

# State of South Dakota

SEVENTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 1998

754B0428

CONFERENCE COMMITTEE ENGROSSED

NO. **HB1097** - 2/26/98

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.**

Introduced by: Representatives de Hueck, Brown (Jarvis), Crisp, Diedrich, and Duxbury and Senators Daugaard and Halverson

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

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

4 Section 1. That section 5 of HB 1160 as previously enacted by the Seventy-third Legislative  
5 Assembly be amended to read as follows:

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

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

13 Each telecommunications company that plans to offer or provide interexchange  
14 telecommunications service ~~or any telecommunications service other than local exchange service~~

1 shall file an application for a certificate of authority with the commission pursuant to this section.  
2 Telecommunications companies seeking to provide any local exchange service shall submit an  
3 application for certification by the commission pursuant to this Act. Applications required by this  
4 section shall be filed by the company no less than sixty days before its initiation of  
5 telecommunications service in this state. The commission shall have the exclusive authority to  
6 grant a certificate of authority. Each telecommunications company shall submit a two hundred  
7 fifty dollar application fee with its application which shall be deposited into the gross receipts tax  
8 fund established pursuant to § 49-1A-2. If the commission has not ruled upon an application at  
9 the end of the sixty days, the telecommunications company may initiate telecommunications  
10 services in the state until the commission reaches a decision on the application. If the application  
11 is granted, the company may continue to offer its services. However, if the application is denied,  
12 the company shall cease and desist from offering any further services in this state. A  
13 telecommunications company has the burden to prove in its application that it has sufficient  
14 technical, financial and managerial capabilities to offer the telecommunications services described  
15 in its application before the commission may grant a certificate of authority. The commission may  
16 rule upon a telecommunications company's application for a certificate of authority with or  
17 without hearing.

18 Any certificate of authority granted by the commission may be suspended or revoked  
19 pursuant to chapter 1-26 for a willful violation of the laws of this state, a willful failure to comply  
20 with a rule or order of the commission, or other good cause. The commission shall, by rules  
21 promulgated pursuant to chapter 1-26, prescribe the necessary procedures to implement this  
22 section. A telecommunications company that had lawful authority immediately prior to the  
23 effective date of this Act to provide interexchange telecommunications services ~~or~~  
24 ~~telecommunications services other than local exchange service~~ shall continue to have such  
25 authority. Any certificate of authority to provide such telecommunications service may not be

1 sold, assigned, leased, or transferred without commission approval. The offering of such  
2 telecommunications services by a telecommunications company without a certificate of authority  
3 or inconsistent with this section is a Class 1 misdemeanor.

4 Section 2. That section 12 of HB 1160 as previously enacted by the Seventy-third Legislative  
5 Assembly be repealed.

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

11 Section 3. That section 17 of HB 1160 as previously enacted by the Seventy-third Legislative  
12 Assembly be amended to read as follows:

13 Pursuant to 47 U.S.C. § 251(f)(1) as of January 1, 1998, the obligations of an incumbent  
14 local exchange carrier, which include the duty to negotiate and provide interconnection,  
15 unbundled network elements, resale, notice of changes and collocation, do not apply to a rural  
16 telephone company unless the company has received a bona fide request for interconnection,  
17 services, or network elements and the commission determines that the rural telephone company  
18 shall fulfill the request. The commission may only determine that the rural telephone company  
19 shall fulfill the request if, after notice and hearing pursuant to chapter 1-26, the commission finds  
20 that the request is not unduly economically burdensome the request is technically feasible, and  
21 the request is consistent with the universal service principles and provisions set forth in 47  
22 U.S.C. § 254 as of January 1, 1998. The commission shall make such determination within one  
23 hundred twenty days after receiving notice of the request. The person or entity making the  
24 request shall have the burden of proof as to whether each of the standards for reviewing the  
25 request has been met. Nothing in this section prevents a rural telephone company from

1 voluntarily agreeing to provide any of the services, facilities, or access referenced by this section.

1 **BILL HISTORY**

2 1/16/98 First read in House and referred to Judiciary. H.J. 57

3 1/28/98 Scheduled for Committee hearing on this date.

4 1/28/98 Judiciary Deferred to another day.

5 1/30/98 Scheduled for Committee hearing on this date.

6 2/2/98 Scheduled for Committee hearing on this date.

7 2/2/98 Judiciary Do Pass Amended, Passed, AYES 9, NAYS 4. H.J. 369

8 2/4/98 Judiciary Hog Housed.

9 2/5/98 House of Representatives Do Pass Amended, Passed, AYES 61, NAYS 5. H.J. 414

10 2/6/98 First read in Senate and referred to Judiciary. S.J. 370

11 2/18/98 Scheduled for Committee hearing on this date.

12 2/18/98 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 2. S.J. 576

13 2/20/98 Referred to State Affairs. S.J. 623

14 2/23/98 State Affairs Hog Housed.

15 2/23/98 State Affairs Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 647

16 2/23/98 State Affairs Place on Consent Calendar. S.J. 647

17 2/24/98 Second reading of consent calendar items.

18 2/24/98 Second reading of consent calendar items.

19 2/24/98 Senate Do Pass Amended, Passed, AYES 35, NAYS 0. S.J. 672

20 2/25/98 House of Representatives failed to concur, appoint Conference Committee. H.J. 936

21 2/26/98 House of Representatives Conference committee report adopted Passed, AYES 66,  
22 NAYS 0.

23 2/26/98 Senate Conference committee report adopted Passed.