

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

473H0376

## HOUSE BILL NO. 1140

Introduced by: Representatives Olson (Mel), Hargens, and Juhnke and Senators Diedrich (Larry), McCracken, and Symens

1 FOR AN ACT ENTITLED, An Act to provide for a universal service fund regarding  
2 telecommunications services.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the Universal Service Administrative Board;

6 (2) "Commission," the Public Utilities Commission;

7 (3) "Fund," the South Dakota universal service fund; and

8 (4) "Qualified carrier," a local exchange carrier meeting the requirements of this Act that  
9 has been designated by the commission as eligible to receive support from the South  
10 Dakota universal service fund.

11 Section 2. For the purpose of replacing implicit support in intrastate switched access charges  
12 with explicit universal service funding and for the purpose of lowering the charges to consumers  
13 in South Dakota for intrastate long distance services, there is hereby created the South Dakota  
14 universal service fund.

15 Section 3. Any provider of telecommunications services within the state, including any



1 provider not otherwise subject to regulation by the commission, including corporations, persons,  
2 and entities that provide fixed or mobile radio services which in any way access local exchange  
3 service networks, and services that provide access to the internet and other information services  
4 shall contribute through a surcharge, on an equitable and nondiscriminatory basis, to the fund.  
5 A telecommunications service is provided within this state if the service originates or terminates  
6 in this state and is billed to a customer with a service address in this state; or for customers with  
7 no service address in the state, the service both originates and terminates in this state.

8 Section 4. Contributions to the fund shall be made through a three percent surcharge on the  
9 intrastate and interstate gross operating revenues of telecommunications service providers  
10 subject to the contribution. Revenues from wholesale transactions between service providers  
11 shall be exempted in determining contributions where the service provided is a component part  
12 of a service provided to an end user. This exemption includes network access charges and  
13 interconnection charges paid to a local exchange company. No telecommunications service  
14 provider may be prevented from charging retail customers for the fund contributions. Any  
15 contribution made to the fund is not subject to any state or local taxes or franchise fees.

16 Section 5. There is also hereby established the Universal Service Administrative Board that  
17 shall consist of the chair of the Public Utilities Commission or the chair's designee from the  
18 commission or its staff, the Executive Director of the Legislative Research Council or the  
19 director's designee from Legislative Research Counsel staff, and an individual appointed by and  
20 serving at the pleasure of the Governor. The board shall supervise administration of the fund and  
21 shall engage a private entity acting under its supervision to administer collections and  
22 distributions from the fund, upon such conditions and security as it determines should be  
23 required.

24 Section 6. The board shall, by rules adopted pursuant to chapter 1-26, establish procedures

1 for the collection of assessments from all telecommunications companies, for the handling and  
2 accounting of assets, and for the making of universal service fund payments.

3 Section 7. The private entity engaged by the board as the fund administrator is responsible  
4 for the day-to-day operations of the fund. The board shall cause the books and records of the  
5 fund administrator to be independently audited on an annual basis. The independent audit shall  
6 be paid for from funds held in the fund.

7 Section 8. The board may direct any telecommunications service provider to make available  
8 its books and records or other information for inspection by the board in a form required by the  
9 board to ensure that all contributions required by this Act, as determined by the board, have been  
10 remitted.

11 Section 9. Any telecommunications provider that fails to remit any contribution established  
12 pursuant to this Act or that fails to follow a directive of the board concerning its books and  
13 records or the need for other information relating to contributions required by this Act is subject  
14 to a penalty of not less than five hundred dollars nor more than two thousand dollars for each  
15 offense. Each violation of this section by a telecommunications service provider, person, or entity  
16 is a separate offense. In the case of a continuing failure to comply, each day the violation  
17 continues is a separate offense. In construing and enforcing the provisions of this section relating  
18 to penalties, the act, omission, or failure of an officer, agent, or employee of the  
19 telecommunications service provider acting within the scope of the officer's, agent's, or  
20 employee's official duties of employment, shall in each case be considered the act, omission, or  
21 failure of that telecommunications service provider. All moneys collected pursuant to this section  
22 shall be deposited in the fund.

23 Section 10. Any telecommunications service provider that fails to remit the contribution  
24 required by this Act or fails to follow a directive of the board concerning its books and records

1 or other information issued pursuant to this Act is ineligible to receive any support from the fund.  
2 In addition, the provider, if subject to the commission's certification authority under § 49-31-3  
3 or 49-31-69, may also have its certificate of authority to provide telecommunications services  
4 revoked by the commission. The board may take any legal action necessary or proper in state  
5 court for the recovery of uncollected contributions due from telecommunications service  
6 providers.

7 Section 11. All money collected and deposited into the fund is to be held in trust for  
8 disbursement consistent with this Act and at no time becomes money of the state or becomes  
9 part of the general budget of any state agency. Any payment from the fund is not an obligation  
10 of the state. No request for reimbursement from the fund may be paid with state moneys.

11 Section 12. Money from the fund shall be distributed to support affordable basic  
12 telecommunications services for all South Dakota consumers. Basic telecommunications services  
13 for purposes of this Act shall include all services that have been determined to be a component  
14 of universal service pursuant to 47 U.S.C. § 254 as of January 1, 2002. In addition, the  
15 commission may include as basic telecommunication services, the providing of equal access to  
16 interexchange telecommunications carrier services.

17 Section 13. Any local exchange carrier determined by the commission to be a qualified carrier  
18 within the carrier's service area is eligible to receive support from the fund. In all service areas  
19 of the state, the commission shall designate at least one carrier as a qualified carrier eligible to  
20 receive support out of the fund and adopt procedures for changing or terminating such  
21 designations. To be designated, the local exchange carrier shall be facilities-based and shall  
22 demonstrate that it is making basic telecommunications services available to all consumers within  
23 its service area. The carrier shall be capable of providing its basic telecommunications service to  
24 any requesting consumer within its service area within a reasonable period of time as determined

1 by the commission, taking into account reasonable customer expectations relating to the service.  
2 In addition, the carrier shall establish that its basic telecommunications services are in compliance  
3 with all applicable commission quality of service requirements.

4 Section 14. The commission may not in the case of an area served by a rural telephone  
5 company designate more than one local exchange carrier as a qualified carrier eligible to receive  
6 support from the fund absent a finding that the additional designation is in the public interest and  
7 furthers universal service policies. It is not in the public interest to designate more than one  
8 qualified carrier as eligible to receive support from the fund if the designation would likely have  
9 an adverse impact on the rates charged for or the quality of telecommunications services or if the  
10 carrier seeking qualified carrier designation does not clearly demonstrate that it accepts the  
11 obligation to make its services available throughout the service area.

12 Section 15. Any distribution from the fund shall be directed to reduce implicit support found  
13 in the intrastate switched access charges of qualified carriers. Accordingly, any distribution to  
14 qualified carriers, except for any distribution made to carriers under section 17 of this Act, shall  
15 be determined based on:

- 16 (1) The switched access revenue requirement of each qualified carrier determined by the  
17 commission pursuant to §§ 49-31-18 and 49-31-19 and any administrative rules  
18 promulgated thereunder; and
- 19 (2) An affordable rate threshold and transitional rates established by the commission for  
20 single-line residential basic telecommunications service.

21 Section 16. Except for amounts otherwise distributed under section 17 of this Act, any  
22 distribution to a qualified carrier shall be determined from switched access revenue requirements  
23 periodically established by the commission pursuant to §§ 49-31-18 and 49-31-19. From all  
24 universal service funds available, any distribution among those qualified carriers regulated by the

1 commission under §§ 49-31-18 and 49-31-19, shall be based on relative switched access revenue  
2 requirements, calculated to provide a pro rata distribution based on each qualified carrier's  
3 percentage of the total annual switched access revenue requirement attributable to all qualified  
4 carriers that have applied for fund distributions. The amount of distribution based on this  
5 calculation shall, however, be adjusted for any qualified carrier that is charging less for its  
6 residential basic telecommunications service than either the applicable affordable rate threshold  
7 or transition rate established by the commission under sections 18 to 21, inclusive, of this Act.  
8 The adjustment shall be a reduction in the qualified carrier's distribution from the fund equal to  
9 the difference between the qualified carrier's current rate for single-line residential basic  
10 telecommunications service and the applicable affordable rate threshold or transition rate  
11 established by the commission multiplied by the number of residential access lines in service for  
12 the qualified carrier. Any additional universal service funds made available from any such  
13 required adjustment shall be applied to increase the pro rata distributions provided other qualified  
14 carriers pursuant to this section.

15 Section 17. Any qualified carrier not regulated by the commission for access charges as  
16 provided for in §§ 49-31-18 and 49-31-19 may also receive distributions from the fund.  
17 However, no such unregulated carrier may receive support at a level that is higher on a per line  
18 basis than the support received by an existing qualified carrier for the same area. The amount of  
19 distribution to any such carrier shall be established by the commission taking into account the  
20 carrier's actual costs of providing residential basic telecommunications services, the applicable  
21 affordable rate threshold or transition rate established under sections 18 to 21, inclusive, of this  
22 Act, and whether the carrier is providing like services and comparable service quality to that of  
23 the existing qualified carrier providing service in the same area.

24 Section 18. For purposes of determining the amount of universal service support that should

1 be distributed to each qualified carrier, the commission shall set an affordable rate threshold on  
2 a carrier-by-carrier basis that represents a reasonable rate for single-line residential basic  
3 telecommunications service provided by the qualified carrier. The affordable rate threshold shall  
4 take into account the universal service policies stated in this Act and also take into account any  
5 existing extended local calling arrangements that are offered as basic residential  
6 telecommunications service by any qualified carrier and increase the value of such service. No  
7 threshold may include the federal subscriber line charge, the 911 surcharge, and the surcharge  
8 for dual party relay service. No threshold may exceed the amount for single-line residential basic  
9 telecommunications services charged by any qualified local exchange carrier serving more than  
10 two hundred thousand retail access lines in the state.

11 Section 19. Any affordable rate threshold established by the commission pursuant to section  
12 18 of this Act shall be reviewed periodically and may be changed to account for changes in basic  
13 telecommunications services for purposes of this Act or for other changed circumstances  
14 impacting a previous affordability determination.

15 Section 20. The commission shall also set transitional rates for residential basic  
16 telecommunications services. The transitional rates shall be lower than the affordable rate  
17 threshold and apply during a transitional period. The commission shall establish a transitional  
18 period of not less than two years. During the established transitional period, the transitional rates  
19 shall be used instead of the affordable rate threshold established under section 18 of this Act in  
20 determining the amount of fund distributions to qualified carriers.

21 Section 21. The affordable rate threshold and transitional rates established pursuant to this  
22 Act shall be used exclusively for the purpose of calculating universal service fund distributions.  
23 Neither the affordable rate threshold or the transitional rate may be construed as a cap on the  
24 local exchange service rates of qualified carriers and, except to the extent otherwise required by

1 law, a qualified carrier may charge rates for single line residential basic telecommunications  
2 service that exceed the transitional rates or affordable rate thresholds established by the  
3 commission.

4 Section 22. Nothing in this Act affects the commission's authority under §§ 49-31-18 and 49-  
5 31-19 to regulate access charges for switching and transporting telecommunications services.  
6 However, the commission may not, prior to the implementation and availability of a sufficient  
7 amount of offsetting funds from the fund, make changes to its method of regulating switched  
8 access charges that would have the effect of reducing the switched access rates of any qualified  
9 carrier.

10 Section 23. Each qualified carrier shall apply annually to the commission for a distribution  
11 from the fund. As part of this application process, any qualified carrier subject to the  
12 commission's access rate regulation under §§ 49-31-18 and 49-31-19 shall demonstrate that the  
13 entire amount of the distribution it receives from the fund will be applied to reduce its switched  
14 access rates. Any other qualified carrier, not regulated by the commission for access charges that  
15 is seeking support under section 17 of this Act, shall as part of the application process, provide  
16 documentation acceptable to the commission regarding the amount of support that the carrier  
17 should receive consistent with the provisions of section 17 of this Act. In addition, any such  
18 carrier shall demonstrate that any support received from the fund shall be used for the purposes  
19 specified in section 2 of this Act.

20 Section 24. The commission may adopt rules, pursuant to chapter 1-26, to carry out its  
21 duties relating to the fund as set forth in sections 12 to 23, inclusive, of this Act. The commission  
22 shall be paid from moneys from the fund for the commission's actual costs expended for  
23 commission employee time, expert witnesses, and other necessary and related expenses incurred  
24 by the commission in implementing this Act. The moneys received shall be deposited in the



1 commission's gross receipts tax fund established pursuant to § 49-1A-2.

2 Section 25. The board shall implement the fund and start collections for the purpose of  
3 making distributions from the fund no later than one hundred eighty days following the effective  
4 date of this Act.