

Introduced by

Industry, Business and Labor Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century  
2 Code, relating to licensing of telecommunications resellers; and to amend and reenact sections  
3 49-02-01.1, 49-03.1-02, and 49-21-01 of the North Dakota Century Code, relating to jurisdiction  
4 of the public service commission, excluding telecommunications resellers from certificate of  
5 public convenience and necessity requirements, and definitions applicable to  
6 telecommunications resellers.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North  
9 Dakota Century Code is amended and reenacted as follows:

10 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in  
11 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,  
12 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of  
13 any public utility owned and operated by the state or by any city, county, township, or other  
14 political subdivision of the state or any public utility, that is not operated for profit, that is  
15 operated as a nonprofit, cooperative, or mutual telecommunications company or is a  
16 telecommunications company having fewer than eight thousand local exchange subscribers.  
17 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual  
18 telecommunications company or has fewer than eight thousand local exchange subscribers is  
19 subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 6 of section 49-02-02  
20 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding  
21 rates, terms, and conditions of access services or connection between facilities and transfer of  
22 telecommunications between two or more telecommunications companies. Nothing in this  
23 section limits the authority of the commission under section 1 of this Act, chapter 49-03.1, or  
24 sections 49-04-05 and 49-04-06.

1           **SECTION 2. AMENDMENT.** Subsection 2 of section 49-03.1-02 of the 1997  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3           2. "Public utility" includes any association, person, firm, corporation, limited liability  
4 company, or agency engaged or employed in this state to furnish its product or  
5 services to the public generally which is statutorily subject to the jurisdiction of the  
6 commission. The words "public utility" as used in this chapter shall not apply to  
7 electric public utilities or ~~motor carriers of persons or property for hire~~ reseller  
8 telephone public utilities.

9           **SECTION 3. AMENDMENT.** Section 49-21-01 of the 1997 Supplement to the North  
10 Dakota Century Code is amended and reenacted as follows:

11           **49-21-01. Definitions.** As used in this chapter, unless the context otherwise clearly  
12 requires:

- 13           1. "Access" means telecommunications services to connect a telecommunications  
14 customer or end user with a telecommunications company that allows for the  
15 origination or the termination, or both, of WATS, 800, and message toll  
16 telecommunications services and private line transport services. "Switched  
17 access" includes:
- 18           a. Local exchange central office switching and signaling;
  - 19           b. Operator and recording intercept of calls;
  - 20           c. Termination of end user lines in the local exchange central office;
  - 21           d. The carrier common line charge for the line between the end user's premises  
22 and the local exchange central office; and
  - 23           e. Telecommunications service, including connections, provided to allow  
24 transmission service and termination between an interexchange company's  
25 premises and the local exchange central office switch for the origination or  
26 termination of the interexchange company's switched telecommunications  
27 services.
- 28           2. "Essential telecommunications price factor" means:
- 29           a. In the case of group I telecommunications companies, a factor determined  
30 annually as the lower of:

- 1                   (1) 41.6667 percent of the percentage change of the average annual gross  
2                   national product price index; or
- 3                   (2) The percentage change of the average annual gross national product  
4                   price index minus 2.75 percentage points.
- 5                   b. In the case of group II telecommunications companies, a factor determined  
6                   annually as the lower of:
- 7                   (1) 52.0834 percent of the percentage change of the average annual gross  
8                   national product price index; or
- 9                   (2) The percentage change of the average annual gross national product  
10                  price index minus 2.0625 percentage points.
- 11                  c. For purposes of the determination of essential telecommunications price  
12                  factor, group I telecommunications companies are telecommunications  
13                  companies with over fifty thousand subscribers and group II  
14                  telecommunications companies are telecommunications companies with fifty  
15                  thousand or fewer subscribers.
- 16                  3. "Essential telecommunications service" means service that is necessary for  
17                  switched access to interexchange telecommunications companies and necessary  
18                  for two-way switched communications for both residential and business service  
19                  within a local exchange area. A charge based on measured service may not be  
20                  required for residential and business local exchange service. Essential  
21                  telecommunications services are limited to:
- 22                  a. Switched access;
- 23                  b. Any new product or service offered in North Dakota after July 1, 1989,  
24                  deemed essential by the commission after notice and hearing in accordance  
25                  with chapter 28-32;
- 26                  c. Billing and collection of the billing company's own essential  
27                  telecommunications services and billing and collection recording for  
28                  interexchange carriers to which the local exchange carrier provides feature  
29                  group C access service;
- 30                  d. Primary directory listing, including nonlisted and nonpublished service, and  
31                  local exchange directory assistance;

- 1 e. Emergency 911 services and emergency operator assistance in local  
2 exchange areas in which emergency 911 service is not available;
- 3 f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area  
4 service to designated nearby local exchange areas;
- 5 g. Installation of the service connection for essential services from the end user's  
6 premises to the local exchange network;
- 7 h. Transmission service necessary for the connection between the end user's  
8 premises and the local exchange central office switch including a trunk  
9 connection that has direct inward dialing and necessary signaling service  
10 such as touchtone used by end users for essential telecommunications  
11 services;
- 12 i. Single or multiparty flat-rate or measured residence and business service;
- 13 j. Single or multiparty flat-rate or measured combination business and residence  
14 service; and
- 15 k. The transmission service line for a coin or pay telephone.
- 16 4. "Gross national product price index" means the fixed-weighted price index of prices  
17 of all the goods and services that make up gross national product, as published  
18 quarterly by the United States department of commerce, economics and statistics  
19 administration, bureau of economic analysis. "Average annual gross national  
20 product price index" means the mean of the gross national product price index  
21 published in the third calendar quarter of a year through the second calendar  
22 quarter of the following year.
- 23 5. "Interexchange telecommunications company" means a person providing  
24 telecommunications service to end users located in separate local exchange areas.
- 25 6. "Local exchange area" means a geographic territorial unit established by a  
26 telecommunications company for the administration of telecommunications  
27 services as approved and regulated in accordance with chapter 49-03.1.
- 28 7. "Mutual telephone company" means a telephone cooperative organized and  
29 operating subject to the provisions of this chapter, and such a cooperative shall  
30 also be subject to the general law governing cooperatives, except where such  
31 general law is in conflict with this chapter.

- 1           8. "Nonessential telecommunications service" means any telecommunications  
2           service, other than those essential telecommunications services listed in  
3           subsection 3 that a customer has the option to purchase either in conjunction with  
4           or separate from any essential telecommunications service. Nonessential  
5           telecommunications services include, but are not limited to:
- 6           a. InterLATA and intraLATA message toll service;
  - 7           b. Private line transport service;
  - 8           c. Calling features and information or enhanced services such as call waiting,  
9           call forwarding, three-way calling, intracall, speed calling, call transfer, voice  
10           or data store and forward, message delivery, or caller identification;
  - 11           d. Centrex services and features, not including transmission service described in  
12           subdivision h of subsection 3 of this section;
  - 13           e. Installation of service connections in addition or supplementary to that  
14           described in subdivision g of subsection 3 which also provides transmission  
15           service between the end user's premises and the local exchange central  
16           office switch;
  - 17           f. Mobile telecommunications services using radio spectrum or cellular  
18           technology; and
  - 19           g. Packet-switched services.
- 20           9. "Price" means any charge set and published in accordance with chapter 49-21 and  
21           collected by a telecommunications company for any telecommunications service  
22           offered by it to the public or other telecommunications companies.
- 23           10. "Private line transport service" means a telecommunications service to a customer  
24           over a circuit dedicated to the customer's exclusive use, within a local exchange  
25           area, or between or among local exchanges. Private line transport service  
26           includes services to customers who are end users and services to  
27           telecommunications companies.
- 28           11. "Resale" means the subscription to local or long distance telecommunications  
29           services and facilities by one entity, and reoffered for profit or with markup to  
30           others with or without enhancements. If reoffered service is part of a package, and  
31           the package is offered for profit or markup, it is resale.

1           12.   "Reseller" means a person reselling local or long distance telecommunications  
2                    services. This definition does not include pay telephone providers, but does  
3                    include cellular services.

4           13.   "Service element" means a telecommunications function or service component that  
5                    is not useful to the user unless it is combined with one or more other  
6                    telecommunications functions or service components.

7    ~~14.~~ 14.   "Telecommunications company" means a person engaged in the furnishing of  
8                    telecommunications service within this state.

9    ~~15.~~ 15.   "Telecommunications service" means the offering for hire of telecommunications  
10                   facilities, or transmitting for hire telecommunications by means of such facilities  
11                   whether by wire, radio, lightwave, or other means.

12           **SECTION 4.** A new chapter to title 49 of the North Dakota Century Code is created and  
13 enacted as follows:

14           **Reseller license required.** A telecommunications reseller may not do business in this  
15 state without a valid reseller license from the commission. Each reseller license expires on  
16 March thirty-first of each year.

17           **Surety bonds.** The commission may require evidence of financial soundness,  
18 including the posting of a surety bond in an amount determined by the commission, as part of  
19 the reseller licensing process.

20           **Reseller license fees.** The fee for an annual reseller license is two hundred fifty  
21 dollars. An application for a reseller license must be accompanied by payment of the required  
22 fee or the application may not be accepted for filing.

23           **Reseller license application.** An application for a reseller license must be in the form  
24 required by the commission and must contain the information required by the commission.  
25 Failure to comply with the application requirements is sufficient grounds to deny, dismiss, or  
26 reject the application. If the commission finds evidence indicating that an applicant has violated  
27 any state or federal laws or rules, including those concerning consumer protection, antitrust, or  
28 securities, the commission may dismiss or deny the application.

29           **Reseller license revocation.** The commission may revoke a license for cause and  
30 may impose additional sanctions on the licensee after notice and opportunity for hearing under  
31 chapter 28-32. During an investigation or other proceeding, the commission may order a

- 1 licensee to cease and desist from marketing its service or signing up new customers if the
- 2 commission finds there is probable cause to believe that without a cease and desist order
- 3 consumers or the reliability of the network will be harmed.