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CLEARINGHOUSE RULE 95-062

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The commission should consider repealing and recreating ch. PSC 168. Because the new material placed in ch. PSC 168 by Clearinghouse Rule 95-062 is extensive and because the rule also involves substantial reorganization of the chapter, it would be much simpler to repeal and recreate the entire chapter rather than amending, renumbering and amending, and creating new sections. In addition, there are a great variety of drafting errors in Clearinghouse Rule 95-062 which would be eliminated if the chapter were repealed and recreated. These drafting errors are explained in this report.

b. In all of the treatment clauses of the rule, a period should replace the colon and “SECTION” should replace “Section.”

c. It is not necessary to amend the table of contents to ch. PSC 168. This will be changed by the Revisor of Statutes to reflect changes made by the rule.

d. Section PSC 168.01 (2) essentially undermines the purpose of promulgating ch. PSC 168. The commission should establish standards under which variances to ch. PSC 168 will be permitted for specific telecommunications resellers.

e. In s. PSC 168.01 (2), the reference to “these rules” should be replaced with “this chapter.” [See s. 1.07 (1), Manual.]

f. Because s. PSC 168.01 (2) is created by Clearinghouse Rule 95-062, s. PSC 168.01 (intro.) should be renumbered sub. (1).

g. Section PSC 168.01 (2) is created by Clearinghouse Rule 95-062, and therefore should not be underscored. In addition, a separate treatment section should state that s. PSC 168.01 (2) is being created. [See s. 1.04 (2), Manual.] Because this comment is also applicable to many other provisions of Clearinghouse Rule 95-062, the entire rule should be reviewed to eliminate this problem.

In addition, in several provisions of the rule, there is stricken material in the midst of newly created underscored material. For example, see “~~therein~~” in s. PSC 168.01 (2). Since this is all new material, why are stricken words shown? Also see s. PSC 108.10 (1) (d).

h. In s. PSC 168.02, separate treatment SECTIONS should be used to renumber and amend sub. (1) and to create a new sub. (1). Section PSC 168.02 (3) through (6) can be combined in a separate SECTION and subs. (8) and (9) can be combined in a separate SECTION but the renumbering and amending of sub. (2) must have its own SECTION. [Again, see s. 1.04, Manual.] However, also note that the terms defined in s. PSC 168.02 are not in alphabetical order.

i. Sections PSC 168.05 and 168.06 should be reorganized. The material in s. PSC 168.06 (1) pertains to initial certification of resellers as alternative telecommunications utilities and therefore more properly belongs in s. PSC 168.05. Section PSC 168.06 should be limited to renewal of the certification of resellers as alternative telecommunications utilities.

j. SECTION 4 of Clearinghouse Rule 95-062 should renumber and amend present s. PSC 168.03. When a rule section is renumbered, the present rule number, as opposed to the proposed new number, determines the sequence of treatment in the draft. [See s. 1.04 (2) (c), Manual.] Because this comment is also applicable to other SECTIONS of Clearinghouse Rule 95-062, the entire rule should be reviewed to eliminate the problem and place the sections in proper order.

k. It is suggested that the parentheses in ss. PSC 168.04 (1) (d) and 168.05 (1) (a) be replaced with commas. [See s. 1.01 (6), Manual.]

l. In s. PSC 168.05 (1), pars. (b) through (e) are repealed and should be treated in a separate SECTION of the rule. In addition, because these paragraphs are repealed they should not be stricken through or appear in the rule. This comment is also applicable to s. PSC 168.05 (1) (g) and (h). Also, renumbered s. PSC 168.05 (1) (b) should be treated in a separate SECTION of the rule and should be renumbered. [See s. 1.04, Manual.]

m. The treatment clauses in SECTIONS 7 and 8 of Clearinghouse Rule 95-062 are drafted improperly. The phrase “the title and language” should be deleted from both treatment clauses of the rule. [See the examples in s. 1.04 (2), Manual.]

n. Section PSC 168.08 (2) is drafted improperly. When material is deleted and material is added in the same location, the underscored material always immediately follows the stricken material. [See s. 1.06, Manual.] The entire rule should be checked for instances of this error.

o. In s. PSC 168.04 (2), “The” should replace “Such” and in s. PSC 168.09 (1) to (5), “The” or “the” should replace “Said” or “said.”

p. Much of the material in s. PSC 168.10 (1) (intro.) is explanatory in nature. If the commission feels it is necessary to explain why it is necessary for resellers to file annual reports, the explanation should be placed in a note following the subsection of the rule. [See s. 1.09, Manual.]

q. SECTION 12 of Clearinghouse Rule 95-062 is drafted improperly. The stricken-through material should not appear in SECTION 12.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. PSC 168.04 (2), the reference to “par. (1) (d)” should be replaced by a reference to “sub. (1) (d).” [See s. 1.07 (2), Manual.] In addition, in this rule subsection, the phrase “foregoing limit” should be replaced with the phrase “limit in sub. (1) (d).” [See s. 1.07 (1), Manual.]

b. In s. PSC 168.08 (1), “Stats.” should be inserted after the listing of statutory citations.

c. In s. PSC 168.10 (2), the commission should provide a specific citation to the commission’s confidentiality procedures.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second sentence of s. PSC 168.01, it is suggested that the phrase “classified as telecommunications resellers” be substituted for the phrase “included by the commission in the telecommunications resellers classification.”

b. Section PSC 168.02 (4) would be more clear if it were drafted in a manner similar to the following: “‘Control’ of transmission facilities includes leasing transmission facilities.”

c. In s. PSC 168.02 (5), it is suggested that the phrase “for purposes of definition” be deleted. Because the subsection creates a definition, it is not necessary to say that the defined term includes a telecommunications utility for purposes of definition.

d. In s. PSC 168.03 (1) (a), it is suggested that the phrase “toll services that are similar to MTS” be substituted for the phrase “MTS-like toll services.” This comment is also applicable to s. PSC 168.03 (1) (b) and (c).

e. It is suggested that the material in s. PSC 168.03 (2) and (3) be combined in a single subsection drafted in a manner similar to the following: “A reseller may petition the commission for approval to resell services not listed in sub. (1). If the commission determines that the petition is consistent with the purposes of this chapter, the commission may adopt an order approving the services for resale.”

f. In s. PSC 168.04 (1) (a), it is suggested that the word “May” be placed preceding the word “resell.”

g. In s. PSC 168.04 (1) (d), the term “for conveyance purposes” should be deleted because the purpose of transmission facilities is for the conveyance of telecommunications mes-

sages. In addition, the phrase “i.e.” should be replaced with the word “including” and the word “bases” should be replaced with the word “basis.” The phrase “do not” should be replaced with the phrase “does not.” Are “capital leases” defined by generally accepted accounting principles? The second sentence of s. PSC 168.04 (1) (d) is confusing. If no annual reports are to be required by the commission, how are the requirements of par. (d) to be substantiated? If the commission does intend to require annual reports, the paragraph should state this.

h. Because s. PSC 168.04 relates to services which may be performed by resellers, the statement that a telecommunications utility is not a reseller unless it sets its own rates for the services it provides does not properly belong in s. PSC 168.04. This appears to be more definitional than substantive.

i. In s. PSC 168.05 (1) (c), the commission should attempt to be more specific concerning what corporate relationships constitute a “holding company system.”

j. In s. PSC 168.05 (3), the word “the” should be placed after the word “without.” Also, words such as “must” and “will” should not be used in rules. [See s. 1.01 (2), Manual.] Either “may” or “shall” should replace them.

k. In the last sentence of s. PSC 168.06 (1), it is suggested that the phrase “if satisfied” be replaced with a phrase similar to: “if the commission determines that the petitioner meets the requirements to be certified as an alternative telecommunications utility reseller.”

l. The first sentence of s. PSC 168.06 (2) is confusing. First, the sentence should distinguish between certificates issued under ch. PSC 168 prior to the effective date of Clearinghouse Rule 95-062 and those certificates issued under new ch. PSC 168. Are certificates issued prior to the effective date of the rule valid for one year following publication of Clearinghouse Rule 95-062 without an April 1 renewal requirement? For certificates issued after publication of Clearinghouse Rule 95-062, are these certificates also valid for one year without renewal? If so, what is the status of certificates during the period between the date that the one year expires and the next April 1 renewal date? Section PSC 168.06 (2) should be redrafted to be more clear concerning certification requirements. Also, “publication of these rules” should be replaced by “effective date of this subsection [revisor inserts date].” This permits the Revisor of Statutes to insert the actual date. [See s. 1.01 (9) (b), Manual.]

m. In s. PSC 168.09 (2), it appears that the word “petitioners” should be replaced with “providers.”

n. In s. PSC 168.10 (1) (b), the commission should be more specific about what constitutes “changes affecting a controlling interest over the management or policies of the reseller.”

o. In s. PSC 168.10 (1) (d), it is suggested that the phrase “bases exceed” be replaced with “basis exceeds.”