

2009 DRAFTING REQUEST

Assembly Amendment (AA-AB696)

Received: 04/13/2010

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Josh Zepnick (608) 266-1707**

By/Representing: **Lloyd Clark**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - telco**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Zepnick@legis.wisconsin.gov**

Carbon copy (CC:) to: **summer.shannon-bradley@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Providers of last resort

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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/1	mkunkel 04/13/2010	nmatzke 04/13/2010	rschluet 04/13/2010	_____	sbasford 04/13/2010	sbasford 04/13/2010	

FE Sent For:

<END>

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/?	mkunkel	/1 nwn 4/13	(PN _____ _____			
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FE Sent For:

<END>

8/13/10

Kunkel, Mark

From: Kunkel, Mark
Sent: Monday, April 12, 2010 11:17 AM
To: Clark3, Lloyd
Subject: RE: =Amendment to AB 696/SB 469

I have the following questions:

Page 1, lines 7 to 8: In the definition of "basic voice service," you say that it "must provide the customer the ability to utilize a dial-up Internet access service or an equivalent service." Because you've included that language in a definition, I'm not sure of its meaning. First, it could mean that if a service does not provide the customer the ability to do what it is described, then the service is, by definition, not a "basic voice service." Second, you could be saying that anybody who provides a basic voice service must also, in providing that service to a customer, provide that customer with the ability to do what is described. If your intent is the 2nd meaning, then I wouldn't place the language within the definition, but I would create a separate substantive provision that achieves that result.

Page 1, line 14: you say notwithstanding any provision of this chapter, including s. 196.206. There is no reason to say "including s. 196.206," as it is covered by the language "any provision in this chapter." You do the same thing on page 3, line 5.

Page 2, lines 9 to 10: you refer to the granting a certain waiver by operation of law. However, you've included that language in the midst of waivers granted by the PSC. As a result I'm unclear about the intended process. Is the waiver granted only if a person applies to the PSC for the waiver? Or does the waiver apply without any application to the PSC? Page 2, lines 14 to 15 say that a waiver cannot be requested or deemed granted until May 1, 2011. Does that mean a waiver must first be requested before it can be deemed granted? What exactly is the process that you want to apply for these types of waivers?

Page 2 lines 16 to 18 don't appear to be necessary. If you command the PSC to grant a waiver if conditions are satisfied, isn't the language on page 2 lines 16 to 18 redundant?

From: Clark3, Lloyd
Sent: Monday, April 12, 2010 10:54 AM
To: Kunkel, Mark
Subject: =Amendment to AB 696/SB 469
Importance: High

Mark, can we get a tremendous RUSH on this?

Thanks,

04/12/2010

Lloyd Clark – Office of Rep. Zepnick

Kunkel, Mark

From: Clark3, Lloyd
Sent: Monday, April 12, 2010 10:54 AM
To: Kunkel, Mark
Subject: =Amendment to AB 696/SB 469
Importance: High
Attachments: COLR PSC 1.1 .DOC

Mark, can we get a tremendous RUSH on this?

Thanks,

Lloyd Clark – Office of Rep. Zepnick

1 **196.503. PROVIDER OF LAST RESORT OBLIGATIONS.** (1) In this section,
2 “incumbent local exchange carrier” means an incumbent local exchange carrier as
3 defined by 47 U.S.C. s. 251(h).

4 (2) In this section, “basic voice service” means the provision to residential and
5 small business customers of 2-way voice communication within a local calling area.

6 “Basic voice service” includes extended community calling and extended area service.

7 “Basic voice service” must provide the customer the ability to utilize a dial-up Internet
8 access service or an equivalent service. “Basic voice service” does not include the

9 offering of Internet access service or any discretionary or optional services that may be
10 provided to a residential or small business customer, but it may be offered along with
11 other services in a bundle or a package.

12 (3) In this section, “small business customer” means a business having 3 or
13 less telephone numbers assigned to it.

14 (4) Notwithstanding any other provision in this chapter, including 196.206, an
15 incumbent local exchange carrier shall make basic voice service available to all
16 residential and small business customers within a local exchange area in which it operates
17 as an incumbent local exchange carrier.

18 (5) An incumbent local exchange carrier may satisfy its obligations under sub. (4)
19 through an affiliate, and through the use of interconnected voice over Internet protocol
20 service or any available technology or mode.

21 (6) (a) An incumbent local exchange carrier may apply to the commission for a
22 waiver from compliance with sub. (4) of this section in a local exchange area. The

*move
to
substantive
provision*

delete

1 Commission shall grant such a waiver request in a local exchange area if it finds that the
2 incumbent local exchange carrier demonstrates any of the following:

3 (i) That the waiver is in the public interest.

4 (ii) That effective competition exists for basic voice service in the local
5 exchange.

6 (iii) That the commission has made a previous finding of effective competition
7 pursuant to s. 196.195 (2) for basic local exchange service in the local exchange for
8 which the waiver is requested, in which case, upon that waiver request, the incumbent
9 local exchange carrier's waiver request in that local exchange shall be deemed granted by

10 operation of law. (iii): 1 LEC must file for waiver & PSC must grant upon
11 (b) ~~Notwithstanding any other provision of this chapter, a commission~~ verifying
12 ~~decision prior to enactment of this section relieving an incumbent local exchange carrier~~ existing
13 ~~of provider of last resort obligations remains in full force and effect.~~ previous
filing

See
new
language

14 (7) A waiver from this section pursuant to sub. (6) (a)(iii) may not be
15 requested or deemed granted until May 1, 2011.

16 (8) The commission's review of a waiver request filed pursuant to sub. (6)(a)
17 shall be strictly limited to determining whether the incumbent local exchange carrier
18 meets one of the criteria set forth in sub. (6)(a).

requester
wants
to
leave as
is

19 (9) Within sixty (120) days of the filing of a waiver request pursuant to subs.
20 6(i) and (ii), the commission shall grant or deny the request and, if denied, the
21 commission shall issue a written decision identifying the reasons for its denial. If the
22 commission fails to grant or deny the waiver request within 120 days of its filing, the
23 request shall be deemed granted by operation of law.

- 2 -

1 (10) This section sunsets and shall no longer be in effect as of May 1, 2015.

2 (11) Except to enforce this section, nothing in this section provides the commission
3 with any authority to regulate, or jurisdiction over, incumbent local exchange carriers and
4 the rates, terms and conditions of their services that the commission does not have under
5 this chapter, including ss. 196.203, 196.206 or 196.50.

6

delete

otherwise

Kunkel, Mark

From: Shannon-Bradley, Summer
Sent: Monday, April 12, 2010 5:33 PM
To: Kunkel, Mark
Subject: FW: Questions from Kunkel on POLR amendment language

Summer R. Shannon-Bradley
Office of Senator Jeff Plale
(608) 266-7505
State Capitol, 313 South
P.O. Box 7882
Madison, WI 53707-7882

From: KLASEN, MICHAEL (ATTSI) [mailto:mk1715@att.com]
Sent: Monday, April 12, 2010 5:27 PM
To: Schroeder, Ryan; Shannon-Bradley, Summer
Cc: AJ Wilson; ANDERSON, KARL B (Legal); Judd A. Genda; CHORZEMPA, DAVID J (Legal); Bill Esbeck
Subject: FW: Questions from Kunkel on POLR amendment language

Per your request, below are responses to Mr. Kunkel's questions

Michael Klasen
Director - Regulatory
AT&T Wisconsin
414-270-5936 (voice)
414-283-0876 (fax)

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From: ANDERSON, KARL B (Legal)
Sent: Monday, April 12, 2010 4:55 PM
To: KLASEN, MICHAEL (ATTSI); 'Judd A. Genda'
Cc: 'Bill Esbeck'
Subject: RE: Questions from Kunkel on POLR amendment language

04/12/2010

Here's is a combined response from WSTA and AT&T to the questions from Mr. Kunkel.

- (1) We have no objection to removing the sentence regarding dial-up internet that now appears at page 1, lines 7-8, from the definition of "Basic voice service" and placing it in a separate substantive subsection.
- (2) We have no objection to removing the reference to "s. 196.206" from page 1, line 14. With reference to subsection 10, on page 3, we have no objection to removing the references to "ss. 196.203, 196.206 or 196.50", but would propose that the word "otherwise" be inserted between "does not" and "have" on line 4, so that the subsection would read as follows:

Except to enforce this section, nothing in this section provides the commission with any authority to regulate, or jurisdiction over, incumbent local exchange carriers and the rates, terms and conditions of their services that the commission does not otherwise have under this chapter.

- (3) With reference to subsection (6)(a), it is our intention that, to obtain a waiver, an ILEC would be required to request the commission to grant a waiver, even if the ILEC intends to rely on a previous finding of effective competition. With respect to a waiver request under the criteria in (6)(a)(iii), there would be no commission process or decision necessary other than verifying the existence of the previous finding of effective competition.
- (4) We would prefer not to remove subsection (8), appearing at page 2, lines 16 to 18. The intent of that section is to make it clear that in reviewing a waiver request, the commission has no authority to take action beyond a consideration of whether the waiver should be granted based on one of the criteria set forth in subsection (6)(a).

In addition, we propose the following revision to subsection (6)(b) taking into consideration a suggestion made by counsel for the commission staff:

(b) Notwithstanding any other provision of this chapter, a commission decision prior to enactment of this section eliminating an incumbent local exchange carrier's provider of last resort obligations, by operation of law or otherwise, remains in force and effect as to the elimination of those obligations.

Karl B. Anderson
General Attorney
AT&T Midwest
225 W. Randolph, Fl. 25D
Chicago, Ill. 60606
(312) 727-2928

From: AJ Wilson <aj@broydrick.com>
To: CHORZEMPA, DAVID J (Legal); JULIUS, GERALD (ATTSI)
Sent: Mon Apr 12 13:14:14 2010
Subject: Questions from Kunkel on POLR amendment language

Please see below questions from Kunkel on amendment draft...

----- Forwarded Message

From: "Clark3, Lloyd" <Lloyd.Clark3@legis.wisconsin.gov>

Date: Mon, 12 Apr 2010 12:02:05 -0500

To: <gj1583@att.com>

Cc: "Aj@broydrick.com" <aj@broydrick.com>, "Schroeder, Ryan" <Ryan.Schroeder@legis.wisconsin.gov>

Subject: FW: =Amendment to AB 696/SB 469

From: Kunkel, Mark

Sent: Monday, April 12, 2010 11:17 AM

To: Clark3, Lloyd

Subject: RE: =Amendment to AB 696/SB 469

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Page 1, line 14: you say notwithstanding any provision of this chapter, including s. 196.206. There is no reason to say "including s. 196.206," as it is covered by the language "any provision in this chapter." You do the same thing on page 3, line 5.

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Subject: =Amendment to AB 696/SB 469
Importance: High

Mark, can we get a tremendous RUSH on this?

Thanks,

Lloyd Clark – Office of Rep. Zepnick

----- End of Forwarded Message

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Kunkel, Mark

From: Clark3, Lloyd
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To: Kunkel, Mark
Cc: Schroeder, Ryan
Subject: RE: =Amendment to AB 696/SB 469

*Same as
 Comments in
 Shannon Bradley
 email*

Mark, bear with me, Rep. Zepnick and Ryan were both in Milwaukee – this is what I have received via Blackberry (again, I don't know enough about the bill to know if it makes sense).

(1) I have no objection to removing the sentence regarding dial-up internet that now appears at page 1, lines 7-8, from the definition of "Basic voice service" and placing it in a separate substantive subsection.

(2) I have no objection to removing the reference to "s. 196.206" from page 1, line 14. With reference to subsection 10, on page 3, we have no objection to removing the references to "ss. 196.203, 196.206 or 196.50", but would propose that the word "otherwise" be inserted between "does not" and "have" on line 4, so that the subsection would read as follows:

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In addition, I propose the following revision to subsection (6)(b) taking into consideration a suggestion made by counsel for the commission staff:

(b) Notwithstanding any other provision of this chapter, a commission decision prior to enactment of this section eliminating an incumbent local exchange carrier's provider of last resort obligations, by operation of law or otherwise, remains in force and effect as to the elimination of those obligations.

I really hope this makes sense and answers your questions. Ryan will be back in the morning, so you can give him a call if you need further clarification.

Have a great evening,

Lloyd Clark

Office of State Representative Josh Zepnick

9th Assembly District
608-266-1707

From: Kunkel, Mark
Sent: Monday, April 12, 2010 11:17 AM
To: Clark3, Lloyd
Subject: RE: =Amendment to AB 696/SB 469

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Importance: High

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04/13/2010

Lloyd Clark – Office of Rep. Zepnick



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa2159/1
MDK:|:....
nwn

O-NOTE

TODAY

ASSEMBLY AMENDMENT,
TO 2009 ASSEMBLY BILL 696

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 8: after "utilities," insert "telecommunications provider of last
3 resort obligations,".

4 2. Page 29, line 19: after that line insert:

5 "SECTION 88m. 196.503 of the statutes is created to read:

6 **196.503 Telecommunications provider of last resort obligations. (1)**

7 DEFINITIONS. In this section:

8 (a) "Basic voice service" means the provision to residential and small business
9 customers of 2-way voice communication within a local calling area. "Basic voice
10 service" includes extended community calling and extended area service. "Basic
11 voice service" does not include the offering of Internet access service or any
12 discretionary or optional services that may be provided to a residential or small
13 business customer.

1 (b) "Incumbent local exchange carrier" has the meaning given in 47 USC 251

2 (h).

3 (c) "Small business customer" means a business having 3 or ~~less~~ ^{fewer} telephone
4 numbers assigned to it.

5 (2) INCUMBENT LOCAL EXCHANGE CARRIER OBLIGATIONS. (a) Notwithstanding any
6 other provision in this chapter, and except as provided in sub. (4), an incumbent local
7 exchange carrier shall make basic voice service available to all residential and small
8 business customers within a local exchange area in which ~~the~~ it operates as an
9 incumbent local exchange carrier. In making basic voice service available to a
10 customer under this paragraph, an incumbent local exchange carrier shall provide
11 the customer the ability to utilize a dial-up Internet access service or an equivalent
12 service and an incumbent local exchange carrier may, but is not required to, offer
13 Internet access service or any discretionary or optional services in a bundle or a
14 package.

15 (b) An incumbent local exchange carrier may satisfy its obligations under par.
16 (a) through an affiliate and through the use of interconnected voice over Internet
17 protocol service or any available technology or mode.

18 (3) WAIVERS. (a) An incumbent local exchange carrier may apply to the
19 commission for a waiver from compliance with sub. (2) (a) in a local exchange area.

20 (b) The commission shall grant a waiver requested under par. (a) for a local
21 exchange area if any of the following are satisfied:

22 1. The commission finds that the incumbent local exchange carrier
23 demonstrates that the waiver is in the public interest or that effective competition
24 exists for basic voice service in the local exchange.

under

1 2. The commission has made a previous finding of effective competition
2 pursuant to s. 196.195 (2) for basic local exchange service in the local exchange. The
3 commission may not grant a waiver under this subdivision until after May 1, 2011.

4 (c) The commission's review of a waiver requested under par. (a) shall be
5 strictly limited to determining whether any of the criteria specified in par. (b) 1. or
6 2. is satisfied.

7 (d) 1. Within 120 days of the filing of a waiver request based on par. (b) 1., the
8 commission shall grant or deny the request and, if denied, the commission shall issue
9 a written decision identifying the reasons for its denial. If the commission fails to
10 grant or deny the waiver request within 120 days of its filing, the commission is
11 considered to have granted the waiver.

12 2. The commission shall grant a waiver based on par. (b) 2. as soon as the
13 commission verifies that the commission has previously made the finding specified
14 in par. (b) 2.

15 (4) EFFECT ON OTHER REQUIREMENTS. (a) Notwithstanding any other provision
16 of this chapter, a commission decision prior to the effective date of this paragraph
17 [LRB inserts date], eliminating an incumbent local exchange carrier's provider of
18 last resort obligations, by operation of law or otherwise, remains in force and effect
19 as to the elimination of those obligations.

20 (b) Except to enforce this section, nothing in this section provides the
21 commission with any authority to regulate, or jurisdiction over, incumbent local
22 exchange carriers and the rates, terms, and conditions of their services that the
23 commission does not otherwise have under this chapter.

24 (5) SUNSET. This section does not apply after April 30, 2015."

25

(END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2159/1dn

MDK:j:...

nwn

Date

Rep. Zepnick:

Please note the following about this amendment, which is based on the proposal you provided: ✓

1. I made some changes to the organization of the proposal. ✓
2. The 2nd sentence of s. 196.503 (2) (a) includes language that was included in the proposal's definition of "basic voice service." ✓
3. Subsection (9) of the proposal refers to both a 60-day and 120-day deadline. ✓ I assume that the reference to 60 days is a typo. ✓ I incorporated sub. (9) of the proposal into s. 196.503 (3) (d) 1. ✓ Please review proposed s. 196.503 (3) (d) 1. ✓ and let me know if you want any changes to the deadline. ✓ Also note that the language regarding granting of waivers when the PSC misses a deadline is based on similar language under current law in s. 196.491 (3) (g). ✓
4. Because you want a deadline for PSC waivers under s. 196.503 (3) (b) 1., ✓ I think it is advisable to impose a timing requirement on PSC waivers under s. 196.503 (3) (b) 2. ✓ Therefore, I created s. 196.503 (3) (d) 2., ✓ which requires the PSC to grant a waiver as soon as it verifies that it previously made the required finding. ✓ Is that okay? ✓

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

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

LRBa2159/1dn
MDK:nwn:rs

April 13, 2010

Rep. Zepnick:

Please note the following about this amendment, which is based on the proposal you provided:

1. I made some changes to the organization of the proposal.
2. The 2nd sentence of s. 196.503 (2) (a) includes language that was included in the proposal's definition of "basic voice service."
3. Subsection (9) of the proposal refers to both a 60-day and 120-day deadline. I assume that the reference to 60 days is a typo. I incorporated sub. (9) of the proposal into s. 196.503 (3) (d) 1. Please review proposed s. 196.503 (3) (d) 1. and let me know if you want any changes to the deadline. Also note that the language regarding granting of waivers when the PSC misses a deadline is based on similar language under current law in s. 196.491 (3) (g).
4. Because you want a deadline for PSC waivers under s. 196.503 (3) (b) 1., I think it is advisable to impose a timing requirement on PSC waivers under s. 196.503 (3) (b) 2. Therefore, I created s. 196.503 (3) (d) 2., which requires the PSC to grant a waiver as soon as it verifies that it previously made the required finding. Is that okay?

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