

AB32



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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DATE: January 19, 2000

TO: SENATOR ROBERT JAUCH AND REPRESENTATIVE DAVID HUTCHISON, COCHAIRPERSONS, JOINT COMMITTEE ON INFORMATION POLICY

FROM: John Stolzenberg, Staff Scientist, and Dan Schmidt, Analyst

SUBJECT: State and Federal Requirements for Contributions by Commercial Mobile Radio Service Providers to the State Universal Service Fund

This memorandum provides background information on state and federal requirements relating to whether commercial mobile radio service (CMRS) providers are required to contribute to the state universal service fund (USF). Senator Jauch requested this information to assist in your review of Clearinghouse Rule 99-19. This rule relates to the provision of universal telecommunications service and administration of the USF. It was submitted to the Legislature by the Public Service Commission (PSC) and is presently being reviewed by the Joint Committee on Information Policy.

As used in the Wisconsin statutes, a "telecommunications provider" is any person who provides telecommunications services. [s. 196.01 (8p), Stats.] A "CMRS provider" is a telecommunications provider that is authorized by the Federal Communications Commission (FCC) to provide "commercial mobile service," as defined in 47 U.S.C. s. 332 (d). [See s. 196.01 (2g) and (2i), Stats.] "Commercial mobile service" includes cellular phone service and wireless personal communication service.<sup>1</sup>

Under current PSC rules in ch. PSC 160, CMRS providers are not required to contribute to the state USF. Clearinghouse Rule 99-19 continues that policy and does not require these providers to contribute to the USF.

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1. State statutes have previously used other terms to refer to providers of cellular telecommunications service. The United States Code refers to a "commercial mobile service provider," which substantively has the same meaning as the state "CMRS provider." To simplify this memorandum, the memorandum will only use the current state terminology "CMRS provider."

The remainder of this memorandum is divided into the following sections:

- a. State statutes.
- b. Federal statutes.
- c. FCC interpretations.
- d. Relevant case law.
- e. Current PSC rules and Clearinghouse Rule 99-19.

## A. STATE STATUTES

### 1. Section 196.218, USF

The state USF was created as part of the Legislature's major revision of the regulation of the telecommunications industry in 1993 Wisconsin Act 496. In general, the PSC must require all telecommunications providers to contribute to the USF beginning on January 1, 1996. [s. 196.218 (3) (a) 1., Stats.] Section 196.218 (3), Stats., provides two exceptions to this contribution requirement. One exception authorizes the PSC to exempt from part or all of the required contributions telecommunications providers who have small gross operating revenues from the provision of intrastate telecommunications services in Wisconsin and have provided the services for a period specified by the PSC, not to exceed five years. [s. 196.218 (3) (b), Stats.] Under the second exception, the PSC may exempt a telecommunications provider from part or all of the required contributions if the PSC determines that requiring the contributions would not be in the public interest. [s. 196.218 (3) (b), Stats.]

### 2. Section 196.202, Stats., CMRS Providers Exemption

In addition to creating the USF, 1993 Wisconsin Act 496 also addressed the state regulation of CMRS providers. Act 496 exempted CMRS providers from utility securities law (now ch. 200) and repealed the condition and mechanism by which these providers could become subject to s. 196.203 and, thus, be regulated by the PSC as an alternative telecommunications utility.

Act 496 also established that these providers would not be subject to ch. 196 (i.e., regulation by the PSC) with one exception relating to USF contributions and related data requests. Current law sets forth these exemptions and the exception to the exemptions as follows:

A commercial mobile radio service provider is not subject to ch. 200 or this chapter [ch. 196], except a commercial mobile radio service provider is subject to s. 196.218 (3) [relating to USF required contributions] *to the extent not preempted by federal law.* If the application to s. 196.218 (3) to the commercial mobile radio

service provider is not preempted, a commercial mobile radio service provider shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in the state from the commission necessary to administer the universal service fund. [s. 196.202 (2), Stats. (emphasis added).]

## B. FEDERAL STATUTES

Proponents and opponents of a state requiring contributions from CMRS providers to a state USF cite three U.S. Code provisions in interpreting whether federal law preempts or allows these contributions. These provisions are given below.

### 1. 47 U.S.C. s. 332, Mobile Services

In 1993, the U.S. Congress amended the Communications Act of 1934 in order to limit states' authority to regulate specific elements of the wireless telecommunications industry. As amended at that time, 47 U.S.C. s. 332 (c) (3) (A) provides, in relevant part, the following:

Notwithstanding sections 2(b) and 221(b) [47 U.S.C. ss. 152 (b) and 221 (b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates . . . . [47 U.S.C. s. 332 (c) (3) (A).]

### 2. 47 U.S.C. s. 253, Removal of Barriers to Entry

The Telecommunications Act of 1996 created the following provision relating to state requirements for universal service:

(b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [47 U.S.C. s. 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. [47 U.S.C. s. 253 (b).]

### 3. 47 U.S.C. s. 254, Universal Service

Congress also included in the Telecommunications Act of 1996 47 U.S.C. s. 254 (f), relating to states' authority to collect state universal service support fees. Section 254 (f) states:

(f) State authority. A State may adopt regulations not inconsistent with the Commission's [FCC's] rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms. [47 U.S.C. s. 254 (f).]

### C. FCC INTERPRETATIONS

The FCC became involved in the question of whether a state may require a CMRS provider to contribute to its USF when the FCC offered an interpretation of the relevant statutes in a 1997 order on universal service. In this interpretation, the FCC concluded that states may require wireless telecommunications service providers to contribute to state universal service support mechanisms. [See FCC 97-157, *Report and Order in CC Docket No. 96-45*, paragraph 791 (May 8, 1997).] The FCC concluded that 47 U.S.C. s. 254 (f) prohibited state regulation of CMRS provider market entry or rates, not "equitable and nondiscriminatory" state universal service support mechanisms. In addition, the FCC noted that it rejected the CMRS providers' argument that the portion of the second sentence in s. 332 (c) (3) (A) in parentheses indicated that CMRS providers were exempt from anything but state entry or rate regulation.

After the first order was published, the FCC received several legal challenges to its interpretation (see Section D, "*Relevant Case Law*," below) and CMRS providers formally requested that the FCC reconsider its position on the state assessments. The FCC responded to the requests for reconsideration in another order by citing the same interpretation of the federal statutes as was in the original order and again rejecting the CMRS providers' claims that 47 U.S.C. s. 254 (f) (47) conflicts with 47 U.S.C. s. 332 (c) (3) (A). [See FCC 97-420, *Fourth Order on Reconsideration in CC Docket No. 96-45*, paragraph 299 (December 30, 1997).]

### D. RELEVANT CASE LAW

Three recent federal appeals courts' decisions are specifically relevant to the issues surrounding state universal service assessment of CMRS providers. The cases are *Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.*, 149 F.3d 1058 (10th Cir. 1998), also referred to as *Sprint; Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*, 168 F.3d 1332 (D.C. Cir. 1999), also referred to as

*Cellular*; and *Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission*, 183 F.3d 393 (5th Cir. 1999), also referred to as *Texas*.

1. *Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.*

In *Sprint*, the Federal Appeals Court for the Tenth Circuit reviewed the general question of whether the State of Kansas may assess CMRS providers for universal service support. Specifically, the court dealt with the question of whether 47 U.S.C. s. 254 (f) conflicts with 47 U.S.C. s. 332 (c) (3) (A). The CMRS providers argued that the second sentence in 47 U.S.C. s. 332 (c) (3) (A), cited above in Section B, creates a specific exemption for mobile services.

According to the plaintiffs' primary argument, the parenthetical language within the sentence identifies the only condition under which such assessments may be made--when commercial mobile services are a substitute for land-line service for a substantial portion of a state.

The court found that the scope of the second sentence of 47 U.S.C. s. 332 (c) (3) (A) is limited to that subparagraph and therefore it is not affected by and does not limit 47 U.S.C. s. 254 (f). The court also found that 47 U.S.C. s. 332 (c) (3) (A) has no relevance to 47 U.S.C. s. 254 (f) because s. 254 does not impose any rate regulation. The court affirmed the district court's decision to deny a preliminary injunction.

2. *Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*

In *Cellular*, the Federal Appeals Court for the District of Columbia considered a petition for review of the FCC's universal service order. The CMRS providers challenged the validity of the FCC's interpretation on whether states may assess such providers for universal service support. The CMRS providers argued that the FCC had incorrectly interpreted the relationship between 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A). [See FCC 97-157, *op. cit.*] The FCC argued that the plaintiffs were interpreting 47 U.S.C. s. 332 (c) (3) (A) incorrectly by not viewing the second sentence of the statute in the context of the rest of the subsection.

The court found in favor of the FCC and noted that, in the court's opinion, one provision does not control the other and that 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A) are not in conflict, but rather in harmony with one another. The court denied the plaintiffs' petitions for review.

3. *Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission*

In *Texas*, the Federal Appeals Court for the Fifth Circuit addressed the issue of state universal service support assessments in a petition for review of the final universal service order of the FCC. Again, the CMRS providers challenged the FCC's interpretation of 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A) as presented in the original universal service order. [See FCC 97-157, *op. cit.*] The court noted that the CMRS providers argued that "Congress has

spoken to the precise question at issue," and "therefore, the FCC's interpretation deserves no deference."

Although in disagreement with the precise manner in which the *Sprint* court came to its conclusion, the Federal Appeals Court for the Fifth Circuit came to a similar conclusion. The court found that the FCC's interpretation, as represented by the original universal service order, was an accurate reading of the relationship between 47 U.S.C. s. 254 (f) and 47 U.S.C. s. 332 (c) (3) (A) and rejected the interpretation offered by the CMRS providers. In rejecting the CMRS providers' challenge to the FCC interpretation, the court noted:

The FCC's reading reflects Congress's unambiguous intent as expressed in the plain language of the statute and takes into account Congress's instruction that s. 254 be construed in ways that do not conflict with other federal laws.

On December 23, 1999, Celpage, Inc., and other CMRS providers that were parties to the Fifth Circuit case, requested that the U.S. Supreme Court review the decision of the Appeals Court for the Fifth Circuit to uphold the FCC's interpretation of 47 U.S.C. s. 332 (c) (3) (A). The Supreme Court has not yet indicated if it will grant such a review.

#### E. CURRENT PSC RULES AND CLEARINGHOUSE RULE 99-19

The PSC's original rules on the USF are set forth in ch. PSC 160, Wis. Adm. Code. These rules became effective May 1, 1996, a date prior to the enactment of the Federal Telecommunications Act of 1996. The original rule contains a provision, s. PSC 160.18 (1) (b), that addresses the assessment of CMRS providers for the USF. Clearinghouse Rule 99-19 changes the terminology used in par. (b) but not the substance of par. (b). As amended by Clearinghouse Rule 99-19, s. PSC 160.18 (1) (b) reads:

(b) Commercial mobile radio service providers shall be assessed only if the commission determines after hearing that market information regarding the commercial mobile radio service area indicates that commercial mobile radio services are a substitute for land-line telecommunications exchange service for a substantial portion of the communications in this state pursuant to 47 USC 322(c)(3). [s. PSC 160.18 (1) (b), as amended by Clearinghouse Rule 99-19.]

In addition, the analysis accompanying Clearinghouse Rule 99-19 states that "The Commission considered but did not make changes that would have made wireless providers immediately subject to universal service fund assessments."

If you have any questions regarding this memorandum, please feel free to contact either of us at the Legislative Council Staff offices.

JES:DWS:ksm:wu:jal

**PUBLIC SERVICE COMMISSION OF WISCONSIN**  
**Memorandum**

November 3, 2000

**FOR COMMISSION AGENDA**

TO: The Commission

FROM: Anita Sprenger  
Universal Service Fund Manager

RE: Administration of the Universal Service Fund

05-GF-104

Suggested Minute: The Commission approved/modified/rejected an order suspending the universal service fund assessment of commercial mobile radio service providers beginning in November 2000 and continuing until January 2002, when the assessment shall resume. [The Commission directed that letters be sent to Williams Young and to providers explaining the change.] The Commission approved/modified/rejected the revised assessment rates of: TEACH - .03824%, UW-System - .00332%, DPI BadgerLink - .00616%, PSC USF programs - .03089%.

The CMRS industry approached the Joint Committee on the Review of Administrative Rules (JCRAR) raising the arguments that: assessing CMRS providers without allowing them to use a surcharge is not in the public interest, and the statute prohibiting use of a surcharge to pass the assessment on to customers violates federal law because it is rate regulation. The CMRS industry asked, and JCRAR agreed, to suspend a portion of Wis. Admin. Code § PSC 160.18(10) as follows:

The commission shall obtain the information necessary to process the assessment of commercial mobile radio service providers, and ~~shall mail bills to such providers within 90 days of May 1, 2000. These bills will include assessments back to the effective date of May 1, 2000.~~

This change alone does not stop the assessment of CMRS providers; the Commission must act for that to occur. In letters to and testimony before JCRAR, representatives of the CMRS industry stated that they plan to go to the legislature when the new session starts and ask

for the repeal of the surcharge prohibition statute. They stated that they are not arguing against the assessment *per se*, but only against the surcharge prohibition.

Suspending the assessment beginning in November 2000 would end assessments prospectively. It does not require the refund of amounts already collected, the Commission would continue to bill for assessments through October, and would continue collection efforts against those who have been assessed but haven't paid, and would continue to try to get information from those who have not responded to requests for information.

If the assessment of CMRS is suspended, the assessment rates for all other assessed providers must be recalculated since the revenue data and base over which assessments will be spread will have changed. If the CMRS data is removed from the calculation, the new assessment rates will be: TEACH - .03824%, UW-System - .00332%, DPI BadgerLink - .00616%, PSC USF programs - .03089%. (Details on the calculation of these assessment rates are attached.)

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Attachment



<b>TEACH needs:</b>	
99-01 biennial appropriation used for previous assessment rate calculation	\$24,531,900
Less: Amounts billed from July 1999 through July 2000 (13 months)	(\$13,240,537)
Less: TEACH appropriation included above that was not released by the Joint Committee on Finance	(\$1,997,300)
Less: Back billing to Commercial Mobile Radio Service (CMRS) providers for May, June and July 2000 per § PSC 160.18(10)	(\$751,382)
Less: Amounts billed from August 2000 through October 2000 (3 months)	(\$2,329,821)
Net: Remaining need for the rest of FY 2001	\$6,212,860
Monthly Need (Divide Net By 8) (Over 8 Months - November 2000 to June 2001)	\$776,607
Total Assessable Gross Intrastate Revenue <sup>1</sup>	\$2,030,647,683
<b>Monthly Assessment Rate beginning November 2000 – TEACH</b>	<b>.03824%</b>

<sup>1</sup> These calculations use updated 1999 revenues excluding those of CMRS providers.

<b>UW-System needs:</b>	
99-01 biennial appropriation used for previous assessment rate calculation	\$1,728,000
Less: Amounts billed from July 1999 through July 2000 (13 months)	(\$932,649)
Less: Back billing to CMRS providers for May, June and July 2000 per § PSC 160.18(10)	(\$52,926)
Less: Amounts billed from August 2000 through October 2000 (3 months)	(\$202,479)
Net: Remaining need for the rest of FY 2001	\$539,946
Monthly Need (Divide Net By 8) (Over 8 Months - November 2000 to June 2001)	\$67,493
Total Assessable Gross Intrastate Revenue	\$2,030,647,683
<b>Monthly Assessment Rate – UW-System</b>	<b>.00332 %</b>

<b>DPI - BadgerLink needs:</b>	
99-01 biennial appropriation used for previous assessment rate calculation	\$2,536,000
Less: Amounts billed from December 1999 through July 2000 (8 months)	(\$1,061,573)
Less: Back billing to CMRS providers for May, June and July 2000 per § PSC 160.18(10)	(\$98,173)
Less: Amounts billed from August 2000 through October 2000 (3 months)	(\$375,342)
Net: Remaining need for the rest of FY 2001	\$1,000,912
Monthly Need (Over 8 Months - November 2000 to June 2001)	\$125,114
Total Assessable Gross Intrastate Revenue	\$2,030,647,683
<b>Monthly Assessment Rate - DPI BadgerLink</b>	<b>.00616 %</b>

<b>PSC USF program needs:</b>	
00-01 fiscal year appropriation	\$6,900,000
Less: Amounts billed from August 2000 through October 2000 (3 months)	(\$1,881,819)
Net: Remaining need for the rest of FY 2001	\$5,018,181
Monthly Need (Over 8 Months - November 2000 to June 2001)	\$627,273
Total Assessable Gross Intrastate Revenue	\$2,030,647,683
<b>Monthly Assessment Rate - PSC USF programs</b>	<b>.03089 %</b>

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BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Administration of the Universal Service Fund

05-GF-104

**ORDER**

The universal service fund was created to further the goal of providing access to telecommunications services throughout the state. All telecommunications providers are required to contribute to the universal service fund. Wis. Stat. § 196.218(3). This requirement applies to Commercial Mobile Radio Service (CMRS) providers as well. Wis. Stat. § 196.202(2). However, under limited circumstances state law also permits the Commission exempt providers from this contribution requirement. One such circumstance is if the Commission determines that requiring the contribution would not be in the public interest. Wis. Stat. § 196.218(3)(b).

CMRS is an emerging telecommunications market. While this market is growing, CMRS is still generally viewed as an adjunct to wireline service. Adjunct services are especially vulnerable to basic rate increases and service limitations. Users are more likely to abandon or limit use of an adjunct service if basic rates increase or services are reduced or limited, than they are to abandon primary wireline service under the same circumstances. Since providers may not recover their universal service fund assessment through a surcharge, in order to recover that amount they must either increase basic rates or absorb the expense of the assessment. Wis. Stat. § 196.218(3)(e); Wis. Admin. Code § PSC 160.15. Since adjunct services are especially sensitive to rate increases and service limitations, such increases or slower deployment of

Docket 05-GF-104

coverage areas because of reduced net revenues could decrease consumer use of CMRS. This negatively affects the development of competition, consumer choice, and infrastructure development.

Therefore, the Commission finds that a limited amount of additional time should be allowed for the CMRS market to develop before CMRS providers are assessed for universal service fund contributions. However, given the levels of growth and development in the CMRS market, the Commission finds that only a limited amount of additional time should be allowed. Therefore, the Commission finds that it is not in the public interest to assess wireless providers at this time. The universal service fund assessment of such providers shall be suspended beginning in November 2000, and continuing until January 2002, when the assessment shall resume.

Dated at Madison, Wisconsin, \_\_\_\_\_

By the Commission:

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

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A

This proceeding is not a contested case under Wis. Stat. ch. 227, therefore there are no parties to be listed or certified under Wis. Stat. § 227.47. However, an investigation was conducted and the persons listed below participated.

Public Service Commission of Wisconsin  
*(Not a party but must be served)*  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

Wisconsin State Telecommunications Association  
6602 Normandy Lane  
Madison, WI 53719

Universal Service Fund Council Members



State of Wisconsin  
Tommy G. Thompson, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

February 1, 2001

To: Senator Bob Jauch, Co-Chair  
Representative Mark Pettis, Co-Chair  
Joint Committee on Information Policy and Technology

From: William L. Oemichen, Administrator  
Division of Trade and Consumer Protection *Bill Oemichen*

Subject: Assembly Bills 32 and 33, relating to Universal Service Fund Surcharges

Thank you for providing the Department of Agriculture, Trade and Consumer Protection with the opportunity to testify on AB 32 and 33. We offer several potential changes to the proposed legislation.

First, the Department of Agriculture, Trade and Consumer Protection does not regulate prices charged by telecommunications providers. However, we do regulate how the agreement for provision of telecommunication services is reached between the consumer and telecommunications provider through Wisconsin Administrative Code ATCP 123. Among other important provisions, this rule requires that consumers be notified in advance of price increases, and given ample opportunity to cancel the contract so that the consumer can move to a different telecommunications provider. We are concerned this legislation authorizes a price increase without prior notice to the consumer. For this reason, we would request the legislation be amended to require compliance with Wisconsin Administrative Code ATCP 123 if the Universal Service Fund surcharge is to be added to consumers' telephone bill.

Second, the Department is concerned this legislation does not specifically limit the amount that can be collected from consumers to only that amount due to the Universal Service Fund. The Department urges the Committee to limit the surcharge amount charged to the no more than the actual amount of the surcharge paid by the telecommunications provider. In this way, we want to prevent "hidden charges" from being included in this surcharge line item.

Finally, to limit consumer confusion over the addition of the surcharge, we recommend the surcharge be similarly identified in plain English on all Wisconsin telephone bills.

Thank you again for the opportunity to testify on Assembly Bills 32 and 33.





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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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TO: REPRESENTATIVE MARK PETTIS

FROM: Ronald Sklansky, Senior Staff Attorney

RE: Legislative Consideration of 2001 Assembly Bills 32 and 33

DATE: February 7, 2001

This memorandum, prepared at your request, responds to a question you have raised regarding the legislative consideration of 2001 Assembly Bills 32 and 33, relating to Universal Service Fund (USF) surcharges on customer bills. Specifically, you have asked for a discussion of the procedure by which the Assembly will consider the bills under the Legislature's 2001 session schedule.

On October 11, 2000, the Joint Committee for Review of Administrative Rules (JCRAR) suspended a portion of s. PSC 160.18 (10). In general, the rule required the Public Service Commission to send bills to commercial mobile radio service providers for collection of USF contributions. On November 15, 2000, JCRAR adopted motions to introduce legislation to sustain its rule suspension. Because this legislation could not be taken up in the 1999 session of the Legislature, the suspension-sustaining bills, Assembly Bills 32 and 33, were introduced in the 2001 session according to s. 227.26 (2) (j), Stats. The bills were introduced on January 19, 2001, and were referred to the Joint Committee on Information Policy and Technology.

Section 227.26 (2) (h), Stats., provides that a bill introduced by JCRAR following a rule suspension must receive expedited consideration. If a committee to which a bill is referred makes no report within 30 days after referral, the bill must be considered reported without recommendation. Consequently, if the Joint Committee on Information Policy and Technology were to take no action on Assembly Bills 32 and 33, the bills would be considered reported without recommendation on February 18, 2001. The statute also provides that no later than 40 days after referral, the bills must be placed on the calendar of the Assembly, according to its rule governing the placement of proposals on the calendar. In this case, the 40th day after referral of Assembly Bills 32 and 33 is February 28, 2001. (For additional information on this process, see Assembly Rules 15 (6) and 33 (7).)

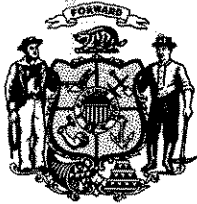
According to Senate Joint Resolution 1, the Assembly will be in session on February 13, 14 and 15 of this year. Thus, in order to comply strictly with s. 227.26 (2) (h), Stats., Assembly Bills 32 and 33

should be calendared no later than February 15, unless a skeleton session with a calendar occurs on another date on or before February 28.

Companion bills to Assembly Bills 32 and 33 also were introduced by JCRAR in the Senate. These bills, 2001 Senate Bills 20 and 21, were referred to a Senate standing committee on January 19, 2001, and are subject to the same expedited procedure described above. Further, if either of these bills is passed by the Senate, the Assembly must consider the proposal under the expedited procedure. [See s. 227.26 (2) (h), Stats.]

If I can be of any further assistance in this matter, please feel free to contact me.

RS:wu



# Public Service Commission of Wisconsin

Ave M. Bie, Chairperson  
Joseph P. Mettner, Commissioner  
John H. Farrow, Commissioner

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

February 12, 2001

The Honorable Bob Jauch  
Senate Co-Chairperson  
Joint Committee on Information Policy  
State Capitol, Room 313 South  
Madison, WI 53702

Representative Mark Pettis  
Assembly Co-Chairperson  
Joint Committee on Information Policy  
State Capitol, Room 5 North  
Madison, WI 53702

Re: AB 32 and AB 33

Dear Senator Jauch and Representative Pettis:

At the February 8th hearing of the Joint Committee on Information Policy Senator Lazich requested that the Commission provide the committee with information concerning potential surcharges for in-state Universal Service Fund (USF) programs, should that surcharge be calculated a flat monthly charge per customer.

Table 1 in the attachment summarizes possible configurations of per-line surcharges for representative local exchange companies (LECs).

As was emphasized in testimony during the February 8th hearing, there are several alternative methods by which land-line and wireless providers could implement surcharges to recover their in-state USF liabilities. For example, certain interexchange carriers (long distance companies) recover their liabilities under federal USF programs from customers on a volumetric or usage-sensitive basis.

As a representative example, AT&T once charged a flat monthly fee per customer to recover the company's liabilities under the federal USF. AT&T now charges a percentage of the interstate and international charges appearing on a customer bill. This percentage has ranged between 8.9% and 9.9%.

If Wisconsin providers were to recover state USF liabilities from customers as a percentage of the customer bill, an indicator of customer impact can be estimated by using the Commission's current assessment rates as applied to providers. Table 2 in the attachment outlines these percentages. This type of surcharge would recover from customers proportionate to the manner in which a customer's usage contributes to the provider's assessment. Because the USF assessments are revenue based, the higher a customer's bill, the more the provider will pay to the USF for that customer.

Of course, any combination of fixed and usage-based methods of implementing USF surcharges is also possible. It should be emphasized that these calculations are speculative and do not

The Honorable Bob Jauch  
Joint Committee on Information Policy  
Page 2

represent any binding methodology by which the depicted providers, or any provider, may be permitted to establish USF surcharges.

If you or any members of the committee should have further questions, please contact me at 266-1245, or Paul Nelson, the Commission's Legislative Liaison, at 266-1383.

Sincerely,

Joseph P. Mettner  
Commissioner

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Enclosure

cc: Members of the Joint Committee on Information Policy  
Dan Schmidt

**TABLE 1**

**Public Service Commission of Wisconsin  
Potential Per-Line Charges for Universal Service Fund Costs For Four Sample  
Local Exchange Companies<sup>1</sup>**

<b>COMPANY (PSC UTILITY NUMBER)</b>	<b>TOTAL ANNUAL REVENUES FOR USF ASSESSMENT PURPOSES<sup>2</sup></b>	<b>NUMBER OF ACCESS LINES<sup>3</sup></b>	<b>ESTIMATED MONTHLY PER LINE SURCHARGE FOR PSC USF PROGRAM<sup>4</sup></b>	<b>ESTIMATED MONTHLY PER LINE SURCHARGE FOR ALL USF PROGRAMS<sup>5</sup></b>
<b>Amery (150)</b>	\$1,708,978	6,829	\$0.06	\$0.16
<b>Belmont (450)</b>	\$373,284	879	\$0.11	\$0.28
<b>Verizon North (2180)</b>	\$217,716,952	525,110	\$0.01	\$0.03
<b>Southeast Telco. TDS (5570)</b>	\$3,821,402	10,037	\$0.10	\$0.24

**TABLE 2**

**Potential USF Assessments as a Percentage of Customer Bills**

<b>USF program areas</b>	<b>Potential surcharge amounts to be applied to customer bills</b>
PSC USF Programs	<b>.371 %</b>
TEACH	<b>.459 %</b>
UW System	<b>.039 %</b>
DPI Badger Link	<b>.074 %</b>
<b>TOTAL</b>	<b>.943 %</b>

<sup>1</sup> The four local exchange companies included in this small sample represent a range of the very small to large companies that file annual report data publicly. Many other local exchange companies file their annual report data with the PSC confidentially. Similar cost analysis cannot be reported publicly for those companies.

<sup>2</sup> Per 1999 Annual Report

<sup>3</sup> Per 1999 Annual Report, Business and Residential Lines

<sup>4</sup> The FY 01 appropriation for the Public Service Commission USF programs is \$6.9 million. Programs funded by the PSC USF include LifeLine, LinkUp, Telecommunications Equipment Purchase Program, Public Interest Payphone, High Rate Assistance, Telemedicine Grants, Non-Profit Access Grants, etc.

<sup>5</sup> The FY 01 appropriation of \$20.3 million for all USF programs includes funding for TEACH, telecommunications services provided to specified UW-System campuses, the Department of Public Instruction BadgerLink program, and the PSC USF programs.



# Public Service Commission of Wisconsin

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John H. Farrow, Commissioner

610 North Whitney Way  
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March 27, 2000

TO: Senator Rodney Moen

FROM: Joyce S. Mahan  
Assistant General Counsel

RE: Biennial Review of Universal Service Fund Rules in  
Wis. Admin. Code Ch. PSC 160

1-AC-166

This reflects the opinion of the Office of General Counsel and was the basis for the vote by the majority approving the rule language submitted to your committee.

## RELEVANT LAW

### 47 U.S.C. § 254(f)

(f) ...Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State...

### Wis. Stat. § 196.218(3)(a)1.

(a)1. Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund.....

### 47 U.S.C. § 332(c)(3)(A)

(A) ...no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.....

### Wis. Stat. § 196.202(2)

(2) A commercial mobile radio service provider is not subject to ch. 200 or this chapter, except a commercial mobile radio service provider is subject to s. 196.218(3) to the extent not preempted by federal law.....

### Wis. Stat. § 196.218(3)(e)

(e) ...a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

## QUESTION

Does the surcharge prohibition found in s. 196.218(3)(e), Wis. Stat. constitute rate regulation of commercial mobile radio service providers (CMRS) which is prohibited under federal law?

## BRIEF ANSWER

No, the surcharge prohibition is not rate regulation.

## DISCUSSION

In its *First Report and Order on Universal Service Issues* (May 8, 1997) the FCC stated that 47 U.S.C. § 332(c)(3)(A) does not prohibit states from assessing CMRS for universal service. It states that universal service contribution requirements are regulation of "other terms and conditions" of CMRS rather than of "entry or rates." This was repeated in the FCC's *Fourth Order on Reconsideration* (December 30, 1997).

In a declaratory ruling case<sup>1</sup> that was appealed to the DC Circuit Court of Appeals<sup>2</sup>, the FCC refers to Congressional legislative history and cites a House Report where the meaning of "terms and conditions" was explained<sup>3</sup>. In that report the House Committee states that matters such as "...customer billing information and practices and billing disputes and other consumer protection issues..." are included in "terms and conditions."

While it is true that none of the recent court cases dealt specifically with a state statute that prohibited a surcharge, they did discuss related matters. For example, the DC Circuit Court of Appeals case cites the FCC's interpretation of the "rates charged by" language in 47 U.S.C. § 332(c)(3)(A).<sup>4</sup> The FCC interprets that language to "prohibit states from prescribing, setting or fixing rates."

Additionally, the DC Court of Appeals specifically dealt with the argument that assessment of CMRS providers is rate regulation because it impacts their cost of doing business, which could impact the rates charged to customers. The court stated:

One might say the same thing about local siting laws or state consumer protection laws. Yet a House Committee cited these laws as examples of the variety of permissible regulation of the "other terms and conditions."....To equate state action that may increase the cost of doing business with rate regulation would, the Commission reasonably concluded, forbid nearly all forms of state regulation, a result at odds with the "other terms and conditions" portion of the first sentence [of 47 U.S.C. § 332(c)(3)(A)].<sup>4</sup>

<sup>1</sup> *In the Matter of Petition of Pittencrieff Communications, Inc.* (October 2, 1997)

<sup>2</sup> *Cellular Telecomms. Indus. Ass'n v. FCC*, 168 F.3d 1332

<sup>3</sup> *Pittencrieff* at par. 16

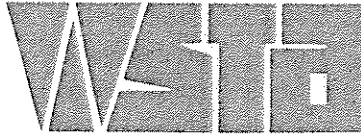
<sup>4</sup> *Cellular* at 1336

It is my opinion that the surcharge statute is not rate regulation since it does not prescribe, set or fix rates. It does not prohibit "the passthrough to customers of the universal service fund assessment." The surcharge statute regulates the billing method, not what may be billed. It only deals with how a customer is billed, not what a customer is billed. Billing practices are "other terms and conditions" and may be regulated by states. CMRS providers have complete freedom to recover the assessment through their rates or to choose not to pass the cost on to customers. The only thing they cannot do is use a surcharge mechanism. If they want to pass the assessment cost on to customers, they must do so through their rates. However, what their rates are is entirely up to them and is not regulated.



# Wisconsin State Telecommunications Association, Inc.

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## Assembly Bills 32 and 33 Universal Service Fund Surcharges

I'm Ray Riordan, Executive Vice President of WSTA. WSTA supports AB 33 and opposes AB 32 and the proposed amendments to AB 32.

All incumbent telephone companies are assessed through the Universal Service Fund for the costs of the USF programs, TEACH programs, UW Systems, and DPI Badgerlink. Telephone companies are allowed to raise their rates immediately after the assessment rate has been determined to recover the assessments for only the latter three programs. These companies can only recover the assessment for the USF program only after securing a general rate increase by petition or from the PSC.

The Public Service Commission has extended the USF assessments to include wireless telecommunications providers. In October the Joint Committee on Review of Administrative Rules and the PSC suspended those assessments with the hope that the legislature will remove a legal impediment to such assessments. Peter Gardon will discuss that.

The telephone companies have problems with the present system. First, there is a delay in recovering the assessment for the USF programs because they do not have general rate increases every year. Second, the USF assessment has increased substantially. Each year since its inception, the cost of the program was between \$2.5 and \$2.9 million. For fiscal year 2001 it has jumped to over \$6.8 million.

Third, the companies' rates jump up and down in their recovery of the assessments for the TEACH, UW Systems, and DPI Badgerlink programs. For example, Baldwin Telephone Company has had five increases or decreases since December 1998. Several others have had four. Their customers don't have any idea why the rates are so sporadic.

Fourth, these programs are social programs. We don't think it is appropriate to hide the fact that the customers are paying for such social programs. It's unfair to the customer. There is a federal Universal Service program and the fee for that is listed on your telephone bills.

In conclusion, WSTA, its wireline and wireless members, request you approve AB 33 and vote against AB 32 and its proposed amendments.

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## Universal Service Fund Expenditures 1996 - 2001

Year	1996	1997	1998	1999	2000	2001
Equipment Purchase	\$ 276,810	\$ 342,350	\$ 271,705	\$ 604,387	\$ 770,000	\$ 1,550,000
Rate Shock Mitigation	649,870	61,318	28,251	14,160	-	-
Rate Ceiling	1,412,116	1,504,961	1,471,494	1,337,884	1,125,000	1,400,000
Institutional Discount	67,846	278,031				
Lifeline	162,556	325,081	332,279	299,651	401,000	1,750,000
Link-up	120,775	170,036	170,972	207,280	211,000	450,000
Voice Mail for Homeless			-	-	-	20,000
Outreach for low-income						250,000
Newsline for blind			111,000		43,500	45,500
Non-profit groups				35,000		500,000
Medical Equipment						500,000
Public Interest Payphones						100,000
Two-line Voice Carryover						10,000
Provider of last resort						-
Eligible Telecom Carrier						-
Advanced Telecom Services						
Other		1,400				
Administration	79,676	133,433	124,971	141,755	140,000	250,000
<b>Total Expenditures</b>	<b>\$ 2,769,649</b>	<b>\$ 2,816,610</b>	<b>\$ 2,510,672</b>	<b>\$ 2,640,117</b>	<b>\$ 2,690,500</b>	<b>\$ 6,825,500</b>

**TEACH Appropriations  
1997-2001**

	Fiscal Year 97-98	Fiscal Year 98-99	Additional Appropriations 98-99	Fiscal Year 99-00	Fiscal Year 00-01
<b>TEACH Appropriations Direct to TEACH Through Joint Finance</b>		\$ 6,335,700 2,000,000	\$ 3,980,700	\$ 8,998,900 1,997,300	\$ 10,268,600 3,267,100
<b>Teach Total</b>	-	8,335,700		10,996,200	13,535,700
<b>UW-System</b>	\$ 1,008,000	864,000		864,000	864,000
<b>DPI BadgerLink</b>				<u>836,000</u>	<u>1,700,000</u>
<b>Total Appropriations</b>	\$ 1,008,000	\$ 9,199,700	\$ 3,980,700	\$ 12,696,200	\$ 16,099,700

Information obtained from Public Service Commission of Wisconsin memorandums

# USF ASSESSMENT

COMPANY	USF FUND ASSESSMENT		TEACH PROGRAM ASSESSMENT		UW SYSTEMS ASSESSMENT		DPI BADGER LINK		TOTAL 2001 ASSESSMENTS	
	\$		\$		\$		\$		\$	
Amery	6,336.00		7,848.00		684.00		1,260.00		16,128.00	
Badger Telecom	12,540.00		19,356.00		Included in Teach		Included in Teach		31,896.00	
Baldwin	720.00		6,828.00		588.00		1,104.00		9,240.00	
Black Earth	2,388.00		3,684.00		Included in Teach		Included in Teach		6,072.00	
Central State, WI	22,128.00		34,188.00		Included in Teach		Included in Teach		56,316.00	
Chequamegon	13,608.00		16,848.00		1,464.00		2,712.00		34,632.00	
Chibardun	9,348.00		11,580.00		1,008.00		1,860.00		23,796.00	
Clear Lake	1,956.00		2,424.00		216.00		396.00		4,992.00	
CTC Telecom	9,684.00		11,988.00		1,044.00		1,932.00		24,648.00	
Frontier	38,292.00		47,412.00		4,116.00		7,632.00		97,452.00	
Luck	2,736.00		3,396.00		300.00		552.00		6,984.00	
Mt. Vernon	15,372.00		23,736.00		Included in Teach		Included in Teach		39,108.00	
Marquette-Adams	6,240.00		7,728.00		672.00		1,248.00		15,888.00	
Milltown	3,012.00		3,732.00		324.00		600.00		7,668.00	
Mount Horeb	11,076.00		13,704.00		1,188.00		2,208.00		28,176.00	
Southeast - TDS	14,160.00		17,532.00		1,524.00		2,820.00		36,036.00	
Union	8,244.00		10,212.00		888.00		1,644.00		20,988.00	
UTELCO	26,232.00		40,524.00		Included in Teach		Included in Teach		66,756.00	
Waunakee	9,072.00		14,016.00		Included in Teach		Included in Teach		23,088.00	
Wood County	34,128.00		42,252.00		3,672.00		6,804.00		86,856.00	

## PSC PROGRAMS PAID FOR BY USF ASSESSMENTS

**Telecommunications Equipment Purchase Program (TEPP)**– Provides assistance to individuals with disabilities to purchase needed telecommunications equipment.

\* **Rate Shock Mitigation** – Ensures that sudden rate increases do not adversely affect customers.

**High Rate Ceiling Credits** – Assures that rates in high-cost areas remain affordable.

\* **Institutional Discount Program** – Provides discounts for schools, libraries and hospitals for certain telecommunications services.

**Lifeline Service** – Provides discounts on basic telephone service to low-income customers.

**Link-Up Service** – Provides discounts on connection charges for low-income customers.

**Voicemail for Homeless** – Provides a method of contacting homeless people and others with telephone service.

**Outreach to Low-Income** – Provides funds to promote increased participation in the USF low-income programs.

**News Line for the Blind** – Provides funding to allow blind persons access to audio news stories by telephone.

**Non-Profit Groups Access Programs for Projects** – Allows non-profit organizations to have funds for programs and projects that will facilitate access to telecommunications services.

**Medical Telecommunications Equipment Program** – Provides assistance for clinics and hospitals in using advanced telecommunications.

**Public Interest Pay Telephones** – Ensures payphones are available where needed.

**Second Line for Two Line Voice Carryover** – Provides a second line for use with telecommunications devices for the deaf (TTYs or TDDs)

\* **Provider of Last Resort** – Allows the PSC to hold an auction for the provider of last resort status and may provide USF compensation to the provider selected for that role.

\* **Eligible Telecommunications Carrier (ETC)** – This PSC may use the provider of last resort process to determine a ETC, and payments from the USF to the designated ETC may arise.

\* **Advanced Services Assistance** – Ensures that customers requiring such services can obtain advanced services no matter where those customers are located in Wisconsin.

**Administration** – This includes handling assessments, miscellaneous printing, promotional materials, educational activities, travel reimbursement for members of the USF Council, interpreters for the deaf at meetings, assistance from DOR in verifying Lifeline and Link-Up applicants.

**NOTE:** \* Indicates no funding allotted for 2001, but allocation will be made if requested.

## **TEACH PROGRAMS PAID FOR BY USF ASSESSMENTS**

**Video and Data Links** – Provides funding for public school districts, CESAs, public library boards, private schools and colleges, tribal colleges and technical college districts to obtain video and data links.

**Foreign Language Instruction Grants** – Funds Internet use and video-based distance learning educational technologies in support of foreign language instruction in grades K-6.

**Educational Technology Block Grants** – Public school districts and Milwaukee charter schools governed by the UW-Milwaukee and City Council of Milwaukee are eligible for funds to accelerate their investment in educational technology.

**Training and Technical Assistance Grants** – Provides grants for training teachers, educational staff, librarians, students and library patrons in the use of educational technology.

**Wiring Loans** – Makes funds available to school districts and library boards to upgrade electrical wiring and install computer network wiring.

## **UW-SYSTEM PROGRAM PAID FOR BY USF ASSESSMENTS**

Makes funds available to the UW-System for telecommunications equipment.

## **DPI BADGERLINK PROGRAM PAID FOR BY USF ASSESSMENTS**

Makes funds available to the Badgerlink Network for telecommunications equipment.