



Carol Kelso

Wisconsin State Legislature
88th Assembly District Representative

January 14, 2000

The Honorable Rodney Moen, Chair
Senate Committee on Health, Utilities, Veterans and Military Affairs
State Capitol, 8 South
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Moen:

I am writing in favor of an amendment to Clearinghouse Rule 99-019 (PSC 160) to accomplish two sets of changes with one overall objective: to replace up to \$100,000 of funds in the Department of Health and Family Services that support rehabilitation teachers for the blind. Before providing some background and context for this request, here are the two sets of changes:

- (1) Amend PSC 160.125(2) to specify that a governmental agency may be a qualifying entity to receive Universal Service Fund support. Accommodate the target allocation to DHFS by increasing the maximum funding allocation under the section by \$100,000.
- (2) Amend two paragraphs under PSC 160.071 so as to authorize USF payment of the telecommunications equipment program co-pay for those low-income customers who are eligible for the telecommunications assistance program.

The reason for this request is of extreme importance to not only my constituents but to all Wisconsinites who are trying to make the transition from a world of sight to a world of visual impairment or blindness.

DHFS is authorized to employ 14.8 rehabilitation teachers that assist visually impaired individuals in their home to develop independent living skills. Every year, each rehabilitation teacher assists 150 people with visual impairments to develop independent living skills with the aid of technology. As a part of this effort, DHFS uses GPR funds through its Telecommunications Assistance Program (TAP) to purchase adaptive equipment to aid in telecommunications.

However, only 11.8 rehabilitation teachers are currently employed. Three positions are being held vacant for lack of sufficient funding. This means that hundreds of citizens who are going blind and request assistance to cope with new challenges of living and remaining independent are placed on a waiting list.

Office: P.O. Box 8952, State Capitol – Madison, WI 53708-8952
(608)266-0485 – Toll Free: (888)534-0088 – Rep.Kelso@legis.state.wi.us
District: 416 E. Le Capitaine Circle – Green Bay, WI 54302 – (920)468-8025

At a meeting at the end of 1999, it was agreed by Public Service Commission Chairperson Ave Bie, DHFS Secretary Joe Leean and myself that we would seek changes to PSC 160 so that the USF could support otherwise allowable expenditures that assist people with disabilities. The changes attached are the result of our cooperative work. The agreement was built on the understanding that the current rules of the PSC already specify that the USF is "to further the goal of providing a basic set of essential telecommunications services and access to advanced service capabilities to *all* customers of the state." Two of the rule's sections address low-income assistance programs and assistance for individuals with disabilities. The changes that I am endorsing codify this agreement with the PSC and DHFS.

DHFS currently pays the \$100 co-payment for low-income individuals who are otherwise eligible to receive subsidized telecommunications equipment from the Public Service Commission's Telecommunications Equipment Purchase Program (TEPP). If amended according to my recommendation (attached), the USF would assume payment for the TEPP co-pay on behalf of low-income eligibles. In addition, DHFS uses GPR funds through its Telecommunications Assistance Program (TAP) to purchase telecommunications adaptive equipment for persons with disabilities. Through my proposed amendment, the USF could pay for this equipment and thereby free up funds to then reallocate in support of our rehabilitation teachers for the blind.

In sum, DHFS utilizes GPR for vouchers, TTY capability, and other adaptive equipment. All of these expenditures, no more than \$100,000, could be funded by the USF if PSC 160 was amended as I have suggested. Once the way is cleared for USF funding of these expenditures, this would allow DHFS to reallocate its resources to fully support Wisconsin's rehabilitation teachers for the blind. Please join me in support of this amendment to Clearinghouse Rule 99-019 and request that the PSC make the changes outlined in the attachment to PSC 160. Thank you.

Sincerely,

Carol Kelso
Representative
88th District

attachment

cc: Representative David Hutchison, Co-chair
Joint Committee on Information Policy

Senator Robert Jauch, Co-Chair
Joint Committee on Information Policy

Chairperson Ave Bie
Public Service Commission

Secretary Joe Leean
Department of Health and Family Services



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Leean, Secretary

TESTIMONY ON CR 99-019 (PSC 160)

BEFORE THE
SENATE COMMITTEE ON HEALTH, UTILITIES, VETERANS & MILITARY AFFAIRS

JANUARY 26, 2000

Thank you for this opportunity to testify today on behalf of the amendments to PSC 160 (CR 99-019) proposed by Representative Carol Kelso and backed by Chairperson Ave Bie of the Public Service Commission and Secretary Joe Leean of the Department of Health and Family Services. These two sets of changes fit well within the spirit and context of the current and proposed rules governing the Universal Service Fund: to further the goal of providing a basic set of essential telecommunications services and access to advanced service capabilities to ALL customers of this state. The rules pay special attention to the needs of both low-income customers and customers with disabilities and these changes before you are consistent with that need.

Some Background

Currently, the USF financially supports the PSC's Telecommunications Equipment Purchase Program (TEPP). This program provides special needs equipment vouchers to assist customers with disabilities in the purchase of equipment needed to access the telecommunications network from their homes. Vouchers are limited to categorical amounts and the voucher recipient is required to make a co-payment of \$100 at the time the equipment is purchased. Because those individuals with disabilities who are also below the poverty line cannot afford this co-payment, the DHFS Telecommunications Assistance Program (TAP) pays this co-payment for these individuals from GPR funds.

Through TAP, the Department also uses GPR to support the purchase of TTY capability and other telecommunications adaptive equipment. These means of accessing telecommunications from home not only fit the mission of the Universal Service Fund, they keep many of your constituents independent, enhance a person's quality of life and social interaction, and provide a level of safety that every one of us would want our loved ones to have. There is no reason to deny these expenditures as USF eligible.

What the Amendments Accomplish (In Short)

- Amend two paragraphs under PSC 160.071 so as to authorize USF payment of the TEPP co-pay for those low-income customers who are eligible for the telecommunications assistance program.
- Amend PSC 160.125(2) to specify that a governmental agency may be a *qualifying* entity to receive Universal Service Fund support. (Also increase the maximum funding allocation under the section by \$100,000 to accommodate the target allocation to DHFS.)

NOTE: There has been some concern expressed that somehow these changes will create a “slippery slope” or “open the flood gates.” Nothing could be further from the truth. The rule will continue to specify that an agency must apply to the USF commission for funding. Applications must continue to state how the proposal meets a public need through affordable access to telecommunications or information services. And projects deemed worthy of USF support will continue to only receive up to 50% of its cost.

The Overall Objective

These two sets of changes have one overall objective that in itself is consistent with the mission of the USF: to replace up to \$100,000 of funds in the Department of Health and Family Services that support *rehabilitation teachers for the blind*. This is crucially important to all Wisconsinites who are trying to make the transition from a world of sight to a world of visual impairment or blindness.

DHFS is authorized to employ 14.8 rehabilitation teachers that assist visually impaired individuals in their home to develop independent living skills. Every year, each rehabilitation teacher assists 150 people with visual impairments to develop independent living skills with the aid of technology. This includes the acquisition and training in the use of adaptive equipment to aid in telecommunications.

However, due to a shrinking funding base, DHFS can only support 11.8 rehabilitation teachers. This means that hundreds of citizens who are going blind and request assistance to cope with new challenges of living and remaining independent are placed on a waiting list.

It is our hope that this Senate Committee on both Health and Utilities would concur with the agreement between Public Service Commission Chairperson Ave Bie, DHFS Secretary Joe Lekan and Representative Carol Kelso to change PSC 160 so that the USF could support otherwise allowable expenditures to assist people in need.

In sum, DHFS utilizes GPR for vouchers, TTY capability, and other adaptive equipment. All of these expenditures, no more than \$100,000, could be funded by the USF if PSC 160 was amended as I have suggested. Once the way is cleared for USF funding of these expenditures, this would allow DHFS to reallocate its resources to fully support Wisconsin’s rehabilitation teachers for the blind. Please join in support of this amendment to Clearinghouse Rule 99-019 and request that the PSC make the changes outlined in the attachment. Thank you.

SECTION 81. PSC 160.125(2) is created to read:

(2) ACCESS PROGRAMS OR PROJECTS BY NON-PROFIT GROUPS AND GOVERNMENT AGENCIES. (a) For purposes of this section, a qualifying entity is a non-profit group or a governmental agency.

(b) (a) Partial funding may be available to qualifying entities non-profit groups for the facilitation of affordable access to telecommunications and information services through programs or projects, or both, not supported elsewhere in this chapter, but that are consistent with the purposes identified in s. 196.218(5)(a)1. and 2., Stats.

Note: As of November 1999, s. 196.218(5)(a)1. and 2., Stats., reads:

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

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.
2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

(c) (b) Any qualifying entity non-profit group may apply for universal service funding to fund any portion of a program or project or both. Funding shall be provided on a state fiscal year basis. Applications for funding in the following fiscal year shall be submitted by November 15th. The commission shall issue a list of approved programs or projects, or both, by April 15th, with funding for those programs or projects, or both, to begin that July 1st. All applications shall become public documents upon filing.

(d) (c) Applications shall include:

1. A description of a public need which is not being met at present;
2. A description of how the program or project is consistent with the purposes identified in s. 196.218(5)(a)1. and 2., Stats.
3. A description of the program or project proposed, including a description of how the public need described in subd. 1. may be met through affordable access to telecommunications or information services;
4. A showing that the proposed program or project meets the described public need in a least cost manner. This requirement can be met by showing that the applicant carried out an appropriate request for proposals.
5. Identification of the providers of each portion of the telecommunications services or equipment and a specific description of the following components of the program or project:
 - a. The costs of telecommunications services and telecommunications equipment used by the program or project;
 - b. The cost of training for those who are served by the program or project so that they can utilize the services;
 - c. The administrative costs directly attributable to the program or project;
 - d. The cost of technical expertise required to complete the program or project; and
 - e. Revenue from services or training described in subd. 5.b.

(e) (d) The commission shall evaluate all applications submitted. In evaluating the applications the commission shall consider information including, but not limited to, the following:

1. The basis of the public need to be met;

2. The extent to which other programs or projects, either funded under this section or otherwise under this chapter, meet that need; and

3. The overall cost of the proposed program or project.

(f) (e) The universal service fund shall reimburse applicants for up to 50% of the cost of reimbursable portions of the program or project, or both. The reimbursable costs include those listed in par. (c) (d) 5.a. to d.

(g) (f) The programs or projects, or both, to be funded and the amount of reimbursement for each program or project shall be determined by the commission. The commission shall seek comments on the programs or projects to be funded, but shall not hold a hearing. A maximum of \$500,000 \$600,000 in funding may be dispersed under this subsection per state fiscal year.

SECTION 12. PSC 160.02(9) to (12) are created to read:

(NO CHANGES)

(9) "Non-profit group" means an organization described in s. 501(c)(3) of the internal revenue code that is exempt from federal income tax under s. 501(a) of the internal revenue code.

T:\rules\160-USF rewrite\step2\redrafting work\Section 81 rewrite for government

SECTION 50. PSC 160.071(1)(a), (b), (c), (f) and (j) are amended to read:

(a) Vouchers shall be available to assist disabled customers with a disability who have special needs certification in the purchase of equipment needed in their homes to personally access and use essential services of the telecommunications network. Vouchers may not be used to purchase equipment which will be used exclusively for commercial purposes.

(b) Vouchers shall be limited to the following amounts by category of disability:

1. \$200 for hard of hearing.
2. \$500 \$800 for deaf and severely hard of hearing.
3. \$1,500 \$1,600 for speech impaired.
4. \$1,500 \$1,600 for mobility impaired.
5. \$2,500 for deaf-low vision.
6. \$6,700 \$7,200 for deaf-blind.

(c) The A voucher recipient is under par. (b)1. is not required to make a co-payment. All other voucher recipients are required to make a co-payment of \$100 at the time the equipment is purchased. Pursuant to par. (f), for low income customers who are qualified under the telecommunications assistance program (TAP), the co-payment may be supplied by funding from the universal service fund through the telecommunications assistance program (TAP).

(f) Applicants for vouchers under this section shall be Wisconsin residents. Neither the applicant nor a member of the applicant's household may have received a voucher for equipment for the same disability within the last 3 years. Low-income Applications filed by low-income deaf and hard of hearing applicants individuals shall be referred to the Wisconsin department of health and family services to determine if they qualify for application for the telecommunications assistance program (TAP) and payment by the fund of funding to provide any customer co-payment required under par. (c). If found eligible for TAP, an alternative voucher may be issued to cover the co-payment. That co-payment shall be paid from the universal service fund. include that program's funding. If found ineligible, a voucher application shall be processed in priority according to its original date of receipt by the fund administrator.

(j) Vendors may redeem vouchers, submitted with an invoice, from the universal service fund administrator. Reimbursement may not exceed the total purchase price of the equipment with tax less, where applicable, a customer co-payment of \$ 100.



Suite 600
44 East Mifflin Street
Madison, WI 53703-2877

**Summary of AT&T Position on Proposed Universal Service Fund Rules-CR-99-019
January 26, 2000**

- AT&T fully supports all of the components of Act 496, including the state Universal Fund portion and the process for PSCW determination of who should be subject to assessment to the fund.
- Administrative Code PSC 160.18 (1) (b) provides a process for determining whether wireless carriers should be assessed. At a future point in time after the PSCW has followed this process and made a determination, it may be appropriate to include wireless carriers in the state USF assessment.

include all telecommunications providers operating within Wisconsin, with the following exceptions:

(a) Wisconsin telecommunications providers with intrastate gross telecommunications revenues of less than \$200,000 during the preceding calendar year are exempt from assessment.

(b) Cellular mobile radio telecommunications utilities shall be assessed only if the commission determines after hearing that market information regarding the cellular service area indicates that cellular services are a substitute for land-line telephone exchange service for a substantial portion of the communications in this state pursuant to 47 USC 332 (c) (3).

Note: Section 196.218(3), Stats., states that "the commission shall require all telecommunications providers to contribute to the universal service fund beginning on January 1, 1996." Because these rules may not be officially published by January 1, 1996, the fund administrator will need to back bill assessed providers to January 1, 1996.

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

(3) Telecommunications providers shall be assessed on the basis of their gross intrastate operating revenues from telecommunications services.

(4) Each telecommunications provider shall submit information, on a schedule and in a format to be set by the commission, on the telecommunications provider's gross intrastate telecommunications revenues during the preceding calendar year.

(5) The percentage liability for a given telecommunications provider is the ratio of that provider's intrastate gross telecommunications revenues to the sum of the intrastate gross telecommunications revenues for all contributory providers.

(6) The amount to be assessed to a given telecommunications provider is the percentage liability of that provider under sub. (5) multiplied by the total amount to be collected.

(7) Telecommunications providers who provided telecommunications service in Wisconsin for only part of the preceding calendar year shall be assessed based on actual revenues for the year, without adjustments to annualize that revenue.

(8) Failure to receive a bill is not grounds for relief from a telecommunications provider's liability for assessment.

(9) A telecommunications provider that has not paid within 45 days of receiving a bill shall be deemed to have not paid under s. 196.218 (8), Stats.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96.

PSC 160.19 Universal service fund council. (1) The commission shall appoint a universal service fund council to advise the commission concerning the administration of s. 196.218, Stats., the content of administrative rules adopted pursuant to s. 196.218, Stats., and any other matters assigned to the universal service fund council by the commission.

(2) The universal service fund council shall consist of telecommunications providers and of consumers of telecommunications services. The commission shall appoint a diverse membership to the universal service council including representatives of the local exchange telecommunications industry; the interexchange telecommunications industry, including facilities-based

carriers and resellers; the cable television industry; other telecommunications providers and consumers of telecommunications services including residential, business, governmental, institutional, and public special interest group users of telecommunications services.

(3) A majority of the members of the universal service fund council shall be representatives of consumers of telecommunications services.

(4) (a) Terms of universal service fund council members initially appointed by the commission are effective through December 31, 1995. After December 31, 1995, universal service fund council members shall be appointed to staggered three-year terms.

Note: For terms beginning on January 1, 1996, the commission will appoint some universal service fund council members to a one-year term, others to a 2-year term and the remaining members to a 3-year term.

(b) The commission may appoint a replacement member when necessary to serve the remaining term of a member withdrawing from the universal service fund council.

(5) The commission shall appoint a chairperson for the universal service fund council who shall serve in that capacity through December 31, 1995. Thereafter, the universal service fund council shall elect a chairperson and a vice-chairperson from its membership, not including the commission staff liaison. The term of office for these positions shall be one year. Elections may be held at the first meeting of each calendar year commencing after December 31, 1995, or may be conducted by mail prior to the first meeting of each calendar year.

(6) The universal service fund council shall meet at least twice annually. Other meetings may be called, upon adequate notice to all members, to address matters of the fund as they arise. Meetings of the universal service fund council shall be open to the public.

(7) Members of the universal service fund council shall serve without compensation. Members, other than those members representing the telecommunications industry and any members representing state agencies, may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as part of the universal service fund council, subject to budget guidelines adopted by the commission.

(8) (a) The universal service fund council may adopt bylaws appropriate for its operation.

(b) The universal service fund council may form subcommittees of its membership as necessary to review issues and make recommendations for consideration of the full council.

(9) The commission shall assign staff members as needed to facilitate the work of the universal service fund council. The commission shall appoint a member of the commission staff to serve as staff liaison for the universal service fund council. The liaison shall be a non-voting member and shall do all of the following:

(a) Assist the universal service fund council in obtaining subject matter expertise in the area of universal telecommunications service.

(b) Maintain the official record of the universal service fund council, including membership, minutes of meetings, agendas and reports.

(c) Assist the chairperson of the universal service fund council in planning the agendas, times and places of meetings.

(d) Provide other administrative assistance as required.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96.

**STATEMENT
CONCERNING THE UNIVERSAL SERVICE FUND RULES:
EXEMPTION FROM ASSESSMENT**

**BEFORE THE
SENATE COMMITTEE ON HEALTH,
UTILITIES, VETERANS AND MILITARY AFFAIRS**

*Peter L. Gardon
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, s.c.
P.O. Box 2018
Madison, WI 53701-2018
608-229-2200 - Telephone*

January 26, 2000

INTRODUCTION

My name is Peter Gardon. I am a shareholder with Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. A substantial portion of my practice involves the representation of telecommunications and energy companies in proceedings before the Public Service Commission of Wisconsin, as well as other state agencies. I also have served as special counsel on behalf of the State of Wisconsin in several matters.

I was directly involved in the discussions relating to the creation of Wisconsin's Information Superhighway legislation, 1993 Wisconsin Act 496. In addition, I was directly involved in the creation and implementation of the universal service fund rules as promulgated by the Commission in 1996 and have participated in the proceedings relating to the review of these rules.

In the most recent *Biennial Review of Universal Service Fund Rules in Wisconsin Administrative Code Chapter PSC 160*, Docket No. 1-AC-166, the Commission declined to modify the exemption from universal service fund assessment in § PSC 160.18, Wis. Admin. Code. The Commission properly concluded that § PSC 160.18(1)(b), Wis. Admin. Code, should remain part of the universal service rules as written.

The Wisconsin universal service statute, § 196.218(3)(e), Stats., if applied to CMRS (Commercial Mobile Radio Service) or wireless providers, would contravene federal law by forbidding CMRS providers from passing through universal service contributions to their customers. If wireless carriers must make universal service contributions, a state cannot regulate a wireless provider's rates by forbidding carriers from passing such contributions through to their customers. Moreover, requiring state

universal service contributions from CMRS carriers or their customers is not in the interest of Wisconsin consumers or necessary to the operation of the state universal service fund.

I. FORBIDDING WIRELESS CARRIERS FROM PASSING THROUGH UNIVERSAL SERVICE FUND CONTRIBUTIONS CONSTITUTES IMPERMISSIBLE RATE REGULATION AND VIOLATES FEDERAL LAW.

The Wisconsin universal service statute, § 196.218, Stats., if applied to CMRS providers, would preclude them from placing a surcharge on customer bills for the contributions paid into the state universal service fund. Section 196.218(3)(e) Stats., provides, in pertinent part:

. . . a telecommunications provider or other person may not establish a surcharge on customers' bills to collect from customers contributions required under this subsection.

However, state and local governments are prohibited from regulating the entry of *or the rates charged* by wireless providers. A state's prohibition of a wireless carrier's imposition of a specific charge on its customers' bills violates 47 U.S.C. § 332(c)(3)(A)'s prohibition on rate regulation.¹

¹ 47 U.S.C. § 332(c)(3)(A) of the Telecommunications Act of 1996 (47 U.S.C. § 332 (c)(3)(A) reads, in pertinent part, as follows:

(3) State preemption. (A) Notwithstanding sections 2(b) and 221(b) [47 USCS §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.

Section 196.218(3)(e), Stats., is the type of state regulation of CMRS practices which has a direct and significant effect on CMRS rates. The statute explicitly forbids CMRS providers from imposing certain “surcharges” on their bills and addresses what is placed on the customer’s invoice. The obvious intention of the statute is to govern what CMRS providers can and cannot charge to customers, which is clear rate regulation.

Section 332(c)(3)(A) provides for a procedure whereby a state, if it believes either that market conditions will not offer protection from unjust CMRS rates or that CMRS has become a substitute for the landline telephone exchange service in the state, may petition the FCC for authority to regulate CMRS rates. After public comment, the FCC may grant such consent if the Commission is persuaded that rate regulation is necessary in that state. However, Wisconsin has filed no such petition, and thus has no authority to regulate wireless rates as § 196.218(3)(e), Stats., would purport to do.

Accordingly, wireless providers can be assessed universal service fund contributions in Wisconsin only if § 196.218(3)(e), Stats., is amended so that wireless providers are not prohibited from passing through their universal service fund contributions to customers or a finding is made that wireless services are a substitute for landline telephone exchange services for a substantial portion of the communications within Wisconsin. Since neither circumstance has occurred, wireless providers should not be assessed, as recognized in the universal service rules, PSC § 160.18(1)(b).

II. RECENT CASES CONFIRM THAT A SUBSTITUTE SERVICE FINDING IS REQUIRED BEFORE A STATE REGULATES THE RATES OF CMRS PROVIDERS.

The position in Section I that prohibiting wireless providers from passing through their universal service fund contributions to customers under § 196.218(3)(e), Stats., violates § 332(c)(3)(A), is independent of and unrelated to the determinations made in three recent court decisions.² In other words, even if those cases were correctly decided, they do not answer, refute, or deal with in any way the position that § 196.218(3)(e), Stats., as applied to wireless providers, violates federal law, if wireless providers are required to pay into the universal service fund.

Moreover, those cases are contrary to the express language of § 332(c)(3)(A) and the Commission is not bound by those cases. A plain reading of § 332(c)(3)(A) indicates that a wireless provider cannot be assessed for universal service fund contributions unless and until a finding is made that "such services are a substitute for landline telephone exchange service for a substantial portion of the communications within such state." Under no circumstances are wireless services a substitute for landline telephone exchange services in Wisconsin and no such finding has been made. To the extent the Commission, in retaining the exemption in PSC 160.18(1)(b) relied upon a plain reading of § 332(c)(3)(A), they are not bound by the decisions in those cases.

² See *Sprint Spectrum, L.P., et al. v. State Corporation Commission of the State of Kansas, et al.*, 149 F.3d 1058 (10th Cir. 1998); *Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*, 168 F.3d 1332 (D.C. Cir. 1999); and *Texas Office of Public Utility Counsel, et al. v. Federal Communications Commission*, 183 F.3d 393 (5th Cir. 1999).

Furthermore, even if you accept their reasoning, those cases have found that states may require universal service contributions from wireless providers as long as it does not constitute regulation of rates. For example, in *Texas Office of Public Utility Counsel, et al. v. FCC*, the United States Court of Appeals for the Fifth Circuit noted that pursuant to the FCC's reading of § 332(c)(3)(A), "states retain the ability to compel universal service contributions as long as it does not constitute regulation of rates . . ." 183 F.3d at 432. Stated otherwise, where a state's imposition of universal service fund requirements on CMRS providers constitutes a regulation of rates, as it would if § 196.218(3)(e), Stats. is applied to wireless providers, a substitute service finding first must be made. Consequently, these cases are consistent with and not contrary to the position stated in Section I that if a universal service fund contribution requirement is placed on wireless providers, and the state seeks to regulate the rates of wireless providers by prohibiting them from passing through the universal service fund contribution to their customers as exists under § 196.218(3)(e), Stats., then the state first must make a determination that wireless services are a substitute for landline service. Since that determination has not been made, these cases support retaining the wireless exemption under PSC § 160.18(1)(b).

III. IT IS NOT IN THE PUBLIC INTEREST TO IMPOSE UNIVERSAL SERVICE FUND CONTRIBUTION REQUIREMENTS ON WIRELESS PROVIDERS AT THIS TIME.

It is not in the public interest for Wisconsin to establish a state universal service assessment on CMRS providers or their customers at this time. Section 196.218(3)(b), Stats., provides that the Commission may "exempt a telecommunications provider or

other person from part or all of the [universal service fund contribution requirement] if the commission determines that requiring the contribution would not be in the public interest." The imposition of universal service fund assessments on CMRS providers in Wisconsin would be detrimental to the public interest because such an assessment will artificially decrease wireless usage. Decreased wireless usage, in turn, discourages the development of wireless as a replacement for landline services. Until wireless is such a replacement, it will not compete for local exchange customers.

The wireless marketplace currently is one of the most robustly competitive segments of the telecommunications industry. Indeed, the highly competitive nature of the wireless market in recent years has led to lower prices and more choices for American consumers, including the residents of Wisconsin. Although wireless competition is vigorous and subscriber growth is accelerating rapidly, wireless has yet to provide serious competition to landline services. Most Americans still perceive wireless service as a complement to fixed landline service, not as a substitute. The primary reason is price. Despite dramatic price reductions in the recent past, wireless service remains more expensive than fixed landline service.

As a more expensive, complementary service -- notwithstanding recent and dramatic price reductions -- wireless providers are extremely vulnerable to price increases of any kind. Simply put, price increases such as those brought about by universal service assessments artificially suppress demand for wireless services because the benefit of a call no longer outweighs the higher cost of the call. Even though a

universal service assessment is wholly unrelated to the costs of providing a wireless call, it imposes a cost increase on the “bottom line” of a wireless customer’s bill.

Such cost increases, whatever their source, are more acutely felt in emerging telecommunications markets. Specifically, studies have shown that wireless services have a much higher elasticity of demand than landline services.³ Consumers are much more likely to forgo using their wireless phone in response to price increases than they are in response to increased local rates. Until wireless service represents a true alternative to local exchange offerings, this demand disparity is unlikely to change.

If the demand for wireless services decreases, the likelihood that wireless service will compete directly with landline services decreases as well. The Commission recognized that since competition for local exchange customers results in lower prices and better services, the public interest is not served if wireless growth is stymied. Unless the volume of wireless usage increases and wireless rates are decreased further, thereby reducing the landline/wireless price differential, competition for the local exchange customer will not develop. Thus, any attempt to impose universal service fund assessments upon CMRS providers undermines the clear public interest in wireless offering genuine competition for local exchange services.

Wisconsin's telephone penetration rates (a statistical measure of the percentage of households that have telephone service) consistently have been among the highest in the United States. (See Public Service Commission's Annual Report on Universal Service to

³ See Jerry A. Hausman, *Valuing the Effect of Regulation on New Services in Telecommunications in Economic Activity: Microeconomics* (1997) at 1 (Brookings Institution); *Taxation by Telecommunications Regulation in Tax Policy and the Economy*, National Bureau of Economic Research.

the Joint Committee on Information Policy (July 1999) ("Annual Report"), p. 6). In fact, the penetration rate for landline residential telephone service in Wisconsin is 95.9%. (See Industry Analysis Division, FCC Common Carrier Bureau, Telephone Subscribership in the United States (1999 Report)). In other words, essential telecommunications services universally are available in Wisconsin.

Moreover, a \$2.5 million balance exists in the universal service fund and the Commission has ceased assessments for the Commission portion of fund contributions since December 1997 because of a fund surplus. (See Annual Report, Appendix 2, p. 2). Since there is no urgency to increase the fund at this time, the Commission properly declined to amend the regulations.

The Commission is the agency charged by the Legislature with administering and enforcing the requirements of federal and state telecommunications laws. The Commission has substantial expertise and experience with these laws and is keenly aware of the purpose and effect of these laws as they apply to the telecommunications industry. The Commission's determination, which was based on their specialized expertise, comports with both federal and state law and should be retained.

I thank you for the opportunity to provide these comments.

RELEVANT STATUTES

1. 47 U.S.C. § 332(c)(3)(A) states in relevant part:

(3) State preemption. (A) Notwithstanding sections 2(b) and 221(b) [47 U.S.C. §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence in this paragraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that-

- (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or
- (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State

2. Section 196.218(3)(e), Wis. Stats.

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

Special note as of 1/26/00: This copy has been enhanced to insert confirmation of what recommendations contained in this submission were indeed incorporated into the PSC proposed order submitted to the WI legislature for review in Clearinghouse Rule 99-019. The new comments are shown in brackets and bold.

September 30, 1999

WI Public Service Commission
Chairperson Ave Bie, Commissioner John Farrow, Commissioner Joseph Mettner
610 North Whitney Way, P.O. Box 7854
Madison, WI 53707-7854

RE: Docket 1-AC-166

Dear Commissioners:

As concerned telecommunications users, we urge you to take expeditious action on the biennial review of Universal Service Fund Rules in Wisconsin Administrative Code ch. PSC 160. Considerable time has passed since the USFC's recommendations were made. As a result, changes have arisen meriting the adjustment or correction in the proposed rules prior to their submission to the legislature. Our organizations are submitting these comments to reiterate the position shared by the numerous deaf, hard of hearing, and disability community representatives that participated in the public comment period. The revisions stated below do not require authorization of any additional funds, but do help distribute existing funds appropriately.

Some provisions below are endorsed "as written" per inclusion in the PSC proposed rules. Others are stated with "suggested revisions" that were shared during the public comment period.

1. Inclusion/revision to Section 7 PSC 160.02(8)(t):

"Two line voice carryover" means the technique of using 2 telephone lines, one for voice and one for TTY or similar equipment and 3 way calling, to connect a caller who is deaf or hard of hearing but can speak, with another caller-via the TRS.

Rationale-editorial clarification

[PSC chose not to insert 3 way calling. This is a misunderstanding by PSC because in order for a consumer to utilize two-line VCO they MUST have 3 way calling to conference TRS and the hearing caller into the call. This needs correction in the final order.]

2. Inclusion/revision of Section 9. PSC 160.03 (2) (a) 14

Intercept and announcements for vacant, changed, suspended and disconnected numbers in ~~oral~~ audible and text (TTY-readable) formats.

Rationale-editorial clarification

[This change was editorial only. PSC chose to stay with TTY-readable.]

3. Inclusion/revision of Section 18. PSC 160.05(1) d

Telecommunications equipment purchase program vouchers (TEPP), as specified in s PSC 160.071(1) and the public promotion, education and training, regarding the availability and potential uses for the TEPP.

Rationale - This language clarifies "for the purpose of informing the public". Since the first vouchers were available in July of 1996, the PSC nor the Fund Administrators have had no organized, public education/promotion about TEPP. As the statistics demonstrate, funds allocated to the TEPP have been vastly under utilized. We believe the lack of use is due to people not knowing about the program and how to apply as well as having an unclear

understanding of where to obtain proper equipment, assistance in equipment selection/use and understanding how their purchase is handled.

[This additional language as proposed above was not inserted. However, there is a statement in 160.05 that reads, "PSC 160.05 Universal Service fund programs. Universal service fund monies may be used for fund administration; for the purpose of informing the public regarding the universal service fund, its existence, purpose, intent and areas of use; ..." This is sufficient if the community can receive some assurance that a more aggressive level of action will be taken to this regard.]

4. Revision of Section 39 PSC 160.071 (1)(e)

Vouchers shall be available to assist customers with a disability who have special needs certification in the purchase of equipment needed to personally access and use essential services of the telecommunications network.

Rationale - Since the TEPP began it has been a self-identifying program not requiring persons to "prove" their need for assistive equipment. In the past, phone companies have used a "certification" process for customers asking for reduced calling rates or special directory assistance allowances. When this rule change asking for disability certification was first adopted by the council it was in fear of fraud issues. To date, there is no evidence of abuse of the current system, and no evidence to support adding a new qualifying requirement that may be an undue burden to customers, vendors, and the fund administrator.

[The PSC chose to leave the phrase 'who have special needs certification' in their proposed order stating this is not new. PSC has clarified to our satisfaction that the certification is a self-certifying process.]

5. Revision/Inclusion of section 39. PSC 160.071 (1) (b) as follows:

Voucher increases proposed based on data from the program to date:

Hard of Hearing from \$200 with a \$100 co-pay to \$200 with no co-pay

Deaf and Severely Hard of Hearing— public comment reflect the need for an increase from \$500 to \$800.00. Data shows consumers are spending the maximum voucher amount and often not able to purchase phone-signaling systems along with a TTY within the amount allowed.

Speech Impaired from \$1,500 to \$1,600

Mobility Impaired from \$1,500 to \$1,600

Deaf/Low Vision from \$2,500 to \$1,600

Deaf/Blind from \$6,500 to \$7,200

[The PSC has revised the voucher amounts as requested above, as well as retained the deaf/low vision amount. Thus, the hard of hearing category is \$200 w/ no co-pay, the deaf category \$800, and the deaf/low vision category is \$2,500. This pleases the coalition!]

6. Inclusion of section 39. PSC 160.071(1)(c) as proposed

Hard of hearing category - remove co- payment requirement

Rationale - Currently hard of hearing consumers are paying a disproportionate amount compared to other voucher recipients. We feel this is inequitable, thus we endorse the deletion of the co-payment requirement for this voucher category.

[PSC agrees and proposes no co-pay for hard of hearing individuals.]

7. Revision of section 39 PSC 160.071 (1)(f)

Applicants for vouchers under this section shall be Wisconsin residents who have applied for a voucher and who have not received a voucher for equipment for the same disability within the past 2 years.

Rationale - In homes where more than one individual relies on a specialized device for basic telecommunications access, we believe it is discriminatory to restrict devices on a per household basis. For example, deaf individuals living in a shared apartment, may chose to have separate phone lines for billing purposes. With the per household criteria, they would be forced to have the same line and share the same device. Later, if the roommate situation

changes one person would not have access. Additionally, deaf couples, who both fall under the same category, may have totally different needs but be within the same "household". One may be a VCO Phone user while the other is strictly a text user. A VCO phone would not be the solution for that household, yet because they both fall within the DEAF voucher category they would be limited to one device. Furthermore, technology related to telecommunication products is considered "emerging", therefore rapidly changing. Within 3 years there may be major changes affecting basic access. It is also very necessary to own more than one telecommunications device in the event of malfunction.

[The PSC order did not include the above changes. A concern still remains with the limit per household or per telephone line, since non-related disabled consumers find themselves unable to meet their individual needs within the 'one per household' definition. This needs revisiting. PSC states, "Like Lifeline and Link-up, this program is only intended to provide basic and essential service for the household (what is necessary to connect the household to the network), not to meet all the telecommunications needs." In all due respect, this is not the quite the same.]

8. Revision to Section 40. PSC 160.071(1)(m)

Equipment purchases involving individual exceptions to these eligible equipment lists may be granted by the administrator only following consultation with ~~commission staff~~ a knowledgeable person(s) or entity.

Rationale – Due to their multitude of responsibilities the PSC staff and fund administrator can not be expected to be "experts" on the latest assistive technology. A person or agency whom works with and fully understands the various needs of individuals who are deaf and hard of hearing and assistive technology available, should be involved in assessing individual exceptions and insuring a level of consistency and appropriateness.

[PSC chose to leave the language as is. The coalition members' concern is that the individual making the decision has extensive knowledge of the equipment in question.]

9. Inclusion of Section 44. PSC 160.071 (6)

"In addition, hearing impaired customers who are able and choose to use two line voice carry over shall not be charged for the second line."

[Provision included in PSC order for reimbursement. This applies to a small population, but is an important stipulation.]

10. Inclusion of Section PSC 160.075 (3) & (5)

"all pay telephone providers to be responsible for insuring that their payphones comply with state and federal standards, and that customers can complain about non-compliance to the Commission. The changes merely clarify the PSC's rules and require providers to post information on how to file a complaint."

[Provision included in PSC order. Coalition members expect to see better signage at pay phones alerting them how to report non-compliance or non-functioning units.]

[Provision to Section PSC 160.071(1)(m) is appropriate in that it is an "essential service" category. For deaf and hard of hearing individuals should be included. Rationale: Of a persons who are deaf and use the Internet and email as part of the regular or limited system due to technological limitations related to reading Braille.]

[PSC chose not to include this provision, as they did not view this as a functionally equivalent substitute to telephone equipment procurement. The coalitions' intent was to suggest this as an alternative mode of access. Perhaps this will be revisited by the PSC when they deal with internet issues?]

12. Revision/inclusion of Section 71. PSC 160.125(2) Access programs or projects by nonprofit groups. (a) Partial funding may be available to nonprofit groups for the facilitation of information about and -affordable access to telecommunications, the TEPP and information ...

Rationale-Clarification that non-profits can apply for funds specifically to provide TEPP information.

[PSC's order states, "No change necessary. Change to allow USF funding for public education about TEPP has already been made in s. PSC 160.05 (intro.). Further, it may be that funding for such a project or program by a non-profit would fit under the proposed rule concerning grants to non-profits."

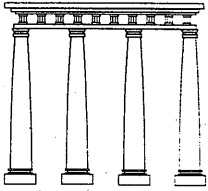
The coalition wishes to note that the reason the non-profit community asked for this inclusion is due to the fact, since the programs inception, non-profit organization personnel, TRS personnel, and volunteers in the deaf community have gone out and voluntarily done public promotion of the program. This has become a burden on staff of non-profit organizations to the point a change is called for. The USF/TEPP program should be doing their own training, education promotion of the program, and general information dissemination. However, in the interest of seeing this program utilized, as promotional activities were greatly lacking --volunteers initiated their own public education efforts. This clearly needs correcting.]

In conclusion, we urge you to promulgate these rules without further delay.

Sincerely,

Lee Shultz, Executive Director, Independence First	lee@independencefirst.org
Tim Jaech, Acting Chair, Concerned Deaf Citizens	jaechta@mail.state.wi.us
Alex Slappay, Superintendent, WI School for the Deaf	slappah@mail.state.wi.us
Bob Gilpatrick, Superintendent, Verona Public Schools, USFC Member	gilpatrib@verona.k12.wi.us
Bruce Nelsen, Executive Director, Society's Assets Inc.	bruce.nelsen@sai-inc.org
Carol Burns, President, WI State Assoc, Self Help for Hard of Hearing People Inc.	burnsca@chorus.net
Charlene Dwyer, EBTIDE, Inc.	chardwyer@aol.com
Claude Stout, Executive Director, Telecommunications for the Deaf Inc.	TDIExDir@aol.com
Dan Houlihan, President, WI Association of the Deaf	danhmarika@juno.com
Michael Ginter, President, Deafirst	Deafirst@chours.net
Kim Bruno, President, WI Children of Deaf Adults	h-codakim@juno.com
Dawn Hankwitz, President, WI Registry of Interpreters for the Deaf	HankWDM@dhfs.state.wi.us
Deborah Gorra, President, Professional Interpreting Enterprise	dccgorra@execpc.com
Greg Vanderheiden, Trace Rehabilitation Research Center	gv@trace.wisc.edu
Jack Barr, President, Barr Productions	asl@itis.com
John Boyer, Executive Director, Computers to Help People, Inc.	chpi@execpc.com
Mark Thompson, WI Telecommunicators Inc.	rhonda.thompson@uwp.edu
Michelle Guyette, Secretary, WI American Sign Language Instructors Association	guyette3@aol.com
Jim Powell, President, WI deaf Sports Club	jpowell@mailbatg.com
Tom Fraizer, Coalition for WI Aging Groups	tfrazier@midplains.net
Louise Trubek, Chair USF Council Consumer Caucus	lgrubek@facstaff.wisc.edu
Rick Postl, McBurney Disability Center	rbpostl@facstaff.wisc.edu
Tom Harbison, Chair, WI Relay Advisory Council	Katom@elknet.net
Kathie Knoble Iverson, Chair, WI Coalition of Independent Living Centers, Inc.	wcilc@aol.com
Deb Wisniewshi, Coordinator, WI State Independent Living Council	wisnida@dhfs.state.wi.us
Pam Holmes, Director of Consumer & Regulatory Affairs, Ultratec, Inc.	pholmes@ultratec.com

CC: Gary Evenson
Jeff Richter



Center for Public Representation, Inc.

P.O. Box 260049

Madison, WI 53726-0049

608/251-4008

FAX: 608/251-1263

CPR@lawmail.law.wisc.edu

January 26, 2000

TESTIMONY

LOUISE G. TRUBEK, SENIOR ATTORNEY, CENTER FOR PUBLIC REPRESENTATION

SENATE HEALTH, UTILITIES, VETERANS AND MILITARY AFFAIRS COMMITTEE

RE: SENATE CLEARINGHOUSE RULE 99-019 UNIVERSAL SERVICE FUND

Thank you for the opportunity to present testimony on the pending rules. As a member of the Universal Service Fund Council for the entire rule drafting process, I am very pleased to testify in these closing moments. I was unable to attend the Joint Committee on Information Policy hearing so I am also submitting this testimony to that Committee.

First, I wish to urge the Committee to act rapidly to approve the rules. While I am aware of pending issues, and I will testify on several of those, speed is crucial. The programs funded by USF are needed by many consumers and groups. The rules enhance existing programs and create new programs for the disabled, poor people, and community groups. The funding is in hand; the only obstacle is your approval of the rules.

Second, I have the following comments on the set of rules before you:

1) I very much support the insertion of rules to implement the statute creating the new "Medical Telecommunication Equipment Grant Program" I support the revised eligibility requirements proposed by the Wisconsin Primary Care Association. I suggest that the definition of medical telecommunication equipment be left to the PSC staff and reviewing system. I support the removal of the \$20,000 cap in the draft proposed by Rep. Urban.

2) I do not support the amendment to PSC 160.125(2) proposed by Rep. Kelso. The project she is proposing is not relevant to the mission of the nonprofit program created by PSC 160.125(2). It is possible that her proposed program could be funded under the existing TEPP program as revised under this set of rules since it advances equipment for persons with disabilities. The mission of PSC 160.125(2) is to support the nonprofit sector as well as help consumers. Rep. Kelso's proposal creates an additional mission, more appropriately attached to the TEPP mission.

cc: Joint Committee on Information Policy

SECTION 50. PSC 160.071(1)(a), (b), (c), (f) and (j) are amended to read:

(a) Vouchers shall be available to assist disabled customers with a disability who have special needs certification in the purchase of equipment needed in their homes to personally access and use essential services of the telecommunications network. Vouchers may not be used to purchase equipment which will be used exclusively for commercial purposes.

(b) Vouchers shall be limited to the following amounts by category of disability:

1. \$200 for hard of hearing.
2. \$500 ~~\$800~~ for deaf and severely hard of hearing.
3. \$1,500 ~~\$1,600~~ for speech impaired.
4. \$1,500 ~~\$1,600~~ for mobility impaired.
5. \$2,500 ~~for~~ deaf-low vision.
6. \$6,700 ~~\$7,200~~ for deaf-blind.

(c) The A voucher recipient is under par. (b)1. is not required to make a co-payment. All other voucher recipients are required to make a co-payment of \$100 at the time the equipment is purchased. Pursuant to par. (f), for low income customers who are qualified under the telecommunications assistance program (TAP), the co-payment may be supplied by funding from the universal service fund through the telecommunications assistance program (TAP).

(f) Applicants for vouchers under this section shall be Wisconsin residents. Neither the applicant nor a member of the applicant's household may have received a voucher for equipment for the same disability within the last 3 years. Low-income Applications filed by low-income deaf and hard of hearing applicants individuals shall be referred to the Wisconsin department of health and family services to determine if they qualify for application for the telecommunications assistance program (TAP) and payment by the fund of funding to provide any customer co-payment required under par. (c). If found eligible for TAP, an alternative voucher may be issued to cover the co-payment. That co-payment shall be paid from the universal service fund. include that program's funding. If found ineligible, a voucher application shall be processed in priority according to its original date of receipt by the fund administrator.

(j) Vendors may redeem vouchers, submitted with an invoice, from the universal service fund administrator. Reimbursement may not exceed the total purchase price of the equipment with tax less, where applicable, a customer co-payment of \$ 100.

SECTION 81. PSC 160.125(2) is created to read:

(2) ACCESS PROGRAMS OR PROJECTS BY NON-PROFIT GROUPS AND GOVERNMENT AGENCIES. (a) For purposes of this section, a qualifying entity is a non-profit group or a governmental agency.

(b) (a) Partial funding may be available to qualifying entities non-profit groups for the facilitation of affordable access to telecommunications and information services through programs or projects, or both, not supported elsewhere in this chapter, but that are consistent with the purposes identified in s. 196.218(5)(a)1. and 2., Stats.

Note: As of November 1999, s. 196.218(5)(a)1. and 2., Stats., reads:

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

1. To assist customers located in areas of this state that have relatively high costs of telecommunications services, low-income customers and disabled customers in obtaining affordable access to a basic set of essential telecommunications services.
2. To assist in the deployment of advanced service capabilities of a modern telecommunications infrastructure throughout this state.

(c) (b) Any qualifying entity non-profit group may apply for universal service funding to fund any portion of a program or project or both. Funding shall be provided on a state fiscal year basis. Applications for funding in the following fiscal year shall be submitted by November 15th. The commission shall issue a list of approved programs or projects, or both, by April 15th, with funding for those programs or projects, or both, to begin that July 1st. All applications shall become public documents upon filing.

(d) (c) Applications shall include:

1. A description of a public need which is not being met at present;
2. A description of how the program or project is consistent with the purposes identified in s. 196.218(5)(a)1. and 2., Stats.
3. A description of the program or project proposed, including a description of how the public need described in subd. 1. may be met through affordable access to telecommunications or information services;
4. A showing that the proposed program or project meets the described public need in a least cost manner. This requirement can be met by showing that the applicant carried out an appropriate request for proposals.
5. Identification of the providers of each portion of the telecommunications services or equipment and a specific description of the following components of the program or project:
 - a. The costs of telecommunications services and telecommunications equipment used by the program or project;
 - b. The cost of training for those who are served by the program or project so that they can utilize the services;
 - c. The administrative costs directly attributable to the program or project;
 - d. The cost of technical expertise required to complete the program or project; and
 - e. Revenue from services or training described in subd. 5.b.

(e) (d) The commission shall evaluate all applications submitted. In evaluating the applications the commission shall consider information including, but not limited to, the following:

1. The basis of the public need to be met;

2. The extent to which other programs or projects, either funded under this section or otherwise under this chapter, meet that need; and

3. The overall cost of the proposed program or project.

(f) (e) The universal service fund shall reimburse applicants for up to 50% of the cost of reimbursable portions of the program or project, or both. The reimbursable costs include those listed in par. (c) (d)5.a. to d.

(g) (f) The programs or projects, or both, to be funded and the amount of reimbursement for each program or project shall be determined by the commission. The commission shall seek comments on the programs or projects to be funded, but shall not hold a hearing. A maximum of \$500,000 \$600,000 in funding may be dispersed under this subsection per state fiscal year.

SECTION 12. PSC 160.02(9) to (12) are created to read:

(NO CHANGES)

(9) "Non-profit group" means an organization described in s. 501(c)(3) of the internal revenue code that is exempt from federal income tax under s. 501(a) of the internal revenue code.

T:\rules\160-USF rewrite\step2\redrafting work\Section 81 rewrite for government

January 26, 2000



WISCONSIN
PRIMARY HEALTH CARE
ASSOCIATION

My name is Mari Freiberg and I am the Policy and Public Affairs Director for the Wisconsin Primary Health Care Association. We are a non-profit trade and advocacy organization dedicated to improving health care access for people who live in medically underserved areas of the state - both urban and rural Wisconsin.

In the scope of the entire rule, I am interested in talking about a small, but very important part - implementation of the state budget provision for a Medical Telecommunications Equipment Grants. The Medical Telecommunications Equipment Grant Program sets aside \$500,000 in the Universal Service Fund for telecommunications equipment purchases at non-profit medical clinics and public health agencies.

I ask the Committee for three modifications to the draft rule language proposed by Representative Urban - clarification of the grant award ranges, a definition for medical telecommunications equipment, and modification of the definition of non-profit medical clinic.

While the proposed language is permissive with regard to a \$20,000 limit for awards under this program, we are concerned that this may be interpreted to imply a desire by the Legislature to award grants in this amount. We ask the Committee to recommend rule language that is either silent on the issue of grant amounts, or to insert rule language that allows a range of grant awards (\$10,000 - \$100,000). In this manner, you encourage a broad range of applications, in addition to giving the State the ability to choose from innovative projects that support medical telecommunications development.

The world of medical telecommunications equipment is a dynamic one and new equipment is being developed all the time - there are electronic stethoscopes, GI scopes, video cameras, video microscopes, in addition to hundreds of others. Equipment prices span the range as well. We simply seek, through these rules, to ensure that the full range of applications are considered when institutions write for these grants.

We also support the addition of a definition for medical telecommunications equipment. This will guarantee that the monies collected through the Universal Service Fund goes to support medical telecommunications applications. While there are very worthwhile and important programs that may need funding on a whole host of issues, unless these programs fall within the parameters of medical telecommunications equipment, they should not be funded with this money.

And finally, our Association asks for a definition modification to non-profit medical clinic. The proposed definition makes grant funding available to a non-profit clinic that serves a federally designated health professional shortage area. All non-profit medical clinics can document that they served a federally designated shortage area, but not all non-profit medical clinics are the same. Each provides unique and valuable service for their patients, but some clinics do not have policies that require they care for all patients. These clinics have a greater ability to obtain financing for medical telecommunications equipment. We request a change in the definition of non-profit medical clinic to require clinics to serve patients in a designated health professional shortage area and either have a sliding fee scale, or serve all patients. By redrafting the definition, you are supporting medical telecommunications equipment purchases in clinics that offer health care services to our neediest populations.

5721 Odana Road, Suite 105
Madison, WI 53719

Phone: (608) 277-7477
Fax: (608) 277-7474

Email: wphca@wphca.org
www.execpc.com/~wphca

Comments of
GTE
100 Communications Drive
Sun Prairie, Wisconsin 53590

January 26, 2000

**Comments Regarding Proposed Universal Service Rules in
Wisconsin Administrative Code Ch. PSC 160
CR 99-019**

My name is Dick Bohling, and I am submitting comments on behalf of GTE North Incorporated (GTE) that our counsel Stacy Rodriguez, who was unable to attend today's hearing, submitted to the Joint Committee on Information policy last week in opposition to proposed section PSC 160.18(1)(b) of the Wisconsin Administrative Code. That proposed section preserves an exemption allowing commercial mobile radio service (CMRS) providers, or wireless providers, to be exempt from contributing to the state's universal service fund. *GTE requests that section 160.18(1)(b) be deleted from the rules*, and submits that the state of Wisconsin has the authority to and should, as a matter of public policy, require wireless providers to contribute to the state universal service fund. Following are the legal and regulatory reasons why we believe that all providers should be required to contribute to the universal service fund.

- A. *The State of Wisconsin has the authority to require wireless providers to contribute to the state universal service fund.*

GTE believes that contributions to the universal service fund should come from all telecommunications providers in Wisconsin, including wireless providers. Such a rule would be in accord with federal law. Under the Telecommunications Act of 1996, states

have the authority to require CMRS providers to contribute to universal service. Section 254(f) of the 1996 Act states that “[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.”¹ Including all telecommunications providers in the universal service obligation lessens the burden on any one class of providers, thereby advancing the federal mandate of “equitable and nondiscriminatory” contribution.

Some wireless providers have argued that if Wisconsin were to remove their exemption from the universal service obligation, it would amount to the state unlawfully attempting to regulate the rates of wireless carriers, in contravention of Section 332(c)(3)(A) of the Communications Act of 1934. That section provides that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.” 47 U.S.C. § 332(c)(3)(A). Thus, while a state may not regulate the rates of wireless carriers, it may regulate “other terms and conditions” of wireless services. The Federal Communications Commission (FCC) has confirmed, in its Pittencrief Order, that a requirement for CMRS providers to contribute to state universal service support mechanisms is not a regulation of rates, but is a regulation of “other terms and conditions” within the meaning of § 332(c)(3)(A), and is therefore within a state’s

¹ CMRS providers are telecommunications carriers under the terms of the 1996 Act. *See Petition of Pittencrief Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 1735, 1743 (1997) (“Pittencrief Order”).

lawful authority. *See* Pittencrief Order, 17 FCC Rcd at 1743. The Pittencrief Order was upheld by the United States Court of Appeals for the District of Columbia Circuit on March 16, 1999. *See Cellular Telecoms. Indus. Ass'n v. FCC*, 168 F.3d 1332 (D.C. Cir. 1999). In addition, two other other federal appeals courts have upheld the proposition that states can require CMRS providers to contribute to universal service. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Sprint Spectrum v. State Corp. Comm'n of the State of Kansas*, 149 F.3d 1058 (10th Cir. 1999). Federal law is clear: the state of Wisconsin has the authority to require wireless providers to contribute to the universal service fund.

B. The state of Wisconsin should, as a matter of public policy, remove the exemption and require wireless providers to contribute to universal service.

There are a number of reasons why Wisconsin should require wireless carriers to contribute to universal service.

First, removing the exemption for wireless carriers would bring Wisconsin law into alignment with federal law and would advance the federal mandate, contained in § 254(f) of the 1996 Act, of equitable and nondiscriminatory universal service assessments for all telecommunications providers. Section 196.218(3)(a)(1) of the Wisconsin Statutes requires “all telecommunications providers to contribute to the universal service fund,” subject to certain narrowly-defined exceptions stated in § 196.218(3)(b). Section 196.218(3)(b) allows for two categories of exemptions from universal service: providers with small gross operating revenues (defined as less than \$200,000 annually), and providers for whom requiring contribution would not be in the public interest.

Presumably, at the time the Public Service Commission granted the wireless carriers’

exemption from universal service, it did so under the latter category and determined it would not be in the “public interest” for wireless to contribute. If there ever was an argument that it would not be in the “public interest” for wireless carriers to contribute, GTE submits that such argument does not exist today.²

Second, one of the reasons the Public Service Commission did not eliminate the wireless exemption in its recent rulemaking, even though such a change was recommended by the Wisconsin Universal Service Fund Council, was a concern that the issue of whether federal law preempted states from assessing wireless providers for universal service was unsettled. That concern is now moot, as discussed above. The FCC as well as at least three federal appeals courts have ruled that states may require wireless providers to contribute to universal service.

Third, requiring that all telecommunications providers contribute to universal service, as contemplated by both the federal and Wisconsin statutes, is a matter of fundamental fairness and equity. For universal service to work as it is intended, all providers need to contribute, so that the burdens are distributed among all. Some wireless providers have argued that they do not receive any benefits from the universal service program, and for that reason a provider should not be required to contribute until it is classified as an eligible telecommunications carrier (ETC) and is thus able to receive universal service funds. However, that argument is flawed because it ignores the fact that if wireless carriers are not assessed, those who are ETCs receive universal service support even though they do not contribute to the fund. All carriers should support the Universal

² Section 196.218(3)(b) does not, as some wireless carriers have suggested, require that the Public Service Commission make a finding that it would be in the public interest for wireless carriers to contribute to universal service before assessing them. In fact, the “public interest” exception in the statute reads the

Service Fund regardless, of whether they receive support. Wireline providers are obligated to contribute to the USF regardless of whether they receive funds from it, so wireless providers would be no more disadvantaged by having to contribute. In addition, wireless customers benefit from universal service programs by being connected to the public switched network. Wireless service is growing rapidly in Wisconsin, and is already replacing wireline service in some of GTE's resort service areas. To exclude wireless providers from universal service obligations necessarily impacts rates for wireline customers in the long run.

Fourth, although the Public Service Commission expressed concern, at a hearing last year on these rules, that the amount of money in the fund was not being spent as quickly as anticipated, that concern is not an appropriate reason to exclude CMRS providers from contributing to the fund. Adding CMRS providers as contributors would not affect the fund size or surplus; instead, it would lower the level of assessment for all providers, because the assessment would be divided among a larger number of contributors, a result which is in keeping with the goal of equitable and nondiscriminatory contribution.

Fifth, thirteen of the states in which GTE operates require CMRS providers to contribute to the universal service fund. Those states are Kentucky, Texas, California, Arkansas, New Mexico, Colorado, Kansas, Nebraska, Oklahoma, Utah, Vermont, Wyoming and South Carolina. Wisconsin should do likewise. GTE supports the requirement of wireless providers contributing to universal service even though GTE is itself both a wireline and a wireless provider of services; we have taken this position in

opposite way. All telecommunications carriers, including wireless, are required to contribute, unless there is a finding that requiring contribution is *not* in the public interest.

all states. It is also worth noting that the Wisconsin State Telecommunications Association (WSTA), in written comments provided to the Public Service Commission last year, in the USF rule revision docket publicly recommended that CMRS providers be required to contribute to universal service.

There is one other issue regarding the proposed rules that GTE would like to comment on. At last weeks hearing there were two proposals to amend the rules to allow government agencies to draw from the universal service fund. GTE has no objection to the funds being used for telemedicine or the visually impaired, in fact that was the intention when the fund was originally established. However, if a government agency determines a need that they feel is not being met, they should partner with an eligible non-profit group to obtain funds, or they should work with the Universal Service Council to determine how to solve the problem.

Conclusion

In summary, for all of the reasons we have stated above, GTE urges this committee to recommend that the Public Service Commission delete proposed section PSC 160.18(1)(b) of the Wisconsin Administrative Code and that the rules not be amended to make government agencies eligible for funding.

Thank you for your consideration of these comments.

What is the Telecommunications Equipment Purchase Program (TEPP)?

The TEPP is to help people with disabilities buy equipment they need in order to use basic telephone services. The TEPP is one of several different programs paid for by the Wisconsin Universal Service Fund (USF) established by the Public Service Commission. Money collected from Wisconsin telephone service providers goes into the USF.

This sounds too good to be true! What's the catch?

There is NO CATCH, all you do is request the simple application form, fill it out and mail it in.

The few rules are that an applicant:

- Be a Wisconsin resident.
- Be a person who is deaf, hard of hearing, speech impaired, or mobility or motion impaired.
- Need special equipment to use the telephone in your home or when traveling (like a TTY, volume control, visual alert system, etc.).

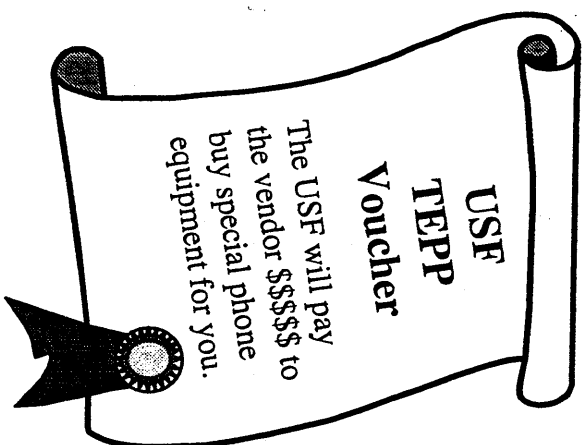
There's no age or income limit, but the same household can only get TEPP money once every three years for the same type of disability. (For example, just one voucher even if two or more deaf people is in the same household.)

How much will TEPP pay?

The amount depends on your disability. On the form, you check off which disability affects your telephone use. You will be mailed a voucher (like a check) for the amount you are qualified to get. These amounts were set based on the usual cost of the equipment needed.

Below are the maximum voucher amounts allowed for each type of disability:

Type of disability	Amount
Hard of Hearing (HH)	\$200
Deaf/Severely HH	500
Speech Impaired	1,500
Mobility Impaired	1,500
Deaf with low vision	2,500
Deaf and Blind	6,700



How much do I have to pay?

You pay the first \$100. The voucher pays the rest, up to the maximum voucher amount. If you buy equipment that is more expensive than the voucher plus your \$100, you must also pay the extra charges. For example, if you mark "Deaf/Severely HH" as your disability, you will get a voucher for \$500. If you buy equipment with a total cost of \$618, you will pay \$118.

What if I can't afford the \$100?

The Wisconsin Office for the Deaf and Hard of Hearing (WDHH) has a special program -- the Telecommunication Assistance Program (TAP). This is only for qualified persons who are deaf, deaf blind, or hard of hearing. Unlike TEPP, TAP does have income requirements. But, this separate, state funded program pays the \$100 TEPP co-payment if you qualify.

How do I get TAP to pay the \$100?

The TEPP and TAP application form are combined. For TAP, you must fill out the household income lines and you also need to send a hearing loss certificate. You must add up all income for everyone living in your house. If your total household income meets the TAP income limits your application will automatically be processed for a TEPP and TAP voucher so your voucher may include the \$100 co-payment.

What kind of phone equipment will TEPP allow me to buy?

- ☎ TTY
- ☎ Amplified handset or phone
- ☎ Telebraille/TTY unit
- ☎ TTY with large visual display
- ☎ Special modem
- ☎ Hands-free speaker phone
- ☎ Puff activator
- ☎ Phone signaling system using flashing lights, a vibrator or a loud bell, and
- ☎ Other specialized equipment may be approved on an individual basis

How do I get an application?

To get a TEPP application form, or answers to your questions, call or write:

Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854
☎ (608) 267-1479 TTY
☎ (608) 231-3305 Voice
☎ (608) 266-3957 Fax
pscrecs@psc.state.wi.us E-Mail

OR, contact:

- ☎ The Wisconsin Office for the Deaf and Hard of Hearing at:
(608) 243-5626 Voice/TTY
- ☎ The Office for Persons with Physical Disabilities or an Independent Living Center at: (608) 267-9582 Voice
(608) 267-9880 TTY
- ☎ Your local telephone company
- ☎ Vendors of specialized equipment.

Where do I mail my TEPP form?

Send completed applications to:

USF Administrator
Williams Young, LLC
P.O. Box 8700
Madison, WI 53708-8700
(608) 274-1980 Voice
(608) 274-4448 TTY
(608) 274-8085 Fax

When will I receive the voucher?

It takes three weeks from the time you mail an application to process it and mail a voucher to you. It takes two or more weeks longer if you apply for TAP also. **If you have questions about the status of your application you may call or write the USF administrator.**

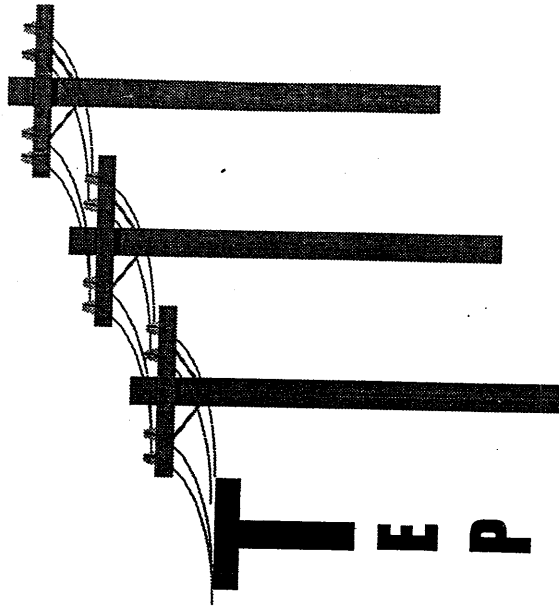
If money is not available when your application arrives, TEPP will hold your application in the order it is received until money is available.

How do I use a TEPP voucher?

Choose your equipment and where you want to buy it. Use the voucher (like a check) to pay the vendor for your qualifying special equipment. You pay: 1) \$100, if not TAP qualified, 2) for any purchase amount over the total of the voucher plus your \$100, and 3) for any nonqualifying items purchased.



Would some special equipment help you make better personal use of the telephone?



The

Telecommunications Equipment Purchase Program

is the

*way to get what you
need for a reasonable
price!*