

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Revision of Chapter PSC 165 – Consumer Protection Rules 1-AC-184

**COMMENTS OF THE
WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION**

General Comments

The Wisconsin State Telecommunications Association welcomes the opportunity to comment on the proposed rules in this docket. However, we are confident that the depth and breadth of the proposed changes are unnecessary and counterproductive given the unprecedented changes occurring in the Wisconsin telecommunications marketplace.

WSTA understands the need to review and modernize the existing 35-year-old consumer protection rules in PSC 165.

Unfortunately, the proposed rules would be outdated immediately if they were adopted in their current form. They do not modernize the existing rules to conform with the dynamic transformation of the industry during the last decade. As proposed they are designed to regulate a monopoly industry that no longer exists. Simply stated, the rules would be better suited for an industry entering a monopoly environment rather than exiting one.

Furthermore, the proposed rules appear in direct conflict with Wisconsin’s legislative policy directing the Commission to “rely on competition rather than regulation to determine the variety, quality and price of telecommunications services.”¹

The preamble of the federal Telecommunications Act of 1996 states as its purpose, “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”²

The impact of the proposed rules would be the opposite of these guiding principles. They are significantly more extensive and detailed than any of the regulations in effect when the telecommunications industry actually was a monopoly. Examples of new rules and the unapologetic attempt to micromanage ILECs include the rules that mandate:

- Reciting a script by a customer service representative when accepting an application for service.³
- Prescribing the order in which the customer representative must recite the script.⁴

¹ 1985 Wisconsin Act 297 SECTION 1.(3) “The public service commission shall, when consistent with the protection of ratepayers and with other public interest goals established by the legislature, rely on competition rather than regulation to determine the variety, quality and price of telecommunications services.”

² Pub. L. No. 104-104, 110 Stat. 56 (1996)

³ Proposed PSC165.0302(2)

- Recording and tracking of all customers' and applicants' alleged grievances, dissatisfactions, disagreements, etc. even when the customer's concern is resolved immediately or the customer is satisfied that his alleged grievance was not justified. The ILEC must keep these records for up to three years.⁵
- Identify, record and maintain a record of every malfunction of equipment for the recording of information for billing purposes for 2 years.⁶
- Provide call detail upon request and at no cost for package services provided to customers. These services are provided at lower rates due in part to the cost savings from not providing call detail.⁷
- Prohibiting the refusal of service to a small business because of its lack of creditworthiness.⁸
- Providing detailed information on calls for directory assistance, including directory assistance that is provided by companies other than the ILEC and which the ILEC may not be able to provide. The ILEC must do this at no charge.⁹
- Requiring tight business office telephone answer speeds on all calls, possibly on a monthly basis.¹⁰

Finally, it is important to note that in the area of consumer protection, telecommunications providers are not only subject to the jurisdiction of the Public Service Commission of Wisconsin but also the Department of Agriculture, Trade and Consumer Protection.

Growth in Competition

The growth of the competitive providers has been dramatic. In December of 1999 ILECs had 3,148,000 access lines in Wisconsin while CLECs had 177,000 and wireless carriers had 1,526,000. In the past three years the CLECs and Wireless carriers increased their lines by 1,160,000, while WI ILECs lost 85,000 access lines¹¹. The Wisconsin non-ILECs grew in market share from 35% to more than 48%. This is a growth rate of 68% while ILECs decreased by almost 3%. Wisconsin CLEC access lines almost tripled to about 500,000.

CLECs and wireless carriers served 48% of the access lines in Wisconsin at the end of 2002.¹² My projections indicate they'll grow by almost 300,000 access lines during 2003 thus ending this year with almost 53% market share.

“Wireless phones have become an essential ingredient of American life, and Wisconsin is no exception,” according to the Wisconsin State Journal. The attached article reflects the

⁴ Proposed PSC165.0302(2)

⁵ Proposed PSC 165.0303; 165.0202; 165.0206; and 165.0303

⁶ Proposed PSC165.0210

⁷ Proposed PSC 165.401(8) and (10)(b)

⁸ Proposed PSC165.0501(1)(g)

⁹ Proposed PSC165.0302(8)

¹⁰ Proposed PSC 165.0606

¹¹ *FCC Local Telephone Competition: Status as of December 31, 2002* Tables 8, 9, and 13.

¹² Computed from *FCC Local Telephone Competition: Status as of December 31, 2003*.

intense competition among wireline (ILEC and CLEC), wireless and cable television carriers in providing telecommunications services in Wisconsin.

Significant Reduction in Consumer Complaints and Lack of Interest by Consumers in More Consumer Protection Rules

The number of consumer complaints to the PSC from 2000 to 2002 has declined by almost 40% from 9,980 to 6,108.¹³ While 2000 was high due to unique problems, complaints have dropped to 1997 levels. The PSCW's Annual Consumer Contact Reports do not indicate by industry what percentage of the complaints is justified. However, less than one-third of all contacts were found to be justified or partially justified. Interpolating those numbers leads to the conclusion that less than 2,000 telecommunications contacts were "justified" or "partially justified" (A substantial number of those complaints were against long distance carriers which are not subject to these proposed rules). This is only 3 complaints for every 10,000 ILEC and CLEC access lines in Wisconsin.

We firmly believe the statewide publicity surrounding the spike in customer service complaints in 2000 have given all Wisconsin consumers an appreciation for the PSC complaint process. Headlines in statewide newspapers during and after the spike referred specifically to customer service issues and complaints at the PSC. If there was any doubt that telecommunications customers lacked the information necessary to file a complaint at the PSC prior to 2000, the sustained publicity that year served as a tutorial for all Wisconsin consumers.

While the Commission attempted to secure consumer involvement in developing new rules, there has been virtually none. No consumers or consumer groups testified at the two days of the hearings. Only one consumer group, Citizens Utility Board, filed comments. CUB's two-page letter objected to the provider selection freeze rules (these were dropped) and the mandatory service quality credits (these remain).

We are confident the lack of interest generated among consumer groups in the rules process is an indicator of satisfaction with existing telecommunications service and recognition of the choices available in the competitive marketplace.

Unfair Discrimination Among Competitors

The rules expressly exempt wireless carriers and cable television service from all rules concerning basic local service (service for residential customers and small businesses)¹⁴ and expressly exempts wireless carriers and long distance carriers from all rules that apply to all other telecommunications providers.¹⁵ Since wireless and long distance carriers are beyond PSC jurisdiction, it is not reasonable to extensively regulate their competitors, ILECs and CLECs.

¹³ PSCW 2002 Annual Consumer Contact Report

¹⁴ PSC 165.0102(5) & (6)

¹⁵ PSC 165.0102(34)

In granting wireless carriers ETC status, this Commission acknowledged that the wireless carrier is able to offer supported services to all customers in its designated areas and will advertise these services.¹⁶

As previously discussed, the total number of CLEC and wireless access lines in Wisconsin will soon exceed the total of ILEC access lines. The competitive marketplace is thriving in Wisconsin. Yet the proposed rules subject ILECs to extensive and detailed deposit, disconnection, deferred payment agreement, information, telephone assistance program and dispute rules.¹⁷ These proposed rules are far more extensive than the rules governing these areas prior to competition. This increase in regulation is counterintuitive.

Concerns Regarding Specific New Provisions:

PSC 165.0102(13) – Definition of “Complaint” – while the revised definition is an improvement; it unnecessarily requires substantially more personnel, expense, delays, and record keeping. The vast majority of “grievances” or “alleged wrongs, actions” etc., are either immediately resolved or the customer understands that the “alleged” wrong was not wrong.

Two-thirds of the customers’ complaints to the PSC are found to have no validity. It is just as likely that the percentage of customer “complaints” to the phone company that are not valid or are resolved immediately is a fraction of the total complaints. What is important is not the number of “complaints” but whether the customer is satisfied. To keep track of every “complaint” means additional record keeping and employee hours at the expense of the very customers these rules are purported to assist.

Particularly, with small telephone companies’ grievances are expressed to employees at church, in restaurants, calls to their home, or other situations where the employee is not working or is unable to record the grievance. Most often the customer is advised to call the business office. In fairness to the employee and the provider, complaints should only need to be recorded when made to the provider’s office.

Here is a suggested revision:

“Complaint” means a statement by an applicant, customer or other affected person expressing a concern about an applicant’s or customer’s telephone service to a provider’s business office, repair office or executive office expressing a grievance or alleging a wrong, injury, illegal action or procedure, dangerous condition or action, or failure of a provider to meet provider obligation, where such statement remains unresolved to the customer’s satisfaction after the conclusion of the communication in which the statement is conveyed.

¹⁶ Application of US Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin Final Decision and Order, Docket 8225-TI-102, at page 5, mailed December 20, 2002

¹⁷ PSC 165 Subchapter III – Consumer Service and Protection

PSC 165.0302(2) the information the customer representative must tell a prospective customer has grown substantially under the revised rules. The information is very detailed and must be told in a specific order at the beginning of a sales script when the customer calls to order a new service. The script must be read regardless of the customer's interest in hearing it. The prescribed script alone may take several minutes. This level regulation of the minutest aspects of taking an order for service is not in the customer's interest.

The vast majority of orders are taken over the phone. Most customers want to place their order and get off the phone. They do not want to listen to a long presentation containing information in which they have little or no interest. This approach to regulation will only serve to drive customers toward unbridled competitors.

WSTA recommends this rule be eliminated.

PSC 165.0302(2)(d) requires all recurring and nonrecurring charges, fees and taxes be provided in the sales script. These vary depending on the service being ordered. Some fees are hidden in the rate, such as the Wisconsin Universal Service Fund assessments. Will it be necessary for the company representative to discuss the fees and taxes for third-party long distance carriers?

WSTA recommends this rule be eliminated. In the alternative changed so the customer service representatives do not have to provide the specific information on taxes, fees and surcharges.

WSTA suggests PSC 165.0303(5) be revised to include the word "attempt to" in the first sentence after "shall" and before "contact." Thus the telecommunications provider shall attempt to contact a complainant within 48 hours. Without the change, the provider would be liable even if the reason contact was not made was that the complainant was unavailable.

PSC 165.0402(2), (3), and (4) provides automatic credits be given customers for service interruptions, installment delays, and missed appointments. The awarding of the credits is automatic and does not provide for a hearing. The credits do not appear compensatory and exceed the loss or harm to the consumer. Since this will be a rule, the failure to pay the credits would be subject to additional penalties provided in Ch. 196.

Before a person may be deprived of property, that person has a right to a hearing. Chicago & N.W. Transp. Co v. Pedersen, 80 Wis.2d 566, 259 NW2d 316 (1977)

The Commission does not have the authority to order payments that are not related to harm because such payments constitute "penalties." See Wisconsin Bell, Inc. v. PSC et al Case 02-2783 (Wis. App. 2003). That decision ruled that assessments that are not related to harm or damage are penal, not compensatory. The assessments under these

rules, which are not based on harm or damage, are penal and thus beyond the power of the Commission to impose.

PSC 165.0402(2)(b)4.b. and (3)(j) have no limit on the amount of credits to be imposed. While the credits do not begin until the carrier is notified of the problem or learns of the problem, the credit can continue indefinitely. Due to a simple oversight by a carrier's employee, or in some cases the underlying carrier, the credits under proposed PSC 165.0402(3)(j) can grow to about a thousand dollars in three months or several thousand dollars a year. During this time the customer may be receiving service from another provider. The customer has no incentive to advise the provider that the problem continues. The credits should end if the customer does not notify the provider of the continuing problem after 30 days.

PSC 165.0402(5)(a)3. provides an exception to the credits when the problem is caused by, "Natural disasters or other acts of God that cannot be reasonably anticipated,..." While some natural disasters and acts of God can be "reasonably anticipated" the damage caused by them cannot be avoided. Examples include floods, ice storms and high winds. The ability to anticipate disasters does not give a provider the ability to prevent the damage. The phrase "that cannot reasonably be anticipated" should be eliminated.

PSC 165.0402(2)(c) This credit should be limited to cover basic cellular service provided at the lowest cost, particularly when an underlying carrier and not the customer's carrier is paying for the cellular service.¹⁸ Otherwise the customer's provider has an incentive to furnish its customer the most expensive cellular service available because it is not responsible for the payment of the cellular service.

PSC 165.0501(1)(g) prohibits an ILEC or a non-wireless ETC carrier from relying on the fact that small business is not creditworthy in denying to provide service. ILECs have always been able to deny business service based on creditworthiness. Now that the majority of small businesses may secure service from CLECs or wireless carriers, it's not reasonable to put additional risks on ILECs.

PSC 165.0606(1)(c) WSTA suggests the definition of "Dropped call" be revised. It is impossible for a carrier to measure a call until it reaches the carrier's platform. This is the first place where the carrier can secure the information necessary from the call to identify and record it as a call intended for the provider's office. WSTA suggest the Commission staff work with industry representatives to develop an appropriate definition for "dropped call."

PSC 165.0606(1)(d) WSTA suggests the definition of "Answer speed" be revised. The proposed definition starts the clock from the time the last digit of a call attempt is dialed. This will not work because the call cannot be measured from the time the last digit is dialed. For example, a call originating on a wireless system may not be initiated until several seconds after the last digit is dialed. After the number is dialed, the transmit button must be activated, then the handset must locate an available tower, the dialed

¹⁸ PSC 165.0402(2)(f)

number is then transmitted, and the call is transmitted through the wireless network and switches before it reaches the providers network. This process can take several seconds. Similar problems may be encountered with any call that uses facilities of more than one provider. The “answer speed” measure can only start at a point of interface in the network where the provider that is receiving the call can begin to measure the time. WSTA representatives would like to meet with PSC staff representatives to resolve this concern.

PSC 165.0606(2) is ambiguous and may be interpreted to change the time period for calculating answering times from an annual average to a monthly average. If that is the intent, it will be very inefficient and costly to attempt to meet the requirement. It is difficult and expensive to provide sufficient personnel each and every month to meet the answer times because the number of calls can vary substantially and unexpectedly from one month to another. For small telcos this is particularly onerous because of the very small customer representative staffs. Many have one or two representatives. To meet these requirements on a monthly basis an additional employee(s) may be needed.

This ambiguity can be resolved by adding the word “annual” between the words, “An” and “average” in the first line of each of the paragraphs in PSC 165.0606(2)(a), (b), and (c).

Conclusion:

In the telecommunications industry we’re seeing the number of providers and the development of technology able to provide telecommunications service grow rapidly. Now we have wireless, ILECs, CLECs, voice over Internet, CATV telecommunications carriers, satellite and even power companies as providers, each with their unique technology. The changes continue to accelerate. The extensive proposed rules are an inappropriate attempt to regulate a limited number of providers in this vast market place.

WSTA suggests the industry representatives meet with PSC and consumer representatives to simply update the existing PSC 165 rules. This would not be an attempt to substantially increase regulation. We believe this can be accomplished in three months.

Respectfully submitted,
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Date: September 25, 2003