

2001 DRAFTING REQUEST

Bill

Received: 12/29/2000

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Holden**

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

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - telco**

Extra Copies:

Pre Topic:

DOA:.....Holden -

Topic:

PSC enforcement authority regarding telecommunications providers

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>
/1	kunkemd 01/08/2001	gilfokm 01/08/2001	jfrantze 01/08/2001	_____	lrb_docadmin 01/09/2001		State
	kunkemd 02/07/2001	jdye 02/07/2001		_____			
/2			pgreensl 02/07/2001	_____	lrb_docadmin 02/07/2001		State

FE Sent For:

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/1	kunkemd 01/08/2001	gilfokm 01/08/2001	jfrantze 01/08/2001	2/7 Pg/R	lrb_docadmin 01/09/2001		State

FE Sent For:

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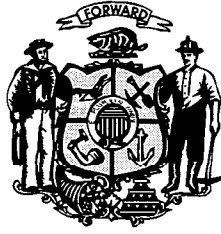
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-1696

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
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Date: December 28, 2000

To: Steve Miller, LRB

From: Kerry Holden, DOA *KH*
266-8593

Subject: Changes to PSC authority re: telecommunications companies.

Attached is a draft submitted by the PSC containing changes the agency would like made to statutory language regarding its authority to regulate telecommunications companies. Please feel free to call me if you have any questions. Thanks!

196.219. Protection of telecommunications consumers.

(1) DEFINITIONS. In this section:

(a) "Consumer" means any person, including a telecommunications provider, that uses the services, products or facilities provided by a telecommunications utility or the local exchange services offered by a telecommunications provider that is not a telecommunications utility.

(b) "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

(2) CONSUMER PROTECTION.

(a) Notwithstanding any exemptions identified in this chapter except s. 196.202, a telecommunications utility or provider shall provide protection to its consumers under this section unless exempted in whole or in part by rule or order of the commission under this section. The commission shall promulgate rules that identify the conditions under which provisions of this section may be suspended.

(b) On petition, the commission may grant an exemption from a requirement under this section upon a showing that the exemption is reasonable and not in conflict with the factors under s. 196.03 (6)

(c) On petition, the commission may grant an exemption from a requirement under this section retroactively if the application of the requirement would be unjust and unreasonable considering the factors under s. 196.03 (6) or other relevant factors.

(d) If the commission grants an exemption under this subsection, it may require the telecommunications utility or provider to comply with any condition necessary to protect the public interest.

(2m) ACCESS SERVICES. A telecommunications utility or provider shall provide access services under tariff under the same rates, terms and conditions to all telecommunications providers, except that a provider is not obligated to provide to competitors access to dedicated access services provided to end user customers as part of an interexchange service.

(3) PROHIBITED PRACTICES. A telecommunications utility with respect to its regulated services or any other telecommunications provider with respect to its offering of local exchange services may not do any of the following:

(a) Refuse to interconnect within a reasonable time with another person to the same extent that the federal communications commission requires the telecommunications utility or provider to interconnect. The public service commission may require additional interconnection based on a determination, following notice and opportunity for hearing, that additional interconnection is in the public interest and is consistent with the factors under s. 196.03 (6)

(b) Upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection.

(c) Impair the speed, quality or efficiency of services, products or facilities offered to a consumer under a tariff, contract or price list.

(d) Unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(e) Fail to provide a service, product or facility to a consumer other than a telecommunications provider in accord with the telecommunications utilitysutilities or providers applicable tariffs, price lists or contracts and with the commissions rules and orders.



(em) Refuse to provide a service, product or facility, in accord with that telecommunications utilitys or providers applicable tariffs, price lists or contracts and with the commissions rules and orders, to another telecommunications provider.

(f) Refuse to provide basic local exchange service, business access line and usage service within a local calling area and access service on an unbundled basis to the same extent that the federal communications commission requires the telecommunications utility or provider to unbundle the same services provided under its jurisdiction. The public service commission may require additional unbundling of intrastate telecommunications services based on a determination, following notice and opportunity for hearing, that additional unbundling is required in the public interest and is consistent with the factors under s. 196.03 (6) The public service commission may order unbundling by a small telecommunications utility.

(g) Provide services, products or facilities in violation of s. 196.204

(h) To the extent prohibited by the federal communications commission, or by the public service commission under rules promulgated consistent with the factors under s. 196.03 (6), give preference or discriminate in the provision of services, products or facilities to an affiliate, or to the telecommunications utilitys or providers own or an affiliates retail department that sells to consumers.

(j) Restrict resale or sharing of services, products or facilities, except for basic local exchange service other than extended community calling, unless the commission orders the restriction to be lifted. A telecommunications utility that has 150,000 or less access lines in use in this state may limit the use of extended community calling or business line and usage service within a local calling area as a substitute for access service, unless the commission orders the limitation to be lifted.

(L) Fail to provide, or to terminate, any telecommunications service as necessary to comply with the minimum standards of service established by the commission with respect to technical service quality, deposits, disconnection, billing and collection of amounts owed for services provided or to be provided.

(m) Provide telecommunications service to any person acting as a telecommunications utility, telecommunications provider, alternative telecommunications utility or telecommunications carrier if the commission has ordered the telecommunications utility or provider to discontinue service to that person.

(n) Provide telecommunications service in violation of s. 100.207

(4) ENFORCEMENT.

(a) The commission, in~~On its the commissions~~ own name or on behalf of consumers, motion or upon complaint filed by the consumer, the commission shall have jurisdiction to take administrative action, including initiating a contested case or to commence civil actions against telecommunications utilities or providers to enforce this section.

(b) The commission, in its own name or on behalf of consumers, may, at its discretion, take administrative action, including initiating a contested case and

may institute in any court of competent jurisdiction a proceeding against a telecommunications utility or provider for injunctive relief to compel compliance with this section, to compel the accounting and refund of any moneys collected in violation of this section or for any other appropriate relief permitted under this chapter. The commission may directly impose forfeitures for violations of this section.

(4d) UNFAIR TRADE PRACTICE ENFORCEMENT. Upon receipt of a notice issued under s. 100.208, the commission may order a telecommunications provider to cease offering the telecommunications service that creates the unfair trade practice or method of competition.

(4m) CIVIL ACTIONS.

(a) Upon a finding of a violation of this section by the commission, any person injured because of a violation of this section by a telecommunications utility or provider may commence a civil action to recover damages or to obtain injunctive relief.

(b) The commission may take administrative action, including initiating a contested case, and the commission and, upon ~~Upon~~ request of the commission, the attorney general, may bring an action to require a telecommunications utility or provider to compensate any person for any pecuniary loss caused by the failure of the utility or provider to comply with this section.

(5) ALTERNATE DISPUTE RESOLUTION. The commission shall establish by rule a procedure for alternative dispute resolution to be available for complaints filed against a telecommunications utility or provider.

196.22. Discrimination forbidden.

No public utility may charge, demand, collect or receive more or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in the schedules for the service filed under s. 196.19, including schedules of joint rates, as may at the time be in force, or demand, collect or receive any rate, toll or charge not specified in the schedule. Payments made for violations of this chapter are not contrary to this section.

196.37. Lawful rates; reasonable service.

(1) If, after an investigation under this chapter or ch. 197, the commission finds rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and order reasonable rates, tolls, charges, schedules or joint rates to be imposed, observed and followed in the future, and may determine and order reasonable compensation for persons injured by reason of such rates, tolls, charges, schedules or joint rates.

(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.

196.44. Law enforcement.

(1) DUTY OF COMMISSION. (a) The commission shall inquire into the neglect or violation of the laws of this state by public utilities, or by their officers, agents or employes or by persons operating public utilities, and shall enforce

all laws relating to public utilities, and report all violations to the attorney general.

(b) The commission may take administrative action and may institute and prosecute all necessary actions or proceedings for the enforcement of all laws relating to public utilities or telecommunications providers and for the punishment of all violations.

(2). DUTIES OF ATTORNEY GENERAL AND DISTRICT ATTORNEYS.

(a) Upon request of the commission, the attorney general or the district attorney of the proper county shall aid in any investigation, hearing or trial had under this chapter, and shall institute and prosecute all necessary actions or proceedings for the enforcement of all laws relating to public utilities or telecommunications providers, and for the punishment of all violations.

(b) The attorney general may, on his or her own initiative, appear before the commission on telecommunications matters relating to consumer protection and antitrust. If acting under the authority granted by this paragraph, the attorney general shall have the rights accorded a party before the commission in its proceedings but may not appeal as a party a decision of the commission to the circuit court. This paragraph does not apply after June 30, 2001.

(3) ACTIONS, CHARACTER, VENUE. Any forfeiture, fine or other penalty under this chapter may be recovered as a forfeiture in a civil action brought in the name of the state in the circuit court of Dane County or in the county that would be the proper place of trial under s. 801.50 History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1977 c. 29 ss. 1337, 1654 (10) (c), 1656 (43); 1977 c. 272; Stats. 1977 s. 196.44; 1981 c. 390 s. 252; 1983 a. 53; 1993 a. 496; 1997 a. 218; 1999 a. 9.

196.499. Regulation of telecommunications carriers.

(1) SCOPE. Notwithstanding any other provisions of this chapter, a telecommunications carrier is not subject to regulation under this chapter, except under each of the following provisions:

(a) A telecommunications carrier shall comply with the requirements of this section.

(b) A telecommunications carrier shall be treated under ss. 196.209, 196.218 (8) and 196.219 as a telecommunications provider.

(c) A telecommunications carrier shall be treated under s. 196.85 as a telecommunications utility.

(d) A telecommunications carrier shall be treated under s. 196.858 as an interexchange telecommunications utility.

(e) A telecommunications carrier may be assessed under s. 196.218 (3) as a telecommunications provider and shall respond, subject to the protection of the telecommunications carriers competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund. A telecommunications carrier may not be assessed in a manner that is inconsistent with this paragraph.

(f) For purposes of enforcing s. 196.209, 196.218 (3) or (8), 196.219, 196.85 or 196.858, or for purposes of approving or enforcing an interconnection agreement to which a telecommunications carrier is a party, a telecommunications carrier shall be subject to ss. 196.02 (3), 196.32, 196.33, 196.39, 196.395,

196.40, 196.41, 196.43, 196.44 (3) and 196.48 and be treated as a party to the agreement under ss. 196.199 and 196.26, as a public utility under ss. 196.02 (5) and (6), 196.14, 196.24, 196.44 (2) (a), 196.66 and 196.85 (1) and as a telecommunications provider under ss. 196.25 (3) and 196.65 (3)

(2) TARIFFS. Every telecommunications carrier shall keep on file with the commission a tariff for each service, that contains all the rules, rates and classifications used by it in the provision of its telecommunications services, including limitations on liability unless the commission waives any requirement. A tariff shall be effective when filed or on a date indicated by the carrier. The telecommunications carrier shall provide notice of price increases by publication in newspapers or by any other reasonable means and may provide notice of price decreases or of tariffed promotional rates. Tariffs may be filed for services offered on an interim basis, for special promotions, for discounts, including discounts intended to maintain customer relations, or for individual contracts between carriers and customers. A telecommunications carrier shall charge rates in accordance with its tariff.

(3) RATES.

(a) Except as provided in this subsection, a telecommunications carrier may not charge different rates for residential basic message telecommunications services, business basic message telecommunications services, or single-line wide-area telecommunications service on routes of similar distances within the state, unless otherwise authorized by the commission.

(am) Paragraph (a) does not prohibit volume or term discounts, discounts in promotional offerings, differences in the rates for intralata and interlata services of similar distances, the provision of optional toll calling plans to

selected exchanges or customers or the passing through of any state or local taxes in the specific geographic areas from which the taxes originate.

(b) Notwithstanding any other provision in this chapter, a telecommunications carrier may furnish services to its employes, officers, agents or pensioners at no charge or at rates that are lower than its tariff rates.

(c) A telecommunications carrier may contract to charge prices for services that are unique to a particular customer or group of customers if differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers or if market conditions require individual pricing.

(4) ABANDONMENT OF SERVICES. A telecommunications carrier shall provide written notice to the commission not less than 60 days before its abandonment of basic message telecommunications service to an exchange. The carrier shall also publish notice in a newspaper of general circulation within the exchange and provide any other notice required by the commission. A telecommunications carrier shall be subject to rules and procedures that the commission may establish for the continuance of basic message telecommunications service to an exchange if notice has been received that all providers of the service intend to abandon that service in the exchange. A rule or procedure may not regulate the price, terms or conditions of service other than as authorized in this section and may not discriminate in favor of or against any telecommunications provider.

(5) COMPLAINTS.

(a) In this subsection, "complaint" means a complaint filed with the commission that any rate, toll, charge or schedule relating to the provision of telecommunications service violates sub. (2) or (3) (a)

(am) In any complaint proceeding, the person initiating the complaint has the burden of proving a violation of sub. (2) or (3) (a)

(b) If any business organization, body politic or 25 individuals file a complaint against a telecommunications carrier, the commission, with or without notice, may investigate the complaint as it considers necessary. The commission may not issue an order based on the investigation without allowing the telecommunications carrier an opportunity for a hearing.

(c)

1. Before holding a hearing under this subsection, the commission shall notify the telecommunications carrier complained of that a complaint has been made, and no sooner than 10 days after the notice has been given the commission may set a time and place for a hearing.

2. The commission shall give the telecommunications carrier which is the subject of a complaint and the complainant at least 10 days notice of the time and place of a hearing and the subject of the hearing. The commission may subpoena any witness at the request of the telecommunications carrier or complainant.

3. Notice under subds. 1. and 2. may be combined. The combined notice may not be given less than 10 days before a hearing.

(d) If the commission finds by a preponderance of the evidence that existing rates, tolls, charges or schedules violate sub. (2) or (3) (a), the commission may issue its order requiring compliance with sub. (2) or (3) (a)

(6) INVESTIGATIONS AND HEARINGS.

(a) If the commission believes that any rate or charge violates sub. (2) or (3) (a), the commission on its own motion summarily may investigate with or without notice.

(b) If after an investigation under par. (a) the commission determines that sufficient grounds exist to warrant a hearing, the commission shall set a time and place for a hearing. The hearing shall be conducted as a hearing under sub.

(5) Notice of the time and place for a hearing under this paragraph shall be given to the telecommunications carrier, and to any other interested person as the commission considers necessary.

(7) PETITIONS. A telecommunications carrier may file a petition for relief with the commission on any matter affecting the telecommunications carriers product or service.

(8) DEPOSITIONS. The commission or any party in any investigation or hearing may take the depositions of witnesses in the manner prescribed for civil actions. Any expense incurred by or authorized by the commission in taking a deposition may be charged to the appropriation under s. 20.155 (1) (g)

(9) RECORDS AND TRANSCRIPTS. Sections 196.34 and 196.36, as they apply to records and transcripts relating to public utility hearings, apply to records and transcripts relating to telecommunications carrier hearings.

(11) REVIEW. Any order or determination of the commission may be reviewed under ch. 227

(12) ENFORCEMENT.

(a) The commission shall inquire into the neglect or violation of this section by telecommunications carriers, or by their officers, agents or employes or by

persons operating telecommunications carriers, and shall enforce all laws relating to this section and report any violation to the attorney general.

(b) The commission may take administrative action and may institute and prosecute all necessary actions or proceedings for the enforcement of all laws relating to telecommunications carriers.

(c) Upon request of the commission, the attorney general or a district attorney may aid in any investigation, hearing or trial under this section and shall prosecute any proceeding for the enforcement of laws relating to telecommunications carriers.

(d) A civil action to enforce this section shall be brought in the name of the state in the circuit court for Dane County or in the county that would be the proper place of trial under s. 801.50

(e) This section and rules and orders of the commission promulgated or adopted under this section may be enforced by an action to recover forfeitures, an action for injunction, an action to compel performance or by other appropriate actions.

(13) CRISIS SITUATIONS.

(a) If a sheriff, a police chief or a law enforcement officer designated by a sheriff or police chief to respond in a crisis situation has probable cause to believe that a person is holding a hostage or is resisting apprehension through the use or threatened use of force, the sheriff, police chief or law enforcement officer may order a telecommunications carrier to interrupt or reroute telecommunications service to or from the suspected person for the duration of the crisis situation to prevent the person from communicating with anyone other

than a person authorized by the sheriff, police chief or law enforcement officer.

(b) A telecommunications carrier may not be held liable for any action that it takes under par. (a)

(13m) EMERGENCY SERVICES. A telecommunications carrier may not unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(14) EXTENSION OF FACILITIES. Any telecommunications carrier may extend its facilities into or through any municipality for the furnishing of its services, subject to the reasonable regulation of the governing body of the municipality relative to the location of poles and wires and the preservation of the safe and convenient use of streets and alleys to the public. Upon a petition for relief made by a telecommunications carrier, the commission shall set a hearing and if it finds a contract, ordinance or resolution under this subsection to be unreasonable, the contract, ordinance or resolution shall be void.

(15) CERTIFICATES. A telecommunications carrier that is not authorized to provide intrastate telecommunications service on January 1, 1994, may not commence the construction of any plant, extension or facility, or provide intrastate telecommunications service directly or indirectly to the public, unless the telecommunications carrier obtains a certificate from the commission authorizing the telecommunications carrier to provide intrastate telecommunications. The commission may issue a certificate if the telecommunications carrier demonstrates that it possesses sufficient technical, financial and managerial resources to provide intrastate telecommunications services. A telecommunications carrier that is authorized to provide intrastate

telecommunications service on January 1, 1994, is not required to be recertified under this subsection.

(16) ACCESS SERVICE AUTHORIZATION. If a telecommunications utility with 150,000 or less access lines in use in this state is authorized in a geographic area to provide access service to the public or business access line and usage service within a local calling area, a telecommunications carrier may not offer in that same geographic area access service to the public or business access line and usage service within a local calling area without the authorization of the commission. The commission may authorize a telecommunications carrier to offer those services if, after notice and opportunity for hearing, the commission finds that public convenience and necessity require the offering of those services by the telecommunications carrier. The commission may not require a telecommunications carrier to meet a more stringent standard for authorization than the standard applied to any telecommunications provider seeking the same authority.

(17) FORFEITURES.

(a) A telecommunications carrier who violates a provision of this section or rule or order of the commission promulgated or adopted under this section may be required to forfeit not less than \$ 100 nor more than \$ 1,000 for each violation. Each day of continued violation constitutes a separate offense.

(b) A telecommunications carrier that knowingly and intentionally violates sub. (2) or (3) (a) may be required to forfeit not less than \$ 100 nor more than \$ 5,000 for each violation.

196.66. General forfeiture provisions.

(1) GENERAL FORFEITURE; FAILURE TO OBEY. If any public utility violates this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for which a penalty has not been provided, or fails, neglects or refuses to obey any lawful requirement or order of the commission or the governing body of a municipality or a sanitary commission or any judgment or decree of any court upon its application, for every violation, failure or refusal the public utility shall forfeit not less than \$ 25 nor more than \$ 5,000. The commission may impose a forfeiture under this section by administrative action.

(2) EACH DAY SEPARATE OFFENSE. Every day during which any public utility or any officer, agent, as defined in sub. (3) (a), or employe of a public utility fails to comply with any order or direction of the commission or to perform any duty enjoined by this chapter or ch. 197 shall constitute a separate and distinct violation under sub. (1) If the order is suspended, stayed or enjoined, this penalty shall not accrue.

(3) CONSIDERATIONS IN SETTING FORFEITURES.

(a) In this subsection, "agent" means an authorized person who acts on behalf of or at the direction of a public utility. "Agent" does not include a director, officer or employe of a public utility.

(b) The commission or a A court imposing a forfeiture on a public utility or an agent, director, officer or employe of a public utility under this chapter shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the forfeiture to the volume of business of the public utility.

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after the public utility, agent, director, officer or employe receives notice of the violation.

(4) TREBLE MAXIMUM FORFEITURES.

(a) If an act or omission causes death or a life-threatening or seriously debilitating injury, and is subject to a forfeiture proceeding under this chapter, the maximum forfeiture that may be imposed shall be trebled.

(b) If a public utility fails to comply with any rule, order or direction of the commission after actual receipt by the public utility of written notice from the commission specifying the failure, the maximum forfeiture under sub. (1) shall be \$ 15,000.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1696/1

MDK:1/...

D-NOTE

DOA:.....Holden - PSC enforcement authority regarding
telecommunications providers

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 *Don't*
AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

Under current law, telecommunications utilities and providers are subject to certain requirements regarding the protection of consumers, including other telecommunications utilities and providers that use their services. There are several provisions for enforcing these requirements, including the following three. First, the public service commission (PSC), on its own motion or upon a complaint filed by a consumer, may take administrative action or commence civil actions against telecommunications utilities and providers to enforce these requirements. This bill provides that the PSC has jurisdiction in its own name or on behalf of consumers to take such actions. The bill also clarifies that the PSC's authority to take administrative action includes initiating a contested case.

Second, under current law, the PSC may bring an action in court for injunctive relief for compelling compliance with the requirements, for compelling refunds of any moneys collected in violation of the requirements, or for any other relief under the public utility statutes. This bill also allows the PSC to take administrative action, in addition to bringing an action in court, for compelling compliance with the requirements or for compelling refunds. In addition, the bill allows the PSC to take

administrative action or bring an action in court for any other appropriate relief, instead of just any other relief under the public utility statutes. Also, the bill allows the PSC to directly impose forfeitures for violations of the requirements.

Third, under current law, the PSC may request the attorney general to bring an action in court to require a telecommunications utility or provider to compensate any person for any pecuniary loss caused by failure to comply with the requirements. Under this bill, in addition to requesting the attorney general to bring such an action, the PSC may take administrative action, including initiating a contested case, or bring its own action in court to require such compensation.

Finally, the bill makes other changes to the enforcement authority of the PSC, including the following:

1. Under current law, the PSC may investigate whether rates, tolls, charges, schedules, or joint rates are unjust, unreasonable, insufficient, unjustly discriminatory or preferential, or unlawful and order that reasonable rates, tolls, charges, schedules, or joint rates be imposed, observed, or followed in the future. This bill also allows the PSC to order reasonable compensation for persons injured by reason of rates, tolls, charges, schedules, or joint rates that are investigated.

2. Under current law, public utilities and certain other entities that violate laws enforced by the PSC, PSC orders, and certain other requirements are subject to a forfeiture of between \$25 and \$5,000, for each day of violation, which is imposed by a court. Under this bill, the PSC may also impose such a forfeiture by administrative action.

3. Under current law, the PSC is required to inquire into neglect or violation of laws by public utilities and telecommunications carriers, enforce such laws, and report all violations to the attorney general. This bill also allows the PSC to take administrative action and institute and prosecute all necessary actions and proceedings for enforcing all laws relating to public utilities, telecommunications providers, or telecommunications carriers, and for the punishment of all violations.

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:

1 SECTION 1. 196.219 (4) (a) of the statutes is amended to read:
2 196.219 (4) (a) ~~On the commission's own motion or upon complaint filed by the~~
3 ~~consumer, the~~ The commission, in its own name or on behalf of consumers, shall have
4 jurisdiction to take administrative action, including initiating a contested case, or to

1 commence civil actions against telecommunications utilities or providers to enforce
2 this section.

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

3 **SECTION 2.** 196.219 (4) (b) of the statutes is amended to read:

4 196.219 (4) (b) The commission, in its own name or on behalf of consumers,
5 may, at its discretion, take administrative action, including initiating a contested
6 case, or institute in any court of competent jurisdiction a proceeding against a
7 telecommunications utility or provider for injunctive relief, to compel compliance
8 with this section, to compel the accounting and refund of any moneys collected in
9 violation of this section, or for any other appropriate relief permitted under this
10 chapter. The commission may directly impose forfeitures for violations of this
11 section.

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

12 **SECTION 3.** 196.219 (4m) (b) of the statutes is amended to read:

13 196.219 (4m) (b) ~~Upon request of the commission, the attorney general may~~
14 The commission may take administrative action, including initiating a contested
15 case, or bring an action to require a telecommunications utility or provider to
16 compensate any person for any pecuniary loss caused by the failure of the utility or
17 provider to comply with this section. Upon the request of the commission, the
18 attorney general may bring an action specified in this paragraph.

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

19 **SECTION 4.** 196.22 of the statutes is amended to read:

20 **196.22 Discrimination forbidden.** No public utility may charge, demand,
21 collect, or receive more or less compensation for any service performed by it within
22 the state, or for any service in connection therewith, than is specified in the schedules
23 for the service filed under s. 196.19, including schedules of joint rates, as may at the
24 time be in force, or demand, collect, or receive any rate, toll, or charge not specified

1 in the schedule. Payments made for violations of this chapter are not contrary to this
2 section.

History: 1983 a. 53.

3 **SECTION 5.** 196.37 (1) of the statutes is amended to read:

4 196.37 (1) If, after an investigation under this chapter or ch. 197, the
5 commission finds rates, tolls, charges, schedules, or joint rates to be unjust,
6 unreasonable, insufficient, or unjustly discriminatory or preferential[✓] or otherwise
7 unreasonable or unlawful, the commission shall determine and order reasonable
8 rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed
9 in the future and may determine and order reasonable compensation for persons
10 injured by reason of the rates, tolls, charges, schedules, or joint rates.

History: 1981 c. 390, 1983 a. 53 ss. 47, 50, 1989 a. 344; 1993 a. 496; 1995 a. 409.

11 **SECTION 6.** 196.44 (1) of the statutes is renumbered 196.44 (1) (a).

12 **SECTION 7.** 196.44 (1) (b) of the statutes is created to read:

13 196.44 (1) (b) The commission may take administrative action and institute
14 and prosecute all necessary actions or proceedings for the enforcement of all laws
15 relating to public utilities or telecommunications providers and for the punishment
16 of all violations.

17 **SECTION 8.** 196.499 (12) (am) of the statutes is created to read:

18 196.499 (12) (am) The commission may take administrative action and
19 institute and prosecute all necessary actions or proceedings for the enforcement of
20 all laws relating to telecommunications carriers and for the punishment of all
21 violations.

22 **SECTION 9.** 196.66 (1) of the statutes is amended to read:

23 196.66 (1) GENERAL FORFEITURE; FAILURE TO OBEY. If any public utility violates
24 this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for

1 which a penalty has not been provided, or fails, neglects, or refuses to obey any lawful
2 requirement or order of the commission or the governing body of a municipality or
3 a sanitary commission or any judgment or decree of any court upon its application,
4 for every violation, failure, or refusal the public utility shall forfeit not less than \$25
5 nor more than \$5,000. The commission may impose a forfeiture under this section
6 by administrative action.

7 History: 1981 c. 390; 1983 a. 53; 1989 a. 49.

7 **SECTION 10.** 196.66 (3) (b) (intro.) of the statutes is amended to read:

8 196.66 (3) (b) (intro.) ~~A-~~ The commission or a court imposing a forfeiture on a
9 public utility or an agent, director, officer[✓] or employee of a public utility under this
10 chapter shall consider all of the following in determining the amount of the
11 forfeiture:

12 History: 1981 c. 390; 1983 a. 53; 1989 a. 49[✓]

12 **SECTION 9342. Initial applicability; public service commission.**

13 (1) ENFORCEMENT AUTHORITY. The treatment of sections 196.219 (4) (b)[✓], 196.499
14 (12) (am)[✓], and 196.66 (1)[✓] and (3) (b) (intro.)[✓] of the statutes first applies to violations
15 occurring on the effective date of this subsection.

16 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1696/1dn

MDK:K...
King

Kerry Holden:

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

1. The instructions make a change to s. 196.219 (3) (e), stats., that I do not understand and, therefore, I didn't include in the bill. It appears that you want to make the reference to "telecommunications utility" plural, rather than singular, but I don't see why the change is necessary.
2. I made the language of proposed s. 196.44 (1) (b) consistent with proposed s. 196.499 (12) (am). (The instructions do not include the language regarding punishment for violations.) Is this okay?
3. I changed the wording of the amendment of s. 196.219 (4m) (b), stats., to make it more readable.
4. This may seem like a minor point, but I put a comma after "injunctive relief" in the proposed amendment of s. 196.219 (4) (b), stats. With the comma, it is clear that administrative action may be taken to compel compliance, etc. Without the comma, it reads that administrative action may be taken for *injunctive relief* to compel compliance, etc. I may be wrong, but I don't think it makes sense to talk about injunctive relief in connection with administrative action.
5. I don't know what is intended to be accomplished by the amendment of s. 196.22, stats. It may be helpful for the drafting file to include an explanation of what's going on here. If you or the PSC can provide an explanation, I will redraft this bill and include an explanation in the analysis.

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-1696/1dn
MDK:kmj:jf

January 8, 2001

Kerry Holden:

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

1. The instructions make a change to s. 196.219 (3) (e), stats., that I do not understand and, therefore, I didn't include in the bill. It appears that you want to make the reference to "telecommunications utility" plural, rather than singular, but I don't see why the change is necessary.
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D-NOTE

+ jld 2

DOA:.....Holden - PSC enforcement authority regarding telecommunications providers

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Do not gen

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

PUBLIC UTILITY REGULATION

Under current law, telecommunications utilities and providers are subject to certain requirements regarding the protection of consumers, including other telecommunications utilities and providers that use their services. There are several provisions for enforcing these requirements, including the following three. First, the public service commission (PSC), on its own motion or upon a complaint filed by a consumer, may take administrative action or commence civil actions against telecommunications utilities and providers to enforce these requirements. This bill provides that the PSC has jurisdiction in its own name or on behalf of consumers to take such actions. The bill also clarifies that the PSC's authority to take administrative action includes initiating a contested case.

Second, under current law, the PSC may bring an action in court for injunctive relief for compelling compliance with the requirements, for compelling refunds of any moneys collected in violation of the requirements, or for any other relief under the public utility statutes. This bill also allows the PSC to take administrative action, in addition to bringing an action in court, for compelling compliance with the requirements or for compelling refunds. In addition, the bill allows the PSC to take

(of telecommunications providers)

(with respect to telecommunications providers)

administrative action or bring an action in court for any other appropriate relief, instead of just any other relief under the public utility statutes. Also, the bill allows the PSC to directly impose forfeitures for violations of the requirements.

Third, under current law, the PSC may request the attorney general to bring an action in court to require a telecommunications utility or provider to compensate any person for any pecuniary loss caused by failure to comply with the requirements. Under this bill, in addition to requesting the attorney general to bring such an action, the PSC may take administrative action, including initiating a contested case, or bring its own action in court to require such compensation.

Such as telecommunications providers

Finally, the bill makes other changes to the enforcement authority of the PSC, including the following:

1. Under current law, the PSC may investigate whether rates, tolls, charges, schedules, or joint rates are unjust, unreasonable, insufficient, unjustly discriminatory or preferential, or unlawful and order that reasonable rates, tolls, charges, schedules, or joint rates be imposed, observed, or followed in the future. This bill also allows the PSC to order reasonable compensation for persons injured by reason of rates, tolls, charges, schedules, or joint rates that are investigated.

2. Under current law, public utilities and certain other entities that violate laws enforced by the PSC, PSC orders, and certain other requirements are subject to a forfeiture of between \$25 and \$5,000, for each day of violation, which is imposed by a court. Under this bill, the PSC may also impose such a forfeiture by administrative action.

against a telecommunications provider

3. Under current law, the PSC is required to inquire into neglect or violation of laws by public utilities and telecommunications carriers, enforce such laws, and report all violations to the attorney general. This bill also allows the PSC to take administrative action and institute and prosecute all necessary actions and proceedings for enforcing all laws relating to public utilities, telecommunications providers, or telecommunications carriers, and for the punishment of all violations.

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:

- 1 SECTION 1. 196.219 (4) (a) of the statutes is amended to read:
- 2 196.219 (4) (a) ~~On the commission's own motion or upon complaint filed by the~~
- 3 ~~consumer, the~~ The commission, in its own name or on behalf of consumers, shall have
- 4 jurisdiction to take administrative action, including initiating a contested case, or to
- 5 commence civil actions against telecommunications utilities or providers to enforce
- 6 this section.

1 SECTION 2. 196.219 (4) (b) of the statutes is amended to read:

2 196.219 (4) (b) The commission, in its own name or on behalf of consumers,
3 may, at its discretion, take administrative action, including initiating a contested
4 case, or institute in any court of competent jurisdiction a proceeding against a
5 telecommunications utility or provider for injunctive relief, to compel compliance
6 with this section, to compel the accounting and refund of any moneys collected in
7 violation of this section, or for any other appropriate relief permitted under this
8 chapter. The commission may directly impose forfeitures for violations of this
9 section.

10 SECTION 3. 196.219 (4m) (b) of the statutes is amended to read:

11 196.219 (4m) (b) ~~Upon request of the commission, the attorney general may~~
12 The commission may take administrative action, including initiating a contested
13 case, or bring an action to require a telecommunications utility or provider to
14 compensate any person for any pecuniary loss caused by the failure of the utility or
15 provider to comply with this section. Upon the request of the commission, the
16 attorney general may bring an action specified in this paragraph.

17 SECTION 4. 196.22 of the statutes is amended to read:

18 **196.22 Discrimination forbidden.** No public utility may charge, demand,
19 collect, or receive more or less compensation for any service performed by it within
20 the state, or for any service in connection therewith, than is specified in the schedules
21 for the service filed under s. 196.19, including schedules of joint rates, as may at the
22 time be in force, or demand, collect, or receive any rate, toll, or charge not specified
23 in the schedule. Payments made for violations of this chapter are not contrary to this
24 section.

25 SECTION 5. 196.37 (1) of the statutes is amended to read:

by telecommunications providers ✓

INSERT 4-6

1 196.37 (1) If, after an investigation under this chapter or ch. 197, the
2 commission finds rates, tolls, charges, schedules, or joint rates to be unjust,
3 unreasonable, insufficient, or unjustly discriminatory or preferential, or otherwise
4 unreasonable or unlawful, the commission shall determine and order reasonable
5 rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed
6 in the future and may determine and order reasonable compensation for persons
7 injured by reason of ~~the~~ ^{such} rates, tolls, charges, schedules, or joint rates.

8 SECTION 6. 196.44 (1) of the statutes is renumbered 196.44 (1) (a).

9 SECTION 7. 196.44 (1) (b) of the statutes is created to read:

10 196.44 (1) (b) The commission may take administrative action and institute
11 and prosecute all necessary actions or proceedings for the enforcement of all laws
12 relating to ~~public utilities or~~ telecommunications providers and for the punishment
13 of all violations.

14 SECTION 8. 196.499 (12) (am) of the statutes is created to read:

15 196.499 (12) (am) The commission may take administrative action and
16 institute and prosecute all necessary actions or proceedings for the enforcement of
17 all laws relating to telecommunications carriers and for the punishment of all
18 violations.

19 SECTION 9. 196.66 (1) of the statutes is amended to read:

20 196.66 (1) GENERAL FORFEITURE; FAILURE TO OBEY. If any public utility violates
21 this chapter or ch. 197 or fails or refuses to perform any duty enjoined upon it for
22 which a penalty has not been provided, or fails, neglects, or refuses to obey any lawful
23 requirement or order of the commission or the governing body of a municipality or
24 a sanitary commission or any judgment or decree of any court upon its application,
25 for every violation, failure, or refusal the public utility shall forfeit not less than \$25

against a telecommunications provider

1 nor more than \$5,000. The commission may impose a forfeiture under this section
2 by administrative action.

3 SECTION 10. 196.66 (3) (b) (intro.) of the statutes is amended to read:

4 196.66 (3) (b) (intro.) ~~A~~ The commission or a court imposing a forfeiture on a
5 public utility or an agent, director, officer, or employee of a public utility under this
6 chapter shall consider all of the following in determining the amount of the
7 forfeiture: or telecommunications provider or telecommunications ✓

8 SECTION 9342. Initial applicability; public service commission. provider

9 (1) ENFORCEMENT AUTHORITY. The treatment of sections 196.219 (4) (b), 196.499
10 (12) (am), and 196.66 (1) and (3) (b) (intro.) of the statutes first applies to violations
11 occurring on the effective date of this subsection.

12 (END)

**2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1696/2ins
MDK:.....

1 **INSERT 4-6:**
2 , with respect to rates, tolls, charges, schedules, or joint rates of telecommunications
3 providers,

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1696/2dn

MDK:.....

JLD

Kerry Holden:

This version is identical to the previous version, except for the following:

1. The last sentence of the proposed amendment of s. 196.22, stats., is revised so that it refers only to payments by telecommunications providers.
2. Section 196.37 (1), stats., is amended so that the PSC may determine and order reasonable compensation for persons injured by rates, tolls, charges, schedules, or joint rates of only telecommunications providers.
3. Proposed s. 196.44 (1) (b) is revised to refer to enforcement of all laws relating to telecommunications providers. The reference to laws relating to public utilities is eliminated. However, note that if a public utility is a telecommunications provider (i.e., it is a telecommunications utility) it is subject to this provision.
4. Under the proposed amendment of s. 196.66 (1), stats., the PSC may impose a forfeiture only against a telecommunications provider.
5. Upon reflection, I realized that it is necessary to make a change to the proposed amendment of s. 196.66 (3) (b) (intro.) so that it refers to both public utilities and telecommunications providers.

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Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkcl@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1696/2dn
MDK:jld:pg

February 7, 2001

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1696/2
MDK:kmg&jld:pg

DOA:.....Holden - PSC enforcement authority regarding
telecommunications providers

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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

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2. Under current law, public utilities and certain other entities, such as telecommunications providers, that violate laws enforced by the PSC, PSC orders, and certain other requirements are subject to a forfeiture of between \$25 and \$5,000, for each day of violation, which is imposed by a court. Under this bill, the PSC may also impose such a forfeiture against a telecommunications provider by administrative action.

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18 attorney general may bring an action specified in this paragraph.

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23 for the service filed under s. 196.19, including schedules of joint rates, as may at the
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8 rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed
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8 public utility or telecommunications provider or an agent, director, officer, or
9 employee of a public utility or telecommunications provider under this chapter shall
10 consider all of the following in determining the amount of the forfeiture:

11 **SECTION 9342. Initial applicability; public service commission.**

12 (1) ENFORCEMENT AUTHORITY. The treatment of sections 196.219 (4) (b), 196.499
13 (12) (am), and 196.66 (1) and (3) (b) (intro.) of the statutes first applies to violations
14 occurring on the effective date of this subsection.

15 (END)