

1989 Senate Bill 282

Date of enactment: **April 27, 1990**
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1989 WISCONSIN ACT 344

AN ACT *to repeal* 196.20 (5) (b) 3; *to amend* 196.01 (8), 196.02 (2), 196.09 (1), 196.11 (2), 196.20 (3), 196.20 (5) (b) 1, 196.20 (5) (b) 2, 196.20 (5) (c), 196.20 (5) (d), 196.205 (1) (intro.), 196.213 (1) (b), 196.213 (2), 196.215 (2) (intro.), 196.215 (2) (c) (intro.), 196.215 (2) (c) 1 and 1m, 196.215 (2) (d), 196.215 (2m), 196.215 (3) (a), 196.215 (3) (am) 2, 196.215 (3) (b), 196.215 (3) (c), 196.215 (4), 196.26 (4) and 196.37 (3); *to repeal and recreate* 196.20 (5) (a); and *to create* 196.09 (9), 196.20 (5) (b) 1g and 1r, 196.20 (5) (c) 4 and 5, 196.20 (6), 196.215 (1) (am), 196.215 (2g), 196.215 (3) (bm), 196.215 (3) (cm), 196.215 (5), 196.215 (6), 196.215 (7), 196.215 (8), 196.215 (9), 196.28 (4) and 196.37 (4) of the statutes, **relating to**: the regulation of telecommunications utilities and granting rule-making authority.

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

SECTION 1. 196.01 (8) of the statutes is amended to read:

196.01 (8) “Small telecommunications utility” means any telecommunications utility ~~which or a successor in interest of a telecommunications utility that~~ provided landline local and access telecommunications service as of January 1, 1984, ~~and which provides such service to less than 7,500 consumers, as defined in s. 196.213 (1) (a) 1., and that has less than 9,000 access lines in use~~ in this state.

SECTION 2. 196.02 (2) of the statutes is amended to read:

196.02 (2) DEFINITION; CLASSIFICATION. In this subsection, “public utility” does not include a telecommunications cooperative or a small telecommunications utility except as provided under ~~ss. s.~~ 196.205 and (1) or 196.215 (2). The commission shall provide for a comprehensive classification of service for each public utility. The classification may take into account the quantity used, the time when used, the purpose for which used, and any other reasonable consideration. Each public utility shall conform its schedules of rates, tolls and charges to such classification.

SECTION 3. 196.09 (1) of the statutes is amended to read:

196.09 (1) In this section, “public utility” does not include a telecommunications cooperative except as provided under s. 196.205 (1). In subs. (2) to ~~(8)~~ (7), “public utility” does not include a small telecommunications utility, except as provided under s. 196.215 (2). Subsection (9) only applies to a small telecommunications utility. Every public utility shall file with the commission, within such time as may be required by the commission, its estimate of the average annual rate of depreciation required for each of its classes of fixed capital used for public utility purposes, and of the composite annual rate of depreciation required for such fixed capital as an aggregate, which shall constitute the public utility’s estimates of the amount which should be returned to it out of its rates for service, to meet the depreciation of its property.

SECTION 4. 196.09 (9) of the statutes is created to read:

196.09 (9) (a) 1. The commission shall create by order guidelines establishing classes of fixed capital that small telecommunications utilities use for public utility purposes and a range of annual depreciation rates for each of those classes.

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2. The commission shall review biennially the guidelines established under subd. 1, except that if the commission receives, more than 365 days before the deadline for a biennial review, a written request from a small telecommunications utility for a review, the commission shall review the guidelines no later than 365 days after receiving the request.

(b) The commission shall review a small telecommunications utility's estimate of its annual rate of depreciation for a specified class of fixed capital and determine if that rate is just and reasonable if the commission receives a written request for a review from that small telecommunications utility or if that small telecommunications utility becomes subject to subs. (2) to (7) under s. 196.215 (2). The commission shall determine that an annual depreciation rate is just and reasonable if the rate falls within the range established for that class under par. (a) 1. or if the commission previously determined that the rate is just and reasonable.

SECTION 5. 196.11 (2) of the statutes is amended to read:

196.11 (2) Any arrangement under this section shall be under the supervision and regulation of the commission. The commission may order any rate, charge or regulation which the commission deems necessary to give effect to the arrangement. The commission may make any change in a rate, charge or regulation as the commission determines is necessary and reasonable and may revoke its approval and amend or rescind all orders relative to any arrangement. This subsection does not apply to telecommunications cooperatives or small telecommunications utilities except as provided under ss. s. 196.205 and (1) or 196.215 (2).

SECTION 6. 196.20 (3) of the statutes is amended to read:

196.20 (3) ~~This~~ Except as provided in sub. (5) (a), this section does not apply to telecommunications cooperatives or small telecommunications utilities ~~except as provided~~ unless made subject to this section under ss. s. 196.205 and (1) or 196.215 (2).

SECTION 7. 196.20 (5) (a) of the statutes is repealed and recreated to read:

196.20 (5) (a) This subsection applies to any of the following:

1. A small telecommunications utility subject to this section under s. 196.215 (2) that files with the commission a proposed change in its rate schedules that constitutes an increase in rates, tolls or charges to consumers.

2. A small telecommunications utility subject to this subsection under s. 196.215 (5) to (7).

SECTION 8. 196.20 (5) (b) 1. of the statutes is amended to read:

196.20 (5) (b) 1. If ~~an applicant~~ a small telecommunications utility files a proposed change in rate schedule with the commission, it shall file with the proposed change, on a form prescribed by the commission by rule,

information sufficient for the commission to consider the proposed change.

SECTION 9. 196.20 (5) (b) 1g and 1r of the statutes are created to read:

196.20 (5) (b) 1g. If the commission orders a review of a proposed rate increase under s. 196.215 (5), the commission shall use the information filed under s. 196.213 (2) to consider the proposed rate increase. For purposes of this subsection, the commission shall consider that information as being filed on the day that the commission orders a review of a proposed rate increase.

1r. If the commission orders a review of rates, tolls or charges under s. 196.215 (6) or (7), the small telecommunications utility shall file information sufficient for the commission to consider rates, tolls and charges within 120 days after the small telecommunications utility receives notice from the commission that it is subject to this subsection.

SECTION 10. 196.20 (5) (b) 2. of the statutes is amended to read:

196.20 (5) (b) 2. Within ~~20~~ 30 days after ~~an applicant~~ a small telecommunications utility files information under ~~subd. 1~~ subds. 1 to 1r, the commission ~~may notify~~ shall inform the applicant of small telecommunications utility if any additional information ~~is~~ is necessary for the commission's consideration of the proposed change. The commission may dismiss an application for a proposed rate increase if the small telecommunications utility fails to submit information requested by the commission. An application dismissed under this subdivision may be refiled at any time.

SECTION 11. 196.20 (5) (b) 3. of the statutes is repealed.

SECTION 12. 196.20 (5) (c) of the statutes is amended to read:

196.20 (5) (c) 1. ~~If the commission has received all of the information it has requested under par. (b) or 20- days have elapsed since the applicant filed a proposed change in rates and the commission has not requested any such information or 5 days have elapsed since the commission has requested and received any information under par. (b), whichever is sooner, the commission shall require the applicant to~~ No later than 14 days after a small telecommunications utility files information under par. (b) 1. to 1r, unless the commission grants an extension, the small telecommunications utility shall send a written notice to all of its consumers and to any other person requesting notice. The notice shall designate a period of time during which the commission will receive written comments in favor of or against the applicant's small telecommunications utility's proposed rate increase or the small telecommunications utility's rates, tolls or charges and during which a request for a hearing may be submitted under subd. 2.

2. After ~~the applicant~~ a small telecommunications utility sends the notice under subd. 1, any person may

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submit to the commission a written objection to the proposed rate increase or to rates, tolls or charges or may request to have a hearing under s. 227.44 on the applicant's proposed changes and shall specify his or her interest in the proceeding. If the commission determines that any person who has submitted a request under this subdivision is entitled to have all of the rights of a party under s. 227.44, the commission shall conduct a hearing on the proposed changes.

3. If the period of time designated in a notice under subd. 1 has expired and the commission does not determine that at least one person is entitled to a hearing under subd. 2, or prior to any hearing to which the commission determines a person is entitled under subd. 2, the The commission shall give the applicant small telecommunications utility, commission staff and full all parties an opportunity to propose stipulations of facts, identify any issue between the parties and submit arguments in writing on such issues. On any issue for which no stipulation is reached, the commission shall conduct the hearing requested under subd. 2, or if no hearing was requested under subd. 2, the commission shall give an opportunity for a hearing to the applicant and to the commission staff Unless the commission and the small telecommunications utility agree to a later date, the commission shall serve any proposed stipulation on all parties and shall give any notice required under subd. 4 within 120 days after the commission receives the application for the proposed rate increase or receives the information under par. (b) 1r.

SECTION 13. 196.20 (5) (c) 4. and 5. of the statutes are created to read:

196.20 (5) (c) 4. The commission shall give any person submitting a written objection or requesting a hearing under subd. 2 notice of a proposed stipulation by regular mail. Within 10 days after the commission mails the notice, a person may submit to the commission a written request for a hearing, specifying his or her interest in the proceeding. If the commission determines that the person is entitled to have all rights of a party under s. 227.44, the commission shall conduct a hearing under s. 227.44. If the notice is returned undelivered or if a person does not request a hearing under this subdivision within 10 days after the commission mails the notice, the person waives the right to request a hearing.

5. The commission shall conduct a hearing under this subsection if a stipulation is not reached on all issues, if the commission determines that a hearing is required under subd. 4 or if the small telecommunications utility or the commission staff requests a hearing. The small telecommunications utility and the commission staff shall serve proposed testimony on all parties at least 10 days before a hearing.

SECTION 14. 196.20 (5) (d) of the statutes is amended to read:

196.20 (5) (d) The If the commission does not conduct a hearing under this subsection, the commission shall issue a final order on the merits of the application under this subsection no later than 120 150 days after the notice is sent under par. (c) 1., except that if commission receives the application or receives the information under par. (b) 1r. If the commission has conducted conducts a hearing on the proposed increase, the commission shall issue the order no later than 180 days after the notice is required to be sent commission receives the application or receives the information under par. (b) 1r. If the commission conducts a hearing, the hearing examiner may extend the time for issuing an order up to 30 additional days. Notwithstanding s. 196.34, the commission may require the small telecommunications utility to bear the expense of a stenographer to record a hearing conducted under this subsection.

SECTION 15. 196.20 (6) of the statutes is created to read:

196.20 (6) If a telecommunications utility that is not a small telecommunications utility and that has less than 100,000 access lines in use in this state files with the commission an application for a rate change that constitutes an increase in rates, the commission shall issue the order on the application no later than 180 days after the commission receives the application. The hearing examiner may extend the time for issuing an order up to 30 additional days. Notwithstanding s. 196.34, the commission may require the telecommunications utility to bear the expense of a stenographer to record a hearing conducted under this subsection.

SECTION 16. 196.205 (1) (intro.) of the statutes is amended to read:

196.205 (1) (intro.) A telecommunications cooperative may elect to be subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (1), 196.11 (2), 196.20, 196.26 in any of the following ways:

SECTION 17. 196.213 (1) (b) of the statutes is amended to read:

196.213 (1) (b) "Rate increase" means any an increase in rates any rate, toll or charge for any class of consumer on the schedules filed under s. 196.19.

SECTION 18. 196.213 (2) of the statutes is amended to read:

196.213 (2) Unless subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (8) (7), 196.11 (2), 196.20 and 196.26, at least 60 days and not more than 100 days before the effective date of any a rate increase proposed by a small telecommunications utility, the small telecommunications utility shall notify each of its consumers and the commission of the proposed rate increase. Notice to the commission shall include a list of the small telecommunications utility's published consumers and a summary of

the justification for the proposed rate increase. Notice by the small telecommunications utility to all consumers shall be in a form prescribed by the commission, shall be by mail and shall include a schedule of the proposed rates, tolls and charges, the effective date of the rates, tolls and charges and the procedure necessary for consumers to petition the commission to determine rates, tolls or charges in lieu of the proposed rates, tolls or charges, including but not limited to a notice that the deadline for commission receipt of petitions is 60 days after a small telecommunications utility mails notice of a proposed rate increase to consumers. The commission shall develop the form in cooperation with representatives of small telecommunications utilities and other interested persons. Notwithstanding s. 227.01 (9), the form is not a rule. If a small telecommunications utility inserts the procedures to petition the commission in the telephone directory published by the utility, the directory shall describe the petitioning procedures under s. 196.215 (3) (a) ~~and~~ (b) ~~and~~ (cm). A reference to the location of the procedure described in the directory shall be adequate notice of the procedure to consumers billed for local telecommunications service access lines in lieu of the form.

SECTION 19. 196.215 (1) (am) of the statutes is created to read:

196.215 (1) (am) "Equity-~~thin~~ utility" means a small telecommunications utility with less than 25% common stock equity in its utility capital structure.

SECTION 20. 196.215 (2) (intro.) of the statutes is amended to read:

196.215 (2) (intro.) A small telecommunications utility may be made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (8) (7), 196.11 (2), 196.20 and 196.26 as they apply to any rate, toll, charge or schedule or any joint rate, in any of the following ways:

SECTION 21. 196.215 (2) (c) (intro.) of the statutes is amended to read:

196.215 (2) (c) (intro.) ~~By Except as provided in sub. (2g),~~ by a determination of the commission that:

SECTION 22. 196.215 (2) (c) 1. and 1m of the statutes are amended to read:

196.215 (2) (c) 1. The small telecommunications utility's proposed rate increase for any service except the provision of residential basic local exchange service including nonoptional extended area service exceeds, in any one year, 30% or, ~~in the case of residential local telecommunications service, the small telecommunications utility's proposed rate increase for residential basic local exchange service including nonoptional extended area service exceeds, in any one year, 30% or \$2, whichever is higher.~~

1m. The small telecommunications utility's proposed rate increases for any service except the provision of residential basic local exchange service including nonoptional extended area service exceed, in any 4 consecu-

utive years, 100% or, ~~in the case of residential local telecommunications service, the small telecommunications utility's proposed rate increases for residential basic local exchange service including nonoptional extended area service exceed, in any 4 consecutive years, 100% or \$10, whichever is higher.~~

SECTION 23. 196.215 (2) (d) of the statutes is amended to read:

196.215 (2) (d) By action of its consumers under sub. (3) (b).

SECTION 24. 196.215 (2g) of the statutes is created to read:

196.215 (2g) (a) In this subsection, "basic local exchange service" means any service providing access to and the transmission of 2-way switched voice communications within a local calling area but does not include installation of or enhancements to basic local exchange service or local per-call coin charges.

(b) A small telecommunications utility may petition the commission for an exemption from sub. (2) (c) 1. and 1m for a proposed rate increase for a telecommunications service other than basic local exchange service. The commission may grant the petition if it is reasonable and in the public interest. If the commission does not enter an order disposing of the petition within 20 days after its receipt, the petition is denied.

SECTION 25. 196.215 (2m) of the statutes is amended to read:

196.215 (2m) (a) A small telecommunications utility ~~which that~~ has made itself subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (8) (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (a) may exempt itself from those sections by amending its articles of incorporation.

(b) A small telecommunications utility ~~which that~~ has made itself subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (8) (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (b) may exempt itself from those sections by majority vote of all the voting members of its board of directors.

(c) A small telecommunications utility ~~which that~~ the commission has made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (8) (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (c) 1 and 1m may exempt itself from those sections by withdrawing its the proposed rate increase that exceeds the limits established in sub. (2) (c) 1. or 1m. A small telecommunications utility may refile a proposed rate increase at any time unless the commission has determined rates, tolls or charges under sub. (6) (b).

(d) A small telecommunications utility ~~which that~~ the commission has made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to (8) (7), 196.11 (2), 196.20 and 196.26 under sub. (2) (c) 2. may exempt itself from those sections by

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correcting its failure to comply substantially with s. 196.213 or this section.

SECTION 26. 196.215 (3) (a) of the statutes is amended to read:

196.215 (3) (a) ~~If by the day before the effective date of a proposed rate increase within 60 days after notice of a proposed rate increase is mailed~~ under s. 196.213 the commission has not received petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility ~~proposing the increase, which petition requests requesting~~ that the commission determine the rates, tolls or charges on the proposed increase, the commission shall certify ~~such that~~ fact to the small telecommunications utility and the ~~separate~~ small telecommunications utility's proposed rate increase shall become effective ~~take effect~~ as published in the notice to consumers under s. 196.213. ~~Rates, tolls and charges established by a small telecommunications utility under this paragraph shall be in effect for at least 365 days. If by the day before the effective date of the proposed rate increase within 60 days after notice of a proposed rate increase is mailed the commission has received receives~~ petitions from at least the number of eligible consumers specified in par. (am) of the small telecommunications utility requesting that the commission determine the rates, tolls or charges on the proposed increase, the commission shall ~~notify the small telecommunications utility that the proposed rates will not take effect as published in the notice and that the commission will determine the rates on the proposed rate increase. Rates established by the commission or by a small telecommunications utility under this paragraph shall be in effect for at least 365 days proceed under sub. (5) (e).~~

SECTION 27. 196.215 (3) (am) 2 of the statutes is amended to read:

196.215 (3) (am) 2. ~~In the case of For~~ a proposed rate increase for any class of consumers under s. 196.213 (1) (a) 1., the ~~number of~~ eligible consumers under par. (a) shall be ~~10% of such consumers equal to 9.5% of the small telecommunications utility's access lines in use unless this number of consumers is:~~

a. Less than 50, in which case 50 ~~of such~~ consumers shall constitute the number of eligible consumers; or

b. Greater than 500, in which case 500 ~~of such~~ consumers shall constitute the number of eligible consumers.

SECTION 28. 196.215 (3) (b) of the statutes is amended to read:

196.215 (3) (b) If the commission receives petitions from at least the number of eligible consumers specified in par. ~~(am) 2 (bm)~~ of the small telecommunications utility requesting that the small telecommunications utility be subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to ~~(8) (7)~~, 196.11 (2), 196.20 and 196.26, the commission shall certify ~~such that~~ fact to the small telecommunications utility. A signature on a petition may not be counted if the

date of the signature is more than 90 days before the filing of the petition. The small telecommunications utility shall mail ballots approved by the commission to all of its consumers along with a written direction to return the ballots to the commission. The small telecommunications utility may enclose the ballot and the written direction with the regular periodic billing for the small telecommunications utility's services. The commission shall keep the ballots sealed until a date agreed upon by the commission. On ~~such that~~ date, the commission shall count the ballots. After counting the ballots, the commission shall declare the results of the election. If the majority of the small telecommunications utility's voting consumers vote in favor of the small telecommunications utility being subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to ~~(8) (7)~~, 196.11 (2), 196.20 and 196.26, the small telecommunications utility shall be subject to ~~such those~~ sections 30 days after the date on which the ballots are counted commission declares the election results. The small telecommunications utility shall pay the mailing cost of consumers returning the ballots to the commission. The consumers of that small telecommunications utility may not file petitions for an election under this paragraph until at least 270 days after the commission declares the results of an election under this paragraph and an election may not be held under this paragraph until at least 365 days after the commission declares those results.

SECTION 29. 196.215 (3) (bm) of the statutes is created to read:

196.215 (3) (bm) For a petition under par. (b), for any class of consumers under s. 196.213 (1) (a) 1., the number of eligible consumers shall be equal to 12% of the small telecommunications utility's access lines in use unless this number is:

1. Less than 50, in which case 50 consumers shall constitute the number of eligible consumers; or

2. Greater than 500, in which case 500 consumers shall constitute the number of eligible consumers.

SECTION 30. 196.215 (3) (c) of the statutes is amended to read:

196.215 (3) (c) The consumers of a small telecommunications utility ~~which that~~ has been made subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (2) to ~~(8) (7)~~, 196.11 (2), 196.20 and 196.26 under par. (b) may follow the election and petition procedures under par. (b) to revoke their election that the small telecommunications utility be subject to ~~ss. 196.02 (2), 196.09 (2) to (8), 196.11 (2), 196.20 and 196.26 those sections.~~

SECTION 31. 196.215 (3) (cm) of the statutes is created to read:

196.215 (3) (cm) If the commission receives a petition from at least the number of eligible consumers specified in par. (am) 2 of the small telecommunications utility

requesting that the commission investigate and determine if the small telecommunications utility's rates, tolls or charges are just and reasonable, the commission shall notify the small telecommunications utility that the commission will investigate under sub. (6). A signature on a petition may not be counted if the date of that signature is more than 60 days before the filing of the petition.

SECTION 32. 196.215 (4) of the statutes is amended to read:

196.215 (4) A small telecommunications utility shall be subject to ss. 196.28 and 196.37 as they apply to any rate, toll or charge and to ss. 196.02 (2), 196.09 (4) (2) to (7), 196.11 (2), 196.20 and 196.26 under an order of the commission issued under sub. (2) (c) 3. until the first day of the 24th month after affirmation of the order by the circuit court of Dane county or after the expiration of the period during which a petition for review or rehearing is authorized under s. 196.52 or 227.16, whichever is sooner.

SECTION 33. 196.215 (5) of the statutes is created to read:

196.215 (5) (a) Interest coverage ratio is calculated by adding net operating income to income earned on temporary cash investments, deducting applicable federal income taxes and applicable taxes imposed under ch. 71, and dividing that figure by interest expense.

(b) 1. Target rate is calculated by adding Moody's average of yields on Baa public utility bonds, expressed in percent, to a percentage set by the commission under subd. 2.

2. The commission shall promulgate a rule establishing percentages used to calculate target rate under subd. 1. Percentages set under this subdivision shall be in effect for at least 7 years. The commission shall adopt a rule to change a percentage set under this subdivision at least 2 years before the effective date of the change. The commission may not change a percentage set under this subdivision by more than 20% of the amount of the percentage.

3. The rate of return range for a small telecommunications utility is a range 2% above to 2% below the small telecommunications utility's target rate.

4. Annually no later than January 31, the commission shall issue an order adjusting the Moody's average of yields on Baa public utility bonds used to determine the target rate by taking the most recent 12-month average of Moody's average of yields on Baa public utility bonds. The order shall take effect on February 1 immediately following the order. The commission may issue the order without a hearing.

(c) An equity-thin utility is building equity if the small telecommunications utility has an average dividend payout of less than 50% of its average net income after taxes or if the commission determines that the small telecommunications utility is increasing the percentage

of common stock equity in its utility capital structure through other appropriate means.

(d) 1. The commission shall use the information filed by a small telecommunications utility under s. 196.07 in the 3 most recent years to calculate average interest coverage ratio, average rate of return on common stock equity, average dividend payout and average net income after taxes.

2. The commission may adjust, for making a determination under this section, any salary, affiliated interest charge or depreciation expense that the commission determines to be unreasonable in calculating the rate of return on common stock equity of a small telecommunications utility. The commission may adjust, for making a determination under this section, a depreciation rate used by a small telecommunications utility only if that depreciation rate falls outside the range established under s. 196.09 (9) or has not otherwise been approved by the commission within the previous 24 months. If the commission adjusts for depreciation, it shall use the rate established under s. 196.09 (9) (a) that is closest to the rate used by the small telecommunications utility.

(e) If consumers petition the commission under sub. (3) (a), the small telecommunications utility may implement the proposed rate increase as published in the notice under s. 196.213, subject to refund. The commission shall proceed under s. 196.20 (5).

SECTION 34. 196.215 (6) of the statutes is created to read:

196.215 (6) (a) If consumers request that the commission investigate a small telecommunications utility's rates, tolls or charges under sub. (3) (cm), the commission shall dismiss the petition if any of the following financial conditions exists:

1. The small telecommunications utility has an average interest coverage ratio of less than 2.

2. The small telecommunications utility has an average rate of return on common stock equity within or below the small telecommunications utility's rate of return range.

3. If an equity-thin utility, the small telecommunications utility is building equity.

(b) Annually, if the commission does not dismiss a petition under par. (a), the commission shall proceed under s. 196.20 (5). Rates, tolls or charges established by the commission under this paragraph shall be in effect for at least 365 days.

(c) Subsection (5) (a) to (d), as it relates to financial conditions under that subsection, applies to financial conditions under this subsection.

SECTION 35. 196.215 (7) of the statutes is created to read:

196.215 (7) (a) The commission on its own motion may, under s. 196.20 (5), investigate, determine and

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order rates, tolls or charges of a small telecommunications utility if at least 3 of the following conditions exist:

1. The small telecommunications utility's basic single-party residential flat rate exceeds the monthly rate under par. (b) or, if the small telecommunications utility does not use a basic single-party residential flat rate, the small telecommunications utility's rate for that service exceeds a rate established by the commission that is equivalent to the monthly rate under par. (b).

2. The small telecommunications utility has an average interest coverage ratio of more than 2.

3. The small telecommunications utility has an average rate of return on common stock equity above the rate of return range.

4. If an equity-thin utility, the small telecommunications utility is not building equity.

(b) 1. The basic single-party residential flat rate shall be \$9 per month, subject to adjustment under subd. 2.

2. Annually, no later than March 31, the commission shall issue an order adjusting the basic single-party residential flat rate by the percentage change, unadjusted for seasonal variation, in the producer price index for local residential telephone service, as determined by the U.S. department of labor, for the previous year. The order shall take effect on April 1 immediately following the order. The commission may issue the order without a hearing.

3. If the U.S. department of labor eliminates the producer price index, the commission shall adopt the most comparable replacement index after comments from interested parties and a hearing, if requested.

(c) If the commission does not make a determination regarding the financial conditions under par. (a) 2. to 4. by October 1 or within 180 days after a small telecommunications utility files the information required under s. 196.07, whichever is later, the commission may not on its own motion order that small telecommunications utility to change its rates, tolls or charges under par. (a).

(d) Rates, tolls or charges established by the commission under this subsection shall be in effect for at least 365 days.

(e) Subsection (5) (a) to (d), as it relates to financial conditions under that subsection, applies to financial conditions under this subsection.

SECTION 36. 196.215 (8) of the statutes is created to read:

196.215 (8) If the amount of a small telecommunications utility's federal or state taxes decreases due to a decrease in tax rates, the decrease shall be reflected in rates, tolls or charges unless the small telecommunications utility files adequate information with the commission regarding why a decrease should not be reflected in rates, tolls or charges. The proposed method of implementing the decrease shall be submitted to the commission before the effective date of the tax rate decrease, or as soon as practicable after that effective date. The com-

mission may deny or modify the proposed method if the commission determines that the method is not fair and reasonable. The commission shall review any information that a small telecommunications utility submits to support its position that rates, tolls or charges should not reflect the decrease and determine, based on all information available to the commission, whether a decrease in rates, tolls or charges should be implemented and the extent of any decrease. Any decrease under this subsection shall take effect on the effective date of the tax rate decrease. The commission may issue an order, without a hearing, requiring a small telecommunications utility to refund to consumers excess rates, tolls or charges paid by consumers if a decrease under this section is implemented after the effective date of the tax rate decrease.

SECTION 37. 196.215 (9) of the statutes is created to read:

196.215 (9) This section does not limit the commission's authority to regulate the capital structure of a small telecommunications utility.

SECTION 38. 196.26 (4) of the statutes is amended to read:

196.26 (4) (a) This section does not apply to any rate, toll, charge or schedule ~~or any joint rate~~ of any telecommunications cooperative except as provided under s. 196.205 (1) or unless at least 5% of the customers of the telecommunications cooperative file a complaint with the commission that the rate, toll, charge or schedule ~~or joint rate~~ is in any respect unreasonable, insufficient or unjustly discriminatory.

(b) This section does not apply to any rate, toll, charge or schedule ~~or any joint rate~~ of any small telecommunications utility except as provided under s. 196.215 (2).

SECTION 39. 196.28 (4) of the statutes is created to read:

196.28 (4) This section does not apply to rates, tolls or charges of a telecommunications cooperative or small telecommunications utility except as provided in s. 196.205 (1) or 196.215 (2).

SECTION 40. 196.37 (3) of the statutes is amended to read:

196.37 (3) Any public utility to which an order under this section applies shall make such changes in schedules on file under s. 196.19 to make the schedules conform to the order. The public utility may not make any subsequent change in its rates, tolls or charges, ~~or joint rates,~~ without the approval of the commission, except as provided in s. 196.205 (1) or 196.215 (2).

SECTION 41. 196.37 (4) of the statutes is created to read:

196.37 (4) This section does not apply to rates, tolls or charges of a telecommunications cooperative or small telecommunications utility except as provided in s. 196.205 (1) or 196.215 (2).

SECTION 42. Nonstatutory provisions. (1) Notwithstanding section 196.215 (5) (b) 4. of the statutes, as created by this act, on the first day of the 2nd month beginning after publication, the public service commission shall issue an order establishing the Moody's average of yields on Baa public utility bonds by taking the most recent 12-month average of Moody's average of yields on Baa public utility bonds to determine the target rate under section 196.215 (5) (b) 1. of the statutes, as created by this act.

(2) No later than January 2, 1993, the public service commission shall prepare a report and submit it to the chief clerk of each house of the legislature for distribution to the appropriate standing committees in the manner provided under section 13.172 (3) of the statutes. The report shall summarize the experience of the commission

in regulating small telecommunications utilities. The report shall include recommendations on whether there is a need for changes in the regulation of small telecommunications utilities.

(3) A rate change or increase pending but not in effect before the effective date of this subsection or a rate review commenced before the effective date of this subsection shall be governed by the law existing before the effective date of this subsection.

(4) The public service commission shall submit proposed rules establishing percentages used to calculate target rate under section 196.215 (5) (b) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 10th month beginning after the effective date of this subsection.