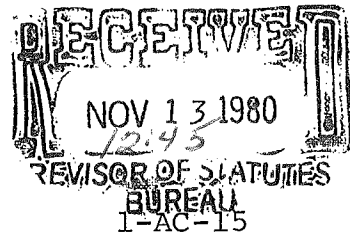


PSC 165

CERTIFICATE



STATE OF WISCONSIN )  
 ) ss  
 PUBLIC SERVICE COMMISSION )

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

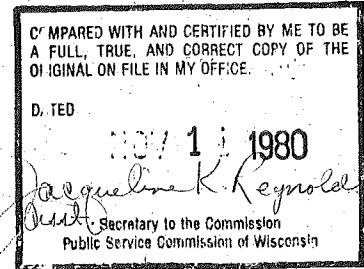
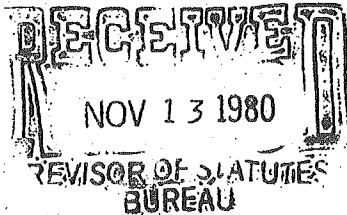
I, Jacqueline K. Reynolds, Assistant Secretary to the Public Service Commission of Wisconsin, and custodian of the official records of said commission, do hereby certify that the annexed order creating Wis. Adm. Code section PSC 165.092 was duly approved and adopted by this commission on November 6, 1980.

I further certify that said copy has been compared by me with the original on file in this commission and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Commission at the Hill Farms State Office Building, in the City of Madison, this 11th day of November, 1980.

*Jacqueline K. Reynolds*  
 Jacqueline K. Reynolds  
 Assistant Secretary to  
 the Commission

1-1-81



BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation by the Commission of the )  
Need For and Provisions of Rules ) 1-AC-15  
Regarding Telephone Utility Sales of )  
Inside Wiring and Related Materials )

Order of the Public Service Commission of Wisconsin  
Adopting Rules

Relating to rules concerning the sale by telephone  
utilities, to customers for private use, of inside telephone  
wiring and related materials.

Analysis prepared by the Public Service Commission  
of Wisconsin.

ANALYSIS

On November 8, 1977, the commission issued a Notice  
of Investigation and Hearing in this proceeding, which stated  
in part:

"In response to complaints, and in recognition of  
changing conditions in the telecommunications industry  
caused by expanding private ownership of terminal com-  
munications equipment, the commission, on October 11,  
1977, pursuant to section 196.03, Wis. Stats., directed  
that a formal investigation and hearing be instituted to  
develop rules, if necessary, relative to telephone  
utility sales of inside wire and related materials.

Matters to be considered in this investigation in-  
clude, but are not limited to:

1. Should the Public Service Commission of  
Wisconsin regulate the sale of inside wiring  
and related materials by telephone utilities?
2. How should the price of such sales be determined?

3. Should the price of such sales be filed with the commission as tariff rates?

Subsequent to the December 14, 1977 hearing the commission determined that telephone utility sales of inside wiring and related materials were a matter subject to regulation. The commission directed that further hearings be scheduled to investigate the following rule as an addition to Chapter PSC 165, Wis. Adm. Code.

PSC 165.092 Sales of inside wire by telephone utilities. In place, inside wire and related materials shall be sold by the telephone utility upon customer request. The tariffs shall be based on the net book value of both the inside wire and the other related materials.

Interested parties to ensuing hearings were requested through the November 28, 1978 notice to address the general issue of the Wis. Adm. Code change and the following items as well.

- advantages, disadvantages, and impacts of the rule as drafted,
- proposals and justifications for modifications,
- administrative, legal, and other aspects of the requirement for tariffs on these sales,
- application of the rule in both business and residence service situations, but for single-party services only.

The commission recognized that sales of inside wiring could possibly lead to inquiries on sales of telephones and related terminal equipment. Because issues such as direct equipment sales or even decontrol of all terminal equipment transactions could arise in the context of this investigation, the commission urged comments on these broader issues as well.

Subsequent to public hearings and briefing of these matters and pursuant to authority vested in the Public Service Commission of Wisconsin by ss. 196.02, 196.03, 196.20, 196.37, and 227.014, Wis. Stats., the Public Service Commission of Wisconsin proposes to adopt rules interpreting ss. 196.02, 196.03, 196.19, 196.20, and 196.37, Wis. Stats., as follows:

Section PSC 165.092 of the Wisconsin Administrative Code is adopted to read:

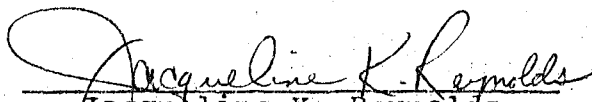
PSC 165.092. Sales of in-place inside wire.  
In-place inside wire and related materials may be sold by the telephone utility upon customer request. Utilities that choose to make such sales shall file appropriate tariffs with the commission indicating the conditions of sale and the methodology of sales price determinations. Utilities may make sales to any customers consistent with applicable Federal Communications Commission regulations.

The rule adopted in this docket shall become effective on the first day of the month following its publication in the Wisconsin Administrative Register as provided by s. 227.026(1), Wis. Stats.

Dated at Madison, Wisconsin,

November 6, 1980

By the Commission.

  
Jacqueline K. Reynolds  
Assistant Secretary to  
the Commission

## Report

### Discussion and Findings of Fact

The commission initiated this proceeding to determine what rules, if any, should be promulgated relative to the sales of surplus inside wire to customers by telephone utilities. At the start of the proceeding the focus was on whether rules were needed. Subsequently the commission issued a proposed rule that specified a sales price determination method.

Originally, this proceeding was concerned primarily with inside wiring sales to large business customers. The commission subsequently expanded the focus to include residences and small businesses. The submitted testimony, comments, and briefs discussed numerous topics, including PSC authority, FCC preemption, specific proposed rules, alleged problems with such rules, alleged harm from such rules (physical and administrative) and proposed accounting changes.

Pursuant to due notice, hearings were held in Madison on December 14, 1977, March 19, 1979, March 20, 1979 and October 2, 1979, before Examiner Clarence B. Sorensen.

Written comments relative to the proceedings were submitted by Wisconsin Telephone Company on March 19, 1979, and North-West Telephone Company on March 20, 1979, and were included in the file.

An early brief was submitted by General Telephone Company of Wisconsin on April 3, 1978, after the transcript release of the first day of hearings. Subsequent briefs were submitted after the close of the hearings by Wisconsin Telecommunications Contractors Association on December 4, 1979; by Wisconsin Telephone Company on December 5, 1979 and January 4, 1980; and by Sampson Enterprises, Inc. on December 21, 1979.

Appearances are shown in the appendix.

#### Discussion

In 1968, the Federal Communications Commission (FCC) issued the now-historic Carterfone case that permitted customers to own and use telephone equipment not supplied by telephone utilities (68 FCC 2nd 420). Subsequent FCC actions as are discussed further in this discussion have further expanded the ability of customers to use their own telephones and other terminal equipment. In cases where the customer chooses to replace telephone utility equipment with private equipment, the inside wiring used for providing the utility's service sometimes become surplus or no longer useful for utility service. In some cases, this wiring may be used for serving the customer-owned equipment.

This proceeding evolved following customer requests for this commission to rule on the sales price for inside wiring as set by the telephone utilities or to set standards for determination of such prices for future sales.

The principal questions to be addressed that arose in the course of this proceeding are:

Does the commission have authority to regulate this area?

Can the commission require the sales of inside wiring?

How shall the sales price be determined?

Shall tariffs be filed?

To whom may sales of inside wiring be made?

General Telephone Company of Wisconsin (General) has argued that the commission does not have the jurisdictional authority to regulate the sale of inside wiring and related materials by telephone utilities to other parties with private terminal communications equipment. General argues that there is no statutory empowerment granted to the commission to permit jurisdiction over the disposal of surplus inside wire. Other parties generally acknowledge the commission's authority to regulate matters related to inside wire, but do raise objection to the commission's jurisdiction to require the utility to sell its private property.

The investment in inside wiring to serve utility equipment is part of the total investment of a regulated utility. The accounting for this investment is under a system of accounts directed by this commission. The removal of inside wire from service and any associated expenses or revenues from its removal or sale can cause impacts on the overall

operations of the utility. The authority to regulate in those areas that affect the service of the utility and the rates for that service is, in the commission's view, broad. The matter of inside wiring sales is found to be subject to the exercise of the commission's regulatory review and, in certain respects as discussed below, the commission will exercise that jurisdiction in matters of these types of transactions.

Traditionally, telephone utilities have provided service to the public on a monthly-rate basis. Direct sales of equipment have been infrequent. Service to customers is provided by telephone utilities through use of the private property of these utilities.

General and the Wisconsin Telephone Company (WTC) argue that the commission cannot require a utility to dispose of its property. These parties raise constitutional issues relative to due process and the taking of property for private use of another party. General and WTC contend that utilities have not made a public undertaking to provide wiring for private telephone systems and the commission has no authority to regulate beyond the public utility undertaking. To require such sales would be to deprive a utility its ownership rights in private property. Such requirements would further invade management prerogatives in determination of whether, and under what conditions, private property will be sold.



Sampson Enterprises, Inc., (Sampson) argues that to effectively regulate, the commission must have authority to set rules on inside wiring sales. Sampson contends the commission must protect against utility activities that may result in cross-subsidization of services. If the commission, cannot exercise jurisdiction to order the sale of inside wiring at specific price levels, Sampson argues the commission is powerless to prevent cross-subsidization.

The Wisconsin Telecommunication Contractors' Association (Contractors) argue that while the commission has jurisdiction to inquire into and regulate practices involving sales of inside wire, forced disposition of such property may only invite legal challenge on the constitutional issues. Therefore to promote a workable plan to be effective in a timely manner, Contractors suggest a rule that is permissive on the matter of inside wiring sales.

The commission believes there is a need for early implementation of rules dealing with the in-place inside wiring sales issue. Accordingly, to provide a reasonable rule to address this issue and to avoid risks of delay caused by legal challenges to a rule requiring in-place inside wiring sales, the commission finds that a rule that permits, but does not mandate, these sales is reasonable under the circumstances. Telephone utilities may sell

this surplus in-place inside wiring. If a utility chooses to undertake such sales the commission will require tariffs to be filed as discussed further below.

The commission's notice of November 28, 1978 asked for comment on the following proposed rule:

PSC 165.092 Sales of inside wire by telephone utilities. In place, inside wire and related materials shall be sold by the telephone utility upon customer request. The tariffs shall be based on the net book value of both the inside wire and the other related materials.

The issue of requiring sales of inside wiring has been discussed above and such actions will not be ordered. The pricing of such sales as do occur was a matter of much discussion, however. The above rule contemplated a net book value approach and this approach was advocated by some parties. Other parties argued against net book value and in favor of different methods of price setting such as negotiation between customer and utility and a form of replacement cost less observed depreciation.

The commission will direct no single method for the pricing of these sales. Utilities will be required to file tariffs if they choose to make sales. These tariffs shall indicate general conditions of sale and the methodology to be employed by the utility in determining the sales price. There is no one best way to set these prices. The purchase of inside wire by a customer from the utility is but one option for obtaining this service. Utilities that choose to make

such sales should be able to receive reasonable compensation for these materials; customers that are interested in a purchase should be offered a reasonable, competitive quote for the sale. The filing of individual tariffs with specifications of price determination methods will be most reasonable for making the sale available and for providing both parties with the option for an economic choice on the disposal or obtaining of the wiring facilities. Sales that are consummated may also benefit the general ratepayer, since the utility may accrue more funds than would be realized under normal salvage.

Federal Communications Commission rules on customer ownership of equipment contain restrictions on connections to the telephone network. These rules have been developed and specified in the FCC's proceeding on a Registration Program (Docket 19528). WTC states that the FCC's exercise of jurisdiction over the interconnection of customer-provided equipment has preempted state regulation of this area. The FCC's registration rules require that customer-provided equipment associated with one and two-line services be connected to the network by means of a telephone-company-provided jack. WTC argues the proposed commission rule would result in violation of that FCC requirement and is therefore precluded by the FCC rules. Sampson does not argue the relationship of the commission rule and the FCC rule but proposes this commission's rules be restricted to businesses in excess of two lines.

The commission finds that sales of inside wiring should be made to all eligible customers desiring to buy such materials; however, the FCC guidelines must be met. Any tariffs filed must reference the FCC requirements and accordingly comply with those provisions. In the short-run at least, the commission recognizes that some customers may be restricted from inside wiring purchases, but encourages the industry to make efforts at expanding this option to all types of service.

The commission will adopt a rule consistent with the above discussions. The effect of the rule will be to allow, but not require, sales of inside wiring. Utilities that choose to make such sales shall file tariffs to specify the conditions of the sale. Any sales shall be consistent with the FCC registration program relative to connections to the telephone network.

The commission had requested comments on sales of terminal equipment or decontrol of this aspect of utility service. Comments on these issues were not extensive; the commission also has other proceedings that look at these matters. No findings on terminal equipment sales or de-regulation will be made in this case.

The commission recognizes that there are proceedings of the FCC that have some bearing on this issue of inside wiring. The matter of the Registration Program and connections by one and two-line customers has been noted above. In addition to this

case, the FCC is considering changes of the accounting for station connections. Station connections, which include inside wiring, are currently capitalized. Under consideration are changes to the system of accounts that would result in expensing of part, or all, of station connections. The commission believes the action taken by this order to not direct any particular pricing mechanism is reasonable under existing circumstances and accounting practices. Should the FCC modify the system of accounts for inside wiring, this commission will review the requirements of this order in light of any future potentially significant accounting modifications.

By order of April 7, 1980 in its docket 20828, the Second Computer Inquiry, the FCC has directed major changes to the telephone industry and regulation. Among the provisions of this order (which is under appeal) all terminal telecommunications customer premises equipment (CPE) is to be deregulated. In its order the FCC excludes inside wiring from the CPE category. Accordingly, matters of inside wiring are appropriate issues of regulatory inquiry; this confirms the commission's decision to investigate and issue this rule on the inside wiring subject. Again, should changes be made that impact the fundamental bases upon which inside wiring is provided or regulated, the commission may investigate and change the provisions of this order to ensure reasonable rules on the inside wiring matter.

## Findings of Fact

### THE COMMISSION FINDS:

1. Present statutory and Wisconsin Administrative Code provisions give the commission authority to regulate the utility sale of surplus inside wiring and related materials.

2. Telephone utilities may sell surplus inside wiring and related materials to customers upon request. Utilities are not required to offer such material for sale.

3. Telephone companies that decide to sell surplus inside wire and related material to customers shall file tariffs identifying the conditions of sale and the price determination methodology.

4. The rules promulgated by this order and tariffs filed for sales are intended to apply to all customers consistent with applicable FCC requirements on connections to the telephone network.

5. The rules adopted by this order are reasonable and just and are in the public interest.

6. The revision of Chapter PSC 165, Wis. Adm. Code is classified as a Category 3 Action under s. PSC 2.90(3), Wis. Adm. Code. It consequently does not require an environmental screening under s. 1.11, Wis. Stats., and the Revised Guidelines for the Implementation of the Wis. Environmental Policy Act issued by Executive Order No. 26, February 1976.

APPENDIX

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In Support of Regulation

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and by

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IN OPPOSITION TO REGULATION:

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