

**2003 DRAFTING REQUEST**

**Bill**

Received: **04/08/2003**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **Jeremy Shepherd**

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco  
Counties - miscellaneous  
Munis - miscellaneous**

Extra Copies: **RJM  
MES**

Submit via email: **YES**

Requester's email: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

**Pre Topic:**

No specific pre topic given

**Topic:**

Regulatory treatment of broadband service providers

**Instructions:**

See Attached


**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	mkunkel 08/15/2003	kfollett 08/15/2003	pgreensl 08/15/2003	_____	lemery 08/15/2003		S&L
/1	mkunkel	kfollett	pgreensl	_____	sbasford		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	09/17/2003	09/17/2003	09/18/2003	_____	09/18/2003		
/2	mkunkel 10/21/2003	kfollett 10/21/2003	jfrantze 10/21/2003	_____	lemery 10/21/2003		S&L
/3	mkunkel 10/22/2003	kfollett 10/22/2003	pgreensl 10/22/2003	_____	mbarman 10/22/2003	lemery 10/24/2003	

FE Sent For:

<END>


 At  
Intro.

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/?							S&L
/P1	mkunkel 08/15/2003	kfollett 08/15/2003	pgreensl 08/15/2003		lemery 08/15/2003		S&L
/1	mkunkel	kfollett 13 k/f 10/22	pgreensl 0/22 p/s	to es P8/11	sbasford		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	09/17/2003	09/17/2003	09/18/2003	_____	09/18/2003		
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/1	mkunkel	kfollett	pgreensl		sbasford		

*Handwritten:* To 10/21, Jch 10/21

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	09/17/2003	09/17/2003	09/18/2003	_____	09/18/2003		

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12 kj  
10/2

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/?							S&L
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/P1	mkunkel 08/15/2003	kfollett 08/15/2003	pgreensl 08/15/2003	<del>9/18</del>	lemery 08/15/2003		
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Handwritten notes and signatures:

- Under kfollett: 11/18, 9/17
- Under pgreensl: 9/17, P8
- Under ~~9/18~~: P8, gpc

FE Sent For:

<END>

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1/?	mkunkel	1 \$ P1 8/15	8/15 PS	8/15 PS			

FE Sent For:

<END>

**Kunkel, Mark**

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**From:** Pfaff, Bruce  
**Sent:** Tuesday, April 08, 2003 4:18 PM  
**To:** Kunkel, Mark  
**Subject:** Broadband Parity Bill

Mark,

Senator Kanavas would like to draft this ALEC model legislation for Wisconsin, I am sending this draft to you because of the public utilities nature of this legislation. If it should go to a different drafting attorney, please let me know.

Bruce A. Pfaff  
Chief of Staff  
State Senator Ted Kanavas  
608.266.9174

## *ALEC Model Legislation*

### **Parity and Certainty in Regulatory Treatment of High Speed Internet Access Services and Broadband Services and Providers Act**

#### **Summary**

This Act provides for regulatory parity and certainty at the state level in the critical areas of high-speed Internet access services and broadband services. The Act prohibits state commissions from imposing regulations in these areas, regardless of the technology or medium used to provide such services. The Act further provides, however, that the incumbent local exchange provider must continue comply with the unbundling and other requirements of the Federal Communications Commission.

#### **Model Legislation**

**Section 1. {Legislative Findings}** The legislature hereby finds and declares:

- (A) The cable modem service offered by cable operators and other technologies such as satellite that are used for high-speed access to the Internet are functionally equivalent to, and compete with, digital subscriber line service and other broadband services offered by local exchange carriers.
- (B) Cable modem services and digital subscriber line services are subject to disparate regulatory treatment by the Federal Government and by State and local governments.
- (C) Competing and functionally equivalent products and services should be treated in the same manner, regardless of who provides such products or services.
- (D) A deregulatory environment should apply to providers of high-speed Internet access services and broadband services, regardless of the platform used to provide such services.
- (E) Government regulation should not favor or advantage one class of competitors among competitors offering similar products or services.
- (F) The deployment of digital subscriber line service, in particular, has been restrained by regulatory requirements that are inappropriate for a competitive service offered by various providers.
- (G) Inappropriate regulation imposes needless costs and results in higher consumer costs.

(H) Lower consumer costs will accelerate demand for high-speed Internet access services.

(I) Deregulation across broadband platforms will provide incentives to increase deployment of high speed Internet services and broadband services, bringing the benefits of such services to communities in the form of enhancements in medicine, education, national security, work from home, and other benefits.

(J) When all providers of high speed Internet access services and broadband services compete in a free market environment, consumers will benefit from increased choices and lower prices.

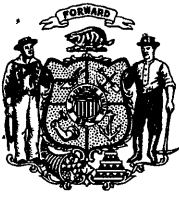
### **Section 2. {Definitions}**

**“High speed Internet access service” or “broadband service”** means, as used in this Act, those services and underlying facilities that provide upstream, from customer to provider, or downstream, from provider to customer, transmission to or from the Internet or have the capability to transmit information in excess of one hundred forty four (144) kilobits per second, regardless of the technology or medium used including, but not limited to, wireless, copper wire, fiber optic cable, or coaxial cable, to provide such service.

### **Section 3. {Main Provisions}**

- A. Neither the \_\_\_\_\_ Commission, nor any unit of local government shall, by entering any order, adopting any rule, or otherwise taking any agency action, impose any regulation upon a provider of high speed Internet access service or broadband service in its provision of such service, regardless of technology or medium used to provide such service.
- B. An incumbent local exchange telecommunications service provider (ILEC) subject to the provisions of 47 U.S.C., Section 251(c) shall be required to provide unbundled access to network elements, including but not limited to loops, subloops, and collocation space within the facilities of the ILEC, to the extent specifically required under Federal Communications Commission regulations or any successor regulations issued by the Federal Communications Commission.
- C. Nothing in this section shall effect the assessment of any company under Article (property tax provisions).

*As adopted by the Telecommunications & Information Technology  
Task Force on December 11, 2002.*



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2562/P1

MDK: *[Signature]*

*D. NOTE*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Today by  
4:30*

*Gen*

1 AN ACT ...; relating to: exempting broadband Internet service from regulation  
2 by the public service commission and local governments. X

*Analysis by the Legislative Reference Bureau*

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

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:*

3 SECTION 1. 66.0422<sup>✓</sup> of the statutes is created to read:

4 **66.0422 Broadband service.** No city, village, town, or county may enact an  
5 ordinance or adopt a resolution that regulates providing, or offering to provide,  
6 broadband service, as defined in s. 196.01 (1k)<sup>✓</sup>, to the public.

7 SECTION 2. 196.01 (1g)<sup>✓</sup> of the statutes is amended to read:

8 196.01 (1g) "Basic local exchange service" means the provision to residential  
9 customers of an access facility, whether by wire, cable, fiber optics or radio, and

1 essential usage within a local calling area for the transmission of high-quality  
2 2-way interactive switched voice or data communication. “Basic local exchange  
3 service” includes extended community calling and extended area service. “Basic  
4 local exchange service” does not include additional access facilities or any  
5 discretionary or optional services that may be provided to a residential customer.  
6 “Basic local exchange service” does not include cable television service, broadband  
7 service, or services provided by a commercial mobile radio service provider.

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 297 ss. 14 to 22, 39; 1987 a. 27; 1989 a. 344; 1993 a. 121, 496; 1995 a. 46, 409; 1997 a. 184, 218, 229; 1999 a. 9, 32, 53; 1999 a. 150 s. 672; 2001 a. 16. ✓

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

9 196.01 (1k) “Broadband service” means the conveyance of any voice, data,  
10 audio, video, or other information over the Internet using any medium or technology  
11 at a speed of 144 kilobits or more per second.

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

13 196.01 (9m) “Telecommunications service” means the offering for sale of the  
14 conveyance of voice, data or other information at any frequency over any part of the  
15 electromagnetic spectrum, including the sale of service for collection, storage,  
16 forwarding, switching and delivery incidental to such communication and including  
17 the regulated sale of customer premises equipment. “Telecommunications service”  
18 does not include cable television service, broadband service, or broadcast service.

History: 1977 c. 29, 418; 1981 c. 390; 1983 a. 27, 53, 76, 192, 425, 538; 1985 a. 79, 1985 a. 297 ss. 14 to 22, 39; 1987 a. 27; 1989 a. 344; 1993 a. 121, 496; 1995 a. 46, 409; 1997 a. 184, 218, 229; 1999 a. 9, 32, 53; 1999 a. 150 s. 672; 2001 a. 16. ✓

19 **SECTION 5.** 196.219 (2r) of the statutes is created to read:

20 196.219 (2r) UNBUNDLED NETWORK ELEMENTS. A telecommunications utility  
21 shall provide unbundled network elements to consumers to the extent specifically  
22 required under 47 USC 251 (c) and the regulations of the federal communications  
23 commission promulgated thereunder.





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

LRB-2562/P1dn

MDK: 

*Date*

Sen. Kanavas:

Please review this bill to make sure that it achieves your intent. In particular, note the following differences between the bill and the model legislation that you provided to me:

1. The bill exempts broadband service from PSC regulation by excluding broadband service from the definition of "telecommunications service". Although the bill takes a different approach than that of the model legislation, the bill's approach is consistent with the way in which cable television operators are exempted from PSC regulation under current law. Also, I think the bill's approach results in a less ambiguous exemption than that of the model legislation. X
2. The exemption from local government regulation is included in ch. 66, stats.
3. There is no need to state that property taxes aren't affected by the bill, because the bill does not affect property taxes.
4. The definition of "broadband service" refers to voice, data, audio, video, or other information, instead of only referring to information. This is similar to the references to voice, data, and other information in the definition under current law for "telecommunications service". In addition, I simplified other provisions of the model legislation (for example, there's no need to distinguish between upstream and downstream transmissions if they are both included in the definition). X
5. Proposed s. 196.219 (2r) corresponds to the language in the instructions requiring incumbent exchange carriers to comply with federal law regarding unbundled access to network elements. However, it's not clear to me why you want state law to require compliance with federal law.

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

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

LRB-2562/P1dn  
MDK:kjf:pg

August 15, 2003

Sen. Kanavas:

Please review this bill to make sure that it achieves your intent. In particular, note the following differences between the bill and the model legislation that you provided to me:

1. The bill exempts broadband service from PSC regulation by excluding broadband service from the definition of "telecommunications service." Although the bill takes a different approach than that of the model legislation, the bill's approach is consistent with the way in which cable television operators are exempted from PSC regulation under current law. Also, I think the bill's approach results in a less ambiguous exemption than that of the model legislation.
2. The exemption from local government regulation is included in ch. 66, stats.
3. There is no need to state that property taxes aren't affected by the bill, because the bill does not affect property taxes.
4. The definition of "broadband service" refers to voice, data, audio, video, or other information, instead of only referring to information. This is similar to the references to voice, data, and other information in the definition under current law for "telecommunications service." In addition, I simplified other provisions of the model legislation (for example, there's no need to distinguish between upstream and downstream transmissions if they are both included in the definition).
5. Proposed s. 196.219 (2r) corresponds to the language in the instructions requiring incumbent exchange carriers to comply with federal law regarding unbundled access to network elements. However, it's not clear to me why you want state law to require compliance with federal law.

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

## Kunkel, Mark

---

**From:** Pfaff, Bruce  
**Sent:** Monday, September 08, 2003 9:32 AM  
**To:** Kunkel, Mark  
**Subject:** LRB-2562

Mark:

Thanks for your work on LRB-2562 relating to exempting broadband Internet service from PSC regulation. I have 3 simple changes to the Preliminary draft:

- 1.) Page 2, line 17 & line 18 - delete the words - **"at any frequency over any part of the electromagnetic spectrum,"**
- 2.) Page 3, line 1 - add the words - **"and orders"** after the word "regulations"
- 3.) New item - Repeal s.196.196 (1)(a)(2)(b)

On a different topic, where are you on the "right of way" draft which is also based on an ALEC model? Please call if you have any questions on these changes.

Thanks,

Bruce A. Pfaff  
Chief of Staff  
Office of State Senator Ted Kanavas  
Room 20 S. State Capitol  
608.266.9174  
608.576.4499

1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Tomorrow  
4:30 PM  
9/18

RN  
has  
been  
sun

INSERT  
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gen cat.

1  
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4

AN ACT *to amend* 196.01 (1g) and 196.01 (9m); and *to create* 66.0422, 196.01 (1k) and 196.219 (2r) of the statutes; **relating to:** exempting broadband Internet service from regulation by the Public Service Commission and local governments

requiring telecommunications utilities to provide unbundled network elements, and

**Analysis by the Legislative Reference Bureau**

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

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:**

5  
6  
7  
8

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

**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.

regulation of  
price-regulated telecommunications utilities

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

2 196.01 (1g) "Basic local exchange service" means the provision to residential  
3 customers of an access facility, whether by wire, cable, fiber optics or radio, and  
4 essential usage within a local calling area for the transmission of high-quality  
5 2-way interactive switched voice or data communication. "Basic local exchange  
6 service" includes extended community calling and extended area service. "Basic  
7 local exchange service" does not include additional access facilities or any  
8 discretionary or optional services that may be provided to a residential customer.  
9 "Basic local exchange service" does not include cable television service, broadband  
10 service, or services provided by a commercial mobile radio service provider.

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

12 196.01 (1k) "Broadband service" means the conveyance of any voice, data,  
13 audio, video, or other information over the Internet using any medium or technology  
14 at a speed of 144 kilobits or more per second.

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

16 196.01 (9m) "Telecommunications service" means the offering for sale of the  
17 conveyance of voice, data or other information ~~at any frequency over any part of the~~  
18 ~~electromagnetic spectrum,~~ including the sale of service for collection, storage,  
19 forwarding, switching and delivery incidental to such communication and including  
20 the regulated sale of customer premises equipment. "Telecommunications service"  
21 does not include cable television service, broadband service, or broadcast service.

stroke

22 SECTION 5. 196.219 (2r) of the statutes is created to read:

23 196.219 (2r) UNBUNDLED NETWORK ELEMENTS. A telecommunications utility  
24 shall provide unbundled network elements to consumers to the extent specifically

INSERT 2-21

*and orders*

1

required under 47 USC 251 (c) and the regulations of the federal communications  
commission promulgated thereunder.

3

**SECTION 6. Initial applicability.**

4

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

6

(END)

1

INSERT 1A:

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. X

This bill excludes broadband service from the definition of "telecommunications service". The bill defines "broadband service" as the conveyance of any voice, data, audio, video, or other information over the Internet using any medium or technology at a speed of 144 kilobits or more per second. 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. X

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. X

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 Federal Communications Commission (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. X

Finally, the bill makes changes to the PSC's authority regarding telecommunications utilities that are subject to "price regulation". Under this type of regulation, the PSC regulates the rates charged by a telecommunications utility for services, but does not regulate a utility's rates of return on investments. Current law authorizes the PSC to subject a telecommunications utility's advanced telecommunications services to price regulation, if certain conditions are satisfied. (Current law does not define "advanced telecommunications services".) The bill eliminates the authority of the PSC to subject advanced telecommunications services to price regulation. X

2

INSERT 2-21:



1            ~~SECTION 1~~<sup>x</sup> 196.196 (1) (a) 2. (intro.) and 2. a. of the statutes are consolidated,  
2            renumbered 196.196 (1) (a) 2. and amended to read:

3            196.196 (1) (a) 2. The commission may include, following notice and  
4            opportunity for hearing, as part of the services subject to price regulation under this  
5            subsection ~~all of the following:~~ a. ~~Those~~ those services and technological features  
6            found by the commission to be a necessary component of universal service under s.  
7            196.218.

History: 1993 a. 496; 1999 a. 29, 35; 2001 a. 16.

8            ~~SECTION 2~~<sup>x</sup> 196.196 (1) (a) 2. b. of the statutes is repealed.

## Kunkel, Mark

---

**From:** Pfaff, Bruce  
**Sent:** Thursday, October 16, 2003 9:48 AM  
**To:** Kunkel, Mark  
**Subject:** Revisions to LRB 2562/1

Mark:

Below please find a couple of changes to LRB 2562/1, I believe these will be the final changes needed.

~~196.01(1k)~~ **Broadband Service** means the conveyance of any voice, data or information in both direction between a providers facilities and a customers premises using any medium or technology in any of the following ways:

- (a) At a speed of at least 200 kilobits per second
- (b) Via a wireless device that is an intentional radiator subject to 47 CFR

✓ ~~196.196(1)(a)(2)~~ of the statutes is repealed

~~196.218(4)~~ of the statutes is repealed

Please feel free to contact me with any questions regarding this request.

Thanks,

Bruce A. Pfaff  
Chief of Staff  
Office of State Senator Ted Kanavas  
Room 20 S. State Capitol  
608.266.9174  
608.576.4499

2

TODAY 10/21  
4:30P M

D - NOTE

2003 BILL

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telecommunications

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

regulation of

and universal service requirements

**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

**BILL**

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conveyance of any voice, data, ~~video~~ or other information over the Internet using any medium or technology at a speed of 144 kilobits or more per second. 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 Federal Communications Commission (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.

~~Finally, the bill makes changes to the PSC's authority regarding telecommunications utilities that are subject to "price regulation." Under this type of regulation, the PSC regulates the rates charged by a telecommunications utility for services, but does not regulate a utility's rates of return on investments. Current law authorizes the PSC to subject a telecommunications utility's advanced telecommunications services to price regulation, if certain conditions are satisfied. (Current law does not define "advanced telecommunications services.") The bill eliminates the authority of the PSC to subject advanced telecommunications services to price regulation.~~

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:*

- 1            **SECTION 1.** 66.0422 of the statutes is created to read:
- 2            **66.0422 Broadband service.** No city, village, town, or county may enact an
- 3 ordinance or adopt a resolution that regulates providing, or offering to provide,
- 4 broadband service, as defined in s. 196.01 (1k), to the public.
- 5            **SECTION 2.** 196.01 (1g) of the statutes is amended to read:

## BILL

INSEAT 3-10

1 196.01 (1g) "Basic local exchange service" means the provision to residential  
2 customers of an access facility, whether by wire, cable, fiber optics or radio, and  
3 essential usage within a local calling area for the transmission of high-quality  
4 2-way interactive switched voice or data communication. "Basic local exchange  
5 service" includes extended community calling and extended area service. "Basic  
6 local exchange service" does not include additional access facilities or any  
7 discretionary or optional services that may be provided to a residential customer.  
8 "Basic local exchange service" does not include cable television service, broadband  
9 service, or services provided by a commercial mobile radio service provider.

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

11 196.01 (1k) "~~Broadband service~~" means the conveyance of any voice, data,  
12 audio, video, or other information over the Internet using any medium or technology  
13 at a speed of 144 kilobits or more per second.

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

15 196.01 (9m) "Telecommunications service" means the offering for sale of the  
16 conveyance of voice, data or other information ~~at any frequency over any part of the~~  
17 ~~electromagnetic spectrum~~, including the sale of service for collection, storage,  
18 forwarding, switching and delivery incidental to such communication and including  
19 the regulated sale of customer premises equipment. "Telecommunications service"  
20 does not include cable television service, broadband service, or broadcast service.

21 SECTION 5. 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: a. ~~These~~ those services and technological features

**BILL**

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

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

4 **SECTION #** 196.219 (2r) of the statutes is created to read:

5 196.219 (2r) UNBUNDLED NETWORK ELEMENTS. A telecommunications utility  
6 shall provide unbundled network elements to consumers to the extent specifically  
7 required under 47 USC 251 (c) and the regulations and orders of the federal  
8 communications commission promulgated thereunder.

9 **SECTION # Initial applicability.**

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

12 (END)

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4-3

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**INSERT 2A:**

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in both directions between a provider's facilities and a customer's premises using any

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medium or technology: 1) at a speed of 200 kilobits per second or more; or 2) via an

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intentional radiator, as defined by the Federal Communications Commission (FCC).

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(The FCC has defined "intentional radiator" as a device that intentionally generates

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and emits radio frequency energy by radiation or induction.)

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**INSERT 2B:**

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¶ The bill also makes changes to the PSC's authority regarding price regulation

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of telecommunications utilities and universal service. Under price regulation, the

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PSC regulates the rates charged by a telecommunications utility for certain

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residential and business services, but does not regulate a utility's rate of return on

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investments, which is the subject of traditional utility regulation. If certain

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conditions are satisfied, current law also authorizes the PSC to apply price

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regulation to rates for the following: 1) advanced telecommunications services; and

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2) services that the PSC finds are necessary for universal service. Current law

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imposes various other duties on the PSC regarding universal service, which, in

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general, require the PSC to promote the availability of affordable

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telecommunications services throughout the state. One of the duties is for the PSC

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to promulgate rules that define the types of services that are necessary components

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of universal service.

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The bill eliminates the authority of the PSC to apply price regulation to rates

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for advanced telecommunications services and services that the PSC finds are

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necessary for universal service. The bill also eliminates the duty of the PSC to

1 promulgate rules defining the types of services that are necessary components of  
2 universal service. The bill does not affect any other duties of the PSC regarding  
3 universal service.

4 **INSERT 3-10:**

5 196.01 (1k) "Broadband service" means the conveyance of any voice, data, or  
6 other information in both directions between a provider's facilities and a customer's  
7 premises using any medium or technology in any of the following ways:

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

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

10 **INSERT 4-3:**

11 **SECTION ~~1~~<sup>✓</sup>** 196.196 (1) (a) 1. of the statutes is renumbered 196.196 (1) (a) .

12 **SECTION ~~2~~<sup>✓</sup>** 196.196 (1) (a) 2. of the statutes is repealed.

13 **SECTION ~~3~~<sup>✓</sup>** 196.218 (4) of the statutes is repealed.

*D-Note*



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

LRB-2562/2dn

MDK: 

*Date*

Sen. Kanavas:

This version incorporates the changes you requested. Please note I simplified the reference to "intentional radiator". If all intentional radiators are wireless devices, there's no need to refer to a wireless device that is an intentional radiator. Also, I refer to the definition in the federal regulations, rather than referring to something that is "subject to" the federal regulations. If these changes aren't consistent with your intent, please let me know.

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

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

LRB-2562/2dn  
MDK:kjf:jf

October 21, 2003

Sen. Kanavas:

This version incorporates the changes you requested. Please note I simplified the reference to "intentional radiator." If all intentional radiators are wireless devices, there's no need to refer to a wireless device that is an intentional radiator. Also, I refer to the definition in the federal regulations, rather than referring to something that is "subject to" the federal regulations. If these changes aren't consistent with your intent, please let me know.

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



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2562/2-e (3)  
MDK:kjfm

THURS. 10/23  
NOON

2003 BILL

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

**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

**BILL**

✓ conveyance of any voice, data, or other information in both directions between a provider's facilities and a customer ~~via wires~~ 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 ~~and services that the PSC finds are necessary for universal service.~~ The bill also ~~eliminates the duty of the PSC to promulgate rules defining the types of services that are necessary components of universal service.~~ The bill does not affect any other duties of the PSC regarding universal service.

INSERT 2A

**BILL**

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:*

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

2           **66.0422 Broadband service.** No city, village, town, or county may enact an  
3 ordinance or adopt a resolution that regulates providing, or offering to provide,  
4 broadband service, as defined in s. 196.01 (1k), to the public.

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

6           196.01 (1g) “Basic local exchange service” means the provision to residential  
7 customers of an access facility, whether by wire, cable, fiber optics or radio, and  
8 essential usage within a local calling area for the transmission of high-quality  
9 2-way interactive switched voice or data communication. “Basic local exchange  
10 service” includes extended community calling and extended area service. “Basic  
11 local exchange service” does not include additional access facilities or any  
12 discretionary or optional services that may be provided to a residential customer.  
13 “Basic local exchange service” does not include cable television service, broadband  
14 service, or services provided by a commercial mobile radio service provider.

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

16           196.01 (1k) “Broadband service” means the conveyance of any voice, data, or  
17 other information in both directions between a provider’s facilities and a customer  
18 ~~premises~~ using any medium or technology in any of the following ways:

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

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

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



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prohibits the PSC from promulgating rules that specify that broadband service is a necessary component of universal service.

**INSERT 4-7:**

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

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

History: 1993 a. 496; 1999 a. 29, 85; 2001 a. 16.

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

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

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

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

**Emery, Lynn**

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**From:** Pfaff, Bruce  
**Sent:** Friday, October 24, 2003 3:23 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-2562/3 Topic: Regulatory treatment of broadband service providers

It has been requested by <Pfaff, Bruce> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-2562/3 Topic: Regulatory treatment of broadband service providers