

Introduced by

1 A BILL for an Act to create and enact sections 49-21-31, 49-21-32, 49-21-33, 49-21-34,
2 49-21-35, and 49-21-36 of the North Dakota Century Code, relating to a universal service fund;
3 to amend and reenact sections 49-02-01.1 and 49-21-01.7 of the North Dakota Century Code,
4 relating to the jurisdiction and power of the public service commission; and to provide for a
5 continuing appropriation.

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

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

9 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
10 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
11 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
12 any public utility owned and operated by the state or by any city, county, township, or other
13 political subdivision of the state or any public utility, that is not operated for profit, that is
14 operated as a nonprofit, cooperative, or mutual telecommunications company or is a
15 telecommunications company having fewer than eight thousand local exchange subscribers.
16 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual
17 telecommunications company or has fewer than eight thousand local exchange subscribers is
18 subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25,
19 subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3,
20 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access
21 services or connection between facilities and transfer of telecommunications between two or
22 more telecommunications companies. Nothing in this section limits the authority of the
23 commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06. Any
24 telecommunications company that is operated as a nonprofit, cooperative, or mutual

telecommunications company or has fewer than eight thousand local exchange subscribers is
subject to sections 49-21-31 through 49-21-36 regarding universal service.

SECTION 2. AMENDMENT. Section 49-21-01.7 of the North Dakota Century Code is
amended and reenacted as follows:

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

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection

relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive state and federal universal service support ~~under~~ in accordance with sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining state and federal universal service obligations and support mechanisms ~~under~~ in accordance with the federal act.
14. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the act unless specifically allowed or required under sections 49-21-31 through 49-21-36.

SECTION 3. Section 49-21-31 of the North Dakota Century Code is created and enacted as follows:

49-21-31. Definitions. Notwithstanding section 49-21-01.1, as used in sections 49-21-32 through 49-21-36, unless the context otherwise requires:

1. "Station" means a subscriber service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
2. "Telecommunications carrier" means a company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service.
3. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; and
 - d. Telegraph service.

SECTION 4. Section 49-21-32 of the North Dakota Century Code is created and enacted as follows:

49-21-32. Universal service policies. The state universal service fund created by this chapter:

1. May not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but must complement the federal fund by providing additional funding as necessary to ensure universal service in this state;
2. Must be competitively and technologically neutral in both funding and distribution;
3. Must provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and
4. Must provide that consumers in rural and high-cost regions of the state have access to telecommunications and information 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.

SECTION 5. Section 49-21-33 of the North Dakota Century Code is created and enacted as follows:

49-21-33. Universal service fund established - Continuing appropriation.

1. Pursuant to a determination of need, the commission shall establish and administer a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. All moneys contributed to the fund must be transferred to the state treasurer who shall deposit these moneys in the universal service fund. All moneys in the universal fund are appropriated on a continuing basis to the commission and its agent for the purposes of sections 49-21-31 through 49-21-36. The fund must provide support for the following services:

- a. Voice grade access to the public-switched network, including some local usage;
- b. Dual-tone multifrequency signaling or its equivalent;
- c. Single-party service;
- d. Access to emergency services, including access to 911, where available;
- e. Access to operator services;
- f. Access to interexchange services of the customer's choice; and
- g. Access to directory assistance.
- h. Access to information services at a rate of at least one hundred twenty-eight thousand baud.

2. The fund must support only access to the services listed in subdivisions d through h of subsection 1 and not support the services themselves.

3. The fund must be administered to ensure that the operation of the fund is competitively and technologically neutral.

SECTION 6. Section 49-21-34 of the North Dakota Century Code is created and enacted as follows:

49-21-34. Fund administrator.

1. A fiscal agent must be selected to receive and distribute funds under this section and sections 49-21-32, 49-21-33, 49-21-35, and 49-21-36.
2. The commission shall select the fiscal agent for the provision of professional services after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with this section and sections 49-21-32, 49-21-33, 49-21-35, and 49-21-36.
3. The fiscal agent shall provide monthly reports of fund activities to the commission and shall provide annual audits done by a certified public accountant in a manner determined by and under the direction of the commission.
4. The fiscal agent shall make the fund financial accounts available at reasonable times to any telecommunications carrier in this state as to that carrier's account information and to the public in a manner that protects proprietary information. All records collected in creating and administering a universal service fund are not subject to section 44-04-18 or section 6 of article XI of the Constitution of North Dakota and meetings between the commission and the fiscal agent are not subject to section 44-04-19 or section 5 of article XI of the Constitution of North Dakota. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices.

SECTION 7. Section 49-21-35 of the North Dakota Century Code is created and enacted as follows:

49-21-35. Contributions to fund.

1. The fiscal agent shall collect contributions from all telecommunications carriers on a monthly basis, based on a July first to June thirtieth fiscal year, unless the amount is de minimus as determined by the commission, then contributions must be collected for a duration of time as determined by the commission. Initial contributions to the fund may only be collected for the two-month period prior to the effective date of distributions from the fund. Contributions must be calculated as follows:

- a. Determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;
 - b. Determine the total funds needed for distributions in the next fiscal year as authorized pursuant to section 49-21-36;
 - c. Compute a uniform percentage of the amount determined in subdivision a that will produce an amount equal to the fund total calculated in subdivision b;
 - d. Adjust the percentage multiplier computed in subdivision c to recover or reimburse any fund shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support, cost of administration, and auditing; and
 - e. Send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least two months before the effective date of the application of the percentage.
2. The commission shall adopt procedural rules governing collection of the contributions required by this section and rules allowing the fiscal agent to assess late fees and interest on delinquent payments from telecommunications carriers. The commission may enforce the contribution requirements of this section through suit in district court.

SECTION 8. Section 49-21-36 of the North Dakota Century Code is created and enacted as follows:

49-21-36. Distributions from fund - Calculation of costs.

1. Subject to the requirements of this section, payments from the fund must be made from collected contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a monthly basis, pursuant to rules adopted by the commission.
2. Only an eligible telecommunications carrier that offers the telecommunications services described in subsection 1 of section 49-21-33, except subdivision h, to all customers in a designated support area of a rural telephone company by using its own facilities or by a combination of its own facilities and resale of another carrier's service, including services offered by another eligible telecommunications carrier, and that advertises the availability of the telecommunications services and the

charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area. An eligible telecommunications carrier qualified under this subsection to receive state universal service funds shall use the funds for the provision, maintenance, and upgrading of facilities and services for which the support is provided under sections 49-21-31 through 49-21-36.

3. Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's service area in this state except as provided in subdivision b of subsection 5.

4. Support for the services listed in subsection 1 of section 49-21-33 must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine the affordability benchmark.

5. For rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

a. If an additional eligible telecommunications carrier has not been designated, the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in section 49-21-33, which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December thirty-first of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

b. Upon the designation of an additional eligible telecommunications carrier in a designated support area served by a rural telephone company, the additional

1 eligible telecommunications carrier has access to the fund on the same basis
2 as the rural telephone company. Upon the designation of the additional
3 eligible telecommunications carrier, the additional carrier must receive
4 distributions from the fund based upon that carrier's average cost for each line
5 disaggregated to geographic areas smaller than a wire center and the rural
6 telephone company must receive distributions from the fund based upon that
7 rural telephone company's average cost for each line disaggregated to
8 geographic areas smaller than a wire center. The support for each line for
9 each geographic area must be based upon that additional carrier's or that
10 rural telephone company's costs, as determined in subdivision a, distributed
11 to each of the geographic areas.

12 6. An eligible telecommunications carrier providing telecommunications services
13 through resale of another telecommunications carrier's telecommunications
14 services or facilities may not receive support for those telecommunications
15 services or facilities if the rates charged to an eligible telecommunications carrier
16 by the other telecommunications carrier have been reduced by a contribution from
17 universal service funds under this section.

18 7. Any reduction in telecommunications carrier access expenses because of the
19 removal of implicit subsidies inherent in telecommunications carrier access rates
20 must be passed through to end-user customer retail rates in this state.

21 8. Costs of administering the fund must be paid from the fund.