



## Legislative Fiscal Bureau

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April 21, 2009

Joint Committee on Finance

Paper #665

### **Telecommunications Assessments for Consumer Protection (Public Service Commission)**

[LFB 2009-11 Budget Summary: Page 545, #8]

### **Telecommunications Utility Trade Practices Assessment (Agriculture, Trade, and Consumer Protection)**

[LFB 2009-11 Budget Summary: Page 93, #15]

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#### **CURRENT LAW**

The Public Service Commission (PSC) is responsible for regulating the rates, safety, adequacy, and quality of service of electric, natural gas, water, and combined water and sewer utilities and certain aspects of local telephone service. The Commission's operations are funded through assessments charged to the regulated utilities.

State law generally authorizes the Department of Agriculture, Trade, and Consumer Protection (DATCP) to enforce the state's consumer protection laws. As part of its authority, the agency may adopt administrative rules, issue special orders enjoining unfair practices and requiring businesses to adopt practices specified by the agency, and commence actions to recover civil forfeitures for violation of agency rules and orders.

#### **GOVERNOR**

Require the PSC to annually assess against telecommunications utilities, in proportion to their gross operating revenues during the last year, the total amount appropriated to DATCP for consumer protection functions related to telecommunications services (\$415,800 annually in 2009-10 and 2010-11). Require telecommunications utilities to pay the assessments within 30 days after the Commission mails bills for the assessments, and provide that bills constitute notice

of assessments and demand for payment. Prohibit telecommunications utilities from recovering the assessments through a separate line on billing statements to their customers. Extend current law provisions regarding payment of Commission expenditures to the assessments. Create an annual, program-revenue appropriation for DATCP regulation of telecommunications utility providers, which would be funded with revenues from the new assessment. Further, transfer \$415,800 GPR annually with 6.0 positions from DATCP's consumer protection general operations appropriation to the new PR telecommunications utility appropriation.

## **DISCUSSION POINTS**

1. Except for federal revenues that partially fund the PSC's pipeline safety program, the Commission is funded entirely through fees that it imposes on public utilities. Most of the fees are imposed to fund the Commission's regulatory activities, but some fees fund utility-related programs such as the energy efficiency and renewable resource program, the stray voltage program, and grants under the universal service fund (USF) and the E-911 fund.

2. Like the proposed funding of the 6.0 DATCP positions, there are other instances where PSC-imposed fees fund functions in other agencies. For the stray voltage program, Commission fees fund 4.6 positions at DATCP, in addition to 1.5 positions at the PSC. Also, seven positions in the Department of Natural Resources' power plant siting program are funded with PSC-imposed fees.

3. Most of the PSC-imposed fees on telecommunications utilities fund functions other than regulation of telecommunications companies. Telephone assessments totaled \$36.2 million in 2006-07 and \$31.3 million in 2007-08, but only 8% of the 2006-07 assessments and 12% of the 2007-08 assessments funded the Commission's regulatory activities. The assessments also fund programs created in the early- and mid-1990s during the deregulation of the telecommunications industry. These include the telephone relay service program operated by the Department of Administration (DOA), which has a base funding level of \$4.7 million, and the universal service fund programs, which have a base funding level of \$32.0 million.

4. Of the \$32.0 million in 2008-09 appropriations funded with USF assessments, programs administered by the PSC comprise \$6.0 million. The remaining programs funded with USF assessments include:

- \$17.3 million to the Educational Telecommunications Access (TEACH) program administered by the Department of Administration (DOA);

- \$2.1 million to the BadgerLink program administered by the Department of Public Instruction (DPI);

- \$5.5 million to the Aid to Public Library Systems program administered by DPI;

- \$1.1 million to the University of Wisconsin System to reimburse DOA for BadgerNet

telecommunications services provided to university campuses; and

- \$108,000 to DPI to fund a contract with the National Federation of the Blind to provide the Newsline electronic information service.

5. Besides the new fees that the Commission would impose on telecommunications utilities for consumer protection funding, AB 75 proposes significant increases in telecommunication utility assessments for USF programs. Assessments under the bill would increase by \$12.6 million (39.4%) for 2009-10 and by \$13.4 million (41.8%) for 2010-11. Most of the increase would be used to replace the current GPR appropriation for aid to public library systems. In addition, the bill would require the Commission to impose an additional \$11.3 million in assessments for aid to public library systems in 2008-09. Because it is unlikely that AB 75 will be enacted in time for the Commission to impose these fees in 2008-09, the \$11.3 million in fees would have to be provided through interfund borrowing until the fees can be assessed in 2009-10. This action would have the effect of increasing USF assessments by \$23.9 million, or 74.7%, in 2009-10. Including the proposed consumer protection assessment would raise the assessment increase to \$24.3 million.

6. The additional \$24.3 million represents an assessment increase of 67% compared to the 2006-07 assessment (\$36.2 million) and an increase of 78% compared to the 2007-08 assessment (\$31.3 million). A typical consumer's telecommunications bill would increase by an estimated 65 cents per month in 2009-10 and 37 cents per month in 2010-11 due to the provisions in AB 75 and assuming the assessments would be spread uniformly among the state's 3.1 million end-user access lines. About half of the 2009-10 increase would be of a one-time nature due to the 2008-09 library aid funding. The funding for the consumer protection proposal represents just over 1 cent per month relative to the estimated increases.

7. DATCP, the Department of Justice (DOJ), and district attorneys regulate the advertising, sales representations, and practices related to telecommunication services. The statutes specifically prohibit advertising and sales representations that in any manner make false, misleading, or deceptive statements or representations in regard to the provision of telecommunication services, including the rates, terms, or conditions for service. In addition, consumers may not be billed for any telecommunication service that was not affirmatively ordered, unless the service is required to be provided by law, by the Federal Communications Commission, or by the PSC. Consumers must be provided written confirmation of any services ordered through oral solicitation and customers may not be charged for any services that they have canceled. DATCP, in consultation with DOJ, has the authority to promulgate rules related to the provision of telecommunication services in the state. Administrative rule ATCP 123 regulates subscription and billing practices related to cable and telecommunication services provided to consumers primarily for personal, household, or family use.

8. Authorized staffing for DATCP's Bureau of Consumer Protection totals 68.60 positions in 2008-09 (53.8 under the bill). Base level staffing includes 23.25 positions in the Regulation and Safety Section who enforce laws and rules related to environmental regulation of

consumer products and product safety and who do not handle complaints involving telecommunications services. The six positions that the Governor proposes to fund through telecommunications assessments represent 13% of the remaining 45.35 positions.

9. One function of DATCP's consumer protection staff is to review and respond to consumer inquiries and complaints. In each year from 2003 to 2008, DATCP opened between 14,000 and 18,000 written complaints in response to consumer contacts and its own investigations, and in five of the six years, telecommunications complaints were the second highest source of complaints after telemarketing/"no call" list complaints. Of the more than 91,000 overall complaints (formal written complaints, as well as complaints received by telephone or walk-in service), there were over 11,000 telecommunications complaints, representing 12% of the total. Therefore, the percentage of staff that would be funded through telecommunications assessments is almost equivalent to the average percentage of telecommunications complaints over the 2003 to 2008 period.

10. Some of the telecommunications complaints investigated by the Bureau concern commercial mobile radio service providers (wireless providers), but DATCP indicates that it is not able to quantify those complaints. The definition of telecommunications utility used in the AB 75 provision authorizing the fee for consumer protection activities would not extend to wireless providers. State law limits PSC authority over these companies.

11. Wireless providers have also been exempted from contributions to the universal service fund. Even though state law authorizes the PSC to impose USF fees on wireless providers, the Commission issued an order suspending assessments on them in November, 2000 (Docket No. 05-GF-104). In the order, the Commission reasoned that as an emerging market in which wireless service is viewed as an adjunct to wireline service, users would be more likely to abandon or limit their use of wireless service in response to basic rate increases resulting from assessments. Because such actions would negatively affect "the development of competition, consumer choice, and infrastructure development," the Commission found that the wireless market should be allowed to develop before providers become subject to USF assessments. In keeping with this reasoning, the initial suspension was to extend only to January, 2002, but the Commission extended the suspension indefinitely in December, 2001.

12. State law requires the PSC to review its USF administrative rules biennially, although AB 75 would replace this with a more general provision requiring the Commission to review and revise its rules as appropriate. In 2006, the PSC proposed changes to its USF rules and sought comments on the revisions. The Commission invited specific comments and testimony concerning "whether assessment of wireless providers should be resumed."

13. Comments and testimony supporting the suspension's revocation maintained that the suspension is contrary to federal law and that the conditions which the PSC cited in its approval of the suspension are no longer applicable. A federal law provision relating to state universal service funds states, "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by

the State to the preservation and advancement of universal service in that State" [47 U.S.C. s. 254(f)]. Testimony that this provision requires USF assessments imposed on wireline providers to also be imposed on wireless providers has been corroborated by staff opinions from the Legislative Council and the PSC. Other testimony indicated that because the numbers of wireline and wireless subscribers in Wisconsin are comparable (as of 2005), wireless service should no longer be viewed as an adjunct to wireline service. More recent data compiled by the Federal Communications Commission indicates that the number of wireless subscribers in Wisconsin increased from 2.2 million in December, 2001, to 3.8 million in December, 2007, and exceeds the 3.1 million wireline subscribers served by local exchange carriers.

14. To the extent that wireless providers are a source of consumer complaints, it could be argued that they should be subject to the assessment. This would require AB 75 to be modified to include wireless providers in the definition of telecommunications utility. This action would also spread the cost of the assessment across a larger number of customers, thereby reducing the per customer cost of the DATCP assessment. Assuming the assessment is passed on to customers, the number of customers affected by the assessment would increase by 123% (from 3.1 million to 6.9 million), and per customer charges would decrease by 55% (from 13.4 cents to 6.0 cents annually).

15. Because the consumer complaint assessment would total only \$415,800 annually, the assessment is estimated to have a minimal impact on subscriber bills regardless of which providers are subject to the assessment. However, if both the DATCP and USF assessments were imposed on both wireline and wireless providers, monthly bills for wireline customers would decrease relative to current law amounts even if the Legislature approves both the DATCP assessment and the USF assessment increases. Assuming uniform pass through of all assessments to customers, current USF assessments average 86 cents per month for wireline customers. Under AB 75, which would impose assessments only on wireline providers, the per customer amount would increase to \$1.51 per month, relative to the 2008-09 and 2009-10 appropriations, and to \$1.23 per month, relative to the 2010-11 appropriations. By extending the proposed DATCP and USF assessments to wireline and wireless providers, charges to customers would equal 68 cents per month and 56 cents per month, respectively, relative to the two preceding amounts and assuming the assessments' uniform pass-through to all customers. Because many individuals subscribe to both wireline and wireless service, the net impact per customer would vary depending on service mix. Each of these options could be achieved by amending the current law provision that limits PSC authority over wireless providers (s. 196.202).

16. Deleting the Governor's recommendation would decrease PR expenditures by \$415,800 annually and increase GPR expenditures by an offsetting amount. If the Committee desires to take other action affecting the six DATCP positions, that action should be taken during the Committee's executive session on DATCP. If the Committee wants to modify the Governor's proposed use of SEG funding for library aids, that action should be taken during the Committee's executive session on the Department of Public Instruction.

**ALTERNATIVES**

1. Approve the Governor's recommendation.
2. Modify the Governor's recommendation to extend the following assessment(s) specifically to commercial mobile radio (wireless) providers as well as wireline providers:
  - a. the DATCP consumer complaint assessment; and/or
  - b. the universal service fund assessment.
3. Delete provision.

<b>ALT 3</b>	<b>Change to Bill</b>	
	Funding	Positions
GPR	\$831,600	6.00
PR	<u>- 831,600</u>	<u>- 6.00</u>
Total	\$0	0.00

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