

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

707B0640

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1160** - 2/11/98

Introduced by: Representatives Schaanaman, Gabriel, Hagen, and Pederson (Gordon) and
Senators Olson, Halverson, and Johnson (William)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of
2 telecommunication companies.

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

4 Section 1. That § 49-31-1 be amended by adding thereto NEW SUBDIVISIONS to read as
5 follows:

6 "Eligible telecommunications carrier," a local exchange carrier designated by the commission
7 pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to receive universal service
8 support funding;

9 "Incumbent local exchange carrier," a local exchange carrier, including successors and
10 assigns, which was providing local exchange service within a defined service area in this state on
11 or before February 8, 1996;

12 "Interexchange telecommunications service," telecommunications service between points in
13 two or more exchanges;

14 "Local exchange area," a geographic area established by a local exchange carrier as filed with
15 or approved by the commission for the administration of local telecommunications service which

1 may consist of one or more central offices or wire centers together with associated facilities used
2 in furnishing telecommunications service in that area;

3 "Rural telephone company," a local exchange company as defined in 47 U.S.C. § 153(37)
4 as of January 1, 1998;

5 "Service area," a geographic area established by the commission for the purpose of
6 determining universal service obligations and support mechanisms. For a rural telephone
7 company, the service area is the company's study area or any other area designated jointly by the
8 commission and the Federal Communications Commission pursuant to 47 U.S.C. § 214(e)(5)
9 as of January 1, 1998;

10 "Switched access," an exchange access service purchased for the origination and termination
11 of interexchange telecommunications services which includes central office switching and
12 signaling, local loop facility, or local transport.

13 Section 2. That subdivision (19) of § 49-31-1 be amended to read as follows:

14 (19) "Local exchange service," the access to and transmission of two-way switched ~~voice~~
15 ~~communications~~ telecommunications service within a ~~geographic territorial unit~~
16 ~~established by a telecommunications company for the administration of~~
17 ~~telecommunications services~~ local exchange area;

18 Section 3. That subdivision (35) of § 49-31-1 be amended to read as follows:

19 (35) "Telecommunications company," any person; ~~or~~ or municipal corporation; ~~trustee, lessee~~
20 ~~or receiver~~ owning, operating, reselling, managing or controlling in whole or in part,
21 any telecommunications line, system or exchange in this state, directly or indirectly,
22 for public use. ~~All telecommunications companies are common carriers~~ For purposes
23 of this definition the term, for public use, means for the use of the public in general
24 or for a specific segment of the public, or which connects to the public in general or
25 for a specific segment of the public, or which connects to the public switched network

1 for access to any telecommunications service;

2 Section 4. That subdivision (39) of § 49-31-1 be repealed.

3 (39) ~~"Universal service," a service which is, as far as possible, a rapid, efficient~~
4 ~~telecommunications service with adequate facilities available to all the people of South~~
5 ~~Dakota at a reasonable charge; and~~

6 Section 5. That § 49-31-3 be amended to read as follows:

7 49-31-3. The commission has general supervision and control of all telecommunications
8 companies offering common carrier services within the state to the extent such business is not
9 otherwise regulated by federal law or regulation. The commission shall inquire into any
10 complaints, unjust discrimination, neglect, or violation of the laws of the state governing such
11 companies. The commission may exercise powers necessary to properly supervise and control
12 such companies.

13 Each telecommunications company that plans to offer or provide interexchange
14 telecommunications service or any telecommunications service other than local exchange service
15 shall file an application for a certificate of authority with the commission pursuant to this section.
16 Telecommunications companies seeking to provide any local exchange service shall submit an
17 application for certification by the commission pursuant to this Act. Applications required by this
18 section shall be filed by the company no less than sixty days prior to initiating any before its
19 initiation of telecommunications service in this state. The commission shall have the exclusive
20 authority to grant a certificate of authority. Each telecommunications company shall submit a
21 two hundred fifty dollar application fee with its application which shall be deposited into the
22 gross receipts tax fund established pursuant to § 49-1A-2. If the commission has not ruled upon
23 an application at the end of the sixty days, the telecommunications company may initiate
24 telecommunications services in the state until the commission reaches a decision on the
25 application. If the application is granted, the company may continue to offer its services.

1 However, if the application is denied, the company shall cease and desist from offering any
2 further services in this state. A telecommunications company has the burden to prove in its
3 application that it has sufficient technical, financial and managerial capabilities to offer the
4 telecommunications services described in its application before the commission may grant a
5 certificate of authority. The commission may rule upon a telecommunications company's
6 application for a certificate of authority with or without hearing.

7 Any certificate of authority granted by the commission may be suspended or revoked
8 pursuant to chapter 1-26 for a willful violation of the laws of this state, a willful failure to comply
9 with a rule or order of the commission, or other good cause. The commission shall, by rules
10 promulgated pursuant to chapter 1-26, prescribe the necessary procedures to implement this
11 section. A telecommunications company that had lawful authority immediately prior to ~~July 1,~~
12 ~~1992~~ the effective date of this Act to provide interexchange telecommunications services or
13 telecommunications services other than local exchange service shall continue to have such
14 authority. ~~The commission shall issue such a telecommunications company a certificate of~~
15 ~~authority.~~ Any certificate of authority to provide such telecommunications service may not be
16 sold, assigned, leased, or transferred without commission approval. The offering of such
17 telecommunications services by a telecommunications company without a certificate of authority
18 or inconsistent with this section is a Class 1 misdemeanor.

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

21 No telecommunications company may begin the construction of a telecommunications facility
22 intended to provide local exchange service, commence operating a telecommunications facility
23 for the purpose of providing local exchange service, or offer or otherwise provide local exchange
24 service in this state prior to receiving a certificate of authority to provide the service from the
25 commission. A company may not extend an existing telecommunications facility outside its local

1 exchange service area for the purpose of providing local exchange service in a service area in
2 which it is not certified without applying to the commission for authority to do so. Any
3 telecommunications company seeking to amend or alter its authorized local exchange service
4 territory shall apply for an amended certificate of authority. An application for an amended
5 certificate is subject to the same requirements as an application for an initial certificate. The
6 commission has the exclusive authority to grant a certificate of authority.

7 Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 An application for a certificate of authority to provide local exchange service shall set forth
10 with particularity the proposed geographic territory to be served and provide information
11 regarding the types of local exchange services to be provided. Each telecommunications
12 company holding a certificate of authority to provide local exchange service within the
13 geographic area where an applicant is seeking to provide local exchange service shall be provided
14 notice of the application and be granted intervenor status in any commission proceeding on the
15 application.

16 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The commission shall issue a certificate of authority for local exchange service to the
19 applying telecommunications company, if, after notice and opportunity for hearing pursuant to
20 chapter 1-26, the applicant has demonstrated sufficient technical, financial, and managerial
21 capabilities to provide the local exchange services applied for. In granting a certificate of
22 authority to provide local exchange service, the commission may impose terms and conditions,
23 on a competitively neutral basis, that it finds consistent with preserving and advancing universal
24 service, protecting the public safety and welfare, ensuring the continued quality of service, and
25 safeguarding the rights of consumers.

1 Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Except when an evidentiary hearing is required by the commission, the commission shall act
4 on an application for a certificate of authority to provide local exchange service within sixty days
5 of receiving a complete application. If an evidentiary hearing is required, the commission shall
6 act on the application within one hundred twenty days of receipt of a complete application.

7 Section 10. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Except as provided in 47 U.S.C. § 253(f) as of January 1, 1998, if the applicant proposes to
10 provide any local exchange service in the service area of a rural telephone company, the applicant
11 is required to satisfy the service obligations of an eligible telecommunications carrier as set forth
12 in 47 U.S.C. § 214(e) as of January 1, 1998. In addition, the services required to be provided as
13 set forth in 47 U.S.C. § 214(e) as of January 1, 1998, shall be provided at prices and on terms
14 which reflect a good faith offering of the services throughout the service area of the incumbent
15 rural telephone company. This includes the obligation to advertise the availability of local
16 exchange services and prices to potential customers throughout the service area using media of
17 general distribution. However, an applicant may petition the commission for a waiver from the
18 requirement of satisfying the service obligations of an eligible telecommunications carrier. The
19 commission may grant the waiver if, after notice and hearing pursuant chapter 1-26, it is
20 established by clear and convincing evidence that the waiver would not adversely impact
21 universal service, that quality of service would be continued, and that it would otherwise be in
22 the public interest.

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

25 Any certificate of authority for local exchange service granted by the commission to a

1 telecommunications company prior to the effective date of this Act shall remain in full force and
2 effect unless modified by the commission, and such company need not apply for certification in
3 order to continue offering or providing service to the extent authorized in such certificate of
4 authority. Prior to substantially altering the nature or scope of services provided under a
5 certificate of authority, or adding or expanding services beyond the authority contained in such
6 certificate, any such carrier shall apply for a certificate of authority for such alterations or
7 additions.

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

10 The commission may review and modify the terms of any certificate of authority issued to
11 a telecommunications company prior to the effective date of this Act in order to ensure its
12 conformity with the requirements and policies of this chapter. Any certificate of authority may
13 be altered or modified by the commission after notice and hearing pursuant to chapter 1-26, upon
14 its own motion or upon application of the person or company affected.

15 Section 13. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A certificate of authority for local exchange service issued by the commission may not be
18 sold, assigned, leased, or transferred without commission approval. Any certificate of authority
19 issued by the commission may be suspended or revoked, pursuant to chapter 1-26, for a willful
20 violation of the laws of this state, a willful failure to comply with a rule or order of the
21 commission, or other good cause. The offering of any local exchange telecommunications service
22 without a certificate of authority or which is inconsistent with this section is a Class 1
23 misdemeanor.

24 Section 14. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
25 follows:

1 Within ninety days after the effective date of this Act, the commission shall initiate rule-
2 making proceedings pursuant to chapter 1-26 to adopt rules addressing the competitive
3 provisioning of local exchange service which, consistent with 47 U.S.C. § 253(b) as of January 1,
4 1998, shall be directed toward preserving and advancing universal service, protecting the public
5 safety and welfare, ensuring the continued quality of service, and safeguarding the rights of
6 affected consumers. The preservation and advancement of universal service shall be a primary
7 concern. The commission shall adopt and implement the rules no later than one hundred eighty
8 days after the effective date of this Act.

9 Section 15. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The commission may promulgate rules pursuant to chapter 1-26 to establish service quality
12 standards for local exchange services.

13 Section 16. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The commission shall designate a common carrier as an eligible telecommunications carrier
16 for a service area designated by the commission consistent with 47 U.S.C. § 214(e) as of
17 January 1, 1998. The commission may permit an eligible telecommunications carrier to relinquish
18 its designation as such a carrier in any area served by more than one eligible telecommunications
19 carrier consistent with 47 U.S.C. § 214(e)(4) as of January 1, 1998. The commission may
20 designate a common carrier or carriers to provide service to unserved areas that request such
21 service consistent with 47 U.S.C. § 214(e)(3) as of January 1, 1998. The commission may not
22 in an area served by a rural telephone company designate more than one eligible
23 telecommunications carrier absent a finding that the additional designation would be in the public
24 interest.

25 Section 17. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Pursuant to 47 U.S.C. § 251(f)(1) as of January 1, 1998, the obligations of an incumbent
3 local exchange carrier, which include the duty to negotiate and provide interconnection,
4 unbundled network elements, resale, notice of changes and collocation, do not apply to a rural
5 telephone company unless the company has received a bona fide request for interconnection,
6 services, or network elements and the commission determines that the rural telephone company
7 shall fulfill the request. The commission may only determine that the rural telephone company
8 shall fulfill the request if, after notice and hearing pursuant to chapter 1-26, the commission finds
9 that the request is not unduly economically burdensome the request is technically feasible, and
10 the request is consistent with the universal service principles and provisions set forth in 47
11 U.S.C. § 254 as of January 1, 1998. The person or entity making the request shall have the
12 burden of proof as to whether each of the standards for reviewing the request has been met.
13 Nothing in this section prevents a rural telephone company from voluntarily agreeing to provide
14 any of the services, facilities, or access referenced by this section.

15 Section 18. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Consistent with 47 U.S.C. § 251(f)(2) as of January 1, 1998, the commission may grant a
18 suspension or modification of any of the interconnection or other requirements set forth in 47
19 U.S.C. §§ 251(b) and 251(c), as of January 1, 1998, to any local exchange carrier which serves
20 fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide. Any
21 such carrier shall petition the commission for the suspension or modification. The commission
22 shall grant the petition to the extent that, and for such duration as, the commission determines
23 that the requested suspension or modification is consistent with the public interest, convenience,
24 and necessity and is necessary:

25 (1) To avoid a significant adverse economic impact on users of telecommunications

1 services generally;

2 (2) To avoid imposing a requirement that is unduly economically burdensome; or

3 (3) To avoid imposing a requirement that is technically infeasible.

4 The commission may suspend enforcement of the requirement or requirements identified in
5 the petition pending final action on the requested suspension or modification.

6 Section 19. That § 49-31-5.1 be amended to read as follows:

7 49-31-5.1. Telecommunications cooperatives organized pursuant to chapters 47-15 to 47-20,
8 inclusive, municipal telephone systems operated pursuant to chapter 9-41, and independent
9 telephone companies serving less than ~~ten~~ fifty thousand local exchange subscribers are not
10 subject to chapter 49-11, §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4.1,
11 inclusive, §§ 49-31-4.3, 49-31-5, and 49-31-6, §§ 49-31-12 to 49-31-12.5, inclusive, and
12 §§ 49-31-44 to 49-31-46, inclusive.

13 However, any cooperative, municipality or independent telecommunications company may
14 elect to have its rates regulated by the commission and be subject to commission regulation for
15 its emerging and noncompetitive telecommunications services. The election to be regulated shall
16 be made by filing with the commission a certified copy of the resolution of the board of directors
17 or the municipal governing body. Commission regulation shall become effective thirty days after
18 receipt of the resolution by the commission.

19 Section 20. That § 49-31-17 be repealed.

20 ~~49-31-17. Notwithstanding § 49-31-15, no access may be compelled except at or within the~~
21 ~~local exchange boundary, or a centralized point serving several exchanges, of the~~
22 ~~telecommunications company refusing the access. The company refusing access may not be~~
23 ~~compelled by the commission to build a facility outside its local exchange territory, or a~~
24 ~~centralized point serving several exchanges, to connect to the telecommunications company~~
25 ~~requesting the access. Nothing in § 49-31-15 may be construed to prevent telecommunications~~

1 ~~companies from providing access to each other's facilities by mutual consent.~~

2 Section 21. That § 49-31-20 be amended to read as follows:

3 ~~49-31-20. No person who owns telecommunications facilities in this state may consolidate~~
4 ~~with or hold a controlling interest in the stock, bonds or assets of another telecommunications~~
5 ~~company owning a competing line, switch, exchange or other telecommunications facilities.~~

6 ~~— A person may file with the commission an application to consolidate or merge~~
7 ~~telecommunications companies. If the commission finds after an investigation, notice and, with~~
8 ~~or without, public hearing that the public interest will be benefited by the consolidation or~~
9 ~~merger, the commission may issue a permit granting the consolidation or merger. Any~~
10 ~~telecommunications company that holds a certificate of authority to operate in this state shall~~
11 ~~notify the commission of any consolidation or merger with another telecommunications~~
12 ~~company.~~

13 Section 22. That § 49-31-21 be repealed.

14 ~~— 49-31-21. Any person before commencing the construction of a telecommunications facility,~~
15 ~~or an extension of an existing telecommunications facility outside its lawful local exchange~~
16 ~~territory, shall first apply to the commission for authority to do so. The application shall have~~
17 ~~attached thereto a plat or map showing the location of the proposed facility. Upon receipt of the~~
18 ~~application, the commission shall notify any other telecommunications company which may be~~
19 ~~affected and permit the filing of comments or objections. The commission may allow, with or~~
20 ~~without a hearing, the construction of a telecommunications facility if it finds the facility to be~~
21 ~~in the public interest and which will provide competition in the delivery or use of~~
22 ~~telecommunications services. If the proposed location of a facility is in the local exchange~~
23 ~~territory assigned to telephone cooperatives organized pursuant to chapters 47-15 to 47-20,~~
24 ~~inclusive, or municipal telephone systems operated pursuant to chapter 9-41, or independent~~
25 ~~telephone companies serving less than ten thousand local exchange subscribers, the commission~~

1 ~~may allow the proposed facility only upon the additional finding that the local exchange company~~
2 ~~operating the existing facility is not furnishing reasonably adequate telecommunications service~~
3 ~~and will not furnish reasonably adequate service within a reasonable time. Nothing in this section~~
4 ~~prohibits the construction of nonaccess facilities which cross the local exchange territory being~~
5 ~~lawfully occupied and served by another telecommunications company furnishing reasonably~~
6 ~~adequate service. Nothing in this section affects construction or extension of facilities within the~~
7 ~~local exchange territory for which a company has the certificate to operate, into contiguous~~
8 ~~territory which is not receiving similar service, or where a certificated telecommunications~~
9 ~~company agrees in writing to an attachment of lines or to the construction of telecommunications~~
10 ~~facilities in the affected company's local exchange territory.~~

11 Section 23. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The commission may implement and comply with the provisions of the federal
14 Telecommunications Act of 1996, including the promulgation of rules pursuant to chapter 1-26.
15 Except to the extent a local exchange carrier is exempt from or has received a suspension or
16 modification pursuant to 47 U.S.C. § 251(f)(1) or 251(f)(2), as of January 1, 1998, and the
17 provisions of this chapter, the carrier shall provide interconnection, network elements, and other
18 telecommunications services to any provider of competitive telecommunications services that
19 requests such interconnection and services to the extent required by 47 U.S.C. §§ 251(a) to
20 251(c), inclusive, as of January 1, 1998. If the parties are unable to voluntarily negotiate an
21 agreement for the interconnection or services requested, either party may petition the
22 commission to mediate or arbitrate any unresolved issues as provided in 47 U.S.C. § 252. The
23 provisioning of interconnection, network elements, and other telecommunications services to the
24 extent required by 47 USC §§ 251(a) to 251(c), inclusive, by a local exchange carrier pursuant
25 to this section is not subject to §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4,

1 inclusive, §§ 49-31-12.2, 49-31-12.4, 49-31-12.5, and §§ 49-31-18 and 49-31-19, inclusive.

2 Section 24. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 It is recognized that certain resale restrictions may be necessary to prevent unfair
5 competition, preserve universal service and otherwise protect the public interest. The commission
6 may permit reasonable and nondiscriminatory resale restrictions proposed by local exchange
7 carriers that are consistent with 47 U.S.C. § 251(c)(4) and that do not constitute a barrier to
8 entry under 47 U.S.C. § 253(a). The commission may adopt rules pursuant to chapter 1-26 to
9 implement this section.

10 Section 25. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The commission may not prohibit telecommunications companies from voluntarily forming
13 an association to assist in the administration and filing of schedules or tariffs and to engage in the
14 pooling of access costs and revenues in a manner which is consistent with preserving and
15 advancing universal service throughout this state or consistent with the Public Communications
16 Network Infrastructure policies set forth in §§ 49-31-60 to 49-31-68, inclusive.

17 Section 26. That § 49-31-44 be amended to read as follows:

18 49-31-44. There is hereby created a fund within the state treasury to be known as the
19 "telecommunications investigation fund" which shall be used by the commission to defray the
20 expenses of conducting investigations or public hearings relating to §§ 49-31-3.2 to 49-31-3.4,
21 inclusive, 49-31-4, and 49-31-4.1, or arbitration proceedings conducted pursuant to 47 U.S.C.
22 § 252 as of January 1, 1998. Each telecommunications company as defined in subdivision
23 49-31-1(9), ~~upon the opening of~~ that is a party to an official docket to exercise commission
24 authority pursuant to §§ 49-31-3.2 to 49-31-3.4, inclusive, 49-31-4 and 49-31-4.1, or arbitration
25 proceedings conducted pursuant to 47 U.S.C § 252 as of January 1, 1998, shall make a deposit

1 not to exceed seventy-five thousand dollars in the "telecommunications investigation fund." The
2 amount and the division of the deposit among the companies, if any, shall be designated by
3 commission order. However, any costs incurred related to arbitration proceedings conducted
4 pursuant to 47 U.S.C. § 252 as of January 1, 1998, shall be shared equally among the parties.

5 The commission shall use the deposit to defray the expense incident to conducting the hearing
6 or investigation of the company making the deposit. The deposit is appropriated to the use of
7 the commission for such purpose. The funds necessary for such expenses are hereby authorized
8 to be expended.

9 Section 27. It is the intent of the Legislature to encourage telecommunications companies
10 to more efficiently meet the infrastructure deployment goal described in §§ 49-31-60 to 49-31-
11 68, inclusive, for a fully integrated SONET backbone of interconnected survivable rings. To that
12 end, telecommunications companies may jointly provide facilities and enter into revenue-pooling
13 arrangements between and among themselves relating to the provisioning of these facilities. Any
14 such arrangement shall be subject to commission review and approval and, to the extent it has
15 received such approval, may not be construed as violating any state or local laws governing
16 unfair trade practices, antitrust or restraint of trade. Further, it is the intent of the Legislature that
17 any such approved arrangement shall be exempt from federal laws governing unfair trade
18 practices, antitrust, or restraint of trade. Except with respect to such joint provisioning of
19 facilities and revenue pooling arrangements approved by the commission, both state and federal
20 laws governing unfair trade practices, antitrust, and restraint of trade shall apply with full force
21 and effect. The joint provisioning of facilities within an arrangement consistent with the limited
22 purpose described in this section may not be construed as imposing additional common carrier
23 obligations on the participating companies. The provisions of this section may not be construed
24 to permit any telecommunications company to take any action that is contrary to the public
25 interest.

1 **BILL HISTORY**

2 1/20/98 First read in House and referred to State Affairs. H.J. 127

3 1/30/98 Scheduled for Committee hearing on this date.

4 1/30/98 State Affairs Deferred to another day.

5 2/4/98 Scheduled for Committee hearing on this date.

6 2/4/98 State Affairs Deferred to another day.

7 2/9/98 Scheduled for Committee hearing on this date.

8 2/11/98 Scheduled for Committee hearing on this date.

9 2/11/98 State Affairs Do Pass Amended, Passed, AYES 13, NAYS 0.