

# State of South Dakota

EIGHTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2010

492R0594

## HOUSE BILL NO. 1173

Introduced by: Representative Peters and Senator Gray

1 FOR AN ACT ENTITLED, An Act to provide certain provisions concerning the notice and  
2 interconnection of video programming and rural telephone service and to establish certain  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 For purposes of this Act, the terms, bona fide request for interconnection, cable operator,  
8 eligible telecommunications carrier, rural telephone company, and video programming shall  
9 have the same meaning as the terms are defined in the Federal Communications Act of 1934,  
10 as of January 15, 2010 and 47 U.S.C. §§ 151 et seq, as of January 15, 2010.

11 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 Notwithstanding any other provision of this chapter, the commission shall grant any  
14 application for authorization to provide competitive local exchange service in an area served by  
15 one or more rural telephone companies if the application meets the requirements for



1 authorization in any area served by a nonrural telephone company pursuant to § 49-31-76. The  
2 commission may not require any applicant for an area served by a rural telephone company to  
3 qualify as an eligible telecommunications carrier in such area.

4 Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any rural telephone company that intends to provide video programming service shall  
7 provide written notice, to the commission and to each cable operator with a service area that  
8 overlaps the rural telephone company's service area, no less than one hundred twenty days  
9 before the date which the rural telephone company first intends to provide video programming  
10 service.

11 If, within thirty days of the date of a rural telephone company's notice pursuant to this  
12 section, any cable operator authorized to provide competitive local telephone service makes a  
13 bona fide request for interconnection pursuant to 47 U.S.C. § 251(f)(1)(A) as of January 15,  
14 2010, and provides notice of the bona fide request to the commission, the commission shall  
15 initiate a proceeding to terminate the rural telephone company's exemption under 47 U.S.C.  
16 § 251(f)(1) as of January 15, 2010, and, if requested by the cable operator, any suspension or  
17 modification under 47 U.S.C. § 251(f)(2) as of January 15, 2010. The commission shall  
18 complete the proceeding within eighty days of receipt of notice of the bona fide request.

19 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 In any proceeding pursuant to this Act:

22 (1) The commission shall presume that the rural telephone company's notice of intent to  
23 provide video programming demonstrates that the cable operator's request for  
24 interconnection is not unduly economically burdensome and is consistent with 47

1 U.S.C. § 254, as of January 15, 2010, and shall presume that any request for  
2 interconnection consistent with normal industry practices is technically feasible. To  
3 the extent that the cable operator seeks to terminate any suspension or modification  
4 pursuant to 47 U.S.C. § 251(f)(2), as of January 15, 2010, the commission shall  
5 presume that the rural telephone company's notice of intent to provide video  
6 programming demonstrates that the suspension or modification:

7 (a) Is not necessary to avoid a significant adverse economic impact on users of  
8 telecommunications services generally, to avoid imposing a requirement that  
9 is unduly economically burdensome or, to the extent that the request for  
10 interconnection is consistent with normal industry practices, to avoid imposing  
11 a requirement that is technically infeasible; and

12 (b) Is not consistent with the public interest, convenience, and necessity;

13 (2) If the commission terminates the rural telephone company's rural exemption, the  
14 schedule the commission shall set for interconnection shall require the rural  
15 telephone company to provide interconnection no later than thirty days after the  
16 intended date for commencement of video service indicated in the notice given  
17 pursuant to this section; and

18 (3) In addition to any other available remedies, the commission may require the rural  
19 telephone company and the cable operator to enter into an interim interconnection  
20 agreement to be effective no later than the intended date for commencement of video  
21 programming service indicated in the rural telephone company notice given pursuant  
22 to section 3 of this Act. The agreement shall include such terms and conditions as the  
23 commission deems to be just and reasonable and consistent with the requirements of  
24 47 U.S.C. §§ 251 and 252, as of January 15, 2010, and which may provide for a true-

1 up to the charges under any permanent interconnection agreement subsequently  
2 entered into between the rural telephone company and the cable operator.

3 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5 Any rural telephone company that fails to comply with the requirements of section 3 of this  
6 Act or with any schedule set by the commission pursuant to subdivision (2) of section 4 of this  
7 Act shall be subject to civil liability pursuant to § 49-13-14.1.