

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2420
(Senators Wardner, Tallackson, Robinson)
(Representatives Bernstein, Kerzman, Poolman)

AN ACT to create and enact three new sections to chapter 49-21, five new subsections to section 49-21-01, a new subsection to section 49-21-01.1, subsections 5, 6, and 7 of section 49-21-01.3, and subsections 7, 8, 9, 10, 11, 12, 13, and 14 of section 49-21-01.7 of the North Dakota Century Code, relating to telecommunications facilities, regulation of telecommunications services, telecommunications service prices, and powers of the public service commission; to amend and reenact sections 49-02-01.1, 49-21-04, 49-21-07, 49-21-08.1, and 49-21-10.2 of the North Dakota Century Code, relating to jurisdiction of the public service commission, telecommunications price schedules, discrimination, dialing parity, and telecommunications service quality rules; and to repeal section 49-21-02.1 of the North Dakota Century Code, relating to exemptions from public service commission regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4 ~~and~~, 49-21-08, sections 10, 11, and 12 of this Act, and is ~~subject to subsection~~ subsections 6 through 14 of section ~~49-02-02~~ 49-21-01.7 and to sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

SECTION 2. Five new subsections to section 49-21-01 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

"Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.

"Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.

"Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].

"Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.

"Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.

SECTION 3. A new subsection to section 49-21-01.1 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Private line transport service.

SECTION 4. Subsections 5, 6, and 7 of section 49-21-01.3 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

5. The monthly price of residence service for group I telecommunications companies defined in subsection 2 of section 49-21-01 may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.
6. The commission may investigate an increased price allowed pursuant to subsection 5 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
7. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 5. Subsections 7, 8, 9, 10, 11, 12, 13, and 14 of section 49-21-01.7 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.

9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the act.

SECTION 6. AMENDMENT. Section 49-21-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such service; and
3. All new prices and any price changes of essential services at least ~~sixty~~ twenty days before the effective date of the new price or price change, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter. ~~Each filing under this section must be accompanied by a fifty dollar filing fee.~~

SECTION 7. AMENDMENT. Section 49-21-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company, ~~including a telecommunications company exempt from one or more provisions of title 49 under section 49-21-02.1~~ providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state,

municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

SECTION 8. AMENDMENT. Section 49-21-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-08.1. ~~(Effective until July 31, 1999) Universal telephone service— Dialing parity - IntraLATA equal access.~~ In order to continue to make available to all people of this state modern and efficient telecommunications services at the most economic and reasonable cost, the ~~The provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be required to be provided by any company providing local exchange service prior to January 1, 2000. Every local exchange carrier shall provide intraLATA dialing parity no later than January 1, 2000.~~

SECTION 9. AMENDMENT. Section 49-21-10.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-10.2. Quality of service - Procedure and remedies. Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

SECTION 10. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Construction of Facilities - Cost recovery.

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred to comply with a commission order, including any order issued under section 49-21-10.2, for construction modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:
 - a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
 - b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
 - c. Costs for which some other recovery treatment is specifically provided in federal or state law.

SECTION 11. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Prohibited acts - Arbitration.

1. A telecommunications company may not:
 - a. Discriminate against another provider of telecommunications services by refusing or delaying access to the company's services;
 - b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:
 - (1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
 - (2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
 - (3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
 - (4) The facility, feature, function, or capability will enable competition; or
 - c. Degrade the quality of access or service provided to another provider of telecommunications services.
2. A claim that a telecommunications company has violated this section may be resolved by arbitration or by a complaint filed with the commission. Arbitration of a claim must be conducted by a single arbitrator engaged in the practice of law under the rules of the American arbitration association. All expedited procedures prescribed by the American arbitration association rules apply. The arbitrator's award is final and binding and may be entered in any court having jurisdiction thereof. A complaint filed with the commission must be referred to the office of administrative hearings for hearing and issuance of recommended findings of fact, conclusions of law, and an order pursuant to chapter 28-32. Each party shall bear its own costs and attorney's fees and shall equally share in the fees and expenses of the arbitration or administrative hearing.

SECTION 12. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Competitive local exchange companies. All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross subsidization, section 49-21-02.2; price schedules, sections 49-21-04 and 49-21-05; price complaints, section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

SECTION 13. REPEAL. Section 49-21-02.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2420.

Senate Vote: Yeas 48 Nays 1 Absent 0

House Vote: Yeas 78 Nays 19 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State