

1985 Senate Bill 318

Date of enactment: April 25, 1986
Date of publication: May 5, 1986

1985 Wisconsin Act 297

(Vetoed in Part)

AN ACT *to repeal* 196.08 (2), 196.20 (5) (a) (intro.) and 196.795 (1) (p); *to renumber* 196.01 (1) and 196.08 (1); *to renumber and amend* 76.38 (1) (bkm) 3, 134.40, 196.20 (5) (a) 1, 196.20 (5) (a) 2 and 196.26 (4); *to amend* 20.505 (1) (ke), 66.045 (6), 76.38 (1) (b), 76.38 (1) (bkm) (intro.), 146.70 (1) (e), (h), (j) and (k), (2) (g) and (6), 184.01 (2), 196.01 (5), 196.02 (2), 196.03 (1), 196.04 (1) (b) 2. (intro.), 196.06 (2), 196.08 (title), 196.09 (1), 196.11 (2), 196.19 (5), 196.20 (3), 196.26 (4) (title), 196.50 (title), 196.50 (1), 196.50 (2), 196.52 (3) (a) and (b) 1, 196.52 (4), (6) and (7), 196.53, 196.595 (1) (c), 196.60 (1) (a) and (2), 196.61, 196.72 (1) (b), 196.795 (9), 196.81 (2), 199.03 (12), 885.365 (2) (a) and (b), 909.015 (6) and 968.31 (2) (a); *to repeal and recreate* 196.01 (2), 196.14, 196.31 (2) and 196.625; and *to create* 20.155 (1) (p), 76.38 (1) (ac), 76.38 (1) (b) and (bkm), 76.38 (1) (bkm) 3. a and b, 76.38 (1) (fm), 134.40 (2), 196.01 (1), 196.01 (1r), 196.01 (4m), 196.01 (5m), 196.01 (9), (9m), (9r), (10) and (12), 196.194, 196.195, 196.196, 196.20 (2r), 196.201, 196.202, 196.203, 196.204, 196.213, 196.215, 196.216, 196.26 (4) (b), 196.505, 196.52 (1) (h), 196.52 (3) (c), 196.52 (8), 196.77 and 196.975 of the statutes, *relating to* various changes in the law regulating public utilities, the exemption from the tax on telephone companies of a share of revenue from reselling telecommunications services, making appropriations and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. **Legislative intent.** The legislature finds that the telecommunications industry is in a state of transition, providing opportunities for new sources of competition, and that changes in technology, public policy and federal regulatory and judicial initiatives are revolutionizing the industry. It is the intent of the legislature that:

(1) Universal telecommunications services continue to be available to the people of this state at just and reasonable rates and be of sufficient quantity, quality and reliability to meet the public interest.

(2) The public service commission have flexibility to deal with the current period of transition in the industry, while keeping as its main purpose the protection of the interests of ratepayers of public utilities offering regulated telecommunications services.

SECTION 2. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

20.155 Public service commission

- (1) REGULATION OF PUBLIC UTILITIES
- (p) Intervenor financing

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SECTION 3. 20.155 (1) (p) of the statutes is created to read:

20.155 (1) (p) *Intervenor financing.* The amounts in the schedule for intervenor financing under s. 196.31. All moneys received for intervenor financing under s. 196.31 (2) shall be credited to this appropriation.

SECTION 4. 20.505 (1) (ke) of the statutes is amended to read:

20.505 (1) (ke) (title) *State telecommunications system.* The amounts in the schedule to provide state ~~telephone~~ telecommunications system services and inventory items primarily to state agencies. All moneys received from the provision of state ~~telephone tele-~~ communications system services and sale of inventory items primarily to state agencies shall be credited to this appropriation.

SECTION 5. 66.045 (6) of the statutes is amended to read:

66.045 (6) Subsections (1) to (5) do not apply to public service corporations, or to cooperative associations organized under ch. 185 to render or furnish ~~telephone~~ telecommunications service, gas, light, heat or power, but such corporations shall secure permit from the proper official for temporary obstructions or excavation in a highway and shall be liable for all injuries to person or property thereby.

SECTION 5m. 76.38 (1) (ac) of the statutes, as affected by 1985 Wisconsin Act 29, is created to read:

76.38 (1) (ac) "Allocable share of approved reselling services" means actual costs incurred for services under par. (bkm) 1 actually utilized in providing the telecommunications services for which the gross revenues are received multiplied by the amount obtained

(3) The public service commission shall, when consistent with the protection of ratepayers and with other public interest goals established by the legislature, rely on competition rather than regulation to determine the variety, quality and price of telecommunications services.

(4) The public service commission ensure that, in general, users of regulated telecommunications services and facilities pay only reasonable and just charges for such services and facilities and that such charges do not include costs associated with the competitive activities of telecommunications utilities.

(5) Partial deregulation be a regulatory system to facilitate competition where it may exist. When the market for a telecommunications service is fully competitive, the level of regulation imposed by the public service commission upon all similarly situated providers of that service shall be equal.

by dividing the sum of the property factor and the originating revenues factor by 2, except that the department may determine the allocable share of approved reselling services based on other facts and circumstances if, in the department's judgment, the formula under this paragraph does not produce a substantially just and correct determination.

SECTION 6. 76.38 (1) (b) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

76.38 (1) (b) "Gross revenues" includes all revenue derived from local and rural exchange service, all toll business gross revenue, and all other operating revenues from telecommunications business. It does not include excise taxes on telephone service or facilities nor uncollectible telecommunications revenues actually written off during the year. "Gross revenues" includes recoveries within the year of all telecommunications revenues written off in prior years as uncollectible. For a telephone company operating on any form of mutual basis, "gross revenues" includes all amounts assessed against the members for the operation and maintenance of the business. "Gross revenues" also includes access revenues and revenues from directory advertising. For qualifying telecommunications resellers, "gross revenues" does not include the allocable share of approved reselling services sold to the public.

SECTION 6m. 76.38 (1) (b) and (bkm) of the statutes, as affected by 1985 Wisconsin Acts 29 and (this act), are created to read:

76.38 (1) (b) "Gross revenues" includes all revenue derived from local and rural exchange service, all toll business gross revenue, and all other operating reve-

nues from telecommunications business. It does not include excise taxes on telephone service or facilities nor uncollectible telecommunications revenues actually written off during the year. "Gross revenues" includes recoveries within the year of all telecommunications revenues written off in prior years as uncollectible. For a telephone company operating on any form of mutual basis, "gross revenues" includes all amounts assessed against the members for the operation and maintenance of the business. "Gross revenues" also includes access revenues and revenues from directory advertising. For qualifying telecommunications resellers, "gross revenues" does not include the allocable share of approved reselling services sold to the public.

(bkm) "Qualifying telecommunications reseller" means a company that provides local or rural exchange service and does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized them to provide local or rural services or a telephone company that fulfills all the following requirements:

1. Resells message telecommunications service, wide-area telecommunications services or other telecommunications services which have been approved for reselling by the public service commission or by the federal communications commission.

2. Does not own, operate, manage or control transmission facilities that have the technological capability to provide telecommunications service within this state.

3. Is not a person at least 50% of the voting stock of which is owned directly or indirectly by another person which directly or indirectly owns, operates, manages or controls transmission facilities that have the technological capability to provide telecommunications service within the state unless that latter person is a company that provides local or rural exchange service and does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized it to provide local or rural services or unless that latter person:

- a. Owns at least 50% of the voting stock of a company that provides local or rural exchange service and that does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized it to provide local or rural services; and

- b. Does not own directly or indirectly at least 50% of the voting stock of another company that owns, operates, manages or controls transmission facilities that have the technological capability to provide telecommunication services within this state.

SECTION 7. 76.38 (1) (bkm) (intro.) of the statutes, as created by 1985 Wisconsin Act 29, is amended to read:

76.38 (1) (bkm) (intro.) "Qualifying telecommunications reseller" means a company that provides local or rural exchange service and does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized them to provide local or rural services or a telephone company that fulfills all the following requirements:

SECTION 8. 76.38 (1) (bkm) 3 of the statutes, as created by 1985 Wisconsin Act 29, is renumbered 76.38 (1) (bkm) 3. (intro.) and amended to read:

76.38 (1) (bkm) 3. (intro.) Is not a person at least 50% of the voting stock of which is owned directly or indirectly by another person which directly or indirectly owns, operates, manages or controls transmission facilities that have the technological capability to provide telecommunications service within the state unless that latter person is a company that provides local or rural exchange service and does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized it to provide local or rural services or unless that latter person:

SECTION 9. 76.38 (1) (bkm) 3. a and b of the statutes are created to read:

- a. Owns at least 50% of the voting stock of a company that provides local or rural exchange service and that does not own, operate, manage or control transmission facilities for toll business outside the exchanges in which the public service commission has authorized it to provide local or rural services; and

- b. Does not own directly or indirectly at least 50% of the voting stock of another company that owns, operates, manages or controls transmission facilities that have the technological capability to provide telecommunication services within this state.

SECTION 9m. 76.38 (1) (fm) of the statutes, as affected by 1985 Wisconsin Act 29, is created to read:

76.38 (1) (fm) "Transmission facilities" means facilities for the carriage of telecommunications services by wire, optics, radio signal or other means.

SECTION 10. 134.40 of the statutes is renumbered 134.40 (1) and amended to read:

134.40 (1) Any Except as provided under sub. (2), any person having the right so to do who shall wilfully remove or change any building or other structure or any timber, standing or fallen, to which any telegraph, telephone, electric railway, electric light or electric power lines or wires are in any manner attached, or cause the same to be done, which shall destroy, disturb or injure the wires, poles or other property of any telegraph, telephone telecommunications, electric railway, electric light or electric power company transacting business in this state, without first giving to such company, at its office nearest to such place of injury, at least 24 hours' previous notice thereof, shall be punished by imprisonment in the county jail not more than 30 days or by fine not exceeding \$50. And

any person who shall unlawfully break down, interrupt or remove any telegraph, telephone, electric railway, electric light or electric power line or wire or destroy, disturb, interfere with or injure the wires, poles or other property of any telegraph, ~~telephone~~ telecommunications, electric railway, electric light or electric power company in this state shall be punished by imprisonment in the county jail not more than 3 months or by fine not exceeding \$100.

SECTION 11. 134.40 (2) of the statutes is created to read:

134.40 (2) This section does not apply to any person who is lawfully using a land survey marker for land surveying purposes no more than 30 inches below ground level.

SECTION 12. 146.70 (1) (e), (h), (j) and (k), (2) (g) and (6) of the statutes are amended to read:

146.70 (1) (e) "Direct dispatch method" means a ~~telephone~~ telecommunications system providing for the dispatch of an appropriate emergency service vehicle upon receipt of a telephone request for such service.

(h) "Relay method" means a ~~telephone~~ telecommunications system whereby a request for emergency services is received and relayed to a provider of emergency services by telephone.

(j) "~~Telephone Telecommunications utility~~" means ~~any public utility as defined in~~ has the meaning designated under s. 196.01 (5) which is engaged in the business of supplying the public with telephone and telephonic service or operating a telephone exchange (10).

(k) "Transfer method" means a ~~telephone~~ telecommunications system which receives telephone requests for emergency services and transfers such requests directly to an appropriate public safety agency or other provider of emergency services.

(2) (g) Every ~~telephone~~ telecommunications utility providing coin-operated telephones for public use within the boundaries of a basic or sophisticated system established under this section shall convert, by December 31, 1987, all such telephones to telephones which enable a user to reach "911" without inserting a coin. Any coin-operated telephone installed by a ~~telephone~~ telecommunications utility after December 31, 1987, in an agency which has established an emergency phone system under this section shall enable a user to reach "911" without inserting a coin.

(6) (title) TELECOMMUNICATIONS UTILITY REQUIREMENTS. A ~~telephone~~ telecommunications utility serving a public agency or group of public agencies which have established a sophisticated system under sub. (2) (e) shall provide by December 31, 1985, or upon establishing a system, whichever is later, such public agency or group of public agencies access to the telephone numbers of subscribers and the addresses associated with the numbers as needed to implement automatic number identification and automatic location identification in a sophisticated system, but such information

shall at all times remain under the direct control of the ~~telephone~~ telecommunications utility and a ~~telephone~~ telecommunications utility may not be required to release a number and associated address to a public agency or group of public agencies unless a call to the telephone number "911" has been made from such number. The costs of such access shall be paid by the public agency or group of public agencies.

SECTION 13. 184.01 (2) of the statutes, as affected by 1985 Wisconsin Act 79, is amended to read:

184.01 (2) "Public service corporation" means and embraces every corporation, except municipalities and other political subdivisions, which is a public utility as defined in s. 196.01, and every corporation which is a railroad as defined in s. 195.02, but shall not include a public utility corporation receiving an annual gross revenue of less than \$1,000 for the calendar year next preceding the issuance of any securities by it. "Public service corporation" includes a holding company, as defined under s. 196.795 (1) (h), which is a public utility, as defined under s. 196.01 (5). "Public service corporation" does not include any other holding company unless the holding company was formed after November 28, 1985, and unless the commission has determined, under s. 196.795 (7) (a), that each nonutility affiliate, as defined under s. 196.795 (1) (j), does not and cannot reasonably be expected to do at least one of the items specified in s. 196.795 (7) (a). "Public service corporation" does not include a company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications ~~public~~ utility, as defined in s. ~~196.795 (1) (p)~~ 196.01 (10), unless such company also owns, operates, manages or controls a public utility which is not a telecommunications ~~public~~ utility or unless such company is a telecommunications ~~public~~ utility.

SECTION 14. 196.01 (1) of the statutes is renumbered 196.01 (2m).

SECTION 15. 196.01 (1) of the statutes is created to read:

196.01 (1) "Alternative telecommunications utility" means any of the following:

(a) Cable television telecommunications service providers.

(b) Pay telephone service providers.

(c) Telecommunications resellers or resellers.

(d) Radio common carriers.

(e) Cellular mobile service providers.

SECTION 17. 196.01 (1r) of the statutes is created to read:

196.01 (1r) "Cable television telecommunications service provider" means a person who provides one or more telecommunications services but who, during the previous taxable year, received at least 90% of his or her gross income in the particular television franchise area in which telecommunication services are provided from the operation of a cable television system subject in whole or in part to 47 USC 521 to 559.

SECTION 18. 196.01 (2) of the statutes is repealed and recreated to read:

196.01 (2) "Cellular mobile service provider" means a cellular mobile radio telecommunications utility subject to s. 196.202 (4).

SECTION 19. 196.01 (4m) of the statutes is created to read:

196.01 (4m) "Pay telephone service provider" means a person who owns or leases a pay telephone located on property owned or leased by that person and who otherwise does not offer any telecommunications service directly or indirectly to the public.

SECTION 20. 196.01 (5) of the statutes, as affected by 1985 Wisconsin Act 79, is amended to read:

196.01 (5) "Public utility" means every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or all or any part of a plant or equipment, within the state, ~~for the conveyance of telephone messages, for the receiving, transmitting or delivery of messages by telegraph, or~~ for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public. "Public utility" does not include a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members only. "Public utility" includes any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains and any person, except a governmental unit, who furnishes services by means of a sewerage system either directly or indirectly to or for the public. "Public utility" includes a telecommunications utility. "Public utility" does not include a holding company, as defined in s. 196.795 (1) (h), unless the holding company furnishes, directly to the public, ~~telephone, telegraph tele-~~ communications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas. "Public utility" does not include any company, as defined in s. 196.795 (1) (f), which owns, operates, manages or controls a telecommunications ~~public utility, as defined in s. 196.795 (1) (p);~~ unless the company furnishes, directly to the public, telephone, telegraph or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.

SECTION 21. 196.01 (5m) of the statutes is created to read:

196.01 (5m) "Radio common carrier" means a common carrier in the domestic public land mobile radio service licensed by the federal communications commission under 47 CFR 21.0 to 21.909 or 22.900 to 22.921 to receive and transmit signals from transmitters within a specified geographic area.

SECTION 22. 196.01 (9), (9m), (9r), (10) and (12) of the statutes are created to read:

196.01 (9) "Telecommunications reseller" or "reseller" means a telecommunications utility which:

(a) Resells message telecommunications service, wide-area telecommunications services or other telecommunications services which have been approved for reselling by the commission; and

(b) Does not own, operate, manage or control, directly or indirectly, transmission facilities with the technological capability to provide telecommunications service within the state.

(9m) "Telecommunications service" means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment. "Telecommunications service" does not include the one-way transmission to subscribers of video programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other programming services that make information available to all subscribers generally and does not include any subscriber interaction required for the selection of such video programming or other program service.

(10) "Telecommunications utility" means any person, corporation, company, cooperative, partnership, association and lessees, trustees or receivers appointed by any court that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public.

(12) "Transmission facility" means any plant or equipment used to carry telecommunications services by wire, optics, radio signal or other means.

SECTION 23. 196.02 (2) of the statutes is amended to read:

196.02 (2) In this subsection, "public utility" does not include a ~~telephone telecommunications~~ cooperative or a small telecommunications utility except as provided under ~~s. ss. 196.205 and 196.215~~. The commission shall provide for a comprehensive classification of service for each public utility. The classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility shall conform its schedules of rates, tolls and charges to such classification.

SECTION 24. 196.03 (1) of the statutes is amended to read:

196.03 (1) Each public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished ~~or for any telephone message conveyed~~ or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

SECTION 25. 196.04 (1) (b) 2. (intro.) of the statutes is amended to read:

196.04 (1) (b) 2. (intro.) Every public telecommunications utility for the conveyance of telephone messages shall permit physical connections to be made, and telephone telecommunications service to be furnished, between any telephone telecommunications system operated by it and the telephone telecommunications toll line operated by another such public telecommunications utility, or between its toll line and the telephone telecommunications system of another such public telecommunications utility, or between its toll line and the toll line of another such public telecommunications utility, or between its telephone telecommunications system and the telephone telecommunications system of another such public telecommunications utility if:

SECTION 26. 196.06 (2) of the statutes is amended to read:

196.06 (2) The commission may require any public utility engaged directly or indirectly in any business other than that of the production, transmission or furnishing of heat, light, water, telecommunications service or power ~~or the conveyance of telephone messages or telegraph messages~~ to keep and render separately to the commission in like manner and form the accounts of all such other business. This chapter applies to the books, accounts, papers and records of such other business if the commission requires the keeping and rendering separately of the accounts under this subsection.

SECTION 27. 196.08 (title) of the statutes is amended to read:

196.08 (title) Audit and inspection.

SECTION 28. 196.08 (1) of the statutes is renumbered 196.08.

SECTION 29. 196.08 (2) of the statutes is repealed.

SECTION 30. 196.09 (1) of the statutes is amended to read:

196.09 (1) In this section, "public utility" does not include a telephone telecommunications cooperative except as provided under s. 196.205. In subs. (2) to (8), "public utility" does not include a small telecommunications utility, except as provided under s. 196.215. Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the average annual rate of depreciation required for each of its classes of fixed capital used for public utility purposes, and of the composite annual rate of depreciation required for such fixed capital as an aggregate, which shall constitute the public utility's estimates of the amount which should be returned to it out of its rates for service, to meet the depreciation of its property.

SECTION 31. 196.11 (2) of the statutes is amended to read:

196.11 (2) Any arrangement under this section shall be under the supervision and regulation of the com-

mission. The commission may order any rate, charge or regulation which the commission deems necessary to give effect to the arrangement. The commission may make any change in a rate, charge or regulation as the commission determines is necessary and reasonable and may revoke its approval and amend or rescind all orders relative to any arrangement. This subsection does not apply to telephone telecommunications cooperatives or small telecommunications utilities except as provided under ~~s. ss.~~ 196.205 and 196.215.

SECTION 32. 196.14 of the statutes is repealed and recreated to read:

196.14 Public record exception. The commission may withhold from public inspection any information which would aid a competitor of a public utility in competition with the public utility.

SECTION 33. 196.19 (5) of the statutes is amended to read:

196.19 (5) If public telecommunications utilities ~~engaged in the conveyance of telephone messages~~ are furnishing joint telephone telecommunications service to the public, or are required to furnish the service, and refuse or neglect to establish joint tolls, the commission, after notice and a public hearing, may establish by order the joint tolls. If the public utilities fail to agree upon the apportionment of the joint tolls within 20 days after service of the order, the commission, upon a like hearing, may issue a supplemental order determining the apportionment of such joint tolls. The supplemental order shall take effect as part of the original order.

SECTION 34. 196.194 of the statutes is created to read:

196.194 Telecommunications utility individual contracts. Nothing in ss. 196.03, 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits the commission from approving the filing of a tariff which permits a telecommunications utility to enter into an individual contract with an individual customer if the commission determines that substitute telecommunications services are available to customers or potential customers of the telecommunications utility and the absence of such a tariff will cause the telecommunications utility to be disadvantaged in competing for business. A tariff filed under this section shall include the condition that any such contract shall be compensatory. The tariff shall include any other condition and procedure required by the commission in the public interest. Within 20 days after a contract authorized under this section or an amendment to such a contract has been executed, the telecommunications utility shall submit the contract to the commission. The commission shall give notice to any person, upon request, that a contract authorized under this section has been received by the commission. The notice shall identify the telecommunications utility that has entered into the contract. Within 6 months after receiving substantial evidence that a con-

tract may be noncompensatory, or upon its own motion, the commission shall investigate and determine whether the contract is compensatory. If the commission determines that the contract is noncompensatory, the commission may make appropriate adjustments in the rates or tariffs of the telecommunications utility that has entered into the contract, in addition to other remedies under this chapter. The dollar amount of the adjustment may not be less than the amount by which the contract was found to be noncompensatory.

SECTION 35. 196.195 of the statutes is created to read:

196.195 Partial deregulation of competitive telecommunications services. (1) **REGULATION IMPOSED.** Except as provided in this section and ss. 196.202, 196.203 and 196.215, a telecommunications utility is subject to every applicable provision of this chapter and ch. 184.

(2) **HEARING ON PARTIAL DEREGULATION.** (a) Except as provided under par. (b), in response to a petition from any interested person or upon its own motion, the commission may hold a hearing to determine whether effective competition exists in a market for a telecommunications service which competition justifies a lesser degree of regulation by suspending the application of one or more provisions of law under sub. (5) and whether competition under a lesser degree of regulation in that market will serve the public interest. In making this determination, the commission shall consider factors including:

1. The number and size of telecommunications utilities or other persons providing the same, equivalent or substitutable service in the relevant market.

2. The extent to which the same, equivalent or substitutable service is available in the relevant market.

3. The ability of customers in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions.

4. The ability of telecommunications utilities or other persons to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions.

5. The relevant market power of each telecommunications utility or other person providing the same, equivalent or substitutable service in the relevant market and any apparent trends in how the market power of each telecommunications utility may change in the future.

6. Any affiliation of any telecommunications utility providing the service in the relevant market which may affect competition.

7. The existence of any significant barrier to the entry or exit of a provider of the service in the relevant market.

(b) If the commission suspends the application of any provision of law for any telecommunications utility, the commission, upon its own motion or in response to a petition from any interested person, may

waive the hearing required under par. (a), with notice to all known interested parties, for any similarly situated telecommunications utility which is providing the same, equivalent or substitutable service in the same market and which requests a waiver of the same provision of law for the service, if the waiver is in the public interest.

(3) **LEVELS OF REGULATION.** If after the proceeding under sub. (2) the commission has determined that effective competition exists in a market for a telecommunications service that justifies lesser regulation, the commission shall establish the level of regulation for telecommunications utilities providing the service in that market as follows:

(a) The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be equal unless the commission finds that the public interest requires that different regulatory requirements be imposed.

(b) The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be the amount of regulation which does not hinder competition and is consistent with protecting the public interest.

(4) **FINDINGS OF FACT.** (a) Except as provided in par. (b), the commission shall issue written findings of fact on each of the factors specified in sub. (2) (a) 1 to 7 and on any other factors considered by the commission in making the following determinations:

1. Whether effective competition exists in the market for the telecommunications service that justifies lesser regulation.

2. The level of regulation to be imposed upon each telecommunications utility providing the service in that market.

3. The different regulatory requirements, if any, determined for each telecommunications utility providing the service in the market.

4. The provisions of law to be suspended, if any, under sub. (5).

(b) If the commission conducts more than one hearing under sub. (2) on the same telecommunications service or the same market, the commission may, if appropriate and if no new finding of fact is required, rely on a finding of fact made under par. (a) in a prior hearing.

(5) **COMMISSION ACTION.** If after the proceedings under subs. (2), (3) and (4) the commission has determined that effective competition exists in the market for the telecommunications service which justifies a lesser degree of regulation and that lesser regulation in that market will serve the public interest, the commission may, by order, suspend any of the following provisions of law, except as provided under subs. (7) and (8): ch. 184 and s. 196.02 (2); s. 196.07, but only to the extent necessary to allow a telecommunications utility to close its annual accounts on a date other than December 31; s. 196.09; s. 196.10; s. 196.11; s. 196.13 (2); s. 196.20; s. 196.49; s. 196.50; s. 196.52, except that

the commission shall retain continuing supervisory control over affiliated interest contracts and arrangements, and amendments to affiliated interest contracts and arrangements, as necessary to protect the public interest; s. 196.525; s. 196.53, as it relates to a telecommunications utility, if the commission has determined to suspend the application of ch. 184 and ss. 196.52, 196.78, 196.79, 196.80 and 196.81 under this subsection; s. 196.58; s. 196.595; s. 196.78 or 196.81, or both, except that the commission shall require adequate prior notice to the commission and to customers affected by a proposed dissolution or abandonment before a dissolution or abandonment may occur; s. 196.79 or 196.80, or both, except that the commission shall require adequate prior notice to the commission of proposed public utility reorganizations, sales, mergers or consolidations; and ss. 196.22, 196.60 and 196.604, except that the commission may suspend the application of ss. 196.22, 196.60 and 196.604 only to the extent that such suspension is required to implement any other suspensions under this section or to the extent necessary to enable a telecommunications utility to make limited promotional offerings to the public.

(6) INTERIM RELIEF. (a) If after 10 days' written notice and opportunity for interested persons to comment the commission finds that a telecommunications utility has adequately demonstrated that a telecommunications service which it offers and which is subject to the jurisdiction of the commission is subject to competition that may justify a lesser degree of regulation under sub. (5) and that it may be materially disadvantaged in such competition without commission authorization under this subsection, the commission, prior to a determination under sub. (5), may authorize the telecommunications utility to provide the telecommunications service under a tariff which specifies a range of rates which may be charged for the service or may authorize the telecommunications utility to file a price list for the service which is effective upon at least 10 days' written notice to affected consumers.

(b) If the commission authorizes a telecommunications utility to provide a service under par. (a), the telecommunications utility may not provide the service at a price which does not recover long-run incremental cost plus any contribution to overhead costs which is required by the commission in the public interest and which is consistent with competitive circumstances.

(c) The commission may investigate the price of any service authorized under par. (a) to assure that the price complies with par. (b) and may suspend any price which does not comply with par. (b).

(d) A request for authorization under par. (a) constitutes a request for a hearing on partial deregulation under sub. (2). An order granting such authorization expires on the first day of the 9th month following its issuance or upon the date of the commission order granting or denying suspension of any provision of

law under sub. (5), whichever is earlier, unless extended by the commission for good cause pending issuance of a final order.

(7) CONDITIONS ON DEREGULATION. If the commission suspends the application of any provision of law to a telecommunications utility under sub. (5), it may require the telecommunications utility to comply with any condition reasonably necessary to protect the public interest because of the suspended application.

(8) RECORDS FOR COMMISSION REVIEW. The commission may suspend the application of a provision of law relating to an accounting or reporting requirement under sub. (5) only if, with consideration given to any conditions imposed under sub. (7), the commission determines that it will have enough information to determine whether the suspension of the application of any provision of law under sub. (5) is justified at any time after the suspension is ordered.

(9) SERVICE PRICE. If under this section the commission authorizes a telecommunications utility to provide a telecommunications service under a tariff that specifies a range of rates which may be charged for the service or authorizes the telecommunications utility to file a price list for the service which is effective after a minimum period of notice to affected customers, the telecommunications utility may not provide the service at a price which does not recover long-run incremental cost plus any contribution to overhead costs which is required by the commission in the public interest and which is consistent with competitive circumstances.

(10) REVOCATION OF DEREGULATION. If necessary to protect the public interest, the commission, at any time by order, may revoke its order to suspend the applicability of any provision of law suspended under sub. (5).

(11) COMMISSION STUDY. By December 31, 1992, the commission shall prepare a report summarizing the experience of this state in relying upon competition rather than regulation to determine the variety, quality and price of telecommunications service offered in this state and summarizing its recommendations for any changes in the regulation by the state of the telecommunications industry. No later than January 2, 1993, the commission shall file the report with the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.72 (2). The report shall include a recommendation as to whether there exists a need for lifeline rates for telecommunications services in this state, the types of telecommunications services that should be made available at lifeline rates, the characteristics of individuals that should be eligible for lifeline rates and how lifeline rates should be funded. The report shall also include an assessment of how 1985 Wisconsin Act ... (this act), sections 23, 30, 31, 36, 44, 45 and 49 have affected the rates for local exchange telecommunications service charged by small telecommunications utilities that are owned by

holding companies and a finding, supported by financial data, on whether such rates are reasonable and just in relation to the costs of providing the service.

SECTION 35m. 196.196 of the statutes is created to read:

196.196 Equal telecommunications access goal. If equal access to alternative long distance telecommunications services is not available by January 1, 1991, the commission shall prepare a report for the governor and the legislature that identifies why equal access was not achieved, including whether local exchange telecommunications utilities have installed the necessary equipment to provide equal access and the extent to which long distance telecommunications utilities conducting business in this state have offered to provide their services statewide and any recommendations for achieving equal access. No later than June 1, 1991, the commission shall file the report with the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.72 (2).

SECTION 35r. 196.20 (2r) of the statutes is created to read:

196.20 (2r) In setting the rates charged for basic residential local exchange telecommunications service under this section in local exchange areas served by the same telecommunications utility, the commission may investigate those areas where changes in these rates may be warranted because of the number of access lines accessible from the local exchange area.

SECTION 36. 196.20 (3) of the statutes is amended to read:

196.20 (3) This section does not apply to telephone telecommunications cooperatives or small telecommunications utilities except as provided under ~~s.~~ ss. 196.205 and 196.215.

SECTION 37. 196.20 (5) (a) (intro.) of the statutes is repealed.

SECTION 38. 196.20 (5) (a) 1 of the statutes is renumbered 196.20 (5) (a) and amended to read:

196.20 (5) (a) "Applicant" In this subsection, "applicant" means a small ~~telephone company tele-~~ communications utility which files with the commission a proposed change in its rate schedules which constitutes an increase in rates to consumers.

SECTION 39. 196.20 (5) (a) 2 of the statutes is renumbered 196.01 (8) and amended to read:

196.01 (8) "Small telephone company telecommunications utility" means any ~~public telecommunica-~~ tions utility which provided landline local ~~telephone telecommunications~~ service as of January 1, 1984, and which provides such service to less than 7,500 consumers, as defined in s. 196.213 (1) (a) 1, in this state.

SECTION 40. 196.201 of the statutes is created to read:

196.201 Regulation of private shared telecommunications systems. (1) DEFINITION. In this section, "private shared telecommunications system" means plant

or equipment used to provide telecommunications service through privately owned customer premise equipment to a user group located in a discrete premises, such as in a building complex or a large multitenant building, or used to provide telecommunications service where the cost of service is shared among 2 or more persons who are not affiliated interests under s. 196.52, and where the plant or equipment is not used to offer telecommunications service for sale directly or indirectly to the general public.

(2) REQUEST FOR ACCESS. At the request of any person who receives telecommunications service from a private shared telecommunications system, or at the request of a telecommunications utility seeking to provide telecommunications service requested by any such person, the owner or manager of the private shared telecommunications system shall make facilities or conduit space available to any telecommunications utility for the purpose of providing telecommunications service.

(3) COMMISSION MAY ORDER. If the commission finds that the owner or manager of a private shared telecommunications system has failed to comply with a request under sub. (2), it may order the owner or manager to make facilities or conduit space available to any telecommunications utility making a request under sub. (2) at reasonable prices and on reasonable terms and conditions, under the procedures of s. 196.04.

SECTION 41. 196.202 of the statutes is created to read:

196.202 Provisional exemption of cellular mobile radio telecommunications. (1) DEFINITION. In this section, "cellular mobile radio telecommunications utility" means a person authorized by the federal communications commission to provide domestic public cellular radio telecommunications service under 47 USC 154 (i).

(2) SOLE UTILITY REGULATED. Except as provided under subs. (3) and (4), no cellular mobile radio telecommunications utility is subject to this chapter unless it is the only provider of any specific type of telecommunications service within the geographic service area in which it is authorized to operate by the federal communications commission under 47 USC 154 (i).

(3) AFFILIATED INTERESTS. Every cellular mobile radio telecommunications utility is subject to s. 196.52.

(4) REGULATION. On the first day of the first January following the date on which subscribers to all cellular mobile radio telecommunications utilities in a geographic service area, defined by the federal communications commission under 47 USC 154 (i), constitute 2% or more of the population in that service area, every cellular mobile radio telecommunications utility providing service in that area is subject to s. 196.203.

SECTION 42. 196.203 of the statutes is created to read:

196.203 Exemption of alternative telecommunications utilities. (1) Except as provided in this section, alternative telecommunications utilities are exempt from all provisions of ch. 184 and this chapter.

(1m) Any person claiming to be a cable telecommunications service provider under this section shall annually file with the commission any information required by the commission to determine the gross income of the person which is derived from the operation of a cable television system.

(2) No person may commence providing service as an alternative telecommunications utility unless the person petitions for and the commission issues a determination that the person is an alternative telecommunications utility. The commission shall give notice at least 30 days prior to the issuance of such a determination to any person, upon request, that a petition under this subsection has been received by the commission. The notice shall identify the telecommunications utility that filed the petition.

(3) In response to a petition from any interested person, or upon its own motion, the commission shall determine whether the public interest requires that any provision of ch. 184 or this chapter be imposed on a person providing or proposing to provide service as an alternative telecommunications utility in a relevant market. In making this determination, the commission may consider factors including the quality of service, customer complaints, concerns about the effect on customers of local exchange telecommunications utilities and the extent to which similar services are available from alternative sources.

(4) The commission may impose any provision of ch. 184 or this chapter on one or more, but not necessarily all, alternative telecommunications utilities providing service in a relevant market.

SECTION 43. 196.204 of the statutes is created to read:

196.204 Cross-subsidization limited. (1) Except for retained earnings, no telecommunications utility may allocate revenues earned from any part of its business subject to this chapter to subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.195, 196.202 or 196.203. No telecommunications utility may allocate any costs or expenses in a manner which would subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.195, 196.202 or 196.203. Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.195, 196.202 or 196.203.

(2) The commission shall attribute revenues derived from the sale of directory advertising or directory

publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.

(3) The commission shall establish the necessary minimum accounting and reporting requirements, and structural separation requirements if necessary, for telecommunications utilities to enable it to enforce this subsection.

(4) In order to protect the public interest, the commission may allocate the earnings derived from sale of services partially deregulated under s. 196.195, 196.202 or 196.203 to the fully regulated activities of a telecommunications utility for rate-making purposes.

SECTION 44. 196.213 of the statutes is created to read:

196.213 Notice of rate increase by small telecommunications utility. (1) In this section:

(a) "Consumer" means any of the following:

1. A person billed for one or more local telecommunications service access lines not to exceed one person per access line. A person billed for more than one access line may not be considered a consumer for each access line for which he or she is billed.

2. A telecommunications utility purchasing intrastate access to a local exchange operated by another telecommunications utility.

(b) "Rate increase" means any increase in rates for any class of consumer.

(2) Unless subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26, at least 60 days before the effective date of any rate increase proposed by a small telecommunications utility, the small telecommunications utility shall notify each of its consumers and the commission of the proposed rate increase. Notice to the commission shall include a list of the small telecommunications utility's published consumers and a summary of the justification for the proposed rate increase. Notice by the small telecommunications utility to all consumers shall be in a form prescribed by the commission, shall be by mail and shall include a schedule of the proposed rates, the effective date of the rates and the procedure necessary for consumers to petition the commission to determine rates in lieu of the proposed rates. The commission shall develop the form in cooperation with representatives of small telecommunications utilities and other interested persons. Notwithstanding s. 227.01 (9), the form is not a rule. If a small telecommunications utility inserts the procedures to petition the commission in the telephone directory published by the utility, the directory shall describe the petitioning procedures under s. 196.215 (3) (a) and (b). A reference to the location of the procedure described in the directory shall be adequate notice of the procedure to consumers billed for local telecommunications service access lines in lieu of the form.

SECTION 45. 196.215 of the statutes is created to read:

196.215 Election of rate regulation and flexible regulation of small telecommunications utilities. (1) In this section:

(a) "Consumer" has the meaning given under s. 196.213 (1) (a).

(b) "Rate increase" has the meaning given under s. 196.213 (1) (b).

(2) A small telecommunications utility may be made subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 as they apply to any rate, toll, charge or schedule or any joint rate, in any of the following ways:

(a) By amendment of its articles of incorporation.

(b) By a majority vote of all the voting members of its board of directors.

(c) By a determination of the commission that:

1. The small telecommunications utility's proposed rate increase exceeds, in any one year, 30% or, in the case of residential local telecommunications service, 30% or \$2, whichever is higher.

1m. The small telecommunications utility's proposed rate increases exceed, in any 4 consecutive years, 100% or, in the case of residential local telecommunications service, 100% or \$10, whichever is higher.

2. The small telecommunications utility has failed to comply substantially with this section or s. 196.213.

3. The small telecommunications utility has violated s. 196.06, 196.52, 196.525 or 196.60.

(d) By action of its consumers under sub. (3).

(2m) (a) A small telecommunications utility which has made itself subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 under sub. (2) (a) may exempt itself from those sections by amending its articles of incorporation.

(b) A small telecommunications utility which has made itself subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 under sub. (2) (b) may exempt itself from those sections by majority vote of all the voting members of its board of directors.

(c) A small telecommunications utility which the commission has made subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 under sub. (2) (c) 1 and 1m may exempt itself from those sections by withdrawing its proposed rate increase.

(d) A small telecommunications utility which the commission has made subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 under sub. (2) (c) 2 may exempt itself from those sections by correcting its failure to comply substantially with s. 196.213 or this section.

(3) (a) If by the day before the effective date of a proposed rate increase under s. 196.213 the commission has not received petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility proposing the increase, which petition requests that the commission determine the rates on the proposed increase, the com-

mission shall certify such fact to the small telecommunications utility and the separate small telecommunications utility's proposed rate increase shall become effective as published in the notice to consumers. If by the day before the effective date of the proposed rate increase the commission has received petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility requesting that the commission determine the rates on the proposed increase, the commission shall notify the small telecommunications utility that the proposed rates will not take effect as published in the notice and that the commission will determine the rates on the proposed rate increase. Rates established by the commission or by a small telecommunications utility under this paragraph shall be in effect for not less than one year.

(am) 1. In the case of a proposed rate increase for a class of consumers under s. 196.213 (1) (a) 2 who purchase access to the local exchange operated by the small telecommunications utility that exceeds, in any 12-month period, the percentage increase in the U.S. consumer price index for all urban consumers, U.S. city average, for the previous year and that is not identical to the corresponding increase in charges for interstate access to the local network applicable to this class of consumers, the eligible consumers under par. (a) shall be any combination of telecommunications utilities subject to this proposed rate increase that are billed for 10% or more of the small telecommunications utility's revenues derived from charges for intrastate access to the local network.

2. In the case of a proposed rate increase for any class of consumers under s. 196.213 (1) (a) 1, the eligible consumers under par. (a) shall be 10% of such consumers unless this number of consumers is:

a. Less than 50, in which case 50 of such consumers shall constitute the eligible consumers; or

b. Greater than 500, in which case 500 of such consumers shall constitute the eligible consumers.

(ar) If the eligible consumers identified in par. (am) 1 submit a valid petition to the commission under par. (a), the eligible consumers may withdraw the petition at any time prior to the commission establishing the rates subject to the petition. Upon withdrawal, the commission may not establish these rates.

(b) If the commission receives petitions from at least the number of eligible consumers specified in par. (am) 2 of the small telecommunications utility requesting that the small telecommunications utility be subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26, the commission shall certify such fact to the small telecommunications utility. The small telecommunications utility shall mail ballots approved by the commission to all of its consumers along with a written direction to return the ballots to the commission. The small telecommunications utility may enclose the ballot and the written direction with the regular periodic billing for the small telecom-

munications utility's services. The commission shall keep the ballots sealed until a date agreed upon by the commission. On such date, the commission shall count the ballots. If the majority of the small telecommunications utility's voting consumers vote in favor of the small telecommunications utility being subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26, the small telecommunications utility shall be subject to such sections 30 days after the date the ballots are counted. The small telecommunications utility shall pay the mailing cost of consumers returning the ballots to the commission.

(c) The consumers of a small telecommunications utility which has been made subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 under par. (b) may follow the election and petition procedures under par. (b) to revoke their election that the small telecommunications utility be subject to ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26.

(d) The commission shall promulgate rules governing the form of petitions under this subsection. The commission may not deem invalid any petition submitted under this subsection which is substantially in compliance with the commission's rules.

(4) A small telecommunications utility shall be subject to ss. 196.02 (2), 196.09 (1), 196.11 (2), 196.20 and 196.26 under an order of the commission issued under sub. (2) (c) 3 until the first day of the 24th month after affirmation of the order by the circuit court of Dane county or after the expiration of the period during which a petition for review or rehearing is authorized under s. 196.52 or 227.16, whichever is sooner.

SECTION 46. 196.216 of the statutes is created to read:

196.216 Small telecommunications utilities as small businesses. A small telecommunications utility is a small business for the purposes of s. 227.016.

SECTION 47. 196.26 (4) (title) of the statutes is amended to read:

196.26 (4) (title) EXCEPTIONS.

SECTION 48. 196.26 (4) of the statutes is renumbered 196.26 (4) (a) and amended to read:

196.26 (4) (a) This section does not apply to any rate, toll, charge or schedule or any joint rate of any ~~telephone telecommunications~~ cooperative except as provided under s. 196.205 or unless at least 5% of the customers of the telecommunications cooperative file a complaint with the commission that the rate, toll, charge or schedule or joint rate is in any respect unreasonable, insufficient or unjustly discriminatory.

SECTION 49. 196.26 (4) (b) of the statutes is created to read:

196.26 (4) (b) This section does not apply to any rate, toll, charge or schedule or any joint rate of any small telecommunications utility except as provided under s. 196.215.

SECTION 50. 196.31 (2) of the statutes is repealed and recreated to read:

196.31 (2) Compensation granted under this section shall be paid from the appropriation under s. 20.155 (1) (p) and shall be assessed under s. 196.85 (1), except that, if the commission finds that the participation for which compensation is granted relates more to a general issue of utility regulation rather than to an issue arising from a single proceeding, the cost of the compensation may be assessed under s. 196.85 (2). Any payment by a public utility for compensation under this section assessed under s. 196.85 (1) or (2) shall be credited to the appropriation under s. 20.155 (1) (p).

SECTION 52. 196.50 (title) of the statutes is amended to read:

196.50 (title) Competing public utilities; indeterminate permits, telecommunications.

SECTION 53. 196.50 (1) of the statutes is amended to read:

196.50 (1) CERTIFICATE OF NECESSITY. ~~No municipality~~ The commission may not grant any public utility a license, permit or franchise to own, operate, manage or control any plant or equipment for the conveyance furnishing of telephone messages or telegraph messages telecommunications services, or for the production, transmission, delivery or furnishing of heat, light, water or power in the municipality, if there is in operation under an indeterminate permit a public utility engaged in similar service in the municipality under an indeterminate permit, unless the public utility seeking the license, permit or franchise secures from the commission a declaration, after a public hearing of any interested party, that public convenience and necessity require the delivery of service by the 2nd public utility. This subsection shall not prevent or impose any condition upon the extension of any ~~telephone telecommunications~~ telecommunications toll line from any municipality into or through any municipality for the purpose of connecting with any ~~telephone telecommunications~~ telecommunications exchange in the municipality or connecting with any other ~~telephone telecommunications~~ telecommunications line or system.

SECTION 54. 196.50 (2) of the statutes is amended to read:

196.50 (2) (title) TELECOMMUNICATIONS, EXTENSION. No ~~public telecommunications~~ public telecommunications utility ~~furnishing telephone service~~ may install or extend any ~~telephone telecommunications~~ telecommunications exchange for furnishing local service in any town if a ~~public telecommunications~~ public telecommunications utility is engaged in similar service in the town, unless the ~~public telecommunications~~ public telecommunications utility proposing to install or extend a ~~telephone an~~ exchange serves notice in writing upon the commission and upon the other ~~public telecommunications~~ public telecommunications utility of the installation or extension of the exchange which it proposes to make. A ~~public telecommunications~~ public telecommunications utility proposing to install or extend a ~~telephone an~~ exchange may not make the installation or extension if the commission, within 20 days after service of such notice by the ~~public telecommunications~~ public telecommunications utility, upon investigation, finds and

declares that public convenience and necessity do not require the installation or extensions of the exchange. Any ~~public~~ telecommunications utility already engaged in furnishing local service to subscribers within any city or village may extend its exchange within the city or village without the authority of the commission. A ~~public~~ telecommunications utility operating ~~a telephone~~ an exchange in any city or village, on demand, shall extend its lines to the limits of the city or village to furnish service, subject to the conditions and requirements prescribed in ss. 196.04 and 196.19 (4) and (5).

SECTION 55. 196.505 of the statutes is created to read:

196.505 Construction. (1) Except as provided in s. 196.53, nothing in this chapter may be construed to deny a foreign corporation the privilege of offering telecommunications services in this state if it has received a certificate of authority under ch. 180 and any other authorization from the commission required under this chapter.

(2) Nothing in this chapter may be construed to permit chapter 184 or this chapter to apply differently to a foreign corporation which offers telecommunications services in this state than to a similarly situated domestic corporation which offers telecommunications services in this state.

SECTION 56. 196.52 (1) (h) of the statutes is created to read:

196.52 (1) (h) Any subsidiary of the public utility. In this paragraph, "subsidiary" means any person 5% or more of the securities of which are directly or indirectly owned by a public utility.

SECTION 57. 196.52 (3) (a) and (b) 1 of the statutes are amended to read:

196.52 (3) (a) In this subsection, "contract or arrangement" means a contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial or similar services and any contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than management, supervisory, construction, engineering, accounting, legal, financial or similar services. Except as provided under par. (b), unless and until the commission gives its written approval, any contract or arrangement is not valid or effective if the contract or arrangement is made between a public utility and an affiliated interest after June 7, 1931. Every public utility shall file with the commission a verified copy of any contract or arrangement, a verified summary of any unwritten contract or arrangement, and any contract or arrangement, written or unwritten, which was in effect on June 7, 1931. The commission shall approve a contract or arrangement made or entered into after June 7, 1931, only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. The com-

mission may not approve any contract or arrangement unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility or of the cost to the public utility of rendering the services or of furnishing the property or service to each affiliated interest. No proof is satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(b) 1. The requirement for written approval under par. (a) shall not apply to any contract or arrangement if the amount of consideration involved is not in excess of ~~\$10,000~~ \$25,000 or 5% of the ~~par value of~~ outstanding common stock equity of the public utility, whichever is smaller. For a telecommunications utility with intrastate gross operating revenues of \$100,000,000 or more during the prior year, the requirement for written approval under par. (a) does not apply to any contract or arrangement if the amount of consideration involved in the contract or arrangement is not more than \$100,000. Regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount may not be broken down into a series of transactions to come within the exemption under this paragraph. Any transaction exempted under this paragraph shall be valid or effective without commission approval under this section.

SECTION 58. 196.52 (3) (c) of the statutes is created to read:

196.52 (3) (c) If the value of a contract or arrangement between an affiliated interest and a public utility exceeds \$1,000,000, the commission:

1. May not waive the requirement of the submission of cost records or accounts under par. (a);

2. Shall review the accounts of the affiliated interest as they relate to the contract or arrangement prior to the commission approving or disapproving the contract or arrangement under par. (a); and

3. May determine the extent of cost records and accounts which it deems adequate to meet the requirements for submission and review under subds. 1 and 2.

SECTION 59. 196.52 (4), (6) and (7) of the statutes are amended to read:

196.52 (4) In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to or from an affiliated interest for any services

rendered or property or service furnished under an existing contract or arrangement with an affiliated interest under sub. (3) (a) unless the public utility establishes the reasonableness of the payment or compensation. In the proceeding the commission shall disallow the payment or compensation, in whole or in part, in the absence of satisfactory proof that the payment or compensation is reasonable in amount. In the proceeding the commission may not approve or allow any payment or compensation, in whole or in part, unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service to each public utility or of the cost to the public utility of rendering the service or furnishing the property or service to each affiliated interest. No proof shall be satisfactory under this paragraph unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract of the records and accounts or a summary taken from the records and accounts if the commission deems the abstract or summary adequate. The accounts shall be properly identified and duly authenticated. The commission, where reasonable, may approve or disapprove a contract or arrangement without submission of the cost records or accounts.

(6) If the commission finds upon investigation that a public utility is giving effect to a contract or arrangement without the commission's approval under this section, the commission shall issue a summary order directing the public utility to cease and desist from making any payments, receiving compensation, providing any service or otherwise giving any effect to the contract or arrangement until the contract or arrangement receives the approval of the commission. The circuit court of Dane county may enforce the order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

(7) If the commission finds upon investigation that a public utility is making a payment to, providing a service to or receiving compensation from an affiliated interest, although the payment, service or compensation has been disallowed and disapproved by the commission in a proceeding involving the public utility's rates or practices, the commission shall issue a summary order directing the public utility to cease and desist from making the payment, providing the service or receiving the compensation. The circuit court of Dane county may enforce the order to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission.

SECTION 59m. 196.52 (8) of the statutes is created to read:

196.52 (8) Nothing in this section prevents a public utility from investing equity capital which is in excess of the level of equity that the commission has deter-

mined to be appropriate for the utility's capital structure in a subsidiary without commission approval.

SECTION 60. 196.53 of the statutes is amended to read:

196.53 Franchise, foreign corporation not to have. No license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power ~~shall or for the furnishing of local exchange telecommunications services~~ may be granted or transferred to a foreign corporation.

SECTION 61. 196.595 (1) (c) of the statutes is amended to read:

196.595 (1) (c) "Public utility" in this section means any public utility, as defined in s. 196.01, engaged in the transmission, delivery or furnishing of natural gas by means of pipes or mains, telephone messages telecommunications service, heat, light or power. "Public utility" does not include any cooperative association organized under ch. 185.

SECTION 62. 196.60 (1) (a) and (2) of the statutes are amended to read:

196.60 (1) (a) Except as provided under sub. (2), no public utility and no agent or officer of a public utility, directly or indirectly, may charge, demand, collect or receive from any person more or less compensation for any service rendered or to be rendered by it in or affecting or relating to the production, transmission, delivery or furnishing of heat, light, water, telecommunications service or power, ~~or the conveyance of telephone messages or telegraph messages~~, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force, or established under this chapter, or than it charges, demands, collects or receives from any other person for a like contemporaneous service.

(2) Nothing in this section and s. 196.604 or any other provision of law may be construed to prohibit a public telecommunications utility engaged in the conveying of telephone messages or telegraph messages from furnishing service to its employes, pensioners and officers, and its employes, pensioners and officers may receive such service, at no charge or at charges less than those prescribed in its published schedules or tariffs. The commission may prescribe rules under this subsection. The rules may not prohibit or restrict the furnishing of service to employes, pensioners and officers or the receiving of service by employes, pensioners and officers at no charge or charges less than those prescribed in the public telecommunications utility's published schedules or tariffs. No revenue may accrue or be credited in the accounts of the public telecommunications utility for service furnished and not charged under this subsection.

SECTION 63. 196.61 of the statutes is amended to read:

196.61 Facilities in exchange for compensation, prohibited; exceptions. No public utility may demand, charge, collect or receive from any person, firm or cor-

poration less compensation for any service rendered or to be rendered by the public utility in return for the furnishing by that person, firm or corporation of any part of the facilities incident to the service. This section may not be construed to prohibit any public utility from renting any facility relating to the production, transmission, delivery or furnishing of heat, light, water, telecommunications service or power ~~or the conveyance of telephone messages~~ and from paying a reasonable rental for the facility. This section may not be construed to require any public utility to furnish any part of any appliance which is situated in and upon the premises of any consumer, except ~~telephone~~ telecommunications station equipment, and except meters and appliances for measurements of any product or service unless the commission orders otherwise.

SECTION 64. 196.625 of the statutes is repealed and recreated to read:

196.625 Discrimination by telecommunications utilities. Every telecommunications utility shall receive and transmit without discrimination messages from and for any person upon tender or payment of the usual or customary charges therefor, whenever requested to do so, without regard to the character of the messages to be transmitted. Any person neglecting or refusing to comply with any of the provisions of this section shall forfeit not less than \$25 nor more than \$100 for each day of such neglect or refusal. One-half of the forfeitures recovered under this section shall be paid to the person prosecuting under this section.

SECTION 65. 196.72 (1) (b) of the statutes is amended to read:

196.72 (1) (b) Notwithstanding any statute to the contrary, ~~including but not limited to s. 196.14~~, any report filed with the commission under par. (a) shall be without prejudice to the person making the report and shall be for the sole information and use of the commission and its staff. Neither the report nor its content may be made available to any other person. The report may not be used as evidence in any trial, civil or criminal, arising out of the event concerning which the report is submitted.

SECTION 66. 196.77 of the statutes is created to read:

196.77 Promotional rates. Nothing in ss. 196.03, 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625 prohibits a telecommunications utility from making a limited offering of promotional rates for services provided under a tariff containing such a promotional rate approved by the commission. A promotional rate under this section shall take effect at the time specified in the tariff but not earlier than 10 days after the date the tariff, is filed with the commission. The commission shall give notice to any person, upon request, that a proposed tariff containing a promotional rate authorized under this section has been received by the commission.

SECTION 67. 196.795 (1) (p) of the statutes, as created by 1985 Wisconsin Act 79, is repealed.

SECTION 68. 196.795 (9) of the statutes, as created by 1985 Wisconsin Act 79, is amended to read:

196.795 (9) **PROTECTION OF BUSINESS INFORMATION.** Notwithstanding s. 19.35 ~~or 196.14~~, if the commission obtains business information from a holding company system which, if disclosed to the public, would put any ~~part of the holding company~~ nonutility affiliate in the holding company system at a material competitive disadvantage, the commission shall protect such information from public disclosure as if it were a trade secret.

SECTION 69. 196.81 (2) of the statutes is amended to read:

196.81 (2) The commission may not approve a request by an electric, ~~telephone~~, or ~~telegraph~~ telecommunications utility to abandon a right-of-way, unless the commission requires the public utility to remove any pole at ground level from the right-of-way and any other structure which extends more than 3 feet above ground level and which belongs to the utility at the time of abandonment. If the commission approves a request under this section it shall require any part of the abandoned right-of-way which is in a rural area and which was obtained by the utility by condemnation to be disposed of by the utility within 3 years from the date of approval. The commission may rescind the disposal requirement if the utility applies for rescission within 6 months prior to the end of the 3-year period and if the commission finds that the requirement would subject the utility to undue hardship.

SECTION 69m. 196.975 of the statutes is created to read:

196.975 Local access and transport area boundaries. (1) One hundred fifty or more consumers, as defined in s. 196.213 (1) (a) 1, who are residents of the same local exchange area for telecommunications service may file with the commission a petition requesting that commission staff, in cooperation with the affected telecommunications utilities, petition the appropriate federal district court to include their local exchange area in a different local access and transport area. The petitioners shall include with the petition information explaining why the current boundaries of the local access and transport area which includes their local exchange area does not adequately reflect areas of common social, economic and other concerns.

(2) After receiving a petition under sub. (1), the commission shall schedule a public hearing, to be held in the local exchange area of the petitioners, serving to receive testimony on the contents of the petition and any other matters deemed relevant by the commission. The commission shall publish a class 1 notice under ch. 985 in a newspaper serving the local exchange area at least 20 days prior to the hearing.

(3) If, after the hearing under sub. (2), the commission determines that there is sufficient evidence that current boundaries of the local access and transport area does not adequately reflect areas of common social, economic and other concerns and that there is substantial public support within the local exchange area to include the area in a different local access and transport area, the commission shall direct its staff, in cooperation with the affected telecommunications utilities to petition the appropriate federal district court to so revise the local access and transport area boundaries. All of the commission's expenses of petitioning the federal court shall be paid by the commission from its appropriation under s. 20.155 (1) (g).

SECTION 70. 199.03 (12) of the statutes is amended to read:

199.03 (12) "Public utility" means any person, except a town, village, city or sanitary district, who owns, operates, manages or controls any plant or equipment or any part of a plant or equipment, within the state, ~~for the conveyance of telephone messages or~~ for the production, transmission, delivery or furnishing of heat, light, water, telecommunications service or power either directly or indirectly to or for the public. "Public utility" includes any person engaged in the transmission or delivery of natural gas for compensation within this state by means of pipes or mains. "Public utility" does not include a cooperative association organized under ch. 185 for the purpose of generating, distributing or furnishing telephone telecommunications service or electric energy to its members only.

SECTION 71. 885.365 (2) (a) and (b) of the statutes are amended to read:

885.365 (2) (a) Such recording is made in a manner other than by interception and the person whose conversation is being recorded is informed at that time that the conversation is being recorded and that any evidence thereby obtained may be used in a court of law; or such recording is made through a recorder connector provided by the ~~telephone public tele-~~ communications utility as defined in s. 196.01 in accordance with its tariffs and which automatically produces a distinctive recorder tone that is repeated at intervals of approximately 15 seconds;

(b) The recording is made by a ~~telephone public tele-~~ communications utility as defined in s. 196.01 or its officers or employes for the purpose of or incident to the construction, maintenance, conduct or operation of the services and facilities of such public utilities, or to the normal use by such public utilities of the services and facilities furnished to the public by such public utility; or

SECTION 72. 909.015 (6) of the statutes is amended to read:

909.015 (6) TELEPHONE CONVERSATIONS. Telephone conversations, by evidence that a call was made to the number assigned at the time by the ~~telephone telecom-~~

munications company to a particular person or business, if:

(a) ~~in~~ In the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(b) ~~in~~ In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

SECTION 73. 968.31 (2) (a) of the statutes is amended to read:

968.31 (2) (a) For an operator of a switchboard, or an officer, employe or agent of any ~~telephone public tele-~~ telecommunications utility, whose facilities are used in the transmission of a wire communication to intercept, disclose or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the carrier of such communication, but ~~telephone public tele-~~ telecommunications utilities shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

SECTION 74. **Nonstatutory provisions.** (1) NOTICE TO CONSUMERS. The public service commission shall direct all small telecommunications utilities to notify their consumers, within 30 days after the effective date of this subsection, of the effect of this act on the regulation of these utilities and of the opportunities for consumers to petition the commission under section 196.215 (3) (a) and (b) of the statutes, as created by this act.

(2) FORM DEVELOPMENT. Within 45 days after the effective date of this subsection, the public service commission shall specify the form designated under section 196.213 (2) of the statutes, as created by this act.

~~(3) PARTIAL DEREGULATION. No later than July 1, 1988, the public service commission shall submit the rules under which it will administer section 196.195 of the statutes, as created by this act, to the legislative council clearinghouse under section 227.029 (1) of the statutes. Nothing in this subsection may be deemed to require the commission to delay instituting partial deregulation under section 196.195 of the statutes until such rules are promulgated.~~

SECTION 75. **Appropriation changes; public service commission.** The appropriation to the public service commission under section 20.155 (1) (g) of the statutes, as affected by the acts of 1985, is increased by \$34,300 for fiscal year 1985-86 and by \$141,300 for fiscal year 1986-87 to fund 1.0 PRO FTE clerical position and 4.0 PRO FTE professional positions to perform the responsibilities assigned to the commission under this act.

SECTION 76. **Terminology changes.** (1) Wherever the term "telephone" or "telephonic" appears in the following sections of the statutes, the term "telecommunications" is substituted: 11.40 (1) (a), 24.40 (1),

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28.02 (4) (b) 5, 32.02 (4), 66.016 (1) (a), 66.521 (1) (b) and (2) (k) 3, 66.64 (1), 66.94 (37) (a), 103.01 (3), 146.70 (1) (c), (4) (e), and (f), as affected by 1985 Wisconsin Act 29, (7), as affected by 1985 Wisconsin Act 120, and (11), as affected by 1985 Wisconsin Act 120, 175.05 (1) (e), 182.017 (1), 182.0175 (2) (e) 3, 182.025 (1), 182.202, 182.219, 184.01 (3), 184.05 (4), 196.04 (title) and (1) (a) 2, 196.205 (title) and (1) (intro.), 196.372, 196.50 (6), 196.605, 199.03 (4) and (15) and 893.28 (2).

(2) Wherever the term "telecommunications public utility" appears in the following section of the statutes, the term "telecommunications utility" is substi-

tuted: 196.795 (1) (h) 2, (8) (b) and (11) (b), as created by 1985 Wisconsin Act 79.

SECTION 77. Effective dates. (1) Except as provided in subsections (2) and (3), this act takes effect on the day following publication.

(2) The creation of section 76.38 (1) (ac) (by SECTION 5m), (b) and (bkm) (by SECTION 6m) and (fm) (by SECTION 9m) of the statutes takes effect on January 1, 1988.

(3) The treatment of section 76.38 (1) (b) and (bkm) (intro.) and 3 of the statutes and the creation of section 76.38 (1) (bkm) 3. a and b of the statutes take effect retroactively to January 1, 1986.
