

**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2003 SENATE BILL 302**

March 2, 2004 – Offered by Senator KANAVAS.

1     **AN ACT** *to repeal* 196.196 (1) (a) 2. b.; *to renumber* 196.218 (4); *to renumber*  
2             *and amend* 196.199 (1); *to consolidate, renumber and amend* 196.196 (1)  
3             (a) 2. (intro.) and 2. a.; *to amend* 93.01 (1m), 133.07 (2), 196.01 (1g), 196.19 (1m)  
4             (a), 196.195 (1), 196.204 (1), 196.218 (3) (a) 3m., 196.219 (2) (a) and 196.219 (3)  
5             (f); and *to create* 66.0422, 196.01 (1k), 196.196 (3) (d), 196.199 (1) (a) 2., 196.199  
6             (1) (b), 196.2035, 196.218 (4) (b) and 196.219 (2r) of the statutes; **relating to:**  
7             regulation of broadband service, requiring telecommunications utilities to  
8             provide unbundled network elements, and price regulation of  
9             telecommunications utilities.

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

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

11           **66.0422 Broadband service.** No city, village, town, or county may enact an  
12           ordinance or adopt a resolution that regulates providing, or offering to provide,

1 broadband service, as defined in s. 196.01 (1k), to the public. This subsection does  
2 not prohibit a city, village, town, or county from regulating the use of a public  
3 right-of-way by a broadband service provider.

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

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

15 **SECTION 3.** 133.07 (2) of the statutes is amended to read:

16 133.07 (2) This chapter does not prohibit activities of any public utility, as  
17 defined in s. 196.01 (5), or telecommunications carrier, as defined in s. 196.01 (8m),  
18 which are required by ch. 196 or rules or orders under ch. 196, activities necessary  
19 to comply with that chapter or those rules or orders or activities that are actively  
20 supervised by the public service commission. This subsection does not apply to  
21 activities of a public utility or telecommunications carrier that are exempt from  
22 public service commission regulation under s. 196.195, 196.196, 196.202, 196.203,  
23 196.2035, 196.219 or 196.499 or by other action by the commission.

24 **SECTION 4.** 196.01 (1g) of the statutes is amended to read:

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 5.** 196.01 (1k) of the statutes is created to read:

11           196.01 **(1k)** “Broadband service” means a telecommunications service that  
12 conveys voice, data, or other information in either direction between a provider’s  
13 facilities and a customer using any medium or technology in any of the following  
14 ways:

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

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

17           **SECTION 6.** 196.19 (1m) (a) of the statutes is amended to read:

18           196.19 **(1m)** (a) In this subsection, “new telecommunications service” means  
19 services that are not offered by the telecommunications utility before January 1,  
20 1994, and alternative rate structures offered after December 31, 1993, for any  
21 telecommunications service that is offered before January 1, 1994, if the rate  
22 structure effective before January 1, 1994, continues to be available to new and  
23 existing customers. “New telecommunications service” includes additional  
24 functions and features on, and technological alternatives to, any

1 telecommunications service offered before January 1, 1994. “New  
2 telecommunications service” does not include broadband service.

3 **SECTION 7.** 196.195 (1) of the statutes is amended to read:

4 196.195 (1) REGULATION IMPOSED. Except as provided in this section and ss.  
5 196.202, 196.203, 196.2035, 196.215 and 196.219, a telecommunications utility is  
6 subject to every applicable provision of this chapter and ch. 201.

7 **SECTION 8.** 196.196 (1) (a) 2. (intro.) and 2. a. of the statutes are consolidated,  
8 renumbered 196.196 (1) (a) 2. and amended to read:

9 196.196 (1) (a) 2. The commission may include, following notice and  
10 opportunity for hearing, as part of the services subject to price regulation under this  
11 subsection ~~all of the following:~~ 2. a. ~~Those~~ those services and technological features  
12 found by the commission to be a necessary component of universal service under s.  
13 196.218.

14 **SECTION 9.** 196.196 (1) (a) 2. b. of the statutes is repealed.

15 **SECTION 10.** 196.196 (3) (d) of the statutes is created to read:

16 196.196 (3) (d) Notwithstanding pars. (a) to (c), this subsection does not apply  
17 to the offering of a broadband service by a price-regulated telecommunications  
18 utility.

19 **SECTION 11.** 196.199 (1) of the statutes is renumbered 196.199 (1) (intro.) and  
20 amended to read:

21 196.199 (1) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, “interconnection:  
22 (a) “Interconnection agreement” does not include ~~an~~ any of the following:

23 1. An interconnection agreement to which a commercial mobile radio service  
24 provider is a party.

25 **SECTION 12.** 196.199 (1) (a) 2. of the statutes is created to read:

1           196.199 (1) (a) 2. All or part of an interconnection agreement or of an  
2 amendment to an interconnection agreement that provides interconnection, a  
3 service, or a network element pursuant to 47 USC 251 (c) or 271 (c) (2) (B) that is used  
4 exclusively to provide a broadband service to an end user customer by the  
5 telecommunications provider procuring the interconnection, service, or network  
6 element under the interconnection agreement or amendment.

7           **SECTION 13.** 196.199 (1) (b) of the statutes is created to read:

8           196.199 (1) (b) “Network element” has the meaning given in 47 USC 153 (29).

9           **SECTION 14.** 196.2035 of the statutes is created to read:

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

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

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

23           **SECTION 15.** 196.204 (1) of the statutes is amended to read:

24           196.204 (1) Except for retained earnings, a telecommunications utility may not  
25 subsidize, directly or indirectly, any activity, including any activity of an affiliate,

1 which is not subject to this chapter or is subject to this chapter under s. 196.194,  
2 196.195, 196.202 ~~or~~, 196.203, or 196.2035. No telecommunications utility may  
3 allocate any costs or expenses in a manner which would subsidize any activity which  
4 is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195,  
5 196.202 ~~or~~, 196.203, or 196.2035. Except as provided in subs. (2) and (4) the  
6 commission may not allocate any revenue or expense so that a portion of a  
7 telecommunications utility's business which is fully regulated under this chapter is  
8 subsidized by any activity which is not regulated under this chapter or is partially  
9 deregulated under s. 196.194, 196.195, 196.202 or 196.203.

10 **SECTION 16.** 196.218 (3) (a) 3m. of the statutes is amended to read:

11 196.218 (3) (a) 3m. Contributions under this paragraph may be based only on  
12 the gross operating revenues from the provision of broadcast services identified by  
13 the commission under subd. 2. and on intrastate telecommunications services, other  
14 than broadband services, in this state of the telecommunications providers subject  
15 to the contribution.

16 **SECTION 17.** 196.218 (4) of the statutes is renumbered 196.218 (4) (a).

17 **SECTION 18.** 196.218 (4) (b) of the statutes is created to read:

18 196.218 (4) (b) In promulgating rules under par. (a), the commission may not  
19 specify that broadband service is a necessary component of universal service.

20 **SECTION 19.** 196.219 (2) (a) of the statutes is amended to read:

21 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter  
22 except s. ss. 196.202 and 196.2035, a telecommunications utility or provider shall  
23 provide protection to its consumers under this section unless exempted in whole or  
24 in part by rule or order of the commission under this section. The commission shall

1 promulgate rules that identify the conditions under which provisions of this section  
2 may be suspended.

3 **SECTION 20.** 196.219 (2r) of the statutes is created to read:

4 **196.219 (2r)** INTERCONNECTION, SERVICES, AND UNBUNDLED NETWORK ELEMENTS.  
5 A telecommunications utility shall provide interconnection, services, and unbundled  
6 network elements used to provide a broadband service to an end user customer who  
7 is not a telecommunications provider to the extent specifically required or authorized  
8 under 47 USC 251 (c) or 271 (c) (2) (B) and the regulations and orders of the federal  
9 communications commission promulgated thereunder.

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

11 **196.219 (3) (f)** Refuse to provide basic local exchange service, business access  
12 line and usage service within a local calling area and access service on an unbundled  
13 basis to the same extent that the federal communications commission requires the  
14 telecommunications utility or provider to unbundle the same services provided  
15 under its jurisdiction. The Except as provided in sub. (2r), the public service  
16 commission may require additional unbundling of intrastate telecommunications  
17 services based on a determination, following notice and opportunity for hearing, that  
18 additional unbundling is required in the public interest and is consistent with the  
19 factors under s. 196.03 (6). The public service commission may order unbundling by  
20 a small telecommunications utility.

21 **SECTION 22. Initial applicability.**

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

24 (2) The treatment of section 196.199 (1) (a) 2. and (b) of the statutes and the  
25 renumbering and amendment of section 196.199 (1) of the statutes first apply to

1 interconnection agreements or amendments to interconnection agreements  
2 submitted to the public service commission for approval on the effective date of this  
3 subsection.

4 (END)