

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2216
(Senators Espegard, Heitkamp)
(Representative Carlson)

AN ACT to create and enact section 49-21-10.3 of the North Dakota Century Code, relating to complaints against telecommunications companies; to amend and reenact sections 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 North Dakota Century Code, relating to telecommunications regulation; and to repeal sections 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 Dakota Century Code, relating to telecommunications regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01.1 of 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, 49-21-02.4, ~~49-21-08~~, 49-21-23, 49-21-24, and 49-21-25, subsections 6 through 14 of section 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. AMENDMENT. Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services.
2. "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.
3. "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.
4. "Essential telecommunications service" means the following services:
 - a. Switched access;

- b. ~~The transmission service line for a coin or pay telephone;~~
 - e. Installation of the service connection for other essential services from the end user's premises to the local exchange network; and
 - d. c. ~~Flat Primary flat rate or measured residence, business and combination business and residence basic telephone service including the following service elements:~~
 - (1) Billing and collecting of the telecommunications company's charges for the service.
 - (2) Primary directory listing, ~~including nonlisted and nonpublished service.~~
 - (3) Access to directory assistance.
 - (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
 - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
 - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.
5. "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.].
6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
9. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
10. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
11. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
12. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. ~~Nonessential telecommunications services include, but are not limited to:~~
- a. ~~InterLATA and intraLATA message toll service;~~

- ~~b. Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;~~
 - ~~c. Centrex services and features;~~
 - ~~d. Installation of service connections in addition or supplementary to that described in subdivision c of subsection 4 which also provides transmission service between the end user's premises and the local exchange central office switch;~~
 - ~~e. Mobile telecommunications services using radio spectrum or cellular technology; and~~
 - ~~f. Packet-switched services.~~
13. "Price" means any charge set and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
14. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
15. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
16. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
17. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
18. "Switched access" means access to include:
- a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;
 - e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides ~~feature group G~~ access service; and
 - f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.

19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

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

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

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

- f. Educational, governmental, and nonprofit users of system or institution interactive video conferencing site facilities and associated network services.

Institutions may not unreasonably restrict access by a telecommunications company to institution facilities for the purpose of furnishing telecommunications services to residents in institution housing or to other persons or entities leasing institution facilities, except institutions may limit access to residence halls. Institutions may require reasonable payment for and adopt reasonable restrictions on the use of institution telecommunications infrastructure to avoid service interruptions or increased maintenance or administrative burdens.

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

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

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
2. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
3. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this section, a telecommunications company may accumulate such changes in price subject to the following conditions:
 - a. Price increases may be accumulated up to a percentage total of five percent.
 - b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
 - c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
 - d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
 - e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.
4. The monthly price of residence service for telecommunications companies with over fifty thousand subscribers 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.~~

- ~~5. The commission may investigate an increased price allowed pursuant to subsection 4 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.~~
- ~~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 after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection ~~relating to expenses of the regulatory reform review commission must be deposited in the general fund of the~~

~~state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.~~

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. Investigate and resolve numbering issues relating to assignment of N11 dialing codes.
15. 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 greater than obligations imposed under the act.

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

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

SECTION 7. AMENDMENT. Section 49-21-10.2 of 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 8. Section 49-21-10.3 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 9. REPEAL. Sections 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 Dakota Century Code are 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-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2216.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 75 Nays 13 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,
at _____ o'clock _____ M.

Secretary of State