

1999 DRAFTING REQUEST

Bill

Received: **01/28/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Sheldon Wasserman (608) 266-7671**

By/Representing: **Sarah**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - telco and cable**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Advertising and billing of per minute charges for long distance calls

Instructions:

Require long distance service providers who do business in state to use consistent terminology for "per minute" charges. Per minute should mean per minute. Check DATCP proceedings? Recent federal action?

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	kunkemd 04/27/1999	gilfokm 04/27/1999	hhagen 04/27/1999	_____	lrb_docadmin 04/27/1999		
	kunkemd 05/12/1999	gilfokm 05/12/1999		_____			
/2	kunkemd 08/11/1999	ygeller 08/11/1999	jfrantze 05/12/1999	_____	lrb_docadmin 05/12/1999		
/3			mclark 08/11/1999	_____	lrb_docadmin 08/11/1999	lrb_docadmin 09/27/1999	

FE Sent For:

<END>

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/3			mclark 08/11/1999	_____	lrb_docadmin 08/11/1999		

08/11/1999 01:33:47 PM

Page 2

FE Sent.For:

<END>

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	kunkemd 05/12/99	gilfokm 05/12/99		_____			
/2		<i>1/3 8/11 jlg</i> gilfokm 05/12/99	jfrantze 05/12/99	_____	lrb_docadmin 05/12/99		
FE Sent For:			<i>mrc</i> 8/11	<i>mrc/JF</i> 8/11			
				<END>			

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/1	kunkemd 04/27/99	gilfokm 04/27/99	hhagen 04/27/99	_____	lrb_docadmin 04/27/99		

FE Sent For: *12-5-1299*
mmg *Jb 5/12* *Jb 5/12*
<END>

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For: Sheldon Wasserman (608) 266-7671

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Drafter: kunkemd

May Contact:

Alt. Drafters:

Subject: Public Util. - telco and cable

Extra Copies:

Topic:

Advertising and billing of [✓]per-minute charges for long distance calls

Instructions:

Require long distance service providers who do business in state to use consistent terminology for "per minute" charges. Per minute should mean per minute. Check DATCP proceedings? Recent federal action?

Drafting History:

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1?	kunkemd	1-4-99 kmg	4/22	4/27			

FE Sent For:

<END>

10



km

O-NOTE

1999 BILL

*Tomorrow, 4/28/99
by 3:00*

*WPD:
fix request
sheet topic*

Sen Cat.

1 AN ACT ...; **relating to:** requiring certain disclosures in advertising per^v-minute
2 rates for long distance service and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a telecommunications provider from advertising a per^v-minute rate for long distance service unless the advertisement clearly and conspicuously discloses all conditions, restrictions and charges associated with using the long distance service and discloses the per^v-minute cost of the long distance service to an average residential customer of the telecommunications provider. The cost that is required to be disclosed must be calculated on the basis of all conditions, restrictions and charges that are associated with using the long distance service. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 196.219 (2) (b) of the statutes is amended to read:
4 196.219 (2) (b) On petition, the commission may, except as provided in par.
5 (cm), grant an exemption from a requirement under this section upon a showing that
6 the exemption is reasonable and not in conflict with the factors under s. 196.03 (6).

History: 1993 a 496; 1997 a. 218.

BILL

1 SECTION 2. 196.219 (2) (c) of the statutes is amended to read:

2 196.219 (2) (c) On petition, the commission may, except as provided in par. (cm),
3 grant an exemption from a requirement under this section retroactively if the
4 application of the requirement would be unjust and unreasonable considering the
5 factors under s. 196.03 (6) or other relevant factors.

6 History: 1993 a. 496; 1997 a. 218.

6 SECTION 3. 196.219 (2) (cm) of the statutes is created to read:

7 196.219 (2) (cm) The commission may not grant an exemption from the
8 requirements of sub. (3m).

9 SECTION 4. 196.219 (3m) of the statutes is created to read:

10 196.219 (3m) [✓]PER-MINUTE LONG DISTANCE ADVERTISING. (a) In this subsection,
11 “long distance” means interstate long distance within the continental United States.

12 (b) A telecommunications provider may not advertise a [✓]per-minute rate for long
13 distance service unless the advertisement clearly and conspicuously discloses each
14 of the following:

15 1. All conditions, restrictions and charges associated with using the long
16 distance service.

17 2. The [✓]per-minute cost of the long distance service to an average residential
18 customer of the telecommunications provider. The cost that is required to be
19 disclosed under this subdivision shall be calculated on the basis of all conditions,
20 restrictions and charges associated with using the long distance service.

21 (c) Any person who violates par. (b) may be required to forfeit not more than
22 \$10,000 for the first offense and may be required to forfeit not more than \$50,000 for
23 the 2nd or any later offense within a year. Each day of continued violation constitutes

BILL

1 a separate offense. The one-year period shall be measured by using the dates of the
2 offenses that resulted in convictions.

3 (d) Paragraph (b) applies to any advertising directed to a resident of this state.

4 **SECTION 5. Effective date.**

5 (1) This act takes effect on the first day of the 3rd month beginning after
6 publication.

7 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2044/1dn

MDK:K...
King

Representative Wasserman:

Please review this bill very carefully to make sure that it achieves your intent. In addition, please note the following:

1. You may want to consider requiring the PSC to promulgate rules on the disclosures that are required, rather than attempt to impose specific disclosure requirements in legislation.

2. I assume that you want the bill to apply to any person whose advertising is directed to residents of this state, including out-of-state advertisers. However, note that this aspect of the bill may be subject to a challenge on interstate commerce grounds. Please contact me if you want me to look more closely at this issue.

3. The bill has a delayed effective to give advance notice to persons who are regulated by the bill. Is this okay?

4. Are the forfeitures in the bill okay, or should the bill specify different amounts?

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2044/1dn
MDK:kmg:hmh

April 27, 1999

Representative Wasserman:

Please review this bill very carefully to make sure that it achieves your intent. In addition, please note the following:

1. You may want to consider requiring the PSC to promulgate rules on the disclosures that are required, rather than attempting to impose specific disclosure requirements in legislation.
2. I assume that you want the bill to apply to any person whose advertising is directed to residents of this state, including out-of-state advertisers. However, note that this aspect of the bill may be subject to a challenge on interstate commerce grounds. Please contact me if you want me to look more closely at this issue.
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4. Are the forfeitures in the bill okay, or should the bill specify different amounts?

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

By
Thursday 5/13
3:00pm

D-NOTE

1999 BILL

2

RM NOT
RUN

Sen. Cat.

1 AN ACT *to amend* 196.219 (2) (b) and 196.219 (2) (c); and *to create* 196.219 (2)
2 (cm) and 196.219 (3m) of the statutes; **relating to:** requiring certain
3 disclosures in advertising per-minute rates for long distance service and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a telecommunications provider from advertising a per-minute rate for long distance service unless the advertisement clearly and conspicuously discloses all conditions, restrictions and charges associated with using the long distance service and discloses the per-minute cost of the long distance service to an average residential customer of the telecommunications provider. The cost that is required to be disclosed must be calculated on the basis of all conditions, restrictions and charges that are associated with using the long distance service.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 196.219 (2) (b) of the statutes is amended to read:

BILL

SECTION 1

1 196.219 (2) (b) On petition, the commission may, except as provided in par.
2 (cm), grant an exemption from a requirement under this section upon a showing that
3 the exemption is reasonable and not in conflict with the factors under s. 196.03 (6).

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5 196.219 (2) (c) On petition, the commission may, except as provided in par. (cm),
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7 application of the requirement would be unjust and unreasonable considering the
8 factors under s. 196.03 (6) or other relevant factors.

9 **SECTION 3.** 196.219 (2) (cm) of the statutes is created to read:

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11 requirements of sub. (3m).

or intrastate interlata

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13 196.219 (3m) PER-MINUTE LONG DISTANCE ADVERTISING. (a) In this subsection,
14 “long distance” means interstate long distance within the continental United States.

15 (b) A telecommunications provider may not advertise a per-minute rate for
16 long distance service unless the advertisement clearly and conspicuously discloses
17 each of the following:

- 18 1. All conditions, restrictions and charges associated with using the long
19 distance service.
- 20 2. The per-minute cost of the long distance service to an average residential
21 customer of the telecommunications provider. The cost that is required to be
22 disclosed under this subdivision shall be calculated on the basis of all conditions,
23 restrictions and charges associated with using the long distance service.

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BILL

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3 offenses that resulted in convictions.

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5 **SECTION 5. Effective date.**

6 (1) This act takes effect on the first day of the 3rd month beginning after
7 publication.

8 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2044/2dn

MDK:.....



Representative Wasserman:

This version is identical to LRB-2044/1, except for the definition of "long distance".

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2044/2dn
MDK:kmg:jf

May 12, 1999

Representative Wasserman:

This version is identical to LRB-2044/1, except for the definition of "long distance".

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

Kunkel, Mark

From: Wasserman, Sheldon
Sent: Monday, July 12, 1999 9:19 AM
To: Kunkel, Mark
Subject: RE: Per minute Bill

Hi, Mark:

Thanks for copying Sheldon on this. Yes, it should be ok to share a copy of the bill with Louanne.

-Sarah
Rep. Wasserman's Office

-----Original Message-----

From: Kunkel, Mark
Sent: Monday, July 12, 1999 9:16 AM
To: 'Russ Wasserman'
Cc: Wasserman, Sheldon
Subject: RE: Per minute Bill

Mr. Wasserman,

I will be in touch with Louanne Kelly at DATCP regarding the changes to the bill that you requested on Rep. Wasserman's behalf. She is out of the office until July 20. When I talk to her, is it okay to share with her a copy of the bill?

Mark Kunkel
Legislative Attorney
State of Wisconsin
Legislative Reference Bureau

mark.kunkel@legis.state.wi.us
(608) 266-0131

-----Original Message-----

From: Russ Wasserman [mailto:wasser@execpc.com]
Sent: Friday, July 09, 1999 2:02 PM
To: mark.kunkel@legis.state.wi.us
Subject: Per minute Bill

To: Mark Kunkel

From: Russell Wasserman

414 327-5545

Re: 1999 Bill to amend 196.219 related to per minute rates

7/12/99

Date: 7/9/99

Representative Sheldon Wasserman gave me a copy of your proposed amendments and additions related to long distance companies falsely advertising per minute charges.

Please consider adding additional language that would further clarify the definition of a minute.

A "minute" must be defined as 60 seconds. A "minute of usage" must have the same definition as a minute.

I would be happy to discuss in detail how NOS Communications has offered a low "per minute of usage" rate (i.e. 7.9 cents) only to bill on TCUs "Telecommunication units". There are 2.5 TCUs in the first minute.

A NOS Communications representative claims it is perfectly legal to advertise "per minute of usage" but not bill "per minute"!

To assist you in understanding the problem please call me or Luanne Kelly at the Department of Consumer Protection 608-224-4994.

7/12/99

Kunkel, Mark

From: Russ Wasserman [wasser@execpc.com]
Sent: Monday, July 12, 1999 11:00 AM
To: Kunkel, Mark
Subject: Re: Per minute Bill

Mark,

Thank you for your reply. I'm a bit foreign about the confidentiality issue about showing a state employee a proposed bill but Sarah from Rep Wasserman's office (608 266-7671) can answer that.

In my opinion, you must understand the scam that NOS is running to write an effective bill. Otherwise you will leave "disclosure" loop holes.

The essence of this law must be an universal definition of a "minute" or "minute of usage" or any other reference to the word "minute" as sixty seconds.

Russell

don't know why yo

-----Original Message-----

From: Kunkel, Mark <Mark.Kunkel@legis.state.wi.us>
To: 'Russ Wasserman' <wasser@execpc.com>
Cc: Wasserman, Sheldon <Sheldon.Wasserman@legis.state.wi.us>
Date: Monday, July 12, 1999 9:17 AM
Subject: RE: Per minute Bill

>Mr. Wasserman,

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>I will be in touch with Louanne Kelly at DATCP regarding the changes to the
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>Legislative Attorney
>State of Wisconsin
>Legislative Reference Bureau
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>mark.kunkel@legis.state.wi.us
>(608) 266-0131

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>Sent: Friday, July 09, 1999 2:02 PM
>To: mark.kunkel@legis.state.wi.us
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>To: Mark Kunkel

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>From: Russell Wasserman
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>at
>the Department of Consumer Protection 608-224-4994.
>



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION (608) 266-3561
LEGAL FAX (608) 264-8522

REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5648

August 10, 1999

MEMORANDUM

To: LRB-2044

From: Mark Kunkel

Subject: DATCP Contact

Today I spoke with Louanne Kelly at DATCP regarding the Nos Communications TCU issue. She thinks that the problem is that NOS advertises a per minute long distance rate, but does not disclose that it is only an introductory rate. After the introductory period is over, the customer is charge on the basis of "total calling units", which is probably equal to 6 second increments. In any event, the bills are very complicated and it is difficult for the customer to determine the actual basis for the bill. Kelly contacted an investigator at the FCC (Brian Benson, 202/418-2895) who said that the TCU billing is consistent with NOS's tariff filing, but that it is very unique. Kelly provided copies of the complaints that she has received about NOS to the FCC. In addition, the matter is now being handled by Steve Foemmel of DATCP, 224-4956.

Kelly thinks that, from DATCP's perspective, the matter may be treated as deceptive advertising (s. 100.18, stats.). She noted that DATCP's rules on telecommunications billings (ATCP 123) apply only to residential customers, not businesses.

My NOS Communications Experience

California Public Utilities Commission

Consumer Affairs Room #2250

505 Van Ness Avenue-San Francisco, CA 94102-3298

Dear Sirs,

I recently had an experience that exceeded even my most pessimistic views about unethical and fraudulent business practices. About 6 months ago, I was approached by a representative from NOS Communications (Sharon Portney) and was promised a rate of 8.9 cents per minute, state to state and 5 cents a minute within the state. I've included the fax I was originally sent by NOS. What was ultimately billed to me however was something very different. After the first two months, the rate I was billed climbed to over 20 cents a minute state to state and 15 cents a minute within the state. My bills literally doubled from an average of around \$1500 per month to over \$3000! After numerous discussions with several representatives from NOS, I finally discovered why.

First I began by fighting with NOS over the rate at which I was billed. Sharon stated verbally numerous times that this was ABSOLUTELY NOT an introductory rate, but after 2 months my rates began to skyrocket. After their "introductory 2 months" they began by raising my base rate to 9.9 then 10.9 out of state and 7.9 within the state. With much arm twisting they ultimately recalculated a majority of these "rate" increases in my favor, but this wasn't where I was ultimately being gouged.

They also changed the way in which they calculate time! NOS evidently bills in what are called "Total Call Units". After the introductory 2 months, they also began changing the way they calculate these magical little "Total Call Units". During the introductory period, they are evidently computed per minute, however after the first two months these "TCU's" are ultimately computed only by using some "Lookup Chart" to convert minutes to "Total Call Units". After making one of their representatives run me through some examples of this magic math formula, it became clear that this Lookup Chart in effect increases an average call duration by a factor of at least 2, a whopping 100% increase. Though they advertise a rate per minute, they compute rates in a way that defies logic. This eventually becomes a rate nobody can even begin to guess at.

I was assured this magic little "Lookup Table" was included in my first bill, but I've never seen it. This KEY issue was never discussed with me by anyone at NOS prior to today. This deceptive computational methodology, was only made know to me as I investigated my huge bills. Despite their claims, to my knowledge, I have never received any paperwork about this little magic math formula/table. Quite the contrary, I'm including a copy of a fax sent to me by them specifically stating the rate was computed per minute. I'm not sure what my legal rights are, but I am certain, I was misled, lied to and defrauded out of close to \$5000 by this highly unethical practice. I don't understand how NOS can legally advertise a "Per Minute" rate when they in fact charge using a

formula nobody could ever figure out. Your help in making sure nobody else suffers this same fate would be most appreciated.

Sincerely,

Michael Mozina



tomorrow
8/12
by 4:00pm

D-NOTE

JG+

1999 BILL

residential
or business

INSERT A

✓
INSERT B

Regen

1 AN ACT to amend 196.219 (2) (b) and 196.219 (2) (c); and to create 196.219 (2)
2 (cm) and 196.219 (3m) of the statutes; relating to: requiring certain
3 disclosures in advertising per-minute rates for long distance service and
4 providing a penalty.

or business

Analysis by the Legislative Reference Bureau

This bill prohibits a telecommunications provider from advertising a per-minute rate for long distance service unless the advertisement clearly and conspicuously discloses all conditions, restrictions and charges associated with using the long distance service, and discloses the per-minute cost of the long distance service to an average residential customer of the telecommunications provider. ~~The cost that is required to be disclosed must be calculated on the basis of all conditions, restrictions and charges that are associated with using the long distance service.~~

✓
INSERT C

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5 SECTION 1, 196.219 (2) (b) of the statutes is amended to read:

BILL

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17 long distance service unless the advertisement clearly and conspicuously discloses
18 each of the following:

19 1. All conditions, restrictions and charges associated with using the long
20 distance service. INSERT 2-20 ✓

21 ~~2. The per-minute cost of the long distance service to an average residential~~
22 ~~customer of the telecommunications provider. The cost that is required to be~~
23 ~~disclosed under this subdivision shall be calculated on the basis of all conditions,~~
24 ~~restrictions and charges associated with using the long distance service.~~

INSERT 2-21 ✓
INSERT 2-24 ✓

BILL

this subsection ✓

1
2
3
4
5
6
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9
10

(c) Any person who violates ~~par (b)~~ may be required to forfeit not more than \$10,000 for the first offense and may be required to forfeit not more than \$50,000 for the 2nd or any later offense within a year. Each day of continued violation constitutes a separate offense. The one-year period shall be measured by using the dates of the offenses that resulted in convictions.

or business

6

(d) Paragraph (b) applies to any advertising directed to a resident of this state.

SECTION 5. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2044/3ins
MDK:.....

1

INSERT A:

2

~~§~~, including whether the rate is an introductory rate, ~~§~~

3

INSERT B:

~~§~~ In addition, if the per-minute rate is an introductory rate, the advertisement must clearly and conspicuously disclose the period during which the introductory rate is in effect and the rate that will be charged at the expiration of the introductory rate.

4

INSERT C:

~~§~~ The bill also requires a telecommunications provider that charges a rate for long distance service that is not a per-minute rate to clearly and conspicuously disclose on the bill for the service the per-minute cost of the service under the rate that is charged.

5

INSERT 2-20:

6

~~§~~, including whether the per-minute rate is an introductory rate ~~§~~

7

INSERT 2-21:

8 1m. If the per-minute rate is an introductory rate, the period during which the
9 introductory rate is in effect and the rate that will be charged at the expiration of the
10 introductory period.

11 2. If the rate is for residential customers, the per-minute cost[✓] of the long
12 distance service to an average residential customer of the telecommunications
13 provider or, if the rate is for business customers, the per-minute cost of the long
14 distance service to an average business customer of the telecommunications
15 provider.

16

INSERT 2-24:

17

(bm) A telecommunications provider that charges a rate for long distance

18

service that is not a per-minute[✓] rate shall clearly and conspicuously disclose on the

1 bill for long distance service the per-minute cost of the long distance service under
2 the rate that is charged.

3 (bs) The per-minute cost that is required to be disclosed under pars. (b) 2. and ✓
4 (bm) shall be calculated on the basis of all conditions, restrictions and charges
5 associated with using the long distance service.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2044/3dn
MDK:.....

Representative Wasserman:

Please review this version very carefully to make sure that it achieves your intent. I made the following changes to the previous version:

1. Based on my discussion with Louanne Kelly of DATCP, it appears that there are 2 categories of complaints against NOS Communications. First, that the company does not disclose that its advertised rate is only an introductory rate. Therefore, this version requires a telecommunications provider to disclose whether an advertised rate is an introductory rate and to disclose the rate that will be charged at the expiration of the introductory period.

2. The second category of complaints deals with the confusing way that the company charges on the basis of "total call units". Apparently, such charges are based on increments other than a minute. Therefore, this version requires a telecommunications provider that charges a rate that is not a per-minute rate to disclose on the bill the per-minute cost of the rate.

3. The previous version dealt only with residential long distance service. This version deals with both residential and business service.

If you have any questions or redraft instructions, please contact me.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2044/3dn
MDK:jlg:mrc

August 11, 1999

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