

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2231

Introduced by

Senators Espegard, Tallackson

Representatives Carlson, Froelich

1 A BILL for an Act to amend and reenact sections 49-21-01, 49-21-01.3, 49-21-04, 49-21-05,
2 49-21-07, 49-21-08.1, 49-21-10.1, 49-21-20, and 49-21-23 of the North Dakota Century Code,
3 relating to definitions, price changes, price schedules, dialing parity, refunds, penalties, and
4 cost recovery for telecommunications services and telecommunications companies; and to
5 repeal section 49-21-19 of the North Dakota Century Code, relating to telephone directory
6 notices.

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

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

10 **49-21-01. Definitions.** As used in this chapter, unless the context otherwise clearly
11 requires:

- 12 1. "Access" means telecommunications services to connect a telecommunications
13 customer or end user with a telecommunications company that allows for the
14 origination or the termination, or both, of WATS, 800, and message toll
15 telecommunications services and private line transport services. ~~"Switched~~
16 ~~access" includes:~~
- 17 a. ~~Local exchange central office switching and signaling;~~
 - 18 b. ~~Operator and recording intercept of calls;~~
 - 19 e. ~~Termination of end user lines in the local exchange central office;~~
 - 20 d. ~~The carrier common line charge for the line between the end user's premises~~
21 ~~and the local exchange central office; and~~
 - 22 e. ~~Telecommunications service, including connections, provided to allow~~
23 ~~transmission service and termination between an interexchange company's~~
24 ~~premises and the local exchange central office switch for the origination or~~

~~termination of the interexchange company's switched telecommunications
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 price factor" means:~~

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

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

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

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

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

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

e. ~~For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.~~

5. ~~"Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area. A charge based on measured service may not be~~

- 1 ~~required for residential and business local exchange service. Essential~~
2 ~~telecommunications services are limited to:~~
- 3 ~~a. Switched access;~~
4 ~~b. Any new product or service offered in North Dakota after July 1, 1989,~~
5 ~~deemed essential by the commission after notice and hearing in accordance~~
6 ~~with chapter 28-32;~~
- 7 ~~c. Billing and collection of the billing company's own essential~~
8 ~~telecommunications services and billing and collection recording for~~
9 ~~interexchange carriers to which the local exchange carrier provides feature~~
10 ~~group C access service;~~
- 11 ~~d. Primary directory listing, including nonlisted and nonpublished service, and~~
12 ~~access to directory assistance;~~
- 13 ~~e. Emergency 911 services and emergency operator assistance in local~~
14 ~~exchange areas in which emergency 911 service is not available;~~
- 15 ~~f. Except as provided in section 49-02-01.1, mandatory, flat rate extended area~~
16 ~~service to designated nearby local exchange areas;~~
- 17 ~~g. Installation of the service connection for essential services from the end~~
18 ~~user's premises to the local exchange network;~~
- 19 ~~h. Transmission service necessary for the connection between the end user's~~
20 ~~premises and the local exchange central office switch including a trunk~~
21 ~~connection that has direct inward dialing and necessary signaling service~~
22 ~~such as touchtone used by end users for essential telecommunications~~
23 ~~services;~~
- 24 ~~i. Single or multiparty flat rate or measured residence and business service;~~
25 ~~j. Single or multiparty flat rate or measured combination business and~~
26 ~~residence service; and~~
- 27 ~~k. The transmission service line for a coin or pay telephone.~~

28 4. "Essential telecommunications service" means the following services:

- 29 a. Switched access;
30 b. The transmission service line for a coin or pay telephone;

c. Installation of the service connection for other essential services from the end user's premises to the local exchange network;

d. 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.

6- 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.].

7. ~~"Gross national product price index" means the fixed weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. "Average annual gross national product price index" means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.~~

8- 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.

~~9.~~ 8. "Interexchange telecommunications company" means a person providing
telecommunications service to end users located in separate local exchange
areas.

~~40.~~ 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.

~~44.~~ 10. "Management costs" means the reasonable direct actual costs a political
subdivision incurs in exercising its police powers over the public rights of way.

~~42.~~ 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.

~~43.~~ 12. "Nonessential telecommunications service" means any telecommunications
service, other than those essential telecommunications services listed in
subsection ~~5~~ 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. Private line transport service;~~

~~e.~~ 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;

~~d.~~ c. Centrex services and features, ~~not including transmission service described in
subdivision h of subsection 5;~~

~~e.~~ d. Installation of service connections in addition or supplementary to that
described in subdivision ~~g~~ c of subsection ~~5~~ 4 which also provides
transmission service between the end user's premises and the local
exchange central office switch;

- 1 f. e. Mobile telecommunications services using radio spectrum or cellular
2 technology; and
- 3 ~~g.~~ f. Packet-switched services.
- 4 ~~44.~~ 13. "Price" means any charge set ~~and published in accordance with chapter 49-24 and~~
5 collected by a telecommunications company for any telecommunications service
6 offered by it to the public or other telecommunications companies.
- 7 ~~45.~~ 14. "Private line transport service" means a telecommunications service to a customer
8 over a circuit dedicated to the customer's exclusive use, within a local exchange
9 area, or between or among local exchanges. Private line transport service
10 includes services to customers who are end users and services to
11 telecommunications companies.
- 12 ~~46.~~ 15. "Public right of way" means the area on, below, or above a public roadway,
13 highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political
14 subdivision has a legal interest, including other dedicated rights of way for travel
15 purposes, utility easements, and all the area within seventy-five feet [22.86 meters]
16 of the centerline of any county or township highway right of way over which a
17 board of county commissioners or a board of township supervisors has control
18 under section 24-01-42. The term does not include the airwaves above a public
19 right of way with regard to cellular or other wireless telecommunications or
20 broadcast service or utility poles owned by a political subdivision or a municipal
21 utility or a telecommunications company, in whole or part.
- 22 ~~47.~~ 16. "Rural telephone company" means a telecommunications company that meets the
23 definition of section 153(37) of the federal act.
- 24 ~~48.~~ 17. "Service element" means a telecommunications function or service component that
25 is not useful to the user unless it is combined with one or more other
26 telecommunications functions or service components.
- 27 18. "Switched access" means access to include:
- 28 a. Local exchange central office switching and signaling;
- 29 b. Operator and recording intercept of calls;
- 30 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 C 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 2. 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. The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall publish the essential telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four~~

~~calendar quarters ending with the second calendar quarter of the preceding
calendar year. No price for a service may be changed more than once a year.
Prices may be changed by service element, but the aggregate annual price
change for a service may not exceed the essential telecommunications price
factor. Complaints may be made pursuant to section 49-21-06 for any prices
changed under this subsection. A discounted price for an essential
telecommunications service is not the price of a service for purposes of this
section. Discontinuing or altering any discount price for an essential
telecommunications service is not a price change as regulated by this subsection.~~

~~3.~~ 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.

~~4.~~ 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.

~~5.~~ 4. The monthly price of residence service for ~~group 1~~ telecommunications companies
~~defined in subsection 2 of section 49-21-04~~ 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.

~~6.~~ 5. The commission may investigate an increased price allowed pursuant to subsection ~~5~~ 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.

~~7.~~ 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.

1 **SECTION 3. AMENDMENT.** Section 49-21-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

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

- 6 1. Schedules showing all prices, including those prices set by contract and the
7 individual unbundled or unpackaged price of any essential service, in effect at the
8 time for any essential telecommunications service rendered to the public by such
9 telecommunications company within this state;
- 10 2. All rules and regulations which in any manner affect the prices charged or to be
11 charged for such essential service; and
- 12 3. All new prices and any price ~~changes~~ increases of essential services at least
13 twenty days before the effective date of the new price or price ~~change~~ increase,
14 unless the commission upon application and for good cause allows a lesser time,
15 and except prices changed in accordance with subsection 1 of section 49-21-01.3,
16 which will be filed at least ten days before the expiration of the thirty-day period
17 mandated in that section. No price or price change is effective until filed in
18 accordance with this chapter.

19 **SECTION 4. AMENDMENT.** Section 49-21-05 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **49-21-05. Schedule of prices to be ~~on file~~ available for public inspection.** The
22 commission may require any telecommunications company to ~~keep on file and accessible~~
23 make available to the public, subject to considerations for maintaining trade secrets or
24 commercial confidentiality, ~~at any city in which the telecommunications company has a public~~
25 ~~office~~; a printed or electronic schedule of such prices for ~~essential~~ telecommunications services
26 offered by the telecommunications company as the commission may deem necessary.

27 **SECTION 5. AMENDMENT.** Section 49-21-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **49-21-07. Discrimination unlawful.** It shall be unlawful for any telecommunications
30 company to make any unjust or unreasonable discrimination in prices, practices, or service for
31 or in connection with like telecommunications service, or give any undue or unreasonable

1 preference or advantage to any person or telecommunications company or to subject any
2 person or telecommunications company to any undue or unreasonable prejudice or
3 disadvantage in the service rendered by it to the public or to a telecommunications company, or
4 to charge or receive for any such service rendered, more or less than the prices provided for in
5 the schedules then on file with the commission. A telecommunications company providing
6 intrastate interexchange message toll services shall charge uniform prices on all routes where it
7 offers such services. A telecommunications company providing local exchange service and
8 message toll and private line services shall cover in its price for message toll and private line
9 services, the price of providing access service in its own exchanges. Nothing in this chapter
10 shall be construed to prevent any telecommunications company from offering or providing
11 volume or other discounts based on reasonable business practices; from introducing
12 promotional offerings, including special incentives, competitive discounts, and price waivers;
13 from passing through any state, municipal or local taxes or fees to the specific geographic
14 areas from which the taxes or fees originate; from contracting with a retail subscriber to provide
15 telecommunications services at prices negotiated with the subscriber to meet service requests
16 of the subscriber or competitive offerings of another telecommunications company; or from
17 furnishing free telecommunications service or service at reduced prices to its officers, agents,
18 servants, or employees.

19 **SECTION 6. AMENDMENT.** Section 49-21-08.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **49-21-08.1. Dialing parity - IntraLATA equal access.** ~~The provisioning of dialing~~
22 ~~parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be~~
23 ~~required to be provided by any company providing local exchange service prior to January 1,~~
24 ~~2000. Every local exchange carrier shall provide intraLATA 1 + equal access dialing parity no~~
25 ~~later than January 1, 2000.~~

26 **SECTION 7. AMENDMENT.** Section 49-21-10.1 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **49-21-10.1. Excessive charges - Refunds.** When complaint has been made to the
29 commission or by the commission on its own motion concerning any price for a
30 telecommunications service, and the commission has found, upon a hearing after notice given
31 as required by law, that the telecommunications company has charged for such service a price

1 in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or
2 has otherwise violated a statute, rule, or order, the commission may order that the
3 telecommunications company make due refunds or reparations, with interest from ~~the~~ a date of
4 ~~collection~~ not earlier than two years from when the complaint was filed.

5 **SECTION 8. AMENDMENT.** Section 49-21-20 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **49-21-20. Penalty.** Any person who shall violate any of the provisions of ~~sections~~
8 section 49-21-18 and 49-21-19 shall be guilty of a class B misdemeanor.

9 **SECTION 9. AMENDMENT.** Section 49-21-23 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **49-21-23. Construction of facilities - Cost recovery.**

- 12 1. A telecommunications company is not required to construct, modify, or extend
13 telecommunications facilities at the request or for the use of another
14 telecommunications company except as required by the federal act.
- 15 2. The commission must allow a telecommunications company to recover in advance
16 from the benefited company or customer any nonrecurring costs incurred at the
17 request of another telecommunications company, a particular customer, or to
18 comply with a commission order, including any order issued under section
19 49-21-10.2, for construction, modification or extension of the company's network in
20 excess of the normal course of business and primarily for the benefit of another
21 telecommunications company or for a particular customer, and not due to any
22 negligence or misconduct on the part of the company. This subsection does not
23 apply to:
 - 24 a. Costs incurred to extend or modify a network to provide for interconnection,
25 collocation, network access, or the sale of unbundled network elements,
26 unless those costs are identifiable and specific to a particular end-user
27 customer, or wholesale services to another telecommunications company
28 under the federal act;
 - 29 b. Costs incurred to remedy discriminatory or unequal treatment that has been
30 found to exist by the commission or an arbitrator; or

1 c. Costs for which some other recovery treatment is specifically provided in
2 federal or state law.

3 **SECTION 10. REPEAL.** Section 49-21-19 of the North Dakota Century Code is
4 repealed.