

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, and
2 49-21-35 of the North Dakota Century Code, relating to a supplemental state high-cost
3 universal service fund; to amend and reenact sections 49-02-01.1 and 49-21-01.7 of the North
4 Dakota Century Code, relating to the jurisdiction and power of the public service commission
5 over a state universal service fund; and to provide for a 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

1 telecommunications company or has fewer than eight thousand local exchange subscribers is
2 subject to sections 49-21-31 through 49-21-35 regarding universal service.

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

5 **49-21-01.7. Powers in general.** The commission has the power to:

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

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

- 5 7. Act upon an application for a certificate of public convenience and necessity under
6 chapter 49-03.1 consistent with section 253 of the federal act, provided a
7 telecommunications company is not required to obtain a certificate of public
8 convenience and necessity to resell telecommunications services.
- 9 8. Mediate or arbitrate agreements for interconnection, services, or network elements
10 under sections 251 and 252 of the federal act.
- 11 9. Approve or reject agreements for interconnection, services, or network elements
12 under sections 251 and 252 of the federal act.
- 13 10. Receive and approve or reject a statement of generally available terms under
14 section 252(f) of the federal act.
- 15 11. Determine whether to terminate a rural telephone company's exemption under
16 section 251(f) of the federal act.
- 17 12. Designate telecommunications companies as eligible telecommunications carriers
18 to receive state and federal universal service support ~~under~~ in accordance with
19 sections 214 and 254 of the federal act.
- 20 13. Designate geographic service areas for the purpose of determining state and
21 federal universal service obligations and support mechanisms ~~under~~ in accordance
22 with the federal act.
- 23 14. Adopt rules consistent with state law as are necessary to carry out the powers in
24 subsections 7 through 13 provided the rules may not impose obligations on a
25 telecommunications company that are different or greater than obligations imposed
26 under the act unless specifically allowed or required under sections 49-21-31
27 through 49-21-35.

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

30 **49-21-31. Definitions.** Notwithstanding section 49-21-01.1 in case of contradiction, as
31 used in sections 49-21-32 through 49-21-35, unless the context otherwise requires:

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

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

21 **49-21-32. Universal service fund established - Continuing appropriation.**

- 22 1. Pursuant to a determination of need, the commission shall establish and administer
23 a fund to assist eligible telecommunications carriers in providing affordable
24 telecommunications services in high-cost areas. Need exists when federal
25 universal service support is inadequate to support affordable service for any item
26 listed in this subsection. The fund must provide support for the following:
- 27 a. Voice grade access to the public-switched network, including some local
28 usage;
- 29 b. Dual-tone multifrequency signaling or its functional equivalent;
- 30 c. Single-party service;
- 31 d. Access to emergency services, including access to 911, where available;

- 1 e. Access to operator services;
- 2 f. Access to interexchange services of the customer's choice; and
- 3 g. Access to directory assistance.
- 4 2. The fund must support only access to the services listed in subdivisions d through
5 g of subsection 1 and not support the services.
- 6 3. The fund must be administered to ensure that the operation of the fund is
7 competitively and technologically neutral.
- 8 4. All moneys contributed to the fund must be transferred to the state treasurer who
9 shall deposit the moneys in the universal service fund. All moneys in the universal
10 service fund are appropriated on a continuing basis to the commission for the
11 purposes of sections 49-21-31 through 49-21-35.

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

14 **49-21-33. Fiscal agent.**

- 15 1. A fiscal agent must be selected to receive and distribute funds under this section
16 and sections 49-21-32, 49-21-34, and 49-21-35.
- 17 2. The commission shall select the fiscal agent for the provision of professional
18 services after an opportunity for public comment on the specific qualifications
19 required of the fiscal agent. A telecommunications carrier is not eligible to be the
20 fiscal agent. The duties of the fiscal agent must be determined by a contract
21 consistent with this section and sections 49-21-32, 49-21-34, and 49-21-35.
- 22 3. The fiscal agent shall provide monthly reports of fund activities to the commission
23 and shall be subject to annual audits performed by a certified public accountant in
24 a manner determined by and under the direction of the commission.
- 25 4. The fiscal agent shall make the fund financial accounts available at reasonable
26 times to any telecommunications carrier in this state as to that carrier's account
27 information and to the public in a manner that protects proprietary information. All
28 records collected in creating and administering a universal service fund are not
29 subject to section 44-04-18 or section 6 of article XI of the Constitution of North
30 Dakota and meetings between the commission and the fiscal agent are not subject
31 to section 44-04-19 or section 5 of article XI of the Constitution of North Dakota.

1 The commission may investigate the accounts and practices of the fiscal agent and
2 enter orders concerning the accounts and practices.

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

5 **49-21-34. Contributions to fund.**

- 6 1. The fiscal agent shall collect contributions from all telecommunications carriers on
7 a monthly basis, based on a July first to June thirtieth fiscal year, unless the
8 amount is de minimus as determined by the commission. If the amount is
9 de minimus, it must be collected on a quarterly basis. Initial contributions to the
10 fund may only be collected for the two-month period prior to the effective date of
11 distributions from the fund. To calculate the contributions, the commission shall:
- 12 a. Determine the total retail revenue for telecommunications services provided
13 by all telecommunications carriers for the immediately preceding fiscal year of
14 July first to June thirtieth;
 - 15 b. Determine the total funds needed for distributions in the next fiscal year as
16 authorized pursuant to section 49-21-35;
 - 17 c. Compute a uniform percentage of the amount determined in subdivision a that
18 will produce an amount equal to the fund total calculated in subdivision b;
 - 19 d. Adjust the percentage multiplier computed in subdivision c to recover or
20 reimburse any fund shortfalls or excesses in the previous fiscal year, including
21 uncollectibles, new providers seeking support, cost and expenses, and
22 auditing; and
 - 23 e. Send notice of the current uniform percentage and appropriate remittance
24 forms to each telecommunications carrier at least two months before the
25 effective date of the application of the percentage.
- 26 2. The commission shall adopt rules governing collection of the contributions required
27 by this section and rules allowing the fiscal agent to assess late fees and interest
28 on delinquent payments from telecommunications carriers. The commission may
29 enforce the contribution requirements of this section through a claim for relief in
30 district court.

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

3 **49-21-35. Distributions from fund - Calculation of costs.**

- 4 1. Subject to the requirements of this section, payments from the fund must be made
5 from collected contributions by the fiscal agent to qualifying eligible
6 telecommunications carriers, on a monthly basis, pursuant to rules adopted by the
7 commission.
- 8 2. An eligible telecommunications carrier that offers the telecommunications services
9 described in subsection 1 of section 49-21-32 to all customers in a designated
10 support area of a rural telephone company by using its own facilities or by a
11 combination of its own facilities and resale of another carrier's service, including
12 services offered by another eligible telecommunications carrier, and that advertises
13 the availability of the telecommunications services and the charges for the
14 telecommunications services using media of general distribution may receive
15 support from the fund for the designated support area. An eligible
16 telecommunications carrier qualified under this subsection to receive state
17 universal service funds shall use the funds for the provision, maintenance, and
18 upgrading of facilities and services for which the support is provided under sections
19 49-21-32 through 49-21-35.
- 20 3. Distributions must be calculated for the designated support areas. In the case of
21 an area served by a rural telephone company, the term "designated support area"
22 means the rural telephone company's service area in this state.
- 23 4. Support for the services listed in subsection 1 of section 49-21-32 must be
24 calculated as the difference between the costs determined in each designated
25 support area and the affordability benchmark. The commission shall adopt rules to
26 determine the affordability benchmark.
- 27 5. Each eligible telecommunications carrier qualified to receive funding shall calculate
28 and submit that carrier's average cost per line based on the methodology and on
29 the same schedule used by the federal communications commission to determine
30 cost for the federal rural universal service fund.

- 1 6. Upon the designation of an additional eligible telecommunications carrier in a
2 designated support area served by a rural telephone company, the additional
3 carrier must receive distributions from the fund based upon that carrier's average
4 cost and the rural telephone company must receive distributions from the fund
5 based upon that rural telephone company's average cost both in the same manner
6 as determined in subsection 5.
- 7 7. An eligible telecommunications carrier providing telecommunications services
8 through resale of another telecommunications carrier's telecommunications
9 services or facilities may not receive support for those telecommunications
10 services or facilities if the rates charged to an eligible telecommunications carrier
11 by the other telecommunications carrier have been reduced by a contribution from
12 universal service funds under this section.
- 13 8. An eligible telecommunications carrier may not collect a distribution under this
14 section if that carrier is delinquent with a contribution to the fund.
- 15 9. Costs and expenses of administering the fund, including professional services and
16 litigation expenses, must be paid from the fund.