



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## ☞ Appendix A ... segment VII

### LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB-1625 (For: Rep. Honadel)

has been transferred to the drafting file for

**2011 LRB-1901** (For: Rep. Honadel)

☞ Are These “Companion Bills” ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 04/12/2011 (Per: MDK)

☞ The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1625/PT  
MDK:wlj:md

O - NOTE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1

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1 AN ACT *to repeal* 196.09 (9), 196.19 (1m), 196.19 (5), 196.194 (title), 196.194 (1),  
2 196.196, 196.198 (2) (b), 196.20 (1m), 196.20 (2) (am), 196.20 (2r), 196.20 (3),  
3 196.20 (5), 196.20 (6), 196.203 (3) (b), 196.203 (3) (c), 196.203 (3) (d), 196.203 (3)  
4 (dm), 196.203 (3) (e), 196.203 (4), 196.204 (1), 196.204 (2), 196.204 (3), 196.204  
5 (4), 196.204 (5) (b), 196.204 (6), 196.205, 196.213, 196.215, 196.219 (2m),  
6 196.219 (3) (h), 196.26 (4), 196.49 (1) (ag), 196.49 (3) (d), 196.50 (1) (b) 1. and  
7 2., 196.50 (2) (g) 3., 196.50 (2) (h), 196.52 (5) (b), 196.60 (2), 196.77, 196.79 (2),  
8 196.805 and 201.15; *to renumber* 196.50 (1) (b) 3. and 196.52 (5) (a); *to*  
9 *renumber and amend* 196.04 (1) (a) 1., 196.194 (2), 196.198 (2) (a), 196.203  
10 (1), 196.203 (2), 196.203 (3) (a), 196.204 (5) (ag), 196.204 (5) (ar), 196.79 (1) and  
11 196.975 (1); *to amend* 93.01 (1m), 133.07 (2), 196.01 (9m), 196.02 (2), 196.04  
12 (1) (b) 1., 196.04 (2), 196.09 (1), 196.13 (2), 196.195 (1), 196.195 (2) (a) (intro.),  
13 196.195 (4) (a) 4., 196.195 (5), 196.195 (7), 196.195 (8), 196.195 (10), 196.195  
14 (12) (a), 196.195 (12) (b) 1. (intro.), 196.195 (12) (b) 2., 196.195 (12) (b) 3.,  
15 196.195 (12) (d) 4., 196.198 (3) (intro.), 196.198 (3) (a), 196.198 (3) (b) (intro.),

1 196.20 (1), 196.20 (2) (a) (intro.), 196.20 (2m), 196.203 (5), 196.218 (3) (a) 3m.,  
 2 196.218 (3) (f), 196.218 (5r) (a) 4., 196.219 (1) (b), 196.219 (2) (a), 196.26 (1) (a),  
 3 196.28 (4), 196.31 (1m), 196.37 (3), 196.37 (4), 196.49 (3) (b) (intro.), 196.50  
 4 (title), 196.50 (2) (a), 196.50 (2) (b), 196.50 (2) (e) 1., 196.50 (2) (f), 196.52 (3) (b)  
 5 1., 196.52 (3) (c) (intro.), 196.52 (6), 196.52 (9) (e), 196.60 (1) (a), 196.604 and  
 6 196.975 (2); **to repeal and recreate** 196.204 (title) and 196.218 (4); and **to**  
 7 **create** 182.017 (1g) (cq), 196.01 (1d) (g), 196.01 (2s), 196.01 (3a), 196.01 (3f),  
 8 196.01 (3s), 196.01 (8d), 196.01 (8e), 196.01 (12w), 196.016, 196.04 (1) (a) 3.,  
 9 196.191, 196.203 (1d), 196.203 (2) (b), 196.203 (2) (c), 196.203 (2) (d), 196.203  
 10 (4m), 196.206, 196.212, 196.218 (1) (a), 196.219 (2r), 196.50 (2) (i), 196.50 (2) (j),  
 11 196.50 (2) (k), 196.503 and 196.975 (1g) of the statutes; **relating to:** regulation  
 12 of telecommunications utilities and alternative telecommunications utilities;  
 13 telecommunications provider of last-resort obligations; telecommunications  
 14 *intrastate* switched access service rates; Internet protocol-enabled service; and use of  
 15 transmission equipment and property by video service providers.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

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

16 **SECTION 1.** 93.01 (1m) of the statutes is amended to read:  
 17 93.01 (1m) "Business" includes any business, except that of banks, savings  
 18 banks, credit unions, savings and loan associations, and insurance companies.

1 “Business” includes public utilities and telecommunications carriers to the extent  
2 that their activities, beyond registration, notice, and reporting activities, are not  
3 regulated by the public service commission and includes public utility and  
4 telecommunications carrier methods of competition or trade and advertising  
5 practices that are exempt from regulation by the public service commission under s.  
6 196.195, ~~196.196~~, 196.202, 196.203, 196.219, or 196.499 or by other action of the  
7 commission.

8 **SECTION 2.** 133.07 (2) of the statutes is amended to read:

9 133.07 (2) This chapter does not prohibit activities of any public utility, as  
10 defined in s. 196.01 (5), or telecommunications carrier, as defined in s. 196.01 (8m),  
11 which are required by ch. 196 or rules or orders under ch. 196, activities necessary  
12 to comply with that chapter or those rules or orders or activities that are actively  
13 supervised by the public service commission. This subsection does not apply to  
14 activities of a public utility or telecommunications carrier that are exempt from  
15 public service commission regulation under s. 196.195, ~~196.196~~, 196.202, 196.203,  
16 196.219 or 196.499 or by other action by the commission.

17 **SECTION 3.** 182.017 (1g) (cq) of the statutes is created to read:

18 182.017 (1g) (cq) “Telecommunications service” means the offering for sale of  
19 the conveyance of voice, data, or other information at any frequency over any part  
20 of the electromagnetic spectrum, including the sale of service for collection, storage,  
21 forwarding, switching, and delivery incidental to such communication and including  
22 the regulated sale of customer premises equipment.

23 **SECTION 4.** 196.01 (1d) (g) of the statutes is created to read:

24 196.01 (1d) (g) A telecommunications utility that provides notice to the  
25 commission under s. 196.50 (2) (j) 1. a.

1 SECTION 5. 196.01 (2s) of the statutes is created to read:

2 196.01 (2s) "Incumbent local exchange carrier" has the meaning given in 47  
3 USC 251 (h).

\*\*\*\*NOTE: Because "incumbent local exchange carrier" is used in more than one section, I created a definition that applies throughout ch. 196.

4 SECTION 6. 196.01 (3a) of the statutes is created to read:

5 196.01 (3a) "Interconnected voice over Internet protocol service" has the  
6 meaning given in 47 CFR 9.3.

7 SECTION 7. 196.01 (3f) of the statutes is created to read:

8 196.01 (3f) "Internet protocol-enabled service" means any service, capability,  
9 functionality, or application provided using Internet protocol, or any successor  
10 protocol, that enables an end user to send or receive a voice, data, or video  
11 communication in Internet protocol format or any successor format. "Internet  
12 protocol-enabled service" includes interconnected voice over Internet protocol  
13 service.

all other notes should be removed

14 SECTION 8. 196.01 (3s) of the statutes is created to read:

15 196.01 (3s) "Local exchange carrier" has the meaning given in 47 USC 153 (32).

\*\*\*\*NOTE: Because the term "local exchange carrier" is used in the definition of "switched access rates" I think the term should be defined. The definition also alerts readers to distinguish between local exchange carriers and incumbent local exchange carriers. Is that okay?

16 SECTION 9. 196.01 (8d) of the statutes is created to read:

17 196.01 (8d) "Switched access rates" means the rates, rate elements, and rate  
18 structure, including all applicable fixed and traffic sensitive charges, that a local  
19 exchange carrier charges for the provision of switched access services.

\*\*\*\*NOTE: I moved the definitions of "switched access rates" and "switched access services" from s. 196.212 to s. 196.01 so that they apply throughout the chapter.

20 SECTION 10. 196.01 (8e) of the statutes is created to read:

1           196.01 **(8e)** “Switched access services” means the offering of switched access  
2 to a local exchange network for the purpose of enabling a telecommunications  
3 provider to originate or terminate telecommunications service within the local  
4 exchange.

5           **SECTION 11.** 196.01 (9m) of the statutes is amended to read:

6           196.01 **(9m)** “Telecommunications service” means the offering for sale of the  
7 conveyance of voice, ~~data or other information~~ communication at any frequency over  
8 any part of the electromagnetic spectrum, including the sale of ~~service for collection,~~  
9 ~~storage, forwarding,~~ switching and delivery incidental to such communication ~~and~~  
10 ~~including the regulated sale of customer premises equipment.~~ “Telecommunications  
11 service” does not include cable service or broadcast service. “Telecommunications  
12 service” includes switched access service.

13           **SECTION 12.** 196.01 (12w) of the statutes is created to read:

14           196.01 **(12w)** (a) “Wholesale telecommunications service” means, except as  
15 provided in par. (b), a service that satisfies all of the following:

16           1. The service is provided by a telecommunications provider to another  
17 telecommunications provider other than an affiliated interest, as defined in s. 196.52  
18 (1).

19           2. The service is subject to regulation by the commission under this chapter.

20           3. The service is subsequently used in the provision of a telecommunications  
21 service to retail end users.

\*\*\*\*NOTE: Previous versions of the above referred to “end user customers.”  
However, for the sake of consistency with ss. 196.01 (3f) and 196.218 (3) (a) 3m, I changed  
the reference to “end users.”

22           (b) “Wholesale telecommunications service” does not include switched access  
23 service.

1           **SECTION 13.** 196.016 of the statutes is created to read:

2           **196.016 Relationship to certain federal telecommunications law.**

3           Except as provided in s. 196.50 (2) (j) 2. and 3., nothing in this chapter is intended  
4           to either reduce or expand the scope and application of the federal  
5           Telecommunications Act of 1996, P.L. 104-104, including the jurisdiction and  
6           authority granted to the commission thereunder, and the commission may take any  
7           action that the commission is authorized to take under that federal act.

8           **SECTION 14.** 196.02 (2) of the statutes is amended to read:

9           196.02 (2) DEFINITION; CLASSIFICATION. ~~In this subsection, “public utility” does~~  
10          ~~not include a telecommunications cooperative, an unincorporated~~  
11          ~~telecommunications cooperative association, or a small telecommunications utility~~  
12          ~~except as provided under s. 196.205 or 196.215 (2) and does not include an alternative~~  
13          ~~telecommunications utility.~~ The commission shall provide for a comprehensive  
14          classification of service for each public utility. The classification may take into  
15          account the quantity used, the time when used, the purpose for which used, and any  
16          other reasonable consideration. Each public utility shall conform its schedules of  
17          rates, tolls and charges to such classification.

18          **SECTION 15.** 196.04 (1) (a) 1. of the statutes is renumbered 196.04 (1) (a) 4. and  
19          amended to read:

20          196.04 (1) (a) 4. “Transmission equipment and property” means any conduit,  
21          subway, pole, tower, transmission wire, cable, or other equipment on, over, or under  
22          any right-of-way owned or controlled by a political subdivision, street, or highway.

23          **SECTION 16.** 196.04 (1) (a) 3. of the statutes is created to read:

24          196.04 (1) (a) 3. “Political subdivision” means any county, city, village, or town  
25          or public utility owned or operated by any county, city, village, or town.

1           **SECTION 17.** 196.04 (1) (b) 1. of the statutes is amended to read:

2           196.04 (1) (b) 1. Any person who owns transmission equipment and property  
3 shall permit, for reasonable compensation, the use of the transmission equipment  
4 and property, including an attachment to a pole, by any public utility, video service  
5 provider, or telecommunications provider if public convenience and necessity require  
6 such use and if the use will not result in irreparable injury to any owner or user of  
7 the transmission equipment and property or in any substantial detriment to the  
8 service to be rendered by the owner or user.

9           **SECTION 18.** 196.04 (2) of the statutes is amended to read:

10           196.04 (2) If there is a failure to agree upon the use of transmission equipment  
11 and property under sub. (1) or the conditions or compensation for the use, or if there  
12 is a failure to agree upon the physical connections or the terms and conditions upon  
13 which the physical connections shall be made, any public utility, ~~any~~ video service  
14 provider, telecommunications provider, or ~~any other~~ interested person ~~interested~~  
15 may apply to the commission. If, after investigation, the commission determines  
16 that public convenience and necessity require the use of the transmission equipment  
17 and property or the physical connections and that the use or physical connections  
18 will not result in irreparable injury to the owner or other users of the transmission  
19 equipment and property or of the facilities of the public utility, video service provider,  
20 or telecommunications provider or in any substantial detriment to the service to be  
21 rendered by the owner or the public utility, video service provider,  
22 telecommunications provider, or other users of the transmission equipment and  
23 property or facilities, the commission, by order, shall direct that the use of the  
24 transmission equipment and property be permitted and that the physical  
25 connections be made. The commission shall prescribe reasonable conditions and

1 compensation for the use of the transmission equipment and property and shall  
2 determine how and within what time the physical connections shall be made and by  
3 whom the expense of making and maintaining the physical connections shall be paid.  
4 An order under this subsection may be revised by the commission.

5 **SECTION 19.** 196.09 (1) of the statutes is amended to read:

6 196.09 (1) ~~In this section, “public utility” does not include a~~  
7 ~~telecommunications cooperative or an unincorporated telecommunications~~  
8 ~~cooperative association except as provided under s. 196.205. In subs. (2) to (7),~~  
9 ~~“public utility” does not include a telecommunications utility. Subsection (9) only~~  
10 ~~applies to a telecommunications utility.~~ Every public utility shall file with the  
11 commission, within such time as may be required by the commission, its estimate of  
12 the annual rate of depreciation required for each of its classes of fixed capital used  
13 for public utility purposes, and of the composite annual rate of depreciation required  
14 for such fixed capital as an aggregate, which shall constitute the public utility's  
15 estimates of the amount which should be returned to it out of its rates for service, to  
16 meet the depreciation of its property.

17 **SECTION 20.** 196.09 (9) of the statutes is repealed.

18 **SECTION 21.** 196.13 (2) of the statutes is amended to read:

19 196.13 (2) The commission shall publish in its reports the value of all the  
20 property actually used and useful for the convenience of the public of a public utility,  
21 ~~other than a telecommunications utility,~~ if the commission has held a hearing on the  
22 public utility's rates, charges, service or regulations or if the commission has  
23 otherwise determined the value of the public utility's property.

24 **SECTION 22.** 196.19 (1m) of the statutes is repealed.

25 **SECTION 23.** 196.19 (5) of the statutes is repealed.

1           **SECTION 24.** 196.191 of the statutes is created to read:

2           **196.191           Telecommunications utility and alternative**  
3 **telecommunications utility tariffs.** (1) Notwithstanding anything in this  
4 chapter to the contrary, any telecommunications utility or alternative  
5 telecommunications utility may do any of the following:

6           (a) Retain on file with the commission tariffs already on file with the  
7 commission as of the effective date of this paragraph .... [LRB inserts date], showing  
8 the rates, tolls, and charges that the telecommunications utility or alternative  
9 telecommunications utility has established as of the effective date of this paragraph  
10 .... [LRB inserts date], for some or all of the services performed by the  
11 telecommunications utility or alternative telecommunications utility within the  
12 state or for any service in connection therewith or performed by any  
13 telecommunications utility or alternative telecommunications utility controlled or  
14 operated by the telecommunications utility or alternative telecommunications  
15 utility.

16           (b) Withdraw or change the rates, terms, or conditions of a tariff on file with  
17 the commission, except that the telecommunications utility or alternative  
18 telecommunications utility may not increase its switched access rates if it chooses  
19 to withdraw its tariff for switched access services.

20           (c) File with the commission new tariffs showing the rates, tolls, and charges  
21 that the telecommunications utility or alternative telecommunications utility has  
22 established, as provided in the tariff filings, for some or all of the services performed  
23 by the telecommunications utility or alternative telecommunications utility within  
24 the state or for any service in connection therewith or performed by any  
25 telecommunications utility or alternative telecommunications utility controlled or

*intra state*  
*intra state*

1 operated by the telecommunications utility or alternative telecommunications  
2 utility. If a telecommunications utility or alternative telecommunications utility  
3 files a new tariff under this paragraph, all of the following apply:

4 1. The new tariff shall become effective on the date specified in the tariff, unless  
5 the commission suspends the operation of the new tariff upon serving a written  
6 notice of the suspension on the telecommunications utility or alternative  
7 telecommunications utility within 10 days after the date of filing. The notice shall  
8 include a statement of the reason upon which the commission believes the tariff may  
9 be modified under subd. 2.

10 2. The commission may modify, only to the extent permitted by ss. 196.203 and  
11 196.50 (2) (i) and (j), the new tariff after an opportunity for a hearing.

12 3. If the commission does not conduct a hearing under subd. 2., the commission  
13 shall issue its final order within 60 days after issuing the notice of suspension under  
14 subd. 1. If the commission conducts a hearing, the commission shall issue its final  
15 order within 120 days after issuing the notice of suspension under subd. 1. If a final  
16 order is not issued within the time limits specified in this subdivision, the new tariff  
17 becomes effective as filed.

18 (2) Nothing in this section shall give the commission jurisdiction over the rates  
19 or terms and conditions of any service that is not subject to a tariff under sub. (1).

20 (3) Every telecommunications utility or alternative telecommunications utility  
21 that files a tariff with the commission under sub. (1) shall include all terms and  
22 conditions that apply to the services specified in the tariff and the rates charged or  
23 to be charged.

\*\*\*NOTE: Previous versions of the above referred to a tariff that is filed with the  
commission "under this section." For the sake of consistency with s. 196.191 (2), I changed  
"under this section" to "under sub. (1)." See similar changes to s. 196.191 (7) and (8).

1 (4) A telecommunications utility or alternative telecommunications utility  
2 may withdraw a tariff for any service by providing notice to the commission.

3 (5) (a) Except as provided in par. (b), a proposed change in a tariff shall be  
4 effective at the time specified in the tariff as filed with the commission under sub.  
5 (1).

*\*\*\*NOTE: For the sake of consistency with s. 196.191 (2) and (3), I referred to a tariff as filed with the commission "under sub. (1)." The phrase "under sub. (1)" is not included in previous versions of the above*

6 (6) (b) No change in a tariff that constitutes an increase in switched access <sup>in interstate</sup> rates may be made unless the change is consistent with the public interest factors  
7 rates may be made unless the change is consistent with the public interest factors  
8 set forth in s. 196.03 (6) and does not violate s. 196.212 and the commission by order,  
9 after investigation and opportunity for a hearing, approves the change.

10 (6) Nothing in this chapter prohibits a tariff for a service that permits a  
11 telecommunications utility or alternative telecommunications utility to enter into an  
12 individual contract with an individual customer for that tariffed service that  
13 includes rates, terms, and conditions that are different from those in the tariff.

14 (7) Except as provided in sub. (6), no telecommunications utility or alternative  
15 telecommunications utility may charge, demand, collect, or receive more or less  
16 compensation for any service for which a tariff is filed under sub. (1) than is specified  
17 in the tariff, as may at the time be in force, or demand, collect, or receive any rate,  
18 toll, or charge for such service not specified in the tariff.

19 (8) A copy of the tariffs filed under sub. (1) shall be made available to consumers  
20 in a form and place readily accessible to the public.

21 SECTION 25. 196.194 (title) of the statutes is repealed.

22 SECTION 26. 196.194 (1) of the statutes is repealed.

*or retained on file ✓*

*or retained on file ✓*

1           **SECTION 27.** 196.194 (2) of the statutes is renumbered 196.194 and amended  
2 to read:

3           **196.194 Gas ~~utilities~~ utility individual contracts.** Nothing in ss. 196.03,  
4 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits the  
5 commission from approving the filing of a tariff which permits a gas utility to enter  
6 into an individual contract with an individual customer if the term of the contract  
7 is no more than 5 years, or a longer period approved by the commission, and if the  
8 commission determines that substitute gas services are available to customers or  
9 potential customers of the gas utility and the absence of such a tariff will cause the  
10 gas utility to be disadvantaged in competing for business. A tariff filed under this  
11 ~~subsection~~ section shall include the condition that any such contract shall be  
12 compensatory. The tariff shall include any other condition and procedure required  
13 by the commission in the public interest. Within 20 days after a contract authorized  
14 under this ~~subsection~~ section or an amendment to such a contract has been executed,  
15 the gas utility shall submit the contract to the commission. The commission shall  
16 give notice to any person, upon request, that a contract authorized under this  
17 ~~subsection~~ section has been received by the commission. The notice shall identify the  
18 gas utility that has entered into the contract. Within 6 months after receiving  
19 substantial evidence that a contract may be noncompensatory, or upon its own  
20 motion, the commission shall investigate and determine whether the contract is  
21 compensatory. If the commission determines that the contract is noncompensatory,  
22 the commission may make appropriate adjustments in the rates or tariffs of the gas  
23 utility that has entered into the contract, in addition to other remedies under this  
24 chapter. The dollar amount of the adjustment may not be less than the amount by  
25 which the contract was found to be noncompensatory.

1           **SECTION 28.** 196.195 (1) of the statutes is amended to read:

2           196.195 (1) REGULATION IMPOSED. Except as provided in this section and ss.  
3 196.202, 196.203, ~~196.215~~ and 196.219, and 196.50 (2) (i) and (j), a  
4 telecommunications utility is subject to every applicable provision of this chapter  
5 and ch. 201.

6           **SECTION 29.** 196.195 (2) (a) (intro.) of the statutes is amended to read:

7           196.195 (2) (a) (intro.) Except as provided under par. (b), in response to a  
8 petition from any interested person or upon its own motion, the commission may hold  
9 a hearing to determine whether effective competition exists in a market for a  
10 telecommunications service which competition justifies a lesser degree of regulation  
11 by suspending the application of one or more provisions of ~~law ch. 201~~ under sub. (5)  
12 and whether competition under a lesser degree of regulation in that market will  
13 serve the public interest. In making this determination, the commission shall  
14 consider factors including:

*NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law that may be suspended under s. 196.195 (5). However, it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15?*

15           **SECTION 30.** 196.195 (4) (a) 4. of the statutes is amended to read:

16           196.195 (4) (a) 4. The provisions of ~~law ch. 201~~ to be suspended, if any, under  
17 sub. (5).

*\*\*\*\*NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law that may be suspended under s. 196.195 (5). However, it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15?*

18           **SECTION 31.** 196.195 (5) of the statutes is amended to read:

19           196.195 (5) COMMISSION ACTION. If after the proceedings under subs. (2), (3) and  
20 (4) the commission has determined that effective competition exists in the market

1 for the telecommunications service which justifies a lesser degree of regulation and  
2 that lesser regulation in that market will serve the public interest, the commission  
3 may, by order, suspend any ~~of the following~~ provisions of law ch. 201, except as  
4 provided under subs. (7) and (8): ~~ch. 201 and s. 196.02 (2); s. 196.05; s. 196.06; s.~~  
5 ~~196.07; s. 196.09; s. 196.10; s. 196.12; s. 196.13 (2); s. 196.19; tariffing requirements~~  
6 ~~under s. 196.194; s. 196.196 (1) or (5); s. 196.20; s. 196.21; s. 196.22; s. 196.26; s.~~  
7 ~~196.28; s. 196.37; s. 196.49; s. 196.52; s. 196.58; s. 196.60; s. 196.604; s. 196.77; s.~~  
8 ~~196.78; s. 196.79; and s. 196.805.~~

\*\*\*\*NOTE: It appears that the provisions of s. 201.15 are the only provisions of ch.  
201 that could apply to telecommunications utilities. Therefore, shouldn't the reference  
to ch. 201 be changed to s. 201.15?

9 **SECTION 32.** 196.195 (7) of the statutes is amended to read:

10 196.195 (7) CONDITIONS ON DEREGULATION. If the commission suspends the  
11 application of any provision of law ch. 201 to a telecommunications utility under sub.  
12 (5), it may require the telecommunications utility to comply with any condition  
13 reasonably necessary to protect the public interest because of the suspended  
14 application.

\*\*\*\*NOTE: Although not mentioned in the instructions, I made the above change  
because ch. 201 provisions are the only provisions of law that may be suspended under  
s. 196.195 (5). However, it appears that the provisions of s. 201.15 are the only provisions  
of ch. 201 that could apply to telecommunications utilities. Therefore shouldn't the  
reference to ch. 201 be changed to s. 201.15?

15 **SECTION 33.** 196.195 (8) of the statutes is amended to read:

16 196.195 (8) RECORDS FOR COMMISSION REVIEW. The commission may suspend the  
17 application of a provision of law ch. 201 relating to an accounting or reporting  
18 requirement under sub. (5) only if, with consideration given to any conditions  
19 imposed under sub. (7), the commission determines that it will have enough

1 information to determine whether the suspension of the application of any provision  
2 of law ch. 201 under sub. (5) is justified at any time after the suspension is ordered.

~~NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law that may be suspended under s. 196.195 (5). However, it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15? Also, if the provisions of s. 201.15 do not relate to accounting or reporting, the above can be repealed. Please advise.~~

3 **SECTION 34.** 196.195 (10) of the statutes is amended to read:

4 196.195 (10) REVOCATION OF DEREGULATION. If necessary to protect the public  
5 interest, the commission, at any time by order, may revoke its order to suspend the  
6 applicability of any provision of law ch. 201 suspended under sub. (5).

~~NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law that may be suspended under s. 196.195 (5). However, it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15?~~

7 **SECTION 35.** 196.195 (12) (a) of the statutes is amended to read:

8 196.195 (12) (a) To provide incentives for telecommunications utilities to  
9 achieve any of the goals listed in par. (b) 1. a., the commission may suspend any of  
10 the provisions listed in sub. (5) except ss. ~~196.19, 196.20 (1m), 196.22, 196.26, 196.37,~~  
11 ~~196.60 and 196.604~~ of ch. 201 or may approve a regulatory method alternative to  
12 traditional rate-of-return regulation that does not require suspension of any  
13 provisions listed in sub. (5).

14 **SECTION 36.** 196.195 (12) (b) 1. (intro.) of the statutes is amended to read:

15 196.195 (12) (b) 1. (intro.) Except as provided in subd. 2., after opportunity for  
16 hearing, the commission shall determine whether it is in the public interest to  
17 suspend any of the provisions ~~identified in par. (a) of ch. 201~~ or to approve an  
18 alternative regulatory method. In making this determination, the commission shall  
19 identify all of the following:

\*\*\*\*NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law identified in s. 196.195 (12) (a). However, it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15?

1           **SECTION 37.** 196.195 (12) (b) 2. of the statutes is amended to read:

2           196.195 (12) (b) 2. If the commission suspends the application of any provision  
3 ~~identified in par. (a) of ch. 201~~ or approves an alternative regulatory method for any  
4 telecommunications utility, the commission may waive the hearing opportunity  
5 required under subd. 1., with notice to all known interested parties, for any similarly  
6 situated telecommunications utility, if the waiver is in the public interest.

\*\*\*\*NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law identified in s. 196.195 (12) (a). However, it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15?

7           **SECTION 38.** 196.195 (12) (b) 3. of the statutes is amended to read:

8           196.195 (12) (b) 3. The commission shall regulate telecommunications utilities  
9 with the goal of developing alternative forms of regulation. The commission shall, by  
10 order, develop and approve an incentive regulatory plan for each  
11 telecommunications utility to implement this subdivision. The commission may not  
12 increase regulation of a small telecommunications utility in implementing this  
13 subdivision. ~~For telecommunications utilities with more than 150,000 access lines~~  
14 ~~in use in this state, s. 196.196 (2) applies to access service rates in any regulatory plan~~  
15 ~~approved under this subdivision.~~

16           **SECTION 39.** 196.195 (12) (d) 4. of the statutes is amended to read:

17           196.195 (12) (d) 4. A request for authorization under subd. 1. constitutes a  
18 request for a hearing on partial deregulation under sub. (2). An order granting such  
19 authorization expires on the first day of the 9th month following its issuance or upon  
20 the date of the commission order granting or denying suspension of any provision of

1 law ch. 201 under sub. (5), whichever is earlier, unless extended by the commission  
2 for good cause pending issuance of a final order.

\*\*\*NOTE: Although not mentioned in the instructions, I made the above change because ch. 201 provisions are the only provisions of law identified in s. 196.185 (5). However it appears that the provisions of s. 201.15 are the only provisions of ch. 201 that could apply to telecommunications utilities. Therefore, shouldn't the reference to ch. 201 be changed to s. 201.15?

3 **SECTION 40.** 196.196 of the statutes is repealed.

4 **SECTION 41.** 196.198 (2) (a) of the statutes is renumbered 196.198 (2) and  
5 amended to read:

6 196.198 (2) Except as provided in sub. (3), a telecommunications utility that  
7 has more than 150,000 access lines in use in this state or a telecommunications  
8 provider that has more than 150,000 access lines in use in this state may not charge  
9 a residential customer for basic local exchange service based on the duration of a call  
10 or on the time of day that a call is made. This ~~paragraph~~ subsection does not apply  
11 to an extended community telephone service.

12 **SECTION 42.** 196.198 (2) (b) of the statutes is repealed.

13 **SECTION 43.** 196.198 (3) (intro.) of the statutes is amended to read:

14 196.198 (3) (intro.) The commission may suspend the application of sub. (2) ~~(a)~~  
15 in a particular geographical area for a telecommunications utility or a  
16 telecommunications provider if, after a contested case hearing, the commission  
17 determines that all of the following apply:

18 **SECTION 44.** 196.198 (3) (a) of the statutes is amended to read:

19 196.198 (3) (a) Failure to suspend the application of sub. (2) ~~(a)~~ makes  
20 competition in that geographical area impractical.

21 **SECTION 45.** 196.198 (3) (b) (intro.) of the statutes is amended to read:

1           196.198 (3) (b) (intro.) Suspending the application of sub. (2) (a) is beneficial  
2 to all of the following groups:

3           **SECTION 46.** 196.20 (1) of the statutes is amended to read:

4           196.20 (1) The rate schedules of any public utility shall include all rules  
5 applicable to the rendition or discontinuance of the service to which the rates  
6 specified in the schedules are applicable. No change may be made by any public  
7 utility in its schedules except by filing the change as proposed with the commission.  
8 ~~Except for a telecommunications utility, no~~ No change in any public utility rule which  
9 purports to curtail the obligation or undertaking of service of the public utility shall  
10 be effective without the written approval of the commission after hearing, except  
11 that the commission, by emergency order, may make the rule, as filed, effective from  
12 the date of the order, pending final approval of the rule after hearing.

13           **SECTION 47.** 196.20 (1m) of the statutes is repealed.

14           **SECTION 48.** 196.20 (2) (a) (intro.) of the statutes is amended to read:

15           196.20 (2) (a) (intro.) ~~Except for a telecommunications utility, a~~ A proposed  
16 change which constitutes a decrease in rates shall be effective at the time specified  
17 in the change as filed but not earlier than 10 days after the date of filing the change  
18 with the commission, unless any of the following occurs:

19           **SECTION 49.** 196.20 (2) (am) of the statutes is repealed.

20           **SECTION 50.** 196.20 (2m) of the statutes is amended to read:

21           196.20 (2m) Except as provided under sub. (5) and ss. s. 196.193, ~~196.195 (12)~~  
22 ~~and 196.196~~, no change in schedules which constitutes an increase in rates to  
23 consumers may be made except by order of the commission, after an investigation  
24 and opportunity for hearing. ~~The commission may waive a hearing under this~~  
25 ~~subsection for a proposed change in a telecommunications utility schedule. By rule~~

1 ~~or order, the commission shall specify the notice and procedural requirements~~  
2 ~~applicable to a telecommunications utility proposal for which a hearing is waived.~~

3 SECTION 51. 196.20 (2r) of the statutes is repealed.

4 SECTION 52. 196.20 (3) of the statutes is repealed.

5 SECTION 53. 196.20 (5) of the statutes is repealed.

6 SECTION 54. 196.20 (6) of the statutes is repealed.

7 SECTION 55. 196.203 (1) of the statutes is renumbered 196.203 (1g) and  
8 amended to read:

9 196.203 (1g) Alternative telecommunications utilities are exempt from all  
10 provisions of ch. 201 and this chapter, except as provided in this section, and except  
11 that an alternative telecommunications utility is subject to ~~s. ss.~~ 196.025 (6),  
12 196.191, 196.206, and 196.212, and except that an alternative telecommunications  
13 utility that is a local government telecommunications utility, ~~as defined in s. 196.204~~  
14 ~~(5) (ag) 1.~~, is subject to s. 196.204 (5).

\*\*\*\*NOTE: The instructions provide that an alternative telecommunications utility  
may elect to be subject to s. 196.191. However, s. 196.191 allows, but does not require,  
an alternative telecommunications utility to do certain things. If an alternative  
telecommunications utility wants to do those things, it can rely on s. 196.191 to do them  
and it does not have to elect to subject itself to s. 196.191. As a result, I don't think the  
election option has any legal significance and is not necessary. See also the NOTE  
following s. 196.203 (4m) (d).

15 SECTION 56. 196.203 (1d) of the statutes is created to read:

16 196.203 (1d) In this section, "local government telecommunications utility"  
17 has the meaning given in s. 196.204 (1m) (a).

18 SECTION 57. 196.203 (2) of the statutes is renumbered 196.203 (2) (a) and  
19 amended to read:

20 196.203 (2) (a) No person may commence providing service as an alternative  
21 telecommunications utility unless the person petitions for and the commission issues

1 a ~~determination~~ certification that the person is an alternative telecommunications  
2 utility or unless the person is a telecommunications utility for which the commission  
3 issues an order under s. 196.50 (2) (j) 1. a.

4 **(6)** The commission shall maintain information on authorized certified  
5 alternative telecommunications utilities and on applicants for alternative  
6 telecommunications utility status certification and make that information available  
7 to any person, upon request.

8 **SECTION 58.** 196.203 (2) (b) of the statutes is created to read:

9 196.203 **(2)** (b) Except for an alternative telecommunications utility that is a  
10 local government telecommunications utility, certification as an alternative  
11 telecommunications utility shall be on a statewide basis and any certification issued  
12 by the commission before the effective date of this paragraph ... [LRB inserts date],  
13 to an alternative telecommunications utility that is not a local government  
14 telecommunications utility is considered amended to be a statewide certification.

15 **SECTION 59.** 196.203 (2) (c) of the statutes is created to read:

16 196.203 **(2)** (c) An alternative telecommunications utility may provide notice  
17 to the commission to maintain certification as an alternative telecommunications  
18 utility but to recertify the alternative telecommunications utility and impose on the  
19 alternative telecommunications utility only those provisions of this chapter specified  
20 in this paragraph. No later than 30 days after receiving notice under this paragraph,  
21 the commission shall issue an order granting recertification and imposing on the  
22 alternative telecommunications utility those provisions of this chapter specified in  
23 sub. (4m) (a) that are imposed on all alternative telecommunications utilities under  
24 sub. (3). An alternative telecommunications utility for which an order of  
25 recertification is issued is subject to sub. (1g). The granting of the recertification

1 shall operate to terminate the alternative telecommunications utility's prior  
2 certification, and all regulatory requirements related to the prior certification,  
3 including all such requirements imposed by the certification and all requirements  
4 imposed by the commission, whether by statute or commission rule or order, on the  
5 alternative telecommunications utility are terminated on the effective date of the  
6 order.

7 **SECTION 60.** 196.203 (2) (d) of the statutes is created to read:

8 196.203 (2) (d) The commission may deny a petition for certification as an  
9 alternative telecommunications utility described in s. 196.01 (1d) (f) if the  
10 commission finds that the petitioner does not have the financial, managerial, or  
11 technical capabilities to provide its proposed services or to comply with conditions  
12 that the commission is authorized to impose under sub. (3).

13 **SECTION 61.** 196.203 (3) (a) of the statutes is renumbered 196.203 (3) and  
14 amended to read:

15 196.203 (3) In response to a petition from any interested person, or upon its  
16 own motion, the commission shall determine whether the public interest requires  
17 that ~~any a~~ provision of ~~ch. 201~~ or this chapter specified in sub. (4m) be imposed on  
18 a person providing or proposing to provide service as an alternative  
19 telecommunications utility ~~in a relevant market~~. In making this determination, the  
20 commission may consider factors including ~~the quality of service, customer~~  
21 ~~complaints, concerns about the effect on customers of local exchange~~  
22 ~~telecommunications utilities~~ and the extent to which similar services are available  
23 from alternative sources. If the commission imposes a provision of this chapter  
24 specified in sub. (4m) (a) on an alternative telecommunications utility under this

1 subsection, the commission shall impose the same provision at the same level of  
2 regulation on all other alternative telecommunications utilities.

3 SECTION 62. 196.203 (3) (b) of the statutes is repealed.

4 SECTION 63. 196.203 (3) (c) of the statutes is repealed.

5 SECTION 64. 196.203 (3) (d) of the statutes is repealed.

6 SECTION 65. 196.203 (3) (dm) of the statutes is repealed.

7 SECTION 66. 196.203 (3) (e) of the statutes is repealed.

8 SECTION 67. 196.203 (4) of the statutes is repealed.

9 SECTION 68. 196.203 (4m) of the statutes is created to read:

10 196.203 (4m) (a) The commission may impose s. 196.01, 196.02 (1), (4), or (5),  
11 196.04, 196.135, 196.14, 196.197, 196.199, 196.207, 196.208, 196.209, 196.218,  
12 196.219 (1), (2) (b), (c), or (d), (2r), (3) (a), (d), (j), (m), (n), or (o), 196.25, 196.26, 196.39,  
13 196.395, 196.40, 196.41, 196.43, 196.44, 196.65, 196.66, 196.81, 196.85, 196.858, or  
14 196.859 on an alternative telecommunications utility.

15 (b) In addition to the requirements under s. 196.212, the commission may, with  
16 respect only to switched access services, impose s. 196.03 (1) or (6) or 196.37 on an  
17 alternative telecommunications utility.

18 (c) The commission may, with respect only to wholesale telecommunications  
19 service, impose s. 196.03 (1) or (6), 196.219 (4), 196.28, or 196.37 on an alternative  
20 telecommunications utility certified under sub. (2) (a) or (c).

21 (d) An alternative telecommunications utility certified pursuant to s. 196.50 (2)  
22 (j) 1. a. shall be subject, with respect only to wholesale telecommunications service,  
23 to all provisions in pars. (a) and (c).

\*\*\*\*NOTE: The instructions include the following par. (e): "An alternative telecommunications utility certified pursuant to s. 196.50 (2) (j) 1. a. shall be subject, with respect only to its switched access services, to s. 196.191. For its services other than

switched access services, such an alternative telecommunications utility may elect to be subject to s. 196.191." I did not include par. (e) because I'm not sure what it does. Section 196.191 provides that, notwithstanding anything in ch. 196 to the contrary, an alternative telecommunications utility may (i.e., is allowed but not required to) retain, withdraw, or change tariffs on file with the PSC or file new tariffs. Does the first sentence in par. (e) require an alternative telecommunications utility certified under s. 196.50 (2) (b) 1. A. to take an action specified in s. 196.191 for its switched access rates? As for the second sentence's reference to an election, see the NOTE following the treatment of s. 196.203 (1g), as renumbered.

1           **SECTION 69.** 196.203 (5) of the statutes is amended to read:

2           196.203 (5) The commission may establish a reasonable fee schedule and may  
3 assess an alternative telecommunications utility to cover the cost of making a  
4 certification or other determination under this section.

5           **SECTION 70.** 196.204 (title) of the statutes is repealed and recreated to read:

6           **196.204 (title) Local government telecommunications utilities.**

7           **SECTION 71.** 196.204 (1) of the statutes is repealed.

8           **SECTION 72.** 196.204 (2) of the statutes is repealed.

9           **SECTION 73.** 196.204 (3) of the statutes is repealed.

10          **SECTION 74.** 196.204 (4) of the statutes is repealed.

11          **SECTION 75.** 196.204 (5) (ag) of the statutes is renumbered 196.204 (1m), and  
12 196.204 (1m) (intro.), as renumbered, is amended to read:

13          196.204 (1m) (intro.) In this ~~subsection~~ section:

14          **SECTION 76.** 196.204 (5) (ar) of the statutes is renumbered 196.204 (2m), and  
15 196.204 (2m) (a), (b) (intro.) and (c) (intro.), as renumbered, are amended to read:

16          196.204 (2m) (a) ~~In addition to the other requirements of this section, each~~  
17 Each telecommunications service, relevant group of services, and basic network  
18 function offered or used by a local government telecommunications utility shall be  
19 priced to exceed its total service long-run incremental cost. ~~The commission may~~  
20 ~~waive the applicability of this subdivision to a nongovernmental~~

1 ~~telecommunications utility's basic local exchange service if the commission~~  
2 ~~determines that a waiver is consistent with the factors under s. 196.03 (6).~~

3 (b) (intro.) For purposes of ~~subd. 1. par. (a)~~, the total service long-run  
4 incremental cost of a local government telecommunications utility shall take into  
5 account, by imputation or allocation, equivalent charges for all taxes, pole rentals,  
6 rights-of-way, licenses, and similar costs that are incurred by nongovernmental  
7 telecommunications utilities. This ~~subdivision~~ paragraph does not apply to a local  
8 government telecommunications utility that is subject to the exemption under s.  
9 66.0422 (3n). This ~~subdivision~~ paragraph also does not apply to a  
10 telecommunications service, relevant group of services, or basic network function if  
11 all of the following conditions apply:

12 (c) (intro.) ~~Subdivision 2. Paragraph (b)~~ does not apply to a telecommunications  
13 service, relevant group of services, or basic network function, that is used to provide  
14 broadband service and that is offered by a municipal telecommunications utility, if  
15 all of the following apply:

16 **SECTION 77.** 196.204 (5) (b) of the statutes is repealed.

17 **SECTION 78.** 196.204 (6) of the statutes is repealed.

18 **SECTION 79.** 196.205 of the statutes is repealed.

19 **SECTION 80.** 196.206 of the statutes is created to read:

20 **196.206 Internet protocol-enabled service. (1) EXEMPTIONS.** (a) Internet  
21 protocol-enabled service is not subject to ch. 201 or this chapter, except as provided  
22 in this section, and except that interconnected voice over Internet protocol service is  
23 subject to ss. 196.025 (6), 196.218 (3), and 196.859. Nothing in this section shall be  
24 construed to require or prohibit the payment of switched access charges or other  
25 intercarrier compensation.

\*\*\*\*NOTE: The instructions would remove the phrase, "except as provided in this section" but I retained the phrase because I think it is logically necessary.

\*\*\*\*NOTE: What is "intercarrier compensation"? If the meaning is subject to debate, you may want to define the term or otherwise elaborate on its meaning.

1 (b) Except as provided in this section, and notwithstanding any other provision  
2 of law, the commission may not enact, adopt, or enforce, either directly or indirectly,  
3 any order, rule, standard, or other provision having the force or effect of law that  
4 regulates, or has the effect of regulating, the entry of, or rates, terms or conditions  
5 for, Internet protocol-enabled service.

\*\*\*\*NOTE: I removed the reference to law, as the PSC does not have the authority to enact a law. Likewise, the PSC does not adopt ordinances, so I deleted the reference to ordinances. Also, in Wisconsin, agencies adopt rules rather than regulations, so I deleted the reference to regulation.

6 (3) UNIVERSAL SERVICE FUND. An entity that provides interconnected voice over  
7 Internet protocol service in this state and that contributes to the universal service  
8 fund based on its revenues from providing such service shall calculate such revenues  
9 using direct assignment, a provider-specific traffic study, the inverse of the  
10 interstate jurisdictional allocation established by the federal communications  
11 commission for the purpose of federal universal service assessments, or any other  
12 reasonable assignment. Direct assignment or traffic studies shall be based on the  
13 primary physical service address identified by the customer.

14 SECTION 81. 196.212 of the statutes is created to read:

15 196.212 Switched access rates. (1) DEFINITIONS. In this section:

16 (a) "Affiliate" means any person, corporation, company, cooperative,  
17 unincorporated cooperative association, partnership, association, or other entity  
18 that is controlled by, or is under common control with, a telecommunications provider  
19 or telecommunications utility.

1 (b) "Large incumbent local exchange carrier" means an incumbent local  
2 exchange carrier that, with any affiliates that are incumbent local exchange carriers  
3 operating in the state, in total had 150,000 or more access lines in use in this state  
4 as of January 1, 2010.

\*\*\*\*NOTE: I created the terms "large incumbent local exchange carrier," "small  
incumbent local exchange carrier," and "nonincumbent" because I think the terms aid the  
reader in understanding the requirements of this section.

5 (c) "Nonincumbent" means a telecommunications provider that is not an  
6 incumbent local exchange carrier.

7 (d) "Small incumbent local exchange carrier" means an incumbent local  
8 exchange carrier that, with any affiliates that are incumbent local exchange carriers  
9 operating in the state, in total had fewer than 150,000 access lines in use in this state  
10 as of January 1, 2010.

11 (2) REDUCTIONS FOR NONINCUMBENTS. A nonincumbent shall reduce its  
12 intrastate switched access rates to no higher than the nonincumbent's rates for  
13 interstate switched access services as follows:

14 (a) Beginning on the effective date of this paragraph .... [LRB inserts date], the  
15 nonincumbent may not increase its intrastate switched access rates or charge  
16 intrastate switched access rates higher than the amount the nonincumbent charged  
17 for intrastate switched access services on January 1, 2011.

18 (b) No later than one year after the effective date of this paragraph .... [LRB  
19 inserts date], the nonincumbent shall reduce its intrastate switched access rates by  
20 an amount equal to 50 percent of the difference between its intrastate switched  
21 access rates in effect prior to the reduction and its interstate switched access rates  
22 in effect prior to the reduction.

1 (c) No later than 2 years after the effective date of this paragraph .... [LRB  
2 inserts date], the nonincumbent shall further reduce its intrastate switched access  
3 rates by an amount equal to 50 percent of the difference between its intrastate  
4 switched access rates in effect prior to the reduction and its interstate switched  
5 access rates in effect prior to the reduction.

6 (d) No later than 3 years after the effective date of this paragraph .... [LRB  
7 inserts date], the nonincumbent shall reduce its intrastate switched access rates to  
8 mirror its interstate switched access rates in effect prior to the reduction and,  
9 beginning no later than that date, may not charge intrastate switched access rates  
10 that are higher than its interstate switched access rates.

11 **(3) REDUCTIONS FOR LARGE INCUMBENT LOCAL EXCHANGE CARRIERS.** A large  
12 incumbent local exchange carrier shall reduce its intrastate switched access rates to  
13 no higher than the large incumbent local exchange carrier's rates for interstate  
14 switched access services as follows:

15 (a) Beginning on the effective date of this paragraph .... [LRB inserts date], the  
16 large incumbent local exchange carrier may not increase its intrastate switched  
17 access rates or charge intrastate switched access rates higher than the amount it  
18 charged for intrastate switched access services on January 1, 2011.

19 (b) No later than one year after the effective date of this paragraph .... [LRB  
20 inserts date], the large incumbent local exchange carrier shall reduce its intrastate  
21 switched access rates by an amount equal to 25 percent of the difference between its  
22 intrastate switched access rates in effect prior to the reduction and its interstate  
23 switched access rates in effect prior to the reduction.

24 (c) No later than 2 years after the effective date of this paragraph .... [LRB  
25 inserts date], the large incumbent local exchange carrier shall further reduce its

1 intrastate switched access rates by an amount equal to 33 percent of the difference  
2 between its intrastate switched access rates in effect prior to the reduction and its  
3 interstate switched access rates in effect prior to the reduction.

4 (d) No later than 3 years after the effective date of this paragraph .... [LRB  
5 inserts date], the large incumbent local exchange carrier shall further reduce its  
6 intrastate switched access rates by an amount equal to 50 percent of the difference  
7 between its intrastate switched access rates in effect prior to the reduction and its  
8 interstate switched access rates in effect prior to the reduction.

9 (e) No later than 4 years after the effective date of this paragraph .... [LRB  
10 inserts date], the large incumbent local exchange carrier shall reduce its intrastate  
11 switched access rates to mirror its interstate switched access rates in effect prior to  
12 the reduction and, beginning no later than that date, may not charge intrastate  
13 switched access rates that are higher than its interstate switched access rates.

14 (4) COMMISSION REVIEW LIMITED. (a) Notwithstanding any other provision of  
15 this chapter, subs. (2) and (3) govern the rates that nonincumbents and large  
16 incumbent local exchange carriers may charge for intrastate switched access  
17 services. Except as required to enforce this section, the commission may not review  
18 or set the rates for intrastate switched access services of nonincumbents and large  
19 incumbent local exchange carriers.

*intrastate* ✓

20 (b) During the 3-year period beginning on the effective date of this paragraph  
21 .... [LRB inserts date], if a small incumbent local exchange carrier does ~~seek~~  
22 increase its switched access rates, the commission may not order a reduction in the  
23 small incumbent local exchange carrier's switched access rates. *intrastate*

21  
22  
23

\*\*\*NOTE: Is "seek" the correct word to use? How does a small ILEC seek to increase rates? Do you mean to refer instead to a small ILEC that actually increases its rates?

1           **SECTION 82.** 196.213 of the statutes is repealed.

2           **SECTION 83.** 196.215 of the statutes is repealed.

3           **SECTION 84.** 196.218 (1) (a) of the statutes is created to read:

4           196.218 (1) (a) “Essential telecommunications services” means the services or  
5 functionalities listed in 47 CFR 54.101 (a) as of January 1, 2010.

6           **SECTION 85.** 196.218 (3) (a) 3m. of the statutes is amended to read:

7           196.218 (3) (a) 3m. Contributions under this paragraph may be based only on  
8 the gross operating revenues from the provision of broadcast services identified by  
9 the commission under subd. 2. and on intrastate telecommunications services  
10 provided to end users in this state of the telecommunications providers subject to the  
11 contribution.     Wholesale services of any type, including wholesale  
12 telecommunications service, provided by any telecommunications provider are not  
13 intrastate telecommunications services for purposes of this subdivision.  
14 Contributions based on revenues from interconnected voice over Internet protocol  
15 service shall be calculated as provided under s. 196.206 (3).

16           **SECTION 86.** 196.218 (3) (f) of the statutes is amended to read:

17           196.218 (3) (f) ~~Notwithstanding ss. 196.196 (1) and (5) (d) 2., 196.20 (2m), (5)~~  
18 ~~and (6), 196.213 and 196.215, a~~ A telecommunications utility that provides local  
19 exchange service may make adjustments to local exchange service rates for the  
20 purpose of recovering its contributions to the universal service fund required under  
21 this subsection. A telecommunications utility that adjusts local exchange service  
22 rates for the purpose of recovering such contributions shall identify on customer bills  
23 a single amount that is the total amount of the adjustment. The public service  
24 commission shall provide telecommunications utilities the information necessary to  
25 identify such amounts on customer bills.

1           **SECTION 87.** 196.218 (4) of the statutes is repealed and recreated to read:

2           196.218 **(4)**    ESSENTIAL TELECOMMUNICATIONS SERVICES.   (a)   Each  
3   telecommunications provider that is designated as an eligible telecommunications  
4   carrier pursuant to 47 USC 214 (e) (2) shall make available to its customers all  
5   essential telecommunications services. A telecommunications provider may satisfy  
6   this paragraph by providing essential telecommunications services itself or through  
7   an affiliate and in either case may provide essential telecommunications services  
8   through the use of any available technology or mode.

9           (b) Notwithstanding par. (a), if a commercial mobile radio service provider is  
10   designated or seeks designation as an eligible telecommunications carrier pursuant  
11   to 47 USC 214 (e) (2) for the purpose of federal universal service funding and not for  
12   the purpose of state universal service funding, the commercial mobile radio service  
13   provider is not subject to any eligible telecommunications carrier requirements  
14   imposed by the commission pursuant to 47 USC 214 (e) that are in addition to the  
15   requirements imposed pursuant to 47 USC 214 (e) (2).

16           **SECTION 88.** 196.218 (5r) (a) 4. of the statutes is amended to read:

17           196.218 **(5r)** (a) 4. An assessment of how ~~successful investments identified in~~  
18   ~~s. 196.196 (5) (f),~~ assistance provided by the universal service fund, ~~and price~~  
19   ~~regulation~~ and other alternative incentive regulations of telecommunications  
20   utilities designed to promote competition have been in advancing the public interest  
21   goals identified under s. 196.03 (6), and recommendations for further advancing  
22   those goals.

23           **SECTION 89.** 196.219 (1) (b) of the statutes is amended to read:

1           196.219 (1) (b) "Local exchange service" ~~has the meaning given in s. 196.50 (1)~~  
2 ~~(b) 1. includes access service, basic local exchange service, and business access line~~  
3 ~~and usage service within a local calling area.~~

4           **SECTION 90.** 196.219 (2) (a) of the statutes is amended to read:

5           196.219 (2) (a) Notwithstanding any exemptions identified in this chapter  
6 except ~~s. ss. 196.202, 196.203, 196.206, and 196.50~~, a telecommunications utility or  
7 provider shall provide protection to its consumers under this section unless  
8 exempted in whole or in part by rule or order of the commission under this section.  
9 The commission shall promulgate rules that identify the conditions under which  
10 provisions of this section may be suspended.

11           **SECTION 91.** 196.219 (2m) of the statutes is repealed.

12           **SECTION 92.** 196.219 (2r) of the statutes is created to read:

13           196.219 (2r) SWITCHED ACCESS ~~RATES~~ RATES. Any reduction in <sup>in 10/30/08</sup> switched access  
14 ~~rates~~ rates ordered by the commission prior to the effective date of this subsection  
15 ... [LRB inserts date], including any reduction ordered pursuant to s. 196.195, shall  
16 remain effective unless modified by the commission in a subsequent order, or unless  
17 the ordered reduction is inconsistent with the requirements of s. 196.212.

~~\*\*\*\*NOTE: The instructions would add, "in which case the requirements of that section shall control." That language is not necessary. If the ordered reduction is inconsistent with s. 196.212, then the ordered reduction does not apply and s. 196.212 would apply. There is no need to reiterate that s. 196.212 applies.~~

18           **SECTION 93.** 196.219 (3) (h) of the statutes is repealed.

19           **SECTION 94.** 196.26 (1) (a) of the statutes is amended to read:

20           196.26 (1) (a) A complaint filed with the commission that any rate, toll, charge,  
21 or schedule, joint rate, regulation, measurement, act, or practice relating to the  
22 provision of heat, light, water, or power, ~~or telecommunications service~~ is  
23 unreasonable, inadequate, unjustly discriminatory, or cannot be obtained.

1           **SECTION 95.** 196.26 (4) of the statutes is repealed.

2           **SECTION 96.** 196.28 (4) of the statutes is amended to read:

3           196.28 (4) This section does not apply to rates, tolls or charges of a  
4 telecommunications cooperative, an unincorporated telecommunications  
5 cooperative association, or a small telecommunications utility ~~except as provided in~~  
6 ~~s. 196.205 or 196.215 (2).~~

7           **SECTION 97.** 196.31 (1m) of the statutes is amended to read:

8           196.31 (1m) The commission shall compensate any consumer group or  
9 consumer representative for all reasonable costs of participating in a hearing under  
10 s. ~~196.196 (1) (g) or~~ 196.198.

11          **SECTION 98.** 196.37 (3) of the statutes is amended to read:

12          196.37 (3) Any public utility to which an order under this section applies shall  
13 make such changes in schedules on file under s. 196.19 to make the schedules  
14 conform to the order. The public utility may not make any subsequent change in  
15 rates, tolls or charges without the approval of the commission, ~~except as provided in~~  
16 ~~s. 196.205 or 196.215 (2).~~

17          **SECTION 99.** 196.37 (4) of the statutes is amended to read:

18          196.37 (4) This section does not apply to rates, tolls or charges of a  
19 telecommunications cooperative, an unincorporated telecommunications  
20 cooperative association, or a small telecommunications utility ~~except as provided in~~  
21 ~~s. 196.205 or 196.215 (2).~~

22          **SECTION 100.** 196.49 (1) (ag) of the statutes is repealed.

23          **SECTION 101.** 196.49 (3) (b) (intro.) of the statutes is amended to read:

24          196.49 (3) (b) (intro.) ~~Except as provided in par. (d), the~~ The commission may  
25 require by rule or special order under par. (a) that no project may proceed until the

1 commission has certified that public convenience and necessity require the project.  
2 The commission may refuse to certify a project if it appears that the completion of  
3 the project will do any of the following:

4 **SECTION 102.** 196.49 (3) (d) of the statutes is repealed.

5 **SECTION 103.** 196.50 (title) of the statutes is amended to read:

6 **196.50 (title) Competing public utilities; indeterminate permits;**  
7 **telecommunications utility certification.**

8 **SECTION 104.** 196.50 (1) (b) 1. and 2. of the statutes are repealed.

9 **SECTION 105.** 196.50 (1) (b) 3. of the statutes is renumbered 196.50 (1) (b).

10 **SECTION 106.** 196.50 (2) (a) of the statutes is amended to read:

11 196.50 (2) (a) Alternative telecommunications utilities shall be certified under  
12 s. 196.203. All Except as provided in par. (j) 1. a., all other telecommunications  
13 utilities shall be certified under this subsection.

14 **SECTION 107.** 196.50 (2) (b) of the statutes is amended to read:

15 196.50 (2) (b) A certificate, franchise, license or permit, indeterminate or  
16 otherwise, in effect on September 1, 1994, for a telecommunications utility shall  
17 remain in effect and shall have the effect of a certificate of authority. A  
18 telecommunications utility is not required to apply for a new certificate of authority  
19 to continue offering or providing service to the extent of the prior authorization. Each  
20 telecommunications utility, including telecommunications cooperatives and  
21 unincorporated telecommunications cooperative associations, shall have on file with  
22 the commission ~~under s. 196.19 a tariff that sets forth the rates, terms and conditions~~  
23 ~~for all services provided and~~ a map that defines the geographical limits of the service  
24 territory that the telecommunications utility is obliged to serve.

25 **SECTION 108.** 196.50 (2) (e) 1. of the statutes is amended to read:

1           196.50 (2) (e) 1. Pending the determination on an application for a certificate  
2 of authority or an amended certificate of authority, the commission may issue,  
3 without notice and hearing, a temporary license for a period not to exceed one year  
4 ~~and may temporarily exempt the applicant from requirements of this chapter~~  
5 ~~identified in s. 196.195 (5) if the exemption is in the public interest.~~ The issuance of  
6 a temporary license does not bind the commission in the final determination on the  
7 application.

\*\*\*\*NOTE: Although not mentioned in the instruction, I made the above change  
because, as amended, s. 196.195 (5) no longer identifies any requirements under "this  
chapter," i.e., ch. 196. Instead, s. 196.195 (5) is amended to refer only to provisions under  
ch. 201.

8           **SECTION 109.** 196.50 (2) (f) of the statutes is amended to read:

9           196.50 (2) (f) The commission shall issue a certificate of authority or an  
10 amended certificate of authority if it finds, after notice and opportunity for hearing,  
11 that the applicant possesses sufficient technical, financial and managerial resources  
12 to provide telecommunications service to any person within the identified geographic  
13 area. In making this determination, the commission shall consider the factors  
14 identified in s. 196.03 (6). ~~The commission may order the applicant to satisfy any~~  
15 ~~conditions that the commission considers to be necessary to protect the public~~  
16 ~~interest, including structural safeguards.~~

17           **SECTION 110.** 196.50 (2) (g) 3. of the statutes is repealed.

18           **SECTION 111.** 196.50 (2) (h) of the statutes is repealed.

19           **SECTION 112.** 196.50 (2) (i) of the statutes is created to read:

20           196.50 (2) (i) A telecommunications utility certified under this subsection is  
21 exempt from all provisions of ch. 201 and is exempt from s. 196.02 (2); s. 196.03,  
22 except with respect to wholesale telecommunications service; ss. 196.05, 196.06,  
23 196.07, 196.09, 196.10, 196.12, 196.13, 196.19, 196.20, 196.21, and 196.22; s. 196.28,

1 except with respect to wholesale telecommunications service; s. 196.37, except with  
2 respect to wholesale telecommunications service; ss. 196.49, 196.52, 196.58, 196.60,  
3 and 196.78; and s. 196.79; except that, with respect only to its switched access  
4 services, a telecommunications utility certified under this subsection with 50,000 or  
5 fewer access lines in this state as of the effective date of this paragraph .... [LRB  
6 inserts date], is not exempt from s. 196.03; and except that, with respect only to its  
7 switched access services, a telecommunications utility certified under this  
8 subsection with more than 50,000 and fewer than 150,000 access lines in this state  
9 as of the effective date of this paragraph .... [LRB inserts date], is not exempt from  
10 ss. 196.03 and 196.37. The intrastate dedicated access service <sup>SET</sup> rates of a  
11 telecommunications utility with 150,000 or more access lines in this state as of the  
12 effective date of this paragraph .... [LRB inserts date], may not exceed the  
13 telecommunications utility's interstate access service <sup>SET</sup> rates for similar access  
14 services, except that such a telecommunications utility shall not assess an intrastate  
15 carrier common line charge or a substitute charge. Except to enforce this paragraph  
16 and s. 196.212, the commission may not review or set the access rates for a  
17 telecommunications utility with 150,000 or more access lines in this state as of the  
18 effective date of this paragraph .... [LRB inserts date].

\*\*\*\*NOTE: The instructions include the following sentence: "Notwithstanding the preceding sentence, the requirements of s. 196.212 govern the rates that telecommunications providers subject to those requirements may charge for switched access services." Because the instructions also include a similar sentence in s. 196.50 (2) (j) 1. b., I deleted the sentences from the above and s. 196.50 (2) (j) 1. b., and created language in s. 196.50 (2) (k).

19 **SECTION 113.** 196.50 (2) (j) of the statutes is created to read:  
20 196.50 (2) (j) 1. A telecommunications utility certified under this subsection  
21 may do any of the following:

1           a. Provide notice to the commission to terminate the certification under this  
2 subsection and certify the telecommunications utility as an alternative  
3 telecommunications utility under s. 196.203. No later than 30 days after receiving  
4 notice under this subd. 1. a., the commission shall issue an order granting a  
5 certification under s. 196.203. Except as provided in subds. 4. and 5., the granting  
6 of such certification shall operate to terminate the certification under this subsection  
7 and all regulatory requirements related to the certification under this subsection,  
8 including all such requirements imposed by the certification under this subsection  
9 or imposed by order or otherwise by the commission.

10           b. Provide notice to the commission to recertify the telecommunications utility  
11 under this subsection and impose on the telecommunications utility only those  
12 provisions of this chapter specified in this paragraph. No later than 30 days after  
13 receiving notice under this subd. 1. b., the commission shall issue an order granting  
14 recertification under this subsection and imposing on the telecommunications utility  
15 those provisions of this chapter specified in s. 196.203 (4m) (a) that are imposed on  
16 all alternative telecommunications utilities under s. 196.203 (3). The  
17 telecommunications utility shall be exempt from all provisions of ch. 201 and this  
18 chapter, except ss. 196.025 (6), 196.191, 196.206, and 196.212, and except as provided  
19 in subds. 4. and 5., and except as provided in the order under this subd. 1. b.; and  
20 except that, if the telecommunications utility has 50,000 or fewer access lines in this  
21 state as of the effective date of this subd. 1. b. .... [LRB inserts date], then, only with  
22 respect to its switched access services, the telecommunications utility is not exempt  
23 from s. 196.03; and except that, if the telecommunications utility has more than  
24 50,000 and fewer than 150,000 access lines in this state as of the effective date of this  
25 subd. 1. b. .... [LRB inserts date], then, only with respect to its switched access

1 services, the telecommunications utility is not exempt from ss. 196.03 and 196.37.  
2 Except as provided in subds. 4. and 5., the granting of the recertification shall operate  
3 to terminate the telecommunications utility's prior certification, and all regulatory  
4 requirements related to the prior certification, including all such requirements  
5 imposed by the certification and all requirements imposed by the commission,  
6 whether by statute or commission rule or order, on the telecommunications utility  
7 are terminated on the effective date of the order.

\*\*\*\*NOTE: See the NOTE following s. 196.50 (2) (i).

8 2. Issuance of a commission order under subd. 1. shall operate as a limited  
9 waiver of the telecommunications utility's right to an exemption under 47 USC 251  
10 (f) (1), which shall apply only to all of the following:

11 a. The requirements of 47 USC 251 (c) (1) and (2).

12 b. The requirements of 47 USC 251 (c) (5), but only with respect to the  
13 requirements of 47 CFR 51.325 (a) (1) and (2).

14 3. Issuance of a commission order under subd. 1. shall operate as a limited  
15 waiver of the telecommunications utility's right to petition the commission for  
16 suspension or modification under 47 USC 251 (f) (2), which shall apply only to all of  
17 the following:

18 a. The requirements of 47 USC 251 (b) and (c) (1) and (2).

19 b. The requirements of 47 USC 251 (c) (5), but only with respect to the  
20 requirements of 47 CFR 51.325 (a) (1) and (2).

21 4. Regardless of whether a telecommunications utility certified under this  
22 subsection takes an action allowed under subd. 1., the telecommunications utility is  
23 subject, with respect to its wholesale telecommunications service, to all provisions  
24 specified in s. 196.203 (4m) (a) and (c).

1           5. This paragraph does not terminate any order of the commission regarding  
2 interconnection, unbundling, collocation, or any other obligation under 47 USC 251,  
3 or regarding wholesale telecommunications service.

4           **SECTION 114.** 196.50 (2) (k) of the statutes is created to read:

5           196.50 (2) (k) Notwithstanding pars. (i) and (j) 1. b., s. 196.212 governs the  
6 rates that a telecommunications provider subject to s. 196.212 may charge for  
7 intrastate switched access services.

\*\*\*NOTE: The above replaces the sentences I removed from s. 196.50 (2) (i) and (j) 1. b.

8           **SECTION 115.** 196.503 of the statutes is created to read:

9           **196.503 Telecommunications provider of last-resort obligations. (1)**

10          DEFINITIONS. In this section, "basic voice service" means the provision to residential  
11 customers of 2-way voice communication within a local calling area. "Basic voice  
12 service" includes extended community calling and extended area service. "Basic  
13 voice service" does not include any discretionary or optional services that are  
14 provided to a residential customer, even if provided in a bundle or package with basic  
15 voice service.

\*\*\*\*NOTE: The instructions add a definition for "universal service fund." However that definition is not necessary. When a fund is established in ch. 25, it is not necessary to create a definition for the fund. (Note that the definition under current law in s. 196.218 (1) (d) is also not necessary.)

16          **(2) INCUMBENT LOCAL EXCHANGE CARRIER OBLIGATIONS.** (a) Notwithstanding any  
17 other provision in this chapter, and except as provided in sub. (3), an incumbent local  
18 exchange carrier shall make basic voice service available to all residential customers  
19 within a local exchange area in which it operates as an incumbent local exchange  
20 carrier.

1 (b) An incumbent local exchange carrier may satisfy its obligations under par.  
2 (a) through an affiliate and through the use of any available technology or mode.

3 **(3) WAIVERS.** (a) An incumbent local exchange carrier may apply to the  
4 commission for a waiver from compliance with sub. (2) (a) in a local exchange area.  
5 If a waiver is granted, then the requesting incumbent local exchange carrier shall not  
6 be eligible to receive moneys from the universal service fund for the purpose of  
7 assisting customers of this state that have relatively high costs of  
8 telecommunications service in obtaining affordable access to a basic set of essential  
9 telecommunications services, as provided in s. 196.218 (5) (a) 1. The requesting  
10 carrier may receive moneys from the universal service fund for any other purpose  
11 specified in s. 196.218 (5), including any other purpose specified in s. 196.218 (5) (a)  
12 1.

13 (b) The commission shall grant a waiver requested under par. (a) for a local  
14 exchange area if any of the following is satisfied:

15 1. The commission finds that the incumbent local exchange carrier  
16 demonstrates that the waiver is in the public interest or that effective competition  
17 exists for basic voice service in the local exchange.

18 2. The commission has made a previous finding of effective competition under  
19 s. 196.195 (2) for basic local exchange service in the local exchange. The commission  
20 may not grant a waiver under this subdivision until after June 1, 2012, or the  
21 effective date of this subdivision .... [LRB inserts date], whichever is later.

22 (c) The commission's review of a waiver requested under par. (a) shall be strictly  
23 limited to determining whether any of the criteria specified in par. (b) 1. or 2. is  
24 satisfied.

1 (d) 1. Within 120 days of the filing of a waiver request based on par. (b) 1., the  
2 commission shall grant or deny the request and, if denied, the commission shall issue  
3 a written decision identifying the reasons for its denial. If the commission fails to  
4 grant or deny the waiver request within 120 days of its filing, the waiver request is  
5 considered granted by operation of law.

6 2. The commission shall grant a waiver based on par. (b) 2. as soon as the  
7 commission verifies that the commission has previously made the finding specified  
8 in par. (b) 2., but no later than 20 days after the filing of the waiver request. If the  
9 commission fails to grant a waiver request based on par. (b) 2. within 20 days of its  
10 filing, the waiver request is considered granted by operation of law. If the  
11 commission denies a waiver based on par. (b) 2., the commission shall issue a written  
12 decision identifying the reasons for its denial.

13 (4) EFFECT ON OTHER REQUIREMENTS. (a) Notwithstanding any other provision  
14 of this chapter, a commission decision prior to the effective date of this paragraph ....  
15 [LRB inserts date], eliminating an incumbent local exchange carrier's provider of  
16 last-resort obligations, by operation of law or otherwise, remains in force and in  
17 effect as to the elimination of those obligations.

18 (b) Except to enforce this section, nothing in this section provides the  
19 commission with any authority to regulate, or any jurisdiction over, incumbent local  
20 exchange carriers and the rates, terms, and conditions of their services that the  
21 commission does not otherwise have under this chapter.

22 (5) SUNSET. This section does not apply after April 30, 2013.

23 SECTION 116. 196.52 (3) (b) 1. of the statutes is amended to read:

24 196.52 (3) (b) 1. The requirement for written approval under par. (a) shall not  
25 apply to any contract or arrangement if the amount of consideration involved is not

1 in excess of \$25,000 or 5% of the equity of the public utility, whichever is smaller. The  
2 requirement under par. (a) also does not apply to ~~a telecommunications utility~~  
3 ~~contract or arrangement~~ or to contracts or arrangements with joint local water  
4 authorities under s. 66.0823. Regularly recurring payments under a general or  
5 continuing arrangement which aggregate a greater annual amount may not be  
6 broken down into a series of transactions to come within the exemption under this  
7 paragraph. Any transaction exempted under this paragraph shall be valid or  
8 effective without commission approval under this section.

9 **SECTION 117.** 196.52 (3) (c) (intro.) of the statutes is amended to read:

10 196.52 (3) (c) (intro.) If the value of a contract or arrangement between an  
11 affiliated interest and a public utility, ~~other than a telecommunications utility,~~  
12 exceeds \$1,000,000, the commission:

13 **SECTION 118.** 196.52 (5) (a) of the statutes is renumbered 196.52 (5).

14 **SECTION 119.** 196.52 (5) (b) of the statutes is repealed.

15 **SECTION 120.** 196.52 (6) of the statutes is amended to read:

16 196.52 (6) If the commission finds upon investigation that a public utility, ~~other~~  
17 ~~than a telecommunications utility,~~ is giving effect to a contract or arrangement  
18 without the commission's approval under this section, the commission shall issue a  
19 summary order directing that public utility to cease and desist from making any  
20 payments, receiving compensation, providing any service or otherwise giving any  
21 effect to the contract or arrangement until the contract or arrangement receives the  
22 approval of the commission. The circuit court of Dane County may enforce the order  
23 to cease and desist by appropriate process, including the issuance of a preliminary  
24 injunction, upon the suit of the commission.

25 **SECTION 121.** 196.52 (9) (e) of the statutes is amended to read:

1           196.52 **(9)** (e) Notwithstanding sub. (5) ~~(a)~~, the commission may not modify or  
2 terminate a leased generation contract approved under sub. (3) except as specified  
3 in the leased generation contract or the commission's order approving the leased  
4 generation contract.

5           **SECTION 122.** 196.60 (1) (a) of the statutes is amended to read:

6           196.60 **(1)** (a) ~~Except as provided under sub. (2), no~~ No public utility and no  
7 agent, as defined in s. 196.66 (3) (a), or officer of a public utility, directly or indirectly,  
8 may charge, demand, collect or receive from any person more or less compensation  
9 for any service rendered or to be rendered by it in or affecting or relating to the  
10 production, transmission, delivery or furnishing of heat, light, water,  
11 ~~telecommunications service~~ or power or for any service in connection therewith, than  
12 that prescribed in the published schedules or tariffs then in force, or established  
13 under this chapter, or than it charges, demands, collects or receives from any other  
14 person for a like contemporaneous service.

15           **SECTION 123.** 196.60 (2) of the statutes is repealed.

16           **SECTION 124.** 196.604 of the statutes is amended to read:

17           **196.604 Rebates, concessions and discriminations unlawful.** No person  
18 may knowingly solicit, accept or receive any rebate, concession or discrimination  
19 from a public utility for any service in or affecting or relating to the production,  
20 transmission, delivery or furnishing of heat, light, water or power ~~or the conveying~~  
21 ~~of telecommunications messages~~ within this state or for any connected service  
22 whereby the service is rendered or is to be rendered free or at a rate less than the rate  
23 named in the schedules and tariffs in force, or whereby any other service or  
24 advantage is received. Any person violating this section shall be fined not less than  
25 \$50 nor more than \$5,000 for each offense.

1           **SECTION 125.** 196.77 of the statutes is repealed.

2           **SECTION 126.** 196.79 (1) of the statutes is renumbered 196.79 and amended to  
3 read:

4           **196.79 Reorganization subject to commission approval.** ~~Except as~~  
5 ~~provided in sub. (2), the~~ The reorganization of any public utility shall be subject to  
6 the supervision and control of the commission. No reorganization may take effect  
7 without the written approval of the commission. The commission may not approve  
8 any plan of reorganization unless the applicant for approval establishes that the plan  
9 of reorganization is consistent with the public interest.

10          **SECTION 127.** 196.79 (2) of the statutes is repealed.

11          **SECTION 128.** 196.805 of the statutes is repealed.

12          **SECTION 129.** 196.975 (1) of the statutes is renumbered 196.975 (1r) and  
13 amended to read:

14           196.975 (1r) One hundred fifty or more consumers, ~~as defined in s. 196.213 (1)~~  
15 ~~(a) 1.,~~ who are residents of the same local exchange area for telecommunications  
16 service may file with the commission a petition requesting that commission staff, in  
17 cooperation with the affected telecommunications utilities and telecommunications  
18 carriers, petition the appropriate federal district court to include their local exchange  
19 area in a different local access and transport area. The petitioners shall include with  
20 the petition information explaining why the current boundaries of the local access  
21 and transport area which includes their local exchange area does not adequately  
22 reflect areas of common social, economic and other concerns.

23          **SECTION 130.** 196.975 (1g) of the statutes is created to read:

24           196.975 (1g) In this section, “consumer” means a person billed for one or more  
25 local telecommunications service access lines not to exceed one person per access

1 line. A person billed for more than one access line may not be considered a consumer  
2 for each access line for which he or she is billed.

3 **SECTION 131.** 196.975 (2) of the statutes is amended to read:

4 196.975 (2) After receiving a petition under sub. ~~(4)~~ (1r), the commission shall  
5 schedule a public hearing, to be held in the local exchange area of the petitioners,  
6 serving to receive testimony on the contents of the petition and any other matters  
7 deemed relevant by the commission. The commission shall publish a class 1 notice  
8 under ch. 985 in a newspaper serving the local exchange area at least 20 days prior  
9 to the hearing.

10 **SECTION 132.** 201.15 of the statutes is repealed.

11 **SECTION 133. Nonstatutory provisions.**

12 (1) In this section:

13 (a) "Commission" means the public service commission.

14 (b) "Price-regulated telecommunications utility" means a telecommunications  
15 utility that elected to become a price-regulated telecommunications utility under  
16 section 196.196 (1) or (4), 2009 stats.

17 (c) "Telecommunications utility" has the meaning given in section 196.01 (10)  
18 of the statutes.

19 (2) Except as provided in section 196.219 (2r) of the statutes, as created by this  
20 act, on the effective date of this subsection, any requirement imposed by the  
21 commission under section 196.195 (5), 2009 stats., or section 196.196, 2009 stats.,  
22 whether by statute or commission rule or order, on a price-regulated  
23 telecommunications utility is terminated.

24 (3) Except as provided in section 196.219 (2r) of the statutes, as created by this  
25 act, on the effective date of this subsection, any requirement imposed on a

1 telecommunications utility under section 196.203, 2009 stats., or section 196.50,  
2 2009 stats., whether by statute or commission rule or order, that is inconsistent with  
3 sections 196.203 or 196.50 (2) of the statutes, as affected by this act, is terminated.

4 (END)

1

**INSERT 2A:**

The bill ~~makes~~ does all of the following: 1) makes changes to the authority of the Public Service Commission (PSC) over telecommunications utilities; 2) imposes requirements on switched access rates; 3) creates requirements for telecommunications utility tariffs; 4) specifies the PSC's authority over Internet protocol-enabled (IP-enabled) 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; 9) makes changes to requirements for the use of another person's transmission equipment and property by public utilities and telecommunications providers; and 10) makes other changes to telecommunications regulation.

**TELECOMMUNICATIONS UTILITY REGULATION**

*the PSC regulates*

Under current law, with certain exceptions, a telecommunications provider that provides basic local exchange service ~~is regulated by the PSC~~ 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.** The bill limits the requirements 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 other interconnection 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 if the PSC finds that the imposition is in the public interest. However, the bill eliminates certain of the factors the PSC may consider in making such a determination. The bill also provides that, if the PSC imposes a requirement on an ATU, the PSC must impose the same requirement at the same level of regulation 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. In addition, with certain exceptions, the bill allows the PSC to deny certification as an ATU 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. (STE) X

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.

**TUs.** The bill exempts TUs from requirements relating to all of the following: 1) PSC classification of public utility service; 2) PSC valuation of utility property; 3) accounting requirements, including depreciation rates and new construction accounting; 4) reporting of expenses, profit, and other items; 5) PSC reports of utility property values and other financial data; 6) filing of rates and PSC approval of rates; 7) PSC investigations of rates and services; 8) construction, installation, or operation of new facilities; 9) PSC approval of certain contracts; 10) certain municipal authority to regulate public utilities; 11) dissolution and reorganization; and 12) issuance of securities. 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.

The bill also allows a TU to terminate its certification as a TU and require the PSC to certify the TU as an ATU and issue an order terminating all regulatory requirements related to the TU certification, except as discussed below. Upon certification as an ATU, the formerly certified TU is subject to the same requirements as an ATU. In addition, the bill allows a TU to require the PSC to issue an order recertifying the TU as a TU, but regulating the TU like an ATU. Such a recertification terminates the TU's prior certification, and all regulatory requirements related to the prior certification, except as discussed below.

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. The bill also provides that certification of a TU as an ATU, or recertification of a TU as a TU that is regulated like an ATU, does not terminate any PSC order regarding interconnection, unbundling, collocation, wholesale telecommunications services, or any obligation under federal interconnection law.

**SWITCHED ACCESS RATES**

In general, the bill imposes reductions on intrastate switched access rates that depend on whether a telecommunications provider is a "nonincumbent," which the bill defines as a telecommunications provider that is not an ILEC, or a "large ILEC," which the bill defines as an ILEC that, with any ILEC affiliates, had 150,000 or more access lines in this state as of January 1, 2010. 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.

Beginning on the bill's effective date, both nonincumbents and large ILECs may not increase their intrastate switched access rates or charge rates that are higher than the amounts charged on January 1, 2011. No later than one year after the bill's effective date, a nonincumbent must reduce its intrastate switched access by an amount equal to 50 percent of the difference between its intrastate and interstate switched access rates. For a large ILEC, the required reduction is 25 percent. No later than two years after the bill's effective date, a nonincumbent 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. For a large ILEC, the

two

required reduction is 33 percent. No later than <sup>three</sup> 3 years after the bill's effective date, a 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. No later than that date, a large ILEC must 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 <sup>four</sup> 4 years after the bill's effective date, a large ILEC is subject to the same requirements that apply to a nonincumbent <sup>three</sup> 3 years after the bill's effective date.

The bill also limits the PSC's authority over 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. During the <sup>three</sup> 3-year period beginning on the bill's effective date, if a small ILEC does ~~not~~ increase its intrastate switched access rates, the PSC may not order a reduction in the small ILEC's intrastate switched access rates.

The bill provides that, except to enforce the above requirements, the PSC may not review or set intrastate switched access rates for nonincumbents or large ILECs. Also, if the PSC ordered a reduction in switched access service rates prior to the bill's effective date, and the reduction is not inconsistent with the above requirements, the bill provides that the reductions remain effective unless modified by the PSC in a subsequent order. The bill also imposes certain requirements under current law regarding reasonable and adequate service on the provision of switched access service by TUs with fewer than 150,000 access lines in this state on the bill's effective date. In addition, the bill allows the PSC to impose such requirements on ATUs.

The bill also prohibits the intrastate dedicated access service rates of certain TUs from exceeding their interstate rates for similar service. This prohibition applies to a TU with 150,000 or more access lines in this state as of the bill's effective date. The bill also prohibits such a TU from assessing an intrastate carrier common line charge or a substitute charge.

**TARIFFS**

The bill allows, but does not require, a TU or <sup>an</sup> ATU to do any of the following: 1) retain on file with PSC tariffs showing the service rates, tolls, and charges the TU or ATU has established; 2) withdraw or change the rates, terms, or conditions of a tariff filed with the PSC; or 3) file new tariffs with the PSC. If a TU or <sup>an</sup> ATU withdraws a tariff for intrastate switched access services, the bill prohibits the TU or ATU from increasing its intrastate switched access rates. Also, if a TU or <sup>an</sup> ATU files a new tariff, the tariff must include all terms and conditions that apply to services specified in the tariff, as well as the service rates. In addition, the new tariff is effective as specified in the tariff, unless the PSC, within ten days after the filing, suspends the new tariff. The PSC may modify the new tariff only to the extent permitted by the PSC's authority over the TU or ATU, and only after granting the TU or ATU an opportunity for a hearing. If the PSC fails to comply with deadlines in the bill regarding the new tariff, the new tariff is effective as filed.

The bill also provides that a proposed change in a tariff is effective as specified in the tariff, except for changes that constitute increases in intrastate switched

access rates, which are not effective until approved by the PSC after an opportunity for hearing. Any such increase must comply with the requirements for switched access rates described above, and must be consistent with certain public interests specified under current law. \*

In addition, the bill allows a tariff for a service that permits a TU or <sup>an</sup>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 <sup>an</sup>ATU from receiving for a service more or less compensation than that specified for the service in the tariff, and prohibits a TU or <sup>an</sup>ATU from receiving compensation for a service that is not specified in a tariff that is filed or retained on file under the bill. Also, copies of tariffs filed under the bill must be made available to consumers in a form and place readily accessible to the public. \*

**IP-ENABLED SERVICE**

With certain exceptions, the bill provides that IP-enabled service is exempt from PSC regulation. The bill defines "IP-enabled service" as any service that uses Internet protocol, or a successor protocol, and that enables an end user to send or receive a voice, data, or video communication in Internet protocol format or a successor format. "IP-enabled service" is defined to include interconnected voice over Internet protocol (VOIP) service. 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 above exemption is that an entity that provides interconnected VOIP service must make contributions to the state's universal service fund. This results because, under current law, the PSC must, with certain exceptions, require persons who provide telecommunications service to contribute to the fund and interconnected VOIP service satisfies the definition of "telecommunications service," as affected by the bill. (The bill's treatment of the definition of "telecommunications service" is discussed below under the heading, "Other changes.") Current law requires contributions to be based on revenues from telecommunications service, and the bill specifies the methods for calculating revenues from interconnected VOIP service. Under the other exceptions to the above exemption, a provider of interconnected VOIP service must impose a monthly police and fire protection fee on its customers that is required under current law, and must pay assessments for DATCP enforcement of certain consumer protection requirements. \*

**UNIVERSAL SERVICE**

Current law requires the PSC to promulgate rules that define a basic set of essential telecommunications services that must be available to all customers at affordable prices and that are a necessary component of universal service. Current law also requires the PSC to promulgate rules that define a set of advanced service capabilities that must be available to all areas of this state at affordable prices within a reasonable time and that are a necessary component of universal service. The

essential services and advanced service capabilities 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 and requires instead that certain telecommunications providers must make available to their customers all essential telecommunications services. 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 not the state's universal service fund.

#### **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, or the bill's effective date, whichever is later. 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 cables and any equipment and property that is on, over, or under any right-of-way owned or controlled by a county, city, village, 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, 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**

The bill also 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. 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 requirement under current law for TUs and other telecommunications providers to provide, with certain exceptions, access services under tariffs under the same rates, terms, and conditions to all telecommunications providers.

4. 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.

5. The bill imposes certain requirements under current law regarding reasonable and adequate service on a TU's provision of "wholesale telecommunications services," as defined in the bill. In addition, the bill allows the PSC to impose such requirements on ATUs.

6. The bill excludes revenues from wholesale services, including wholesale telecommunications services, from the revenues on which contributions to the state's universal service fund are calculated.

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

STEI

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1625/1dn

MDK.../...

WJ

Date

Rep. Honadel:

This version includes an analysis and is identical to the previous version, except for the following changes, which you should review to ensure consistency with your intent:

1. Instead of referring to "switched access rates," the following are revised to refer to "intrastate switched access rates": ss. 196.191 (1) (b) and (5) (b), 196.212 (4) (b), and 196.219 (2r). Also note that in ss. 196.191 (5) (b) and 196.219 (2r), the previous version used the term "switched access service rates," instead of the defined term, "switched access rates." I made corrections to refer to the defined term. In addition, in s. 196.212 (4) (b), I refer to whether a small ILEC ~~increases~~ its intrastate switched access rates, rather than seeks to increase such rates. On a related point, note that, as in the previous version, s. 196.208 (1) refers to "switched access charges." However, that term is not defined. Should s. 196.208 (1) be revised to refer to the defined term, "switched access rates"?

STET  
does increase

2. In s. 196.191 (7) and (8), the previous version referred to a tariff filed under s. 196.191 (1). I changed the references to a tariff filed *or retained on file* under s. 196.191 (1). If my change is not okay, please let me know.

Finally, numerous provisions of this bill either state that a TU or <sup>or</sup> ATU is exempt from ch. 201 or allow the PSC to impose any provision of ch. 201 on a TU or <sup>or</sup> ATU. However, it appears to me that s. 201.15 contains the ~~only~~ only provisions of ch. 201 that could apply to a TU. Furthermore, the bill repeals s. 201.15, which is something that I failed to realize when I discussed the applicability of ch. 201 in NOTES included in the previous version of the bill. Thus, it appears that nothing remains in ch. 201 that could apply to a TU or <sup>or</sup> ATU. If this is correct, the bill should be revised to eliminate language that either creates exemptions from ch. 201 or allows the PSC to impose ch. 201. If you agree with my conclusions, please let me know and I can quickly redraft the bill to eliminate such language.

\*  
\*  
\*

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-1625/1dn  
MDK:wlj:ph

March 21, 2011

Rep. Honadel:

This version includes an analysis and is identical to the previous version, except for the following changes, which you should review to ensure consistency with your intent:

1. Instead of referring to "switched access rates," the following are revised to refer to "intrastate switched access rates": ss. 196.191 (1) (b) and (5) (b), 196.212 (4) (b), and 196.219 (2r). Also note that in ss. 196.191 (5) (b) and 196.219 (2r), the previous version used the term "switched access service rates," instead of the defined term, "switched access rates." I made corrections to refer to the defined term. In addition, in s. 196.212 (4) (b), I refer to whether a small ILEC increases its intrastate switched access rates, rather than seeks to increase such rates. On a related point, note that, as in the previous version, s. 196.206 (1) refers to "switched access charges." However, that term is not defined. Should s. 196.206 (1) be revised to refer to the defined term, "switched access rates"?

2. In s. 196.191 (7) and (8), the previous version referred to a tariff filed under s. 196.191 (1). I changed the references to a tariff filed *or retained on file* under s. 196.191 (1). If my change is not okay, please let me know.

Finally, numerous provisions of this bill either state that a TU or an ATU is exempt from ch. 201 or allow the PSC to impose any provision of ch. 201 on a TU or an ATU. However, it appears to me that s. 201.15 contains the only provisions of ch. 201 that could apply to a TU. Furthermore, the bill repeals s. 201.15, which is something that I failed to realize when I discussed the applicability of ch. 201 in NOTES included in the previous version of the bill. Thus, it appears that nothing remains in ch. 201 that could apply to a TU or an ATU. If this is correct, the bill should be revised to eliminate language that either creates exemptions from ch. 201 or allows the PSC to impose ch. 201. If you agree with my conclusions, please let me know and I can quickly redraft the bill to eliminate such language.

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

**Kunkel, Mark**

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**From:** CHORZEMPA, DAVID J (Legal) [dc1928@att.com]  
**Sent:** Monday, March 21, 2011 4:39 PM  
**To:** Kunkel, Mark  
**Subject:** RE: My draft language for s. 196.218 (4) (b)

I would be fine with that.

✓  
**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Monday, March 21, 2011 4:38 PM  
**To:** CHORZEMPA, DAVID J (Legal)  
**Subject:** RE: My draft language for s. 196.218 (4) (b)

Is it possible that the FCC could issue orders instead of or in addition to regulations? If so, how about changing "and implementing Federal Communications Commission rules" to "and regulations and orders of the Federal Communications Commission implementing 47 USC 214 (e) (1)"?

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**From:** CHORZEMPA, DAVID J (Legal) [mailto:dc1928@att.com]  
**Sent:** Monday, March 21, 2011 4:30 PM  
**To:** CHORZEMPA, DAVID J (Legal); Kunkel, Mark  
**Cc:** Vick, Jason  
**Subject:** RE: My draft language for s. 196.218 (4) (b)

Mark

I just thought about this more, I think this language should read as follows, since the intent is to subject wireless carriers only to federal ETC requirements imposed by the 47 USC 214(e) and the FCC in a series of rules (otherwise I think the language in the current draft is circular). I think you'd be hard pressed to say this with more specificity:

(b) Notwithstanding par. (a), if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214(e) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission and shall only be subject to the eligible telecommunications carrier requirements imposed by 47 USC 214(e)(1) and implementing Federal Communications Commission rules.

DJC

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**From:** CHORZEMPA, DAVID J (Legal)  
**Sent:** Tuesday, March 15, 2011 2:06 PM  
**To:** 'Kunkel, Mark'  
**Subject:** RE: My draft language for s. 196.218 (4) (b)

Attached is the FCC's ETC order. You'll see that the FCC views – and has made clear – that states exercising authority under 47 USC 214(e) itself have discretion to impose on those ETCs state-specific eligibility requirements and state-specific public interest requirements. Thus, I still believe the correct reference is to section 214(e) not 254, as follows:

(b) Notwithstanding par. (a), if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214 (e) (2) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission pursuant to 47 USC 214(e) that are in addition to the requirements imposed pursuant to 47 USC 214 (e) (2).

Yes, the PSC's 160 rules include provisions re: USF that go beyond 214(e) obligations. Some of the PSC 160 rules are promulgated pursuant to the the PSC's authority under 196.218(4) --- which is preserved in 47 USC 254(f). However, what we're talking about here is the PSC's authority to designate ETCs under 214(e) -- that's it.

DJC

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**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Tuesday, March 15, 2011 1:51 PM  
**To:** CHORZEMPA, DAVID J (Legal)  
**Subject:** My draft language for s. 196.218 (4) (b)

Section 76. 196.218 (4) of the statutes is repealed and recreated to read:

196.218 (4) Essential telecommunications services. (a) Each telecommunications provider that is designated as an eligible telecommunications carrier pursuant to 47 USC 214 (e) (2) shall make available to its customers all essential telecommunications services. A telecommunications provider may satisfy this subsection by providing essential telecommunications services itself or through an affiliate and in either case may provide essential telecommunications services through the use of any available technology or mode.

(b) Notwithstanding par. (a), if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214 (e) (2) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission pursuant to 47 USC 254 (f) that are in addition to the requirements imposed pursuant to 47 USC 214 (e) (2).

**Kunkel, Mark**

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**From:** Vick, Jason  
**Sent:** Tuesday, March 22, 2011 9:09 AM  
**To:** Kunkel, Mark  
**Subject:** FW: LRB-1625/1

Mark,

Please also incorporate the changes that Dave Chorzempa discussed with you yesterday.

Thanks,

**Jason Vick**

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

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**From:** CHORZEMPA, DAVID J (Legal) [mailto:dc1928@att.com]  
**Sent:** Monday, March 21, 2011 4:48 PM  
**To:** Vick, Jason  
**Cc:** HADNOT, DEXTRA A (ATTSI)  
**Subject:** FW: LRB-1625/1

Jason

Just wanted to see some additional responses I provided to LRB. These changes would not change the substance of the bill and, if you agree with them, you should let Mark know. The second issue (referencing 196.195) would eliminate the section of the statute that allows the PSC to approve "alternative regulation." There would be absolutely no reason to have this provision under the bill since the benefits of alternative regulation are otherwise provided in the bill.

DJC

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**From:** CHORZEMPA, DAVID J (Legal)  
**Sent:** Monday, March 21, 2011 4:46 PM  
**To:** 'Kunkel, Mark'  
**Subject:** RE: LRB-1625/1

1. I believe so, yes. It makes sense to use the same term consistently.
2. I would simply repeal all of 196.195 since there would be no need for alternative regulation. There may have been some reason we left it in last year, but I can't remember it and based on the current bill I don't see it as necessary. Since we repealed 196.196 we should also repeal 196.195.

DJC

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**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Monday, March 21, 2011 4:32 PM  
**To:** CHORZEMPA, DAVID J (Legal)  
**Subject:** LRB-1625/1

3/22/2011

David:

Jason in Rep. Honadel's office said that I should make the changes suggested in my drafter's note to LRB-1625/1. However, I still have the following questions:

1. Should s. 196.206 (1) (a) be revised to refer to the defined term, "switched access rates" rather than the undefined term, "switched access charges"? See page 30, line 1 of LRB-1625/1.

2. I have questions about what to do with s. 196.195. It looks like you want me to revise the bill to strike all language regarding subjecting or exempting a telecommunications provider to or from ch. 201. This makes sense because, with the repeal of s. 201.15, ch. 201 will not apply to telecommunications providers. (This results because, except for s. 201.15, ch. 201 applies to public service corporations, which are defined to exclude telecommunications utilities.)

If I take this approach with respect to s. 196.195, all of s. 196.195 would be repealed, except that here is how I propose to treat the following:

Section --. 196.195 (title) of the statutes is repealed and recreated to read:

196.195 (title) Incentive regulation for telecommunications utilities.

Section --. 196.195 (1) of the statutes is amended to read:

196.195 (1) Regulation imposed. Except as provided in this section and ss. 196.202, 196.203, ~~196.215 and 196.219, and 196.50 (2) (i) and (j)~~, a telecommunications utility is subject to every applicable provision of this chapter ~~and ch. 201~~.

Section --. 196.195 (12) of the statutes is repealed and recreated to read:

196.195 (12) Commission action.

Section --. 196.195 (12) (a) of the statutes is amended to read:

196.195 (12) (a) To provide incentives for telecommunications utilities to achieve any of the goals listed in par. (b) 1. a., the commission ~~may suspend any of the provisions listed in sub. (5) except ss. 196.19, 196.20 (1m), 196.22, 196.26, 196.37, 196.60 and 196.604 of ch. 201 or~~ may approve a regulatory method alternative to traditional rate-of-return regulation ~~that does not require suspension of any provisions listed in sub. (5)~~.

Section --. 196.195 (12) (b) 1. (intro.) of the statutes is amended to read:

196.195 (12) (b) 1. (intro.) Except as provided in subd. 2., after opportunity for hearing, the commission shall determine whether it is in the public interest to ~~suspend any of the provisions identified in par. (a) of ch. 201 or to~~ approve an alternative regulatory method. In making this determination, the commission shall identify all of the following: [text of (b) 1. a. to 1. c. omitted from this email]

Section --. 196.195 (12) (b) 2. of the statutes is amended to read:

196.195 (12) (b) 2. If the commission ~~suspends the application of any provision identified in par. (a) of ch. 201 or~~ approves an alternative regulatory method for any telecommunications utility, the commission may waive the hearing opportunity required under subd. 1., with notice to all known interested parties, for any similarly situated telecommunications utility, if the waiver is in the public interest.

Section --. 196.195 (12) (b) 3. of the statutes is amended to read:

196.195 (12) (b) 3. The commission shall regulate telecommunications utilities with the goal of developing alternative forms of regulation. The commission shall, by order, develop and approve an incentive regulatory plan for each telecommunications utility to implement this subdivision. The commission may not increase regulation of a small telecommunications utility in implementing this subdivision. ~~For telecommunications utilities with more than 150,000 access lines in use in this state, s. 196.196 (2) applies to access service rates in any regulatory plan approved under this subdivision.~~

196.195 (12) (e) would not be affected. Here is the text of s. 196.195 (12) (e):

196.195(12)(e): If under this subsection the commission authorizes a telecommunications utility to provide a telecommunications service under a tariff that specifies a range of rates which may be charged for the service or authorizes the telecommunications utility to file a price list for the service which is effective after a minimum period of notice to affected customers, the telecommunications utility may not provide the service at a price which does not recover total service long-run incremental cost.

Are the above proposed treatments okay? Or should s. 196.195 be repealed in its entirety, as there is no longer a need for an alternative regulatory method authorized under s. 196.195 (12) (a) and (b)? Or if you want to retain s. 196.195 (12) (a) and (b), do you want to further amend s. 196.195 (12) (b) 3. to replace "shall" in the 1st and 2nd sentences with "may"? And in the 3rd sentence, should the PSC be prohibited from increasing regulation on any telecommunications utility, and not just small ones? Finally, if you want to retain s. 196.195 (12) (a) and (b), what do you want to do about s. 196.195 (12) (e)? Isn't s. 196.195 (12) (e) inconsistent with the new tariff language in s. 196.191?

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