

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-NINTH SESSION**

**S.F. No. 1862**

(SENATE AUTHORS: SPARKS)

DATE	D-PG	OFFICIAL STATUS
03/18/2015	969	Introduction and first reading Referred to Jobs, Agriculture and Rural Development

A bill for an act

1.1 relating to telecommunications; modifying rate case procedures; standardizing  
 1.2 consumer billing practices; requiring intrastate call completion; simplifying  
 1.3 certification procedures; removing antiquated or obsolete provisions; amending  
 1.4 Minnesota Statutes 2014, sections 237.01, by adding subdivisions; 237.02;  
 1.5 237.035; 237.075, subdivision 1, by adding a subdivision; 237.081, subdivisions  
 1.6 1, 2, 4; 237.12, by adding a subdivision; proposing coding for new law in  
 1.7 Minnesota Statutes, chapter 237; repealing Minnesota Statutes 2014, sections  
 1.8 237.03; 237.072; 237.075, subdivisions 2, 3, 6, 9; 237.21; 237.22; 237.57;  
 1.9 237.59, subdivisions 1, 1a, 2, 3, 4, 5, 6, 8, 9, 10; 237.64, subdivision 2; 237.775;  
 1.10 237.80, subdivision 2.  
 1.11

1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.13 Section 1. Minnesota Statutes 2014, section 237.01, is amended by adding a  
 1.14 subdivision to read:

1.15 Subd. 1a. **Basic services.** "Basic services" means (1) telecommunications services  
 1.16 provided to residential customers and to business customers subscribing to three or fewer  
 1.17 business lines, and (2) switched access services.

1.18 Sec. 2. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision  
 1.19 to read:

1.20 Subd. 3a. **Local service.** "Local service" means wire-line access to  
 1.21 telecommunications service enabling the customer to originate calls to, and receive calls  
 1.22 from, telephone numbers assigned under the North American Numbering Plan. Local  
 1.23 service does not include interexchange service.

1.24 Sec. 3. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision  
 1.25 to read:

2.1            Subd. 5a. **Switched access rates.** "Switched access rates" means any charge by a  
2.2 local service provider assessed to an interexchange carrier for the ability to originate or  
2.3 terminate interexchange telecommunications traffic to or from the called party's premises.

2.4            Sec. 4. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision  
2.5 to read:

2.6            Subd. 5b. **Telecommunications.** "Telecommunications" means the transmission of  
2.7 information of the user's choosing between or among points specified by the user without  
2.8 change in the form or content of the information as sent and received.

2.9            Sec. 5. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision  
2.10 to read:

2.11           Subd. 6a. **Telecommunications service provider.** "Telecommunications service  
2.12 provider" means a provider of wire-line service, packet-based service, data service, or any  
2.13 other telecommunications service that provides a customer with the ability to originate  
2.14 or terminate calls using the North American Numbering Plan, including but not limited  
2.15 to telephone companies and telecommunications carriers.

2.16           Sec. 6. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision  
2.17 to read:

2.18           Subd. 6b. **Telecommunications services.** "Telecommunications services" means  
2.19 the offering of telecommunications for a fee directly to the public or to such classes of  
2.20 users as to be effectively available to the public regardless of the facilities used.

2.21           Sec. 7. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision  
2.22 to read:

2.23           Subd. 9. **Intermediate provider.** "Intermediate provider" means any entity that  
2.24 carries or processes telecommunications traffic that traverses or will traverse the public  
2.25 switched network at any point insofar as that entity neither originates nor terminates the  
2.26 traffic, but is not certified in Minnesota to provide retail telecommunications service  
2.27 to the public.

2.28           Sec. 8. Minnesota Statutes 2014, section 237.02, is amended to read:

2.29           **237.02 GENERAL AUTHORITY OF DEPARTMENT AND COMMISSION;**  
2.30 **DEFINITIONS.**

3.1 The Department of Commerce and the Public Utilities Commission are hereby  
 3.2 vested with ~~the same~~ jurisdiction and supervisory power over telephone and companies,  
 3.3 telecommunications companies carriers, telecommunications service providers, and  
 3.4 intermediate providers doing business in this state as ~~the commission's predecessor, the~~  
 3.5 ~~railroad and warehouse commission, had over railroad and express companies~~ provided  
 3.6 in this chapter. The definitions set forth in sections 216A.02 and 216B.02 also apply  
 3.7 to this chapter.

3.8 Sec. 9. Minnesota Statutes 2014, section 237.035, is amended to read:

3.9 **237.035 TELECOMMUNICATIONS CARRIER EXEMPTION.**

3.10 (a) Telecommunications carriers are subject to regulation under this chapter only to  
 3.11 the extent required under paragraphs (b) to (e).

3.12 (b) Telecommunications carriers shall comply with sections 237.121 and 237.74.

3.13 (c) Telecommunications carriers shall comply with section 237.16, subdivisions  
 3.14 8 and 9.

3.15 (d) To the extent a telecommunications carrier offers local service, it shall obtain a  
 3.16 certificate under section 237.16 for that local service.

3.17 (e) In addition, a telecommunications carrier's local service is subject to this chapter  
 3.18 ~~except that:~~

3.19 ~~(1) a telecommunications carrier is not subject to rate-of-return or earnings~~  
 3.20 ~~investigations under section 237.075 or 237.081; and~~

3.21 ~~(2) a telecommunications carrier is not subject to section 237.22.~~

3.22 Sec. 10. Minnesota Statutes 2014, section 237.075, subdivision 1, is amended to read:

3.23 Subdivision 1. **Notice.** Unless the commission otherwise orders, no telephone  
 3.24 company shall ~~change~~ increase a rate ~~which has been duly established under this chapter,~~  
 3.25 for basic services ~~except upon 60 days' notice to the~~ customers, the department, and the  
 3.26 commission. The notice shall ~~include statements of facts, expert opinions, substantiating~~  
 3.27 ~~documents, and exhibits, supporting the change requested,~~ and state the change proposed  
 3.28 to be made in the rates then in force and the time when the modified rates will go into  
 3.29 effect. ~~The filing telephone company shall give written notice, as approved by the~~  
 3.30 ~~commission, of the proposed change to the governing body of each municipality and~~  
 3.31 ~~county in the area affected. All proposed changes shall be shown by filing new schedules~~  
 3.32 ~~or shall be plainly indicated upon schedules on file and in force at the time.~~ A telephone  
 3.33 company may give notice to its customers by the same means used to bill the customer,  
 3.34 including by e-mail or other electronic means, or by any other reasonable means that

4.1 provides actual notice to the customer. Customer notices for increases of intrastate rates  
4.2 must include as a heading "NOTICE OF PRICE INCREASE." All proposed changes shall  
4.3 be shown on the telephone company's tariff. Any proposed increase to switched access  
4.4 rates shall include an explanation stating how the increase is consistent with federal law.  
4.5 All purchasers of switched access shall be charged the rate listed in the provider's price list  
4.6 and shall pay for switched access at that rate.

4.7 Sec. 11. Minnesota Statutes 2014, section 237.075, is amended by adding a subdivision  
4.8 to read:

4.9 Subd. 3a. **Rate increases.** No telecommunications provider shall increase rates for  
4.10 basic services until after January 1, 2016. Thereafter, rates for basic service shall not be  
4.11 increased by more than ten percent per year, unless the commission finds that exigent  
4.12 circumstances justify a greater increase.

4.13 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.14 Sec. 12. **[237.077] SCHEDULES; TARIFFS.**

4.15 Subdivision 1. **Filing requirements.** Except as set forth in this section,  
4.16 telecommunications service providers are not required to maintain or file any rate  
4.17 schedule, tariff, contract, or agreement with the commission.

4.18 Subd. 2. **General provisions applicable to all tariffs.** Any tariff filed with the  
4.19 commission in accordance with this chapter must include all terms, conditions, rates, and  
4.20 charges that apply to the services specified in the tariff.

4.21 Subd. 3. **Tariff.** (a) Any telecommunications service provider that offers intrastate  
4.22 switched access services shall maintain on file with the commission a tariff containing  
4.23 the terms, conditions, rates, and charges the telecommunications service provider has  
4.24 established for intrastate switched access services. Filings under this section are governed  
4.25 by chapter 14.

4.26 (b) Every local exchange carrier that provides basic telecommunications service  
4.27 shall maintain on file with the commission a tariff containing the terms, conditions, rates,  
4.28 and charges for that service.

4.29 (c) Subject to any applicable notice to end users required by this chapter, a telephone  
4.30 company tariff becomes effective 60 days after it is filed with the commission.

4.31 (d) A person who objects to a tariff shall file an objection within 30 days of the filing  
4.32 of the tariff. The person filing the tariff may reply to the objection within five days of  
4.33 the filing of the objection.

5.1 (e) The commission shall review the tariff, the objection, and the reply within 60  
 5.2 days of the filing of the tariff and shall issue an order approving the tariff or order that  
 5.3 a contested case hearing be conducted under chapter 14.

5.4 Sec. 13. Minnesota Statutes 2014, section 237.081, subdivision 1, is amended to read:

5.5 Subdivision 1. **Commission investigation.** Whenever the commission believes  
 5.6 that a service is inadequate or cannot be obtained or that an investigation of any matter  
 5.7 relating to any telephone service should for any reason be made, it may on its own motion  
 5.8 investigate the service or matter with or without notice, except that the commission shall  
 5.9 give notice to a telephone company before it investigates the level of rates for basic  
 5.10 services charged by the company.

5.11 Sec. 14. Minnesota Statutes 2014, section 237.081, subdivision 2, is amended to read:

5.12 Subd. 2. **Procedure after investigation.** (a) If, after making an investigation under  
 5.13 subdivision 1 or 1a, the commission finds that a significant factual issue raised has not  
 5.14 been resolved to its satisfaction, ~~the commission shall follow the appropriate procedure~~  
 5.15 ~~prescribed by this subdivision.~~

5.16 ~~(b) For an investigation concerning the reasonableness of the rates for noncompetitive~~  
 5.17 ~~services of a telephone company whose general revenue requirement is determined under~~  
 5.18 ~~section 237.075, the commission shall order the company to initiate a rate proceeding in~~  
 5.19 ~~accordance with section 237.075. The commission shall allow the company at least 120~~  
 5.20 ~~days after the date of the commission's order to initiate the proceeding.~~

5.21 ~~(c) For other investigations,~~ the commission shall order that a contested case hearing  
 5.22 be conducted under chapter 14 unless the complainant, the telephone company, and the  
 5.23 commission agree that an expedited hearing under section 237.61 is appropriate, or unless  
 5.24 the commission finds that no significant factual issues are in dispute.

5.25 Sec. 15. Minnesota Statutes 2014, section 237.081, subdivision 4, is amended to read:

5.26 Subd. 4. **Establishment of rate and price.** Whenever the commission finds,  
 5.27 after a proceeding under subdivision 2, that (1) a service that can be reasonably  
 5.28 demanded cannot be obtained, (2) that any rate, toll, tariff, charge, or schedule, or any  
 5.29 regulation, measurement, practice, act, or omission affecting or relating to the production,  
 5.30 transmission, delivery, or furnishing of telephone service or any service in connection with  
 5.31 telephone service, is in any respect ~~unreasonable, insufficient, or unjustly discriminatory~~  
 5.32 contrary to the requirements of this chapter, or (3) that any service is inadequate, the  
 5.33 commission shall make an order respecting the tariff, regulation, act, omission, practice,

6.1 or service that is just and reasonable and, if applicable, shall establish just and reasonable  
6.2 rates and prices for basic services.

6.3 Sec. 16. **[237.102] CUSTOMER BILLING.**

6.4 (a) Bills to customers from telecommunications service providers shall be rendered  
6.5 regularly, and shall contain an itemized listing of all charges and the period of time  
6.6 covered by the billing. Taxes and fees collected and remitted as mandated by law shall be  
6.7 separately identified, itemized, and distinguished from the service charges on the bill.

6.8 (b) All bills shall contain an explanation of the charges in plain language. Bills shall  
6.9 include a company telephone number the customer may contact with billing questions or  
6.10 concerns. Each bill shall also provide the Public Utility Commission's telephone number.

6.11 (c) Charges billed to a customer shall not exceed the price stated in any related  
6.12 offers or advertisements as the regular price for the service, including any fractional  
6.13 monthly amounts, with the exception of taxes and fees collected and remitted for required  
6.14 government programs.

6.15 (d) Any rates, charges, or fees collected by the telecommunications service provider  
6.16 that are not required to be remitted by state or federal law and that are not included in the  
6.17 telecommunications service provider's price list shall not be charged to the customer,  
6.18 unless otherwise approved by the commission.

6.19 (e) Customers shall not be assessed an additional charge or fee to obtain a paper bill.

6.20 Sec. 17. Minnesota Statutes 2014, section 237.12, is amended by adding a subdivision  
6.21 to read:

6.22 Subd. 5. **Discontinuance for nonpayment.** (a) Except as otherwise provided in  
6.23 an interconnection agreement or contract, in the event an interexchange carrier or a local  
6.24 exchange carrier fails to pay full compensation to a local exchange carrier for services  
6.25 and a written dispute has not been registered between the companies, the local exchange  
6.26 carrier may discontinue accepting traffic from the alleged nonpaying carrier after the local  
6.27 exchange carrier provides to the commission, the department, and the nonpaying carrier  
6.28 30 days' notice of intent to discontinue service. The notice to the department shall indicate  
6.29 whether the discontinuance will result in the disruption of service to end users or others  
6.30 and what steps will be taken, if any, to prevent such disruption.

6.31 (b) Any person objecting to the discontinuance shall file an objection with the  
6.32 commission within 30 days of notice of intent to disconnect. If an objection is filed,  
6.33 the department shall investigate and recommend to the commission whether public  
6.34 convenience requires continued service to the other carrier and, if so, the recommended

7.1 compensation, terms, and conditions of the continuance of service between the companies.  
7.2 A carrier objecting to the discontinuance must pay all undisputed charges while the  
7.3 objection is being considered.

7.4 (c) If no objection is filed within 30 days, the discontinuance shall be deemed  
7.5 approved and the local exchange carrier may discontinue service.

7.6 Sec. 18. **[237.131] INTRASTATE CALL ROUTING.**

7.7 Subdivision 1. **Certain practices prohibited.** (a) Telecommunications service  
7.8 providers and intermediate providers shall not participate in the adoption or perpetuation  
7.9 of intrastate call routing practices that result in the blocking, restriction, or interference  
7.10 with the completion of calls to certain telephone exchanges, for the purpose of avoiding the  
7.11 terminating access rates of those exchanges. All contracts, agreements, or arrangements  
7.12 with intermediate providers to deliver traffic on behalf of the telecommunications service  
7.13 provider shall not contain terms that are inconsistent with this section.

7.14 (b) A telecommunications service provider shall not knowingly contract with an  
7.15 intermediate provider that is not registered with the commission.

7.16 (c) For calls that are not completed within ten seconds, the telecommunications  
7.17 service provider must provide the caller with a message stating the call is being processed.  
7.18 This requirement applies regardless of whether a ringtone is used by the originating  
7.19 provider while the call is being processed.

7.20 (d) Upon learning a call has failed to terminate, the service provider for the customer,  
7.21 whether for the called or calling customer, shall:

7.22 (1) determine the reason for the failure;

7.23 (2) notify the affected called and calling customers; and

7.24 (3) report to the commission or department that the failure occurred and the actions  
7.25 taken to correct the cause of the failure.

7.26 (e) A telecommunications service provider shall be liable under this section and is  
7.27 subject to section 237.461 for the actions of an intermediate provider used to deliver  
7.28 traffic on its behalf if:

7.29 (1) the intermediate provider is an agent, contractor, or subcontractor of the  
7.30 telecommunications service provider, or is employed by the telecommunications service  
7.31 provider; and

7.32 (2) the telecommunications service provider knew or should have known of the  
7.33 intermediate provider's actions.

8.1 Subd. 2. **Enforcement; commission authority.** (a) The commission is authorized  
8.2 to investigate alleged violations of subdivision 1. Investigations under this subdivision  
8.3 shall be conducted in a manner consistent with section 237.081.

8.4 (b) If the commission finds a telecommunications service provider has violated  
8.5 subdivision 1, the commission may levy a fine or revoke the telecommunications service  
8.6 provider's authorization to operate in the state. Enforcement actions under this paragraph  
8.7 are subject to the contested case procedures in chapter 14.

8.8 **Sec. 19. [237.132] REGISTRATION OF INTERMEDIATE PROVIDERS.**

8.9 (a) An intermediate provider shall file a registration with the commission that  
8.10 includes the company name, address, a contact name, and a telephone number that will  
8.11 be answered 24 hours each day, seven days a week, to address any failures of calls to  
8.12 complete within Minnesota. The contacts provided by each entity should be well-versed in  
8.13 the subject matter of call routing and call completion. Intermediate providers are subject  
8.14 to regulation under this chapter only to the extent required under section 237.131.

8.15 (b) The department shall maintain a contact list of all registered intermediate  
8.16 providers on its Web site to enable expeditious resolution of any call routing and call  
8.17 completion problems involving intermediate providers.

8.18 (c) Intermediate providers shall update their registration information when changes  
8.19 occur, but no less than annually.

8.20 **Sec. 20. [237.84] CERTIFICATION, REGISTRATION, AND MAPPING.**

8.21 Subdivision 1. **Application for certificate of authority.** Before a  
8.22 telecommunications service provider may offer retail or wholesale telecommunications  
8.23 services to the public in Minnesota, the telecommunications service provider must receive  
8.24 a certificate of authority from the commission. The commission shall issue a certificate of  
8.25 authority within 60 days after receipt of a complete application, unless it makes a finding  
8.26 that issuance of a certificate is contrary to the public interest. A telecommunications service  
8.27 provider seeking a certificate of authority under this chapter shall submit an application on  
8.28 a form prescribed by the commission. If a telecommunications service provider's submitted  
8.29 application is incomplete, the commissioner may deny the application or suspend the  
8.30 60-day period until it finds that a complete application has been filed. The form must  
8.31 require the telecommunications service provider to provide the following information:

8.32 (1) the legal name of the telecommunications service provider and any name under  
8.33 which the telecommunications service provider does or will do business in Minnesota, as  
8.34 authorized by the secretary of state;

9.1 (2) a certification from the secretary of state authorizing the telecommunications  
9.2 service provider to do business in Minnesota;

9.3 (3) the address and telephone number of the telecommunications service provider,  
9.4 along with contact information for the person responsible for ongoing communication  
9.5 with the commission;

9.6 (4) the legal name, address, and telephone number of the parent company of the  
9.7 telecommunications service provider, if any;

9.8 (5) a description of each service area in Minnesota in which the telecommunications  
9.9 service provider proposes to offer telecommunications service;

9.10 (6) a list of other states in which the telecommunications service provider offers  
9.11 telecommunications service, including the type of telecommunications service offered;

9.12 (7) information demonstrating the financial, managerial, and technical ability of  
9.13 the telecommunications service provider to provide telecommunications service in  
9.14 Minnesota; and

9.15 (8) verification that the telecommunications service provider's 911 plan has been  
9.16 approved.

9.17 Subd. 2. Fees. The commission may collect from the applicant a filing fee not to  
9.18 exceed \$2,000, charged at the time an application is filed under this section.

9.19 **Sec. 21. REVISOR'S INSTRUCTION.**

9.20 The revisor shall make necessary technical cross-reference changes in Minnesota  
9.21 Statutes and Minnesota Rules consistent with the repealer in section 21.

9.22 **Sec. 22. REPEALER.**

9.23 Minnesota Statutes 2014, sections 237.03; 237.072; 237.075, subdivisions 2, 3, 6,  
9.24 and 9; 237.21; 237.22; 237.57; 237.59, subdivisions 1, 1a, 2, 3, 4, 5, 6, 8, 9, and 10;  
9.25 237.64, subdivision 2; 237.775; and 237.80, subdivision 2, are repealed.

**237.03 SCOPE OF LAW.**

Except as otherwise provided in this chapter, all the provisions of Revised Laws 1905, chapter 28, and acts amendatory thereof applying to railroad and express companies, shall insofar as the same are applicable apply also to telephone companies.

**237.072 LIMITATION ON RATE CHANGE.**

(a) After December 15, 1997, the commission, notwithstanding any provision to the contrary, shall not allow an incumbent telephone company with more than 1,000,000 access lines in Minnesota to change its retail rates for telecommunications services without a determination of its revenue requirement pursuant to section 237.075 unless the incumbent telephone company is regulated pursuant to sections 237.76 to 237.773.

(b) If, prior to December 15, 1997, the incumbent telephone company petitions the commission to become subject to an alternative regulation plan under sections 237.76 to 237.773, paragraph (a) shall not apply to the petitioning company until 270 days after the date of the filing of the petition.

**237.075 RATE CHANGE.**

Subd. 2. **Suspension of proposed rate; hearing; final determination defined.** (a) Whenever there is filed with the commission as provided in subdivision 1 a schedule modifying or resulting in a change in any rate then in force, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected telephone company a statement in writing of its reasons for the suspension at any time before the rates become effective. The suspension shall not be for a longer period than ten months beyond the initial filing date except as provided in paragraph (b). During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the department can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 250 affected customers, whichever is less, it shall refer the matter to the Office of Administrative Hearings with instructions for a public hearing as a contested case pursuant to chapter 14, except as otherwise provided in this section. The commission may order that the issues presented by the proposed rate changes be bifurcated into two separate hearings as follows: (1) determination of the telephone company's revenue requirements and (2) determination of the rate design. Upon issuance of both administrative law judge reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the Department of Commerce. If the commission does not make a final determination concerning a schedule of rates within ten months after the initial filing date, the schedule shall be deemed to have been approved by the commission; except if a settlement has been submitted to and rejected by the commission, the schedule is deemed to have been approved 12 months after the initial filing.

(b) If the commission finds that it has insufficient time during the suspension period to make a final determination of a case involving changes in general rates because of the need to make final determinations of other previously filed cases involving changes in general rates under this section or section 216B.16, the commission may extend the suspension period to the extent necessary to allow itself 20 working days to make the final determination after it has made final determinations in the previously filed cases. An extension of the suspension period under this paragraph does not alter the setting of interim rates under subdivision 3.

(c) For the purposes of this section, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all those petitions.

Subd. 3. **Interim rate; refund.** Notwithstanding any order of suspension of a proposed increase in rates, the commission shall order an interim rate schedule into effect not later than 60 days after the initial filing date. The commission shall order the interim rate schedule ex parte without a public hearing. Notwithstanding the provisions of sections 216.25 and 237.25, no interim rate schedule ordered by the commission pursuant to this subdivision shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination. Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test-year cost of capital, rate base, and expenses,

## APPENDIX

### Repealed Minnesota Statutes: 15-0092

except that it shall include: (1) a rate of return on common equity for the company equal to that authorized by the commission in the company's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the company's most recent rate proceeding; and (3) no change in the existing rate design, except for products and services offered by nonregulated competitors. In the case of a company which has not been subject to a prior commission determination or has not had a general rate adjustment in the preceding three years, the commission shall base the interim rate schedule on its most recent determination concerning a similar company.

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the company to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. The company shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the company will recover the difference in revenues from the date of the final determination to the date the new rate schedules are put into effect.

If the telephone company fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and may recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the distribution of the refund to persons entitled thereto. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds. The commission shall not order an interim rate schedule in a general rate case into effect as provided by this subdivision until at least four months after it has made a final determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2, unless:

(1) the commission finds that a four-month delay would unreasonably burden the company, its customers, or its shareholders and that an earlier imposition of interim rates is therefore necessary; or

(2) the company files a second general rate case at least 12 months after it has filed a previous general rate case for which the commission has extended the suspension period under subdivision 2.

**Subd. 6. Factors considered, generally.** The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for telephone companies, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the telephone company for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its telephone company property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in the property. In determining the rate base upon which the telephone company is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the telephone company, less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. To the extent that construction work in progress is included in the rate base, the income used in determining the actual return on the telephone company property may include an allowance for funds used during construction. For purposes of determining rate base, the commission shall consider the original cost of telephone company property included in the base and shall make no allowance for its estimated current replacement value.

**Subd. 9. Election on regulation; cooperative, municipal, independent.** For the purposes of this section, "telephone company" shall not include a cooperative telephone association organized under the provisions of chapter 308A, an independent telephone company, or a municipal, unless the cooperative telephone association, independent telephone company, or municipal makes the election provided in this subdivision.

A cooperative telephone association may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (1) approved by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308A.135, excluding the filing requirements; or (2) approved by a majority of members or stockholders voting by mail ballot initiated by petition of no fewer than five percent of the members or stockholders of the association. The ballot to be used for the election shall be approved by the board of directors and the department. The department shall mail the ballots to the association's members who shall return the ballots to the department. The department will

## APPENDIX

### Repealed Minnesota Statutes: 15-0092

keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the association shall count the ballots. If a majority of the association's members who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after the date the ballots are counted. For purposes of this section, the term "member or stockholder" shall mean either the member or stockholder of record or the spouse of the member or stockholder unless the association has been notified otherwise in writing.

A municipal may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (1) approved by resolution of the governing body of the municipality; or (2) approved by a majority of the customers of the municipal voting by mail ballot initiated by petition of no fewer than 20 percent of the customers of the municipal. The ballot to be used for the election shall be approved by the governing body of the municipality and the department. The department shall mail the ballots to the municipal's customers who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the governing body of the municipality. On this date, representatives of the department and the municipal shall count the ballots. If a majority of the customers of the municipal who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after the date the ballots are counted. For purposes of this section, the term "customer" shall mean either the person in whose name the telephone service is registered or the spouse of the person unless the municipal utility has been notified otherwise in writing.

An independent telephone company may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (1) approved by the board of directors of the company in accordance with the procedures for amending the articles of incorporation contained in sections 302A.133 to 302A.139, excluding the filing requirements; or (2) approved by a majority of subscribers voting by mail ballot initiated by petition of no fewer than five percent of the subscribers of the company. The ballot to be used for the election shall be approved by the board of directors and the department. The department shall mail the ballots to the company's subscribers who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the company shall count the ballots. If a majority of the company's subscribers who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after the date the ballots are counted. For purposes of this section the term "subscriber" shall mean either the person in whose name the telephone service is registered or the spouse of the person unless the independent telephone company has been notified otherwise in writing.

#### **237.21 VALUATION OF TELEPHONE PROPERTY.**

In determining the value of any telephone property for ratemaking purposes, no valuation shall be allowed upon the value of any franchise granted by the state or any municipality where no payment was or is being made to the state or municipality on account thereof. The requirement as to reasonableness of rates shall apply to each exchange unit as well as to telephone plants as a whole. Provided, that in the case of a company operating a telephone system consisting of more than one exchange in the state, reasonableness of rates, as measured by earnings, shall be determined by a reasonable return from the total operations of the system within the state rather than by the return from individual exchanges or services. No telephone rates or charges shall be allowed or approved by the commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected.

#### **237.22 DEPRECIATION; AMORTIZATION.**

(a) For purposes of a proceeding to determine or investigate any wholesale or retail rate, or to set any universal service support level, the commission may fix proper and adequate rates and methods of depreciation and amortization with respect to a telephone company's property.

(b) All telephone companies shall retain data in sufficient detail for the purpose of determining depreciation accruals and reserves by depreciable telephone plant account. Depreciable plant accounts are those specified by the Federal Communications Commission for the class to which a telephone company belongs. All telephone companies shall maintain, and

## APPENDIX

Repealed Minnesota Statutes: 15-0092

have available for inspection by the commission upon request, adequate accounts and records related to depreciation practices as defined herein.

### **237.57 DEFINITIONS.**

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given them in this section.

Subd. 2. **Competitive service.** "Competitive service" means a service that has been determined to be subject to effective competition or emerging competition.

Subd. 3. **Effective competition.** "Effective competition" exists when the criteria of section 237.59, subdivision 5, have been satisfied for a service.

Subd. 4. **Emerging competition.** A service will be regulated under "emerging competition" provisions when the criteria of section 237.59, subdivision 5, have not been satisfied, but there is a trend toward effective competition, or if it is a new service offered for the first time after August 1, 1994, that is not integrally related to the provision of adequate telephone service or access to the telephone network or to the privacy, health, or safety of the company's customers, whether or not it meets the criteria of section 237.59, subdivision 5.

Subd. 5. **Local access and transport area.** "Local access and transport area (LATA)" means a geographical area designated by the Modification of Final Judgment in U.S. v. Western Electric Co., Inc., 552 F. Supp. 131 (D.D.C. 1982).

Subd. 6. **Noncompetitive service.** "Noncompetitive service" means a service that has not been classified as competitive by the commission.

### **237.59 CLASSIFICATION OF COMPETITIVE SERVICE; HEARING.**

Subdivision 1. **Emerging competitive service.** (a) The following services provided by the telephone company are subject to emerging competition unless and until reclassified as noncompetitive or subject to effective competition under this section:

- (1) apartment door answering services;
- (2) automatic call distribution;
- (3) billing and collection services;
- (4) call waiting, call forwarding, and three-way calling services for businesses with three or more lines;
- (5) central office-based pricing packages providing switched business access lines which substitute for private branch exchange systems which may or may not share intelligence with customer premises equipment;
- (6) command link-type services for network reconfiguring to rearrange cross-connections between channel services;
- (7) custom network services and special assemblies;
- (8) Digicom switchnet services for full duplex, synchronous, information transport;
- (9) direct customer access services for telephone number information;
- (10) teleconferencing services;
- (11) inter-LATA and intra-LATA message toll service;
- (12) inter-LATA and intra-LATA private line services;
- (13) inter-LATA and intra-LATA wide area telephone service;
- (14) mobile radio services;
- (15) operator services, excluding local operator services;
- (16) public pay telephone services, excluding charges for access to the central office;
- (17) special construction of facilities;
- (18) systems for automatic dialing; and
- (19) versanet-type service access line involving continuous monitoring and transmission of data from customer's premises to the central office.

(b) A service classified as subject to emerging competition before June 1, 1994, retains that classification unless and until it is reclassified pursuant to subdivision 3 or 10.

Subd. 1a. **CLASS service.** Notwithstanding the terms of subdivision 1, paragraph (b), CLASS services may be classified as competitive services only when so classified according to subdivision 3 or 10.

Subd. 2. **Petition.** (a) A telephone company, or the commission on its own motion, may petition to have a service of that telephone company classified as subject to effective competition or emerging competition. The petition must be served on the commission, the department, the Office of the Attorney General, and any other person designated by the commission. The petition must contain at least:

APPENDIX

Repealed Minnesota Statutes: 15-0092

(1) a list of the known alternative providers of the service available to the company's customers; and

(2) a description of affiliate relationships with any other provider of the service in the company's market.

(b) At the time the company first offers a service, it shall also file a petition with the commission for a determination as to how the service should be classified. In the event that no interested party or the commission objects to the company's proposed classification within 20 days of the filing of the petition, the company's proposed classification of the service is deemed approved. If an objection is filed, the commission shall determine the appropriate classification after a hearing conducted pursuant to section 237.61. In either event, the company may offer the new service to its customers ten days after the company files the price list and incremental cost study as provided in section 237.60, subdivision 2, paragraph (f).

(c) A new service may be classified as subject to effective competition or emerging competition pursuant to the criteria set forth in subdivision 5. A new service must be regulated under the emerging competition provisions if it is not integrally related to the provision of adequate local service or access to the telephone network or to the privacy, health, or safety of the company's customers, whether or not it meets the criteria set forth in subdivision 5.

**Subd. 3. Expedited proceeding.** An interested party wishing to contest the change of classification of a service must file an objection with the commission within 20 days after the filing of the petition. If no party files an objection, the service must be reclassified in accordance with the petition. If a petition is contested, a telephone company that is the subject of a petition under subdivision 2 may request that the commission determine the classification of the service through an expedited proceeding under section 237.61 or a contested case hearing. If an expedited proceeding is requested, the commission must provide interested persons an opportunity to comment on the appropriateness of the process and the merits of the petition.

When an expedited proceeding is requested, the commission shall make a final determination within 60 days of the date on which all required information required under subdivision 2 is filed, unless during the 60 days the commission finds that a material issue of fact is in dispute, in which case it shall order that a contested case hearing be conducted to evaluate the petition.

**Subd. 4. Contested case hearing.** If a contested case hearing is held under this section, the commission shall make a final determination on the petition within eight months from the date the petitioning party requests a contested case hearing or from the date the commission orders a contested case hearing under subdivision 3. When a contested case hearing is requested in the petition or when the commission acts on its own motion, this deadline may be extended for no more than 60 days by agreement of all parties or by order of the commission if the commission finds that the case cannot be completed within the required time and that without an extension there is substantial probability that the public interest will be harmed.

**Subd. 5. Criteria.** (a) If a proposed classification is objected to pursuant to subdivision 2, paragraph (b), on the basis that the service does not meet the criteria of this subdivision, the commission shall consider, in determining whether a service is subject to either effective competition or emerging competition from available alternative service providers, the following factors:

(1) the number and sizes of alternative providers of service and affiliation to other providers;

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

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

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

(5) the necessity of the service to the well-being of the customer.

(b) In order for the commission to find a service subject to effective competition alternative services must be available to over 50 percent of the company's customers for that service.

(c) In order for the commission to find a service subject to emerging competition alternative services must be available to over 20 percent of the company's customers for that service.

**Subd. 6. Burden of proof.** The classification of a service may not be changed so as to result in lessened regulation unless it is demonstrated by a preponderance of the evidence that the criteria of subdivision 5 have been met.

**Subd. 8. Interim relief.** A telephone company that has a petition pending before the commission under this section to declare a service competitive may decrease its price for that service without notice while the commission considers the petition. A company must provide

## APPENDIX

Repealed Minnesota Statutes: 15-0092

an incremental cost study if requested by the commission. The commission shall suspend a company's right under this subdivision to decrease rates if, after an expedited hearing conducted under section 237.61, the commission finds that the service is being priced below cost, or that the company has within the previous 12 months charged customers interim rates under this subdivision for the same service, and that service was determined by the commission to be noncompetitive.

**Subd. 9. Reporting requirements; exception.** A telephone company that offers only competitive services is not subject to the accounting and reporting requirements of this chapter unless otherwise ordered by the commission for good cause. A telephone company that offers both competitive and noncompetitive services is not subject to the reporting requirements with regard to its effective competition services unless otherwise ordered by the commission for good cause.

**Subd. 10. Regulation reinstated.** (a) The commission, on its own motion or upon complaint, shall reclassify a service as noncompetitive or as subject to emerging competition and reinstate, in whole or in part, rate regulation of the service if, after notice and hearing, the commission finds either:

(1) that the competitive market for that service, on review of the criteria found in subdivision 5, has failed so that rate regulation of that service is necessary to protect the interest of consumers, that it has considered the alternatives to rate regulation, and that the benefits of rate regulation outweigh the burdens of rate regulation; or

(2) that unreasonable discrimination has occurred between different areas of the state.

(b) In any proceeding to reclassify a service the person initiating the complaint has the burden of proving that the existing classification is inappropriate, except the telephone company providing the service has the burden of proving that the classification is appropriate when the proceeding is commenced by the commission on its own motion or when the complainant is the department or the attorney general.

### **237.64 REGISTRATION; BOND.**

**Subd. 2. Bond.** Telephone companies that have registered under subdivision 1 shall maintain a bond if the company requires advance payments or deposits from its customers, unless waived by the commission. The bond must be issued by a surety company admitted to do business in this state in the principal sum of all deposits and advance payments to be held by the company. The department shall determine the amount of the bond and may require the company to supply information to determine the appropriate amount of the bond. The bond must be in favor of the state for the benefit of any customer who suffers the loss of a deposit or advance payment due to insolvency, cessation of business, or failure to return any unused portion of the deposit or advance payment. The bond must be filed with the department.

### **237.775 EXISTING PLAN NOT AFFECTED.**

An alternative regulation plan approved by the commission prior to May 1, 1997, is not subject to the amendments in Laws 1997, chapter 223; provided that a plan filed, revised, or renewed after that date is subject to those amendments.

### **237.80 INTEREXCHANGE TELEPHONE SERVICE.**

**Subd. 2. Consultation with FCC.** Any investigation or proceeding by the Minnesota Public Utilities Commission for the purpose of verifying compliance with the competitive checklist requirements of section 271(c) of the act must be completed by the commission and the resulting certification provided to the Federal Communications Commission within 90 days after receipt of a request for verification from the Federal Communications Commission.