



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-084

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

Section PSC 165.0102 (32) appears to conflict with s. 196.01 (8p), Stats., because it defines “provider” as any “telecommunications provider...” and then proceeds to make exceptions that are not made in the definition of “telecommunications provider” under s. 196.01 (8p), Stats.

2. Form, Style and Placement in Administrative Code

a. This rule is very difficult to piece together. Would it be easier and more understandable to readers just to repeal ch. PSC 165 and recreate it in its entirety? While amending and creating provisions generally gives readers a chance to see the changes made; the large scale changes made by this rule might warrant repealing and recreating the chapter.

b. This rule replaces the three digits after the decimal point in ch. PSC 165 with four digits after the decimal point--a practice that, in general, should only occur if there is a good reason for doing so. As drafted, the first digit after the decimal point in ch. PSC 165 is always zero. While it is helpful that the second digit after the decimal point indicates which of the eight subchapters the provision is in, there is no apparent reason why the first digit after the decimal point could not serve that function. By eliminating the first digit of 0, no functionality would be lost and the maximum number of digits immediately following the decimal point could be kept at three rather than four.

c. Subchapter titles should be written in solid capital letters. For example, on page one of the draft text, the title for subchapter I should be written as follows: "SUBCHAPTER I, GENERAL." Likewise for subchapter II (title) on page 6 of the draft, subchapter III (title) on page 7 of the draft, subchapter IV (title) on page 21 of the draft, subchapter V (title) on page 33 of the draft, subchapter VI (title) on page 48 of the draft, subchapter VII on page 49 of the draft, and subchapter VIII (title) on page 51 of the draft. [See s. 1.05 (2) (a), Manual.]

d. In SECTION 10 of the rule, s. PSC 165.0102 (1), the "P" should not be capitalized in "Pay." Similarly, in SECTION 14, the "S" should not be capitalized in "Service."

e. The definition in s. PSC 165.0102 (32) could be better organized by eliminating the subdivisions and using three paragraphs. The first excludes a telecommunications carrier, the second includes certain telecommunications carriers, and the third includes certain cable television service providers. Therefore, the three subunits should be preceded with the following introductory material: "'Provider' means any of the following:". [See s. 1.03 (8), Manual.] The word "Means" in the beginning of the first two paragraphs and the word "Includes" in the beginning of the third can then be deleted.

f. In many provisions of the rule, "such" should be replaced by an appropriate article. [See s. 1.01 (9) (c), Manual.] For example, in s. PSC 165.0210, "the" should replace "such." Also see ss. PSC 165.0302 (6) (a) and (b) and 165.0303 (6).

g. In order to be correctly drafted as introductory material, in s. PSC 165.0301 (1) (e) (intro.), "as follows:" should replace the final period.

h. Section PSC 165.0304 (2) (a) (intro.) should be sub. (2) (a) 1. and the subsequent subdivisions should be renumbered.

i. In s. PSC 165.0304 (2) (b), the parenthetical example should be moved to a note. [See s. 1.09 (1), Manual.] Also see s. PSC 165.0305 (4) (b) 3.

j. Several of the terms defined in s. PSC 165.0305 (1) are also defined in s. PSC 165.0304 (1). Can these terms instead be included in the definitions provision at the beginning of ch. PSC 165?

k. Section PSC 165.0305 (4) (c) (intro.) should end with a colon and "all of the following" should replace "this paragraph."

l. Although SECTION 95 of the rule states that it is amending as well as renumbering s. PSC 165.05 (1) (c) 2., it appears that it is only renumbering the provision in the same manner that SECTION 94 of the rule did for s. PSC 165.05 (1) (c) 1. Therefore, just as SECTION 94 of the rule did not write out the provision, there is no need to write out the provision in SECTION 95.

m. In s. PSC 165.0606 (3), "shall" should replace "must."

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. PSC 165.0301 (1) (a), "s. PSC 165.0302 (7) (g) and (8) (g)" should replace the cite given.

b. In s. PSC 165.0301 (1) (c) and (d), "par. (e)" should replace "sub. (e)."

c. In s. PSC 165.0304 (2) (a) 3., “this part” should be replaced with a more specific reference such as “this subsection” or “this paragraph.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 7 of the rule, s. PSC 165.0101 (2) (b), lines 3 and 5 on page 2 use the words “herein” and “therein,” respectively. Use of such vague words should be avoided, using instead a specific reference such as “in this chapter,” or “under this section.” [See s. 1.01 (9) (c), Manual.] A similar reference should replace “in these rules and regulations.” Also, s. PSC 165.0101 (2) (b) could be written more succinctly and in the active voice. For example: “Nothing in this chapter precludes the PSC from imposing requirements on individual telecommunications providers or services that differ from those set forth in this chapter, if PSC investigation reveals that exceptional circumstances would justify different treatment.” [See s. 1.01 (1), Manual.]

b. In SECTION 46 of the rule, s. PSC 165.0302 (7) (g) and (8) (g), “requesting supplemental application information under...” should be changed to “additional information requested from applicants under....”

c. In SECTION 46 of the rule, s. PSC 165.0302 (9), the last sentence should use the active rather than the passive voice. [See 1.01 (1), Manual.] The sentence, which uses “shall be furnished” and “are paid,” could be replaced with something like the following: “The provider shall furnish additional statements to the customer if the customer pays for the reasonable costs of preparing and furnishing the statements.” Also, since the last sentence of this provision uses the singular form of “customer,” the first sentence should too. [See s. 1.01 (1), Manual.]

d. In SECTION 50 of the rule, s. PSC 165.0303 (7) (b) creates an exception to the “par. (a) no disconnect and no refusal requirement,” found in SECTION 174 of the rule under s. PSC 165.0303 (7) (a). Therefore, s. PSC 165.0303 (7) (a) should reference this exception with something like: “Except as provided in par. (b), a provider may not disconnect or refuse service....”

e. In SECTION 51 of the rule, s. PSC 165.0304 is titled “**Provider selection changes**” and par. (1) (g) uses the phrase “provider selection change” three times. Since “Provider selection freeze” is defined in this section, should “provider selection change” also be defined? If not, should it be replaced with the simpler phrase “Provider changes”? Note that s. PSC 165.0304 (4) includes the phrase “UNAUTHORIZED PROVIDER CHANGES” in its title, rather than “unauthorized provider selection changes.” Should there be consistency?

f. In SECTION 54 of the rule, s. PSC 165.0308 (1), “shall not” should be changed to “may not.” [See s. 1.01 (2), Manual.] Also, s. PSC 165.0308 (2) defines “Oppressive and deceptive practices,” and therefore the extent of the applicability of the definition should be clearly stated, e.g., by a phrase such as “In this section.” Similarly, in s. PSC 165.0401 (4) (b), the last sentence should begin “In this paragraph.” The entire rule should be reviewed for occurrences of this error. [See s. 1.01 (7), Manual.]

g. In s. PSC 165.0401 (4) (b), “should” should be changed to “shall” if the action is mandatory. [See s. 1.01 (2), Manual.]

- h. In s. PSC 165.0401 (7) (b), the hyphen in “on-the bill” should be deleted.
- i. In s. PSC 165.0403 (1), what factors should be included in a provider’s non-discrimination policy in order for the policy to be acceptable to the commission.
- j. In SECTION 76 of the rule, s. PSC 165.0404 (6), the words “shall not” should be replaced with “may not” in the first clause, and the word “shall” should be replaced with the word “may” in the second clause. [See s. 1.01 (2), Manual.]
- k. In SECTION 82 of the rule, s. PSC 165.0302 (2) should be written in the active voice as follows: “A provider shall inform an applicant, at the time of application for new telecommunications service, of at least the following items, in this order and at the beginning of the sales script”. [See s. 1.01 (1), Manual.]
- l. In SECTION 86 of the rule, s. PSC 165.0302 (5), does “customer premises equipment” need to be defined?
- m. In SECTION 102 of the rule, s. PSC 165.0501 (1) should begin by using the active voice, e.g.: “A provider may refuse service only for one of the following reasons?”. Also, it is not clear what par. (b) adds that is not already provided for in par. (a), so perhaps par. (b) should be deleted. In s. PSC 165.0501 (2) (a), “where” should be changed to “if” in the first and second sentences.
- n. In SECTION 115 of the rule, s. PSC 165.0402 (3) (a), the words “shall not” should be replaced with “may not.” [See s. 1.01 (2), Manual.]
- o. In SECTION 174 of the rule, under s. PSC 165.0303 (7) (a), the passive voice used in “Service may not be disconnected or refused...” should be changed to the active voice, for example: “A provider may not disconnect or refuse service....” [See s. 1.01 (1), Manual.] This comment applies to several other provisions in the rule that use the passive voice.