

**2009 DRAFTING REQUEST**

**Bill**

Received: **11/25/2008**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **CTS**

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

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**Pre Topic:**

DOA:.....Miner, BB0201 -

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**Topic:**

Telecommunications assessments for consumer protection

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	mkunkel 12/05/2008	kfollett 12/05/2008	phenry 12/08/2008	_____	mbarman 12/08/2008		S&L
/2	mkunkel 12/09/2008	kfollett 12/09/2008	rschluet 12/09/2008	_____	sbasford 12/09/2008		

FE Sent For:

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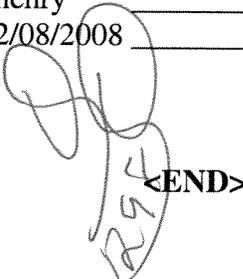
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/1	mkunkel 12/05/2008	kfollett 12/05/2008	phenry 12/08/2008		mbarman 12/08/2008		

FE Sent For:

12/15/08  
12/19/08

  
12/15/08

<END>

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/?	mkunkel	11/25/08 kjf	12/8/08 dh	12/18/08 ph/jkf			

FE Sent For:

<END>

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Telecommunications Assessment for Consumer Protection
- Tracking Code:
- SBO team: Agriculture, Environment and Justice
- SBO analyst: Andrew Miner *Am 11/10/09*
  - Phone: 266-1103
  - Email: andrew.miner@wisconsin.gov
- Agency acronym: DATCP / PSC
- Agency number: 115 / 155
- Priority (Low, Medium, High): High

Intent: Establish a new assessment on telecommunications companies to pay for consumer protection-related costs incurred by DATCP with regards to the telecommunications industry. The assessment should be modeled after the current relay assessment under s. 196.858. See page 4 of the attached issue paper for language suggestions.

## **Telecommunications Assessment**

*Department of Agriculture, Trade and Consumer Protection  
Background Issue Paper*

Draft: September 25, 2008

### **Issue**

Wisconsin taxpayers are increasingly funding customer service for telecommunications companies with tax dollars and state employees. These businesses are systematically reducing or even eliminating their customer service functions. This results in a loss of Wisconsin jobs. In addition, it leaves DATCP to perform the customer service function of the industry.

In the past, the Public Service Commission (PSC) handled most consumer complaints against telecommunications providers and directly billed telecommunication utilities under s. 196.85 for work done in this capacity. Since 1993, more and more of the regulatory authority over consumer telecommunications complaints has been given to DATCP under s. 100.207. As a result, the costs associated with this work have been shifted from the companies themselves to the state taxpayers. Telecommunications companies are now the major source of consumer complaints in Wisconsin and require an ever increasing expenditure of state resources.

The purpose of this paper is to set forth a proposal to require the telecommunication providers to once again pay for the customer service issues that their industry generates.

### **History**

The Telecommunications Act (the "Act") of 1993 (1993 Act 496) deregulated a substantial portion of the telecommunications industry including the activities of:

- Price-regulated telecommunications utilities (local carriers) related to any "new services" such as three-way-calling, call waiting, and repeat dialing.
- Telecommunications carriers, such as businesses that provide long-distance telecommunications services.
- All other businesses that provide telecommunications services in Wisconsin.

In fact, the only portions of the telecommunications industry that the 1993 Act directed the PSC to continue to actively regulate are: (1) telecommunications utilities that choose to remain cost regulated, and (2) basic local service of telecommunications utilities that choose to be price regulated.

The "Act" also created Wis. Stat. § 100.207, which regulates sales and collections activities of telecommunications providers, and directs DATCP to administer this new law. In addition, the "Act" also amended Wis. Stat. § 93.01(1m) by expanding the definition of "business" to include the activities of "public utilities and telecommunications carriers" that the PSC is not actively

regulating. The effect of this amendment requires the department to regulate the trade practices of any business providing deregulated telecommunications services under Wis. Stat. § 100.20.

In effect, the Telecommunications Act of 1993 shifted the primary responsibility for regulating the trade practices of most of the telecommunications industry from the PSC to the department.<sup>1</sup> Despite this fact, the “Act” did not shift any funding for this activity from the PSC to the department or provide any additional funding from any other source to the department.

On November 23, 2005, the Public Service Commission issued an order that further deregulated the telecommunication industry. That order suspended the PSC’s price regulation over SBC’s offering of basic service in its 17 largest exchanges.<sup>2</sup> (SBC is the single largest provider of basic telephone service in Wisconsin.) By no longer actively regulating the activities of SBC’s largest exchanges, the PSC has ceded jurisdiction over virtually all SBC consumer protection issues to DATCP’s authority under to Wis. Stat. §§ 100.20 and 100.207, and Wis. Adm. Code ch. ATCP 123. This action has significantly increased DATCP’s responsibility to administer the state’s consumer protection laws related to the telecommunications industry.

The Public Service Commission is currently considering additional deregulation under Public Service Commission Docket 5-TI-1777, February 2008

### **PSC Funding Sources**

Major PSC funding sources for regulation of telecommunications providers include:

- Direct Assessment – Wis. Stat. § 196.85(1)
- Remainder Assessment – Wis. Stat. § 196.85(2)
- Telephone Relay Assessment – Wis. Stat. § 196.858
- USF Assessments – Wis. Stat. § 196.218(3)
- Other - Wis. Stat Ch. 196

<http://www.legis.state.wi.us/rsb/stats.html>

The telecommunication providers that are subject to assessment include:

- Incumbent Local Exchange Companies (ILECs)
- Incumbent Telecommunications Cooperatives
- Alternative Telecommunications Utility – Cable Television (ATU)
- ATU Pay Telephone

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<sup>1</sup> During a legislative hearing on the bill introducing 1993 Act 496, Senator Panzer asked then-chief PSC Commissioner Cheryl Perino how consumers were to be protected from unfair trade practices by the telecommunications industry if the proposed deregulation occurred? Commissioner Perino stated that the deregulated telecommunications industry should “follow the same rules that other businesses must follow.” Immediately following Commissioner Perino’s testimony, a department representative explained to the legislative committee how Wis. Stat. § 100.20 “generally” regulated trade practices in business.

<sup>2</sup> Order of the Public Service Commission, Docket 6720-TI-196, dated November 23, 2005.

- ATU Resellers
- ATU – Other
- Commercial Mobile Radio Service (CMRS) – Currently Suspended
- Competing Certified Telecommunications Utilities

The revenues that are subject to assessments are those earned from regulated intrastate calls originating and terminating in Wisconsin and regulated interstate calls originating in Wisconsin. Each year the rates for assessments are calculated by the PSC and each provider pays the assessment based on that year's rate.

The revenues that are subject to these assessments are: (not all-inclusive)

- Offering for sale the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication...§196.01(9m)
- Sales to retail customers
- Revenue from phone card sales
- Provision of certain voice mail services

It appears that some of the fees collected by the PSC are for activities that the PSC no longer regulates. However, **all** of these activities are actively regulated by DATCP under Chapter ATCP 123, Wis. Admin. Code.

### **Bureau of Consumer Protection's FTE Usage**

Since 1998, more than 10% of consumer complaints received by DATCP have been about telecommunications services. Telecommunications was the number one consumer issue from 1995, when the telecommunications and cable television rules were promulgated, until 2002 when No-Call claimed the number one spot and telecommunications moved to second. The ten year average is more than 2,100 complaints annually.

When the bureau receives a written complaint about a telecommunications provider, it assigns the matter to a Consumer Specialist who mediates the issue between the complainant and the provider. If mediation fails, and the matter is more than an isolated incident, the bureau will investigate the matter and determine whether the department should take enforcement action. During the past several years, the approximate FTE use relating to the trade practices of telecommunications providers is as follows:

- Hotline and support staff – .98 FTE
- Consumer specialists – 1.36 FTE
- Consumer protection investigators – 3.67 FTE

**Total – 6.01 FTE** (This does not include supervisor or attorney FTE use)

The total cost for the Bureau staff time set forth above is approximately \$421,253 annually. This means that the taxpayers of the state are paying \$421,253 annually to resolve customer complaints generated by the telecommunications industry.

**Recommendation**

DATCP recommends that the telecommunications industry pay all or a significant portion of the consumer protection related costs attributable to unfair trade practices and inadequate customer service. This can easily be accomplished by adding language to Secs. 20.115 and 196.859, Wis. Stats., to direct a sum from the PSC Assessments to the department to support the FTEs the bureau uses to regulate the trade practices of the telecommunications industry<sup>3</sup>. Suggested statutory language follows:

**Statutory Language**

Section 20.115 (1) (jm) is created to read:

20.115 (1) (jm) *Telecommunications utility trade practices.* The amounts in the schedule for the administration of s. 100.207. All monies received under s. 196.859 shall be accredited to this appropriation account.

Section 196.859 is created to read:

196.859 **Assessment for telecommunications utility trade practices.** (1) The commission shall annually assess against telecommunications utilities the total of the amounts appropriated under s. 20.115 (1) (jm).

(2) The commission shall assess a sum equal to the annual total amount under sub. (1) to telecommunications utilities in proportion to their gross operating revenues during the last calendar year. A telecommunications utility shall pay the assessment within 30 days after the bill has been mailed to the assessed telecommunications utility. The bill constitutes notice of the assessment and demand of payment. Payments shall be credited to the appropriation account under s. 20.115 (1) (jm).

add something comparable to  
s. 196.858 (3) and (5) ?

and TU does not include TC

<sup>3</sup> A current example of PSC funds diverted to the department involves stray voltage at Wis. Stat. §§ 20.115(3)(j), and 196.857 (1m) (b) and (2g).

what about CM RSPs? ATUs?



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0949/1  
MDK:.....  
gf

D-NOTES  
12-5-08

DOA:.....Miner, BB0201 - Telecommunications assessments for consumer protection

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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

*Analysis by the Legislative Reference Bureau*

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

X Under current law, DATCP enforces certain requirements that apply to advertising, sale representations, and sales and collection practices of telecommunications providers, including telecommunications utilities subject to varying degrees of regulation by the PSC. DATCP's enforcement of the requirements is funded, in general, by general purpose revenues. Under this bill, DATCP's enforcement of the requirements is funded by annual assessments paid by telecommunications utilities. The bill requires the PSC to assess telecommunications utilities in proportion to their gross operating revenues.

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

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

2 SECTION 1. 20.115 (1) (jm) of the statutes is created to read:



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0949/1dn

MDK: kjf

Date

Andrew Miner:

1. Proposed s. 196.859 (3), which was not included in the instructions, is based on s. 196.858 (3). Is it okay?
2. Do you want to include something comparable to s. 196.858 (5), which would prohibit a telecommunications utility (TU) from recovering an assessment by billing a customer for the assessment on a separate line in a billing statement?
3. The bill requires the PSC to assess TUs. Note the definition of TU excludes a telecommunications carrier (TC), which is defined as a person who does not provide basic local exchange service, except on a resale basis. See s. 196.01 (8m) and (10). Therefore, the bill does not allow the PSC to assess TCs. Is that okay?
4. As drafted, the PSC is not able to assess commercial mobile radio service providers (CMRSPs) (i.e., wireless phone companies) and alternative telecommunications utilities (ATUs). The reason is that, although CMRSPs and ATUs fall under the definition of TU, they are generally exempt from ch. 196. Is that okay, or do you want the PSC to assess CMRSPs and ATUs?

Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: mark.kunkel@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0949/1dn  
MDK:kjf:ph

December 8, 2008

Andrew Miner:

1. Proposed s. 196.859 (3), which was not included in the instructions, is based on s. 196.858 (3). Is it okay?
2. Do you want to include something comparable to s. 196.858 (5), which would prohibit a telecommunications utility (TU) from recovering an assessment by billing a customer for the assessment on a separate line in a billing statement?
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Mark D. Kunkel  
Senior Legislative Attorney  
Phone: (608) 266-0131  
E-mail: [mark.kunkel@legis.wisconsin.gov](mailto:mark.kunkel@legis.wisconsin.gov)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0949/1

MDK:kjf:ph

Handwritten notes: "2" and "RM has been pur" circled.

DOA:.....Miner, BB0201 - Telecommunications assessments for consumer protection

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Handwritten notes: "Don't Gen" and "IN SEPT 1A" circled.

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

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2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0949/2ins  
MDK:.....

1

**INSERT 1A:**

*tele*

*single  
space*

2

, except for telecommunications utilities that are regulated as alternative  
telecommunications utilities and wireless phone companies

3

4

**INSERT 2-16:**

5

(4) A telecommunications utility may not recover the assessment under this  
section by billing a customer for the assessment on a separate line in a billing  
statement.

6

7

## Kunkel, Mark

---

**From:** Grant, Peter  
**Sent:** Monday, December 08, 2008 2:39 PM  
**To:** Kunkel, Mark  
**Subject:** RE: LRB-0949

I'd just do this one the better way and leave the current one alone. ✓

---

**From:** Kunkel, Mark  
**Sent:** Monday, December 08, 2008 2:29 PM  
**To:** Grant, Peter  
**Subject:** RE: LRB-0949

Agree that "amount" is better, but I used the same language as a current law provision (s. 196.858 (1) reproduced below), because I figured that if the PSC knew how to handle current law, it would also know what to do under the bill.

So, if I say "amount" in my bill, I should also change s. 196.858 (1)?

Section 196.858 (1): "The commission shall annually assess against local exchange and interexchange telecommunications utilities the total, not to exceed \$5,000,000, of the amounts appropriated under s. 20.505 (1) (ir)."

---

**From:** Grant, Peter  
**Sent:** Monday, December 08, 2008 2:23 PM  
**To:** Kunkel, Mark  
**Subject:** LRB-0949

On page 2, line 7, should "amounts" be "amount"? It's unclear in that sentence whether you mean the total amount appropriated for both years or just one year. I think sub. (2) makes it clear that it's only one year, but maybe sub. (1) should say something like "the amount appropriated under s. 20.115 (1) (jm) for that year."

**Kunkel, Mark**

---

**From:** Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]  
**Sent:** Monday, December 08, 2008 3:34 PM  
**To:** Kunkel, Mark  
**Subject:** answers to dn questions, LRB 0949

Hi Mark,

I have answers to the questions in your drafter's note to this draft concerning the telecommunications assessment:

1. Yes, the inclusion is ok. ✓
2. Yes, we would like to have similar language for this assessment. ✓
3. Yes, how you drafted is fine. ✓
4. No, we do not want the assessment to cover CMRSPs and ATUs. ✓

Please let me know if you have any other questions. Thanks,  
Andrew

*Andrew Miner  
Agriculture, Environment and Justice  
Wisconsin State Budget Office  
(608) 266-1103*



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0949/2

MDK:kjf:rs

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