

Clearinghouse Rule 10-143

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Rule Modifications to Wis. Admin. Code ch. PSC 168
Related to Certification of Resellers

1-AC-235

NOTICE OF HEARING

Hearing Date:	10:00 a.m., Tuesday, January 11, 2011
Hearing Location:	Public Service Commission, 610 North Whitney Way, Madison, WI

Comments Due: January 19, 2011 – Noon	Address Comments To: Sandra J. Paske, Secretary to the Commission Public Service Commission of Wisconsin
FAX Due: January 18, 2011 – Noon	P.O. Box 7854 Madison, WI 53707-7854 FAX: (608) 266-3957

The Public Service Commission of Wisconsin proposes an order to renumber PSC 168.06 (5); renumber and amend PSC 168.13 (2) (a); amend PSC 168.09 (2); and create PSC 168.06 (5) (b) and 168.13 (2) (b) and (c). The proposed amendments would, respectively, establish certain criteria for the recertification of resellers; include s. 196.859, Stats., in the list of assessment statutes that apply to large resellers; and clarify the procedure for involuntary revocation of a reseller certificate.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The analysis is set forth as Attachment A.

TEXT OF PROPOSED RULE

The text of the proposed rule is set forth as Attachment B.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule changes may affect small businesses, but generally in a way that affords them benefits. No new professional skills will be required of a small business on account of the rule.

The establishment of criteria that may mitigate the current refund of revenues received while operating without certification will provide an opportunity for a small business to present facts, without need of counsel, to show why refunds would not be fair or could adversely affect the economic viability of the company. The proposed rule essentially allows equitable arguments to be made to reduce the refund without imperiling the company and to expedite a reseller's return to certification in good standing.

The insertion of s. 196.859, Stats. (telecommunications utility trade practices), among those assessment statutes applicable to certain larger resellers has already been applied by order in docket 5-TI-1990. The order in that docket applied s. 196.859, Stats., to large resellers having annual gross operating revenues derived from Wisconsin intrastate operations of \$200,000 or more. The smallest resellers will continue to be exempt from reporting if they have gross operating revenues under \$200,000 in a calendar year, as they would otherwise have no duty to file any revenue data with the commission. It would not be worth the commission expense to force small resellers to file annual reports to permit levying assessments under s. 196.859, Stats., that likely would not exceed the cost of preparing and filing the necessary reports.

The last rule change proposing an amendment to the certification revocation procedure clarifies the process. It permits resellers to quickly comprehend their choices: (a) compliance to retain good standing; (b) default to permit the revocation without opposition; or (c) opposition to revocation by going to a contested case hearing. The current rule's lack of clarity suggests an additional petition process for hearing when it was originally intended that there be one proceeding to encompass both an opportunity to cure deficiencies and the right to resort to hearing, if necessary.

FISCAL ESTIMATE

Fiscal information is included as Attachment C. The changes are unlikely to have any significant fiscal impact, and may actually provide some occasional administrative efficiency in a simplified revocation process.

NOTICE OF HEARING

NOTICE IS GIVEN that pursuant to s. 227.16 (2) (b), Stats., the commission will hold a public hearing on these proposed rule changes in the Amnicon Falls Hearing Room at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin, on Tuesday, January 11, 2011, at 10:00 a.m. This building is accessible to people in wheelchairs through the Whitney Way (lobby) entrance. Handicapped parking is available on the south side of the building.

WRITTEN COMMENTS

Any person may submit written comments on these proposed rules. The hearing record will be open for written comments from the public, effective immediately, and until January 19, 2011, at noon (January 18, 2011, at noon, if filed by fax). All written comments must include a reference on the filing to docket 1-AC-235. File by one mode only.

Industry:

File comments using the Electronic Regulatory Filing system. This may be accessed from the commission's website, <http://psc.wi.gov>.

Members of the Public:

If filing electronically: Use the Public Comments system or the Electronic Regulatory Filing system. Both of these may be accessed from the commission's website, <http://psc.wi.gov>.

If filing by mail, courier, or hand delivery: Address as shown in the box on page 1.

If filing by fax: Send fax comments to (608) 266-3957. Fax filing cover sheet MUST state "Official Filing," the docket number 1-AC-235, and the number of pages (limited to 25 pages for fax comments).

CONTACT PERSON

Questions regarding this matter should be directed to the docket coordinator, Gary A. Evenson, at (608) 266-6744. Small business questions may be directed to Gary A. Evenson at the foregoing telephone number, or gary.evanson@wisconsin.gov. Media questions should be directed to Teresa Weidemann-Smith, Communications Specialist, Governmental and Public Affairs, at (608) 266-9600. Hearing- or speech-impaired individuals may also use the commission's TTY number; if calling from Wisconsin, dial (800) 251-8345; if calling from outside Wisconsin, dial (608) 267-1479.

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to get this document in a different format should contact the docket coordinator, as indicated in the previous paragraph, as soon as possible.

Docket 1-AC-235

Dated at Madison, Wisconsin December 2, 2010

By the Commission,

/s/ Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

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**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

A. Statutory Authority and Explanation of Authority

The proposed rule amendments are authorized under ss. 196.01 (1) (d), 196.02 (1) and (3), 196.03 (1) and (6), 196.203 (2) and (3), 196.44, 196.859, and 227.11 (2), Stats.

Section 227.11, Stats., authorizes agencies to promulgate administrative rules. Section 196.02 (1), Stats., authorizes the commission to do all things necessary and convenient to its jurisdiction. Section 196.02 (3), Stats., grants the commission specific authority to promulgate rules. Sections 196.01 (1d) (c) and 196.203 (2), Stats., define resellers and require their certification to provide telecommunications services in Wisconsin. Section 196.859, Stats., requires the commission to assess telecommunications providers to recover the budgeted costs of the enforcement of the telecommunications trade practices regulations under the jurisdiction of the department of agriculture, trade and consumer protection. Pursuant to its authority in ss. 196.44 and 196.02 (3), Stats., the commission may promulgate a rule interpreting and applying s. 196.859, Stats., to reseller telecommunications providers.

B. Statute Interpreted

The proposed regulations interpret ss. 196.203 (3), 196.03 (1) and (6), and 196.44, Stats. Sections 196.203 (3) and 196.03 (1) and (6), Stats., require that a telecommunications utility, which includes resellers in the alternative telecommunications utility category, provide reasonably adequate services and that such services be priced at just and reasonable rates. For a telecommunications provider, whether a service is reasonably adequate or a rate or charge is just and reasonable is determined by a multi-factor test in ss. 196.03 (1) and (6), Stats. The multi-factor test applies when evaluating what is in the public interest, convenient or necessary with respect to the services and rates and charges of a telecommunications provider. Certification of a reseller is effected under s. 196.203, Stats., which includes in the certification process the commission's right and opportunity to impose provisions of ch. 196, Stats., that the commission believes are necessary for protection of the public interest.

Protection of the public interest is effected by ensuring that only properly certified resellers are doing business in Wisconsin. A streamlined revocation process as proposed aids the elimination from the market of resellers that are unable or unwilling to comply with the law. In addition, the mechanism of voiding of reseller arrangements, contracts, and billings for operations without proper certification is an administrative device to compel resellers to properly obtain and maintain certification at the risk of repaying their Wisconsin-generated revenues gained during unauthorized operations. This device is a means of enforcing provisions of ch. 196, Stats., under s. 196.44, Stats. However, an amendment is proposed here to better calibrate the refund obligation to the nature of the deficiency causing the loss of certification. If a reseller lost certification and then re-applied, the criteria proposed to evaluate the applicant reseller's

ability to comply with regulations would strike a better balance between the refund obligation and the cause of the loss of certification. Greater flexibility will aid a speedier return of the applicant reseller to full certification.

Section 196.44, Stats., permits the appropriate enforcement of s. 196.859, Stats., as a provision in ch. 196, Stats., subject to commission enforcement. The proposed rule to make larger resellers subject to assessment is consistent with the commission's discretion and duty to engage in practical and economical enforcement of a legislative direction for the recovery of budgeted costs of the enforcement of the telecommunications trade practices regulations of the department of agriculture, trade and consumer protection.

C. Related Statutes or Rules

Related rules consist of the other provisions of ch. PSC 168 dealing with resale of telecommunications services and the certification of resellers. That chapter identifies telecommunications services that are legally available for resale, providers that are subject to reseller certification, the application for certification, and how certification is continued through annual report filings. Once an entity is certified as a reseller, the related rules identify the permissible activities in which a reseller may engage and the statutes with which the reseller must comply. Annual reports on such activities are required, which, if not filed, may trigger the revocation of certification. Other activities are identified that may also justify opening a revocation proceeding. Finally, a reseller may also voluntarily surrender its certificate to cease Wisconsin intrastate operations, but subject to compliance with any outstanding commission orders.

D. Summary and Analysis of the Rule Amendments

The proposed amendment to PSC 168.06 (5) establishes five criteria that the commission may use to evaluate the amount of revenues that need to be refunded due to operations without certification, as required to enforce PSC 168.06 (1). The proposed criteria afford the commission flexibility to judge each reseller re-applying for certification according to its individual circumstances, taking into account the reason for loss of certification, the cooperation of the applicant, past conduct while operating without authority, the number and type of consumer complaints, and the impact of a proposed refund upon the financial viability of the applicant. This benefits the applicant by informing it as to the requisites for re-certification and by better accommodating equitable arguments that a full refund might be disproportionate to the nature of the failure that resulted in the prior de-certification.

The proposed amendment to PSC 168.09 (2) to insert s. 196.859, Stats., in the list of assessment statutes applicable to larger resellers better informs them of their statutory responsibilities. This treatment accords with the commission's decision in docket

5-TI-1990 in November 2009, to impose the statute on larger resellers by exercise of the reserved power to amend any reseller's existing certificate. Resellers having intrastate Wisconsin gross operating revenues in a calendar year that did not exceed \$200,000 were excluded in that order and remain excluded in this proposed rule amendment. Commission experience fairly suggests that it would be burdensome to require an annual report from smaller providers where the costs of commission processing and provider compliance would likely exceed the few dollars of liability that would accrue to the reseller but for the exemption.

Finally, the proposed amendment of the revocation procedure under PSC 168.13 (2) clarifies and streamlines the revocation process by clearly stating the opportunity to cure non-compliance within the timeline of a revocation proceeding, but before the revocation process proceeds to a formal trial-type hearing. The current language tends to suggest that an objecting respondent reseller should petition for a hearing when in fact a proceeding with an opportunity for hearing is already underway by the commission's noticing an intention to revoke certification. The proposed amendment clarifies that during the initial 30-day window, the reseller can choose either to object and proceed to hearing or to elect to cure deficiencies to avoid the sanction of revocation.

E. Comparison with Existing or Proposed Federal Regulations

There are no known comparable rules at the federal level under the jurisdiction of the Federal Communications Commission.

F. Comparison with Similar Rules in Adjacent States

Section 196.859, Stats., relates to an assessment by the commission for telecommunications utility trade practices. Such an assessment is apparently unique to Wisconsin. There is no similar rule in any of the neighboring states of Illinois, Iowa, Michigan and Minnesota.

The neighboring states do not have regulations comparable to the proposed rule amendments to provide flexibility in granting re-certification and streamlining the revocation process. Michigan does not certify resellers at all. While the other three states do have reseller certification procedures, if a reseller lost its certification and then re-applied, each of those states would treat the applicant reseller as if it were seeking an original certification. However, such an applicant would be subject to limited additional staff scrutiny as to whether the cause for the termination of the prior certification had been remedied. Such additional scrutiny is not codified in any rules, however. None of the three states has Wisconsin's refund obligation for revenues obtained during unauthorized operations. The criteria in proposed PSC 168.06 (5) (b) would be unique to Wisconsin.

G. Effect on Small Business

No specific factual or analytical studies were conducted as to the proposed changes, or with respect to the effects on small businesses. The proposed amendment to PSC 168.09 (2) is intended to avoid smaller reselling entities, especially as the administrative costs for both the commission and the provider would likely exceed the annual assessment liability, which in many cases, based on other assessment statutes administered by the commission, could be quite small.

Anecdotal experience from prior commission applications and proceedings support the amendment of PSC 168.13 (2) and PSC 168.06 (5) (b), as simplifying procedures and thus creating savings and efficiencies in administrative operations for both the reseller and the commission.

H. Comments

Comments on this rule may be submitted as outlined in the Notice of Hearing.

I. Accommodation

The commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to receive this document in a different format should contact the Docket Coordinator, as indicated in the following paragraph, as soon as possible.

J. Agency Contacts

Questions regarding this matter should be directed to the Docket Coordinator, Gary A. Evenson, at (608) 266-6744. Small business questions may be directed to Gary A. Evenson at the foregoing telephone number, or gary.evenson@wisconsin.gov. Media questions should be directed to Theresa Weidemann-Smith, Communications Specialist, Governmental and Public Affairs, at (608) 266-9600. Hearing- or speech-impaired individuals may also use the commission's TTY number; if calling from Wisconsin, dial (800) 251-8345; if calling from outside Wisconsin, dial (608) 267-1479.

TEXT OF PROPOSED RULE

SECTION 1. PSC 168.06 (5) is renumbered 168.06 (5) (a).

SECTION 2. PSC 168.06 (5) (b) is created to read:

PSC 168.06 (5) (b) If a reseller is seeking recertification after a prior certification under this chapter expired or was revoked by the commission and it had operated in Wisconsin without certification, the commission may consider the following factors in determining any repayment, refund, or credit respecting the reseller's void arrangements, contracts, and billings under sub. (1):

1. The reason for the failure to obtain certification of its operations under this chapter.
2. The cooperation of the reseller in resolving past deficiencies in conjunction with the application for re-certification.
3. The past conduct of the reseller during the period in which it operated without valid certification under this chapter.
4. The number and type of prior and pending consumer complaints against the reseller based upon violations of this chapter or regulations of any other governmental unit.
5. The impact of repayment, refund, or credit upon the financial viability of the reseller.

SECTION 3. PSC 168.09 (2) is amended to read:

PSC 168.09 (2) Alternative telecommunications utility resellers having gross operating revenues derived from Wisconsin intrastate operations of \$200,000 or more in a calendar year shall comply with and be subject to assessment as provided in ss. 196.85, ~~and 196.858, and 196.859,~~ Stats.

SECTION 4. PSC 168.13 (2) is renumbered 168.13 (2) (a) and amended to read:

PSC 168.13 (2) (a) If the commission has determined that grounds for revocation exist, the commission may commence a revocation proceeding by mailing to the affected reseller, at its last known address on file with the commission, a written notice of the reasons for the proposed revocation of certification under this section. ~~Within 30 days of the mailing date of said notice, a reseller may file a written petition for continued certification. The petition shall contain a statement of any corrective action taken and state whether a hearing is requested or waived. Depending upon the information received, the commission may determine that the grounds for~~

~~revocation have been remedied, proceed to revoke the reseller's certificate, or take other action as may be appropriate in the circumstances. Failure of a reseller to respond under this subsection shall result in revocation of certification without hearing.~~

SECTION 5. PSC 168.13 (2) (b) and (c) are created to read:

PSC 168.13 (2) (b) Within 30 days of the mailing date of said notice under par. (a), a reseller may ~~file a written petition for continued certification. The petition shall contain a statement of any corrective action taken and state whether a hearing is requested or waived.~~ file a written response that may contain one or more of the following:

1. A showing that one or more of the commission's reasons for revocation have been resolved or cured.
2. A showing that one or more of the commission's reasons may be resolved in a remedial compliance plan for which the reseller requests commission acceptance and deferral of certificate revocation.
3. An objection to the commission's reasons for revocation and a request for hearing.

(c) Depending upon the information received in the reseller's response, the commission may determine that the grounds for revocation have been remedied, proceed to revoke the reseller's certificate, or take other action as may be appropriate in the circumstances. Failure of a reseller to respond under this subsection shall result in revocation of certification without hearing.

SECTION 6. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

<p>2009-2010 Session</p> <p>LRB or Bill No./Adm. Rule No. PSC 168</p> <p>Amendment No. if Applicable</p>				
<p>FISCAL ESTIMATE DOA-2048 N(R10/96)</p>	<p><input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED</p> <p><input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL</p>			
<p>Subject Revision to Telecommunications Resellers and Resale PSC 168</p>				
<p>Fiscal Effect</p> <p>State: <input checked="" type="checkbox"/> No State Fiscal Effect</p> <p>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.</p> <table style="width:100%; border: none;"> <tr> <td style="width: 50%; border: none;"> <p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p> </td> <td style="width: 50%; border: none;"> <p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p> </td> </tr> </table>		<p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p>	<p><input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p>	
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<p>Fund Sources Affected</p> <p><input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>Affected Ch. 20 Appropriations</p> <p>20.155 (1) (g)</p>			
<p>Assumptions Used in Arriving at Fiscal Estimate</p> <p><u>State Fiscal Effects</u></p> <p>There are no estimated state fiscal effects from the draft revisions to the Telecommunications Resellers and Resale Rule (PSC 168). A state fiscal effect would occur if the revisions increased or decreased state staff workload, but the proposed rule is not anticipated to change workload for state staff.</p> <p>The Telecommunications Resellers and Resale Rule revision 1) clarifies the process under which the Commission considers the amount of customer refunds required of resellers who operate without certification, 2) clarifies the process under which resellers may file an objection to revocation of certification, and 3) makes administrative rule consistent with Commission order under docket 5-TI-1990 and applies s. 196.859 to resellers with annual gross operating revenues, derived from Wisconsin intrastate operations, of \$200,000 or more. The rule change to apply s. 196.859 to resellers with intrastate revenues of \$200,000 or more is consistent with current policy and will not change state staff workload. The revisions clarifying the information the Commission will consider in calculating potential refunds to consumers and in finalizing revocation proceedings could streamline state staff work processes. The volume of reseller recertification requests is very small, but can be time-consuming in the one element usually of concern to resellers, the amount of refund due to operations without proper certification. It is anticipated that the flexibility provided in the proposed criteria applicable to establishing and/or reducing required refunds would likely permit much faster resolution of this primary issue of contention. A small, but unquantifiable, increment in staff processing efficiency is expected. Therefore, the proposed rule is estimated to have no state fiscal effect.</p> <p><u>Local Fiscal Effects</u></p> <p>The revised Telecommunications Resellers and Resale Rule is not estimated to have a local fiscal effect. A local fiscal effect would occur if telecommunication service rates or refunds for customers, which include Local Governments, were affected by this proposed rule. The revisions to the rule are not anticipated to change service rates. In addition, the revisions clarifying process under which the Commission considers the amount of customer refunds required of resellers who operate without certification will not change Commission policy in determining the amount of customer refunds required; so the proposed rule will not affect refund amounts. Therefore, the revised Telecommunications Resellers and Resale Rule is not estimated to have a local fiscal effect.</p>				
<p>Long-Range Fiscal Implications</p> <p>None</p>				
<p>Agency/Prepared by: (Name & Phone No.) Anne Olson 267-9086</p>	<p>Authorized Signature/Telephone No. Anne Olson 267-9086</p>			
<p>Date 11/18/2010</p>				