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ANALYSIS INSERT:

The bill does all of the following: 1) makes changes to the authority of the Public Service Commission (PSC) over telecommunications utilities; 2) imposes requirements on intrastate switched access rates; 3) creates requirements for telecommunications utility tariffs, including tariffs for intrastate switched access rates; 4) specifies the PSC's authority over interconnected voice over Internet protocol (interconnected VOIP) service; 5) makes changes to the PSC's authority for ensuring universal access to telecommunications service; 6) imposes requirements regarding the availability of basic voice service; 7) makes changes to requirements for the use of another person's transmission equipment and property by public utilities and telecommunications providers; and 8) makes other changes to telecommunications regulation.

TELECOMMUNICATIONS UTILITY REGULATION

Under current law, with certain exceptions, the PSC regulates a telecommunications provider that provides basic local exchange service as either a telecommunications utility (TU) or an alternative telecommunications utility (ATU). In general, the PSC has certified as TUs those telecommunications providers that are incumbent local exchange carriers (ILECs) under federal law, which are telecommunications providers that resulted from the breakup of the Bell System pursuant to a federal antitrust action. In general, the PSC has certified as ATUs those telecommunications providers that are competitive local exchange carriers (CLECs) under federal law, which are telecommunications providers that compete with ILECs to provide basic local exchange service.

Under current law, TUs are subject to varying degrees of regulation by the PSC, depending on certain factors, such as whether the TU has elected price regulation, under which the PSC regulates the rates charged by a TU, but not the TU's rate of return. The degree of PSC regulation also depends on whether a TU is a cooperative association, or whether the TU is a "small TU," which is a TU that had fewer than 50,000 access lines in this state on January 1, 1984. With certain exceptions, current law exempts an ATU from PSC regulation, except that, if certain conditions are satisfied, the PSC may impose on an ATU a requirement that otherwise applies to a TU or other public utility. In addition, ATUs, like certain other persons who provide active retail voice communications service, must collect from customers and remit to the PSC a monthly police and fire protection fee that is used for shared revenue payments.

ATUs. Under this bill, ATUs are subject to the intrastate switched access rate, tariff, and interconnected VOIP requirements described below, ~~as well as~~ ^{and to} the monthly police and fire protection fee described above. In addition, the bill limits the additional requirements that the PSC may impose on an ATU. Under the bill, the PSC may impose requirements that relate only to the following: 1) submission of stockholder and other business management information; 2) PSC examination of accounting and other business records; 3) use of and connection to transmission

equipment and property by other telecommunications providers; 4) confidential treatment of records by the PSC; 5) rates and costs of unbundled network elements; 6) interconnection agreements and related requirements; 7) telephone caller identification, pay-per-call, and toll-free services; 8) PSC privacy rules; 9) universal service and contributions to the state's universal service fund; 10) access to telecommunications emergency services; 11) restrictions on resale or sharing certain services, products, and facilities; 12) violations of rules of the Department of Agriculture, Trade and Consumer Protection (DATCP) regarding advertising and sales and collection practices; 13) transfer of local exchange customers to other telecommunications providers; 14) PSC questionnaires and other information requests; 15) PSC hearings on consumer complaints; 16) changes to PSC orders and reopening PSC cases; 17) PSC-required tests; 18) conditional, emergency, and supplemental PSC orders; 19) timing of effect of PSC orders; 20) court review of PSC orders; 21) injunction procedures; 22) enforcement duties of the PSC, the attorney general, and district attorneys and related court venues; 23) penalties related to information and record requests; 24) forfeitures; 25) abandonment or discontinuance of lines, services, and rights-of-way; 26) assessments for reimbursement of PSC expenses; 27) assessments for telephone relay service; and 28) assessments for enforcement of certain consumer protection requirements by DATCP.

As under current law, the bill allows the PSC to impose a requirement specified above if the PSC finds that the imposition is in the public interest. The bill also provides that, if the PSC imposes such a requirement on an ATU, the PSC must impose the same requirement at the same level of regulation on all other ATUs. The bill allows the PSC, based on the public interest, to impose other requirements on an ATU related to the reasonableness and adequacy of intrastate switched access service and wholesale telecommunications service. However, the PSC is not required to impose the same requirement at the same level on all other ATUs.

In addition, the bill provides that, except for a local government ATU, certification as an ATU is on a statewide basis and that any ATU certification issued by the PSC before the bill's effective date is considered amended to be a statewide certification. Also, with certain exceptions, the bill allows the PSC to deny certification as an ATU only if the PSC finds that the applicant for certification does not have the financial, managerial, or technical capabilities to provide service or comply with requirements applicable to ATUs. The bill also allows an ATU to require the PSC to grant recertification as an ATU. Upon recertification, the ATU is subject to the requirements for ATUs described above. However, the recertification terminates all regulatory requirements related to the prior certification that were previously imposed on the ATU by the PSC, unless the ATU requests to remain subject to certain of those requirements.

TUs. The bill exempts TUs from requirements relating to all of the following: 1) PSC classification of public utility service; 2) PSC authority regarding production of records, audits of accounts, service measurement standards, and test results; 3) PSC authority to enter premises; 4) PSC valuation of utility property; 5) accounting requirements, including depreciation rates and new construction accounting; 6) reporting of expenses, profit, and other items; 7) PSC reports of utility property

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values and other financial data; 7) filing of rates and PSC approval of rates; 8) prohibition against ~~unjustly discriminating amongst~~ customers; 9) certain prohibitions regarding the provision of service to customers; 10) construction, installation, or operation of new facilities; 11) PSC approval of certain contracts; 12) certain municipal authority to regulate public utilities; 13) dissolution and reorganization; 14) liability for treble damages; 15) PSC enforcement of certain unfair trade practice orders; 16) private causes of actions by persons injured by certain violations of law by TUs; and 17) alternate dispute resolution requirements of the PSC. Except for wholesale telecommunications service, the bill also exempts TUs from certain enforcement authority of the PSC. 18

The bill makes changes to current law to ensure that small TUs, and TUs that are cooperatives, are subject to the foregoing exemptions. The bill also eliminates the PSC's authority to order an applicant for certification as a TU to satisfy any conditions the PSC considers necessary to protect the public interest. In addition, the bill repeals the requirements that apply to TUs under current law that apply to the following: 1) offering new telecommunications services or jointly offering services with other TUs; 2) classification of TU service; 3) promotional rates; 4) PSC authority regarding contracts between TUs and individual customers; and 5) consolidations and mergers. Also, the bill repeals price regulation of TUs and terminates any requirements imposed by the PSC on price-regulated TUs, as well as repeals the PSC's authority to impose partial deregulation and other types of alternative regulation on TUs. However, if a TU is subject to an alternative regulation plan under current law, the bill provides that, unless the TU terminates the plan, the TU remains regulated pursuant to the plan, except to the extent that the plan is inconsistent with the bill's tariff or intrastate switched access rates requirements.

The bill allows a TU to terminate its certification as a TU and have the PSC to certify the TU as an ATU. Upon certification as an ATU, all regulatory requirements related to the former TU certification are terminated, unless the TU requests to remain subject to certain of the requirements. In addition, the formerly certified TU is subject to the same requirements as an ATU. Also, the formerly certified TU's wholesale telecommunications services and rates are subject to the PSC's authority regarding reasonable rates and adequate service, and the formerly certified TU is subject to the basic voice requirements discussed below. In addition, if the formerly certified TU was subject to price regulation under current law, its intrastate dedicated access rates must mirror its interstate dedicated access rates.

The bill also allows a TU to require the PSC to issue an order recertifying the TU as a TU, but generally regulating the TU like an ATU, except that the recertified TU is also subject to the basic voice requirements discussed below. Such a recertification terminates the TU's prior certification, and all regulatory requirements related to the prior certification, unless the TU requests to remain subject to certain of those requirements.

If the PSC issues an order certifying a TU as an ATU, or recertifying a TU as a TU that is regulated like an ATU, the order operates as a limited waiver of the TU's right to the following: 1) an exemption from interconnection requirements under

federal law that apply to ILECs that are rural telephone companies; and 2) suspension or modification of certain interconnection requirements under federal law. The bill provides that, except for the foregoing limited waivers, the state's telecommunications law is not intended to reduce or expand the scope and application of federal telecommunications law, including the PSC's authority under federal law.

INTRASTATE SWITCHED ACCESS RATES

The bill imposes requirements on intrastate switched access rates that depend on whether a telecommunications provider is a large or small ILEC, new nonincumbent, or large or small nonincumbent, as defined in the bill. The bill defines "switched access rates" as rates charged for providing switched access to a local exchange network for enabling the origination or termination of telecommunications service within the local exchange. In general, federal law provides that the Federal Communications Commission regulates interstate rates and the states regulate intrastate rates.

Large ILECs. The bill defines large ILEC as an ILEC that, with any ILEC affiliates, had 150,000 or more access lines in this state as of January 1, 2010. No later than one year after the bill's effective date, a large ILEC must reduce its intrastate switched access by an amount equal to 25 percent of the difference between its intrastate and interstate switched access rates. No later than two years after the bill's effective date, a large ILEC must further reduce its intrastate switched access rates by an amount equal to 33 percent of the difference between its intrastate and interstate switched access rates. No later than three years after the bill's effective date, a large ILEC must further reduce its intrastate switched access rates by an amount equal to 50 percent of the difference between its intrastate and interstate switched access rates. No later than four years after the bill's effective date, a large ILEC must further reduce its intrastate switched access rates to mirror its interstate switched access rates and, beginning on that date, may not charge intrastate rates that are higher than its interstate rates.

New nonincumbents. The bill defines "new nonincumbent" as a telecommunications provider that is not an ILEC and that was initially certified as an ATU or TU on or after January 1, 2011, except that "new nonincumbent" does not include an ATU that was formerly certified as a TU. Within 30 days after the bill's effective date, the bill prohibits a new nonincumbent from charging intrastate switched access rates that are higher than its interstate switched access rates.

Large nonincumbents. The bill defines "large nonincumbent" as a telecommunications provider, other than an ILEC, that had 10,000 or more access lines in the state as of January 1, 2010, and that was initially certified as a TU or ATU before January 1, 2011. The bill prohibits a large nonincumbent from charging intrastate switched access rates that are higher than the rates it charged on January 1, 2011, except for increases that result in mirroring interstate switched access rates. No later than four years after the bill's effective date, a large nonincumbent must reduce its intrastate switched access by an amount equal to 33 percent of the difference between its intrastate and interstate switched access rates. No later than five years after the bill's effective date, a large nonincumbent must further reduce

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its intrastate switched access rates by an amount equal to 50 percent of the difference between its intrastate and interstate switched access rates. No later than six years after the bill's effective date, a large nonincumbent must ~~reduce its intrastate switched access rates to mirror its interstate switched access rates and, beginning on that date, may not charge intrastate rates that are higher than its interstate rates.~~ *Further*

Other requirements. The bill provides that, except to enforce the above requirements, the PSC may not investigate, review, or set intrastate switched access rates for large ILECs, new nonincumbents, or large nonincumbents. Also, during the 4-year period beginning on the bill's effective date, the ~~bill generally prohibits the PSC from investigating, reviewing, or setting the intrastate switched access rates of a "small ILEC," which the bill defines as an ILEC that, with any ILEC affiliates, had fewer than 150,000 access lines in this state as of January 1, 2010. In addition, during the 3-year period beginning on the bill's effective date, the bill generally prohibits the PSC from doing the same with respect to a "small nonincumbent," which the bill defines as a telecommunications provider, other than an ILEC, that had fewer than 10,000 access lines in the state as of January 1, 2010, and that was initially certified as an ATU before January 1, 2011. However, the bill allows the PSC to enforce reductions in intrastate switched access rates ordered by the PSC prior to the bill's effective date. Also, the bill allows the PSC to approve certain increases in intrastate switched access rates that are included in tariff revisions, which are discussed below.~~

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TARIFFS

In general. The bill allows, but does not require, a TU or an ATU to do any of the following: 1) retain on file with the PSC tariffs showing the service rates, tolls, and charges the TU or ATU has established for some or all services that the TU or ATU performs in the state; 2) file new tariffs with the PSC for some or all of such services; 3) withdraw tariffs for any service, except for intrastate switched access service; and 4) file revised tariffs that change the rates, tolls, charges, or terms and conditions under tariffs on file with the PSC. Except for changes that constitute increases in intrastate switched access rates, tariff revisions are effective at the time specified in the revised tariff as filed with the PSC. Except for new tariffs for intrastate switched access services, a new tariff is effective on ~~date specified in the tariff, unless the PSC, within ten days after the new tariff is filed, suspends the new tariff. If the PSC suspends a new tariff, the PSC may modify the new tariff only to the extent that the new tariff violates certain requirements that apply to the TU or ATU, and only after granting the TU or ATU an opportunity for a hearing. If the PSC fails to modify the new tariff within deadlines specified in the bill, the new tariff is effective as filed.~~ *the*

The bill also allows a tariff for a service that permits a TU or an ATU to enter into an individual contract with an individual customer under rates, terms, or conditions that are different from those specified for the service in the tariff. Except for such an individual contract, the bill prohibits a TU or an ATU from receiving for a service more or less compensation than that specified for the service in a tariff, and prohibits a TU or an ATU from receiving compensation for a service that is not

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specified in a tariff. Also, copies of tariffs filed under the bill must be made available to consumers in a form and place readily accessible to the public.

Intrastate switched access rates. No later than 90 days after the bill's effective date, a TU or ATU that provides intrastate switched access service must have on file with the PSC a tariff showing the rates, tolls, and charges for the service. The bill provides that the absence of such a tariff before that deadline does not prohibit a TU or ATU from charging intrastate switched access rates that comply with the requirements for intrastate switched access rates described above or that are charged pursuant to a prior order of the PSC. The PSC is authorized to enforce payment of rates specified in such a tariff. Once such a tariff is in effect, the bill generally prohibits a TU or ATU from withdrawing the tariff. However, under certain circumstances, a TU or ATU may revise the tariff to increase intrastate switched access rates. The PSC must approve such an increase, except for certain specified increases that are effective at the time specified in a revised tariff. The bill also allows a TU or ATU to file a new tariff for intrastate switched access rates that are higher than the rates the TU or ATU charged on January 1, 2011. Unless an exception applies that allows the rates to go into effect as specified in the new tariff, the PSC must approve the new tariff.



INTERCONNECTED VOIP SERVICE

With certain exceptions, the bill provides that interconnected VOIP service is exempt from PSC regulation. Under the bill, "interconnected VOIP service" has the same meaning as under federal law, which is a service requiring a broadband connection and Internet protocol-compatible customer premises equipment that allows the user to engage in real-time, two-way communication over the public switched telephone network.

One exception to the exemption is that an entity that provides interconnected VOIP service must make contributions to the state's universal service fund based on the entity's revenues from providing intrastate interconnected VOIP service. The bill specifies the methods for calculating such revenues. Under the other exceptions to the exemption, a provider of interconnected VOIP service must do the following, which apply to other telecommunications providers under current law: 1) impose a monthly police and fire protection fee on its customers; 2) pay assessments for DATCP enforcement of certain consumer protection requirements; and 3) pay assessments for a statewide telecommunications relay service. In addition, interconnected VOIP service is subject to the PSC's authority over interconnection agreements under current law. The bill also provides that, unless otherwise provided under federal law, an entity that provides interconnected VOIP service must pay intrastate switched access rates. Also, unless otherwise provided under federal law, if the entity provides intrastate switched access service in connection with the interconnected VOIP service, the entity is allowed to charge intrastate switched access rates for the service.

UNIVERSAL SERVICE

Under current law, the state's universal service fund is used for, among other things, supporting programs that promote access to essential and advanced telecommunications services. Current law requires the PSC to promulgate rules

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that define the essential and advanced telecommunications services that must be available to all customers at affordable prices as a necessary component of universal service. The essential services and advanced services must be based on market, social, economic development, and infrastructure development principles rather than on specific technologies or providers.

This bill repeals the foregoing requirements regarding PSC rules and requires instead that certain telecommunications providers ~~must~~ make available to their customers all essential telecommunications services. In addition, the bill eliminates advanced services from the programs supported by the state's universal service fund. The bill defines "essential telecommunications services" as services or functionalities listed in a regulation by the Federal Communications Commission as of January 1, 2010. The bill's requirements apply to a telecommunications provider that is designated under federal law as a telecommunications carrier eligible to receive support from the federal universal service fund. Also, the bill provides that a telecommunications provider may provide essential telecommunications services itself or through an affiliate or through the use of any available technology or mode. In addition, the bill limits the requirements that the PSC may impose on a wireless telecommunications provider that receives support from the federal universal service fund but does not receive support from the state's universal service fund.

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BASIC VOICE SERVICE

The bill requires an ILEC to make basic voice service available to all residential customers within the ILEC's local exchange area. "Basic voice service" is defined, in part, as two-way voice communication service within a local calling area. The bill allows an ILEC to provide basic voice service through an affiliate or through the use of any available technology or mode.

The bill also allows an ILEC to apply to the PSC for a waiver from the foregoing requirements. The PSC must grant a waiver if the waiver is in the public interest or effective competition exists in the local exchange area. If the PSC fails to meet a 120-day deadline for the waiver request, the waiver request is considered granted by operation of law. In addition, the PSC must grant a waiver if the PSC previously found that effective competition existed. However, the PSC may not grant a waiver based on a previous finding of effective competition until after June 1, 2012. If the PSC fails to meet a 20-day deadline for a waiver request based on a previous finding of effective competition, the waiver request is considered granted by operation of law. The bill also provides that decisions of the PSC prior to the effective date of the bill that eliminate an ILEC's provider of last-resort obligations remain in force and effect. Finally, the bill provides that none of the bill's basic voice service requirements apply after April 30, 2013.

USE OF TRANSMISSION EQUIPMENT AND PROPERTY

Current law requires any person who owns transmission equipment and property to permit, for reasonable compensation, a public utility or telecommunications provider to use the equipment and property, if certain requirements are satisfied. Current law defines "transmission equipment and property" to include any conduit, subway, pole, tower, transmission wire, or other equipment, that is on, over, or under any street or highway. The PSC is authorized

to resolve disputes regarding such uses of transmission equipment and property, and may prescribe reasonable conditions and compensation for such uses.

This bill defines "transmission equipment and property" so that it also includes any equipment and property that is on, over, or under any right-of-way owned or controlled by a county, city, village, or town or public utility owned or operated by any county, city, village, or town. In addition, the bill allows a person granted a video service or cable television franchise under current law, in addition to a public utility or telecommunications provider, to use transmission equipment ^{or} property under the foregoing conditions. Also, the bill specifies that pole attachments constitute transmission equipment and property that are subject to the foregoing requirements.

OTHER CHANGES

and

The bill makes other changes to telecommunications regulation, including the following:

1. The bill eliminates the conveyance of data or other information from the definition of "telecommunications service" for purposes of the statutes administered by the PSC and certain other statutes. As a result, the definition is limited to the conveyance of voice communication, except that the bill also specifies that the definition includes switched access service.

2. Under current law, a company that provides telecommunications service may, subject to municipal regulation and PSC review, maintain lines within public rights-of-way. Current law does not define "telecommunications service" for this purpose. The bill defines "telecommunications service" for this purpose to include the conveyance of voice communication, data, or other information.

3. The bill eliminates a prohibition under current law against TUs and other telecommunications providers from giving certain preferences to their consumer retail departments or affiliates.

4. The bill eliminates certain requirements under current law that apply to certain telecommunications providers regarding issuance of securities, capital structure, and payment of dividends.

5. The bill exempts telecommunications providers from the PSC's authority to require public utilities to answer questionnaires and provide certain documents to the PSC, and the bill clarifies that the PSC's authority to require telecommunications providers to answer questionnaires applies only to matters within the PSC's jurisdiction.

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**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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INSERT 2-15:

SECTION ~~2~~ 20.155 (1) (q) of the statutes is amended to read:

20.155 (1) (q) *Universal telecommunications service.* From the universal service fund, the amounts in the schedule for the promotion of universal telecommunications service for the purposes specified in s. 196.218 (5) (a) 1. ~~to~~, 4., 8. and 9.

History: 1971 c. 125; 1973 c. 90; 1975 c. 39; 1977 c. 29; 1979 c. 34; 1981 c. 20; 1985 a. 79, 296, 297, 332; 1987 a. 27, 399; 1991 a. 39, 269; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27, 140, 229; 1999 a. 9, 32, 84, 150, 196; 2001 a. 16, 30; 2003 a. 48; 2005 a. 179; 2007 a. 20, 130; 2009 a. 28, 180, 383.

INSERT 5-8:

SECTION ~~2~~ 196.01 (9m) of the statutes is amended to read:

196.01 (9m) "Telecommunications service" means the offering for sale of the conveyance of voice, ~~data or other information at any frequency over any part of the electromagnetic spectrum~~ communication, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication ~~and including the regulated sale of customer premises equipment, regardless of the technology or mode used to make such offering.~~ "Telecommunications service" includes switched access service. "Telecommunications service" does not include cable service or broadcast service.

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 297 ss. 14 to 22, 39; 1987 a. 27; 1989 a. 344; 1993 a. 121, 496; 1995 a. 46, 409; 1997 a. 184, 218, 229; 1999 a. 9, 32, 53; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 441; 2007 a. 42.

INSERT 8-23:

SECTION ~~2~~ 196.11 (2) of the statutes is amended to read:

196.11 (2) Any arrangement under this section shall be under the supervision and regulation of the commission. The commission may order any rate, charge or regulation which the commission deems necessary to give effect to the arrangement. The commission may make any change in a rate, charge or regulation as the

1 commission determines is necessary and reasonable and may revoke its approval
2 and amend or rescind all orders relative to any arrangement. This subsection does
3 not apply to telecommunications cooperatives, unincorporated telecommunications
4 cooperative associations, or telecommunications utilities except as provided in s.
5 196.205.

6 **History:** 1981 c. 148; 1983 a. 53; 1985 a. 297; 1989 a. 344; 1993 a. 496; 2005 a. 441.

INSERT 13-2:

7 includes intrastate switched access rates higher than the intrastate switched access
8 rates it charged on January 1, 2011, the tariff shall not be

INSERT 24-14:

10 ~~SECTION #~~ 196.205 (1m) of the statutes is renumbered 196.205 and 196.205
11 (intro.), as renumbered, is amended to read:

12 **196.205** (intro.) A telecommunications cooperative or an unincorporated
13 telecommunications cooperative association may elect to be subject to ss. 196.28 and
14 196.37 as they apply to any rate, toll or charge and to ss. ~~196.02 (2)~~, ~~196.09 (1)~~, s.
15 196.11 (2), ~~196.20~~ and ~~196.26~~ in any of the following ways:

16 **History:** 1981 c. 148; 1985 a. 297 s. 76; 1989 a. 344; 1993 a. 496; 1997 a. 218; 1999 a. 32; 2005 a. 441.

~~SECTION #~~ 196.205 (2) of the statutes is repealed.

INSERT 30-19:

18 ~~SECTION #~~ 196.218 (1) (c) of the statutes is amended to read:
19 196.218 (1) (c) "Universal service" includes the availability of a basic set of
20 essential telecommunications services and access to advanced service capabilities of
21 a modern telecommunications infrastructure anywhere in this state.

22 **History:** 1993 a. 496; 1997 a. 27, 41, 237; 1999 a. 9, 29, 185; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20; 2009 a. 28, 238.

INSERT 31-20:

23 ~~SECTION #~~ 196.218 (5) (a) 2. of the statutes is repealed.

24 ~~SECTION #~~ 196.218 (5) (b) of the statutes is amended to read:

1 under s. 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5).
 2 “Public service corporation” does not include a telecommunications ~~utility provider~~,
 3 as defined in s. 196.01 ~~(10) (8p)~~. “Public service corporation” does not include any
 4 other holding company unless the holding company was formed after
 5 November 28, 1985, and unless the commission has determined, under s. 196.795 (7)
 6 (a), that each nonutility affiliate, as defined under s. 196.795 (1) (j), does not and
 7 cannot reasonably be expected to do at least one of the items specified in s. 196.795
 8 (7) (a). “Public service corporation” does not include a company, as defined in s.
 9 196.795 (1) (f), which owns, operates, manages or controls a telecommunications
 10 ~~utility provider~~, as defined in s. 196.01 ~~(10) (8p)~~, unless such company also owns,
 11 operates, manages or controls a public utility which is not a telecommunications
 12 ~~utility provider~~. “Public service corporation” does not include a transmission
 13 company, as defined in s. 196.485 (1) (ge).

History: 1971 c. 164 s. 88; 1977 c. 29; 1981 c. 347 s. 80 (2); 1983 a. 189; 1985 a. 79; 1985 a. 297 ss. 13, 76; 1993 a. 16, 123, 496, 1997 a. 140 s. 11; Stats. 1997 s. 200.01; 1999 a. 9; 1999 a. 150 s. 653; Stats. 1999 s. 201.01; 2003 a. 152; 2005 a. 179, 441.

14 **SECTION ~~12~~ 943.45 (1) (intro.)** of the statutes is amended to read:

15 943.45 (1) (intro.) No person may intentionally obtain or attempt to obtain
 16 telecommunications service, as defined in s. ~~196.01 (9m)~~ 182.017 (1g) (cq), by any of
 17 the following means:

History: 1977 c. 173; 1991 a. 39; 1993 a. 496; 2001 a. 109.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1901/P2dn

MDK:Y:...

(WJ)

Date

Ⓣ 20 = 1 revised s. 196.212 (2) (b) (c) 10
to refer to an exception under
so 196.191 (3) (b) as well
as under s. 196.191 (2) (d) 2. a.

Rep. Honadel:

Please review this draft to make sure it achieves your intent. In particular, please note the following:

1. Why ^{does} s. 196.212 (4) (b) and (c) include exceptions for the PSC to enforce ss. 196.191 (2) (d) 2. and 196.219 (2r), and s. 196.212 (4) (a) does not include such an exception? For the sake of consistency, shouldn't s. 196.212 (4) (a) be revised to include the exception? If the exception is not included, the result would appear to be that s. 196.219 (2r) does not apply to large nonincumbents, new nonincumbents, and large ILECs. However, I'm not sure what results with respect to s. 196.191 (2) (d) 2., as s. 196.191 (2) (intro.) says that s. 196.191 (2) (d) 2. applies "notwithstanding anything in this chapter to the contrary," and s. 196.212 (4) (a) also says "notwithstanding any other provision of this chapter." So, the two provisions both claim to supercede each other. I kept the bill as a preliminary draft because I think you should resolve this logical inconsistency before the draft is introduced.
2. Section 196.191 (1) prohibits a telecommunications utility (TU) or alternative telecommunications utility (ATU) from withdrawing a tariff for intrastate switched access rates, and s. 196.191 (2) (d) 2. allows for certain changes in such tariffs. However, s. 196.191 (3) (b) also allows a TU or ATU to file certain new tariffs for intrastate switched access rates. How does such a new tariff interact with a prior tariff, which the TU or ATU is prohibited from withdrawing? I think you need language to address this situation, such as, for example, creating an exception to the prohibition on withdrawing a tariff.
3. Section 196.212 (5) allows the PSC to enforce payment of switched access rates set forth in a tariff required under s. 196.191 (1). Shouldn't the PSC also be allowed to enforce payment of rates under a new tariff filed under s. 196.191 (2) (b) for increases allowed under s. 196.191 (3) (b)? Also, is it clear that the PSC can enforce payment of increases if a tariff required under s. 196.191 (1) is revised under s. 196.191 (2) (d) 2.?
4. Section 196.191 (2) (d) 1. refers to terms and conditions, along with rates, tolls, and charges, but s. 196.191 (2) (d) 2. refers to rates, tolls, and charges, without also referring to terms and conditions. Is that okay?
5. In order to consistently refer to an ATU certified under s. 196.208 pursuant to s. 196.50 (2) (j) 1. a., I made changes to the following: ss. 196.01 (1d) (g), 196.203 (1g) (b) and (2) (a), 196.212 (1) (d), and 196.50 (2) (j) 1. a.

(as renumbered)

2 (a) and (b) (4), and (6)

- 7 6. In s. 196.203 (3) ^(as renumbered), which allows the PSC to impose a requirement on an ATU if in the public interest, you deleted the sentence that says the PSC may consider certain specified factors. As I read the resulting language, the PSC can still consider those factors, as the only factor remaining is the public interest, which the PSC can broadly interpret to include the eliminated factors. Is that your intent, or do you want instead to prohibit the PSC from considering the eliminated factors?
- 8 7. I revised the text that recreates ^{as} s. 196.195 to refer to a TU, rather than a telecommunications provider because, under current law, s. 196.195 applies to TUs, not telecommunications providers.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1901/P2dn
MDK:wljjf

April 18, 2011

Rep. Honadel:

Please review this draft to make sure it achieves your intent. In particular, please note the following:

1. Why does s. 196.212 (4) (b) and (c) include exceptions for the PSC to enforce ss. 196.191 (2) (d) 2. and 196.219 (2r), and s. 196.212 (4) (a) does not include such an exception? For the sake of consistency, shouldn't s. 196.212 (4) (a) be revised to include the exception? If the exception is not included, the result would appear to be that s. 196.219 (2r) does not apply to large nonincumbents, new nonincumbents, and large ILECs. However, I'm not sure what results with respect to s. 196.191 (2) (d) 2., as s. 196.191 (2) (intro.) says that s. 196.191 (2) (d) 2. applies "notwithstanding anything in this chapter to the contrary," and s. 196.212 (4) (a) also says "notwithstanding any other provision of this chapter." So, the two provisions both claim to supercede each other. I kept the bill as a preliminary draft because I think you should resolve this logical inconsistency before the draft is introduced.
2. I revised s. 196.212 (2) (b) 1. to refer to an exception under s. 196.191 (3) (b), as well as under s. 196.191 (2) (d) 2. a.
3. Section 196.191 (1) prohibits a telecommunications utility (TU) or alternative telecommunications utility (ATU) from withdrawing a tariff for intrastate switched access rates, and s. 196.191 (2) (d) 2. allows for certain changes in such tariffs. However, s. 196.191 (3) (b) also allows a TU or an ATU to file certain new tariffs for intrastate switched access rates. How does such a new tariff interact with a prior tariff, which the TU or ATU is prohibited from withdrawing? I think you need language to address this situation, for example, creating an exception to the prohibition on withdrawing a tariff.
4. Section 196.212 (5) allows the PSC to enforce payment of intrastate switched access rates set forth in a tariff required under s. 196.191 (1). Shouldn't the PSC also be allowed to enforce payment of rates under a new tariff filed under s. 196.191 (2) (b) for increases allowed under s. 196.191 (3) (b)? Also, is it clear that the PSC can enforce payment of increases if a tariff required under s. 196.191 (1) is revised under s. 196.191 (2) (d) 2.?
5. Section 196.191 (2) (d) 1. refers to terms and conditions, along with rates, tolls, and charges, but s. 196.191 (2) (a) and (b), (4), and (6) refers to rates, tolls, and charges, without also referring to terms and conditions. Is that okay?

6. In order to consistently refer to an ATU certified under s. 196.203 pursuant to s. 196.50 (2) (j) 1. a., I made changes to the following: ss. 196.01 (1d) (g), 196.203 (1g) (b) and (2) (a) (as renumbered), 196.212 (1) (d), and 196.50 (2) (j) 1. a.

7. In s. 196.203 (3) (as renumbered), which allows the PSC to impose a requirement on an ATU if in the public interest, you deleted the sentence that says the PSC may consider certain specified factors. As I read the resulting language, the PSC can still consider those factors, as the only factor remaining is the public interest, which the PSC can broadly interpret to include the eliminated factors. Is that your intent, or do you want instead to prohibit the PSC from considering the eliminated factors?

8. I revised the text that recreates s. 196.195 to refer to a TU, rather than a telecommunications provider because, under current law, s. 196.195 applies to TUs, not telecommunications providers.

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

Kunkel, Mark

From: CHORZEMPA, DAVID J (Legal) [dc1928@att.com]

Sent: Tuesday, April 19, 2011 11:25 AM

To: Vick, Jason

Cc: Kunkel, Mark

Subject: Responses

Attachments: Responser to Drafter's Questions 4.19.docx

Attached are responses to the drafter's questions, I believe Jason indicated there is a legislative intent letter from the representative that he will forward as well.

DJC

1. Why does s. 196.212 (4) (b) and (c) include exceptions for the PSC to enforce ss. 196.191 (2) (d) 2. and 196.219 (2r), and s. 196.212 (4) (a) does not include such an exception? For the sake of consistency, shouldn't s. 196.212 (4) (a) be revised to include the exception? If the exception is not included, the result would appear to be that s. 196.219 (2r) does not apply to large nonincumbents, new nonincumbents, and large ILECs. However, I'm not sure what results with respect to s. 196.191 (2) (d) 2., as s. 196.191 (2) (intro.) says that s. 196.191 (2) (d) 2. applies "notwithstanding anything in this chapter to the contrary," and s. 196.212 (4) (a) also says "notwithstanding any other provision of this chapter." So, the two provisions both claim to supercede each other. I kept the bill as a preliminary draft because I think you should resolve this logical inconsistency before the draft is introduced.

Response: First, we did not include an exception for 196.219(2r) in 196.212(4)(a) because we did not see it as practically necessary, although we would not oppose it for consistency.

As to nonincumbents (both large and new) we are unaware of any PSC order reducing such carriers' intrastate switch access rates. As a result we did not think of including a reference to that section here. However, we agree that for consistency sake the provision 196.212(4)(a) should include some exception to 196.219(2r) in the unlikely event that the PSC has ordered such reductions and we are unaware of that order.

In addition, for all large incumbents, we know that any prior PSC order reducing their switched access rates (historically, in an order under prior 196.195) are inconsistent with the requirements of 196.212(3), meaning that the intrastate switched access rates set in those alternative regulation plans approved under prior 196.195 would never survive the requirements in 196.219(2r) – which provides that intrastate switched access reductions previously ordered only survive if consistent with 196.212. That is why we did not apply 196.219(2r) as an "exception" in 196.212(4)(a). But again, for consistency sake, we would not object if 196.212(4)(a) includes an exception to 196.219(2r).

Second, the reason we did not include an exception for 196.191(2)(d)(2) or 196.191(3)(b) is similar. The intent of s. 196.212 (2), (3) and (4) was to only allow new nonincumbents, large nonincumbents, and large incumbents to increase their switched access rates if (and only if) the increase results in mirroring. Otherwise, their rates are, in effect, frozen at January 1, 2011 levels until the reductions in 196.212 kick in: i.e., for new nonincumbents on day 30, for large nonincumbents four years from the effective date, and for large incumbents one year from the effective date. Again, on a practical level, we are not aware of any new nonincumbents, large nonincumbents, or large incumbents that have intrastate switched access rates below mirrored levels and, as a result, we did not believe including an exception under 196.191(d)(2) was needed, but we agree that some exception is appropriate in case we are wrong (or if interstate rates rose).

In addition, the intent was not to allow any new nonincumbent, large nonincumbent, or large incumbent to take advantage of the provisions of 196.191(d)(2) b – allowing CPI increases for intrastate switched access. To repeat, the intent of 196.212 is to only allow new nonincumbents, large nonincumbents, and large incumbents to increase to increase their intrastate switched

access rates if (and only if) the increase results in mirroring. Otherwise, their intrastate switched access rates are, in effect, frozen at January 1, 2011 levels until the reductions in 196.212 kick in. That is different from a small incumbent local exchange carrier, who can take advantage of 196.191(2)(d)2 b. if they qualify as a small telecommunications utility, as defined in Chapter 196. We believe 196.191(2)(d)(2)b already addresses this issue since it allows CPI increases only if “the increase does not violate 196.212 or 196.219(2r).”

We are concerned that a blanket “exception” in 196.212(4) referencing 196.191(2) or (most especially) (3) could create confusion concerning whether the provisions in those sections (allowing any switched access rate increase subject to PSC review under 196.03(6)) would apply and a carrier could argue that it could increase its intrastate switched access rates and avoid the reductions and requirements provided s. 196.212(2) and (3).

Thus, although we don’t see this coming up in practice, for consistency, we suggest the following edits:

(1) Page 17 line 12 insert the following before “Notwithstanding anything in this chapter”:

“Except as provided in this section and s. 196.212 ...”

(2) Page 35 line 19 replace sub (a) with the following:

“(a) Notwithstanding any other provision of this chapter, except to enforce this section, s. 196.191(2) (d) (2) a., 196.191(3)(b) only to allow intrastate switched access rates to mirror interstate switched access rates, or 196.219(2r), the commission may not investigate, review, or set the intrastate switched access rates of large nonincumbents, new nonincumbents, and large incumbent local exchange carriers.”

2. I revised s. 196.212 (2) (b) 1. to refer to an exception under s. 196.191 (3) (b), as well as under s. 196.191 (2) (d) 2. a.

Response: See explanation above, that is not entirely consistent with the intent since, as explained above. We suggest the provision should read as follows:

“(b) Large nonincumbents. 1. Except for an increase in intrastate switched access rates under 196.191(2)(d)(2) a. or 196.191(3)(b) to mirror its interstate switched access rates, a large incumbent may not charge intrastate switched access rates higher than intrastate switched access rates it charged on January 1, 2011.”

3. Section 196.191 (1) prohibits a telecommunications utility (TU) or alternative telecommunications utility (ATU) from withdrawing a tariff for intrastate switched access rates, and s. 196.191 (2) (d) 2. allows for certain changes in such tariffs. However, s. 196.191 (3) (b) also allows a TU or an ATU to file certain new tariffs for intrastate switched access rates. How does such a new tariff interact with a prior tariff,

which the TU or ATU is prohibited from withdrawing? I think you need language to address this situation, for example, creating an exception to the prohibition on withdrawing a tariff.

Response: We disagree. All TUs – and some ATUs -- have switched access tariffs at present and the draft intentionally would require those TUs and ATUs to keep those tariffs in place. However, some ATUs presently do not have switched access tariffs and the intent of 196.191(3)(b) is to allow those ATUs time to file new switched access tariffs, subject to the requirements therein concerning new switched access tariffs that result in rate increases. The intent is to avoid the situation of a carrier withdrawing a previously filed switched access tariff and replacing it with a new one. No revisions are necessary.

4. Section 196.212 (5) allows the PSC to enforce payment of intrastate switched access rates set forth in a tariff required under s. 196.191 (1). Shouldn't the PSC also be allowed to enforce payment of rates under a new tariff filed under s. 196.191 (2) (b) for increases allowed under s. 196.191 (3) (b)? Also, is it clear that the PSC can enforce payment of increases if a tariff required under s. 196.191 (1) is revised under s. 196.191 (2) (d) 2.?

Response: We believe the intent is clear (see discussion above regarding new switched access tariffs in particular), and 196.191(1) requires a carrier to have a tariff at all times, whether it is an existing, revised or new tariff, and enforcement applies equally to each. No revisions necessary.

5. Section 196.191 (2) (d) 1. refers to terms and conditions, along with rates, tolls, and charges, but s. 196.191 (2) (a) and (b), (4), and (6) refers to rates, tolls, and charges, without also referring to terms and conditions. Is that okay?

Response: (4) and (6) do reference terms and conditions. Add the reference to terms and conditions to 196.191(2)(a) and (b).

6. In order to consistently refer to an ATU certified under s. 196.203 pursuant to s. 196.50 (2) (j) 1. a., I made changes to the following: ss. 196.01 (1d) (g), 196.203 (1g) (b) and (2) (a) (as renumbered), 196.212 (1) (d), and 196.50 (2) (j) 1. a.

Response: That is okay.

7. In s. 196.203 (3) (as renumbered), which allows the PSC to impose a requirement on an ATU if in the public interest, you deleted the sentence that says the PSC may consider certain specified factors. As I read the resulting language, the PSC can still consider those factors, as the only factor remaining is the public interest, which the PSC can broadly interpret to include the eliminated factors. Is that your intent, or do you want instead to prohibit the PSC from considering the eliminated factors?

Response: The intent is to provide the commission discretion under a public interest standard when deciding whether to apply 196.203(4m)(b) or (c). No revisions necessary.

~~8~~ I revised the text that recreates s. 196.195 to refer to a TU, rather than a telecommunications provider because, under current law, s. 196.195 applies to TUs, not telecommunications providers.

Response: Ok.

Other Changes

Amend 196.81(3) as follows:

~~(3)~~ This section does not apply to a service discontinuance by a ~~telecommunications utility telecommunications provider.~~

The intent here is to put ATUs on parity with TUs.

~~P. 34~~ line 16 change "REDUCTIONS" TO "REQUIREMENTS" since not all carriers affected would have to reduce (since some already mirror interstate rates).

~~P. 47~~ line 14 there is a reference to 196.195(2) – you should ensure that this reference is to the prior statute.

Notes on summary:

~~Page 2~~ item (3) at top should say: "(3) eliminates mandatory tariff requirements except for intrastate switched access services."

~~Page 3~~, there is a reference in item (15) to "PSC hearings on consumer complaints." Suggest changing to reference "wholesale complaints" and strike "consumer". Not sure what consumer complaint authority you are referring to here. *196.26 - which is amended to not apply to tel com, except for intrastate*

~~Page 4~~ (also on page 5) there is a statement that the recertifications terminate "all regulatory requirements related to the prior certification that were previously imposed on the " ATU or TU by the PSC. Shouldn't this say "all regulatory requirements inconsistent with the bill's provisions" or something like that? There are two other places on page 5 that have similar language.

~~Finally~~, there is a statement at the bottom of page 7 that provides: "The bill also allows a TU or an ATU to file a new tariff for intrastate switched access rates that are higher than the rates the TU or ATU charged on January 1, 2011." Based on the discussion above in the responses (which highlight the fact that this statement is not entirely true), we'd recommend deleting this sentence.

~~Page 4~~ insert "certain" before "exemption from interconnection requirements", since not all requirements are exempted.

Kunkel, Mark

From: Vick, Jason
Sent: Tuesday, April 19, 2011 11:27 AM
To: Kunkel, Mark
Subject: RE: Responses
Attachments: 20110418163708479.pdf

Mark, please include this leg intent letter with the responses to finish the draft.

Thank you,

Jason Vick

Office of Rep. Mark Honadel
21st Assembly District
608-266-0611

From: CHORZEMPA, DAVID J (Legal) [mailto:dc1928@att.com]
Sent: Tuesday, April 19, 2011 11:25 AM
To: Vick, Jason
Cc: Kunkel, Mark
Subject: Responses

Attached are responses to the drafter's questions, I believe Jason indicated there is a legislative intent letter from the representative that he will forward as well.

DJC

MARK R. HONADEL
STATE REPRESENTATIVE • 21ST ASSEMBLY DISTRICT

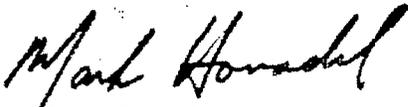
April 18, 2011

To: Mark Kunkel, Legislative Reference Bureau

All further drafting of LRB 1625 should follow these instructions:

It is the intent of the Legislature to give small telecommunications utilities greater flexibility and to reduce regulatory burdens, costs, and delays by permitting those companies to establish their rates for service, depreciation rates, profit sharing and classifications without commission review, investigation and approval.

Sincerely,



Mark Honadel
State Representative
21st Assembly District

Working For You!

OFFICE: P.O. Box 8952, STATE CAPITOL • MADISON, WI 53708-8952
(608) 266-0610 • TOLL-FREE: (888) 534-0021 • FAX: (608) 282-3621 • REP.HONADEL@LEGIS.WI.GOV
DISTRICT: 1219 MANITOBA AVE. • SOUTH MILWAUKEE, WI 53172 • (414) 764-9921

Kunkel, Mark

From: CHORZEMPA, DAVID J (Legal) [dc1928@att.com]
Sent: Tuesday, April 19, 2011 12:02 PM
To: CHORZEMPA, DAVID J (Legal); Vick, Jason
Cc: Kunkel, Mark
Subject: RE: Responses

One last item on the summary:

The list of requirements from which TUs are exempt (contained on page 4 of the summary) should include: "affiliated interest requirements."

The list of requirements that have been repealed (contained on page 4 of the summary) should include: "cross- subsidization requirements for non-local government telecommunications utilities."

Page 6 under "other requirements" the summary states in two locations that the commission is "generally" prohibited from investigating, reviewing or setting rates. The word "generally" should be deleted, because the exceptions are addressed later in the paragraph.

DJC

From: CHORZEMPA, DAVID J (Legal)
Sent: Tuesday, April 19, 2011 11:25 AM
To: 'Vick, Jason'
Cc: 'Kunkel, Mark'
Subject: Responses

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