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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-131

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.]

1. Statutory Authority

There does not appear to be statutory authority for s. PSC 172.03 (2) and for portions of s. PSC 172.06 (2) (a) since they affect cellular mobile radio telecommunications utilities. Under s. 196.202 (2), Stats., a cellular mobile radio telecommunication utility is not subject to ch. 184 or 196, Stats., except for the provisions of s. 196.218 (3), Stats., which relates to contributions to a universal service fund. Section PSC 172.03 (2) appears to require that a cellular mobile radio telecommunications utility comply with s. 196.203, Stats. Section PSC 172.06 (2) (a) subjects mobile radio telecommunications providers, which includes a cellular mobile radio telecommunications utility, to ss. 196.14, 196.25 (3), 196.28, 196.39, 196.395, 196.40, 196.41, 196.43, 196.44, 196.65 and 196.66, Stats. [These statutory provisions do not appear to include language similar to the phrase “Notwithstanding any exemptions identified in this chapter” that is found in s. 196.209 (1), Stats.] The commission should attempt to explain the statutory authority for ss. PSC 172.03 (2) and 172.06 (2) (a).

2. Form, Style and Placement in Administrative Code

a. The repeal and recreation of ch. PSC 172 should be designated as SECTION 1 of the rule. [See s. 1.04, Manual.] In addition, the phrase “in its entirety” in the treatment language repealing and recreating ch. PSC 172 should be deleted.

b. In s. PSC 172.01 (2), because the first sentence does not grammatically lead into the following divisions, this introductory material should be renumbered as par. (a). The remaining

paragraphs should be renumbered accordingly. [See also ss. PSC 172.04 (1) (intro.) and (b) and 172.06 (1).]

c. In s. PSC 172.04 (2) (a), the phrase “shall be deemed” should be replaced by the word “is.” In par. (b), the word “must” should be replaced by the word “shall.” Finally, in par. (c), the phrase “within 60 days of the effective date of these rules” should be replaced by the phrase “within 60 days of the effective date of this chapter [revisor inserts date].” The final change suggested in this comment directs the Revisor of Statutes to place the actual effective date of ch. PSC 172 in the text of the rule.

d. In s. PSC 172.06 (2) (b), the phrase “including sub. (5) thereof” is redundant and should be deleted.

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

Section PSC 172.06 (1) provides that mobile radio telecommunications providers are subject to the universal service and funding requirements in s. 196.218, Stats., and in “the rules promulgated pursuant to that statute.” The commission should provide a specific citation to the administrative rules promulgated under s. 196.218, Stats.

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

a. In s. PSC 172.03 (3) (d) 2., the word “too” should be replaced with the word “to.”

b. Section PSC 172.04 (1) should be redrafted to make it clear that the receipt of a determination of status or certification of authorization is a condition of providing mobile radio telecommunications services in Wisconsin. In addition, in s. PSC 172.04 (1) (a), the phrase “shall be determined to be” should be replaced with the word “is.”

c. Section PSC 172.06 (2) (b) should be redrafted to be more clear as to how the cited statutory requirements apply to the commission’s administration and enforcement of ss. 196.202 and 196.218 (3), Stats., and, therefore, to what extent they must be complied with by cellular mobile radio telecommunications utilities.