



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2009 Assembly Bill 696	Assembly Amendment 3, as Amended, and Assembly Amendment 4
<i>Memo published: April 21, 2010</i>	<i>Contact: David L. Lovell, Senior Analyst (266-1537)</i>

2009 Assembly Bill 696 relates to the regulation of telecommunications utilities. Assembly Amendment 3 makes extensive revisions to the bill and Assembly Amendment 1 to Assembly Amendment 3 makes further revisions; Assembly Amendment 4 addresses the “provider of last resort.”

Assembly Bill 696, as Amended by Assembly Amendment 3

The following are the main elements of the bill, as amended by Assembly Amendment 3:

With regard to the *certification of telecommunications utilities*, the amended bill does the following:

- Allows an incumbent local exchange carrier (ILEC) to retain its existing certification, to recertify as an alternative telecommunications utilities (ATU), or to recertify as an ILEC but to be regulated as an ATU. Recertification terminates all regulations to which the ILEC was previously subject.
- Allows an ATU to recertify as an ATU subject to the revised regulation of ATUs described below. Recertification terminates all regulations to which the ATU was previously subject.
- Repeals limits on entry by a competitive local exchange carrier (CLEC) into the service territory of a small ILEC and specifies that recertification as an ATU or election to be regulated as an ATU regulation by a small ILEC constitutes a limited waiver of the ILEC’s rights under parallel federal law.

With regard to the *regulation of telecommunications utilities*, the amended bill does the following:

- Repeals several regulatory schemes available to ILECs (including traditional rate-of-return regulation) and provides, through statutory waiver, amendment, or repeal, that a number of current regulations do not apply to ILECs under the remaining regulatory schemes.
- Specifies that, if the Public Service Commission (PSC) imposes any requirement on an ATU, it must impose the same requirement on all ATUs, at the same level of regulation.
- Specifies that the PSC may not impose any regulatory requirements on an ATU other than those included in a list created by the amended bill.

With regard to *tariffs*, the amended bill repeals or otherwise eliminates the obligation of telecommunications utilities to file tariffs with the PSC, and authorizes telecommunications utilities to file, revise, and withdraw tariffs, at their option.

The amended bill generally removes the current prohibitions on the *cross-subsidization* of a telecommunications utility's unregulated activities with revenues from regulated activities.

The amended bill eliminates the PSC's authority to investigate *consumer complaints* of inadequate service or unjust charges by a telecommunications utility, or to initiate such an investigation on its own motion, and to order remedies.

With regard to the *switched access services*, the amended bill does the following:

- Applies the PSC's authority to review access services and charges and to enforce requirements that such service and charges be adequate and just to some telecommunications utilities and not to others, depending on the utility's size and type of certification.
- Specifies that the intrastate access charges of a large ILEC may not be greater than the ILEC's interstate access charges, and prohibits PSC regulation of such charges beyond enforcement of this requirement.

The amended bill exempts *interconnected voice over Internet protocol (VoIP) services* from all public utility regulations except requirements to charge their customers the police and fire protection fee and to collect revenues for the Universal Service Fund and to fund the telecommunications-related consumer protection functions of the Department of Agriculture, Trade, and Consumer Protection.

With regard to the *essential and advanced services*, the amended bill does the following:

- Replaces current requirements with a requirement that telecommunications utilities provide "essential telecommunications services," as determined by the Federal Communications Commission, to customers.
- Repeals current requirements regarding advanced telecommunications services.

For a fuller description of the amended bill, see the March 26, 2010 Legislative Council staff memorandum to the Assembly Committee on Energy and Utilities, *2009 Assembly Bill 696, Relating to Telecommunications Regulations, as Amended by Assembly Amendment 3 to Assembly Bill 696*.

Assembly Amendment 1 to Assembly Amendment 3

Assembly Amendment 1 to Assembly Amendment 3 changes the amended bill in the following ways:

Current law exempts *small telecommunications utilities* (those serving fewer than 50,000 access lines) from two statutes authorizing the PSC to investigate the adequacy of a public utility's service and fairness of its charges; the *amended bill* repeals these exemptions, and the *amendment* restores them.

The amendment distinguishes between *wholesale telecommunications services* and *switched access services*. It does not change the treatment of switched access services under the amended bill, but specifies that, with regard to wholesale telecommunications services, statutes requiring that utilities provide adequate services at reasonable rates and authorizing the PSC to investigate violations and order remedies apply to ILECs, including ILECs that recertify as an ATU and those that recertify as an ILEC but elect to be regulated as an ATU; it specifies that the PSC *may* apply these statutes to the wholesale services of ATUs.

The amended bill establishes a list of statutes that the PSC may apply to ATUs. The amendment specifies that all of these listed statutes apply with respect to the wholesale services of ILECs, including ILECs that recertify as an ATU and those that recertify as an ILEC but elect to be regulated as an ATU. As under the amended bill, the amendment specifies that the PSC *may* apply these statutes to the wholesale services of ATUs and that, with regard to any of the statutes that it does apply to any ATU, the PSC *must* apply to all ATUs.

The amendment repeals a statute that requires telecommunications utilities to provide access services at the same prices, terms, and conditions to all parties.

The amendment specifies that, in general, nothing in ch. 196, Stats. (the chapter containing utility regulations), is intended to either reduce or expand the scope and application of the Federal Communications Act, including the jurisdiction and authority granted to the PSC under that act, and that the PSC may take any action it is authorized to take under the act. In addition, the amendment specifies that the recertification of an ILEC as an ATU or as an ILEC but regulated as an ATU does not terminate any order of the PSC regarding interconnection or obligation under the federal act, or regarding wholesale telecommunications services.

For a fuller description of the amendment, see the April 7, 2010 Legislative Council staff memorandum to the Assembly Committee on Energy and Utilities, *2009 Assembly Bill 696, Relating to the Regulation of Telecommunications Utilities: Assembly Amendment 1 to Assembly Amendment 3*.

Assembly Amendment 4 to Assembly Bill 696

ILECs, as the inheritors of the monopoly service territories that existed prior to the break-up of the Bell system, have generally had an obligation to serve all customers in these territories, although current law authorizes the PSC to waive this obligation in certain circumstances. Assembly Bill 696 effectively eliminates the obligation to serve.

Assembly Amendment 4 establishes an explicit but limited and temporary obligation of ILECs to serve as the provider of last resort. It requires an ILEC to provide basic voice service to all residential

and small business customers in a local exchange area in which it offers service. It specifies that the ILEC may meet this obligation by any technological means, including the use of voice over Internet protocol (VoIP) technology.

The amendment specifies that the PSC must grant a waiver to this obligation to serve if it finds that the waiver would be in the public interest or finds or has found in the past that effective competition exists for basic voice service in the local exchange area. The amendment specifies that any prior decision of the PSC removing an ILEC's obligation to serve remains in effect.

The obligation to serve created by the amendment sunsets on April 30, 2015.

Legislative History

On March 30, 2010, the Assembly Committee on Energy and Utilities voted to recommend adoption of Assembly Amendment 1 to Assembly Amendment 3, adoption of Assembly Amendment 3 as amended, and passage of Assembly Bill 696 as amended on votes of Ayes, 12; and Noes, 0.

On April 20, 2010, the Assembly adopted Assembly Amendment 3, as amended by Assembly Amendment 1 to Assembly Amendment 3, and Assembly Amendment 4 on voice votes; it passed Assembly Bill 696, as amended, on a vote of Ayes, 71; and Noes, 27.

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