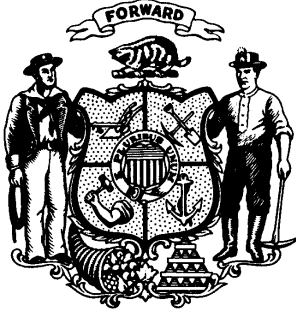


State of Wisconsin



1997 Senate Bill 351

Date of enactment: **April 28, 1998**
Date of publication*: **May 12, 1998**

1997 WISCONSIN ACT 218

AN ACT *to repeal* 196.01 (1d) (d), 196.01 (5m), 196.202 (1) and 196.219 (2m) (b); *to renumber* 196.205; *to renumber and amend* 196.219 (1), 196.219 (2m) (a), 196.219 (4m), 196.26 (1) and 196.499 (1); *to amend* 146.70 (1) (cm), 146.70 (2) (h) and (i), 196.01 (1g), 196.01 (5), 196.01 (8m), 196.202 (title), 196.202 (2), 196.202 (5), 196.219 (2) (a), 196.219 (2) (d), 196.219 (3) (intro.) and (a), 196.219 (3) (e), 196.219 (3) (em), 196.219 (3) (f), 196.219 (3) (h), 196.219 (3) (m), 196.219 (4), 196.219 (5), 196.26 (1m), 196.26 (2) (a), 196.26 (2) (b), 196.28 (3), 196.44 (2) (a), 943.455 (title), 943.455 (1) (a), 943.455 (1) (b), 943.455 (2) (a), (b), (c) and (f), 943.455 (5) and 968.27 (14) (d); and *to create* 196.01 (2g), 196.01 (2i), 196.01 (3b), 196.199, 196.205 (2), 196.215 (2d), 196.215 (2m) (e), 196.219 (1) (b), 196.219 (4m) (b), 196.26 (1) (a) 2. and 3., 196.26 (4) (c), 196.43 (3) and 196.499 (1) (f) of the statutes; **relating to:** enforcement of interconnection agreements by the public service commission, protections for users of certain telecommunications services, granting rule-making authority and providing a penalty.

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

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

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

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

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

(i) If a user reaches a basic or sophisticated system through a ~~cellular commercial~~ mobile radio ~~telecommunications utility~~ service provider and the service requested is to be provided outside of the jurisdiction served by the system, the public agency operating the

system shall transfer the request for services to the appropriate jurisdiction.

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

SECTION 4. 196.01 (1g) of the statutes is amended 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 commercial~~ mobile radio ~~telecommunications utility~~ or any ~~other mobile radio telecommunications utility~~ service provider.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

196.01 (2i) "Commercial mobile service" has the meaning given in 47 USC 332 (d).

SECTION 6m. 196.01 (3b) of the statutes is created to read:

196.01 (3b) "Interconnection agreement" means an interconnection agreement that is subject to approval by the commission under 47 USC 252 (e).

SECTION 7. 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, telecommunications or sewer service, heat, light, water or power or, by means of pipes or mains, natural gas. "Public utility" does not include a ~~cellular commercial mobile radio telecommu-~~ nications utility service provider.

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

SECTION 9. 196.01 (8m) of the statutes is amended 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, ~~or a cellular commercial mobile radio telecommu-~~ nications utility service provider.

SECTION 10. 196.199 of the statutes is created to read:
196.199 Interconnection agreements. (1) DEFINITION. In this section, "interconnection agreement" does not include an interconnection agreement to which a commercial mobile radio service provider is a party.

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

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

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

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

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

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

1g. The commission may investigate whether a party to an interconnection agreement approved by the commission has complied with the agreement upon the filing of a petition by the party for a determination of whether the party has complied with the agreement if the petition demonstrates that a controversy has arisen over the party's compliance with the agreement. If the commission initiates an investigation under this subdivision, the commission may determine that a party to an interconnection agreement has failed to comply with the agreement only if a complaint is filed under subd. 1. a. in which the complaining party alleges that the party's failure to comply with the agreement has a significant adverse effect on the complaining party's ability to provide telecommunications service to its customers or potential customers.

1m. a. Within 5 business days after the filing of a complaint under subd. 1. a. or the receipt of notice under par. (b) 1. b., the party who is the subject of a complaint

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

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

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

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

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

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

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

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

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

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

2. No party to an interconnection agreement may file a complaint under par. (a) 1. a. or a petition under par. (a)

1g. unless the party has first notified the other parties to the agreement and provided an opportunity to resolve the alleged failure to comply or controversy over compliance to the satisfaction of the complaining or petitioning party within 5 business days, or a shorter period of time approved by the commission, after receipt of the notice. The commission shall promulgate rules establishing standards and procedures for approving a period of time shorter than 5 business days.

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

1. The filing is reasonably supported by applicable law.

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

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

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

(d) If, at any time during a proceeding under this subsection, the commission determines, after notice and reasonable opportunity to be heard, that a person has made a filing in violation of par. (c), the commission shall order the person to pay to any party to the proceeding the amount of reasonable expenses incurred by that party because of the filing, including reasonable attorney fees, and the commission may directly assess a forfeiture against the person of not less than \$25 nor more than \$5,000. A person against whom the commission assesses a forfeiture under this paragraph shall pay the forfeiture to the commission within 10 days after receipt of notice of the assessment or, if the person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The commission shall remit all forfeitures paid under this paragraph to the state treasurer for deposit in the school fund. The attorney general may bring an action in the name of the state to collect any forfeiture assessed by the commission under this paragraph that has not been paid as provided in this paragraph. The only contestable issue in such an action is whether or not the forfeiture has been paid.

(e) At any time during a proceeding under this subsection, the commission may, without holding a hearing, order a party to the interconnection agreement to take an action or refrain from taking an action that is related to

complying with the agreement upon a showing by any other party to the proceeding of all of the following:

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

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

3. That the order is in the public interest.

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

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

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

2. The maximum forfeiture that may be imposed under subd. 1. shall be trebled if either of the following con-

ditions is satisfied and shall be sextupled if both of the following conditions are satisfied:

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

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

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

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

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

2. The gravity of the failure to comply.

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

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

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

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

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

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

SECTION 13m. 196.202 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

196.202 (2) SCOPE OF REGULATION. A cellular commercial mobile radio telecommunications utility service provider is not subject to ch. 184 or this chapter, except a cellular commercial mobile radio telecommunications utility service provider 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 commercial mobile radio telecommunications utility service provider is not preempted, a cellular commercial mobile radio telecommunications utility service provider shall respond, subject to the protection of the cellular commercial mobile radio telecommunications utility's service provider's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund.

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

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

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

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

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

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

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

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

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

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

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

(a) "Consumer" means any person, including a telecommunications provider, that uses the services, products or facilities provided by a telecommunications utility or the local exchange services offered by a telecommunications provider that is not a telecommunications utility.

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

196.219 (1) (b) "Local exchange service" has the meaning given in s. 196.50 (1) (b) 1.

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

196.219 (2) (a) Notwithstanding any exemptions identified in this chapter except s. 196.202, a telecommunications utility or provider 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.

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

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

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

196.219 (2m) ACCESS SERVICES. A telecommunications utility or provider shall provide access services under tariff under the same rates, terms and conditions to all telecommunications providers, except that a provider is not obligated to provide to competitors access to dedicated access services provided to end user customers as part of an interexchange service.

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

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

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

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

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

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

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

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

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

196.219 (3) (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 or provider 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 pub-

lic service commission may order unbundling by a small telecommunications utility.

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

196.219 (3) (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 or provider's own or an affiliate's retail department that sells to consumers.

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

196.219 (3) (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 or provider to discontinue service to that person.

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

196.219 (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 or providers to enforce this section.

(b) The commission may, at its discretion, institute in any court of competent jurisdiction a proceeding against a telecommunications utility or provider 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.

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

196.219 (4m) (a) 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 or provider may commence a civil action to recover damages or to obtain injunctive relief.

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

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

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

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

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

196.26 (1) COMPLAINT. (intro.) In this section, "~~complaint~~";

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

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

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

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

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

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

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

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

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

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

196.26 (2) (b) The commission shall give the complainant and either the public utility or party to an interconnection agreement which is the subject of a complaint filed under and the complainant specified in sub. (1) (a) 1. or 3. or, for a complaint specified in sub. (1) (a) 2., a party to an interconnection agreement who is identified in a notice under s. 196.199 (3) (b) 1. b., 10 days' notice of the time and place of the hearing and the matter to be considered and determined at the hearing. The complainant and either the public utility or the party to the interconnection agreement may be heard. The commission may subpoena any witness at the request of the public

utility, party to the interconnection agreement or complainant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A telecommunications carrier may be assessed under s. 196.218 (3) as a telecommunications provider and shall respond, subject to the protection of the tele-

communications carrier's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund. A telecommunications carrier may not be assessed in a manner that is inconsistent with this section paragraph.

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

196.499 (1) (f) For purposes of enforcing s. 196.209, 196.218 (3) or (8), 196.219, 196.85 or 196.858, or for purposes of approving or enforcing an interconnection agreement to which a telecommunications carrier is a party, a telecommunications carrier shall be subject to ss. 196.02 (3), 196.32, 196.33, 196.39, 196.395, 196.40, 196.41, 196.43, 196.44 (3) and 196.48 and be treated as a party to the agreement under ss. 196.199 and 196.26, as a public utility under ss. 196.02 (5) and (6), 196.14, 196.24, 196.44 (2) (a), 196.66 and 196.85 (1) and as a telecommunications provider under ss. 196.25 (3) and 196.65 (3).

SECTION 47g. 943.455 (title) of the statutes is amended to read:

943.455 (title) Theft of cellular telephone commercial mobile service.

SECTION 47r. 943.455 (1) (a) of the statutes is amended to read:

943.455 (1) (a) "Cellular telephone Commercial mobile service" means ~~any telecommunications service commercial mobile service, as defined in s. 196.01 (2i), that is provided by a company over a cellular telephone system~~ for payment.

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

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

SECTION 48g. 943.455 (2) (a), (b), (c) and (f) of the statutes are amended to read:

943.455 (2) (a) Obtain or attempt to obtain ~~cellular telephone commercial mobile~~ 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 commercial mobile~~ services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any ~~cellular telephone commercial mobile~~ service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant

demonstrates that the technical assistance or instruction was given for a legitimate purpose.

(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~~ commercial mobile services for the purpose of obtaining ~~cellular telephone~~ commercial mobile 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~~ commercial mobile service to the defendant was authorized under a service agreement with the defendant and has been terminated by the company and that thereafter there exists in fact an ability to connect to the company's ~~cellular telephone~~ commercial mobile service system.

(f) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device or any plan or kit for a device designed to receive ~~cellular telephone~~ commercial mobile services offered for sale by a company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that that device, plan or kit be used for obtaining a company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, plan or kit for a device in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain ~~cellular telephone~~ commercial mobile service without charge.

SECTION 48m. 943.455 (5) of the statutes is amended to read:

943.455 (5) EXCEPTION. This section does not affect the use by a person of ~~cellular telephone~~ commercial mobile services if the services have been paid for.

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

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

SECTION 50. Nonstatutory provisions.

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

(2m) The public service commission shall study the feasibility and desirability of enforcing interconnection agreements, that are subject to the approval of the public service commission under 47 USC 252 (e), to which a commercial mobile radio service provider, as defined in section 196.01 (2g) of the statutes, as created by this act, is a party in the same manner as interconnection agreements to which such a provider is not a party. The commission shall submit a report on the results of the study and any recommended proposals for legislation to the legislature in the manner provided in section 13.172 (2) of the statutes no later than January 1, 2000.

SECTION 50m. Initial applicability.

(1m) The treatment of section 943.455 (1) (a), (2) (a), (b), (c) and (f) and (5) of the statutes first applies to offenses committed on the effective date of this subsection.

(2m) The treatment of section 968.27 (14) (d) of the statutes first applies to radio communications transmitted on the effective date of this subsection.

SECTION 51. Effective date.

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