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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-019

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. The commission should review, and as appropriate, correct the following deficiencies or inconsistencies in the placement of provisions in the rule:

- (1) The treatment clause in SECTION 38 should reference s. PSC 160.071 (1) (title) rather than s. PSC 160.071 (title).
- (2) The text of s. PSC 160.09 (4) (intro.) should not be included in SECTION 52 as this introduction is not amended by the rule. Similarly, the text of s. PSC 160.11 (1) (intro.) is not needed in SECTION 65.
- (3) The treatment of s. PSC 160.11 (3m) should follow the treatment of s. PSC 160.11 (3) (a) to (d) rather than precede it.
- (4) The treatment clause in SECTION 65 should indicate that s. PSC 160.11 (3) (intro.) rather than s. PSC 160.11 (3) is amended in that SECTION.

b. The commission should review the entire rule and, as appropriate, correct the following deficiencies in drafting style or form:

- (1) The treatment clause in SECTION 11 should end with the phrase “is amended to read:”.

- (2) The treatment clause in SECTION 30 should end with the phrase “amended to read:”.
- (3) The preferred format to instruct the Revisor of Statutes to insert a date within the text of a rule is: “the effective date of this (section, subsection, paragraph, subdivision) [revisor inserts date].” This style was not followed in s. PSC 160.063 (4).
- (4) The treatment clauses in SECTIONS 41 and 43 should use the verb “are created” rather than “shall be created.”
- (5) Mandatory duties should be noted in rules by use of the word “shall”; an optional provision or discretionary authority should be noted through the use of “may.” Prohibitions should be stated as “no person may . . .” or “a person may not” In addition, “should,” “could,” “would,” “will” or “must” should not be used to express a mandatory or permissive action. [See s. 1.01 (2), Manual.] This drafting style was not followed in numerous provisions in the treatment of ss. PSC 160.125 (2), 160.13 and 160.155. See, for example, s. PSC 160.125 (2) (d) (intro.) and 160.13 (5).
 - c. In s. PSC 160.01 (2) (a), “shall be deemed imposed on” should be replaced by the phrase “apply to.”
 - d. In s. PSC 160.071 (1) (f), the phrase “Applications filed by” should be underscored.
 - e. In s. PSC 160.071 (3), the last sentence should be contained in a note.
 - f. In s. PSC 160.073 (3), the word “following” should be inserted after the phrase “All of the”; the phrase “in pars. (a) and (b)” should be deleted; and the introduction should conclude with a colon.
 - g. In s. PSC 160.09 (2), the word “if” following the phrase “except that” should be underscored.
 - h. In s. PSC 160.13 (1) (intro.), the phrase “shall be deemed” should be replaced by the word “is.” Also, in sub. (6), the introduction should be renumbered as par. (a) and the remaining paragraphs should be renumbered accordingly.

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

- a. The commission should review the following general references and make the reference to the applicable subunit or subunits within the unit being cited:
 - (1) Section 196.218, Stats., in the list of statutes authorizing rule-making in the analysis accompanying the rule.
 - (2) Section 196.203, Stats., in s. PSC 160.01 (2) (a).

(3) Section PSC 160.14 in s. PSC 160.13 (6) (b).

b. The commission should review the following vague references and, as appropriate, clarify them:

(1) The “federal communications commission end user common line charge” in s. PSC 160.09 (3) (b).

(2) The “federal high cost support fund” in s. PSC 160.091 (4) and the “federal high cost program” in s. PSC 160.13 (1) (intro.).

(3) “Applicable state programs” in s. PSC 160.13 (1) (intro.).

c. The reference in s. PSC 160.02 (4) (a) to the definition of “private schools” in s. 115.001 (3) (r), Stats., is incorrect; it should be to s. 115.001 (3r), Stats.

d. In s. PSC 160.071 (1) (L), the phrase “under par. (b)” should be inserted after the phrase “each category” in the first sentence. Similarly, in sub. (1) (m), the phrase “under par. (L)” should be inserted following the phrase “equipment lists.”

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

a. The commission should review the following undefined terms and phrases to determine if a definition of them should be provided in the rule to improve the clarity of the rule:

(1) “Telecommunications access” in s. PSC 160.03 (2) (a) 10.

(2) “Essential network access service” in s. PSC 160.061 (1).

(3) “Location provider” in s. PSC 160.073 (3) (b) 1. and 6.

(4) “Audiographic services” in s. PSC 160.11 (1) (a).

(5) “Wire center” in s. PSC 160.13 (2) (a).

(6) “Intralata presubscription” in s. PSC 160.14 (2) (d).

(7) “Rural area” and “urban area” in s. PSC 160.155 (1).

b. The rule contains a number of provisions that are not clear. The commission should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

(1) Since “public library systems” have library-type functions and other functions, the phrase “public libraries, including public library systems” in s. PSC 160.02 (4) (b) is potentially confusing, as this phrase implies that public library systems

are a subset of public libraries. To remove this potential ambiguity, “and” could be substituted for “including.”

- (2) Under s. PSC 160.031 (3), a local exchange service provider that initiates data transmission services after the effective date of sub. (3), such as a new competitive local exchange company, does not have a deadline for notifying the commission if it is unable to meet the data transmission capability requirement in s. PSC 160.03 (1). If the commission intends to have a deadline for this notification for new local exchange service providers, then it should specify the deadline in sub. (3).
- (3) The circumstances under which the commission will approve other programs under s. PSC 160.05 (1) (L) are vague. Can the commission specify criteria that it will use in addition to the program being instituted on an emergency basis?
- (4) The use of the phrase “quality of service rules” in s. PSC 160.091 (1) is ambiguous. If the commission is using “rules” to mean administrative rules, then sub. (1) should include references to these rules. If the commission means “rules” to refer to “standards,” then the commission should either indicate that the standards are developed on a case-by-case basis or, if the standards are codified, give references in the administrative code or statutes to the standards.
- (5) The rule refers to “lifeline monthly rate” and to “lifeline rate.” See, for example, s. PSC 160.062 (1), (2) (b) and (c), (4) (as renumbered to sub. (3)) and (5). If there is a difference between these types of rates, then the difference should be clarified; otherwise, consistent terms should be used. Similarly, does the commission intend s. PSC 160.125 (2) (c) 4. and 5. a. to refer only to a “project” or to a “program or project”? Other provisions in s. PSC 160.125 (2) refer to a “program or project.”
- (6) The phrase “designate a number of eligible telecommunications carriers” in s. PSC 160.13 (3) is not clear. If the commission intends to be able to designate only one eligible telecommunications carrier under this provision, then sub. (3) should be clarified to more clearly convey this intent.
- (7) Does the commission wish to specify any sanction or remedy if an audit under s. PSC 160.181 indicates that funding was not applied for or used appropriately?
- (8) The phrase “usability of their pay telephones for individuals with disabilities” in s. PSC 160.075 (3) is not clear. Should “by” be substituted for “for” in this phrase?
- (9) Since titles to any unit of a rule are not part of the substance of the rule, s. PSC 160.13 (1) should be clarified to indicate that under that subsection, the PSC may designate the company to be an “eligible telecommunications carrier.” The commission should also review whether it wants to designate companies

eligible to receive funding specified in s. PSC 160.13 (1) as an “eligible telecommunications carrier” or use another term to remove any potential ambiguity over an eligible telecommunications carrier being construed as a subset of telecommunications carriers, as defined in s. 196.01 (8m), Stats.

- (10) Under s. PSC 160.125 (2) (b), funding to nonprofit groups is provided on a state fiscal year basis. Under s. PSC 160.125 (2) (f), the cap on the total funding to nonprofit groups is established on a calendar year basis. How will the commission apply the calendar year cap to individual programs and projects funded on a fiscal year basis?

c. Though s. PSC 160.02 (8) (e) was not affected by the rule, does the commission wish to correct the reference in par. (e) from s. 49.80, Stats., to s. 16.385, Stats.?