

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB302)

Received: 02/27/2004

Received By: mkunkel

Wanted: As time permits

Identical to LRB:

For: Ted Kanavas (608) 266-9174

By/Representing: David Lovell

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: **Sen.Kanavas@legis.state.wi.us**

Carbon copy (CC:) to: **david.lovell@legis.state.wi.us**
john.stolzenberg@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>
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O-NOTE

2003 - 2004 LEGISLATURE

LRBs0305/2
MDK:kjf:chr

SSA to SB 302

gjs

Today

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

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NOT
RUN

Con cat.

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)

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

LRBs0406/1dn

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Sen. Kanavas:

This is a companion to LRBs0389/2.

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**DRAFTER'S NOTE
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LEGISLATIVE REFERENCE BUREAU**

LRBs0406/1dn
MDK:cjs:ch

February 27, 2004

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