State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

☞ Appendix A ... segment III

LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2011 LRB–1625 (For: Rep. Honadel)

has been transfered to the drafting file for

2011 LRB–1901 (For: Rep. Honadel)

☞ Are These "Companion Bills" ?? ... No

RESEARCH APPENDIX -

PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 04/12/2011 (Per: MDK)

☞ The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0660/P1dn
MDK:kjf:md

December 23, 2010

LRB-1625 is based on LRB-0660/P1. Therefore, D-NOTE is relevant to drafting FYI for LRB-1625.

Rep. Huebsch:

The draft is identical to the engrossed version of 2009 AB 696, except for the changes itemized in the list below, which are based on the documents you provided. I will prepare a version of the draft that can be introduced after the issues noted below are resolved.

1. Section 196.04 is amended. Please note the following:

a. The documents you provided include "attachment" in the definition of "transmission equipment and property." However, in s. 196.04 (2), the documents refer to a charge for the attachment of any transmission equipment and property. The result is to refer to a charge for the attachment of an attachment. I'm not sure what your intent is, so I left "attachment" out of the definition of "transmission equipment and property." Please give me more information on your intent with respect to this issue.

b. In the definition of "transmission equipment and property," I referred to a right-of-way owned or controlled by a political subdivision, rather than to a "municipality right of way." My language is similar to 47 USC 224 (a) (4), which refers to a right-of-way owned or controlled by a utility. Did I get your intent right, or did you mean to refer to a private entity's right-of-way over municipal property? Also note that I refer to a public utility owned or operated by any county, city, village, or town, rather than to a municipal utility.

c. Under our drafting practice, we don't define "municipality" to include a county. Instead, we use the term "political subdivision" to refer to a city, village, town, or county. Therefore, I created a definition for a political subdivision.

d. The documents would amend s. 196.04 (1) (b) 1. to refer to any person, including a municipality. However, it is not necessary to specify that person includes a municipality, as s. 990.01 (26) defines "person" to include "all partnerships, associations and ***bodies politic*** or corporate." (Emphasis added.) Therefore, I did not make the requested amendment.

e. Please review the last sentence of s. 196.04 (2). I'm having trouble understanding your intent on this issue. Can you explain to me how you want federal law to apply here? I'm confused because you appear to want 47 USC 224 (d) to apply

regardless of whether a service is classified as cable or telecommunications service, but 47 USC 224 (d) itself distinguishes between cable and telecommunications service. See 47 USC 224 (d) (3), which provides that 47 USC 224 (d) applies to telecommunications service until the effective date of the FCC's regulations for telecommunications service under 47 USC 224 (e), which was February 8, 2001. Is it your intent to apply 47 USC 224 (d) to both cable and telecommunications service, and to ignore the FCC's regulations under 47 USC 224 (e)? On a related point, how do you want to address the requirements under 47 USC 224 (e) (2) and (3) for apportioning costs among multiple parties who make attachments? Should the PSC apply or ignore 47 USC 224 (e) (2) and (3)?

f. What do you want to do, if anything, about s. 182.017 (1r) and (8), which allow cities, villages, and towns to regulate uses of rights–of–way by certain entities, including public utilities and video service providers, subject to review by the PSC? In particular, s. 182.017 (8) contains rules for the PSC to determine whether payments required by cities, villages, and towns are reasonable. What is your intent on how s. 182.017 (8) should interact with the last sentence of s. 196.04 (2)?

2. Instead of creating the switched access rate material in a repealed and recreated s. 196.196, I created s. 196.212 for that material. The reason is that the new material has a different subject than the material in s. 196.196, and repealing and recreating s. 196.196 for a different subject would create a confusing drafting history. Note that I made cross–references to s. 196.212 (instead of s. 196.196) in s. 196.191 (5) (b), 196.203 (1g), 196.219 (2r), 196.50 (2) (i), and 196.50 (2) (j) 1. b.

3. Regarding new s. 196.212, please note the following:

a. I added titles to the subsections and made some grammatical and other stylistic changes.

b. The documents include a new definition of "switched access service" for purposes of s. 196.212. However, that term is used throughout the draft in other statutory sections without a definition. For the sake of clarity, do you want your new definition to apply throughout ch. 196, and not just in s. 196.212?

c. I have not yet described s. 196.212 in the analysis because I am not sure how it relates to the requirements that apply to switched access service in the rest of draft. For example, the PSC is allowed to impose a duty to provide switched access service at reasonable and just rates on the following: alternative telecommunications utilities and telecommunications utilities with less than 150,000 access lines. With respect to a telecommunications utility with 150,000 or more access lines, the draft requires that the telecommunications utility's intrastate access rates must not exceed interstate access rates. How do the new requirements for intrastate switched access service interact with the foregoing?

d. As requested, incumbent local exchange carrier (ILEC) has the meaning given in 47 USC 251 (h). However, note that 47 USC 251 (h) (1) defines ILEC and 47 USC 251 (h) (2) allows the FCC to treat, for purposes of 47 USC 251, a local exchange carrier as an ILEC if certain conditions are satisfied. You may want to clarify

whether, for purposes of s. 196.212, the term "ILEC" includes the entities defined in 47 USC 215 (h) (1), as well as those entities the FCC treats as ILECs under 47 USC 251 (h) (2).

e. I referred to telecommunications providers, rather than telecommunications providers, telecommunications utilities, and alternative telecommunications utilities, because the term "telecommunications providers" encompasses both telecommunications utilities and alternative telecommunications utilities.

f. I'm confused about s. 196.212 (3), which concerns applicability. Under s. 196.212 (3) (a) and (b), it appears that the only telecommunications providers to whom s. 196.212 does ***not*** apply are ILECs who, with affiliates, have less than 150,000 access lines. If that is your intent, why not directly state that? If I'm wrong about your intent, please advise.

g. The definition of "switched access rates" also creates problems about applicability. The term is defined as something that a local exchange carrier charges. However, s. 196.212 (2) imposes reductions on the intrastate switched access rates of a telecommunications provider. If, under the definition, only a local exchange carrier can charge switched access rates, how can you impose a reduction duty on a telecommunications provider that may not be a local exchange carrier?

h. I rephrased s. 196.212 (2) (intro.) so that it is in the active voice, and requires a telecommunications provider to reduce its intrastate access rates.

i. Section s. 196.212 (2) (b) includes a July 1, 2011, deadline. What is your intent if the bill passes after that deadline? Do you want to rephrase the deadline to July 1, 2011, or the bill's effective date, whichever is later? The same issue applies to the deadline in s. 196.212 (2) (c).

j. In s. 196.212 (2) (b), (c), and (d), I eliminated the references to a "then current" rate, because I thought "then" is ambiguous. For example, "then" might be interpreted as referring to the deadline date, rather than the date on which a reduction occurs. Please review my changes.

k. Shouldn't s. 196.212 (2) (d) impose a duty that begins on July 1, 2013, rather than one that must be achieved no later than July 1, 2013? As drafted, there is no duty to maintain the reduction after July 1, 2013.

L. Section s. 196.212 (2) (d) requires that intrastate switched access rates "mirror" interstate switched access rates. I don't think "mirror" has a precise meaning. Can you say instead that the rates must be equivalent, substantially equivalent, or something else?

m. I eliminated the reference to "rate structure" in s. 196.212 (2) (d), because "rate structure" is included in the definition of "switched access rates." As a result, the reference is redundant.

4. Section 196.219 (3) (c) and (e) and (3m) are removed from the list of statutes the PSC may impose on an alternative telecommunications utility under s. 196.203 (4m) (a).

5. Section 196.206 (3) refers to intrastate ***switched*** access rates, instead of intrastate access rates.

6. The definition of "essential telecommunications services" in s. 196.218 (1) (a) is revised. However, I made a more specific reference to 47 CFR 54.101 (a), instead of 47 CFR 54.101. Also note that our drafting style refers to 47 CFR 54.101, rather than to 47 CFR s. 54.101. In addition, see s. 196.01 (3a), which refers to 47 CFR 9.3, rather than to 47 CFR s. 9.3.

7. The first sentence of s. 196.218 (4) refers to a telecommunications provider that is designated, rather than to a telecommunications provider that provides basic local exchange service or that is designated.

8. Section 196.219 (2r) is revised to create an additional exception for an ordered reduction that is inconsistent with the requirements of s. 196.212.

9. The second and third sentences of s. 196.50 (2) (i) are revised to refer to 150,000 or more access lines ***as of the effective date of the draft***. Although the documents you provided did not do so, for the sake of consistency, I also revised the first sentence to refer to 50,000 or fewer access lines ***as of the effective date of the draft*** and to more than 50,000 and fewer than 150,000 access lines ***as of the effective date of the draft***. I made similar revisions to s. 196.50 (2) (j) 1. b. Are my revisions okay? Also, the draft amends s. 196.198 (2), but does ***not*** make a similar change to the reference to more than 150,000 access lines. Is that okay? In addition, I made a grammatical correction to refer to "fewer" lines, rather than to "less" lines.

10. Section 196.503 (1) (a), (2) (a) and (b), (3) (b) 2., (d) 2., and (5) are revised as shown in the documents you provided, except that I changed the third sentence of s. 196.503 (1) (a). I did so because the documents used the word "may" in a definition, which could be interpreted as permissive, rather than descriptive. Therefore, I changed the sentence to eliminate the word "may." Please review my changes and let me know what you think. Also note that proposed s. 196.503 (3) (b) 2. refers to June 1, 2012, ***or the effective date of the draft, whichever is later***. Finally, under both s. 196.503 (3) (d) 1. and 2., if the PSC fails to grant a waiver request by the relevant deadline, I specified that that waiver request is considered granted by operation of law. You requested such language for s. 196.503 (3) (d) 2., so I made s. 196.503 (3) (d) 1. consistent with that language. Also, I used "considered granted," rather than "deemed granted," as "considered granted" is consistent with our current drafting style.

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