

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-EIGHTH LEGISLATURE**

**S.F. No. 584**

(SENATE AUTHORS: SPARKS, Saxhaug, Dahms, Koenen and Ruud)

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02/18/2013	285	Introduction and first reading Referred to Jobs, Agriculture and Rural Development
02/25/2013	397	Author added Saxhaug
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A bill for an act

1.1 relating to telecommunications; clarifying enforcement authority; adding new  
1.2 requirements for tariffs; protecting proprietary information; specifying criteria  
1.3 for certificates of authority; terminating alternative regulation plans; adding  
1.4 definitions; making technical corrections; removing obsolete provisions; making  
1.5 conforming changes; amending Minnesota Statutes 2012, sections 216B.16,  
1.6 subdivision 2; 237.01, subdivisions 6, 7, by adding subdivisions; 237.02; 237.035;  
1.7 237.036; 237.065, subdivision 2; 237.066, subdivision 3; 237.081, subdivisions  
1.8 1, 1a, 2, 4; 237.09; 237.115; 237.12, by adding a subdivision; 237.121; 237.295,  
1.9 subdivision 2; 237.49; 237.491, subdivision 2; 237.661, subdivision 1; 237.663;  
1.10 237.681, subdivision 5; 237.81; 308A.210, subdivision 8; 325F.693, subdivision  
1.11 2; 412.014; 609.892, subdivision 1; proposing coding for new law in Minnesota  
1.12 Statutes, chapter 237; repealing Minnesota Statutes 2012, sections 237.06;  
1.13 237.067; 237.068; 237.069; 237.07; 237.071; 237.072; 237.075, subdivisions 1,  
1.14 2, 3, 4, 5, 6, 7, 8, 9, 10, 11; 237.076; 237.082; 237.10; 237.11; 237.12, subdivision  
1.15 2; 237.15; 237.155; 237.16, subdivisions 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13;  
1.16 237.164; 237.18; 237.21; 237.22; 237.23; 237.231; 237.28; 237.295, subdivisions  
1.17 1, 6; 237.30; 237.33; 237.34; 237.35; 237.36; 237.37; 237.38; 237.39; 237.40;  
1.18 237.411; 237.414; 237.47; 237.57; 237.59, subdivisions 1, 1a, 2, 3, 4, 5, 6, 8, 9,  
1.19 10; 237.60, subdivisions 3, 4; 237.61; 237.626; 237.64; 237.66, subdivisions 1,  
1.20 1a, 1c, 1d, 2, 2a, 3; 237.73; 237.74; 237.75; 237.76; 237.761; 237.762; 237.763;  
1.21 237.764; 237.765; 237.766; 237.767; 237.768; 237.769; 237.770; 237.771;  
1.22 237.772; 237.773, subdivisions 1, 2, 3, 4; 237.774; 237.775; 237.80.

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

**ARTICLE 1**

**STATUTE MODERNIZATION**

1.27 Section 1. Minnesota Statutes 2012, section 237.01, is amended by adding a  
1.28 subdivision to read:

1.29 Subd. 1a. **Advanced services.** "Advanced services" means any of the following:

1.30 (1) advanced services, as defined in Code of Federal Regulations, title 47, section  
1.31 51.5;

2.1 (2) informational services, as defined in United States Code, title 47, section 153,  
2.2 paragraph (20);

2.3 (3) internet protocol-enabled services, including, without limitation, Voice Over  
2.4 Internet Protocol, regardless of how the service is defined, classified, interpreted, or  
2.5 enforced by the Federal Communications Commission;

2.6 (4) commercial mobile radio service, as defined in United States Code, title 47,  
2.7 section 332; or

2.8 (5) any telecommunications service not commercially available on the effective  
2.9 date of this section.

2.10 Sec. 2. Minnesota Statutes 2012, section 237.01, is amended by adding a subdivision  
2.11 to read:

2.12 Subd. 1b. **Advanced services provider.** "Advanced services provider" means a  
2.13 a person or entity that provides any advanced services. An advanced services provider  
2.14 may also be a telecommunications carrier.

2.15 Sec. 3. Minnesota Statutes 2012, section 237.01, is amended by adding a subdivision  
2.16 to read:

2.17 Subd. 1c. **Basic services.** "Basic services" means one unbundled, single line,  
2.18 unlimited usage, residential voice local exchange telephone service, or unbundled, single  
2.19 line, unlimited usage, business voice local exchange telephone service. Basic services  
2.20 does not include any state or federally authorized or mandated services.

2.21 Sec. 4. Minnesota Statutes 2012, section 237.01, is amended by adding a subdivision  
2.22 to read:

2.23 Subd. 1d. **Competitive local exchange carrier.** "Competitive local exchange  
2.24 carrier" or "CLEC" means a telecommunications carrier that is certified by the commission  
2.25 to provide local service.

2.26 Sec. 5. Minnesota Statutes 2012, section 237.01, is amended by adding a subdivision  
2.27 to read:

2.28 Subd. 2a. **End user.** "End user" means a retail customer of a telecommunications  
2.29 provider.

2.30 Sec. 6. Minnesota Statutes 2012, section 237.01, is amended by adding a subdivision  
2.31 to read:

3.1 Subd. 9. Wholesale telecommunications service. "Wholesale telecommunications  
 3.2 service" means either: (1) any telecommunications service offered under an interconnection  
 3.3 agreement between an incumbent local exchange carrier and a competitive local exchange  
 3.4 carrier under sections 251 and 252 of the 1996 Act; or (2) intrastate access service.

3.5 Sec. 7. Minnesota Statutes 2012, section 237.01, is amended by adding a subdivision  
 3.6 to read:

3.7 Subd. 10. 1996 Act. "1996 Act" means the federal Telecommunications Act of  
 3.8 1996, Public Law 104-104, United States Code, title 47, section 151 et. seq.

3.9 Sec. 8. Minnesota Statutes 2012, section 237.02, is amended to read:

3.10 **237.02 GENERAL AUTHORITY OF DEPARTMENT AND COMMISSION;**  
 3.11 **DEFINITIONS.**

3.12 (a) The Department of Commerce and the Public Utilities Commission are hereby  
 3.13 vested with the same jurisdiction and supervisory power outlined in this chapter. Effective  
 3.14 July 1, 2019, the duties granted to the Department of Commerce shall be transferred to  
 3.15 the Public Utilities Commission. The commissioner is authorized to transfer staff and  
 3.16 resources necessary to continue executing the duties under this chapter over telephone  
 3.17 and telecommunications companies doing business in this state ~~as the commission's~~  
 3.18 ~~predecessor, the railroad and warehouse commission, had over railroad and express~~  
 3.19 ~~companies.~~

3.20 (b) The definitions set forth in sections 216A.02 and 216B.02 also apply to this  
 3.21 chapter.

3.22 Sec. 9. Minnesota Statutes 2012, section 237.065, subdivision 2, is amended to read:

3.23 Subd. 2. ~~Basic and advanced telecommunication service; reduced rate.~~ (a)  
 3.24 Notwithstanding the provisions of sections 237.09, and 237.14, 237.60, subdivision 3,  
 3.25 and 237.74, each telephone company and telecommunications carrier that provides local  
 3.26 telephone service in a service area that includes a school that has classes within the  
 3.27 range from kindergarten to grade 12, a public library, or a telecommunication services  
 3.28 purchasing cooperative may provide, upon request, ~~basic and advanced~~ telecommunication  
 3.29 services at reduced or no cost to that school, library, or may provide, upon request,  
 3.30 ~~advanced~~ basic telecommunication services at reduced wholesale rates to the members  
 3.31 of a telecommunication services purchasing cooperative. For purposes of this section,  
 3.32 a "telecommunication services purchasing cooperative" means a cooperative organized  
 3.33 under section 308A.210. A school or library receiving telecommunications services at

4.1 reduced or no cost may not resell or sublease the discounted services. No members of a  
4.2 telecommunication services purchasing cooperative may resell or sublease the discounted  
4.3 services. A purchasing cooperative is not required to negotiate or provide a uniform rate  
4.4 for its members. Telecommunications services shall be provided in accordance with  
4.5 Public Law 104-104, and the regulations of the Federal Communications Commission  
4.6 adopted under the act.

4.7 (b) An agent that provides telecommunications services to a school or library may  
4.8 request the favorable rate on behalf of and for the exclusive benefit of the school or library.  
4.9 The school or library must authorize the agent to make the request of the local telephone  
4.10 company or telecommunications carrier. The telephone company or telecommunications  
4.11 carrier is not required to offer the same price discount to the agent that it would offer to the  
4.12 school district or library. An agent that receives a price discount for telecommunications  
4.13 services on behalf of a school or library may only resell or sublease the discounted  
4.14 services to that school or library.

4.15 (c) For the purposes of this subdivision, "school" includes a public school as defined  
4.16 in section 120A.05, nonpublic, and church or religious organization schools that provide  
4.17 instruction in compliance with sections 120A.22, 120A.24, and 120A.41.

4.18 Sec. 10. Minnesota Statutes 2012, section 237.066, subdivision 3, is amended to read:

4.19 Subd. 3. **Rates.** Notwithstanding section 237.09; or 237.14, 237.60, subdivision  
4.20 3, or 237.74, a telephone company or a telecommunications carrier may, individually or  
4.21 in cooperation with other telephone companies or telecommunications carriers, develop  
4.22 and offer basic ~~or advanced~~ telecommunications services at discounted or reduced rates  
4.23 as a state government telecommunications pricing plan. Any basic telecommunications  
4.24 services provided under any state government telecommunications pricing plan shall be  
4.25 used exclusively by those entities described in subdivision 2 subject to the plan solely for  
4.26 their own use and shall not be made available to any other entities by resale, sublease,  
4.27 or in any other way.

4.28 Sec. 11. **[237.077] SCHEDULES, TARIFFS, AND INDIVIDUAL CONTRACTS.**

4.29 Subdivision 1. **Filing requirements.** Except as set forth in this section,  
4.30 telecommunications carriers are not required to maintain or file any schedule, tariff,  
4.31 contract, or agreement with the commission.

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

5.1 Subd. 3. **Required tariff.** (a) The telecommunications services described in  
 5.2 this subdivision require the filing of a tariff. Any tariff required to be filed under this  
 5.3 subdivision must be referred to as a required tariff.

5.4 (b) Any telecommunications carrier that offers intrastate access services shall  
 5.5 maintain on file with the commission a tariff containing the terms, conditions, rates, and  
 5.6 charges the telecommunications carrier has established for such intrastate access services.

5.7 (c) Every local exchange carrier that provides basic telecommunications service  
 5.8 shall maintain on file with the commission a tariff containing the terms, conditions, rates,  
 5.9 and charges for that service.

5.10 (d) Subject to any applicable notice to end users required by this chapter, a required  
 5.11 tariff becomes effective 30 days after it is filed with the commission.

5.12 (e) A person who objects to a required tariff shall file an objection within 20 days  
 5.13 of the filing of the required tariff. The person filing the required tariff may reply to the  
 5.14 objection within five days of the filing of the objection.

5.15 (f) The commission shall review the required tariff, the objection, and the reply  
 5.16 within 60 days of the filing of the required tariff and shall issue an order approving the  
 5.17 required tariff or order that a contested case hearing be conducted under chapter 14.

5.18 Subd. 4. **Individual contracts permitted; no filing requirement.** (a)  
 5.19 Notwithstanding any other provision of this chapter, a telecommunications carrier may  
 5.20 enter into an individual contract for providing retail or wholesale telecommunications  
 5.21 services, except for intrastate switched services. The contract may include, without  
 5.22 limitation, services that are subject to a tariff filed under this section that includes terms,  
 5.23 conditions, rates, and charges that are different from those in the telecommunications  
 5.24 carrier's tariff.

5.25 (b) Except as required by federal or state law, any individual contract is not subject  
 5.26 to any filing or notice requirement, including, without limitation, a requirement that the  
 5.27 contract be filed with the commission.

5.28 Sec. 12. Minnesota Statutes 2012, section 237.081, subdivision 1, is amended to read:

5.29 Subdivision 1. **Commission investigation.** Whenever the commission believes that  
 5.30 a basic or wholesale telecommunications service is inadequate or cannot be obtained or  
 5.31 that an investigation of any matter relating to any telephone service should for any reason  
 5.32 be made, it may on its own motion investigate the service or matter with or without notice,  
 5.33 except that the commission shall give notice to a telephone company before it investigates  
 5.34 the level of rates charged by the company.

6.1 Sec. 13. Minnesota Statutes 2012, section 237.081, subdivision 1a, is amended to read:

6.2 Subd. 1a. **Complaint investigation.** Upon a complaint made against a telephone  
 6.3 company by any other provider of telephone service, by the governing body of a political  
 6.4 subdivision, or by no fewer than five percent or 100, whichever is the lesser number,  
 6.5 of the subscribers or spouses of subscribers of the particular telephone company, that  
 6.6 any of the rates, tolls, tariffs, charges, or schedules, or any regulation, measurement,  
 6.7 practice, act, or omission affecting or relating to the production, transmission, delivery, or  
 6.8 furnishing of telephone basic or wholesale telecommunications service or any service in  
 6.9 connection with telephone basic or wholesale telecommunications service is in any respect  
 6.10 unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate  
 6.11 or cannot be obtained, the commission, after notice to the telephone company, ~~shall~~ may  
 6.12 investigate the matters raised by the complaint.

6.13 Sec. 14. Minnesota Statutes 2012, section 237.081, subdivision 2, is amended to read:

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

6.18 (b) For an investigation concerning the reasonableness of the rates for ~~nonecompetitive~~  
 6.19 basic services of a telephone company ~~whose general revenue requirement is determined~~  
 6.20 ~~under section 237.075, the commission shall order the company to initiate a rate~~  
 6.21 ~~proceeding in accordance with section 237.075. The commission shall allow the company~~  
 6.22 ~~at least 120 days after the date of the commission's order to initiate the proceeding.~~

6.23 (c) ~~For other investigations, the commission shall~~ may order that a contested case  
 6.24 hearing be conducted under chapter 14 unless the complainant, the telephone company,  
 6.25 and the commission agree that an expedited hearing ~~under section 237.61~~ is appropriate.

6.26 Sec. 15. Minnesota Statutes 2012, section 237.081, subdivision 4, is amended to read:

6.27 Subd. 4. **Establishment of rate and price.** Whenever the commission finds, after  
 6.28 a proceeding under subdivision 2, that (1) a basic or wholesale telecommunications  
 6.29 service that can be reasonably demanded cannot be obtained, (2) that any rate, toll, tariff,  
 6.30 charge, or schedule, or any regulation, measurement, practice, act, or omission affecting  
 6.31 or relating to the production, transmission, delivery, or furnishing of telephone basic  
 6.32 or wholesale telecommunications service or any service in connection with telephone  
 6.33 service, is in any respect unreasonable, insufficient, or unjustly discriminatory, or (3) that  
 6.34 any basic or wholesale telecommunications service is inadequate, the commission shall

7.1 make an order respecting the tariff, regulation, act, omission, practice, or service that is  
 7.2 just and reasonable and, if applicable, shall establish just and reasonable rates and prices.

7.3 Sec. 16. Minnesota Statutes 2012, section 237.09, is amended to read:

7.4 **237.09 DISCRIMINATION PROHIBITED.**

7.5 Subdivision 1. **Generally.** No telephone company, or any agent or officer thereof,  
 7.6 shall, directly or indirectly, in any manner, knowingly or willfully, charge, demand,  
 7.7 collect, or receive from any person, firm, or corporation, a greater or less compensation for  
 7.8 any intrastate basic or wholesale telecommunications service rendered or to be rendered  
 7.9 by it than it charges, demands, collects, or receives from any other firm, person, or  
 7.10 corporation for a like and contemporaneous intrastate service under similar circumstances.

7.11 Subd. 2. **Particular services.** (a) A telephone company that offers or provides a  
 7.12 basic or wholesale telecommunications service or services, service elements, features, or  
 7.13 functionalities on a separate, stand-alone basis to any customer shall provide that service,  
 7.14 service element, feature, or functionality pursuant to tariff to all similarly situated persons,  
 7.15 including all telecommunications carriers and competitors. To the extent prohibited by  
 7.16 the Federal Communications Commission or Public Utilities Commission, a telephone  
 7.17 company shall not give preference or discriminate in providing basic or wholesale  
 7.18 telecommunications services, products, or facilities to an affiliate or to its own or an  
 7.19 affiliate's retail department that sells to consumers.

7.20 (b) For purposes of establishing an appropriate rate or price floor for a rate for  
 7.21 a ~~telephone~~ basic or wholesale telecommunications service, a telephone company shall  
 7.22 impute, on a service-by-service basis, into the rate or price for that service, the tariffed rate  
 7.23 or price for the same services, service elements, or network functions that the company  
 7.24 provides to others who use it to provide a service that competes with the telephone service  
 7.25 offered by the company. A company is not required to impute a rate or price under this  
 7.26 paragraph if it demonstrates to the commission, in an expedited proceeding ~~under section~~  
 7.27 ~~237.61~~, that:

7.28 (1) the competitor can obtain substantially equivalent services, service elements,  
 7.29 or network functions within the relevant market or geographic area on reasonably  
 7.30 comparable terms and conditions through self-provision or from a provider other than  
 7.31 the telephone company; or

7.32 (2) application of the imputation requirement otherwise would be inconsistent with  
 7.33 the public interest.

8.1 Sec. 17. Minnesota Statutes 2012, section 237.115, is amended to read:

8.2 **237.115 INFORMATION SUBJECT TO PROTECTIVE ORDER.**

8.3 Subdivision 1. **Proprietary information to be protected.** The commission shall  
8.4 maintain the confidentiality of all proprietary information, including trade secrets, business  
8.5 plans, and other confidential information that either becomes known to the commission or  
8.6 comes into the commission's possession or control. The commission shall not disclose  
8.7 proprietary information without adequate protection of the information and reasonable  
8.8 notice to the affected person.

8.9 Subd. 2. **Protective order.** The commission possesses the authority to enter into any  
8.10 protective order necessary and appropriate to maintain the confidentiality of proprietary  
8.11 information. The order may be entered only after giving the affected parties 30 days'  
8.12 advance notice and the opportunity to comment on the proposed protective order.

8.13 Subd. 3. **Procedural requirements.** In any meeting of the commission during  
8.14 which information that is subject to a protective order is discussed, the commission shall  
8.15 employ the procedures of section 14.60 to close to all persons who are not authorized  
8.16 to obtain the information under the protective order that portion of the meeting during  
8.17 which the information will be discussed and take other appropriate measures to ensure  
8.18 that the data is not disclosed to persons who are not authorized to obtain the information  
8.19 under the protective order.

8.20 Sec. 18. Minnesota Statutes 2012, section 237.12, is amended by adding a subdivision  
8.21 to read:

8.22 Subd. 5. **Discontinuance.** (a) In the event that an interexchange carrier or a  
8.23 competitive local exchange carrier fails to pay full compensation to a local exchange  
8.24 carrier and a valid dispute has not been registered between the companies, the local  
8.25 exchange carrier may discontinue accepting traffic from that interexchange carrier  
8.26 or CLEC if the local exchange carrier provides to the commission notice of intent to  
8.27 disconnect the interexchange carrier.

8.28 (b) Any person objecting to the discontinuance must file an objection with the  
8.29 commission within 20 days.

8.30 (c) The commission will investigate and ascertain whether public convenience  
8.31 requires continued service to the interexchange carrier or CLEC and, if the commission so  
8.32 finds, the commission shall fix the compensation, terms, and conditions of the continuance  
8.33 of service between the companies within 90 days of its receipt of an objection to the  
8.34 discontinuance.

9.1 Sec. 19. Minnesota Statutes 2012, section 237.121, is amended to read:

9.2 **237.121 PROHIBITED PRACTICES.**

9.3 (a) A telephone company or telecommunications carrier may not do any of the  
9.4 following with respect to services regulated by the commission:

9.5 (1) upon request, fail to disclose in a timely and uniform manner information  
9.6 necessary for the design of equipment and services that will meet the specifications for  
9.7 interconnection;

9.8 (2) intentionally impair the speed, quality, or efficiency of services, products, or  
9.9 facilities offered to a consumer under a tariff, contract, or price list;

9.10 (3) fail to provide a service, product, or facility to a consumer other than a telephone  
9.11 company or telecommunications carrier in accordance with its applicable tariffs, price  
9.12 lists, or contracts and with the commission's rules and orders;

9.13 (4) refuse to provide a service, product, or facility to a telephone company or  
9.14 telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts  
9.15 and with the commission's rules and orders;

9.16 (5) impose unreasonable or discriminatory restrictions on the resale of its services,  
9.17 provided that:

9.18 (i) it may require that residential service may not be resold as a different class of  
9.19 service; and

9.20 (ii) the commission may prohibit resale of services it has approved for provision for  
9.21 not-for-profit entities at rates less than those offered to the general public; or

9.22 (6) provide telephone service to a person acting as a telephone company or  
9.23 telecommunications carrier if the commission has ordered the telephone company or  
9.24 telecommunications carrier to discontinue service to that person.

9.25 (b) A telephone company or telecommunications carrier may not violate a provision  
9.26 of section 325F.693, with regard to any of the basic or wholesale telecommunications  
9.27 services provided by the company or carrier.

9.28 Sec. 20. Minnesota Statutes 2012, section 237.295, subdivision 2, is amended to read:

9.29 Subd. 2. **Assessment of costs.** The department and commission shall quarterly, at  
9.30 least 30 days before the start of each quarter, estimate the total of their expenditures  
9.31 in the performance of their duties relating to telephone companies, other than amounts  
9.32 chargeable to telephone companies under subdivision ~~4~~, 5, ~~or 6~~. The remainder must  
9.33 be assessed by the department to the telephone companies operating in this state in  
9.34 proportion to their respective gross jurisdictional operating revenues from basic or  
9.35 intrastate wholesale telecommunications services during the last calendar year. The

10.1 assessment must be paid into the state treasury within 30 days after the bill has been  
10.2 transmitted via mail, personal delivery, or electronic service to the telephone companies.  
10.3 The bill constitutes notice of the assessment and demand of payment. The total amount  
10.4 that may be assessed to the telephone companies under this subdivision may not exceed  
10.5 three-eighths of one percent of the total gross jurisdictional intrastate operating revenues  
10.6 from basic or wholesale telecommunications services during the calendar year. Effective  
10.7 July 1, 2019, this fee assessment cap shall be reduced to 3/32 of one percent of total  
10.8 gross revenue derived from basic or wholesale telecommunications services during the  
10.9 calendar year. The assessment for the third quarter of each fiscal year must be adjusted  
10.10 to compensate for the amount by which actual expenditures by the commission and  
10.11 department for the preceding fiscal year were more or less than the estimated expenditures  
10.12 previously assessed. A telephone company with gross jurisdictional operating revenues of  
10.13 less than \$5,000 is exempt from assessments under this subdivision.

10.14 Sec. 21. Minnesota Statutes 2012, section 237.49, is amended to read:

10.15 **237.49 COMBINED LOCAL ACCESS SURCHARGE.**

10.16 Subdivision 1. Local exchange carriers. Each local telephone company shall  
10.17 collect from each subscriber an amount per telephone access line representing the total of  
10.18 the surcharges required under sections 237.52, 237.70, and 403.11. Amounts collected  
10.19 must be remitted to the commissioner of public safety in the manner prescribed in section  
10.20 403.11. The commissioner of public safety shall divide the amounts received and deposit  
10.21 them in the appropriate accounts. The commissioner of public safety may recover from  
10.22 the agencies receiving the surcharges the personnel and administrative costs to collect and  
10.23 distribute the surcharge. A company or the billing agent for a company shall list the  
10.24 surcharges as one amount on a billing statement sent to a subscriber.

10.25 Subd. 2. Advanced service providers. Advanced service providers shall collect  
10.26 from each end user an amount per Minnesota telephone number assigned to the end user's  
10.27 account representing the total number of surcharges required under sections 237.52,  
10.28 237.70, and 403.11. Advanced service providers providing service over their owned or  
10.29 leased facilities shall collect the surcharges on a line equivalency basis of 21 surcharges  
10.30 for every 1.5 megabits per second of capacity. Amounts collected must be remitted  
10.31 to the commissioner of public safety in the manner prescribed in section 403.11. The  
10.32 commissioner of public safety shall divide the amounts received and deposit them in the  
10.33 appropriate accounts. The commissioner of public safety may recover from the agencies  
10.34 receiving the surcharges the personnel and administrative costs to collect and distribute

11.1 the surcharge. An advanced service provider or its billing agent shall list the surcharge  
11.2 as one amount on a billing statement sent to a subscriber.

11.3 Sec. 22. Minnesota Statutes 2012, section 237.491, subdivision 2, is amended to read:

11.4 Subd. 2. **Per number fee.** (a) ~~By January 15, 2006, the commissioner of commerce~~  
11.5 ~~shall report to the legislature and to the senate Committee on Jobs, Energy and Community~~  
11.6 ~~Development and the house of representatives Committee on Regulated Industries,~~  
11.7 ~~recommendations for the amount of and method for assessing a fee that would apply to~~  
11.8 ~~each service provider based upon the number of Minnesota telephone numbers in use by~~  
11.9 ~~current customers of the service provider. Annually, the commission shall set the fee~~  
11.10 ~~would be set at a level calculated to generate only the amount of revenue necessary to fund:~~

11.11 (1) the telephone assistance program and the telecommunications access Minnesota  
11.12 program at the levels established by the commission under sections 237.52, subdivision  
11.13 2, and 237.70; and

11.14 (2) the 911 emergency and public safety communications program at the levels  
11.15 appropriated by law to the commissioner of public safety and the commissioner of  
11.16 management and budget for purposes of sections 403.11, 403.113, 403.27, 403.30, and  
11.17 403.31 for each fiscal year.

11.18 (b) The recommendations must include any changes to Minnesota Statutes necessary  
11.19 to establish the procedures whereby each service provider, to the extent allowed under  
11.20 federal law, would collect and remit the fee proceeds to the commissioner of revenue. The  
11.21 commissioner of revenue would allocate the fee proceeds to the three funding areas in  
11.22 paragraph (a) and credit the allocations to the appropriate accounts.

11.23 (c) ~~The recommendations must be designed to allow the combined per telephone~~  
11.24 ~~number fee to be collected beginning July 1, 2006.~~ The per access line fee used to collect  
11.25 revenues to support the TAP, TAM, and 911 programs remains in effect until the statutory  
11.26 changes necessary to implement the per telephone number fee have been enacted into  
11.27 law and taken effect.

11.28 (d) As part of the process of developing the recommendations and preparing the  
11.29 report to the legislature required under paragraph (a), the commissioner of commerce  
11.30 must, at a minimum, consult regularly with the Departments of Public Safety, Management  
11.31 and Budget, and Administration, the Public Utilities Commission, service providers,  
11.32 the chairs and ranking minority members of the senate and house of representatives  
11.33 committees, subcommittees, and divisions having jurisdiction over telecommunications  
11.34 and public safety, and other affected parties.

12.1 Sec. 23. Minnesota Statutes 2012, section 237.663, is amended to read:

12.2 **237.663 LOADING.**

12.3 (a) Except as provided in paragraph (b) or (c), a telephone company or  
12.4 telecommunications carrier providing ~~local~~ basic service shall not charge a telephone  
12.5 service subscriber, as defined in section 325F.692, for a telephone or telecommunications  
12.6 service that is not required by the commission to be offered and for which the subscriber  
12.7 did not explicitly contract.

12.8 (b) If a charge is assessed on a per-use basis for a service described in paragraph (a),  
12.9 the charge must be applied as a credit to the subscriber's next monthly bill, if the subscriber  
12.10 notifies the telephone company or telecommunications carrier that the subscriber did not  
12.11 utilize the service or did not authorize the utilization of the service.

12.12 (c) A telephone company or telecommunications carrier that receives a notification  
12.13 from a telephone service subscriber under paragraph (b) shall inform the subscriber of the  
12.14 ability to block the services from future use by the subscriber, and shall block the services  
12.15 from future use by the subscriber, if the subscriber so requests. If a subscriber requests that  
12.16 the carrier or company not block the service or later requests to have the block lifted, the  
12.17 subscriber shall be responsible for charges caused by the future utilization of that service.  
12.18 The carrier or company may not charge a recurring fee for blocking the service.

12.19 Sec. 24. **[237.84] CERTIFICATION, REGISTRATION, AND MAPPING.**

12.20 Subdivision 1. Application for certificate of authority; fee. (a) Before a  
12.21 telecommunications carrier may offer basic or wholesale telecommunications services  
12.22 to end users in Minnesota, the telecommunications carrier must receive a certificate of  
12.23 authority from the commission. The commission shall issue a certificate of authority  
12.24 within 30 days after receipt of a completed application. A telecommunications carrier  
12.25 seeking a certificate of authority under this chapter shall submit an application on a form  
12.26 prescribed by the commission. The form must require the telecommunications carrier to  
12.27 provide the following information:

12.28 (1) the legal name of the telecommunications carrier and any name under which the  
12.29 telecommunications carrier does or will do business in Minnesota, as authorized by the  
12.30 secretary of state;

12.31 (2) a certification from the secretary of state authorizing the telecommunications  
12.32 carrier to do business in Minnesota;

12.33 (3) the address and telephone number of the telecommunications carrier, along  
12.34 with contact information for the person responsible for ongoing communication with  
12.35 the commission;

13.1 (4) the legal name, address, and telephone number of the parent company of the  
 13.2 telecommunications carrier, if any;

13.3 (5) a description of each service area in Minnesota in which the telecommunications  
 13.4 carrier proposes to offer telecommunications service;

13.5 (6) a list of other states in which the telecommunications carrier offers  
 13.6 telecommunications service, including the type of telecommunications service offered; and

13.7 (7) information demonstrating the financial, managerial, and technical ability of the  
 13.8 telecommunications carrier to provide telecommunications service in Minnesota.

13.9 (b) The commission may collect from the applicant a filing fee not to exceed \$300,  
 13.10 charged at the time an application is filed under this section.

13.11 Subd. 2. **Advanced service provider registration.** (a) Advanced service providers  
 13.12 shall register with the commission within 60 days after beginning operation by submitting  
 13.13 a registration form as prescribed by the commission. The form must require the advanced  
 13.14 service provider to provide the following information:

13.15 (1) the legal name of the advanced service provider and any name under which the  
 13.16 advanced service provider does or will do business in Minnesota, as authorized by the  
 13.17 secretary of state;

13.18 (2) a certification from the secretary of state authorizing the advanced service  
 13.19 provider to do business in Minnesota;

13.20 (3) the address and telephone number of the advanced service provider, along  
 13.21 with contact information for the person responsible for ongoing communication with  
 13.22 the commission; and

13.23 (4) a description of the services being provided by the advanced service provider  
 13.24 in Minnesota.

13.25 (b) The registration requirements in paragraph (a) do not apply to an advanced  
 13.26 service provider that:

13.27 (1) is also a telecommunications carrier; and

13.28 (2) has received a certificate of authority from the commission under this chapter.

13.29 Subd. 3. **Map.** Every local exchange carrier authorized to provide telephone  
 13.30 exchange service under this chapter shall file and maintain a territorial map.

13.31 **Sec. 25. [237.85] ALTERNATIVE REGULATION PLANS TERMINATED.**

13.32 Any alternative regulation plan entered into under Minnesota Statutes 2010, chapter  
 13.33 237, automatically terminates in its entirety with respect to all services subject to the plan  
 13.34 and has no force or effect as of the effective date of this act.



15.1 (d) All prehearing discovery activities of state agency intervenors shall be  
15.2 consolidated and conducted by the Department of Commerce.

15.3 (e) If the commission does not make a final determination concerning a schedule of  
15.4 rates within ten months after the initial filing date, the schedule shall be deemed to have  
15.5 been approved by the commission; except if:

15.6 (1) an extension of the procedural schedule has been granted under paragraph (f) or  
15.7 subdivision 1a, in which case the schedule of rates is deemed to have been approved by  
15.8 the commission on the last day of the extended period of suspension; or

15.9 (2) a settlement has been submitted to and rejected by the commission and the  
15.10 commission does not make a final determination concerning the schedule of rates, the  
15.11 schedule of rates is deemed to have been approved 60 days after the initial or, if applicable,  
15.12 the extended period of suspension.

15.13 (f) If the commission finds that it has insufficient time during the suspension period  
15.14 to make a final determination of a case involving changes in general rates because of the  
15.15 need to make a final determination of any pending case involving changes in general rates  
15.16 under this section ~~or section 237.075~~, the commission may extend the suspension period  
15.17 to allow up to a total of 90 additional calendar days to make the final determination.

15.18 An extension of the suspension period under this paragraph does not alter the setting of  
15.19 interim rates under subdivision 3.

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

15.24 Sec. 2. Minnesota Statutes 2012, section 237.01, subdivision 6, is amended to read:

15.25 Subd. 6. **Telecommunications carrier.** "Telecommunications carrier" means a  
15.26 person, firm, association, or corporation authorized to furnish one or more of the following  
15.27 telephone services to the public, but not otherwise authorized to furnish local exchange  
15.28 service: (1) interexchange telephone service; (2) local telephone service pursuant to a  
15.29 certificate granted ~~under the authority of section 237.16, subdivision 4~~, before August 1,  
15.30 1995; or (3) local service pursuant to a certificate granted ~~under section 237.16~~, for the  
15.31 first time after August 1, 1995, except if granted to a successor to a telephone company  
15.32 otherwise authorized to furnish local exchange service. Telecommunications carrier does  
15.33 not include entities that derive more than 50 percent of their revenues from operator  
15.34 services provided to transient locations such as hotels, motels, and hospitals. In addition,

16.1 telecommunications carrier does not include entities that provide centralized equal access  
16.2 services.

16.3 Sec. 3. Minnesota Statutes 2012, section 237.01, subdivision 7, is amended to read:

16.4 Subd. 7. **Telephone company.** "Telephone company," means and applies to any  
16.5 person, firm, association or any corporation, private or municipal, owning or operating  
16.6 any telephone line or telephone exchange for hire, wholly or partly within this state, or  
16.7 furnishing any telephone service to the public.

16.8 A "telephone company" does not include a radio common carrier as defined in  
16.9 subdivision 4. A telephone company which also conforms with the definition of a radio  
16.10 common carrier is subject to regulation as a telephone company. However, none of  
16.11 chapter 237 applies to telephone company activities which conform to the definition of  
16.12 a radio common carrier.

16.13 A "telephone company" does not include a telecommunications carrier as defined in  
16.14 subdivision 6, except that a telecommunications carrier is a telephone company for the  
16.15 purposes of section 222.36. ~~A telephone company is not subject to section 237.74.~~

16.16 Sec. 4. Minnesota Statutes 2012, section 237.035, is amended to read:

16.17 **237.035 TELECOMMUNICATIONS CARRIER EXEMPTION.**

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

16.20 (b) Telecommunications carriers shall comply with ~~sections~~ section 237.121 ~~and~~  
16.21 ~~237.74.~~

16.22 (c) ~~Telecommunications carriers shall comply with section 237.16, subdivisions~~  
16.23 ~~8 and 9.~~

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

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

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

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

16.31 Sec. 5. Minnesota Statutes 2012, section 237.036, is amended to read:

16.32 **237.036 COIN-OPERATED OR PUBLIC PAY TELEPHONES.**

16.33 (a) Neither commission approval nor a commission certificate is required to:

17.1 (1) site a coin-operated or public pay telephone in the state; or

17.2 (2) implement changes in service, services offered, rates, or location regarding a  
17.3 coin-operated or public pay telephone. Registration under section 237.64 is required to  
17.4 own or operate a coin-operated or public pay telephone in the state.

17.5 (b) This section does not change the authority of other state or local government  
17.6 entities to regulate aspects of coin-operated or public pay telephone ownership, location,  
17.7 or operation; however, an entity may not regulate aspects of these services that it did not  
17.8 regulate prior to May 26, 1999. The commission shall retain the authority delegated to  
17.9 it under federal and state law to protect the public interest with regard to coin-operated  
17.10 or public pay telephones.

17.11 (c) Owners and operators of coin-operated or public pay telephones are exempt from  
17.12 sections ~~237.06, 237.07, 237.075, 237.09, 237.23, and 237.295, and 237.39~~ and the annual  
17.13 reporting requirement of section ~~237.11~~.

17.14 (d) Owners of coin-operated or public pay telephones shall:

17.15 (1) provide immediate coin-free access, to the extent technically feasible, to 911  
17.16 emergency service or to another approved emergency service; and

17.17 (2) provide free access to the telecommunications relay service for the  
17.18 communication impaired.

17.19 (e) Owners of coin-operated or public pay telephones must post at each coin-operated  
17.20 or public pay telephone location:

17.21 (1) customer service and complaint information, including the name, address, and  
17.22 telephone number of the owner of the coin-operated or public pay telephone and the  
17.23 operator service handling calls from the coin-operated or public pay telephone; a toll-free  
17.24 number of the appropriate telephone company for the resolution of complaints; and the  
17.25 toll-free number of the public utilities commission; and

17.26 (2) a toll-free number at which consumers can obtain pricing information regarding  
17.27 rates, charges, terms, and conditions of local and long-distance calls.

17.28 Sec. 6. Minnesota Statutes 2012, section 237.661, subdivision 1, is amended to read:

17.29 Subdivision 1. **Antislamming duties of local telephone company.** If a customer  
17.30 has elected to exercise the right described in Minnesota Statutes 2010, section 237.66,  
17.31 subdivision 1a, the telephone company serving the customer shall not process a request  
17.32 to serve the customer by another telecommunications carrier without prior authorization  
17.33 from the customer. If a customer has not elected to exercise the right described in  
17.34 that subdivision, the company may process a request to serve the customer by another  
17.35 telecommunications carrier.

18.1 Sec. 7. Minnesota Statutes 2012, section 237.681, subdivision 5, is amended to read:

18.2 Subd. 5. **Exemption.** A commercial shared services provider is exempt from  
 18.3 Minnesota Statutes 2010, section 237.16<sub>2</sub>, if the private shared services are only provided  
 18.4 to tenants or for the provider's own use.

18.5 Sec. 8. Minnesota Statutes 2012, section 237.81, is amended to read:

18.6 **237.81 SCOPE.**

18.7 To the extent they regulate telecommunications right-of-way users, sections 237.04;  
 18.8 ~~237.16, subdivision 1<sub>2</sub>, 237.162<sub>2</sub>, and 237.163; and 237.74, subdivision 5~~, supersede  
 18.9 section 222.37, and any ordinance, regulation, or rule to the contrary.

18.10 Sec. 9. Minnesota Statutes 2012, section 308A.210, subdivision 8, is amended to read:

18.11 Subd. 8. **Advanced telecommunication service; defined.** "Advanced  
 18.12 telecommunications service" includes any service that would be classified as a flexibly  
 18.13 priced service ~~within the meaning of section 237.761, subdivision 4~~, or non-price-regulated  
 18.14 service ~~within the meaning of section 237.761, subdivision 4~~, provided that a service may  
 18.15 be an advanced telephone service whether or not the telephone company has adopted an  
 18.16 alternative rate plan ~~within the meaning of section 237.76~~.

18.17 Sec. 10. Minnesota Statutes 2012, section 325F.693, subdivision 2, is amended to read:

18.18 Subd. 2. **Slamming deemed consumer fraud.** (a) It is fraud under section 325F.69  
 18.19 to request a change in a telephone service subscriber's local exchange or interexchange  
 18.20 carrier without the subscriber's verified consent.

18.21 (b) A telephone service subscriber may employ ~~the remedies provided in section~~  
 18.22 ~~237.66 for violations of paragraph (a)~~. section 8.31 ~~may also be employed to remedy~~  
 18.23 violations of paragraph (a).

18.24 (c) For the purposes of paragraph (a):

18.25 (1) the consent of the telephone service subscriber may be verified utilizing any  
 18.26 method that is consistent with federal law or regulation;

18.27 (2) compliance with applicable federal law and regulation, or state law and rule,  
 18.28 whichever is more stringent, is a complete defense to an allegation of consumer fraud  
 18.29 under paragraph (a); and

18.30 (3) it is the responsibility of the company or carrier requesting a change in a telephone  
 18.31 service subscriber's company or carrier to verify that the subscriber has authorized the  
 18.32 change. A telephone company or telecommunications carrier providing local exchange  
 18.33 service who has been requested by another telephone company or telecommunications

19.1 carrier to process a change in a subscriber's carrier is only liable under this section if it  
19.2 knowingly participates in processing a requested change that is unauthorized.

19.3 ~~Nothing in this section shall be construed to change a telephone company's or~~  
19.4 ~~telecommunications carrier's obligations under section 237.66.~~

19.5 Sec. 11. Minnesota Statutes 2012, section 412.014, is amended to read:

19.6 **412.014 POWER TO OPERATE TELEPHONE LINES.**

19.7 Any statutory city heretofore or hereafter incorporated, in the territory of which  
19.8 previous to such incorporation telephone lines have been constructed and operated by a  
19.9 town as authorized by Minnesota Statutes 2010, sections 237.33 to 237.40, is hereby  
19.10 authorized to continue to operate such telephone lines and the city shall have all the  
19.11 powers granted to towns and the council shall have all of the powers granted to boards of  
19.12 supervisors under Minnesota Statutes 2010, sections 237.33 to 237.40.

19.13 Sec. 12. Minnesota Statutes 2012, section 609.892, subdivision 1, is amended to read:

19.14 Subdivision 1. **Applicability.** The definitions in this section apply to sections  
19.15 ~~237.73~~, 609.892, and 609.893.

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**237.06 RATES AND DEPOSITS.**

It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful. Any telephone company may include in its charges a reasonable deposit fee for facilities furnished.

**237.067 ESTABLISHMENT EXEMPT FROM REGULATION.**

Subdivision 1. **Definition.** For purposes of this section, "establishment" means an individual hotel, motel, restaurant, lodging house, boarding house, resort, or place of refreshment licensed under chapter 157.

Subd. 2. **Exemption; conditions.** An establishment that provides telephone service to patrons on the premises of the establishment is not subject to regulation under this chapter, except that the establishment:

(1) shall comply with the requirement of section 237.06 that rates charged must be fair and reasonable;

(2) shall provide notice of charges and service providers to patrons as required in section 325F.99; and

(3) is subject to the complaint and investigation procedures of section 237.081.

**237.068 MULTIPARTY LINE TELEPHONE SERVICE.**

After October 31, 1993, no telephone company may offer or provide multiparty line telephone service to more than two subscribers per line, unless otherwise approved by the commission.

**237.069 TRACER; HARASSING TELEPHONE CALL; RULES.**

The commission shall adopt rules to govern how telephone companies respond to requests for tracers made by persons who allege receiving harassing telephone calls. The rules must address when a request for a tracer may be denied or delayed.

**237.07 FILING REQUIREMENTS.**

Subdivision 1. **Filing of charges.** Every telephone company shall keep on file with the department a specific rate, toll, or charge for every kind of noncompetitive service and a price list for every kind of service subject to emerging competition, together with all rules and classifications used by it in the conduct of the telephone business, including limitations on liability. The filings are governed by chapter 13. When a company sells services subject to emerging competition on an individually priced basis, it shall file a statement of the charges to its customers with the commission and the department. The department shall require each telephone company to keep open for public inspection, at designated offices, so much of these rates, price lists, and rules as it deems necessary for the public information.

Subd. 2. **Separate pricing.** When competitive services or service elements or services on an individually priced basis are sold in conjunction with noncompetitive services or service elements, the telephone company shall file or have on file with the commission and the department separate prices for its services subject to emerging competition and noncompetitive services or service elements. Telephone services or service elements must be offered on a nondiscriminatory basis.

**237.071 SPECIAL PRICING.**

Except as prohibited by section 237.60, subdivision 3, prices unique to a particular customer or group of customers may be allowed for noncompetitive services and for services subject to emerging competition when differences in the cost of providing a service or a service element justifies a different price for a particular customer or group of customers. Individual pricing for services subject to emerging competition may be allowed when a uniform price should not be required because of market conditions. Unique or individual prices for services or service elements in effect before July 1, 1989, are deemed to have been approved under this section.

**237.072 LIMITATION ON RATE CHANGE.**

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(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.**

Subdivision 1. **Notice.** Unless the commission otherwise orders, no telephone company shall change a rate which has been duly established under this chapter, except upon 60 days' notice to the commission. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and state the change proposed to be made in the rates then in force and the time when the modified rates will go into effect. The filing telephone company shall give written notice, as approved by the commission, of the proposed change to the governing body of each municipality and county in the area affected. All proposed changes shall be shown by filing new schedules or shall be plainly indicated upon schedules on file and in force at the time.

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

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schedule shall be calculated using the proposed test-year cost of capital, rate base, and expenses, 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. 4. Burden of proof.** The burden of proof to show that the rate change is just and reasonable shall be upon the telephone company seeking the change.

**Subd. 5. Determination after finding rate unacceptable.** If, after the hearing, the commission finds the rates to be unjust or unreasonable or discriminatory, the commission shall determine the rates to be charged or applied by the telephone company for the service in question and shall fix them by order to be served upon the telephone company. The rates shall thereafter be observed until changed, as provided by this chapter. In no event shall the rates exceed the level of rates requested by the telephone company, except that individual rates may be adjusted upward or downward. Rate design changes shall be prospective from the effective date of the new rate schedules approved by the commission.

**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. 7. Advertising.** The commission shall not make an allowance for operating expenses incurred by a telephone company for institutional advertising.

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Subd. 8. **Charitable contribution.** The commission shall allow as operating expenses only 50 percent of the qualified charitable contributions which the commission deems prudent for the use of any community chest, corporation, trust, fund, association, foundation, or organization, and only as long as the use is exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes or for the prevention of cruelty to children or animals. No part of a charitable contribution may inure to the benefit of any private stockholder or individual.

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 (a) 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 (b) 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 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 (a) approved by resolution of the governing body of the municipality; or (b) 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 (a) 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 (b) 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.

Subd. 10. **Intervenor reimbursement.** The commission may order a telephone company to pay all or a portion of a party's intervention costs not to exceed \$20,000 per intervention in any general rate case when the commission finds that the intervenor has materially assisted the commission's deliberation and the intervenor has insufficient financial resources to afford the costs of intervention. No entity which provides telephone services of any kind is eligible for reimbursement of intervention costs under this subdivision.

Subd. 11. **Recovery of expenses of segregating billing charges.** The public utilities commission shall allow each telephone company and independent telephone company subject to

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the requirements of section 325F.692 to automatically adjust tariffs or rates paid by information service providers to reflect the reasonable cost to the company to comply with section 325F.692.

### **237.076 SETTLEMENT; PROCEDURES.**

Subdivision 1. **Settlement.** In proceedings before the commission, interested parties are encouraged to enter into settlements of their disputes. If a settlement is reached before a contested case hearing has been ordered and the commission rejects the settlement, the commission shall order a contested case hearing if a significant issue has not been resolved to the commission's satisfaction. When a contested case hearing has been ordered under this chapter, the Office of Administrative Hearings, before conducting the hearing, shall convene a settlement conference including all the parties to encourage settlement of issues in the contested case. If a stipulated settlement is not reached before the contested case hearing, the Office of Administrative Hearings may, at its discretion or a party's request, reconvene the settlement conference during the hearing or after its completion. If all parties agree to a stipulated settlement of the case or a part of the case, the settlement must be submitted to the commission.

Subd. 2. **Procedures.** The commission may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence. If the commission does not accept a settlement, it may issue an order modifying the settlement, subject to the approval of the parties. A party has ten days after entry of the order, or of an order disposing of a petition for reconsideration, in which to reject the proposed modification. If no party rejects the proposed modification, the commission's order becomes final. If the commission rejects a settlement or if a party rejects the commission's proposed modification of a settlement, the matter must be referred to the administrative law judge assigned to the case for further proceedings.

### **237.082 TELECOMMUNICATION RATE AND SERVICE GOALS.**

When setting rates, adopting rules, or issuing orders related to telecommunication matters that affect deployment of the infrastructure, the commission may apply the goals of:

- (1) achieving economically efficient investment in:
  - (i) higher speed telecommunication services; and
  - (ii) greater capacity for voice, video, and data transmission; and
- (2) just and reasonable rates.

The department may apply the same goals in its regulation of and recommendations regarding telecommunication services.

### **237.10 UNIFORM RULES, CLASSIFICATIONS, PRACTICES; FORMS.**

It shall be the duty of the commission to prescribe uniform rules and classifications pertaining to the conduct of intrastate telephone business and a system of accounting to be used by telephone companies in transacting this business, and it shall prescribe and furnish blanks and forms for reports, all of which shall conform as nearly as practicable to the rules, classifications, accounting systems, and reports prescribed by the Federal Communications Commission for the interstate business of like size companies.

The commission shall by correspondence or conference where necessary use its best endeavors toward establishing uniformity in practice in all matters pertaining to regulation of the business of telephone companies between the federal government and state government of this and adjacent states.

### **237.11 INSPECTING RECORDS AND PROPERTY; REPORTS REQUIRED.**

Every telephone company subject to the provisions of this chapter, wherever organized, shall keep an office in this state, and make such reports to the department as it shall from time to time require. All books, records, and files, whether they relate to competitive or noncompetitive services, and all of its property shall be at all times subject to inspection by the commission and the department. It shall close its accounts and take therefrom a balance sheet on December 31 of each year, and on or before May 1 following, such balance sheet, together with such other information as the department shall require, verified by an officer of the telephone company, shall be filed with the commission and the department, except that a local exchange carrier or a competitive local exchange carrier, as defined in Minnesota Rules, chapter 7811, is only required to file an annual report that includes the company's name, contact person, annual revenue, and status of its 911 update plan.

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In the event that any telephone company shall fail to file its annual report, as provided by this section, the department is authorized to make such an examination of the books, records, and vouchers of the company as is necessary to procure the necessary data for the annual report and cause the same to be prepared. The expense of procuring this data and preparing this report shall be paid by the telephone company failing to report, and the amount paid shall be credited by the commissioner of management and budget to funds appropriated for the expense of the department.

The department is authorized to force collection of such sum by an action at law in the name of the department.

### **237.12 SERVICE CONNECTION BETWEEN TELEPHONE COMPANIES.**

Subd. 2. **Discontinuance.** Wherever a physical connection or connections exist between any telephone exchange system operated by a telephone company and the toll line or lines operated by another telephone company or between its toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another telephone company, neither of the companies shall cause such connection to be severed or the service between the companies to be discontinued without first obtaining an order from the commission upon an application for permission to discontinue such physical connection. Upon the filing of an application for discontinuance of such a connection, the department shall investigate and ascertain whether public convenience requires the continuance of such physical connection, and if the department so finds, the commission shall fix the compensation, terms and conditions of the continuance of the physical connection and service between the telephone companies.

### **237.15 INVESTIGATION AND HEARING; AUTHORITY DELEGATED.**

The department shall whenever it deems the same necessary determine the value of all the property of any telephone company devoted to the public use, and in so doing it shall, after notice to the telephone company, hold such public hearing as will give all interested parties a chance to furnish evidence and be heard. For the purpose of this chapter the department is authorized to appoint engineers, examiners, experts, clerks, accountants, and other assistants as it may deem necessary at such rates of compensation as it may prescribe.

In the discharge of their duties such appointees shall have every power, of any inquisitorial nature granted in this chapter to the department. The department may conduct any number of investigations contemporaneously through its individual members or appointees, and may delegate to its individual members and employees the taking of all testimony on any investigation or hearing.

### **237.155 CREDIT FOR INCORRECT DIRECTORY ASSISTANCE.**

A local exchange carrier that provides directory assistance to customers for a fee, either directly or by contracting with a third party, must provide for an immediate credit to a customer that informs the directory assistance provider that the provider has given the customer incorrect information for which the provider charged the customer a fee. A local exchange carrier must notify its customers of the right to the immediate credit for incorrect directory assistance. The notice must be in a writing labeled "NOTICE OF RIGHT TO INCORRECT DIRECTORY ASSISTANCE CREDIT." The notice must be given to a new customer within 45 days of commencing service and at least annually thereafter and the notification print must be of sufficient size to be clearly legible.

### **237.16 LOCAL EXCHANGE COMPETITION, RULES.**

Subdivision 1. **New service, certificate of authority.** (a) For the purpose of bringing about fair and reasonable competition for local exchange telephone services, the commission has the exclusive authority, subject to the authority of a local government unit under sections 237.162 and 237.163, to:

(1) authorize any person to construct telephone lines or exchanges or to otherwise furnish local service to subscribers in any municipality of this state, and to prescribe the terms and conditions upon which construction or service delivery may be carried on; and

(2) establish terms and conditions for the entry of telephone service providers so as to protect consumers from monopolistic practices and preserve the state's commitment to universal service.

(b) No person shall provide telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to

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provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.

(c) The commission shall make a determination on an application for a certificate within 120 days of the filing of the application.

Subd. 3. **Map.** Every company authorized to provide local telephone service under this section shall file a territorial map. The map must comply with the rules prescribed by the commission.

Subd. 4. **Amended certificate required for expansion.** No company authorized to provide local service shall provide local telephone service in any area for which it has not been certified nor shall any person acquire ownership or control of another telephone company either directly or indirectly, without first obtaining from the commission an amended certificate of authority. The applicant for an amended certificate shall file with the commission notice of the expansion or acquisition, along with a new map under subdivision 3, identifying the territory to be served. Notice of the filing shall be served on any affected municipality and local telephone company certified in that territory. If no objection is filed with the commission by any interested party or raised by the commission within 20 days of the filing, it is considered approved, except if it involves an acquisition governed by section 237.23, in which case no certificate shall be granted until approval is obtained pursuant to that section and subdivision 1. If an objection is filed, the commission shall determine whether to approve the amendment in an expedited proceeding under section 237.61. This section shall not be construed to require a telephone company operating an exchange in Minnesota to secure a certificate for an extension within any territory within which such company has heretofore filed maps or for substitute facilities within such territories, or for extensions into territories contiguous to that already occupied by such company and not receiving similar service from another company if no certificate of territorial authority has been issued to or applied for by any other company.

Subd. 5. **Revocation and temporary suspension.** Any certificate of authority may, after notice of hearing and a hearing, be revoked or temporarily suspended by the commission, in whole or in part, for: the failure of its holder to furnish reasonably adequate telephone service within the area or areas determined and defined in the certificate of authority; failure to meet the terms and conditions of its certificate; intentional violation of the commission's rules or orders; or intentional violation of any applicable state or federal law relating to the provision of telephone or telecommunications services.

Subd. 6. **Expansion of service area not required.** This section does not require any telephone company providing local service in the state of Minnesota to render telephone service in any portion of any territorial area not included on the telephone company's territorial map.

Subd. 7. **Existing certificate service continued.** This section does not limit the ability of telephone companies possessing certificates of territorial authority on August 1, 1995, including, but not limited to, certificates authorizing resale of local telephone service, to continue to provide telephone service within their designated territories.

Subd. 8. **Rules.** (a) Before August 1, 1997, the commission shall adopt rules applicable to all telephone companies and telecommunications carriers required to obtain or having obtained a certificate for provision of telephone service using any existing federal standards as minimum standards and incorporating any additional standards or requirements necessary to ensure the provision of high-quality telephone services throughout the state. The rules must, at a minimum:

- (1) define procedures for competitive entry and exit;
- (2) require the provisions of equal access and interconnection with the company's network and other features, functions, and services which the commission considers necessary to promote fair and reasonable competition;
- (3) require unbundling of network services and functions to at least the level required by existing federal standards;
- (4) prescribe, if necessary, methods of reciprocal compensation between telephone companies;
- (5) provide for local telephone number portability;
- (6) prescribe appropriate regulatory standards for new local telephone service providers, that facilitate and support the development of competitive services;
- (7) protect against cross-subsidization, unfair competition, and other practices harmful to promoting fair and reasonable competition;
- (8) prescribe methods for the preservation of universal and affordable local telephone services;
- (9) prescribe standards for quality of service;

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(10) provide for the continued provision of local emergency telephone services under chapter 403; and

(11) protect residential and commercial customers from unauthorized changes in service providers in a competitively neutral manner.

(b) Before January 1, 1998, in a separate rulemaking, the commission shall adopt separate rules regarding the issues described in paragraph (a), clauses (1) to (11), as may be appropriate to provision of competitive local telephone service in areas served by telephone companies with less than 50,000 subscribers originally certified to provide local telephone services before January 1, 1988.

Subd. 9. **Universal service fund.** The commission shall establish and require contributions to a universal service fund, to be supported by all providers of telephone services, whether or not they are telephone companies under section 237.01, including, but not limited to, local telephone companies, independent telephone companies, cooperative telephone companies, municipal telephone companies, telecommunications carriers, radio common carriers, personal communication service providers, and cellular carriers. Services that should be considered for inclusion as universal include, at a minimum, single-party service including access, usage and touch-tone capability; line quality capable of carrying facsimile and data transmissions; equal access; emergency services number capability; statewide telecommunications relay service for the hearing-impaired; and blocking of long-distance toll services. The fund must be administered and distributed in accordance with rules adopted by the commission and designed to preserve the availability of universal service throughout the state. Any state universal service fund must be coordinated with any federal universal service fund and be consistent with section 254(b)(1) to (5) of the federal Telecommunications Act of 1996, Public Law 104-104. The department shall make recommendations to the legislature by January 1, 1996, regarding a plan for contributions to and expenditures from the universal service fund. In particular, the department shall address the following issues:

(1) what additional services should be included in the basic set of essential telephone services which the state should encourage in its mandate to ensure universal service;

(2) whether and how expenditures from the fund should be used to ensure citizens access to local government and other public access programming; and

(3) whether expenditures from the fund should be used to encourage construction of infrastructure for, and access to, advanced services, especially in high-cost areas of the state, and, if the commission determines the fund should be used for this purpose, a plan to accomplish these goals.

Subd. 10. **Interim authority.** (a) Before adopting the rules required under subdivision 8, the commission shall grant an applicant a certificate to provide a proposed local telephone service when the commission finds that the applicant meets the conditions of subdivision 1. Any applicant for a certificate pursuant to subdivision 1 shall, at the time its application is filed, provide notice of its application to all local telephone companies authorized to provide local exchange service in the geographic area identified in the application. The applicant and telephone companies shall negotiate a temporary arrangement pertaining to interconnection matters for the effective interconnection of local exchange networks, pending the adoption of the rules under subdivision 8. If the applicant and the telephone companies fail to reach agreement within 60 days of filing the application, the commission shall set the terms of the temporary arrangement at the time of the issuance of the certificate.

(b) Any company previously certified to provide local telephone services may request a temporary arrangement for the effective interconnection with the local exchange network of another telephone company in the same territory, pursuant to the time frames and procedures of this subdivision.

(c) In addition, through and until the rules are adopted under subdivision 8, each telephone company serving more than 50,000 access lines in the state shall:

(1) permit interconnection or discontinue interconnection for intrastate services to the same extent and in the same manner and time frame as the Federal Communications Commission requires interconnection or permits discontinuance of interconnection for interstate services; and

(2) unbundle its intrastate services and facilities used for intrastate services to the same extent and in the same manner as the Federal Communications Commission requires unbundling for interstate purposes.

Subd. 11. **Interim authority in area served by small telephone company.** (a) Before adopting the rules required under subdivision 8 for telephone companies with less than 50,000 subscribers, when an applicant requests certification to provide local telephone service in an area served by a telephone company with less than 50,000 subscribers originally certified to provide local telephone service before January 1, 1988, the commission shall grant the application

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if it finds the applicant meets the requirements of subdivision 1. The commission shall make its determination on the application, including whether to provide a temporary arrangement for the effective interconnection of the local exchange networks, after a hearing under chapter 14 or expedited proceeding under section 237.61, within nine months of the application, and considering any facts unique to that telephone company. In addition, if an application is granted, that telephone company shall:

(1) permit interconnection or discontinue interconnection for intrastate services to the same extent and in the same manner and time frame as the Federal Communications Commission may thereafter require for that small telephone company for interstate purposes; and

(2) unbundle its intrastate services and facilities used for intrastate services to the same extent and in the same manner as the Federal Communications Commission may thereafter require for that telephone company for interstate purposes.

(b) If a telephone company with less than 50,000 subscribers is authorized by the Federal Communications Commission to provide video common carrier services before the rules required under subdivision 8 are adopted, an application under this subdivision for certification to provide local telephone service in an area served by that telephone company shall be determined within 120 days of its filing.

Subd. 12. **Extension of interexchange facility.** In order to promote the development of competitive interexchange services and facilities, any interexchange facility that is owned by a certified telephone company, independent telephone company, telecommunications carrier or an affiliate and that is used to provide service to customers located in areas for which it has been previously certified to provide service may be extended to meet and interconnect with the facility of another telephone company, small telephone company, or telecommunications carrier, whether at a point inside or outside of its territories, without further proceeding, order, or determination of current or future public convenience and necessity, upon mutual consent with the other telephone company, small telephone company, or telecommunications carrier whose facilities will be met and interconnected. Written notice of the extension and interconnection must be provided to the Public Utilities Commission and Department of Public Safety within 30 days after completion. The written notice must be served on all local exchange companies certified before January 1, 1988, in all areas where the facilities are located.

Subd. 13. **Application of other law.** Notwithstanding any provisions of sections 237.035 and 237.74 to the contrary, before adopting the rules under subdivision 8, the local services provided by a telecommunications carrier are subject to this chapter in the same manner as those local services of a telephone company regulated under this chapter, except that the telecommunications carrier is not subject to section 237.22 and is not subject to rate-of-return regulation or earnings investigations under section 237.075 or 237.081. Before offering a local telephone service a telecommunications carrier must be certified to provide local service under this section.

#### **237.164 UNIVERSAL SERVICE DISCOUNT FOR SCHOOL OR LIBRARY.**

The commission shall establish intrastate service discounts for schools and libraries by order to the extent and within the time frame necessary to enable schools and libraries to begin receiving federally supported discounts at the earliest date permitted by the Federal Communications Commission.

#### **237.18 SURRENDERING OLD LICENSE; NEW AUTHORITY.**

Any telephone company operating under any existing license, permit, or franchise or which shall, before the taking effect of Laws 1915, chapter 152, acquire any license, permit, or franchise, upon filing with the clerk of the municipality which granted such franchise, a written declaration that it surrenders such license, permit, or franchise, may receive in lieu thereof, an indeterminate permit, as defined in this chapter; and such telephone company shall thereafter hold such permit under all the terms, conditions, and limitations of this chapter. The filing of such declaration shall be deemed a waiver by such telephone company of the right to insist upon the fulfillment by any municipality of any contract theretofore entered into relating to any rate, charge, or service made subject to regulation by this chapter. Upon filing such written declaration by the telephone company, the clerk of the municipality shall file with the commission a certificate showing that fact and the date thereof, and thereupon it shall receive an indeterminate permit from the commission conferring the same rights as if originally granted under this chapter.

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

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

#### **237.23 ACQUIRING PROPERTY OF ANOTHER COMPANY.**

It shall be unlawful for any telephone company, corporation, person, partnership, or association subject to the provisions of this chapter to purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises, rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the consent of the commission thereto; and telephone companies, corporations, persons, partnerships, or associations are hereby given the right with the consent of the commission to purchase and acquire the property, capital stock, bonds, securities, or other obligations together with all franchises, rights, privileges, and immunities owned or enjoyed by said companies. The owner and the proposed purchaser of said property shall both join in the application filed with the commission for the approval of such transfer, and in the case of a corporation desiring to sell all of its property it shall require a vote of a majority of its stockholders to ratify the same. Telephone companies may sell and dispose of any property not used by said telephone companies in the conduct of their business at the time of the sale without the consent of the commission.

Nothing herein shall be deemed to prevent the holding of stock heretofore lawfully acquired or to prevent the acquisition of additional stock by any telephone company owning a majority of the stock of any telephone company.

#### **237.231 SALE OF LOCAL EXCHANGE SERVICE.**

Subdivision 1. **Commission approval.** A Class A telephone company may not sell a local exchange service territory without receiving the prior consent of the commission. For the purposes of this section, a Class A telephone company is a telephone company which has annual revenues from regulated telecommunication operations of \$100,000,000 or more, as defined by the Federal Communications Commission in Code of Federal Regulations, title 47, section 32.11, paragraphs (a)(1) and (e).

Subd. 2. **Notice of intended sale.** At least 90 days prior to applying to the commission for consent to a proposed sale or acquisition of a local exchange service, the selling telephone company must provide notice to its customers in that local exchange of its intent to sell and identify the affected local exchange, and the name of the proposed buyer. The notice must be on a separate document and included in the company's monthly billings to customers. The commission must approve the form of all notices.

Subd. 3. **Resident poll.** At least 60 days prior to the hearing under subdivision 4, the telephone company proposing the sale of a local exchange service must provide each of its customers with a stamped envelope addressed to the commission and must inform the customer that the customer is encouraged to comment on the quality of service that has been provided in the local exchange service territory by the telephone company over the last 12 months.

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Subd. 4. **Public hearing.** At least 30 days prior to the commission's deliberations about a proposed sale or acquisition of a local exchange service territory, the commission must hold a public hearing at a location within the affected local exchange service territory allowing the public an opportunity to be heard and to present any concerns or comments.

Subd. 5. **Requirements for consent.** The commission may not give consent to a sale of a service territory unless, at a minimum, it finds all of the following:

(1) the quality of service provided by the telephone company servicing the local exchange service territory has substantially complied with all applicable quality of service standards adopted by rule by the commission for the previous calendar year;

(2) the proposed buyer is financially responsible and capable of making necessary investments to maintain quality service at levels required by rule; and

(3) the proposed buyer demonstrates that it has an adequate number of properly trained employees to maintain service at required levels.

The commission shall, as a condition of its consent, require a proposed buyer to enter into binding commitments obligating the buyer to maintain minimum levels of investment and staffing needed to meet the commission's quality of service rules. These commitments are in addition to any other conditions that the commission may impose.

### **237.28 BURDEN OF PROOF.**

In any investigation, action or proceeding arising under, or growing out of, an action initiated by the commission upon its own motion, the burden of proof shall be upon the telephone company to establish the reasonableness of the existing rates.

### **237.295 ASSESSMENT OF REGULATORY EXPENSES.**

Subdivision 1. **Filing fee for new authority.** An application for a new authority must be accompanied by a payment not to exceed \$2,000 as determined by the Public Utilities Commission. This fee will be reviewed annually and adjusted accordingly.

Subd. 6. **Extended area service balloting account; appropriation.** The extended area service balloting account is created as a separate account in the special revenue fund in the state treasury. The commission shall render separate bills to telephone companies only for direct balloting costs incurred by the commission. The bill constitutes notice of the assessment and demand of payment. The amount of a bill assessed by the commission under this subdivision must be paid by the telephone company into the state treasury within 30 days from the date of assessment. Money received under this subdivision must be credited to the extended area service balloting account and is appropriated to the commission.

### **237.30 TELEPHONE INVESTIGATION FUND; APPROPRIATION.**

The sum of \$25,000 is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to establish and provide a revolving fund to be known as the Minnesota Telephone Investigation Fund for the use of the Department of Commerce and of the attorney general in investigations, valuations, and revaluations under section 237.295. All sums paid by the telephone companies to reimburse the department for its expenses pursuant to section 237.295 shall be credited to the revolving fund and shall be deposited in a separate bank account and not commingled with any other state funds or moneys, but any balance in excess of \$25,000 in the revolving fund at the end of each fiscal year shall be paid into the state treasury and credited to the general fund. The sum of \$25,000 herein appropriated and all subsequent credits to said revolving fund shall be paid upon the warrant of the commissioner of management and budget upon application of the department or of the attorney general to an aggregate amount of not more than one-half of such sums to each of them, which proportion shall be constantly maintained in all credits and withdrawals from the revolving fund.

### **237.33 TOWN TELEPHONE SYSTEM.**

For the purpose of preventing the starting and spreading of forest or prairie fires and extinguishing the same, promoting public welfare, public health, and public safety, and facilitating the work of public improvements, the electors of any organized town of this state shall have power, at their annual town meeting or at any special town meeting called in the manner provided by law for special town meetings, to authorize the town to construct, or otherwise acquire, operate, and maintain a township telephone system, including the necessary poles, wires, telephones and telephone equipment, and by itself or in conjunction with one or more other towns to construct,

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equip, acquire, operate, and maintain a local telephone exchange, or one or more trunk lines of wires connecting such town or towns with the local exchange, or with a local exchange owned by some other corporation or persons, and to determine by ballot the amount of money to be raised for the purposes aforesaid. No such local exchange as herein provided for shall be constructed or maintained in municipalities where a local exchange is already in operation.

### **237.34 TOWN TELEPHONE LINE OUTSIDE CORPORATE LIMITS.**

For the purpose of carrying out the provisions of section 237.33, any town may, by itself or in conjunction with one or more other towns, construct, maintain, acquire, own, or lease telephone lines, telephone equipment, or a local exchange outside the corporate limits of such town. The authority herein granted to any town to acquire, construct, or maintain, by itself, lines outside of its corporate limits shall be solely for the purpose of connecting telephones inside its corporate limits with a telephone exchange or switching center outside its corporate limits. The department may order any service to be extended across any township line to any person or concern adjacent thereto when, in the judgment of the department, such person or concern is entitled to telephone service and the same cannot be reasonably required of any other telephone company.

### **237.35 TAX LEVY FOR CONSTRUCTION.**

When any town has authorized the construction, acquiring, operation, or maintenance of a telephone system, as set forth in sections 237.33 and 237.34, and determined the amount of money to be raised for that purpose, the town board of supervisors may levy a tax for the amount of money to be raised therefor.

### **237.36 RENTAL, CHARGE, TOLL; TAXATION; NONPAYMENT.**

The electors of such town shall have power at their annual town meeting, or at any special meeting, to determine and, in case the electors fail to do so, the town board of supervisors shall determine, the manner of payment of rentals and charges to be paid per phone for operating a local exchange service; and such charges and all tolls payable by the users of such township system shall, in the first instance, be collected by the town board or under its direction. Any local exchange may, by agreement with any town board of supervisors, collect the long-distance tolls directly from the users. No such town shall be subjected to or liable for any gross earnings or other tax by reason of moneys collected or property owned by it for such township telephone system. In case of the failure on the part of any user to pay such charges or tolls in the manner so provided, the town board may institute an action at law to collect such charges or tolls in arrears, and may also discontinue telephone service to such user, until all charges and tolls in arrears, the court costs, if any, taxed and allowed in an action to collect such arrears, and the reasonable cost of disconnecting the telephone from the general service, and reconnecting the same shall have been paid.

### **237.37 BONDS TO CONSTRUCT.**

For the purpose of constructing, acquiring, operating, or maintaining a township telephone system or local exchange, as in sections 237.33 to 237.40 provided, any organized town is hereby authorized to issue and sell its bonds in the same manner, under the same procedure, and within the same limitations as provided by law for the issuance and sale of town road and bridge bonds; and the board of supervisors and their successors are hereby authorized to levy and in due form certify to the auditor of the county in which such town is situated, a tax upon the taxable property of the town to provide for the payment of installments of principal and interest as they mature, in the manner provided in the case of town road and bridge bonds.

### **237.38 LOCAL EXCHANGE PERMITS CONNECTION.**

When public convenience requires the same, every local telephone exchange shall for a reasonable compensation permit a physical connection or connections to be made and telephone service to be furnished between such local telephone exchange system and township telephone system. In case of failure of the local telephone exchange to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the department for an order requiring such connection, and fixing the compensation, terms, and conditions thereof; and if after investigation and hearing the department shall find that such physical connections will not result in irreparable injury to such

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telephone properties, it shall by order direct such connections to be made and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid. When application is made to the department requesting physical connection, it shall be presumed that such connection is necessary and that the public convenience will be promoted thereby, and the burden of overcoming such presumption shall be upon the party resisting such application.

### **237.39 ACQUIRING OR SELLING TELEPHONE SYSTEM.**

When, under the provisions of sections 237.33 to 237.40, a township telephone system is established in any township in which any of the inhabitants of the town are already provided with telephone service furnished by any other telephone company or person, the town shall, when so requested by the telephone company or person, acquire from the telephone company all telephone equipment used by the telephone company or person in furnishing telephone service to the inhabitants of the town exclusively. For the purpose of determining the purchase price of the equipment, application shall be made to the department which shall determine the just compensation which the owner of the telephone equipment is entitled to receive for it from the town. Before deciding upon the compensation, the department shall, at a public meeting, which may be adjourned from time to time, hear all interested persons of the question involved. The department shall by order fix the compensation and furnish a copy of its order to the town, and to the telephone company or person concerned. An appeal may be taken to the district court of the county in which the town is situated from that part of the order fixing the compensation to be paid, within 30 days, by either party. The appeal shall be tried in the same manner as other appeals hereunder. If no appeal is taken, the order of the department shall become final at the end of 30 days.

When, under the provisions of sections 237.33 to 237.40 a township telephone system has been established in any town, and it has been determined by the board of supervisors of the town to be for the best interest of public service and all persons concerned, to sell and transfer the township telephone system to any telephone company or person giving service organized for that purpose and qualified to purchase the system and operate it, the board of supervisors may sell, transfer, and convey the township telephone system upon such reasonable price and terms as it may determine; provided, that there shall be presented to the board of supervisors by a petition signed by at least 25 percent of the landowners of the town asking for the sale. If the sale and agreed sale price are approved at an annual or special town meeting, it being stated in the notice of the annual and special meeting that the proposition will be considered at it, by 66 percent of the legal voters attending the meeting.

If any township telephone lines are sold under the provisions of sections 237.33 to 237.40, and the town has previously issued bonds for their construction, and any part of the bonds are then outstanding and unpaid, the entire consideration received from the sale, or such part as may be necessary, shall be held and applied only for the payment and retirement of the bonds.

### **237.40 MANAGEMENT.**

The board of supervisors of any such town is hereby vested with all necessary authority to manage, maintain, and operate any township telephone system constructed under the provisions of sections 237.33 to 237.40; and, to that end, may, among other things, contract for the connection of such town lines with exchanges owned by others for switching, lease the system for a reasonable compensation, local exchange and toll connections, hire and discharge such employees as may be necessary to operate and maintain such township system, establish rules and regulations; and, subject to the approval of the department, establish and from time to time, change rates and charges covering the service furnished the users.

### **237.411 REDUCED RATE REGULATION FOR CERTAIN BUSINESS CUSTOMERS.**

Subdivision 1. **Business customer; defined.** For the purpose of this section, "business customer" means a customer subscribing to four or more business lines.

Subd. 2. **Competitive area; defined.** A "competitive area" is an exchange located in Minnesota.

Subd. 3. **Reduced rate regulation.** The rates, prices, tariffs, or charges to a business customer in a competitive area by a telephone company or a telecommunications carrier offering local service are only subject to sections 237.07, subdivision 1; 237.66; and 237.663, and are not subject to any rules imposing rate or price restrictions beyond those sections or

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to other order or investigation of local rates under section 237.081. A telephone company or telecommunications carrier subject to this subdivision is not required to file specific price information. However, upon request of the department, the commission, or the Office of Attorney General, a telephone company or telecommunications carrier must demonstrate that its pricing complies with subdivision 4.

Subd. 4. **Protection from anticompetitive pricing.** This subdivision applies to prices governed by subdivision 3. A telephone company must not price its local telephone services, whether offered singly or as part of a bundle of services, below the total service long-run incremental cost of providing the service or services.

Subd. 5. **Enforcement.** (a) The powers and duties granted to the commission by section 237.081 apply to violations or suspected violations of this section. A person aggrieved by a violation of this section may file a complaint as provided in section 237.081, which shall be treated as any other complaint filed under that section. The commissioner of commerce may investigate violations or alleged violations of this section.

(b) Section 237.461 applies to violations of this section.

### **237.414 EXPANDED CALLING AREAS; TRANSPORT FACILITIES; TERMINATIONS.**

Subdivision 1. **Expanded calling areas.** (a) In addition to any existing authority applicable to telephone companies, a telephone company may expand the area to which it can provide calling to its customers upon filing with the commission any agreements between the telephone company and other telephone companies and telecommunications carriers entered into under subdivision 3. Calling to these expanded areas must be optional to customers and must be in addition to the customers' existing local service and any extended area service. Subject to sections 237.06 and 237.09, the telephone company may determine the quantity of expanded calling to provide, the prices for that calling, and whether to offer calling alone or in combination with one or more other telephone or unregulated services.

(b) Prices for expanded calling service or for bundles of services that include expanded calling must exceed the variable cost of the expanded calling service or bundles of services, determined on an aggregate basis. A telephone company is not required to file cost information before implementing its prices and is not required to file cost information except on request of the department, Office of the Attorney General, or commission. Customers must be notified of local service options and prices, including options that do not include expanded calling, as required under section 237.66. The telephone company shall clearly identify the distinction between the expanded calling area and the basic local calling area to customers. The telephone company is not required to offer unlimited flat-rate calling to these expanded calling areas. The telephone company shall file tariffs setting forth the expanded calling area along with the applicable prices and quantities of calling.

(c) A rate increase or a substantial change in terms and conditions of the expanded calling service may be effective 30 days after filing with the commission and 30 days after providing written notice to affected customers. Rate decreases may be effective immediately upon filing. Minor changes to terms and conditions may be effective immediately upon filing and upon notice to customers. This section does not apply to extended area service or to calling areas previously or hereafter established by order of the commission. This section does not limit the existing rights and obligations of telephone companies and telecommunications carriers to provide local calling, including the obligation to offer unlimited flat rate calling in the basic local calling area or expanded calling area.

Subd. 2. **Obtaining transport, switching facilities.** A telephone company may construct, purchase, lease, or rent transport and switching facilities between its existing local area and the expanded calling area that are needed to provide the expanded calling. If the telephone company is unable to reach agreement with other telephone companies or telecommunications carriers, the company or carrier may petition the commission under section 237.12 to resolve issues regarding prices, terms, and conditions for use of any transport facilities that are subject to the jurisdiction of the commission.

Subd. 3. **Termination of expanded calling traffic.** (a) A telephone company providing an expanded calling area under this section may enter into an agreement to terminate calls with telephone companies and telecommunications carriers providing service within the expanded calling area. Compensation to the telephone company or telecommunications carrier to terminate expanded calling into such areas must be the intrastate access charges of the telephone company or telecommunications carrier terminating the call or other rates agreed upon by the companies.

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(b) Two telephone companies that provide expanded calling between their respective areas may also enter into "bill and keep" arrangements for exchange of the expanded calling area traffic.

(c) The telephone company shall file with the commission any agreements for termination of calling by telephone companies and telecommunications carriers providing service within the expanded calling area. The prices, terms, and conditions contained in the agreements required to be filed shall be publicly disclosed in their entirety, and other terminating carriers may elect to adopt those prices, terms, and conditions in whole or in part for technically similar services provided in the exchanges included in the agreement.

Subd. 4. **Amending or terminating expanded calling service.** Except for calling areas that result from a prior or subsequent order of the commission, a telephone company may amend or terminate the expanded calling area service upon 30 days' written notice to customers, the commission, and other telephone companies and telecommunications carriers providing local service in the expanded area. The notice to customers of an amendment to the expanded calling area or termination of an expanded calling area must be sent separately from other mailings and clearly explain how the expanded calling area is being changed. The notice to customers of an amendment must also clearly identify that calls to areas outside of the expanded calling area will be long-distance calls billed at the applicable rate of the customer's long-distance carrier. The notice to customers of a termination must clearly identify that calls to the terminated expanded calling area will become long-distance calls billed at the applicable rate of the customer's long-distance carrier.

### **237.47 ALARM TRANSMISSION TELEPHONE DEVICE; RULES.**

Subdivision 1. **Permission required.** Any person desiring to install or use any automatic, electrical, or mechanical device or attachment to any telephone that reproduces any taped or prerecorded message to report any police, fire, or other emergency to any official emergency reporting telephone number shall obtain permission, in writing, from the sheriff of the county in which located or the police chief or fire chief of the municipality into whose emergency telephone number the attachment or device is connected.

Subd. 2. **Conditions for connection.** The sheriff, police chief, or fire chief may determine the conditions, if any, under which the device or attachment may be connected, provided such conditions are reasonable in accordance with local conditions and further provided that the device or attachment complies with the rules of the Minnesota Public Utilities Commission.

Subd. 3. **Removal.** Whenever the sheriff, police chief, or fire chief has knowledge of the use of any such attachment or device not operated or maintained in accordance with the provisions of this section, that official may order its removal.

Subd. 4. **Penalty.** Violation of any of the provisions of this section shall constitute a misdemeanor.

### **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.**

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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:

- (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.

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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 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

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proceeding is commenced by the commission on its own motion or when the complainant is the department or the attorney general.

### **237.60 DISCRIMINATORY PRACTICES; SERVICE COSTS.**

Subd. 3. **Discrimination.** No telephone company shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory. No telephone company shall unreasonably limit its service offerings to particular geographic areas unless facilities necessary for the service are not available and cannot be made available at reasonable costs. The rates of a telephone company must be the same in all geographic locations of the state unless for good cause the commission approves different rates. A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services. However, a company may offer or provide volume discounts in connection with intrastate long-distance services and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate. Nothing in this subdivision authorizes a telephone company to provide service outside of its authorized service area except as provided in section 237.16.

Subd. 4. **Cost of service.** Prices or rates charged for competitive services must cover the incremental costs of providing the service. If a telephone company provides both local service and long-distance services, that company shall, in determining the cost of the long-distance service, include at least the same level of contribution to common and joint costs as is contained in the access charges to other telephone companies. The company may do so on an aggregate basis, instead of on a time or mileage band basis.

### **237.61 EXPEDITED PROCEEDING.**

Notwithstanding chapter 14, the commission may conduct an expedited proceeding when authorized under this chapter. In an expedited proceeding, the commission shall give prior notice to interested persons and provide them with an opportunity to present statements of fact and argument and to reply, either orally or in writing or both. In an expedited proceeding, the pleadings must be verified, and oral statements of fact must be made under oath or affirmation. The commission shall make a decision in an expedited proceeding based on the record.

### **237.626 PROMOTION ACTIVITIES.**

Subdivision 1. **Promotions.** A telephone company or telecommunications carrier may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. Section 237.09 does not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. The service being promoted must have a price that is above the incremental cost of the service, including amortized cost of the promotion. A promotion may take effect the day after the notice is filed with the commission. The notice must identify customers to whom the promotion is available.

Subd. 2. **Bundled service.** (a) A telephone company or telecommunications carrier may offer telecommunications services subject to the regulatory jurisdiction of the commission as part of a package of services that may include goods and services other than those subject to the commission's regulatory jurisdiction. Subject to the requirements of this chapter and the associated rules and orders of the commission applicable to those regulated services, a telephone company may establish the prices, terms, and conditions of a package of services, except that:

(1) each telecommunications service subject to the regulatory jurisdiction of the commission must be available to customers on a stand-alone basis; and

(2) at the time the packaged offering is introduced or at the time the packaged price is subsequently changed, the packaged rate or price may not exceed the sum of the unpackaged rates or prices for the individual service elements or services.

(b) Nothing in this subdivision is intended to extend or diminish the regulatory authority of the commission or the department.

Subd. 3. **Promotions available for resale.** Any promotional offering lasting more than 90 days and filed with the commission under subdivision 1 must be available to qualifying carriers for resale. A qualifying carrier must hold a certificate of authority from the commission and must

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have an approved interconnection agreement with the company offering the promotion, the terms of which include language governing the resale of services.

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

Subdivision 1. **Registration.** A person, firm, or corporation seeking to become a telephone company, as defined by section 237.01, subdivision 7, and not required to be certified under section 237.16, shall register with the department and the commission 90 days before beginning operation in the state. The commission may review the proposed rates and services and the financial conditions of the telephone company and may, under section 237.081, investigate any other matter it considers appropriate to protect the public interest. A telephone company that has been authorized by the commission to provide telephone services in this state prior to August 1, 1987, is not required to register under this subdivision. A person, firm, or corporation seeking to offer a noncompetitive service to the public must obtain authority from the commission under section 237.16.

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.

### **237.66 DISCLOSURE OF LOCAL SERVICE OPTIONS.**

Subdivision 1. **Notice to local residential customers.** A telephone company, when a residential customer initially requests service or requests a change of service, and annually in the form of a bill insert, shall advise each residential customer of the price of all service options available to that customer. The requirement of an annual notice through a bill insert does not apply to long-distance service.

Subd. 1a. **Notice to customer; right to require prior authorization.** Each residential and commercial telecommunications carrier customer may elect to require that the telephone company serving the customer receive authorization from the customer before a request to serve that customer from a different intrastate telecommunications carrier than the carrier currently serving the customer is processed.

Subd. 1c. **Timing of notice; new customer.** For new installations, a telephone company shall notify a residential or commercial customer of the right described in subdivision 1a when the customer initially requests intraexchange service. Any customer notification of the rights set forth in this section shall be provided utilizing uniform, competitively neutral language and the form, content, and style of the authorization shall be consistent with federal law and regulation and shall use language provided and approved by the public utilities commission.

Subd. 1d. **Change of election.** A customer may change the election under subdivision 1a at any time by notifying the telephone company of that decision. No separate charge may be imposed on the customer for electing to exercise the right described in subdivision 1a or to change that election, but a telephone company may recover in rates the reasonable costs of administering the election.

Subd. 2. **Filing; exemptions.** Copies of both the written notices and information provided to customer service representatives concerning the disclosure required under subdivision 1 must be filed once every 12 months with the commission and the department. Independent telephone companies, municipalities, and cooperative telephone associations are exempt from the requirements of this subdivision unless otherwise ordered by the commission.

Subd. 2a. **Call blocking.** A telephone company, when a residential customer initially requests service, shall advise each residential customer of the availability of all blocking options including 900 number blocking and international long-distance blocking.

Subd. 3. **Enforcement.** If, after an expedited procedure conducted under section 237.61, the commission finds that a telephone company is failing to provide disclosure as required under subdivision 1, or the notification required under subdivision 1c, it shall order the company to take corrective action as necessary.

### **237.73 OBTAINING SERVICE BY FRAUD; INJUNCTION.**

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Subdivision 1. **Equitable relief.** Whenever it appears that a person is engaged in an act that constitutes or will constitute a violation of section 609.893, a representative of a telecommunications provider or a person harmed by an alleged violation of section 609.893 may begin a civil proceeding in a district court to enjoin the violation and may petition the court to issue an order for the discontinuance of telephone service.

Subd. 2. **Venue.** An action under this section must be brought in the county in which subject matter of the action, or some part of it, is located or found, and must be commenced by the filing of a complaint that must be verified by affidavit.

Subd. 3. **Temporary restraining order.** If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in an act that constitutes a violation of section 609.893, the court shall issue a temporary restraining order to abate and prevent the continuance or recurrence of the act. Notice of the complaint shall be given and a hearing on the issuance of a temporary restraining order shall be held under the Rules of Civil Procedure. The court shall direct the county sheriff to seize and keep until further order of the court any device that is being used in violation of section 609.893. The temporary restraining order expires after ten days.

Subd. 4. **Permanent injunction.** The court may issue a permanent injunction to restrain, abate, or prevent the continuance or recurrence of the violation of section 609.893. The court may grant declaratory relief, mandatory orders, or any other relief it judges necessary to accomplish the purposes of the injunction. The court may keep jurisdiction of the case for the purpose of enforcing its orders.

Subd. 5. **Discontinuance of telephone service.** If it is shown to the satisfaction of the court, by affidavit, that a person is engaged in an act that constitutes a violation of section 609.893, the court may issue an order that shall be promptly served upon the person in whose name the telecommunications device is listed, requiring the party, within a reasonable time to be fixed by the court but not exceeding 48 hours from the time of service of the petition on said party, to show cause before the judge why telephone service should not promptly be discontinued. At the hearing, the burden of proof is on the complainant.

Subd. 6. **Disconnect order.** Upon a finding by the court that the telecommunications device is being used or has been used in violation of section 609.893, the court shall issue an order requiring the telephone company that is rendering service over the device to disconnect the service. Upon receipt of the order, that shall be served upon an officer of the telephone company by the sheriff of the county in which the telecommunications device is installed or by a duly authorized deputy, the telephone company shall proceed promptly to disconnect and remove the service and discontinue all telephone service until further order of the court.

Subd. 7. **Immunity.** No telephone company is liable for any damages, penalty, or forfeiture, whether civil or criminal, for an act performed in compliance with an order issued by the court.

### **237.74 REGULATION OF TELECOMMUNICATIONS CARRIER.**

Subdivision 1. **Filing requirements.** Every telecommunications carrier shall elect and keep on file with the department either a tariff or a price list for each service on or before the effective date of the tariff or price, containing the rules, rates, and classifications used by it in the conduct of the telephone business, including limitations on liability. The filings are governed by chapter 13. The department shall require each telecommunications carrier to keep open for public inspection at designated offices so much of these rates, tariffs or price lists, and rules as the department considers necessary for public information.

Subd. 2. **Discrimination prohibited; practices, services, rates.** No telecommunications carrier shall offer telecommunications service within the state upon terms or rates that are unreasonably discriminatory. No telecommunications carrier shall unreasonably limit its service offerings to particular geographic areas unless facilities necessary for the service are not available and cannot be made available at reasonable costs. The rates of a telecommunications carrier must be the same in all geographic locations of the state unless for good cause the commission approves different rates. A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services. However, a carrier may offer or provide volume or term discounts or may offer or provide unique pricing to certain customers or to certain geographic locations for special promotions, and may pass through any state, municipal, or local taxes in the specific geographic areas from which the taxes originate.

Notwithstanding any other provision of this subdivision, a telecommunications carrier may furnish service free or at reduced rates to its officers, agents, or employees in furtherance of their employment.

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Subd. 3. **Special pricing.** Except as prohibited by this section, prices unique to a particular customer or group of customers may be allowed for services when differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers. Individual pricing for services may be allowed when a uniform price should not be required because of market conditions. Unique or individual prices for services or service elements in effect before August 1, 1993, are deemed to be lawful under this section.

Subd. 4. **Investigation, hearing, order, appeal.** (a) When the commission or the department believes that an investigation of any matter relating to any telephone service should for any reason be made, it may on its own motion investigate the service or matter upon notice to the carrier. However, telecommunications carriers are not subject to rate or rate of return regulation and neither the commission nor the department may investigate any matter relating to a telecommunications carrier's costs, rates, or rate of return, except the commission and the department may investigate whether a rate is unreasonably discriminatory under subdivision 2.

(b) Upon a complaint made against a telecommunications carrier by a telephone company, by another telecommunications carrier, by the governing body of a political subdivision, or by no fewer than five percent or 100, whichever is the lesser number, of the subscribers or spouses of subscribers of the particular telecommunications carrier, that any of the rates, tolls, tariffs or price lists, charges, or schedules is in any respect unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission, after notice to the telecommunications carrier, shall investigate the matters raised by the complaint.

(c) If, after making an investigation under paragraph (a) or (b), the commission finds that a significant factual issue raised has not been resolved to its satisfaction, the commission may order that a contested case hearing be conducted under chapter 14 unless the complainant, the telecommunications carrier, and the commission agree that an expedited hearing under section 237.61 is appropriate.

(d) In any complaint proceeding authorized under this section, telecommunications carriers shall bear the burden of proof consistent with the allocation of the burden of proof to telephone companies in sections 237.01 to 237.73.

(e) A full and complete record must be kept by the commission of all proceedings before it upon any formal investigation or hearing and all testimony received or offered must be taken down by the stenographer appointed by the commission and a transcribed copy of the record furnished to any party to the investigation upon the payment of the expense of furnishing the transcribed copy.

If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tolls, tariffs or price lists, charges, or schedules are unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission may issue its order requiring termination of the discrimination or making the service adequate or obtainable.

(f) A copy of an order issued under this section must be served upon the person against whom it runs or the person's attorney, and notice of the order must be given to the other parties to the proceedings or their attorneys.

(g) Any party to a proceeding before the commission or the attorney general may make and perfect an appeal from the order in accordance with chapter 14.

If the court finds from an examination of the record that the commission erroneously rejected evidence that should have been admitted, it shall remand the proceedings to the commission with instructions to receive the evidence rejected and any rebutting evidence and to make new findings and return them to the court for further review. Then the commission, after notice to the parties in interest, shall proceed to rehear the matter in controversy and receive the wrongfully rejected evidence and any rebutting evidence offered and make new findings, as upon the original hearing, and transmit it and the new record properly certified to the Court of Appeals, when the matter shall be again considered by the court in the same manner as in an original appeal.

(h) When an appeal is taken from any order of the commission under this chapter, the commission shall, without delay, have a certified transcript made of all proceedings, pleadings and files, and testimony taken or offered before it upon which the order was based, showing particularly what, if any, evidence offered was excluded. The transcript must be made and filed with the court administrator of the district court where the appeal is pending.

Subd. 5. **Extension of facility.** A telecommunications carrier may extend its facilities into or through a statutory or home rule charter city or town of this state for furnishing its services, subject to the provisions of sections 237.162 and 237.163. Nothing in this subdivision shall be construed to allow or prohibit facilities bypass of the local exchange telephone company, nor shall it be construed to prohibit the commission from issuing orders concerning facilities bypass of the local exchange telephone company.

Subd. 6. **Tariff or price list change.** (a) Telecommunications carriers may:

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(1) decrease the rate for a service, or make any change in a tariff or price list that results in a decrease in rates, effective without notice to its customers or the commission; and

(2) offer a new service, increase the rate for a service, or change the terms, conditions, rules, and regulations of its service offering effective upon notice to its customers. Subject to subdivisions 2 and 9, a telecommunications carrier may discontinue a service, except that a telecommunications carrier must first obtain prior commission approval before discontinuing service to another telecommunications carrier if end users would be deprived of service because of the discontinuance.

(b) A telecommunications carrier may give notice to its customers by bill inserts, by publication in newspapers of general circulation, or by any other reasonable means. However, notice of increases for intrastate residential rates for the services referenced in section 237.662, subdivision 1, shall be made by bill inserts prominently displaying the notice of price increase on the customer's bill, or by a direct mailing or phone call to the customer. Customer notices for increases of intrastate rates for those services must include as a heading "NOTICE OF PRICE INCREASE".

Subd. 7. **Occasional use.** A telecommunications carrier shall not be deemed to provide local exchange services within the meaning of sections 237.01 and 237.035 merely because of occasional use of the service by the customer for local exchange service related to the provision of interexchange services.

Subd. 8. **Uniform rules.** Telecommunications carriers are subject to uniform rules pertaining to the conduct of intrastate telephone services by telecommunications carriers that the commission has prescribed and may prescribe, to the extent the rules are not inconsistent with this section. Rules, forms, or reports required by the commission must conform as nearly as practicable to the rules, forms, or reports prescribed by the Federal Communications Commission for interstate business.

Subd. 9. **Discontinuance.** If a physical connection exists between a telephone exchange system operated by a telephone company and the toll line or lines operated by a telecommunications carrier, neither of the companies shall have the connection severed or the service between the companies discontinued without first obtaining an order from the commission upon an application for permission to discontinue the physical connection. Upon the filing of an application for discontinuance of the connection, the department shall investigate and ascertain whether public convenience requires the continuance of the physical connection, and if the department so finds, the commission shall fix the compensation, terms, and conditions of the continuance of the physical connection and service between the telephone company and the telecommunications carrier. Prior commission approval is not required for severing connections where multiple local exchange companies are authorized to provide service. However, the commission may require the connections if it finds that the connections are in the public interest, but may not require connections with a telecommunications carrier certified to provide only interexchange service.

Subd. 10. **Cost of examination; assessment of expenses; limitation; objection.** Section 237.295 applies to telecommunications carriers as it does to telephone companies.

Subd. 11. **Enforcement; penalties and remedies.** (a) This section and rules and orders of the commission adopted or issued under this section may be enforced by criminal prosecution, action to recover civil penalties, injunction, action to compel performance, other appropriate action, or any combination of penalties and remedies.

(b) A person who knowingly and intentionally violates this section or a rule or order of the commission adopted or issued under this section shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of at least \$100 and not more than \$1,000 for each day of each violation. The civil penalties provided for in this paragraph may be recovered by a civil action brought by the attorney general in the name of the state. Amounts recovered under this paragraph must be paid into the state treasury.

Subd. 12. **Certification requirement.** No telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority. Nothing in this subdivision requires a telecommunications carrier that has been certified by the commission to provide telephone service before August 1, 1993, to be recertified under this subdivision. Nothing in this subdivision shall be construed to allow or prohibit facilities bypass of the local exchange telephone company, nor shall it be construed to prohibit the commission from issuing orders concerning facilities bypass of the local exchange telephone company.

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Subd. 13. **International call blocking.** A telecommunications carrier, on its own or in conjunction with the telephone subscriber's provider of local telephone service, shall offer comprehensive international toll blocking of nondomestic area codes that are part of the North American numbering plans, as a condition of offering service in Minnesota.

### **237.75 CLASS SERVICE.**

Subdivision 1. **Definition.** For purposes of this section, "CLASS" or "custom local area signaling service" means a custom calling telephone service that is enabled through the installation or use of Signaling System 7 or similar signaling system and that includes at least the following features:

- (1) automatic call back;
- (2) automatic recall;
- (3) calling number delivery, commonly known as "caller identification";
- (4) calling number delivery blocking;
- (5) customer originated call tracing;
- (6) distinctive ringing/call waiting;
- (7) selective call acceptance;
- (8) selective call forwarding; and
- (9) selective call rejection.

Subd. 2. **CLASS; terms and conditions.** By January 1, 1994, the commission shall determine the terms and conditions under which CLASS services may be provided by telephone companies in this state.

Subd. 3. **CLASS; capability and offering of service.** Each telephone company that provides local telephone service to persons located in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington shall obtain the capability to offer CLASS services in those counties by January 1, 1995, unless the commission approves an extension to a date certain.

### **237.76 PURPOSE.**

A telephone company may petition the commission for approval of an alternative regulation plan under sections 237.76 to 237.774. The purpose of an alternative regulation plan is to provide a telephone company's customers with service of a quality consistent with commission rules at affordable rates, to facilitate the development of telecommunication alternatives for customers, and to provide, where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation as reflected in other provisions of this chapter.

### **237.761 ALTERNATIVE REGULATION PLAN; SERVICE.**

Subdivision 1. **Classification of services.** An alternative regulation plan must contain provisions that provide for classification of all telephone services as price regulated, flexibly priced, or nonprice regulated consistent with subdivisions 2 to 5.

Subd. 2. **Price-regulated service; definition.** For purposes of this section, the term "price-regulated service" includes only those services that are:

- (1) essential for providing local telephone service and access to the local telephone network;
- (2) integrally related to privacy, health, and safety of the company's customers; and
- (3) for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

Subd. 3. **Specific price-regulated services.** Price-regulated telephone services are the following:

- (1) residential and business service for local calling, including measured local service, two-party service, private branch exchange (PBX) trunks, trunk type hunting services, direct inward dialing, the network access portion of central office switched exchange service, and public access lines for customer-owned coin-operated telephones;
- (2) extended area service;
- (3) switched network access service;
- (4) call tracing;
- (5) calling number blocking;
- (6) touch tone service when provided separately from basic local exchange service;
- (7) local exchange, white-page, printed directories;
- (8) 911 emergency services;

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- (9) installation and repair of local network access;
- (10) local operator services, excluding directory assistance; and
- (11) toll service blocking and 1-900 or 976 access blocking.

Subd. 4. **Flexibly priced service.** (a) A service not listed in subdivision 3 or not otherwise determined to be price regulated under subdivision 6 or 7 or nonprice regulated must be classified as a flexibly priced service.

(b) Flexibly priced services are regulated consistent with section 237.60, subdivision 2, except that:

(1) rate decreases may be effective immediately upon filing and upon notice to affected customers; and

(2) rate increases may be effective 20 days after filing and upon notice to affected customers and are considered approved if no objection is filed or raised by an interested party or the commission within 20 days after the filing. If an interested party files an objection, the commission shall make its determination on the proposed rate increase within 90 days of the filing of the objection.

Subd. 5. **Non-price-regulated service.** (a) A service must be classified as nonprice regulated if the commission finds, based upon evidence filed by the telephone company and other evidence available to the commission and consistent with the company's proposed plan, that there is sufficient competition to justify classification as nonprice regulated. In making that determination, the factors the commission shall consider include:

(1) the number, size, and identity of competitors providing the same or functionally equivalent service;

(2) the geographic area in which competitive service is actually available to and being used by customers, to the extent this information is available to the commission;

(3) the importance of the service to the public; and

(4) the effect of classification of the service on the development of a competitive telecommunications market.

(b) Telephone companies shall file tariffs or price lists for non-price-regulated services with the commission, but the rates for these services are not subject to commission approval or investigation except as provided in subdivision 6 and sections 237.762, subdivision 6, 237.770, and 237.771.

Subd. 6. **Reclassification.** An alternative regulation plan may contain provisions allowing for the reclassification of services during the course of the plan upon a showing that the service meets the criteria contained in subdivision 2, 3, 4, or 5, and the plan, for the requested classification.

Subd. 7. **New service; classification; rate.** At the time the company first offers a service, it shall file a tariff or price list and the proposed classification for the service under the plan along with a written explanation of why the proposed classification is consistent with this section. New services classified as flexibly priced or nonprice regulated may be offered on one day's notice to the commission and the department. New services classified as price regulated may be offered pursuant to the terms set forth in the plan. A service is not considered a new service if it consists of a repackaging including bundling, unbundling, or repricing of an already existing service. If no interested party or the commission objects to the company's proposed classification within 30 days of the filing of the petition, the company's proposed classification of the service is approved. If an objection is filed, the commission shall determine the classification of the service within 90 days of the filing of the new service.

Subd. 8. **Investment commitment.** (a) An alternative regulation plan must also include a plan outlining the company's commitment to invest in telecommunications infrastructure improvements in this state over a period of not less than six years.

(b) An investment plan shall include all of the following:

(1) a description of the level of planned investment in technological or infrastructure enhancement;

(2) a description of the extent to which planned investment will make new telecommunications technology available to customers or expand the availability of current technology;

(3) a description of the planned deployment of fiber-optic facilities or broadband capabilities to schools, libraries, technical colleges, hospitals, colleges and universities, and local governments in this state; and

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(4) a description of planned investment and deployment of higher speed telecommunications services and increased capacity for voice, video, and data transmission, in both the metropolitan and outstate portions of the company's service territory.

**237.762 ALTERNATIVE REGULATION PLAN RATE, PRICE.**

Subdivision 1. **Initial rate.** An alternative regulation plan approved by the commission under this section must provide that the recurring and nonrecurring rates or prices that may be charged by a telephone company for price-regulated services are no higher than the approved rate or prices on file with the commission for those services on the date of the filing of the plan. Furthermore, no plan may in any way change the terms or conditions of any access charge settlements approved by the commission or exempt any company from compliance with any commission access charge order issued before the filing of a plan. The plan must address implementation of additional access charge reductions that may occur during that portion of the plan that extends beyond expiration of commission-approved settlements.

Subd. 2. **New service; rate.** For services offered by the telephone company for the first time after August 1, 1995, the rates or prices must equal or exceed the total service long-run incremental cost of the service.

Subd. 3. **Rate change.** (a) An alternative regulation plan must set forth the procedures under which the telephone company may reduce the rates or prices for price-regulated services below the initial rates or prices or thereafter increase the rates or prices during the term of the plan. The rates or prices may not be reduced below the total service long-run incremental cost of providing the service. Except as provided in paragraph (b), the rates or prices may not exceed the initial rates or prices for the service determined under subdivision 1 for the first three years of the plan. After a plan has been in effect for three years, price-regulated rates may be changed as appropriate under a procedure set forth in an approved plan. Rates for price-regulated services may not be increased unless the company has demonstrated substantial compliance with the quality of service standards set forth in the plan.

(b) An approved plan may allow changes in rates for price-regulated services after two years to reflect:

(1) changes in state and federal taxes;

(2) changes in jurisdictional allocations from the Federal Communications Commission, the amount of which the telephone company cannot control and for which equal and opposite exogenous changes are made on the federal level; and

(3) substantial financial impacts of investments in telecommunications infrastructure which are made: (i) if the investments, for any 12-month period, exceed 20 percent of the gross plant investment of the company; or (ii) are the result of government mandates to construct specific telephone infrastructure, the mandate applies to local telephone companies, and the company would not otherwise be compensated through some other manner under the plan.

Subd. 4. **Bundled rates.** When the rates or prices for services are unbundled, the price for each basic network function must be set to equal or exceed its total service long-run incremental cost. Before August 1, 1997, if the rates or prices for price-regulated services are bundled, the bundled rate or price may not exceed the sum of the unbundled rates or prices for the individual service elements or services or the total initial bundled rate or price for those service elements or services.

Subd. 5. **Income-neutral change.** Other than as authorized in this subdivision, an initial alternative regulation plan must not permit income-neutral rate changes for price-regulated services during the plan except as is necessary to implement extended area service or any successor to that service. Any plan must provide that after the rules issued pursuant to section 237.16 are adopted, rates for price-regulated services may be increased, as approved by the commission, to the extent necessary to carry out the purpose of those rules. However, rate increases, if any, for those services must be incorporated with a universal service fund so that the effective rate for the customers of those services does not increase during the first three years of the plan.

Subd. 6. **Rate for other service.** The telephone company shall file price lists with the commission for all flexibly priced or non-price-regulated services. The rate or price for each flexibly priced and non-price-regulated service must be equal to or exceed the total service long-run incremental cost of providing that service. In any proceeding regarding the appropriateness of a rate or price for a flexibly priced or non-price-regulated service, the telephone company has the burden of proving that the rate or price is above the total service long-run incremental cost of providing that service.

Subd. 7. **Packaged services.** This section does not prevent a telephone company from packaging any service classified as price regulated or flexibly priced pursuant to section 237.761,

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subdivisions 2 to 4, with any other service, or engaging in promotional activities concerning such services, so long as:

(1) the company also continues to offer these price-regulated and flexibly priced services as separate stand-alone services at prices required by this section; and

(2) at the time the packaged offering is introduced, or at the time the package price is subsequently changed, the packaged rate or price may not exceed the sum of the unpackaged rates or prices for the individual service elements or services.

**237.763 EXEMPTION FROM EARNINGS REGULATION AND INVESTIGATION.**

Except as provided in the plan and any subsequent plans, a company that has an alternative regulation plan approved under section 237.764, is not subject to the rate-of-return regulation or earnings investigations provisions of section 237.075 or 237.081 during the term of the plan. A company with an approved plan is not subject to the provisions of section 237.57; 237.59; or 237.60, subdivisions 1, 2, 4, and 5, during the term of the plan. Except as specifically provided in this section or in the approved plan, the commission retains all of its authority under section 237.081 to investigate other matters and to issue appropriate orders, and the department retains its authority under sections 216A.07 and 237.15 to investigate matters other than the earnings of the company.

**237.764 PLAN ADOPTION; EFFECT.**

Subdivision 1. **Petition, notice, hearing, and decision.** (a) Before acting on a petition for approval of an alternative regulation plan, the commission shall conduct any public meetings it may consider necessary.

(b) The commission shall require the petitioning telephone company to provide notice of the proposed plan to its customers, along with a summary description of the plan provisions and the dates, times, and locations of public meetings scheduled by the commission.

(c) The company's petition shall contain an explanation of how ratepayers will benefit from the plan and a justification of the appropriateness of earnings levels and rates in light of the proposed plan as well as any proposed changes in rates for price-regulated services for the first three years of the proposed plan. If a telephone company has completed a general rate proceeding, rate investigation, or audit of its earnings by the department or commission within two years of the initial application for an alternative form of regulation plan, the commission order or department audit report, updated for the most recent calendar year, is sufficient justification of earnings levels to initiate the filing of an alternative regulation plan. At the time of filing a plan, the current earnings level of a telephone company with more than 1,000,000 access lines in Minnesota shall be deemed reasonable.

(d) The commission shall conduct a proceeding under section 237.61 to decide whether to approve the plan and shall grant discovery as appropriate.

(e) The commission shall issue findings of fact and conclusions concerning the appropriateness of the proposed initial rates, where necessary, and the proposed plan, or any modifications to it, but may not order that a modified plan take effect without the agreement of the petitioning telephone company. The commission shall issue its decision on a plan within six months after receiving the petition to approve the plan unless the commission and the petitioning company agree to an extension of the time for commission action.

(f) If a settlement is submitted to the commission, the commission shall accept, reject, or modify the proposed settlement within 60 days from the date it was submitted.

Subd. 2. **Settlement; stipulation; final order.** Upon receipt of a petition for an alternative regulation plan, the commission shall convene a conference including all interested parties to encourage settlement or stipulation of issues. Any settlement or stipulation must be submitted to the commission, which shall accept or reject the proposal in its entirety or modify it. If the commission modifies the proposal, all parties have 30 days to comment on the proposed modifications, after which the commission shall issue its final order. If the final order contains modifications to the proposal, each party to the settlement has ten days to reject the proposed modifications, in which case the matter must be decided under section 237.61. After appropriate notice and hearing for all parties, the commission may adopt a stipulation submitted by a substantial number of, but less than all, parties.

Subd. 3. **Effect on incentive plan.** The approval of a plan under this section automatically terminates any existing incentive plan previously approved under section 237.625, prior to its expiration on August 1, 1999, upon the effective date of the plan approved under this section. However, the company remains obligated to share earnings under the terms of the incentive plan

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through the date of the termination of that plan and also is required to complete the performance of any other unexecuted commitments under the incentive plan.

#### **237.765 QUALITY OF SERVICE.**

(a) For an alternative regulation plan to be approved by the commission under sections 237.76 to 237.774, the plan must contain an existing service quality plan or settlement for retail customers approved by the commission or if no such plan or settlement has been approved, the commission shall require:

(1) evidence that current service quality substantially complies with commission rules as to justify lessened rate regulation;

(2) a baseline measurement of the quality of service levels as achieved by the company during the previous three years, to the extent the data are available, and specific statewide standards for measuring the quality of price-regulated and flexibly priced services provided by the company, including, but not limited to (i) time intervals for installation, (ii) time intervals for restoration or repair of service, (iii) trouble rates, (iv) exchange access line held orders, and (v) customer service answer time;

(3) provisions for reporting to the commission at least annually the company's performance as to the quality of service standards by quarter for the previous year;

(4) provisions that index quality of service standards for local residence services to similar standards for local business services;

(5) appropriate remedies, including penalties and customer-specific adjustments or payments to compensate customers for specific quality of service failures, so as to ensure substantial compliance with the quality of service standards set forth in the plan; and

(6) provisions for informing customers of their rights as to quality of service and how customers can register their complaints regarding service.

(b) Any penalties under paragraph (a), clause (5), shall be returned to customers under a method set forth in the plan.

(c) The terms of an existing service quality plan or settlement approved by the commission must be offered to extend through the duration of an alternative regulation plan filed under this section.

#### **237.766 PLAN DURATION AND EXTENSION.**

Subdivision 1. **Plan duration.** An alternative regulation plan approved by the commission under section 237.764 must remain in force as approved for the term specified in the plan, which must be for no less than three years. Except as otherwise provided in this section, within six months prior to the termination of the plan the company shall give notice that it will propose a new plan, extend an existing plan, or revert to rate of return regulation.

Subd. 2. **New plan.** A new plan proposed by a company must be reviewed by the commission and, with the consent of the company, revised or approved consistent with sections 237.76 to 237.774, except that the justification of earnings levels in section 237.764, subdivision 1, paragraph (c), if required, and the provisions prohibiting rate increases at the initiation of or during the first three years of a plan contained in section 237.762, shall not apply to a new plan. Any new plan must be approved by the commission and shall contain a mechanism under which a telephone company may reduce the rates for price-regulated services below the initial rates or prices or increase the rates or prices during the term of the plan. The plan must specify the reports required of the telephone company for review of the plan and specify that the telephone company shall maintain records in sufficient detail to facilitate the review. A new plan is not an extension, which must be made pursuant to subdivision 3.

Subd. 3. **Plan extension.** (a) Notwithstanding the provisions of its plan, a telephone company operating under a plan as of May 20, 2004, may elect to extend that plan for up to three years from the expiration date of the plan or until December 31, 2007, whichever is earlier. The election is effective upon notification to customers, the commission, the department, and the Office of the Attorney General. A telephone company must provide notification of its election within 30 days of May 20, 2004, or within six months of the expiration of its current or expired plan, whichever is later. Once a telephone company has elected to exercise the option provided under this subdivision, the company may elect at any time to terminate the plan by notifying customers, the commission, the department, and the Office of the Attorney General, in writing, six months prior to the termination date. Upon termination of a plan, the company shall be regulated as provided in this chapter.

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(b) A telephone company may elect to extend a plan entered into after May 20, 2004, in lieu of proposing a new plan only if the company is in substantial compliance with the plan's service quality provisions and has met its infrastructure obligations under the plan. If the company elects to extend a plan, the rates for price-regulated services shall be capped at the rate levels in effect at the time the extension commences, provided, however, exceptions to a price cap contained in the plan being extended may remain in force. Unless otherwise specified in the plan, all other provisions of the plan shall continue in effect throughout the extension period. A plan may not be extended for less than one year or more than three years, and may only be extended once.

(c) The Department of Commerce or the Office of the Attorney General may file an objection to the extension with the commission if the company is not in substantial compliance with the service quality provisions of its plan or has not met its infrastructure obligations under the plan. An objection must be filed within 45 days of the company's notice of its intention to extend the plan.

(d) If an objection is filed by the Department of Commerce or the Office of the Attorney General, the commission may hold a hearing on the issues raised in the objection. The hearings shall be completed within 30 days of the deadline for filing the objections. If the commission finds that the issues raised in the objection are valid, it may reject the extension. If the commission finds that the issues raised in the objection are not valid, it shall approve the extension. The commission shall issue its decision within 15 days of the completion of the hearings concerning the objection.

(e) If the Department of Commerce or the Office of the Attorney General does not file an objection, the commission shall approve the extension within 60 days of the company's filing of its notice of its intention to extend the plan.

**Subd. 4. Joining an existing plan.** (a) A telephone company may elect to opt into another company's plan if:

- (1) the chosen plan is from a company that is larger than the electing company; or
- (2) the chosen plan is from an affiliated company; and
- (3) the plan is currently in effect.

(b) A telephone company electing to enter an existing plan in lieu of proposing a new plan must operate under the terms of that plan for at least three years. If the original term of the existing plan was longer than three years, then the adopting company must operate under the plan for that longer period.

(c) A telephone company that desires to adopt an existing plan must give notice to the commission at least 90 days prior to the proposed effective date of the adoption and to its customers at least 60 days prior to the proposed effective date.

(d) The Department of Commerce or the Office of the Attorney General may file an objection to a telephone company that has previously operated under a plan from electing to opt into the plan of another company if the electing company is not in substantial compliance with the service quality provisions or has not met the infrastructure obligations of its plan.

(e) If a telephone company has not previously operated under an alternative regulation plan, the rates for its price-regulated services must be capped for the first three years at the rates in effect at the time of opt in, except for any plan provisions that address exogenous changes.

(f) Within 30 days of the electing company filing notice to the commission, interested parties may file comments identifying any aspect of the adoption that the party believes is contrary to the public interest. Reply comments may be filed within 45 days following the notice to the commission. The commission shall accept the adoption unless it finds adoption of the existing plan by the electing telephone company is not in the public interest, in which case it may reject or modify the election to opt into the provisions of the existing plan. If the commission modifies the election, the electing company may withdraw its proposed adoption of the existing plan by filing notice with the commission within 30 days of the commission's modification order.

#### **237.767 DISCONTINUANCE OF SERVICE.**

Without the express approval of the commission, a telephone company subject to a plan may not discontinue the provision of a service or basic network function that has been classified as price regulated or flexibly priced.

#### **237.768 PERIODIC FINANCIAL REPORT.**

In addition to the reports required under section 237.766, an alternative regulation plan may require a telephone company to file with the department an annual report of financial matters for the previous calendar year on or before May 1 of each year on report forms furnished by the department in the same manner as is required of other telephone companies on August 1, 1995. In

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addition, any company subject to a plan shall file with the commission and department a copy of any filings it has made to the Federal Communications Commission regarding the provisions of video programming provided through a video dial tone facility in Minnesota. An alternative regulation plan may require a telephone company to maintain its accounts in accordance with the system of accounts prescribed for the company by the commission under section 237.10.

### **237.769 RULES APPLICABLE.**

Any company under a plan is subject to any rules adopted under section 237.16 on the same date as those rules are applicable to other companies.

### **237.770 SUBSIDIZATION.**

No telephone company shall subsidize flexibly priced or non-price-regulated services from other services. A telephone service is not subsidized if the aggregate revenues for the service equal or exceed the total service long-run incremental costs of providing the service. If the commission determines, after a proceeding under section 237.081, that subsidization exists, it shall order changes in rates to price the subsidized service above total service long-run incremental cost and may invoke any other remedies otherwise available under this chapter.

### **237.771 DISCRIMINATION.**

The rates of a telephone company under a plan must be the same in all geographic locations of the state except for good cause. A plan may contain provisions that define good cause, including consideration of the ability to respond to competition. Sections 237.09, 237.121, and 237.60, subdivision 3 apply to a telephone company under a plan.

### **237.772 COST STUDY METHODOLOGY.**

Subdivision 1. **Total service long-run incremental cost.** (a) For purposes of this chapter, total service long-run incremental cost (TSLRIC) means the total cost to the company of supplying a service, group of services, or basic network function. The term "long-run" means a period of time sufficient so that all inputs are avoidable based on the total increment of service, group of services, or basic network function and includes the relevant costs resulting from the company's decision to provide the service, group of services, or basic network function, holding constant the production levels of all other services, groups of services, or basic network functions provided by the company.

(b) A telephone company is not required to prepare or file TSLRIC or variable cost studies for all of its services as a prerequisite to filing a plan. However, the commission may order cost studies to be prepared for specific services as a condition of approval of the plan.

Subd. 2. **Petition for variable cost study.** To the extent that this section or the commission may require a company to provide a TSLRIC study, a company may submit a petition to the commission for permission to submit a variable cost study instead of a TSLRIC study. The commission shall grant the petition if the telephone company demonstrates:

(1) that a TSLRIC study is burdensome in relation to its annual revenue from the service involved;

(2) in the case of an existing service, that the service is no longer being offered to new customers; or

(3) if the telephone company shows other good cause.

### **237.773 ALTERNATIVE REGULATION FOR SMALL TELEPHONE COMPANY.**

Subdivision 1. **Definition.** For purposes of this section, "small telephone company" means a local exchange telephone company with fewer than 50,000 subscribers that has made an election under subdivision 2 whether or not the company is subject to sections 237.59 and 237.60, subdivisions 1, 2, and 5.

Subd. 2. **Election; effect.** A local telephone company with fewer than 50,000 subscribers may elect to become a small telephone company by notice to the commission, in writing, of its decision. The small telephone company may not revoke its election for three years after making the election. While that election remains in effect, a small telephone company is not subject to the rate-of-return regulation or earnings investigation provisions of section 237.075 or 237.081.

If, before electing under this subdivision, a small telephone company has been found by the commission to have significant quality of service problems in violation of applicable

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commission rules, that company must either resolve the quality of service problems or develop a plan to resolve the quality of service problems in conformance with section 237.765. The quality of service plan must be approved by the commission in order for an election under this subdivision to be effective. The commission shall make a determination on the quality of service plan within 60 days after it is submitted.

Subd. 3. **Local rate.** (a) Except as provided in paragraph (b), a small telephone company shall not implement a rate increase for any service listed in section 237.761, subdivision 3, beyond the level in effect 60 days prior to an election under subdivision 2, until the later of January 1, 1998, or two years after making an election. However, a small telephone company may implement any new service and establish rates for any new service and may change rates for any other service at any time subject to the requirements of section 237.761, subdivision 4. A small company shall provide to its customers the ability to block, at no extra charge, any new service which it offers, provides, or bills. This requirement shall not apply to services that require affirmative subscription by the customer. Nothing in this section shall prevent the commission from requiring blocking or other privacy or safety protections for other types of telecommunications services under section 237.081.

(b) At any time following one year after electing under subdivision 2, a small telephone company may change rates for local services except switched network access services, listed in section 237.761, subdivision 3, to reflect:

(1) changes in state and federal taxes;

(2) changes in jurisdictional allocations from the Federal Communications Commission, the amount of which the small telephone company cannot control and for which equal and opposite exogenous changes are made on the federal level;

(3) substantial financial impacts of investments in network upgrades which are made; or

(i) if the investment exceeds 20 percent of the gross plant investment of the company; or

(ii) as the result of government mandates to construct specific telephone infrastructure, if the mandate applies to local telephone companies and the company would not otherwise be compensated.

A small telephone company may change rates for local services listed in section 237.761, subdivision 3, at any time, to implement extended area service or any successor to that service on an income-neutral basis.

A small telephone company proposing an increase under this subdivision shall provide 60 days' advance written notice to the department and each of the company's customers including the individual rates affected and the procedure necessary for the customers to petition for investigation. If the department receives a petition within 45 days after the notice from five percent or 500, whichever is fewer, of the customers of the small telephone company, the department and the company shall jointly determine if the petition is valid and, if so, may investigate the rate change to determine if it conforms to the limitations of this subdivision. Within 30 days of validating the petition, the department shall report its findings to the commission, which shall either adopt the report or order changes to conform to this subdivision.

(c) On or after the later of January 1998, or two years after making an election under subdivision 2, a small telephone company may increase rates for local services, except switched network access services, listed in section 237.761, subdivision 3. A small telephone company proposing an increase shall provide 60 days' advance written notice to its customers including individual rates affected and the procedure necessary for the customers to petition for investigation. If the commission receives a petition within 45 days after such notice, from five percent or 500, whichever is fewer, of the customers of the small telephone company, the department and the company shall jointly determine if the petition is valid and, if so, may investigate the proposed rate increase to determine if it is appropriate in light of rates charged by other local exchange telephone companies for comparable services, taking into account calling scope, quality of service, the availability of competitive alternatives, service costs, and the features available to the customers. Within 30 days of validating the petition, the department shall file a report with the commission which shall then approve appropriate rates for those services. Rates established by the commission under this paragraph shall not be increased within one year of implementation.

Subd. 4. **Access rate.** (a) No election by a small telephone company may in any way change the terms or conditions of any interexchange access charge settlements approved by the commission before an election under subdivision 2.

(b) While any interexchange access charge settlement approved by the commission remains in effect, the commission and department shall enforce the agreement without further investigation of interexchange access charges or earnings relating to the interexchange access service. Except as specifically provided in this section, the commission retains all of its authority

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under section 237.081 to investigate other matters relating to interexchange access charges and to issue appropriate orders, and the department retains its authority under sections 216A.07 and 237.15 to investigate matters relating to interexchange access charges.

**237.774 APPLICATION OF OTHER LAWS.**

Except as provided in sections 237.76 to 237.773, a telephone company subject to a plan approved under sections 237.764 and 237.773, shall comply with any state or federal laws governing the provision of telephone services. Nothing contained in sections 237.76 to 237.773 is intended in any way to change or modify the definitions contained in section 237.01 or what constitutes the provision of telephone service under this chapter or other laws.

**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.**

Subdivision 1. **Definition, findings, and purpose.** (a) For purposes of this section, "act" means the federal Telecommunications Act of 1996, Public Law 104-104.

(b) The act establishes procedures whereby former Bell Operating Companies or their affiliates may obtain Federal Communications Commission authorization to provide intrastate inter-LATA telecommunications services and to promote the development of fair and reasonable competition.

(c) The purpose of this section is to promote the development of fair and reasonable competition in the telecommunications industry in Minnesota.

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.