

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

446A0416

HOUSE BILL NO. 1227

Introduced by: Representatives Jorgensen, Barker, Cutler, Fischer-Clemens, Hagen, Pederson (Gordon), Roe, and Schaunaman and Senators Everist, Dunn (Jim), Halverson, Morford-Burg, Munson (David), Olson, Shoener, Symens, Thompson, and Whiting

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulating of
2 telecommunication services, to provide for a universal service fund, to provide for
3 contributions to the fund, and to establish the use of the fund.

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

5 Section 1. That § 49-31-1 be amended to read as follows:

6 49-31-1. Terms used in this chapter mean:

- 7 (1) "Category or class of customer," an identifiable customer group for whom specified
8 telecommunications services are designed, marketed, or commonly provided.
9 Examples of a category or class of customers are residential; business; interexchange
10 telecommunications companies; elementary and secondary educational and rural
11 health institutions; and local, state, or federal government entities;
- 12 (2) "Centron and centron-like services," services which provide custom switching features
13 which include ~~but are not limited to~~ the local transport facility, distributive dial tone,
14 select number screening, toll restriction and screening, nonattendant busy out,

1 nonattend and call transfer, and select trunk hunting and screening;

2 ~~(2)~~(3) "Commission," the Public Utilities Commission;

3 ~~(3)~~(4) "Common carrier," anyone who offers telecommunications services to the public;

4 (5) "Cost based price," a price which recovers the full, actual costs of providing a service
5 using depreciation rates which reflect forward looking economic lives that reflect the
6 impact of competition and rapidly changing technology, and which shall, without
7 limitation, include a reasonable portion of shared and common costs and a reasonable
8 profit. A reasonable profit constitutes revenues in excess of those necessary to
9 recover all the costs of the business including the cost of capital;

10 (6) "Interconnection service," those services necessary to allow the transmission and
11 routing within the same local calling area of local exchange service between the
12 subscribers of one local exchange company and the subscribers of another local
13 exchange company;

14 (7) "Interexchange telecommunications service," telecommunications service provided
15 between exchanges within the state that are not in the same local calling area. This
16 service is commonly known as long distance service or message telecommunications
17 service;

18 ~~(4)~~(8) "LATA," a local access and transport area;

19 (9) "Local calling area," the geographic area within which telephone calls may be
20 completed between or among customers without the assessment of long distance
21 service charges;

22 ~~(5)~~(10) "Local exchange service," the access to and transmission of two-way switched
23 ~~voice communications~~ telecommunications service within a ~~geographic~~
24 ~~territorial unit established by a telecommunications company for the~~
25 ~~administration of telecommunications services~~ local calling area. Local

1 exchange service includes the transport facilities used to transmit a call
2 between the local exchange switching facility and the customer and only that
3 switching necessary to route a call to or from another local exchange service
4 company or an interexchange telecommunications service provider;

5 (11) "Local exchange service reseller," a telecommunications company that purchases local
6 exchange retail services from a facilities based local exchange company and then
7 reoffers the services to its customer;

8 ~~(6)~~(12) "New products and services," any new product or service introduced after
9 July 1, 1988, which is not functionally required to provide local exchange
10 service. Repackaging of any product or service which is fully competitive with
11 any service regulated as emerging competitive or noncompetitive is not
12 considered a new product or service;

13 ~~(7)~~(13) "Optional service," a limited or discretionary service offered by a
14 telecommunications company which is not functionally required for the
15 provision of noncompetitive services and which the customer has the option
16 to purchase;

17 ~~(8)~~(14) "Rate of return regulation," the procedure used by the commission to approve
18 the charge for a service which gives due consideration to the public need for
19 adequate, efficient and reasonable service and to the need of the public utility
20 for revenues sufficient to enable it to meet its total current cost of furnishing
21 such service, including taxes and interest, and including adequate provision for
22 depreciation of its utility property used and necessary in rendering service to
23 the public, and to earn a fair and reasonable return upon the value of its
24 property;

25 (15) "Rural telephone company," a local exchange company as defined in 47 U.S.C.

1 § 153(a)(47) as of January 1, 1997;

2 (16) "Service area," a geographic area established for purposes of determining universal
3 service support obligations and distributions. For a rural telephone company a service
4 area is also established for determining the service obligations of a competing local
5 exchange service provider and is the study area established by the federal
6 communications commission or federal law;

7 (17) "Switched access," a telecommunications service which is purchased for the
8 origination and termination of interexchange telecommunications services and
9 includes local exchange central office switching and signaling, local transport, and a
10 reasonable contribution to the cost of providing the facilities between the central
11 office and the end user;

12 ~~(9)~~(18) "Telecommunications company," any person, ~~trustee, lessee or receiver~~
13 owning, operating, reselling, managing, or controlling in whole or in part, any
14 telecommunications line, system or exchange in this state, directly or indirectly,
15 for public use. For purposes of this definition the term, for public use, means
16 for the use of the public in general or for a specific segment of the public, or
17 which connects to the public switched network for access to any
18 telecommunications service. All telecommunications companies are common
19 carriers;

20 ~~(10)~~(19) "Telecommunications service," the transmission of signs, signals, writings,
21 images, sounds, messages, data or other information of any nature by wire, radio,
22 lightwaves, electromagnetic means or other similar means. It does not include the
23 provision of terminal equipment used to originate or terminate such service, broadcast
24 transmissions by radio, television and satellite stations regulated by the federal
25 communications commission and one-way cable television service; and

1 ~~(11) "Universal service," a service which is, as far as possible, a rapid, efficient~~
 2 ~~telecommunications service with adequate facilities available to all the people of South~~
 3 ~~Dakota at a reasonable charge~~

4 (20) "Transport and termination," services necessary to provide transport and switching
 5 facilities to reciprocally terminate local exchange service traffic from a local exchange
 6 service or commercial mobile radio service provider within the same local calling area.

7 Section 2. That § 49-31-1.1 be amended to read as follows:

8 49-31-1.1. For the purposes of this chapter, a "noncompetitive service" is a ~~monopoly~~ service
 9 for which no competition exists or the price regulation of which is necessary to insure affordable
 10 local exchange service. Such services include:

- 11 (1) Residential local exchange service;
- 12 (2) Business local exchange service;
- 13 (3) ~~Agribusiness local exchange service~~ Switched access;
- 14 (4) ~~Emergency~~ Access to telephone relay and emergency services;
- 15 (5) ~~Public and semipublic coin telephone~~ Interconnection service; and
- 16 (6) ~~All services not otherwise listed in §§ 49-31-1.2 and 49-31-1.3~~ Transport and
 17 termination services.

18 Section 3. That § 49-31-1.2 be amended to read as follows:

19 49-31-1.2. For the purposes of this chapter, an "emerging competitive service" is a service
 20 that satisfies the criteria of § 49-31-3.2 and which has alternative services available to over
 21 twenty percent of the company's customers for that service. Such services include:

- 22 ~~(1) Inter-LATA~~ inter-LATA message toll service and intra-LATA message toll service;
- 23 ~~(2) Inter-LATA wide area telephone service and intra-LATA wide area telephone service;~~
 24 ~~and~~
- 25 ~~(3) New products and services not functionally required to provide local exchange~~

1 service, otherwise known as interexchange telecommunications or long distance
 2 service which originates and terminates within South Dakota.

3 Section 4. That § 49-31-1.3 be amended to read as follows:

4 49-31-1.3. For the purposes of this chapter, a "fully competitive service" is a service that
 5 satisfies the criteria of § 49-31-3.2 and which has alternative services available to over fifty
 6 percent of the company's customers for that service within a locality or defined market, or which
 7 is of limited scope or so discretionary in nature that regulation is not warranted. Except as
 8 provided for in § 49-31-3.2, section 8 of this Act, and § 49-31-11 the service is exempt from the
 9 provisions of this title. Such services include:

- 10 (1) ~~Cellular~~ Commercial mobile radio services;
- 11 (2) Centron and centron-like services;
- 12 (3) Billing and collections;
- 13 (4) Optional services;
- 14 (5) Private line and special access; ~~and~~
- 15 (6) Premise cable and inside wire;
- 16 (7) Directory listings and published or electronically available directories;
- 17 (8) New products and services not functionally required to provide local exchange
 18 service; and
- 19 (9) Any telecommunications service not listed in §§ 49-31-1.1 and 49-31-1.2.

20 Section 5. That § 49-31-1.4 be amended to read as follows:

21 49-31-1.4. For the purposes of this chapter, "price regulation" is the procedure used by the
 22 commission to approve the charge for an emerging or noncompetitive telecommunications
 23 service which is not based on rate of return regulation. In determining whether the price is fair
 24 and reasonable, the commission shall determine and consider the price of alternative services, the
 25 overall market for the service, the affordability of the price for the service in the market it is

1 offered, and the impact of the price of the service on the commitment to preserve affordable
2 universal service. In determining the price for a noncompetitive and an emerging competitive
3 ~~service, the commission shall also consider the actual cost of providing the service. In~~
4 ~~determining the price for a noncompetitive service, the commission shall also consider the fully~~
5 ~~allocated cost of providing the service~~ permit prices that are cost based.

6 Section 6. That § 49-31-2 be amended to read as follows:

7 49-31-2. ~~The~~ Notwithstanding the provisions of § 49-31-1.3, the provisions of chapters 49-7
8 to 49-13, inclusive, and this chapter apply to all telecommunications companies and to all
9 telecommunications lines and facilities of any kind, character or description in use by any
10 corporation, receiver, trustee or other or person operating a telecommunications company,
11 whether owned or operated under contract, agreement, lease or otherwise. The commission may
12 not discriminate in its regulation of companies, lines, or facilities or in its application of the
13 provisions contained in this chapter.

14 Section 7. That § 49-31-3 be amended to read as follows:

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

21 ~~—Each telecommunications company~~ No telecommunications company may offer or provide
22 any interexchange telecommunications service prior to receiving a certificate of authority. The
23 application for a certificate of authority shall file an application for a certificate of authority be
24 filed with the commission, which shall have the exclusive authority to grant the certificate, no
25 less than sixty days prior to initiating providing any telecommunications service in this state.

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

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

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

25 No telecommunications company may begin the construction of a telecommunications facility

1 intended to provide any telecommunications service or to offer or provide any
2 telecommunications service within a local calling area prior to receiving a certificate of authority
3 for the local calling area sought to be served. No company may extend an existing
4 telecommunications facility, outside its local exchange service area for the purpose of providing
5 local exchange service, without applying to the commission for authority to do so.

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

8 An application for a certificate of authority to provide local exchange service shall be filed
9 with the commission, which shall have exclusive authority to grant the requested certificate. The
10 application shall specify the types of services that are proposed, and shall include a plat or map
11 identifying the specific geographic area for which the services are proposed. If an incumbent
12 telecommunications company is providing local exchange services in a defined local calling area,
13 the local calling area established by any additional certificate shall be coextensive with the already
14 existing local calling area including any extended area service.

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

17 An applicant seeking a certificate of authority to provide local exchange services shall
18 provide a copy of the application at the time of filing to all incumbent telecommunications
19 companies providing local exchange service in the area identified in the application. Incumbent
20 telecommunications companies shall automatically have party status in any commission
21 proceeding to consider the application.

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

24 The commission may not grant the requested certificate of authority unless, after notice and
25 opportunity for hearing, the applicant meets its burden of proving that it has the technical,

1 managerial, and financial resources to provide the proposed local exchange service in the
2 geographic area proposed to be served, and that the commission determines that the granting of
3 the certificate of authority is consistent with the requirements of this chapter and any exemptions,
4 suspensions or modifications authorized for incumbent local exchange service companies
5 pursuant to 47 U.S.C. §§ 251(f)(1) and 251(f)(2) as of January 1, 1997. Any grant of a
6 certificate authority to provide local exchange service shall be subject to such terms and
7 conditions as the commission finds consistent with preserving and advancing universal service,
8 protecting the public safety and welfare, ensuring the continued quality of service, and
9 safeguarding the rights of consumers, including the nondiscriminatory availability of 911 or
10 enhanced 911 service, access to a directory that includes the customers' local calling area, and
11 access to local exchange service operators.

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

14 Except if an evidentiary hearing is required by the commission, the commission shall act on
15 an application for a certificate of authority to provide local exchange service within ninety days
16 of receiving a complete application. If an evidentiary hearing is required, the commission shall
17 act on the application within one hundred twenty days of receipt of a complete application. The
18 time periods for commission action may be extended for good cause, including the need to
19 review interconnection agreements between or among affected companies to determine whether
20 the certificate of authority is in the public interest. If an interconnection agreement is necessary
21 to provide local exchange service, and that agreement has not been reviewed and approved by
22 the commission as required by 47 U.S.C. § 252(e) as of January 1, 1997, approval of an
23 application for a certificate shall be conditioned on the approval of the necessary interconnection
24 agreement. Nothing in this section limits the right of an applicant to obtain an interconnection
25 agreement while the application is pending.

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

3 If the applicant proposes to provide any local exchange service in an area served by a rural
4 telephone company, the applicant shall satisfy the service obligations of an eligible
5 telecommunications carrier, unless the commission determines that the requirement is not in the
6 public interest and a waiver is granted by the commission pursuant to section 14 of this Act. For
7 purposes of this section an eligible telecommunications carrier shall, in addition to satisfying the
8 conditions in section 11 of this Act, provide some or all of the facilities necessary to provide
9 local exchange service; provide all services supported by federal universal service support
10 mechanisms; provide single-line residential and business local exchange service using the same
11 local calling area, including any extended area service, as the incumbent rural telephone
12 company; provide inter and intra-LATA equal access to same extent provided by the incumbent
13 rural telephone company; provide the required services at prices and terms which reflect a good
14 faith offering of service throughout the service area of the incumbent rural telephone company;
15 and advertise the availability of its local exchange services and its prices to all potential
16 customers throughout the service area using media of general distribution.

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

19 An applicant may petition the commission for a waiver from the requirement of satisfying the
20 service obligations of an eligible telecommunications carrier where the incumbent rural telephone
21 company has obtained an exemption, suspension, or modification under 47 U.S.C. § 251(f) as
22 of January 1, 1997, which effectively prevents an applicant from meeting those obligations or
23 where the commission determines, after notice and hearing pursuant to chapter 1-26, that the
24 waiver would be in the public interest, that it would not adversely impact universal service, that
25 prices for local exchange service will be just, reasonable and affordable, and that quality of

1 service will be continued.

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

4 Any telecommunications company seeking to amend or alter its authorized local exchange
5 service territory shall apply for an amended certificate of authority. An application for an
6 amended certificate shall be subject to the same requirements as an application for an initial
7 certificate.

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

10 An application for a certificate of authority to provide local exchange service shall be
11 accompanied by a fee of two hundred fifty dollars, which shall be deposited in the gross receipts
12 tax fund established pursuant to § 49-1A-2.

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

15 Any certificate of authority in effect as of the effective date of the Act shall remain in full
16 force and effect.

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

19 Any certificate of authority may be suspended or revoked by the commission pursuant to
20 chapter 1-26 for a violation of the laws of this state, failure to comply with a rule or order of the
21 commission, or other good cause including a failure to provide reasonably adequate service and,
22 if customers have a choice of providers, degradation of service quality affecting customers served
23 by another company. The commission may order a partial suspension or revocation for less than
24 the entire area served.

25 Section 19. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 A certificate of authority may not be sold, assigned, leased or transferred without authority
3 from the commission. The offering of local exchange service without a certificate of authority
4 or otherwise inconsistent with this section is a Class 1 misdemeanor.

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

7 The commission may promulgate rules necessary to implement this sections 9 to 19,
8 inclusive, of this Act.

9 Section 21. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A local exchange service reseller is not an independent telecommunications company as that
12 term is used in § 49-31-5.1.

13 Section 22. That § 49-31-3.2 be amended to read as follows:

14 49-31-3.2. The commission, after notice and hearing, shall waive, eliminate or modify any
15 of its rules or orders affecting telecommunications services if it finds that a telecommunications
16 service is a fully competitive service or an emerging competitive service. A person, or the
17 commission on its own motion, may apply to have an emerging competitive service of a
18 telecommunications company classified as a fully competitive service or a noncompetitive service
19 classified as an emerging competitive service or a fully competitive service. The application may
20 be distinguished by or limited to a particular locality or market where the service faces a
21 demonstrated level of competition. The application shall be filed with the commission and served
22 on any other person designated by the commission. The application shall be in a form prescribed
23 by the commission. The commission, in determining how a telecommunications service is to be
24 classified, shall consider:

25 (1) The number and size of alternative providers of the service and the affiliation to other

1 providers;

2 (2) The extent to which services are available from alternative providers in the relevant
3 market;

4 (3) The ability of alternative providers to make functionally equivalent or substitute
5 services readily available at competitive rates, terms, and conditions of service;

6 (4) The market share, the ability of the market to hold prices close to cost, and other
7 economic measures of market power; and

8 (5) The impact on universal service.

9 The commission shall approve or deny any such application within ninety days after the filing
10 of the application. However, the commission may, by order, defer the period within which it
11 must act for one additional period of ninety days, upon a finding that the proceeding cannot be
12 completed within ninety days and that the additional time period is necessary for the commission
13 to adequately and completely fulfill its duty under this title. If the commission has not acted on
14 any such application within the appropriate time period permitted, the application shall be
15 deemed granted.

16 Section 23. That § 49-31-3.3 be repealed.

17 ~~—49-31-3.3. The commission may, within ninety days after July 1, 1988, conclude an~~
18 ~~investigation into any or all of the telecommunications services listed in §§ 49-31-1.1, 49-31-1.2~~
19 ~~and 49-31-1.3 to determine if any service is properly classified pursuant to the standards found~~
20 ~~in subdivisions 49-31-3.2 (1) to (5), inclusive. The commission may, after notice and hearing,~~
21 ~~reclassify any service to conform the classification of the service to the evidence and the~~
22 ~~standards in § 49-31-3.2. The telecommunications company providing the service has the burden~~
23 ~~of proving the classification is appropriate. During this ninety-day period, any service subject to~~
24 ~~the investigation will remain under rate of return regulation. Upon expiration of the ninety-day~~
25 ~~period, reclassification of any service, even if hearings had commenced within the ninety days,~~

1 ~~will be pursuant to the provisions of § 49-31-3.4.~~

2 Section 24. That § 49-31-4 be amended to read as follows:

3 49-31-4. Any charge established for the provision of telecommunications services shall be
4 fair and reasonable. The commission shall determine and approve individual ~~rates~~ prices to be
5 charged by any telecommunications company for a noncompetitive service ~~pursuant to~~ under
6 price regulation as defined in § 49-31-1.4, if applicable, and pursuant to §§ ~~49-31-12~~, 49-31-12.2
7 and 49-31-12.4. ~~Except as provided in § 49-31-4.1, the commission shall utilize rate of return~~
8 ~~regulation when determining the charge for a noncompetitive service.~~

9 The commission shall determine and approve individual prices to be charged by a
10 telecommunications company for any emerging competitive service pursuant to §§ 49-31-1.4,
11 ~~49-31-12~~, 49-31-12.2, and 49-31-12.5. ~~However, there is no rate of return regulation of~~
12 ~~emerging competitive services and no rate of return or price regulation of fully competitive~~
13 ~~services.~~

14 The commission shall separate, assign and distribute a telecommunications company's
15 revenues, investments, and expenses among all services offered. The commission shall, by rules
16 promulgated pursuant to chapter 1-26, prescribe the methodologies by which a
17 telecommunications company shall segregate its revenues, investments and expenses. The
18 methodologies prescribed by the rules shall be in accord with federal and state law. No
19 telecommunications company may use the revenues from emerging competitive services to
20 subsidize fully competitive services or revenues from noncompetitive services to subsidize
21 emerging competitive services or fully competitive services. Expenses and investment of fully
22 competitive services may not be attributed to emerging competitive services or noncompetitive
23 services and the expenses and investment of emerging competitive services may not be attributed
24 to noncompetitive services.

25 ~~— Rates being charged by a telecommunications company on July 1, 1988 shall be deemed to~~

1 ~~be the fair, reasonable, and effective rates until changed or altered pursuant to this chapter.~~

2 Section 25. That § 49-31-4.1 be repealed.

3 ~~—49-31-4.1. The commission shall, on its own motion or upon petition, hold public hearings~~
4 ~~investigating methods of price regulation consistent with § 49-31-1.4 and chapter 1-26. Within~~
5 ~~thirty days of its receipt of a petition filed pursuant to this section, the commission shall issue a~~
6 ~~procedural schedule setting forth dates by which written direct testimony or data shall be filed~~
7 ~~and ordering the date for commencement of a hearing.~~

8 ~~—If the investigation indicates that pricing regulation is appropriate for any noncompetitive~~
9 ~~service because such regulation has a positive impact on universal service and is more reasonable~~
10 ~~and fair than rate of return regulation, the commission may adopt pricing regulation for any such~~
11 ~~noncompetitive service.~~

12 Section 26. That § 49-31-4.2 be repealed.

13 ~~—49-31-4.2. A telecommunications company providing intrastate interexchange~~
14 ~~telecommunications services shall charge uniform prices on all routes where it offers the services.~~
15 ~~However, notwithstanding this section and § 49-31-11, a telecommunications company may offer~~
16 ~~or provide volume discounts and may pass through any state, municipal or local taxes in the~~
17 ~~specific geographic areas from which the taxes originate.~~

18 Section 27. That § 49-31-4.3 be repealed.

19 ~~—49-31-4.3. Each telecommunications company engaged directly or indirectly in any business~~
20 ~~other than that of providing telecommunications service shall keep and, if requested by the~~
21 ~~commission, render separately to the commission, in like manner and form the relevant accounts~~
22 ~~of all such other businesses. The provisions of this chapter apply to the books, accounts, papers~~
23 ~~and records of relevant transactions with such other businesses. All profits and losses of such~~
24 ~~other business may be considered by the commission as are relevant to the general fiscal~~
25 ~~condition of the telecommunications company. The commission, in determining the allowance~~

1 ~~for materials or services to be included in costs of operations for rate of return or price~~
2 ~~regulation for noncompetitive services, may disallow any unreasonable profit made in the sale~~
3 ~~of materials to or service supplied for any telecommunications company by any firm or~~
4 ~~corporation owned or controlled directly or indirectly by such company or any affiliate,~~
5 ~~subsidiary, parent company, associate or any corporation whose controlling stockholders are also~~
6 ~~controlling stockholders of such telecommunications company. The burden of proof shall be on~~
7 ~~the telecommunications company to prove that no unreasonable profit is involved.~~

8 Section 28. That § 49-31-5 be amended to read as follows:

9 49-31-5. The commission may regulate the business of providing telecommunication service
10 and may promulgate rules pursuant to chapter 1-26 concerning:

- 11 (1) Requirements for telecommunications companies to maintain and make available to
12 the public and the commission records and utility tariffs;
- 13 (2) Requirements for telecommunications companies to provide information to customers
14 regarding credit, deposits, services, refunds, and billing rights;
- 15 (3) Requirements that telecommunications companies must follow regarding procedures
16 for billing customers;
- 17 (4) Procedures and requirements for handling billing disputes, service interruptions,
18 payment plans, and refunds;
- 19 (5) Standards and procedures for telecommunications companies to follow to ensure
20 nondiscriminatory credit policies;
- 21 (6) Procedures, requirements, and record-keeping guidelines regarding deposit policies;
- 22 (7) Procedures, requirements, and record-keeping guidelines regarding customer refunds;
- 23 (8) Policies for telecommunications companies to follow regarding refusal of telephone
24 service to the public;
- 25 (9) Policies for telecommunications companies to follow regarding disconnection of

- 1 customer service;
- 2 (10) Registration procedures, service requirements, billing practices, and maximum service
- 3 charges for alternative operator services in South Dakota;
- 4 (11) Procedures and requirements for classification and reclassification proceedings;
- 5 (12) Standards, procedures, and requirements regarding the telecommunications utility
- 6 investigation fund;
- 7 (13) Application and notice procedures for the construction of telecommunications
- 8 facilities; ~~and~~
- 9 (14) Requirements for filing and noticing tariff changes;
- 10 (15) Procedures for competitive entry and exit in the provisioning of local exchange
- 11 service;
- 12 (16) Provision of equal access and interconnection with other local exchange companies;
- 13 (17) Funding of number portability;
- 14 (18) Methods to preserve affordable local exchange service;
- 15 (19) Standards of service quality; and
- 16 (20) Provision of emergency telecommunications services.

17 Section 29. That § 49-31-5.1 be amended to read as follows:

18 49-31-5.1. Telecommunications cooperatives organized pursuant to chapters 47-15 to 47-20,
19 inclusive, municipal telephone systems operated pursuant to chapter 9-41, and independent
20 telephone companies serving less than ~~ten~~ fifty thousand local exchange subscribers are not
21 subject to chapter 49-11, §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4.1,
22 inclusive, §§ 49-31-4.3, 49-31-5 and 49-31-6, §§ 49-31-12 to 49-31-12.5, inclusive, and §§
23 49-31-44 to 49-31-46, inclusive. To qualify as an independent telephone company, the company
24 shall also be an incumbent local exchange company, as defined by 47 U.S.C. § 251(h) as of
25 January 1, 1997.

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

7 Section 30. That § 49-31-6 be repealed.

8 ~~49-31-6. The commission may make a physical valuation of all the property of any~~
9 ~~telecommunications company, to be taken when such valuation is necessary for the purpose of~~
10 ~~arriving at any determination in connection with the regulation of its business or the adjustment~~
11 ~~of its rates.~~

12 Section 31. That § 49-31-7 be amended to read as follows:

13 49-31-7. In addition to the regulatory powers and duties provided by chapters 49-1 to 49-13,
14 inclusive, and this chapter, the commission may conduct any investigations that are necessary to
15 protect the public interest. The commission may order such changes or improvements in
16 telecommunications facilities, exchanges or networks as necessary for the improvement
17 provisioning of noncompetitive telecommunications service and the convenience of the public
18 and which are technically feasible, economically reasonable, and not harmful to the network. If,
19 in the judgment of the commission, any repair upon telecommunications facilities, ~~a change in~~
20 ~~its rates~~, a change in the mode of operating telecommunications facilities or conducting
21 telecommunications company business is necessary; and ~~reasonable and expedient in order to~~
22 ~~promote the safety, convenience and accommodation of the public,~~ the commission shall, after
23 notice and opportunity for a hearing, notify the telecommunications company immediately; ~~and~~
24 ~~such.~~ The telecommunications company shall change the mode of operating its facilities ~~or~~
25 ~~conducting its business,~~ or repair, renew, or replace ~~such~~ the facilities in such manner, of such

1 material and within such time as the commission may order. Unless a cost support mechanism
2 such as a universal service fund enables a company to recover the full, actual cost of
3 implementing a commission order pursuant to this section, the commission shall permit the
4 company to pass through in the prices for the services affected by the commission's order, or
5 through charges to the person or entity requesting commission action, any expense or investment
6 occasioned by the commission's order issued pursuant to this section. This section does not
7 apply to interconnections which are subject to § 49-31-15 and sections 46 to 49, inclusive, of this
8 Act.

9 Section 32. That § 49-31-7.1 be amended to read as follows:

10 49-31-7.1. The commission may:

11 (1) Examine and inspect the condition of each telecommunications company in this state
12 and of its equipment, and the manner of its conduct and management with reference
13 to the safety, accommodation and convenience of the public;

14 (2) Require any telecommunications company doing business in this state to install any
15 facility ~~necessary for the safety, convenience and accommodation of the public~~ which
16 is technically feasible, economically reasonable, not harmful to the existing network,
17 and in the public interest if the company is permitted to recover its full, actual cost
18 incurred either through a cost support mechanism such as a universal service fund, or
19 through its prices for service, or through a surcharge on customers or users that
20 benefit from the installation of the facility. This subdivision does not apply to
21 interconnections which are subject to § 49-31-15 and sections 46 to 49, inclusive, of
22 this Act;

23 (3) Inquire into the management of the business of all telecommunications companies
24 subject to the provisions of this chapter, and the commission shall keep informed as
25 to the manner and method in which the same is conducted, and may obtain from such

1 telecommunications companies full and complete information necessary to enable it
2 to perform the duties and carry out the objects for which it was created;

3 (4) Require annual reports and such special reports which, ~~in the opinion of the~~
4 ~~commission,~~ are reasonable, necessary, or proper for its information;

5 (5) Prescribe the forms of any and all accounts, records and memoranda to be kept by
6 telecommunications companies;

7 (6) ~~Inspect all accounts, records and memoranda kept by telecommunications companies~~
8 ~~and may employ special agents or examiners who have authority, under the order of~~
9 ~~the commission, to examine any and all accounts, records and memoranda kept by any~~
10 ~~telecommunications company engaged in interstate commerce;~~

11 (7) Examine any of the books, papers or documents of any such telecommunications
12 company and to examine under oath or otherwise any officer, director, agent or
13 employee of any such telecommunications company; and

14 (8) Issue subpoenas to compel the attendance and testimony of witnesses and the
15 production of all books, papers, tariffs, schedules, contracts, agreements and
16 documents relating to any matter under investigation, and to that end may invoke the
17 aid of any court of this state in requiring the attendance and testimony of witnesses
18 and the production of books, papers and documents under the provisions of this
19 section. The attendance of witnesses and the production of documents, books and
20 papers may be required from any place in the state at any designated place of hearing.

21 Section 33. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Notwithstanding any other provisions of this chapter, any telecommunications company
24 providing wholesale services may reorganize its business to separate its wholesale business from
25 its retail business. Any asset transfers shall be at book value. The company need only advise the

1 commission of its action and file any necessary price schedules or tariffs to accurately reflect the
2 prices, terms and conditions of service. The reorganization of the business does not affect the
3 commission's ability to regulate the services provided by the companies as provided for in this
4 chapter.

5 Section 34. That § 49-31-11 be amended to read as follows:

6 49-31-11. No person or telecommunications company may unjustly or unreasonably
7 discriminate between persons in providing telecommunications services or in the rate or price
8 charged for those services. ~~No telecommunications company may offer a rate or charge, demand,~~
9 ~~collect or receive from any person a greater or lesser compensation for any telecommunications~~
10 ~~service offered than it charges, demands, collects or receives from any other person for providing~~
11 ~~a like telecommunications service.~~ Prices charged by providers of intrastate interexchange
12 telecommunications services to customers in rural and high cost areas may not be higher than
13 prices charged by the providers to its customers in urban areas. A telecommunications company
14 shall offer to customers in all regions of the state served by the company access to like
15 telecommunications services at reasonably comparable prices. No telecommunications company
16 may make or give any unjust or unreasonable preference or advantage to any person, nor unjustly
17 or unreasonably prejudice or disadvantage any person, in the provision of any
18 telecommunications service. Notwithstanding any prohibitions in this ~~section~~ chapter, upon
19 application to the commission, any telecommunications company may after investigation by the
20 commission, be authorized by the commission to charge special ~~rates~~ prices, or to charge
21 different prices based on good cause, or to give certain preferences which are determined by the
22 commission to be fair and reasonable.

23 A telecommunications company may pass through to its customers, residing in the area to
24 which the taxes apply, any state, municipal and local taxes assessed against the company.

25 Nothing in this section applies to volume discounts or to the provision of telecommunications

1 services at reduced ~~rates~~ prices for the United States, this state, local governments or
 2 governmental subdivisions. Any discounts, reduced prices, or price preferences provided for
 3 under this section do not constitute the retail price for that service.

4 Whoever violates any of the provisions of this section is guilty of unjust discrimination and
 5 shall be punished by a civil fine not less than one thousand nor more than five thousand dollars
 6 for each violation. Nothing in this section ~~may alter~~ alters or ~~eliminate~~ eliminates any remedy
 7 otherwise available to an injured party, including an injured party's right to initiate a suit against
 8 the company guilty of discrimination pursuant to § 49-13-14.1.

9 Section 35. That § 49-31-12 be repealed.

10 ~~49-31-12. The commission shall make for each of the telecommunications companies doing~~
 11 ~~business in this state a schedule of reasonable fares and rates or prices~~
 12 ~~except for those telecommunications services which are fully competitive. The~~
 13 ~~commission may determine and approve different rates or prices for different~~
 14 ~~companies and for different services of any company. The commission shall:~~

15 ~~(1) Change and revise such rates or prices as circumstances require;~~

16 ~~(2) Serve upon each company at least ten days notice of the time and place rates or prices~~
 17 ~~will be determined, and provide an opportunity for any person, partnership, limited~~
 18 ~~liability company, corporation, or company to be heard; and~~

19 ~~(3) Give notice to the company of the rates or prices decided upon and the effective date~~
 20 ~~of such rates or prices, and provide a printed copy of such rates or prices to the~~
 21 ~~general public upon request.~~

22 Section 36. That § 49-31-12.1 be amended to read as follows:

23 49-31-12.1. Any tariff, or a certified copy, approved pursuant to § 49-31-1.4, ~~49-31-12,~~
 24 ~~49-31-12.2, 49-31-12.4, or 49-31-12.5,~~ shall be received in evidence as an official tariff on file
 25 with the commission, without further proof. The commission shall certify that the tariff in

1 question is a true copy of the original on file with the commission and that it is currently in effect.
2 The tariff shall, in any suit brought against a company, constitute prima facie evidence that the
3 ~~rates or~~ prices approved thereby are fair and reasonable.

4 Section 37. That § 49-31-12.2 be amended to read as follows:

5 49-31-12.2. Any telecommunications company subject to this chapter for noncompetitive and
6 emerging competitive telecommunications services shall:

- 7 (1) Print and keep for public inspection in a convenient and publicly accessible place, its
8 tariff showing the ~~rates or~~ prices for telecommunications services offered by the
9 company which are in force at the time;
- 10 (2) Not increase published ~~rates or~~ prices for noncompetitive telecommunications services
11 except after thirty days notice to the commission and to the public. The notice shall
12 state the proposed increase and the proposed effective date of the increase. After
13 thirty days notice the increase may go into effect subject to suspension, refund or
14 both, pursuant to § 49-31-12.4 or 49-31-12.5, whichever is applicable. A company
15 need only notify the commission of any reduction in rates or prices for
16 telecommunications services before the effective date of the reduction and publish the
17 appropriately amended tariff and notice required in subdivision (1) of this section;
- 18 (3) Except as provided for in subdivision (2) of this section, not deviate from any of its
19 current published ~~rates~~ prices; and
- 20 (4) Upon request of the commission, file with the commission copies of any contracts,
21 agreements or arrangements with other companies that are affected by the provisions
22 of this chapter.

23 Section 38. That § 49-31-12.3 be amended to read as follows:

24 49-31-12.3. If any telecommunications company subject to the provisions of this chapter
25 neglects or refuses to file or publish its tariffs of ~~rates or~~ prices, and contracts and agreements

1 relating thereto, the telecommunications company, pursuant to chapter 21-34, is subject to a writ
2 of mandamus to be issued by any circuit court of the state in the judicial circuit where the
3 principal office of the telecommunications company is situated or where the offense may be
4 committed.

5 Section 39. That § 49-31-12.4 be amended to read as follows:

6 49-31-12.4. If a telecommunications company files with the commission any tariff stating a
7 new ~~rate or~~ price or any new practice affecting any noncompetitive telecommunications service,
8 the commission:

9 (1) May upon a petition to intervene or on its own initiative, with or without answer or
10 other formal pleading by the interested company or companies but upon reasonable
11 notice, enter upon a hearing concerning the propriety or reasonableness of the ~~rate,~~
12 price or practice;

13 (2) Pending any hearing pursuant to subdivision (1) of this section, the commission may
14 suspend the operation of the tariff and the use of the ~~rate~~ price or practice upon order
15 with notice to the company of the reasons therefor. The suspension may not last
16 longer than ~~one hundred twenty~~ sixty days beyond the proposed effective date of the
17 ~~rate~~ price or practice. However, the commission may extend the period an additional
18 ~~sixty~~ thirty days;

19 (3) During any hearing conducted pursuant to subdivision (1) of this section, receive
20 whatever evidence, statements or arguments the parties may offer pertinent to the
21 investigation. The burden is on the company to prove that the tariff is fair and
22 reasonable;

23 (4) After any hearing pursuant to subdivision (1) of this section, determine a fair and
24 reasonable ~~rate or~~ price, render a written decision specifically setting out the ~~rate or~~
25 price and prepare a record of its proceeding and findings; and

1 (5) If a rate has been suspended pursuant to subdivision (2) of this section and the
2 commission has not issued an order at the expiration of ~~one hundred eighty~~ ninety
3 days after the proposed effective date of the ~~rate~~ price or practice, the proposed
4 change may go into effect at the end of such period. In the case of a proposed
5 increased ~~rate or~~ price, the telecommunications company shall keep an accurate
6 account of all amounts received by reason of the increase. The company shall specify
7 by whom and on whose behalf the amounts are paid. Upon completion of the hearings
8 and entry of a commission decision, the commission may require the
9 telecommunications company to refund, with interest, to the persons in whose behalf
10 such amounts were paid, the portion of the increased ~~rates or~~ prices found to be unfair
11 or unreasonable.

12 Section 40. That § 49-31-15 be amended to read as follows:

13 49-31-15. The commission may compel access to any telecommunications facilities in this
14 state which does not threaten network reliability or security. Any telecommunications company
15 desiring access to any other company's facilities shall, if access is refused, make an application
16 to the commission. Upon receipt of the application, the commission shall ascertain the facts in
17 the case. If in its judgment the public service demands the access and the facilities of the
18 applicant are in proper condition, the commission may order the access upon such terms and
19 conditions that are found to be in the public interest and apportion the expense of the access.

20 If the extension of telecommunications facilities to meet customer demand for access,
21 interconnection or other services, whether offered as a retail or wholesale service, results in
22 construction costs or investment in excess of the average cost or investment to provide the
23 service, the company may, prior to initiating construction or making the investment, require
24 payment sufficient to recover the costs or investment. The term, access, means the connection
25 of a local exchange service customer to the local exchange service network or the connection

1 of an interexchange telecommunications service provider or other local exchange service
2 provider to a local exchange service network. Nothing in this section prevents access to another
3 telecommunications company's facilities by mutual consent.

4 Section 41. That § 49-31-17 be amended to read as follows:

5 49-31-17. Notwithstanding § 49-31-15, no local exchange service company may be
6 compelled to provide switched access ~~may be compelled~~ except at or within the local exchange
7 boundary, or a centralized point serving several exchanges, of the telecommunications company
8 ~~refusing the access.~~ The company refusing access may not be compelled by the commission to
9 build a facility outside its local exchange territory, ~~or a centralized point serving several~~
10 ~~exchanges,~~ to connect to the telecommunications company requesting the switched access.
11 ~~Nothing in § 49-31-15 may be construed to prevent telecommunications companies from~~
12 ~~providing access to each other's facilities by mutual consent.~~

13 Section 42. That § 49-31-18 be amended to read as follows:

14 49-31-18. Every telecommunications company shall provide switched access for any other
15 telecommunications company doing business in the same vicinity that makes application therefor
16 and shall afford all reasonable and proper facilities for such access, for reasonable compensation
17 and without discrimination, and under rules the commission may prescribe. ~~To provide access~~
18 ~~facilities at reasonable rates and to enhance and preserve universal service, the~~ The commission
19 ~~may shall~~ establish methods designed to ~~determine and~~ implement fair and reasonable cost based
20 switched access rates prices by rules promulgated pursuant to chapter 1-26. A local exchange
21 service reseller shall be required to purchase switched access services for the origination or
22 termination of any intrastate interexchange telecommunications services which originate or
23 terminate using the resold local exchange services.

24 Section 43. That § 49-31-19 be amended to read as follows:

25 49-31-19. ~~Access~~ Switched access service charges for switching and transporting intrastate

1 interexchange telecommunications services between facilities shall be published in the tariff filed
2 by the telecommunications company providing the access.

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

7 Section 44. That § 49-31-20 be repealed.

8 ~~—49-31-20. No person who owns telecommunications facilities in this state may consolidate
9 with or hold a controlling interest in the stock, bonds or assets of another telecommunications
10 company owning a competing line, switch, exchange or other telecommunications facilities.~~

11 ~~— A person may file with the commission an application to consolidate or merge
12 telecommunications companies. If the commission finds after an investigation, notice and, with
13 or without, public hearing that the public interest will be benefited by the consolidation or
14 merger, the commission may issue a permit granting the consolidation or merger.~~

15 Section 45. That § 49-31-21 be repealed.

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

1 ~~inclusive, or municipal telephone systems operated pursuant to chapter 9-41, or independent~~
2 ~~telephone companies serving less than ten thousand local exchange subscribers, the commission~~
3 ~~may allow the proposed facility only upon the additional finding that the local exchange company~~
4 ~~operating the existing facility is not furnishing reasonably adequate telecommunications service~~
5 ~~and will not furnish reasonably adequate service within a reasonable time. Nothing in this section~~
6 ~~prohibits the construction of nonaccess facilities which cross the local exchange territory being~~
7 ~~lawfully occupied and served by another telecommunications company furnishing reasonably~~
8 ~~adequate service. Nothing in this section affects construction or extension of facilities within the~~
9 ~~local exchange territory for which a company has the certificate to operate, into contiguous~~
10 ~~territory which is not receiving similar service, or where a certificated telecommunications~~
11 ~~company agrees in writing to an attachment of lines or to the construction of telecommunications~~
12 ~~facilities in the affected company's local exchange territory.~~

13 Section 46. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 To the extent required by federal law, each local exchange telecommunications company shall
16 provide access to, and interconnection with, its telecommunications services and unbundled
17 network elements to any other provider of local exchange service requesting access and
18 interconnection at prices and on terms that are just, reasonable and nondiscriminatory.

19 Section 47. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Unless specifically exempted by federal law, telecommunications companies requesting
22 interconnection and network services for the purpose of providing local exchange service, and
23 incumbent local exchange companies shall engage in good faith negotiations to establish mutually
24 acceptable prices, terms, and conditions for interconnection and unbundled network services. At
25 any time in the negotiation process, the parties involved may petition the commission to appoint

1 a mediator to help resolve differences arising in the course of the negotiations. Parties may also,
2 consistent with federal law, petition the commission to appoint an arbitrator to resolve open
3 issues in the negotiations. The commission may appoint mediators or arbitrators. In establishing
4 any prices for interconnection and unbundled network services, the commission shall ensure that
5 the prices are cost based.

6 Section 48. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The aggregate price for unbundled network service may exceed the price for a bundled
9 service that includes the network services, if necessary to satisfy the requirement that a local
10 exchange company providing the network services may not be required to provide service below
11 cost. A telecommunications company that purchases the local loop unbundled from the switching
12 service shall pay a price which covers all costs regardless of jurisdiction. In those instances where
13 a telecommunications company desires to use facilities of another company that are used to
14 provide extended area service, it shall negotiate an interconnection agreement with the local
15 exchange company where the traffic originates and the company where the traffic terminates.
16 Prices for unbundled network services may be deaveraged to reflect cost differences only if
17 corresponding retail services prices may also be deaveraged to reflect cost differences unless
18 some cost support mechanism such as a universal service fund is in place which offsets the need
19 for deaveraged retail prices.

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

22 The interconnection exemption established for rural telephone companies shall be maintained
23 consistent with 47 U.S.C. § 251(f)(1) as of January 1, 1997, and the commission may grant
24 suspensions and modifications from requirements to provide interconnection services as provided
25 for by 47 U.S.C. § 251(f)(2) as of January 1, 1997.

1 Section 50. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 The commission shall permit the joint ownership, operation or sharing of public switched
4 network infrastructure, technology, information, and telecommunications facilities and functions
5 between local exchange companies for the purpose of enabling or assisting an eligible
6 telecommunications carrier to provide telecommunications services, or access to information
7 services, in its service area. A local exchange company may not be required to share facilities
8 with an eligible telecommunications carrier if the facilities will be used to provide service to
9 customers in the local exchange company's service area. Local exchange companies participating
10 in the joint ownership, operation or sharing arrangement may not be treated as a common carrier
11 for hire or as offering common carrier services with respect to any infrastructure, technology,
12 information, facilities or functions made available to an eligible telecommunications carrier under
13 the arrangement.

14 Section 51. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 It is not unreasonable or discriminatory for a telecommunications company to impose the
17 following conditions or limitations on the resale of its services:

- 18 (1) A limitation which does not allow the resale of residential local exchange service to
19 any other category of class of customer;
- 20 (2) A limitation which does not allow the resale at wholesale prices of services to a
21 different category or class of customer than that category or class of customer for
22 which the service is available at retail prices;
- 23 (3) A limitation that does not allow the use of flat or measured rate local exchange
24 service or the existence of a local calling area to bypass the use of switched access;
- 25 (4) A requirement that services offered at a discounted retail price by a local exchange

1 company may be resold only to those customers eligible for the retail discount from
2 the local exchange company;

3 (5) A requirement that does not allow a local exchange service company to provide a
4 retail service, which is priced below the full actual cost of providing the service, at a
5 discount that represents the costs that will be avoided as described in 47 U.S.C.
6 § 252(d)(3) as of January 1, 1997.

7 (6) A limitation that a local exchange service reseller may resell service to only that
8 category or class of customer for which the service is intended, designed or marketed
9 by the wholesale provider. If a service is withdrawn or obsoleted, but service is
10 continued for existing customers, local exchange service resellers shall provide the
11 service only to those customers who are eligible to purchase the withdrawn or
12 obsoleted service.

13 Section 52. That § 49-31-58 be amended to read as follows:

14 49-31-58. ~~If it is determined to be in the public interest, the~~ The commission may utilize
15 ~~various cost allocation methods other than fully distributed methods as provided for in § 49-31-4~~
16 ~~for the assignment of costs among jointly provided for noncompetitive services, emerging~~
17 ~~competitive services, or fully competitive services.~~ In determining ~~whether any alternative~~ what
18 method of assigning costs is in the public interest the commission shall ~~consider~~:

19 (1) ~~The~~ Consider the impact of the method on efforts to preserve universal
20 telecommunications service;

21 (2) ~~The~~ Consider the extent to which the method will promote competition and facilitate
22 the offering of advanced telecommunications services to all classes of ~~ratepayers~~
23 customers throughout the state; ~~and~~

24 (3) ~~Any other factors that the commission considers relevant to the public interest~~ Give
25 substantial deference to the costing methods of an eligible telecommunications carrier

1 for that carriers own services, facilities and costs; and

2 (4) Insure that no cost method precludes a company from pricing its services so as to
3 realize a reasonable return on investment or capital recovery rates which take into
4 account the impacts of competition and rapid technological change.

5 Section 53. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Legislature of the State of South Dakota finds and declares that individuals residing in
8 rural and other high cost service areas require quality, reliable telecommunications facilities and
9 services at rates that are reasonable. A universal service fund may be necessary to encourage
10 investment in state-of-the-art telecommunications facilities and equipment through appropriate
11 cost supports.

12 Section 54. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 If the commission determines it to be necessary in furtherance of the policy objectives stated
15 in section 53 of this Act, the commission shall maintain a universal service fund.

16 Section 55. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 Only carriers designated as eligible telecommunications carriers by the commission may
19 receive payments from the universal service fund.

20 Section 56. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The commission shall identify services which should be offered in order to meet the policies
23 of section 53 of this Act and shall establish proxies which reasonably quantify embedded facilities
24 and equipment costs, including a reasonable return on investment, and the direct identifiable
25 costs other than facilities and equipment costs incurred by eligible telecommunications carriers

1 in providing the identified services. Cost proxies shall reasonably recognize the cost differences
2 between companies that result from different customer densities, loop lengths, and number of
3 customers served. The commission may upon request grant waivers allowing eligible
4 telecommunications carriers to submit a cost study demonstrating the actual cost of providing
5 the identified services as an alternative to the use of cost proxies where it is shown that the
6 applicable proxies do not fairly reflect the costs incurred to provide the identified services.

7 Section 57. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The commission shall also develop affordability prices for the identified services. The
10 commission shall establish different affordability prices for rural telephone companies. Any
11 company whose local service is regulated by the commission shall be permitted to charge prices
12 at least up to the affordability level established by the commission. In setting the affordability
13 price, the commission shall take into consideration the value of the service, the number of access
14 lines that can be reached within the exchange, subscriber reliance on intrastate interexchange
15 service, and regional differences in gross income.

16 Section 58. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 An eligible telecommunications carrier shall receive payment from the universal service fund
19 equal to the amount by which applicable proxies, or for companies that have received a waiver
20 under this section their actual identified costs, exceed the applicable affordability price times the
21 average number of subscribers actually taking the service in the preceding twelve months less the
22 amount of any payments from a federal universal service fund. In addition, an eligible
23 telecommunications carrier shall receive payment equal to the amount by which the revenues
24 received from the actual prices it charges to libraries, elementary and secondary schools, and
25 rural health institutions that are eligible for discount prices fall below applicable proxy amounts,

1 or for companies that have received a waiver under this section, the companies' actual identified
2 costs of providing qualifying services to such entities, less the amount of any payments from any
3 federal universal service fund received for providing the services. The commission shall establish
4 a price floor below which compensation from this fund may not be paid for services provided to
5 libraries, elementary and secondary schools and rural health institutions.

6 The fund shall also provide for a contribution to the recovery of discounts provided to
7 qualified low income customers.

8 Section 59. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Any provider of telecommunications services within the state, including any provider not
11 otherwise subject to regulation by the commission, including corporations, persons and entities
12 that provide fixed or mobile radio services having direct or automated user access to the local
13 exchange service networks and services which provide access to the internet and other
14 information services shall contribute to the universal service fund.

15 Section 60. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The contributions shall be sufficient to pay the amount due to the eligible telecommunications
18 carriers under section 58 of this Act, along with the administrative costs of managing the fund.
19 The amount of contribution from individual telecommunication service providers shall be a
20 uniform percentage applied to the monthly gross operating revenues from all telecommunications
21 services provided within this state. A telecommunications service is provided within this state
22 if the service originates or terminates in this state and is billed to a customer with a service
23 address in this state; or for customers with no service address in the state, the service both
24 originates and terminates in this state. Revenues from wholesale transactions between service
25 providers are exempt. This exemption includes network access charges, interconnection charges,

1 and billing and collection charges paid to a local exchange company. The telecommunications
2 provider may flow through the contributions to the fund to its customers through a uniform
3 percentage charge and may identify the charge as a separate line item on customer bills.

4 Section 61. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any provider of telecommunications service shall report its prior year's revenues, less
7 revenues received from other telecommunications carriers, to the fund administrator. The fund
8 administrator shall develop the annual percentage to be recovered uniformly from all
9 telecommunications carriers. The annual percentage is equal to the total universal service fund
10 obligations divided by the total of all providers' gross retail revenues for the prior year. This
11 percentage will be determined on an annual basis and will be provided to all telecommunications
12 service providers by September first of the year preceding the calendar year in which the charge
13 shall be applicable. The percentage shall be rounded to the nearest tenth of one percent.

14 Section 62. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Telecommunications service providers will remit monthly to the fund administrator the
17 difference between the amount owed to the fund and the amount due to the eligible
18 telecommunications carrier from the fund.

19 Section 63. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 The commission may direct any telecommunications service provider, person or entity to
22 provide information, in a form required by the commission, to determine the appropriate amount
23 of contributions to the universal service fund. The books and records of a telecommunications
24 service providers required to contribute to the universal service fund shall be available for
25 inspection by the commission for the purposes of enforcing the provisions of this section.

1 Section 64. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 Any telecommunications service provider, person or entity which fails to submit any
4 contribution established pursuant to this Act or which fails to obey a directive of the commission
5 concerning its books and records or the need for other information is subject to a penalty of not
6 less than five hundred dollars nor more than two thousand dollars for each offense. Each
7 violation of this section by a telecommunications service provider, person, or entity is a separate
8 offense. In the case of a continuing failure to comply, each day the violation continues is a
9 separate offense. In construing and enforcing the provisions of this section relating to penalties,
10 the act, omission or failure of an officer, agent or employee of the telecommunications service
11 provider, person or entity, acting within the scope of official duties or employment, shall in each
12 case be considered the act, omission or failure of that telecommunications service provider,
13 person, or entity.

14 A telecommunications service provider that fails to pay any portion of the contribution due
15 and payable under this Act may also have its certificate of authority revoked pursuant to the
16 provisions of § 49-31-3.

17 Section 65. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 A local exchange carrier designated as an eligible telecommunications carrier by the
20 commission pursuant to 47 U.S.C. § 214(e)(2) as of January 1, 1997, and fulfilling the service
21 obligations of an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e)(1) as of
22 January 1, 1997, shall receive support from the universal service fund.

23 Section 66. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 The commission in fulfilling its duties under 47 U.S.C. § 214(e)(2) as of January 1, 1997,

1 may not, in the case of an area served by a rural telephone company, designate more than one
2 local exchange carrier as an eligible telecommunications carrier absent a finding that such
3 additional designation furthers the universal service policies. A rural telephone company
4 providing local telephone service as of January 1, 1997, shall automatically qualify as an eligible
5 telecommunications carrier.

6 Section 67. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The commission shall engage a private entity to administer the fund.

9 Section 68. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The commission shall adopt rules for the implementation and administration of the universal
12 service fund in accordance with the provisions of this Act.

13 Section 69. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The provisions of this chapter do not prohibit or otherwise limit the regulatory authority of
16 the commission to preserve and advance universal service throughout the state.