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CLEARINGHOUSE RULE 95-093

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

Section PSC 161.2, relating to the telecommunications privacy council, is incorrectly numbered. Since other sections in ch. PSC 161 are numbered consecutively, this section should be numbered s. PSC 161.11.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department should review the following terms which are used in the rule and are similar but not identical to terms defined in s. PSC 161.02 to determine whether a separate definition is necessary to assure consistent application of the rule or whether the term should be changed to conform to the term defined in s. PSC 161.02:

- (1) “Caller identification service,” as used in ss. PSC 161.04 (2) (a) (intro.), (4) (a) and (b) 8., (c), (d) and (e) and 161.07 (2) versus “telephone caller identification service” in s. PSC 161.02 (15).
- (2) “Telecommunications service providers,” as used in s. PSC 161.08 (4) (g) and (h) versus “telecommunications provider” in s. PSC 161.01 (12).

b. Should s. PSC 161.02 contain a definition of the term “new telecommunications service”? For example, see s. 196.19 (1m), Stats.

c. The spelling of “co-chairpersons” in s. PSC 161.2 (2) (c) does not conform with the statutory spelling, “cochairpersons.”

d. The rule and accompanying analysis contain a number of provisions that are not clear. The department should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

- (1) The analysis accompanying the rule states that the rule “creates a process to identify and review privacy considerations that may exist as a provider introduces a new telecommunications service.” A reasonable reading of this statement is that the rule will have broad applicability to all providers introducing new telecommunications services, whereas s. PSC 161.03 (1) establishes requirements for privacy considerations for new services that are applicable to a provider who is either a telecommunications utility or telecommunications carrier filing a tariff under the cited provisions.
- (2) The definition of “privacy consideration” in s. PSC 161.02 (9) interprets s. 196.209 (4), Stats. The phrase “outflow of information” in this definition, though it repeats statutory language, is potentially ambiguous and open to interpretation. Can the commission specify from or to whom the information flows? For example, is it an outflow of information if a telecommunications utility shares information about users of a telecommunications service with an affiliate, with another utility or with the general public? Also, what is the relation between consideration of the outflow of information under s. PSC 161.03 and ss. PSC 161.06 and 161.08, relating to subscriber list rental services and customer records?
- (3) The treatment by the commission under s. PSC 161.03 of unresolved privacy considerations with respect to a service offered by a telecommunications carrier under s. 196.499, Stats., is not clear. One interpretation of s. PSC 161.03 is that commission staff shall review a carrier’s tariff application pursuant to s. PSC 161.03 (3) with no further review or determinations by the commission since s. PSC 161.03 (4) does not reference s. 196.499, Stats., and only refers to telecommunications utilities. Another interpretation is that, since s. 196.499 (1), Stats., indicates that telecommunications carriers shall be treated under s. 196.209, Stats., as a telecommunications provider, the process specified in s. PSC 161.03 (4) also applies to a carrier’s tariff application. The commission should consider clarifying its treatment of unresolved privacy considerations for a telecommunications carrier’s tariff application.
- (4) As indicated in s. PSC 161.04 (1) (intro.), s. PSC 161.04 (1) establishes the conditions of service applicable to the provision of calling name delivery and calling number delivery. One of the conditions is that the telecommunications utility must provide “per-call blocking.” See s. PSC 161.04 (1) (a) 1. “Per-line blocking” only applies to calling number delivery subscribers and not to calling name delivery subscribers. See the definitions of “per-call blocking” and “calling number delivery blocking service” in s. PSC 161.02 (4) and (7). In light of the applicability of s. PSC 161.04 (1) established in sub. (1) (intro.), should the definition of “calling number delivery blocking

service” also apply to the prevention of the transmission of telephone line identification to calling name delivery subscribers? A similar question arises with respect to the reference of “per-line blocking” in other provisions in s. PSC 161.04, such as s. PSC 161.04 (2) (a).

- (5) The commission should reconcile the total number of members of the telecommunications privacy council specified in the first and third sentences in s. PSC 161.02 (2) (intro.) with the 15 members delineated in s. PSC 161.02 (2) (intro.) and (a) to (f).
- (6) In light of the override of exemptions identified in ch. 196, Stats., specified in s. 196.209 (1) (intro.), Stats., the commission should review the applicability of each of the substantive sections in ch. PSC 161 to ensure that each section applies only to the intended telecommunications providers. For example, one reading of s. PSC 161.08 (1) (intro.) results in the application of sub. (1) to all telecommunications utilities, including telecommunications resellers. Similarly, s. PSC 161.09 (1) may be read to apply to all telecommunications providers, including a provider who is not a telecommunications utility or carrier.

e. Section PSC 161.04 (1) (b) and (3) (b) refer to a public safety agency or public safety agencies. Are these terms defined by the listing of entities in s. PSC 161.04 (3) (a)? If so, either a cross-reference should be provided to sub. (3) (a) or, in the alternative, a definition of “public safety agency” should be included in s. PSC 161.02.

f. In s. PSC 161.08 (4) (f), can the phrase “in response to lawful process” be more fully developed and clarified?

g. Section PSC 161.10 (1) provides that the commission may waive or modify an application of a provision of ch. PSC 161 as it applies to one or more providers. Subsections (3) and (4) specify items that the commission must consider before making a determination on a waiver request. However, no standards for the commission’s determination are included in s. PSC 161.10. This section should be clarified to include such standards in order that a uniform policy be applied to telecommunications utilities, providers and carriers.

h. In s. PSC 161.2 (2) (a) and (b), the word “a” should be replaced by the phrase “his or her.”