

2001 DRAFTING REQUEST

Bill

Received: 02/18/2002

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Phil Montgomery (608) 266-5840**

By/Representing: **Rose Smyrski**

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

Drafter: **kunkemd**

May Contact: **John Stolzenberg**

Addl. Drafters: **gibsom
rkite
nelsorp1**

Subject: **Public Util. - telco
Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Montgomery@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Assembly task force on telecommunications

Instructions:

See Attached

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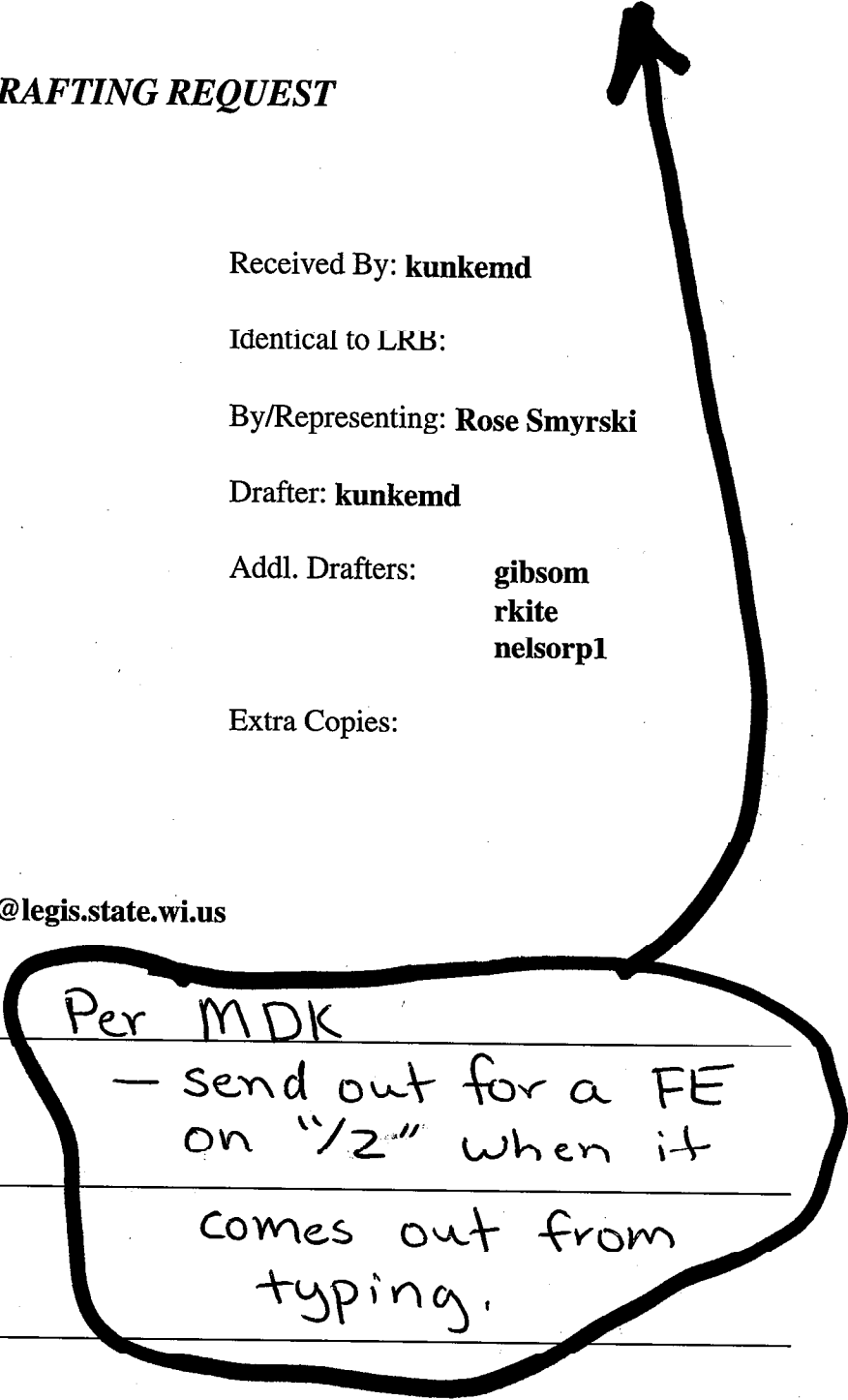
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Kunkel, Mark

From: Stolzenberg, John
Sent: Tuesday, February 05, 2002 4:20 PM
To: Kunkel, Mark
Subject: Telecommunications bill drafting request

Mark,

Per Rose Smyrski, Rep. Montgomery's aide, here are the drafting instructions for a telecommunications bill to be drafted at Rep. Montgomery's request. Let me know if you have any questions on these instructions.

John



Telecom report
2-5-02.doc

John Stolzenberg,
Legislative Council Staff Scientist
Suite 401. One East Main Street
PO Box 2536
Madison, WI 53701-2536
Direct: 608-266-2988
Fax: 608-266-3830

Telecommunications Task Force,
Representative Phil Montgomery, Chair

Recommendations

February 5, 2002

Table of Contents

I.	Statewide Wireless 911 Program	1
II.	Municipal Telecommunications Services	5
III.	Service Requirements.....	6
IV.	Cross-Subsidies	8
V.	Access Fees	9
VI.	Consumer Protection.....	10
VII.	Telephone Numbers and Area Codes.....	11
VIII.	PSC Advanced Telecommunications Infrastructure Biennial Report.....	11
IX.	PSC General Duties and Enforcement Powers	12

Task Force Staff

Rose Smyrski,
Office of Rep. Phil Montgomery

John Stolzenberg and
Mary Offerdahl,
Legislative Council Staff

Telecommunications Task Force,
Representative Phil Montgomery, Chair

Recommendations

I. Statewide Wireless 911 Program

A. Definitions

1. "Board" means the Wireless 911 Board.
2. "FCC order" means the Federal Communications Commission's orders on wireless 911 service in FCC docket No. 94-102. *federal wireless order -- CR 116.70 (1) (em)*
3. "PSAP" means a public safety answering point. *146.70(1)(gm) - which is a facility*
4. "Wireless provider" means a commercial mobile radio service provider subject to the FCC order. *CR 146.70(1)(m)*

B. Creation and Operation of Wireless State 911 Board

1. Members

a. Create the Board consisting of 12 persons:

- (1) Eight persons appointed by the Governor, with four representatives of wireless providers and four representatives of local governments and public safety personnel. *use public agency defn 7 146.70(1)(g)*
- (2) Four legislators, one each appointed by the Speaker, Assembly Minority Leader, Senate Majority Leader and Senate Minority Leader.

- b. Establish that public members of the Board serve for staggered three-year terms and that a public member may not serve more than two consecutive three-year terms.**

2. Attachment

- a. Attach the Board to the Department of Commerce for administrative purposes under s. 15.03, Stats.**

C. Board's Responsibilities

1. Duties

- a. Direct the Board to collect the Wireless State 911 Surcharge, distribute funds and collect and report annual cost data for PSAPs and wireless providers to the Governor and the Legislature under s. 13.172 (2), Stats.**

2. Powers

into pays for to audit? subject to 2.5% cap?

- a. Authorize the Board to contract for an independent audit of a wireless provider's cost recovery request or of a PSAP's wireless 911 program. Require an audited provider to provide relevant confidential information to the auditor.
- b. Direct the Board to provide public information on the Wireless State 911 Surcharge.
 - (1) Authorize the Board to establish an 800 telephone number directly or by contract to assist the public.
 - (2) Authorize the Board to require wireless providers to list the 800 number on a bill directing customers with questions or concerns to contact the Board.
- c. Authorize the Board to initiate an action to collect unpaid surcharges.
- d. Authorize the Board to promulgate rules necessary to implement its responsibilities.
- e. Authorize positions for the Board (level of the Board's staffing to be determined, subject to the 2.5% cap on the Board's expenses given below).
- f. Authorize the Board to take other necessary or convenient actions to implement its responsibilities.

Position #?
1.0 FTE

D. Revenues - Wireless State 911 Surcharge

- 1. Establish a "Wisconsin Wireless 911 Surcharge" with the following features:
 - a. The surcharge shall initially be \$.50 per month per mobile telephone number that has a billable address in Wisconsin.
 - b. The surcharge shall be uniform statewide.
 - c. The Board may raise or lower the surcharge as necessary to fund the expenditures specified below, provided that the Board may not increase the surcharge more than once per calendar year, more than \$.10 per increase, or above \$1.00.
- 2. Direct wireless providers to collect the surcharge from their customers and authorize a wireless provider to retain 2% of the amount of surcharge it collects in fiscal year 2002-03 for administrative costs, including reprogramming of their billing systems and other collection and remittance expenses.
 - a. Authorize the Joint Committee on Finance to allow wireless providers to retain up to 2% of the amount of surcharges they collect after fiscal year 2002-03 for administrative costs, if the Joint Committee determines that there is a demonstrated need for this reimbursement.
- 3. Require wireless providers to identify the surcharge on a separate line on a customer's bill, labeled as the "Wisconsin Wireless 911 Fund."

absolute limit?
no later than 60 days beginning
1/1/03
if 5/31/03 years
if approved

to raise who shall...
copy of minutes...
the copy in the WIS register

4. Establish that a wireless provider may not prorate the monthly surcharge and shall collect the full amount for a partial month of wireless service.

5. Establish that a wireless provider is not required to take legal action to enforce the collection of the surcharge. - wireless shouldn't be on the hook if customer doesn't pay

6. Establish that a wireless provider shall commence collecting the surcharge from its Wisconsin customers subject to the surcharge on a customer's first bill issued by the wireless provider after July 1, 2002.

a. If the Board is appointed by July 1, 2002, authorize the Board to establish its collection form and policy as an emergency rule without the finding of an emergency under s. 227.24 (1) (a), Stats.

b. If the Board is not appointed by July 1, 2002, direct the Department of Commerce to prescribe a form and collect the surcharge from wireless providers.

(1) Authorize the Department to establish its collection form and policy as an emergency rule without the finding of an emergency under s. 227.24 (1) (a), Stats. [Note: Under s. 227.24 (1) (c), Stats., in general an emergency rule remains in effect for 150 days unless the period is extended by the Joint Committee for Review of Administrative Rules.]

7. Require wireless providers to remit surcharges collected by the provider to the Board or Department for deposit not more than 60 days after the end of the calendar month in which the surcharge was collected.

8. Require the Board and the Department to deposit 50% of the surcharge revenues available for grants into an account for wireless providers' grants and 50% of these revenues into an account for PSAPs' grants.

E. Expenditures

1. Grants to Wireless Providers

a. Establish that any wireless providers capable of providing access to wireless 911 service in Wisconsin are eligible to receive funding from the Board.

b. Specify that a grant to a wireless provider shall be for the actual expenses incurred by the provider to upgrade, purchase, lease, program, install, test or maintain all necessary data, hardware and software required by the FCC order.

c. Establish that the Board may provide recovery of a wireless provider's eligible expenses over multiple grant cycles. - entitled to all costs multiple grants

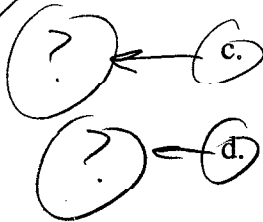
d. Authorize the Board, if there are insufficient funds for wireless providers in any given grant cycle, to award expenses on a prorated basis.

e. Authorize the Board, if there are insufficient funds in its wireless provider grant account and if there are funds in the PSAP grant account that are not

all members not qualified and qualified

- 1.100 + 100 mg fee - 266.63
no duty to inform nonpay me

what is "insufficient"?



encumbered for more than three months, to transfer funds from the PSAP grant account to the wireless provider grant account to ensure full cost recovery by wireless providers.

- (1) Condition this transfer on the wireless grant account repaying the PSAP grant account the amount of the transfer in a timely manner pursuant to a repayment plan prescribed by the Board.

2. Grants to PSAPs

who determines whether PSAP is in compliance?

- a. Establish that a PSAP is eligible to receive funding from the Board, once the PSAP is providing wireless 911 service or has begun implementation of wireless service and is in compliance with the wireless 911 requirements established by the FCC order. *a PA instead?*

- b. Specify that a grant to a PSAP shall be for the actual expenses incurred by the PSAP that are directly and primarily for the lease, purchase, or maintenance of a wireless PSAP. *why both direct & primary?* These eligible expenses include the following: (1) necessary network equipment, computer hardware, software, data base equipment, radio and telephone equipment within the physical PSAP location; (2) training of PSAP operators; and (3) network costs for delivery of calls from a wireless provider to the PSAP.

- (1) Exclude the following nonrecoverable expenses from a PSAP's grant: (a) any emergency service dispatch expenses, including personnel, training, equipment, software, records management, radio communications, mobile data network systems, unless those expenses are an eligible expense identified above; (b) vehicles; (c) equipment in vehicles; (d) communications equipment or software used to communicate with vehicles; (e) real estate; (f) improvements on real estate, other than modifications necessary to maintain the security of the PSAP; and (g) PSAP operators' salaries and benefits.

- c. Establish that no PSAP may recover from the Board a total of more than 50% of its eligible expenses, provided that the Board may provide recovery to a PSAP over multiple grant cycles.

- d. Authorize the Board, if there are insufficient funds for PSAPs in any given grant cycle, to award expenses on a prorated basis.

3. Board's Expenses

GPOs?

- a. Establish that the Board's expenses may not exceed 2.5% of the surcharge revenues submitted to the Board. *ANNUAL?*

F. Miscellaneous Provisions

1. Treatment of Records

- a. Authorize the Board to withhold from public inspection any information which would aid a competitor of a wireless provider in competition with the

wireless provider. [This open records exception is based on the exception in public utility law, s. 196.14, Stats.]

(?) (b) Direct the Board to establish procedures governing documents Board members may access to protect confidential business information in invoices submitted by wireless providers to the Board. *internal procedures*

2. Audits

a. Direct the Legislative Audit Bureau to periodically conduct a financial audit of the Board's programs. *13.94 (1)(b) - every 5 yrs*

3. Prohibition on Other Surcharges

a. Establish that no state agency or local unit of government may levy a surcharge or fee relating to the provision of wireless 911 service that is collected or paid by a wireless provider. *create except - to defray*

4. Wireless Provider Liability

a. Establish that a wireless provider shall not be liable to any person who uses a wireless 911 system funded under this program. [This is the same liability waiver as for telecommunications utilities providing wireline 911 service under a 911 system created under s. 146.70, Stats.] *"costs" under s. 146.70(3)(a)2*
→ see 146.70(7)

(G) Sunset

1. Sunset the statewide wireless 911 program five years after the effective date of this provision.

II. Municipal Telecommunications Services

A. Authorize local governmental units to plan, construct and own telecommunications facilities, including transmission facilities, subject to item B. *not used to provide telecom services to the public*

1. Define "local governmental unit" to be a city, village, town, county, special purpose district, or a subunit of any of these entities, or any combination of these entities or subunits. *→ does this mean many only do if B. is satisfied?*

B. Authorize a local governmental unit to lease its telecommunications facilities to one or more telecommunications providers that are not owned or controlled by a local governmental unit for use by the telecommunications providers in providing one or more telecommunications services to the public. *subunit?*

C. For telecommunications facilities that a local governmental unit intends to lease under item B. after the effective date of this provision, require the local governmental unit, as a condition of leasing the facilities, to have its electorate support the leasing in a referendum held during the spring or fall general election.

(D) Require a local governmental unit that leases telecommunications facilities after the effective date of this provision under item B. to report to the PSC its financing plan and budget for the project. Require these reports to be open to public inspection. *Sp. purpose district?*

all for who reside in district

why?

facility means

contracts for constr. or purpose...

contracts construct that comm...

own or for which contr. is comm. need before off. dist.

why?

simply or filing request?

NOT necessary?

*- school bds
- sewerage districts*

III. Service Requirements

A. Service Quality Standards and Other Requirements

1. Retail service quality

a. Direct the PSC in s. 196.219, Stats., to establish by order retail service quality standards for basic residential and business telecommunications services.

(1) Require the PSC to set standards that relate to initiation of service, service outages, repeat trouble reports, missed repair appointments, and service center response times and any other measure of retail service quality identified by the PSC.

(2) Apply the retail service quality standards established under this item to any telecommunications utility with more than 500,000 access lines in use in this state. Authorize the PSC to apply the standards to other telecommunications utilities, or other telecommunications providers that provide local exchange services, if the PSC finds that the utility or provider has engaged in a demonstrable pattern of poor retail service or intentional misconduct. *w/ret. service?*

2. Provision of wholesale services

a. Define in s. 196.219, Stats., "wholesale services" to include preordering, ordering and provisioning, maintenance and repair, network performance, unbundled elements, operator's services and directory assistance, system performance, service center availability and billing.

*OSS
doc part*

(1) Authorize the PSC by order to modify the list of services included in "wholesale services."

b. Establish in s. 196.219, Stats., that a telecommunications utility or other telecommunications provider with respect to its offering of local exchange services must provide wholesale services to telecommunications providers on the same terms and conditions as the telecommunications utility or provider receives from any other telecommunications provider [unless the terms and conditions violate federal law] → *NOT NECCY*

3. Wholesale service quality

a. Direct the PSC in s. 196.219, Stats., to establish by order minimum wholesale service quality standards.

(1) Require the PSC to set standards that relate to service outages, response to orders for wholesale services, repeat trouble reports, and any other measure of wholesale service quality identified by the PSC.

(2) Direct the PSC to specify in its order which telecommunications utilities are subject to the wholesale service quality standards established under this item.

*delegation
issue*

4. Implementation

a. Direct the PSC to implement its initial orders identified above (items A. 1. a., A. 2. b. and A. 3. a.) within 120 days after the effective date of this provision. Authorize the PSC, if in the public interest, to apply the initial orders to particular types of telecommunications providers.

oper. app'n hearing - must be in effect

(?)

(?)

b. Direct the PSC to promulgate by rule its definitions of wholesale services and its retail and wholesale service quality standards specified in the orders identified above (items A. 1. a., A. 2. b. and A. 3. a.). Direct the PSC to submit the rules in proposed form to the Legislative Council Staff under s. 227.15 (1), Stats., no later than July 1, 2005.

rules? orders? what's the relationship?

must promulgate rules - rule will trump order

B. Enforcement and Remedies

1. Compensation for poor service

a. Authorize explicitly the PSC to require a telecommunications utility, or other telecommunications provider that provides local exchange services, that is subject to the retail service quality standards established under item A. 1. a., to issue a service guarantee with credits to the utility's or provider's end-user customers for service disruptions, failure to install local exchange service in a timely manner, failure to keep service or repair appointments or other retail service problems identified by the PSC.

collecting information

(?)

2. Review of price regulations

a. Include explicitly the promotion of service quality in the list of potential goals that may be achieved by the PSC in reviewing a price-regulated telecommunications utility's regulation under s. 196.196 (1) (g), Stats.

3. Forfeitures and other relief

a. Establish a penalty provision in s. 196.219, Stats., that establishes that a telecommunications utility or other telecommunications provider that violates s. 196.219, Stats., shall forfeit not more than one of the following amounts:

(1) If the telecommunications utility is a small telecommunications utility, up to the amount specified in the current ch. 196 general forfeiture provisions, s. 196.66 (1), Stats. (this amount is \$5,000 per violation).

(2) If the telecommunications utility or other provider is not a small telecommunications utility, up to \$30,000 per violation or 0.00825% of the utility's or provider's gross operating revenues from intrastate telecommunications services per violation, whichever is greater.

b. In imposing a forfeiture under item 3. a., direct the court or the PSC to consider all of the factors specified in s. 196.66 (3), Stats., in setting the amount of the forfeiture. (These three factors are the appropriateness of the forfeiture to the volume of business of the utility, the gravity of the violation, and any good faith attempt to achieve compliance after the utility receives notice of the violation.)

b1696/2

if the penalty mechanism was included in

5

c. Establish in the price regulation statute, s. 196.196, Stats., authority for a court, or the PSC to take administrative action, to impose a forfeiture for inadequate service provided by or insufficient investment made by any price-regulated telecommunications utility up to an amount equal to the amount of a penalty mechanism of five percentage points under the price cap formula specified in s. 196.196 (1) (c) 1., Stats.

1 b1 196
secs 1 & 2

d. Amend s. 196.219 (4) (a) and (b), Stats., to authorize the PSC, in its own name or on behalf of consumers to take administrative action, including initiating a contested case, in addition to instituting in court a proceeding against a telecommunications utility or provider to enforce s. 196.219, Stats.

(1) Include in this authority the power for the PSC to directly impose forfeitures for violations of s. 196.219, Stats.

(2) Include in this authority the ability of the PSC to require any other appropriate relief, including injunctive relief.

e. Authorize the PSC in s. 196.219, Stats., to order a telecommunications utility, or any other telecommunications provider with respect to its offering of local exchange services, to provide to its customers a credit or other remedy upon the utility or provider engaging in a practice or activity that fails to comply with a standard or requirement that the PSC establishes under s. 196.219, Stats., and specifies in the order.

prospective order
- x, y, z
- measure compliance
- if don't comply, must pay

f. Amend s. 196.22, Stats., which prohibits discrimination in rates and charges for services, to establish that any payments made for violations of ch. 196 by telecommunications providers are not contrary to s. 196.22, Stats.

S. 499 6/6/96
WHY?

g. Amend s. 196.37 (1), Stats., relating to PSC authority to order reasonable future rates or charges if it finds that rates or charges are unreasonable or unlawful, to also authorize the PSC to order reasonable compensation for persons injured by reason of unlawful rates or charges of telecommunications providers.

budget

S. 5

h. Amend s. 196.37 (2), Stats., relating to the authority of the PSC to make a just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished in the future if the measurement, regulation, practice, act or service is unreasonable or unlawful or if the service is inadequate or if the service which reasonably can be demanded cannot be obtained, to also authorize the PSC to order a telecommunications provider to pay monetary compensation to the PSC or other persons for failure to comply with these requirements.

make consistent

Compensate the PSC?

Mitte Varda
PSC

- avoiding pecuniary losses

see (Lm) -

FOR WHAT?
IV. Cross-Subsidies

A. Definitions

1. "Eligible utility" means a telecommunications utility that has less than 25,000 access lines in use in this state.

- a. For purposes of this definition, if a telecommunications utility is owned, controlled, or held by a holding company, the number of access lines in use in this state by the telecommunications utility shall include the number of access lines in use in this state by all other telecommunications utilities, other than commercial mobile radio service providers, that are owned, controlled, or held by the holding company.

2. "Affiliated interest" has the meaning specified in s. 196.52 (1), Stats.

B. Accounting Requirement

1. Establish that the PSC, in setting minimum accounting requirements to enable the PSC to enforce the cross-subsidies law under s. 196.204 (3), Stats., may not require an eligible utility to use the market price method of determining the value of a transaction with an affiliated interest of the eligible utility unless the total aggregate annual value of the transaction is at least \$100,000.

C. Exceptions to the Prohibition on Cross-Subsidization

1. Expand the current retained earnings exception to the prohibition on a telecommunications utility subsidizing an unregulated activity under the first sentence in s. 196.204 (1), Stats., to also apply to a telecommunications cooperative's retained earnings and patronage capital.
2. Create an exception to the prohibition on a telecommunications utility subsidizing an unregulated activity under the first sentence in s. 196.204 (1), Stats., for a loan guarantee that an eligible utility provides for a loan made to an affiliated interest of the eligible utility if all of the following conditions apply:
 - a. The purpose of the loan is to partially or completely fund equipment that the affiliated interest or eligible utility will use to provide a voice, data or high-speed based telecommunications service, a cable television service, or both.
 - b. The affiliated interest agrees to pay to the eligible utility annually an amount equal to 1% of the outstanding balance of the loan.
3. Establish a "grandfather clause" that provides that a loan guarantee that an eligible utility provided for a loan made to an affiliated interest after November 16, 2001 and prior to the effective date of this provision shall be deemed legal.
 - a. Establish that this provision may not be deemed to otherwise diminish the PSC's control or jurisdiction over the operations and assets of any eligible utility.

V. Access Fees

- A. Except as provided in item B., authorize the PSC to conduct an earnings review of a telecommunications utility if the utility's intrastate originating or terminating access rates exceed any of the following amounts at the specified times:
 1. After July 1, 2004, 150% of the benchmark access rates established by the PSC in its order in Docket 05-TR-103 dated March 23, 1993.

2. After July 1, 2006, 125% of the benchmark access rates established by the PSC in its order in Docket 05-TR-103 dated March 23, 1993.
3. After July 1, 2008, the benchmark access rates established by the PSC in its order in Docket 05-TR-103 dated March 23, 1993.

B. Exempt from the review under item A. any telecommunications utility that is (1) subject to price regulations under s. 196.196, (2) whose intrastate access rates were set under incentive regulations under s. 196.195 (12), or (3) whose intrastate access rates have been reviewed and approved by the PSC since the enactment of 1993 Wisconsin Act 496.

VI. Consumer Protection

A. Amend the telecommunications services consumer protection law administered by the Department of Agriculture, Trade and Consumer Protection (DATCP), s. 100.207, Stats., to do all of the following:

1. Truth in billing:

(?) a. Prohibit a telecommunications provider from entering into a contract to bill for a third party service without the consumer's approval to enable a consumer to control who bills them through the telephone bill.

John Stolzeberg is getting more info from DATCP

b. When a telecommunications provider bills for a third party, require the same consumer protections and recourse as that state law currently requires for other credit collection services such as credit cards. Require that all collections for products or services provided by a third party be completely separated from the services provided by the billing company.

Jim Rabbit DATCP 224-4965

c. Require all telecommunications providers' collection and billing records relating to telecommunications service provided in Wisconsin be maintained for a period of time equal to the statute of limitations for PSC or DATCP enforcement actions.

or Ted Haas 224-5032

d. Require a telecommunications provider to provide to DATCP or PSC without subpoena records relating to the administration and enforcement of s. 100.207.

(?) e. Require a telecommunications provider, at the request of a consumer, to itemize bills at no additional charge to the consumer.

itemize

2. Customer Service Agreements

a. Prohibit telecommunications providers' customer service agreements that attempt to bypass Wisconsin law through law-of-choice, arbitration, and class action exclusion.

3. Contract Acceptance

(?) a. Prohibit any method of contract acceptance that is also used to perform another function on the telephone.

- b. Require any method of signifying contract acceptance by the consumer to be reasonably unique and require an affirmative act by the consumer. (This would address industry practices that construe a consumer making a call, paying a bill, or dialing a second number within two seconds of completing a call to constitute acceptance of the terms of a contract.)

How relate to examples in paras?

4. Long Arm Jurisdiction

- a. Require telecommunications providers that do business in Wisconsin to submit to the jurisdiction of Wisconsin law enforcement agencies.
- b. Provide that a telecommunications provider must honor subpoenas and investigative demands.

?

- B. Establish that no provider of a broadcast service or cable television service, as defined in s. 196.01 (1m) and (1p), Stats., may transmit from a facility in Wisconsin an encrypted audio or video signal such that the signal may not be recorded by an individual for the individual's personal use to the extent authorized under federal copyright law.

check w/ Robin

VII. Telephone Numbers and Area Codes

- A. Grant explicitly the PSC the authority, to the extent authorized under federal law, to administer numbers and area codes used by all telecommunications providers in Wisconsin.

?

- B. Include under this authority PSC jurisdiction over numbers and area codes assigned by telecommunications carriers and commercial mobile radio service providers in Wisconsin.

- 1. Make any information that the PSC collects from these carriers and providers in administering this provision subject to the public records inspection exception under s. 196.14, Stats. (which applies to information that would aid the competitor of a carrier or provider in competition with the carrier or provider).

VIII. PSC Advanced Telecommunications Infrastructure Biennial Report

- A. Direct the PSC to include in the advanced telecommunications infrastructure report required under s. 196.196 (5) (f), Stats., information on the status of competition for telecommunications services throughout the state.

- B. Authorize the PSC to collect information from telecommunications carriers, commercial mobile radio service providers and providers of cable television service necessary to prepare the report.

- 1. Make any information that the PSC collects from these carriers and providers subject to the public records inspection exception under s. 196.14, Stats. (which applies to information that would aid the competitor of a carrier or provider in competition with the carrier or provider).

see 196.65 - info gathering penalties
↓
make that the penalties for not copying w/ VIII

IX. PSC General Duties and Enforcement Powers

A. Direct the PSC, in making all telecommunications-related decisions, orders and rules, to promote the availability of high quality telecommunications services at reasonable rates, facilitate the development of competitive markets for local telecommunications services, protect the public against monopolies, and ensure the effective regulation of telecommunications utilities that have control or market power over essential telecommunications facilities.

61696
SS. 6-
10

B. Authorize the PSC to take administrative action and institute all necessary actions or proceedings for the enforcement of any provision in ch. 196, Stats., relating to telecommunications providers, including telecommunications carriers, and for the punishment of all violations of these laws.

1. Include in this authority that the PSC may impose a forfeiture against a telecommunications provider under s. 196.66, Stats., by administrative action, subject to the same factors set forth in s. 196.66 (3), Stats., that a court must consider in setting the amount of a forfeiture. (These three factors are identified above in item III. B. 3. b.)

JES:jal:rv;jal:rv

no changes
necy for 3 factors
because I'm amending
s. 196.66 (3)
(b) (intro.)

Kunkel, Mark

From: Stolzenberg, John
Sent: Tuesday, February 19, 2002 9:35 AM
To: Kunkel, Mark
Cc: Offerdahl, Mary
Subject: RE: Earnings review

Mark,

I agree with most of Mary's description of "earnings review". Her 2nd and 3rd sentences describe the comparable triggers under current law, s. 196.215 (7). The level of the residential rates is only one of the four triggers in s. 196.215 (7) (a).

With respect to other parts of the Assembly instructions, do you need a description or a definition of "patronage capital" in Item IV. C. 1.?

John

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

From: Offerdahl, Mary
Sent: Tuesday, February 19, 2002 8:41 AM
To: Kunkel, Mark
Cc: Stolzenberg, John
Subject: RE: Earnings review

Mark, I'm copying this to John so that he can correct me if I'm wrong, but as I understand it, PSC has told us that they do an annual review of small telco earnings (what they call an "earnings review") under s. 196.20 (5), Stats., when triggered by the provisions in s. 196.215 (7), Stats. These triggers primarily relate to residential rates that are above the statewide average. Item V (A) of the Assembly instructions is intended to establish comparable triggers, relating to higher-than-average access charges instead of residential rates, for an earnings review. Item V (A) of the Assembly instructions is intended to address complaints that independent incumbent local exchange carriers are assessing higher intrastate access charges than Verizon and Ameritech.

Mary Offerdahl
Staff Attorney
Legislative Council

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

From: Kunkel, Mark
Sent: Monday, February 18, 2002 6:06 PM
To: Stolzenberg, John; Offerdahl, Mary
Subject: Earnings review

Regarding item V (A) of the Assembly instructions, what is an "earnings review"? That term does not appear in ch. 196.

Mark D. Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

Kunkel, Mark

From: Stolzenberg, John
Sent: Tuesday, February 19, 2002 4:19 PM
To: Kunkel, Mark
Cc: Smyrski, Rose; Offerdahl, Mary; Varda, Mike PSC
Subject: Definition of "total patronage capital"

Mark,

Here's a definition of "total patronage capital" that should be used in Rep. Montgomery's telecommunications drafting request in Item IV. C. 1. in lieu of "retained earnings and patronage capital." It was prepared by PSC staff at my request.

- "Total patronage capital" means the cumulative total of a telecommunications cooperative's annual net proceeds, as recorded on the cooperative's accounts and owned by and distributable to its patrons under s. 185.45, Stat., less annual distributions to patrons of a portion of the accrued net proceeds based upon their patronage in a designated prior year.

For me, the key concept behind this definition is the fact that telecommunications cooperatives typically divide their annual distributions to their patrons (or members) into 2 parts, one part is a payment made in the year the distribution was made and the other part is a delayed payment for 8 to 10 (or more) years, pursuant to the cooperative's articles or bylaws. While the latter distribution has been allocated to the patron and legally owned by the patron, the cooperative holds the funds until the delayed payment is made. The cumulative amount of these outstanding delayed payments, less the amount of delayed payments owed in a given year, is the total patronage capital for that year.

Let me know if you have questions on this definition.

John

John Stolzenberg,
Legislative Council Staff Scientist
Suite 401, One East Main Street
PO Box 2536
Madison, WI 53701-2536
Direct: 608-266-2988
Fax: 608-266-3830

Kunkel, Mark

From: Stolzenberg, John
Sent: Tuesday, February 19, 2002 4:46 PM
To: Kunkel, Mark
Cc: Smyrski, Rose; Offerdahl, Mary; Varda, Mike PSC
Subject: Total patronage capital; further clarification

Mark,

I just got an e-mail note from PSC staff suggesting that the first clause in the first sentence in s. 196.204 (1) also be amended as part of the treatment of "patronage capital" under Rep. Montgomery's drafting request, Item IV. C. 1. to clarify that a cooperative can not account for its total patronage capital twice, once as a stand alone expense and once as part of "retained earnings." I am told that some cooperatives are arguing to the PSC that their retained earnings account should include total patronage capital.

One way to prevent this double counting would be to amend this first clause as follows: "Except for retained earnings and any total patronage capital, if separately accounted for in the case of a telecommunications cooperative, a telecommunications utility shall not subsidize...." Please add to Rep. Montgomery's bill draft appropriate language to prevent this double counting.

John

John Stolzenberg,
Legislative Council Staff Scientist
Suite 401, One East Main Street
PO Box 2536
Madison, WI 53701-2536
Direct: 608-266-2988
Fax: 608 266 3830

Kunkel, Mark

From: Smyrski, Rose
Sent: Tuesday, February 19, 2002 4:49 PM
To: Kunkel, Mark; Stolzenberg, John
Subject: Drafting introduction

Importance: High

At the request of Rep Montgomery we would like to have the section relating to Cross Sub - Affiliated Interest removed from the draft. If you have any questions, please contact us.

Rose Smyrski for
Representative Phil Montgomery

Kunkel, Mark

From: Stolzenberg, John
Sent: Wednesday, February 20, 2002 9:32 AM
To: Kunkel, Mark
Subject: RE: wireless question

Mark,

Sen. Fitzgerald's staff confirmed my interpretation this morning; the CMRS eligible expenses include all of their expenses relating to constructing, implementing, operating and maintaining their wireless 911 systems required by the FCC order.

John

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

From: Kunkel, Mark
Sent: Tuesday, February 19, 2002 5:09 PM
To: Stolzenberg, John
Subject: RE: wireless question

Okay. I used to do environmental law when I worked at a law firm, and one of the federal statutes talks about "operation and maintenance". So, every time I see the word "maintenance" I wonder if "operation" should also be used.

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

From: Stolzenberg, John
Sent: Tuesday, February 19, 2002 5:01 PM
To: Kunkel, Mark
Cc: Smyrski, Rose
Subject: RE: wireless question

Mark,

It is not intentional. My recollection is that a wireless provider is eligible to receive all of its operating expenses relating to its wireless 911 system. Note the reference to "maintain" in Item I. E. 1.b. I have a call into Sen. Fitzgerald's staff to confirm my interpretation. Assume that I'm correct, unless I tell you otherwise.

With respect to staff for the wireless 911 Board, Item I. C. 2. e., authorize 1 FTE to staff the Board.

John

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

From: Kunkel, Mark
Sent: Tuesday, February 19, 2002 3:31 PM
To: Stolzenberg, John
Subject: wireless question

Under item I (E) 1. b., there is no mention of expenses related to operating hardware, etc. Is that intentional?

Mark D. Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

Kite, Robin

From: Stolzenberg, John
Sent: Wednesday, February 20, 2002 10:53 AM
To: Kite, Robin
Cc: Smyrski, Rose; Rabbitt, Jim L DATCP; Ghilardi, David J DATCP
Subject: Telecommunications Consumer Protection Related Drafting Instruction

Robin,

This note responds to your question on Item VI. A. 3. b. in the drafting instructions from Rep. Montgomery on his telecommunications bill draft, relating to required methods of signifying contract acceptance by a consumer. You'd requested clarification of what it means for this acceptance to be "reasonably unique and require an affirmative act by the consumer."

I talked this morning with staff at DATCP. They suggested an alternative approach to signifying contract acceptance [or consent] that requires the telecommunications provider to confirm the consumer's consent in a manner that: (1) reasonably demonstrates that the consent was knowledgeably given by the consumer, and (2) provides the consumer an opportunity to withdraw the consent.

I also confirmed Rep. Montgomery's acceptance of this alternative, so please amend the instructions in Item VI. A. 3. b. to reflect this alternative approach.

Please let me know if you have any questions on this alternative.

John

John Stolzenberg,
Legislative Council Staff Scientist
Suite 401, One East Main Street
PO Box 2536
Madison, WI 53701-2536
Direct: 608-266-2988
Fax: 608-266-3830

Kunkel, Mark

From: Stolzenberg, John
Sent: Wednesday, February 20, 2002 5:05 PM
To: Kunkel, Mark
Cc: Smyrski, Rose
Subject: RE: Question

Mark,

My understanding is that, if a utility or provider receives services from more than one provider, then the receiving utility or provider would have to provide wholesale services to other utilities or providers pursuant to the terms and conditions that wholesale services are provided to the receiving utility or provider and that result in the highest quality of wholesale services to the receiving utility or provider. In other words, the receiving utility or provider would have to make a judgment on which set of wholesale services that it receives is at the highest quality and then that set would determine the terms and conditions under which the utility or provider would provide wholesale services to others. To make such a system work, I assume that either the receiving or providing utility or provider should be able petition the PSC to determine which set of terms and conditions should apply.

John

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

From: Kunkel, Mark
Sent: Wednesday, February 20, 2002 4:07 PM
To: Stolzenberg, John
Subject: Question

Regarding item III (A) (2) b., please review the following:

Section 8. 196.219 (3) (p) of the statutes is created to read:

196.219 (3) (p) Fail to provide wholesale services to another telecommunications provider on the same terms and conditions that the telecommunications utility or telecommunications provider receives from any other telecommunications provider.

****Note: If a telecommunications provider receives wholesale services on different terms and conditions from different other telecommunications providers, what is the result? As drafted, I don't think the above tells the telecommunications provider what to do.

Mark D. Kunkel
Legislative Attorney
Legislative Reference Bureau
(608) 266-0131

“Remedy Plan” power—underscore added to existing statute.

196.37(2) If the commission finds that any measurement, regulation, practice, act or service is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise unreasonable or unlawful, or that any service is inadequate, or that any service which reasonably can be demanded cannot be obtained, the commission shall determine and make any just and reasonable order relating to a measurement, regulation, practice, act or service to be furnished, imposed, observed and followed in the future and may determine and order (monetary compensation) to the commission or other persons for failure to comply.

legmemoparity&planpowers013002

INTENT:

→ - not necily tied to dmgs

- a tool of inducement instead

- Service guarantee is a form liquidated dmgs

2. After July 1, 2006, 125% of the benchmark access rates established by the PSC in its order in Docket 05-TR-103 dated March 23, 1993.
3. After July 1, 2008, the benchmark access rates established by the PSC in its order in Docket 05-TR-103 dated March 23, 1993.

B. Exempt from the review under item A. any telecommunications utility that is (1) subject to price regulations under s. 196.196, (2) whose intrastate access rates were set under incentive regulations under s. 196.195 (12), or (3) whose intrastate access rates have been reviewed and approved by the PSC since the enactment of 1993 Wisconsin Act 496.

VI. Consumer Protection

A. Amend the telecommunications services consumer protection law administered by the Department of Agriculture, Trade and Consumer Protection (DATCP), s. 100.207, Stats., to do all of the following:

1. Truth in billing:

not telecom service not by telecom service provider
John Stolzeberg is getting more info from DATCP

MG

(?)

a. Prohibit a telecommunications provider from entering into a contract to bill for a third party service without the consumer's approval to enable a consumer to control who bills them through the telephone bill.

b. *current law does this per RJM*
 [When a telecommunications provider bills for a third party, require the same consumer protections and recourse as that state law currently requires for other credit collection services such as credit cards.] Require that all collections for products or services provided by a third party be completely separated from the services provided by the billing company.

MG

ABS/8

MG + MDK

require 10 years

c. Require all telecommunications providers' collection and billing records relating to telecommunications service provided in Wisconsin be maintained for a period of time equal to the statute of limitations for PSC or DATCP enforcement actions.

ANL

MG + MDK

d. Require a telecommunications provider to provide to DATCP or PSC without subpoena records relating to the administration and enforcement of s. 100.207.

MG + family

(?)

e. Require a telecommunications provider, at the request of a consumer, to itemize bills at no additional charge to the consumer.

2. Customer Service Agreements

MG + RDK

a. Prohibit telecommunications providers' customer service agreements that attempt to bypass Wisconsin law through law-of-choice, arbitration, and class action exclusion.

788.01

3. Contract Acceptance

RDK

(?)

a. Prohibit any method of contract acceptance that is also used to perform another function on the telephone.

RNK

- b. Require any method of signifying contract acceptance by the consumer to be reasonably unique and require an affirmative act by the consumer. (This would address industry practices that construe a consumer making a call, paying a bill, or dialing a second number within two seconds of completing a call to constitute acceptance of the terms of a contract.)

→ How relate to examples in paras?

4. Long Arm Jurisdiction

MGG

- a. Require telecommunications providers that do business in Wisconsin to submit to the jurisdiction of Wisconsin law enforcement agencies.

MGG

- b. Provide that a telecommunications provider must honor subpoenas and investigative demands.

RNK ?

~~B. Establish that no provider of a broadcast service or cable television service, as defined in s. 196.01 (1m) and (1p), Stats., may transmit from a facility in Wisconsin an encrypted audio or video signal such that the signal may not be recorded by an individual for the individual's personal use to the extent authorized under federal copyright law.~~

VII. Telephone Numbers and Area Codes

RNK ?

A. Grant explicitly the PSC the authority, to the extent authorized under federal law, to administer numbers and area codes used by all telecommunications providers in Wisconsin.

RNK ?

B. Include under this authority PSC jurisdiction over numbers and area codes assigned by telecommunications carriers and commercial mobile radio service providers in Wisconsin.

- 1. Make any information that the PSC collects from these carriers and providers in administering this provision subject to the public records inspection exception under s. 196.14, Stats. (which applies to information that would aid the competitor of a carrier or provider in competition with the carrier or provider).

VIII. PSC Advanced Telecommunications Infrastructure Biennial Report

A. Direct the PSC to include in the advanced telecommunications infrastructure report required under s. 196.196 (5) (f), Stats., information on the status of competition for telecommunications services throughout the state.

RNK

B. Authorize the PSC to collect information from telecommunications carriers, commercial mobile radio service providers and providers of cable television service necessary to prepare the report.

- 1. Make any information that the PSC collects from these carriers and providers subject to the public records inspection exception under s. 196.14, Stats. (which applies to information that would aid the competitor of a carrier or provider in competition with the carrier or provider).

see 196.65 - the gathering penalties
 ↓
 make that the penalties for not copying w/ VIII