☞ **09hr_AC-EU_ab0696_ pt01**

☞

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Energy and Utilities...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (December 2012)

Assembly

Record of Committee Proceedings

Committee on Energy and Utilities

Assembly Bill 696

Relating to: authority of the Public Service Commission over certain telecommunications utilities, telecommunications access charges, universal service fund contributions based on interconnected voice over Internet protocol service, tandem switching provider electronic call records, granting rule-making authority, and making an appropriation.

By Representative Zepnick; cosponsored by Senator Plale.

February 01, 2010 Referred to Committee on Energy and Utilities.

February 9, 2010 **PUBLIC HEARING HELD**

Present: (11) Representatives Soletski, Zepnick, Richards, Steinbrink, Parisi, Zigmunt, Huebsch, Montgomery, Honadel, Petersen and Zipperer.

Absent: (1) Representative Staskunas.

Appearances For

- Josh Zepnick, Milwaukee — Rep., 9th Assembly District
- Jeff Plale, South Milwaukee — Sen., 7th Senate District
- Tom Still, Madison — Wis Technology Council
- David Ward, Sturgeon Bay — WI Technology Council
- Scott Vander Sanden, Oregon — ATT
- Steve Baas — MMAC
- Hance Haney, Alexandria, VA — Discovery Institute
- Jennifer Denewellis, Columbus — ATT
- Tom Kiffer, Sun Prairie — ATT
- Thad NAtion, Milwaukee — Wired WI
- Tom Giovanetti, Lewisville, TX — Institute for Policy Innocation
- Jason Carl, West Bend — ATT
- Mark Mohr, Sun Prairie — ATT

Appearances Against

- Paul Fuglie, Lansing, MI — Verizon
- Lorenzo Cruz, Madison — CenturyLink
- Kira Loehr, Madison — Wisconsin Calls

- Charlie Higley, Madison — Citizens Utility Board
- Mark Frey, Sauk City — CWA
- Ann McNeary, Sun Prairie — CWA
- Rob Boelk, Mayville — CWA 5622

Appearances for Information Only

- Gary Evenson, Madison — PSC
- Tom Moore, Madison — WI Cable Communication Association
- Mike McDermott, Schaumburg, IL — Verizon Wireless
- Bill Esbeck, Madison — WSTA
- Ray Riordan, Nsight Teleservices — Monona
- Chet Gerlach, Madison — Sprint
- Patrick Fucik, Madison — Sprint
- Michael Theis, Madison — Theis Communications Consulting

Registrations For

- Dextra Hadnot, Milwaukee — ATT
- Tama Weber, Oak Creek — ATT
- Matt McBriarty, Oak Creek — ATT
- Matthew Dinnauer, Oconomowoc — ATT
- Lisa Schulte, Hartland — ATT
- Debora Meixner, Burlington — ATT
- Vicki Scott, McFarland — ATT
- William Faulkner, Wales — ATT
- Randy Udell, Fitchburg — ATT
- Larry Baeder, McFarland — att
- Erica Hoch, Cudahy — AT&T
- Kristen Cogswell, Middleton — ATT
- Brian Shafe, Hudson — ATT
- Tricia Conway, Mt. Pleasant — ATT
- Michael Klasen, Brookfield — ATT
- Scott Jansen, Hartland — ATT
- Dennis Sisfoo, Hartland — ATT
- Julie Tonkoritz, Waukesha — ATT
- Michael Passino, Waukesha — ATT

Registrations Against

- Gary Hebl, Sun Praiire — Rep., 46th Assembly District
- Bill Smith, Madison — NFIB
- Brandon Scholz, Madison — Wisconsin Grocers Assn
- Mary Cardona, Madison — Self
- Barry Orton, Madison — Self

- Terry Russell, Cottage Grove — CWA 4630

Registrations for Information Only
- None.

March 30, 2010 **EXECUTIVE SESSION HELD**

Present: (12) Representatives Soletski, Zepnick, Staskunas, Richards, Steinbrink, Parisi, Zigmunt, Huebsch, Montgomery, Honadel, Petersen and Zipperer.
Absent: (0) None.

Moved by Representative Richards, seconded by Representative Huebsch that **Assembly Amendment 1 to Assembly Amendment 3** be recommended for adoption.

Ayes: (12) Representatives Soletski, Zepnick, Staskunas, Richards, Steinbrink, Parisi, Zigmunt, Huebsch, Montgomery, Honadel, Petersen and Zipperer.
Noes: (0) None.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY AMENDMENT 3 ADOPTION RECOMMENDED, Ayes 12, Noes 0

Moved by Representative Richards, seconded by Representative Huebsch that **Assembly Amendment 3** be recommended for adoption.

Ayes: (12) Representatives Soletski, Zepnick, Staskunas, Richards, Steinbrink, Parisi, Zigmunt, Huebsch, Montgomery, Honadel, Petersen and Zipperer.
Noes: (0) None.

ASSEMBLY AMENDMENT 3 ADOPTION RECOMMENDED, Ayes 12, Noes 0

Moved by Representative Richards, seconded by Representative Zepnick that **Assembly Bill 696** be recommended for passage as amended.

Ayes: (12) Representatives Soletski, Zepnick, Staskunas, Richards, Steinbrink, Parisi, Zigmunt, Huebsch, Montgomery, Honadel, Petersen and Zipperer.
Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 12, Noes 0

Steven Peters
Committee Clerk

WISCONSIN STATE LEGISLATURE

Wisconsin State Telecommunications Association

WSTA 1910-2010 100th Anniversary
CELEBRATING A CENTURY OF SERVICE, INNOVATION AND PROGRESS

NAb69b

President
DREW PETERSEN
President Elect
ROD OLSON
Executive Director
WILLIAM ESBECK

DATE: Monday, February 8, 2010

TO: Senate Committee on Commerce, Utilities, Energy & Rail, Members
Assembly Committee on Energy & Utilities, Members

FROM: Wisconsin State Telecommunications Association (WSTA)

RE: Request for Modifications to CR 06-067 (PSC 160)

1) Excessive Initial (First Year) and Annual Reporting Requirements – The proposed rules contain reporting requirements that far exceed any current state reporting requirements or Federal Communications Commission (FCC) reporting requirements. The current draft could require onerous reporting of all services; Essential Services, Non-Regulated, Non-Telecommunications. The annual mapping requirement is a redundant obligation given the current statewide mapping initiative already underway. These reporting burdens would be a significant, costly, and unnecessary use of resources for Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers.

The reporting burdens that do not correspond to current FCC requirements should be modified to ensure consistency between the FCC and the state rules. The annual mapping requirements should be modified to reflect the current statewide mapping project.

2) Data Transmission Capabilities – The rules define data transmission service as 750 Kbps down and 250 Kbps up as an Essential Service i.e. Telecommunications Service. The presence of this 'capability' is meaningless because it alone does not connect or require connection to a broadband offering – specifically, it does not include Internet Access. Furthermore, broadband services – as "information services" – are subject to exclusive FCC regulation. The data transmission speeds are also obsolete, with many WSTA members offering far more robust broadband products and services. In addition, this service was removed from the calculation of High Rate Assistance Credit, but not from Link Up obligations.

The sections dealing with the Data Transmission Capabilities need to be modified to reflect the fact that the Federal Communications Commission has regulatory jurisdiction over broadband services.

121 East Wilson Street, Suite 102 • Madison, WI 53703 • PHONE: 608.256.8866 • FAX: 608.256.2676
E-mail: info@wsta.info • Website: www.wsta.info

3) Definitional problems – There are numerous terms used in the rules that lack definitions or are very poorly defined. The lack of definitions or lack of clear definitions will create implementation problems that result in confusion, inefficiency, and a waste of time and resources.

Definitions should be included and/or clarified to mitigate implementation problems.

4) Obsolete Terms – There are terms used throughout the rules which are technology specific or do not apply to all facilities used by ETC's. This document was started so long ago that the regulation in the document is in some cases already obsolete.

Obsolete Terminology used in the rules should be updated.

5) Future Changes without hearing process – Section 160.01(5) gives the Public Service Commission of Wisconsin much authority to modify these rules without input from interested parties in a public hearing.

The opportunity for a public hearing should be maintained.

SUGGESTED MOTION FOR MODIFICATIONS

- **The reporting burdens that do not correspond to current FCC requirements should be modified to ensure consistency between the FCC and the state rules. The annual mapping requirements should be modified to reflect the current statewide mapping project.**
- **The sections dealing with the Data Transmission Capabilities need to be modified to reflect the fact that the Federal Communications Commission has regulatory jurisdiction over broadband services.**
- **Definitions should be included and/or clarified to mitigate implementation problems.**
- **Obsolete Terminology used in the rules should be updated.**
- **The opportunity for a public hearing should be maintained.**

Background

The request to open this docket was made in June of 2000, nearly 10 years ago. Even with a process that lasted nearly ten years, the PSC has produced a document that Docket Opened in 2000

Docket 05-TI-1777 – opened by the Commission to review and decrease regulation in response to the competitive marketplace for communications services. Unfortunately PSC 160 seeks to impose new regulations and reporting requirements.

The industry has been engaged and active throughout the process Industry concerns presented in comments throughout the process hoping to avoid the unnecessary and costly regulatory burdens.

Burdensome Requirements that are Inefficient or Inconsistent with Federal guidelines

There are several sections in the proposed rule that inconsistent with federal rules and are not needed or relevant for the Commission to certify ETCs. The PSC 160 Rules should be consistent with the FCC requirements for financial reporting requirements, network trouble and emergency reporting. Producing the additional information requested is time consuming and costly, and is simply an inefficient use of resources for telecommunications providers.

There are other sections of the proposed rules that are different from federal requirements and create inefficiencies and regulatory burdens relate to

Excessive Initial (First Year) and Annual Reporting Requirements.
Requirements far exceed any current State reporting requirements or Federal reporting requirements. Current draft could require reporting of all services; Essential Services, Non-Regulated, Non-Telecommunications.
This would be a huge time commitment for ILECs and CLECs.

Lifeline/Linkup Standards?

Advanced Service Mandates

The federal government regulates broadband – which are designated as 'information services'- and are regulated by the FCC. As such, sections 160.03 and 160.031 should be significantly revised to reflect the fact that the FCC regulates broadband.

We believe that market forces should drive broadband buildout and availability...not overt regulation...and the market is working in Wisconsin:

According to an FCC report released in July 2009: as of June 30, 2008 82% of residential end-user could order DSL Broadband from their local telephone company

The PSC 160 Rule calls for 80% broadband availability three years after the effective date of the rule.

The PSC 160 Rule calls for a standard in 2013 that was exceeded by the market in 2008. The market is working.

Furthermore, we are in the process of producing a state level map through the Wisconsin Broadband Data and Development Program – a map that will provide detail on where broadband is and is not available in Wisconsin.

In addition, the Federal Communications Commission is in the process of developing and publishing a National Broadband Plan which will be presented to Congress on March 17, 2010.

The Federal Communications Commission must deliver the plan to Congress that will provide a roadmap toward achieving the goal of ensuring that all Americans reap the benefits of broadband. The American Reinvestment and Recovery Act requires the plan to explore several key elements of broadband deployment and use, and the Commission now seeks comment on these elements, including:

· The most effective and efficient ways to ensure broadband access for all Americans

· Strategies for achieving affordability and maximum utilization of broadband infrastructure and services

· Evaluation of the status of broadband deployment, including the progress of related grant programs

· How to use broadband to advance consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation, and economic growth, and other national purposes.

Finally, the federal government is in the process of providing billions of dollars in ARRA Stimulus Grants and Loans for broadband deployment.

Notwithstanding the fact that the federal government regulates broadband, it seems that at a minimum, the sections 160.03 and 160.031 dealing with advance service mandates should be modified until these state and federal projects have had a chance to succeed.

OTHER ITEMS

Definitions - Lack of or very poor "defined terms" that are used. In many cases we can only guess at what the PSCW will require or request to implement these rules.

Obsolete terms - Terms are used throughout the document which are technology specific or do not apply to all facilities used by ETC's. This document was started so long ago and did not provide an opportunity for comment prior to issuance to the PSCW Commissioners that the regulation in the document is in some cases already obsolete.

Section 160.01(5) Gives the PSCW too much Authority to modify these rules without input from other parties. Need an opportunity for a hearing.


FORWARD
E PLURIBUS UNUM

MMAC

Metropolitan Milwaukee
Association of Commerce

DATE: FEBRUARY 9, 2010

TO: SENATE UTILITY COMMITTEE, ASSEMBLY COMMITTEE ON ENERGY AND UTILITIES

FROM: STEVE BAAS, DIRECTOR OF GOVERNMENT AFFAIRS
METROPOLITAN MILWAUKEE ASSOCIATION OF COMMERCE

RE: SB 469/AB 696

Chairman Plale, Chairman Soletski and Committee members:

On behalf of the Metropolitan Milwaukee Association of Commerce (MMAC) I would like to urge your positive consideration of Senate Bill 469 / Assembly Bill 696; the "Wisconsin Access Reform and Parity Act."

The MMAC is an advocate for nearly 1800 member businesses, employing over 300,000 workers in the metropolitan Milwaukee region. We are also a founding partner of the Milwaukee 7 Southeastern Wisconsin regional economic development organization. As such, we support legislation like Senate Bill 469 / Assembly Bill 696 that aims to increase our economic competitiveness by reducing unnecessary regulatory burdens on job creators and creating a level playing field on which businesses can operate and innovate.

Wisconsin's large regulated telephone landline providers still operate under an outdated system of inconsistent rules that were enacted before competition existed in the Wisconsin telecommunications market. Other telecommunications and information technology providers operate under different regulatory rules. As you know, this is an area of technology that is developing at an almost exponential rate. Even the best intentioned attempts at government regulation will never keep pace with the marketplace's innovation, nor should it try. Instead, I urge you to support measures like SB 469/AB 696 that maintain the right level of consumer protections while creating a level playing field for all landline service providers. This bill will serve to increase service options and decrease confusion for consumers in this rapidly changing marketplace.

At a time when our state and our nation find themselves in dire need of economic recovery and jobs, it is essential that the Legislature does everything in its power to improve Wisconsin's ability to attract new business and hold on to existing members of the business community. By eliminating technologically obsolete distinctions and leveling the regulatory playing field within the information technology and telecommunications industry, we believe passage of SB 469/AB 696 will do just that.

Thank you for your granting SB 469 / AB 696 a public hearing and for your attention to our MMAC perspectives on this legislation.

###


FORWARD
E PLURIBUS UNUM

February 9, 2010

TESTIMONY BEFORE THE

SENATE COMMERCE, UTILITIES, ENERGY AND RAIL COMMITTEE

AND THE

ASSEMBLY ENERGY AND UTILITIES COMMITTEE

Clearinghouse Rule 06-067

STEPHANIE CASSIOPPI, UNITED STATES CELLULAR CORPORATION

Chairmen Plale and Soletski and members of the committees, thank you for the opportunity to testify today on Clearinghouse Rule 06-067 – the proposed Universal Service Fund rule. My name is Stephanie Cassioppi, and I am providing testimony on behalf of United States Cellular Corporation.

U.S. Cellular is the nation's sixth largest wireless telecommunications provider. Since our founding in 1983, we have grown to provide an array of wireless services to 6.2 million residential and commercial customers. U.S. Cellular also has an exceptionally strong presence in rural markets throughout our service footprint, both in Wisconsin and across the country.

U.S. Cellular is concerned about a number of provisions in CHR 06-067 and would urge both committees to request modifications to the rule that would allow providers to continue to offer quality service to Wisconsin consumers in a sensible regulatory climate. Our suggested modifications, which I will briefly outline below, would in no way impact provider contributions to the USF.

U.S. Cellular was designated as a federal Eligible Telecommunications Carrier (ETC) by the Public Service Commission of Wisconsin on December 20, 2002. As a result, we are required to comply with federal USF requirements. Unless CHR 06-067 is modified to clarify that federal ETC wireless providers can continue to follow federal guidelines, U.S. Cellular could be subject to unnecessary state USF requirements.

More specifically, if the rule is not modified, U.S. Cellular and other federal ETC designated wireless carriers in Wisconsin could be burdened with state regulations that: 1.) Would be difficult to comply with based on the wireless industry's business model; and 2.) Significantly drive-up the cost of doing business in Wisconsin with no benefit to consumers.

For example, the rule would require wireless providers to distribute directories, which is not a service traditionally offered by wireless carriers. Such a requirement would not be competitively neutral and therefore, would be inconsistent with federal law.

Clearinghouse Rule 06-067 would also require wireless providers to comply with state Lifeline program provisions. U.S. Cellular strongly supports low-income programs and provides Lifeline services in Wisconsin and 14 other states under federal rules. However, CHR 06-067 would result in significant changes to the processes U.S. Cellular has used for years in Wisconsin and across the country. It would create numerous financial and administrative difficulties for wireless providers.

U.S. Cellular has successfully provided service in Wisconsin under federal ETC requirements without issue for over eight years. Simply put, there is no reason to fix a problem that does not exist. Additionally, it's also important to point out federal law does not provide states with the authority to regulate the entry of or rates charged by a wireless provider.

As I stated-above, if federal ETC wireless providers become subject to state USF requirements under CHR 06-067, it would require U.S. Cellular to comply with burdensome and unnecessary state regulations that would directly impact the cost of doing business in Wisconsin.

With that in mind, I would encourage members of both committees to consider supporting a proposed amendment to the rule that would 1.) Specifically retain the current federal requirements for wireless ETC providers; and 2.) Amend the rule's proposed broadband development requirements.

Thank you for your thoughtful consideration of our request to modify CHR 06-067. U.S. Cellular looks forward to working with you to reach an acceptable consensus on a proposed amendment. At this time, I would be happy to answer any questions.

Sprint
Together with NEXTEL

Sprint Nextel
6450 Sprint Parkway
Overland Park, KS 66251
Mailstop: KSOPHN0314-3B221
patrick.r.fucik@sprint.com

Patrick R. Fucik
Director, West Region
State Government Affairs
913-315-9155 office
913-687-5548 wireless

Testimony of Patrick Fucik on Wisconsin SB 469
Proposed Wisconsin Deregulation Legislation
(LRB 3964/1)
February 9, 2010

Thank you Chairman Plale, Chairman Soletski and members of the Committee. My name is Patrick Fucik and I am the Director of State Government Affairs in the West Region for Sprint. Thank you for the opportunity to present comments on behalf of Sprint regarding SB 469.

Sprint Position

During at least the last four legislative sessions, the Local Exchange Carriers (LECs) in Wisconsin have been trying to pass deregulation legislation. In fact, in preparation for this hearing, I pulled out my testimony from 2007 on SB 285 and the position Sprint held then is still relevant to the provisions of SB 469. That position is that no deregulation legislation should be enacted without the inclusion of intrastate access charge reform.

While Sprint's past efforts to include access charge reform in deregulation legislation was met with resistance from the LEC's I was very pleased to see that progress had been made and in fact SB 469 as introduced includes substantial access charge reform. As introduced, Sprint is willing to support SB 469 if a few amendments to the bill could be worked out.

However, I am concerned that a proposed Senate Amendment (LRBa1464/1) to SB 469 has been circulated that would remove the access charge reform language in the bill leaving only substantial deregulation that will provide no consumer benefits to Wisconsin residents.

If that proposed Senate Amendment (LRBa1464/1) to SB 469 is adopted, Sprint will have no choice but to follow our previous position of opposing any deregulation legislation that does not include intrastate access charge reform.

Overview of Deregulation Contained in SB 469

The proposed telecom deregulation language contained in SB 469 provides substantial benefits resulting in deregulation for LECs including:

- **Total pricing flexibility** – removes price cap regulations and rate of return regulation for LECs;
- **Total deregulation** – allows LECs to be treated like Alternative Telecom Utilities (ATU) which are essentially exempt from Wisconsin Public Service Commission (WPSC) jurisdiction; and
- **Reduced reporting** - reduces reporting requirements of ILECs to the WPSC.

While enabling incumbent telephone companies to raise rates for basic local services and reducing WPSC oversight enriches Wisconsin's LECs, it provides no benefits to Wisconsin's consumers. More over, the proposal fails to promote competition because it does not require LECs to mirror interstate access rates as current law does for carriers who elected price cap regulation (196.196).

Access Charge Reform Needed

Presumably, the ILECs contend the marketplace is adequately competitive to justify this reduced regulation. Unfortunately, while retail phone competition is beginning to make inroads the LECs retain their market power to deny or delay competitive entry and impose inflated costs on their competitive rivals in the form of high intrastate access charges.

What are Access Charges?
LECs such as AT&T, CenturyLink, TDS, Frontier and rural telcos impose a per minute intrastate charge on Sprint and other carriers to "access" the LEC facilities in order to complete wireless and long distance calls to LEC customers. Intrastate access rates, rates charged for calls within the State of Wisconsin are set by the WPSC and interstate rates on calls between Wisconsin and other states are much lower and set by the Federal Communications Commission (FCC).

While AT&T and Verizon currently mirror the interstate access rates, the other LECs in Wisconsin charge intrastate access charges that are 7 times higher than what AT&T and Verizon charge.

Do Wisconsin Legislators want to allow for substantial rate increases on basic local service with consumers receiving nothing in return?

If SB 469 were to pass with no access charge reform language, LECs will be given a windfall. They will be permitted to increase basic local rates AND continue to impose excessive access fees on competitors. Requiring access rate reductions is a necessary pre-requisite to any regulatory relief granted to the LECs. Wisconsin consumers will benefit from the lower calling costs and increased competition afforded by reducing bloated access fees. Decreased access rates are a necessary competitive safeguard – competitors should not be forced to subsidize the LECs they compete with by being forced to pay inflated access charges.

The impact of these excessive intrastate access rates is higher charges being passed on to Wisconsin residential and business customers. Attached to my testimony is a graph developed by the FCC that shows the linkage between retail long distance rates and access rates. The graph shows how retail long distance rates decrease when access costs decrease. In addition, reduced intrastate access expenses will result in consumers benefiting from increased investments of providers in Wisconsin.

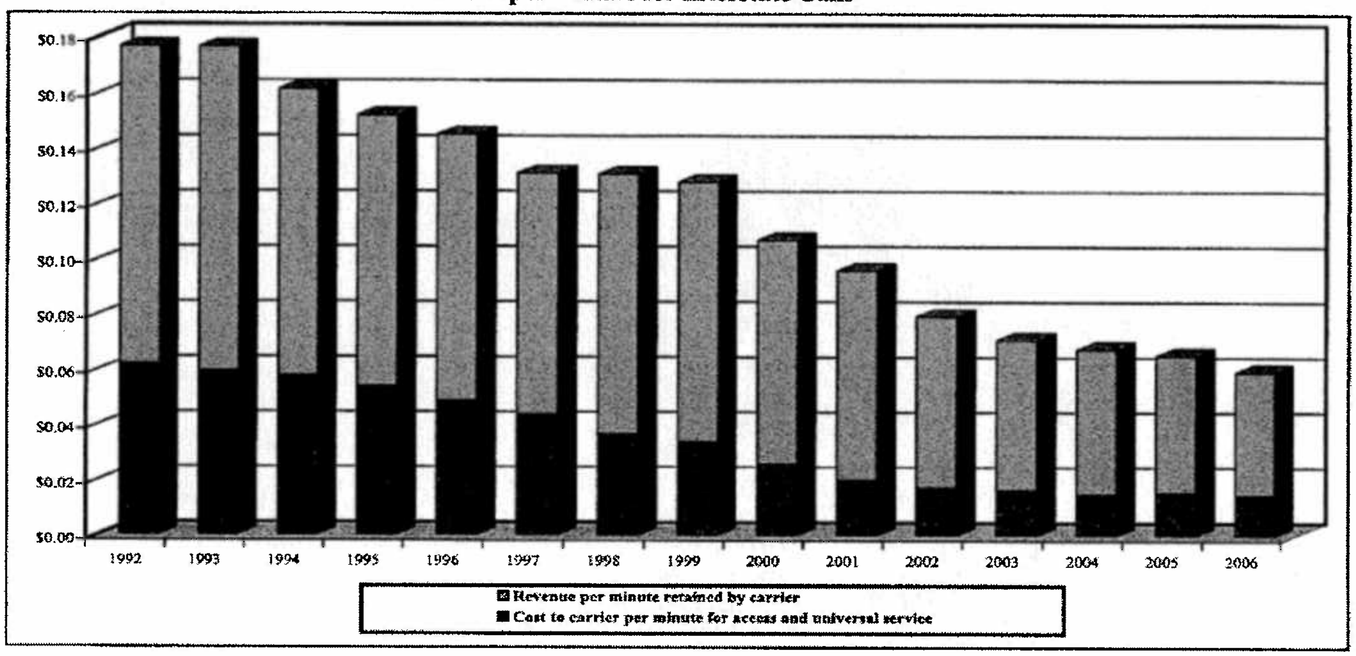
Conclusion

Sprint encourages the adoption of SB 469 as introduced with some minor changes in order to provide necessary intrastate access charge reform along with the substantial deregulation provisions for LECs. Without access charge reform, Sprint must oppose SB 469. Thank you.

Customers Benefit from Reduced Access Rates

RETAIL LONG DISTANCE RATES DECREASE WHEN ACCESS RATES DECREASE

Chart 13.1
Revenue per Minute for Interstate Calls



Item	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Revenue per minute retained by carrier	$0.115	$0.117	$0.104	$0.098	$0.097	$0.087	$0.094	$0.094	$0.081	$0.076	$0.062	$0.054	$0.052	$0.049	$0.045
Cost to carrier per minute for access and universal service	$0.062	$0.059	$0.058	$0.054	$0.049	$0.044	$0.037	$0.034	$0.026	$0.020	$0.017	$0.016	$0.015	$0.016	$0.015

Source: FCC Trends in Telephone Service, August 2008


FORWARD
E PLURIBUS UNUM

Senate Committee on Commerce, Utilities, Energy, and Rail

Assembly Committee on Energy and Utilities

Joint Hearing on SB 469 and AB 696

February 9, 2010

Testimony of Gary A. Evenson - Public Service Commission of Wisconsin

Good morning, Chairman Plale, Chairman Soletski, and members of the Committees. Thank you for the opportunity to present information to the Committees regarding the impact on customers and providers if SB 469 or AB 696 were enacted as currently drafted.

My name is Gary Evenson, and I serve as Administrator of the Telecommunications Division at the Public Service Commission.

The Commission is not taking a position on these bills at this time. I am here to testify for informational purposes.

These bills identify topics that are real and relevant issues for telecommunications today – for providers and for consumers: access charges, universal service, electronic records for transiting traffic, competitiveness in the telecommunications market, the increasing appearance of Voice over Internet Protocol offerings, and the level of regulation for providers.

Many Commission investigations and most telecom or regulatory discussions today touch somehow on these issues.

In recent years, Commission leadership, including current Commission Chairperson Eric Callisto, has sought to evaluate legislative efforts to de-regulate, or re-regulate, various elements of the telecommunications industry in light of three priorities: (i) consumer protection, (ii) broadband deployment, and (iii) promoting competition. While Commission staff continues to analyze the bill, we note today concerns about the following key impacts and potential shortcomings, with respect to those three priorities, which are not exclusive:

1. <u>Removal of retail consumer protections.</u> With or without increased competition for telecommunications, it is important that basic consumer protections be available. The bill removes critical protections for individual consumers and small businesses that are not available in other agencies like DATCP or at least not with the same scope and effectiveness. Small businesses and consumers would not have any recourse other than

costly litigation to address unfair disconnection, deferred payment arrangements, wrongful termination of service, poor technical service quality, rebates or liquidated damages for provider service outages and missed appointments, and similar provider performance failures. The idea that consumers (presuming they do not have long term contracts or large early termination fees) can switch carriers when they are dissatisfied with service may be true in areas where competition exists, but effective competition does not exist everywhere and so switching service is not always an adequate solution. The draft legislation's elimination of complaint options and other oversight mechanisms removes a critical consumer safety net.

2. Removal of authority to foster broadband deployment. It is becoming more universally recognized that broadband telecommunications connections are vital to the state and the economy and to individual consumer needs. The bill removes existing ways to incent broadband facility deployment as part of the necessary "information highway" infrastructure of the state. This is occurring just as Wisconsin is implementing a federal grant to map broadband availability and plan for further broadband deployment. To date, market forces have not provided ubiquitous broadband build out in this state. Legislation should preserve whatever tools the state has to promote broadband deployment for Wisconsin.

3. Ubiquitous competition. The bill assumes telecommunications competition is strong throughout the state, even in rural and northern areas, and is sufficient to discipline prices and maintain service quality. This is not entirely true. Many areas still have only a single wireline provider, no access to the Internet, or little to no cell service coverage. In the absence of real competition, with options consumers want and can use, consumers could be trapped by unregulated price increases and service quality decreases.

4. Potential harm to existing competition. Competition in telecommunications comes in many flavors – from cable TV companies that have their own networks and facilities, from wireless providers who use spectrum over the airwaves, from internet protocol providers that make voice services travel over existing broadband connections, and from competitive local exchange providers who use, at least in part, some facilities secured from the incumbent local exchange providers. Federal legislation in 1996 compelled monopoly incumbent local exchange carriers to make their facilities available at wholesale to new entrants. The bill could harm the competition that has developed since, by:

(a) Allowing incumbent local exchange carriers, or ILECs, to avoid current commitments to promote competition, minimum service quality standards, and additional broadband deployment, in exchange for pricing freedom and unrestrained earnings;
(b) Potentially permitting ILECs to abandon services at an exchange, and thus force CLECs—who use the ILECs' facilities at wholesale rates—to abandon the exchange or incur substantial and unexpected costs to replace service and facilities; and
(c) Denying to CLECs nondiscriminatory access to ILEC wholesale telecommunications services as allowed under law. These particular provisions enable Commission resolution of industry-wide issues (*e.g.*, access charges and transit traffic standards) for all carriers and, through an impartial and expert forum, prevents any one carrier from unreasonably forcing its position as to an industry practice or standard that unreasonably burdens competitors.

Changes to regulation should not be justified by the existence of competition if those very changes can jeopardize the viability of that competition.

5. Removing any oversight over next-generation digital Internet Protocol (IP)-enabled transmission technology and service. Clearly, the technology of telecommunications is changing. Increasingly, voice telephony is migrating to Internet-protocol technologies and services. Because the most basic component of universal service is a basic voice service (especially for E911 emergencies), the removal of Voice over Internet Protocol, or VoIP, from Commission jurisdiction has serious implications for the public interest in a maintaining a minimum universal service platform of a "basic voice offering everywhere" as the communications network technologies evolve. The new fiber-based Internet Protocol (IP)-enabled transmission technology is replacing circuit-based technology with the capability, via broadband, to use a common digital transmission to handle all voice, video, and data. This "convergence" trend does not care what the content is. Under the bill, Voice over Internet Protocol offerings would not be subject to Commission oversight or universal service funding (USF) support as the next generation of basic voice service.

6. Removal of adequate services at just and reasonable rates. The bill allows virtually any telecommunications utility to withdraw at will from markets, and lets providers freely vary or raise local rates. Local rate increases are more likely in high-cost areas of the state where there is less competition, the net effect of which could increase the demand for USF support and ultimately raise fees for consumers, or worse, leave some customers unserved.

7. State public interest objectives as to universal service would be unnecessarily restricted to unknown federal minimums. The bill reduces USF jurisdiction to a set of as-yet-undefined federal "essential telecommunications services," thus repealing the promotion of, and support for, access to "advanced service capabilities"— such as broadband. Wisconsin should not defer to the federal government on what basic services are necessary to serve Wisconsin customers.

These concepts are important and far-reaching and the drafting is both critical and complex. We continue to review the words and explore the intentions. The Commission stands ready to assist the legislature understand the issues and effects of the present bill, any bill amendments, or alternatives.

Thank you for this opportunity to testify today.

WISCONSIN STATE LEGISLATURE

CUB

Citizens Utility Board

February 9, 2010

The Honorable Jeffrey Plale
Chairman
Senate Committee on Commerce, Utilities, Energy, and Rail
State Capitol, Madison, Wisconsin

The Honorable James Soletski
Chairman
Assembly Committee on Energy and Utilities
State Capitol, Madison, Wisconsin

RE: AB 696 and SB 469, relating to telephone regulation

Dear Senator Plale, Representative Soletski, and Members of the Committees:

On behalf of the Citizens Utility Board, I would like to provide you with our concerns regarding AB 696 and SB 469, which would radically deregulate telephone service in Wisconsin.

The Citizens Utility Board of Wisconsin is a member-supported, nonprofit organization that advocates for reliable and affordable utility service. CUB represents the interests of residential, farm, and small business customers of electric, natural gas, and telecommunication utilities before the Legislature, regulatory agencies, and the courts.

In the fall and winter of 2007-2008, the Senate and Assembly utilities committees reviewed AB 561 and SB 285, two identical bills that also would have deregulated telephone utilities in Wisconsin. In my testimony dated October 25, 2007, I urged the Public Service Commission to open an investigation to explore the issues regarding further deregulation of telephone service. The PSC opened such an investigation in docket 05-TU-1777 on February 7, 2008.

Unfortunately, this investigation has not been completed. Indeed, the PSC has yet to issue a draft report on how telephone regulations should be modified. In an email dated November 20, 2008, Commission staff explained that the draft report would be delayed pending resolution of various issues before the Federal Communication Commission and other matters.

Given that the PSC has yet to weigh in regarding telephone service and appropriate regulation, AB 696 and SB 469 are premature and not ready for review. CUB recommends that you take no action on these bills until the PSC has finished its investigation.

16 N. Carroll St., Suite 530 • Madison, WI 53703 • 608.251.3322 • fax 608.251.7609
e-mail: staff@wiscub.org • website: www.wiscub.org

Assuming that you and your colleagues will continue reviewing these bills, I urge you not to give them your support. These bills would almost completely eliminate any remaining regulation of telephone service in Wisconsin, especially service provided by AT&T and other "telecommunications utilities," or TUs (also known as "incumbent local exchange carriers" or ILECs). These bills would make it nearly impossible for the PSC to ensure that customers are receiving "reasonable and adequate service at just and reasonable rates throughout the state," a current requirement of AT&T and other TUs.

Below are some specific concerns regarding AB 696 and SB 469.

Section 88 would allow TUs to demand that the PSC regulate them as "alternative telecommunications utilities," or ATUs. Typically, ATUs are provided with less regulatory scrutiny because they don't own the lines, switches, and equipment that make up traditional phone service—service previously provided by the Bell Telephone System and other monopoly providers. ATUs are the newcomers in the telephone world, which are trying to compete with the old monopolies now owned by AT&T and other TUs. AT&T and other TUs still provide service over telephone lines to millions of customers. Allowing AT&T to be regulated as an ATU would not be good policy, because AT&T and other TUs still have near-monopoly responsibilities to provide adequate service at reasonable rates over telephone lines.

Should AT&T and other TUs wish to keep their TU certification, then Section 88 would allow them to do so, but then requires the PSC to regulate them as ATUs. This is similarly unreasonable.

Under current law, AT&T and other TUs are treated as "public utilities." Under the proposed legislation, should AT&T and others wish to remain certified as TUs, then they would be exempt from many of the regulations that apply to public utilities. These regulations attempt to ensure that customers receive adequate and reliable service at affordable rates, because TUs still provide service to older citizens and others who prefer lines instead of wireless phones. In fact, TUs still own the lines leading to homes and businesses. Competing companies often need to rent these lines from AT&T so that they can provide competing service. TUs still have responsibility to maintain these facilities and services, not only for their own customers, but for their competitors as well. Therefore, PSC oversight is still needed to make sure the TUs are providing reasonable service at reasonable rates, and it remains appropriate to regulate TUs as public utilities.

Below are specific examples of how AT&T and other TUs, which continue to have important responsibilities, would evade regulation that protects consumers and the public interest:

Section 84, which would amend 196.50(2)(f), which deals with certificates of authority for providing service. Section 84 would delete the following words: "The commission may order the applicant to satisfy any conditions that the commission considers to be necessary to protect the public interest, including structural safeguards." By deleting these words, the proposed legislation would restrict the PSC from making sure that TUs provide reasonable service.

Section 86, which would repeal 196.50(2)(h). Section 86 would eliminate the PSC's authority to make sure a TU is providing reasonably adequate service at just and reasonable rates.

Section 87 would **exempt** AT&T and other TUs from the following requirements:

1. exemption from 196.02(2), which relates to classification of service. AT&T and other TUs would no longer need to comply with regulations regarding the classification of service, which takes into account the purpose for which the telephone service is used, when it is used, and the quantity used. The classification of telephone service has a direct bearing on the rates, tolls, and charges related to specific types of telephone service.

2. exemption from 196.03 (as noted in the draft amendment LRBa1464/1), which requires that AT&T and other TUs provide adequate services at reasonable rates.

3. exemption from 196.05, which allows the PSC to value or revalue the property of a public utility used and useful for the convenience of the public.

4. exemption from 196.06, which requires public utilities to keep uniform accounting, forms, and books.

5. exemption from 196.07, which requires public utilities to annually file with the PSC its balance sheet and other financial information.

6. exemption from 196.09, which requires public utilities and TUs to annually file with the PSC depreciation schedules for capital investments used for public utility purposes.

7. exemption from 196.10, which requires the PSC to "keep itself informed" regarding new construction and extension of service by public utilities.

8. exemption from 196.12, which requires public utilities to file information with the PSC regarding depreciation, salaries and wages, legal expenses, taxes, expenses for materials, revenues, profits, dividends, and prices paid by customers, along with other information.

9. exemption from 196.13, which requires the PSC to publish biennial reports regarding public utilities.

10. exemption from 196.19, which requires public utilities to file schedules showing all rates, tolls, and charges. Subsection (1m) requires TUs to file tariffs for new telecommunication services.

11. exemption from 196.20, which requires public utilities and TUs to provide service under filed rates and tariffs, unless they apply for and receive permission from the PSC to change the rates and tariffs. If AT&T and other TUs were to become exempt from this law, then they could stop providing telephone service anywhere, anytime, without reason or notice.

12. exemption from 196.22, which forbids public utilities from charging different rates to customers that receive similar service, known as "discrimination." This is one of the oldest and most important principles of utility regulation, because it is simply unfair to charge one customer a lower rate for receiving service similar to service provided to another customer. Without this protection, AT&T and other TUs could provide lower rates for favored, influential customers, while charging everyone else higher rates, returning us to the bad old days of discriminatory service that reigned in the era before telephone regulation was established over 100 years ago.

13. exemption from 196.28, which allows the PSC to investigate complaints regarding service that is unreasonable, inadequate, unjustly discriminatory, or for service that cannot be obtained.

14. exemption from 196.37, which allows the PSC to change rates, tolls, charges, and schedules if it determines they were unreasonable or unlawful. It also allows the PSC to change any practice, act, or service that is unreasonable or unlawful.

15. exemption from 196.52, which defines how public utilities can interact with affiliated interests.

16. exemption from 196.58, in which municipalities may enter into contracts with public utilities regarding the provision of service and the use of public places, including streets, poles, and other public property within the municipality.

17. exemption from 196.60, which prohibits public utilities from charging different rates to customers that receive similar service. Similar to 196.22, this law prohibits rate discrimination between customers. TUs already are allowed to offer free or special rates to officers, employees, and pensioners. If AT&T and other TUs become exempt from this law, they can offer special rates to their favorite customers and charge higher rates to everyone else.

18. exemption from 196.78, which prohibits companies that own public utilities from simply dissolving without receiving permission from the PSC.

19. exemption from 196.79, which requires a TU to provide the PSC with notice that it will reorganize its corporate structure.

These are just some of the reasons why AB 696 and SB 469 go too far in removing regulations that have long protected customers of AT&T and other telephone utilities.

In summary, AB 696 and SB 469 would radically deregulate telephone service, and AT&T and other TUs:

- would no longer need to provide reasonable service at reasonable rates;
- would no longer need to file financial information with the PSC, allowing them to evade appropriate regulation and charge whatever they want for service;
- could change telephone rates or stop providing service at their discretion;
- would no longer need to maintain important equipment and facilities, such as the lines going to homes and businesses;
- could charge customers discriminatory rates for similar service, thus favoring preferred customers while charging everyone else higher rates;
- could engage in unscrupulous or even illegal schemes, and the PSC would have reduced authority to investigate, stop, and remedy such abuses;

With millions of Wisconsin consumers still relying on traditional telephone service, I urge you to oppose this legislation and to wait until the PSC finishes its investigation into whether and how telephone regulation should be modified.

Thank you for your consideration.

Sincerely,

Charlie Higley

Charlie Higley
Executive Director

WISCONSIN STATE LEGISLATURE

WISCONSIN CALLS

Customers for Affordable Local and Long Distance Service

Testimony of Kira E. Loehr
on behalf of Wisconsin CALLS
2009 Senate Bill 469/Assemby Bill 696

Senate Committee on Commerce, Utilities, Energy, and Rail
Assembly Energy and Utilities Committee
Hearing, February 9, 2010, 412 East

Good morning Chairmen Plale and Soletski and committee members. My name is Kira Loehr and I am one of the attorneys representing Wisconsin CALLS. I am testifying on behalf of CALLS in opposition to Senate Bill 469 and Assembly Bill 696 as drafted.

Wisconsin CALLS is a coalition of organizations and companies dedicated to improving service and promoting competition in the delivery of local and long distance telecommunications services. CALLS' members include several competitive local exchange carriers or "CLECs," Covad Communications, Northern Telephone & Data, One Communications, PAETEC, TDS Metrocom, and tw telecom of wisconsin. These companies have invested significant funds developing infrastructure and creating jobs in this state in order to provide choice in telecommunications services to the people of Wisconsin. These companies are also wireline competitors of AT&T, the largest incumbent local exchange carrier, or "ILEC," in the state.

To foster competition in a market developed and dominated by a monopoly incumbent for scores of years, federal law requires ILECs to lease part of their networks to competitors. Each state, through its Public Service Commission, plays a significant role in balancing, policing, and enforcing, this arrangement. Chapter 196 along with the federal Telecommunications Act of 1996 provides the source of the Commission's authority over wholesale issues. It is a complex chapter with many intertwined parts. Opening it up is much like opening Pandora's box, and should be done with extreme care. CALLS is concerned that the current draft of the bill has unintended consequences that would have a severe negative impact on competition in the telecommunications industry in Wisconsin.

For instance, under the auspice of changing the current regulatory structure so that the incumbent providers are treated "just like everyone else," the bill restricts the Commission's authority to open an investigation on its own motion to decide policy issues applicable to all providers. The loss of this authority could be devastating to a competitors' ability to survive if the incumbent were to begin taking actions for which the competitor had no other recourse. Moreover, the refrain that all providers should be treated equally may sound fair, but in reality it is not. All providers are not, in fact, equal nor can they be. As the legacy carriers that have been providing services directly to the homes and businesses of Wisconsinsites for generations, it is the incumbents who maintain the services and equipment that all telecommunications companies need access to in order to reach wireline customers.

There is clearly a tension when competitors are forced to share services and, not surprisingly, disputes between competitors and the incumbents sometimes arise. Under current law, the Public Service Commission can address these disputes and determine whether a telecommunications provider is providing the reasonable and adequate service that is required under federal law. In just the last ten years the Public Service Commission has decided many disputes between providers with respect to the provision of wholesale services and opened many of its own investigations after providers brought issues to its attention. In addressing these wholesale concerns, the Commission relied upon Wis. Stat. §§ 196.02(7); 196.03; 196.219(3)(f); 196.22; 196.26; 196.28; 196.37; and 196.60. These provisions would no longer apply to incumbents as a result of these bills.

The statutory provisions just identified are not the sole source of CALLS' concerns. The bill has other "rough edges" such as the introduction of new undefined terms related to "wholesale" access services and rates. The bills also address the laudable goal of requesting providers to submit information for proper billing for services, but the bills focus on CLECs and wireless providers to the exclusion of VoIP providers and the current draft of the bills do not appear to fully capture the bills' intent.

In addition, although the majority of the provisions relating to intrastate access have been removed in the amendment to the bills; the amendments also add new sections with respect to access services that seem out of place in what purports to be a retail deregulatory bill.

The bottom line is that extreme care must be taken when seeking to alter the delicate balance contained within the Commission's ability to regulate providers in a previously monopoly-dominated industry, and this bill has numerous flaws that must be corrected in order to safeguard the interests of all providers in the state.

CALLS would be happy to work with the chairs of these committees, Representative Zepnick, other committee members and committee staff in crafting a solution to the problems we have raised.

Thank you. At this time I would be happy to answer any questions the committees may have.

WISCONSIN STATE LEGISLATURE

WISCONSIN LEGISLATIVE COUNCIL

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

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON ENERGY AND UTILITIES AND THE SENATE COMMITTEE ON COMMERCE, UTILITIES, ENERGY, AND RAIL

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

RE: 2009 Assembly Bill 696 and 2009 Senate Bill 469, Relating to Telecommunications Regulations, and Assembly Amendment 1 to Assembly Bill 696 and Senate Amendment 1 to Senate Bill 469

DATE: February 9, 2010

This memorandum was prepared and distributed to your committees at the request of Representative Josh Zepnick and Senator Jeff Plale, the principal authors of the two companion bills, 2009 Assembly Bill 696 and 2009 Senate Bill 469 (hereafter, "the bill"). The memorandum provides a summary of the bill and an amendment to the bill (Assembly Amendment 1 to Assembly Bill 696 and the companion amendment, Senate Amendment 1 to Senate Bill 469).

The bill makes a number of changes to the way in which providers of telecommunications services are regulated in Wisconsin, both revising existing statutes and creating new statutes.

This memorandum is in three parts: the first part introduces the classes of telecommunications utilities in Wisconsin and some of the key features in their current regulatory treatment under state utility law; the second part summarizes the bill; and the third part summarizes the amendment.

Except where specifically noted, the bill takes effect on the day after publication.

Background: Classes of Telecommunications Utilities in Wisconsin

In general, a person that provides telecommunications services to the public, directly or indirectly, in this state is termed a telecommunications utility. Telecommunications utilities that existed before the break up of the Bell system or those resulting from that break up are termed incumbent local exchange carriers (ILECs).[1]

[1] This memorandum uses the common names for the various types of telecommunications utilities in Wisconsin, though not all of these names are defined or used in the statutes.

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

The other two main classes of telecommunications utilities are alternative telecommunications utilities and cell phone service providers. Both ILECS and alternative telecommunications utilities provide landline-based services. Cell phone service providers provide wireless-based services.

Current law establishes a comprehensive set of regulations for telecommunications utilities subject to traditional (rate-of-return) utility regulation and a number of alternative regulatory schemes that represent lower levels of regulation. These schemes are often characterized by how the rates of a telecommunications utility are regulated under them, though they typically also entail reduced regulation of other aspects of the utility's operations. These schemes are briefly described here.

The number and type of utilities subject to each scheme and their number of access lines (or phone lines) as of December 31, 2008 is also provided. This data was obtained from staff at the Public Service Commission (PSC).

Incumbent Local Exchange Carriers

The default regulatory scheme for ILECs is rate-of-return regulation. A variant of this is available to small telecommunications utilities and three other schemes are available to any ILEC, upon petition by the ILEC. Telecommunications cooperatives are treated separately.

Rate-of-Return Regulated Telecommunications Utilities

Under rate-of-return regulation, the PSC sets the allowable returns that the utility may earn as well as the utility's rates [s. 196.20, Stats.]. The PSC also regulates a number of other aspects of the utility's operations, including its depreciation of its assets, cross subsidies, relations with affiliated interests, service offerings and standards, uniform accounting practices, and approval of mergers.

There are two ILECs subject to full rate-of-return regulation, CenturyTel of Central Wisconsin and Telephone USA of Wisconsin. They have a combined total of almost 102,200 access lines.

Small Telecommunications Utility Flexible Rate of Return Regulation

Small telecommunications utilities, ILECs providing service as of January 1, 1984 and having less than 50,000 access lines, may elect to be subject to flexible regulation and have their rate increases reviewed by the PSC upon their customers petitioning the PSC for the review [ss. 196.213 and 196.215, Stats.].

There are 42 small telecommunications utilities subject to flexible rate-of-return regulation. These utilities have a total of almost 190,400 access lines.

Alternative Regulation

Alternative regulation is an alternative to traditional rate-of-return regulation intended to give telecommunications utilities incentives through the suspension by the PSC of specific regulation to achieve various goals, such as promoting competition, infrastructure deployment, economic development, consumer choice, and other public goods. [s. 196.195 (12), Stats.] A telecommunications utility may petition the PSC for approval of an alternative regulation plan for the utility.

There are 26 ILECs subject to alternative regulation with a total of more than 372,600 access lines.

Price Regulation

Price regulation is, essentially, one kind of alternative regulation specified by statute, under which the PSC regulates a telecommunications utility's rates, but not its rate of return. [s. 196.196, Stats.] Separate provisions apply to basic local exchange services, intrastate access service, and other services. In addition, there is a separate procedure for small telecommunications utilities to elect to become price regulated. Under price regulation of basic local exchange services, a telecommunications utility may not raise its rates for service for a period of three years. Following the initial three-year period, the telecommunications utility's rates are based on a formula tied to inflation, except that the PSC may increase the allowable rates to reward infrastructure investments by the telecommunications utility or decrease the allowable rates if it determines that the telecommunications utility has provided inadequate service or has made inadequate infrastructure investments.

There are two ILECs subject to price regulation, Verizon North and AT&T (also known as Wisconsin Bell). Verizon North has almost 273,900 access lines. AT&T has almost 124,400 residential access lines in its 60 smallest exchanges subject to price regulation. The PSC has also removed price regulations under procedures in the price regulation statute from all of AT&T's residential access lines in its larger exchanges (including its exchanges in Milwaukee and Madison) and all of its business lines statewide, a combined total of almost 975,400 access lines.

Partial Deregulation

Under partial deregulation, a telecommunications utility may petition the PSC for partial deregulation. [s. 196.195 (5), Stats.] If the PSC determines that effective competition exists in the relevant market, based on criteria and following a process specified in the statutes, it may suspend any of a list of specified regulations as they apply to the telecommunications utility, including regulation of the securities of telecommunications utilities.

There are no ILECs subject to partial deregulation under this scheme.

Telecommunications Cooperatives

In general, the rates of a telecommunications utility operated as a cooperative are not subject to regulation by the PSC, unless the cooperative elects to be subject to that regulation. [s. 196.205, Stats.]

There are 11 telecommunications cooperatives in Wisconsin with a total of over 47,600 access lines.

Alternative Telecommunications Utilities

Alternative telecommunications utilities (ATUs) are a subset of telecommunications utilities, being any of the following:

1. Cable television telecommunications service providers.

2. Pay telephone service providers.

3. Resellers of telecommunications services.

4. Any other telecommunications utility that provides a service that the PSC determines is available from other telecommunications utilities. This category includes, most notably, competitive local exchange carriers (CLECs). CLECs provide local exchange and long distance services and compete within the service territory of an ILEC.

ATUs are generally exempt from PSC regulation, except that the PSC may impose individual requirements of the statutes it administers on individual ATUs.

Staff at the PSC report that there are 50 CLECs certified in Wisconsin who reported having access lines in the state in 2008 (there are additional certified CLECs who did not report any access lines). These 50 CLECs have a total of almost 803,800 access lines.

Cell Phone Service Providers

Cell phone service providers (termed "commercial mobile radio service providers") are exempt from PSC regulation except that they are required to contribute to the Universal Service Fund (USF), collect the police and fire protection fee, and are subject to assessments for telecommunications utility trade practices administered by the Department of Agriculture, Trade in Consumer Protection [s. 196.203, Stats.].

According to the Federal Communications Commission's (FCC's) Thirteenth Annual Report to Congress by the FCC on the State of Competition in the Commercial Mobile Radio Services ("CMRS") marketplace, WT Docket No. 08-27, January 16, 2009, at the end of 2007 there were 10 carriers providing mobile wireless services in Wisconsin. At that time, these carriers had almost 3,841,800 subscribers.

THE BILL

Certification of Telecommunications Utilities

Prior to providing service, a telecommunications utility must obtain a certificate of authority from the PSC.

Certification of Telecommunications Utilities Other Than ATUs (ILECs)

The bill, in effect, authorizes an ILEC to elect to be certified to provide telecommunications services in the state in any of the following three manners:

- As a telecommunications utility certified under the current certification statute, s. 196.50 (2) [proposed s. 196.50 (2) (i)]. (This is the default certification.)

- As an ATU under the ATU certification statute, s. 196.203 [proposed s. 196.50 (2) (j) 1.].

- As a telecommunications utility certified under the current certification statute but regulated in the same manner as an ATU [proposed s 196.50 (2) (j) 2.].

The regulations that apply under each of these schemes are summarized in the next subsection of this memorandum.

Under current law, in issuing a certificate of authority, the PSC may include conditions it determines are necessary to protect the public interest. In addition, the PSC may alter or amend a certification. The bill repeals these provisions.

The bill also repeals the current law that directs the PSC to establish by rule classes of certificates of authority based on services.

Certification of ATUs (Including CLECs)

Under current law, the PSC may certify an ATU to provide service in a specified portion of the state. The bill specifies that the certification of an ATU, other than an ATU that is a municipal government, is on a statewide basis. It further states that any such certification issued before the effective date of this provision is considered amended to be statewide.

The bill specifies that the PSC may deny an application for ATU certification by a CLEC or other entity in that category (see description of ATUs, above) if it finds that the applicant does not have the financial, managerial, or technical capabilities to provide its proposed services or to comply with any condition that the PSC is authorized to impose on an ATU.

Under current law, the PSC may not certify a CLEC to provide local exchange service in a municipality where an ILEC provides service unless one of several conditions applies. The bill repeals this provision.

<u>Telecommunications Utilities Regulatory Schemes</u>

Regulation of Telecommunications Utilities Other Than ATUs (ILECs Electing This Regulation)

The bill repeals the following regulatory schemes for ILECs: rate-of-return regulation, small telecommunications utility flexible rate of return regulation, and price regulation. As described below, the bill modifies the telecommunications cooperatives rate regulation, alternative regulation, and partial deregulation regulatory schemes.

The bill modifies the partial deregulation and alternative regulation statutes by replacing the PSC's authority to waive specified regulations for a telecommunications utility, upon petition by the telecommunications utility, with statutory waiver or repeal of those requirements. Specifically, the bill exempts ILECs electing to be certified as telecommunications utilities from all of the following:[2]

- PSC classification of public utility service. [s. 196.02 (2).]
- PSC valuation of utility property. [s. 196.05.]
- Accounting requirements, including depreciation rates and new construction accounting. [ss. 196.06, 196.09, and 196.10.]
- Reporting of expenses, profit, and other items. [ss. 196.07 and 196.12.]
- PSC reports of utility property values and other financial data. [s. 196.13.]
- Filing of rates and PSC approval of rates (except for access service charges, as described below). [ss. 196.19, 196.20, 196.21, and 196.37.]
- PSC investigations of rates and services, based on consumer complaint or on its own motion. [s. 196.28.]
- Construction, installation, or operation of new facilities. [s. 196.49.]
- Relations with affiliated interests and PSC approval of certain contracts. [s. 196.52.]
- Certain municipal authority to regulate public utilities. [s. 196.58.]
- Dissolution and reorganization. [ss. 196.78 and 196.79.]
- Prohibition of rebates, concessions, and discriminations. [ss. 196.22 and 196.60.]

The bill also repeals the following requirements that generally apply to telecommunications utilities under current law (unless a utility is subject to a regulatory scheme that exempts the utility from the requirement):

- Promotional rates. [s. 196.77.]
- Consolidations and mergers. [s. 196.805.]

In addition to the changes listed above, the bill amends or repeals numerous statutes to conform with the waivers and repeals listed above. Modifications in other telecommunications utility regulations by the bill are summarized below. Some of these modifications have the effect of altering the applicability of the regulation.

---

[2] N.B. The lists under this subheading are of regulations from which telecommunications utilities other than ATUs are ***exempt*** or that are ***repealed*** by the bill, as compared to the list under the following subheading, which is of regulations that the PSC ***may impose*** on an ATU.

Regulation of ATUs (Including CLECs and ILECs Electing ATU Regulation)

The bill specifies that, if the PSC imposes any requirement on an ATU, it must impose the same requirement, "at the same level of regulation," on all other ATUs and all other telecommunications utilities.

Under current law, the PSC may impose any regulation under ch. 196 or 201 on an ATU. The bill limits the regulations that the PSC may impose on an ATU, or a CLEC electing to be certified or treated as an ATU, to the following topics:[3]

- Chapter 196 definitions. [s. 196.01.]
- PSC jurisdiction. [s. 196.02 (1).]
- Submission of stockholder and other business management information. [s. 196.02 (4).]
- PSC examination of accounting and other business records. [s. 196.02 (5).]
- Use of and connection to transmission equipment and property by other telecommunications providers. [s. 196.04.]
- Confidential treatment of records by the PSC. [ss. 196.135 and 196.14.]
- Rates and costs of unbundled network elements. [s. 196.197.]
- Interconnection agreements and other interconnection requirements. [s. 196.199.]
- Telephone caller identification, pay-per-call, and toll-free services. [ss. 196.207 and 196.208.]
- PSC privacy rules. [s. 196.209.]
- Universal service and contributions to the state universal service fund. [s. 196.218.]
- Exemptions, on petition, from a requirement in s. 196.219 and PSC imposition of conditions to protect the public interest. [s. 196.219 (2) (b), (c) and (d).]
- Interconnection within a reasonable time. [s. 196.219 (3) (a).]
- Impairment of speed, quality or efficiency of services, products, or facilities offered to consumers. [s. 196.219 (3) (c).]
- Access to telecommunications emergency services. [s. 196.219 (3) (d).]

---

[3] N.B. This is a list of regulations that the PSC ***may impose*** on ATUs, as compared to the lists under the preceding subheading, which are regulations from which telecommunications utilities other than ATUs are ***exempt*** or that are ***repealed*** by the bill.

- Compliance with price lists, contracts, and PSC rules and orders regarding providing consumers with service, products, or facilities. [s. 196.219 (3) (e).]
- Discrimination in favor of affiliates and other entities. [s. 196.219 (3) (h).]
- Restrictions on resale or sharing certain services, products, and facilities. [s. 196.219 (3) (j) and (m).]
- Violations of rules of the Department of Agriculture, Trade and Consumer Protection regarding advertising and sales and collection practices. [s. 196.219 (3) (n).]
- Transfer of local exchange customers to other telecommunications providers. [s. 196.219 (3) (o).]
- Late payment charges. [s. 196.219 (3m),]
- PSC questionnaires and other information requests. [s. 196.28.]
- PSC hearings on consumer complaints (as modified by the bill). [s. 196.26.]
- Changes to PSC orders and reopening PSC cases. [s. 196.39.]
- PSC-required tests; conditional, emergency, and supplemental PSC orders. [s. 196.395.]
- Timing of effect of PSC orders. [s. 196.40.]
- Court review of PSC orders. [s. 196.41.]
- Injunction procedures. [s. 196.43.]
- Enforcement duties of the PSC, the attorney general, and district attorneys and related court venues. [s. 196.44.]
- Penalties related to information and record requests. [s. 196.65.]
- Forfeitures. [s. 196.66.]
- Abandonment or discontinuance of lines, services, and rights-of-way. [s. 196.81.]
- Assessments for reimbursement of PSC expenses. [s. 196.85.]
- Assessments for telephone relay service. [s. 196.858.]
- Issuance of securities. [ch. 201.]

Cross-Subsidization

Under current law, in general, a telecommunications utility may not subsidize, directly or indirectly, any activity of an affiliate or any activity that is not regulated under ch. 196, Stats., or that is regulated under specified statutes, including the partial deregulation, alternative regulation, and price regulation statutes. In addition, telecommunications utilities are required to price their services to exceed the cost of providing the services, measured by what is called the total service long-run incremental cost (TSLRIC), except that the PSC may waive this requirement for a municipal telecommunications utility's local exchange service if it makes certain determinations. Also, under circumstances involving a telecommunications utility that uses one of its own services if a competitor offers the same service, the price the utility charges for that service must exceed the sum of the tariffed rate and the TSLRIC.

With one exception, the bill repeals the cross-subsidization provisions. The exception is that the bill retains the requirement that services be priced to exceed total service long-run incremental cost, but applies it only to local governmental telecommunications utilities. Further, it repeals the PSC's authority to waive that requirement.

Individual Contracts

Under current law, the PSC may approve the filing of a tariff which permits a telecommunications utility to enter into an individual contract with an individual customer if two conditions are met. These conditions are that substitute telecommunications services are available to customers or potential customers of the utility and that the absence of such a tariff will cause the utility to be disadvantaged in competing for business.

Current law also requires any individual contracts under such a tariff to be compensatory and authorizes the PSC to include any other condition and procedure in the public interest. Within 20 days after a contract, or an amendment to it, authorized under this provision has been executed, the telecommunications utility must submit written notice on the contract to the PSC. Upon request, the PSC must inform a person that it has received this notice. Current law also authorizes the PSC to investigate whether a contract is non-compensatory and to make appropriate adjustments in the rates ore tariffs of the telecommunications utility that has entered into the contract.

The bill retains the two conditions for a tariff authorizing individual contracts specified in the first paragraph above and repeals all of the provisions described in the second paragraph.

Consumer Complaints

In addition to its general authority to investigate customer complaints, current law authorizes the PSC to investigate the following three types of complaints relating to telecommunications utilities under s. 196.26:

- A complaint that any rate, charge, or schedule, regulation, measurement, act, or practice relating to the provision of telecommunications service is unreasonable, inadequate, unjustly discriminatory, or cannot be obtained.

- A complaint over an alleged failure to comply with an interconnection agreement that the PSC determines has not had a significant adverse effect on the ability of a complaining party or any other party to the agreement to provide telecommunications service to its customers or potential customers.

- A complaint by a party to an interconnection agreement, approved by the PSC, that another party to the agreement has failed to comply with the agreement and that does not allege that the failure to comply has a significant adverse effect on the ability of the complaining party to provide telecommunications service to its customers or potential customers.

The bill removes the authority of the PSC to investigate the first type of complaint in the above list and repeals related provisions in ch. 196 in conformance with this removal.

Access Service Charge

Access services are a type of wholesale service offered between telecommunications providers. Access services enable one telecommunications provider to connect its customer's calls to the customers of another telecommunications provider.

Under current law, the PSC may review and set the rate or charges most telecommunications utilities may charge for their access services for originating or terminating intrastate telephone calls in their service territories. (The FCC has jurisdiction over interstate access charges.) As a condition of electing to become a price-regulated telecommunications utility, the utility must reduce its intrastate access service rates according to statutorily specified schedules. The schedules vary by the size of the utility, measured in its number of access lines in use in Wisconsin. For a price-regulated telecommunications utility with more than 150,000 access lines, its intrastate access service rates may not exceed its interstate rates for similar access services, and it must eliminate its "intrastate carrier common line charges" (one element of access charges) within two years of its election to be priced-regulated or upon full authorization to provide interlata long distance service.

The bill establishes intrastate access charges for ILECs and other telecommunications providers by statute. In particular, the bill specifies that an ILEC:

- May not increase its intrastate access charges above its interstate access charges allowed under federal law.

- Must reduce its intrastate access charges, within six months after the bill's effective date, to be equal to or less than its interstate access charges allowed under federal law.

The bill establishes that an ILEC shall recover the following portions of its revenues lost from complying with the requirements described in the preceding two bullet points from the state Universal Service Fund:

- 95% of lost revenues during the first year following the required reduction.

- 85% of lost revenues during the second year following the required reduction.

- 75% of lost revenues during the third years following the required reduction and each year thereafter.

- If the ILEC provides access to broadband service with upstream and downstream average minimum speeds of at least 200 kilobits[4] to at least 85% of its customers during the sixth year following the required reduction and each year thereafter, 75% of lost revenues.

- If the ILEC fails to provide this access to broadband service as described in the preceding bullet point, 50% of lost revenues.

The bill specifies the basis for an ILEC to calculate its annual lost revenues, and directs ILECs to report those amounts with supporting documentation to the PSC. Upon receiving an ILEC's report, the PSC must calculate the amount of monthly disbursements from the Universal Service Fund to the ILEC and commence those disbursements with nine months of the bill's effective date. The PSC must also report at least annually to the Universal Service Fund Council on the administration of these disbursements, including the total amount of money collected from each telecommunication provider contributing to the fund, the total amount disbursed to each ILEC for these lost revenues, and the PSC's expenses in administering these disbursements and collecting contributions to the fund from VoIP service providers described below.

The bill also authorizes an ILEC to increase its rates for services other than for access services to recover its lost revenues not recovered from the Universal Service Fund.

For ATUs, including CLECs, the bill requires that, in general, the provider's intrastate access charges for a local exchange may not exceed the intrastate access charges of the ILEC that provides telecommunications service in that local exchange. This requirement is delayed for five years if the provider is required to reduce its intrastate access charges under the schedule described in the next paragraph.

If a telecommunications provider's intrastate access charges for a local exchange on the bill's effective date exceed the ILEC's intrastate access charges in the local exchange on October 1, 2009, then the bill requires the provider to determine the difference between these charges and reduce its intrastate access charges according to the following schedule:

- 20% of the difference within two months of the bill's effective date.

- 40% of the difference within two years of the bill's effective date.

- 60% of the difference within three years of the bill's effective date.

- 80% of the difference within four years of the bill's effective date.

- The entire difference within five years of the bill's effective date.

---

[4] The bill provides that the PSC may increase these speeds by rule if such speeds are consistent with any definition of broadband service established by the Federal Communications Commission.

Interconnected VoIP Service

Under current law, the PSC regulates a telecommunications provider providing interconnected voice over Internet protocol service, also called voice over Internet protocol (VoIP), as a CLEC.

The bill establishes that this service is generally exempt from regulation under public utility law in chs. 196 and 201, Stats. However, under the bill, a telecommunications provider that provides this service in Wisconsin must make contributions to the Universal Service Fund based on its revenues from providing this service calculated in accordance with procedures specified in the bill. In addition, unless otherwise provided under federal law, access charges for this service are subject to the intrastate access charge provisions described in the preceding subsection in this memorandum.

Essential Telecommunications Services and Advanced Service Capabilities

Current law[5] directs the PSC to define by rule, and biennially revise, the following:

- A basic set of essential telecommunications services that shall be available to all customers at affordable prices and that are a necessary component of universal service.
- A set of advanced service capabilities that shall be available to all areas of the state at affordable prices within a reasonable time, no later than seven years after the rule's effective date, and that are a necessary component of universal service.

For the purposes of these directives, "universal service" includes the availability of a basic set of essential telecommunications service and access to advanced service capabilities of a modern telecommunications infrastructure anywhere in this state. These essential services and advanced service capabilities must be based on market, social, economic development, and infrastructure development principles rather than specific technologies or providers and must include specified essential services.

The bill repeals and recreates these directives to require each telecommunication provider that provides basic local exchange service or that is designated as an eligible telecommunications carrier under federal law to make available to its customers all essential telecommunications services. The bill defines "essential telecommunications services" to mean the "services or functionalities determined by the Federal Communications Commission to be eligible for support by federal universal service support mechanisms." A telecommunications provider may satisfy this requirement by providing essential telecommunications services itself or through an affiliate and in either case may provide these services through the use of any available technology or mode.

Electronic Call Detail Records

The bill directs each tandem switching provider that routes a call originated by a wireless provider or a CLEC to a telecommunications provider's network for termination to make electronic call detail records for such calls available to the telecommunications provider. These records enable the identification of the telecommunications provider on whose network the call originated. For purposes of

[5] This law is in the statute governing the Universal Service Fund, s. 196.218, Stats.

this provision, a "tandem switching provider" is a telecommunications provider that provides tandem switching service to another telecommunications provider. A tandem switching service provides intermediate or higher level switching of telephone calls being routed to or from switches in central offices.

THE AMENDMENT

PSC Certification of Telecommunications Utilities

Telecommunications Utilities

The amendment adds s. 196.03 to the list of exemptions applicable to telecommunications utilities that are not certified or treated as an ATU (see also the subsection below on Access Service Charge). Section 196.03 (1) requires a public utility to furnish reasonably adequate service and facilities and requires that its charges to be reasonable and just. Section 196.03 (6) specifies factors the PSC must consider in determining a reasonably adequate telecommunications service or a reasonable and just charge for that service under other statutes.

Alternative Telecommunications Utilities

The bill establishes that certifications by the PSC of alternative telecommunications utilities, other than local government telecommunications utilities, are on a statewide basis and that PSC certifications of alternative telecommunications utilities, other than local government telecommunications utilities, prior to the bill's effective date are considered amended to be statewide certifications. The bill specifies that these provisions do not alter any conditions of a certification issued before the bill's effective date, except for geographic scope. The amendment deletes this grandfather clause.

The amendment adds to the list of statutes that the PSC may impose on an ATU s. 196.859, relating to assessments for telecommunications utility trade practices administered by the Department of Agriculture, Trade and Consumer Protection.

Other Conforming Changes

The amendment makes other changes in the text of the bill that conform the treatment of the certification statute and other statutes with the general treatment of the certification of telecommunications utilities and ATUs by the bill.

Access Service Charge

The amendment deletes the provisions created in the bill on access service charges, including the statutory specification of the allowable amounts of these charges, access service charges for VoIP, and payments from the Universal Service Fund to ILECs for lost revenues from reduced access service charges.

The amendment adds to the statute relating to the certification of telecommunications utilities other than ATUs that, with respect to their wholesale access services, telecommunications utilities certified under that provision are subject to certain regulations, as follows:

- Telecommunications utilities with less than 50,000 access lines are subject to s. 196.03.[6]
- Telecommunications utilities with more than 50,000 in less than 150,000 access lines are subject to ss. 196.03 and 196.37.[7]
- Telecommunications utilities with more than 150,000 access lines may not have intrastate access rates that exceed the utility's interstate rates for similar access services, except that these utilities shall not assess an intrastate carrier common line charge or a substitute charge. Except to enforce this provision, the PSC may not review or set the access rates for these utilities.

The amendment also establishes that a telecommunications utility certified under this provision may file a tariff with the PSC designating the rates, terms, and conditions of its wholesale access services and may decrease its wholesale access rates without notice to the PSC. A telecommunications utility certified under this provision with less than 150,000 access lines may seek to increase its wholesale access service rates by petitioning the PSC for approval of the increase, and, after notice, the PSC may review and approve or reject that petition subject to the standards set forth in s. 196.03 (6).

The amendment adds to the list of statutes that the PSC may impose on the certification of ATUs the requirement that any reduction in wholesale access rates ordered by the PSC prior to the bill's effective date, including any reduction ordered pursuant to the alternative regulation statute, s. 196.195, shall remain in effect unless modified by the PSC in a subsequent order.

Individual Contracts

The bill deletes part of the statute dealing with a telecommunications utility filing a tariff that permits it to enter into an individual contract with an individual customer and retains the part of this statute that imposes two conditions on the use of these contracts, as described on page 9 in this memorandum.

The amendment, in effect, removes these two conditions, thus resulting in the repeal of all statutory requirements and procedures for a telecommunications utility to enter into these types of contracts.

---

[6] Section 196.03, as it relates to telecommunications utilities, was described in the preceding subsection, PSC Certification of Telecommunications Utilities on page 13.

[7] Section 196.37 authorizes the PSC to take remedial action if, after an investigation, it finds that a public utility's rates or charges are unjust or unreasonable or a public utility's practices or services are unjust, unreasonable or insufficient.

Electronic Call Detail Records

The amendment modifies the provisions in the bill on electronic call detail records in two ways. First, it advances by six months the effective date of the duty of tandem switching providers to make electronic call detail records available to telecommunications providers. Specifically, it changes this effective date to be no later than 18 rather than 24 months after the bill's effective date.

Second, the amendment requires wireless providers or CLECs that originates a call to transmit with the call all information necessary for the proper identification of the provider or carrier originating the call and for the proper billing of intercarrier compensation to the call.

If you have any questions on Assembly Bill 696 and Senate Bill 469 or the amendments to them, please feel free to contact either of us directly at the Legislative Council staff offices.

DLL:JES:jal