

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

707I0332

HOUSE ENGROSSED NO. **SB 41** - 02/28/2003

Introduced by: The Committee on Commerce at the request of the Public Utilities
Commission

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a no solicitation calls list for
2 persons wishing not to receive unsolicited telephone calls, to create a telephone solicitation
3 account, and to establish certain fees and civil penalties.

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) "Addressable," enabling users to connect and communicate with a specific party easily
8 and securely on a dial-up, addressable basis;
- 9 (2) "Available," ensuring that network services are available if the user requires them,
10 even at times of peak usage; designed to be a nonblocking network, minimizing
11 network contention;
- 12 (3) "Broadband network," the broadband network extends the range of fully switched,
13 addressable, robust transport services over the fiber network which increase in
14 multiples of OC-1 (51.84 Mbps), including OC-3 (155.52 Mbps) and OC-12 (622.08
15 Mbps);



- 1 (4) "Centron and centron-like services," services which provide custom switching features
2 which include distributive dial tone, select number screening, toll restriction and
3 screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting
4 and screening;
- 5 (5) "Commission," the Public Utilities Commission;
- 6 (6) "Common carrier," anyone who offers telecommunications services to the public;
- 7 (7) "Eligible telecommunications carrier," a local exchange carrier designated by the
8 commission pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to
9 receive universal service support funding;
- 10 (8) "Feature rich," providing the specific features and functionality required by users'
11 voice, data, video, graphics, imaging, and multimedia applications; functionally
12 beyond mere transport;
- 13 (8A) "Financial institution," any financial institution as defined in 15 U.S.C. § 6827 as of
14 January 1, 2003, including any financial institution affiliate that controls, is controlled
15 by, or is under common control with the financial institution;
- 16 (9) "Incumbent local exchange carrier," a local exchange carrier, including successors and
17 assigns, which was providing local exchange service within a defined service area in
18 this state on or before February 8, 1996;
- 19 (10) "Interexchange telecommunications service," telecommunications service between
20 points in two or more exchanges;
- 21 (11) "LATA," a local access and transport area;
- 22 (12) "Local exchange area," a any geographic area established by a local exchange carrier
23 as filed with or approved by the commission for the administration of local
24 telecommunications service which may consist of one or more central offices or wire

1 centers together with associated facilities used in furnishing telecommunications
2 service in that area;

3 (13) "Local exchange service," the access to and transmission of two-way switched
4 telecommunications service within a local exchange area;

5 (14) "Narrowband network," a fully switched digital network covering the transport range
6 from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps information B
7 (Bearer) channels and a 16 Kbps signaling D (Delta) channel;

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

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

16 (17) "Private," ensuring confidentiality and integrity of network transport of messages
17 without dependency on specialized customer premise security devices;

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

1 (19) "Register," a list of names and telephone numbers of residential telephone subscribers
2 who have properly enrolled to prevent unsolicited telephone calls;

3 (20) "Residential telephone subscriber," any person residing in the state who has residential
4 telephone service, including cellular service, personal communications service, and
5 wireless local loop service, primarily used for personal use;

6 (21) "Robust," easily and economically sustaining the rigors of growth and extensive public
7 use;

8 ~~(20)~~(22) "Rural telephone company," a any local exchange company as defined in 47
9 U.S.C. § 153(37) as of January 1, 1998;

10 ~~(21)~~(23) "Secure," physically precluding unwanted access to network and information;

11 ~~(22)~~(24) "Service area," a geographic area established by the commission for the
12 purpose of determining universal service obligations and support mechanisms.
13 For a rural telephone company, the service area is the company's study area or
14 any other area designated jointly by the commission and the Federal
15 Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of
16 January 1, 1998;

17 ~~(23)~~(25) "Standard," supporting universal interfaces and networking standards and
18 protocols of generally accepted standards setting bodies;

19 ~~(24)~~(26) "Switched," providing circuit, packet, or channel type switching, each suited
20 to specific application requirements;

21 ~~(25)~~(27) "Switched access," ~~an~~ any exchange access service purchased for the
22 origination and termination of interexchange telecommunications services
23 which includes central office switching and signaling, local loop facility, or
24 local transport;

1 not include any not-for-profit or charitable organization exempt from federal income
2 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of
3 January 1, 2003, which makes telephone calls solely to solicit a charitable donation;

4 (32) "Unsolicited telephone call," any telephone solicitation call other than a call made:

5 (a) In response to an express request of the person called;

6 (b) Primarily in connection with an existing debt or contract, payment or
7 performance of which has not been completed at the time of such call;

8 (c) To any person with whom the telephone solicitor, or any business or financial
9 institution on whose behalf the telephone call is being made has an established
10 business relationship or a business relationship that existed within the
11 immediately preceding twelve months; or

12 (d) To any person for the purpose of obtaining information and establishing a date
13 and time for an appointment with the telephone solicitor which will take place
14 at the solicitor's place of business or the consumer's home and the call is not
15 made by an automated telephone dialing system. For purposes of this
16 subsection, an automated telephone dialing system is any automatic terminal
17 equipment that stores or produces numbers to be called randomly or
18 sequentially;

19 ~~(28)~~(33) "Wideband network," the wideband network extends the range of fully
20 switched, digital, addressable information transport from the 144 Kbps to the
21 DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and
22 6.312 Mbps, respectively.

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

1 Any telephone solicitor who makes unsolicited telephone calls shall institute procedures that
2 comply with the provisions of this Act for obtaining a list of persons who do not wish to receive
3 unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone solicitor
4 may make an unsolicited telephone call to any number listed on the register. The commission
5 may promulgate rules, pursuant to chapter 1-26, concerning procedures and requirements
6 regarding the implementation of a register, setting of fees for purchase of the register, form of
7 the application, requirements for acquiring a copy of the register, requirements for enrollment
8 on and removal from the register, procedures for maintaining a register, setting of fees to enroll
9 or renew enrollment on the register, procedures for operating the register, standards concerning
10 the use of the register, and application of the civil fines.

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

13 The commission shall maintain a register of names and telephone numbers of each South
14 Dakota residential telephone subscriber who has elected not to receive unsolicited telephone
15 calls. The commission may provide to the Federal Trade Commission, for inclusion in the
16 national "do-not-call" registry, the telephone numbers listed in the register. The commission may
17 include South Dakota residential telephone subscribers listed in the national "do-not-call" registry
18 in the register.

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

21 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
22 telephone subscribers shall obtain a copy of the register.

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

1 There is hereby established in the state treasury, the telephone solicitation account. Unless
2 otherwise provided by law, this fund shall consist of all fees and fines imposed pursuant to this
3 Act designated for deposit in the fund. The fund shall be maintained separately and administered
4 by the commission to implement and administer provisions of this Act. Any interest earned on
5 money in the fund shall be deposited in the fund. Expenditures from the fund shall be budgeted
6 through the normal budget process. Unexpended funds and interest shall remain in the fund until
7 appropriated by the Legislature. Any expenditure from the fund shall be disbursed on warrants
8 drawn by the state auditor and shall be supported by vouchers approved by the commission.

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

11 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
12 telephone subscribers shall pay to the commission an annual fee of not more than five hundred
13 dollars. Fees collected under this section shall be credited to the telephone solicitation account.

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

16 The commission shall establish or provide for the operation of a register. The register may
17 be operated by the commission or by another entity under contract with the commission. A
18 residential telephone subscriber may enroll on the register in accordance with procedures
19 prescribed by the commission. A subscriber shall pay to the commission a fee, set pursuant to
20 section 2 of this Act, of not more than five dollars to be listed on the register. Fees collected
21 under this section shall be credited to the telephone solicitation account established in section 5
22 of this Act.

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

1 Notwithstanding any other provision of this Act, the commission may use the national "do-
2 not-call" registry established and maintained by the Federal Trade Commission as the register.

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

5 Notwithstanding the provisions of chapter 49-1A, the commission may use amounts
6 deposited in the gross receipts tax fund to implement this Act. All funds used shall be returned
7 to the gross receipts tax fund within three years of implementation of the register.

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

10 Any telecommunications company that provides local exchange service shall inform its
11 customers of the provisions of this Act by publication of the notice in the consumer pages of its
12 telephone directories.

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

15 Any person who violates this Act or any rules promulgated pursuant to this Act is subject
16 to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The
17 commission may impose a civil fine of not more than five thousand dollars for each offense. In
18 determining the amount of the penalty upon finding a violation, or the amount of a compromise
19 settlement, the commission shall consider the appropriateness of the penalty to the size of the
20 business of the person charged, prior offenses and compliance history, and the good faith of the
21 person charged in attempting to achieve compliance. Any telephone solicitation made to a person
22 whose name first appears on the register is not a violation of this Act if the solicitation is made
23 within thirty days of the receipt of the register. Any penalty collected pursuant to this section
24 shall be credited to the telephone solicitation account established pursuant to section 5 of this

1 Act.