

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

464D0694

SENATE BILL NO. 160

Introduced by: Senators Flowers, Dunn (Jim), and Olson and Representative Wetz

1 FOR AN ACT ENTITLED, An Act to provide for a fund to assist in the delivery of advanced
2 telecommunications services.

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

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

6 For the purposes of this Act, the term, SDHCF, means the South Dakota high cost fund
7 which is hereby created.

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

10 For purposes of this Act, access to advanced telecommunications services means an evolving
11 level of access to telecommunications services and facilities that, taking into account advances
12 in telecommunications and information technologies and services, and market demand, the
13 commission determines should be provided at reasonable and affordable prices to South Dakota
14 consumers. The commission shall, by rules adopted pursuant to chapter 1-26, determine what
15 telecommunications services and facilities should be deemed advanced telecommunications
16 services for purposes of this Act and thus eligible for support from the SDHCF. The definition
17 of advanced telecommunications services established by the commission shall, at a minimum,

1 give consumers the ability to transmit and receive information reliably at a data transmission rate
2 of no less than 400 Kbps.

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

5 The commission shall periodically, but not less than once every three years, conduct a
6 proceeding to review and change, if appropriate, the advanced telecommunications services
7 definition in a manner consistent with the policies stated in § 49-31-60 with the goal of further
8 developing the public communications network infrastructure and enhancing access throughout
9 the state to greater bandwidth and a changing, wider range of communications capabilities.

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

12 Any provider of intrastate telecommunications services, including any provider not otherwise
13 subject to regulation by the commission, including any corporation, person, or entity that
14 provides fixed or mobile radio services having direct or automated access to the local exchange
15 service networks or any service which provides access to the internet and other information
16 services shall contribute through surcharges, on an equitable and nondiscriminatory basis, to the
17 SDHCF. The commission may exempt a provider or class of providers from this requirement if
18 the provider's telecommunications activities are limited to such extent that the level of the
19 provider's contribution to the SDHCF is de minimus.

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

22 Contributions to the SDHCF shall be submitted on an annual basis and shall be equal to two
23 percent of the annual intrastate gross operating revenues of telecommunications service
24 providers subject to the contribution. Revenues from wholesale transactions between service
25 providers shall be exempted in determining contributions if the service provided is a component

1 part of a service provided to an end user. This exemption includes network access charges,
2 interconnection charges, and billing and collection charges paid to a local exchange company.
3 No telecommunications service provider may be prevented from charging its retail customers for
4 the SDHCF contributions. Contributions to the SDHCF are not subject to any state or local taxes
5 or franchise fees.

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

8 Required contributions shall be collected and remitted in accordance with procedures
9 established by the commission by rules promulgated pursuant to chapter 1-26.

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

12 The commission may direct any telecommunications service provider to make available its
13 books and records or other information for inspection by the commission in a form required by
14 the commission in rules promulgated pursuant to chapter 1-26 to ensure that all contributions
15 required by this Act have been remitted.

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

18 The commission may impose a fine on any telecommunications service provider that fails to
19 remit any contribution as established pursuant to this Act or that fails to follow a directive of the
20 commission concerning its books and records or the need for other information relating to
21 contributions required by this Act of not less than five hundred nor more than two thousand
22 dollars for each offense. Each violation of this section by a telecommunications service provider,
23 person, or entity is a separate offense. In the case of a continuing failure to comply, each day the
24 violation continues is a separate offense. In construing and enforcing the provisions of this
25 section relating to penalties, the act, omission, or failure of an officer, agent, or employee of the

1 telecommunications service provider acting within the scope of the officer's, agent's, or
2 employee's official duties of employment, shall in each case be considered the act, omission, or
3 failure of that telecommunications service provider.

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

6 A telecommunications service provider that fails to remit the contribution required by this
7 Act or fails to follow a directive of the commission concerning its books and records or other
8 information issued pursuant to this Act may also have its certificate of authority to provide
9 telecommunications services revoked by the commission. Further, the commission may take any
10 legal action necessary or proper in state court for the recovery of uncollected contributions due
11 from telecommunications service providers.

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

14 No money collected and deposited into the SDHCF becomes, at any time, money of the state
15 and does not become part of the general budget of the commission or any other state agency.
16 Payments from the SDHCF are not an obligation of the state. No requests for reimbursement
17 from the SDHCF may be paid with state moneys.

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

20 Moneys in the SDHCF, after reasonable costs of administration are applied, shall be
21 distributed to qualifying local exchange carriers. Only those local exchange carriers that have
22 been designated by the commission as eligible telecommunications carriers pursuant to § 49-31-
23 78 and have incurred facility and equipment costs to deliver the advanced telecommunications
24 services subject to this Act are eligible to receive support from the SDHCF.

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

1 follows:

2 The commission shall determine the amount of high cost funding to be distributed to each
3 eligible telecommunications carrier that is providing the advanced telecommunications services
4 deemed subject to this Act. Distributions shall be based on the difference between the necessary
5 facility and equipment costs incurred by a carrier to deliver these advanced services on a per-line
6 basis to locations outside of a defined wire center zone and the necessary actual or estimated
7 facility and equipment costs to deliver the same or similar services on a per-line basis within a
8 defined wire center zone. The costs of delivering such services within a wire center zone for
9 purposes of determining SDHCF distributions may be determined by the commission through
10 the establishment of an average carrier cost of delivering the services, or based on proxies which
11 reasonably quantify such costs. No customer premise equipment may be included as part of the
12 equipment costs. All facility and equipment costs shall include a reasonable return on investment.
13 For purposes of determining distributions to eligible telecommunications carriers, the commission
14 shall define the wire center zone to be used and shall further establish a benchmark which
15 requires that a carrier's facility and equipment costs for delivering the services outside such zone
16 exceed the costs of delivering the services within such zone by a specified percentage before
17 being eligible for distribution from the fund.

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

20 An eligible telecommunications carrier shall also be eligible to receive funding from the
21 SDHCF to provide increased discounts for advanced services provided to libraries, elementary
22 and secondary schools, and rural health care institutions, as defined in 47 U.S.C. § 254(h)(5) as
23 of January 1, 1998. The discounts shall be in addition to any discounts available through federal
24 universal service mechanisms and shall be established by rules promulgated pursuant to chapter
25 1-26. In establishing the discounts, the commission shall take into account recommendations of

1 the Bureau of Information and Telecommunications.

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

4 All carriers eligible to receive support from the SDHCF shall request funding through an
5 application process established by the commission and as part of this application process shall
6 be required to provide cost support information.

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

9 The commission shall engage the National Exchange Carrier's Association, or some other
10 independent private entity, to administer collections and distributions from the SDHCF, upon
11 such conditions and security as the commission determines should be required.

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

14 The commission shall adopt rules pursuant to chapter 1-26 for implementation and
15 administration of the SDHCF in accordance with the provisions of this Act setting forth
16 procedures for the collection and remission of surcharges and criteria for distribution to eligible
17 telecommunications carriers. The rules shall become effective by no later than January 1, 2001.

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

20 The commission shall coordinate any distributions received by carriers through the SDHCF
21 with any distributions received from federal universal service funding mechanisms for the same
22 services.

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

25 By no later than October first of each year, beginning in year 2001, the commission shall

1 submit a report to the Executive Board of the Legislative Research Council summarizing SDHCF
2 activity for the preceding year. The report, at minimum, shall contain the following:

- 3 (1) A statement of all collections and distributions from the SDHCF;
- 4 (2) A record of total cost of universal service fund administration;
- 5 (3) Audit reports and recommendations provided by the fund administrator; and
- 6 (4) Information detailing what impact the fund has had in enhancing the level of access
7 to advanced services consistent with the purposes of this Act.