



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## ☞ Appendix A ... segment VI

### LRB BILL HISTORY RESEARCH APPENDIX

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

has been transferred 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.

UNITED STATES CODE SERVICE  
Copyright © 2011 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group (TM)  
All rights reserved.

\*\*\* CURRENT THROUGH PL 111-383, APPROVED 1/7/2011 \*\*\*

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  
CHAPTER 5. WIRE OR RADIO COMMUNICATION  
COMMON CARRIERS  
COMMON CARRIER REGULATION

47 USCS § 214

§ 214. Extension of lines or discontinuance of service; certificate of public convenience and necessity

....

(e) Provision of universal service.

(1) Eligible telecommunications carriers. A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 [47 USCS § 254] and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS § 254(c)], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and  
(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers. A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) Designation of eligible telecommunications carriers for unserved areas. If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) [47 USCS § 254(c)] to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be

designated as an eligible telecommunications carrier for that community or portion thereof.

(4) Relinquishment of universal service. A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) "Service area" defined. The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) [47 USCS § 410(c)], establish a different definition of service area for such company.

(6) Common carriers not subject to State commission jurisdiction. In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

#### **History:**

(June 19, 1934, ch 652, Title II, § 214, 48 Stat. 1075; March 6, 1943, ch 10, §§ 2-5, 57 Stat. 11; Nov. 30, 1974, P.L. 93-506, § 1, 88 Stat. 1577; Dec. 19, 1989, P.L. 101-239, Title IV, Subtitle A, § 3002(d), 103 Stat. 2131; Oct. 25, 1994, P.L. 103-414, Title III, § 304(a)(4), 108 Stat. 4296; Feb. 8, 1996, P.L. 104-104, Title I, Subtitle A, § 102(a), 110 Stat. 80; Dec. 1, 1997, P.L. 105-125, 111 Stat. 2540.)

UNITED STATES CODE SERVICE  
Copyright © 2011 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group (TM)  
All rights reserved.

\*\*\* CURRENT THROUGH PL 111-383, APPROVED 1/7/2011 \*\*\*

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  
CHAPTER 5. WIRE OR RADIO COMMUNICATION  
COMMON CARRIERS  
DEVELOPMENT OF COMPETITIVE MARKETS

47 USCS § 254

§ 254. Universal service

....

(f) State authority. A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

47 CFR 54.201

LEXISNEXIS' CODE OF FEDERAL REGULATIONS  
Copyright (c) 2011, by Matthew Bender & Company, a member  
of the LexisNexis Group. All rights reserved.

\*\*\* THIS SECTION IS CURRENT THROUGH THE MARCH 10, 2011 \*\*\*  
\*\*\* ISSUE OF THE FEDERAL REGISTER \*\*\*

TITLE 47 -- TELECOMMUNICATION  
CHAPTER I -- FEDERAL COMMUNICATIONS COMMISSION  
SUBCHAPTER B -- COMMON CARRIER SERVICES  
PART 54 -- UNIVERSAL SERVICE  
SUBPART C -- CARRIERS ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT

**[Go to the CFR Archive Directory](#)**

47 CFR 54.201

§ 54.201 Definition of eligible telecommunications carriers, generally.

(a) Carriers eligible to receive support. (1) Beginning January 1, 1998, only eligible telecommunications carriers designated under paragraphs (b) through (d) of this section shall receive universal service support distributed pursuant to part 36 and part 69 of this chapter, and subparts D and E of this part.

(2) [Reserved]

(3) This paragraph does not apply to offset or reimbursement support distributed pursuant to subpart G of this part.

(4) This paragraph does not apply to support distributed pursuant to subpart F of this part.

(b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term "facilities" under this subpart.

(g) A state commission shall not require a common carrier, in order to satisfy the requirements of paragraph (d)(1) of this section, to use facilities that are located within the relevant service area, as long as the carrier uses facilities to provide the services designated for support pursuant to subpart B of this part within the service area.

(h) A state commission shall designate a common carrier that meets the requirements of this section as an eligible telecommunications carrier irrespective of the technology used by such carrier.

(i) A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

**HISTORY:**

[62 FR 32862, 32950, June 17, 1997; 63 FR 2094, 2125, Jan. 13, 1998; 64 FR 62120, 62123, Nov. 16, 1999; 71 FR 65743, 65750, Nov. 9, 2006]

**AUTHORITY:**

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

47 U.S.C. 151, 154(i), 201, 205, 214, and 254.

**Kunkel, Mark**

**From:** CHORZEMPA, DAVID J (Legal) [dc1928@att.com]  
**Sent:** Tuesday, March 15, 2011 2:06 PM  
**To:** Kunkel, Mark  
**Subject:** RE: My draft language for s. 196.218 (4) (b)  
**Attachments:** Westlaw\_Document\_13\_59\_20.doc

*56 page order: not included in  
 drafting file  
 see 20 FCCR 6371*

Attached is the FCC's ETC order. You'll see that the FCC views – and has made clear – that states exercising authority under 47 USC 214(e) itself have discretion to impose on those ETCs state-specific eligibility requirements and state-specific public interest requirements. Thus, I still believe the correct reference is to section 214(e) not 254, as follows:

(b) Notwithstanding par. (a), if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214 (e) (2) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission pursuant to 47 USC 214(e) that are in addition to the requirements imposed pursuant to 47 USC 214 (e) (2).

Yes, the PSC's 160 rules include provisions re: USF that go beyond 214(e) obligations. Some of the PSC 160 rules are promulgated pursuant to the the PSC's authority under 196.218(4) --- which is preserved in 47 USC 254(f). However, what we're talking about here is the PSC's authority to designate ETCs under 214(e) – that's it.

DJC

---

**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Tuesday, March 15, 2011 1:51 PM  
**To:** CHORZEMPA, DAVID J (Legal)  
**Subject:** My draft language for s. 196.218 (4) (b)

Section 76. 196.218 (4) of the statutes is repealed and recreated to read:

196.218 (4) Essential telecommunications services. (a) Each telecommunications provider that is designated as an eligible telecommunications carrier pursuant to 47 USC 214 (e) (2) shall make available to its customers all essential telecommunications services. A telecommunications provider may satisfy this subsection by providing essential telecommunications services itself or through an affiliate and in either case may provide essential telecommunications services through the use of any available technology or mode.

(b) Notwithstanding par. (a), if a commercial mobile radio service provider is designated or seeks designation as an eligible telecommunications carrier pursuant to 47 USC 214 (e) (2) for the purpose of federal universal service funding and not for the purpose of state universal service funding, the commercial mobile radio service provider is not subject to any eligible telecommunications carrier requirements imposed by the commission pursuant to 47 USC 254 (f) that are in addition to the requirements imposed pursuant to 47 USC 214 (e) (2).



1 of 36 DOCUMENTS

Application of Wausau Cellular Telephone Company Limited Partnership; Wisconsin RSA #4 Limited Partnership; Wisconsin RSA # 10 Limited Partnership; Brown County MSA Cellular Limited Partnership; and Nsighttel Wireless, LLC, to Extend their Eligible Telecommunications Carrier Designations and Petition for Redefinition of Rural Telephone Company Service Area  
 Application of Wisconsin RSA # 10 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin

5-TI-2052; 8201-TI-101

PUBLIC SERVICE COMMISSION OF WISCONSIN

*2011 Wisc. PUC LEXIS 52*

January 28, 2011, Mailed

**PANEL:** [\*1]

THE COMMISSION

**OPINION: DECISION**

This is a Decision in these dockets to address the designation of Wisconsin RSA # 10 Limited Partnership (RSA # 10) as an eligible telecommunications carrier (ETC), pursuant to *47 U.S.C. § 214(e)(2)* and *Wis. Admin. Code § PSC 160.13* for the entire Cellcom service area. Designation as an ETC makes a provider eligible to receive universal service fund (USF) monies.

**Introduction**

RSA # 10 was initially designated as an ETC for its own service territory in docket number 8201-TI-101. On September 1, 2010, RSA # 10, along with four other companies n1 who are jointly operated and do business under the name "Cellcom," filed an application to expand the area for each provider to include the collective Cellcom service territory. The Commission issued a Notice of Investigation and Request for Comments on October 7, 2010. No comments were filed. The Commission discussed this matter at its December 16, 2010, open meeting. A list of parties to the docket is shown in Appendix A.

n1 The five Cellcom companies are Wausau Cellular Telephone Company Limited Partnership, Wisconsin RSA # 4 Limited Partnership, Wisconsin RSA # 10 Limited Partnership, Brown County MSA Cellular Limited Partnership, and Nsighttel Wireless, LLC (collectively Cellcom companies).

[\*2]

**Findings of Fact**

1. RSA # 10 is a wireless carrier serving a portion of Northeastern Wisconsin.
2. RSA # 10 has committed to providing service to all requesting customers, and to advertising the availability of its service, throughout the entire Cellcom service territory, as required under *47 U.S.C. § 214(e)* and *Wis. Admin. Code § PSC 160.13*.



3. RSA # 10 has committed to providing service which meets the requirements set forth in *Wis. Admin. Code § PSC 160.13*, including the essential service definition set forth in *Wis. Admin. Code § PSC 160.03*, with the exception of the requirement that an ETC provide a pay phone in each municipality, as set forth in *Wis. Admin. Code § PSC 160.13(1)(d)*, and the requirement for TTY-readable intercepts throughout the combined service area, as required in *Wis. Admin. Code § PSC 160.03(2)(a)14*. RSA # 10 has indicated that it is working to find a method to comply with [\*3] the TTY requirement that will work across all of the Cellcom networks in the combined service area. RSA # 10 has requested a waiver of the payphone requirement, and requested additional time to comply with the intercept requirement.

4. It is reasonable and in the public interest to grant ETC status to RSA # 10 in the areas indicated in its application.

5. It is reasonable to adopt a requirement concerning pay phones other than the one set forth in *Wis. Admin. Code § PSC 160.13(1)(d)*. It is reasonable to require RSA # 10 to work with other providers in the area to ensure that there is at least one pay phone in each municipality that it serves.

6. It is reasonable to allow RSA # 10 a reasonable amount of additional time to meet the requirement for TTY-readable intercept announcements throughout the combined service area, set forth in *Wis. Admin. Code § PSC 160.03(2)(a)14*. It is reasonable to require RSA # 10 to provide periodic updates on its progress in meeting that requirement.

#### Conclusions of Law

1. The Commission has jurisdiction and authority under *Wis. Stat. §§ 196.02* [\*4], *196.218* and *196.395*; *Wis. Admin. Code ch. PSC 160*; *47 U.S.C. §§ 214* and *254*; and other pertinent provisions of the Telecommunications Act of 1996 to make the above Findings of Fact and to issue this Decision.

2. The Commission has the authority to adopt different ETC requirements under *Wis. Admin. Code § PSC 160.01(2)(b)*.

#### Opinion

ETC status was created by the Federal Communications Commission (FCC), and codified in *47 U.S.C. § 214(e)(2)*. Under FCC rules, state commissions are allowed to designate providers as ETCs. (*47 U.S.C. § 214(e)(2)*, *47 C.F.R. § 54.201(b)*) Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from some, but not all, state universal service programs.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. (*47 U.S.C. § 214* [\*5] (e)(1), *47 C.F.R. § 54.101(a)*) The 1996 Telecommunications Act states that: "States may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." (*47 U.S.C. § 254(f)*) A court upheld the states' right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, *183 F.3d 393*, *418 (5th Cir. 1999)*.

In 2000, the Commission promulgated rules covering ETC designations and requirements in Wisconsin. (*Wis. Admin. Code § PSC 160.13*) Those rules govern the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission.

In its previous application for ETC designation, in docket 8201-TI-101, RSA # 10 requested that the Commission not apply the provisions of *Wis. Admin. Code ch. PSC 160* to it, but instead apply only the ETC requirements codified in the federal rules, (*47 U.S.C. § 214(e)(1)*, *47 C.F.R. § 54.101(a)*), and that it [\*6] not be eligible for state universal service funding. The Commission chose to apply the federal rules, and not the state rules, under authority of *Wis. Admin. Code § PSC 160.01(2)(b)*.

RSA # 10 is no longer requesting such a modification. RSA # 10 seeks designation as an ETC under both state and federal law, and if so designated will be eligible for both state and federal USF funding. All provisions of both state and federal ETC rules will apply to RSA # 10, with the exceptions described below.

The Commission finds that RSA # 10 meets the requirements for ETC designation throughout the combined Cellcom service area. RSA # 10 is already certified as a competitive local exchange carrier and is serving as an ETC in a portion of the combined Cellcom service area. RSA # 10 has agreed to meet all of the state and federal requirements for ETC designation with the exception of the pay phone and TTY-readable intercept requirements that are discussed below.

RSA # 10 has requested that the requirement that an ETC provide a pay phone in each municipality, as set forth in *Wis. Admin. Code § PSC 160.13(1)(d)* [\*7], not be applied to it. The Commission is authorized under *Wis. Admin. Code §§ PSC 160.01(2)* and *PSC 165.01(3)* to adopt different requirements for individual providers in unusual or exceptional circumstances, as the Commission did in docket 7184-TI-102, in which Midwestern Telecommunications, Inc. (MTI), was designated as an ETC. In that docket, MTI noted that the Commission had a pending rulemaking, docket 1-AC-198, which proposed substantial revisions to that requirement. n2 MTI noted that it would be burdensome to meet the existing requirements and that any pay phones it provided would be redundant; therefore, MTI requested that the Commission not apply that requirement. MTI stated its willingness to meet the requirement proposed in docket 1-AC-198. The Commission determined, in that docket, that pendency of the rule change and the redundancy of any pay phones MTI would provide created an unusual circumstance. It was therefore reasonable for the Commission to forgo applying the pay phone provision to MTI and to instead adopt a different requirement. MTI was required to work with the [\*8] other providers in its service area to jointly ensure that pay phones are available. It is reasonable to apply the same alternative requirement to RSA # 10.

n2 While that docket has since been closed, the same changes will be proposed in a new rulemaking docket.

In its application, the Cellcom companies noted that they are investigating methods of providing TTY-readable intercept messages over their networks throughout the combined Cellcom territories. The Cellcom companies have found promising technology, but are still determining whether that technology is fully compatible. It is reasonable to allow the companies a reasonable and limited period of time to find and install that technology. However, it is also reasonable to require RSA # 10 to report on progress periodically, until it meets the requirement. Such reports shall be made quarterly, by letter to the Administrator of the Telecommunications Division.

The FCC has determined that an applicant should be designated as an ETC only where such designation serves [\*9] the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural provider. n3 The Commission finds that it is in the public interest to designate RSA # 10 as an ETC in the areas for which RSA # 10 requests such designation. The Commission is guided by the factors set forth in *Wis. Stat. § 196.03(6)* when making a public interest determination. The Commission finds that although there are other ETCs in the areas at issue, designating RSA # 10 as an ETC will nonetheless increase competition in those areas and consequently, will increase consumer choice. Further, designation of another ETC may spur infrastructure deployment by other providers and encourage further efficiencies and productivity gains. Additional infrastructure deployment, additional consumer choices, increased local calling areas and the effects of competition will benefit consumers and improve the quality of life for affected citizens of Wisconsin.

n3 *In the Matter of Federal-State Joint Board on Universal Service, 20 F.C.C.R. 6371, 6373, P 3 (2005).*

[\*10]

In making its public interest determination, the Commission also considers whether cream-skimming is occurring. Since RSA # 10 has requested ETC status in all areas in which Cellcom is licensed to operate, the Commission finds no evidence of cream-skimming in this docket.

The Cellcom service area includes a portion, but only a portion, of the territory previously served by Verizon North Incorporated, and now served by Frontier North, Inc. Federal ETC requirements do not allow companies to serve only a portion of an incumbent's service territory, unless the territory is redefined by the FCC. The FCC had previously made such a finding with respect to Verizon North. It is reasonable to condition this order on the Cellcom companies making such a request with regard to Frontier North, unless the FCC determines that such a request is unnecessary.

#### Order

1. RSA # 10 is granted ETC status in the wire centers served by the Cellcom companies - Wausau Cellular Telephone Company Limited Partnership, Wisconsin RSA # 4 Limited Partnership, Wisconsin RSA # 10 Limited Partnership, Brown County MSA Cellular Limited Partnership, and Nsighttel Wireless, LLC, jointly.

2. RSA # 10 is an ETC within [\*11] the meaning of 47 U.S.C. § 214(c), and is eligible to receive federal USF funding pursuant to 47 U.S.C. § 254(2). This order constitutes the Commission's certification to that effect.

3. RSA # 10 is an ETC within the meaning of 47 U.S.C. § 214(c), and is eligible to receive state USF funding consistent with Wis. Admin. Code ch. PSC 160.

4. RSA # 10 does not have to meet the requirement under *Wis. Admin. Code § PSC 165.088* that it provide a pay phone in each incorporated municipality, but RSA # 10 is instead required to meet the requirement that it work with other providers in its service territory to jointly ensure that pay phones are available.

5. For a reasonable and limited period of time, while it is investigating methods of doing so, RSA # 10 does not have to meet the requirement under Wis. Admin. Code § PSC 165.03(2)(a)14. that it provide a TTY-readable intercepts throughout the combined Cellcom service area. RSA # 10 is instead required to report on its progress in doing so to the Administrator of the Telecommunications [\*12] Division, by March 1, 2011, and quarterly thereafter, until the necessary technology is in place.

6. Jurisdiction is maintained.

7. This Decision is effective the day after mailing.

Dated at Madison, Wisconsin, January 28, 2011

By the Commission

#### APPENDIX A

This docket proceeding is not a contested case under *Wis. Stat. ch. 227*, therefore there are no parties as defined in *Wis. Stat. § 227.01(8)*, to be listed or certified under *Wis. Stat. § 227.47*. However, the persons listed below are defined by *Wis. Admin. Code § PSC 2.02(7)*, (10), and (12) as parties in the docket and participated therein.

Public Service Commission of Wisconsin  
(Not a party but must be served)  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

CELLCOM CARRIERS  
Ray Riordan, Attorney for Cellcom Carriers  
1250 Femrite Drive, Suite 105  
Monona, WI 54176

WISCONSIN RSA # 10 LIMITED PARTNERSHIP  
Ronald Van Nuland  
P.O. Box 19079  
Green Bay, WI 54307-9079

#### Legal Topics:

For related research and practice materials, see the following legal topics:  
Communications LawFederal ActsGeneral OverviewCommunications LawTelephone ServicesPayphone ServicesCommunications LawU.S. Federal Communications CommissionAuthority

UNITED STATES CODE SERVICE  
Copyright © 2011 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group (TM)  
All rights reserved.

\*\*\* CURRENT THROUGH PL 111-383, APPROVED 1/7/2011 \*\*\*

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS  
CHAPTER 5. WIRE OR RADIO COMMUNICATION  
GENERAL PROVISIONS

§ 153. Definitions

*used to  
be 47 USC  
26*

47 USCS § 153

For the purposes of this Act, unless the context otherwise requires--

(20) Exchange access. The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

(32) Local exchange carrier. The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) [47 USCS § 332(c)], except to the extent that the Commission finds that such service should be included in the definition of such term.

(54) Telephone exchange service. The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

**History:**

(June 19, 1934, ch. 652, Title I, § 3, 48 Stat. 1065; May 20, 1937, ch. 229, § 2, 50 Stat. 189; July 16, 1952, ch. 879, § 2, 66 Stat. 711; April 27, 1954, ch. 175, §§ 2, 3, 68 Stat. 64; Aug. 13, 1954, ch. 729, § 3, 68 Stat. 707; Aug. 13, 1954, ch. 735, § 1, 68 Stat. 729; Aug. 6, 1956, ch. 973, § 3, 70 Stat. 1049; Aug. 13, 1965, P.L. 89-121, § 1, 79 Stat. 511; May 3, 1968, P.L. 90-299, § 2, 82 Stat. 112; Sept. 13, 1982, P.L. 97-259, Title I, § 120(b), 96 Stat. 1097; Aug. 10, 1993, P.L. 103-66, Title VI, § 6002(b)(2)(B)(ii), 107 Stat. 396; Feb. 8, 1996, P.L. 104-104, § 3(a)-(c), 110 Stat. 58; Aug. 5, 1997, P.L. 105-33, Title III, § 3001(b), 111 Stat. 258.)  
(As amended Oct. 8, 2010, P.L. 111-260, Title I, § 101, 124 Stat. 2752.)

47 USCS § 251

§ 251. Interconnection

(h) "Incumbent local exchange carrier" defined.

(1) Definition. For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that--

(A) on the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], provided telephone exchange service in such area; and

(B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents. The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if--

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

**History:**

(June 19, 1934, ch 652, Title II, Part II, § 251, as added Feb. 8, 1996, P.L. 104-104, Title I, Subtitle A, § 101(a), 110 Stat. 61; Oct. 26, 1999, P.L. 106-81, § 3(a), 113 Stat. 1287.)

kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

(As amended Oct. 8, 2010, P. L. 111-260, Title I, § 101, 124 Stat. 2752.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Amendments:

2010. Act Oct. 8, 2010, added paras. (53)-(59), relating to advance communications services, consumer generated media, disability, electronic messaging service, interconnected VoIP service, non-interconnected VoIP service, and interoperable video conferencing service.

Such Act further redesignated paras. (1)-(12) as paras. (2)-(13), respectively, paras. (13)-(15) as paras. (15)-(17), respectively, paras. (16)-(20) as paras. (20)-(24), respectively, para. (21) as para. (26), paras. (22)-(29) as paras. (28)-(33), respectively, (30)-(52) as (37)-(59), para. (53) as para. (1), para. (54) as para. (14), paras. (55) and (56) as para. (18) and (19), respectively, para. (57) as para. (25), para. (58) as para. (56), and para. (59) as para. (27).

##### Other provisions:

**Limitation on liability.** Act Oct. 8, 2010, P. L. 111-260, § 2, 124 Stat. 2751, provides:

“(a) In general. Except as provided in subsection (b), no person shall be liable for a violation of the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) [for full classification, consult USCS Tables volumes] with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services to the extent such person—

“(1) transmits, routes, or stores in intermediate or transient storage the communications made available through the provision of advanced communications services by a third party; or

“(2) provides an information location tool, such as a directory, index, reference, pointer, menu, guide, user interface, or hypertext link, through which an end user obtains access to such video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.

“(b) Exception. The limitation on liability under subsection (a) shall not apply to any person who relies on third party applications, services, software, hardware, or equipment to comply with the requirements of this Act (or of the provisions of the Communications Act of 1934 that are amended or added by this Act) [for full classification, consult USCS Tables volumes] with respect to video programming, online content, applications, services, advanced communications services, or equipment used to provide or access advanced communications services.”

**Proprietary technology.** Act Oct. 8, 2010, P. L. 111-260, § 3, 124 Stat. 2752, provides: “No action taken by the Federal Communications Commission to implement this Act or any amendment made by this Act [for full classification, consult USCS Tables volumes] shall mandate the use or incorporation of proprietary technology.”

**Title II of Twenty-First Century Communications and Video Accessibility Act of 2010; definitions.** Act Oct. 8, 2010, P. L. 111-260, Title II, § 206, 124 Stat. 2776, provides:

“In this title [for full classification, consult USCS Tables volumes]:

“(1) Advisory committee. The term ‘Advisory Committee’ means the advisory committee established in section 201 [47 USCS § 613 note].

“(2) Chairman. The term ‘Chairman’ means the Chairman of the Federal Communications Commission.

“(3) Commission. The term ‘Commission’ means the Federal Communications Commission.

“(4) Emergency information. The term ‘emergency information’ has the meaning given such term in section 79.2 of title 47, Code of Federal Regulations.

“(5) Internet protocol. The term ‘Internet protocol’ includes Transmission Control Protocol and a successor protocol or technology to Internet protocol.

“(6) Navigation device. The term ‘navigation device’ has the meaning given such term in section 76.1200 of title 47, Code of Federal Regulations.

“(7) Video description. The term ‘video description’ has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).

“(8) Video programming. The term ‘video programming’ has the meaning given such term in section 713 of the Communications Act of 1934 (47 U.S.C. 613).”

#### RESEARCH GUIDE

##### Federal Procedure:

1 Administrative Law (Matthew Bender), ch 5, Officers and Employees § 5.02.

##### Forms:

15A Fed Procedural Forms L Ed, Telecommunications (2010) §§ 62:343, 351, 395.

##### Corporate and Business Law:

9 Kintner, Federal Antitrust Law (Matthew Bender), ch 67, Exemptions for Communications Companies § 67.6.

##### Annotations:

Validity, Construction, and Application of State Taxes on Revenues and Income from Communications Satellite Services. 51 ALR6th 257.

#### INTERPRETIVE NOTES AND DECISIONS

##### 12. Telecommunications carrier

Because corporation did not have to make publicly available its contract and rates in order to be deemed telecommunications carrier under Telecommunications Act of 1996, corporation self-certified that it was common carrier, corporation was making public its intent to act as common carrier, and corporation had entered into public interconnection agreements, Iowa Utilities Board’s ruling that corporation was telecommunications carrier under 47 USCS § 153(44), (46) affirmed. Iowa Telecom Servs. v Iowa Utils. Bd. 2009, CA8 Iowa) 563 F3d 743.

Purchaser of services from telecommunications carrier was not entitled to motion to dismiss carrier’s claim for declaratory judgment under 28 USCS § 2201 that purchaser was not telecommunications carrier under 47 USCS § 153 as represented because minimal at early stage was unwarranted even if claim might be redundant to other claims. Southwest-

ern Bell Tel. Co. v Fitch (2009, SD Tex) 643 F Supp 2d 902.

##### 13. Telecommunications service

Under 28 USCS § 1447(c), local telephone company was unsuccessful in its attempt to remand its suit against long-distance telecommunications providers to state court after it had been removed because whether or not local company could collect intrastate access charges under state tariff on phone calls that comprised first leg of international calls was issue that arose under federal law, specifically, 47 USCS § 153(17), (22), which defined “foreign communication” and “interstate communication,” respectively, as international calls subject to jurisdiction of Federal Communications Commission. McClure Tel. Co. v AT&T Commun. of Ohio, Inc. (2009, ND Ohio) 650 F Supp 2d 699.

#### 154. Federal Communications Commission

##### RESEARCH GUIDE

##### Federal Procedure:

1 Administrative Law (Matthew Bender), ch 4, Organization and Functions of Federal Administrative Agencies § 4.04.  
1 Administrative Law (Matthew Bender), ch 5, Officers and Employees § 5.02.  
3 Administrative Law (Matthew Bender), ch 14, Rulemaking Versus Adjudication § 14.01.  
4 Administrative Law (Matthew Bender), ch 22, Admissibility of Evidence § 22.03.  
4 Administrative Law (Matthew Bender), ch 23, Discovery and Production of Evidence §§ 23.01, 23.02.  
5 Administrative Law (Matthew Bender), ch 41, Licenses § 41.07.

##### Forms:

15A Fed Procedural Forms L Ed, Telecommunications (2010) § 62:392.

**Kunkel, Mark**

---

**From:** Kunkel, Mark  
**Sent:** Wednesday, March 16, 2011 3:27 PM  
**To:** Kunkel, Mark  
**Subject:** 11-1625 drafting file note

LRB-1625/P1 omits the following statutes from the list in s. 196.203 (4m) (a): 196.219 (3) (c) and (e) and (3m). Those statutes are included in the engrossed version of 2009 AB 696.

The list in s. 196.50 (2) (i) is the same in LRB-1625/P1 and engrossed 2009 AB 696.

**Kunkel, Mark**

---

**From:** Vick, Jason  
**Sent:** Friday, March 18, 2011 11:16 AM  
**To:** Kunkel, Mark  
**Subject:** RE: LRB-1625 (Telcom modernization)

It would be fine to e-mail a copy to Dave when it is completed.

**Jason Vick**

Office of Rep. Mark Honadel  
21st Assembly District  
**608-266-0611**

---

**From:** Kunkel, Mark  
**Sent:** Friday, March 18, 2011 11:13 AM  
**To:** Vick, Jason  
**Subject:** RE: LRB-1625 (Telcom modernization)

Do you want me to set it up so that a copy is automatically emailed to Dave Chorzempa when it's done Monday am, or do you want to retain control over that?

---

**From:** Vick, Jason  
**Sent:** Friday, March 18, 2011 11:11 AM  
**To:** Kunkel, Mark  
**Subject:** RE: LRB-1625 (Telcom modernization)

Sounds good. Thank you!

**Jason Vick**

Office of Rep. Mark Honadel  
21st Assembly District  
**608-266-0611**

---

**From:** Kunkel, Mark  
**Sent:** Friday, March 18, 2011 11:10 AM  
**To:** Vick, Jason  
**Subject:** RE: LRB-1625 (Telcom modernization)

Is Monday morning okay? I'm putting together the analysis and it will take a little bit of time to finish and edit, so it might be difficult to get it done yet today.

---

**From:** Vick, Jason  
**Sent:** Friday, March 18, 2011 11:05 AM  
**To:** Kunkel, Mark  
**Subject:** RE: LRB-1625 (Telcom modernization)

Mark,



We have reviewed the draft 1625/P1. The draft includes a number of notes with suggested revisions, all of which are fine. In addition, the one note asks whether the words "seek to" can be stricken from 196.212(4)(b). That is fine, so it should say: "...if a small incumbent local exchange carrier does not increase its switched access rates ...". Otherwise, please prepare the bill for introduction consistent with the revisions suggested in your notes.

As you finalize the draft for introduction, when could we expect to receive a finalized draft?

Thanks,

**Jason Vick**

Office of Rep. Mark Honadel

21st Assembly District

**608-266-0611**

---

**From:** Kunkel, Mark

**Sent:** Tuesday, March 15, 2011 3:34 PM

**To:** 'CHORZEMPA, DAVID J (Legal)'

**Cc:** Vick, Jason

**Subject:** LRB-1625 (Telcom modernization)

David:

The new draft (LRB-1625) will be finished and sent to Rep. Honadel by Thursday am. It will be a preliminary draft without an analysis, but I will be working on the analysis while you review the new draft. After I get your comments on the new draft, I will incorporate them, as well as the analysis, into a version of the draft that can be introduced.

-- Mark

**2011 DRAFTING REQUEST**

**Bill**

Received: 03/09/2011

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Mark Honadel (608) 266-0610**

By/Representing: **Jason Vick**

May Contact:

Drafter: **mkunkel**

Subject: **Public Util. - telco**

Addl. Drafters:

Extra Copies: **TKK**

Submit via email: **YES**

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

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Regulation of telecommunication utilities and alternative telecommunication utilities

---

**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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

1/2	mkunkel						
-----	---------	--	--	--	--	--	--

*PLW/LJ  
3/16*

*[Signature]  
3/11*

*[Signature]  
3/11*

*[Signature]*  
<END>

FE Sent For: