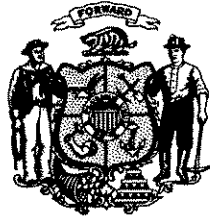


98-049 PSC 1608/161-EDUC. TELECOMM.  
ACCESS

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-049**

AN ORDER to amend PSC 160.05 and 160.17; and to create PSC 160.11 (6) and chapter PSC 161, relating to the educational telecommunications access program.

Submitted by **PUBLIC SERVICE COMMISSION**

03-27-98 RECEIVED BY LEGISLATIVE COUNCIL.

04-23-98 REPORT SENT TO AGENCY.

RS:JES;jt;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

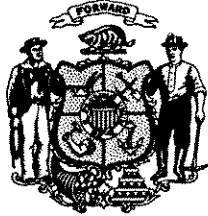
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-049

### 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 October 1994.]**

#### 1. Statutory Authority

The commission should review whether it has the authority to delegate to the Technology for Educational Achievement in Wisconsin Board the duty to establish technical standards and specifications under s. PSC 161.03 (1) and (2) and the powers to establish other eligibility and priority criteria under s. PSC 161.06 (2) (f) and (3) (f). Section 196.218 (4) (c) 2. and 3., Stats., direct the commission to establish these eligibility requirements and specifications for access to a data line or video link.

#### 2. Form, Style and Placement in Administrative Code

a. The use of hyphens in the reference to statutes interpreted in the analysis accompanying the rule does not conform with preferred drafting style. [See s. 1.07 (2), Manual.]

b. The inclusion of "Section" before "PSC" in the treatment clauses in SECTIONS 1 to 3 does not conform with preferred drafting style. [See the examples in s. 1.04 (2), Manual.]

c. The treatment of s. PSC 160.05 should be divided into three SECTIONS with each SECTION corresponding to a specific type of treatment. One SECTION should amend s. PSC 160.05 (intro.), a second SECTION should renumber s. PSC 160.05 (1) to (10) to sub. (1) (a) to (j) and a third SECTION should create s. PSC 160.05 (2) to (4). [See s. 1.04 (2) (b), Manual.] Similarly, the treatment of s. PSC 160.17 by the rule should be divided into appropriate SECTIONS.

d. The reference at the end of s. PSC 160.17 (2), as created by the rule, should include "PSC" before "160.05 (2)."

e. The use of parentheses to contain parenthetical or explanatory material is not the preferred drafting style. [See s. 1.01 (6), Manual.] See the use of parentheses in s. PSC 161.05 (3).

f. The rule uses "will" as part of the verb in ss. PSC 161.06 (4) and 161.07 (1). The preferred drafting style to express a mandatory duty is to use "shall" as part of the verb. To express a discretionary authority, the preferred drafting style is to use "may" as part of the verb. [See s. 1.01 (2), Manual.] The commission should replace "will" in these two provisions with "may" or "shall" as appropriate.

g. Since the Educational Telecommunications Access Program established under s. 196.218 (4r), Stats., does not include the payment for telecommunications services under s. 16.973 (1), Stats., to the campuses of the University of Wisconsin System at River Falls, Stout, Superior and Whitewater, the text of s. PSC 161.08 (3) should not be placed in ch. PSC 161, as ch. PSC 161 relates to the Educational Telecommunications Access Program.

h. Unless the commission has a specific reason not to, the commission should be consistent in its treatment of terms that are defined in the statutes in the definitions in s. PSC 161.02. The definitions of "data line" and "private college" in s. PSC 161.02 (4) and (6) essentially repeat the definitions in s. 196.218 (4r) (a) 1. and 2., whereas the definitions of "private school" and "school district" in s. PSC 161.02 (7) and (9) cross-reference statutory definitions.

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

a. Since an agency may only interpret a statute that it enforces or administers, the appropriateness of including statutes that the commission does not administer or enforce, ss. 16.974 (7), 20.275, 20.285 (1q), 44.70 and 44.71, Stats., in the list of statutes interpreted in the analysis accompanying the rule is not apparent.

b. The list of statutes interpreted in the analysis accompanying the rule indicates that the rule interprets s. 196.218 (3) (a) 4. and (f), Stats. Since the rule does not appear to contain any provisions which interpret these statutes, the necessity for listing them is not apparent.

c. Section PSC 161.05 (5) refers to a form. The commission should ensure that the requirements of s. 227.14 (3), Stats., are met.

d. In s. PSC 161.08 (3), it appears that the cross-reference to s. 16.973 (1), Stats., is incorrect. Following the enactment of 1997 Wisconsin Act 27, this provision of the statutes only contains definitions.

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

a. The second sentence in s. PSC 160.17 (3) gives the impression that the commission may unilaterally modify the rate of assessments that fund the universal service fund at any time

based on changes in funding needs. The assessments are capped under s. 196.218 (3) (a) 3., Stats., at a rate sufficient to generate the amounts in the specified appropriations. If the funding needs determined by the commission exceed the sum of those appropriations, then the commission may change the assessments that fund the universal service fund only following a change in one or more of the appropriations through enactment of a law or a supplemental appropriation authorized by the Joint Committee on Finance under s. 13.101 (3), Stats. The commission should clarify s. PSC 160.17 (3) to establish that the assessments may not raise more funds than what is authorized to be appropriated under ch. 20, Stats.

b. Section PSC 161.01 (2) authorizes a school district, private school technical college district, private college or private library board to receive special access to a data line or video link in a manner that does not conform with ch. PSC 161 under an exceptional or unusual situation. Since sub. (2) is written in the passive voice, the process that one of these entities should follow to receive this treatment is not clear. Should the entity apply to the commission, the Department of Administration (DOA) or the Technology for Educational Achievement in Wisconsin Board for this treatment? And what standards will be used?

c. Section 196.218 (4r) (c) 5., Stats., requires the rule to include the privacy protections specified in s. 196.209 (4) (a) and (b), Stats. The text of the privacy protections in s. PSC 161.04 is identical to the general protections specified in s. 196.209 (4) (a) and (b), Stats. Can the commission provide additional guidance in s. PSC 161.04 on the types or characteristics of protections that satisfy these requirements to help ensure a consistent application of the requirements? The rule as written says nothing.

d. As drafted, the restriction in s. PSC 161.05 (3) on dual funding applies only to a school district that has the specified grant because of an access contract with the DOA under s. 16.974 (7) (a), Stats., in effect on October 14, 1997. If the commission intends this restriction to apply to all school districts that have received a grant under s. 196.218 (4r) (g), Stats., in the current state fiscal year, then the commission should delete the clause at the end of s. PSC 161.05 (3) that begins with "because" and ends with "link" before the last period in the subsection.

e. The eligibility criteria in s. PSC 161.06 (2) (b) and (d) refer to an applicant's technology plan and training plan. What are these plans? They are not identified or referenced elsewhere in ch. PSC 161. If they are required of all applicants, then the rule should identify them in the requirements for an application in s. PSC 161.05.

f. The commission should review the eligibility criteria in s. PSC 161.06 (2) and the criteria for prioritizing applications in s. PSC 161.06 (3) to ensure that the application of each criterion is clear. For example, what does the criterion in sub. (2) (b), "applicant's technology plan," mean? Must an application have any technology plan or a plan with specific content to meet this criterion? The criterion in sub. (2) (e), "proposed uses of the requested access," suggests that some uses are more acceptable than others and that the uses will be a factor in determining whether an application for access is granted. With respect to the criterion in sub. (3) (b), "whether the applicant has applied for a discount under the Federal Universal Service Program and 47 U.S.C. 254," it is not clear if application for this federal discount would assist or hinder an application.

g. Under s. PSC 161.07 (2), the Technology for Educational Achievement in Wisconsin Board may coordinate with the DOA an investigation of the feasibility of alternative access and, if alternative access is feasible, coordinate with the department for the procurement of such alternative access. Can the commission clarify this process by establishing criteria for conditions that will make an alternative access "feasible"?

h. What is the contract between an applicant and the DOA referred to in s. PSC 161.08 (1)? The commission should define it or provide a reference to a statute or administrative rule that requires it.

i. The provisions in s. PSC 161.08 (2) and (3) essentially repeat the provisions in s. PSC 160.05 (2) to (4). Also, s. PSC 161.09 is redundant with the provisions in s. PSC 160.17 (2) and (3). The commission should review ss. PSC 161.08 (2) and (3) and 161.09 to determine whether they are necessary as part of ch. PSC 161.

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Rules to Establish an Educational  
Telecommunications Access Program (Per TEACH WI)

1-AC-169

**NOTICE OF INVESTIGATION AND HEARING  
REGARDING EMERGENCY RULES IN EFFECT AND PROPOSED ORDER  
OF THE PUBLIC SERVICE COMMISSION OF WISCONSIN CREATING RULES**

**Public Hearing:**

**May 5, 1998 - 10:00 a.m.**  
Public Service Commission  
610 North Whitney Way  
Madison, WI 53705

Address Comments To:

**Lynda L. Dorr, Secretary to the  
Commission**  
P.O. Box 7854  
Madison, WI 53707-7854  
Fax No: (608) 266-3957

Written Comments (if desired) Due:

**May 15, 1998, by Noon**

FAX Comments Due:

**May 14, 1998, by Noon**

At its open meeting of February 24, 1998, the Public Service Commission of Wisconsin (Commission) adopted emergency rules establishing, on a temporary basis, the Educational Telecommunications Access Program, as part of the Technology for Educational Achievement in Wisconsin (TEACH WI) initiative.

The Commission now proposes permanent rules to amend §§ PSC 160.05, PSC 160.11(6) and PSC 160.17, Wis. Admin. Code, regarding the provision of universal telecommunications service and administration of the universal service fund and to create ch. PSC 161, Wis. Admin. Code, establishing the Educational Telecommunications Access Program.

**INPUT FROM EDUCATIONAL INSTITUTIONS, LIBRARIES AND  
TELECOMMUNICATIONS PROVIDERS EXPRESSLY INVITED**

The Commission specifically invites public libraries and various educational institutions, which are potentially eligible under the TEACH program; the telecommunications industry; the



Technology for Educational Achievement in Wisconsin Board (Board); and the Department of Administration (Department) to comment and participate in this proceeding. Interested persons may consider the rules attached hereto as a starting point for further discussion. The Commission wants to create rules that appropriately administer the Educational Telecommunications Access Program and that are competitively neutral and, to the extent possible, technologically neutral.

**ANALYSIS PREPARED BY THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory Authority: §§ 196.02(1) and (3), 196.218(4r)(b), and 227.11(2), Stats.  
Statutes Interpreted: §§ 16.974(7); 20.275; 20.285(1)(q), 44.70-44.71, 196.218(1),  
(3)(a)3-4, and (f), (4r), (5)(a)5-7., Stats.

4.  
2-5-98

- How  
interpret  
?

The TEACH WI initiative culminated in comprehensive legislation in 1997 Wisconsin Act 27 (Act 27). Newly enacted § 196.218(4r)(b), Stats., mandates that the Commission, in consultation with the Department and Board, promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links.

Section 9141 of Act 27 mandated that the Commission also promulgate emergency rules establishing the Educational Telecommunications Access Program, for the period before the effective date of permanent rules promulgated under § 196.218(4r)(b), Stats., but not to exceed the period authorized under § 227.24(1)(c) and (2), Stats. Establishing for the first time the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices, the emergency rules were effective February 27, 1998.

The proposed rules which are the subject of this notice are different from the emergency rules already in effect only in regard to technical college districts. Because the Board, in consultation with the Commission, has decided that the appropriation contains sufficient monies to include technical college districts in the program on or after April 1, 1998, the prohibitions that a technical college district could not apply before April 1, 1998, or be determined eligible on or after April 1, 1998, have been eliminated. Sections PSC 161.05(4) and PSC 161.06(1)(b), Wis. Admin. Code, are provisions in the emergency rules not contained in the proposed permanent rules. These draft rules (and the emergency rules) amend §§ PSC 160.05, 160.11(6) and PSC 160.17, Wis. Admin. Code, and create ch. PSC 161, Wis. Admin. Code, to read as shown in Attachment A. The rules implement the TEACH legislation by:

- Defining the entities which may be eligible under this program, i.e., “private college,” “private school,” “public library board,” “school district” and “technical college district.”

- Defining a “data line” as a data circuit which provides direct access to the internet.
- Defining a “video link” as a 2-way interactive video circuit and associated services.
- Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.
- Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.
- Including privacy protections as required by § 196.218(4r)(c)5., Stats.
- Providing an application procedure that (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, and (3) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under § PSC 160.11, Wis. Admin. Code.
- Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access, readiness of the applicant to utilize the requested access and proposed uses of the requested access.
- Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.
- Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.
- Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.
- Providing that assessments for this program shall be made by the Commission under ch. PSC 160, Wis. Admin. Code, in order to pay other costs of this program.

### TEXT OF PROPOSED RULE

The text of the proposed rules is set forth as Attachment A hereto.

### INITIAL REGULATORY FLEXIBILITY ANALYSIS

Existing universal service fund rules may have an effect on small telecommunications utilities, which are small businesses under § 196.216, Stats., for the purposes of § 227.114, Stats. These small telecommunications utilities, of which there are 79 in Wisconsin, like other telecommunications providers (both large and small), have obligations under the universal

service fund, including an obligation for payments to the universal service fund. Under the rules proposed in this proceeding, there will be further assessments for the fund per the requirements and process of the existing rules in ch. PSC 160, Wis. Admin. Code.

Other provisions of these proposed rules should have no direct impact on small businesses. The Commission already has established in § PSC 160.18(1)(a), Wis. Admin. Code, a policy and provision to make an exemption from fund assessments to protect entry by and continued operation of small telecommunications providers as directed by statutory objectives.

The agency has considered the methods in § 227.114(2), Stats., for reducing the impact of the rules on small businesses. Other than the provisions for exemption from assessments for small providers noted above, these methods are not appropriate nor consistent with statutory objectives.

### **FISCAL ESTIMATE**

These rules have no independent fiscal impact from that of the TEACH legislation which mandates these rules. Appropriations for the TEACH program costs as estimated by the Legislative Fiscal Bureau, and excluding the Universal Services Fund appropriations under § 20.155(1)(q), Stats., are \$14,188,400 for operations during the 1997–99 biennium, as shown on the attached Fiscal Estimate form, Attachment B.

### **ENVIRONMENTAL ANALYSIS**

This is a Type III action under § PSC 4.10(3), Wis. Admin. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under § 1.11, Stats., nor an environmental assessment is required.

### **EFFECTIVE DATE**

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in § 227.22(2)(intro.), Stats.

### **NOTICE OF HEARING**

**NOTICE IS HEREBY GIVEN** that the Commission will hold a public hearing for the purpose of obtaining comments from educational institutions, libraries, telecommunications providers and other interested parties on both the emergency rules and the proposed permanent rules. The hearing will be held according to the following schedule:

Docket 1-AC-169

**May 5, 1998, at 10:00 a.m.**, in the Amnicon Falls Hearing Room (Room 1300) at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin. The examiner may continue the hearing at such times and places as necessary to complete the hearing.

**NOTICE IS FURTHER GIVEN** that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (Lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building and the building has some wheelchair accessible rest rooms. Any party with a disability who needs additional accommodations should contact Richard Teslaw at (608) 267-9766.

### **WRITTEN COMMENTS**

**NOTICE IS FURTHER GIVEN** that any person may submit written comments on the emergency rules and revised, proposed rules. The hearing record will be open for written comments from the public effective immediately, until **May 15, 1998, by noon (May 14, 1998, by noon, if filed by fax).**

All written comments on the rules must include a reference on the filing to docket 1-AC-169 and be addressed to Lynda Dorr, Secretary to the Commission.

If filing by mail, courier or hand delivery: Address comments to Lynda Dorr, Secretary to the Commission, Public Service Commission, 610 North Whitney Way, P.O. Box 7854, Madison, WI, 53707-7854. Industry parties should submit an original and 15 copies. Members of the general public need only file an original. File by **May 15, 1998, at noon.**

If filing by fax: Send fax comments to (608) 266-3957. Address comments to Lynda Dorr, Secretary to the Commission. Fax filing cover sheets **MUST** state "**Official Filing**," the docket number (1-AC-169), and the number of pages (limited to 20 pages for fax comments). File faxes by **May 14, 1998, at noon.**

**File by one mode only.**

Questions regarding the hearing may be directed to Examiner John Crosetto at (608) 266-7165. Other questions on this matter should be directed to Gary Evenson, Assistant Administrator, Telecommunications Division, at (608) 266-6744 or [evensg@psc.state.wi.us](mailto:evensg@psc.state.wi.us), or

Docket 1-AC-169

Mary Stevens, Legal Counsel, Telecommunications Division, at (608) 266-1125 or *stevem@psc.state.wi.us*. Do **not** direct any comments for the record to these addressees.

Dated at Madison, Wisconsin, March 26, 1998

By the Commission:

  
\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

LLD:MMS:reb:slj:g:\notice\pending\1-AC-169

Attachments

- cc: Records Management
- Lynda Dorr, Secretary to the Commission
- RM Mail

SECTION 1. Section PSC 160.05 is amended to read:

**PSC 160.05 Universal service fund programs.** Universal service fund monies may be used for fund administration and for the following purposes:

(1) For the following programs as adopted by the commission under the appropriation in s. 20.155(1)(q), Stats.:

- (1)(a) Link-Up America, as specified in s. PSC 160.061.
- (2)(b) Lifeline assistance, as specified in s. PSC 160.062.
- (3)(c) Voice mail service for the homeless, as specified in s. PSC 160.063.
- (4)(d) Special needs equipment vouchers, as specified in s. PSC 160.071(1).
- (5)(e) Telecommunications customer assistance program, as specified in s. PSC 160.08.
- (6)(f) High rate assistance credits, as specified in PSC 160.09.
- (7)(g) Alternative universal service protection plans, as specified in s. PSC 160.092.
- (8)(h) Rate shock mitigation, as specified in s. PSC 160.10.
- (9)(i) Assistance for institutions, as specified in s. PSC 160.11.
- (10)(j) Intralata toll service provider of last resort, as specified in s. PSC 160.14.

(2) For payments by the technology for educational achievement in Wisconsin board for educational telecommunications access support, as specified in s. 196.218(5)(a)5., Stats., under the appropriation in s. 20.275(1)(s), (t) and (tm), Stats.

(3) For payments to the department of administration for telecommunications services provided to the campuses of the University of Wisconsin system at River Falls, Stout, Superior and Whitewater, as specified in s. 196.218(5)(a)6., Stats., under the appropriation in s. 20.285(1)(q), Stats.

(4) For grants awarded by the technology for educational achievement in Wisconsin board prior to July 1, 2002, as specified in s. 196.218(5)(a)7., Stats., under the appropriation in s. 20.275(1)(s), Stats.

SECTION 2. Section PSC 160.11(6) is created to read:

160.11 (6) An institution which is receiving access to a data line or video link supported by the educational telecommunications access program under ch. PSC 161 is not eligible to receive support under this section for that data line or video link.

SECTION 3. Section PSC 160.17 is amended to read:

**PSC 160.17 Fund budget and assessment rate.** (1) At least annually, the commission shall set the budget for fund administration and the entire universal service fund and its individual programs specified in s. PSC 160.05(1). (2) The commission may make adjustments to the budget as needed to address unforeseen circumstances. Adjustments may include:

- (a) Reallocating the budget among programs.

- (b) Modifying the support formulas or benefits within a program.
- (c) Deferring support payments to a later period.
- (d) Raising or reducing assessment levels.

(2) At least annually, the commission, in consultation with the technology for educational achievement in Wisconsin board and department of administration, shall determine the amounts necessary for funding the payments specified in s. 160.05(2) and (4).

(3) Based on the need for funds under subs. (1) and (2) and s. 196.218(5)(a)6., Stats., the commission shall determine the assessment rate to apply to providers. The commission may modify the assessment rate at any time based on changes in funding needs or provider revenues subject to assessment.

(4) The commission shall provide notice of the proposed annual fund budget under sub. (1) and any proposed changes to the budget to the universal service fund council and other interested parties with an opportunity for comment prior to commission action.

SECTION 4. Chapter PSC 161 is created to read:

**Chapter PSC 161**

**EDUCATIONAL TELECOMMUNICATIONS ACCESS PROGRAM**

PSC 161.01	Purpose and special consideration.	PSC 161.06	Determinations of eligibility.
PSC 161.02	Definitions.	PSC 161.07	Provision of services.
PSC 161.03	Technical standards.	PSC 161.08	Payment.
PSC 161.04	Privacy protections.	PSC 161.09	Assessments.
PSC 161.05	Applications.		

**PSC 161.01 Purpose and special consideration.** (1) **PURPOSE.** As required under s. 196.218(4r)(b), Stats., this chapter establishes an educational telecommunications access program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards. Under this chapter, the technology for educational achievement in Wisconsin board determines eligibility to participate in the program. The department of administration contracts with telecommunications providers under s. 16.974(7), Stats., for the requested access. The applicant makes monthly payments to the department for each data line or video link. The board pays the difference between costs under the contract and the applicant's payments from the universal service fund. The board may consider, as alternative access, service architecture or technology not available through the department at the time of the application.

(2) **SPECIAL CONSIDERATION.** Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and, upon due investigation of the facts and circumstances involved, the provision of access under this program in a manner which may be lesser, greater, other or different than provided in this chapter.

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Estimate

Att. person authorized to sign  
11/16/04

Attachment A

**PSC 161.02 Definitions.** In this chapter:

- (1) "Alternative access" means a service architecture or technology not available through the department at the time of the application.
- (2) "Board" means the technology for educational achievement in Wisconsin board.
- (3) "Commission" means the public service commission.
- (4) "Data line" means a data circuit which provides direct access to the internet. (4r)(a)1.
- (5) "Department" means the department of administration.
- (6) "Private college" means a private, regionally accredited, 4-year, nonprofit college or university which is incorporated in this state or which has its regional headquarters and principal place of business in this state or a tribally controlled college in this state. has the meaning s. 196.218(4) a)2
- (7) "Private school" has the meaning given in s. 115.001(3r), Stats.
- (8) "Public library board" means a board created under ch. 43, Stats.
- (9) "School district" has the meaning given in s. 115.01(3), Stats. established?
- (10) "Technical college district" means a district organized under ch. 38, Stats.
- (11) "Universal service fund" means the trust fund established under s. 25.95, Stats.
- (12) "Video link" means a 2-way interactive video circuit and associated services. (4r)(a)3?

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5- to establish

**PSC 161.03 Technical standards. (1) GENERAL STANDARDS.** The board shall

establish technical standards and specifications as necessary for access to data lines or video links provided under the educational telecommunications access program to school districts, private schools, technical college districts, private colleges and public library boards. The board shall encourage the development of internationally recognized standards, specifications and technologies, and consider adopting such standards, specifications and technologies as soon as possible, to ensure that access provided under this chapter allows maximum interaction with other networks throughout the world.

(4r)(c)3.

(2) DATA LINE. A data line shall terminate at an internet service provider unless the board determines that an alternative is acceptable. A data line may include transport and associated hardware required by the department for its management of its statewide network. A data line does not include voice services or other non-internet related data transmission or services unless the board determines that other data transmission is acceptable. The direct access to the internet provided by the data line does not include internet services such as subscription services, electronic mail, applications and other services determined by the board.

(3) VIDEO LINK. The video link may include transport, switching equipment and software needed to provide 2-way interactive video, maintenance, scheduling software, and equipment needed to compress and decompress video information. A video link may also include direct access to the internet through available channels within the circuit and access to a gateway for purposes of inter-system communication and compatibility. A video link may not include television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

**PSC 161.04 Privacy protections.** Any access to data lines or video links provided

under the educational telecommunications access program shall include protections against the outflow of information about users of telecommunications services and protection to the users of

what kind of protections

5- clarity still?

doesn't say anything system 43,19(1) 43,21(1) 43,24(1) 43,25(1) 43,26(1)



telecommunications services from receiving privacy intrusions, as required under s. 196.218(4r)(c)5., Stats.

**PSC 161.05 Applications.** (1) Except as provided under subs. (3), (4) and (5), a school district, private school, technical college district, private college or public library board may apply to the board to participate in the educational telecommunications access program for access to a data line or video link.

(2) Notwithstanding sub. (1), a school district which operates more than one high school may apply for access to a data line and video link or access to more than one data line or video link. A school district may not apply for access to more data lines or video links than the number of high schools in that district.

(3) A school district may not apply to participate in the educational telecommunications access program for access to a data line or video link if it has received in the current state fiscal year (July 1 to June 30) an annual grant from the board under s. 196.218(4r)(g), Stats., because of a contract under s. 16.974(7)(a), Stats., in effect on October 14, 1997, for access to a data line or video link.

(4) A school district, private school, technical college district, private college or public library board may not apply to participate in the educational telecommunications access program for access to a data line or video link if it is receiving partial support funding through rate discounts from the universal service fund under s. PSC 160.11 for that data line or video link.

(5) The application shall be on a form approved by the board and include the following:

(a) The name, address and telephone number of the school district, private school, technical college district, private college or public library board and the name and telephone number of an individual to contact about the application.

(b) A description of the access requested.

(c) The specific location for each data line or video link requested.

(d) The desired date for service to begin for each data line or video link requested.

(e) A brief description of the proposed use of each data line or video link requested.

(f) Other information requested by the board.

(6) The board shall forward applications when received to the commission and department.

**PSC 161.06 Determinations of eligibility.** (1) The board shall determine if any school district, private school, technical college district, private college or public library board which applies under s. PSC 161.05 is eligible to participate in the educational telecommunications access program.

(2) In its determination of eligibility under sub. (1), the board shall use the following criteria:

(a) Availability of funds and impact of the requested access on available funds.

(b) Applicant's technology plan.

(c) Reasonableness of requested access, including economic efficiency and cost.

Requests for access which requires telecommunications transport over long distances when similar access is available locally or regionally may be determined ineligible.

5-4 max?

2- use C  
(-) PSC 161.05  
for

under link?

for

Forms

1- Bd. 161.07

to deny - when  
refused?

(d) Readiness of applicant to utilize the requested access, including whether a training plan addressing the new technology has been established.

(e) Proposed uses of the requested access.

(f) Other criteria established by the board.

(3) If the board, after consultation with the commission, determines at any time that the monies in the universal service fund for this program are insufficient to approve all pending applications, the board may prioritize applications for access. In establishing priorities, the board may consider, in addition to the criteria under sub. (2), the following: all of

(a) Whether an applicant already has data lines or video links in service.

(b) Whether the applicant has applied for a discount under the federal universal service program in 47 USC 254.

(c) The potential for underutilization of the access requested by the applicant.

(d) The maximization of the number of eligible applicants statewide.

(e) Geographic distribution of access to data line and video links statewide.

(f) Other criteria established by the board.

(4) The board will notify the applicant, department and commission of its determination.

**PSC 161.07 Provision of services.** (1) COORDINATE WITH DEPARTMENT. If the board determines under s. PSC 161.06 that an applicant is eligible to participate in the educational telecommunications access program, the board will coordinate with the department to provide the requested access.

(2) ALTERNATIVE ACCESS. At any time, in response to an application from an applicant or upon its own motion, the board may coordinate with the department an investigation of the feasibility of alternative access. If alternative access is feasible, the board shall coordinate with the department for the procurement of such alternative access.

(3) NOTIFICATION. If the department is unable to contract under s. 16.974(7), Stats., for alternative access which is feasible, the department shall notify the board within 5 days.

**PSC 161.08 Payments.** (1) Any contract between an applicant and the department shall require a monthly payment from the applicant to the department for each data line or video link, not to exceed \$250 per month, except that the payment required may not exceed \$100 per month for each data line or video link which relies on a transport medium operating at a speed of 1.544 megabits per second.

(2) The board shall pay from the universal service fund the costs of annual grants under s. 196.218(4r)(g), Stats., and contracts under s. 16.974(7), Stats., as required by s. 196.218(5)(a)5., Stats., to the extent that these costs are not paid under sub. (1).

(3) The department shall recover from the universal service fund amounts necessary to pay for telecommunications services provided under s. 16.973(1), Stats., to the campuses of the University of Wisconsin System at River Falls, Stout, Superior and Whitewater, as required by s. 196.218(5)(a)6., Stats.

Handwritten notes: 2- training plan, 5- some use, not released at this time, 1- US PSC do

Handwritten notes: 2- shall, 2- shall

Handwritten notes: 5- shall, 5- shall

Handwritten notes: 4- shall, 4- shall

Handwritten notes: 2- placement, 1- placement, 1- placement, 1- placement, 1- placement

Handwritten notes: 160.05(3)

5. Rechecked w/ ch. 160 amendments -

2. § 210(1) Manual

outside of the rules (but in order)

**PSC 161.09 Assessments.** Assessments for the educational telecommunications access program shall be made by the commission pursuant to ch. PSC 160.

SECTION 5. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

G:\notice\pending\1-AC-169

1997 Session

**FISCAL ESTIMATE**

DOA-2048 N(R10/96)

 ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Rule-Making

Amendment No. if Applicable

**Subject**

Rule Implementation for the Educational Telecommunications Access Program

**Fiscal Effect**State:  No State Fiscal Effect (for rule making)Check columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.
 Increase Costs - May be possible to Absorb  
Within Agency's Budget     Yes     No

 Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation
 Decrease CostsLocal:  No local government costs (for rule making)

1.  Increase Costs  
 Permissive     Mandatory

2.  Decrease Costs  
 Permissive     Mandatory

3.  Increase Revenues  
 Permissive     Mandatory

4.  Decrease Revenues  
 Permissive     Mandatory

5. Types of Local Governmental Units Affected:

 Towns       Villages       Cities  
 Counties     Others \_\_\_\_\_  
 School Districts     WTCS Districts
**Fund Sources Affected**
 GPR     FED     PRO     PRS     SEG     SEG-S
**Affected Ch. 20 Appropriations**

20.275 and 20.285

**Assumptions Used in Arriving at Fiscal Estimate**

The Public Service Commission in accordance with the provisions of Wisconsin Act 27 established Rule-Making Docket 1-AC-169 to implement emergency rules and permanent rules for the program known commonly as the Educational Telecommunications Access Program (TEACH WI). The emergency rules became effective on February 27, 1998. This further rule making will address permanent rules. Under Wisconsin rule-making provisions, if there is determined to not be a fiscal impact from the rules, then a summary of the impact of the statutes that warranted the creation of the rules must be made.

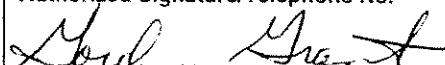
Appropriations for the Teach WI program costs as estimated by the Legislative Fiscal Bureau and excluding the Universal Services Fund appropriations under 20.155 (1) (q), are \$14,188,400 for operations during the 1997-99 biennium. These amounts are established to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards.

**Long-Range Fiscal Implications**

Assume at least the same level of biennial expenditures for the future

 Agency/Prepared by: (Name & Phone No.)  
 PSC, Gordon Grant 267-9086

Authorized Signature/Telephone No.



Date

03/23/98



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman  
John H. Farrow, Commissioner

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

The Honorable Glenn Grothman, Cochair  
Joint Committee for Review of Administrative Rules  
The State Assembly  
State Capitol, Room 125 West  
P.O. Box 8952  
Madison, WI 53708-8952

The Honorable Robert Welch, Cochair  
Joint Committee for Review of Administrative Rules  
The State Senate  
1 East Main, Room 201  
P.O. Box 7882  
Madison, WI 53707-7882

Re: Rules to Establish an Educational Telecommunications Access  
Program (Per TEACH WI)

1-AC-169

## Second Request to Extend the Effective Date of Emergency TEACH Rules

Dear Representative Grothman and Senator Welch:

The Public Service Commission of Wisconsin (Commission) requests that the emergency rules governing the Educational Telecommunications Access Program, as part of the Technology for Educational Achievement in Wisconsin (TEACH WI), be extended for an additional 60 days.

Part of the TEACH WI initiative included the establishment of a program to support improved technology for educational institutions and public libraries. The Commission was mandated by § 9141 of 1997 Act 27 to promulgate rules for this program and to do so on an emergency basis. That same section of Act 27 exempted the Commission from the finding of emergency required by § 227.24, Stats. The Commission adopted the emergency rules (modifying certain parts of ch. PSC 160, Wis. Admin. Code, and creating ch. PSC 161, Wis. Admin. Code) on February 24, 1998. On that same date, the Commission approved a scoping statement as required by § 227.135, Stats., with respect to the proposal of the Commission to commence a rule making proceeding, under the usual ch. 227, Stats., rule making procedures, to promulgate permanent rules as mandated by § 196.218(4r)(b), Stats.

The emergency rules were effective on February 27, 1998. Without further action, they would have expired on July 26, 1998. The Commission requested an initial extension of the rules, which the Joint Committee for Review of Administrative Rules approved on June 30, 1998. The emergency rules would now expire on September 24, 1998. Final rules cannot be in effect by that date, so an additional extension is requested herein.

The Honorable Glenn Grothman  
The Honorable Robert Welch  
Docket 1-AC-169  
Page 2

As noted in the June 18, 1998, letter filed with the Joint Committee for Review of Administrative Rules, when the Commission adopted the required emergency TEACH rules, it also began the process to promulgate permanent rules on the Educational Telecommunications Access Program. The chronology of the rules process in this instance is as follows:

- |                   |   |
|-------------------|---|
| February 24, 1998 | Emergency TEACH rules and Scoping Statement on permanent TEACH rules approved by the Commission.  |
| February 27, 1998 | Emergency rules go into effect.   |
| March 26, 1998    | Notice of Investigation and Hearing and Proposed Order creating permanent rules approved by the Commission.   |
| March 27, 1998    | Notice of Investigation and Hearing and Proposed Order creating permanent rules mailed by the Commission.   |
| April 23, 1998    | Legislative Rules Clearinghouse report received by the Commission.  |
| May 5, 1998       | Public hearing on the emergency rules and the proposed permanent rules was held at the Commission.  |
| May 15, 1998      | Comment period for written input on the rules ended.  |
| June 18, 1998     | Commission request for an extension of the emergency rules filed with the Joint Committee for Review of Administrative Rules.                                 |
| June 30, 1998     | A 60-day extension of the emergency rules granted by the Joint Committee for Review of Administrative Rules.  |
| July 14, 1998     | Proposed Order of the Public Service Commission Adopting Rules approved by the Commission and forwarded to the presiding officers of the Senate and Assembly. |
| July 14, 1998     | In the Senate, the proposed rules were assigned to the Committee on Environment and Energy.   |
| July 23, 1998     | In the Assembly, the proposed rules were assigned to the Joint Committee on Information Policy.   |

The Honorable Glenn Grothman  
The Honorable Robert Welch  
Docket 1-AC-169  
Page 3

Even with the first extension of the emergency rules granted by the Joint Committee for Review of Administrative Rules, it will not be possible for the permanent rules to be in place before September 24, 1998, the current expiration date of the emergency rules. The Commission will be acting to promulgate the final Educational Telecommunications Access Program rules when the review periods in the Senate and Assembly committees have ended. (This presumes that the assigned legislative committees do not extend their review times or request changes to the rules.)

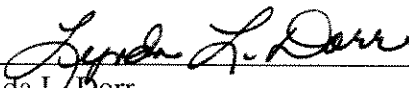
The statutory effective date for rules is on the first day of the month after the month in which the Revisor of Statutes publishes the rules. The Revisor publishes final rules only once per month. Accordingly, the Commission's intention is to act on the final rules in early September, for publication in the October 1, 1998, Administrative Register. This would mean the rules would be effective on November 1, 1998. Because the currently effective emergency rules will expire on September 24, 1998, the need for this second extension request is evident.

The Educational Telecommunications Access Program under TEACH is now in operation. To avoid a gap in the administration of this program, the Commission respectfully requests that the Joint Committee for Review of Administrative Rules extend the effective period for the emergency rules in §§ PSC 160.05, 160.11(6), and 160.17, and ch. PSC 161, Wis. Admin. Code, for an additional 60 days.

If there are questions on this matter, please contact Gary A. Evenson, Assistant Administrator of the Telecommunications Division at 266-6744, or Mary Stevens, Legal Counsel for the Telecommunications Division, at 266-1125.

Dated at Madison, Wisconsin, August 18, 1998

By the Commission:

  
\_\_\_\_\_  
Lynda L. Dorr  
Secretary to the Commission

LLD:GAE:reb:g:\letter orders\pending\1-AC-169 teach extension ltr #2 8-98

cc: RM/MFC  
RM/Orders  
Mark Bugher, Secretary, Department of Administration  
Doris Hanson, Executive Director, TEACH WI  
Gary Poulson, Deputy Revisor of Statutes