

2003 Senate Bill 272

Date of enactment: **April 16, 2004**  
Date of publication\*: **April 30, 2004**

## 2003 WISCONSIN ACT 278

AN ACT *to renumber and amend* 196.204 (5) (a); *to amend* 196.203 (1) and 196.204 (5) (b); and *to create* 66.0419 (3m), 66.0422, 196.204 (5) (ag), 196.204 (5) (ar) 2. and 196.204 (5) (ar) 3. of the statutes; **relating to:** local government telecommunications utilities and public hearings for ordinances and resolutions authorizing local government cable television, telecommunications, and broadband facilities.

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

**SECTION 1.** 66.0419 (3m) of the statutes is created to read:

66.0419 (3m) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) Except for costs for any of the following, a municipality that owns and operates a cable television system, or an entity owned or operated, in whole or in part, by such a municipality, may not require nonsubscribers of the cable television system to pay any of the costs of the cable television system:

1. Public, educational, and governmental access channels.
2. Debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of a cable television system.
3. The provision of broadband service by the cable television system, if the requirements of s. 66.0422 (3d) (a) 1., 2., or 3. are satisfied.

(am) Paragraph (a) does not apply to a municipality that, on March 1, 2004, was providing cable service to the public.

(b) Paragraph (a) does not apply to a municipality if all of the following conditions apply:

1. On November 1, 2003, the public service commission has determined that the municipality is an alternative telecommunications utility under s. 196.203.

2. A majority of the governing board of the municipality votes to submit the question of supporting the operation of a cable television system by the municipality to the electors in an advisory referendum and a majority of the voters in the municipality voting at the advisory referendum vote to support the operation of a cable television system by the municipality.

**SECTION 2.** 66.0422 of the statutes is created to read:  
**66.0422 Cable television, telecommunications, and broadband facilities.** (1) In this section:

- (a) "Cable service" has the meaning given in s. 66.0419 (2) (c).
- (b) "Local government" means a city, village, or town.
- (c) "Telecommunications service" has the meaning given in s. 196.01 (9m).

(2) Except as provided in subs. (3), (3d), (3m), and (3n), no local government may enact an ordinance or adopt a resolution authorizing the local government to construct, own, or operate any facility for providing cable service, telecommunications service, or broadband service, directly or indirectly, to the public, unless all of the following are satisfied:

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\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(a) The local government holds a public hearing on the proposed ordinance or resolution.

(b) Notice of the public hearing is given by publication of a class 3 notice under ch. 985 in the area affected by the proposed ordinance or resolution.

(c) No less than 30 days before the public hearing, the local government prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility and including a cost-benefit analysis of the facility for a period of at least 3 years. The costs that are subject to this paragraph include personnel costs and costs of acquiring, installing, maintaining, repairing, or operating any plant or equipment, and include an appropriate allocated portion of costs of personnel, plant, or equipment that are used to provide jointly both telecommunications services and other services.

(3) Subsection (2) does not apply to a local government if all of the following conditions apply:

(a) On November 1, 2003, the public service commission has determined that the local government is an alternative telecommunications utility under s. 196.203.

(b) A majority of the governing board of the local government votes to submit the question of supporting the operation of the facility for providing cable service, telecommunications service, or Internet access service, directly or indirectly to the public, by the local government to the electors in an advisory referendum and a majority of the voters in the local government voting at the advisory referendum vote to support operation of such a facility by the local government.

(3d) (a) Subsection (2) does not apply to a facility for providing broadband service to an area within the boundaries of a local government if any of the following are satisfied:

1. The local government asks, in writing, each person that provides broadband service within the boundaries of the local government whether the person currently provides broadband service to the area or intends to provide broadband service within 9 months to the area and within 60 days after receiving the written request no person responds in writing to the local government that the person currently provides broadband service to the area or intends to provide broadband service to the area within 9 months.

2. The local government determines that a person who responded to a written request under subd. 1. that the person currently provides broadband service to the area did not actually provide broadband service to the area and no other person makes the response to the local government described in subd. 1.

3. The local government determines that a person who responded to a written request under subd. 1. that the person intended to provide broadband service to the area within 9 months did not actually provide broadband service to the area within 9 months and no other person

makes the response to the local government described in subd. 1.

(3m) Subsection (2) does not apply to a facility for providing broadband service if all of the following apply:

(a) The municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service.

(b) The municipality itself does not use the facility to provide broadband service to end users.

(c) The municipality determines that, at the time that the municipality authorizes the construction, ownership, or operation of the facility, whichever occurs first, the facility does not compete with more than one provider of broadband service.

(3n) Subsection (2) does not apply to a local government that, on March 1, 2004, was providing cable service to the public.

(4) Notwithstanding sub. (2), a local government may enact an ordinance or adopt a resolution authorizing the local government to prepare a report specified in sub. (2) (c).

(5) If a local government enacts an ordinance or adopts a resolution that complies with the requirements of sub. (2), the local government must determine the cost incurred in preparing the report specified in sub. (2) (c). As soon as practicable after the local government generates revenue from a facility specified in sub. (2) (intro.), the local government shall use the revenues to reimburse the treasury of the local government for the cost determined under this subsection.

**SECTION 3.** 196.203 (1) of the statutes is amended to read:

196.203 (1) ~~Except as provided in this section, alternative Alternative telecommunications utilities are exempt from all provisions of ch. 201 and this chapter, except as provided in this section and except that an alternative telecommunications utility that is a local government telecommunications utility, as defined in s. 196.204 (5) (ag) 1., is subject to s. 196.204 (5).~~

**SECTION 4g.** 196.204 (5) (a) of the statutes is renumbered 196.204 (5) (ar) 1. and amended to read:

196.204 (5) (ar) 1. In addition to the other requirements of this section, each telecommunications service, relevant group of services and basic network function offered or used by a telecommunications utility shall be priced to exceed its total service long-run incremental cost. The commission may waive the applicability of this ~~paragraph subdivision~~ to a nongovernmental telecommunications utility's basic local exchange service if the commission determines that a waiver is consistent with the factors under s. 196.03 (6).

**SECTION 5.** 196.204 (5) (ag) of the statutes is created to read:

196.204 (5) (ag) In this subsection:

1. "Local government telecommunications utility" means a municipality that owns, operates, manages, or

controls any plant or equipment, or that wholly owns, operates, manages, or controls any entity that owns, operates, manages, or controls any plant or equipment, used to furnish telecommunications services within the state directly or indirectly to the public.

2. "Nongovernmental telecommunications utility" means a telecommunications utility that is not a local government telecommunications utility.

**SECTION 5r.** 196.204 (5) (ar) 2. of the statutes is created to read:

196.204 (5) (ar) 2. For purposes of subd. 1., the total service long-run incremental cost of a local government telecommunications utility shall take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights-of-way, licenses, and similar costs that are incurred by nongovernmental telecommunications utilities. This subdivision does not apply to a local government telecommunications utility that is subject to the exemption under s. 66.0422 (3m). This subdivision also does not apply to a telecommunications service, relevant group of services, or basic network function if all of the following conditions apply:

a. On November 1, 2003, the commission has determined that the local government telecommunications utility is an alternative telecommunications utility under s. 196.203.

b. A majority of the governing board of the local government telecommunications utility votes to submit the question of supporting the operation of the local government telecommunications utility to the electors in an advisory referendum and a majority of the voters in the local government telecommunications utility voting at the advisory referendum vote to support operation of the local government telecommunications utility.

**SECTION 5w.** 196.204 (5) (ar) 3. of the statutes is created to read:

196.204 (5) (ar) 3. Subdivision 2. does not apply to a telecommunications service, relevant group of services, or basic network function, that is used to provide

broadband service and that is offered by a municipal telecommunications utility, if all of the following apply:

a. The municipal telecommunications utility offers the telecommunications service, relevant group of services, or basic network function on a nondiscriminatory basis to persons who provide broadband service to end users.

b. The municipality does not provide to end users the telecommunications service, relevant group of services, or broadband service provided by the basic network function.

c. The municipal utility determines that, at the time that the municipal utility authorizes the provision of the telecommunications service, relevant group of services, or basic network function, the municipal utility's provision of the service, group of services, or function does not compete with more than one provider of broadband service.

**SECTION 6.** 196.204 (5) (b) of the statutes is amended to read:

196.204 (5) (b) Unless ordered by the commission, par. (a) ~~(ar)~~ does not apply to basic local exchange service or to business access line and usage service within a local calling area offered by a nongovernmental telecommunications utility with 150,000 or less access lines in use in this state. If par. ~~(a)~~ ~~(ar)~~ does not apply, the nongovernmental telecommunications utility may not reduce its rates for basic local exchange service below the monthly rate under s. 196.215 (7) or total service long-run incremental cost, whichever is lower, and may not reduce its rates for business access line and usage service within a local calling area below total service long-run incremental cost.

**SECTION 7. Initial applicability.**

(1) The treatment of section 66.0419 (3m) of the statutes first applies to costs incurred on the effective date of this subsection.

**SECTION 8. Effective date.**

(1) This act takes effect on the first day of the 3rd month beginning after publication.