

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

707B0640

## HOUSE BILL NO. 1160

Introduced by: Representatives Schaunaman, 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 "Category of customers," an identifiable customer group for whom specified  
7 telecommunications services are designed, marketed, or commonly provided. Examples of a  
8 category of customers are residential; business; interexchange telecommunications companies;  
9 elementary and secondary educational and rural health institutions; and local, state, or federal  
10 government entities;

11 "Centralized equal access provider," an entity certified by the Federal Communications  
12 Commission and the commission to provide centralized equal access;

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

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

4 "Interexchange telecommunications service," telecommunications service between points in  
5 two or more exchanges;

6 "Local exchange area," a geographic area established by a local exchange carrier as filed with  
7 or approved by the commission for the administration of local telecommunications service which  
8 may consist of one or more central offices or wire centers together with associated facilities used  
9 in furnishing telecommunications service in that area;

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

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

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

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

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

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

1 (35) "Telecommunications company," any person; ~~or municipal corporation, trustee, lessee~~  
 2 ~~or receiver~~ owning, operating, reselling, managing or controlling in whole or in part,  
 3 any telecommunications line, system or exchange in this state, directly or indirectly,  
 4 for public use. ~~All telecommunications companies are common carriers~~ For purposes  
 5 of this definition the term, for public use, means for the use of the public in general  
 6 or for a specific segment of the public, or which connects to the public in general or  
 7 for a specific segment of the public, or which connects to the public switched network  
 8 for access to any telecommunications service;

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

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

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

14 49-31-3. The commission has general supervision and control of all telecommunications  
 15 companies offering common carrier services within the state to the extent such business is not  
 16 otherwise regulated by federal law or regulation. The commission shall inquire into any  
 17 complaints, unjust discrimination, neglect, or violation of the laws of the state governing such  
 18 companies. The commission may exercise powers necessary to properly supervise and control  
 19 such companies.

20 Each telecommunications company that plans to offer or provide interexchange  
 21 telecommunications service or any telecommunications service other than local exchange service  
 22 shall file an application for a certificate of authority with the commission pursuant to this section.  
 23 Telecommunications companies seeking to provide any local exchange service shall submit an  
 24 application for certification by the commission pursuant to this Act. Applications required by this  
 25 section shall be filed by the company no less than sixty days prior to initiating any before its

1 initiation of telecommunications service in this state. The commission shall have the exclusive  
2 authority to grant a certificate of authority. Each telecommunications company shall submit a  
3 two hundred fifty dollar application fee with its application which shall be deposited into the  
4 gross receipts tax fund established pursuant to § 49-1A-2. If the commission has not ruled upon  
5 an application at the end of the sixty days, the telecommunications company may initiate  
6 telecommunications services in the state until the commission reaches a decision on the  
7 application. If the application is granted, the company may continue to offer its services.  
8 However, if the application is denied, the company shall cease and desist from offering any  
9 further services in this state. A telecommunications company has the burden to prove in its  
10 application that it has sufficient technical, financial and managerial capabilities to offer the  
11 telecommunications services described in its application before the commission may grant a  
12 certificate of authority. The commission may rule upon a telecommunications company's  
13 application for a certificate of authority with or without hearing.

14 Any certificate of authority granted by the commission may be suspended or revoked  
15 pursuant to chapter 1-26 for a willful violation of the laws of this state, a willful failure to comply  
16 with a rule or order of the commission, or other good cause. The commission shall, by rules  
17 promulgated pursuant to chapter 1-26, prescribe the necessary procedures to implement this  
18 section. A telecommunications company that had lawful authority immediately prior to ~~July 1,~~  
19 ~~1992~~ the effective date of this Act to provide interexchange telecommunications services or  
20 telecommunications services other than local exchange service shall continue to have such  
21 authority. ~~The commission shall issue such a telecommunications company a certificate of~~  
22 ~~authority.~~ Any certificate of authority to provide such telecommunications service may not be  
23 sold, assigned, leased, or transferred. The offering of such telecommunications services by a  
24 telecommunications company without a certificate of authority or inconsistent with this section  
25 is a Class 1 misdemeanor.

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

3 No telecommunications company may begin the construction of a telecommunications facility  
4 intended to provide local exchange service, commence operating a telecommunications facility  
5 for the purpose of providing local exchange service, or offer or otherwise provide local exchange  
6 service in this state prior to receiving a certificate of authority to provide the service from the  
7 commission. A company may not extend an existing telecommunications facility outside its local  
8 exchange service area for the purpose of providing local exchange service without applying to  
9 the commission for authority to do so. Any telecommunications company seeking to amend or  
10 alter its authorized local exchange service territory shall apply for an amended certificate of  
11 authority. An application for an amended certificate is subject to the same requirements as an  
12 application for an initial certificate. The commission has the exclusive authority to grant a  
13 certificate of authority.

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

16 An application for a certificate of authority to provide local exchange service shall set forth  
17 with particularity the proposed geographic territory to be served and include a price list and  
18 informational tariff regarding the types of local exchange services to be provided. Each  
19 telecommunications company holding a certificate of authority to provide local exchange service  
20 within the geographic area where an applicant is seeking to provide local exchange service shall  
21 be provided notice of the application and be granted intervenor status in any commission  
22 proceeding on the application.

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

25 The commission shall issue a certificate of authority for local exchange service to the

1 applying telecommunications company, if, after notice and opportunity for hearing pursuant to  
2 chapter 1-26, the applicant has demonstrated sufficient technical, financial, and managerial  
3 capabilities to provide the local exchange services applied for. Any grant of a certificate of  
4 authority to provide local exchange service shall be subject to such terms and conditions as the  
5 commission finds consistent with preserving and advancing universal service, protecting the  
6 public safety and welfare, ensuring the continued quality of service, and safeguarding the rights  
7 of consumers.

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

10 Each telecommunications company shall submit a two hundred fifty dollar application fee  
11 with its application which shall be deposited into the gross receipts tax fund established pursuant  
12 to § 49-1A-2.

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

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

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

21 Except as provided in 47 U.S.C. § 253(f) as of January 1, 1998, if the applicant proposes to  
22 provide any local exchange service in an area served by a rural telephone company, the applicant  
23 is required to satisfy the service obligations of an eligible telecommunications carrier as set forth  
24 in 47 U.S.C. § 214(e) as of January 1, 1998. In addition, the services required to be provided as  
25 set forth in 47 U.S.C. § 214(e) as of January 1, 1998, shall be provided at prices and on terms

1 which reflect a good faith offering of the services throughout the service area of the incumbent  
2 rural telephone company. This includes the obligation to advertise the availability of local  
3 exchange services and prices to potential customers throughout the service area using media of  
4 general distribution. The applicant shall provide evidence showing that the applicant will provide  
5 local exchange services to the entire service area within one year, or a longer period of time as  
6 determined by the commission, from the date the provider begins to provide local exchange  
7 service to the area for which certification is sought. However, an applicant may petition the  
8 commission for a waiver from the requirement of satisfying the service obligations of an eligible  
9 telecommunications carrier. The commission may grant the waiver if, after notice and hearing  
10 pursuant chapter 1-26, it is established by clear and convincing evidence that the waiver would  
11 not adversely impact universal service, that quality of service would be continued, and that it  
12 would otherwise be in the public interest.

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

15 Any certificate of authority for local exchange service granted by the commission to a  
16 telecommunications company prior to the effective date of this Act shall remain in full force and  
17 effect unless modified by the commission, and such company need not apply for certification in  
18 order to continue offering or providing service to the extent authorized in such certificate of  
19 authority. Prior to substantially altering the nature or scope of services provided under a  
20 certificate of authority, or adding or expanding services beyond the authority contained in such  
21 certificate, any such carrier shall apply for a certificate of authority for such alterations or  
22 additions.

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

25 The commission may review and modify the terms of any certificate of authority issued to

1 a telecommunications company prior to the effective date of this Act in order to ensure its  
2 conformity with the requirements and policies of this chapter. Any certificate of authority may  
3 be altered or modified by the commission after notice and hearing pursuant to chapter 1-26, upon  
4 its own motion or upon application of the person or company affected.

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

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

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

15 Within ninety days after the effective date of this Act, the commission shall initiate rule-  
16 making proceedings pursuant to chapter 1-26 to adopt rules addressing the competitive  
17 provisioning of local exchange service which, consistent with 47 U.S.C. § 253(b) as of January 1,  
18 1998, shall be directed toward preserving and advancing universal service, protecting the public  
19 safety and welfare, ensuring the continued quality of service, and safeguarding the rights of  
20 affected consumers. The preservation and advancement of universal service shall be a primary  
21 concern. The commission shall adopt and implement the rules no later than one hundred eighty  
22 days after the effective date of this Act.

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

25 The commission may promulgate rules pursuant to chapter 1-26 to establish service quality



1 standards for local exchange services.

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

4 The commission shall designate a common carrier as an eligible telecommunications carrier  
5 for a service area designated by the commission consistent with 47 U.S.C. § 214(e) as of  
6 January 1, 1998. The commission may permit an eligible telecommunications carrier to relinquish  
7 its designation as such a carrier in any area served by more than one eligible telecommunications  
8 carrier consistent with 47 U.S.C. § 214(e)(4) as of January 1, 1998. The commission may  
9 designate a common carrier or carriers to provide service to unserved areas that request such  
10 service consistent with 47 U.S.C. § 214(e)(3) as of January 1, 1998. The commission may not  
11 in an area served by a rural telephone company designate more than one eligible  
12 telecommunications carrier absent a finding that the additional designation would be in the public  
13 interest.

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

16 Pursuant to 47 U.S.C. § 251(f)(1) as of January 1, 1998, the obligations of an incumbent  
17 local exchange carrier, which include the duty to negotiate and provide interconnection,  
18 unbundled network elements, resale, notice of changes and collocation, do not apply to a rural  
19 telephone company unless the company has received a bona fide request for interconnection,  
20 services, or network elements and the commission determines that the rural telephone company  
21 shall fulfill the request. The commission may only determine that the rural telephone company  
22 shall fulfill the request if, after notice and hearing pursuant to chapter 1-26, the commission finds  
23 that the request is not unduly economically burdensome the request is technically feasible, and  
24 the request is consistent with the universal service principles and provisions set forth in 47  
25 U.S.C. § 254 as of January 1, 1998. The person or entity making the request shall have the

1 burden of proof as to whether each of the standards for reviewing the request has been met.  
2 Nothing in this section prevents a rural telephone company from voluntarily agreeing to provide  
3 any of the services, facilities, or access referenced by this section.

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

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

- 14 (1) To avoid a significant adverse economic impact on users of telecommunications  
15 services generally;
- 16 (2) To avoid imposing a requirement that is unduly economically burdensome; or
- 17 (3) To avoid imposing a requirement that is technically infeasible.

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

20 Section 20. That § 49-31-5.1 be amended to read as follows:

21 49-31-5.1. Telecommunications cooperatives organized pursuant to chapters 47-15 to 47-20,  
22 inclusive, municipal telephone systems operated pursuant to chapter 9-41, and independent  
23 telephone companies serving less than ~~ten~~ fifty thousand local exchange subscribers are not  
24 subject to chapter 49-11, §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4.1,  
25 inclusive, §§ 49-31-4.3, 49-31-5, and 49-31-6, §§ 49-31-12 to 49-31-12.5, inclusive, and

1 §§ 49-31-44 to 49-31-46, inclusive.

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

8 Section 21. That § 49-31-15 be amended to read as follows:

9 49-31-15. The Subject to any applicable exemptions, suspensions, or modifications granted  
10 incumbent local exchange companies pursuant to 47 U.S.C. §§ 251(f)(1) and 251(f)(2), as of  
11 January 1, 1998, and the provisions of this chapter, the commission may compel access to any  
12 telecommunications facilities in this state for reasonable compensation, without discrimination,  
13 and under rules the commission may promulgate pursuant to chapter 1-26. Any  
14 telecommunications company desiring access to any other company's facilities shall, if access is  
15 refused, make an application to the commission. Upon receipt of the application, the commission  
16 shall ascertain the facts in the case. If in its judgment the public service demands the access and  
17 the facilities of the applicant are in proper condition, the commission may order the access upon  
18 such terms and conditions that are found to be in the public interest and apportion the expense  
19 of the access. Nothing in this section may be construed to prevent telecommunications  
20 companies from providing access to each other's facilities by mutual consent.

21 Section 22. That § 49-31-17 be repealed.

22 ~~49-31-17. Notwithstanding § 49-31-15, no access may be compelled except at or within the~~  
23 ~~local exchange boundary, or a centralized point serving several exchanges, of the~~  
24 ~~telecommunications company refusing the access. The company refusing access may not be~~  
25 ~~compelled by the commission to build a facility outside its local exchange territory, or a~~

1 ~~centralized point serving several exchanges, to connect to the telecommunications company~~  
2 ~~requesting the access. Nothing in § 49-31-15 may be construed to prevent telecommunications~~  
3 ~~companies from providing access to each other's facilities by mutual consent.~~

4 Section 23. That § 49-31-18 be amended to read as follows:

5 49-31-18. Every telecommunications company shall provide switched access for any other  
6 telecommunications company doing business in the same vicinity that makes application therefor  
7 and shall afford all reasonable and proper facilities for such switched access, for reasonable  
8 compensation and without discrimination, and under rules the commission may prescribe. To  
9 provide switched access facilities at reasonable rates prices and to enhance and preserve universal  
10 service, the commission may establish methods designed to determine and implement fair and  
11 reasonable compensatory access rates prices by rules promulgated pursuant to chapter 1-26.

12 Section 24. That § 49-31-19 be amended to read as follows:

13 49-31-19. ~~Access~~ Switched access charges for switching and transporting intrastate  
14 interexchange telecommunications services between facilities shall be published in the tariff filed  
15 by the telecommunications company providing the access.

16 Notwithstanding any exemption granted under § 49-31-5.1, any telecommunications  
17 company providing ~~telecommunications~~ switched access services which are classified as  
18 emerging or noncompetitive shall file its access tariffs with the commission for approval pursuant  
19 to § 49-31-12.4 or 49-31-12.5, as applicable.

20 Section 25. That § 49-31-20 be amended to read as follows:

21 ~~49-31-20. No person who owns telecommunications facilities in this state may consolidate~~  
22 ~~with or hold a controlling interest in the stock, bonds or assets of another telecommunications~~  
23 ~~company owning a competing line, switch, exchange or other telecommunications facilities.~~

24 ~~—A person may file with the commission an application to consolidate or merge~~  
25 ~~telecommunications companies. If the commission finds after an investigation, notice and, with~~

1 ~~or without, public hearing that the public interest will be benefited by the consolidation or~~  
2 ~~merger, the commission may issue a permit granting the consolidation or merger. Any~~  
3 ~~telecommunications company that holds a certificate of authority to operate in this state shall~~  
4 ~~notify the commission of any consolidation or merger with another telecommunications~~  
5 ~~company.~~

6 Section 26. That § 49-31-21 be repealed.

7 ~~—49-31-21. Any person before commencing the construction of a telecommunications facility,~~  
8 ~~or an extension of an existing telecommunications facility outside its lawful local exchange~~  
9 ~~territory, shall first apply to the commission for authority to do so. The application shall have~~  
10 ~~attached thereto a plat or map showing the location of the proposed facility. Upon receipt of the~~  
11 ~~application, the commission shall notify any other telecommunications company which may be~~  
12 ~~affected and permit the filing of comments or objections. The commission may allow, with or~~  
13 ~~without a hearing, the construction of a telecommunications facility if it finds the facility to be~~  
14 ~~in the public interest and which will provide competition in the delivery or use of~~  
15 ~~telecommunications services. If the proposed location of a facility is in the local exchange~~  
16 ~~territory assigned to telephone cooperatives organized pursuant to chapters 47-15 to 47-20,~~  
17 ~~inclusive, or municipal telephone systems operated pursuant to chapter 9-41, or independent~~  
18 ~~telephone companies serving less than ten thousand local exchange subscribers, the commission~~  
19 ~~may allow the proposed facility only upon the additional finding that the local exchange company~~  
20 ~~operating the existing facility is not furnishing reasonably adequate telecommunications service~~  
21 ~~and will not furnish reasonably adequate service within a reasonable time. Nothing in this section~~  
22 ~~prohibits the construction of nonaccess facilities which cross the local exchange territory being~~  
23 ~~lawfully occupied and served by another telecommunications company furnishing reasonably~~  
24 ~~adequate service. Nothing in this section affects construction or extension of facilities within the~~  
25 ~~local exchange territory for which a company has the certificate to operate, into contiguous~~

1 ~~territory which is not receiving similar service, or where a certificated telecommunications~~  
2 ~~company agrees in writing to an attachment of lines or to the construction of telecommunications~~  
3 ~~facilities in the affected company's local exchange territory.~~

4 Section 27. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 The commission may implement and comply with the provisions of the federal  
7 Telecommunications Act of 1996, including the promulgation of rules pursuant to chapter 1-26.  
8 Except to the extent a local exchange carrier is exempt from or has received a suspension or  
9 modification pursuant to 47 U.S.C. § 251(f)(1) or 251(f)(2), as of January 1, 1998, and the  
10 provisions of this chapter, the carrier shall provide access to and interconnection with its  
11 telecommunications services and network elements to any provider of competitive  
12 telecommunications services that requests access and interconnection as provided for in 47  
13 U.S.C. §§ 251(a) to 251(c), inclusive, as of January 1, 1998. If the parties are unable to  
14 voluntarily negotiate an agreement, either party may petition the commission to mediate or  
15 arbitrate any unresolved issues. The prices for interconnection and unbundled network elements  
16 provided pursuant to 47 U.S.C. §§ 251(c)(2) and 251(c)(3), as of January 1, 1998, determined  
17 by the commission, shall be cost based and shall include an allocation of joint and common costs  
18 and a reasonable profit. The wholesale rates for resold services provided pursuant to 47 U.S.C.  
19 § 251(c)(4) as of January 1, 1998, shall be determined based on the retail rate of the service less  
20 any net avoided costs due to the resale. The charges for transport and termination services  
21 provided pursuant to 47 U.S.C. § 251(b)(5) as of January 1, 1998, shall be consistent with the  
22 provisions of 47 U.S.C. § 252(d)(2) as of January 1, 1998. The provisioning of access to and  
23 interconnection with a local exchange carrier's services and network elements is not subject to  
24 §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4, inclusive, §§ 49-31-12.2, 49-31-  
25 12.4, 49-31-12.5, and §§ 49-31-17 to 49-31-19, inclusive.

1 Section 28. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3 It is recognized that certain resale restrictions are necessary to prevent unfair competition,  
4 preserve universal service and otherwise protect the public interest. The commission may permit  
5 reasonable and nondiscriminatory resale restrictions proposed by local exchange carriers  
6 including the following:

- 7 (1) Resale restrictions which prohibit resellers from purchasing retail telecommunications  
8 services offered by that local exchange carrier to one category of customers and  
9 reselling those retail services to a different category of customers;
- 10 (2) Restrictions which remove from the resale requirement promotional prices, service  
11 packages, trial offerings, or temporary discounts of no more than ninety days that are  
12 offered by the local exchange carrier to its customers; and
- 13 (3) Restrictions that do not allow the use of a flat or measured rate local exchange  
14 service, sold for purpose of resale, to bypass the use of switched access.

15 Section 29. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as  
16 follows:

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

22 Section 30. That § 49-31-44 be amended to read as follows:

23 49-31-44. There is hereby created a fund within the state treasury to be known as the  
24 "telecommunications investigation fund" which shall be used by the commission to defray the  
25 expenses of conducting investigations or public hearings relating to §§ 49-31-3.2 to 49-31-3.4,

1 inclusive, 49-31-4, and 49-31-4.1, or arbitration proceedings conducted pursuant to 47 U.S.C.  
2 § 252 as of January 1, 1998. Each telecommunications company as defined in subdivision  
3 49-31-1(9), ~~upon the opening of~~ that is a party to an official docket to exercise commission  
4 authority pursuant to §§ 49-31-3.2 to 49-31-3.4, inclusive, 49-31-4 and 49-31-4.1, or arbitration  
5 proceedings conducted pursuant to 47 U.S.C § 252 as of January 1, 1998, shall make a deposit  
6 not to exceed seventy-five thousand dollars in the "telecommunications investigation fund." The  
7 amount and the division of the deposit among the companies, if any, shall be designated by  
8 commission order. However, any costs incurred related to arbitration proceedings conducted  
9 pursuant to 47 U.S.C. § 252 as of January 1, 1998, shall be shared equally among the parties.  
10 The commission shall use the deposit to defray the expense incident to conducting the hearing  
11 or investigation of the company making the deposit. The deposit is appropriated to the use of  
12 the commission for such purpose. The funds necessary for such expenses are hereby authorized  
13 to be expended.