

**2007 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB285)**

Received: **02/14/2008**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Jeffrey Plale (608) 266-7505**

By/Representing:

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Plale@legis.wisconsin.gov**

Carbon copy (CC:) to: **david.lovell@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

Deregulation of certain telecommunications utilities

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**Instructions:**

See Attached

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**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>
/?							
/1	mkunkel 02/18/2008	bkraft 02/18/2008	rschluet 02/18/2008	_____	sbasford 02/18/2008	sbasford 02/18/2008	
/2	mkunkel 02/18/2008	bkraft 02/19/2008	jfrantze 02/19/2008	_____	cduerst 02/19/2008	cduerst 02/19/2008	

FE Sent For:

<END>

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/?							
/1	mkunkel 02/18/2008	bkraft 02/18/2008	rschluet 02/18/2008	_____	sbasford 02/18/2008	sbasford 02/18/2008	

FE Sent For:

12 bjk 2/19 to bjr  
2/19 <END> 2/19

**2007 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB285) ✓**

Received: 02/14/2008

Received By: **mkunkel**

Wanted: **As time permits**

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By/Representing:

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

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Public Util. - telco**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Plale@legis.wisconsin.gov**

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**Topic:**

Deregulation of certain telecommunications utilities

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**Instructions:**

See Attached

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/?	mkunkel	1/16 jk 2/18					
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FE Sent For:

<END>

Substitute  
amendment

Drafting Instructions for PSC-WSTA Agreed-Upon Substitute Amendment to SB 285

The following drafting instructions are the result of a negotiated agreement on a legislative proposal that will be endorsed by the WSTA and the Chairman of the Public Service Commission of Wisconsin. The key elements of the proposal are divided into three main categories, pricing flexibility, competitive entry and miscellaneous. The specific statutory provisions (with suggested language) are provided in chronological order.

The three main themes are:

Pricing flexibility: These changes will provide additional flexibility in the way telecommunications utilities provide and price their services. Specifically, the changes will remove the application of Wis. Stat. § 196.204 and 196.52 from telecommunications utilities that provide service in “bundles” or “packages” – terms that are defined in the substitute amendment. The substitute amendment will also change the small telecommunications utility pricing statute (196.213) to reduce the requirements for price changes of bundled or packaged services.

Competitive Entry: These changes will establish a state-wide certification process for competitive telecommunications providers, including retroactive application to previously certified alternative telecommunications utilities.

Other Issues: The proposal will also make other minor changes, including a revision to the due date for annual reports.

**ISSUE #1: MISCELLANEOUS CHANGE**

**Change Annual Report Filing Deadline (suggested modification)**

This change has agreement pursuant to 2/12/08 call.

**Wis. Stat. § 196.07(1) is amended as follows:**

(1) Each public utility shall close its accounts annually on December 31 and promptly prepare a balance sheet of that date. On or before the following ~~April~~ May 1 every public utility shall file with the commission the balance sheet together with any other information the commission prescribes, verified by an officer of the public utility. The commission, for good cause shown, may extend the time for filing the balance sheet and prescribed information.



67505


**ISSUE #3: PRICING FLEXIBILITY**

**Modification to Allow Greater Flexibility in Tariffing and Contracting for Services (suggested modification)**

This change is made pursuant to the Commissions 2/8/08 proposal.

196.194(1) is amended to read:

(1) **Telecommunications utilities.** ~~Except as provided in this subsection, n~~ Nothing in this chapter prohibits the commission from approving the filing of a tariff which permits a telecommunications utility to enter into an individual contract with an individual customer, ~~if substitute telecommunications services are available to customers or potential customers of the telecommunications utility and the absence of such a tariff will cause the telecommunications utility to be disadvantaged in competing for business. A tariff filed under this subsection shall include the condition that any such contract shall be compensatory as determined under s. 196.204 (5) and (6). The tariff shall include any other condition and procedure required by the commission in the public interest. Within 20 days after a contract authorized under this subsection or an amendment to such a contract has been executed, the telecommunications utility shall submit to the commission written notice of the general nature of the contract and the parties to the contract. Upon request, the commission shall inform a person, or direct that the person be informed, that notice has been received by the commission of execution of a contract under this subsection. Within 6 months after receiving substantial evidence that a contract may be noncompensatory, or upon its own motion, the commission shall investigate and determine whether the contract is compensatory. If the commission determines that the contract is noncompensatory, the commission may make appropriate adjustments in the rates or tariffs of the telecommunications utility that has entered into the contract, in addition to other remedies under this chapter. The dollar amount of the adjustment may not be less than the amount by which the contract was found to be noncompensatory.~~



Q to PSC

**ISSUE #4: COMPETITIVE ENTRY**

**Apply Competitive Certification on a Statewide Basis (suggested modification)**

These changes are made pursuant to the Commission's 2/4/08 proposal, with modifications based on the 2/8/08 meeting and the 2/12/08 call.

**196.203(1d) of the statutes is created to read:**

196.203(1d) In this section, "local government telecommunications utility" has the meaning given in s. 196.204(5)(ag)1. ✓

**196.203(1) is renumbered and amended as follows:**

196.203(1g) 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). ✓

**196.203(2) amended by renumbering as (2)(a), inserting a new paragraph and changing the lettering:**

(a) No person may commence providing service as an alternative telecommunications utility unless the person petitions for and the commission issues a determination certification that the person is an alternative telecommunications utility. In determining whether to grant certification to a person petitioning for certification as an alternative telecommunications utility described in s. 196.01(1d)(f), the commission may consider the financial, managerial, and technical capabilities of the person, and may deny certification if the person lacks such capabilities necessary to comply with conditions of certification that are imposed by the commission pursuant to sub. (3) and that are consistent with 47 U.S.C. 253(b).

if don't meet fin, m, tech. cap or

used to certify CLECs

↓  
253(a)  
state auth

(b) Certification of a person as an alternative telecommunications utility shall be on a statewide basis, except when a petition is filed by a cable television telecommunications service provider as defined in §196.01(1d)(a), or a local government telecommunications utility.

(c) Existing certificates of alternative telecommunications utilities certified under s. 196.01(1d)(f) as of [revisor inserts date of enactment] shall be deemed amended to be statewide certifications, except those held by a cable television telecommunications service provider as defined in §196.01(1d)(a), or a local government telecommunications utility.

(d) The commission shall maintain information on authorized alternative telecommunications utilities and on applicants for alternative telecommunications utility status and make that information available to any person, upon request.

196.203(3)(d) is repealed. [*imposed s. 196.50(1)(b) as additional entry requirement when STU territory sought.*]

**ISSUE #5: PRICING FLEXIBILITY**

**Removal of limitations of Wis. Stat. § 196.204 and 196.52 (suggested modification)**

This section is modified from the 2/8/08 proposal and will need further review and final approval. This section is drafted to reflect what appears to be the intent, pursuant to the 2/8/08 proposal, to eliminate the effect of both 196.204 and 196.52 for companies providing bundles. This is consistent with the annual report modifications proposed as well.

196.204(7) is created to read: [definitions modified from proposal]

[This definition is modified to a hybrid using language from Mike Varda's 2/12/08 email]

(a)1. In this section, "bundle" means the combined retail offering of two or more services by a telecommunications utility in which at least one of the services is furnished by an affiliate of the telecommunications utility or a non-regulated service provided by a third party.

Subs (1) to (6)

?

2. In this section, "package" means a multi-service retail offering of a telecommunications utility that includes at least one regulated offering of the telecommunications utility and whose total price reflects a discount of the price for the services if they were obtained separately.

NOT neccy

(b) This section, s. 196.219(2)(a), with respect to s. 196.219(3)(g), and s. 196.219(3)(g), shall not apply to a telecommunications utility that offers services in packages or bundles. A

Deleted: nor s  
Deleted: [included to replace 196.219(1)(c) pursuant to 2/12/08 call - this needs to be confirmed for accuracy]  
Deleted:

telecommunications utility that offers service in packages or bundles shall also not be subject to s.

196.52, except as specified in s. 196.52(5)(b) and (b)(m) → NOT neccy  
[Change made pursuant to 2/12/08 email from BR to Mike Varda et al.]

Deleted: unless an affiliate interest agreement is required to investigate a complaint filed under s. 196.219, except sub. (3)(g), relating to the telecommunications utility's furnishing of a bundle or package.

(Am 196.219(2)(a) instead)

**ISSUE #6: PRICING FLEXIBILITY**

Changes to Incorporate Bundles and Packages into Small Telco Rate Change Statute (suggested modification)

Slightly modified from 2/4/08 proposal, but is fashioned to capture the intent.

196.213(1)(b) is amended as follows:

✓ accomplish same for another exempt

(b) "Rate increase" means an increase in any rate, toll or charge for any class of consumer on the schedules filed under s. 196.19. "Rate increase" does not include an increase in a rate for retail bundles or packages as defined in s. 196.204(7).

Deleted: include  
Deleted: s  
Deleted: or bundles

**ISSUE #7: PRICING FLEXIBILITY**

Remove references to 196.204 from 196.219 for companies providing bundles (suggested modification)

Included to ensure the intent of the proposal is adequately established in 196.219.

196.219(3)(g) is amended to read:



(g) Provide services, products or facilities in violation of s. 196.204. This subsection does not apply to a telecommunications utility that offers services in packages or bundles as defined in s. 196.204(7).

**ISSUE #8: MISCELLANEOUS CHANGE**  
**Move Statutory Section (suggested modification)**

This change is made pursuant to the Commission's 2/4/08 proposal.

Because much of the current Wis. Stat. § 196.50 is removed, the definition of "local exchange service" is transferred to s. 196.219(1)(c) so it reads as follows:

196.219(1)(c): "Local exchange service" includes access services, basic local exchange service, and business access line and usage service within a local calling area.

**ISSUE #9: COMPETITIVE ENTRY**  
**Eliminate Process Requirements of Wis. Stat. § 196.50 (suggested modification)**

This change is modified from the 2/4/08 proposal to incorporate changes discussed at the 2/8/08 meeting.

196.50(1)(b) is repealed in its entirety, except that sub. (1)(b)3 and (1)(c) becomes (1)(a) and (b), respectively, and the reference in present s. 196.50(1)(c) to para. (b) is stricken.

Deleted: therein

**ISSUE #10: PRICING FLEXIBILITY**  
**Changes to Ensure Proper Application of Supervisory Jurisdiction Under 196.52 (suggested modification)**

This language is created to capture the intent of the 2/8/08 proposal.

196.52(5)(b) is amended as follows:

(b)1. For telecommunications utilities, the commission shall have supervisory jurisdiction over the terms and conditions of contracts and arrangements under this section as necessary to enforce ss.

Deleted: or bundles

196.204. This section does not apply to telecommunications utilities that offer bundles or packages as defined in s. 196.204(7).

*Contract or agreement*

2. For telecommunications utilities, the commission shall have supervisory jurisdiction over the terms and conditions of contracts and arrangements under this section as necessary to enforce s.

Deleted: or bundles

196.219. This section does not apply to telecommunications utilities that offer bundles or packages as defined in s. 196.204(7), unless an affiliated interest agreement is requested by the Commission, or a

Deleted: required

party to a proceeding, in order to investigate a filed complaint that alleges a violation of s. 196.219,

Deleted: filed

except <sup>(3g)</sup> relating to the utility's furnishing of a package or bundle. **[The preceding change is**

Deleted: under

**consistent with the change proposed in a 2/12/08 email to Mike Varda et al.]**

**[This following language is a proposal based on a conversation between Brian Rybarik, Nick Linden and Chris Larson as a possible compromise position. We recognize that this suggestion needs to be reviewed further.]**

*only applies to TLU aff. contracts or agreements*

(bm) Telecommunications utilities shall retain copies of all affiliated interest contract or agreements for the effective period of those agreements, plus three years. Affiliated interest contracts or agreements shall adequately specify rates, terms and conditions for the exchange of specific services, goods, and property arising within the general subject matter categories in the definition of contract or arrangement in s. 196.52(3)(a),

Deleted: for the duration of the effectiveness of

Deleted: which shall be made available to the Commission if necessary for an investigation under subsection (b)2. above.

**[In addition to this proposal, WSTA would also make a commitment in the annual report changes that it will agree that telecommunications utilities maintain an updated list of the affiliate transactions that they are party to. This list would be made available to the Commission pursuant to a data request if needed by the Commission to perform its duties. Assuming agreement on the language in this section, WSTA's commitment can be added to the chart provided in the 2/8/08 document which will likely form the baseline for annual report discussions.]**

**ISSUE #11: MISCELLANEOUS CHANGE**

**Effective Date:**

This change is included pursuant to 2/12/08 call.

“The provisions of this Act shall become effective on the first day of the fourth month after enactment.”

## **SEC. 253. REMOVAL OF BARRIERS TO ENTRY.**

(a) **IN GENERAL.**—No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) **STATE REGULATORY AUTHORITY.**—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) **STATE AND LOCAL GOVERNMENT AUTHORITY.**—Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

(d) **PREEMPTION.**—If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

(e) **COMMERCIAL MOBILE SERVICE PROVIDERS.**—Nothing in this section shall affect the application of section 332(c)(3) to commercial mobile service providers.

(f) **RURAL MARKETS.**—It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and

(2) to a provider of commercial mobile services.

## Kunkel, Mark

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**From:** Lovell, David  
**Sent:** Thursday, February 14, 2008 10:17 AM  
**To:** Kunkel, Mark  
**Subject:** Observations on 2-13-08 drafting instructions for SB 285 sub.

Mark,

Here are some notes, questions, and observations regarding the drafting instructions we got yesterday. Some of them are just my thoughts on drafting, which you should ignore at will.

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P. 3. s. 196.203 (2)

- "alternative telecommunications utilities described in s. 196.01 (1d) (f)" is the "ATU-other" category. Is there a term that can be substituted? These are mostly CLECs, but are they **exclusively** CLECs, such that that term could be defined and used?
- "may consider" -- isn't it sufficient to say that the commission can deny certification if it finds that the applicant lacks financial, managerial, and technical capabilities? That clearly implies that it may consider those qualifications.
- "and that are consistent with 47 USC 253 (b)" -- We can't impose conditions that are not consistent with federal law, so what does this add? Or is this intended to describe the conditions that may be imposed under that section of federal law? If so, should the stakes say, instead, that the commission may impose conditions consistent with 47 USC 253(b)?
- Since this language on page 3 relates to the commission's review of an application, doesn't it belong in sub. (3)?

Considering these points, would it be appropriate to delete the language on page 3 and instead create a paragraph (am) along the following lines:

196.203 (3) (am) The commission may impose conditions on certification of an (ATU-other) that are [consistent with 47 USC 253 (b)] [competitively neutral, consistent with 47 USC 254, and necessary to preserve and advance universal service, protect public safety and welfare, ensure the continued quality telecommunications service, and safeguard the rights of consumers\*]. The commission may deny an application for certification of an (ATU-other) if it determines that the applicant does not have the financial, managerial, or technical capabilities to comply with conditions imposed by the commission under this subsection.

\* this quotes the language of 47 USC 253 (b)

This does not affect proposed paragraphs (b) and (c) (though I would combine them in a single paragraph).

P. 4., third line: delete reference to definition

P. 4, fourth line: substitute "described" for "certified"

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P. 4. Definition of "bundle"

As written, the services furnished by an affiliate could be either regulated services or nonregulated services. Is this the intent, or is it only regulated service furnished by an affiliate? If it is the latter, this could be modified to read: "at least one of the services is a regulated service furnished by an affiliate...". Also, I would insert "is" after "or", for clarity.

P. 5., top of page:

(b) "Subsections 1 to 6, s. 196.219 (3) (g), and, except as provided in s. 196.52 (5) (b) and (bm), s. 196.52 do not apply to ..." These exemptions are repeated in s. 196.219 (3) (g) and 196.52 -- in which case, do they need to be stated in this provision?

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P. 5., bottom of page:

Instead of amending the definition of "rate increase," I suggest creating a new sub. (3): This section does not apply to rates for services offer and bundles or packages, as defined in ...

P. 6., first line: substitute "paragraph" for "subsection"

P. 6, Issue # 9: just repeal 196.50 (1) (b) 1. and 2. Note that the reference to par. (b), in par. (c)., was repealed by Act 42.

P. 7., fifth line: I would make the sentence beginning on this line a separate paragraph (par. (d)) and include a clear statement that pars. (b) and (bm) **do** apply.

P. 7., sixth line: substitute "a contract or arrangement" for "an affiliate interest agreement"

P. 7., eighth line: substitute "(3) (g)" for "(3g)"

---

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

**Kunkel, Mark**

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**From:** Evenson, Gary PSC [Gary.Evenson@psc.state.wi.us]  
**Sent:** Thursday, February 14, 2008 2:18 PM  
**To:** Kunkel, Mark  
**Cc:** Varda, Mike - PSC; Linden, Nick - PSC  
**Subject:** RE: SB 285 - PSC/WSTA package drafting

In the context of 196.50(1)(b), it would be the "holder of the permit" but perhaps Mike Varda can more artfully work the words with you.

==++==++==++==++==++==++==++==++==++==++

Gary A. Evenson  
Administrator  
Telecommunications Division  
PSC of Wisconsin

---

**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Thursday, February 14, 2008 2:14 PM  
**To:** Evenson, Gary PSC  
**Subject:** RE: SB 285 - PSC/WSTA package drafting

What is an "incumbent telecommunications utility"?

---

**From:** Evenson, Gary PSC [mailto:Gary.Evenson@psc.state.wi.us]  
**Sent:** Thursday, February 14, 2008 2:12 PM  
**To:** Ruesch, Kristin; Hodgson, Amber; Kunkel, Mark; Lovell, David  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** SB 285 - PSC/WSTA package drafting

I have spoken to Brian Rybarik about this. We are interested in having this language added to the bill – perhaps as a nonstatutory provision. WSTA is not opposed.

**"The provisions of this Act shall not affect any contractual obligations relating to an incumbent telecommunications utility's exercise of a statutory right under Wis. Stat. s. 196.50(1)(b) (2005-06)."**

This relates to a settlement agreement that terminated an earlier PSC case, where an ILEC has agreed not to oppose a CLEC's entry to some rural ILEC territory, if that entry follows a schedule that the two parties agreed to. This provision is intended to keep that agreement and schedule in place.

==++==++==++==++==++==++==++==++==++==++

*Gary A. Evenson*  
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Web Site: <http://psc.wi.gov>





Wisconsin Legislative Council Staff  
608/266-1537

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**From:** Evenson, Gary PSC [mailto:Gary.Evenson@psc.state.wi.us]  
**Sent:** Thursday, February 14, 2008 3:21 PM  
**To:** Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber; Lovell, David  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

When it was an affiliate, I recall we wanted to allow either.

==+==+==+==+==+==+==+==+==+==+==+==

Gary A. Evenson  
Administrator  
Telecommunications Division  
PSC of Wisconsin

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**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Thursday, February 14, 2008 3:11 PM  
**To:** Evenson, Gary PSC; Ruesch, Kristin; Hodgson, Amber; Lovell, David  
**Cc:** Linden, Nick PSC; Varda, Michael PSC; Callisto, Eric PSC; Brian J. Rybarik  
**Subject:** Issue 5 question: definition of bundle

David Lovell spotted an issued regarding the definition of "bundle." As written, the services furnished by an affiliate could be either regulated services or nonregulated services. Is this the intent, or should it refer only regulated service furnished by an affiliate?

Let me know what you think.

**Kunkel, Mark**

**From:** Brian J. Rybarik [brybarik@wsta.info]  
**Sent:** Friday, February 15, 2008 10:17 AM  
**To:** Kunkel, Mark  
**Subject:** SB 285 Substitute Amendment

Mark:

As I discussed in my voicemail to you, I had a couple of thoughts on the provision that is intended to avoid an interference with a preexisting settlement agreement. I think this could be a non-statutory provision, which would establish a clear legislative intent to not void the prior agreement.

The first thought I had was:

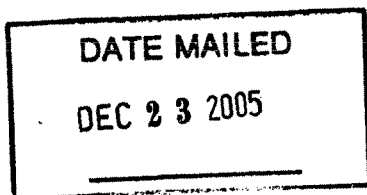
“The provisions of this Act do not affect any contractual obligations that existed prior to enactment that are inconsistent with the provisions of this Act.”

However, since it is a non-statutory provision, could it be more specific to the situation we are trying to get at? Like “The provisions of this Act do not affect any settlement agreements reached in Commission Docket 3355-NC-104”

Let me know if you have any questions.

Brian J. Rybarik  
Legal Counsel and Manager of Regulatory Affairs  
Wisconsin State Telecommunications Association  
121 E. Wilson St., Suite 102  
Madison, WI 53703  
(608) 256-8866 ext. 23

*settlement - stipulated - w.r.t  
196.50(1)(b) in  
Comm. n  
are not  
affected  
by this act*



BEFORE THE

## PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Charter Fiberlink, LLC to Expand Authorization to  
Territories Served by TDS Telecom

3355-NC-104

Request of Charter Fiberlink, LLC to Terminate the Rural Telephone  
Company Exemption of Certain Operating Companies of TDS Telecom

5-TI-1317

**ORDER****Background**

On June 10, 2005, Charter Fiberlink, LLC (Charter), filed with the Commission its application to expand its alternative telecommunications utility certification into the service territories of 16 TDS Operating Companies,<sup>1</sup> collectively represented by their management affiliate TDS Telecom (TDS). The same day Charter also filed with the Commission its request to terminate the rural telephone company exemption (RTCE), 47 U.S.C. § 251(f)(1), of seven of those TDS Operating Companies, specifically Bonduel Telephone Company; Burlington, Brighton & Wheatland Telephone Company; Dickeyville Telephone Company, LLC; The Farmers Telephone Company, LLC; Midway Telephone Company, LLC; Mt. Vernon Telephone Company, LLC; and Tenney Telephone Company, LLC. On behalf of its operating companies, TDS filed oppositions to both the certification application and above-identified request for termination of the RTCEs.

<sup>1</sup> The companies are: Badger Telecom, LLC; Black Earth Telephone Company, LLC; Bonduel Telephone Company; Burlington, Brighton & Wheatland Telephone Company; Dickeyville Telephone, LLC; EastCoast Telecom, Inc.; The Farmers Telephone Company, LLC; Grantland Telecom, Inc.; Midway Telephone Company, LLC; Mt. Vernon Telephone Company, LLC (Mt. Vernon); Riverside Telecom, LLC; Stockbridge & Sherwood Telephone Company; Tenney Telephone Company, LLC; The Scandinavia Telephone Company; UTELCO, LLC; and Waunakee Telephone Company, LLC (Waunakee).

On August 22, 2005, the Commission, pursuant to its discretion, issued a Notice of Investigation and Prehearing Conference (Notice) to “investigate all relevant legal and factual issues” and delegated to the Administrative Law Judge (ALJ) the power to “renotify the dockets as proceedings and to hold discretionary hearings, if necessary.” Notice, at 2. Charter and TDS, after the prehearing conference, engaged in extensive discovery and negotiations leading up to a scheduled hearing in early December. The parties filed direct testimony on November 11, 2005. However, prior to submitting rebuttal testimony, the parties submitted the December 1, 2005, Settlement (Appendix B) to the Commission and requested that the ALJ suspend the testimony filing and hearing schedule. By order dated December 5, 2005, the ALJ did so, and required the parties to promptly submit a motion to the Commission to approve the Settlement.

The Settlement—described by the parties as contractual and binding upon the parties—requires Charter<sup>2</sup> to amend its application in 3355-NC-104 to limit it to the service territories of Mt. Vernon and Waunakee, stagger its entry into service territories of the remaining 14 TDS Operating Companies with applications to amend its certification over the 2007 to 2010 calendar years, and withdraw its RTCE termination request. In consideration, TDS would withdraw its opposition and consent per Wis. Stat. § 196.50(1)(b)2.b. to certification of Mt. Vernon and Waunakee, waive its right to oppose the future Charter applications if they follow routine Commission certification practices, and, lastly, both TDS and Charter acknowledge that present interconnection requests of Charter do not “implicate” an interconnection duty subject to 47 U.S.C. § 251(c). In light of these agreements, the parties ask the Commission to approve the Settlement, whereupon the parties would proceed as described.

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<sup>2</sup> For purposes of the Settlement, Charter Fiberlink, LLC, is defined to include affiliates that are represented as assisting Charter Fiberlink in providing telecommunications services and facilities. See Appendix B, at 1 and 7.

The Commission reviewed a staff memorandum and the parties' motion and attachments and discussed the items at its open meeting of December 22, 2005. Attached as Appendix A is a list of the affected parties.

### **Discussion**

The Settlement terms and conditions obviate the need for the Commission to continue the investigation in the two dockets that it opened on a consolidated basis with the August 22, 2005, Notice. Ordinarily, the Commission seeks to authorize a competitive local exchange carrier (CLEC)<sup>3</sup> to all territory opened to competitors either by statute or alternative regulatory plans. That certification treatment, however, does not justify continuing a broadly-framed investigation (including a scheduled hearing) and imposing costly litigation, when the parties, in essence, no longer deem the investigation necessary at all in light of their Settlement. Administrative efficiency, therefore, reasonably warrants the Commission approving the Settlement. However, it should be noted that the Settlement represents the reconciliation of the competing needs and interests of the parties, and approval here should not be construed as the Commission's adoption or approval of any substantive term of the Settlement as a policy generally applicable to other providers or in other circumstances. The Commission will terminate the formal investigation commenced by the Notice, subject to conditions based upon the Settlement.

This order is based upon the Commission's jurisdiction and discretion in Wis. Stat. §§ 196.02(1) and (7), 196.203, 196.26, 196.28, 196.395, 196.40, 196.50(1)(b), 227.44(5), and other provisions of Wis. Stat. chs. 196 and 227 as may be pertinent hereto.

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<sup>3</sup> A CLEC is an entity that falls under the category of alternative telecommunications utility—other (Wis. Stat. § 196.01(1d)(f)).

**Order**

1. This order shall be effective upon mailing.
2. The terms of the Settlement (Appendix B) are hereby approved, as discussed above.
3. The formal investigation commenced by the Notice of Investigation and Prehearing Conference dated August 22, 2005, shall be deemed terminated upon compliance with both of the following conditions:
  - (a) Charter, consistent with the Settlement, files its request to withdraw its request to terminate the RTCEs of the seven TDS Operating Companies identified hereinabove; and
  - (b) Charter, consistent with the Settlement, amends its application in docket 3355-NC-104 to seek expanded certification only for the service territories of Mt. Vernon Telephone and Waunakee Telephone.
4. Upon satisfaction of both conditions identified in Order Paragraph 3, docket 05-TI-1317 shall be deemed closed with prejudice, and the amended application in docket 3355-NC-104 shall be referred to the Administrator of the Telecommunications Division for appropriate processing under delegated authority to approve routine CLEC certification applications.
5. The Commission retains jurisdiction.

Dated at Madison, Wisconsin, December 22, 2005

By the Commission:



Christy L. Zehner  
Secretary to the Commission

MSV:CBO:jah:g:\order\pending\3355-NC-104, 5-TI-1317 Final.doc

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98



APPENDIX A

These dockets were treated as if they were contested cases under Wis. Stat. ch. 227. Therefore, in order to comply with Wis. Stat. § 227.47, the following persons who appeared before the agency are considered parties as defined by both Wis. Stat. § 227.01(8) and Wis. Admin. Code § PSC 2.02(6), (10), and (12), for purposes of any review under Wis. Stat. § 227.53.

PUBLIC SERVICE COMMISSION OF WISCONSIN  
*(Not a party, but documents must be filed with the Commission)*

610 North Whitney Way

P.O. Box 7854

Madison, WI 53707-7854

Please file documents using the Electronic Regulatory Filing System (ERFS) which may be accessed through the PSC website: <https://psc.wi.gov>.

CHARTER FIBERLINK, LLC

John C. Dodge

K. C. Halm

Cole, Raywid & Braverman, LLP

1919 Pennsylvania Avenue, NW, Suite 200

Washington, DC 20006

TDS TELECOM COMPANIES: 3355-NC-104

BADGER TELECOM

BLACK EARTH TELEPHONE COMPANY

BONDUEL TELEPHONE COMPANY

BURLINGTON, BRIGHTON AND WHEATLAND TELEPHONE COMPANY

DICKEYVILLE TELEPHONE LLC

EASTCOAST TELECOM INC

FARMERS TELEPHONE COMPANY LLC

GRANTLNAD TELECOM INC

MT. VERNON TELEPHONE COMPANY LLC

MIDWAY TELEPHONE COMPANY

RIVERSIDE TELECOM LLC

STOCKBRIDGE AND SHERWOOD TELEPHONE COMPANY

TENNEY TELEPHONE COMPANY LLC

SCANDINAVIA TELEPHONE COMPANY

UTELCO LLC

Dockets 3355-NC-104, 5-TI-1317

WAUNAKEE TELEPHONE COMPANY LLC

AXLEY BRYNELSON, LLP  
Daniel T. Hardy  
Judd A. Genda  
PO Box 1767  
Madison, WI 53701-1767

*Courtesy Copy List:*

CHARTER COMMUNICATIONS, INC.  
Carrie L. Cox  
12405 Powerscourt Drive  
St. Louis, MO 63131

TDS TELECOM  
Grant Spellmeyer  
525 Junction Road  
Madison, WI 53717

CHARTER FIBERLINK, LLC  
John C. Dodge  
K. C. Halm  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, NW, Suite 200  
Washington, DC 20006

TDS TELECOM COMPANIES: 05-TI-1317  
BONDUEL TELEPHONE COMPANY  
BURLINGTON, BRIGHTON AND WHEATLAND TELEPHONE COMPANY  
DICKEYVILLE TELEPHONE LLC  
FARMERS TELEPHONE COMPANY LLC  
MIDWAY TELEPHONE COMPANY LLC  
MT. VERNON TELEPHONE COMPANY LLC  
TENNEY TELEPHONE COMPANY LLC

Dockets 3355-NC-104, 5-TI-1317

AXLEY BRYNELSON, LLP  
Daniel T. Hardy  
Judd A. Genda  
PO Box 1767  
Madison, WI 53701-1767

*Courtesy Copy List:*

CHARTER COMMUNICATIONS, INC.  
Carrie L. Cox  
12405 Powerscourt Drive  
St. Louis, MO 63131

TDS TELECOM  
Grant Spellmeyer  
525 Junction Road  
Madison, WI 53717

APPENDIX B

DEC 01 '05 14:58 TO-916082993743

FROM-TDS TELECOM GOVT. & REG.

T-118 P.01 F-049

---

**THIS COMPREHENSIVE SETTLEMENT AGREEMENT ("Agreement") is entered into as of December 1, 2005, by and between:**

TDS Telecommunications Corporation ("TDS"), on behalf of and with the full consent of its operating companies herein named, Badger Telecom, LLC; Black Earth Telephone Company, LLC; Bonduel Telephone Company; Burlington, Brighton and Wheaton Telephone Company; Dickeyville Telephone, LLC; EastCoast Telecom, Inc.; The Farmers Telephone Company, LLC; Grantland Telecom, Inc.; Midway Telephone Company, LLC; Mt. Vernon Telephone Company, LLC; Riverside Telecom, LLC; Stockbridge & Sherwood Telephone Company; The Scandanavia Telephone Company; Tenney Telephone Company, LLC; UTELCO, LLC; and Waunakee Telephone Company, LLC (collectively, the "TDS Operating Companies") (together TDS and the TDS Operating Companies are referred to herein as "TDS Telecom"); and

Charter Fiberlink, LLC and its Affiliates (collectively, "Charter Fiberlink");

TDS Telecom and Charter Fiberlink shall occasionally be referred to herein collectively as the "Parties," and individually as a "Party."

**RECITALS**

**WHEREAS**, Charter Fiberlink f/k/a Marcus Fiberlink, LLC, first received authorization as an alternative telecommunications utility on September 5, 1995 in Public Service Commission of Wisconsin ("Commission") Docket 3355-NC-100; and on December 18, 1998 Charter Fiberlink was certified to expand service to include private line services, access services, and dedicated inter-LAN channels in Commission Docket 3355-NC-102; and on January 12, 2001 the Commission expanded Charter Fiberlink's service territory in Commission Docket 3355-NC-103 to include the territories served by Wood County Telephone Company; and on November 23, 2005 the Commission further expanded Charter Fiberlink's service territory in Commission Docket No. 3355-NC-105 to include the "Alternative Regulatory Plan" territories of CenturyTel, Inc.

**WHEREAS**, the TDS Operating Companies are incumbent telecommunications utilities in the State of Wisconsin with 150,000 or less access lines in use in the state as contemplated by WIS. STAT. § 196.50(1)(b)2.b, and are considered to be rural telephone companies pursuant to 47 U.S.C. §§ 153(37) and 251(f)(1).

**WHEREAS**, on June 10, 2005, Charter Fiberlink filed with the Commission its "Application for Approval to Expand Authorization to Territories Served by TDS Telecom" (Commission Docket No. 3355-NC-104) (the "Application") to provide telecommunications services in the TDS Operating Companies' service territories ("TDS Territories"), including local exchange service.

APPENDIX B CONT.

DEC 01 '05 14:58 TO-916082993743

FROM-TDS TELECOM GOVT. & REG.

T-118 P.02/06 F-049

**WHEREAS**, by various filings with and public statements to the Commission TDS Telecom opposed Charter Fiberlink's Application.

**WHEREAS**, on June 10, 2005, Charter Fiberlink filed with the Commission its "Request Pursuant to 47 U.S.C. § 251(f)(1) to Terminate the Rural Telephone Company Exemption of Certain Operating Companies of TDS Telecom" (Commission Docket No. 05-TI-1317) (the "Rural Exemption Termination Request").

**WHEREAS**, by various filings with and public statements to the Commission TDS Telecom has opposed Charter Fiberlink's Rural Exemption Termination Request.

**WHEREAS**, the Parties have undertaken negotiations and reached an agreement concerning the settlement of Commission Docket Nos. 3355-NC-104 and 05-TI-1317 (the "Dockets").

**WHEREAS**, the Parties believe that such settlement complies with applicable Federal and Wisconsin law in that the public convenience and necessity will benefit from the delivery of competing telecommunications service by Charter Fiberlink in TDS Territories in a timely and efficient manner as set forth in this Agreement.

**WHEREAS**, the Parties agree that Charter Fiberlink may provide telecommunications service within the TDS Territories without the Commission terminating the TDS Operating Companies' rural telephone company exemptions under 47 U.S.C. § 251(f)(1)(B).

**WHEREAS**, Charter Fiberlink has provided to TDS Telecom a list of TDS Territories for which Charter Fiberlink has or will have operational two-way plant between 2006 and 2010 and TDS Telecom has acknowledged the same.

**WHEREAS**, the Parties desire to settle all issues before the Commission in the Dockets and to forego the expenditure of their resources in such Dockets, and instead deploy their resources in a competitive manner to benefit the telecommunications-consuming public in Wisconsin.

**TERMS OF SETTLEMENT**

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1) **Intent of Agreement.** This Agreement is intended by the Parties hereto as a full and final settlement and release of any and all issues of any type or nature in, arising out of or related to the Dockets, including without limitation, all claims, actions and causes of actions that any Party asserted or could have asserted in the Dockets.

2) **Incorporation of Recitals.** All of the foregoing factual recitals are incorporated herein by reference and made a part of this Agreement.

APPENDIX B CONT.

DEC 01 '05 14:58 TO-916082993743

FROM-TDS TELECOM GOVT. & REG.

T-118 P.03/06 F-049

3) **Terms Contractual in Nature.** The terms of this Agreement are contractual in nature and not merely recitals.

4) **Settlement Terms.**

(a) **Amend Pending Application.** Charter Fiberlink, within ten (10) days of approval by the Commission of this Agreement, shall amend its Application pending before the Commission to seek expanded authorization as an alternative telecommunications utility ("ATU-CLEC") to serve only the territories of Mt. Vernon Telephone Company, LLC and Waunakee Telephone Company, LLC ("Amended Application").

(b) **Yearly Applications.** Thereafter, and on a yearly basis, Charter Fiberlink may apply to the Commission to amend its ATU-CLEC authorization ("Yearly Applications") to serve the following TDS Territories on the following schedule:

2007 Badger Telecom, LLC  
Dickeyville Telephone, LLC

2008 Riverside Telecom, LLC  
UTELCO, LLC

2009 Midway Telephone Company, LLC  
The Farmers Telephone Company, LLC

2010 Black Earth Telephone Company, LLC  
Bonduel Telephone Company  
Burlington, Brighton and Wheaton Telephone Company  
EastCoast Telecom, Inc.  
Grantland Telecom, Inc.  
Stockbridge & Sherwood Telephone Company  
The Scandanavia Telephone Company  
Tenney Telephone Company, LLC.

(c) **Consent by the TDS Operating Companies.** With respect to Charter Fiberlink's Amended Application described in Section 4(a) herein, and for the Yearly Applications and any associated filings that may be filed by Charter Fiberlink pursuant to Section 4(b) herein, the subject TDS Operating Companies agree that they will consent to Charter Fiberlink's expanded authority and will not seek to intervene in any matter docketed by the Commission to address Charter Fiberlink's Amended Application or Yearly Applications, notwithstanding TDS Telecom's rights under WIS. STAT. § 196.50(1)(b)2.b or any other relevant law; provided, however, that said consent and agreement not to intervene shall not be deemed given and are

APPENDIX B CONT.

DEC 01 '05 14:59 TO-916082993743

FROM-TDS TELECOM GOVT. & REG.

T-118 P.04/06 F-049

specifically reserved in the event that the Amended Application and Yearly Applications request more than expanded ATU-CLEC authorization as has been requested in the Application or seek less regulation than the Commission routinely imposes on ATU-CLECs with respect to similar requests for certification and/or expanded authorization at the time such Amended Application and Yearly Applications are filed with the Commission.

- (d) Withdrawal of Rural Exemption Termination Request. Charter Fiberlink, within ten (10) days of approval by the Commission of this Agreement, shall withdraw its Rural Exemption Termination Request pending before the Commission.
- (e) Interconnection Obligations. The Parties have reached a good faith agreement that Charter Fiberlink's interconnection requests of March 3, 2005 and April 29, 2005 do not implicate the TDS Operating Companies' rural telephone company exemptions. Consequently, Charter Fiberlink agrees not to seek revocation of the TDS Operating Companies' rural telephone company exemptions in order to interconnect with the TDS Operating Companies identified herein, and the TDS Operating Companies agree not to raise their rural telephone company exemptions (with regard to the interconnection requests of March 3, 2005 and April 29, 2005) in order to avoid their interconnection obligations with Charter Fiberlink. To the extent either Party believes that future action or inaction by either Party implicates the TDS Operating Companies' rural telephone company exemptions, or there is a change in law that a Party in good faith believes implicates the TDS Operating Companies' rural telephone company exemptions with respect to then-current interconnection arrangements, the Parties agree to work in good faith and in a commercially reasonable manner to resolve any such issue informally and expressly reserve all rights in these limited circumstances under relevant law including, but not limited to, any rights under 47 U.S.C. § 251(f)(1). The Parties agree that the results of the current arbitration pending before the Commission will be binding upon all of the TDS Operating Companies to the extent that Charter Fiberlink is certified in those territories during the term of the interconnection agreement between the Parties.
- (f) Commission Approval. The terms of this Agreement are subject to approval by the Commission and the obligations of the Parties shall not be effective until such approval is granted by the Commission. The Parties agree to submit to the Commission a draft order regarding approval of this Agreement. The Parties agree to seek a stay of proceedings in the Dockets until the Commission issues an order with respect to this Agreement.

5) Advice of Counsel. The Parties hereto for themselves and their successors and assigns warrant and represent that they have had the advice of the counsel of their choosing and that

APPENDIX B CONT.

DEC 01 '05 14:59 TO-916082993743

FROM-TDS TELECOM GOVT. & REG.

T-118 P.05/06 F-049

they have been informed of and understand the rights and obligations contained within this Agreement.

6) **Authority.** Each Party hereto expressly warrants and represents that it is duly authorized and empowered to enter into this Agreement and each signatory, on behalf of himself, individually and on behalf of the Party to this Agreement on whose behalf he has signed, warrants his authority to execute this Agreement.

8) **Agreement Freely Executed.** Each Party hereto warrants and represents that it was not coerced or under duress to execute this Agreement, and executed the same of its own free will.

9) **Entire Agreement.** This Agreement, and any document or instrument executed in connection herewith, constitutes the complete agreement of the Parties with respect to the subject matters referred to herein, and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations of every nature with respect thereto, all of which have become merged and integrated into this Agreement. The Parties understand that in the event of any subsequent litigation, controversy or dispute concerning any other terms, conditions or provisions of this Agreement, neither shall be permitted to offer or introduce any oral evidence concerning any other oral promises or oral agreements between the Parties relating to the subject matters of this Agreement not included herein and not reflected by a writing. This Agreement cannot be amended, modified or supplemented except by a written document signed by the Parties. This Agreement is the product of negotiation between the Parties and therefore, the Parties waive any right to require that any ambiguity or question about the terms thereof be construed adversely against any of them.

10) **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes but all of which together shall constitute one and the same agreement.

11) **Headings.** Any headings preceding each of the paragraphs in this Agreement are for convenience only and shall not be considered in the construction or interpretation of this Agreement.

12) **Affiliates.** The term "Affiliates" as used in this Agreement shall mean any person or entity owning or holding, directly or indirectly, 50% or more of the voting rights of Charter Fiberlink, LLC, whether or not evidenced by a security, a certificate, partnership interest, or member's interest or otherwise ("Voting Rights"); any person or entity in the chain of successor ownership of 50% or more of the Voting Rights of Charter Fiberlink, LLC; every person or entity 50% or more of whose Voting Rights are owned by any person or entity owning 50% or more of the Voting Rights of Charter Fiberlink, LLC; any subsidiary of Charter Fiberlink, LLC, where "subsidiary" is defined to mean any entity whose Voting Rights are owned, directly or indirectly, 50% or more by Charter Fiberlink, LLC and further includes any person or entity which would otherwise be defined as an Affiliate under this Section; and any and all successors and assigns of Charter Fiberlink, LLC, whether by ownership of its Voting Rights or by ownership of a material



APPENDIX B CONT.

DEC 01 '05 14:59 T0-916082993743

FROM-TDS TELECOM GOVT. & REG.

T-118 P.06/06 F-049

portion of its plant and equipment used to provide telecommunications services in the TDS Territories.

12) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the respective Parties hereto and their successors and assigns.

13) **Governing Law.** This Agreement shall be construed and governed by the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year set forth opposite their name.

TDS TELECOMMUNICATIONS CORPORATION

December 1, 2005

By: *David Darwin*

Name: *David Darwin*

Its: *Spokes Vice President*

CHARTER FIBERLINK, LLC

December \_\_\_\_\_, 2005

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Kunkel, Mark**

---

**From:** Brian Rybarik [brybarik@wsta.info]  
**Sent:** Friday, February 15, 2008 1:46 PM  
**To:** Lovell, David; Evenson, Gary - PSC; Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

I think the definition of bundle is fine from this end. My question on "package" is whether the intent is to allow the company to combine two "telecommunications services" in order to fit the definition. The way I read the definition, the other services could NOT be "telecommunications services" i.e., they would have to be "other" services.

Brian J. Rybarik  
 Legal Counsel and Manager of Regulatory Affairs  
 Wisconsin State Telecommunications Association  
 121 E. Wilson St., Suite 102  
 Madison, WI 53703  
 (608) 256-8866 ext. 23

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

**From:** Lovell, David [mailto:David.Lovell@legis.wisconsin.gov]  
**Sent:** Friday, February 15, 2008 1:13 PM  
**To:** Evenson, Gary - PSC; Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

**This put the 2 definitions in parallel construction and I think captures the concepts of both:**

**"Bundle" means a retail offering by a telecommunications utility that combines one or more telecommunications services provided by the telecommunications utility with one or more services provided by an affiliate of the telecommunications utility or an unaffiliated third party.**

**"Package" means a retail offering by a telecommunications utility that combines a telecommunications service provided by the telecommunications utility with one or more other services provided by the telecommunications utility.**

---

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

---

**From:** Evenson, Gary PSC [mailto:Gary.Evenson@psc.state.wi.us]  
**Sent:** Friday, February 15, 2008 12:31 PM

**To:** Lovell, David; Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

How about:

**"the combined retail offering by a telecommunications utility of two or more services in which a telecommunications utility offering is provided in conjunction with at least one offering furnished by a telecommunications utility affiliate or an unaffiliated third party."**

==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+

Gary A. Evenson  
Administrator  
Telecommunications Division  
PSC of Wisconsin

---

**From:** Lovell, David [mailto:David.Lovell@legis.wisconsin.gov]  
**Sent:** Thursday, February 14, 2008 4:14 PM  
**To:** Evenson, Gary PSC; Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber  
**Cc:** Linden, Nick PSC; Varda, Michael PSC; Callisto, Eric PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

In that case, the definition of "bundle" could be simplified to be  
"the combined retail offering by a telecommunications utility of two or more services, at least one of which is furnished by an affiliate of the telecommunications utility or by another third party."  
Does that accomplish everyones' intent?

---

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

---

**From:** Evenson, Gary PSC [mailto:Gary.Evenson@psc.state.wi.us]  
**Sent:** Thursday, February 14, 2008 4:04 PM  
**To:** Lovell, David; Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

That is a change from what we talked about earlier, BUT Evenson, Varda and Linden think that the third-party service could be regulated or unregulated\*, but Brian Rybarik should weigh in on that.

\*Or – could have no adjective in front of 'service' in the third party provision

==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+

Gary A. Evenson  
Administrator  
Telecommunications Division  
PSC of Wisconsin

**From:** Lovell, David [mailto:David.Lovell@legis.wisconsin.gov]  
**Sent:** Thursday, February 14, 2008 3:26 PM  
**To:** Evenson, Gary PSC; Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber  
**Cc:** Linden, Nick PSC; Varda, Michael PSC; Callisto, Eric PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

but when it is a non-affiliate, you intend to include only non-regulated services (as the written document says), or can this include regulated services, too?

---

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

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**From:** Evenson, Gary PSC [mailto:Gary.Evenson@psc.state.wi.us]  
**Sent:** Thursday, February 14, 2008 3:21 PM  
**To:** Kunkel, Mark; Ruesch, Kristin; Hodgson, Amber; Lovell, David  
**Cc:** Linden, Nick - PSC; Varda, Mike - PSC; Callisto, Eric - PSC; Brian J. Rybarik  
**Subject:** RE: Issue 5 question: definition of bundle

When it was an affiliate, I recall we wanted to allow either.

==+==+==+==+==+==+==+==+==+==+==+==+==+==+==+==

Gary A. Evenson  
Administrator  
Telecommunications Division  
PSC of Wisconsin

---

**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Thursday, February 14, 2008 3:11 PM  
**To:** Evenson, Gary PSC; Ruesch, Kristin; Hodgson, Amber; Lovell, David  
**Cc:** Linden, Nick PSC; Varda, Michael PSC; Callisto, Eric PSC; Brian J. Rybarik  
**Subject:** Issue 5 question: definition of bundle

David Lovell spotted an issued regarding the definition of "bundle." As written, the services furnished by an affiliate could be either regulated services or nonregulated services. Is this the intent, or should it refer only regulated service furnished by an affiliate?

Let me know what you think.

**Kunkel, Mark**

---

**From:** Brian Rybarik [brybarik@wsta.info]  
**Sent:** Friday, February 15, 2008 1:48 PM  
**To:** Evenson, Gary - PSC; Lovell, David; Brian J. Rybarik; Kunkel, Mark; Linden, Nick - PSC; Varda, Mike - PSC  
**Cc:** Ruesch, Kristin; Hodgson, Amber; Callisto, Eric - PSC; Bill Esbeck  
**Subject:** RE: Clarifying references to CLECs

I am fine with this change. The only observation I have is that the reference to 196.219 should be to (1)(b).

Brian J. Rybarik  
Legal Counsel and Manager of Regulatory Affairs  
Wisconsin State Telecommunications Association  
121 E. Wilson St., Suite 102  
Madison, WI 53703  
(608) 256-8866 ext. 23

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

**From:** Evenson, Gary PSC [mailto:Gary.Evenson@psc.state.wi.us]  
**Sent:** Friday, February 15, 2008 1:26 PM  
**To:** Lovell, David; Brian J. Rybarik; Kunkel, Mark; Linden, Nick PSC; Varda, Michael PSC  
**Cc:** Ruesch, Kristin; Hodgson, Amber; Callisto, Eric PSC; Bill Esbeck  
**Subject:** RE: Clarifying references to CLECs

Mike has come up with an idea that may work without changing the ATU definitions. Just add a CLEC definition that thereby becomes useful in other changes being made.

196.01(2t) "Competitive local exchange carrier" means a person that is certified by the commission as an alternative telecommunications utility under s. 196.01(1d)(f) to provide telecommunications services, including the provision of local exchange service as defined in s. 196.219(1)(c). Local exchange service may be provided by a competitive local exchange carrier through either or both of the following means:

- 1. Reselling of telecommunications services.
- 2. Ownership, operation, management or control of plant and equipment to furnish telecommunications services within the state directly or indirectly to the public.

We see this is a potentially useful change, but not one that is critical to the package.

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**From:** Lovell, David [mailto:David.Lovell@legis.wisconsin.gov]

**Sent:** Friday, February 15, 2008 10:34 AM

**To:** Brian Rybarik; Evenson, Gary PSC; Kunkel, Mark; Linden, Nick PSC; Varda, Michael PSC

**Cc:** Ruesch, Kristin; Hodgson, Amber; Callisto, Eric PSC; bill.esbeck@wsta.info

**Subject:** Clarifying references to CLECs

I have talked to several of the folks receiving this message about the messiness of and lack of clarity in the reference to CLECs as "an alternative telecommunications utility described in s. 196.01 (1d) (f)". I, personally, would like to see this changed to refer to CLECs, by name (spelled out, of course), so that the uninitiated have a better chance of reading and understanding the statutes. This could be done by:

- creating a definition of CLEC by cross reference to federal law;
- creating another paragraph in the definition of "alt. telecom. utility" for CLECs (leaving 196.01 (1d) (f), the "other" category, to consist only of the truly miscellaneous types of ATU); and
- substituting CLEC in the draft for "an alternative telecommunications utility described in s. 196.01 (1d) (f)".

This might also help future drafting by giving us "CLEC" as a defined term to use.

I had assumed that this would also require changing an unknown number of other references to ATU-others in the statutes, which would be grounds for *not* making the clarifications I am suggesting. However, a quick search showed that there currently are *no* references to 196.01 (1d) (f) -- suggesting that we could make this clarification without affecting any statutes that are not the subject of this draft.

Given this, what do you all think of this suggested clarification?

David

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