

**FIRST ENGROSSMENT
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2216

Introduced by

Senators Epegard, Heitkamp

Representative Carlson

1 A BILL for an Act to create and enact section 49-21-10.3 of the North Dakota Century Code,
2 relating to complaints against telecommunications companies; to amend and reenact sections
3 49-02-01.1, 49-21-01, 49-21-01.1, 49-21-01.3, 49-21-01.7, 49-21-02.2, and 49-21-10.2 of the
4 North Dakota Century Code, relating to telecommunications regulation; and to repeal sections
5 49-21-04.1, 49-21-08, 49-21-14, 49-21-15, 49-21-17, 49-21-18, and 49-21-20 of the North
6 Dakota Century Code, relating to telecommunications regulation.

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

8 **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is
9 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, 49-21-02.4, ~~49-21-08~~, 49-21-23, 49-21-24, and 49-21-25,
20 subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3,
21 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access
22 services or connection between facilities and transfer of telecommunications between two or
23 more telecommunications companies. Nothing in this section limits the authority of the
24 commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

1 **SECTION 2. AMENDMENT.** Section 49-21-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **49-21-01. Definitions.** As used in this chapter, unless the context otherwise ~~clearly~~
4 requires:

- 5 1. "Access" means telecommunications services to connect a telecommunications
6 customer or end user with a telecommunications company that allows for the
7 origination or the termination, or both, of WATS, 800, and message toll
8 telecommunications services and private line transport services.
- 9 2. "Competitive local exchange company" means any telecommunications company
10 providing local exchange service, other than an incumbent local exchange carrier,
11 whether by its own facilities, interconnection, or resale.
- 12 3. "Eligible telecommunications carrier" means a telecommunications company
13 designated under section 214(e) of the federal act as eligible to receive universal
14 service support in accordance with section 254 of the federal act.
- 15 4. "Essential telecommunications service" means the following services:
 - 16 a. Switched access;
 - 17 b. ~~The transmission service line for a coin or pay telephone;~~
 - 18 e. Installation of the service connection for other essential services from the end
19 user's premises to the local exchange network; and
 - 20 e. c. ~~Flat Primary flat rate or measured residence, business and combination~~
21 ~~business and~~ residence basic telephone service including the following
22 service elements:
 - 23 (1) Billing and collecting of the telecommunications company's charges for
24 the service.
 - 25 (2) Primary directory listing, ~~including nonlisted and nonpublished service.~~
 - 26 (3) Access to directory assistance.
 - 27 (4) Access to emergency 911 service and emergency operator assistance
28 in local exchange areas in which emergency 911 service is not
29 available.
 - 30 (5) Except as provided in section 49-02-01.1, mandatory, flat-rate
31 extended area service to designated nearby local exchange areas.

1 (6) Transmission service necessary for the connection between the end
2 user's premises and the local exchange central office switch including a
3 trunk connection that has inward dialing and necessary signaling
4 service such as touchtone used by end users for the service.

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

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

9 7. "Inside wire" and "premise cable" mean the telecommunications wire on the
10 customer's side of a demarcation point or point of interconnection between the
11 telecommunications facilities of the telecommunications company and the
12 customer or premise owner established under title 47, Code of Federal
13 Regulations, part 68, section 68.105.

14 8. "Interexchange telecommunications company" means a person providing
15 telecommunications service to end users located in separate local exchange
16 areas.

17 9. "Local exchange area" means a geographic territorial unit established by a
18 telecommunications company for the administration of telecommunications
19 services as approved and regulated in accordance with chapter 49-03.1.

20 10. "Management costs" means the reasonable direct actual costs a political
21 subdivision incurs in exercising its police powers over the public rights of way.

22 11. "Mutual telephone company" means a telephone cooperative organized and
23 operating subject to the provisions of this chapter, and such a cooperative shall
24 also be subject to the general law governing cooperatives, except where such
25 general law is in conflict with this chapter.

26 12. "Nonessential telecommunications service" means any telecommunications
27 service, other than those essential telecommunications services listed in
28 subsection 4 that a customer has the option to purchase either in conjunction with
29 or separate from any essential telecommunications service. ~~Nonessential~~
30 ~~telecommunications services include, but are not limited to:~~

31 a. ~~InterLATA and intraLATA message toll service;~~

- 1 b. ~~Calling features and information or enhanced services such as call waiting,~~
2 ~~call forwarding, three way calling, intracall, speed calling, call transfer, voice~~
3 ~~or data store and forward, message delivery, or caller identification;~~
4 e. ~~Centrex services and features;~~
5 d. ~~Installation of service connections in addition or supplementary to that~~
6 ~~described in subdivision c of subsection 4 which also provides transmission~~
7 ~~service between the end user's premises and the local exchange central~~
8 ~~office switch;~~
9 e. ~~Mobile telecommunications services using radio spectrum or cellular~~
10 ~~technology; and~~
11 f. ~~Packet switched services.~~
- 12 13. "Price" means any charge set and collected by a telecommunications company for
13 any telecommunications service offered by it to the public or other
14 telecommunications companies.
- 15 14. "Private line transport service" means a telecommunications service to a customer
16 over a circuit dedicated to the customer's exclusive use, within a local exchange
17 area, or between or among local exchanges. Private line transport service
18 includes services to customers who are end users and services to
19 telecommunications companies.
- 20 15. "Public right of way" means the area on, below, or above a public roadway,
21 highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political
22 subdivision has a legal interest, including other dedicated rights of way for travel
23 purposes, utility easements, and all the area within seventy-five feet [22.86 meters]
24 of the centerline of any county or township highway right of way over which a
25 board of county commissioners or a board of township supervisors has control
26 under section 24-01-42. The term does not include the airwaves above a public
27 right of way with regard to cellular or other wireless telecommunications or
28 broadcast service or utility poles owned by a political subdivision or a municipal
29 utility or a telecommunications company, in whole or part.
- 30 16. "Rural telephone company" means a telecommunications company that meets the
31 definition of section 153(37) of the federal act.

- 1 17. "Service element" means a telecommunications function or service component that
2 is not useful to the user unless it is combined with one or more other
3 telecommunications functions or service components.
- 4 18. "Switched access" means access to include:
5 a. Local exchange central office switching and signaling;
6 b. Operator and recording intercept of calls;
7 c. Termination of end user lines in the local exchange central office;
8 d. The carrier common line charge for the line between the end user's premises
9 and the local exchange central office;
10 e. Billing and collection recording for interexchange carriers to which the local
11 exchange carrier provides ~~feature group C~~ access service; and
12 f. Telecommunications service, including connections, provided to allow
13 transmission service and termination between an interexchange company's
14 premises and the local exchange central office switch for the origination or
15 termination of the interexchange company's switched telecommunications
16 services.
- 17 19. "Telecommunications company" means a person engaged in the furnishing of
18 telecommunications service within this state.
- 19 20. "Telecommunications service" means the offering for hire of telecommunications
20 facilities, or transmitting for hire telecommunications by means of such facilities
21 whether by wire, radio, lightwave, or other means.

22 **SECTION 3. AMENDMENT.** Section 49-21-01.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **49-21-01.1. Inapplicability of provisions of chapter.** Telecommunications service
25 does not include and the provisions of this title do not apply to:

- 26 1. The one-way transmission of radio or television signals for broadcast purposes,
27 including the one-way transmission of video programming or other programming
28 service by a cable system as well as subscriber interaction, if any, which is
29 required for the selection of such video programming or other programming
30 service.

- 1 2. A hospital, hotel, motel, or similar place of temporary accommodation owning or
- 2 operating message switching or billing equipment solely for the purpose of
- 3 reselling telecommunications services to its patients or guests.
- 4 3. Telegraph service.
- 5 4. Except as provided in section 49-21-01.5, home, business, and coinless or
- 6 coin-operated public or semipublic telephone terminal equipment and the use of
- 7 such equipment.
- 8 5. The lease of telecommunications equipment by a telecommunications company
- 9 from a person whose business is the leasing or sale of such equipment.
- 10 6. Billing and collection services.
- 11 7. Inside wire and premise cable installation and maintenance.
- 12 8. Directory services ~~which that are not essential, such as "yellow pages" advertising~~
- 13 ~~and bold faced or color listings in "white pages".~~
- 14 9. Private line transport service.
- 15 10. Services or facilities provided by a system or institution of higher education to:
- 16 a. Institution employees or students at institution facilities or housing owned or
- 17 leased by the institution;
- 18 b. Affiliated organizations, including alumni operations and research
- 19 foundations, formed for the purpose of supporting the institution or leased by
- 20 the institution and offering products and services intended primarily for the
- 21 benefit of institution employees, students, or guests;
- 22 c. Other persons or entities located on property owned or leased by the
- 23 institution and offering products and services intended primarily for the benefit
- 24 of institution employees, students, or guests;
- 25 d. Casual users using the institution's facilities for conferences, seminars and
- 26 other similar special events, and broadcasters of athletic events;
- 27 e. Occupants of technology parks, or business incubators receiving secretarial
- 28 or business startup support in facilities owned or leased by the institution
- 29 during a business startup phase for a term not to exceed four years or until
- 30 August 1, 2005, whichever is later; and

- 1 f. Educational, governmental, and nonprofit users of system or institution
2 interactive video conferencing site facilities and associated network services.
3 Institutions may not unreasonably restrict access by a telecommunications
4 company to institution facilities for the purpose of furnishing telecommunications
5 services to residents in institution housing or to other persons or entities leasing
6 institution facilities, except institutions may limit access to residence halls.
7 Institutions may require reasonable payment for and adopt reasonable restrictions
8 on the use of institution telecommunications infrastructure to avoid service
9 interruptions or increased maintenance or administrative burdens.

10 **SECTION 4. AMENDMENT.** Section 49-21-01.3 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **49-21-01.3. Certain price increases prohibited - Essential telecommunications**
13 **services.** Changes in essential telecommunications services prices are prohibited except as
14 specifically provided for in chapter 49-21 and section 49-02-01.1.

- 15 1. All increases or decreases in governmentally imposed surcharges and any
16 financial impact on cost of essential telecommunications services caused by
17 governmentally imposed changes in taxes, accounting practices, or separations
18 procedures must be fully reflected in any price for those services within thirty days
19 of the effective date of the surcharge or change.
- 20 2. Nothing in this section prohibits the lowering of a price of an essential service
21 based on reasonable business practices in a competitive environment provided
22 that no price change may be anticompetitive or otherwise in violation of antitrust or
23 unfair trade practice laws.
- 24 3. Whenever a price change provided for in this section is less than three percent of
25 the existing price, notwithstanding any time limitations in this section, a
26 telecommunications company may accumulate such changes in price subject to
27 the following conditions:
- 28 a. Price increases may be accumulated up to a percentage total of five percent.
29 b. Price decreases may be accumulated only to the extent that there is an
30 offsetting accumulated price increase of an equal or greater percentage.

- 1 Accumulated price decreases may never exceed accumulated price
2 increases.
- 3 c. Price decreases may be accumulated only for two years beginning January
4 first of the year in which the change is allowed.
- 5 d. Accumulated price increases may be implemented at the discretion of the
6 telecommunications company.
- 7 e. The effective date of implementation of an accumulated price change may be
8 prospective only, and in accordance with the filing requirements of section
9 49-21-04.
- 10 4. The monthly price of residence service for telecommunications companies with
11 over fifty thousand subscribers may be ~~increased after July 31, 1999, up to fifteen~~
12 ~~dollars and fifty cents and may be increased after June 30, 2000, up to eighteen~~
13 ~~dollars. A telecommunications company increasing prices under this subsection~~
14 ~~must submit a report to the commission reasonably demonstrating that it reduced~~
15 ~~the prices of its intrastate intraLATA message toll service and intrastate switched~~
16 ~~access, as such prices existed on January 1, 1999, in aggregate by an annual~~
17 ~~amount not less than the annual revenue increase resulting from the service price~~
18 ~~increases under this subsection. Reductions in message toll and switched access~~
19 ~~prices attributable to the price increases under this section must be made by~~
20 ~~similar percentages as to be accomplished in a competitively neutral manner. The~~
21 ~~commission may review the report and may set aside pursuant to section 49-21-06~~
22 ~~the prices of intraLATA message toll service and intrastate switched access if the~~
23 ~~reductions have not been made in a revenue neutral manner and by similar~~
24 ~~percentages. Prices set aside pursuant to this section remain effective until the~~
25 ~~effective date of revised prices filed by the telecommunications company within~~
26 ~~forty five days of the commission's order.~~
- 27 5. ~~The commission may investigate an increased price allowed pursuant to~~
28 ~~subsection 4 and may set aside all or part of the increase if it finds the price is~~
29 ~~unfair or unreasonable, provided a price for residence service at or below the price~~
30 ~~in effect on January 1, 1999, may not be set aside under this subsection or section~~
31 ~~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.~~

- 6- 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. AMENDMENT. Section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.7. Powers in general. The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require ~~copies of~~ reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and

- 1 after a hearing, if any, is held, the commission may render a bill and make an order
2 for payment. The bill and order must be delivered by certified mail or personal
3 delivery to the managing officer of the telecommunications company. Upon receipt
4 of the bill and order for payment, the telecommunications company has thirty days
5 within which to pay the amount billed. All amounts not paid within thirty days after
6 receipt of the bill and order for payment thereafter draw interest at the rate of six
7 percent per annum. Amounts collected by the commission under this subsection
8 ~~relating to expenses of the regulatory reform review commission must be~~
9 ~~deposited in the general fund of the state treasury. All other amounts collected by~~
10 ~~the commission under this subsection~~ must be deposited in a special account
11 within the public service commission.
- 12 7. Act upon an application for a certificate of public convenience and necessity under
13 chapter 49-03.1 consistent with section 253 of the federal act, provided a
14 telecommunications company is not required to obtain a certificate of public
15 convenience and necessity to resell telecommunications services.
- 16 8. Mediate or arbitrate agreements for interconnection, services, or network elements
17 under sections 251 and 252 of the federal act.
- 18 9. Approve or reject agreements for interconnection, services, or network elements
19 under sections 251 and 252 of the federal act.
- 20 10. Receive and approve or reject a statement of generally available terms under
21 section 252(f) of the federal act.
- 22 11. Determine whether to terminate a rural telephone company's exemption under
23 section 251(f) of the federal act.
- 24 12. Designate telecommunications companies as eligible telecommunications carriers
25 to receive universal service support under sections 214 and 254 of the federal act.
- 26 13. Designate geographic service areas for the purpose of determining universal
27 service obligations and support mechanisms under the federal act.
- 28 14. Investigate and resolve numbering issues relating to assignment of NII dialing
29 codes.
- 30 15. Adopt rules consistent with state law as are necessary to carry out the powers in
31 subsections 7 through 13 provided the rules may not impose obligations on a

1 telecommunications company that are greater than obligations imposed under the
2 act.

3 **SECTION 6. AMENDMENT.** Section 49-21-02.2 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **49-21-02.2. Cross-subsidization prohibited.** Revenues obtained from regulated
6 telecommunications services, including essential and nonessential telecommunications
7 services, may not be used to subsidize or otherwise give advantage to a telecommunications
8 company in its unregulated services, and revenues from essential telecommunications services
9 may not be used to subsidize or otherwise give advantage to a telecommunications company in
10 its nonessential telecommunications services. ~~The commission may require a~~
11 ~~telecommunications company to keep separate books of account, to allocate costs in~~
12 ~~accordance with procedures established by rule or order of the commission, and to perform~~
13 ~~other acts that will assist the commission in enforcing this section. The price charged for an~~
14 ~~unregulated telecommunications service or a nonessential telecommunications service must~~
15 ~~cover the cost of providing that service.~~

16 **SECTION 7. AMENDMENT.** Section 49-21-10.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **49-21-10.2. Quality of service –~~Procedure and remedies.~~** Any customer, and the
19 commission on its own motion, may complain concerning the quality of service provided by a
20 telecommunications company providing telecommunications services in the state. ~~Any person,~~
21 ~~and the commission on its own motion, may complain concerning any violation of law or rule or~~
22 ~~order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the~~
23 ~~complaint and the time and place of hearing. Whenever the commission finds, after notice and~~
24 ~~hearing in accordance with chapter 28-32, that the services of a telecommunications company~~
25 ~~are inadequate, or the company is in violation of a law, rule, or order, the commission may, in~~
26 ~~addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to~~
27 ~~take whatever remedial actions are reasonable and necessary to provide adequate service or~~
28 ~~to bring the company into compliance with the applicable law, rule, or order. The commission~~
29 may not adopt any rule or order under this section applicable to retail services unless the
30 standards of service required by the rule or order are applicable to all telecommunications
31 companies providing similar service in the relevant market area.

1 **SECTION 8.** Section 49-21-10.3 of the North Dakota Century Code is created and
2 enacted as follows:

3 **49-21-10.3. Complaints.** A person, and the commission on its own motion, may
4 complain concerning any violation of law, rule, or order of the commission. In accordance with
5 chapter 28-32, the commission shall provide notice of the complaint and the time and place of
6 hearing. After hearing under chapter 28-32, if the commission finds that a service of a
7 telecommunications company is inadequate or a company is in violation of a law, rule, or order,
8 the commission may direct the telecommunications company to take reasonable and necessary
9 remedial action to provide adequate service or to bring the company into compliance with the
10 applicable law, rule, or order. The remedies of this section are in addition to the penalties
11 under chapter 49-07.

12 **SECTION 9. REPEAL.** Sections 49-21-04.1, 49-21-08, 49-21-14, 49-21-15, 49-21-17,
13 49-21-18, and 49-21-20 of the North Dakota Century Code are repealed.