

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 complimentary 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

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

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 in case of contradiction, as used in sections 49-21-32 through 49-21-35, 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. 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 fund established - Continuing appropriation.

1. The commission shall establish and administer a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. By an amount equivalent to the amount necessary for the fund, the commission shall reduce implicit subsidies, including intrastate access charge rates. The commission shall restructure access rates on a revenue neutral basis so the rates for originating and terminating access are equal. The fund must provide support for and support is limited to the following:
 - a. Voice grade access to the public-switched network, including some local usage;
 - b. Dual-tone multifrequency signaling or its functional 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;
- g. Access to directory assistance; and
- h. Toll-blocking services and toll limitation services if toll limitation services are technically feasible at a reasonable cost.

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

3. The fund must be competitively and technologically neutral, equitable, and nondiscriminatory in its collection and distribution of funds and portable between eligible telecommunications carriers. The commission shall ensure that the fund provides a specific, predictable, and sufficient support mechanism that reduces implicit subsidies, including access charges, and ensures universal service in this state.

4. All moneys contributed to the fund must be transferred to the state treasurer who shall deposit the moneys in the universal service fund. All moneys in the universal service fund are appropriated on a continuing basis to the commission for the purposes of sections 49-21-31 through 49-21-35.

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

49-21-33. Fiscal agent.

1. The commission shall select a fiscal agent to receive and distribute funds under this section and sections 49-21-32, 49-21-34, and 49-21-35. The commission may not act as fund administrator.
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, 49-21-34, and 49-21-35.

1 3. The fiscal agent shall provide monthly reports of fund activities to the commission
2 and shall be subject to annual audits performed by a certified public accountant in
3 a manner determined by and under the direction of the commission.

4 4. The fiscal agent shall make the fund financial accounts available at reasonable
5 times to any telecommunications carrier in this state as to that carrier's account
6 information and to the public in a manner that protects proprietary information. All
7 records collected in creating and administering a universal service fund are not
8 subject to section 44-04-18 or section 6 of article XI of the Constitution of North
9 Dakota and meetings between the commission and the fiscal agent are not subject
10 to section 44-04-19 or section 5 of article XI of the Constitution of North Dakota.
11 The commission may investigate the accounts and practices of the fiscal agent and
12 enter orders concerning the accounts and practices.

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

15 **49-21-34. Contributions to fund.**

- 16 1. The fiscal agent shall collect contributions from all telecommunications carriers on
17 a monthly basis, based on a July first to June thirtieth fiscal year, unless the
18 amount is de minimus as determined by the commission. If the amount is
19 de minimus, it must be collected on a quarterly basis. Initial contributions to the
20 fund may only be collected for the two-month period prior to the effective date of
21 distributions from the fund. To calculate the contributions, the commission shall:
- 22 a. Determine the total retail revenue for telecommunications services provided
23 by all telecommunications carriers for the immediately preceding fiscal year of
24 July first to June thirtieth;
 - 25 b. Determine the total funds needed for distributions in the next fiscal year as
26 authorized pursuant to section 49-21-35;
 - 27 c. Compute a uniform percentage of the amount determined in subdivision a that
28 will produce an amount equal to the fund total calculated in subdivision b;
 - 29 d. Adjust the percentage multiplier computed in subdivision c to recover or
30 reimburse any fund shortfalls or excesses in the previous fiscal year, including

1 uncollectibles, new providers seeking support, cost and expenses, and
2 auditing; and

3 e. Send notice of the current uniform percentage and appropriate remittance
4 forms to each telecommunications carrier at least two months before the
5 effective date of the application of the percentage.

6 2. The commission shall adopt rules governing collection of the contributions required
7 by this section and rules allowing the fiscal agent to assess late fees and interest
8 on delinquent payments from telecommunications carriers. The commission may
9 enforce the contribution requirements of this section through a claim for relief in
10 district court.

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

13 **49-21-35. Distributions from fund - Calculation of costs.**

- 14 1. Subject to the requirements of this section, payments from the fund must be made
15 from collected contributions by the fiscal agent to qualifying eligible
16 telecommunications carriers, on a monthly basis, pursuant to rules adopted by the
17 commission.
- 18 2. An eligible telecommunications carrier that offers the telecommunications services
19 supported by the fund to all customers in a designated support area of a rural
20 telephone company by using its own facilities or by a combination of its own
21 facilities and resale of another carrier's service, including services offered by
22 another eligible telecommunications carrier, and that offers and advertises the
23 availability of the telecommunications services and the charges for the
24 telecommunications services using media of general distribution may receive
25 support from the fund for the designated support area. An eligible
26 telecommunications carrier qualified under this subsection to receive state
27 universal service funds shall use the funds for the provision, maintenance, and
28 upgrading of facilities and services for which the support is provided under sections
29 49-21-32 through 49-21-35.
- 30 3. Distributions must be calculated for the designated support areas as determined by
31 the commission. The commission shall establish a mechanism for determining

appropriate amounts of support to be distributed from the fund. The commission shall ensure the availability of service at affordable rates without unreasonably increasing rates for basic service while granting eligible telecommunications carriers a reasonable profit on supported services in geographic areas requiring support from the fund. The support must be based on the difference between the forward-looking cost of providing basic telecommunications services and a benchmark determined by the commission, less any financial support received by the eligible carrier for any high-cost universal service support program. The commission shall use the forward-looking cost model used by the federal communications commission in determining cost for the purpose of the federal high-cost universal service program. The forward-looking cost may be subsequently revised if the commission determines that doing so would result in more accurate determinations of forward-looking cost. The support must be available for all lines used to provide basic telecommunications services and high-cost locations, regardless of the technology used in the provision of the services. If the fund is insufficient to support the basic telecommunications services at the level of support as determined by the commission, the commission shall increase the benchmark. Affordable rates promote universal service within a local exchange service area giving consideration to the economic conditions and costs to provide the service in that area.

4. Support for the services listed in subsection 1 of section 49-21-32 must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark. The commission shall adopt rules to determine the affordability benchmark.
5. Any support amount provided by the fund to an incumbent telecommunications carrier must be provided to an eligible telecommunications carrier in an area served by the incumbent carrier if the additional carrier provides the services required for funding throughout the same designated area.
6. An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications

- 1 services or facilities if the rates charged to an eligible telecommunications carrier
2 by the other telecommunications carrier have been reduced by a contribution from
3 universal service funds under this section.
- 4 7. An eligible telecommunications carrier may not collect a distribution under this
5 section if that carrier is delinquent with a contribution to the fund.
- 6 8. Costs and expenses of administering the fund, including professional services and
7 litigation expenses, must be paid from the fund.
- 8 9. Neither the eligibility criteria nor the funding mechanism requires any investigation
9 of the cost or rates of a telecommunications carrier receiving support from the fund
10 other than that required by this section.