



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2007 Assembly Bill 561

**Assembly Substitute
Amendment 1**

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2008 Assembly Bill 561 relates to the regulation of local telephone service. It allows certain incumbent local exchange carriers (ILECs)¹ to elect for partial deregulation, with the result that the ILEC is exempt from a range of regulatory provisions.

The *substitute amendment* takes a different approach, exempting all telecommunications utilities providing local telephone service (and, in some cases, all telecommunications utilities) from a smaller set of regulations, primarily providing the utilities greater flexibility in the pricing of their services, particularly utilities that offer services in bundles or packages.²

The substitute amendment also addresses the conditions under which a competitive local exchange carrier (CLEC)³ can enter the service area of an ILEC and the level of regulation the Public Service Commission (PSC) can exercise over the relations between a telecommunications utility and its affiliates.

¹ ILECs, essentially, are the local telephone companies that existed at the time of (and in some cases resulted from) the break-up of the Bell system.

² The substitute amendment defines a “bundle” as an offering by a telecommunications utility that combines services provided by the telecommunications utility with services provided by an affiliate of the utility or an unaffiliated third party and defines a “package” as an offering by a telecommunications utility that combines multiple services provided by the utility.

³ A CLEC is a utility that provides local telephone service in competition with an ILEC. CLECs tend to be larger companies, but are not necessarily so. “Competitive local exchange carrier” is not defined in the statutes; the substitute amendment refers to CLECs as “alternative telecommunications utilities described in s. 196.01 (1d) (f).”

PRICING FLEXIBILITY

Cross-Subsidization

Under *current law*, various requirements apply to the pricing of telecommunications services and the accounting for revenues to ensure that a telecommunications utility does not use revenues from regulated services to subsidize the cost of unregulated services. The *substitute amendment* specifies that these requirements do not apply to a telecommunications utility that offers services in bundles or packages.

Notice of Rate Increases

In general, a small telecommunications utility (a telecommunications utility that serves less than 50,000 access lines in Wisconsin) must provide an advance notice to its customers and the PSC of any proposed rate increase between 60 and 100 days before the effective date of the increase proposed by the utility. This notice initiates the statutory rate-making-by-petition process under which specified numbers of the utility's eligible customers may petition the PSC to determine the rates for the increase in lieu of the utility's proposed rates applying. The *substitute amendment* specifies that this notification requirement does not apply to increases in rates for services offered in bundles or packages.

Tariffs to Authorize Individual Contracts

Under *current law*, the PSC may approve a tariff to allow a telecommunications utility to enter into an individual contract with an individual customer only if substitute services are available to customers or potential customers of the utility, the absence of the tariff will cause the utility a disadvantage in competing for business, and the contract is compensatory. The PSC may include in the tariff any provisions it considers necessary to protect the public interest. Current law includes procedures for the PSC's review of such contracts.

The *substitute amendment* replaces the provisions of current law with a statement that the PSC may approve the filing of a tariff that allows a telecommunications utility to enter into an individual contract with an individual customer.

COMPETITIVE ENTRY

Certification of CLECs and Other ATUs

Under *current law*, an alternative telecommunications utility (ATU)⁴ must obtain certification from the PSC before it may provide telecommunications service. PSC certification applies only to the specific locality where the ATU proposes to provide service. The *substitute amendment* provides that PSC certification of an ATU, other than a local government telecommunications utility, applies statewide. It further provides that, except for local government telecommunications utilities, all such

⁴ "Alternative telecommunications utilities" is a category that primarily consists of CLECs, but also includes pay telephone service providers and resellers of telecommunications service, among others.

certifications in effect on the effective date of the act are amended to apply statewide. (A nonstatutory provision specifies that this provision does not affect the settlement agreement in a specified PSC docket.)

The *substitute amendment* also provides that the PSC may impose certain conditions on a CLEC's certification as an ATU and may deny the CLEC's application for certification as an ATU if it determines that the CLEC lacks the financial, managerial, or technical capabilities necessary to provide its proposed services or to comply with the conditions.

Repeal of Limits on Competitive Entry

Under *federal law*, ILECs have a number of duties related to allowing competition to enter their service areas, including the duty to provide a CLEC with access to its network. Some of these duties do not apply to a rural telephone company unless the company receives a request from a CLEC for interconnection and a *state* regulatory commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with provisions of federal law regarding universal service. Further, a small local exchange carrier (a telecommunications utility that serves less than 2% of all access lines in the nation) can petition the state commission for a suspension or modification of certain of these requirements, which the state regulatory commission must grant if certain conditions are met.

Under *state law*, the PSC may issue a certificate to a CLEC to provide service in competition with an ILEC only if one or more of certain conditions are met. In particular, the PSC *may* issue a certificate if the incumbent serves more than 150,000 access lines in this state, if the incumbent does not serve more than 150,000 access lines in this state but consents to the CLEC's provision of service, or if the PSC finds that issuing the certificate is in the public interest, among others.

The *substitute amendment* repeals the state limits on competitive entry. The federal interconnection duties and limits respecting competitive entry into a small ILEC's service territory are not affected by this change. In practical terms, small ILECs that have not consented to competitive entry will continue to receive some protection from competition under the federal law, depending on the manner in which the CLEC intends to provide service, but less than they currently receive under state law.

RELATIONS WITH AFFILIATED INTERESTS

Under *current law*, the PSC has "supervisory control" over the terms and conditions of contracts and arrangements between telecommunications utilities and their affiliates. This means that telecommunications utilities are not required to obtain prior PSC approval of contracts and arrangements with their affiliates (as other utilities are), but the PSC can inquire into any contract or arrangement to determine whether there is a violation of any law enforced by the PSC.

The *substitute amendment* specifies that the PSC's supervisory control does not apply to a telecommunications utility that offers services in bundles or packages except to allow the PSC to enforce the consumer protection statute that applies to telecommunications utilities.

The substitute amendment also specifies certain information that a contract or arrangement between a telecommunications utility and its affiliate must contain and requires the utility to retain a copy of the contract or arrangement for three years after its termination. This provision applies to all telecommunications utilities.

OTHER PROVISIONS

Annual Reports

Under *current law*, a public utility must close its accounts annually on December 31 and submit an annual report to the PSC by the following April 1. The *substitute amendment* delays the annual report deadline until May 1. Note that this provision applies to *all* public utilities, including electric, gas, and water utilities, not just telecommunications utilities.

PSC Assessments

Under *current law*, the PSC may assess ATUs for the cost of making determinations under the section that regulates ATUs. The *substitute amendment* specifies that this refers to *certification or other* determinations.

Technical Provisions

The *substitute amendment* includes a number of technical provisions that make minor organizational changes to ch. 196, Stats., and revise terminology to provide greater consistency and clarity in that chapter.

Effective Date

The *substitute amendment* takes effect on the first day of the fourth month following publication.

LEGISLATIVE HISTORY

On February 19, 2008, Representative Montgomery offered Assembly Substitute Amendment 1. On February 26, 2008, the Assembly Committee on Energy and Utilities voted to introduce Assembly Substitute Amendment 1 on a vote of Ayes, 10; Noes, 0; and voted to recommend passage of Assembly Bill 561, as amended, on a vote of Ayes, 8; and Noes, 2.

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