

2003 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB672)

Received: **02/25/2004**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Jensen (608) 264-6970**

By/Representing: **John Stolzenberg**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

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

Extra Copies: **MGG**

Submit via email: **YES**

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

Carbon copy (CC:) to: **john.stolzenberg@legis.state.wi.us
brett.healy@legis.state.wi.us
david.lovell@legis.state.wi.us
bruce.pfaff@legis.state.wi.us
mike.richards@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Regulation of broadband services

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>
/?	mkunkel 02/25/2004	kfollett 02/25/2004		_____			

<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			jfrantze 02/26/2004	_____	sbasford 02/26/2004		
/2	mkunkel 02/27/2004	kfollett 02/27/2004	chaugen 02/27/2004	_____	Inorthro 02/27/2004	Inorthro 02/27/2004	

FE Sent For:

<END>

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*PA
Please jacket
2/27*

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/1		<i>1/2 KJF</i> 2/27	jfrantze 02/26/2004 <i>Ch 2-27</i>	<i>Ch 2-27</i> <i>KJF</i>	sbasford 02/26/2004		

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PA:
DO NOT
JACKET.
-MOK

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1/2	mkunkel	1/15 2/25	2/25	2/26			

FE Sent For:

<END>

50389

Kunkel, Mark

From: Stolzenberg, John
Sent: Tuesday, February 24, 2004 6:28 PM
To: Kunkel, Mark
Cc: Healy, Brett; Richards, Mike; Pfaff, Bruce
Subject: Drafting instructions for substitute amendments to SB 302 and AB 672

Mark,

Here are the drafting instructions for the substitute amendments to SB 302 and AB 672 that I had mentioned to you. These subs should be prepared for Sen. Kanavas and Rep. Jensen.

John



SB 302-AB 672 sub
amdt instruc...

John Stolzenberg
Legislative Council
266-2988

DRAFTING INSTRUCTIONS FOR A SUBSTITUTE AMENDMENT TO
2003 ASSEMBLY BILL 672 AND 2003 SENATE BILL 302

At the locations indicated, amend the bill as follows:

1. Page 3, line 4: After the period, insert "This prohibition does not preclude a city, village, town, or county from regulating the use of a public right-of-way by a broadband service provider."

Comment: This provision adds an exception to the prohibition on municipal regulation of broadband services in the bills requested at the public hearing on AB 672.

2. Page 3, line 4: after that line amend s. 93.01 (1m):

- 93.01 (1m) "Business" includes any business, except that of banks, savings banks, savings and loan associations and insurance companies. "Business" includes public utilities and telecommunications carriers to the extent that their activities, beyond registration, notice and reporting activities, are not regulated by the public service commission and includes public utility and telecommunications carrier methods of competition or trade and advertising practices that are exempt from regulation by the public service commission under s. 196.195, 196.196, 196.202, 196.203, 196.xxx [section on broadband services created below], 196.219 or 196.499 or by other action of the commission.

Comment: This provision gives DATCP jurisdiction over deregulated broadband services.

3. Page 3, line 16: Delete "the conveyance of" and substitute "a telecommunications service that conveys".

Comment: This provision modifies the definition of "broadband service" in the bill to establish that broadband service is a type of telecommunications service, which is necessary for the provision in 196.xxx (b), below, to work.

4. Page 3, line 17: Delete "both directions" and substitute "either direction".

Comment: This provision amends the definition of "broadband service" to apply the speed or intentional radiator requirement in one direction rather than two directions.

5. Page 3, line 20: After that line insert a new definition in s. 196.01:

- 196.01 (xx) "Federal communications act" means the federal communications act, 47 USC __ to __ , and regulations issued by the federal communications commission under that act.

Comment: This provision creates a definition used in new s. 196.xxx, below.

6. Page 3, line 21: Delete the material beginning with line 21 and ending with line 2 on page 4.

Comment: This provision deletes the amendment in the bill to the definition of “telecommunications service”. This amendment is no longer needed in light of the deregulation approach in s. 196.xxx, below.

7. Page 4, line 2: After that line insert an amendment to the definition of “new telecommunication service” in s. 196.19 (1m) (a) that adds at the end of this paragraph the following sentence: “‘New telecommunication service’ does not include broadband service.”.

Comment: This provision clarifies that the tariffing provisions in s. 196.19 (1m) do not apply to broadband services.

8. Page 4, line 2: After that line insert an amendment to s. 196.195 (1)

- 196.195 (1) REGULATION IMPOSED. Except as provided in this section and ss. 196.202, 196.203, 196.xxx [section on broadband services created below], 196.215 and 196.219, a telecommunications utility is subject to every applicable provision of this chapter and ch. 201.

Comment: This provision conforms this subsection with the deregulation of broadband services by the bill.

9. Page 4, line 10: After that line add a new provision creating s. 196.196 (3) (d):

- 196.196 (3) (d) Notwithstanding pars. (a) to (c), this subsection does not apply to the offering of an exempt telecommunications service by a price-regulated telecommunications utility.

Comment: This provision clarifies that the PSC will have no jurisdiction over the offering of a broadband service by a price regulated telecommunications utility. Under current law, the PSC has limited jurisdiction over new service offerings by these utilities, as enumerated in s. 196.196 (3) (a) to (c).

10. Page 4, line 10: After that line add a new provision creating a new section in ch. 196 (in s. 196.206?):

- 196.xxx **Broadband services.** (a) Notwithstanding any other provision in this chapter, the offering or provision of any broadband service to an end user customer who is not a telecommunications provider is not subject to regulation under this chapter, except as specified in par. (b).
- (b) The commission may regulate the offering or provision of a broadband service to an end user customer who is not a telecommunications provider to the extent authorized or required in an order or rule adopted after the effective date of this paragraph by the

federal communications commission under the federal communications act. All orders or rules adopted by the commission under this paragraph shall comply with and may not be more stringent than the requirements of the federal communications act.

Comment: This provision creates the basic deregulation of retail broadband services under the substitute amendment. The provision authorizes the PSC to regulate broadband services in the future where delegated to do so by the FCC but only to the extent of that delegation.

11. Page 4, line 10: After that line add an amendment to s. 196.218 (3) 3m

- 196.218 (3) (a) 3m. Contributions under this paragraph may be based only on the gross operating revenues from the provision of broadcast services identified by the commission under subd. 2. and on intrastate telecommunications services, other than broadband services, in this state of the telecommunications providers subject to the contribution.

Comment: This provision excludes revenues from intrastate broadband services from being used as the basis of Universal Service Fund assessments.

12. Page 4, line 14: After that line insert an amendment to s. 196.219 (2) (a):

- 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter except ~~s. ss.~~ 196.202 and 196.206, 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.

Comment: This provision limits the applicability of the telecommunications consumer protection statute, s. 196.219, to retail broadband services to the regulation authorized under s. 196.xxx, created above. Section 196.219 has provisions that apply to retail and to wholesale services.

13. Page 4, line 17: Delete “to consumers” and substitute “used to provide a broadband service to an end user customer who is not a telecommunications provider”.

Comment: This provision clarifies the bills’ treatment of UNE’s to limit the provision to UNE’s used to provide a broadband service. This revision is based on comments made at the hearing on AB 672.

14. Page 4, line 18: Delete “under 47 USC 251 (c)” and substitute “or authorized under 47 USC 251 (c) or 271 (c) (2) (B)”.

Comment: This provision clarifies the bills’ treatment of UNE’s and is based on comments made at the hearing on AB 672.

15. Page 4, line 19: Add an amendment to s. 196.219 (3) (f)

- 196.219 (3) (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~~ Except as provided in sub. (2r), 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.

Comment: This provision removes a potential conflict between the bills' treatment of UNE's and current law.

Prepared at the request of Senator Ted Kanavas and Representative Scott Jensen
By John Stolzenberg, Legislative Council Staff
February 24, 2004

Tomorrow
10 a.m.
if possible

ASA to

2003 ASSEMBLY BILL 672

50389/1

RM
NOT
RUN

November 13, 2003 - Introduced by Representatives JENSEN, MONTGOMERY, NISCHKE, PETTIS, OLSEN, MUSSER, ALBERS, OTT, PETROWSKI and BIES, cosponsored by Senators KANAVAS, WELCH, STEPP, DARLING, REYNOLDS and BROWN. Referred to Committee on Energy and Utilities.

1 AN ACT ^{general} ~~to repeal~~ 196.196 (1) (a) 2. b.; ~~to renumber~~ 196.218 (4); ~~to consolidate,~~
2 ~~renumber and amend~~ 196.196 (1) (a) 2. (intro.) and 2. a.; ~~to amend~~ 196.01
3 (1g) and 196.01 (9m); and ~~to create~~ 66.0422, 196.01 (1k), 196.218 (4) (b) and
4 196.219 (2r) of the statutes; ~~relating to:~~ ^{regulation of} exempting broadband ~~Internet~~ service
5 ~~from regulation by the Public Service Commission and local governments,~~
6 requiring telecommunications utilities to provide unbundled network
7 elements, and price regulation of telecommunications utilities.

Analysis by the Legislative Reference Bureau

Under current law, persons who provide telecommunications service (telecommunications providers) are subject to various degrees and types of regulation by the Public Service Commission (PSC). The degree and type of regulation depends on the type of telecommunications service that is provided. Current law defines "telecommunications service," in part, as the offering for sale of the conveyance of voice, data, or other information, at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication. Cable television service and certain one-way broadcast services are excluded from the definition and, therefore, are not subject to PSC regulation.

This bill excludes broadband service from the definition of "telecommunications service." The bill defines "broadband service" as the

ASSEMBLY BILL 672

conveyance of any voice, data, or other information in both directions between a provider's facilities and a customer using any medium or technology: 1) at a speed of 200 kilobits per second or more; or 2) via an intentional radiator, as defined by the Federal Communications Commission (FCC). (The FCC has defined "intentional radiator" as a device that intentionally generates and emits radio frequency energy by radiation or induction.). As a result, under the bill, the PSC has no authority to regulate persons who broadband service. In addition, the bill also revises the definition of "telecommunications service" to eliminate the requirement that it must be conveyed at any frequency over any part of the electromagnetic spectrum.

The bill also prohibits a city, village, town, or county from enacting an ordinance or adopting a resolution that regulates providing, or offering to provide, broadband service.

In addition, the bill requires telecommunications providers that are regulated as telecommunications utilities by the PSC to provide unbundled network elements to other telecommunications providers to the extent specifically required under federal law by the FCC. In general, "unbundled network elements" are the physical and functional elements of a telecommunications utility's network that the telecommunications utility must make available to competitors under federal law. As a result, the bill allows the PSC to use state law to require telecommunications utilities to comply with the requirements under federal law.

The bill also makes changes to the PSC's authority regarding price regulation of telecommunications utilities and universal service. Under price regulation, the PSC regulates the rates charged by a telecommunications utility for certain residential and business services, but does not regulate a utility's rate of return on investments, which is the subject of traditional utility regulation. If certain conditions are satisfied, current law also authorizes the PSC to apply price regulation to rates for the following: 1) advanced telecommunications services; and 2) services that the PSC finds are necessary for universal service. Current law imposes various other duties on the PSC regarding universal service, which, in general, require the PSC to promote the availability of affordable telecommunications services throughout the state. One of the duties is for the PSC to promulgate rules that define the types of services that are necessary components of universal service.

The bill eliminates the authority of the PSC to apply price regulation to rates for advanced telecommunications services. The bill also prohibits the PSC from promulgating rules that specify that broadband service is a necessary component of universal service. The bill does not affect any other duties of the PSC regarding universal service.

For further information see the *state and local* 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:

ASSEMBLY BILL 672

INSERT 3-4B

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SECTION 1. 66.0422 of the statutes is created to read:

INSERT 3-4A

66.0422 Broadband service. No city, village, town, or county may enact an ordinance or adopt a resolution that regulates providing, or offering to provide, broadband service, as defined in s. 196.01 (1k), to the public.

SECTION 2. 196.01 (1g) of the statutes is amended to read:

196.01 (1g) "Basic local exchange service" means the provision to residential customers of an access facility, whether by wire, cable, fiber optics or radio, and essential usage within a local calling area for the transmission of high-quality 2-way interactive switched voice or data communication. "Basic local exchange service" includes extended community calling and extended area service. "Basic local exchange service" does not include additional access facilities or any discretionary or optional services that may be provided to a residential customer. "Basic local exchange service" does not include cable television service, broadband service, or services provided by a commercial mobile radio service provider.

SECTION 3. 196.01 (1k) of the statutes is created to read:

a telecommunications service that conveys

196.01 (1k) "Broadband service" means the conveyance of any voice, data, or other information in ~~both directions~~ ^{either direction} between a provider's facilities and a customer using any medium or technology in any of the following ways:

- (a) At a speed of 200 kilobits per second or more.
- (b) Via an intentional radiator, as defined in 47 CFR 15.3 (o).

~~SECTION 4. 196.01 (9m) of the statutes is amended to read:~~

~~196.01 (9m) "Telecommunications-service" means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including~~

ASSEMBLY BILL 672

INSERT 4-2

1 the regulated sale of customer premises equipment. "Telecommunications service"
2 does not include cable television service, broadband service, or broadcast service.

3 SECTION 5 196.196 (1) (a) 2. (intro.) and 2. a. of the statutes are consolidated,
4 renumbered 196.196 (1) (a) 2. and amended to read:

5 196.196 (1) (a) 2. The commission may include, following notice and
6 opportunity for hearing, as part of the services subject to price regulation under this
7 subsection all of the following: 2. a. Those those services and technological features
8 found by the commission to be a necessary component of universal service under s.
9 196.218.

INSERT 4-10

10 SECTION 6 196.196 (1) (a) 2. b. of the statutes is repealed.

11 SECTION 7 196.218 (4) of the statutes is renumbered 196.218 (4) (a).

12 SECTION 8 196.218 (4) (b) of the statutes is created to read:

13 196.218 (4) (b) In promulgating rules under par. (a), the commission may not
14 specify that broadband service is a necessary component of universal service.

15 SECTION 9 196.219 (2r) of the statutes is created to read:

271
or 271(c)(2)(B)

16 196.219 (2r) UNBUNDLED NETWORK ELEMENTS. A telecommunications utility
17 shall provide unbundled network elements ~~to consumers~~ to the extent specifically
18 ^{or authorized} required under 47 USC 251 (c) and the regulations and orders of the federal
19 communications commission promulgated thereunder.

INSERT 4-19

20 SECTION 10 Initial applicability.

21 (1) The treatment of section 66.0422 of the statutes first applies to ordinances
22 enacted and resolutions adopted on the effective date of this subsection.

23 (END)

INSERT 4-14

INSERT
4-17

1 functions and features on, and technological alternatives to, any
2 telecommunications service offered before January 1, 1994. "New
3 telecommunication service" does not include broadband service.

History: 1983 a. 53 ss. 28, 35; 1985 a. 297; 1993 a. 496; 1999 a. 9.

4 ~~SECTION 3~~ 196.195 (1) of the statutes is amended to read:

5 196.195 (1) REGULATION IMPOSED. Except as provided in this section and ss.
6 196.202, 196.203, 196.2035, 196.215 and 196.219, a telecommunications utility is
7 subject to every applicable provision of this chapter and ch. 201.

History: 1985 a. 297; 1987 a. 403 s. 256; 1993 a. 496; 1997 a. 140; 1999 a. 150; 2001 a. 16.

8 **INSERT 4-10:**

9 ~~SECTION 4~~ 196.196 (3) (d) of the statutes is created to read:

10 196.196 (3) (d) Notwithstanding pars. (a) to (c), this subsection does not apply
11 to the offering of an exempt telecommunications service by a price-regulated
12 telecommunications utility.

13 ~~SECTION 5~~ 196.2035 of the statutes is created to read:

14 **196.2035 Exemption for broadband service.** (1) In this section, "federal
15 communications acts" means the federal acts codified under title 47 USC, ch. 5.

16 (2) Notwithstanding any other provision in this chapter, the offering or
17 provision of any broadband service to an end user customer who is not a
18 telecommunications provider is not subject to regulation under this chapter, except
19 as specified in sub. (3).

20 (3) The commission may regulate the offering or provision of a broadband
21 service to an end user customer who is not a telecommunications provider to the
22 extent authorized or required in an order or regulation adopted after the effective
23 date of this subsection by the federal communications commission under the federal
24 communications acts. All orders or rules issued or promulgated by the commission

1 under this subsection[✓] shall comply with and may not be more stringent than the
2 requirements of the federal communications acts.

3 ~~SECTION 6.~~ 196.218 (3) (a)[✓] 3m. of the statutes is amended to read:

4 196.218 (3) (a) 3m. Contributions under this paragraph may be based only on
5 the gross operating revenues from the provision of broadcast services identified by
6 the commission under subd. 2. and on intrastate telecommunications services, other
7 than broadband services, in this state of the telecommunications providers subject
8 to the contribution.

9 History: 1993 a. 496; 1997 a. 27, 41, 237; 1999 a. 9, 29, 185; 2001 a. 16; 2003 a. 33.

INSERT 4-14:

10 ~~SECTION 7.~~ 196.219 (2) (a)[✓] of the statutes is amended to read:

11 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter
12 except ~~s. ss.~~ 196.202 and 196.2035, a telecommunications utility or provider shall
13 provide protection to its consumers under this section unless exempted in whole or
14 in part by rule or order of the commission under this section. The commission shall
15 promulgate rules that identify the conditions under which provisions of this section
16 may be suspended.

17 History: 1993 a. 496; 1997 a. 218; 2001 a. 16.

INSERT 4-17:

18 used to provide a broadband service to an end user customer who is not a
19 telecommunications provider

INSERT 4-19:

20 ~~SECTION 8.~~ 196.219 (3) (f)[✓] of the statutes is amended to read:

21 196.219 (3) (f) Refuse to provide basic local exchange service, business access
22 line and usage service within a local calling area and access service on an unbundled
23 basis to the same extent that the federal communications commission requires the
24

1 telecommunications utility or provider to unbundle the same services provided
2 under its jurisdiction. ~~The~~ Except as provided in sub. (2r), the public service
3 commission may require additional unbundling of intrastate telecommunications
4 services based on a determination, following notice and opportunity for hearing, that
5 additional unbundling is required in the public interest and is consistent with the
6 factors under s. 196.03 (6). The public service commission may order unbundling by
7 a small telecommunications utility.

History: 1993 a. 496; 1997 a. 218; 2001 a. 16.

Kunkel, Mark

From: Stolzenberg, John
Sent: Friday, February 27, 2004 11:52 AM
To: Kunkel, Mark
Cc: Pfaff, Bruce; Richards, Mike; Healy, Brett; Lovell, David
Subject: Drafting instructions for revising LRBs0389/1

- ~~5 acs affected~~

Mark,

Here are instructions for a /2 version of the broadband substitute amendment, LRBs0389/1 at the request of Sen. Kanavas and Rep. Jensen. Please draft a substitute amendment to both SB 302 and AB 672 based on these instructions.

Drafting Instructions for Amending LRBs0389/1

1. Antitrust law applicability

a. Amend s. 133.07 (2)

- (i) *Proposed text:* 133.07 (2) This chapter does not prohibit activities of any public utility, as defined in s. 196.01 (5), or telecommunications carrier, as defined in s. 196.01 (8m), which are required by ch. 196 or rules or orders under ch. 196, activities necessary to comply with that chapter or those rules or orders or activities that are actively supervised by the public service commission. This subsection does not apply to activities of a public utility or telecommunications carrier that are exempt from public service commission regulation under s. 196.195, 196.196, 196.202, 196.203, 196.2035, 196.219 or 196.499 or by other action by the commission.

2. Cross-subsidy restrictions

- a. Amend s. 196.204 (1) to prohibit a regulated service from subsidizing a broadband service and to prohibit a broadband service from subsidizing a regulated service.

- (i) *Proposed text:* 196.204 (1) Except for retained earnings, a telecommunications utility may not subsidize, directly or indirectly, any activity, including any activity of an affiliate, which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 ~~or~~ 196.203, or 196.2035. No telecommunications utility may allocate any costs or expenses in a manner which would subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 ~~or~~ 196.203, or 196.2035. Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.194, 196.195, 196.202 or 196.203.

- b. Note: do not amend s. 196.204 (4), which gives the PSC, "in order to protect the public interest," the authority to allocate the earnings from the sale of specified partially deregulated services, including cellular phone services, to fully regulated activities of a telecommunications utility for rate-making purposes.

3. Interconnection agreements

- a. Amend s. 199.199 (1) to establish that for purposes of s. 196.199 an interconnection agreement or an amendment to an interconnection agreement, either of which is entered into after the effective date of the provision, does not include the portion of an interconnection agreement that relates to the provision of interconnection, a service, or a network element that is used *exclusively* to provide a retail broadband service by the procuring provider. This treatment means that, if interconnection, a service, or a network element covered by an interconnection agreement is used by the procuring telecommunications provider to provide both a broadband service and another service, the portion of the agreement covering that item would be subject to s. 196.199. It is my understanding that, if an interconnection agreement is not subject to s. 196.199, as is the case for agreements in which one party is a CMRS provider, a party to the agreement may petition the PSC to approve, but not enforce, the agreement under s. 196.04.

- (i) *Proposed text:* Creation of definition in 196.01 (4d): (4d) "Network element" has the meaning given in 47

USC 153 (29).

- (ii) *Proposed text:* Amendment of 196.199 (1): (1) Definition. In this section, "interconnection agreement" does not include an interconnection agreement to which a commercial mobile radio service provider is a party or part or all of an interconnection agreement or of an amendment to an interconnection agreement that provides interconnection, a service, or a network element pursuant to 47 USC 251 (c) or 271 (c) (2) (B) that is used exclusively to provide a broadband service to an end user customer by the telecommunications provider procuring the interconnection, service, or network element under the interconnection agreement or amendment.
- (iii) *Proposed text of new initial applicability provision:* (x) The treatment of section 199.199 (1) of the statutes first applies to interconnection agreements or amendments to interconnection agreements submitted to the commission for approval on the effective date of this subsection.

4. Terminology correction in LRBs0389/1

- a. Page 4, line 6: substitute "a broadband" for "an exempt telecommunications".

5. Terminology clarification to conform LRBs0389/1 to federal terms on interconnection

- a. Page 5, line 16: after "provide" insert "interconnection, services, and".

In addition, there are a few other points that were considered by the requesters and me as we worked on the drafting instructions for this substitute amendment to SB 302 and AB 672 that I want to make you aware of.

First, the broad exemption for retail broadband services (proposed s. 196.2035 (1)) is modeled on similar broad exemptions for CMRS providers in s. 196.202 (2) and for telecommunications carriers in s. 196.499 (1). Thus, our instructions did not identify every provision in ch. 196 for which retail broadband service would be exempted. We did, however, follow the precedent of the treatment of CMRS providers and service in ch. 196 where there are explicit references.

Second, the drafting instructions did not address the issue of the treatment of the bundling of an exempt broadband service with a regulated service, as it's not necessary to address this concern in the statutes. I understand that the PSC's policy is that the act of such bundling does not automatically exempt the otherwise regulated service from regulation. The PSC's policy was upheld in a 2003 Circuit Court case, Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin v. Public Service Commission of Wisconsin, Circuit Court Branch 4, Milwaukee County, Case No: 02-CV-011501, decision filed Jul 9, 2003. I have a copy of this decision if you'd like to review it.

Please let me know if you have any comments on the last 2 points.

John

John Stolzenberg
Legislative Council
266-2988

Kunkel, Mark

From: Lovell, David
Sent: Friday, February 27, 2004 1:32 PM
To: Kunkel, Mark; Stolzenberg, John
Subject: RE: Drafting instructions for revising LRBs0389/1

correct

David L. Lovell, Senior Analyst
Wisconsin Legislative Council Staff
608/266-1537

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

From: Kunkel, Mark
Sent: Friday, February 27, 2004 1:28 PM
To: Stolzenberg, John; Lovell, David
Subject: RE: Drafting instructions for revising LRBs0389/1

In your item 2 a. (i) below, I assume that you intentionally do *not* insert a reference to s. 196.2035 at the end of the proposed text and that this is related to the point you make in item 2 b. If this isn't correct, please let me know.

-- Mark

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

From: Stolzenberg, John
Sent: Friday, February 27, 2004 11:52 AM
To: Kunkel, Mark
Cc: Pfaff, Bruce; Richards, Mike; Healy, Brett; Lovell, David
Subject: Drafting instructions for revising LRBs0389/1

Mark,

Here are instructions for a /2 version of the broadband substitute amendment, LRBs0389/1 at the request of Sen. Kanavas and Rep. Jensen. Please draft a substitute amendment to both SB 302 and AB 672 based on these instructions.

Drafting Instructions for Amending LRBs0389/1

1. Antitrust law applicability

a. Amend s. 133.07 (2)

- (i) *Proposed text:* 133.07 (2) This chapter does not prohibit activities of any public utility, as defined in s. 196.01 (5), or telecommunications carrier, as defined in s. 196.01 (8m), which are required by ch. 196 or rules or orders under ch. 196, activities necessary to comply with that chapter or those rules or orders or activities that are actively supervised by the public service commission. This subsection does not apply to activities of a public utility or telecommunications carrier that are exempt from public service commission regulation under s. 196.195, 196.196, 196.202, 196.203, 196.2035, 196.219 or 196.499 or by other action by the commission.

2. Cross-subsidy restrictions

a. Amend s. 196.204 (1) to prohibit a regulated service from subsidizing a broadband service and to prohibit a broadband service from subsidizing a regulated service.

- (i) *Proposed text:* 196.204 (1) Except for retained earnings, a telecommunications utility may not subsidize, directly or indirectly, any activity, including any activity of an affiliate, which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 ~~or~~ 196.203, or 196.2035. No telecommunications utility may allocate any costs or expenses in a manner which would subsidize

any activity which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203, or 196.2035. Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.194, 196.195, 196.202 or 196.203.

- b. Note: do not amend s. 196.204 (4), which gives the PSC, "in order to protect the public interest," the authority to allocate the earnings from the sale of specified partially deregulated services, including cellular phone services, to fully regulated activities of a telecommunications utility for rate-making purposes.

3. Interconnection agreements

- a. Amend s. 199.199 (1) to establish that for purposes of s. 196.199 an interconnection agreement or an amendment to an interconnection agreement, either of which is entered into after the effective date of the provision, does not include the portion of an interconnection agreement that relates to the provision of interconnection, a service, or a network element that is used *exclusively* to provide a retail broadband service by the procuring provider. This treatment means that, if interconnection, a service, or a network element covered by an interconnection agreement is used by the procuring telecommunications provider to provide both a broadband service and another service, the portion of the agreement covering that item would be subject to s. 196.199. It is my understanding that, if an interconnection agreement is not subject to s. 196.199, as is the case for agreements in which one party is a CMRS provider, a party to the agreement may petition the PSC to approve, but not enforce, the agreement under s. 196.04.

- (i) *Proposed text:* Creation of definition in 196.01 (4d): (4d) "Network element" has the meaning given in 47 USC 153 (29).

- (ii) *Proposed text:* Amendment of 196.199 (1): (1) Definition. In this section, "interconnection agreement" does not include an interconnection agreement to which a commercial mobile radio service provider is a party or part or all of an interconnection agreement or of an amendment to an interconnection agreement that provides interconnection, a service, or a network element pursuant to 47 USC 251 (c) or 271 (c) (2) (B) that is used exclusively to provide a broadband service to an end user customer by the telecommunications provider procuring the interconnection, service, or network element under the interconnection agreement or amendment.

- (iii) *Proposed text of new initial applicability provision:* (x) The treatment of section 199.199 (1) of the statutes first applies to interconnection agreements or amendments to interconnection agreements submitted to the commission for approval on the effective date of this subsection.

4. Terminology correction in LRBs0389/1

- a. Page 4, line 6: substitute "a broadband" for "an exempt telecommunications".

5. Terminology clarification to conform LRBs0389/1 to federal terms on interconnection

- a. Page 5, line 16: after "provide" insert "interconnection, services, and".

In addition, there are a few other points that were considered by the requesters and me as we worked on the drafting instructions for this substitute amendment to SB 302 and AB 672 that I want to make you aware of.

First, the broad exemption for retail broadband services (proposed s. 196.2035 (1)) is modeled on similar broad exemptions for CMRS providers in s. 196.202 (2) and for telecommunications carriers in s. 196.499 (1). Thus, our instructions did not identify every provision in ch. 196 for which retail broadband service would be exempted. We did, however, follow the precedent of the treatment of CMRS providers and service in ch. 196 where there are explicit references.

Second, the drafting instructions did not address the issue of the treatment of the bundling of an exempt broadband service with a regulated service, as it's not necessary to address this concern in the statutes. I understand that the PSC's policy is that the act of such bundling does not automatically exempt the otherwise regulated service from regulation. The PSC's policy was upheld in a 2003 Circuit Court case, Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin v. Public Service Commission of Wisconsin, Circuit Court Branch 4, Milwaukee County, Case No: 02-CV-011501, decision filed Jul 9, 2003. I have a copy of this decision if you'd like to review it.

Please let me know if you have any comments on the last 2 points.

John

John Stolzenberg
Legislative Council
266-2988

D/NOTE

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**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2003 ASSEMBLY BILL 672**

Regen

1 AN ACT *to repeal* 196.196 (1) (a) 2. b.; *to renumber* 196.218 (4); *to consolidate,*
2 *renumber and amend* 196.196 (1) (a) 2. (intro.) and 2. a.; *to amend* 93.01
3 (1m), 196.01 (1g), 196.19 (1m) (a), 196.195 (1), 196.218 (3) (a) 3m., 196.219 (2)
4 (a) and 196.219 (3) (f); and *to create* 66.0422, 196.01 (1k), 196.196 (3) (d),
5 196.2035, 196.218 (4) (b) and 196.219 (2r) of the statutes; **relating to:**
6 regulation of broadband service, requiring telecommunications utilities to
7 provide unbundled network elements, and price regulation of
8 telecommunications utilities.

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

9 SECTION 1. 66.0422 of the statutes is created to read:

10 **66.0422 Broadband service.** No city, village, town, or county may enact an
11 ordinance or adopt a resolution that regulates providing, or offering to provide,
12 broadband service, as defined in s. 196.01 (1k), to the public. This subsection does

1 not prohibit a city, village, town, or county from regulating the use of a public
2 right-of-way by a broadband service provider.

3 SECTION 2. 93.01 (1m) of the statutes, as affected by 2003 Wisconsin Act 63, is
4 amended to read:

5 93.01 (1m) "Business" includes any business, except that of banks, savings
6 banks, credit unions, savings and loan associations, and insurance companies.
7 "Business" includes public utilities and telecommunications carriers to the extent
8 that their activities, beyond registration, notice, and reporting activities, are not
9 regulated by the public service commission and includes public utility and
10 telecommunications carrier methods of competition or trade and advertising
11 practices that are exempt from regulation by the public service commission under s.
12 196.195, 196.196, 196.202, 196.203, 196.2035, 196.219, or 196.499 or by other action
13 of the commission.

14 SECTION ~~3~~ 196.01 (1g) of the statutes is amended to read:

15 196.01 (1g) "Basic local exchange service" means the provision to residential
16 customers of an access facility, whether by wire, cable, fiber optics or radio, and
17 essential usage within a local calling area for the transmission of high-quality
18 2-way interactive switched voice or data communication. "Basic local exchange
19 service" includes extended community calling and extended area service. "Basic
20 local exchange service" does not include additional access facilities or any
21 discretionary or optional services that may be provided to a residential customer.
22 "Basic local exchange service" does not include cable television service, broadband
23 service, or services provided by a commercial mobile radio service provider.

24 SECTION ~~4~~ 196.01 (1k) of the statutes is created to read:

INSERT 2-13

1 196.01 (1k) "Broadband service" means a telecommunications service that
2 conveys voice, data, or other information in either direction between a provider's
3 facilities and a customer using any medium or technology in any of the following
4 ways:

5 (a) At a speed of 200 kilobits per second or more.

6 (b) Via an intentional radiator, as defined in 47 CFR 15.3 (o).

7 SECTION ~~5~~ 196.19 (1m) (a) of the statutes is amended to read:

8 196.19 (1m) (a) In this subsection, "new telecommunications service" means
9 services that are not offered by the telecommunications utility before January 1,
10 1994, and alternative rate structures offered after December 31, 1993, for any
11 telecommunications service that is offered before January 1, 1994, if the rate
12 structure effective before January 1, 1994, continues to be available to new and
13 existing customers. "New telecommunications service" includes additional
14 functions and features on, and technological alternatives to, any
15 telecommunications service offered before January 1, 1994. "New
16 telecommunications service" does not include broadband service.

17 SECTION ~~6~~ 196.195 (1) of the statutes is amended to read:

18 196.195 (1) REGULATION IMPOSED. Except as provided in this section and ss.
19 196.202, 196.203, 196.2035, 196.215 and 196.219, a telecommunications utility is
20 subject to every applicable provision of this chapter and ch. 201.

21 SECTION ~~7~~ 196.196 (1) (a) 2. (intro.) and 2. a. of the statutes are consolidated,
22 renumbered 196.196 (1) (a) 2. and amended to read:

23 196.196 (1) (a) 2. The commission may include, following notice and
24 opportunity for hearing, as part of the services subject to price regulation under this
25 subsection ~~all of the following: 2. a. Those~~ those services and technological features

INSERT 4-7

1 found by the commission to be a necessary component of universal service under s.
2 196.218.

3 SECTION ~~8~~ 196.196 (1) (a) 2. b. of the statutes is repealed.

4 SECTION ~~9~~ 196.196 (3) (d) of the statutes is created to read:

5 196.196 (3) (d) Notwithstanding pars. (a) to (c), this subsection does not apply
6 to the offering of ~~an exempt telecommunications~~ service by a price-regulated
7 telecommunications utility.

a broadband

8 SECTION ~~10~~ 196.2035 of the statutes is created to read:

9 **196.2035 Exemption for broadband service.** (1) In this section, "federal
10 communications acts" means the federal acts codified under title 47 USC, ch. 5.

11 (2) Notwithstanding any other provision in this chapter, the offering or
12 provision of any broadband service to an end user customer who is not a
13 telecommunications provider is not subject to regulation under this chapter, except
14 as specified in sub. (3).

15 (3) The commission may regulate the offering or provision of a broadband
16 service to an end user customer who is not a telecommunications provider to the
17 extent authorized or required in an order or regulation adopted after the effective
18 date of this subsection by the federal communications commission under the federal
19 communications acts. All orders or rules issued or promulgated by the commission
20 under this subsection shall comply with and may not be more stringent than the
21 requirements of the federal communications acts.

22 SECTION ~~11~~ 196.218 (3) (a) 3m. of the statutes is amended to read:

23 196.218 (3) (a) 3m. Contributions under this paragraph may be based only on
24 the gross operating revenues from the provision of broadcast services identified by
25 the commission under subd. 2. and on intrastate telecommunications services, other

INSERT 4-21

Interconnection
INTERCONNECTION, SERVICES, AND

CSS

1 than broadband services, in this state of the telecommunications providers subject
2 to the contribution.

3 ~~SECTION 12.~~ 196.218 (4) of the statutes is renumbered 196.218 (4) (a).

4 ~~SECTION 13.~~ 196.218 (4) (b) of the statutes is created to read:

5 196.218 (4) (b) In promulgating rules under par. (a), the commission may not
6 specify that broadband service is a necessary component of universal service.

7 ~~SECTION 14.~~ 196.219 (2) (a) of the statutes is amended to read:

8 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter
9 except ~~s. ss.~~ 196.202 and 196.2035, a telecommunications utility or provider shall
10 provide protection to its consumers under this section unless exempted in whole or
11 in part by rule or order of the commission under this section. The commission shall
12 promulgate rules that identify the conditions under which provisions of this section
13 may be suspended.

interconnection, services, and

14 ~~SECTION 15.~~ 196.219 (2r) of the statutes is created to read:

15 196.219 (2r) ~~UNBUNDLED NETWORK ELEMENTS.~~ A telecommunications utility
16 shall provide ~~unbundled network elements~~ used to provide a broadband service to
17 an end user customer who is not a telecommunications provider to the extent
18 specifically required or authorized under 47 USC 251 (c) or 271 (c) (2) (B) and the
19 regulations and orders of the federal communications commission promulgated
20 thereunder.

21 ~~SECTION 16.~~ 196.219 (3) (f) of the statutes is amended to read:

22 196.219 (3) (f) Refuse to provide basic local exchange service, business access
23 line and usage service within a local calling area and access service on an unbundled
24 basis to the same extent that the federal communications commission requires the
25 telecommunications utility or provider to unbundle the same services provided

1 under its jurisdiction. The Except as provided in sub. (2r), the public service
2 commission may require additional unbundling of intrastate telecommunications
3 services based on a determination, following notice and opportunity for hearing, that
4 additional unbundling is required in the public interest and is consistent with the
5 factors under s. 196.03 (6). The public service commission may order unbundling by
6 a small telecommunications utility.

7 **SECTION ~~17~~ Initial applicability.**

8 (1) The treatment of section 66.0422 of the statutes first applies to ordinances
9 enacted and resolutions adopted on the effective date of this subsection.

10

(END)

INSERT
6-9

D-Note

1 telecommunications provider procuring the interconnection, service, or network
2 element under the interconnection agreement or amendment.

3 SECTION ~~4~~ 196.199 (1) (b) of the statutes is created to read:

4 196.199 (1) (b) "Network element" has the meaning given in 47 USC 153 (29).

5 **INSERT 4-21:**

6 SECTION ~~5~~ 196.204 (1) of the statutes is amended to read:

7 196.204 (1) Except for retained earnings, a telecommunications utility may not
8 subsidize, directly or indirectly, any activity, including any activity of an affiliate,
9 which is not subject to this chapter or is subject to this chapter under s. 196.194,
10 196.195, 196.202 ~~or~~, 196.203, or 196.2035. No telecommunications utility may
11 allocate any costs or expenses in a manner which would subsidize any activity which
12 is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195,
13 196.202 ~~or~~, 196.203, or 196.2035. Except as provided in subs. (2) and (4) the
14 commission may not allocate any revenue or expense so that a portion of a
15 telecommunications utility's business which is fully regulated under this chapter is
16 subsidized by any activity which is not regulated under this chapter or is partially
17 deregulated under s. 196.194, 196.195, 196.202 or 196.203.

18 **History:** 1985 a. 297; 1993 a. 496.

INSERT 6-9:

19 ~~(2)~~ The treatment of section 196.199 (1) (a) 2. and (b) of the statutes and the
20 renumbering and amendment of section 196.199 (1) of the statutes first apply to
21 interconnection agreements or amendments to interconnection agreements
22 submitted to the public service commission for approval on the effective date of this
23 subsection.

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

LRBs0389/2dn
MDK: *Kyf*

Date

Rep. Jensen:

SI
This version is based on instructions received from John Stolzenberg. However, note that *a* limited the definition of "network element" to s. 196.199, rather than create a definition that applies throughout ch. 196.

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

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

LRBs0389/2dn
MDK:kjf:ch

February 27, 2004

Rep. Jensen:

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Mark D. Kunkel
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