

PUBLIC UTILITIES

CHAPTER 408

HOUSE BILL NO. 1272

(Representatives Berg, Carlson, Keiser)
(Senator Lee)

LOCOMOTIVE WARNING DEVICE SOUNDING

AN ACT to amend and reenact sections 49-11-21 and 49-11-22 of the North Dakota Century Code, relating to the sounding of a warning device on a locomotive engine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-11-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-11-21. Warning device sounded at crossing by locomotive - Exception. A warning device must be placed on each locomotive engine and must be sounded at a distance of at least eighty rods [402.34 meters] from the place where the railroad crosses any other road or street and must continue to be sounded until it has crossed the road or street. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions. A crew member may sound a warning device as determined appropriate by that crew member.

SECTION 2. AMENDMENT. Section 49-11-22 of the North Dakota Century Code is amended and reenacted as follows:

49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at crossing. The A person ~~owning~~ that owns or has a leasehold interest in a locomotive ~~which~~ that fails to sound its warning device at any road or street crossing as required by section 49-11-21 ~~shall be~~ is guilty of an infraction and ~~shall be~~ is liable for all damages ~~which shall be~~ that are sustained by any person by reason of ~~such~~ the neglect. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city ordinance, any crew member or person with any interest in the locomotive is not liable for any damages sustained by a person by reason of the failure to sound a warning device. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 409**SENATE BILL NO. 2435**
(Senator Heitkamp)**TRAIN CREW MOTOR VEHICLE OPERATOR LICENSE
EXEMPTION**

AN ACT to provide an exemption from motor vehicle operator's license provisions for train crew members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Train crew exemption. In any circumstances involving an accident between a pedestrian or vehicle and a locomotive or part of a train in which the engineer or any other crew member of the train is interviewed by a law enforcement officer, the engineer or any other crew member may not be required to furnish a motor vehicle operator's license and no citation involving the operation of a train in violation of title 39 may be issued against the engineer or any other crew member of the train.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 410

HOUSE BILL NO. 1451

(Representative Grosz)
(Senators Nething, Tomac)

TELECOMMUNICATIONS DEFINITIONS AND FEES

AN ACT to create and enact sections 49-21-23, 49-21-24, 49-21-25, 49-21-26, and 49-21-27 of the North Dakota Century Code, relating to right-of-way fees; to amend and reenact section 49-21-01 and subdivision g of subsection 3 of section 49-23-04 of the North Dakota Century Code, relating to telecommunications definitions and time periods under the one-call excavation notice system; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷² **SECTION 1. AMENDMENT.** Section 49-21-01 of the 1997 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 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 termination of the interexchange company's switched telecommunications services.
2. "Essential telecommunications price factor" means:
 - a. In the case of group I telecommunications companies, a factor determined annually as the lower of:

²⁷² Section 49-21-01 was also amended by section 3 of Senate Bill No. 2008, chapter 30, and section 2 of Senate Bill No. 2420, chapter 411.

- (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.
 - c. 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.
3. "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 required for residential and business local exchange service. Essential telecommunications services are limited to:
 - a. Switched access;
 - b. Any new product or service offered in North Dakota after July 1, 1989, deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
 - c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service;
 - d. Primary directory listing, including nonlisted and nonpublished service, and local exchange directory assistance;
 - e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;
 - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;
 - g. Installation of the service connection for essential services from the end user's premises to the local exchange network;
 - h. 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 direct inward dialing and

- necessary signaling service such as touchtone used by end users for essential telecommunications services;
- i. Single or multiparty flat-rate or measured residence and business service;
 - j. Single or multiparty flat-rate or measured combination business and residence service; and
 - k. The transmission service line for a coin or pay telephone.
4. "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.
 5. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
 6. "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.
 7. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
 8. "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.
 8. 9. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 3 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;
 - c. 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. 10. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
40. 11. "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.
12. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
44. 13. "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.
42. 14. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
43. 15. "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. Section 49-21-23 of the North Dakota Century Code is created and enacted as follows:

49-21-23. Fees. Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee, a political subdivision may not impose after December 31, 1998, any fee to recover from a telecommunications company for the use of its right

of way, other than a fee for its management costs. If requested by a political subdivision, in order to accomplish a necessary public improvement on the right of way, a telecommunications company promptly shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety. A political subdivision may recover from a telecommunications company only those management costs caused by the telecommunications company activity in the public right of way. A fee or other obligation under this section must be imposed on a competitively neutral basis. When a political subdivision's management costs cannot be attributed to only one entity, those costs must be allocated among all users of the public rights of way, including the political subdivision itself. The allocation must reflect proportionately the costs incurred by the political subdivision as a result of the various types of uses of the public right of way. This section does not prohibit the collection of a franchise fee as permitted in section 49-21-26.

SECTION 3. Section 49-21-24 of the North Dakota Century Code is created and enacted as follows:

49-21-24. In-kind services. A political subdivision, in lieu of a fee imposed under section 49-21-23, may not require in-kind services by a telecommunications company right-of-way user or require in-kind services as a condition of the use of the political subdivision's public right of way.

SECTION 4. Section 49-21-25 of the North Dakota Century Code is created and enacted as follows:

49-21-25. Arbitration.

1. A telecommunications company that is denied the use of or access to a political subdivision right of way, that has its right-of-way permit revoked, or that believes that the fees imposed on that company by the political subdivision do not conform to the requirements of section 49-21-23 may request in writing that the denial, revocation, or fee imposition be reviewed by the governing body of the political subdivision. The governing body of the political subdivision shall act within thirty days of the request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the telecommunications company may do either of the following:
 - a. With the consent of the governing body, submit the matter to final, binding arbitration. Binding arbitration must be before an arbitrator selected by the political subdivision and the telecommunications company. If the parties are unable to agree on an arbitrator, the matter must be resolved by the three-person arbitration panel made up of one arbitrator selected by the political subdivision, one arbitrator selected by the telecommunications company, and one arbitrator selected by the other two arbitrators. The cost of a single arbitrator must be paid equally by the political subdivision and the telecommunications company. If a three-person

arbitration panel is selected, each party shall pay the cost of its own arbitrator, and the parties shall jointly pay the cost of the third arbitrator and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

- b. Bring an action in district court to review a decision of the governing body made under this section.

SECTION 5. Section 49-21-26 of the North Dakota Century Code is created and enacted as follows:

49-21-26. Franchise ordinance not superseded. Sections 49-21-23, 49-21-24, and 49-21-25 do not modify or supersede the rights and obligations of a political subdivision and the telecommunications company established by the terms of any existing franchise. A city that collects a city franchise fee under a franchise may not collect a fee from that entity under section 49-21-23. A political subdivision that collects a fee prohibited by section 49-21-23 on January 1, 1999, may continue to collect that fee.

SECTION 6. Section 49-21-27 of the North Dakota Century Code is created and enacted as follows:

49-21-27. Cost recovery. A telecommunications company that is assessed either management costs by a political subdivision pursuant to section 49-21-23 or a city franchise fee pursuant to section 49-21-26 is entitled to recover those costs. If the telecommunications company serves customers within the boundaries of the political subdivision imposing the management costs, the costs may be recovered only from those customers.

²⁷³ **SECTION 7. AMENDMENT.** Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

SECTION 8. RETROACTIVE APPLICATION. Sections 1 through 6 of this Act apply retroactively to January 1, 1999.

Approved April 8, 1999
Filed April 8, 1999

²⁷³ Section 49-23-04 was also amended by section 28 of Senate Bill No. 2015, chapter 37, and section 1 of Senate Bill No. 2265, chapter 418.

CHAPTER 411

SENATE BILL NO. 2420

(Senators Wardner, Tallackson, Robinson)
(Representatives Bernstein, Kerzman, Poolman)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact three new sections to chapter 49-21, five new subsections to section 49-21-01, a new subsection to section 49-21-01.1, subsections 5, 6, and 7 of section 49-21-01.3, and subsections 7, 8, 9, 10, 11, 12, 13, and 14 of section 49-21-01.7 of the North Dakota Century Code, relating to telecommunications facilities, regulation of telecommunications services, telecommunications service prices, and powers of the public service commission; to amend and reenact sections 49-02-01.1, 49-21-04, 49-21-07, 49-21-08.1, and 49-21-10.2 of the North Dakota Century Code, relating to jurisdiction of the public service commission, telecommunications price schedules, discrimination, dialing parity, and telecommunications service quality rules; and to repeal section 49-21-02.1 of the North Dakota Century Code, relating to exemptions from public service commission regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁴ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

²⁷⁵ **SECTION 2.** Five new subsections to section 49-21-01 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

²⁷⁴ Section 49-02-01.1 was also amended by section 2 of House Bill No. 1169, chapter 414.

²⁷⁵ Section 49-21-01 was also amended by section 3 of Senate Bill No. 2008, chapter 30, and section 1 of House Bill No. 1451, chapter 410.

"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.

"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.

"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.].

"Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.

"Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.

SECTION 3. A new subsection to section 49-21-01.1 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Private line transport service.

SECTION 4. Subsections 5, 6, and 7 of section 49-21-01.3 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

5. The monthly price of residence service for group I telecommunications companies defined in subsection 2 of section 49-21-01 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. The commission may investigate an increased price allowed pursuant to subsection 5 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. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 5. Subsections 7, 8, 9, 10, 11, 12, 13, and 14 of section 49-21-01.7 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. 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.

SECTION 6. AMENDMENT. Section 49-21-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail

as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such service; and
3. All new prices and any price changes of essential services at least ~~sixty~~ twenty days before the effective date of the new price or price change, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter. ~~Each filing under this section must be accompanied by a fifty-dollar filing fee.~~

SECTION 7. AMENDMENT. Section 49-21-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company 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 or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, 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, ~~including a telecommunications company 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 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 chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

SECTION 8. AMENDMENT. Section 49-21-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

January 1, 2000. Every local exchange carrier shall provide intraLATA dialing parity no later than January 1, 2000.

SECTION 9. AMENDMENT. Section 49-21-10.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-10.2. Quality of service - Procedure and remedies. Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

SECTION 10. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Construction of Facilities - Cost recovery.

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

SECTION 11. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Prohibited acts - Arbitration.

1. A telecommunications company may not:
 - a. Discriminate against another provider of telecommunications services by refusing or delaying access to the company's services;
 - b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:
 - (1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
 - (2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
 - (3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
 - (4) The facility, feature, function, or capability will enable competition; or
 - c. Degrade the quality of access or service provided to another provider of telecommunications services.
2. A claim that a telecommunications company has violated this section may be resolved by arbitration or by a complaint filed with the commission. Arbitration of a claim must be conducted by a single arbitrator engaged in the practice of law under the rules of the American arbitration association. All expedited procedures prescribed by the American arbitration association rules apply. The arbitrator's award is final and binding and may be entered in any court having jurisdiction thereof. A complaint filed with the commission must be referred to the office of administrative hearings for hearing and issuance of recommended findings of fact, conclusions of law, and an order pursuant to chapter 28-32. Each party shall bear its own costs and attorney's fees and shall equally share in the fees and expenses of the arbitration or administrative hearing.

SECTION 12. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Competitive local exchange companies. All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross subsidization, section 49-21-02.2; price schedules, sections 49-21-04 and 49-21-05; price complaints,

section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

SECTION 13. REPEAL. Section 49-21-02.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 412

SENATE BILL NO. 2094

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

ACCESS CODE NUMBER USAGE

AN ACT to amend and reenact section 49-21-01.5 of the North Dakota Century Code, relating to access code number usage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.5. Access code number usage. A person who, in the ordinary course of operations, makes telephones available to the public or to transient users of that person's premises, for intrastate telephone calls using a provider of operator services shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "~~800~~", "toll free "8XX"", "950", or "~~10XXX 0+~~" "101XXXX 0+" access code numbers to obtain access to the provider of operator services desired by the consumer. Each such person shall ensure that no charge to the consumer for using an "~~800~~", "toll free "8XX"", "950", or "~~10XXX 0+~~" "101XXXX 0+" access code number is greater than the amount charged for calls placed using the presubscribed provider of operator services.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 413**HOUSE BILL NO. 1450**
(Representatives Grosz, Mahoney)
(Senators Nething, Tomac)**ELIGIBLE TELECOMMUNICATION CARRIERS**

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to eligible telecommunication carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Eligible telecommunication company requirements. A telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 414

HOUSE BILL NO. 1169

(Natural Resources Committee)

(At the request of the Public Service Commission)

UNAUTHORIZED TELECOMMUNICATIONS SERVICE

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to unauthorized telecommunications service; to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public service commission; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Unauthorized telecommunications service.

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.
2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law.
3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal Regulations, part 64, subpart k. The cease and desist order must be:
 - a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;

- b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
4. A telecommunications company that violates this section is deemed to have committed an unlawful practice in violation of section 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter 51-15.

²⁷⁶ **SECTION 2. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 1999
Filed March 25, 1999

²⁷⁶ Section 49-02-01.1 was also amended by section 1 of Senate Bill No. 2420, chapter 411.

CHAPTER 415

SENATE BILL NO. 2234

(Senators Wanzek, Christmann, Heitkamp)
(Representatives Nelson, Nichols)

TELECOMMUNICATIONS PRICES

AN ACT to amend and reenact section 49-21-06 of the North Dakota Century Code, relating to telecommunications prices; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-06 of the 1997 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, are fair and reasonable. Any person 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 price for any essential or nonessential service. 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.~~ 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 authorize the commission to set aside any price in effect on January 1, 1999, for intrastate switched access service provided by any rural telephone company, as defined under Public Law No. 104-104 [110 Stat. 56; 47 U.S.C. 153 (37)], upon complaint by an interexchange telecommunications company that the price is unreasonably high, except a price for intrastate switched access service in an exchange may be set aside to the extent it is unreasonably high as a consequence of recovery of costs of intrastate switched access service in that exchange from any explicit federal or state mechanisms to preserve and advance universal service; a sale, assignment, or other transfer of ownership or control of that exchange after January 1, 1999; or a reduction of prices after January 1, 1999, for any other services provided in that exchange.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

Approved March 23, 1999
Filed March 23, 1999

CHAPTER 416

HOUSE BILL NO. 1050

(Legislative Council)

(Regulatory Reform Review Commission)

REGULATORY REFORM REVIEW COMMISSION

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to a regulatory reform review commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service 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. 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 the public service commission staff providing technical assistance while carrying out their duties.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 417

HOUSE BILL NO. 1445

(Representatives Carlson, Huether, Klein)
(Senators Christmann, Naaden, Robinson)

ELECTRICITY TRANSMISSION AND DISTRIBUTION LINE DIFFERENTIATION

AN ACT to create and enact a new section to chapter 49-21.1 of the North Dakota Century Code, relating to differentiation between electricity transmission lines and electricity distribution lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21.1 of the North Dakota Century Code is created and enacted as follows:

Electricity transmission and distribution lines - Differentiation. Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and chapters 57-33 and 57-33.1, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 418

SENATE BILL NO. 2265

(Senators St. Aubyn, Heitkamp, Lyson)
(Representatives Carlson, Keiser, Nottestad)

ONE-CALL EXCAVATION NOTICE SYSTEM TIME PERIODS

AN ACT to amend and reenact subdivision g of subsection 3 of section 49-23-04 of the North Dakota Century Code, relating to time periods under the one-call excavation notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁷ **SECTION 1. AMENDMENT.** Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

Approved March 3, 1999

Filed March 4, 1999

²⁷⁷ Section 49-23-04 was also amended by section 28 of Senate Bill No. 2015, chapter 37, and section 7 of House Bill No. 1451, chapter 410.