



**WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE**

**SPECIAL COMMITTEE ON
PUBLIC AND
PRIVATE BROADBAND**

March 14, 2003

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**SPECIAL COMMITTEE ON PUBLIC AND PRIVATE BROADBAND
REPORT TO THE LEGISLATURE**

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PART I

KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

The Special Committee on Public and Private Broadband recommends the following proposal to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature.

2003 ASSEMBLY BILL 135, RELATING TO DIRECTING THE DEPARTMENT OF ELECTRONIC GOVERNMENT TO DEVELOP A DATABASE AND WEB SITE ON BROADBAND TRANSMISSION SERVICE AVAILABILITY, PUBLIC ACCESS TO CERTAIN RECORDS CREATED FOR THIS PURPOSE, AND GRANTING RULE-MAKING AUTHORITY

- Directs the Department of Electronic Government (DEG) to develop a database and Web site on broadband availability.
- Creates an exception from the Open Records Law to require the DEG to withhold information from public access that it obtains for the database until it determines that the information would not aid a competitor in competition with the provider of the information.

PART II

COMMITTEE ACTIVITY

ASSIGNMENT

The Joint Legislative Council established the Special Committee on Public and Private Broadband and appointed the co-chairs by a May 15, 2002 mail ballot. The committee was directed to study the availability of broadband services (high-speed data transmission) and barriers to broadband deployment in Wisconsin, and determine appropriate state policy relating to digital divide and open access issues.

Membership of the Special Committee, appointed by a July 8, 2002 mail ballot, consisted of two Senators, two Representatives, and seven Public Members. A list of the committee membership is set forth in *Appendix 3*.

SUMMARY OF MEETINGS

The Special Committee held four meetings at the State Capitol in Madison on the following dates:

September 5, 2002
October 9, 2002
November 13, 2002
December 19, 2002

September 5, 2002. The committee heard presentations from invited speakers relating to the importance and availability of broadband service. In particular, speakers addressed broadband applications in business and manufacturing, health care, government, and education, in addition to the current availability of broadband. The committee concluded its meeting with a discussion of the committee assignment.

October 9, 2002. The committee heard a presentation by Public Service Commission (PSC) staff regarding the PSC's efforts to collect information regarding the availability and use of broadband service in Wisconsin. The committee also discussed staff memoranda summarizing: (1) studies of broadband service availability in neighboring states; and (2) broadband policy initiatives in other states.

November 13, 2002. The committee reviewed a staff memorandum presenting options for obtaining information on where broadband service is available. Staff also demonstrated an interactive Internet site that uses geographic information system (GIS) technology to present map-based information regarding the distribution and availability of broadband facilities in Ohio. The committee discussed the purposes for and potential design of a similar Internet-based resource in Wisconsin and directed staff to prepare draft legislation directing the DEG to create such a resource.

The committee also discussed the appropriate level of regulation of broadband service, working from a staff memorandum describing a recently enacted statute in Oklahoma. The committee directed staff to prepare two alternative bill drafts on this topic.

A staff memorandum regarding options for using the BadgerNet system to bring broadband service to underserved areas was discussed. The committee also discussed a staff memorandum relating to incentives for expanding broadband availability. The committee did not pursue any of the options identified in that memorandum, but directed staff to develop a proposal to provide a tax incentive for investments in broadband infrastructure.

December 19, 2002. The committee reviewed a bill draft (WLC: 0087/1) directing the DEG to develop an Internet Web site relating to broadband service availability, and voted to recommend a modified version of the draft for introduction in the 2003 Legislative Session. The committee reviewed two drafts relating to the use of the BadgerNet system to enhance broadband availability. Rather than recommending introduction of either of these drafts, the committee directed the co-chairs to correspond with the state agencies that are developing new BadgerNet contracts to encourage the inclusion of certain ideas in those new contracts.

The committee considered two bill drafts limiting PSC regulation of broadband service, but failed to recommend either draft for introduction in the 2003 Legislature. Finally, the committee considered a bill draft creating a sales tax exemption for investments in broadband infrastructure, but decided not to recommend that draft.

PART III

RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, the bill recommended by the Special Committee on Public and Private Broadband for introduction in the 2003-04 Session of the Legislature.

2003 ASSEMBLY BILL 135, RELATING TO DIRECTING THE DEPARTMENT OF ELECTRONIC GOVERNMENT TO DEVELOP A DATABASE AND WEB SITE ON BROADBAND TRANSMISSION SERVICE AVAILABILITY, PUBLIC ACCESS TO CERTAIN RECORDS CREATED FOR THIS PURPOSE, AND GRANTING RULE-MAKING AUTHORITY

Background

The committee sought information on where broadband service is available in Wisconsin so it could “determine appropriate state policy relating to digital divide and open access issues.” The committee found that current information on broadband availability in specific Wisconsin locations is sporadic.

Under current law, the PSC invokes its statutory authority to require information from telecommunications utilities to obtain information on broadband availability from providers of telephone wire (including DSL) broadband transmission facilities. Such providers are one of the three general types of providers of broadband transmission facilities, with the other two being cable modem and wireless providers.

The PSC relies on the voluntary cooperation of cable modem and wireless providers in obtaining information on broadband availability. While cable modem and wireless providers of broadband service have cooperated with the PSC in providing some information, their cooperation has not been sufficient to obtain comprehensive information on broadband availability for the cable modem and wireless sectors at a detailed level comparable to that for the telecommunications sector. The type of broadband data PSC obtains from telecommunications broadband providers includes such information as whether central office switching centers and more remote digital serving areas are capable of broadband transmission via DSL. By drawing a radius of roughly three miles around either a DSL-capable central office switching center or a DSL-capable digital serving area, the PSC is developing fairly detailed information on where DSL broadband service is available in Wisconsin.

Analogous information for the cable modem and wireless industry sectors would be desirable. In particular, obtaining comparable information on cable modem provision of broadband service is desirable, given that the majority of residential and small business broadband customers obtain service from cable modem service providers. The committee identified two reasons for reluctance on the part of cable modem service providers to provide detailed availability information to the PSC.

- First, because such information would be subject to Wisconsin's Open Records Law, proprietary information could be made public. The Open Records Law sets forth the policy that all persons are entitled to the greatest possible information regarding the affairs of government and a presumption of complete public access is assumed. [s. 19.31, Stats.] However, the PSC is authorized under s. 196.14, Stats., to withhold from public inspection any information deemed to aid competitors of a public utility. If a public utility wants to receive this protection, though, it has to first provide the PSC with the information and a justification for why the information should be withheld from public inspection under s. 196.14, Stats.

Therefore, the public utility initially takes the risk that the PSC may not agree with its justification after reviewing the information, in which case the PSC would be in possession of the information and obliged to disclose it upon receiving an open records request. Additionally, even if the PSC initially agrees to treat the information as confidential, if the PSC subsequently receives a request for the information under the Open Records Law, it then determines whether to withhold information under s. 196.14, Stats., based on a case-by-case analysis of the competitive or sensitive nature of the information filed.

- Second, providing such information to the PSC might "pave the way" towards eventual regulation by the PSC, a result which the cable industry views as undesirable. This concern no longer appears applicable since the committee is directing the DEG rather than the PSC to develop a database and Web site on broadband availability. The bill does not affect current PSC authority.

Description of the Bill

The bill directs the DEG to develop a database and Web site on broadband availability. It directs the DEG to design the Web site in a manner to provide information that will be useful to state and local public officials, current and potential small business and residential customers, and those persons involved in work related to economic development. (The committee was cognizant of current proposals to eliminate the DEG. If this occurs, the Legislature presumably will reassign some or all of the DEG's responsibilities to another agency. If it occurs prior to passage of this bill, the Legislature will need to amend the bill to reflect that change.)

The bill creates an exception from the Open Records Law for the information submitted for this purpose and directs the DEG to withhold such information unless the DEG determines, using criteria it has established by rule, that the information is sufficiently aggregated for Web site display that it would not aid a competitor in competition with the provider of the information.

The bill directs the DEG to report to the Legislature as to the advisability of upgrading and maintaining the database and Web site as an ongoing effort.

The bill also defines "broadband transmission service."

PART IV

OTHER COMMITTEE RECOMMENDATIONS

The committee sent the following letter, dated January 28, 2003, to the heads of the agencies and association that are participating in the Wisconsin Educational Network Collaboration Committee to develop new contracts for the state's data transmission network. Those agencies and association are: the DEG; the Department of Public Instruction; the Educational Communications Board; the University of Wisconsin System; the Technical College System Board; the Technology for Educational Achievement in Wisconsin (TEACH) Board; and the Wisconsin Association of Independent Colleges and Universities.

Mr. Bruce Reines, Acting Secretary
Department of Electronic Government
P.O. Box 7844
Madison, WI 53707-7844

Dear Mr. Reines:

The Joint Legislative Council created the Special Committee on Public and Private Broadband to "study the availability of broadband services and barriers to broadband deployment in Wisconsin, and determine appropriate state policies relating to digital divide and open access issues." The committee began its deliberations by looking at issues of broadband service availability. It sought information regarding the availability of commercial service from telecommunications, cable communications, and other companies. It also inquired into broadband service available to state agencies and other qualified users through the BadgerNet system. At the same time, the committee investigated pertinent policies adopted by other states.

In our study to date of the current availability of broadband service, we have been frustrated by the lack of comprehensive data on that topic. However, the information available has made it clear that there are parts of the state, primarily in rural areas, where broadband service is not available. This is of concern to us. Commerce is increasingly dependent on electronic media for communications between businesses and their customers, suppliers, and industry allies. Communities that do not have broadband access are placed at a disadvantage in attracting and retaining businesses, whose jobs are the key to survival for many small communities today. Consequently, the committee is pursuing policy options to increase the availability of broadband service in those areas.

In our inquiries relating to the BadgerNet system, we have learned that this network extends an impressive array of high-speed voice, video, and data transmission capabilities to remote locations in the state, meeting the needs of a variety of public and nonprofit users. Naturally, we asked whether this network might offer some part of the solution to improving broadband service availability to private users in the currently underserved parts of the state. A possible answer to this question was suggested by a program in Pennsylvania.

Pennsylvania has a state data transmission network similar to the BadgerNet. What is noteworthy is that the procurement process Pennsylvania uses to develop the network contracts is designed to ensure that vendors construct more transmission capacity than the state network requires, so as to provide service to the private sector, as well. The state does not make its own network large enough to serve the private sector and does not provide service to private users. Rather, it encourages the construction of sufficient capacity for the vendors to be able to sell the service directly to private users. The solicitation for proposals states: "Special attention will be given to those...proposals that commit to enhancements in the public network infrastructure to deliver the same services to the Broader Commonwealth Community, and to the general public." It explains the intended results as follows: "The services that are provided through the contract should also be made publicly available to any citizen, business, or organization in the state. While it is expected that market conditions will determine pricing, it is also expected that the Commonwealth contract should make these services more affordably priced."

We understand that the contracts that create the BadgerNet expire in 2005. We further understand that the Wisconsin Educational Network Collaboration Committee (WENCC), on which your agency is a participant, is engaged in a project to procure a new network to replace the state's existing video network. This future network will have adequate bandwidth to meet the needs of the education community. It will include Internet service and may be expanded to include capacity to replace the existing data network.

Because this new network is in the planning stages, now is the time to consider the Pennsylvania model of using the state procurement process to encourage additional investment in infrastructure to serve private sector need for broadband service. It appears that the Department of Electronic Government has ample authority within the scope of existing procurement law to pursue this model. Thus, it is appropriate to use this authority to leverage state investments in the BadgerNet to stimulate additional investments in high-speed services that will help bridge the digital divide and bring the advantages of broadband service to all communities in Wisconsin.

To this end, we strongly urge you to work through your representatives on the WENCC to ensure that this model is given full consideration and, if it appears feasible, to ensure that it is implemented.

If you have any questions or concerns regarding this request, please do not hesitate to contact us.

Sincerely,

Former Senator Richard Grobschmidt, Co-Chair
Special Committee Public and Private
Broadband

Representative Phil Montgomery, Co-Chair
Special Committee on Public and Private
Broadband

Committee and Joint Legislative Council Votes

This Appendix identifies the votes by the Special Committee on Public and Private Broadband and the Joint Legislative Council on the proposals that were approved by the Special Committee for recommendation to the Joint Legislative Council for introduction in the 2003-04 Session of the Legislature:

SPECIAL COMMITTEE VOTES

At its December 19, 2002 meeting, the Special Committee voted as follows on its recommendation:

- WLC: 0087/2, relating to directing the Department of Electronic Government to develop a database and Web site on broadband transmission service availability, creating an exception from the open records law for this purpose, and authorizing rule-making, was recommended, as amended, by a vote of Ayes, 11 (Sens. Grobschmidt and Kanavas; Reps. Montgomery and Schneider; and Public Members Carter, Dunn, Meske, Petersen, Reed, Veeramani, and Vowell); Noes, 0; and Absent, 0.

The proposal that the Special Committee voted to recommend was subsequently drafted by the Legislative Reference Bureau as LRB-1652/1.

JOINT LEGISLATIVE COUNCIL VOTES

At its February 19, 2003 meeting, the Joint Legislative Council voted as follows on the recommendation of the Special Committee:

Introduction by the Joint Legislative Council of LRB-1652/1 passed by a vote of Ayes, 17 (Reps. Wieckert, Coggs, Foti, Freese, Gard, Kaufert, Kreuser, Lehman, Schneider, Townsend, and Travis; Sens. Lasee, Darling, Erpenbach, Harsdorf, Lazich, and Welch); Noes, 0; and Absent, 5 (Sens. Decker, Ellis, George, Panzer, and Risser).

The proposal that the Joint Legislative Council voted to introduce was subsequently introduced as 2003 Assembly Bill 135.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL s. 13.81, Stats.

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481 Aubin Street
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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

PUBLIC AND PRIVATE BROADBAND

Senator Richard A. Grobschmidt, **Co-Chair**
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Senator Ted Kanavas
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STUDY ASSIGNMENT: The Committee shall study the availability of broadband services and barriers to broadband deployment in Wisconsin, and determine appropriate state policy relating to digital divide and open access issues.

Established and Co-Chairs appointed by a May 22, 2002 mail ballot; members appointed by a July 15, 2002 mail ballot.

11 MEMBERS: 2 Senators, 2 Representatives, and 7 Public Members.

LEGISLATIVE COUNCIL STAFF: David L. Lovell, Senior Analyst, Mary Offerdahl, Staff Attorney, and Julie Learned, Support Staff.

Committee Materials List

December 19, 2002 Meeting

[Memo No. 7](#), **Use of BadgerNet Contracts to Stimulate Extension of Broadband Facilities** (12-12-02)

[Draft letter](#) to the heads of the agencies and organization participating in the Wisconsin Educational Network Collaboration Committee from the Co-Chairs of the Special Committee

[WLC: 0088/1](#), relating to procurement of high-speed voice, video, or data services by the Department of Electronic Government

[Memo No. 8](#), **Possible Impact of a State Statute Prohibiting or Limiting Regulation of Broadband Service in Wisconsin** (12-13-02)

[WLC: 0073/1](#), relating to authorizing the Department of Electronic Government to provide telecommunications services to private entities

[WLC: 0087/1](#), relating to directing the Department of Electronic Government to develop a database and website on broadband transmission service availability, and creating an exception from the open records law for this purpose

[WLC: 0089/1](#), relating to limiting the authority of the Public Service Commission to regulate the provision of broadband service by a telecommunications utility

[WLC: 0090/1](#), relating to limiting the authority of the Public Service Commission to require a telecommunications provider to provide unbundled network elements used exclusively for broadband service to competitors

[WLC: 0091/1](#), relating to creating an exemption from the sales tax for sales of equipment, materials, or supplies used to provide broadband service in unserved areas

November 13, 2002 Meeting

[Memo No. 3](#), **Options for Obtaining Information on Where Broadband is Available in Wisconsin** (11-5-02)

[Memo No. 4](#), **Options Modeled on Oklahoma Law to Prohibit Regulation of Broadband Service** (11-5-02)

[Memo No. 5](#), **Options for Using the BadgerNet System to Bring Broadband Service to Underserved Areas** (11-5-02)

[Memo No. 6](#), **Two Options for Providing Incentives to Expand Broadband Availability: Use of Tax Incremental Financing and Technology Development Zones** (11-5-02)

October 9, 2002 Meeting

[Memo No. 1](#), **Selected Studies Relating to Broadband Service Availability in Illinois, Iowa, Michigan, and Minnesota** (10-2-02)

[Memo No. 2, Broadband Policy Initiatives in Other States](#) (10-2-02)

[Broadband Connections](#), by **Dr. Vivian Witkind-Davis**, excerpted from **The State of Regulation: An Annual Examination of the Four Utility Sectors**, National Regulatory Research Institute, Columbus, OH (8-01)

[Handout, Topics for Discussion](#) by the Special Committee on Public and Private Broadband, Identified in Committee Discussion (10-9-02)

[Handout, Holly Reed](#), Public Member

September 5, 2002 Meeting

[Staff Brief 02-5, Background Information Regarding Broadband Internet Service](#) (8-29-02) ([Staff presentation](#))

[Testimony, Dr. Raj Veeramani](#), Professor, College of Engineering and School of Business, University of Wisconsin-Madison

[Testimony, Nina Antoniotti](#), RN, MBA, Ph.D., Program Manager, Telehealth Network, Marshfield Clinic

[Testimony, Joe Brickweg](#), Director, Network Services, Marshfield Clinic

[Testimony, Robert Stuessy](#), Director, Bureau of Network Services, Department of Electronic Government

[Testimony, Stephen Sanders](#), Instructional Technology Consultant, Department of Public Instruction

[Testimony, Duane Wilson](#), Program and Planning Analyst, Public Service Commission

[Testimony, Pete Bremer](#), Technical Services Director, PressEnter! LLC