



State of Wisconsin
1997 - 1998 LEGISLATURE

LRBs0392/6
MDK:kmg&kaf:ijs

**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 351**

March 19, 1998 - Offered by JOINT COMMITTEE ON INFORMATION POLICY.

1 **AN ACT** *to repeal* 196.01 (1d) (d), 196.01 (5m), 196.202 (1) and 196.219 (2m) (b);
2 *to renumber* 196.205; *to renumber and amend* 196.202 (2), 196.219 (1),
3 196.219 (2m) (a), 196.219 (4m), 196.26 (1) and 196.499 (1); *to amend* 146.70 (1)
4 (cm), 146.70 (2) (h) and (i), 196.01 (1g), 196.01 (5), 196.01 (8m), 196.202 (title),
5 196.202 (5), 196.219 (2) (a), 196.219 (2) (d), 196.219 (3) (intro.) and (a), 196.219
6 (3) (e), 196.219 (3) (em), 196.219 (3) (f), 196.219 (3) (h), 196.219 (3) (m), 196.219
7 (4), 196.219 (5), 196.26 (1m), 196.26 (2) (a), 196.26 (2) (b), 196.28 (3), 196.44 (2)
8 (a), 943.455 (1) (b) and 968.27 (14) (d); and *to create* 196.01 (2g), 196.01 (2i),
9 196.199, 196.202 (2) (a), 196.205 (2), 196.215 (2d), 196.215 (2m) (e), 196.219 (1)
10 (b), 196.219 (4m) (b), 196.26 (1) (a) 2. and 3., 196.26 (1) (b), 196.26 (4) (c), 196.43
11 (3) and 196.499 (1) (f) of the statutes; **relating to:** enforcement of
12 interconnection agreements by the public service commission, protections for

1 users of certain telecommunications services, granting rule-making authority
2 and providing a penalty.

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

3 **SECTION 1.** 146.70 (1) (cm) of the statutes is amended to read:

4 146.70 (1) (cm) “Cellular Commercial mobile radio telecommunications utility
5 service provider” has the meaning given in s. ~~196.202 (1)~~ 196.01 (2g).

6 **SECTION 2.** 146.70 (2) (h) and (i) of the statutes are amended to read:

7 146.70 (2) (h) A ~~cellular~~ commercial mobile radio telecommunications utility,
8 service provider shall permit a user of the utility provider to access a basic or
9 sophisticated system if the utility provider operates within the boundaries of a
10 system.

11 (i) If a user reaches a basic or sophisticated system through a ~~cellular~~
12 commercial mobile radio telecommunications utility service provider and the service
13 requested is to be provided outside of the jurisdiction served by the system, the public
14 agency operating the system shall transfer the request for services to the appropriate
15 jurisdiction.

16 **SECTION 3.** 196.01 (1d) (d) of the statutes is repealed.

17 **SECTION 4.** 196.01 (1g) of the statutes is amended to read:

18 196.01 (1g) “Basic local exchange service” means the provision to residential
19 customers of an access facility, whether by wire, cable, fiber optics or radio, and
20 essential usage within a local calling area for the transmission of high-quality
21 2-way interactive switched voice or data communication. “Basic local exchange
22 service” includes extended community calling and extended area service. “Basic
23 local exchange service” does not include additional access facilities or any

1 discretionary or optional services that may be provided to a residential customer.
2 “Basic local exchange service” does not include cable television service or services
3 provided by a cellular commercial mobile radio telecommunications utility or any
4 other mobile radio telecommunications utility service provider.

5 **SECTION 5.** 196.01 (2g) of the statutes is created to read:

6 196.01 (2g) “Commercial mobile radio service provider” means a
7 telecommunications provider that is authorized by the federal communications
8 commission to provide commercial mobile service.

9 **SECTION 6.** 196.01 (2i) of the statutes is created to read:

10 196.01 (2i) “Commercial mobile service” has the meaning given in 47 USC 332
11 (d).

12 **SECTION 7.** 196.01 (5) of the statutes is amended to read:

13 196.01 (5) “Public utility” means every corporation, company, individual,
14 association, their lessees, trustees or receivers appointed by any court, and every
15 sanitary district, town, village or city that may own, operate, manage or control any
16 toll bridge or all or any part of a plant or equipment, within the state, for the
17 production, transmission, delivery or furnishing of heat, light, water or power either
18 directly or indirectly to or for the public. “Public utility” does not include a
19 cooperative association organized under ch. 185 for the purpose of producing or
20 furnishing heat, light, power or water to its members only. “Public utility” includes
21 any person engaged in the transmission or delivery of natural gas for compensation
22 within this state by means of pipes or mains and any person, except a governmental
23 unit, who furnishes services by means of a sewerage system either directly or
24 indirectly to or for the public. “Public utility” includes a telecommunications utility.
25 “Public utility” does not include a holding company, as defined in s. 196.795 (1) (h),

1 unless the holding company furnishes, directly to the public, telecommunications or
2 sewer service, heat, light, water or power or, by means of pipes or mains, natural gas.
3 “Public utility” does not include any company, as defined in s. 196.795 (1) (f), which
4 owns, operates, manages or controls a telecommunications utility unless the
5 company furnishes, directly to the public, telecommunications or sewer service, heat,
6 light, water or power or, by means of pipes or mains, natural gas. “Public utility” does
7 not include a cellular commercial mobile radio telecommunications utility service
8 provider.

9 **SECTION 8.** 196.01 (5m) of the statutes is repealed.

10 **SECTION 9.** 196.01 (8m) of the statutes is amended to read:

11 196.01 **(8m)** “Telecommunications carrier” means any person that owns,
12 operates, manages or controls any plant or equipment used to furnish
13 telecommunications services within the state directly or indirectly to the public but
14 does not provide basic local exchange service, except on a resale basis.
15 “Telecommunications carrier” does not include an alternative telecommunications
16 utility, or a cellular commercial mobile radio telecommunications utility or any other
17 mobile radio telecommunications utility service provider.

18 **SECTION 10.** 196.199 of the statutes is created to read:

19 **196.199 Interconnection agreements. (1) DEFINITION.** In this section,
20 “interconnection agreement” means an interconnection agreement that is subject to
21 approval by the commission under 47 USC 252 (e).

22 **(2) COMMISSION POWERS.** (a) The commission has jurisdiction to approve and
23 enforce interconnection agreements and may do all things necessary and convenient
24 to its jurisdiction.

1 (b) The commission may promulgate rules that require an interconnection
2 agreement to include alternate dispute resolution provisions.

3 (c) The commission shall promulgate rules that specify the requirements for
4 determining under sub. (3) (a) 1m. a. whether a party's alleged failure to comply with
5 an interconnection agreement has a significant adverse effect on the ability of
6 another party to the agreement to provide telecommunications service to its
7 customers or potential customers.

8 **(3) ENFORCEMENT.** (a) 1. Upon the filing of any of the following, the commission
9 may investigate whether a party to an interconnection agreement approved by the
10 commission has failed to comply with the agreement:

11 a. A complaint by a party to the agreement that another party to the agreement
12 has failed to comply with the agreement and that the failure to comply with the
13 agreement has a significant adverse effect on the ability of the complaining party to
14 provide telecommunications service to its customers or potential customers.

15 b. A complaint filed under any provision of this chapter by any person that the
16 commission determines may involve a failure to comply with the agreement by a
17 party to the agreement.

18 1g. The commission may investigate whether a party to an interconnection
19 agreement approved by the commission has complied with the agreement upon the
20 filing of a petition by the party for a determination of whether the party has complied
21 with the agreement if the petition demonstrates that a controversy has arisen over
22 the party's compliance with the agreement. If the commission initiates an
23 investigation under this subdivision, the commission may determine that a party to
24 an interconnection agreement has failed to comply with the agreement only if a
25 complaint is filed under subd. 1. a. in which the complaining party alleges that the

1 party's failure to comply with the agreement has a significant adverse affect on the
2 complaining party's ability to provide telecommunications service to its customers
3 or potential customers.

4 1m. a. Within 5 business days after the filing of a complaint under subd. 1. a.
5 or the receipt of notice under par. (b) 1. b., the party who is the subject of a complaint
6 or the party who is identified in a notice under par. (b) 1. b. as a party who has
7 allegedly failed to comply with an agreement may request that the commission
8 determine whether the alleged failure to comply has a significant adverse effect on
9 the ability of the complaining party or any other party to the agreement to provide
10 telecommunications service to its customers or potential customers. If a request is
11 made under this subd. 1m. a., the commission shall make a determination within 30
12 business days after receipt of the request.

13 b. If the commission determines under subd. 1m. a. that an alleged failure to
14 comply has not had a significant adverse effect on the ability of a complaining party
15 or any other party to an agreement to provide telecommunications service to its
16 customers or potential customers, the commission shall terminate a proceeding on
17 the complaint under this subsection and proceed on the complaint under s. 196.26.

18 2. If the commission does not terminate a proceeding under subd. 1m. b., the
19 commission may, after an investigation under subd. 1. or 1g. and after notice and
20 hearing, do one of the following:

21 a. Issue an order under this subd. 2. a. that includes a finding of a failure to
22 comply with an interconnection agreement and that requires compliance with the
23 agreement.

24 b. Issue an order that interprets any provision of an interconnection
25 agreement.

1 c. If the commission determines that a party specified in subd. 1g. has complied
2 with an agreement, issue an order requiring any other action that the commission
3 determines is necessary to resolve a controversy specified in subd. 1g.

4 2n. The commission may not issue an order under subd. 2. more than 120 days
5 after the filing of a complaint or petition under subd. 1. or 1g., unless all of the parties
6 to the proceeding consent to a longer time period that is approved by the commission.
7 An order issued under subd. 2. may be reviewed under s. 227.52.

8 (b) 1. Before initiating an investigation of a complaint specified in par. (a) 1. b.,
9 the commission shall notify the parties to the agreement about the complaint.
10 Within 5 business days after the parties receive notice under this subdivision, or
11 within a shorter period of time specified by the commission in the notice, the
12 commission shall do one of the following:

13 a. If the alleged failure to comply is resolved to the satisfaction of the
14 commission, the commission shall dismiss the complaint with respect to any issues
15 that involve an alleged failure to comply.

16 b. If the alleged failure to comply is not resolved to the satisfaction of the
17 commission, the commission shall provide a notice to the parties that identifies the
18 party who has allegedly failed to comply with the agreement.

19 2. No party to an interconnection agreement may file a complaint under par.
20 (a) 1. a. or a petition under par. (a) 1g. unless the party has first notified the other
21 parties to the agreement and provided an opportunity to resolve the alleged failure
22 to comply or controversy over compliance to the satisfaction of the complaining or
23 petitioning party within 5 business days, or a shorter period of time approved by the
24 commission, after receipt of the notice. The commission shall promulgate rules

1 establishing standards and procedures for approving a period of time shorter than
2 5 business days.

3 (c) No person may make any filing in a proceeding under this subsection unless
4 there is a nonfrivolous basis for doing so. A person may not make any filing in a
5 proceeding under this subsection unless, to the best of the person's knowledge,
6 information and belief, formed after a reasonable inquiry, all of the following
7 conditions are satisfied:

8 1. The filing is reasonably supported by applicable law.

9 2. The allegations and other factual contentions in the filing have evidentiary
10 support or, if specifically so identified in the filing, are likely to have evidentiary
11 support after reasonable opportunity for further investigation or discovery.

12 3. The filing is not intended to harass a party to an interconnection agreement.

13 4. The filing is not intended to cause unnecessary delay in implementing an
14 interconnection agreement or create a needless increase in the cost of litigation.

15 (d) If, at any time during a proceeding under this subsection, the commission
16 determines, after notice and reasonable opportunity to be heard, that a person has
17 made a filing in violation of par. (c), the commission shall order the person to pay to
18 any party to the proceeding the amount of reasonable expenses incurred by that
19 party because of the filing, including reasonable attorney fees, and the commission
20 may directly assess a forfeiture against the person of not less than \$25 nor more than
21 \$5,000. A person against whom the commission assesses a forfeiture under this
22 paragraph shall pay the forfeiture to the commission within 10 days after receipt of
23 notice of the assessment or, if the person petitions for judicial review under ch. 227,
24 within 10 days after receipt of the final decision after exhaustion of judicial review.
25 The commission shall remit all forfeitures paid under this paragraph to the state

1 treasurer for deposit in the school fund. The attorney general may bring an action
2 in the name of the state to collect any forfeiture assessed by the commission under
3 this paragraph that has not been paid as provided in this paragraph. The only
4 contestable issue in such an action is whether or not the forfeiture has been paid.

5 (e) At any time during a proceeding under this subsection, the commission may,
6 without holding a hearing, order a party to the interconnection agreement to take
7 an action or refrain from taking an action that is related to complying with the
8 agreement upon a showing by any other party to the proceeding of all of the following:

9 1. That there is a substantial probability that, at the conclusion of the
10 proceeding, the commission will find that the party against whom the order is sought
11 has failed to comply with the interconnection agreement.

12 2. For a complaint or petition filed by a party to an interconnection agreement,
13 that the party against whom the order is sought is taking an action or failing to take
14 an action that has a substantial adverse effect on the ability of the complaining or
15 petitioning party to provide telecommunications service to its customers or potential
16 customers.

17 3. That the order is in the public interest.

18 (f) The commission may require a bond or other security of a person seeking an
19 order under par. (e) to the effect that the person shall pay the party against whom
20 the order is issued such damages and expenses, excluding attorney fees, in an
21 amount specified by the commission, as that party may sustain by reason of the order
22 if the commission determines under par. (g) that the person seeking the order was
23 not entitled to the order.

24 (g) Within 5 business days after receiving an order issued under par. (e), the
25 party against whom the order is issued may request the commission to review the

1 order. Within 30 days after receiving a request under this paragraph, the
2 commission shall determine whether the person who sought the order under par. (e)
3 was entitled to the order and shall terminate, continue or modify the order on such
4 terms as the commission determines are appropriate. If the commission determines
5 that the person was not entitled to the order, the commission may order the person
6 to pay the damages and expenses, excluding attorney fees, sustained, by reason of
7 the order, by the party against whom the order was issued. In making a
8 determination under this paragraph, the commission may consider only the factors
9 specified in par. (e) 1. to 3. and may consider information that the commission
10 receives after the commission issued the order under par. (e).

11 **(4) PENALTIES.** (a) 1. If the commission issues an order under sub. (3) (a) 2. a.
12 in which the commission finds that a party to an interconnection agreement has
13 failed to comply with the agreement, the party shall forfeit not more than \$15,000
14 or, if the failure is wilful, not more than \$40,000, except that if the party is a holding
15 company that provides access under an interconnection agreement to 50,000 or less
16 access lines in this state through affiliates that are small telecommunications
17 utilities, or if the party is a small telecommunications utility, the forfeiture under
18 this subdivision shall be not more than \$7,500. For purposes of this subdivision, each
19 day that a party fails to comply with an interconnection agreement is a separate
20 failure to comply.

21 2. The maximum forfeiture that may be imposed under subd. 1. shall be trebled
22 if either of the following conditions is satisfied and shall be sextupled if both of the
23 following conditions are satisfied:

24 a. The party's failure to comply causes death or life-threatening or seriously
25 debilitating injury.

1 b. The party's failure to comply continues after the party receives written notice
2 of the commission's order requiring compliance with the interconnection agreement.

3 3. In addition to a forfeiture imposed under subd. 1., a party to an
4 interconnection agreement, approved by the commission, who has wilfully failed to
5 comply with the agreement shall forfeit an amount equal to not more than 2 times
6 the gross value of the party's economic gain resulting from the failure to comply.

7 (b) A court shall consider each of the following in determining the amount of
8 a forfeiture under par. (a):

9 1. The appropriateness of the forfeiture to the volume of business of the party
10 that failed to comply with the agreement.

11 2. The gravity of the failure to comply.

12 3. Any good faith attempt to comply with the agreement after the party receives
13 notice of a failure to comply

14 4. Any other factor that the court determines is relevant.

15 (c) In an action to recover a forfeiture under par. (a), a finding by the
16 commission in a proceeding under this subsection that a party to an interconnection
17 agreement has failed to comply with the agreement shall be, subject to review under
18 s. 227.52, conclusive proof that the party failed to comply with the agreement.

19 **SECTION 11.** 196.202 (title) of the statutes is amended to read:

20 **196.202** (title) **Exemption of cellular commercial mobile radio**
21 **telecommunications service providers.**

22 **SECTION 12.** 196.202 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
23 is repealed.

24 **SECTION 13.** 196.202 (2) of the statutes, as affected by 1997 Wisconsin Act 27,
25 is renumbered 196.202 (2) (intro.) and amended to read:

1 196.202 (2) SCOPE OF REGULATION. (intro.) A ~~cellular~~ commercial mobile radio
2 ~~telecommunications utility service provider~~ is not subject to ch. 184 or this chapter,
3 except a ~~cellular mobile radio telecommunications utility~~ if any of the following is
4 satisfied:

5 **(b)** A commercial mobile radio service provider is subject to s. 196.218 (3) to the
6 extent not preempted by federal law. If the application of s. 196.218 (3) to a ~~cellular~~
7 commercial mobile radio ~~telecommunications utility service provider~~ is not
8 preempted, a ~~cellular~~ commercial mobile radio ~~telecommunications utility service~~
9 provider shall respond, subject to the protection of the ~~cellular~~ commercial mobile
10 radio ~~telecommunications utility's service provider's~~ competitive information, to all
11 reasonable requests for information about its operations in this state from the
12 commission necessary to administer the universal service fund.

13 **SECTION 14.** 196.202 (2) (a) of the statutes is created to read:

14 196.202 (2) (a) If a commercial mobile radio service provider is a party to an
15 interconnection agreement, as defined in s. 196.199 (1), the provider shall, for
16 purposes of approving or enforcing the agreement, be subject to ss. 196.02 (3), 196.32,
17 196.33, 196.39, 196.395, 196.40, 196.41, 196.43, 196.44 (3) and 196.48 and be treated
18 as a party to the agreement under ss. 196.199 and 196.26, as a public utility under
19 ss. 196.02 (5) and (6), 196.14, 196.24, 196.44 (2) (a), 196.66 and 196.85 (1) and as a
20 telecommunications provider under ss. 196.25 (3) and 196.65 (3).

21 **SECTION 15.** 196.202 (5) of the statutes is amended to read:

22 196.202 (5) BILLING. A ~~cellular~~ commercial mobile radio ~~telecommunications~~
23 ~~utility service provider~~ may not charge a customer for an incomplete call.

24 **SECTION 16.** 196.205 of the statutes is renumbered 196.205 (1m).

25 **SECTION 17.** 196.205 (2) of the statutes is created to read:

1 196.205 (2) Notwithstanding sub. (1m), a telecommunications cooperative
2 shall be subject to s. 196.26 if it is a party in a proceeding on a complaint specified
3 in s. 196.26 (1) (a) 2. or 3.

4 **SECTION 18.** 196.215 (2d) of the statutes is created to read:

5 196.215 (2d) Notwithstanding sub. (2), a small telecommunications utility
6 shall be subject to s. 196.26 if it is a party in a proceeding on a complaint specified
7 in s. 196.26 (1) (a) 2. or 3.

8 **SECTION 19.** 196.215 (2m) (e) of the statutes is created to read:

9 196.215 (2m) (e) Notwithstanding pars. (a) to (d), a small telecommunications
10 utility is subject to s. 196.26 if it is a party in a proceeding on a complaint specified
11 in s. 196.26 (1) (a) 2. or 3.

12 **SECTION 20.** 196.219 (1) of the statutes is renumbered 196.219 (1) (intro.) and
13 amended to read:

14 196.219 (1) (title) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, “consumer”;

15 (a) “Consumer” means any person, including a telecommunications provider,
16 that uses the services, products or facilities provided by a telecommunications utility
17 or the local exchange services offered by a telecommunications provider that is not
18 a telecommunications utility.

19 **SECTION 21.** 196.219 (1) (b) of the statutes is created to read:

20 196.219 (1) (b) “Local exchange service” has the meaning given in s. 196.50 (1)
21 (b) 1.

22 **SECTION 22.** 196.219 (2) (a) of the statutes is amended to read:

23 196.219 (2) (a) Notwithstanding any exemptions identified in this chapter
24 except s. 196.202, a telecommunications utility or provider shall provide protection
25 to its consumers under this section unless exempted in whole or in part by rule or

1 order of the commission under this section. The commission shall promulgate rules
2 that identify the conditions under which provisions of this section may be suspended.

3 **SECTION 23.** 196.219 (2) (d) of the statutes is amended to read:

4 196.219 (2) (d) If the commission grants an exemption under this subsection,
5 it may require the telecommunications utility or provider to comply with any
6 condition necessary to protect the public interest.

7 **SECTION 24.** 196.219 (2m) (a) of the statutes is renumbered 196.219 (2m) and
8 amended to read:

9 196.219 (2m) ACCESS SERVICES. A telecommunications utility or provider shall
10 provide access services under tariff under the same rates, terms and conditions to all
11 telecommunications providers. This subsection applies to a telecommunications
12 provider that is not a telecommunications utility only with respect to the provider's
13 offering of local exchange services.

14 **SECTION 25.** 196.219 (2m) (b) of the statutes is repealed.

15 **SECTION 26.** 196.219 (3) (intro.) and (a) of the statutes are amended to read:

16 196.219 (3) PROHIBITED PRACTICES. (intro.) A telecommunications utility ~~may~~
17 ~~not do any of the following~~ with respect to its regulated services or any other
18 telecommunications provider with respect to its offering of local exchange services
19 may not do any of the following:

20 (a) Refuse to interconnect within a reasonable time with another person to the
21 same extent that the federal communications commission requires the
22 telecommunications utility or provider to interconnect. The public service
23 commission may require additional interconnection based on a determination,
24 following notice and opportunity for hearing, that additional interconnection is in
25 the public interest and is consistent with the factors under s. 196.03 (6).

1 **SECTION 27.** 196.219 (3) (e) of the statutes is amended to read:

2 196.219 (3) (e) Fail to provide a service, product or facility to a consumer other
3 than a telecommunications provider in accord with the telecommunications utility's
4 or provider's applicable tariffs, price lists or contracts and with the commission's
5 rules and orders.

6 **SECTION 28.** 196.219 (3) (em) of the statutes is amended to read:

7 196.219 (3) (em) Refuse to provide a service, product or facility to a
8 ~~telecommunications provider~~, in accord with the that telecommunications utility's or
9 provider's applicable tariffs, price lists or contracts and with the commission's rules
10 and orders, to another telecommunications provider.

11 **SECTION 29.** 196.219 (3) (f) of the statutes is amended to read:

12 196.219 (3) (f) Refuse to provide basic local exchange service, business access
13 line and usage service within a local calling area and access service on an unbundled
14 basis to the same extent that the federal communications commission requires the
15 telecommunications utility or provider to unbundle the same services provided
16 under its jurisdiction. The public service commission may require additional
17 unbundling of intrastate telecommunications services based on a determination,
18 following notice and opportunity for hearing, that additional unbundling is required
19 in the public interest and is consistent with the factors under s. 196.03 (6). The public
20 service commission may order unbundling by a small telecommunications utility.

21 **SECTION 30.** 196.219 (3) (h) of the statutes is amended to read:

22 196.219 (3) (h) To the extent prohibited by the federal communications
23 commission, or by the public service commission under rules promulgated consistent
24 with the factors under s. 196.03 (6), give preference or discriminate in the provision

1 of services, products or facilities to an affiliate, or to the telecommunications utility's
2 or provider's own or an affiliate's retail department that sells to consumers.

3 **SECTION 31.** 196.219 (3) (m) of the statutes is amended to read:

4 196.219 (3) (m) Provide telecommunications service to any person acting as a
5 telecommunications utility, telecommunications provider, alternative
6 telecommunications utility or telecommunications carrier if the commission has
7 ordered the telecommunications utility or provider to discontinue service to that
8 person.

9 **SECTION 32.** 196.219 (4) of the statutes is amended to read:

10 196.219 (4) ENFORCEMENT. (a) On the commission's own motion or upon
11 complaint filed by the consumer, the commission shall have jurisdiction to take
12 administrative action or to commence civil actions against telecommunications
13 utilities or providers to enforce this section.

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

19 **SECTION 33.** 196.219 (4m) of the statutes is renumbered 196.219 (4m) (a) and
20 amended to read:

21 196.219 (4m) (a) Upon a finding of a violation of this section by the commission,
22 any person injured because of a violation of this section by a telecommunications
23 utility or provider may commence a civil action to recover damages or to obtain
24 injunctive relief.

25 **SECTION 34.** 196.219 (4m) (b) of the statutes is created to read:

1 196.219 (4m) (b) Upon request of the commission, the attorney general may
2 bring an action to require a telecommunications utility or provider to compensate
3 any person for any pecuniary loss caused by the failure of the utility or provider to
4 comply with this section.

5 **SECTION 35.** 196.219 (5) of the statutes is amended to read:

6 196.219 (5) ALTERNATE DISPUTE RESOLUTION. The commission shall establish by
7 rule a procedure for alternative dispute resolution to be available for complaints filed
8 against a telecommunications utility or provider.

9 **SECTION 36.** 196.26 (1) of the statutes is renumbered 196.26 (1) (intro.) and
10 amended to read:

11 196.26 (1) COMPLAINT. (intro.) In this section, ~~“complaint”~~;

12 (a) “Complaint” means a any of the following:

13 1. A complaint filed with the commission that any rate, toll, charge or schedule,
14 joint rate, regulation, measurement, act or practice relating to the provision of heat,
15 light, water, power or telecommunications service is unreasonable, inadequate,
16 unjustly discriminatory or cannot be obtained.

17 **SECTION 37.** 196.26 (1) (a) 2. and 3. of the statutes are created to read:

18 196.26 (1) (a) 2. A complaint specified in s. 196.199 (3) (a) 1m. b.

19 3. A complaint by a party to an interconnection agreement, approved by the
20 commission, that another party to the agreement has failed to comply with the
21 agreement and that does not allege that the failure to comply has a significant
22 adverse effect on the ability of the complaining party to provide telecommunications
23 service to its customers or potential customers.

24 **SECTION 38.** 196.26 (1) (b) of the statutes is created to read:

1 196.26 (1) (b) “Interconnection agreement” has the meaning given in s. 196.199
2 (1).

3 **SECTION 39.** 196.26 (1m) of the statutes is amended to read:

4 196.26 (1m) COMPLAINT AND INVESTIGATION. If any mercantile, agricultural or
5 manufacturing society, body politic, municipal organization or 25 persons file a
6 complaint specified in sub. (1) (a) 1. against a public utility, or if the commission
7 terminates a proceeding on a complaint under s. 196.199 (3) (a) 1m. b., or if a person
8 files a complaint specified in sub. (1) (a) 3., the commission, with or without notice,
9 may investigate the complaint under this section as it deems necessary. The
10 commission may not issue an order based on the investigation without a public
11 hearing.

12 **SECTION 40.** 196.26 (2) (a) of the statutes is amended to read:

13 196.26 (2) (a) Prior to a hearing under this section, the commission shall notify
14 the public utility or party to an interconnection agreement complained of that a
15 complaint has been made, and 10 days after the notice has been given the
16 commission may proceed to set a time and place for a hearing and an investigation.
17 This paragraph does not apply to a complaint specified in sub. (1) (a) 2.

18 **SECTION 41.** 196.26 (2) (b) of the statutes is amended to read:

19 196.26 (2) (b) The commission shall give the complainant and either the public
20 utility or party to an interconnection agreement which is the subject of a complaint
21 ~~filed under and the complainant~~ specified in sub. (1) (a) 1. or 3. or, for a complaint
22 specified in sub. (1) (a) 2., a party to an interconnection agreement who is identified
23 in a notice under s. 196.199 (3) (b) 1. b., 10 days’ notice of the time and place of the
24 hearing and the matter to be considered and determined at the hearing. The
25 complainant and either the public utility or the party to the interconnection

1 agreement may be heard. The commission may subpoena any witness at the request
2 of the public utility, party to the interconnection agreement or complainant.

3 **SECTION 42.** 196.26 (4) (c) of the statutes is created to read:

4 196.26 (4) (c) Paragraphs (a) and (b) do not apply to a complaint specified in
5 sub. (1) (a) 2. or 3.

6 **SECTION 43.** 196.28 (3) of the statutes is amended to read:

7 196.28 (3) Notice of the time and place for a hearing under sub. (2) shall be
8 given to the public utility, and to such other interested persons as the commission
9 deems necessary. After the notice has been given, proceedings shall be had and
10 conducted in reference to the matter investigated as if a complaint specified in s.
11 196.26 (1) (a) 1, had been filed with the commission ~~under s. 196.26 (1)~~ relative to the
12 matter investigated. The same order or orders may be made in reference to the
13 matter as if the investigation had been made on complaint under s. 196.26.

14 **SECTION 44.** 196.43 (3) of the statutes is created to read:

15 196.43 (3) No injunction may be issued in any proceeding for review under ch.
16 227 of an order of the commission under s. 196.199 (3) (a) 2., suspending or staying
17 the order, unless the court finds that the person seeking review of the order is likely
18 to succeed on the merits and suffer irreparable harm without the suspension or stay
19 and that the suspension or stay is in the public interest.

20 **SECTION 45.** 196.44 (2) (a) of the statutes is amended to read:

21 196.44 (2) (a) Upon request of the commission, the attorney general or the
22 district attorney of the proper county shall aid in any investigation, hearing or trial
23 had under this chapter, and shall institute and prosecute all necessary actions or
24 proceedings for the enforcement of all laws relating to public utilities or
25 telecommunications providers, and for the punishment of all violations.

1 **SECTION 46.** 196.499 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
2 is renumbered 196.499 (1) (intro.) and amended to read:

3 196.499 (1) SCOPE. (intro.) Notwithstanding any other provisions of this
4 chapter, a telecommunications carrier is not subject to regulation under this chapter,
5 except ~~that a~~ under each of the following provisions:

6 (a) A telecommunications carrier shall comply with the requirements of this
7 section.

8 (b) A telecommunications carrier shall be treated under ss. 196.209, 196.218
9 (8) and 196.219 (4d) as a telecommunications provider.

10 (c) A telecommunications carrier shall be treated under s. 196.85 as a
11 telecommunications utility ~~and.~~

12 (d) A telecommunications carrier shall be treated under s. 196.858 as an
13 interexchange telecommunications utility.

14 (e) A telecommunications carrier may be assessed under s. 196.218 (3) as a
15 telecommunications provider and shall respond, subject to the protection of the
16 telecommunications carrier's competitive information, to all reasonable requests for
17 information about its operations in this state from the commission necessary to
18 administer the universal service fund. A telecommunications carrier may not be
19 assessed in a manner that is inconsistent with this ~~section~~ paragraph.

20 **SECTION 47.** 196.499 (1) (f) of the statutes is created to read:

21 196.499 (1) (f) For purposes of enforcing s. 196.209, 196.218 (3) or (8), 196.219,
22 196.85 or 196.858, or for purposes of approving or enforcing an interconnection
23 agreement, as defined in s. 196.199 (1), to which a telecommunications carrier is a
24 party, a telecommunications carrier shall be subject to ss. 196.02 (3), 196.32, 196.33,
25 196.39, 196.395, 196.40, 196.41, 196.43, 196.44 (3) and 196.48 and be treated as a

1 party to the agreement under ss. 196.199 and 196.26, as a public utility under ss.
2 196.02 (5) and (6), 196.14, 196.24, 196.44 (2) (a), 196.66 and 196.85 (1) and as a
3 telecommunications provider under ss. 196.25 (3) and 196.65 (3).

4 **SECTION 48.** 943.455 (1) (b) of the statutes is amended to read:

5 943.455 (1) (b) "Company" means a ~~cellular~~ commercial mobile radio
6 ~~telecommunications utility service provider~~, as defined in s. ~~196.202 (1)~~ 196.01 (2g).

7 **SECTION 49.** 968.27 (14) (d) of the statutes is amended to read:

8 968.27 (14) (d) Transmitted over a communication system provided by a
9 common carrier, including a ~~cellular~~ commercial mobile radio ~~telecommunications~~
10 ~~utility service provider~~, as defined in s. ~~196.202 (1)~~ 196.01 (2g), unless the
11 communication is a tone-only paging system communication.

12 **SECTION 50. Nonstatutory provisions.**

13 (1) The public service commission shall submit in proposed form the rules
14 required under section 196.199 (2) (c) of the statutes, as created by this act, to the
15 legislative council staff under section 227.15 (1) of the statutes no later than
16 November 1, 1998.

17 **SECTION 51. Effective date.**

18 (1) This act takes effect on January 1, 1999.

19 (END)