

1999 DRAFTING REQUEST

Bill

Received: 10/8/98

Received By: kunkemd

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 6-8593

By/Representing: Holden

This file may be shown to any legislator: NO

Drafter: kunkemd

May Contact:

Alt. Drafters:

Subject: Public Util. - misc.

Extra Copies:

Topic:

DOA:.....Holden - Complaint requirements and prohibitions

Instructions:

See Attached

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>
/P1	kunkemd 11/17/98	wjackson 11/18/98	lpaasch 11/18/98	_____	lrb_docadmin 11/18/98		State
	kunkemd 01/28/99	wjackson 01/29/99		_____			
/1			martykr 01/29/99	_____	lrb_docadmin 01/29/99		State

FE Sent For:

<END>

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FE Sent For:

*1-1-28-99
Kmg*

Km/29

*JF
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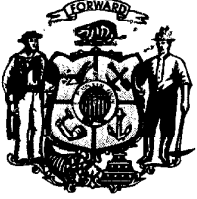
See Attached

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1/?	kunkemd	1/1-11-17 kmg	11/18LP	11/18LP hnh			State

FE Sent For:

<END>



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY

Mailing Address:
Post Office Box 7864
Madison, WI 53707-7864



Date: October 8, 1998

Priority: Medium

To: Steve Miller
Legislative Reference Bureau

From: Kerry Holden, SBO, 6-8593

Subject: Draft for Governor's 1999-2001 Budget Bill – Telecommunications Laws

Please draft the following for inclusion in the Governor's 1999-2001 budget bill.

I have attached five drafting proposals relating to telecommunications laws. These include proposals pertaining to:

- 0630 1. Unequal regulation of local exchange telecommunications utilities and competitors.
- 0631 2. Substantiating complaints against local exchange telecommunications utilities.
- 0632 3. Uniform filing requirements for local exchange telecommunications utilities and competitors.
- 0633 4. Alternative regulatory plan requirements and specific statutes to be suspended.
- 0634 5. Guidance for implementing the federal rural exemption and suspension/modification processes to decide 47 USC 251(f) questions.

I have also included some additional background information on these proposals. Please call me with any questions. Thanks.

EXECUTIVE SUMMARY

The following is a summary of the major issues that were identified as requiring legislative change. For each stated issue, examples are given, the impact on traditional local exchange telecommunications utilities (telcos) and their customers is provided, and a brief statement of the required statutory change(s) is listed.

Issue 1: PSC requires telcos to adhere to more regulation than its competitor, which puts them at a competitive disadvantage.

- Example(s): Under present statutes Telcos are not able to change their prices to respond to competition; telcos and their affiliates are constrained from marketing services to their customers; competitors can selectively serve an area (i.e., niche marketing) while traditional telcos must serve all customers in its service area; telcos must file rates with the PSC; and many others.
- Impact(s): Customers, which competitors have no desire to serve, are forced to pay higher rates without being offered a choice of local providers. Telcos cannot respond rapidly to the pricing strategies of its competitors. Restrictions on telco affiliates prevent them from providing competitive services. Telcos can lose substantial market share, which may impact their ability to meet their mortgage requirements and fiduciary obligations.
- Statutory Change(s): Regulate a telco at the same level as its competitors. When a competitor is certified to serve an area, or a fixed wireless provider is operating in a telco's territory, require the same level of regulation for all competitors in the area.

Issue 2: Provide for a means to avoid costly and time consuming PSC investigations of unsubstantiated complaints filed by competitors against a telecommunications utility.

- Example(s): The PSC staff investigates extensively numerous complaints filed by competitors. One current complaint against a small telco cooperative in its provision of CATV service, is based on unsubstantiated allegations filed by a large national cable company. Responding to the investigation has cost the cooperative heavily in management costs, legal and accounting fees.
- Impact(s): Telcos incur substantial costs to defend against the allegations; diverts management resources from operating the company; telcos may have to suspend operations; telco pays full cost for investigation; deters the telco from providing other competitive services; and deters other small telcos from entering related markets.
- Statutory Change(s): Statutorily define an unsubstantiated complaint; require the PSC to determine if there is sufficient cause to investigate; mandate a penalty for competitors filing an unsubstantiated complaint; and require complainant to pay all costs, including attorney fees, when the complaint is not found to be substantiated.

Issue 3: Statutes adopted during the era of no competition permit the PSC to require the filing of information that is unnecessary, irrelevant and burdensome and to deny confidential treatment of competitively sensitive information.

- Example(s): For almost 90 years of regulation no local competition existed. Numerous rules and procedures developed which require local telephone companies to provide extensive information to the PSC. Further, the PSC has denied confidential treatment to almost all of that information. WSTA has queried PSC staff on numerous occasions as to their need for such information, but the staff responds it is within their power to require the information and that it may be needed sometime in the future. Also, WSTA has officially requested confidential treatment of plant-specific, usage, and other information only to be denied by the PSC. Competitors of our local telcos are not required to provide such extensive information and the information they do provide is kept confidential.
- Impact(s): Allowing competitors to know this operational information of a telco permits the competitor to selectively target the more lucrative areas; to set prices slightly below tariffed prices of the traditional telco; and to learn of the type, capability, extent of facilities and service of the traditional telco. The cost and management time to prepare the information is significant. Usually small telcos must hire outside consultants to prepare the information.
- Statutory Change(s): Statutorily require the same reporting requirements for telcos and their competitors and mandate that all information filed by both be maintained confidentially unless explicitly designated to be made public; and require that the reporting requirements mandated by the PSC be approved by a separate government agency in order to reduce the amount of paperwork.

Issue 4: In alternative regulation plans the PSC staff has required telcos to commit to unreasonable requirements to obtain PSC approval.

- Example(s): PSC staff have insisted that the plans have provision that (1) increase their level of regulation; (2) lack flexibility to respond to competition that may enter during the term of the plan; (3) impose penalties for failing to achieve a higher quality of service than the national standards; (4) invest a substantial amount of money into its network, regardless of need.
- Impact(s): Telcos are reluctant to file alternative regulatory plans that run counter to the legislative intent. In 4 years only 7 have been submitted and only 5 approved. Telcos are required to spend capital on unnecessary upgrades. Additional regulations are imposed on small telcos which does not exist under the small telco law contrary to the terms of the 1994 Rewrite Act. Telco's territories are being open to competition but the fixed-term alternative regulation plans do not permit flexibility for telco to respond.

- Statutory Change(s): Statutorily mandate the specific legislative intent and terms of an alternative regulatory plan and identify the specific statutes that will be suspended.

Issue 5: Provide guidance for implementing the federal rural exemption and suspension/modification processes (47 USC § 251(f) issues).

- Example(s): PSC has issued conflicting guidance in three separate rural exemption proceedings and has used different standards to determine the bona fide nature of various interconnection requests.
- Impact(s): Lack of consistent guidance creates confusion regarding what information the PSC seeks for a telco to maintain its rights afforded to it under federal law.
- Statutory Change(s): Create a new statute, similar to some other states, setting forth specific guidelines to decide 47 USC § 251(f) questions. The guidelines should include the contents of a bona fide request and the criteria the PSC must consider for it to make a finding to remove the rural exemption or to suspend/modify an obligation under the federal law. Also, the statutes need to set 47 USC §253(f) standards to determine appropriate competitor serving areas.

RJR:bw

f:\worddoc\ray\legis\LegTFRegExSum980820

1 **DRAFT - CONFIDENTIAL**

2 Issue 2

3 Complaints

4 **Section 1.** 196.26(1r) is created to read:

5 (a) No person may make any filing in a proceeding under this section unless there is a
6 nonfrivolous basis for doing so. The commission shall complete any investigation under this
7 section within 60 days. A person may not make any filing in a proceeding under this
8 subsection unless, to the best of the person's knowledge, information and belief, formed after
9 a reasonable inquiry, all of the following conditions are satisfied:

- 10 1. The filing is reasonably supported by applicable law.
- 11 2. The allegations and other factual contentions in the filings have evidentiary support
12 or, if specifically so identified in the filing, are likely to have evidentiary support after
13 reasonable opportunity for further investigation or discovery.
- 14 3. The filing is not intended to harass a party to the complaint.
- 15 4. The filing is not intended to create a needless increase in the cost of litigation.

16 (b) If, at any time during a proceeding under this subsection, the commission determines, after
17 notice and reasonable opportunity to be heard, that a person has made a filing in violation of
18 par. (a), the commission shall order the person to pay to any party to the proceeding the
19 amount of reasonable expenses incurred by that party because of the filing, including
20 reasonable attorney fees and the commission may directly assess a forfeiture against the

*of whether
frivolous*

1 person of not less than \$25 nor more than \$5,000. A person against whom the commission
2 assesses a forfeiture under this paragraph shall pay the forfeiture to the commission within 10
3 days after receipt of notice of the assessment or, if the person petitions for judicial review
4 under ch. 227, within 10 days after receipt the final decision after exhaustion of judicial
5 review. The commission shall remit all forfeitures paid under this paragraph to the state
6 treasurer for deposit in the school fund. The attorney general may bring an action in the name
7 of the state to collect any forfeiture assessed by the commission under this paragraph that has
8 not been paid as provided in this paragraph. The only contestable issue in such an action is
9 whether or not the forfeiture has been paid.

10
11 **Section 2.** 196.28(5) is created to read:

12 s. 196.26(1r) shall be applicable to complaints filed seeking summary investigations under this
13 section.

14 **Section 3.** 196.30 is amended to read:

15 **Utilities may complain.** Any public utility may file a complaint with the commission on any
16 matter affecting its own product or service. s. 196.26(1r) shall be applicable to complaints
17 filed under this section.

18 **Section 4. Nonstatutory Provisions.**

September 8, 1998 (2:31PM)

1 **Intent.** Whereas it is possible that in a competitive environment that competitors may
2 attempt to use the regulatory process to harass and hinder competitors, it is the intent of this
3 provision to require the Commission to review any complaint or investigation it initiates in
4 a timely manner to determine if there is sufficient evidence for it to proceed to a full
5 investigation. This legislation is intended to discourage unsubstantiated complaints.

September 8, 1998 (2:31PM)

WLJ EKmg

NOTE

DOA:.....Holden - Complaint requirements and prohibitions

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

*Do Not
GEN CAT*

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

This is a preliminary draft. An analysis will be prepared for a subsequent version.

For further information see the *state* 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:

2 SECTION 1. 196.315[✓] of the statutes is created to read:

3 196.315 Prohibitions in certain proceedings. (1) No person may make
4 any filing, including a complaint, in a proceeding under s. 196.26[✓], 196.28[✓] or 196.30[✓]
5 unless there is a nonfrivolous basis for doing so. A person may not make any filing,
6 including a complaint, in a proceeding under s. 196.26[✓], 196.28[✓] or 196.30[✓] unless, to

1 the best of the person's knowledge, information and belief, formed after a reasonable
2 inquiry, all of the following conditions are satisfied:

3 (a) The filing is reasonably supported by applicable law.

4 (b) The allegations and other factual contentions in the filing have evidentiary
5 support or, if specifically so identified in the filing, are likely to have evidentiary
6 support after reasonable opportunity for further investigation or discovery.

7 (c) The filing is not intended to harass any other party to the proceeding.

8 (d) The filing is not intended to create a needless increase in the cost of
9 litigation.

10 (2) If, at any time during a proceeding under s. 196.26[↓], 196.28[↓] or 196.30[↓], the
11 commission determines, after notice and reasonable opportunity to be heard, that a
12 person has made a filing in violation of sub. (1), the commission shall order the person
13 to pay to any party to the proceeding the amount of reasonable expenses incurred by
14 that party because of the filing, including reasonable attorney fees, and the
15 commission may directly assess a forfeiture against the person of not less than \$25
16 nor more than \$5,000. A person against whom the commission assesses a forfeiture
17 under this subsection shall pay the forfeiture to the commission within 10 days after
18 receipt of notice of the assessment or, if the person petitions for judicial review under
19 ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial
20 review. The commission shall remit all forfeitures paid under this subsection to the
21 state treasurer for deposit in the school fund. The attorney general may bring an
22 action in the name of the state to collect any forfeiture assessed by the commission
23 under this subsection that has not been paid as provided in this subsection. The only
24 contestable issue in such an action is whether or not the forfeiture has been paid.

25 **SECTION 9341. Initial applicability; public service commission.**

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

LRB-0631/P1dn

MDK: /: : : :
W.L.J. & Kmg

Kerry Holden:

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

1. Note that proposed s. 196.315 refers to a complaint or filing made by any person, not just a competitor of a telecommunications utility. Is this okay? I was not sure about your intent because, although the instructions refer to any person, the material submitted with the instructions refers to competitors of telecommunications utilities.

2. The instructions included a requirement that the PSC complete an investigation within 60 days. This draft does not include this requirement because I am not sure about your intent. Should the 60-day deadline apply to *any* investigation conducted by the PSC under ~~the~~ s. 196.26, 196.28 or 196.30, stats., or only to investigations involving complaints by competitors of telecommunications utilities? What if the PSC goes forward with a hearing on a complaint? Do you want to impose a deadline on the hearing? When should the clock on 60-day deadline begin to tick? When a complaint is filed? Do you want to include any provisions for extending the deadline? Also, the language regarding legislative intent appears to distinguish between an investigation and a "full investigation". What is the difference? Finally, what should happen if the PSC fails to comply with the deadline? Should the complaint be dismissed? If so, wouldn't such a dismissal penalize a complainant on the basis of the PSC's failure to comply? Please contact me to discuss these issues.

3. The draft does not include the suggested language regarding the legislature's intent. The LRB generally does not include statements of legislative intent in drafts because they may have unintended consequences. Rather than including a legislative intent statement, it is preferable to make sure that the draft itself accomplishes your intent. Please contact me if you want to discuss the LRB's policy on this matter.

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

Mark D. Kunkel
Legislative Attorney
266-0131

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0631/P1dn
MDK:wlj:lp

November 18, 1998

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Legislative Attorney
266-0131

STAYS

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FOR 1999-01 BUDGET - ~~NOT READY FOR INTRODUCTION~~

DO NOT
SIGN

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*Don't
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INSERT 2-9 ✓

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INSERT 2-12 ✓

SECTION 9341. Initial applicability; public service commission.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0631/lins
MDK:.....

1

INSERT A:

Under current law, certain persons may file complaints with the public service commission (PSC) that allege a violation of the statutory provisions regarding public utilities that are enforced by the PSC. In addition, the PSC may, on its own motion, initiate a proceeding to determine whether such a violation has occurred.

This bill prohibits a person from filing a complaint, or making any other filing in a proceeding before the PSC, unless there is a nonfrivolous basis for doing so and unless each of the following is satisfied: 1) the filing is reasonably supported by applicable law; 2) the allegations in the filing have evidentiary support or are likely to have such support after further investigation or discovery; 3) the filing is not intended to harass another party to the proceeding; and 4) the filing is not intended to create a needless increase in the cost of litigation.

Within 60 days after a complaint is filed, the PSC must determine whether the complaint violates the bill's prohibitions. The bill also allows the PSC to determine at any time during a proceeding whether a person has made a filing that violates the prohibitions. If the PSC determines that there is a violation, the PSC must order the violator to pay the reasonable expenses that any other party to a proceeding incurred because of the filing. In addition, the PSC may directly assess a forfeiture of between \$25 and \$5,000 against the violator.

~~For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.~~

2

INSERT 2-9: ✓

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(2) No later than 60 days after a complaint is filed under s. 196.26 or 196.30, the commission shall determine whether the complaint has been filed in violation of sub. (1). If, after notice and opportunity for hearing, the commission determines under this subsection that a person has filed a complaint in violation of sub. (1), the commission shall terminate the proceeding on the complaint and proceed under sub. (4).

INSERT 2-12:

proceed under sub. (4). ✓

(4) If the commission determines that a person has violated sub. (1), the commission shall



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0631/1
MDK:wlj&kmg:km

DOA:.....Holden - Complaint requirements and prohibitions

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