

Introduced by

Industry, Business and Labor Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new chapter to title 49 of the North Dakota Century
2 Code, relating to licensing of telecommunications resellers; and to amend and reenact sections
3 49-02-01.1, 49-03.1-02, and 49-21-01 of the North Dakota Century Code, relating to jurisdiction
4 of the public service commission, excluding telecommunications resellers from certificate of
5 public convenience and necessity requirements, and definitions applicable to
6 telecommunications resellers.

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

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

10 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
11 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
12 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
13 any public utility owned and operated by the state or by any city, county, township, or other
14 political subdivision of the state or any public utility, that is not operated for profit, that is
15 operated as a nonprofit, cooperative, or mutual telecommunications company or is a
16 telecommunications company having fewer than eight thousand local exchange subscribers.
17 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual
18 telecommunications company or has fewer than eight thousand local exchange subscribers is
19 subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 6 of section 49-02-02
20 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding
21 rates, terms, and conditions of access services or connection between facilities and transfer of
22 telecommunications between two or more telecommunications companies. Nothing in this
23 section limits the authority of the commission under section 1 of this Act, chapter 49-03.1, or
24 sections 49-04-05 and 49-04-06.

1 **SECTION 2. AMENDMENT.** Subsection 2 of section 49-03.1-02 of the 1997
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3 2. "Public utility" includes any association, person, firm, corporation, limited liability
4 company, or agency engaged or employed in this state to furnish its product or
5 services to the public generally which is statutorily subject to the jurisdiction of the
6 commission. The words "public utility" as used in this chapter shall not apply to
7 electric public utilities or ~~motor carriers of persons or property for hire~~ reseller
8 telephone public utilities.

9 **SECTION 3. AMENDMENT.** Section 49-21-01 of the 1997 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

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

- 13 1. "Access" means telecommunications services to connect a telecommunications
14 customer or end user with a telecommunications company that allows for the
15 origination or the termination, or both, of WATS, 800, and message toll
16 telecommunications services and private line transport services. "Switched
17 access" includes:
- 18 a. Local exchange central office switching and signaling;
 - 19 b. Operator and recording intercept of calls;
 - 20 c. Termination of end user lines in the local exchange central office;
 - 21 d. The carrier common line charge for the line between the end user's premises
22 and the local exchange central office; and
 - 23 e. Telecommunications service, including connections, provided to allow
24 transmission service and termination between an interexchange company's
25 premises and the local exchange central office switch for the origination or
26 termination of the interexchange company's switched telecommunications
27 services.
- 28 2. "Essential telecommunications price factor" means:
- 29 a. In the case of group I telecommunications companies, a factor determined
30 annually as the lower of:

- 1 (1) 41.6667 percent of the percentage change of the average annual gross
2 national product price index; or
- 3 (2) The percentage change of the average annual gross national product
4 price index minus 2.75 percentage points.
- 5 b. In the case of group II telecommunications companies, a factor determined
6 annually as the lower of:
- 7 (1) 52.0834 percent of the percentage change of the average annual gross
8 national product price index; or
- 9 (2) The percentage change of the average annual gross national product
10 price index minus 2.0625 percentage points.
- 11 c. For purposes of the determination of essential telecommunications price
12 factor, group I telecommunications companies are telecommunications
13 companies with over fifty thousand subscribers and group II
14 telecommunications companies are telecommunications companies with fifty
15 thousand or fewer subscribers.
- 16 3. "Essential telecommunications service" means service that is necessary for
17 switched access to interexchange telecommunications companies and necessary
18 for two-way switched communications for both residential and business service
19 within a local exchange area. A charge based on measured service may not be
20 required for residential and business local exchange service. Essential
21 telecommunications services are limited to:
- 22 a. Switched access;
- 23 b. Any new product or service offered in North Dakota after July 1, 1989,
24 deemed essential by the commission after notice and hearing in accordance
25 with chapter 28-32;
- 26 c. Billing and collection of the billing company's own essential
27 telecommunications services and billing and collection recording for
28 interexchange carriers to which the local exchange carrier provides feature
29 group C access service;
- 30 d. Primary directory listing, including nonlisted and nonpublished service, and
31 local exchange directory assistance;

- 1 e. Emergency 911 services and emergency operator assistance in local
2 exchange areas in which emergency 911 service is not available;
- 3 f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area
4 service to designated nearby local exchange areas;
- 5 g. Installation of the service connection for essential services from the end user's
6 premises to the local exchange network;
- 7 h. Transmission service necessary for the connection between the end user's
8 premises and the local exchange central office switch including a trunk
9 connection that has direct inward dialing and necessary signaling service
10 such as touchtone used by end users for essential telecommunications
11 services;
- 12 i. Single or multiparty flat-rate or measured residence and business service;
- 13 j. Single or multiparty flat-rate or measured combination business and residence
14 service; and
- 15 k. The transmission service line for a coin or pay telephone.
- 16 4. "Gross national product price index" means the fixed-weighted price index of prices
17 of all the goods and services that make up gross national product, as published
18 quarterly by the United States department of commerce, economics and statistics
19 administration, bureau of economic analysis. "Average annual gross national
20 product price index" means the mean of the gross national product price index
21 published in the third calendar quarter of a year through the second calendar
22 quarter of the following year.
- 23 5. "Interexchange telecommunications company" means a person providing
24 telecommunications service to end users located in separate local exchange areas.
- 25 6. "Local exchange area" means a geographic territorial unit established by a
26 telecommunications company for the administration of telecommunications
27 services as approved and regulated in accordance with chapter 49-03.1.
- 28 7. "Mutual telephone company" means a telephone cooperative organized and
29 operating subject to the provisions of this chapter, and such a cooperative shall
30 also be subject to the general law governing cooperatives, except where such
31 general law is in conflict with this chapter.

- 1 8. "Nonessential telecommunications service" means any telecommunications
2 service, other than those essential telecommunications services listed in
3 subsection 3 that a customer has the option to purchase either in conjunction with
4 or separate from any essential telecommunications service. Nonessential
5 telecommunications services include, but are not limited to:
- 6 a. InterLATA and intraLATA message toll service;
 - 7 b. Private line transport service;
 - 8 c. Calling features and information or enhanced services such as call waiting,
9 call forwarding, three-way calling, intracall, speed calling, call transfer, voice
10 or data store and forward, message delivery, or caller identification;
 - 11 d. Centrex services and features, not including transmission service described in
12 subdivision h of subsection 3 of this section;
 - 13 e. Installation of service connections in addition or supplementary to that
14 described in subdivision g of subsection 3 which also provides transmission
15 service between the end user's premises and the local exchange central
16 office switch;
 - 17 f. Mobile telecommunications services using radio spectrum or cellular
18 technology; and
 - 19 g. Packet-switched services.
- 20 9. "Price" means any charge set and published in accordance with chapter 49-21 and
21 collected by a telecommunications company for any telecommunications service
22 offered by it to the public or other telecommunications companies.
- 23 10. "Private line transport service" means a telecommunications service to a customer
24 over a circuit dedicated to the customer's exclusive use, within a local exchange
25 area, or between or among local exchanges. Private line transport service
26 includes services to customers who are end users and services to
27 telecommunications companies.
- 28 11. "Resale" means the subscription to local or long distance telecommunications
29 services and facilities by one entity, and reoffered for profit or with markup to
30 others with or without enhancements. If reoffered service is part of a package, and
31 the package is offered for profit or markup, it is resale.

1 12. "Reseller" means a person reselling local or long distance telecommunications
2 services. This definition does not include pay telephone providers, but does
3 include cellular services.

4 13. "Service element" means a telecommunications function or service component that
5 is not useful to the user unless it is combined with one or more other
6 telecommunications functions or service components.

7 ~~14.~~ 14. "Telecommunications company" means a person engaged in the furnishing of
8 telecommunications service within this state.

9 ~~15.~~ 15. "Telecommunications service" means the offering for hire of telecommunications
10 facilities, or transmitting for hire telecommunications by means of such facilities
11 whether by wire, radio, lightwave, or other means.

12 **SECTION 4.** A new chapter to title 49 of the North Dakota Century Code is created and
13 enacted as follows:

14 **Reseller license required.** A telecommunications reseller may not do business in this
15 state without a valid reseller license from the commission. Each reseller license expires on
16 March thirty-first of each year.

17 **Surety bonds.** The commission may require evidence of financial soundness,
18 including the posting of a surety bond in an amount determined by the commission, as part of
19 the reseller licensing process.

20 **Reseller license fees.** The fee for an annual reseller license is two hundred fifty
21 dollars. An application for a reseller license must be accompanied by payment of the required
22 fee or the application may not be accepted for filing.

23 **Reseller license application.** An application for a reseller license must be in the form
24 required by the commission and must contain the information required by the commission.
25 Failure to comply with the application requirements is sufficient grounds to deny, dismiss, or
26 reject the application. If the commission finds evidence indicating that an applicant has violated
27 any state or federal laws or rules, including those concerning consumer protection, antitrust, or
28 securities, the commission may dismiss or deny the application.

29 **Reseller license revocation.** The commission may revoke a license for cause and
30 may impose additional sanctions on the licensee after notice and opportunity for hearing under
31 chapter 28-32. During an investigation or other proceeding, the commission may order a

- 1 licensee to cease and desist from marketing its service or signing up new customers if the
- 2 commission finds there is probable cause to believe that without a cease and desist order
- 3 consumers or the reliability of the network will be harmed.