

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

400A0766

HOUSE BILL NO. 1256

Introduced by: Representatives Rost, Broderick, Lucas, Schaunaman, and Wetz and Senators Olson and Paisley

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

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

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

5 49-31-1. Terms used in this chapter mean:

- 6 (1) "Centron and centron-like services," services which provide custom switching features
7 which include but are not limited to the local transport facility, distributive dial tone,
8 select number screening, toll restriction and screening, nonattendant busy out,
9 nonattend and call transfer, and select trunk hunting and screening;
- 10 (2) "Cost based price," a price which recovers the costs of providing a service and
11 includes a reasonable portion of shared and common costs and a reasonable profit;
- 12 (3) "Commission," the Public Utilities Commission;
- 13 ~~(3)~~(4) "Common carrier," anyone who offers telecommunications services to the public;
- 14 (5) "Interexchange telecommunications service," telecommunications service provided
15 between exchanges within the state that are not in the same local calling area;

1 ~~(4)~~(6) "LATA," a local access and transport area;

2 (7) "Local calling area," the geographic area within which telephone calls may be
3 completed between or among customers without the assessment of interexchange
4 telecommunications service charges. An extended area service calling area is part of
5 the local calling area;

6 ~~(5)~~(8) "Local exchange service," the access to and transmission of two-way switched ~~voice~~
7 ~~communications~~ telecommunications service within a ~~geographic territorial unit~~
8 ~~established by a telecommunications company for the administration of~~
9 ~~telecommunications services~~ local calling area. Local exchange service includes the
10 transport facilities used to transmit a call between the local exchange switching facility
11 and the customer and only that switching necessary to route a call to or from another
12 local exchange service company or an interexchange telecommunications service
13 provider;

14 ~~(6)~~(9) "New products and services," any new product or service introduced after July 1,
15 1988, which is not functionally required to provide local exchange service.
16 Repackaging of any product or service which is fully competitive with any service
17 regulated as emerging competitive or noncompetitive is not considered a new product
18 or service;

19 ~~(7)~~(10) "Optional service," a limited or discretionary service offered by a
20 telecommunications company which is not functionally required for the
21 provision of noncompetitive services and which the customer has the option
22 to purchase;

23 ~~(8)~~ "~~Rate of return regulation," the procedure used by the commission to approve the~~
24 ~~charge for a service which gives due consideration to the public need for adequate,~~
25 ~~efficient and reasonable service and to the need of the public utility for revenues~~

1 sufficient to enable it to meet its total current cost of furnishing such service, including
 2 taxes and interest, and including adequate provision for depreciation of its utility
 3 property used and necessary in rendering service to the public, and to earn a fair and
 4 reasonable return upon the value of its property;

5 ~~—(9)~~(11) "Rural telephone company," a local exchange company as defined in the United
 6 States Code, title 47, section 153(37) as of February 8, 1996;

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

14 ~~(10)~~(13) "Telecommunications service," the transmission of signs, signals, writings,
 15 images, sounds, messages, data, or other information of any nature by wire, radio,
 16 light waves, electromagnetic means, or other similar means. It does not include the
 17 provision of terminal equipment used to originate or terminate such service, broadcast
 18 transmissions by radio, television, and satellite stations regulated by the federal
 19 communications commission, and one-way cable television service; ~~and~~

20 ~~—(11)~~ "Universal service," ~~a service which is, as far as possible, a rapid, efficient~~
 21 ~~telecommunications service with adequate facilities available to all the people of South~~
 22 ~~Dakota at a reasonable charge.~~

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

24 49-31-1.1. For the purposes of this chapter, "noncompetitive service" is a ~~monopoly~~ service
 25 for which no competition exists or the regulation of which is necessary to insure affordable local

1 exchange service. Such services include:

- 2 (1) Residential local exchange service;
- 3 (2) Business local exchange service;
- 4 (3) ~~Agribusiness local exchange service;~~
- 5 (4) Emergency services;
- 6 (5) Public and semipublic coin telephone service; and
- 7 (6) All services not otherwise listed in §§ 49-31-1.2 and 49-31-1.3 classified as emerging
- 8 competitive or fully competitive.

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

10 49-31-1.2. For the purposes of this chapter, " an emerging competitive service" is a service
11 that satisfies the criteria of § 49-31-3.2 and which has alternative services available to over
12 twenty percent of the company's customers for that service. Such services include:

- 13 (1) ~~Inter-LATA~~ InterLATA message toll service and intraLATA message toll service,
14 otherwise known as interexchange telecommunications or long distance service which
15 originates and terminates within South Dakota;
- 16 (2) ~~Inter-LATA~~ InterLATA wide area telephone service and ~~intra-LATA~~ intraLATA
17 wide area telephone service; and
- 18 (3) New products and services not functionally required to provide local exchange
19 service.

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

21 49-31-1.3. For the purposes of this chapter, " a fully competitive service" is a service that
22 satisfies the criteria of § 49-31-3.2 and which has alternative services available to over fifty
23 percent of the company's customers for that service within a local calling area or defined market
24 or which is of limited scope or so discretionary in nature that the commission determines price
25 regulation is not warranted. Such services include:

- 1 (1) ~~Cellular~~ Commercial mobile radio services;
- 2 (2) Centron and centron-like services;
- 3 (3) Billing and collections;
- 4 (4) Optional services;
- 5 (5) Private line and special access; and
- 6 (6) Premise cable and inside wire.

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

8 49-31-1.4. For the purposes of this chapter, "price regulation" is the procedure used by the
9 commission to approve the charge for an emerging or noncompetitive telecommunications
10 service ~~which is not based on rate of return regulation~~. In determining whether the price is fair
11 and reasonable, the commission shall determine and consider the price of alternative services, the
12 overall market for the service, the affordability of the price for the service in the market it is
13 offered, and the impact of the price of the service on the commitment to preserve affordable
14 universal service. ~~In determining the price for an emerging competitive service, the commission~~
15 ~~shall also consider the actual cost of providing the service. In determining the price for a~~
16 ~~noncompetitive service, the commission shall also consider the fully allocated cost of providing~~
17 ~~the service, and shall permit prices that are cost based.~~

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

19 49-31-2. The provisions of chapters 49-7 to 49-13, inclusive, and this chapter apply to all
20 telecommunications companies and to all telecommunications lines and facilities of any kind,
21 character, or description in use by any ~~corporation, receiver, trustee or other~~ person operating
22 a telecommunications company, whether owned or operated under contract, agreement, lease,
23 or otherwise. The commission may not unreasonably discriminate in its regulation of companies,
24 lines, or facilities or in its application of the law contained in this chapter.

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

1 49-31-3. The commission has general supervision and control of all telecommunications
2 companies offering common carrier services within the state to the extent such business is not
3 otherwise regulated by federal law or regulation. The commission shall inquire into any
4 complaints, unjust discrimination, neglect, or violation of the laws of the state governing such
5 companies. The commission may exercise powers necessary to properly supervise and control
6 such companies.

7 Each telecommunications company that plans to offer or provide any interexchange
8 telecommunications service shall file an application for a certificate of authority with the
9 commission no less than sixty days prior to ~~initiating any~~ providing interexchange
10 telecommunications service in this state. The commission has the exclusive authority to grant a
11 certificate of authority. Each telecommunications company shall submit a two hundred fifty
12 dollar application fee with its application which shall be deposited into the gross receipts tax fund
13 established pursuant to § 49-1A-2. If the commission has not ruled upon an application at the
14 end of the sixty days, the telecommunications company may ~~initiate~~ provide interexchange
15 telecommunications services in the state until the commission reaches a decision on the
16 application. If the application is granted, the company may continue to offer its services.
17 However, if the application is denied, the company shall cease and desist from offering any
18 further services in this state. A telecommunications company has the burden to prove in its
19 application that it has sufficient technical, financial, and managerial capabilities to offer
20 interexchange telecommunications services before the commission may grant a certificate of
21 authority. The commission may rule upon a telecommunications company's application for a
22 certificate of authority with or without hearing.

23 Any certificate of authority granted by the commission may be suspended or revoked
24 pursuant to chapter 1-26 for a willful violation of the laws of this state, a willful failure to comply
25 with a rule or order of the commission, or other good cause. The commission shall, by rules

1 promulgated pursuant to chapter 1-26, prescribe the necessary procedures to implement this
2 section. A telecommunications company that had lawful authority immediately prior to ~~July 1,~~
3 ~~1992~~ the effective date of this Act shall continue to have such authority. ~~The commission shall~~
4 ~~issue such a telecommunications company a certificate of authority~~ Certificates of authority to
5 provide interexchange telecommunications service may not be sold, assigned, leased, or
6 transferred without authorization from the commission. The offering of telecommunications
7 services by a telecommunications company without a certificate of authority or which is
8 inconsistent with this section is a Class 1 misdemeanor.

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

11 No telecommunications company may begin the construction of a telecommunications facility
12 intended to provide local exchange service or to offer or provide local exchange service within
13 a local calling area prior to receiving a certificate of authority for the local calling area sought
14 to be served. A company may not extend an existing telecommunications facility outside its local
15 exchange service area for the purpose of providing local exchange service without applying to
16 the commission for authority to do so. Any telecommunications company seeking to amend its
17 authorized local exchange service territory shall apply for an amended certificate of authority.
18 An application for an amended certificate is subject to the same requirements as an application
19 for an initial certificate. The commission has the exclusive authority to grant a certificate of
20 authority.

21 A telecommunications company has the burden to prove in its application that it has sufficient
22 technical, financial, and managerial capabilities to provide the proposed local exchange service
23 in the geographic area proposed to be served. The granting of a certificate of authority shall be
24 consistent with any exemptions, suspensions, or modifications authorized for local exchange
25 service companies pursuant to the United States Code, title 47, section 251(f) as of February 8,

1 1996. Any grant of a certificate of authority to provide local exchange service is subject to such
2 terms and conditions as the commission finds consistent with preserving and advancing universal
3 service, protecting the public safety and welfare, ensuring the continued quality of service, and
4 safeguarding the rights of consumers.

5 Each telecommunications company shall submit a two hundred fifty dollar application fee
6 with its application which shall be deposited into the gross receipts tax fund established pursuant
7 to § 49-1A-2. Except when an evidentiary hearing is required by the commission, the commission
8 shall act on an application for a certificate of authority to provide local exchange service within
9 ninety days of receiving a complete application. If an evidentiary hearing is required, the
10 commission shall act on the application within one hundred twenty days of receipt of a complete
11 application.

12 Except as provided in the United States Code, title 47, section 253(f) as of February 8, 1996,
13 if the applicant proposes to provide any local exchange service in an area served by a rural
14 telephone company, the applicant is required to satisfy the service obligations of an eligible
15 telecommunications carrier as set forth in the United States Code, title 47, section 214(e), as of
16 February 8, 1996. However, an applicant may petition the commission for a waiver from the
17 requirements of satisfying the service obligations of an eligible telecommunications carrier. The
18 commission may grant the waiver if it determines, after notice and hearing pursuant to chapter
19 1-26, that the waiver would be in the public interest, that it would not adversely impact universal
20 service, that prices for local exchange service would be just, reasonable, and affordable, and that
21 quality of service would be continued.

22 Any certificate of authority in effect as of the effective date of this Act shall remain in full
23 force and effect. A certificate of authority may not be sold, assigned, leased, or transferred
24 without authority from the commission. Any certificate of authority granted by the commission
25 may be suspended or revoked pursuant to chapter 1-26 for a willful violation of the laws of this

1 state, a willful failure to comply with a rule or order of the commission, or other good cause. The
2 commission may, by rules promulgated pursuant to chapter 1-26, prescribe the necessary
3 procedures to implement this section. The offering of telecommunications services by a
4 telecommunications company without a certificate of authority or which is inconsistent with this
5 section is a Class 1 misdemeanor.

6 Section 9. That § 49-31-3.1 be amended to read as follows:

7 49-31-3.1. A telecommunications company may not discontinue any noncompetitive
8 telecommunications service without the express approval of the commission. A
9 telecommunications company need only notify the commission of the discontinuance of any
10 emerging competitive or fully competitive telecommunications service.

11 Section 10. That § 49-31-3.2 be amended to read as follows:

12 49-31-3.2. The commission, after notice and hearing, shall waive, eliminate or modify any
13 of its rules or orders affecting telecommunications services if it finds that a telecommunications
14 service is a fully competitive service or an emerging competitive service. A person, or the
15 commission on its own motion, may apply to have an emerging competitive service of a
16 telecommunications company classified as a fully competitive service or a noncompetitive service
17 classified as an emerging competitive service or a fully competitive service. The application may
18 be distinguished by, or limited to, a particular local service area or defined market where the
19 service faces a demonstrated level of competition. The application shall be filed with the
20 commission and served on any other person designated by the commission. The application shall
21 be in a form prescribed by the commission. The commission, in determining how a
22 telecommunications service is to be classified, shall consider:

- 23 (1) The number and size of alternative providers of the service and the affiliation to other
24 providers;
- 25 (2) The extent to which services are available from alternative providers in the relevant

1 market;

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

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

6 (5) The impact on universal service.

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

14 Section 11. That § 49-31-3.3 be repealed.

15 ~~—49-31-3.3. The commission may, within ninety days after July 1, 1988, conclude an~~
16 ~~investigation into any or all of the telecommunications services listed in §§ 49-31-1.1, 49-31-1.2~~
17 ~~and 49-31-1.3 to determine if any service is properly classified pursuant to the standards found~~
18 ~~in subdivisions 49-31-3.2 (1) to (5), inclusive. The commission may, after notice and hearing,~~
19 ~~reclassify any service to conform the classification of the service to the evidence and the~~
20 ~~standards in § 49-31-3.2. The telecommunications company providing the service has the burden~~
21 ~~of proving the classification is appropriate. During this ninety-day period, any service subject to~~
22 ~~the investigation will remain under rate of return regulation. Upon expiration of the ninety-day~~
23 ~~period, reclassification of any service, even if hearings had commenced within the ninety days,~~
24 ~~will be pursuant to the provisions of § 49-31-3.4.~~

25 Section 12. That § 49-31-3.4 be amended to read as follows:

1 49-31-3.4. The commission, on its own motion or upon petition, shall commence regulation
2 or reclassify a telecommunications service previously classified by the Legislature or the
3 commission as a fully competitive service or an emerging competitive service if, after hearing or
4 investigation, the commission finds:

5 (1) That the market for that emerging competitive service does not satisfy the criteria of
6 § 49-31-3.2 and does not have alternative telecommunications services available to
7 over twenty percent of the telecommunications company's customers for that service;
8 or

9 (2) That the market for that fully competitive service does not satisfy the criteria of
10 § 49-31-3.2 and does not have alternative telecommunications services available to
11 over fifty percent of the telecommunications company's customers for that service.

12 The petition or commission investigation may be distinguished by, or limited to, a particular
13 local service area or defined market. In any proceeding to reclassify a telecommunications
14 service, the person initiating the petition has the burden of proving that the existing classification
15 is inappropriate, except the telecommunications company providing the service has the burden
16 of proving that the classification is appropriate if the proceeding is commenced by the
17 commission on its own motion. Upon the filing of a petition under this section and upon
18 application, the commission may enter an order staying a price change, for not more than thirty
19 days, for the disputed service pending a hearing on the merits of the petition, for reasonable
20 cause shown. If a petition under this section is found to be spurious or vexatious, the commission
21 may assess reasonable penalties and costs against the petitioning party, which may include
22 reasonable attorney fees. However, the penalties and costs may not be assessed against the
23 commission.

24 Section 13. That § 49-31-4 be amended to read as follows:

25 49-31-4. Any charge established for the provision of telecommunications services shall be

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

6 The commission shall determine and approve individual prices to be charged by a
 7 telecommunications company for any emerging competitive service pursuant to §§ 49-31-1.4,
 8 49-31-12, 49-31-12.2, and 49-31-12.5. ~~However, there~~ There is no ~~rate of return regulation of~~
 9 ~~emerging competitive services and no rate of return or price regulation of fully competitive~~
 10 ~~services.~~

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

22 ~~— Rates being charged by a telecommunications company on July 1, 1988 shall be deemed to~~
 23 ~~be the fair, reasonable, and effective rates until changed or altered pursuant to this chapter.~~

24 Section 14. That § 49-31-4.1 be repealed.

25 ~~— 49-31-4.1. The commission shall, on its own motion or upon petition, hold public hearings~~

1 ~~investigating methods of price regulation consistent with § 49-31-1.4 and chapter 1-26. Within~~
2 ~~thirty days of its receipt of a petition filed pursuant to this section, the commission shall issue a~~
3 ~~procedural schedule setting forth dates by which written direct testimony or data shall be filed~~
4 ~~and ordering the date for commencement of a hearing.~~

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

9 Section 15. That § 49-31-4.2 be repealed.

10 ~~— 49-31-4.2. A telecommunications company providing intrastate interexchange~~
11 ~~telecommunications services shall charge uniform prices on all routes where it offers the services.~~
12 ~~However, notwithstanding this section and § 49-31-11, a telecommunications company may offer~~
13 ~~or provide volume discounts and may pass through any state, municipal or local taxes in the~~
14 ~~specific geographic areas from which the taxes originate.~~

15 Section 16. That § 49-31-4.3 be amended to read as follows:

16 49-31-4.3. Each telecommunications company engaged directly or indirectly in any business
17 other than that of providing telecommunications service shall keep and, if requested by the
18 commission, render separately to the commission, in like manner and form, the relevant accounts
19 of all such other businesses. The provisions of this chapter apply to the books, accounts, papers,
20 and records of relevant transactions with such other businesses. ~~All profits and losses of such~~
21 ~~other business may be considered by the commission as are relevant to the general fiscal~~
22 ~~condition of the telecommunications company.~~ The commission, in determining the allowance
23 for materials or services to be included in costs of operations for ~~rate of return or price~~
24 regulation for noncompetitive services, may disallow any unreasonable profit made in the sale
25 of materials to, or service supplied for, any telecommunications company by any firm or

1 corporation owned or controlled directly or indirectly by such company or any affiliate,
2 subsidiary, parent company, associate, or any corporation whose controlling stockholders are
3 also controlling stockholders of such telecommunications company. The burden of proof ~~shall~~
4 ~~be~~ is on the telecommunications company to prove that no unreasonable profit is involved.

5 Section 17. That § 49-31-5 be amended to read as follows:

6 49-31-5. The commission may regulate the business of providing telecommunication service
7 and may promulgate rules pursuant to chapter 1-26 concerning:

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

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

14 Section 18. That § 49-31-5.1 be amended to read as follows:

15 49-31-5.1. Telecommunications cooperatives organized pursuant to chapters 47-15 to 47-20,

16 inclusive, municipal telephone systems operated pursuant to chapter 9-41, and independent

17 telephone companies serving less than ~~ten~~ fifty thousand local exchange subscribers are not

18 subject to chapter 49-11, §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4.1,

19 inclusive, §§ 49-31-4.3, 49-31-5 and 49-31-6, §§ 49-31-12 to 49-31-12.5, inclusive, and

20 §§ 49-31-44 to 49-31-46, inclusive. To qualify as an independent telephone company, the

21 company must also be an incumbent local exchange company as defined in the United States

22 Code, title 47, section 251(h) as of February 8, 1996.

23 However, any cooperative, municipality, or independent telecommunications company may

24 elect to have its ~~rates~~ noncompetitive services regulated by the commission ~~and be subject to~~

25 ~~commission regulation for its emerging and noncompetitive telecommunications services.~~ The

1 election to be regulated shall be made by filing with the commission a certified copy of the
2 resolution of the board of directors or the municipal governing body. Commission regulation
3 ~~shall become~~ is effective thirty days after receipt of the resolution by the commission.

4 Section 19. That § 49-31-6 be repealed.

5 ~~—49-31-6. The commission may make a physical valuation of all the property of any~~
6 ~~telecommunications company, to be taken when such valuation is necessary for the purpose of~~
7 ~~arriving at any determination in connection with the regulation of its business or the adjustment~~
8 ~~of its rates.~~

9 Section 20. That § 49-31-7 be amended to read as follows:

10 49-31-7. In addition to the regulatory powers and duties provided by chapters 49-1 to 49-13,
11 inclusive, and this chapter, the commission may conduct any investigations that are necessary to
12 protect the public interest. The commission may order such changes or improvements in
13 telecommunications facilities, exchanges, or networks as necessary for the improvement of
14 telecommunications service and the convenience of the public. If, in the judgment of the
15 commission, any repair upon telecommunications facilities, ~~a change in its rates, a~~ or any change
16 in the mode of operating telecommunications facilities or conducting telecommunications
17 company business is necessary, reasonable, and expedient in order to promote the safety,
18 convenience, and accommodation of the public, the commission shall notify the
19 telecommunications company immediately, and such telecommunications company shall change
20 the mode of operating its facilities or conducting its business, or repair, renew, install, or replace
21 such facilities in such manner, of such material, and within such time as the commission may
22 order. Unless a cost support mechanism such as a universal service fund enables a company to
23 recover the cost of implementing a commission order pursuant to this section, the commission
24 shall allow the company to recover the cost of implementing the commission order. This section
25 does not apply to interconnections which are subject to § 49-31-15 or the provisioning of

1 interconnection, services, or network elements subject to section 40 of this Act.

2 Section 21. That § 49-31-7.1 be amended to read as follows:

3 49-31-7.1. The commission may:

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

7 ~~(2) Require any telecommunications company doing business in this state to install any~~
8 ~~facility necessary for the safety, convenience and accommodation of the public;~~

9 (3) Inquire into the management of the business of all telecommunications companies
10 subject to the provisions of this chapter, and the commission shall keep informed as
11 to the manner and method in which the same is conducted, and may obtain from such
12 telecommunications companies full and complete information necessary to enable it
13 to perform the duties and carry out the objects for which it was created;

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

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

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

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

25 (8) Issue subpoenas to compel the attendance and testimony of witnesses and the

1 production of all books, papers, tariffs, schedules, contracts, agreements, and
2 documents relating to any matter under investigation, and to that end may invoke the
3 aid of any court of this state in requiring the attendance and testimony of witnesses
4 and the production of books, papers, and documents under the provisions of this
5 section. The attendance of witnesses and the production of documents, books, and
6 papers may be required from any place in the state at any designated place of hearing.

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

9 Notwithstanding any other provision of this chapter, any telecommunications company
10 providing wholesale services may reorganize its business to separate its wholesale business from
11 its retail business subject to commission approval.

12 Section 23. That § 49-31-11 be amended to read as follows:

13 49-31-11. No person or telecommunications company may ~~unjustly or~~ unreasonably
14 discriminate between persons in providing telecommunications services or in the rate or price
15 charged for those services. ~~No telecommunications company may offer a rate or charge, demand,~~
16 ~~collect or receive from any person a greater or lesser compensation for any telecommunications~~
17 ~~service offered than it charges, demands, collects or receives from any other person for providing~~
18 ~~a like telecommunications service.~~ A telecommunications company shall offer to customers in
19 all regions of the state served by the company access to like telecommunications services at
20 reasonably comparable prices. Prices charged by providers of intrastate interexchange
21 telecommunications services to customers in rural and high cost areas may be no higher than
22 prices charged by the providers to their customers in urban areas. No telecommunications
23 company may make or give any unjust or unreasonable preference or advantage to any person,
24 nor unjustly or unreasonably prejudice or disadvantage any person, in the provision of any
25 telecommunications service. Notwithstanding any prohibitions in this ~~section~~ chapter, upon

1 application to the commission, any telecommunications company may, after investigation by the
 2 commission, be authorized by the commission to charge special ~~rates~~ prices, or to charge
 3 different prices based on good cause, or to give certain preferences which are determined by the
 4 commission to be fair and reasonable.

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

7 Nothing in this section applies to volume discounts or to the provision of telecommunications
 8 services at reduced ~~rates~~ prices for the United States, this state, local governments, or
 9 governmental subdivisions.

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

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

16 49-31-12. The commission shall make for each of the telecommunications companies doing
 17 business in this state a schedule of reasonable ~~fares and rates or~~ prices except for those
 18 telecommunications services which are fully competitive. The commission may determine and
 19 approve different ~~rates or~~ prices for different companies and for different services of any
 20 company. The commission shall:

- 21 (1) Change and revise such ~~rates or~~ prices as circumstances require;
- 22 (2) Serve upon each company at least ten days notice of the time and place ~~rates or~~ prices
 23 will be determined, and provide an opportunity for any person, ~~partnership, limited~~
 24 ~~liability company, corporation, or company~~ to be heard; and
- 25 (3) Give notice to the company of the ~~rates or~~ prices decided upon and the effective date

1 of such ~~rates or~~ prices, and provide a printed copy of such ~~rates or~~ prices to the
2 general public upon request.

3 Section 25. That § 49-31-12.1 be amended to read as follows:

4 49-31-12.1. Any tariff, or a certified copy, approved pursuant to § 49-31-1.4, 49-31-12,
5 49-31-12.2, 49-31-12.4, or 49-31-12.5, shall be received in evidence as an official tariff on file
6 with the commission, without further proof. The commission shall certify that the tariff in
7 question is a true copy of the original on file with the commission and that it is currently in effect.
8 The tariff shall, in any suit brought against a company, constitute prima facie evidence that the
9 ~~rates or~~ prices approved thereby are fair and reasonable.

10 Section 26. That § 49-31-12.2 be amended to read as follows:

11 49-31-12.2. Any telecommunications company subject to this chapter for noncompetitive and
12 emerging competitive telecommunications services ~~shall~~:

- 13 (1) ~~Print~~ Shall print and keep for public inspection in a convenient and publicly accessible
14 place, its tariff showing the ~~rates or~~ prices for telecommunications services offered by
15 the company which are in force at the time;
- 16 (2) ~~Not~~ May not increase published ~~rates or~~ prices ~~for noncompetitive~~
17 ~~telecommunications services~~ except after thirty days notice for noncompetitive
18 services and twenty days notice for emerging competitive services to the commission
19 and to the public. The notice shall state the proposed increase and the proposed
20 effective date of the increase. After ~~thirty days~~ the applicable notice period ends, the
21 increase may go into effect subject to suspension, refund, or both, pursuant to
22 § 49-31-12.4 or 49-31-12.5, whichever is applicable. A company need only notify the
23 commission of any reduction in ~~rates or~~ prices for telecommunications services before
24 the effective date of the reduction and publish the appropriately amended tariff and
25 notice required in subdivision (1) of this section;

1 (3) Except as provided for in subdivision (2) of this section, may not deviate from any of
2 its current published ~~rates~~ prices; and

3 (4) Upon request of the commission, shall file with the commission copies of any
4 contracts, agreements, or arrangements with other companies that are affected by the
5 provisions of this chapter.

6 Section 27. That § 49-31-12.3 be amended to read as follows:

7 49-31-12.3. If any telecommunications company subject to the provisions of this chapter
8 neglects or refuses to file or publish its tariffs of ~~rates or~~ prices, and contracts and agreements
9 relating thereto, the telecommunications company, pursuant to chapter 21-34, is subject to a writ
10 of mandamus to be issued by any circuit court of the state in the judicial circuit where the
11 principal office of the telecommunications company is situated or where the offense may be
12 committed.

13 Section 28. That § 49-31-12.4 be amended to read as follows:

14 49-31-12.4. If a telecommunications company files with the commission any tariff stating a
15 new ~~rate or~~ price or any new practice affecting any noncompetitive telecommunications service,
16 the commission may:

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

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

1 days;

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

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

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

19 Section 29. That § 49-31-12.5 be amended to read as follows:

20 49-31-12.5. If a telecommunications company files with the commission any tariff stating a
21 new price or a change in price or practice affecting any emerging competitive
22 telecommunications service, the commission:

23 (1) ~~Shall permit any proposed change in price or practice to be effective upon twenty~~
24 ~~days notice to the commission and the customers affected by the change;~~

25 (2) May, upon receiving a petition to intervene or upon its own motion, conduct a

1 hearing to determine whether any new price or change in price or practice is fair and
2 reasonable. Any petition to intervene or motion shall be filed or made within twenty
3 days after the filing of the price or practice. The burden of proof is on the company
4 to show that any new price or change in price or practice is fair and reasonable. Any
5 hearing shall be completed and any order of the commission shall be issued within one
6 hundred twenty days after the effective date of the tariff filed;

7 (3) May, if the petition to intervene or motion alleges improper cross subsidization in
8 violation of § 49-31-4 or unjust or unreasonable discrimination pursuant to
9 § 49-31-11, suspend the effective date of any new price or a change in price or
10 practice, if the commission determines that any remedial order of the commission
11 pursuant to chapter 49-13 ~~will~~ does not adequately protect a party from irreparable
12 harm. Any suspension may not exceed thirty days following the effective date of the
13 tariff filed; and

14 (4) Shall, after notice and hearing, disapprove any price or practice found to be unfair and
15 unreasonable and may order a refund with interest of any portion of the change found
16 to be unfair and unreasonable. During any proceedings under this section, a
17 telecommunications company shall keep accurate records of the amounts collected as
18 a result of the increased price in the event of a refund at the conclusion of all
19 proceedings.

20 Section 30. That § 49-31-12.6 be amended to read as follows:

21 49-31-12.6. The ~~Public Utilities Commission~~ commission may require a telecommunications
22 company as defined in subdivision 49-31-1(9) to make a deposit when it files for approval of a
23 general change in ~~rates~~ or prices for any noncompetitive or emerging competitive
24 telecommunications service. The commission may require a telecommunications company to
25 deposit up to one hundred thousand dollars in the South Dakota Public Utilities Commission

1 Regulatory Assessment Fee fund, the amount to be designated by commission order.

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

3 49-31-15. The commission may compel access to any telecommunications facilities in this
4 state for reasonable compensation, without discrimination, and under rules the commission may
5 prescribe pursuant to chapter 1-26. Any telecommunications company desiring access to any
6 other company's facilities shall, if access is refused, make an application to the commission. Upon
7 receipt of the application, the commission shall ascertain the facts in the case. If in its judgment
8 the public service demands the access and the facilities of the applicant are in proper condition,
9 the commission may order the access upon such terms and conditions that are found to be in the
10 public interest and apportion the expense of the access. Nothing in this section may be construed
11 to prevent telecommunications companies from providing access to each other's facilities by
12 mutual consent.

13 Section 32. That § 49-31-17 be repealed.

14 ~~49-31-17. Notwithstanding § 49-31-15, no access may be compelled except at or within the~~
15 ~~local exchange boundary, or a centralized point serving several exchanges, of the~~
16 ~~telecommunications company refusing the access. The company refusing access may not be~~
17 ~~compelled by the commission to build a facility outside its local exchange territory, or a~~
18 ~~centralized point serving several exchanges, to connect to the telecommunications company~~
19 ~~requesting the access. Nothing in § 49-31-15 may be construed to prevent telecommunications~~
20 ~~companies from providing access to each other's facilities by mutual consent.~~

21 Section 33. That § 49-31-18 be amended to read as follows:

22 49-31-18. Every telecommunications company shall provide switched access for any other
23 telecommunications company doing business in the same vicinity that makes application therefor
24 and shall afford all reasonable and proper facilities for such switched access, for reasonable
25 compensation and without discrimination, and under rules the commission may prescribe. To

1 provide switched access facilities at reasonable rates and to enhance and preserve universal
 2 service prices, the commission may establish methods designed to determine and implement fair
 3 and reasonable cost based switched access rates prices by rules promulgated pursuant to chapter
 4 1-26.

5 Section 34. That § 49-31-19 be amended to read as follows:

6 49-31-19. ~~Access~~ Switched access charges for switching and transporting intrastate
 7 interexchange telecommunications services between facilities shall be published in the tariff filed
 8 by the telecommunications company providing the access.

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

13 Section 35. That § 49-31-20 be amended to read as follows:

14 49-31-20. ~~No person who owns telecommunications facilities in this state may consolidate~~
 15 ~~with or hold a controlling interest in the stock, bonds or assets of another telecommunications~~
 16 ~~company owning a competing line, switch, exchange or other telecommunications facilities.~~

17 ~~— A person may file with the commission an application to consolidate or merge~~
 18 ~~telecommunications companies. If the commission finds after an investigation, notice and, with~~
 19 ~~or without, public hearing that the public interest will be benefited by the consolidation or~~
 20 ~~merger, the commission may issue a permit granting the consolidation or merger~~ A
 21 telecommunications company that operates within the state shall notify the commission of any
 22 consolidation or merger with another telecommunications company that operates within the state
 23 thirty days prior to any consolidation or merger.

24 Section 36. That § 49-31-21 be repealed.

25 ~~— 49-31-21. Any person before commencing the construction of a telecommunications facility,~~

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

22 Section 37. That § 49-31-44 be amended to read as follows:

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

1 ~~inclusive, 49-31-4, and 49-31-4.1~~ section 40 of this Act. Each telecommunications company as
 2 defined in subdivision 49-31-1(9), upon the opening of an official docket to exercise commission
 3 authority pursuant to §§ 49-31-3.2 ~~to, 49-31-3.4, inclusive, 49-31-4, and 49-31-4.1~~ section 40
 4 of this Act, shall make a deposit not to exceed seventy-five thousand dollars in the
 5 "telecommunications investigation fund." The amount and the division of the deposit among the
 6 companies, if any, shall be designated by commission order. The commission shall use the deposit
 7 to defray the expense incident to conducting the hearing or investigation of the company making
 8 the deposit. The deposit is appropriated to the use of the commission for such purpose. The
 9 funds necessary for such expenses are hereby authorized to be expended.

10 Section 38. That § 49-31-58 be repealed.

11 ~~49-31-58. If it is determined to be in the public interest, the commission may utilize cost~~
 12 ~~allocation methods other than fully distributed methods as provided for in § 49-31-4 for the~~
 13 ~~assignment of costs among jointly provided noncompetitive services, emerging competitive~~
 14 ~~services, or fully competitive services. In determining whether any alternative method of~~
 15 ~~assigning costs is in the public interest the commission shall consider:~~

- 16 ~~(1) The impact of the method on efforts to preserve universal telecommunications service;~~
- 17 ~~(2) The extent to which the method will promote competition and facilitate the offering~~
 18 ~~of advanced telecommunications services to all classes of ratepayers throughout the~~
 19 ~~state; and~~
- 20 ~~(3) Any other factors that the commission considers relevant to the public interest.~~

21 Section 39. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
 22 follows:

23 The commission shall permit the joint ownership, operation, or sharing of the public switched
 24 network infrastructure, technology, information, and telecommunications facilities and functions
 25 between local exchange companies for the purpose of enabling or assisting an eligible

1 telecommunications carrier, as defined by the United States Code, title 47, section 214(e), to
2 provide telecommunications services, or access to information services, in its service area. A
3 local exchange company may not be required to share facilities with an eligible
4 telecommunications carrier if the facilities are to be used to provide service to customers in the
5 local exchange company's service area. Local exchange companies participating in the joint
6 ownership, operation, or sharing arrangement may not be treated as a common carrier for hire
7 or as offering common carrier services with respect to any infrastructure, technology,
8 information, facilities, or functions made available to an eligible telecommunications carrier under
9 the arrangement.

10 Section 40. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The commission shall have all powers necessary, including promulgating rules pursuant to
13 chapter 1-26, to implement and comply with the provisions of the federal Telecommunications
14 Act of 1996 as of February 8, 1996, which allows for the development of competition for
15 telecommunications services including local exchange services. To the extent required by the
16 federal Telecommunications Act of 1996 as of February 8, 1996, each telecommunications
17 company shall provide access to and interconnection with its telecommunications services and
18 network elements to any provider of competitive telecommunications services that requests
19 access and interconnection. Prices for the interconnection of facilities and equipment pursuant
20 to the United States Code, title 47, section 251(c)(2) and network elements as defined by the
21 United States Code, title 47, section 153(29) shall be cost-based. The provisioning of access to
22 and interconnection with a local exchange company's services and network elements are not
23 subject to §§ 49-31-1.1 to 49-31-1.4, inclusive, §§ 49-31-3.1 to 49-31-4, inclusive, §§ 49-31-
24 12.2, 49-31-12.4, 49-31-12.5, 49-31-18, and 49-31-19.