

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 97-129

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.]

1. Statutory Authority

The commission states in the analysis accompanying the rule and in associated background material that it has the jurisdiction to establish the fresh-look procedures set forth in the rule. However, the provisions in the rule authorizing a customer to terminate an existing contract with an incumbent telecommunications utility under s. PSC 178.06 (3) (intro.), the waiving of termination penalties imposed by an existing contract under s. PSC 178.06 (4) and the voiding of provisions in an existing contract, under s. PSC 178.08 may be vulnerable to challenge under state and federal constitutional provisions that prohibit the impairment of the obligation of contracts. The commission should be prepared to respond to this possible problem.

2. Form, Style and Placement in Administrative Code

The commission should review and, as appropriate, correct the following deficiencies in drafting style or form:

a. The text of the rule should be presented in sequentially numbered sections. [See s. 1.04 (1), Manual. For example, the text of the rule should be preceded by the introduction: “SECTION 1. Chapter PSC 178 is created to read:”.]

b. In s. PSC 178.01 (1), the phrase “these rules” should be replaced by the phrase “this chapter.”

c. In s. PSC 178.01 (3), the phrase “shall preclude” should be replaced by the word “precludes.”

d. In s. PSC 178.02 (1), the phrase “shall mean” should be replaced by the word “means.” Also, the final three sentences of this subsection are substantive in nature and should not be included in a definition. [See s. 1.01 (7) (b), Manual.]

e. In s. PSC 178.05 (2), the phrase “effective date of this rule” should be replaced by the phrase “effective date of this section.” Also, in the second sentence, the phrase “the effective date of this section” should be followed by the notation “... [revisor inserts date].”

f. In s. PSC 178.06, the introduction should be rewritten to read: “Fresh-look procedures under s. PSC 178.05 (1) shall comply with all of the following:”.

g. In s. PSC 178.06 (3), the last line of the introduction should be rewritten to read: “The customer and the incumbent telecommunications utility shall comply with all of the following requirements:”.

h. In s. PSC 178.06 (4), the phrase “A ‘similar contract’ is” should be replaced by the phrase “In this subsection, ‘similar contract’ means.”

i. In s. PSC 178.07 (1), the word “per” should be replaced by the word “under.” Also, in sub. (2), the phrase “these rules” should be replaced by the phrase “this chapter.”

j. Section PSC 178.09 cites “196.03 (6) (a) - (g), Stats.” The preferred style is to use “to” in lieu of the hyphen. [See s. 1.07 (2), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. The reference in s. PSC 178.03 (1) (b) to “a geographical area that has sufficient facilities-based local exchange service competition as defined by this chapter” is vague. Can the commission be more specific? Does the commission intend that these areas be limited to those specified in s. PSC 178.05 (2)?

b. In s. PSC 178.05 (1), the last cross-reference should be replaced by a reference to “s. PSC 178.03 (1) (a).”

c. In s. PSC 178.07 (1), if the last sentence intends to refer to s. 138.04, Stats., relating to a legal rate of interest, the provision should explicitly contain the statutory reference.

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

a. The rule uses two or more terms to identify or describe types of telecommunications utilities, telecommunications services, competition and geographic areas. The commission should review the entire rule to determine whether multiple terms are necessary to convey the meaning of the rule or a single term for each of these entities or concepts would improve the clarity of the rule. The commission should also review whether any of these terms which are undefined should be defined to ensure more consistent application of the rule. Examples of these potentially overlapping terms include the following:

- (1) “Local exchange telecommunications utilities” in s. PSC 178.01 (1), “incumbent telecommunications utility” in ss. PSC 178.01 (2), 178.02 (2) and 178.05 (3) (a) and (b) and “telecommunications utility” in ss. PSC 178.03 (1) (intro.) and 178.05 (1) and (2).
- (2) “Emerging facilities-based local exchange service” in s. PSC 178.01, “telephone exchange service” in s. PSC 178.02 (3), “local exchange service” in s. PSC 178.03 (1) (a) 4. and (b), “telecommunications service” in ss. PSC 178.04 (1) (e) and 178.05 (1) and “facilities-based local exchange telecommunications services” in s. PSC 178.05 (3) (a).
- (3) “Local exchange competition” in s. PSC 178.01, “facilities-based local exchange service competition” in ss. PSC 178.03 (1) (b) and 178.05 (1), “facilities-based competition” in s. PSC 178.03 (2) and “emerging facilities-based competition” in s. PSC 178.05 (2) and (3) (intro.).
- (4) “Geographic area” or “geographic areas” in ss. PSC 178.03 (2), 178.04 (1) (intro.) and 178.05 (2) and (3) (a) and “geographical market” in s. PSC 178.05 (1).

b. Does the commission intend to exclude from the definition of “incumbent telecommunications utility” in s. PSC 178.02 (2) telecommunications utilities that are providing one or more types of local exchange services exclusively to business customers? As drafted, this definition only applies to telecommunications utilities providing services to residential customers, given the use of the term “basic local exchange service” in this definition. [See the definition of “basic local exchange service” in s. 196.01 (1g), Stats.] Also, a comma should be inserted following the word “interest.”

c. In s. PSC 178.03 (1) (b), the phrase “identified to the” should be replaced by the phrase “identified in the.”

d. The preferred drafting style is to set forth a procedure or substantive requirement once. The rule contains two separate provisions authorizing the commission to determine that a geographic area is subject to facilities-based competition. See ss. PSC 178.03 (2) and 178.05 (1). These provisions are not consistent in the standard that the commission is to use in identifying the area and not consistent with respect to whom may petition the commission for this determination. In addition, the rule establishes the 240-day period in which a customer may exercise the fresh-look procedure set forth in the rule in two provisions, ss. PSC 178.03 (2) and 178.06 (1).

e. The commission should review the rule to remove unnecessary words which do not contribute to the plain reading of the text of the rule. See, for example, the use of “thereupon” in s. PSC 178.05 (1), “timely” and “strict” in the last sentence in s. PSC 178.06 (3) (a) and the second occurrence of the word “period” in the first sentence in s. PSC 178.06 (5).

f. In s. PSC 178.05 (3) (intro.), does the phrase “any other geographical area” refer to areas not mentioned in sub. (2)? Or does the phrase refer to areas not mentioned in subs. (1) and (2)? In any event, an appropriate cross-reference should be included. Also, in sub. (3) (b), the phrase “or more” is redundant and the word “chose” should be replaced by the word “choose.”

g. The commission should also review the use of the undefined term “commercial mobile radio service providers” in s. PSC 178.05 (3) (a) to determine whether it should be defined to ensure consistent application of the rule.

h. The commission should review the formula for computing the termination compensation set forth in s. PSC 178.06 (4) and (5) to ensure its clarity. Examples of potential ambiguity in the formula include the following:

- (1) Is the basic termination compensation the amount of compensation required under the “similar contract” or the difference between the amount required under the similar contract for the actual performance period less the amount paid under the original contract for the actual performance period?
- (2) What happens if the incumbent telecommunications utility has no “similar contract”?
- (3) What are the prices referred to in the introductory clause in the first sentence in s. PSC 178.06 (5)? Is the “price for the period of actual performance” the price paid for services under the original contract or under the similar contract? Similarly, is the “price paid under the contract” the price under the original contract or the similar contract?

i. The grammar of the first sentence in s. PSC 178.06 (7) would be improved if “the” were inserted before “date.”