

June 1994 Spec. Sess.  
Assembly Bill 2

Date of enactment: July 5, 1994  
Date of publication: July 19, 1994

## 1993 Wisconsin Act 496 (Vetoed in Part)

AN ACT *to repeal* 14.28 (4), 20.855 (4) (d), 146.70 (1) (j), 196.01 (1) (e), 196.01 (2), 196.01 (9) (b), 196.195 (6) (title), 196.195 (9) (title), 196.195 (11), 196.202 (4), 196.202 (5) (b), 196.205 (1) (b) and (2), 196.215 (2) (d), 196.215 (3) (b), 196.215 (3) (bm), 196.215 (3) (c), 196.215 (7) (b) 3, 943.45 (4), 943.455 (3), 943.46 (3) and 943.47 (4); *to renumber* 196.01 (1) (intro.) and (a) to (d), 196.202 (5) (a), 196.203 (3), 196.205 (1) (intro.), (a) and (c), 196.207 (5) (title), 196.215 (5) (e), 196.44 (2), 196.49 (1) (a), 196.52 (5) and 196.80 (1); *to renumber and amend* 196.195 (6), 196.195 (9), 196.207 (5), 196.50 (1) and 196.79; *to consolidate, renumber and amend* 196.01 (9) (intro.) and (a); *to amend* 16.76 (4) (a), 16.76 (4) (e), 32.075 (1), 66.047, 84.06 (4), 84.065 (2) (b), 93.01 (1m), 100.20 (3), 133.07 (2), 182.0175 (5), 184.01 (2), 196.01 (5), 196.01 (9m), 196.01 (10), 196.02 (2), 196.04 (1) (a) 2, 196.04 (1) (b) 1, 196.04 (1) (b) 2, 196.04 (2), 196.04 (4), 196.09 (1), 196.09 (9) (a) I, 196.09 (9) (a) 2, 196.09 (9) (b), 196.11 (1) (b), 196.11 (2), 196.13 (2), 196.15, 196.194 (1), 196.195 (1), 196.195 (5), 196.20 (1), 196.20 (2) (a) (intro.), 196.20 (2) (a) 1, 196.20 (2m), 196.20 (3), 196.20 (5) (b) 1g, 196.20 (5) (b) 2, 196.20 (5) (d), 196.20 (6), 196.201 (2), 196.201 (3), 196.202 (title), 196.202 (2), 196.203 (2), 196.204 (1), 196.204 (2), 196.204 (3), 196.213 (1) (a) 2, 196.213 (2), 196.215 (1) (am), 196.215 (2) (c) 3, 196.215 (2g) (a), 196.215 (3) (a), 196.215 (3) (am) 1, 196.215 (5) (c), 196.215 (7) (b) 1, 196.215 (7) (b) 2, 196.25 (title), 196.26 (4) (a), 196.28 (4), 196.37 (3), 196.37 (4), 196.44 (2) (title), 196.49 (3) (a), 196.49 (3) (b) (intro.), 196.50 (3), 196.50 (4), 196.50 (5), 196.50 (6), 196.505 (title) and (1), 196.52 (3) (b) 1, 196.52 (3) (c) (intro.), 196.52 (6), 196.525 (1) (intro.), 196.53, 196.595 (1) (c), 196.605 (1), 196.61, 196.65 (title), 196.77, 196.975 (1), 196.975 (3), 230.86 (1), 346.50 (1) (c), 347.26 (9), 706.09 (3) (a), 814.03 (1), 885.365 (2) (a), 885.365 (2) (b), 940.32 (3) (b), 943.45 (title), 943.45 (1) (intro.), 943.455 (2) (a), (c) and (e), 943.455 (4) (a) and (b), 943.46 (1) (a), 943.46 (2) (a), 943.46 (2) (d), 943.46 (2) (f), 943.47 (3) (a), 946.11 (2) (c) and 947.013 (1t); *to repeal and recreate* 196.196, 196.499 (16), 196.50 (1) (b) 2. (intro.), 196.50 (2), 943.45 (3) and 943.47 (3) (b); and *to create* 14.28, 15.945 (2), 16.004 (12), 20.292 (1) (gt), 20.455 (1) (kt), 20.855 (4) (d), 38.42, 100.20 (1t), 100.207, 100.208, 146.81 (1) (fm), 182.0135 (3), 184.15, 196.01 (1b), 196.01 (1d) (f), 196.01 (1g), 196.01 (1j), 196.01 (1m), 196.01 (1p), 196.01 (3e), 196.01 (3r), 196.01 (8m), 196.01 (8p), 196.01 (13), 196.015, 196.03 (6), 196.09 (9) (c), 196.11 (3), 196.19 (1m), 196.195 (12), 196.198, 196.20 (1m), 196.20 (2) (am), 196.203 (3) (b) to (e), 196.203 (5), 196.204 (5), 196.204 (6), 196.204 (7), 196.207 (6), 196.209 (2) to (5), 196.215 (6) (d) 2, 196.217, 196.218, 196.219, 196.25 (3), 196.31 (1m), 196.44 (2) (b), 196.49 (1) (ag), 196.49 (3) (d), 196.499, 196.50 (1) (b) 1 and 2 and (c), 196.50 (1) (b) 3, 196.50 (7), 196.52 (5) (b), 196.54 (6), 196.65 (3), 196.79 (2), 196.80 (1g), 196.805, 196.81 (3), 196.85 (2m), 940.32 (1) (cg), 940.32 (1) (cr), 940.32 (2m), 940.32 (3m), 943.392, 943.47 (3) (c) and (d), 943.48, 947.013 (1) (c), 947.013 (1) (d), 947.013 (1v) and 947.013 (1x) of the statutes, relating to regulation of the telecommunica-

tions industry, statutes affecting telecommunications, creating a telecommunications retraining board, surveillance of state agencies and authorities, fraudulent data alteration, confidentiality of pharmaceutical records, state master lease agreements, granting rule-making authority, providing an exemption from emergency rule procedures, extending the time limit for emergency rules, making appropriations and providing penalties.

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

SECTION 1. 14.28 of the statutes is created to read:

**14.28 Wisconsin advanced telecommunications foundation.** (1) DEFINITIONS. In this section:

(a) "Foundation" means the Wisconsin advanced telecommunications foundation.

(b) "Telecommunications provider" has the meaning given in s. 196.01 (8p).

(2) FOUNDATION CHARACTERISTICS. The governor may provide for the participation of this state in the formation and operation of the foundation if all of the following conditions are satisfied:

(a) The foundation is organized under ch. 181 and operated with the participation of this state and at least 5 telecommunications providers that operate in this state.

(b) The purpose of the foundation is to fund advanced telecommunications technology application projects and efforts to educate telecommunications users about advanced telecommunications services.

(c) Notwithstanding s. 13.94 (4) (b), the foundation is subject to full audit of all of its records and operations under s. 13.94.

(d) The foundation is considered to be an authority, as defined in s. 19.32 (1), and the records of the foundation are open to public inspection under ss. 19.31 to 19.39.

(dm) The foundation is considered to be a governmental body, as defined in s. 19.82 (1), and meetings of the board of directors of the foundation and all committees of the foundation are open to the public under subch. V of ch. 19.

(e) The foundation, with the advice of the ethics board, adopts ethics guidelines applicable to its directors, employees and paid consultants which are similar to subch. III of ch. 19, except that the foundation may not require its paid consultants to file financial disclosure statements.

(f) The governor is authorized to appoint, with the advice and consent of the senate, the majority of the directors of the foundation.

(g) The foundation establishes an endowment fund for the purposes identified under sub. (3).

(h) The foundation establishes a business plan that anticipates capitalizing its endowment fund with a total of \$25,500,000 received from telecommunications providers and from the appropriation under s. 20.855 (4) (d) within 7 years after the foundation is organized.

(i) If the foundation substantially ceases operations, all of the state's unencumbered contribution to

the foundation's endowment fund will be returned to the state.

(3) ENDOWMENT FUND. (a) The foundation may fund from the earnings of the endowment fund a project that does any of the following:

1. Establishes a clearinghouse that matches potential projects that are consistent with the purposes of the foundation with interested funding sources.

2. Demonstrates cooperative applications between telecommunications users or between telecommunications users and telecommunications providers, if the project is replicable, serves to impart knowledge or skills or meets a demonstrated need and does not compete with the private sector in the deployment of telecommunications infrastructure.

3. Promotes the effective use of the telecommunications infrastructure.

4. Educates telecommunications users about advanced telecommunications technologies, applications and alternatives and associated effects on privacy.

5. Develops systems or procedures that assist individuals in applying information, produced through the application of advanced telecommunications and other information technologies, to create knowledge.

(b) 1. This state, a local governmental unit in this state, a public, educational or governmental access facility, as defined in 47 USC 522 (15), located in this state, an educational institution, library or health care information service located in this state or any other person located in this state may apply for funding under par. (a). A telecommunications provider is not eligible for funding under par. (a).

2. The foundation shall give priority to funding applications received from local units of government, educational institutions and libraries and shall give additional priority to funding applications received from school districts in which the allowable percentage increase in revenue under subch. VII of ch. 121 is less than the statewide average and to school districts in which the allowable revenue per pupil under subch. VII of ch. 121 is less than the statewide average.

3. The foundation shall consider other financial resources available to an applicant in evaluating funding applications.

(c) A project funded under par. (a) shall require matching contributions at a level set by the foundation.

(4) STATE FUNDING CONTRIBUTION. (a) Subject to sub. (2), this state shall contribute to the foundation endowment fund from the appropriation under s. 20.855 (4) (d).

(b) Moneys may not be released from the appropriation under s. 20.855 (4) (d) without the approval of the joint committee on finance. The joint committee on finance may not release moneys unless the joint committee on finance determines that the foundation has received direct contributions to the endowment fund from telecommunications providers totaling at least \$1,000,000.

(6) FAST START FUND. (a) In addition to the endowment fund under sub. (3), the foundation shall establish and administer an additional fund. Telecommunications providers shall contribute the following to the fund under this subsection:

1. Before January 1, 1996, a total of \$2,000,000 in direct or in-kind contributions.

2. Before January 1, 1997, in addition to the amount under subd. 1, a total of \$3,000,000, at least 50% of which shall be in direct contributions.

(b) The foundation may use the resources available in the fund established under this subsection to fund any application that satisfies the criteria identified under sub. (3) (a) to (c).

(7) ADDITIONAL CONTRIBUTORS. Before January 1, 2002, the foundation shall attempt to raise from persons other than telecommunications providers a total of at least \$10,000,000 in direct or in-kind contributions to the endowment fund under sub. (3) and the fund under sub. (6).

(8) REPORTS. (a) Before January 1, 1997, and biennially thereafter, the foundation shall submit a report to the joint committee on finance and the joint committee on information policy. The report shall include information about all of the following:

1. The status of the capitalization of the endowment fund, including information on resources received, by contributors.

2. The status of progress under sub. (7) in raising contributions from persons other than telecommunications providers.

(b) If the foundation determines that it cannot capitalize the endowment fund as required under sub. (2) (h), the foundation shall submit a report to the joint committee on finance and the joint committee on information policy before January 1, 2002. The report shall identify recommendations, including suggested legislation, for assisting the foundation in reaching its endowment fund capitalization level. In the report, the foundation shall consider the use of the universal service fund contribution collection mechanism under s. 196.218 (3) to reach the required capitalization level.

SECTION 2. 14.28 (4) of the statutes, as created by 1993 Wisconsin Act .... (this act), is repealed.

SECTION 7. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

SECTION 3. 15.945 (2) of the statutes is created to read:

15.945 (2) TELECOMMUNICATIONS RETRAINING BOARD. (a) There is created a telecommunications retraining board consisting of 7 members, as follows:

1. Three members representing unions with membership in the telecommunications industry.

2. Three members representing telecommunications companies, as defined in s. 38.42 (1).

3. One member who is a member of the technical college system board.

(b) This subsection does not apply after June 30, 1999.

SECTION 4. 16.004 (12) of the statutes is created to read:

16.004 (12) RULES ON SURVEILLANCE OF STATE EMPLOYEES. (a) In this subsection, "state agency" means an association, authority, board, department, commission, independent agency, institution, office, society or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor and the courts.

(b) The department shall promulgate rules that apply to all state agencies governing surveillance by a state agency of the state agency's employees.

SECTION 5. 16.76 (4) (a) of the statutes is amended to read:

16.76 (4) (a) In this subsection, "master lease" means an agreement entered into by the department on behalf of one or more agencies for the ~~current or optional future~~ lease of goods or the provision of telecommunications services under which the department ~~pays or agrees~~ may ~~makes or agrees to make periodic payments.~~ make or agrees to make periodic payments. ~~The department may pay or agree to pay to the lessor a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is may be agreed that the department or one or more agencies will become, or for no other or nominal consideration has the option to become, the owner of the goods leased or to be leased upon full compliance with the terms of the agreement.~~

SECTION 6. 16.76 (4) (e) of the statutes is amended to read:

16.76 (4) (e) The department ~~shall~~ may grant the lessor a perfected security interest in ~~the~~ goods leased or to be leased under each master lease. The department shall record and preserve evidence of the security interest in its offices at all times during which the master lease is in effect.

Vetoed  
in Part

1993-94

1994-95

**20.855 Miscellaneous appropriations**

(4) TAX, ASSISTANCE AND  
TRANSFER PAYMENTS

(d) Wisconsin advanced  
telecommunications  
foundation

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500,000

SECTION 8. 20.292 (1) (gt) of the statutes is created to read:

20.292 (1) (gt) *Telecommunications retraining*. All moneys received under s. 38.42 (4) to fund telecommunications retraining grants under s. 38.42 (5). This paragraph does not apply after June 30, 1999.

SECTION 9. 20.455 (1) (kt) of the statutes is created to read:

20.455 (1) (kt) *Telecommunications positions*. All moneys received from the public service commission under s. 196.85 (2m) for services provided by the department of justice relating to telecommunications matters. No moneys may be encumbered from this appropriation after June 30, 1999.

SECTION 10. 20.855 (4) (d) of the statutes is created to read:

20.855 (4) (d) *Wisconsin advanced telecommunications foundation*. The amounts in the schedule to make this state's contribution to the Wisconsin advanced telecommunications foundation under s. 14.28.

SECTION 11. 20.855 (4) (d) of the statutes, as created by 1993 Wisconsin Act .... (this act), is repealed.

SECTION 12. 32.075 (1) of the statutes is amended to read:

32.075 (1) In this section, "public utility" has the meaning given under s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

SECTION 13. 38.42 of the statutes is created to read:

**38.42 Telecommunications retraining program.** (1) **DEFINITION.** In this section, "telecommunications company" includes a telecommunications utility, as defined in s. 196.01 (10), and a telecommunications carrier, as defined in s. 196.01 (8m).

(2) **ADMINISTRATION.** Subject to sub. (3), the board shall administer, or contract for the administration of, a telecommunications retraining program.

(3) **RETRAINING BOARD DUTIES.** The telecommunications retraining board shall do all of the following:

(a) Determine the impact on telecommunications work and the displacement caused by changing markets, technological advancements, changing methods of operations and competition in the telecommunications industry.

(b) Determine how the telecommunications retraining funds should be expended and how training should be provided under the telecommunications retraining program.

(c) Maximize opportunities for displaced telecommunications workers to receive retraining.

(4) **RETRAINING FUND.** A consortium of telecommunications companies shall agree to contribute \$3,000,000 to the telecommunications retraining fund over a 3-year period beginning on the effective date of this subsection .... [revisor inserts date]. If the retraining fund is depleted within 3 years and if requested by the telecommunications retraining board, the consortium shall contribute up to an additional \$1,000,000. Moneys contributed under this subsection shall be credited to the appropriation under s. 20.292 (1) (gt).

(5) **RETRAINING ELIGIBILITY.** A person is eligible to receive a grant of up to \$2,500 for retraining if all of the following conditions exist:

(a) The person is a displaced telecommunications industry worker who is being laid off, terminated or declared surplus under a telecommunications company downsizing or because of leaving a telecommunications company under an early retirement or incentive separation plan.

(b) The person was not terminated for cause.

(c) The person applied for a retraining grant within 24 months after the person left the employment of the telecommunications company.

(d) The person was employed by a telecommunications company that contributed to the retraining fund under sub. (4).

(e) The person uses the retraining grant for a retraining program that is approved by the telecommunications retraining board.

(6) **SUNSET.** This section does not apply after June 30, 1999.

SECTION 14. 66.047 of the statutes is amended to read:

**66.047 Interference with public service structure.** No contractor having a contract for any work upon, over, along or under any public street or highway shall interfere with, destroy or disturb the structures of any public utility as defined under s. 196.01 (5), and including a telecommunications carrier as defined in s. 196.01 (8m), encountered in the performance of such work so as to interrupt, impair or affect the public service for which such structures may be used, without first procuring written authority from the commissioner of public works, or other properly constituted authority. It shall, however, be the duty of every public utility, whenever a temporary protection of, or temporary change in, its structures, located upon, over, along or under the surface of any public street or highway is deemed by the commissioner of public

works, or other such duly constituted authority, to be reasonably necessary to enable the accomplishment of such work, to so temporarily protect or change its said structures; provided, that such contractor shall give reasonable notice of such required temporary protection or temporary change to the public utility, and shall pay or assure to the public utility the reasonable cost thereof, except when the public utility is properly liable therefor under the law, but in all cases where such work is done by or for the state or by or for any county, city, village, town sanitary district, metropolitan sewerage district created under ss. 66.20 to 66.26 or 66.88 to 66.918 or town, the cost of such temporary protection or temporary change shall be borne by the public utility.

SECTION 15. 84.06 (4) of the statutes is amended to read:

84.06 (4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement undertaken by the department will cross or affect the property or facilities of a railroad or public utility company, the department may, upon finding that it is feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids. The contract may be entered into on behalf of the state by the secretary. Every such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230, except ss. 16.528, 16.752 and 16.754. No such contract in which the total estimated debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As used in this subsection, "public utility" means the same as in s. 196.01 (5), and includes a telecommunications carrier as defined in s. 196.01 (8m), and "railroad" means the same as in s. 195.02. "Property" as used in this subsection includes but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty or responsibility otherwise provided by law relative to such property.

SECTION 16. 84.065 (2) (b) of the statutes is amended to read:

84.065 (2) (b) "Public utility" has the meaning given in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

SECTION 17. 93.01 (1m) of the statutes is amended to read:

93.01 (1m) "Business" includes any business, except that of banks, savings banks, savings and loan associations, and insurance companies and, "Business" includes public utilities other than public utilities or portions of public utility businesses whose associated and telecommunications carriers to the

extent that their activities, beyond registration, notice and reporting activities, are not regulated by the public service commission and includes public utility and telecommunications carrier methods of competition or trade and advertising practices that are exempt from regulation by the public service commission under s. 196.195, 196.196, 196.202 or, 196.203, 196.219 or 196.499 or by other action of the commission.

SECTION 18. 100.20 (1t) of the statutes is created to read:

100.20 (1t) It is an unfair trade practice for a person to provide any service which the person has the ability to withhold that facilitates or promotes an unfair method of competition in business, an unfair trade practice in business, or any other activity which is a violation of this chapter.

SECTION 19. 100.20 (3) of the statutes is amended to read:

100.20 (3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of competition in business or trade practice in business which is determined by the department to be unfair or from providing service in violation of sub. (1t). The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair.

SECTION 20. 100.207 of the statutes is created to read:

**100.207 Telecommunications services.** (1) DEFINITION. In this section, "telecommunications service" has the meaning given in s. 196.01 (9m).

(2) ADVERTISING AND SALES REPRESENTATIONS. A person may not make in any manner any statement or representation with regard to the provision of telecommunications service, including the rates, terms or conditions for telecommunications service, which is false, misleading or deceptive, or which omits to state material information with respect to the provision of telecommunications service that is necessary to make the statement not false, misleading or deceptive.

(3) SALES PRACTICES. (a) A person may not engage in negative option billing or negative enrollment of telecommunications services, including unbundled telecommunications services. A person may not bill a customer for any telecommunications service that the customer did not affirmatively order unless that service is required to be provided by law, the federal communications commission or the public service commission. A customer's failure to refuse a person's proposal to provide a telecommunications service is not an affirmative request for that telecommunications service.

(b) A person may not charge a customer for telecommunications service provided after the customer has canceled that telecommunications service.

(c) A person shall provide a customer who has ordered a telecommunications service through an oral solicitation with independent confirmation of the order within a reasonable time.

(4) COLLECTION PRACTICES. (a) A person may not misrepresent that local exchange service may be disconnected for nonpayment of other telecommunications service.

(b) A person may not unreasonably refuse to provide a detailed listing of charges for telecommunications service upon the request of a customer.

(5) TERRITORIAL APPLICATION. Subsections (2) to (4) apply to any practice directed to any person in this state.

(6) REMEDIES AND PENALTIES. (a) 1. If a person fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including damages, injunctive or declaratory relief, specific performance and rescission.

2. A person or class of persons entitled to relief under subd. 1 is also entitled to recover costs and disbursements.

(b) 1. The department of justice, on its own initiative or at the request of the department of agriculture, trade and consumer protection, or any district attorney upon informing the department of justice, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. Injunctive relief may include an order directing telecommunications providers, as defined in s. 196.01 (8p), to discontinue telecommunications service provided to a person violating this section or ch. 196. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action if proof of these acts or practices is submitted to the satisfaction of the court.

2. The department of agriculture, trade and consumer protection may exercise its authority under ss. 93.14 to 93.16 and 100.18 (11) (c) to administer this section. The department of justice may subpoena persons, require the production of books and other documents, and may request the department of agriculture, trade and consumer protection to exercise its authority to aid in the investigation of alleged violations of this section.

(c) Any person who violates subs. (2) to (4) shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Forfeitures under this paragraph shall be enforced by the department of justice, on its own initiative or at the request of the department of agriculture, trade and consumer protection, or, upon informing the department of justice, by the district attorney of the county where the violation occurs.

(e) The department of agriculture, trade and consumer protection, in consultation with the department of justice, shall promulgate rules under this section.

(f) This section does not preempt the administration or enforcement of this chapter or ch. 133 or 196. Practices in violation of this section may also constitute unfair methods of competition or unfair trade practices under s. 100.20 (1) or (1t) or fraudulent representations under s. 100.18 (1) or violate ch. 133 or 196.

SECTION 21. 100.208 of the statutes is created to read:

**100.208 Unfair trade practices in telecommunications.** (1) In this section, "telecommunications provider" has the meaning given in s. 196.01 (8p).

(2) The department shall notify the public service commission if any of the following conditions exists:

(a) A telecommunications provider has been found by a court to have violated any provision of this chapter or of a rule promulgated under s. 100.20 (2).

(b) The department has issued an order under s. 100.20 (3) prohibiting a telecommunications provider from engaging in an unfair trade practice or method of competition.

SECTION 22. 133.07 (2) of the statutes is amended to read:

133.07 (2) This chapter does not prohibit activities of any public utility, as defined in s. 196.01 (5), or telecommunications carrier, as defined in s. 196.01 (8m), which are required by ch. 196 or rules or orders under ch. 196 or activities necessary to comply with that chapter or those rules or orders or activities that are actively supervised by the public service commission. This subsection does not apply to activities of a public utility or telecommunications carrier that are exempt from public service commission regulation under s. 196.195, 196.196, 196.202, 196.203, 196.219 or 196.499 or by other action by the commission.

SECTION 23. 146.70 (1) (j) of the statutes is repealed.

SECTION 24. 146.81 (1) (fm) of the statutes is created to read:

146.81 (1) (fm) A pharmacist licensed under ch. 450.

SECTION 25. 182.0135 (3) of the statutes is created to read:

182.0135 (3) This section does not apply to a telecommunications utility, as defined in s. 196.01 (10).

SECTION 26. 182.0175 (5) of the statutes is amended to read:

182.0175 (5) **RIGHT TO INJUNCTION.** If any person engages in or is likely to engage in excavation or demolition contrary to the provisions of this section, which results or is likely to result in damage to transmission facilities, the person who owns or operates such facilities may seek injunctive relief in the circuit court for Dane county or in any other court of competent jurisdiction. If the transmission facilities are

owned or operated by a public utility as defined in s. 196.01 (5), including a telecommunications carrier, as defined in s. 196.01 (8m), and the public utility does not seek injunctive relief, the attorney general upon request of the public service commission shall seek injunctive relief in the circuit court for Dane county or in any other court of competent jurisdiction.

SECTION 27. 184.01 (2) of the statutes 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 a telecommunications utility, as defined in s. 196.01 (10). "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 utility, as defined in s. 196.01 (10), unless such company also owns, operates, manages or controls a public utility which is not a telecommunications utility ~~or unless such company is a telecommunications utility.~~

SECTION 28. 184.15 of the statutes is created to read:

**184.15 Securities of telecommunications utilities. (1)**

DEFINITION. In this section, "telecommunications utility" has the meaning given in s. 196.01 (10).

(2) NOTICE. A telecommunications utility subject to rate-of-return regulation shall provide the commission with adequate notice of the issuance of any securities not more than 10 business days after the security issuance. The commission shall retain continuing supervisory jurisdiction over the capital structure of any telecommunications utility subject to rate-of-return regulation, necessary to enforce ss. 196.204 and 196.219.

(3) CAPITAL STRUCTURE. In a rate case involving a telecommunications utility subject to rate-of-return regulation, the commission may impute an appropriately balanced capital structure if the telecommunications utility has not maintained a reasonably balanced capital structure.

(4) DIVIDENDS. (a) If the commission finds that the capital of a telecommunications utility subject to rate regulation, other than a small telecommunications

utility, is impaired, the commission may, after investigation and opportunity for hearing, issue an order directing the telecommunications utility to cease paying dividends on its common stock until the impairment is corrected.

(b) If the commission finds that a small telecommunications utility subject to rate-of-return regulation is an equity-thin utility, as defined in s. 196.215 (1) (am), the commission may, after investigation and opportunity for hearing, issue an order directing the small telecommunications utility to cease paying dividends on its common stock until the small telecommunications utility is no longer an equity-thin utility.

SECTION 29. 196.01 (1) (intro.) and (a) to (d) of the statutes are renumbered 196.01 (1d) (intro.) and (a) to (d).

SECTION 30. 196.01 (1) (e) of the statutes is repealed.

SECTION 31. 196.01 (1b) of the statutes is created to read:

196.01 (1b) "Access service" means the provision of switched or dedicated access to a local exchange network for the purpose of enabling a telecommunications provider to originate or terminate telecommunications service. "Access service" includes unbundled local service provided to telecommunications providers.

SECTION 32. 196.01 (1d) (f) of the statutes is created to read:

196.01 (1d) (f) Any other telecommunications provider if the commission finds that the service offered by the telecommunications provider is available from other telecommunications providers within this state directly or indirectly to the public.

SECTION 33. 196.01 (1g) of the statutes is created to read:

196.01 (1g) "Basic local exchange service" means the provision to residential customers of an access facility, whether by wire, cable, fiber optics or radio, and essential usage within a local calling area for the transmission of high-quality 2-way interactive switched voice or data communication. "Basic local exchange service" includes extended community calling and extended area service. "Basic local exchange service" does not include additional access facilities or any discretionary or optional services that may be provided to a residential customer. "Basic local exchange service" does not include cable television service or services provided by a cellular mobile radio telecommunications utility or any other mobile radio telecommunications utility.

SECTION 34. 196.01 (1j) of the statutes is created to read:

196.01 (1j) "Basic message telecommunications service" means long distance toll service as provided on January 1, 1994, on a direct-dialed, single-message, dial-1 basis between local exchanges in this state at tariff rates. "Basic message telecommunications service" does not include any wide-area telecommunica-

tions service, 800-prefix service, volume, dedicated, discounted or other interoffice services or individually negotiated contracts for telecommunications service.

SECTION 35. 196.01 (1m) of the statutes is created to read:

196.01 (1m) "Broadcast service" means the one-way transmission to the public of video or audio programming regulated under 47 USC 301 to 334 that is provided by a broadcast station, as defined in 47 USC 153 (dd), including any interaction with a recipient of the programming as part of the video or audio programming offered to the public.

SECTION 36. 196.01 (1p) of the statutes is created to read:

196.01 (1p) "Cable television service" means the one-way transmission to subscribers of video programming regulated under 47 USC 521 to 559 that is 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 includes any subscriber interaction required for the selection of video programming or other program services.

SECTION 37. 196.01 (2) of the statutes is repealed.

SECTION 38. 196.01 (3e) of the statutes is created to read:

196.01 (3e) "Interlata" means between local access and transport areas.

SECTION 39. 196.01 (3r) of the statutes is created to read:

196.01 (3r) "Intralata" means within the boundaries of a local access and transport area.

SECTION 40. 196.01 (5) of the statutes 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 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, telecommunications 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 utility 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. "Public utility" does not include a cellular mobile radio telecommunications utility.

SECTION 41. 196.01 (8m) of the statutes is created to read:

196.01 (8m) "Telecommunications carrier" means any person that owns, operates, manages or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public but does not provide basic local exchange service, except on a resale basis. "Telecommunications carrier" does not include an alternative telecommunications utility, a cellular mobile radio telecommunications utility or any other mobile radio telecommunications utility.

SECTION 42. 196.01 (8p) of the statutes is created to read:

196.01 (8p) "Telecommunications provider" means any person who provides telecommunications services.

SECTION 43. 196.01 (9) (intro.) and (a) of the statutes are consolidated, renumbered 196.01 (9) and amended to read:

196.01 (9) "Telecommunications reseller" or "reseller" means a telecommunications utility ~~which:~~ (a) ~~Resells that resells~~ message telecommunications service, wide-area telecommunications services or other telecommunications services which have been approved for reselling by the commission; ~~and.~~

SECTION 44. 196.01 (9) (b) of the statutes is repealed.

SECTION 45. 196.01 (9m) of the statutes is amended to read:

196.01 (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~~ cable television service or broadcast service.

SECTION 46. 196.01 (10) of the statutes is amended to read:

196.01 (10) "Telecommunications utility" means any person, corporation, company, cooperative, part-



nership, 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. “Telecommunications utility” does not include a telecommunications carrier.

SECTION 47. 196.01 (13) of the statutes is created to read:

196.01 (13) “Wide-area telecommunications service” means the offering of message-based telecommunications service using a single, dedicated access line at the originating end of the call at a significant volume-based discount.

SECTION 48. 196.015 of the statutes is created to read:

**196.015 Total service long-run incremental cost.** (1) In this section, “basic network function” means the smallest disaggregation of local exchange transport, switching and loop functions that is capable of being separately listed in a tariff and offered for sale.

(2) In this chapter, total service long-run incremental cost is calculated as the total forward-looking cost, using least cost technology that is reasonably implementable based on currently available technology, of a telecommunications service, relevant group of services, or basic network function that would be avoided if the telecommunications provider had never offered the service, group of services, or basic network function or, alternatively, the total cost that the telecommunications provider would incur if it were to initially offer the service, group of services, or basic network function for the entire current demand, given that the telecommunications provider already produces all of its other services.

SECTION 49. 196.02 (2) of the statutes is amended to read:

196.02 (2) DEFINITION; CLASSIFICATION. In this subsection, “public utility” does not include a telecommunications cooperative or a small telecommunications utility except as provided under s. 196.205 (4) or 196.215 (2) and does not include an alternative telecommunications utility. 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 50. 196.03 (6) of the statutes is created to read:

196.03 (6) In determining a reasonably adequate telecommunications service or a reasonable and just charge for that telecommunications service, the commission shall consider at least the following factors in determining what is reasonable and just, reasonably adequate, convenient and necessary or in the public interest:

(a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219.

(b) Promotion of consumer choice.

(c) Impact on the quality of life for the public, including privacy considerations.

(d) Promotion of universal service.

(e) Promotion of economic development, including telecommunications infrastructure deployment.

(f) Promotion of efficiency and productivity.

(g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

SECTION 51. 196.04 (1) (a) 2 of the statutes is amended to read:

196.04 (1) (a) 2. “Physical connection” means the number of trunk lines or complete wire circuits and connections, including connections by wire, optics, radio signal or other means, required to furnish reasonably adequate telecommunications service between telecommunications ~~utilities~~ providers.

SECTION 52. 196.04 (1) (b) 1 of the statutes is amended to read:

196.04 (1) (b) 1. Any person who owns transmission equipment and property shall permit, for reasonable compensation, the use of the transmission equipment and property by any ~~public utility tele-~~ communications provider if public convenience and necessity require such use and if the use will not result in irreparable injury to any owner or user of the transmission equipment and property or in any substantial detriment to the service to be rendered by the owner or user.

SECTION 53. 196.04 (1) (b) 2 of the statutes is amended to read:

196.04 (1) (b) 2. Every telecommunications utility shall permit physical connections to be made, and telecommunications service to be furnished, between any telecommunications system operated by it and the telecommunications toll line operated by another telecommunications ~~utility provider,~~ or between its toll line and the telecommunications system of another telecommunications ~~utility provider,~~ or between its toll line and the toll line of another telecommunications ~~utility provider,~~ or between its telecommunications system and the telecommunications system of another telecommunications ~~utility provider~~ if all of the following apply:

a. Public convenience and necessity require the connection;

b. The connection will not result in irreparable injury to the owners or other users of the facilities of the public ~~utilities~~ utility making the connection; ~~and,~~

c. The connection will not result in any substantial detriment to the service to be rendered by ~~any of the~~ a public ~~utilities~~ utility making the connection.

SECTION 54. 196.04 (2) of the statutes is amended to read:

196.04 (2) If there is a failure to agree upon use of transmission equipment and property under sub. (1) or the conditions or compensation for the use, or if there is a failure to agree upon the physical connections or the terms and conditions upon which the physical connections shall be made, any public utility, any telecommunications provider or any other person interested may apply to the commission. If, after investigation, the commission determines that public convenience and necessity require the use or physical connections and that the use or physical connections will not result in irreparable injury to the owner or other users of the transmission equipment and property or of the facilities of the public ~~utilities~~ utility or in any substantial detriment to the service to be rendered by the owner or the public ~~utilities~~ utility or other users of the transmission equipment and property or facilities, the commission, by order, shall direct that the use be permitted and that the physical connections be made. The commission shall prescribe reasonable conditions and compensation for the use and shall determine how and within what time the connections shall be made and by whom the expense of making and maintaining the connections shall be paid. An order under this subsection may be revised by the commission.

SECTION 55. 196.04 (4) of the statutes is amended to read:

196.04 (4) If the parties cannot agree and the commission finds that public convenience and necessity or the rendition of reasonably adequate service to the public requires that a public utility or telecommunications provider be permitted to extend its lines on, over or under the right-of-way of any railroad, or requires that the tracks of any railroad be extended on, over or under the right-of-way of any public utility or telecommunications provider, the commission may order the extension by the public utility, telecommunications provider or railroad on, over or under the right-of-way of the other if it will not materially impair the ability of the railroad, telecommunications provider or public utility, on, over or under whose right-of-way the extension would be made, to serve the public. The commission shall prescribe lawful conditions and compensation which the commission deems equitable and reasonable in light of all the circumstances.

SECTION 56. 196.09 (1) of the statutes is amended to read:

196.09 (1) In this section, "public utility" does not include a telecommunications cooperative except as provided under s. 196.205 (4). In subs. (2) to (7), "public utility" does not include a ~~small telecommunications utility, except as provided under s. 196.215 (2).~~ Subsection (9) only applies to a ~~small telecommunications utility.~~ Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the 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 57. 196.09 (9) (a) 1 of the statutes is amended to read:

196.09 (9) (a) 1. The commission shall create by order guidelines establishing classes of fixed capital that ~~small telecommunications utilities~~ use for public utility purposes ~~and~~, a range of annual depreciation rates for each of those classes and a composite range of annual depreciation rates for all classes of fixed capital.

SECTION 58. 196.09 (9) (a) 2 of the statutes is amended to read:

196.09 (9) (a) 2. The commission shall review biennially the guidelines established under subd. 1, except that if the commission receives, more than 365 days before the deadline for a biennial review, a written request from a ~~small telecommunications utility~~ for a review, the commission shall review the guidelines no later than 365 days after receiving the request.

SECTION 59. 196.09 (9) (b) of the statutes is amended to read:

196.09 (9) (b) ~~The commission shall review a small telecommunications utility's estimate of its annual rate of depreciation for a specified class of fixed capital and determine if that rate is just and reasonable if the commission receives a written request for a review from that small telecommunications utility or if that small telecommunications utility becomes subject to subs. (2) to (7) under s. 196.215 (2).~~ The commission shall determine that an annual depreciation rate is just and reasonable if the rate falls within the range established for that class under par. (a) 1, if the composite annual depreciation rate falls within the composite range established under par. (a) 1 for all classes of fixed capital or if the commission previously determined that the rate is just and reasonable.

SECTION 60. 196.09 (9) (c) of the statutes is created to read:

196.09 (9) (c) A telecommunications utility may implement an annual composite depreciation rate, for all classes of fixed capital that is outside the range established under par. (a) 1 by filing the rate with the commission. The proposed annual composite depreciation rate shall be effective on the date specified in the filing but not sooner than 90 days from the date of filing with the commission, unless any of the following occurs:

1. During the 90-day period the commission determines that the rate is not just and reasonable or in the public interest.

2. The commission directs that the depreciation rate be made effective at an earlier date.

SECTION 61. 196.11 (1) (b) of the statutes is amended to read:

196.11 (1) (b) ~~Found~~ Entered into by a public utility other than a telecommunications utility and found by the commission to be reasonable and just and consistent with the purposes of this chapter.

SECTION 62. 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 commission. 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 telecommunications cooperatives or ~~small~~ telecommunications utilities ~~except as provided under s. 196.205 (1) or 196.215 (2).~~

SECTION 63. 196.11 (3) of the statutes is created to read:

196.11 (3) A telecommunications utility may enter into any reasonable arrangement with its consumers or employees, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device, if the arrangement is practical and advantageous to the parties interested.

SECTION 64. 196.13 (2) of the statutes is amended to read:

196.13 (2) The commission shall publish in its reports the value of all the property actually used and useful for the convenience of the public of a public utility, other than a telecommunications utility, if the commission has held a hearing on the public utility's rates, charges, service or regulations or if the commission has otherwise determined the value of the public utility's property.

SECTION 65. 196.15 of the statutes is amended to read:

**196.15 Units of product or service.** The commission shall prescribe for each kind of public utility, other than a telecommunications utility, suitable and convenient standard commercial units of product or service.

SECTION 66. 196.19 (1m) of the statutes is created to read:

196.19 (1m) (a) In this subsection, "new telecommunications service" means services that are not offered by the telecommunications utility before January 1, 1994, and alternative rate structures offered after December 31, 1993, for any telecommunications service that is offered before January 1, 1994, if the rate structure effective before January 1, 1994, continues to be available to new and existing customers. "New telecommunications service" includes additional functions and features on, and technological alternatives to, any telecommunications service offered before January 1, 1994.

(b) A telecommunications utility may not offer a new telecommunications service to the public without

first filing a tariff for that offering with the commission. A proposed tariff offering a new telecommunications service shall be effective on the date specified in the tariff but not earlier than 10 days after the date on which the tariff is filed with the commission, unless the commission, either upon complaint or upon its own motion, suspends the operation of the new tariff by serving written notice of the suspension on the telecommunications utility within 10 days after the date of filing. The notice shall include a statement of the reason under par. (c) upon which the commission believes the tariff may be modified.

(c) The commission may modify a tariff under par. (b) if the commission finds, after an opportunity for a hearing, that the new telecommunications service violates s. 196.204, 196.209 or 196.219 or is otherwise adverse to the quality of basic local exchange service, business access line and usage service within a local calling area or access service.

(d) If the commission does not conduct a hearing under this subsection, the commission shall issue its final order within 60 days after issuing the notice of suspension. If the commission conducts a hearing, the commission shall issue its final order within 120 days after issuing the notice of suspension. If a final order is not issued within the time limits specified in this paragraph, the tariff becomes effective as filed.

(e) The commission, upon application of the telecommunications utility, may direct that the tariff for a new telecommunications service be made effective after a shorter time period than the period in par. (b).

SECTION 67. 196.194 (1) of the statutes, as affected by 1993 Wisconsin Act 211, is amended to read:

196.194 (1) TELECOMMUNICATIONS UTILITIES. ~~Nothing in ss. 196.03, 196.19, 196.20, 196.21, 196.22, 196.37, 196.60, 196.604 and 196.625~~ Except as provided in this subsection, nothing in this chapter 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 subsection shall include the condition that any such contract shall be compensatory as determined under s. 196.204 (5) and (6). 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 subsection or an amendment to such a contract has been executed, the telecommunications utility shall submit ~~the contract~~ the written notice of the general nature of the contract and the parties to the contract. Upon request, the commission shall give notice to any inform a person, upon request or direct that the per-

son be informed, that a contract authorized under this subsection notice has been received by the commission. The notice shall identify the telecommunications utility that has entered into the contract of execution of a contract under this subsection. Within 6 months after receiving substantial evidence that a contract 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 68. 196.195 (1) of the statutes is amended to read:

196.195 (1) REGULATION IMPOSED. Except as provided in this section and ss. 196.202, 196.203 and 196.215 and 196.219, a telecommunications utility is subject to every applicable provision of this chapter and ch. 184.

SECTION 69. 196.195 (5) of the statutes is amended to read:

196.195 (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~~ 196.05; s. 196.06; s. 196.07; s. 196.09; s. 196.10; s. ~~196.14~~ 196.12; s. 196.13 (2); s. 196.19; tariffing requirements under s. 196.194; s. 196.196 (1) or (5); s. 196.20; s. 196.204 (7); s. 196.21; s. 196.22; s. 196.26; s. 196.28; s. 196.37; 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. 196.60; s. 196.604; s. 196.77; 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; and s. 196.805.~~

SECTION 70. 196.195 (6) (title) of the statutes is repealed.

SECTION 71. 196.195 (6) of the statutes is renumbered 196.195 (12) (d) and amended to read:

196.195 (12) (d) 1. 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 paragraph, 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.

2. If the commission authorizes a telecommunications utility to provide a service under ~~par. (a) subd. 1~~, the telecommunications utility may not provide the service at a price which does not recover total service 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.

3. The commission may investigate the price of any service authorized under ~~par. (a) subd. 1~~ to assure that the price complies with ~~par. (b) subd. 2~~ and may suspend any price which does not comply with ~~par. (b) subd. 2~~.

4. A request for authorization under ~~par. (a) subd. 1~~ 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.

SECTION 72. 196.195 (9) (title) of the statutes is repealed.

SECTION 73. 196.195 (9) of the statutes is renumbered 196.195 (12) (e) and amended to read:

196.195 (12) (e) If under this section subsection 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 total service 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.

SECTION 74. 196.195 (11) of the statutes is repealed.

SECTION 75. 196.195 (12) of the statutes is created to read:

196.195 (12) INCENTIVE REGULATION FOR TELECOMMUNICATIONS UTILITIES. (a) To provide incentives for telecommunications utilities to achieve any of the goals listed in par. (b) 1. a., the commission may suspend any of the provisions listed in sub. (5) except ss. 196.19, 196.20 (1m), 196.22, 196.26, 196.37, 196.60 and 196.604 or may approve a regulatory method alternative to traditional rate-of-return regulation that does not require suspension of any provisions listed in sub. (5).

(b) 1. Except as provided in subd. 2, after opportunity for hearing, the commission shall determine whether it is in the public interest to suspend any of the provisions identified in par. (a) or to approve an alternative regulatory method. In making this determination, the commission shall identify all of the following:

a. The goals to be achieved, which may include promoting competition, infrastructure deployment, economic development, consumer choice, productivity, efficiency, quality of life, societal goals or universal service.

b. The authorized incentive and how the incentive is expected to help achieve the identified goals.

c. The measurement to be used to evaluate successful attainment of the identified goals.

d. The extent to which a telecommunications utility has contributed to the Wisconsin advanced telecommunications foundation established under s. 14.28.

2. If the commission suspends the application of any provision identified in par. (a) or approves an alternative regulatory method for any telecommunications utility, the commission may waive the hearing opportunity required under subd. 1, with notice to all known interested parties, for any similarly situated telecommunications utility, if the waiver is in the public interest.

3. The commission shall regulate telecommunications utilities with the goal of developing alternative forms of regulation. The commission shall, by order, develop and approve an incentive regulatory plan for each telecommunications utility to implement this subdivision. The commission may not increase regulation of a small telecommunications utility in implementing this subdivision. For telecommunications

utilities with more than 150,000 access lines in use in this state, s. 196.196 (2) applies to access service rates in any regulatory plan approved under this subdivision.

(c) Subsections (7), (8) and (10) apply to a proceeding under this subsection.

SECTION 76. 196.196 of the statutes is repealed and recreated to read:

**196.196 Telecommunications utility price regulation.**

(1) PRICE REGULATION OF BASIC LOCAL EXCHANGE SERVICES. (a) 1. This subsection governs rates for basic local exchange service, standard business access lines and usage by small businesses with no more than 3 access lines and basic message telecommunications service and any changes in those rates for telecommunications utilities electing to be price regulated. A telecommunications utility shall elect to become a price-regulated utility by filing a written election with the commission.

2. The commission may include, following notice and opportunity for hearing, as part of the services subject to price regulation under this subsection all of the following:

a. Those services and technological features found by the commission to be a necessary component of universal service under s. 196.218.

b. Advanced telecommunications services, if the commission finds that the advanced telecommunications service is essential to the public interest; that the advanced telecommunications service, or reasonably equivalent service, is not available at reasonable prices and terms and conditions from alternative providers; and that price regulation of the advanced telecommunications service is essential to the public interest.

(b) If a telecommunications utility elects to become a price-regulated telecommunications utility within 30 days after the effective date of this paragraph ... [revisor inserts date], the telecommunications utility shall set the initial rates to be charged under this section for services under par. (a) and file the rates with the commission. The rates shall be effective at the time specified in the filing with the commission. The rates shall not be greater than the rates allowed for the telecommunications utility for those services as of December 31, 1993, unless the telecommunications utility has more than 500,000 access lines in use in this state, in which case the telecommunications utility shall reduce its rate for residential access line service and for single line business access line service by at least 10%. If a telecommunications utility elects to become a price-regulated telecommunications utility more than 30 days after the effective date of this paragraph ... [revisor inserts date], the telecommunications utility shall set the initial rates and file those rates with the commission on at least 45 days' notice. The rates shall be no higher than those in effect on the December 31 immediately preceding the election unless the telecommunications utility has more than 500,000 access lines in use in this state, in which case the telecommunica-

tions utility shall reduce its rate for residential access line service and for single line business access line service by at least 10%.

(c) A price-regulated telecommunications utility may not increase its rates for services under par. (a), except for basic message telecommunications service, for a period of 3 years after electing to become price regulated. Following the initial 3-year period for services under par. (a), except for basic message telecommunications service, and at any time for basic message telecommunications service, a price-regulated telecommunications utility may increase its rates for those services to the extent that the change in the revenue weighted price indices does not exceed 2 percentage points less than the most recent annual change in the gross domestic product price index, as published by the federal government. The commission shall, by rule, create a penalty mechanism for up to a one percentage point increase in the percentage offset for inadequate service provided by or insufficient investment made by a price-regulated telecommunications utility. The commission shall, by rule, create an incentive mechanism for up to a one percentage point decrease in the percentage offset to encourage infrastructure investment by the price-regulated telecommunications utility. For a telecommunications utility with more than 500,000 access lines in use in this state at the time of electing to become price regulated, the percentage offset to the change in the gross domestic product price index shall be 3 percentage points and the penalty mechanism and incentive mechanism shall be up to 2 percentage points. No earlier than 6 years after the effective date of this paragraph ... [revisor inserts date], and no more frequently than every 3 years thereafter, the commission may, following notice and an opportunity for hearing, by rule increase or decrease the gross domestic product price index percentage offset by a maximum of one percentage point in any 12-month period to reflect any state-wide changes in the productivity experience of the telecommunications industry. The commission shall promulgate rules to identify the factors that the commission may consider in determining changes in the productivity experience of the telecommunications industry. If application of the price regulation index formula achieves a negative result, prices shall be reduced so that the cumulative price change for services under par. (a), including prior price reductions in these services, achieves the negative result. Annual permitted price increases may be deferred and accumulated for a maximum of 3 years into a single increase. The first permitted increase after the telecommunications utility elects to become price regulated shall be limited by the most recent annual change in the gross domestic product price index, less 2 percentage points, plus or minus any penalty or incentive adjustment. For a telecommunications utility with more than 500,000 access lines in use in this state, the first permitted increase shall be limited by the most recent annual change in the gross domestic product

price index, less 3 percentage points, plus or minus any penalty or incentive adjustment. The increase in any rate element may not at any time exceed 10% or the increase in the gross domestic product price index, whichever is greater. A rate change under this paragraph shall take effect 45 days after the date on which notice is received by the commission. A telecommunications utility shall notify customers of a rate change under this paragraph by a bill insert that is included in a bill no later than the first billing provided after notice of a rate change is submitted to the commission. A telecommunications utility may file only one rate increase under this paragraph during any 12-month period.

(cm) The commission shall consider the extent to which a telecommunications utility has contributed to the Wisconsin advanced telecommunications foundation established under s. 14.28 when making penalty or incentive adjustments under par. (c).

(d) A price-regulated telecommunications utility may reduce the price for any service under par. (a) on one day's notice filed with the commission. A price-regulated telecommunications utility may alter the rate structure for any service under par. (a) on 10 days' prior notice to the commission, provided that the preexisting rate structure continues to be offered to customers.

(e) 1. Notwithstanding pars. (c) and (d) but not earlier than 3 years after electing to become a price-regulated telecommunications utility, a price-regulated telecommunications utility may alter its rate structure or increase rates for services under par. (a) on 120 days' prior notice to the commission. The notice to the commission under this subdivision shall be accompanied with documentary support that the change is just and reasonable. The commission shall establish by rule documentation requirements under this subdivision.

2. Upon complaint filed by an affected party or on the commission's own motion, the commission may initiate an investigation of a proposed rate change within 60 days after receiving the notice. Within 120 days after initiating an investigation and following a hearing, the commission shall issue an order approving, modifying or rejecting the rate change. The commission may suspend a proposed rate structure alteration or rate increase pending the issuance of the order.

3. The commission's review of a proposed rate change may consider only the following:

- a. Cost allocations of costs outside of the control of the telecommunications utility to services under par. (a).
- b. Competition.
- c. Network and service quality, improvement and maintenance.
- d. Changes in the costs of providing the service that are outside of the control of the telecommunications utility.

e. Impact of the proposed change on the public interest.

(f) A telecommunications utility shall give notice of any proposed rate change under par. (c), (d) or (e) to its customers. Notice shall be published in a newspaper of general circulation in the service area to be affected within a reasonable time period after the notice of the rate change is given to the commission, and shall be included in or on the bill of each affected customer in the billing first following notice to the commission. The notice to customers shall contain all of the following:

1. An estimate of the dollar amount of the monthly change for the typical residential customer that would result if the rate change becomes effective.

2. A statement that a customer who desires to comment on the rate change may call or write the commission or who desires the complete details of the rate change may call or write the telecommunications utility.

3. A statement that describes the nature and extent of the commission's review of the proposed rate change.

(g) 1. Five years after a telecommunications utility elects to become a price-regulated telecommunications utility or, if subd. 4 applies, within the dates specified in that subdivision, the commission shall hold a hearing, and at any time thereafter, upon complaint or on the commission's own motion, the commission may hold a hearing, to determine whether it is in the public interest to suspend one or more of the provisions of this subsection as it applies to a price-regulated telecommunications utility or to approve an alternative regulatory method for that utility. In making a determination under this subdivision, the commission shall identify all of the following:

a. The goal to be achieved, which may include promoting competition, infrastructure deployment, economic development, consumer choice, productivity, efficiency, quality of life, societal goals or universal service.

b. The suspension or method to be approved and how the decision is expected to help achieve the identified goals.

c. The criteria to be used to evaluate success of the change.

1m. In making a determination under subd. 1, the commission shall consider if the telecommunications utility is adequately serving geographical areas with diverse income or racial populations.

2. If the commission suspends the application of any provision of this subsection or approves an alternative regulatory method under subd. 1, the commission, upon its own motion or a petition from an interested person, may waive the hearing required under subd. 1, with notice to all known interested parties, for any similarly situated telecommunications utility, if waiver is in the public interest.

3. Section 196.195 (7), (8) and (10), as it applies to that section, applies to a proceeding under this paragraph.

4. If a telecommunications utility that has more than 150,000 access lines in use in this state elects to become a price-regulated telecommunications utility before December 31, 1997, the commission shall commence the hearing required under subd. 1 no earlier than February 1, 1999, and no later than February 15, 1999, and shall complete the proceeding that includes that hearing no later than June 30, 1999.

(2) PRICE REGULATION OF INTRASTATE ACCESS SERVICES. (a) Except as required to enforce this subsection, the commission may not review or set the rates for intrastate access services offered by price-regulated telecommunications utilities. This paragraph does not waive the tariff requirements of s. 196.219 (2m).

(b) 1. Intrastate access service rates of a price-regulated telecommunications utility with more than 150,000 access lines in use in this state may not exceed the utility's interstate rates for similar access services. The telecommunications utility shall eliminate 50% of its intrastate carrier common line charge within one year after its election to become price regulated and shall eliminate the balance of its intrastate carrier common line charge within one year thereafter.

2. A price-regulated telecommunications utility with more than 150,000 access lines in use in this state shall eliminate intrastate carrier common line charges upon full authorization to provide interlata service.

3. After eliminating intrastate carrier common line charges, the telecommunications utility may not reinstate an intrastate carrier common line charge or a substitute charge.

(c) A price-regulated telecommunications utility with 150,000 or less access lines in use in this state shall adjust its intrastate access service rates in equal annual increments so that, within 2 years after its election to become price regulated, its intrastate access service rates and rate elements do not exceed the lower of its intrastate access service rates and rate elements in effect as of the date of its election to become price regulated or its interstate rates for similar access services, including carrier common line. After the 2-year period, intrastate access service rates may not exceed the utility's interstate access service rates. Beginning on the 3rd anniversary of the utility's election to become price regulated, the utility's intrastate carrier common line charge may not exceed 83.33% of its existing interstate carrier common line charge. Beginning on the 4th anniversary of the utility's election, the utility's intrastate carrier common line charge may not exceed 66.67% of its existing interstate carrier common line charge. Beginning on the 5th anniversary of the utility's election, the utility's intrastate carrier common line charge may not exceed 50% of its existing interstate carrier common line charge.

(d) This subsection does not limit any surcharges to access service rates, including to the carrier common line charge or to substitute rate elements, as a means of collecting access customers' share of charges that may be ordered by the commission under s. 196.218.

(e) A telecommunications utility shall give a customer written notice of any rate increase under this subsection before the customer is billed at the increased rate.

(3) PRICE REGULATION OF OTHER SERVICES. (a) Except to the extent expressly permitted by this section and ss. 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 and 196.219, the commission may not have jurisdiction over the prices or terms and conditions for the offering of any other services, including new telecommunications services, offered by a price-regulated telecommunications utility.

(b) A price-regulated telecommunications utility shall file tariffs with the commission for the provision of any telecommunications service, whether or not the service is otherwise subject to this chapter. Except as provided in s. 196.20 (2) (am), changes in the terms and conditions of tariffed services under par. (a) shall be effective one day after filing with the commission, unless the tariff specifies a later effective date.

(c) A telecommunications utility shall give a customer written notice of any rate increase under this subsection before the customer is billed at the increased rate.

(4) PRICE REGULATION FOR SMALL TELECOMMUNICATIONS UTILITIES. (a) A telecommunications utility with 150,000 or less access lines in use in this state may elect to become a price-regulated telecommunications utility and may elect to have its earnings considered in any review under sub. (1) (e).

(b) A telecommunications utility with 150,000 or less access lines in use in this state may file a company-specific price regulation and investment plan subject to commission approval.

(c) A telecommunications utility with 150,000 or less access lines in use in this state that has elected price regulation may rescind election of price regulation and return to rate-of-return regulation, subject to the approval of the commission, if rescission is in the public interest considering the factors under s. 196.03 (6).

(d) All of the following apply to a telecommunications utility that elects to return to rate-of-return regulation under par. (c):

1. It may not elect to be subject to price regulation for a period of 3 years after returning to rate-of-return regulation.

2. It may be subject to a full rate case proceeding before the commission.

(5) INVESTMENT COMMITMENTS. (a) Within 60 days after a telecommunications utility elects to become price regulated under sub. (1), the telecommunications utility shall file with the commission a plan outlining the telecommunications utility's commitment to invest

in telecommunications infrastructure improvements in this state over a period of not less than 6 years.

(b) An investment plan filed with the commission shall include all of the following:

1. A description of the level of planned investment in technological or infrastructure enhancement.

2. A description of the extent to which planned investment will make new telecommunications technology available to customers or expand the availability of current technology.

3. A description of the planned deployment of fiber-optic facilities or broad-band capabilities to schools, libraries, technical colleges, hospitals and colleges and universities in this state.

4. Target dates for the deployment of the planned technology and infrastructure improvements.

5. For a telecommunications utility with more than 500,000 access lines in use in this state at the time of electing to become price regulated, a level of planned investment in an amount of not less than \$700,000,000 within the first 5 years of the plan.

6. The level of planned contributions to the Wisconsin advanced telecommunications foundation established under s. 14.28.

(c) 1. A telecommunications utility shall provide the commission, within one year after its election to become price regulated under sub. (1) and annually thereafter, a progress report relating to the telecommunications utility's investment in and deployment of infrastructure enhancements. A progress report shall include data relative to the telecommunications utility's operating and financial performance during the relevant period.

2. The commission shall consider the telecommunications utility's progress in meeting its investment plan infrastructure commitments when making penalty or incentive adjustments under sub. (1) (c).

(d) 1. Within 120 days after a telecommunications utility elects to become price regulated under sub. (1), the commission, after notice and opportunity for hearing, may rescind the election if the telecommunications utility fails to file an investment plan within the time specified in par. (a) or if the investment plan does not comply with par. (b). If a hearing is held, the time within which the commission may act may be extended an additional 30 days.

2. If the commission orders a rescission, the commission shall reinstate the level of regulation in effect at the time that the election was made and the telecommunications utility shall rescind any rate increases put into effect when the telecommunications utility operated as a price-regulated utility.

(e) Within 120 days after the completion of the first year and of the 2nd year that a telecommunications utility is price-regulated, the commission may reduce rates charged by the price-regulated telecommunications utility for services subject to price regulation by up to 2%. If a hearing is held, the time within which the commission may act may be extended an addi-



tional 30 days. The commission may reduce rates under this paragraph if, after notice and opportunity for hearing, the commission finds any of the following:

1. That the telecommunications utility did not file a progress report within the time specified in par. (c) 1.

2. That the progress report filed by the telecommunications utility does not contain sufficient information to permit the commission to adequately monitor the telecommunications utility's investment and deployment of infrastructure described in its investment plan.

3. That the actual or planned investment described in the progress report does not adequately provide for deployment of advanced infrastructure technologies, fails to exceed routine facility upgrades necessary to maintain service quality or fails to meet goals identified in the investment plan.

(f) 1. Before January 1, 1996, and biennially thereafter, the commission shall submit a report to the joint committee on information policy describing the status of investments in advanced telecommunications infrastructure in this state. The report shall include information on the progress made in all of the following areas:

a. Distance learning, including the number of schools and other educational institutions connected to distance learning networks.

b. Interconnection of libraries, including the number of libraries with video conferencing and network access capabilities.

c. Access to health care.

d. Education, health care and employment opportunities for the disabled and other persons in the home.

e. Integrated services digital network deployment.

f. Other infrastructure investments identified by the commission.

2. The commission shall include in the report under subd. 1 recommendations for improving the progress of investments in advanced telecommunications infrastructure.

3. The commission may combine its report under this paragraph with its report under s. 196.218 (5r).

SECTION 76m. 196.198 of the statutes is created to read:

**196.198 Local measured telecommunications service.**

(1) In this section, "extended community telephone service" means a telecommunications service by which a customer in one exchange may call a customer in another exchange or combination of exchanges under a discounted toll charge plan.

(2) (a) Except as provided in sub. (3), a telecommunications utility that has more than 150,000 access lines in use in this state or a telecommunications provider that has more than 150,000 access lines in use in this state may not charge a residential customer for basic local exchange service based on the duration of a

call or on the time of day that a call is made. This paragraph does not apply to an extended community telephone service.

(b) Paragraph (a) does not prohibit a price-regulated telecommunications utility from offering discounts based on the time of day that a call is made if the price-regulated telecommunications utility also offers basic local exchange service at a rate permitted under s. 196.196 (1).

(3) The commission may suspend the application of sub. (2) (a) in a particular geographical area for a telecommunications utility or a telecommunications provider if, after a contested case hearing, the commission determines that all of the following apply:

(a) Failure to suspend the application of sub. (2) (a) makes competition in that geographical area impractical.

(b) Suspending the application of sub. (2) (a) is beneficial to all of the following groups:

1. Residential customers in general.

2. Disabled customers.

3. Elderly customers.

SECTION 77. 196.20 (1) of the statutes is amended to read:

196.20 (1) The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. ~~No~~ Except for a telecommunications utility, no change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

SECTION 78. 196.20 (1m) of the statutes is created to read:

196.20 (1m) (a) A telecommunications utility may discontinue a service to an exchange if the service is optional and not essential to the provision of basic local exchange service, business access line and usage service within a local calling area or access services, or if one or more other telecommunications providers, whether or not the telecommunications providers are telecommunications utilities or otherwise subject to this chapter, are furnishing substantially the same telecommunications service to customers in the exchange, or if reasonable alternative services are available from the utility or other telecommunications providers.

(b) A telecommunications utility proposing to discontinue a service to an exchange shall file a notice of discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other notice as reasonably required by the commission. Written notice

of the discontinuation of a service under this subsection shall be given to affected customers.

(c) Within 30 days after the date of publication of the notice, the commission, on its own motion or on the application of a person or other telecommunications utility, may initiate an investigation to determine if the discontinuance of service is authorized under this subsection. Following an opportunity for hearing, the commission may order the continued provision of any service not authorized to be discontinued.

(d) The commission shall determine when and under what conditions a telecommunications utility may discontinue basic local exchange service, basic message telecommunications service or any element of universal service to an exchange or part of an exchange.

SECTION 79. 196.20 (2) (a) (intro.) of the statutes is amended to read:

196.20 (2) (a) (intro.) ~~Any~~ Except for a telecommunications utility, a proposed change which constitutes a decrease in rates shall be effective at the time specified in the change as filed but not earlier than 10 days after the date of filing the change with the commission, unless any of the following occurs:

SECTION 80. 196.20 (2) (a) 1 of the statutes is amended to read:

196.20 (2) (a) 1. During the 10-day period the commission, either upon complaint or upon its own motion, by order, suspends the operation of the proposed change: ~~or,~~

SECTION 81. 196.20 (2) (am) of the statutes is created to read:

196.20 (2) (am) For telecommunications utilities, a proposed change which constitutes a decrease in rates shall be effective at the time specified in the tariff as filed unless the commission, either upon complaint or upon its own motion, finds after investigation and hearing that the rate reduction violates s. 196.204 or 196.219. Upon such a finding, the commission may order changes in the rates, terms and conditions.

SECTION 82. 196.20 (2m) of the statutes is amended to read:

196.20 (2m) Except as provided under sub. (5) and ss. 196.195 (12) and 196.196, no change in schedules which constitutes an increase in rates to consumers may be made except by order of the commission, after an investigation and opportunity for hearing. The commission may waive a hearing under this subsection for a proposed change in a telecommunications utility schedule. By rule or order, the commission shall specify the notice and procedural requirements applicable to a telecommunications utility proposal for which a hearing is waived.

SECTION 83. 196.20 (3) of the statutes is amended to read:

196.20 (3) Except as provided in ~~sub.~~ subs. (1m) and (5) (a), this section does not apply to telecommunications cooperatives or small telecommunications

utilities unless made subject to this section under s. 196.205 (+) or 196.215 (2).

SECTION 84. 196.20 (5) (b) 1g of the statutes is amended to read:

196.20 (5) (b) 1g. If the commission orders a review of a proposed rate increase under s. 196.215 (5), ~~the commission shall use the information filed under s. 196.213 (2) to consider the proposed rate increase. For purposes of this subsection, the commission shall consider that information as being filed on the day that the commission orders a review of a proposed rate increase~~ small telecommunications utility shall file information sufficient for the commission to consider rates, tolls and charges within 120 days after the date on which the small telecommunications utility receives notice from the commission that it is subject to this subsection.

SECTION 85. 196.20 (5) (b) 2 of the statutes is amended to read:

196.20 (5) (b) 2. Within 30 days after a small telecommunications utility files information under subs. 1 to 1r, the commission shall inform the small telecommunications utility if any additional information is necessary. The commission may dismiss ~~an application for a proposed rate increase if the small telecommunications utility fails to submit information requested by the commission. An application~~ A proposed rate increase dismissed under this subdivision may be refiled at any time.

SECTION 86. 196.20 (5) (d) of the statutes is amended to read:

196.20 (5) (d) If the commission does not conduct a hearing under this subsection, a proposed rate increase or change in a rate schedule becomes effective as proposed and any rates, tolls or charges under review under s. 196.215 (6) or (7) may not be altered unless the commission shall issue issues a final order no later than 150 days after the commission receives the application or receives the information under par. (b) 1g and 1r. If the commission conducts a hearing, a proposed rate increase or change in a rate schedule becomes effective as proposed and any rates, tolls or charges under review under s. 196.215 (6) or (7) may not be altered unless the commission shall issue issues the final order no later than 180 days after the commission receives the application or receives the information under par. (b) 1g and 1r. If the commission conducts a hearing, the hearing examiner may extend the time for issuing ~~an~~ a final order up to 30 additional days. The commission and the small telecommunications utility may agree in writing to extend the time for issuing a final order. Notwithstanding s. 196.34, the commission may require the small telecommunications utility to bear the expense of a stenographer to record a hearing conducted under this section.

SECTION 87. 196.20 (6) of the statutes is amended to read:

196.20 (6) If a telecommunications utility that is not a small telecommunications utility and that has

~~less than 100,000~~ 150,000 or less access lines in use in this state files with the commission an application for a rate change that constitutes an increase in rates, ~~the rate change becomes effective as proposed unless the commission shall issue~~ issues the final order on the application no later than 180 days after the commission receives the application. The hearing examiner may extend the time for issuing ~~an a~~ a final order up to 30 additional days. ~~The commission and the telecommunications utility may agree in writing to extend the time for issuing a final order.~~ Notwithstanding s. 196.34, the commission may require the telecommunications utility to bear the expense of a stenographer to record a hearing conducted under this subsection.

SECTION 88. 196.201 (2) of the statutes is amended to read:

196.201 (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 or telecommunications carrier 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 or telecommunications carrier for the purpose of providing telecommunications service.

SECTION 89. 196.201 (3) of the statutes is amended to read:

196.201 (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 or telecommunications carrier making a request under sub. (2) at reasonable prices and on reasonable terms and conditions, under the procedures of s. 196.04.

SECTION 90. 196.202 (title) of the statutes is amended to read:

**196.202 (title) Exemption of cellular mobile radio telecommunications.**

SECTION 91. 196.202 (2) of the statutes is amended to read:

196.202 (2) SCOPE OF REGULATION. ~~Except as provided under this section, a~~ A cellular mobile radio telecommunications utility is not subject to ch. 184 or this chapter, except a cellular mobile radio telecommunications utility is subject to s. 196.218 (3) to the extent not preempted by federal law. If the application of s. 196.218 (3) to a cellular mobile radio telecommunications utility is not preempted, a cellular mobile radio telecommunications utility shall respond, subject to the protection of the cellular mobile radio telecommunications utility's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to establish and administer the universal service fund.

SECTION 92. 196.202 (4) of the statutes, as affected by 1993 Wisconsin Act 36, is repealed.

SECTION 93. 196.202 (5) (a) of the statutes is renumbered 196.202 (5).

SECTION 94. 196.202 (5) (b) of the statutes is repealed.

SECTION 95. 196.203 (2) of the statutes is amended to read:

196.203 (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~~ maintain information on authorized alternative telecommunications utilities and on applicants for alternative telecommunications utility status and make that information available to any person, upon request.

SECTION 96. 196.203 (3) of the statutes is renumbered 196.203 (3) (a).

SECTION 97. 196.203 (3) (b) to (e) of the statutes are created to read:

196.203 (3) (b) The commission may not deny a petition filed under par. (a) by a provider of cable television service for alternative telecommunications utility status in a particular geographical area as not being in the public interest if basic local exchange service is provided in the same geographical area by any of the following:

1. A telecommunications utility with more than 50,000 access lines in use in this state.

2. Subject to par. (c), a telecommunications utility with 50,000 or less access lines in use in this state which also provides cable television service in that geographical area, if provision of cable television service began after the effective date of this subdivision .... [revisor inserts date].

(c) Paragraph (b) 2 shall not apply if the telecommunications utility's provision of cable television service is limited to the provision of satellite cable programming, as defined in s. 943.47 (1) (b).

(d) Section 196.50 (1) (b) applies to an alternative telecommunications utility except for a provider of cable television service.

(e) 1. If a provider of cable television service files a petition under par. (a) for alternative telecommunications status to offer local exchange service, as defined in s. 196.50 (1) (b) 1, in a geographical area served by a telecommunications utility with less than 50,000 access lines in use in this state on the effective date of this subdivision .... [revisor inserts date], or at any time thereafter, the commission may not deny the petition as not being in the public interest and shall do any of the following:

a. Eliminate the telecommunications utility's obligation to be the provider of last resort.

b. Allocate universal service fund moneys available under s. 196.218 (5) (a) 1 to the telecommunications utility to offset the obligation to be the provider of last resort under a formula that reimburses the telecommunications utility for 90% of the difference calculated by subtracting 110% of the weighted average basic single-party residential monthly rate for all telecommunications utilities in this state from the eligible telecommunications utility's average basic single-party residential rate and for 90% of the difference calculated by subtracting 110% of the weighted average single line business access line monthly rate for all telecommunications utilities in this state from the eligible telecommunications utility's single line business access line monthly rate.

2. The commission may not increase regulation of a telecommunications utility eligible for funds under subd. 1. b. in implementing this paragraph.

2m. Subdivision 1 does not apply if the petitioner meets the conditions under par. (b) 2.

3. Subdivision 1 does not apply after September 1, 1998, but a telecommunications utility eligible for funds under subd. 1. b. remains eligible for universal service fund funding after that date to offset its obligation to be the provider of last resort.

SECTION 98. 196.203 (5) of the statutes is created to read:

196.203 (5) The commission may establish a reasonable fee schedule and may assess an alternative telecommunications utility to cover the cost of making a determination under this section.

SECTION 99. 196.204 (1) of the statutes is amended to read:

196.204 (1) Except for retained earnings, ~~no a telecommunications utility may allocate revenues earned from any part of its business subject to this chapter to not subsidize, directly or indirectly, any activity, including any activity of an affiliate, which is not subject to this chapter or is subject to this chapter under s. 196.194, 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. 196.194, 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. 196.194, 196.195, 196.202 or 196.203.

SECTION 100. 196.204 (2) of the statutes is amended to read:

196.204 (2) The commission ~~shall~~ may attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activi-

ties of a telecommunications utility for rate making and other utility purposes.

SECTION 101. 196.204 (3) of the statutes is amended to read:

196.204 (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~~ section. For a telecommunications utility regulated under s. 196.195 or 196.196, these requirements shall at a minimum include the filing of cost support documentation demonstrating compliance with subs. (5) and (6) before the effective date of each new service, including any unbundled service element or basic network function; before any reduction in the price of a service offered to end-users; and before any increase in the price of a service offered to other telecommunications providers. The commission, on its own motion or upon complaint, may order any telecommunications utility to file cost support documentation showing that a service that the utility offers or a contract that the utility has entered into under s. 196.194 complies with subs. (5) and (6).

SECTION 102. 196.204 (5) of the statutes is created to read:

196.204 (5) (a) In addition to the other requirements of this section, each telecommunications service, relevant group of services and basic network function offered or used by a telecommunications utility shall be priced to exceed its total service long-run incremental cost. The commission may waive the applicability of this paragraph to a telecommunications utility's basic local exchange service if the commission determines that a waiver is consistent with the factors under s. 196.03 (6).

(b) Unless ordered by the commission, par. (a) does not apply to basic local exchange service or to business access line and usage service within a local calling area offered by a telecommunications utility with 150,000 or less access lines in use in this state. If par. (a) does not apply, the telecommunications utility may not reduce its rates for basic local exchange service below the monthly rate under s. 196.215 (7) or total service long-run incremental cost, whichever is lower, and may not reduce its rates for business access line and usage service within a local calling area below total service long-run incremental cost.

SECTION 103. 196.204 (6) of the statutes is created to read:

196.204 (6) (a) In addition to the other requirements of this section, a telecommunications utility shall meet the imputation test in this subsection if all of the following apply:

1. The telecommunications utility has a service offering that competes with an offering of another telecommunications provider.

2. The other telecommunications provider's offering utilizes a service, including any unbundled service element or basic network function, from the telecom-

munications utility that is not available within the relevant market or geographic area on reasonably comparable terms and conditions from any other telecommunications provider.

3. The telecommunications utility's own offering uses that same noncompetitive service, or its functional equivalent.

(b) The price of a telecommunications service subject to an imputation test shall exceed the sum of all of the following:

1. The tariffed rates, including access, carrier common line, residual interconnection and similar charges, for the noncompetitive service or its functional equivalent that is actually used by the telecommunications utility in its service offering, as those rates would be charged any customer for the use of that service.

2. The total service long-run incremental costs of all other components of the telecommunications utility's service offering, including access charges actually paid.

(c) Upon complaint of a telecommunications utility and after notice and opportunity for hearing, the commission may make reasonable adjustments to the methodology specified in this subsection if the commission finds that adjustments are appropriate in order to recognize network efficiencies in the provision of services by the utility and will not give the utility a competitive advantage. The commission may not make an adjustment under this paragraph before January 1, 1998, for a telecommunications utility with more than 500,000 access lines in use in this state.

(d) 1. The commission may suspend the application of the imputation test for basic local exchange service if that action is consistent with the factors under s. 196.03 (6).

2. Unless ordered by the commission, par. (b) does not apply to basic local exchange service or to business access line and usage service within a local calling area offered by a telecommunications utility with 150,000 or less access lines in use in this state. If par. (b) does not apply, the telecommunications utility may not reduce its rates for basic local exchange service below the monthly rate under s. 196.215 (7) and may not reduce its rates for business access line and usage service within a local calling area.

SECTION 104. 196.204 (7) of the statutes is created to read:

196.204 (7) (a) Except for public service information such as time and temperature or directory information, a telecommunications utility may not provide electronically published news, feature or entertainment material of the type generally published in newspapers or offered in a broadcast service, or electronic advertising services, except through an electronic publishing subsidiary or affiliate. A telecommunications utility may, without editing content, resell news, feature or entertainment material of the type generally published in newspapers or offered in a broadcast ser-

vice, if the material is purchased from an unaffiliated entity or from an electronic publishing subsidiary or affiliate that makes the material available to all other persons under the same rates, terms and conditions.

(b) This subsection does not prohibit a telecommunications utility from electronically advertising its own services or from providing tariffed telecommunications services to a subsidiary, affiliate or unaffiliated entity that provides electronically published news, features or entertainment material or electronic advertising services.

(c) Services subject to this subsection are not subject to any other provisions in this section.

(d) This subsection does not apply to any of the following:

1. A small telecommunications utility.

2. A telecommunications utility that meets all of the following conditions:

a. Is not a small telecommunications utility.

b. Has 150,000 or less access lines in use in this state.

c. Provides cable television service on the effective date of this subd. 2. c. .... [revisor inserts date].

d. Does not begin providing cable television service in a city, village or town other than a city, village or town in which it provides cable television service on the effective date of this subd. 2. d. .... [revisor inserts date].

(e) The commission shall promulgate rules that describe the elements necessary to demonstrate that an electronic publishing subsidiary or affiliate is sufficiently unaffiliated with a telecommunications utility. Elements may include the makeup of the board of directors of the subsidiary or affiliate and the amount of information, facilities or other resources that are shared by the telecommunications utility and the subsidiary or affiliate.

SECTION 105. 196.205 (1) (intro.), (a) and (c) of the statutes are renumbered 196.205 (intro.), (1) and (3).

SECTION 106. 196.205 (1) (b) and (2) of the statutes are repealed.

SECTION 107. 196.207 (5) (title) of the statutes is renumbered 196.209 (title).

SECTION 108. 196.207 (5) of the statutes is renumbered 196.209 (1) and amended to read:

196.209 (1) (title) RULES. The commission shall promulgate ~~a rule~~ rules that ~~establishes~~ establish privacy guidelines applicable to telecommunications ~~utili-~~ ities services. Notwithstanding any exemptions identified in this chapter, a telecommunications provider is subject to rules promulgated under this subsection and s. 196.66 applies to a violation of this subsection.

SECTION 109. 196.207 (6) of the statutes is created to read:

196.207 (6) REDISCLASURE. (a) A person who obtains an unpublished telephone line identification

using a telephone caller identification service may not do any of the following without the written consent of the customer of the unpublished telephone line identification:

1. Disclose the unpublished telephone line identification to another person for purposes of resale or commercial gain.
2. Use the unpublished telephone line identification to solicit business.
3. Intentionally disclose the unpublished telephone line identification through a computer database, on-line bulletin board or other similar mechanism.

(b) 1. A person, other than a corporation, who violates par. (a) may be required to forfeit not more than \$5,000. Each disclosure or use of an unpublished telephone line identification is a separate violation.

2. A corporation that violates par. (a) may be required to forfeit not more than \$50,000. Each disclosure or use of an unpublished telephone line identification is a separate violation.

SECTION 110. 196.209 (2) to (5) of the statutes are created to read:

196.209 (2) **RULE REVIEW.** At least biennially, the commission shall review and revise as appropriate rules promulgated under sub. (1).

(3) **NEW SERVICES.** A telecommunications provider introducing a new telecommunications service shall explicitly address privacy considerations before introducing that telecommunications service.

(4) **SCOPE.** Rules promulgated by the commission under this section and privacy considerations addressed by a telecommunications provider shall include all of the following:

(a) Protections against the outflow of information about users of telecommunications services.

(b) Protection to the users of telecommunications services from receiving privacy intrusions.

(5) **TELECOMMUNICATIONS PRIVACY COUNCIL.** (a) The commission shall appoint a telecommunications privacy council under s. 15.04 (1) (c) consisting of representatives of telecommunications providers and of consumers of telecommunications services, including this state. The privacy advocate designated under s. 19.625 (1) shall be a member of the telecommunications privacy council.

(b) The telecommunications privacy council shall advise the commission concerning the administration of this section and the content of rules promulgated under this section.

SECTION 111. 196.213 (1) (a) 2 of the statutes is amended to read:

196.213 (1) (a) 2. A telecommunications utility or telecommunications carrier purchasing intrastate access to a local exchange operated by another telecommunications utility or telecommunications carrier.

SECTION 112. 196.213 (2) of the statutes is amended to read:

196.213 (2) Unless subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (7), 196.11 (2), 196.20 and 196.26, at least 60 days and not more than 100 days before the effective date of a 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, tolls and charges, the effective date of the rates, tolls and charges and the procedure necessary for consumers to petition the commission to determine rates, tolls or charges in lieu of the proposed rates, tolls or charges, including but not limited to a notice that the deadline for commission receipt of petitions is 60 days after a small telecommunications utility mails notice of a proposed rate increase to consumers. ~~The commission shall develop the form in cooperation with representatives of small telecommunications utilities and other interested persons. Notwithstanding s. 227.01 (13), the form is not a rule. The proposed notice to consumers shall be submitted to the commission for approval. The commission may reject the proposed notice if the notice is misleading. If the commission does not act on the proposed notice within 10 days after receiving it, the notice is considered approved.~~ 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), ~~(b)~~ and (cm). A reference in an approved notice 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 113. 196.215 (1) (am) of the statutes is amended to read:

196.215 (1) (am) "Equity-thin utility" means a small telecommunications utility with less than 25% common stock equity in its utility total capital structure.

SECTION 114. 196.215 (2) (c) 3 of the statutes is amended to read:

196.215 (2) (c) 3. The small telecommunications utility has violated s. 196.06, 196.52, ~~196.525~~ or 196.60.

SECTION 115. 196.215 (2) (d) of the statutes is repealed.

SECTION 116. 196.215 (2g) (a) of the statutes is amended to read:

196.215 (2g) (a) In this subsection, "basic local exchange service" means any service providing access to and the transmission of 2-way switched voice com-

munications within a local calling area, including touchtone service, but does not include installation of or enhancements to basic local exchange service or local per-call coin charges.

SECTION 117. 196.215 (3) (a) of the statutes is amended to read:

196.215 (3) (a) If within 60 days after notice of a proposed rate increase is mailed 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 requesting that the commission determine rates, tolls or charges on the proposed increase, the commission shall certify that fact to the small telecommunications utility and the small telecommunications utility's proposed rate increase shall take effect as published in the notice under s. 196.213. Rates, tolls and charges established by a small telecommunications utility under this paragraph shall be in effect for at least 365 days. If within 60 days after notice of a proposed rate increase is mailed the commission receives petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility requesting that the commission determine rates, tolls or charges on the proposed increase, the commission shall proceed under sub. ~~(5)-(e)~~ (6) (d).

SECTION 118. 196.215 (3) (am) 1 of the statutes is amended to read:

196.215 (3) (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 or telecommunications carriers 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.

SECTION 119. 196.215 (3) (b) of the statutes is repealed.

SECTION 120. 196.215 (3) (bm) of the statutes is repealed.

SECTION 121. 196.215 (3) (c) of the statutes is repealed.

SECTION 122. 196.215 (5) (c) of the statutes is amended to read:

196.215 (5) (c) An equity-thin utility is building equity if the small telecommunications utility has an average dividend payout of less than 50% of its average net income after taxes or if the commission determines that the small telecommunications utility is increasing the percentage of common stock equity in

its ~~utility~~ total capital structure through other appropriate means.

SECTION 123. 196.215 (5) (e) of the statutes is renumbered 196.215 (6) (d) 1.

SECTION 124. 196.215 (6) (d) 2 of the statutes is created to read:

196.215 (6) (d) 2. If consumers request that the commission investigate a small telecommunications utility's proposed rate increase under sub. (3) (a), the small telecommunications utility may withdraw the proposed rate increase within 10 days after the commission notifies the small telecommunications utility that the commission will investigate the proposed rate by notifying the commission and each of the consumers to whom the small telecommunications utility has provided notice of the proposed rate increase. A small telecommunications utility that withdraws a proposed rate increase under this subdivision may not propose a rate increase for the same service for 365 days from the date on which the small telecommunications utility mails the notice of withdrawal of the proposed rate increase.

SECTION 125. 196.215 (7) (b) 1 of the statutes is amended to read:

196.215 (7) (b) 1. The Beginning on the effective date of this subdivision ... [revisor inserts date], and ending on December 31, 1997, the basic single-party residential flat rate shall be \$9 per month the weighted average basic single-party residential monthly rate for all telecommunications utilities in this state as of December 31, 1993, which includes average local usage charges, touch-tone charges and extended area service charges but does not include extended community calling usage charges. Beginning on January 1, 1998, the basic single-party residential flat rate shall be the weighted average basic single-party residential monthly rate for all telecommunications utilities in this state, which includes average local usage charges, touch-tone charges and extended area service charges but does not include extended community calling usage charges, subject to adjustment under subd. 2.

SECTION 126. 196.215 (7) (b) 2 of the statutes is amended to read:

196.215 (7) (b) 2. Annually Beginning in 1998 and thereafter annually, no later than March 31, the commission shall issue an order adjusting the basic single-party residential flat rate by the percentage change, unadjusted for seasonal variation, in the producer price index for local residential telephone service, as determined by the U.S. department of labor, for using information from the previous calendar year. The order shall take effect on April 1 immediately following the order. The commission may issue the order without a hearing.

SECTION 127. 196.215 (7) (b) 3 of the statutes is repealed.

SECTION 128. 196.217 of the statutes is created to read:

**196.217 Average toll rates.** (1) **DIFFERENT RATES RESTRICTED.** A telecommunications utility may not charge different rates for residential basic message telecommunications service, business basic message telecommunications service, or single-line wide-area telecommunications service on routes of similar distances within this state, unless authorized by the commission. This subsection does not prohibit volume or term discounts, discounts in promotional offerings, differences in the rates for intralata and interlata services of similar distances, the provision of optional toll calling plans to selected exchanges or customers or the passing through of any state or local taxes in the specific geographic area from which the tax originates.

(2) **TOLL SERVICES.** Notwithstanding sub. (1), a telecommunications utility may charge prices for toll services under contract that are unique to a particular customer or group of customers if differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers, or if market conditions require individual pricing.

(3) **AVERAGED RATES.** Notwithstanding subs. (1) and (2), an intralata toll provider shall offer all optional toll calling plans on a statewide basis at geographically averaged rates until the provider deploys intralata dial-1 presubscription, except that an optional toll call plan need not be offered where deployment of that offering would not be economically or technically feasible.

**SECTION 129.** 196.218 of the statutes is created to read:

**196.218 Universal service fund.** (1) **DEFINITION.** In this section, "universal service" includes the availability of a basic set of essential telecommunications services and access to advanced service capabilities of a modern telecommunications infrastructure anywhere in this state.

(2) **FUND ADMINISTRATION.** The commission shall do all of the following:

(a) Hold a hearing on the universal service fund.

(b) After holding the hearing under par. (a), direct the establishment of the universal service fund.

(c) Contract for the administration of the universal service fund.

(d) Obtain an annual independent audit of the universal service fund.

(3) **CONTRIBUTIONS TO THE FUND.** (a) 1. Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund beginning on January 1, 1996.

2. The commission may require a person other than a telecommunications provider to contribute to the universal service fund if, after notice and opportunity for hearing, the commission determines that the person is offering a nontraditional broadcast service in this state that competes with a telecommunications service provided in this state for which a contribution is required under this subsection.

3. The commission shall designate the method by which the contributions under this paragraph shall be calculated and collected. Contributions may be based only on the gross operating revenues from the provision of broadcast services identified by the commission under subd. 2 and on intrastate telecommunications services in this state of the telecommunications providers subject to the contribution.

(b) The commission may exempt from part or all of the contributions required under par. (a) telecommunications providers who have small gross operating revenues from the provision of intrastate telecommunications services in this state and who have provided these services for less than a period specified by the commission, not to exceed 5 years. The commission may also exempt a telecommunications provider or other person from part or all of the contribution required under par. (a) if the commission determines that requiring the contribution would not be in the public interest.

(c) The commission shall designate by rule the classes of providers or other persons subject to par. (a) and the required rates of contribution for each class.

(d) The commission shall consider all of the following in specifying the contributions required under par. (a):

1. The impact of the contributions on all members of the public and the telecommunications industry.

2. The fairness of the amount of the contributions and the methods of collection.

3. The costs of administering the collection of the contributions.

(e) Except as provided in s. 196.196 (2) (d), a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

(4) **ESSENTIAL SERVICES AND ADVANCED SERVICE CAPABILITIES.** Before January 1, 1996, and biennially thereafter, the commission shall promulgate rules that define a basic set of essential telecommunications services that shall be available to all customers at affordable prices and that are a necessary component of universal service. Before January 1, 1996, and biennially thereafter, the commission shall promulgate rules that define a set of advanced service capabilities that shall be available to all areas of this state at affordable prices within a reasonable time and that are a necessary component of universal service. For rules promulgated before January 1, 1996, a reasonable time for the availability of the defined set of advanced service capabilities shall be no later than January 1, 2005, and, for rules promulgated thereafter, a reasonable time for the availability of additional advanced service capabilities in the defined set shall be no later than 7 years after the effective date of the rules. These essential services and advanced service capabilities shall be based on market, social, economic develop-



ment and infrastructure development principles rather than on specific technologies or providers. Essential services include single-party service with touch-tone capability, line quality capable of carrying facsimile and data transmissions, equal access, emergency services number capability, a statewide telecommunications relay service and blocking of long distance toll service.

(4m) TOLL BLOCKING. The commission shall issue rules to implement, cost-free to low-income customers, the capability to block all long distance or other toll calls from a customer's telephone service with a goal of universal applicability of the toll-blocking service no later than January 1, 1996. A telecommunications utility may petition the commission for a waiver from providing toll-blocking service upon a demonstration that providing this service would represent an unreasonable expense for the telecommunications utility and its ratepayers.

(5) USES OF THE FUND. (a) The commission shall require that moneys in the universal service fund be used only for any of the following purposes:

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.

2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

3. To promote affordable access throughout this state to high-quality education, library and health care information services.

4. To administer the universal service fund.

(b) The commission shall promulgate rules to determine whether a telecommunications provider, the customers of a telecommunications provider or another person shall be assisted by the universal service fund for any use under par. (a).

(c) The commission shall consider all of the following in establishing the services and equipment which may be assisted by the universal service fund:

1. The impact of the assistance on all members of the public and the telecommunications industry.

2. Eligibility requirements for assistance recipients.

3. The costs of administering the assistance.

4. Telecommunications plans and requirements established by the federal rural electrification administration.

5. The extent to which the fund preserves and promotes an available and affordable basic set of essential telecommunications services, encourages access to the advanced service capabilities of a modern telecommunications infrastructure throughout the state and promotes economic development.

(5m) RULE REVIEW. At least biennially, the commission shall review and revise as appropriate rules promulgated under this section.

(5r) ANNUAL REPORT. (a) Annually, the commission shall submit a universal service fund report to the joint committee on information policy. The report shall include information about all of the following:

1. The affordability of and accessibility to a basic set of essential telecommunications services and of advanced service capabilities throughout this state.

2. The affordability of and accessibility to high-quality education, library and health care information services.

3. Financial assistance provided under the universal service fund.

4. An assessment of how successful investments identified in s. 196.196 (5) (f), assistance provided by the universal service fund or the Wisconsin advanced telecommunications foundation and price regulation and other alternative incentive regulations of telecommunications utilities designed to promote competition have been in advancing the public interest goals identified under s. 196.03 (6), and recommendations for further advancing those goals.

(b) The commission shall prepare a report to determine if public access broadcast channels may receive funding from the universal service fund as an advanced telecommunications service or other service and the effect of federal law on public access broadcast channel funding eligibility. The results of the report shall be included in the 2nd annual report submitted by the commission under par. (a).

(6) UNIVERSAL SERVICE FUND COUNCIL. (a) The commission shall appoint a universal service fund council under s. 15.04 (1) (c) consisting of representatives of telecommunications providers and consumers of telecommunications services, including this state. The majority of the members of the council shall be representatives of consumers of telecommunications services.

(b) The universal service fund council shall advise the commission concerning the administration of this section and the content of rules promulgated under this section.

(7) EDUCATION. The commission may require a telecommunications provider to undertake reasonable public notification and education efforts to inform eligible customers of the availability and requirements of universal and basic service programs, including any offerings of lifeline or other supported services established under state or federal law.

(8) PENALTIES. (a) Any person who fails or refuses to pay the contribution required under sub. (3) may be required to forfeit not less than \$100 nor more than \$10,000. Each day of continued violation constitutes a separate offense.

(b) A court imposing a forfeiture under par. (a) shall consider all of the following in determining the amount of the forfeiture:

1. The appropriateness of the forfeiture to the volume of business of the person.

2. The gravity of the violation.

3. Any good faith attempt to achieve compliance after the person or an officer, agent or employe of the person receives notice of the violation.

4. The financial gain sought by the person by not paying the contribution required under sub. (3).

(9) EMERGENCY TELEPHONE SERVICE STUDY. The commission shall conduct a study to determine if emergency telephone services should be supported by the universal service fund. The commission shall report its findings and recommendations, including any recommendations for statutory changes no later than January 1, 1997, to the joint committee on information policy.

SECTION 130. 196.219 of the statutes is created to read:

**196.219 Protection of telecommunications consumers.** (1) DEFINITION. In this section, "consumer" means any person, including a telecommunications provider, that uses the services, products or facilities provided by a telecommunications utility.

(2) CONSUMER PROTECTION. (a) Notwithstanding any exemptions identified in this chapter except s. 196.202, a telecommunications utility shall provide protection to its consumers under this section unless exempted in whole or in part by rule or order of the commission under this section. The commission shall promulgate rules that identify the conditions under which provisions of this section may be suspended.

(b) On petition, the commission may grant an exemption from a requirement under this section upon a showing that the exemption is reasonable and not in conflict with the factors under s. 196.03 (6).

(c) On petition, the commission may grant an exemption from a requirement under this section retroactively if the application of the requirement would be unjust and unreasonable considering the factors under s. 196.03 (6) or other relevant factors.

(d) If the commission grants an exemption under this subsection, it may require the telecommunications utility to comply with any condition necessary to protect the public interest.

(2m) ACCESS SERVICES. (a) A telecommunications utility shall provide access services under tariff under the same rates, terms and conditions to all telecommunications providers.

(b) Paragraph (a) does not apply to cellular telephone interconnection arrangements authorized or required by the federal communications commission.

(3) PROHIBITED PRACTICES. A telecommunications utility may not do any of the following with respect to regulated services:

(a) Refuse to interconnect within a reasonable time with another person to the same extent that the federal communications commission requires the telecommunications utility to interconnect. The public service commission may require additional interconnection based on a determination, following notice and opportunity for hearing, that additional interconnec-

tion is in the public interest and is consistent with the factors under s. 196.03 (6).

(b) Upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection.

(c) Impair the speed, quality or efficiency of services, products or facilities offered to a consumer under a tariff, contract or price list.

(d) Unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(e) Fail to provide a service, product or facility to a consumer other than a telecommunications provider in accord with the telecommunications utility's applicable tariffs, price lists or contracts and with the commission's rules and orders.

(em) Refuse to provide a service, product or facility to a telecommunications provider in accord with the telecommunications utility's applicable tariffs, price lists or contracts and with the commission's rules and orders.

(f) Refuse to provide basic local exchange service, business access line and usage service within a local calling area and access service on an unbundled basis to the same extent that the federal communications commission requires the telecommunications utility to unbundle the same services provided under its jurisdiction. The public service commission may require additional unbundling of intrastate telecommunications services based on a determination, following notice and opportunity for hearing, that additional unbundling is required in the public interest and is consistent with the factors under s. 196.03 (6). The public service commission may order unbundling by a small telecommunications utility.

(g) Provide services, products or facilities in violation of s. 196.204.

(h) To the extent prohibited by the federal communications commission, or by the public service commission under rules promulgated consistent with the factors under s. 196.03 (6), give preference or discriminate in the provision of services, products or facilities to an affiliate, or to the telecommunications utility's own or an affiliate's retail department that sells to consumers.

(j) Restrict resale or sharing of services, products or facilities, except for basic local exchange service other than extended community calling, unless the commission orders the restriction to be lifted. A telecommunications utility that has 150,000 or less access lines in use in this state may limit the use of extended community calling or business line and usage service within a local calling area as a substitute for access service, unless the commission orders the limitation to be lifted.

(L) Fail to provide, or to terminate, any telecommunications service as necessary to comply with the minimum standards of service established by the com-

mission with respect to technical service quality, deposits, disconnection, billing and collection of amounts owed for services provided or to be provided.

(m) Provide telecommunications service to any person acting as a telecommunications utility, telecommunications provider, alternative telecommunications utility or telecommunications carrier if the commission has ordered the telecommunications utility to discontinue service to that person.

(n) Provide telecommunications service in violation of s. 100.207.

(4) ENFORCEMENT. (a) On the commission's own motion or upon complaint filed by the consumer, the commission shall have jurisdiction to take administrative action or to commence civil actions against telecommunications utilities to enforce this section.

(b) The commission may, at its discretion, institute in any court of competent jurisdiction a proceeding against a telecommunications utility for injunctive relief to compel compliance with this section, to compel the accounting and refund of any moneys collected in violation of this section or for any other relief permitted under this chapter.

(4d) UNFAIR TRADE PRACTICE ENFORCEMENT. Upon receipt of a notice issued under s. 100.208, the commission may order a telecommunications provider to cease offering the telecommunications service that creates the unfair trade practice or method of competition.

(4m) CIVIL ACTIONS. Upon a finding of a violation of this section by the commission, any person injured because of a violation of this section by a telecommunications utility may commence a civil action to recover damages or to obtain injunctive relief.

(5) ALTERNATE DISPUTE RESOLUTION. The commission shall establish by rule a procedure for alternative dispute resolution to be available for complaints filed against a telecommunications utility.

SECTION 131. 196.25 (title) of the statutes is amended to read:

**196.25 (title) Questionnaires.**

SECTION 132. 196.25 (3) of the statutes is created to read:

196.25 (3) If a telecommunications provider receives a questionnaire from the commission, the telecommunications provider shall respond specifically, correctly and fully to each question. If a telecommunications provider is unable to answer any question, the telecommunications provider shall give a good and sufficient reason for its failure. Answers shall be verified under oath by the president, secretary, superintendent or general manager of the telecommunications provider. A completed questionnaire shall be returned to the commission within the time period specified by the commission.

SECTION 133. 196.26 (4) (a) of the statutes is amended to read:

196.26 (4) (a) This section does not apply to any rate, toll, charge or schedule of any telecommunications cooperative except as provided under s. 196.205 (4) 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 is in any respect unreasonable, insufficient or unjustly discriminatory.

SECTION 134. 196.28 (4) of the statutes is amended to read:

196.28 (4) This section does not apply to rates, tolls or charges of a telecommunications cooperative or small telecommunications utility except as provided in s. 196.205 (4) or 196.215 (2).

SECTION 134m. 196.31 (1m) of the statutes is created to read:

196.31 (1m) The commission shall compensate any consumer group or consumer representative for all reasonable costs of participating in a hearing under s. 196.196 (1) (g) or 196.198.

SECTION 135. 196.37 (3) of the statutes is amended to read:

196.37 (3) Any public utility to which an order under this section applies shall make such changes in schedules on file under s. 196.19 to make the schedules conform to the order. The public utility may not make any subsequent change in rates, tolls or charges without the approval of the commission, except as provided in s. 196.205 (4) or 196.215 (2).

SECTION 136. 196.37 (4) of the statutes is amended to read:

196.37 (4) This section does not apply to rates, tolls or charges of a telecommunications cooperative or small telecommunications utility except as provided in s. 196.205 (4) or 196.215 (2).

SECTION 137. 196.44 (2) (title) of the statutes is amended to read:

196.44 (2) (title) DUTIES OF ATTORNEY GENERAL AND DISTRICT ATTORNEYS.

SECTION 138. 196.44 (2) of the statutes is renumbered 196.44 (2) (a).

SECTION 139. 196.44 (2) (b) of the statutes is created to read:

196.44 (2) (b) The attorney general may, on his or her own initiative, appear before the commission on telecommunications matters relating to consumer protection and antitrust. If acting under the authority granted by this paragraph, the attorney general shall have the rights accorded a party before the commission in its proceedings but may not appeal as a party a decision of the commission to the circuit court. This paragraph does not apply after June 30, 1999.

SECTION 140. 196.49 (1) (a) of the statutes is renumbered 196.49 (1) (am).

SECTION 141. 196.49 (1) (ag) of the statutes is created to read:

196.49 (1) (ag) In this subsection, "public utility" does not include a telecommunications utility.

SECTION 142. 196.49 (3) (a) of the statutes is amended to read:

196.49 (3) (a) In this subsection, "project" means construction of any new plant, equipment, property or facility, or extension, improvement or addition to its existing plant, equipment, property, apparatus or facilities. ~~"Project" does not include the completion of the construction and installation of plants and facilities upon which construction work has begun prior to June 7, 1931, or for which contracts were entered into prior to June 7, 1931.~~ The commission may require by rule or special order that a public utility submit, periodically or at such times as the commission specifies and in such detail as the commission requires, plans, specifications and estimated costs of any proposed project which the commission finds will materially affect the public interest.

SECTION 143. 196.49 (3) (b) (intro.) of the statutes is amended to read:

196.49 (3) (b) (intro.) ~~The~~ Except as provided in par. (d), the commission may require by rule or special order under par. (a) (intro.) that no project may proceed until the commission has certified that public convenience and necessity require the project. The commission may refuse to certify a project if it appears that the completion of the project will do any of the following:

SECTION 144. 196.49 (3) (d) of the statutes is created to read:

196.49 (3) (d) A telecommunications utility is not required to obtain commission certification before beginning a construction project.

SECTION 145. 196.499 of the statutes is created to read:

**196.499 Regulation of telecommunications carriers.**

(1) **SCOPE.** Notwithstanding any other provisions of this chapter, a telecommunications carrier is not subject to regulation under this chapter, except that a telecommunications carrier shall comply with the requirements of this section, shall be treated under ss. 196.209, 196.218 (8) and 196.219 (4d) as a telecommunications provider, under s. 196.85 as a telecommunications utility and under s. 196.858 as an interexchange telecommunications utility, may be assessed under s. 196.218 (3) as a telecommunications provider and shall respond, subject to the protection of the telecommunications carrier's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to establish and administer the universal service fund. A telecommunications carrier may not be assessed in a manner that is inconsistent with this section.

(2) **TARIFFS.** Every telecommunications carrier shall keep on file with the commission a tariff for each service, that contains all the rules, rates and classifications used by it in the provision of its telecommunications services, including limitations on liability unless the commission waives any requirement. A tariff shall

be effective when filed or on a date indicated by the carrier. The telecommunications carrier shall provide notice of price increases by publication in newspapers or by any other reasonable means and may provide notice of price decreases or of tariffed promotional rates. Tariffs may be filed for services offered on an interim basis, for special promotions, for discounts, including discounts intended to maintain customer relations, or for individual contracts between carriers and customers. A telecommunications carrier shall charge rates in accordance with its tariff.

(3) **RATES.** (a) Except as provided in this subsection, a telecommunications carrier may not charge different rates for residential basic message telecommunications services, business basic message telecommunications services, or single-line wide-area telecommunications service on routes of similar distances within the state, unless otherwise authorized by the commission.

(am) Paragraph (a) does not prohibit volume or term discounts, discounts in promotional offerings, differences in the rates for intralata and interlata services of similar distances, the provision of optional toll calling plans to selected exchanges or customers or the passing through of any state or local taxes in the specific geographic areas from which the taxes originate.

(b) Notwithstanding any other provision in this chapter, a telecommunications carrier may furnish services to its employees, officers, agents or pensioners at no charge or at rates that are lower than its tariff rates.

(c) A telecommunications carrier may contract to charge prices for services that are unique to a particular customer or group of customers if differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers or if market conditions require individual pricing.

(4) **ABANDONMENT OF SERVICES.** A telecommunications carrier shall provide written notice to the commission not less than 60 days before its abandonment of basic message telecommunications service to an exchange. The carrier shall also publish notice in a newspaper of general circulation within the exchange and provide any other notice required by the commission. A telecommunications carrier shall be subject to rules and procedures that the commission may establish for the continuance of basic message telecommunications service to an exchange if notice has been received that all providers of the service intend to abandon that service in the exchange. A rule or procedure may not regulate the price, terms or conditions of service other than as authorized in this section and may not discriminate in favor of or against any telecommunications provider.

(5) **COMPLAINTS.** (a) In this subsection, "complaint" means a complaint filed with the commission that any rate, toll, charge or schedule relating to the

provision of telecommunications service violates sub. (2) or (3) (a).

(am) In any complaint proceeding, the person initiating the complaint has the burden of proving a violation of sub. (2) or (3) (a).

(b) If any business organization, body politic or 25 individuals file a complaint against a telecommunications carrier, the commission, with or without notice, may investigate the complaint as it considers necessary. The commission may not issue an order based on the investigation without allowing the telecommunications carrier an opportunity for a hearing.

(c) 1. Before holding a hearing under this subsection, the commission shall notify the telecommunications carrier complained of that a complaint has been made, and no sooner than 10 days after the notice has been given the commission may set a time and place for a hearing.

2. The commission shall give the telecommunications carrier which is the subject of a complaint and the complainant at least 10 days' notice of the time and place of a hearing and the subject of the hearing. The commission may subpoena any witness at the request of the telecommunications carrier or complainant.

3. Notice under subs. 1 and 2 may be combined. The combined notice may not be given less than 10 days before a hearing.

(d) If the commission finds by a preponderance of the evidence that existing rates, tolls, charges or schedules violate sub. (2) or (3) (a), the commission may issue its order requiring compliance with sub. (2) or (3) (a).

(6) INVESTIGATIONS AND HEARINGS. (a) If the commission believes that any rate or charge violates sub. (2) or (3) (a), the commission on its own motion summarily may investigate with or without notice.

(b) If after an investigation under par. (a) the commission determines that sufficient grounds exist to warrant a hearing, the commission shall set a time and place for a hearing. The hearing shall be conducted as a hearing under sub. (5). Notice of the time and place for a hearing under this paragraph shall be given to the telecommunications carrier, and to any other interested person as the commission considers necessary.

(7) PETITIONS. A telecommunications carrier may file a petition for relief with the commission on any matter affecting the telecommunications carrier's product or service.

(8) DEPOSITIONS. The commission or any party in any investigation or hearing may take the depositions of witnesses in the manner prescribed for civil actions. Any expense incurred by or authorized by the commission in taking a deposition may be charged to the appropriation under s. 20.155 (1) (g).

(9) RECORDS AND TRANSCRIPTS. Sections 196.34 and 196.36, as they apply to records and transcripts relating to public utility hearings, apply to records and

transcripts relating to telecommunications carrier hearings.

(11) REVIEW. Any order or determination of the commission may be reviewed under ch. 227.

(12) ENFORCEMENT. (a) The commission shall inquire into the neglect or violation of this section by telecommunications carriers, or by their officers, agents or employes or by persons operating telecommunications carriers, and shall enforce all laws relating to this section and report any violation to the attorney general.

(b) Upon request of the commission, the attorney general or a district attorney may aid in any investigation, hearing or trial under this section and shall prosecute any proceeding for the enforcement of laws relating to telecommunications carriers.

(c) A civil action to enforce this section shall be brought in the name of the state in the circuit court for Dane county or in the county that would be the proper place of trial under s. 801.50.

(d) This section and rules and orders of the commission promulgated or adopted under this section may be enforced by an action to recover forfeitures, an action for injunction, an action to compel performance or by other appropriate actions.

(13) CRISIS SITUATIONS. (a) If a sheriff, a police chief or a law enforcement officer designated by a sheriff or police chief to respond in a crisis situation has probable cause to believe that a person is holding a hostage or is resisting apprehension through the use or threatened use of force, the sheriff, police chief or law enforcement officer may order a telecommunications carrier to interrupt or reroute telecommunications service to or from the suspected person for the duration of the crisis situation to prevent the person from communicating with anyone other than a person authorized by the sheriff, police chief or law enforcement officer.

(b) A telecommunications carrier may not be held liable for any action that it takes under par. (a).

(13m) EMERGENCY SERVICES. A telecommunications carrier may not unreasonably refuse, restrict or delay access by any person to a telecommunications emergency service.

(14) EXTENSION OF FACILITIES. Any telecommunications carrier may extend its facilities into or through any municipality for the furnishing of its services, subject to the reasonable regulation of the governing body of the municipality relative to the location of poles and wires and the preservation of the safe and convenient use of streets and alleys to the public. Upon a petition for relief made by a telecommunications carrier, the commission shall set a hearing and if it finds a contract, ordinance or resolution under this subsection to be unreasonable, the contract, ordinance or resolution shall be void.

(15) CERTIFICATES. A telecommunications carrier that is not authorized to provide intrastate telecommunications service on January 1, 1994, may not com-

mence the construction of any plant, extension or facility, or provide intrastate telecommunications service directly or indirectly to the public, unless the telecommunications carrier obtains a certificate from the commission authorizing the telecommunications carrier to provide intrastate telecommunications. The commission may issue a certificate if the telecommunications carrier demonstrates that it possesses sufficient technical, financial and managerial resources to provide intrastate telecommunications services. A telecommunications carrier that is authorized to provide intrastate telecommunications service on January 1, 1994, is not required to be recertified under this subsection.

(16) ACCESS SERVICE AUTHORIZATION. If a telecommunications utility with 150,000 or less access lines in use in this state is authorized in a geographic area to provide access service to the public or business access line and usage service within a local calling area, a telecommunications carrier may not offer in that same geographic area access service to the public or business access line and usage service within a local calling area without the authorization of the commission under s. 196.50 (1) (b) 2. The commission may authorize a telecommunications carrier to offer those services if, after notice and opportunity for hearing, the commission finds that public convenience and necessity require the offering of those services by the telecommunications carrier. The commission may not require a telecommunications carrier to meet a more stringent standard for authorization than the standard applied to any telecommunications provider seeking the same authority.

(17) FORFEITURES. (a) A telecommunications carrier who violates a provision of this section or rule or order of the commission promulgated or adopted under this section may be required to forfeit not less than \$100 nor more than \$1,000 for each violation. Each day of continued violation constitutes a separate offense.

(b) A telecommunications carrier that knowingly and intentionally violates sub. (2) or (3) (a) may be required to forfeit not less than \$100 nor more than \$5,000 for each violation.

SECTION 146. 196.499 (16) of the statutes, as created by 1993 Wisconsin Act .... (this act), is repealed and recreated to read:

196.499 (16) ACCESS SERVICE AUTHORIZATION. If a telecommunications utility with 150,000 or less access lines in use in this state is authorized in a geographic area to provide access service to the public or business access line and usage service within a local calling area, a telecommunications carrier may not offer in that same geographic area access service to the public or business access line and usage service within a local calling area without the authorization of the commission. The commission may authorize a telecommunications carrier to offer those services if, after notice and opportunity for hearing, the commission finds

that public convenience and necessity require the offering of those services by the telecommunications carrier. The commission may not require a telecommunications carrier to meet a more stringent standard for authorization than the standard applied to any telecommunications provider seeking the same authority.

SECTION 147. 196.50 (1) of the statutes is renumbered 196.50 (1) (a) and amended to read:

196.50 (1) (a) The commission may not grant any public utility person a license, permit or franchise to own, operate, manage or control any plant or equipment ~~for the furnishing of telecommunication 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 person 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 telecommunications toll line from any municipality into or through any municipality for the purpose of connecting with any telecommunications exchange in the municipality or connecting with any other telecommunications line or system~~ applicant.

SECTION 148. 196.50 (1) (b) 1 and 2 and (c) of the statutes are created to read:

196.50 (1) (b) 1. In this paragraph, "local exchange service" includes access service, basic local exchange service and business access line and usage service within a local calling area.

2. Except as provided in s. 196.203 (3) (b) or (e), the commission may not grant any person a certificate, license, permit or franchise to own, operate, manage or control any plant or equipment for the furnishing of local exchange service in a 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 any of the following conditions is met:

a. The holder of the permit is a telecommunications utility with more than 150,000 access lines in use in this state.

b. The holder of the permit is a telecommunications utility with 150,000 or less access lines in use in this state and that has consented to the applicant's provision of services.

c. The holder of the permit is a telecommunications utility with 150,000 or less access lines in use in this state and that provides local exchange service within the geographic area in which the applicant provides local exchange service other than cross-boundary foreign exchange service, services offered in open territory or services offered inadvertently or by mutual

agreement between the serving telecommunications utilities.

d. The commission, after investigation and opportunity for hearing, finds that public convenience and necessity requires the delivery of service by the applicant, in which case the holder's obligation to be provider of last resort is eliminated.

e. The holder of the permit and the applicant are both providers of cable television service, if the holder's provision of cable television service began after the effective date of this subd. 2. e. .... [revisor inserts date]. This subd. 2. e. does not apply if the holder's provision of cable television service is limited to the provision of satellite cable programming, as defined in s. 943.47 (1) (b).

(c) Any provision in an agreement or municipal franchise that prohibits entry into the telecommunications or cable television services market after the effective date of this paragraph .... [revisor inserts date], is void. Paragraph (b) and this paragraph do not invalidate an ordinance enacted under s. 66.082 which requires a provider of cable television services to obtain a franchise before offering those services.

SECTION 149. 196.50 (1) (b) 2. (intro.) of the statutes, as created by 1993 Wisconsin Act .... (this act), is repealed and recreated to read:

196.50 (1) (b) 2. (intro.) Except as provided in s. 196.203 (3) (b) or 196.499 (16), the commission may not grant any person a certificate, license, permit or franchise to own, operate, manage or control any plant or equipment for the furnishing of local exchange service in a 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 any of the following conditions is met:

SECTION 150. 196.50 (1) (b) 3 of the statutes is created to read:

196.50 (1) (b) 3. If the commission authorizes a telecommunications carrier to provide access service to the public or business access line and usage service within a local calling area under s. 196.499 (16), the commission shall consider if or to what extent a telecommunications utility with 150,000 or less access lines in use in this state may be relieved of its obligation to be the provider of last resort. The commission shall consider the extent of competition in the relevant geographic area for the service, the revenues that have been or may be lost by the telecommunications utility, the ability of competing telecommunications providers to serve the existing or projected demand and any other factors that it considers to be relevant.

SECTION 151. 196.50 (2) of the statutes is repealed and recreated to read:

196.50 (2) CERTIFICATION OF TELECOMMUNICATIONS UTILITIES. (a) Alternative telecommunications utilities shall be certified under s. 196.203. All other telecommunications utilities shall be certified under this subsection.

(b) A certificate, franchise, license or permit, indeterminate or otherwise, in effect on September 1, 1994, for a telecommunications utility shall remain in effect and shall have the effect of a certificate of authority. A telecommunications utility is not required to apply for a new certificate of authority to continue offering or providing service to the extent of the prior authorization. Each telecommunications utility, including telecommunications cooperatives, shall have on file with the commission under s. 196.19 a tariff that sets forth the rates, terms and conditions for all services provided and a map that defines the geographical limits of the service territory that the telecommunications utility is obliged to serve.

(c) After August 31, 1994, a person who does not possess authority from the commission to provide telecommunications services may not provide services in this state as a telecommunications utility until the person obtains a certificate of authority under this subsection. A certified alternative telecommunications utility or any other certified telecommunications utility may also apply for certification or amended certification under this subsection.

(d) No later than 45 days after the commission receives an application for a certificate of authority or an amended certificate of authority, the commission shall determine if the application is complete. If the commission determines that the application is complete, the commission shall docket the application and issue a final order no later than the expiration date of the temporary license under par. (e). If the commission determines that the application is incomplete, the commission shall notify the applicant in writing of the commission's determination, identify any part of the application which the commission has determined to be incomplete and state the reasons for the determination. An applicant may supplement and refile an application which the commission has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application before a final order on the application. If the commission fails to make a determination within 15 days after receiving a refiled application regarding the completeness of an application previously determined to be incomplete, the refiled application shall be considered to be complete.

(e) 1. Pending the determination on an application for a certificate of authority or an amended certificate of authority, the commission may issue, without notice and hearing, a temporary license for a period not to exceed one year and may temporarily exempt the applicant from requirements of this chapter identified in s. 196.195 (5) if the exemption is in the public interest. The issuance of a temporary license does not bind the commission in the final determination on the application.

2. An application for a certificate of authority or amended certificate of authority that is filed after June 30, 1994, shall identify the geographical area to be

served and the classification for which it is filed. The application shall be served by the applicant on all affected telecommunications providers.

(f) The commission shall issue a certificate of authority or an amended certificate of authority if it finds, after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area. In making this determination, the commission shall consider the factors identified in s. 196.03 (6). The commission may order the applicant to satisfy any conditions that the commission considers to be necessary to protect the public interest, including structural safeguards.

(g) 1. The authority of every telecommunications utility with a certificate under this subsection is statewide and nonexclusive. The existence of or issuance of a certificate of authority or amended certificate of authority to any telecommunications utility and the approval of any tariff for the telecommunications utility shall not preclude the commission from authorizing additional telecommunications utilities to provide the same or equivalent service or to serve the same geographical area as any previously authorized utility or approved tariff.

2. A telecommunications utility's obligation to serve is defined by the map that the utility files under par. (b).

3. The commission shall establish by rule classes of certificates of authority based on services. The commission shall notify each telecommunications utility of its classification.

(h) After notice and opportunity for hearing, the commission may alter or amend any telecommunications utility's certificate of authority to provide telecommunications services in order to achieve or maintain the availability of reasonably adequate service at just and reasonable rates throughout the state.

SECTION 152. 196.50 (3) of the statutes is amended to read:

196.50 (3) **SECOND UTILITY.** Any certificate, permit, license or franchise issued to a public utility, other than a telecommunications utility, which contains any term interfering with the existence of a 2nd public utility, other than a telecommunications utility, is amended to permit any municipality to grant a franchise for the operation of the 2nd public utility.

SECTION 153. 196.50 (4) of the statutes is amended to read:

196.50 (4) **MUNICIPALITY RESTRAINED.** No municipality may construct any public utility if there is in operation under an indeterminate permit in the municipality a public utility engaged in similar service other than a telecommunications service, unless it secures from the commission a declaration, after a public hearing of all parties interested, that public convenience and necessity require the municipal public utility.

SECTION 154. 196.50 (5) of the statutes is amended to read:

196.50 (5) **INJUNCTION.** Pending investigation and finding by the commission as to whether public convenience and necessity require a 2nd public utility, the furnishing of any public utility service, other than a telecommunications service, in any municipality contrary to the provisions of this section may be enjoined at the suit of the state or of any public utility having an interest in the issue.

SECTION 155. 196.50 (6) of the statutes is amended to read:

196.50 (6) **NO DENIAL ON FEDERAL FINANCING.** No certificate of convenience and necessity or permit to any public utility under ss. 196.49 and 196.50 shall be denied because of the amount of the public utility's notes, bonds or other evidences of indebtedness issued to the United States in connection with loans ~~for~~ to rural telecommunications ~~facilities~~ utilities made under the rural electrification act of 1936 (~~7 USC 901, et seq.~~) to 950aaa-5, as amended, or by reason of the ratio of such indebtedness to the value of the public utility's property or to its other classes of securities.

SECTION 156. 196.50 (7) of the statutes is created to read:

196.50 (7) **INTERLATA CERTIFICATION.** (a) This subsection applies to any telecommunications utility that is restricted under federal law or under any consent decree approved by a federal district court.

(b) Upon application by a telecommunications utility subject to this subsection for a certificate to provide interlata services, the commission shall consider all of the following factors in determining whether to grant a certificate of authority:

1. Whether granting the certificate is in the public interest.
2. Whether the utility will provide interconnection to its local exchange network under reasonable terms and conditions.
3. Whether the utility will permit appropriate resale and sharing of its services.
4. Whether the utility will provide unbundled services under reasonable terms and conditions.
5. Whether the utility provides its services in compliance with s. 196.204.
6. Whether competition in the interlata marketplace will be enhanced or hindered by granting the certificate.

(c) The commission may impose terms and conditions upon the grant of a certificate under par. (b) that are necessary to protect the public interest and promote competition.

(d) The commission, after providing notice and opportunity for hearing, shall issue its decision on the application within 180 days after the filing. The time period may be extended upon agreement of the commission and the applicant.



(e) An applicant may not be authorized to provide interlata service before the availability of dial-I presubscription on an intralata basis in all of its exchanges except where it is technically infeasible to offer intralata dial-I presubscription due to the action or inaction of a switch vendor.

SECTION 157. 196.505 (title) and (1) of the statutes are amended to read:

**196.505 (title) Construction of chapter.** (1) ~~Except as provided in s. 196.53, nothing~~ 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.

SECTION 158. 196.52 (3) (b) 1 of the statutes is amended to read:

196.52 (3) (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 \$25,000 or 5% of the 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), and does not apply to any a telecommunications utility 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 159. 196.52 (3) (c) (intro.) of the statutes is amended to read:

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

SECTION 160. 196.52 (5) of the statutes is renumbered 196.52 (5) (a).

SECTION 161. 196.52 (5) (b) of the statutes is created to read:

196.52 (5) (b) For telecommunications utilities, the commission shall have supervisory jurisdiction over the terms and conditions of contracts and arrangements under this section as necessary to enforce ss. 196.204 and 196.219.

SECTION 162. 196.52 (6) of the statutes is amended to read:

196.52 (6) If the commission finds upon investigation that a public utility, other than a telecommunications utility, is giving effect to a contract or arrangement without the commission's approval under this section, the commission shall issue a sum-

mary order directing ~~the~~ that 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.

SECTION 163. 196.525 (1) (intro.) of the statutes is amended to read:

196.525 (1) (intro.) Except under rules ~~and regulations~~ prescribed by the commission, ~~no~~ a public utility may not lend funds or credit to any of its officers or directors ~~or by any of the following~~ and a public utility other than a telecommunications utility may not lend funds or credit to any corporation ~~(, except a public utility subject to the regulatory powers of the commission),~~ if the corporation holds, directly or indirectly through any chain of ownership, 5% or more of the voting stock of the public utility or renders any managerial, supervising, engineering, legal, accounting or financial service to the public utility by any of the following:

SECTION 164. 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 ~~or for the furnishing of local exchange telecommunications services~~ may be granted or transferred to a foreign corporation.

SECTION 165. 196.54 (6) of the statutes is created to read:

196.54 (6) **APPLICABILITY.** This section does not apply to a telecommunications utility.

SECTION 166. 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, ~~telecommunications service~~, heat, light or power. "Public utility" does not include any cooperative association organized under ch. 185.

SECTION 167. 196.605 (1) of the statutes is amended to read:

196.605 (1) A public utility which is a cooperative association incorporated under ch. 185 to furnish telecommunications service in rural areas on a nonprofit basis with a telecommunications ~~system~~ utility financed in part through a loan from the United States under the rural electrification act of 1936 ~~(, 7 USC 901 to 950b)~~ 950aaa-5, as amended, may require each of its local service telecommunications patrons to deposit with the association the amount of the membership fee or other form of capital representing the proportional share of the total equity capital of the

association required as a condition of federal financing. The membership fee or other form of equity capital attributable to each local service patron may be collected by the association in instalments in connection with billings for service. The required deposits of equity capital shall be segregated in the billing from service charges and shall be credited when received on the membership or equity capital account of the patron.

SECTION 168. 196.61 of the statutes is amended to read:

**196.61 (title) Facilities in exchange for compensation prohibited.** ~~No~~ A public utility may not demand, charge, collect or receive from any person, ~~firm or corporation~~ 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 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~~ at the premises of any consumer, ~~except telecommunications station equipment, and~~ except meters and appliances for measurements of any product or service, unless the commission orders otherwise.

SECTION 169. 196.65 (title) of the statutes is amended to read:

**196.65 (title) Penalties relating to information and records.**

SECTION 170. 196.65 (3) of the statutes is created to read:

196.65 (3) (a) In this subsection, "agent" means an authorized person who acts on behalf of or at the direction of a telecommunications provider. "Agent" does not include a director, officer or employe of a telecommunications provider.

(b) An officer of a telecommunications provider shall be fined not less than \$100 nor more than \$2,500, an agent of a telecommunications provider shall be fined not less than \$100 nor more than \$25,000 or an employe of a telecommunications provider shall be fined not less than \$100 nor more than \$1,000 for each offense if the officer, agent or employe does any of the following:

1. Fails or refuses to fill out and return any questionnaire required under s. 196.25 (3).
2. Fails or refuses to answer any question in any questionnaire required under s. 196.25 (3).
3. Knowingly gives a false answer to any question in any questionnaire required under s. 196.25 (3).
4. Evades the answer to any question in any questionnaire required under s. 196.25 (3).
5. Upon proper demand, fails or refuses to exhibit to the commission, or any person authorized to

examine records, any record of the telecommunications provider which is in the possession or under the control of the officer, agent or employe.

(c) A telecommunications provider shall be fined not less than \$500 nor more than \$25,000 for each violation under par. (b) if the officer, agent or employe of the telecommunications provider acted under the direction or request of the telecommunications provider or any general officer of the telecommunications provider.

(d) After notice and hearing, the commission may order a telecommunications utility to cease provision of interconnection or access services to a telecommunications provider who has violated par. (b).

SECTION 171. 196.77 of the statutes is amended 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~~ Except as provided in this section, nothing in this chapter prohibits a telecommunications utility from making filing a tariff to make 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 automatically 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 unless the commission authorizes an earlier effective date or suspends the tariff within 10 days after the date on which it is filed. The commission may suspend a tariff if it believes that the tariff violates s. 196.204, 196.209 or 196.219. If the commission suspends a tariff, it shall investigate and resolve the matter within 60 days after the date on which the tariff is suspended or the tariff shall be effective as filed.

SECTION 172. 196.79 of the statutes is renumbered 196.79 (1) and amended to read:

196.79 (1) ~~The~~ Except as provided in sub. (2), the reorganization of any public utility shall be subject to the supervision and control of the commission. No reorganization may take effect without the written approval of the commission. The commission may not approve any plan of reorganization unless the applicant for approval establishes that the plan of reorganization is consistent with the public interest.

SECTION 173. 196.79 (2) of the statutes is created to read:

196.79 (2) Subsection (1) does not apply to a telecommunications utility, except that the telecommunications utility shall provide the commission with adequate notice of the reorganization not more than 10 business days after the reorganization of the telecommunications utility. The commission shall retain continuing supervisory jurisdiction over the reorgani-

zation of the telecommunications utility, as necessary to enforce ss. 196.204 and 196.219.

SECTION 174. 196.80 (1) of the statutes is renumbered 196.80 (1m).

SECTION 175. 196.80 (1g) of the statutes is created to read:

196.80 (1g) In this section, "public utility" does not include a telecommunications utility.

SECTION 176. 196.805 of the statutes is created to read:

**196.805 Consolidation or merger of telecommunications utilities.** (1) NOTICE. A telecommunications utility shall provide the commission with adequate notice of any consolidation, merger or acquisition listed in sub. (2) not more than 10 business days after the completion of the consolidation, merger or acquisition. The commission shall retain continuing supervisory jurisdiction over the telecommunications utility, as necessary to enforce ss. 196.204 and 196.219.

(2) APPLICABILITY. This section applies to any of the following actions of a telecommunications utility:

(a) Merger or consolidation with one or more other public utilities.

(b) Acquisition of 5% or more of the stock of any other public utility.

(c) Consolidation or merger with any Wisconsin corporation if substantially all of the assets of the corporation consist of the entire stock of the public utility.

(d) Sale, acquisition, lease or rental of any telecommunications utility plant or property constituting an operating unit or system.

(e) Acquisition of the majority of the stock of a telecommunications utility by other than a public utility.

SECTION 177. 196.81 (3) of the statutes is created to read:

196.81 (3) This section does not apply to a service discontinuance by a telecommunications utility.

SECTION 178. 196.85 (2m) of the statutes is created to read:

196.85 (2m) Annually, the commission shall assess telecommunications utilities for the cost of one attorney position in the department of justice to provide services relating to telecommunications matters and for the cost of supplies, services and equipment related to that position. The amounts received under this subsection shall be credited to the appropriation under s. 20.455 (1) (kt). This subsection does not apply after June 30, 1999.

SECTION 179. 196.975 (1) of the statutes is amended to read:

196.975 (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 and telecommunications carriers, 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.

SECTION 180. 196.975 (3) of the statutes is amended to read:

196.975 (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 and telecommunications carriers to petition the appropriate federal district court to ~~se~~ 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 181. 230.86 (1) of the statutes is amended to read:

230.86 (1) No appointing authority may take any disciplinary action based in whole or in part on wire-tapping, electronic surveillance or one-way mirrors unless that surveillance produces evidence that the employe against whom disciplinary action is taken has committed a crime or unless that surveillance is authorized by the appointing authority and is conducted in accordance with the rules promulgated under s. 16.004 (12).

SECTION 182. 346.50 (1) (c) of the statutes is amended to read:

346.50 (1) (c) The vehicle of a public utility, as defined in s. 196.01 (5), a telecommunications carrier, as defined in s. 196.01 (8m), or a rural electric cooperative is stopped or left standing and is required for maintenance, installation, repair, construction or inspection of its facilities by the public utility or a rural electric cooperative when warning signs, flags, traffic cones, or flashing yellow lights or barricades, have been placed to warn approaching motorists of any obstruction to the traveled portion of the highway.

SECTION 183. 347.26 (9) of the statutes is amended to read:

347.26 (9) WARNING LAMPS ON PUBLIC UTILITY AND COOPERATIVE VEHICLES. Any vehicle of a public utility as defined in s. 196.01 (5), of a telecommunications carrier, as defined in s. 196.01 (8m), or of a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power or water to its members, which by reason of its use upon a highway creates a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtak-

ing or passing may be equipped with a flashing amber lamp of the dome type or with 2 flashing amber lamps, one showing to the front and one showing to the rear. Such lamps shall be mounted approximately midway between the extremities of the width of the vehicle and at the highest practicable point and shall be used only for the purpose of warning operators of other vehicles of the presence of the traffic hazard. Should such vehicle be of a type so as to make impractical the mounting of such lamps midway between the extremities of the width of the vehicle then such mountings shall be made at or near the upper left front and rear corners of such vehicle.

SECTION 184. 706.09 (3) (a) of the statutes is amended to read:

706.09 (3) (a) *Public service corporations, railroads, electric cooperatives, trustees, governmental units.* While owned, occupied or used by any public service corporation ~~as defined in s. 196.01~~, any railroad corporation as defined in s. 195.02, any electric cooperative organized and operating on a nonprofit basis under ch. 185, or any trustee or receiver of any such corporation or electric cooperative, or any mortgagee or trust deed trustee or receiver thereof; nor any such interest while held by the United States, the state or any political subdivision or municipal corporation thereof; or

SECTION 185. 814.03 (1) of the statutes is amended to read:

814.03 (1) If the plaintiff is not entitled to costs under s. 814.01 (1) or (3), the defendant shall be allowed costs to be computed on the basis of the demands of the complaint, ~~except as provided in ss. 943.46 (3) (e) and 943.47 (4) (b).~~

SECTION 186. 885.365 (2) (a) of the statutes is 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 telecommunications utility as defined in s. 196.01 (10) or a telecommunications carrier as defined in s. 196.01 (8m) in accordance with its tariffs and which automatically produces a distinctive recorder tone that is repeated at intervals of approximately 15 seconds;

SECTION 187. 885.365 (2) (b) of the statutes is amended to read:

885.365 (2) (b) The recording is made by a telecommunications utility as defined in s. 196.01 (10), a telecommunications carrier as defined in s. 196.01 (8m) 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 188. 940.32 (1) (cg) of the statutes is created to read:

940.32 (1) (cg) "Personally identifiable information" has the meaning given in s. 19.62 (5).

SECTION 189. 940.32 (1) (cr) of the statutes is created to read:

940.32 (1) (cr) "Record" has the meaning given in s. 19.32 (2).

SECTION 190. 940.32 (2m) of the statutes is created to read:

940.32 (2m) Whoever violates sub. (2) is guilty of a Class D felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (2).

SECTION 191. 940.32 (3) (b) of the statutes, as created by 1993 Wisconsin Act 96, is amended to read:

940.32 (3) (b) The actor has a previous conviction under this section or s. 947.013 (1r), (1t), (1v) or (1x) for a violation against the same victim and the present violation occurs within 7 years after the prior conviction.

SECTION 192. 940.32 (3m) of the statutes is created to read:

940.32 (3m) Whoever violates sub. (3) under all of the following circumstances is guilty of a Class D felony:

(a) The person has a prior conviction under sub. (2), (2m) or (3) or this subsection or s. 947.013 (1r), (1t), (1v) or (1x).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (3).

SECTION 193. 943.392 of the statutes is created to read:

**943.392 Fraudulent data alteration.** Whoever, with intent to injure or defraud, manipulates or changes any data, as defined in s. 943.70 (1) (f), is guilty of a Class A misdemeanor.

SECTION 194. 943.45 (title) of the statutes is amended to read:

**943.45 (title) Theft of telecommunications service.**

SECTION 195. 943.45 (1) (intro.) of the statutes is amended to read:

943.45 (1) (intro.) ~~Whoever with intent to defraud obtains or attempts~~ No person may intentionally obtain or attempt to obtain telecommunications service, as defined in s. 196.01 (9m), by any of the following means ~~may be penalized as provided in sub. (3):~~

SECTION 196. 943.45 (3) of the statutes is repealed and recreated to read:

943.45 (3) The following penalties apply to violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (1) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (1) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (1) for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony.

(d) Any person who violates sub. (1) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class D felony.

SECTION 197. 943.45 (4) of the statutes is repealed.

SECTION 198. 943.455 (2) (a), (c) and (e) of the statutes are amended to read:

943.455 (2) (a) Obtain or attempt to obtain cellular telephone service from a company by trick, artifice, deception, use of an illegal device or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the company, the major purpose of which is to permit reception of cellular telephone services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use ~~or if the company cannot demonstrate that it notified the defendant, by mail using the procedure under sub. (3) (b), that he or she was obtaining or attempting to obtain cellular telephone service by means prohibited in this subsection and that at least 20 days thereafter the device was present on the property and in the actual possession of the defendant.~~

(c) Maintain an ability to connect, whether physical, electronic, by radio wave or by other means, with any facilities, components or other devices used for the transmission of cellular telephone services for the purpose of obtaining cellular telephone service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cellular telephone service to the defendant was authorized under a service agreement with the defendant and has been terminated by the company, ~~that the company notified the defendant, by mail using the procedure under sub. (3) (b), of the termination and that at least 20 days thereafter there exists in fact an ability to connect to the company's cellular telephone system at the defendant's property.~~

(e) Possess without authority any device designed to receive from a company any services offered for sale by that company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, or designed to perform or facilitate the performance of any of the acts under pars. (a) to (d) with the intent that that device be used to receive that company's services without payment. The intent

~~required for a violation of this paragraph may be inferred from proof that the company has mailed to the defendant, using the procedure under sub. (3) (b), a written demand requesting the return of a company-owned device that was in the possession of the defendant at the time of mailing and from proof that the defendant has failed to return or make reasonable arrangements to return the device within 20 days after the notice has been mailed to the defendant.~~ Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

SECTION 199. 943.455 (3) of the statutes is repealed.

SECTION 200. 943.455 (4) (a) and (b) of the statutes are amended to read:

943.455 (4) (a) Except as provided in pars. (b) to (d), any person who violates sub. (2) (a) to ~~(e)~~ (f) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) (a) to ~~(e)~~ (f) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

SECTION 201. 943.46 (1) (a) of the statutes is amended to read:

943.46 (1) (a) "Cable television service" ~~means any audio, video or data service provided by a cable television company over its cable system facilities for payment has the meaning given in s. 196.01 (1p).~~ "Cable television service" does not include signals received by privately owned antennas that are not connected to a cable television system whether or not the same signals are provided by a cable television company.

SECTION 202. 943.46 (2) (a) of the statutes is amended to read:

943.46 (2) (a) Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use ~~or if the cable television company cannot demonstrate that it notified the defendant, by mail using the procedure under sub. (3) (b), that he or she was obtaining or attempting to obtain cable television service by means prohibited in this subsection and that at least 20 days thereafter the device was present on the property and in the actual possession of the defendant.~~

SECTION 203. 943.46 (2) (d) of the statutes is amended to read:

943.46 (2) (d) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company; ~~that the cable television company notified the defendant, by mail using the procedure under sub. (3) (b), of the disconnect and that at least 20 days thereafter there exists in fact a connection to the cable system at the defendant's residence or business.~~

SECTION 204. 943.46 (2) (f) of the statutes is amended to read:

943.46 (2) (f) Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. (a) to (e) with the intent that that device or printed circuit be used to receive that cable television company's services without payment. ~~The intent required for a violation of this paragraph may be inferred from proof that the cable television company has mailed to the defendant, using the procedure under sub. (3) (b), a written demand requesting the return of a company owned converter, decoder or other device that was in the possession of the defendant at the time of mailing and from proof that the defendant has failed to return or make reasonable arrangements to return the converter, decoder or other device within 20 days after the notice has been mailed to the defendant.~~ Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

SECTION 205. 943.46 (3) of the statutes is repealed.

SECTION 206. 943.47 (3) (a) of the statutes is amended to read:

943.47 (3) (a) Except as provided in ~~par. (b) pars. (b) to (d)~~, any person who intentionally violates sub. (2) is guilty of subject to a Class B misdemeanor C forfeiture.

SECTION 207. 943.47 (3) (b) of the statutes is repealed and recreated to read:

943.47 (3) (b) Except as provided in pars. (c) and (d), any person who violates sub. (2) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

SECTION 208. 943.47 (3) (c) and (d) of the statutes are created to read:

943.47 (3) (c) Except as provided in par. (d), any person who violates sub. (2) for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony.

(d) Any person who violates sub. (2) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class D felony.

SECTION 209. 943.47 (4) of the statutes is repealed.

SECTION 210. 943.48 of the statutes is created to read:

**943.48 Telecommunications; civil liability.** (1) Any person who incurs injury as a result of a violation of s. 943.45 (1), 943.455 (2), 943.46 (2) or 943.47 (2) may bring a civil action against the person who committed the violation.

(1m) Except as provided in sub. (2), if the person who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs and disbursements.

(2) If the person who incurs the loss prevails against a person who committed the violation wilfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of s. 943.45 (1), 943.455 (2), 943.46 (2) or 943.47 (2), the court shall grant the prevailing party all of the following:

(a) Except as provided in subs. (2g) and (2r), not more than \$10,000.

(b) Actual damages.

(c) Any profits of the violator that are attributable to the violation and that are not taken into account in determining the amount of actual damages under par. (b).

(d) Notwithstanding the limitations under s. 799.25 or 814.04, costs, disbursements and reasonable attorney fees.

(2g) If the court finds that the violation was committed wilfully and for the purpose of commercial advantage, the court may increase the amount granted under sub. (2) (a) to an amount not to exceed \$50,000.

(2r) If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the court may reduce the amount granted under sub. (2) (a).

(3) If damages under sub. (2) (c) are requested, the party who incurred the injury shall have the burden of proving the violator's gross revenue and the violator shall have the burden of proving the violator's deductible expenses and the elements of profit attributable to factors other than the violation.

(4) In addition to other remedies available under this section, the court may grant the injured party a temporary or permanent injunction.

SECTION 211. 946.11 (2) (c) of the statutes is amended to read:

946.11 (2) (c) "Public utility" has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

SECTION 212. 947.013 (1) (c) of the statutes is created to read:

947.013 (1) (c) "Personally identifiable information" has the meaning given in s. 19.62 (5).

SECTION 213. 947.013 (1) (d) of the statutes is created to read:

947.013 (1) (d) "Record" has the meaning given in s. 19.32 (2).

SECTION 214. 947.013 (1t) of the statutes is amended to read:

947.013 (1t) Whoever violates sub. (1r) is guilty of a Class E felony if the person has a prior conviction under this subsection or sub. (1r), (1v) or (1x) or s. 940.32 (2), (2m), (3) or (3m) involving the same victim and the present violation occurs within 7 years of the prior conviction.

SECTION 215. 947.013 (1v) of the statutes is created to read:

947.013 (1v) Whoever violates sub. (1r) is guilty of a Class D felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (1r).

SECTION 216. 947.013 (1x) of the statutes is created to read:

947.013 (1x) Whoever violates sub. (1r) under all of the following circumstances is guilty of a Class D felony:

(a) The person has a prior conviction under sub. (1r), (1t) or (1v) or this subsection or s. 940.32 (2), (2m), (3) or (3m).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (1r).

SECTION 217. **Nonstatutory provisions.** (1t) TELECOMMUNICATIONS POSITIONS. (ag) The authorized FTE positions for the department of justice are increased by 1.0 PR professional project position to provide telecommunications specialist services for a period beginning on August 1, 1994, and ending on July 31, 1996, to be funded from the appropriation under section 20.455 (1) (kt) of the statutes, as created by this act.

(ar) The authorized FTE positions for the department of justice are increased by 1.0 PR professional project position to provide telecommunications advocate services under section 196.44 (2) (b) of the statutes, as created by this act, for a period beginning on October 1, 1996, and ending on June 30, 1999, to be

funded from the appropriation under section 20.455 (1) (kt) of the statutes, as created by this act.

(b) The department of justice shall evaluate the effectiveness of the project position created under paragraph (ar) and, before January 1, 1999, submit a report regarding the benefits of extending the project position beyond June 30, 1999, under section 13.172 (3) of the statutes for review by the appropriate standing committees of the legislature.

(2m) RULES. The public service commission may use the procedure under section 227.24 of the statutes to promulgate rules for the purpose of administering this act. If the commission uses this procedure, the commission shall promulgate the rules within 90 days after the effective date of this subsection. Notwithstanding section 227.24 (1) and (3) of the statutes, the commission is not required to make a finding of emergency for a rule promulgated under this subsection. Notwithstanding section 227.24 (1) (c) and (2) (a) of the statutes, the effective period of a rule promulgated under this subsection is for one year after its promulgation.

SECTION 218. **Initial applicability.** (1) This treatment of sections 814.03 (1), 943.45 (title), (1) (intro.), (3) and (4), 943.455 (2) (a), (c) and (e), (3) and (4) (a) and (b), 943.46 (1) (a), (2) (a), (d) and (f) and (3), 943.47 (3) (a), (b), (c) and (d) and (4) and 943.48 of the statutes first applies to violations committed on the effective date of this subsection.

(2) The treatment of section 196.207 (6) of the statutes first applies to disclosures that occur on the effective date of this subsection.

(3) The treatment of sections 940.32 (1) (cg) and (cr), (2m), (3) (b) and (3m) and 947.013 (1) (c) and (d), (1t), (1v) and (1x) of the statutes first applies to offenses committed on the effective date of this subsection, but does not preclude the counting of other offenses as prior offenses for sentencing a person.

SECTION 219. **Effective dates.** This act takes effect on September 1, 1994, except as follows:

(1) The repeal of sections 14.28 (4) and 20.855 (4) (d) of the statutes takes effect on June 30, 1995.

(2) SECTION 217 (2m) of this act takes effect on the day after publication.

(3) The repeal and recreation of sections 196.499 (16) and 196.50 (1) (b) 2. (intro.) of the statutes and the creation of section 196.50 (1) (b) 3 of the statutes take effect on September 1, 1998.

(5x) The treatment of sections 15.945 (2), 20.292 (1) (gt) and 38.42 of the statutes takes effect on the day after publication.

(5y) The treatment of sections 20.455 (1) (kt) and 196.85 (2m) of the statutes and SECTION 217 (1t) of this act take effect on the day after publication.

(7i) The treatment of section 16.76 (4) (a) and (e) of the statutes takes effect on the day after publication.

(8x) The renumbering of section 196.44 (2) of the statutes and the treatment of section 196.44 (2) (title) and (b) of the statutes take effect on October 1, 1996.

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