

Clearinghouse Rule 98-049

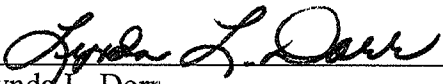
CERTIFICATE

STATE OF WISCONSIN)
)
PUBLIC SERVICE COMMISSION) SS
OF WISCONSIN)

I, Lynda L. Dorr, Secretary to the Public Service Commission of Wisconsin and custodian of the official records, certify that the annexed order adopting rules, relating to the Educational Telecommunications Access Program in docket 1-AC-169, was duly approved and adopted by this Commission on September 10, 1998.

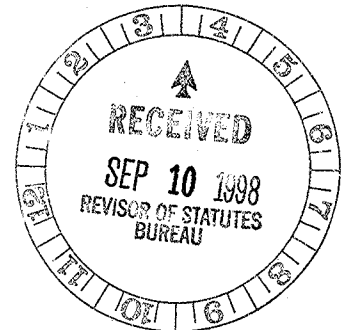
I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Public Service Commission of Wisconsin at Madison, WI, this 10th day of September 1998.

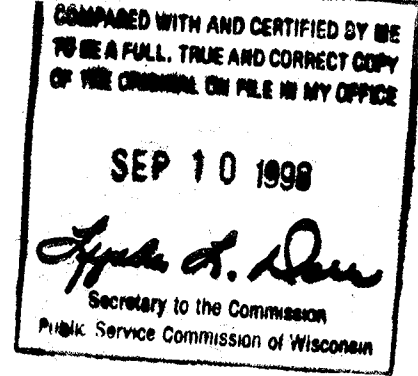
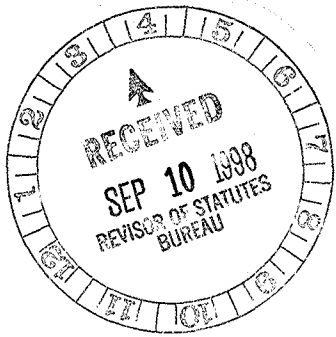


Lynda L. Dorr
Secretary to the Commission
Public Service Commission of Wisconsin

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11-1-98
98-049



BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Rules to Establish an Educational Telecommunications Access
Program (Per TEACH WI)

1-AC-169

**FINAL ORDER OF THE PUBLIC SERVICE COMMISSION
ADOPTING RULES**

To amend §§ PSC 160.05, PSC 160.11(6) and PSC 160.17, Wis. Admin. Code, regarding the provision of universal telecommunications service and administration of the universal service fund and to create ch. PSC 161, Wis. Admin. Code, establishing the Educational Telecommunications Access Program.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The TEACH WI initiative culminated in comprehensive legislation in 1997 Wisconsin Act 27 (Act 27). Newly enacted § 196.218(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department) and Technology for Educational Achievement in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links. 1997 Wisconsin Act 237 subsequently amended § 196.218(4r), Stats., to authorize cooperative educational service agencies to participate in the program.

Section 9141 of Act 27 mandated that the Commission also promulgate emergency rules establishing the Educational Telecommunications Access Program, for the period before the effective date of permanent rules promulgated under § 196.218(4r)(b), Stats., but not to exceed the period authorized under § 227.24(1)(c) and (2), Stats. Establishing for the first time the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices, the emergency rules were effective February 27, 1998.

The rules adopted herein are different from the substance of the emergency rules already in effect only in regard to technical college districts. Because the Board, in consultation with the Commission, decided that the appropriation contains sufficient monies to include technical college districts in the program on or after April 1, 1998, the prohibitions in the emergency rule that a technical college district could not apply before April 1, 1998, or be determined eligible on

or after April 1, 1998, have been eliminated. Sections PSC 161.05(4) and PSC 161.06(1)(b), Wis. Admin. Code, are the provisions in the emergency rules not contained in the permanent rules either published in the Commission's Notice of Investigation and Hearing, dated March 26, 1998, or adopted herein. The rules attached to this Final Order contain additional changes, as specified in the Report to Legislature, in response to suggestions received at the public hearing, in written comments and from the Legislative Council.

Section 196.218(4r)(b), Stats., requires that the Commission consult with the Department and Board during development of rules establishing the Educational Telecommunications Access Program. Commission staff consulted with TEACH staff and Department staff many times regarding the terms of the emergency rule. The Commission has also consulted with the Department and Board regarding the changes included in the version of the rules herein.

These permanent rules amend §§ PSC 160.05, 160.11(6) and PSC 160.17, Wis. Admin. Code, and create ch. PSC 161, Wis. Admin. Code, to read as shown in Attachment A. The Commission's statutory authority for these rules is §§ 196.02(1) and (3), 196.218(4r)(b), and 227.11(2), Stats. The statutes interpreted by these rules are §§ 196.218(1), (3)(a)3. and 4., (4r), and (5)(a)5. to 7., Stats.

These rules implement the TEACH legislation by:

- Defining the entities which may be eligible under this program, i.e., "cooperative educational service agency," "private college," "private school," "public library board," "school district" and "technical college district."
- Defining a "data line" as a data circuit which provides direct access to the internet.
- Defining a "video link" as a 2-way interactive video circuit and associated services.
- Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.
- Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling. Including privacy protections as required by § 196.218(4r)(c)5., Stats. Providing an application procedure that (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, and (3) prohibits a school district, private school, technical college district, private college or public library board from applying for a data line or video link under this program if it is receiving partial support funding for the same data line or video link through rate discounts under § PSC 160.11, Wis. Admin. Code.

- Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access and readiness of the applicant to use the requested access.
- Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.
- Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.
- Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.
- Providing that assessments for this program shall be made by the Commission under ch. PSC 160, Wis. Admin. Code, in order to pay other costs of this program.

REGULATORY FLEXIBILITY ANALYSIS

Existing universal service fund rules may have an effect on small telecommunications utilities, which are small businesses under § 196.216, Stats., for the purposes of § 227.114, Stats. These small telecommunications utilities, of which there are 79 in Wisconsin, like other telecommunications providers (both large and small), have obligations under the universal service fund, including an obligation for payments to the universal service fund. Under these rules, there will be further assessments for the fund per the requirements and process of the existing rules in ch. PSC 160, Wis. Admin. Code.

Other provisions of these rules should have no direct impact on small businesses. The Commission already has established in § PSC 160.18(1)(a), Wis. Admin. Code, a policy and provision to make an exemption from fund assessments to protect entry by and continued operation of small telecommunications providers as directed by statutory objectives.

The agency has considered the methods in § 227.114(2), Stats., for reducing the impact of the rules on small businesses. Other than the provisions for exemption from assessments for small providers noted above, these methods are not appropriate nor consistent with statutory objectives. No reporting or other measures are required by small telecommunications utilities to comply with the rule. These rules have no impact on public health, safety and welfare. There were no issues raised by small businesses during the hearing or in written comments that needed to be considered in the rules.¹

¹Prior to the hearing, the notice of hearing and proposed rules were served on the secretary of the Department of Development and the small business ombudsman clearinghouse.

RULE AND STATUTORY AUTHORITY

Pursuant to authority vested in the Public Service Commission by §§ 196.02(1) and (3), 196.218(4r)(b), and 227.11(2), Stats., and interpreting §§ 196.218(1), (3)(a)3. and 4., (4r), and (5)(a)5. to 7., Stats., the Public Service Commission amends §§ PSC 160.05, 160.11(6) and PSC 160.17, Wis. Admin. Code, and creates ch. PSC 161, Wis. Admin. Code, to read as shown in Attachment A.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in § 227.22(2)(intro.), Stats.

ENVIRONMENTAL ANALYSIS

This is a Type III action under § PSC 4.10(3), Wis. Admin. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under § 1.11, Stats., nor an environmental assessment is required.

Dated at Madison, Wisconsin, September 10, 1998

By the Commission:

Lynda L. Dorr
Lynda L. Dorr
Secretary to the Commission

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Attachments

SECTION 1. PSC 160.05(intro) is amended to read:

PSC 160.05 Universal service fund programs. Universal service fund monies may be used for fund administration and for the following purposes:

(1) For the following programs as adopted by the commission under the appropriation in s. 20.155(1)(q), Stats.:

SECTION 2. PSC 160.05(1) to (10) are renumbered PSC 160.05(1)(a) to (j).

SECTION 3. PSC 160.05 (2) to (4) are created to read:

(2) For payments by the technology for educational achievement in Wisconsin board for educational telecommunications access support, as specified in s. 196.218(5)(a)5., Stats., under the appropriation in s. 20.275(1)(s), (t) and (tm), Stats.

(3) For payments to the department of administration for telecommunications services provided to the campuses of the University of Wisconsin system at River Falls, Stout, Superior and Whitewater, as specified in s. 196.218(5)(a)6., Stats., under the appropriation in s. 20.285(1)(q), Stats.

(4) For grants awarded by the technology for educational achievement in Wisconsin board prior to July 1, 2002, as specified in s. 196.218(5)(a)7., Stats., under the appropriation in s. 20.275(1)(s), Stats.

SECTION 4. PSC 160.11(6) is created to read:

(6) An institution which is receiving access to a data line or video link supported by the educational telecommunications access program under ch. PSC 161 is not eligible to receive support under this section for that data line or video link.

SECTION 5. PSC 160.17(1) and (2) are repealed and PSC 106.17(1) is recreated to read:

PSC 160.17 Fund budget and assessment rates. **(1)** At least annually, the commission shall set the budget for fund administration and the programs specified in s. PSC 160.05(1). The commission may make adjustments to the budget as needed to address unforeseen circumstances. Adjustments may include:

- (a) Reallocating the budget among programs.
- (b) Modifying the support formulas or benefits within a program.
- (c) Deferring support payments to a later period.

SECTION 6. PSC 160.17(2) to (3) are created to read:

(2) At least annually, the commission, in consultation with the technology for educational achievement in Wisconsin board and department of administration, shall determine the amounts necessary for funding the payments specified in s. PSC 160.05(2) and (4).

(3) Based on the need for funds under subs. (1) and (2) and s. 196.218(5)(a)6., Stats., and subject to the appropriation amounts in ch. 20, Stats., the commission shall determine the assessment rates to apply to providers. The commission may modify the assessment rates at any time based on changes in funding needs or provider revenues subject to assessment.

SECTION 7. PSC 160.17(4) is amended to read:

(4) The commission shall provide notice of the proposed ~~annual fund budget~~ under sub. (1) and any proposed changes to the budget to the universal service fund council and other interested parties with an opportunity for comment prior to commission action.

SECTION 8. Chapter PSC 161 is created to read:

Chapter PSC 161

EDUCATIONAL TELECOMMUNICATIONS ACCESS PROGRAM

PSC 161.01	Purpose and special consideration.	PSC 161.06	Determinations of eligibility.
PSC 161.02	Definitions.	PSC 161.07	Provision of services.
PSC 161.03	Technical standards.	PSC 161.08	Payment.
PSC 161.04	Privacy protections.	PSC 161.09	Assessments.
PSC 161.05	Applications.		

PSC 161.01 Purpose and special consideration. (1) **PURPOSE.** As required under s. 196.218(4r)(b), Stats., this chapter establishes an educational telecommunications access program to provide access to data lines and video links for eligible school districts, private schools, cooperative educational service agencies, technical college districts, private colleges and public library boards. Under this chapter, the technology for educational achievement in Wisconsin board determines eligibility to participate in the program. The department of administration contracts with telecommunications providers under s. 16.974(7), Stats., for the requested access. The applicant makes monthly payments to the department for each data line or video link. The board pays from the universal service fund the difference between costs under the contract and the applicant's payments. The board may consider, as alternative access, service architecture or technology not available through the department at the time of the application.

(2) **SPECIAL CONSIDERATION.** The board may apply to the commission for a waiver of any requirement in this chapter for exceptional or unusual situations. Upon due investigation of the facts and circumstances involved, the commission may waive in exceptional or unusual situations any requirement in this chapter, so that the provision of access is in a manner which is be lesser, greater, other or different than otherwise required in this chapter.

PSC 161.02 Definitions. In this chapter:

(1) "Alternative access" means a service architecture or technology not available through the department at the time of the application.

(2) "Board" means the technology for educational achievement in Wisconsin board.

(3) "Commission" means the public service commission.

(4) "Cooperative educational service agency" is a service unit created under ch. 116, Stats.

(5) "Data line" has the meaning given in s. 196.218(4r)(a)1., Stats.

(6) "Department" means the department of administration.

(7) "Private college" has the meaning given in s. 196.218(4r)(a)2., Stats.

(8) "Private school" has the meaning given in s. 115.001(3r), Stats.

(9) "Public library board" means a board created under ch. 43, Stats.

(10) "School district" has the meaning given in s. 115.01(3), Stats.

(11) "Technical college district" means a district organized under ch. 38, Stats.

(12) "Universal service fund" means the trust fund established under s. 25.95, Stats.

(13) "Video link" means a 2-way interactive video circuit and associated services.

PSC 161.03 Technical standards. (1) GENERAL STANDARDS. The board shall establish technical standards and specifications as necessary for access to data lines or video links provided under the educational telecommunications access program to school districts, private schools, cooperative educational service agencies, technical college districts, private colleges and public library boards. The board shall encourage the use of internationally recognized standards, specifications and technologies, and consider adopting such standards, specifications and technologies as soon as possible, to ensure that access provided under this chapter allows maximum interaction with other networks throughout the world.

(2) **DATA LINE.** A data line shall terminate at an internet service provider unless the board determines that an alternative is acceptable. A data line may include transport and associated hardware required by the department for its management of its statewide network. A data line does not include voice services or other non-internet related data transmission or services unless the board determines that other data transmission is acceptable. The direct access to the internet provided by the data line does not include internet services such as subscription services, electronic mail, applications and other services determined by the board.

(3) **VIDEO LINK.** The video link may include transport, switching equipment and software needed to provide 2-way interactive video, maintenance, scheduling software, and equipment needed to compress and decompress video information. A video link may also include direct access to the internet through available channels within the circuit and access to a gateway for purposes of inter-system communication and compatibility. A video link may not include television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.

PSC 161.04 Privacy protections. (1) Any access to data lines or video links provided under the educational telecommunications access program shall include protections against the outflow of information about users of telecommunications services and protections to the users of telecommunications services from receiving privacy intrusions, as required under s. 196.218(4r)(c)5., Stats.

(2) School districts, private schools, cooperative education service agencies, technical college districts, private colleges and public library boards with data lines or video links provided under the educational telecommunications access program shall instruct all personnel with access to the data lines and video links of the need to protect the confidentiality

of information transmitted over, and the users of, the data lines and video links, and of the privacy requirements noted in this section.

PSC 161.05 Applications. (1) Except as provided under subs. (3) and (4), a school district, private school, cooperative educational service agency, technical college district, private college or public library board may apply to the board to participate in the educational telecommunications access program for access to a data line or video link.

(2) Notwithstanding sub. (1), a school district which operates more than one high school may apply for access to a data line and video link or access to more than one data line or video link. A school district may not apply for access to more data lines or video links than the number of high schools in that district.

(3) A school district may not apply to participate in the educational telecommunications access program for access to a data line or video link if it has received in the current state fiscal year, July 1 to June 30, an annual grant from the board under s. 196.218(4r)(g), Stats.

(4) A school district, private school, cooperative educational service agency, technical college district, private college or public library board may not apply to participate in the educational telecommunications access program for access to a data line or video link if it is receiving partial support funding through rate discounts from the universal service fund under s. PSC 160.11 for that data line or video link.

(5) The application to the board shall include the following:

(a) The name, address and telephone number of the school district, private school, cooperative educational service agency, technical college district, private college or public library board and the name and telephone number of an individual to contact about the application.

(b) A description of the access requested and plans for its use.

(c) The specific location for each data line or video link requested.

(d) The desired date for service to begin for each data line or video link requested.

(e) A brief description of the proposed use of each data line or video link requested.

(f) Other information requested by the board.

Note: Application materials are available from the TEACH Board. The TEACH Board's web site is www.teachwi.state.wi.us.

(6) The board shall forward applications when received to the commission and department.

PSC 161.06 Determinations of eligibility. (1) The board shall determine if any school district, private school, cooperative educational service agency, technical college district, private college or public library board which applies under s. PSC 161.05 is eligible to participate in the educational telecommunications access program.

(2) In its determination of eligibility under sub. (1), the board shall use the following criteria:

(a) Availability of funds and impact of the requested access on available funds.

(b) Applicant's educational technology plan.

(c) Reasonableness of requested access, including economic efficiency and cost.

Requests for access which requires telecommunications transport over long distances when similar access is available locally or regionally may be determined ineligible.

(d) Readiness of applicant to use the requested access, including program development, facility arrangements and staff training.

(e) Other criteria established by the board.

(3) If the board, after consultation with the commission, determines at any time that the monies in the universal service fund for this program are insufficient to approve all pending applications, the board may prioritize applications for access. In establishing priorities, the board may give a higher priority to an application whenever a determination of eligibility would maximize the number of eligible applicants statewide or geographically distribute access to data lines and video links throughout the state. In addition, the board may give a higher priority to any application from an applicant which does not already have a data line or video link in service, which has applied for a discount under the federal universal service program in 47 USC 254 or which establishes a reasonable level of utilization for the requested access line or video link. The board may establish at any time other criteria for prioritizing applications for access.

(4) The board shall notify the applicant, department and commission of its determination.

PSC 161.07 Provision of services. (1) ALTERNATIVE ACCESS. (a) If an applicant eligible for access under s. PSC 161.06 requests alternative access, the board may determine whether a particular alternative access is reasonable. The board may at any time seek assistance from the department, which may include an analysis of the feasibility of the alternative access requested.

(b) The board shall make its determination under par. (a) within 90 days of the deadline for applications established by the board, except that the department may request an extension for the completion of its feasibility analysis.

(2) **COORDINATE WITH DEPARTMENT.** (a) The board shall coordinate with the department for the provision of requested access if the board has determined under s. PSC 161.06 that an applicant is eligible to participate in the educational telecommunications access program and, if the requested access is alternative access, the board has determined under sub. (1) that the alternative access is reasonable.

(b) Provision of alternative access by the board under par. (a) shall conform to the competitive procurement requirements of ch. 16, Stats.

(3) **NOTIFICATION.** If the department is unable to contract under s. 16.974(7), Stats., for the alternative access which the board is coordinating with the department under sub. (2), the department shall notify the board within 5 days of the department's inability. The board shall notify the applicant and commission.

PSC 161.08 Payments. (1) Any contract under s. 16.974(7), Stats., between an applicant and the department shall require a monthly payment from the applicant to the department for each data line or video link, not to exceed \$250 per month, except that the payment required may not exceed \$100 per month for each data line or video link which relies on a transport medium operating at a speed of 1.544 megabits per second.

(2) The board shall pay from the universal service fund the costs of annual grants under s. 196.218(4r)(g), Stats., and contracts under s. 16.974(7), Stats., as required by s. 196.218(5)(a)5., Stats., to the extent that these costs are not paid under sub. (1).

PSC 161.09 Assessments. Assessments for the educational telecommunications access program shall be made by the commission pursuant to ch. PSC 160.

SECTION 9. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.



Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman
John H. Farrow, Commissioner
Ave M. Bie, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Mr. Gary Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street, Suite 800
Madison, WI 53703-3233



RE: Rules to Establish an Educational Telecommunications Access
Program (Per TEACH WI)

1-AC-169

Dear Mr. Poulson:

Enclosed please find two copies (one certified) of the Final Order of the Public Service Commission Adopting Rules in the above-entitled matter. The Telecommunications Division will also send you the rules in Word 6.0 via e-mail.

The rules have been seen by legislative committees.

Dated at Madison, Wisconsin, September 10, 1998

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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Enclosures

cc: Records Management, PSCW