTE AMENDMENTS

The substitute amendments exempt retail broadband service from regulation by the Public Service Commission (PSC), with very few exceptions. The manner in which the substitute amendments treat broadband service is modeled in general upon the manner in which the statutes exempt commercial mobile radio service (cellular service) providers and their services from PSC regulation.

Definition of "Broadband Service"

The substitute amendments define "broadband service" as a telecommunications service that conveys voice, data, or other information in either direction between a provider's facilities and a customer using any medium or technology, provided that the service operates either: (1) at a speed of at least 200 kilobits per second (kbps); or (2) by via an intentional radiator. "Intentional radiator" refers to an emerging wireless form of broadband communications, for example, communications based on the "wi-fi" standard, which does not meet the 200 kbps speed standard in some cases.

It should be noted that, under this definition:

1. Broadband service is a telecommunications service.

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2. It includes all types of communications, including voice transmission, such as Voice over Internet Protocol (VoIP) service.

3. It refers to conveyance in either direction, and so includes services with fast download speeds but slow upload speeds, or vice versa, as well as services with high speeds in both directions.

4. It requires that the conveyance be to a customer, and so includes the "last mile" component of service.

5. It includes both retail and wholesale services.

Exemption from PSC Regulation

Retail Service

The essence of the substitute amendments is contained in a statement that, with one exception, the offering or provision of broadband service at retail is not subject to PSC regulation under ch. 196, Stats.[1]

In the one exception to the general exemption, the substitute amendments provide that the PSC may regulate retail broadband service to the extent authorized or required in any order or regulation adopted by the Federal Communications Commission (FCC), under the Federal Communications Act (FCA) of 1934, as amended, if the FCC adopts the order or regulation after the effective date of this provision. They provide, however, that any exercise of this authority must comply with, but be no more stringent than, the FCC regulations.

Wholesale Service

The substitute amendments provide that a telecommunications utility shall provide interconnection, services, and unbundled network elements to other providers for retail broadband service to the extent specifically required or authorized by the FCC, under the FCA.

Exemption From Local Regulation

The substitute amendments also prohibit cities, villages, towns, and counties from enacting ordinances or adopting resolutions that regulate providing or offering to provide broadband service. Note that this prohibition applies to the regulation of both retail and wholesale broadband services. The

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[1] It is the phrase "to an end user who is not a telecommunications provider" that makes this exemption from regulation apply only to retail service. Provision of service to a telecommunications provider would be for the purpose of that provider selling service to end users, and so would be a wholesale transaction. It is the absence of this phrase in the definition of "broadband service" that makes that definition apply to both retail and wholesale service.

substitute amendments do not, however, prohibit a city, village, town, or county from regulating the use of a public right-of-way by a broadband service provider.

Other Provisions

The substitute amendments provide that broadband service:

1. Is not a "basic local exchange service," (i.e., traditional residential local phone service) a category of telecommunications services that is regulated by the PSC.

2. Is not a "new telecommunications service," and so a broadband provider is exempt from the requirement to file a tariff with the PSC, and the authority of the PSC to modify the tariff, for any new telecommunications service.

3. Is exempt from the requirement that price-regulated telecommunications providers file tariffs with the PSC for any service they offer, including unregulated services. The substitute amendments also repeal the PSC's authority to apply price regulation to advanced telecommunications services.

4. Is exempt from PSC approval and enforcement of interconnection agreements under s. 196.199 for any portion of or amendment to an interconnection agreement that provides from an incumbent telecommunications carrier to another provider interconnection, a service or a network element ***exclusively*** for use in providing retail broadband service. The PSC retains jurisdiction over interconnection agreements under s. 196.199 if the interconnection, service, or network element will be used to provide any other service in addition to broadband service. (Note: Section 196.199 is the principal statute that provides authority to the PSC to approve and enforce these federally required interconnection agreements. Broadband providers may submit interconnection agreements to the PSC voluntarily under s. 196.04, as many cellular providers do, but the PSC does not have authority to enforce interconnection agreements that it approves under that section.)

5. Is subject to the prohibition on the subsidization of a nonregulated activity (in this case, broadband service) with revenues from a regulated activity (such as basic local exchange service).

6. Is not a component of "universal service." In addition, revenues from broadband services are not subject to assessments for the Universal Service Fund.

7. Is exempt from the PSC's consumer protection rules, but is subject to the jurisdiction and rules of the Department of Agriculture, Trade and Consumer Protection, including requirements relating specifically to telecommunications services.

8. Is subject to state anti-trust law to the same extent that other unregulated telecommunications services are subject to that law.

RESPONSE TO PUBLIC HEARING

This part of the memorandum identifies provisions that were incorporated into the substitute amendments in response to concerns raised at the November 25, 2003 hearing on 2003 Assembly Bill 672 by the Assembly Committee on Energy and Utilities. Page and line number references to the relevant text in the substitute amendments are included. The provisions are the following:

1. Establishes that the definition of "broadband service" applies to the conveyance of voice, data, or other information at the designated speeds in either direction, that is, either the uplink or downlink speed must be at least 200 kbps or more but not both. [Page 3, line 12.]

2. Clarifies that the deregulation of broadband service applies to retail broadband services. [Page 5, lines 13 and 14.]

3. Clarifies in the policy on unbundled network elements that it applies when the Federal Communications Commission (FCC) has delegated responsibility to state utility commissions and adds specific cross-references to federal law under which unbundling of network elements may be required. [Page 7, lines 7 and 8.]

4. Excludes right-of-way regulation from preemption of local government regulation of broadband service. [Page 2, lines 1 to 3.]

5. Reconciles cross-references to telecommunications-related terminology used in ch. 196 (based upon the alternative approach used in the substitute amendment for exempting retail broadband services). [Page 5, lines 12 to 15.]

If you have any questions regarding Senate Bill 302, Assembly Bill 672, or the substitute amendments, please feel free to contact us directly at the Legislative Council staff offices.

DLL:JES:jal;ksm

WSTA Comments on SB302/AB672

Voice Over Internet Protocol (VOIP), in almost every aspect, offers the exact functional equivalent of basic local and long distance telephone service, albeit using in part an Internet platform. It simply uses a different medium, the Internet platform, for a portion of its services, rather than using the Public Switched Telephone Network (PSTN) exclusively. VOIP customers use their conventional telephone sets, with conventional telephone numbers, to originate and terminate calls on the public switched telephone network. This sounds very much like the traditional telephone services provided by ILECs, CLECs and IXCs, except that these carriers use the PSTN exclusively, where VOIP uses a combination if the Internet and the PSTN. VOIP simply combines its Internet platform with more traditional telecommunications facilities and services, and resells the total package as would any CLEC or IXC.

VOIP providers argue they are not providing telecommunications services at all. In other words, VOIP service may be the exact functional equivalent of a telecommunications service, but VOIP providers will use the Internet shield to protect it from paying its fair share of reciprocal compensation, access charges and USF. They will further use that shield as a means of avoiding their regulatory and social responsibilities. They will reap the rewards of providing telecommunications services, but will not shoulder the risks, burdens and obligations that go hand in hand with providing these services.

Throughout history, various technologies have been developed, subsequently become obsolete, and replaced by new technologies. By focusing on the essential functionality provided to users, one can promote a competitively neutral environment in which the best provider of service will ultimately be the winner. And this makes perfectly good sense. Phone to phone IP calls, even though they use the Internet platform, also use the PSTN. ILEC facilities are used for the origination and termination of these calls and, absent aruling/policy that they constitute a telecommunications service, ILECs will be deprived of their appropriate reciprocal compensation, access charges and USF.

The Wisconsin State Telecommunications Association is concerned that the changes considered in SB302/AB 672 will give VOIP providers legal standing and an arbitrage opportunity in Wisconsin not present in other states. Even with a temporary arbitrage opportunity until the FCC rules on services like those provided by Vonage, this legislation will negatively impact Wisconsin companies and consumers by giving VOIP providers incentives to utilize the PSTN without contributing financially to the maintenance of the network.

Wisconsin Communities where Vonage VOIP service is available:

262	Cedarburg
262	Kenosha
262	Menomonee
262	Milwaukee
262	Oconomowoc
262	Pewaukee
262	Racine
262	Theinsville
262	Waukesha
262	West Bend
414	Milwaukee
608	Beloit
608	Janesville
608	Madison
608	Stoughton
715	Stevens Point
715	Waupaca
920	Appleton
920	De Pere
920	Fond Du Lac
920	Green Bay
920	Kaukauna
920	Manitowoc
920	Neenah
920	Oshkosh
920	Sheboygan

Testimony of Jim Barrett,
Senior Counsel – SBC Wisconsin

In Front of the Senate Infrastructure Committee
March 3, 2004

Good morning. Thank you Chairman Leibham and Committee members for this opportunity to speak to you today regarding Senate Substitute Amendment 1 to SB 302 for informational purposes. As Kate said, my name is Jim Barrett and I have worked for SBC companies for the past five years, primarily as legal counsel.

Let me begin by reiterating one of the messages that Ms. Blavat just delivered: **SBC Wisconsin is encouraged by your efforts on this legislation and strongly supports regulatory parity and the concept that marketplace competition – not heavy government involvement – is the best way to maximize consumer welfare.**

With that said, we have concerns that portions of this substitute amendment undermine this goal of regulatory parity.

First, broadband services should not be considered a subset of telecommunication services. Defining broadband services in that way carries too much regulatory baggage and potentially subjects unregulated companies, including companies providing internet services, and potentially the internet itself to regulatory oversight. Along those lines, the current statutory definition of "telecommunication services" found in 196.01(9m) should also be amended to explicitly exclude broadband services. Note that the current definition already excludes cable television and broadcast services so such an exclusion would not be without precedent.

Second, this bill should recognize both broadband and high capacity services, and their related underlying facilities, are competitive services and therefore, both should benefit from the legislature's measures to ensure regulatory parity. A speed based definition would be appropriate for High Capacity Services but the speed should be compatible with consumer demand and reduced to 144 kbps. On the other hand, broadband services should not be defined by speed. Rather, the legislature should recognize that many of the latest broadband applications are based on packet technology. Therefore, the defining factor should be that the transmission technique used by broadband networks is packetized.

A packetized network does not establish a dedicated path through the network for the duration of a session but, instead, transmits information in units called packets in a connectionless manner. Information streams are broken into packets at the front end of a transmission, sent over the best available network connection, and then reassembled in their original order at the destination endpoint. Therefore a continuous connection at a particular speed is not really necessary for broadband to function.

Third, allowing the public service commission to regulate broadband services to the extent *authorized* by federal law seems to be undercut the goal of regulatory parity and could lead to extensive litigation as to just what is "authorized." An easy solution would be to eliminate the public service commission's authority under section 196.219(3)(f) to order unbundling beyond that which is required by federal law. Both the FCC in its *Triennial Review Order* and now the U.S Court of Appeals in Washington, D.C. Circuit have made clear determinations that these advanced services are not subject to unbundling requirements, should be free of regulatory oversight, are fully competitive, and companies should be free to make business decisions without those burdens.

Fourth, carving out commission oversight of agreements between carriers related to provision of broadband and high capacity services is a good idea. However, this bill's proposed revisions with respect to commission jurisdiction over such agreements do not go far enough.

Finally, we have concerns about how this bill would affect access charges and the proper compensation for the carriers who provide universal service and maintain the public switched telephone network.

That being said, I want to reiterate SBC's support for this bill's common sense goals aimed at speeding deployment and consumer benefits of broadband throughout Wisconsin.

Again...we look forward to working with the Legislature and other providers to ensure that this legislation provides the greatest benefits – and the same benefits – for all broadband consumers, no matter the technology the consumer chooses.

Before I conclude my testimony, I want to thank the Staffs of Senator Kanavas and Representative Jensen for their hard work in the pursuit of regulatory parity.

Thank you for this opportunity to speak on the bill. Kate and I will take any questions you might have.

AARP Wisconsin
Citizens Utility Board

March 3, 2004

To: Honorable Members of the Senate Committee on Transportation and Information Infrastructure

From: Charlie Higley, Executive Director, Citizens Utility Board
Gail Sumi, Government Affairs Representative, AARP Wisconsin

Subject: Substitute amendment s0389/2 to AB 672

AARP and the Citizens Utility Board (CUB) oppose the substitute amendment s0389/2 to Assembly Bill 672 relating to the regulation of broadband service.

As members in Wisconsin Customers for Affordable Local and Long Distance Service (CALLS) AARP and CUB support the goal of having broadband companies compete for providing service to consumers. Real, meaningful competition can reduce rates and improve customer service by providing customers with choices. However, we are concerned that this legislation would remove the option of regulating a new telephone service before we know whether competition is able to protect consumers from monopoly price gouging and the provision of bad service.

For example, the definition of "broadband service" in Section 5 could include the emerging technology of Voice Over Internet [Protocol], or VOIP. If this legislation prevents the Public Service Commission of Wisconsin (PSC) from regulating a new telephone service, namely VOIP, then people with low or fixed incomes could be hurt by rate increases and the loss of support from the universal service fund.

Regarding universal service, Sections 16 and 18 would delete universal service fee collection on broadband revenues and the use of the universal service fund for broadband deployment. AARP and CUB believe that broadband services are becoming more and more important for almost all aspects of modern living. If broadband users do not have to pay into the universal service fund, then this fund will shrink, making it harder to provide telecommunication services in underserved urban and rural communities. Similarly, if universal service funds cannot be used to support the deployment of broadband, we would be making it harder for people in underserved communities to have access to this important technology.

We are also concerned that the substitute amendment would harm consumers by preventing the PSC from establishing and enforcing consumer protections. Section 14 of the substitute amendment would allow the PSC to establish regulations for broadband service only if regulated by the Federal Communications Commission (FCC). However, the FCC does not regulate broadband services, so this section would leave the consumer without any protection from poor service.

Thank you for your consideration.

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March 3, 2004

State Senator Ted Kanavas
State Capitol—Room 20 South
Madison, WI 53702

State Representative Scott Jensen
State Capitol—Room 123 West
Madison, WI 53702

Re: Assembly Substitute Amendment to AB 672 (LRBs0389/2)

Dear Senator Kanavas and Representative Jensen:

Thank you for sharing with Wisconsin CALLS a copy of your proposed Assembly Substitute Amendment to AB 672, legislation relating to the regulation of broadband services. You obviously have been responsive to our testimony from the last public hearing, and we appreciate your willingness to address our concerns. Nonetheless, while the substitute amendment is a substantial improvement over the original bill, Wisconsin CALLS must oppose the measure as drafted for the reasons stated below.

1. State unbundling authority. We appreciate your efforts to clarify that you are only seeking to limit the state commission's authority to unbundle the incumbent's network beyond the requirements of federal law to those parts of the network that deliver broadband services. (Sections 20 and 21). We also recognize that you have expanded the reference to federal unbundling requirements to include 47 U.S.C. § 271.

As we stated in our letter of November 7, 2003, these changes are not enough for us to drop our opposition to the bill. Importantly, the parts of an incumbent's network used to provide broadband services may also be used to deliver more traditional telecommunications services. Thus, the intent to limit unbundling obligations regarding broadband has not been achieved.

More fundamentally, we believe that our PSC must have the authority to order unbundling with respect to broadband facilities beyond what the FCC may require. In our view, such authority is specifically contemplated under the federal Telecommunications Act. We disagree with the FCC's ruling limiting the obligations of ILECs to unbundle their next-generation loops. The result of the FCC's decision is that incumbents can relegate competitive carriers to second place status and wall off whole parts of their network to competitors' access to end-use customers. Such an outcome will reduce competitors' access to end-use customers and succeed in re-monopolizing the phone system. The PSC should have the ability to rectify for our state the policy mistakes made by the FCC.

2. Interconnection disputes. We oppose your suggested change to current law which would remove disputes relating to interconnection, services or network elements used exclusively to provide broadband service. Wis. Stat. § 196.199 creates a mechanism for prompt resolution of interconnection disputes that have a significant adverse effect on the ability of the complaining telecommunications provider to provide service to its customers. Under the substitute amendment, interconnection complaints involving the broadband service could still be filed under § 196.26. Thus, the draft does not remove PSC jurisdiction over the interconnection broadband disputes--it just makes it slower. But aside from this drafting anomaly, we question why the legislature would remove PSC jurisdiction to resolve broadband interconnection disputes. Interconnection agreements are achieved through a combination of negotiation and sometimes arbitration. If the parties have an interconnection agreement that addresses network elements used for the delivery broadband service, it makes little sense to deny those contracting parties an efficient mechanism to resolve their disputes. Importantly, § 196.199 is available for both incumbents and competitors to invoke. We suggest you delete this section from the bill.

3. Broadband deregulation at retail. We read Section 14 as the heart of your legislation to deregulate broadband service at retail. We note that the jurisdiction of the PSC over broadband service would be limited to only those FCC orders or regulations adopted after the effective date of this law. We question what FCC orders or regulations adopted prior to the effective date of this law would not be incorporated into this section.

4. Other provisions. We recognize that you have attempted to address a number of other issues that were raised at the public hearing on AB 672 and in subsequent discussions. For instance, we appreciate that you have clarified that incumbents could not subsidize broadband, although we question how this could be enforced if the PSC cannot require regulatory accounting for an ILEC's delivery of broadband service. We note, without taking a position, that your bill deletes universal fee collection on broadband revenues and the use of the universal service fund for broadband deployment. Some may question whether such a restriction is appropriate for achieving greater broadband deployment. We also understand that you are attempting to shift, rather than eliminate, responsibilities for consumer protection from the PSC to DATCP. We also

appreciate your effort to include broadband services in the list of items that would not be exempt from the state's antitrust laws.

5. Conclusion. We look forward to continuing discussion on this legislation. You have narrowed our differences since the bill was introduced, but we remain opposed to the substitute amendment as drafted.

Finally, the U.S. Court of Appeals for the District of Columbia yesterday issued its ruling with respect to the Federal Communications Commission's Triennial Review Order ("TRO"), the order establishing unbundling obligations of incumbent telecommunications companies who must lease portions of their network to competitors. While the court upheld the TRO as it relates to the unbundling obligations of incumbents for certain broadband facilities, the decision, in all its aspects, is likely to be appealed further. Given this continued uncertainty, we believe that it is better to refrain from attempting to codify the TRO's broadband policies in state law, which we believe is your intent with this legislation.

Sincerely,

CULLEN WESTON PINES & BACH LLP

Curt F. Pawlisch
Attorney for Wisconsin CALLS

cc: Senate Committee on Transportation and Information Infrastructure
Assembly Committee on Energy and Utilities

WISCONSIN ASSEMBLY COMMITTEE ON ENERGY AND UTILITIES
ASSEMBLY SUBSTITUTE AMENDMENT TO ASSEMBLY BILL 672

TESTIMONY OF MELIA CARTER
ON BEHALF OF
COVAD COMMUNICATIONS COMPANY

March 3, 2004

Good Morning. I am Melia Carter and I am testifying on behalf of Covad Communications Company. Thank you for allowing me to speak to you today about the substitute amendment to Assembly Bill 672. As you know, the last time I addressed this committee, I discussed the problems that the competitive industry would face if Assembly Bill 672 passed into law. While the substitute amendment improves upon the original language in the bill, unfortunately, many of the original problems that were pointed out in the November 25th hearing still exist. I would like to take this time to point out a few of those concerns.

First, the language of the bill deregulates facilities based on the services traveling over them. As I mentioned in my past testimony, the key to successful deregulation is developing policies that insure that the monopoly "bottleneck" is open so that competitors can access customers. By opening the bottleneck to the customers, competition is created that can flourish in the market by providing consumers with new and innovative products and services at affordable prices. In the local telecommunications market, the bottleneck is the customer's local phone line. This is a facility that was built under a government granted risk-free regime that was completely funded by the ratepayers – not the monopoly phone companies. Thus, no competitor can ubiquitously replicate these facilities, which is why open access to these monopoly bottleneck facilities was one of the key goals of the Telecommunications Act of 1996.

The agenda of the monopoly phone companies has historically been to strengthen their monopolies by restricting competitive access to facilities depending on the type of service traveling over them. Sadly, this legislation falls directly into that trap. The problem with this flawed assumption is that regardless of what service is traveling over these facilities – the facility itself is still a bottleneck. Therefore, competitors need access to these monopoly facilities regardless of whether they are carrying voice, data, broadband or Morse code. The point is competitors need to have the freedom to be creative in their use of the underlying facilities so that they can unleash new technologies and new services that would never be delivered to WI consumers by the monopoly phone company. This bill would dismantle that process by allowing the monopoly phone companies to restrict competitive access to broadband facilities, stifling innovation in its path.

Let me give you a concrete example. Everyone is talking about Voice of Internet Protocal (or VoIP). This is basically a technology that allows us to use a data network to provide high quality voice service. It is the wave of the future, as I'm sure you've read. Competitive companies like Covad are moving quickly to drive deployment of this technology to consumers, not just to businesses. We want residential customers to be able to chose to ride the technology wave into a new era of more flexible, innovative and functional phone service. But this application requires a broadband connection. So companies like Covad need to lease facilities from the Bells, attach electronics to each end, and create that broadband connection. Assembly Bill 672 would stop Covad from doing exactly that. Since any phone line could be used to create a broadband service, the Bill would obliterate our ability to buy any phone line for broadband.

Second, this bill eliminates the authority of the WPSC to regulate access to these facilities. As I have previously explained to this committee, the WPSC regulates such things as delivery intervals, and performance in providing these facilities to competitive phone companies to insure that there is non-discriminatory treatment in the competitor's ability to offer service to its customers. If implemented, this bill would remove all enforcement authority to insure that the local phone monopolies are providing non-discriminatory treatment and quality service to consumers that choose to obtain service from a competitor. And remember, this bill is not aimed at the Bell retail broadband service offerings. Those are already unregulated. This bill is specifically designed to insure that no carrier in this state can lease a phone line for purposes of delivering a particular service – broadband.

The whole purpose of the Telecommunications Act was to make facilities available to competitors for use in delivering any telecommunications service. Availability of facilities must continue to be service neutral so that competitors can act creatively to develop new products, new features, and new services. It takes access to facilities to enable that kind of innovation – the Bells will never deliver it because monopolists don't innovate. That's a fact. If we'd left it up to the Bell monopolies, we'd all still be dialing up to the internet or using expensive ISDN lines. Instead, people have access to many broadband services and carriers can use those broadband connections to deliver VoIP, internet connectivity and who knows what in the future. Assembly Bill 672 puts an end to that.

Assembly bill 672 and its substitute amendment also requires the state of Wisconsin to hand over its existing authority to the federal government. As we all know, the federal government is not equipped to set policies that are in the best interests of Wisconsin consumers. Since the introduction of the Telecommunications Act of 1996, states have always been allowed to implement policies that go

to itself in 3 days, Covad can and must be able to seek resolution of this dispute with the WPSC. Passage of this bill would mean that Covad and other companies would have no ability to bring disputes on these issues to the Commission. This bill seeks to resolve the dispute by insuring that the monopolist can abuse competitors like Covad, while denying Covad any meaning avenue for redress of greviances. By denying competitors an efficient mechanism to resolve these disputes, competitors are left with nothing but "take it or leave it" proposals from the local phone monopolies. The end result of such actions will leave competitors with the choice of taking a bad deal that may hamper their ability to serve customers or leave the state.

Therefore, I strongly encourage this committee to reject Assembly Bill 672 and the Assembly substitute amendment. Such legislation is bad for consumers, bad for competition and bad for the state of Wisconsin.

Thank you.