

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1067

Introduced by

Legislative Council

(Regulatory Reform Review Commission)

1 A BILL for an Act to create and enact sections 49-21-08.2, 49-21-09.1, 49-21-09.2, 49-21-23,
2 49-21-24, 49-21-25, 49-21-26, and 49-21-27 of the North Dakota Century Code, relating to
3 telephone exchange service and universal service; to amend and reenact sections 49-02-01.1,
4 49-21-01, 49-21-01.1, 49-21-01.2, 49-21-01.4, 49-21-01.6, 49-21-01.7, 49-21-02, 49-21-02.1,
5 49-21-02.2, 49-21-04, 49-21-05, 49-21-06, 49-21-07, 49-21-08.1, 49-21-09, 49-21-10,
6 49-21-10.1, 49-21-10.2, 49-21-13.1, 49-21-22.1, 54-44.8-08, and 57-34-01 of the North Dakota
7 Century Code, relating to the regulation of telecommunications companies, universal telephone
8 service, telephone cooperatives, the regulatory reform review commission, the jurisdiction of
9 the public service commission, a surcharge price change for communication-impaired services,
10 and the definition of service element; to repeal sections 49-21-01.3, 49-21-04.1, 49-21-08,
11 49-21-14, and 49-21-15 of the North Dakota Century Code, relating to essential
12 telecommunications service, duplication of exchanges, and connections; and to provide an
13 expiration date.

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

15 **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1995 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
18 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
19 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
20 any public utility owned and operated by the state or by any city, county, township, or other
21 political subdivision of the state or any public utility, that is not operated for profit, that is
22 operated as a nonprofit, cooperative, or mutual telecommunications ~~company~~ carrier or is a
23 telecommunications ~~company~~ carrier having fewer than eight thousand local exchange
24 subscribers. However, any telecommunications utility that is operated as a nonprofit,

cooperative, or mutual telecommunications ~~company~~ carrier or has fewer than eight thousand local exchange subscribers is subject to ~~sections~~ section 49-21-01.4 and ~~49-21-08~~ and is subject to subsection 6 of section ~~49-02-02~~ 49-21-01.7 and sections ~~49-21-01.2, 49-21-01.3, 49-21-06,~~ 49-21-07, 49-21-08.2, 49-21-09, 49-21-09.1, 49-21-09.2, 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~~ carriers. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06. Any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications carrier or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-23, 49-21-24, 49-21-25, 49-21-26, and 49-21-27 regarding universal service. To qualify as a telecommunications carrier with fewer than eight thousand local exchange subscribers for purposes of this section, the carrier must be an eligible telecommunications carrier under section 214(e) of the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996, and section 49-21-25.

SECTION 2. AMENDMENT. Section 49-21-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions. As used in this chapter, unless the context or custom and usage 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. "Switched access" includes:~~
 - 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; and~~
 - e. ~~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~~

1 ~~termination of the interexchange company's switched telecommunications~~
2 ~~services.~~

3 2. ~~"Essential telecommunications price factor" means:~~

4 a. ~~In the case of group I telecommunications companies, a factor determined~~
5 ~~annually as the lower of:~~

6 (1) ~~41.6667 percent of the percentage change of the average annual gross~~
7 ~~national product price index; or~~

8 (2) ~~The percentage change of the average annual gross national product~~
9 ~~price index minus 2.75 percentage points.~~

10 b. ~~In the case of group II telecommunications companies, a factor determined~~
11 ~~annually as the lower of:~~

12 (1) ~~52.0834 percent of the percentage change of the average annual gross~~
13 ~~national product price index; or~~

14 (2) ~~The percentage change of the average annual gross national product~~
15 ~~price index minus 2.0625 percentage points.~~

16 c. ~~For purposes of the determination of essential telecommunications price~~
17 ~~factor, group I telecommunications companies are telecommunications~~
18 ~~companies with over fifty thousand subscribers and group II~~
19 ~~telecommunications companies are telecommunications companies with fifty~~
20 ~~thousand or fewer subscribers. "Act" means the Communications Act of 1934~~
21 ~~[47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996~~
22 ~~[Pub. L. 104-104, 110 Stat. 56].~~

23 2. "Customer premises equipment" means equipment employed on the premises of a
24 person other than a carrier to originate, route, or terminate telecommunications.

25 3. "Dialing parity" means that a person that is not an affiliate of a local exchange
26 carrier is able to provide telecommunications services in a manner in which
27 customers have the ability to route automatically, without the use of any access
28 code, that person's telecommunications to the telecommunications services
29 provider of the customer's designation from among two or more
30 telecommunications services providers, including the local exchange carrier.

1 4. "Elementary and secondary school" means a nonprofit institution or residential
2 school that provides elementary education and secondary education. The term
3 does not include any institution or school that provides education beyond grade
4 twelve.

5 3- 5. "Essential telecommunications service" means service that is ~~necessary for~~
6 ~~switched access to interexchange telecommunications companies and necessary~~
7 for two-way switched communications for both residential and business service
8 within a local exchange area. A charge based on measured service may not be
9 required for residential and business local exchange service. Essential
10 telecommunications services are limited to:

11 a. ~~Switched access;~~

12 b- ~~Any new product or service offered in North Dakota after July 1, 1989,~~
13 ~~deemed essential by the commission after notice and hearing in accordance~~
14 ~~with chapter 28-32;~~

15 e- ~~Billing and collection of the billing company's own essential~~
16 ~~telecommunications services and billing and collection recording for~~
17 ~~interexchange carriers to which the local exchange carrier provides feature~~
18 ~~group C access service;~~

19 d- Primary directory listing, including nonlisted and nonpublished service, and
20 local exchange directory assistance;

21 e- b. Emergency 911 services and emergency operator assistance in local
22 exchange areas in which emergency 911 service is not available;

23 f- c. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area
24 service to designated nearby local exchange areas;

25 g- d. Installation of the service connection for essential services from the end
26 user's premises to the local exchange network;

27 h- e. Transmission service, when offered as a separate and distinct service,
28 necessary for the connection between the end user's premises and the local
29 exchange central office switch including a trunk connection that has direct
30 inward dialing and necessary signaling service such as touchtone used by
31 end users for essential telecommunications services;

- 1 i. ~~Single or multiparty flat-rate or measured residence and business service;~~
2 j. f. Single or multiparty flat-rate or measured residence service or business
3 service or combination business and residence service; and
4 k. g. The transmission service line for a coin or pay telephone.
- 5 4. ~~"Gross national product price index" means the fixed-weighted price index of~~
6 ~~prices of all the goods and services that make up gross national product, as~~
7 ~~published quarterly by the United States department of commerce, economics and~~
8 ~~statistics administration, bureau of economic analysis. "Average annual gross~~
9 ~~national product price index" means the mean of the gross national product price~~
10 ~~index published in the third calendar quarter of a year through the second calendar~~
11 ~~quarter of the following year.~~
- 12 6. "Exchange access" means the offering of access to telephone exchange services
13 or facilities for the purpose of the origination or termination of telephone toll
14 services.
- 15 7. "Health care provider" means a postsecondary educational institution offering
16 health care instruction, teaching hospital, and medical school; community health
17 center or health center providing health care to a migrant worker; local health
18 department or agency; community mental health center; not-for-profit hospital;
19 rural health clinic; and consortia of health care providers consisting of one or more
20 entities described in this subsection.
- 21 8. "Incumbent local exchange carrier" means, with respect to an area, the local
22 exchange carrier that:
- 23 a. On February 8, 1996, provided telephone exchange service in the area; and
24 b. On February 8, 1996, was deemed to be a member of the exchange carrier
25 association pursuant to 47 CFR 69.601(b); or is a person or entity that, on or
26 after February 8, 1996, became a successor or assign of a member of the
27 association.
- 28 5- 9. "Interexchange telecommunications company service" means a person providing
29 telecommunications service to that connects end users located in separate local
30 exchange areas. This service is otherwise known as long distance service or

1 message toll service. This service does not include mandatory, flat-rate extended
2 area service to designated nearby local exchange areas.

3 ~~6-~~ 10. "Local exchange area" means a geographic territorial unit established by a
4 ~~telecommunications company~~ an incumbent local exchange carrier for the
5 administration of ~~telecommunications~~ telephone exchange services as approved
6 and regulated in accordance with chapter 49-03.1.

7 11. "Local exchange carrier" means any person that is engaged in the provision of
8 telephone exchange service or exchange access. The term does not include a
9 person insofar as the person is engaged in the provision of commercial mobile
10 service under section 332(c) of the Act, except to the extent that the federal
11 communications commission finds that this service is included in the definition of
12 the term.

13 ~~7-~~ 12. "Mutual telephone company" means a telephone cooperative organized and
14 operating subject to ~~the provisions of this chapter, and such a cooperative shall~~
15 which is also be subject to the general law governing cooperatives, except where
16 ~~such~~ the general law is in conflict with this chapter.

17 13. "Network element" means a facility or equipment used in the provision of a
18 telecommunications service. The term includes features, functions, and
19 capabilities that are provided by means of facility or equipment, including
20 subscriber numbers, data bases, signaling systems, and information sufficient for
21 billing and collection or used in the transmission, routing, or other provision of a
22 telecommunications service.

23 ~~8-~~ 14. "Nonessential telecommunications service" means any telecommunications
24 service, other than those essential telecommunications services listed in
25 subsection ~~3~~ 5 that a customer has the option to purchase either in conjunction
26 with or separate from any essential telecommunications service. ~~Nonessential~~
27 ~~telecommunications services include, but are not limited to:~~

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

29 b. ~~Private line transport service;~~

- ~~e. 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;~~
- ~~d. Centrex services and features, not including transmission service described in subdivision h of subsection 3 of this section;~~
- ~~e. Installation of service connections in addition or supplementary to that described in subdivision g of subsection 3 which also provides transmission service between the end user's premises and the local exchange central office switch;~~
- ~~f. Mobile telecommunications services using radio spectrum or cellular technology; and~~
- ~~g. Packet switched services.~~

~~9.~~ 15. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications ~~company~~ carrier for any telecommunications service offered by it to the public or other telecommunications ~~companies~~ carriers.

~~10.~~ 16. "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~~ carriers.

~~11.~~ "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.

~~12.~~ "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

~~13.~~ "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.

17. "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

a. Provides common carrier services to any local exchange carrier study area that does not include either, any city of ten thousand inhabitants or more or any part thereof, based on the most recent available population statistics of the federal bureau of the census; or any territory, incorporated or unincorporated, included in an urbanized area, as defined by the federal bureau of the census as of August 10, 1993;

b. Provides telephone exchange service, including exchange access, to fewer than fifty thousand access lines;

c. Provides telephone exchange service to any local exchange carrier study area with fewer than one hundred thousand access lines; or

d. Has less than fifteen percent of its access lines in cities of more than fifty thousand on February 8, 1996.

18. "Service area" means a geographic area established by the commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, the term means the company's "study area", unless and until a different definition of service area for the company is established under section 214(e)(5) of the Act.

19. "Telecommunications" means the transmission, between or among the points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

20. "Telecommunications carrier" means any provider of telecommunications services. The term does not include aggregation of telecommunications services as defined in section 226 of the Act. A telecommunications carrier is a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services.

21. "Telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to the equipment, including upgrades.

22. "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available directly to the public, regardless of the facilities used.

23. "Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge or comparable service provided through a system of switches, transmission equipment, or other facilities, or combination thereof, by which a subscriber can originate and terminate a telecommunications service.

24. "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

25. "Universal service" means an evolving level of telecommunications services established by the federal communications commission.

SECTION 3. AMENDMENT. Section 49-21-01.1 of the 1995 Supplement to 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~~ does 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,~~ customer premises equipment and coinless or coin-operated public or semipublic telephone terminal equipment and the use of ~~such~~ this equipment.

~~5. 3. The sale or lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment or customer premises equipment.~~

6- 4. ~~Billing~~ Except as provided in section 49-21-09, all billing and collection services.

7- 5. Inside wire and premise cable installation and maintenance.

8- 6. Directory services which are not essential, ~~such as~~ including specialty listings, any electronically published directories, "yellow pages" advertising, and boldface or color listings in "white pages".

7. Private line transport service.

SECTION 4. AMENDMENT. Section 49-21-01.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.2. Exemption - Rate regulation. Except as provided for in this chapter and sections 49-02-01.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications ~~companies~~ carriers and all telecommunications services are exempt from ~~the provisions of~~ chapters 49-02, 49-04, 49-05, and 49-06. Telecommunications ~~companies~~ carriers and services are not subject to rate or rate of return regulation. ~~Any telecommunications company may elect not to be subject to the provisions of this section and section 49-21-01.3, and to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over fifty thousand subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable election.~~

SECTION 5. AMENDMENT. Section 49-21-01.4 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.4. Purchase of essential telecommunications services. ~~Customers of any telecommunications company~~ Telecommunications carriers must be permitted permit subscribers to purchase at retail essential telecommunications services separate from all other telecommunications services. A telecommunications ~~company~~ carrier may disconnect local exchange or essential telecommunications services to retail subscribers only pursuant to rules adopted by the commission. If there are at least two telecommunications carriers in a local exchange area, a telecommunications carrier may discontinue providing essential telecommunications service in the local exchange area if an eligible telecommunications carrier remains in the local exchange area.

SECTION 6. AMENDMENT. Section 49-21-01.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.6. Call identification services - Charges prohibited - Notice - Exceptions.

1. Any telephone call identification service offered in this state by a telecommunications ~~company~~ carrier must allow a caller on a per-call and a per-line basis to withhold display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller.
2. A telecommunications ~~company~~ carrier offering call identification services may not charge any person who requests that the call identification services be blocked on a per-call basis. Per-line blocking must be provided without charge for residential customers and business customers with special needs, ~~such as~~ including law enforcement and domestic violence agencies.
3. A telecommunications ~~company~~ carrier offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered.
4. This section does not apply to:
 - a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.
 - b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).
 - c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.
 - d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service, or any voice or data store and forward service.
 - e. Any other service that, after investigation by the commission, the commission finds that a nondisclosure or similar agreement will protect the privacy interests of a calling party.

SECTION 7. AMENDMENT. Section 49-21-01.7 of the 1995 Supplement to 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~~ carriers.

2. Require telecommunications ~~companies~~ carriers 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~~ a carrier, 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, mediations, arbitrations, and other proceedings relating to telecommunications ~~companies~~ carriers. 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~~ carriers involved in such hearings. The commission shall ascertain the exact cost and expenditure. Except for mediation or arbitration conducted under section 49-21-09, in which case the parties must share equally all necessary expenses, the carrier that necessitates a hearing through a complaint or request normally must bear the cost of the hearing unless the commission determines otherwise. The commission may reduce the liability of other parties to the proceeding based on the additional costs assessed. The pro rata share of any cost may not be determined by the size, number of customers, or the financial strength of a carrier. After giving the telecommunications ~~company~~ carrier 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~~ carrier. Upon receipt of the bill and order for payment, the telecommunications ~~company~~ carrier has thirty days within which to

1 pay the amount billed. All amounts not paid within thirty days after receipt of the
2 bill and order for payment thereafter draw interest at the rate of six percent per
3 annum. ~~Amounts collected by the commission under this subsection relating to~~
4 ~~expenses of the regulatory reform review commission must be deposited in the~~
5 ~~general fund of the state treasury.~~ All other amounts collected by the commission
6 under this subsection must be deposited in a special account within the public
7 service commission.

8 7. Act upon an application for a certificate of public convenience and necessity under
9 chapter 49-03.1, provided:

- 10 a. The exercise of the power does not prohibit or have the effect of prohibiting
11 the ability of any entity to provide any interstate or intrastate
12 telecommunications service.
- 13 b. Nothing in this section affects the ability of the commission to impose, on a
14 competitively neutral basis and consistent with section 254 of the Act,
15 requirements necessary to preserve and advance universal service, protect
16 the public safety and welfare, ensure the continued quality of
17 telecommunications services, and safeguard the rights of consumers.
- 18 c. Any telecommunications carrier that seeks to provide telephone exchange
19 service or exchange access in a service area served by a rural telephone
20 company is required to fulfill the requirements in section 214(e)(1) of the Act
21 and of section 49-21-23 before being permitted to provide telephone
22 exchange service or exchange access. This subdivision does not apply to a
23 service area served by a rural telephone company that has obtained an
24 exemption, suspension, or modification of section 251(c)(4) of the Act which
25 effectively prevents a competitor from meeting the requirements of
26 section 214(e)(1) of the Act and section 49-21-23, and to a provider of
27 commercial mobile services.

28 8. Mediate or arbitrate agreements for interconnection, services, or network elements
29 under sections 251 and 252 of the Act and under section 49-21-09.

30 9. Approve or reject agreements for interconnection, services, or network elements
31 under sections 251 and 252 of the Act and under section 49-21-09.

- 1 10. Receive and approve or reject a statement of generally available terms under
- 2 section 252(f) of the Act.
- 3 11. Determine whether to terminate a rural telephone company's exemption under
- 4 section 251(f) of the Act and under section 49-21-09.1.
- 5 12. Designate eligible telecommunications carriers to receive universal service support
- 6 under sections 102 and 254 of the Act and under section 49-21-25, and to
- 7 implement intrastate universal service support under section 254(f) of the Act and
- 8 under section 49-21-26.
- 9 13. Determine prices for telecommunications service to any public or nonprofit health
- 10 care provider that serves persons who reside in rural areas in this state and to
- 11 determine discounted rates for services that are within the definition of universal
- 12 service and provided to elementary schools, secondary schools, and libraries,
- 13 under section 254(h) of the Act and under section 49-21-27.

14 **SECTION 8. AMENDMENT.** Section 49-21-02 of the 1995 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **49-21-02. Telecommunications ~~companies~~ carriers - Common carriers - Public**
17 **policy.** All persons providing telecommunications service within this state ~~shall be~~ are
18 common carriers and are ~~hereby declared to be~~ affected with a public interest and subject to
19 regulation ~~and general supervision~~ by the commission. Among the purposes to be served by
20 ~~such regulation and supervision~~ are:

- 21 1. To make available to all people of this state modern and efficient
- 22 telecommunications services at the most economic and reasonable cost.
- 23 2. To allow the development of competitive markets for telecommunications services
- 24 where such competition does not unreasonably distract from the efficient provision
- 25 of telecommunications services to the public, and to lessen regulation in whole or
- 26 in part of those telecommunications services ~~which~~ that become subject to
- 27 effective competition.
- 28 3. To establish and maintain reasonable charges for telecommunications services
- 29 without unreasonable discrimination, or unfair or destructive competitive practices.
- 30 4. To ensure that ~~regulated charges do not include the costs of unregulated activities~~
- 31 services that are not competitive do not include the costs of competitive services.

5. To encourage the establishment and maintenance of a strong telecommunications industry.

6. To implement this state's regulatory authority under the Act, including the ability of this state to impose, on a competitively neutral basis and consistent with sections 253 and 254 of the Act, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

SECTION 9. AMENDMENT. Section 49-21-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-02.1. Authority to exempt from regulation.

1. The commission must exempt a telecommunications service, a telecommunications ~~company~~ carrier, or a transaction by a telecommunications ~~company~~ carrier from one or more of the provisions of this title ~~when~~, if the commission determines that the application of ~~such~~ the provisions are not necessary to carry out the telecommunications policy of section 49-21-02; and either of the following apply:
 - a. The transaction or service is of limited scope.
 - b. The application of a provision of this title is not needed to protect subscribers because the service, ~~company~~ carrier, or transaction is subject to a sufficiently competitive market.
2. In determining if a telecommunications service, ~~company~~ carrier, or transaction is subject to a sufficiently competitive market, the commission may consider the following:
 - a. The extent to which competing telecommunications services are available from providers in the relevant market.
 - b. The ability of ~~such~~ providers to make competing telecommunications services ~~which~~ that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions.
 - c. The behavior of the market, including the market share, the impact of potential competition, and other factors ~~which~~ that cause a ~~company~~ carrier to behave competitively.

3. The commission may begin a proceeding under this section on its own initiative or on application by an interested party. The commission may revoke an exemption, to the extent it specifies, ~~when~~ if it finds that application of a provision of this title to the service, ~~company~~ carrier, or transaction is necessary to carry out the telecommunications policy set forth in section 49-21-02.

4. The commission may not be unjustly discriminatory or preferential in the regulatory treatment of any telecommunications ~~company~~ carrier.

5. Notwithstanding any other provisions of this section, telecommunications ~~companies which~~ carriers that provide only nonessential services competing telecommunications services in the relevant market are subject to the same level of commission regulation, oversight, and monitoring.

SECTION 10. AMENDMENT. Section 49-21-02.2 of the 1995 Supplement to 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. A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. Services included in the definition of universal service must bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.~~

SECTION 11. AMENDMENT. Section 49-21-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1 **49-21-04. Price schedules filed with the commission.** Each telecommunications
2 ~~company carrier~~ shall file with the commission in ~~such the~~ form and detail as it may require,
3 subject to considerations for maintaining trade secrets or commercial confidentiality:

- 4 1. Schedules showing all prices, including those prices set by contract ~~and the~~
5 ~~individual unbundled or unpackaged price of any essential service~~, in effect at the
6 time for any telecommunications service ~~rendered to the public by such~~
7 ~~telecommunications company~~ within this state that the carrier provides at retail to
8 subscribers who are not telecommunications carriers;
- 9 2. All rules and regulations ~~which that~~ in any manner affect the prices charged or to
10 be charged for such service; and
- 11 3. All new prices and any price changes of essential services at least ~~sixty~~ ten days
12 before the effective date of the new price or price change, unless the commission
13 allows a lesser time upon application and for good cause ~~allows a lesser time, and~~
14 ~~except prices changed in accordance with subsection 1 of section 49-21-01.3,~~
15 ~~which will be filed at least ten days before the expiration of the thirty day period~~
16 ~~mandated in that section.~~ No price or price change for essential services is
17 effective until filed in accordance with this chapter. Each filing under this section
18 must be accompanied by a fifty-dollar filing fee.
- 19 4. Upon request, a local exchange carrier that is not a rural telephone company shall
20 provide to the commission the cost methodology and studies that the carrier uses
21 to support its prices for residential and business essential telecommunications
22 services for commission review. The method and studies must demonstrate the
23 full cost of providing those services, including cost of capital and reasonable profit.
24 If requested, the methodology and studies must be protected as trade secret by
25 the commission. Before October 1, 1997, the commission shall report the results
26 of its review and any recommendations to the regulatory reform review
27 commission.
- 28 5. A price for residential or business essential telecommunications service may not
29 exceed the full cost of providing the service, including cost of capital and
30 reasonable profit.

6. A price increase for residential and business essential telecommunications service as determined by the public service commission to be allowable under subsection 4 must be divided into increments that do not exceed one-fourth of the total allowable increase. There may be no more than one increment per calendar year. The first increment may not be assessed before January 1, 1998.

SECTION 12. AMENDMENT. Section 49-21-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-05. Schedule of prices to be on file for public inspection. The commission may require any telecommunications ~~company~~ carrier to keep on file and accessible to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, at any city in which the telecommunications ~~company~~ carrier has a public office, a schedule of ~~such~~ prices for essential telecommunications services ~~as the commission may deem necessary~~ that the carrier provides at retail to subscribers who are not telecommunications carriers.

SECTION 13. AMENDMENT. Section 49-21-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-06. Complaint against prices. There is a rebuttable presumption that prices for essential telecommunications services in effect on ~~July 1, 1989~~ August 1, 1997, are ~~fair and~~ reasonable.

1. Any ~~person~~ subscriber to retail telephone exchange service may complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, ~~fairness, or adequacy~~ of any retail price for any essential ~~or nonessential~~ telecommunications service. Any telecommunications carrier may complain to the commission of the adequacy of any price for any essential telecommunications service provided by the carrier.
2. Any notice and hearing by the commission will be provided in accordance with chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines to be unreasonable, ~~unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of~~

telecommunications, provided this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is unreasonably high.

3. The commission may not determine:

- a. That a price that is based on the full cost of providing the service is unreasonable.
- b. Full cost through reference to a rate-of-return or other rate-based proceeding.
- c. That a price that is based on the embedded cost of providing the service is unreasonable.
- d. That a price that includes an amount to recover a reasonable share of any reserve deficiency from underdepreciated capital investment is unreasonable.
- e. That a price that includes cost of capital and normal profit is unreasonable.

SECTION 14. AMENDMENT. Section 49-21-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-07. Discrimination unlawful. It ~~shall be~~ is unlawful for any telecommunications ~~company~~ carrier 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~~ carrier or to subject any person or telecommunications ~~company~~ carrier to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications ~~company~~ carrier, 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~~ carrier, including a telecommunications ~~company~~ carrier 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~~ carrier 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~~ This chapter shall may not be construed to prevent any telecommunications ~~company~~ carrier from offering or providing volume or other discounts based on reasonable business practices; from passing through any

1 state, municipal or local taxes to the specific geographic areas from which the taxes originate;
2 or from furnishing free telecommunications service or service at reduced prices to its officers,
3 agents, ~~servants~~, or employees. A subscriber to retail telephone exchange service may
4 complain to the commission or the commission on its own motion may complain and begin
5 investigation whether a retail price or practice is unreasonably discriminatory. A
6 telecommunications carrier that sells or purchases interconnection, services, or network
7 elements to or from another telecommunications carrier under section 49-21-08.2, 49-21-09, or
8 49-21-09.2 may complain to the commission or the commission on its own motion may
9 complain and begin investigation whether an interconnection, services, or network elements
10 price or practice is unreasonably discriminatory.

11 **SECTION 15. AMENDMENT.** Section 49-21-08.1 of the 1995 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **49-21-08.1. (Effective until July 31, 1999) Universal telephone service - Dialing**
14 **parity - IntraLATA equal access.** In order to continue to make available to all people of this
15 state modern and efficient telecommunications services at the most economic and reasonable
16 cost, the provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA
17 equal access, may not be required to be provided by any ~~company~~ telecommunications carrier
18 providing local exchange service.

19 **SECTION 16.** Section 49-21-08.2 of the North Dakota Century Code is created and
20 enacted as follows:

21 **49-21-08.2. Telephone exchange service resale.** This section governs the terms and
22 conditions for resale of telephone exchange service.

23 1. An incumbent local exchange carrier shall offer for resale at wholesale prices any
24 telecommunications service that the carrier provides at retail to subscribers who
25 are not telecommunications carriers. Wholesale prices must be determined on the
26 basis of retail prices, excluding the portion attributable to any marketing, billing,
27 collection, and other costs that are avoided by the incumbent local exchange
28 carrier. Exchange access services are not services that incumbent local exchange
29 carriers must offer for resale.

30 2. An incumbent local exchange carrier may be obligated only to make available for
31 resale any telecommunications service that it offers on a retail basis to subscribers

that are not telecommunications carriers. An incumbent local exchange carrier may not be obligated to make available for resale any essential telecommunications exchange service separate from all essential telecommunications services that it offers on a retail basis.

3. A telecommunications carrier that obtains at wholesale rates for resale a telecommunications service that the incumbent local exchange carrier makes available at retail only to a category of customers may not offer the service to a different category of customers.

4. Any telecommunications carrier that seeks to provide resold telephone exchange service or exchange access in a service area served by a rural telephone company shall meet the requirements of section 214(e)(1) of the Act and of section 49-21-23 for designation as an eligible telecommunications carrier for that area before being permitted to provide the service. This subsection does not apply to:

a. A service area served by a rural telephone company that has obtained an exemption, suspension, or modification under section 49-21-09.1 which effectively prevents a competitor from meeting the requirements of section 214(e)(1) of the Act; and

b. A provider of commercial mobile services.

5. An incumbent local exchange carrier may require a telecommunications carrier that seeks to provide resold service to deposit security on terms and conditions that are reasonable and nondiscriminatory, or on the same terms as are permitted with respect to service that the carrier provides at retail to subscribers who are not telecommunications carriers.

6. An incumbent local exchange carrier may impose restrictions on resale in addition to the restrictions under this section, only if the incumbent local exchange carrier proves to the commission that the restriction is reasonable and nondiscriminatory.

SECTION 17. AMENDMENT. Section 49-21-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-09. Telecommunications - ~~Connections~~ Interconnections, access, wholesale services, and collection. ~~Whenever a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of~~

~~telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies, as provided in this section. When, after notice and hearing in accordance with chapter 28-32, the commission finds that public convenience and necessity require the use by one telecommunications company of facilities or services of another telecommunications company, and that such use will not result in irreparable injury to the owner or other users of such facilities or services, nor any substantial detriment to the facilities or services, and that such telecommunications companies have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation, terms, and conditions. If such use is directed, the telecommunications company to which the use is permitted is liable to the owner or other users of such facilities or services for such damage as may result therefrom to the property of such owner or other users thereof.~~

1. Each carrier has the duty to negotiate in good faith in accordance with section 252 of the Act the particular terms and conditions for the arrangements if a telecommunications carrier requests from another telecommunications carrier:
 - a. Interconnection for the transmission and routing of telephone exchange service or exchange access;
 - b. Access to network elements;
 - c. Wholesale telecommunications service that the other carrier provides at retail to subscribers who are not telecommunications carriers;
 - d. Physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier; or
 - e. Virtual collocation.
2. Any party negotiating an agreement under this section, at any point in the negotiation, may petition the commission to mediate any differences arising in the course of the negotiations; or during the period from the one hundred thirty-fifth to the one hundred sixtieth day after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, may petition the commission to arbitrate any open issues.

- 1 3. The parties to a negotiation that is the subject of a petition for arbitration shall
2 provide information to the commission and to other parties as provided by
3 section 252 of the Act.
- 4 4. The commission shall limit its consideration of any petition for arbitration to the
5 issues set forth in the petition and in the response, and shall resolve the issues
6 under the standards of section 252 of the Act not later than nine months after the
7 date on which the local exchange carrier received the request under this section.
- 8 5. An incumbent local exchange carrier may not be required to construct, modify, or
9 extend telecommunications facilities primarily for the use of a carrier that has
10 requested an arrangement under this section.
- 11 6. The commission shall permit an incumbent local exchange carrier that incurs
12 nonrecurring costs primarily for the use of a carrier that has requested an
13 arrangement under this section to recover the costs through a nonrecurring charge
14 payable before the costs are incurred, provided that nonrecurring charges are
15 allocated efficiently among requesting telecommunications carriers.
- 16 7. An incumbent local exchange carrier may not be required to make an arrangement
17 under this section which would result in irreparable injury, substantial detriment, or
18 threat to network reliability or security of the incumbent local exchange carrier or
19 other users of its facilities or services.
- 20 8. Any agreement adopted by negotiation or arbitration for interconnection, services,
21 network elements, or collocation must be submitted to the commission for approval
22 under section 252(e) of the Act and this section. The commission shall approve or
23 reject the agreement, with written findings as to any deficiencies. The commission
24 may reject an agreement or any portion of an agreement adopted by negotiation
25 only if it finds that the agreement or any portion of the agreement discriminates
26 against a telecommunications carrier not a party to the agreement; or if the
27 implementation of the agreement or a portion of the agreement is not consistent
28 with the public interest, convenience, and necessity. The commission may reject
29 an agreement or any portion of an agreement adopted by arbitration only if it finds
30 that the agreement does not meet the requirements of section 251 of the Act or the
31 standards set forth in section 252(d) of the Act. If the commission does not act to

approve or reject the agreement within ninety days after submission by the parties of an agreement adopted by negotiation or within thirty days after submission by the parties of an agreement adopted by arbitration, the agreement is approved.

9. The commission shall make a copy of each agreement approved under this section available for public inspection and copying.

10. A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent local exchange carrier's network may not receive interconnection under this section.

SECTION 18. Section 49-21-09.1 of the North Dakota Century Code is created and enacted as follows:

49-21-09.1. Exemptions, suspensions, and modifications.

1. Sections 49-21-08.2 and 49-21-09 do not apply to a rural telephone company until a rural telephone company has received a bona fide request for interconnection, services, or network elements, and the commission determines under this section that the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act, not including sections 254(b)(7) and (c)(1)(D) of the Act.

2. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the commission. The commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption. Within one hundred twenty days after the commission receives notice of the request, the commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act, not including sections 254(b)(7) and (c)(1)(D) of the Act. Upon termination of the exemption, the commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with federal communications commission regulations.

3. The exemption provided by this section does not apply to a request from a cable operator providing video programming, and seeking to provide any telecommunications service in the area in which the rural telephone company

1 provides video programming. The limitation contained in this subsection does not
2 apply to a rural telephone company that is providing video programming on
3 February 8, 1996.

4 4. A local exchange carrier with less than two percent of the subscriber lines installed
5 in the aggregate nationwide may petition the commission for a suspension or
6 modification of the application or a requirement of section 49-21-08.2 or 49-21-09,
7 or of section 251(b) or (c) of the Act, to telephone exchange service facilities
8 specified in the petition. The commission shall grant the petition to the extent that,
9 and for the duration as, the commission determines that the suspension or
10 modification:

11 a. Is necessary to avoid a significant adverse economic impact on users of
12 telecommunications services generally; to avoid imposing a requirement that
13 is unduly economically burdensome; or to avoid imposing a requirement that
14 is technically infeasible; and

15 b. Is consistent with the public interest, convenience, and necessity.

16 5. The commission's determination under this section of whether a request or
17 requirement is unduly economically burdensome must include arrangements that
18 afford a rural telephone company's recovery of embedded costs.

19 6. A party's request of a rural telephone company for interconnection, services, or
20 network elements is a bona fide request if the request includes the requesting
21 party's verified statement describing the requested interconnection, services, or
22 network elements, and describing the telecommunications services that it intends
23 to provide. If the requesting party does not submit a notice of its request to the
24 commission within seven days of submitting the request to the rural telephone
25 company, the request is not bona fide. If the requesting party and the rural
26 telephone company have not achieved agreement within one hundred thirty-five
27 days and if the requesting party does not petition the commission to arbitrate any
28 open issues during the period from the one hundred thirty-fifth to the one hundred
29 sixtieth day after the date on which the rural telephone company received the
30 request for negotiation, the request is not bona fide. If the requesting party does
31 not provide the telecommunications services described in its verified statement

commencing thirty days after approval of an agreement under section 49-21-09, the request is not bona fide and the agreement must be rescinded. If the requesting party intends to provide telephone exchange service or exchange access in a service area served by a rural telephone company, the requesting party must meet the requirements of section 214(e)(1) of the Act and of section 49-21-23 for designation as an eligible telecommunications carrier for that area before being permitted to provide service. This requirement does not apply to:

- a. A service area served by a rural telephone company that has obtained an exemption, suspension, or modification under section 49-21-09.1 that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of the Act and of section 49-21-23; and
- b. A provider of commercial mobile services.

SECTION 19. Section 49-21-09.2 of the North Dakota Century Code is created and enacted as follows:

49-21-09.2. Exchange access service. Incumbent local exchange carriers shall provide exchange access services to interexchange carriers to transmit interexchange traffic originating or terminating within their exchange areas, in interstate and foreign commerce under applicable provisions of the Act, and in intrastate commerce under this section. Any carrier may complain to the commission of the reasonableness or adequacy of any price for intrastate exchange access service. The commission may set aside a price for a service it investigates pursuant to this section only if the commission determines the price to be unreasonable or inadequate. Prices for intrastate exchange access services in effect on August 1, 1997, are deemed fair and reasonable. This section does not set aside any price in effect on August 1, 1997, upon complaint by an interexchange carrier that the price is unreasonably high. The commission shall construe this section consistent with the requirements of the Act, including any regulations adopted by the federal communications commission.

SECTION 20. AMENDMENT. Section 49-21-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-10. Transmitting telecommunications from other telecommunications companies carriers. Every telecommunications ~~company~~ carrier operating in this state shall

1 receive, transmit, and deliver, without discrimination or delay, the telecommunications of every
2 other telecommunications ~~company~~ carrier with which a connection has been made.

3 **SECTION 21. AMENDMENT.** Section 49-21-10.1 of the 1995 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **49-21-10.1. Excessive charges - Refunds.** When complaint has been made to the
6 commission or by the commission on its own motion concerning any price for a
7 telecommunications service, and the commission has found, upon a hearing after notice given
8 as required by law, that the telecommunications ~~company~~ has charged for such service a price
9 in excess of the price permitted under section 49-21-01.3, carrier has discriminated
10 unreasonably; or has otherwise violated a statute, rule, or order, the commission may order that
11 the telecommunications ~~company~~ carrier make due refunds ~~or reparations~~, with interest from
12 the date of collection.

13 **SECTION 22. AMENDMENT.** Section 49-21-10.2 of the 1995 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **49-21-10.2. Quality of service - Procedure and remedies.** Any customer, and the
16 commission on its own motion, may complain concerning the quality of service provided by a
17 telecommunications ~~company~~ carrier providing telecommunications services in the state. Any
18 person, and the commission on its own motion, may complain concerning any violation of law
19 or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide
20 notice of the complaint and the time and place of hearing. Whenever the commission finds,
21 after notice and hearing in accordance with chapter 28-32, that the services of a
22 telecommunications ~~company~~ carrier are inadequate, or the ~~company~~ carrier is in violation of a
23 law, rule, or order, the commission may, in addition to the penalties prescribed in chapter
24 49-07, direct the telecommunications ~~company~~ carrier to take whatever remedial actions are
25 reasonable and necessary to provide adequate service or to bring the ~~company~~ carrier into
26 compliance with the applicable law, rule, or order. If the costs incurred in compliance with a
27 remedial action order include construction, modification, or extension costs in excess of the
28 normal course of the carrier's business, primarily for the benefit of another carrier or for a
29 particular consumer, and not due to any negligence or misconduct on the part of the carrier, the
30 carrier may recover the costs of compliance with the remedial action order through a
31 nonrecurring charge payable before the cost is incurred.

1 **SECTION 23. AMENDMENT.** Section 49-21-13.1 of the 1995 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **49-21-13.1. Telephone cooperatives - Sale of physical plant - Approval.** No mutual
4 aid cooperative or cooperative association that is a telecommunications ~~company~~ carrier as
5 defined in section 49-21-01 may sell, transfer, or convey, within the period of any single
6 calendar year, physical plant in excess of five percent in value of the cooperative, based upon
7 the most recent audit of the books of the cooperative, unless consent has been obtained by
8 vote of not less than two-thirds of the entire membership of the cooperative cast at any regular
9 or special meeting called for that purpose, after notice in writing to all the membership of the
10 cooperative not less than twenty nor more than thirty days prior to the date of ~~such~~ the meeting.
11 Nothing in this section prohibits the transfer of assets in exchange for physical plant of equal
12 monetary value to any public or private person or organization.

13 **SECTION 24. AMENDMENT.** Section 49-21-22.1 of the 1995 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **49-21-22.1. (Effective until December 31, ~~1998~~ 2002) Regulatory reform review**
16 **commission - Appointments - Compensation - Report to legislative council.** The
17 regulatory reform review commission shall review the operation and effect of North Dakota
18 telecommunications law on an ongoing basis during the interims between the ~~1995~~ 1997 and
19 ~~1999~~ 2003 legislative sessions and shall submit a report regarding its operation and effect to
20 the legislative council in ~~1996~~ 1998, 2000, and ~~1998~~ 2002. The regulatory reform review
21 commission may review the effect of taxation laws on North Dakota telecommunications law
22 during the interims between the ~~1995~~ 1997 and ~~1999~~ 2003 legislative sessions and may
23 include any findings and recommendations with respect to its review of the effect of taxation
24 laws on North Dakota telecommunications law in the report to the legislative council in ~~1996~~
25 1998, 2000, and ~~1998~~ 2002. The regulatory reform review commission consists of one
26 member of the public service commission who has responsibility for telecommunications
27 regulation, two members of the senate, appointed by the president of the senate, and two
28 members of the house of representatives, appointed by the speaker. The chairman of the
29 legislative council shall designate the chairman and vice chairman of the regulatory reform
30 review commission from the legislative members of the commission. The public service
31 commission shall provide technical assistance and the legislative council shall provide staff

services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and of the public service commission staff providing technical assistance while carrying out their duties.

SECTION 25. Section 49-21-23 of the North Dakota Century Code is created and enacted as follows:

49-21-23. Universal service requirements. A common carrier designated as an eligible telecommunications carrier under section 49-21-25, throughout the service area for which the designation is received, shall:

1. Offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier.
2. Offer the services that are supported by intrastate universal service support mechanisms under section 49-21-26, either using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another eligible telecommunications carrier.
3. Advertise the availability of these services and the charges for these services using media of general distribution.

SECTION 26. Section 49-21-24 of the North Dakota Century Code is created and enacted as follows:

49-21-24. Universal service support. A common carrier designated as an eligible telecommunications carrier under section 49-21-25 and that meets the universal service requirements of section 49-21-23 is eligible to receive universal service support in accordance with section 254 of the Act and to receive universal service support in accordance with section 49-21-26. An eligible telecommunications carrier designated under section 49-21-25 is eligible to receive universal service support to be used only for the provision, maintenance, and upgrading of facilities and services for which the support is provided under this section.

1 **SECTION 27.** Section 49-21-25 of the North Dakota Century Code is created and
2 enacted as follows:

3 **49-21-25. Designation of eligible telecommunications carrier.**

- 4 1. Upon its own motion or upon request, the commission shall designate a common
5 carrier that meets the requirements of section 49-21-23 as an eligible
6 telecommunications carrier for a service area designated by the commission.
7 Upon request and consistent with the public interest, convenience, and necessity,
8 the commission may, in the case of an area served by a rural telephone company,
9 and shall, in the case of all other areas, designate more than one common carrier
10 as an eligible telecommunications carrier for a service area designated by the
11 commission, if each additional requesting carrier meets the requirements of
12 section 49-21-23. Before designating an additional eligible telecommunications
13 carrier for an area served by a rural telephone company, the commission shall find
14 that the designation is in the public interest.
- 15 2. If no common carrier will provide the services that are supported by federal
16 universal service support mechanisms under section 254 of the Act to an unserved
17 community or any portion of a community that requests a federal universal service,
18 the commission, with respect to intrastate services, shall determine which common
19 carrier or carriers are best able to provide the service to the requesting unserved
20 community or portion of the community and shall order the carrier or carriers to
21 provide the service for that unserved community or for that portion of the
22 community. Any carrier or carriers ordered to provide service under this
23 subsection must meet the requirements of section 49-21-23 and must be
24 designated as an eligible telecommunications carrier for that community or for that
25 portion of the community.
- 26 3. The commission shall permit an eligible telecommunications carrier to relinquish its
27 designation as an eligible telecommunications carrier in any area served by more
28 than one eligible telecommunications carrier. An eligible telecommunications
29 carrier that seeks to relinquish its eligible telecommunications carrier designation
30 for an area served by more than one eligible telecommunications carrier shall give
31 advance notice to the commission of the relinquishment. Before permitting a

telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed one year after the commission approves the relinquishment under this subsection, within which the purchase or construction must be completed.

SECTION 28. Section 49-21-26 of the North Dakota Century Code is created and enacted as follows:

49-21-26. Universal support system - Universal service fund.

1. Upon application of any eligible telecommunications carrier or on its own motion, the commission shall adopt rules for implementation and operation of a universal service fund, if after notice and hearing, the commission determines that the fund is necessary. The commission shall base its determination on the following principles:
 - a. Consumers in all regions of the state, including those in rural and high cost areas, should have access to telecommunications services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
 - b. All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the universal service fund, based on a uniform monthly amount assessed on all providers of telecommunications services.
 - c. Universal service support mechanisms should be specific and predictable.
2. Upon the creation of a state universal service fund, all telecommunications carriers shall remit universal service assessments to the state treasurer for deposit in the universal service fund. State universal service funds must be disbursed pursuant to an appropriation made by the legislative assembly to the commission for

disbursement to eligible telecommunications carriers to reduce those carriers' costs of essential residential service in high cost areas and for all eligible telecommunications carriers' provision of telecommunications service to schools, libraries, and health care facilities.

SECTION 29. Section 49-21-27 of the North Dakota Century Code is created and enacted as follows:

49-21-27. Telecommunications services for certain providers.

1. Upon receiving a bona fide request, a telecommunications carrier shall provide telecommunications services that are necessary for the provision of health care services in this state, including instruction relating to health care services, to any public or nonprofit health care provider that serves persons who reside in rural areas in this state at rates that are reasonably comparable to rates charged for similar services in urban areas in this state. A telecommunications carrier providing service under this subsection is entitled to have an amount equal to any difference between the rate for services provided to health care providers for rural areas in this state and the rate for similar services provided to other customers in comparable rural areas in this state treated as a service obligation as a part of its obligation to participate in the mechanisms to preserve and advance universal service.

2. All telecommunications carriers serving a service area shall provide universal educational services to an elementary school, secondary school, and library for education purposes upon a bona fide request for any of its services that are within the definition of universal service, at rates less than the amounts charged for similar services to other parties. The discount must be an amount that the commission, with respect to intrastate services, determines is appropriate and necessary to ensure affordable access to and use of universal educational intrastate services. A telecommunications carrier providing service under this subsection is entitled to:

a. Have an amount equal to the amount of the discount treated as an offset to its obligation to contribute to the mechanisms to preserve and advance universal service; or

- b. Receive reimbursement utilizing the support mechanisms to preserve and advance universal service.

SECTION 30. AMENDMENT. Section 54-44.8-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-08. Telephone access line and radio communications access surcharge.

1. Before May first of each year, the division shall report all cost data and other information to the commission. Each local exchange company and radio communications service provider shall report all information requested by the division in order to determine the number of telephone access lines and radio communications access service numbers. Before June first of each year, the commission shall determine the amount of a surcharge, not to exceed eleven cents per telephone access line per month, based upon available cost data and other information provided by the division, necessary to cover the costs of providing intrastate telecommunications relay service as provided in section 401 of the federal Americans with Disabilities Act of 1990 [47 U.S.C. 225], including the cost of implementing and administering this chapter which includes the provision of specialized equipment to eligible persons, and taking into consideration any surplus in the telecommunications services account. The surcharge is imposed effective on its determination by the commission and must be billed and collected as provided in this chapter. ~~The surcharge is subject to section 40-21-01.3.~~ Funding for the interstate portion of the state telecommunications relay service must be provided in a manner consistent with rules and orders adopted by the federal communications commission in implementing the federal Americans with Disabilities Act. The division shall notify each local exchange company and radio communications service provider, in writing, of the amount of the monthly surcharge determined by the commission.
2. Each local exchange company and radio communications service provider shall include and identify the surcharge determined under subsection 1 in its monthly billing for service to a customer of the company or provider.
3. Each customer of a local exchange company or radio communications service provider is liable for payment to the local exchange company or radio

communications service provider of any surcharge imposed pursuant to this chapter. The local exchange company or radio communications service provider is not liable for any uncollected surcharge, nor does the company have an obligation to take any legal action to enforce the collection of any surcharge that is unpaid by its customers.

4. No customer of a local exchange company may be required to pay the surcharge on more than one hundred telephone access lines per account and no customer of a radio communications service provider may be required to pay the surcharge on more than one hundred radio communications access service numbers per account in this state.

5. Except as provided in subsection 6, a local exchange company or radio communications service provider shall transmit all surcharges billed and collected to the division no later than the last day of the month following the end of the calendar quarter in which the surcharge is collected. The administrator shall remit the surcharges received to the state treasurer. The state treasurer shall deposit all surcharges received in the state treasury to the credit of the telecommunications services account for the communications impaired.

6. Each local exchange company or radio communications service provider may deduct and retain five percent of the total surcharges billed and collected each month to cover its administrative expense in complying with the requirements of subsections 2, 3, 4, and 5.

SECTION 31. AMENDMENT. Section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Access revenues" means telephone company revenues resulting from charges to individuals, partnerships, corporations, and limited liability companies for their use of telephone company services or facilities to provide a toll service that permits origination or termination of telecommunications between a point or points within one telephone exchange and a point or points within another telephone exchange.

2. "Adjusted telephone operating receipts" means telephone operating receipts less all amounts paid by the reporting telephone company to an individual, partnership, corporation, or limited liability company for connecting fees, switching charges, access charges, and directory assistance.
3. "Originating revenues factor" means a fraction the numerator of which is the revenues of the telephone company from toll business generated from customer premises equipment in this state, regardless of the location to which the billing notice is sent, and the denominator of which is the total revenues of the telephone company from toll business everywhere.
4. "Property factor" means a fraction the numerator of which is the undepreciated original cost as of December thirty-first of the property located in this state owned or rented by the telephone company and used in operating its telecommunications business and the denominator of which is the undepreciated original cost as of December thirty-first of the property located everywhere owned or rented by the telephone company and used in operating its telecommunications business.
5. "Station" means a subscriber line located in this state with a distinct call number designation or distinct extension number designation.
6. "Telephone company" means all mutual associations and cooperative organizations or cooperative corporations engaged in the business of furnishing communication by telephone, and shall further mean all other persons, firms, corporations, limited liability companies, or other organizations which are engaged in the business of furnishing means of communication by telephone within this state exclusively to rural areas or to rural areas and cities provided that each city served has a population of two thousand five hundred persons or less.
7. "Telephone operating receipts" includes all revenue derived from local and rural exchange service, revenues from wide area telephone service, access revenues, billing and collection revenues, revenues from coin-operated telephones, revenues from directory advertising, revenues from directory assistance, recoveries within the year of all telecommunications revenues written off in prior years as uncollectible, all other operating revenues from telecommunications service as defined in subsection 11 of section 49-21-04 attributable to this state, and toll

business gross revenues as defined in this section. For a telephone company operating on any form of mutual basis, "telephone operating receipts" includes all amounts assessed against the members for the operation and maintenance of the business. "Telephone operating receipts" does not include income from merchandising, jobbing and contract work, charges for the maintenance or repair of customer premises equipment, including equipment leased or rented by the customer from any source, revenue from commercial and cable television, unless it is used for two-way communication, radio, one-way radio paging, the transmission of messages incidental to transient occupancy in hotels, income from nonutility operations, or revenues from the transfer, sale, or lease of property not devoted to telecommunications operation. "Telephone operating receipts" does not include excise taxes on telephone service or facilities or uncollectible telephone operating revenues actually written off during the year.

8. "Toll business gross revenues" means gross revenues from toll business originating and terminating in this state and toll business gross revenues attributable to this state.

9. "Toll business gross revenues attributable to this state" means the telephone company's total gross revenues from interstate toll services everywhere multiplied by the amount obtained by dividing the sum of the property factor and the originating revenues factor by two.

SECTION 32. REPEAL. Section 49-21-15 of the North Dakota Century Code and sections 49-21-01.3, 49-21-04.1, 49-21-08, and 49-21-14 of the 1995 Supplement to the North Dakota Century Code are repealed.

SECTION 33. EXPIRATION DATE. Section 24 of this Act is effective through December 31, 2002, and after that date is ineffective.