



2003 SENATE BILL 302

November 4, 2003 - Introduced by Senators KANAVAS, WELCH, STEPP, DARLING, REYNOLDS and BROWN, cosponsored by Representatives JENSEN, MONTGOMERY, NISCHKE, PETTIS, OLSEN, MUSSER, ALBERS, OTT, PETROWSKI and BIES. Referred to Committee on Transportation and Information Infrastructure.

1 **AN ACT** *to repeal* 196.196 (1) (a) 2. b.; *to renumber* 196.218 (4); *to consolidate,*
2 *renumber and amend* 196.196 (1) (a) 2. (intro.) and 2. a.; *to amend* 196.01
3 (1g) and 196.01 (9m); and *to create* 66.0422, 196.01 (1k), 196.218 (4) (b) and
4 196.219 (2r) of the statutes; **relating to:** exempting broadband Internet service
5 from regulation by the Public Service Commission and local governments,
6 requiring telecommunications utilities to provide unbundled network
7 elements, and price regulation of telecommunications utilities.

Analysis by the Legislative Reference Bureau

Under current law, persons who provide telecommunications service (telecommunications providers) are subject to various degrees and types of regulation by the Public Service Commission (PSC). The degree and type of regulation depends on the type of telecommunications service that is provided. Current law defines "telecommunications service," in part, as the offering for sale of the conveyance of voice, data, or other information, at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication. Cable television service and certain one-way broadcast services are excluded from the definition and, therefore, are not subject to PSC regulation.

This bill excludes broadband service from the definition of "telecommunications service." The bill defines "broadband service" as the

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conveyance of any voice, data, or other information in both directions between a provider's facilities and a customer using any medium or technology: 1) at a speed of 200 kilobits per second or more; or 2) via an intentional radiator, as defined by the Federal Communications Commission (FCC). (The FCC has defined "intentional radiator" as a device that intentionally generates and emits radio frequency energy by radiation or induction.). As a result, under the bill, the PSC has no authority to regulate persons who broadband service. In addition, the bill also revises the definition of "telecommunications service" to eliminate the requirement that it must be conveyed at any frequency over any part of the electromagnetic spectrum.

The bill also prohibits a city, village, town, or county from enacting an ordinance or adopting a resolution that regulates providing, or offering to provide, broadband service.

In addition, the bill requires telecommunications providers that are regulated as telecommunications utilities by the PSC to provide unbundled network elements to other telecommunications providers to the extent specifically required under federal law by the FCC. In general, "unbundled network elements" are the physical and functional elements of a telecommunications utility's network that the telecommunications utility must make available to competitors under federal law. As a result, the bill allows the PSC to use state law to require telecommunications utilities to comply with the requirements under federal law.

The bill also makes changes to the PSC's authority regarding price regulation of telecommunications utilities and universal service. Under price regulation, the PSC regulates the rates charged by a telecommunications utility for certain residential and business services, but does not regulate a utility's rate of return on investments, which is the subject of traditional utility regulation. If certain conditions are satisfied, current law also authorizes the PSC to apply price regulation to rates for the following: 1) advanced telecommunications services; and 2) services that the PSC finds are necessary for universal service. Current law imposes various other duties on the PSC regarding universal service, which, in general, require the PSC to promote the availability of affordable telecommunications services throughout the state. One of the duties is for the PSC to promulgate rules that define the types of services that are necessary components of universal service.

The bill eliminates the authority of the PSC to apply price regulation to rates for advanced telecommunications services. The bill also prohibits the PSC from promulgating rules that specify that broadband service is a necessary component of universal service. The bill does not affect any other duties of the PSC regarding universal service.

For further information see the *state and local* 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:

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1 **SECTION 1.** 66.0422 of the statutes is created to read:

2 **66.0422 Broadband service.** No city, village, town, or county may enact an
3 ordinance or adopt a resolution that regulates providing, or offering to provide,
4 broadband service, as defined in s. 196.01 (1k), to the public.

5 **SECTION 2.** 196.01 (1g) of the statutes is amended to read:

6 196.01 (1g) “Basic local exchange service” means the provision to residential
7 customers of an access facility, whether by wire, cable, fiber optics or radio, and
8 essential usage within a local calling area for the transmission of high-quality
9 2-way interactive switched voice or data communication. “Basic local exchange
10 service” includes extended community calling and extended area service. “Basic
11 local exchange service” does not include additional access facilities or any
12 discretionary or optional services that may be provided to a residential customer.
13 “Basic local exchange service” does not include cable television service, broadband
14 service, or services provided by a commercial mobile radio service provider.

15 **SECTION 3.** 196.01 (1k) of the statutes is created to read:

16 196.01 (1k) “Broadband service” means the conveyance of any voice, data, or
17 other information in both directions between a provider’s facilities and a customer
18 using any medium or technology in any of the following ways:

19 (a) At a speed of 200 kilobits per second or more.

20 (b) Via an intentional radiator, as defined in 47 CFR 15.3 (o).

21 **SECTION 4.** 196.01 (9m) of the statutes is amended to read:

22 196.01 (9m) “Telecommunications service” means the offering for sale of the
23 conveyance of voice, data or other information ~~at any frequency over any part of the~~
24 ~~electromagnetic spectrum~~, including the sale of service for collection, storage,
25 forwarding, switching and delivery incidental to such communication and including

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1 the regulated sale of customer premises equipment. "Telecommunications service"
2 does not include cable television service, broadband service, or broadcast service.

3 **SECTION 5.** 196.196 (1) (a) 2. (intro.) and 2. a. of the statutes are consolidated,
4 renumbered 196.196 (1) (a) 2. and amended to read:

5 196.196 (1) (a) 2. The commission may include, following notice and
6 opportunity for hearing, as part of the services subject to price regulation under this
7 subsection ~~all of the following: 2. a. Those~~ those services and technological features
8 found by the commission to be a necessary component of universal service under s.
9 196.218.

10 **SECTION 6.** 196.196 (1) (a) 2. b. of the statutes is repealed.

11 **SECTION 7.** 196.218 (4) of the statutes is renumbered 196.218 (4) (a).

12 **SECTION 8.** 196.218 (4) (b) of the statutes is created to read:

13 196.218 (4) (b) In promulgating rules under par. (a), the commission may not
14 specify that broadband service is a necessary component of universal service.

15 **SECTION 9.** 196.219 (2r) of the statutes is created to read:

16 196.219 (2r) UNBUNDLED NETWORK ELEMENTS. A telecommunications utility
17 shall provide unbundled network elements to consumers to the extent specifically
18 required under 47 USC 251 (c) and the regulations and orders of the federal
19 communications commission promulgated thereunder.

20 **SECTION 10. Initial applicability.**

21 (1) The treatment of section 66.0422 of the statutes first applies to ordinances
22 enacted and resolutions adopted on the effective date of this subsection.

23 (END)