

Sec. 2. **STUDY; REPORT.**

The state auditor shall conduct a two-year study of the effect of section 1, including an evaluation of the costs and quality of services provided. The study shall include calendar years 1995 and 1996 and compare the results to calendar years 1992 and 1993. The state auditor shall report the results of the study to the legislature by November 1, 1997.

Presented to the governor April 26, 1994

Signed by the governor April 28, 1994, 2:29 p.m.

CHAPTER 534—H.F.No. 2143

An act relating to telecommunications; regulating competitive telephone services and incentive plans; extending expiration dates and making technical changes for certain regulatory provisions; amending Minnesota Statutes 1992, sections 237.161, by adding a subdivision; 237.57, subdivision 4; 237.58, subdivision 1; 237.59, subdivisions 1, 2, 3, 5, and by adding a subdivision; 237.60, subdivision 2; 237.62, subdivision 1; 237.625, subdivision 1; and 325E.26, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 237; repealing Minnesota Rules, parts 7815.0700; 7815.0800; 7815.0900; 7815.1000; 7815.1100; 7815.1200; 7815.1300; 7815.1400; and 7815.1500; Laws 1987, chapter 340, section 26; Laws 1989, chapter 74, sections 25 and 27; Laws 1990, chapter 513, section 3; and Laws 1993, chapter 41, section 1.

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

ARTICLE 1

Section 1. Minnesota Statutes 1992, section 237.161, is amended by adding a subdivision to read:

Subd. 6. EXPIRATION. This section expires June 1, 1996, or upon the issuance under this subdivision of a final order of the commission to govern extended area service, whichever occurs earlier.

Prior to June 1, 1996, the commission shall complete a proceeding or series of proceedings to investigate issues related to extended area telephone service and shall issue a final order to establish, at a minimum, an orderly and equitable process and standards for determining the configurations of and cost allocations for extended area service in the state. The commission shall provide notice of the proceedings required under this subdivision in the same manner as for rule-making and shall ensure public participation in the proceedings as for rate changes under section 237.075. The commission may not accept a new petition

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for extended area service between the effective date of this subdivision and the effective date of the final order issued under this subdivision but shall continue to process petitions pending on that effective date under this section.

Sec. 2. Minnesota Statutes 1992, section 237.57, subdivision 4, is amended to read:

Subd. 4. **EMERGING COMPETITION.** A service will be regulated under "emerging competition" exists 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.

Sec. 3. **[237.5799] EXPIRATION.**

Sections 237.58, 237.59, 237.60, 237.61, 237.62, 237.625, 237.63, 237.64, 237.65, 237.66, and 237.68 expire on August 1, 1999.

Sec. 4. Minnesota Statutes 1992, section 237.58, subdivision 1, is amended to read:

Subdivision 1. **APPLICABILITY.** This section and sections 237.59; 237.60, subdivisions 1, 2, and 5; 237.62; and 237.625 do not apply to a telephone company unless the company notifies the commission in writing of its decision to be subject to all of those sections. The company may not revoke its decision to be subject to those sections before January 1, ~~1994~~ 1999, unless the company becomes subject to some other form of alternative regulation.

Sec. 5. Minnesota Statutes 1992, section 237.59, subdivision 1, is amended to read:

Subdivision 1. **EMERGING COMPETITIVE SERVICES.** (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;

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(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 ~~services video display~~;

(10) ~~group access bridge~~ 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-handled intercept~~ operator services, excluding local operator services;

(16) public pay telephone services, excluding charges for access to the central office;

(17) seminars;

~~(18) services not previously offered prior to August 1, 1987;~~

(19) a service that generates an annual revenue equal to or less than the greater of one-tenth of one percent or \$100,000 of a telephone company's annual gross revenues in the year the company elects to be covered by this section;

~~(20) special construction of facilities;~~

~~(21) studies;~~

~~(22) (18) systems for automatic dialing; and~~

~~(23) (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 the effective date of this act retains that classification unless and until it is reclassified pursuant to subdivision 3 or 10.

Sec. 6. Minnesota Statutes 1992, section 237.59, is amended by adding a subdivision to read:

Subd. 1a. CLASS SERVICES. 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.

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Sec. 7. Minnesota Statutes 1992, section 237.59, subdivision 2, is amended to read:

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 of public service, 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) ~~an estimate of the company's current market share;~~
- (3) ~~identification of barriers to entry or exit from the market for the service;~~
~~and~~
- (4) 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.

Sec. 8. Minnesota Statutes 1992, section 237.59, subdivision 3, is amended to read:

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

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case hearing. If an expedited proceeding is requested, the commission must provide interested persons an opportunity to comment on the appropriateness of the process and the merits of the petition.

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

Sec. 9. Minnesota Statutes 1992, section 237.59, subdivision 5, is amended to read:

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 services service providers, the commission shall consider and make findings on 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.

Sec. 10. Minnesota Statutes 1992, section 237.60, subdivision 2, is amended to read:

Subd. 2. **EMERGING COMPETITION.** (a) A company may decrease the rate for a service subject to emerging competition that is listed in the price list, effective ten days after filing a new price list with the commission and the department, along with an incremental cost study demonstrating that the new

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price is above incremental cost. The commission shall prevent a proposed price reduction from going into effect or prospectively reinstate the original rate if the reduction has gone into effect if, after receiving a complaint or on its own motion, under section 237.081, the commission finds that the new rate is below incremental cost or that the new rate is not just and reasonable.

(b) A company may increase the rate for a service subject to emerging competition that is listed in the price list effective 30 days after notice is given to affected customers, the commission, and the department. The notice and new price list filing to the commission and the department for a rate increase must include an incremental cost study demonstrating that the proposed price is above incremental cost, unless a cost study for the service has been filed within the past three years and the company certifies that the cost study remains appropriate for setting rates. However, the commission may order a new cost study upon showing that the most recent cost study is inadequate. The department shall investigate an increase in rates for services subject to emerging competition, and report its findings to the commission within 30 days of the filing.

An interested party may file comments on the proposed rate increase within 30 days of the filing. If no party objects to the increase within that time, the rate is deemed approved. If an objection is filed, the rate increase must nonetheless be deemed approved unless within 60 days of the date of the filing the commission determines that the increase is potentially contrary to the public interest. In that event, the commission may shall, within 60 days after the date of the filing, order that the rate increase is interim in nature and subject to refund. If interim rates are not ordered, the rate increase is not refundable. If a rate is subject to refund, the commission, after a contested case hearing or an expedited hearing under section 237.61, must make a final decision regarding the propriety of the rate increase within six months of the date the price change was filed, except that if a contested case hearing before an administrative law judge is required the commission shall make a final decision within ten months of the date the price change was filed. If the commission does not do so, the price change is deemed approved.

(c) If language describing a rate, term, or condition of service in a price list is changed without substantially altering the application of the price list, the change may take effect upon one-day notice to the commission.

(d) If a term or condition of service in a price list is changed in a way that results in a substantial change in the application of the price list, but the price is not changed, the change in the price list is effective at the same time as a price decrease under paragraph (a).

(e) If a new pricing plan is proposed for a service that is currently offered by a telephone company, the change in the price list is subject to the same schedules governing a price increase under paragraph (b). For purposes of this paragraph, a new pricing plan is a proposal that bundles rate elements for a service, alters the definition of the rate elements for a service, or includes increases for some rate elements and decreases for other rate elements.

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(f) A telephone company may offer a new service to its customers ten days after it files a price list and incremental cost study for the service with the department and the commission.

(g) A telephone company may discontinue a telephone service that is subject to emerging competition, as long as the discontinuance is effective for that service throughout the state, effective 60 days after notice to the commission, the department, and affected customers, unless the commission, within 45 days of the notice, orders a hearing on it. If the commission orders a hearing, the commission shall make a final determination on the discontinuance within 180 days of the date that notice of the discontinuance was filed with the commission, except that if a contested case hearing before an administrative law judge is required the commission shall make a final decision within ten months of the date the notice of discontinuance was filed.

(h) A change in a price list not covered by paragraphs (a) to (f) must be reviewed according to the schedule prescribed for a price increase under paragraph (b).

(i) An incremental cost study required by this section, section 216D.01, subdivision 8, and 237.62, must be a long-run incremental cost study unless the commission has allowed the telephone company required to do the study to set rates based on a variable cost study. A telephone company may include a petition to file a variable cost study instead of a long-run incremental cost study with its notice of price change, notice of a promotion, or its filing of a new service. The commission shall grant the petition if the company demonstrates that a long-run incremental cost study is burdensome in relation to its annual revenue from the service involved, that the company has a low market share, that the service is no longer being offered to new customers, or if the company shows other good cause. A petition must be accompanied by a variable cost study. If the petition is denied, the company shall withdraw a filing made under this section.

(j) For purposes of this section and section 237.62, (1) long-run incremental cost means the change in total cost associated with a change in volume of the service, expressed on a per-unit basis, and (2) variable cost means the change in total cost, excluding fixed costs, associated with a change in volume of service, expressed on a per-unit basis.

Sec. 11. Minnesota Statutes 1992, section 237.62, subdivision 1, is amended to read:

Subdivision 1. **FINANCIAL REQUIREMENTS.** (a) This subdivision governs a proceeding initiated under section 237.075 or 237.081 to change the rates for noncompetitive services. Subdivision 1a governs a proceeding under section 237.075 or 237.081 to change the rates for noncompetitive services and for services subject to emerging competition. The company shall elect that rate changes be made in accordance with either this subdivision or subdivision 1a, and that election is binding on the commission in all respects.

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(b) A company electing to use this subdivision may demonstrate the revenue requirement for its noncompetitive services by providing:

(1) revenues, expenses, and embedded investments directly related to the provision of the noncompetitive services;

(2) a reasonable portion of the net income generated jointly or arising from jointly competitive and noncompetitive services, and net income received by a telephone company as a result of the sale of telephone number listings, charges and advertising for use in white pages, yellow pages, other directory and other related services, must be treated as arising jointly from competitive and noncompetitive services; and

(3) a reasonable portion of the company's total joint and common costs to be attributable to the provision of the noncompetitive services.

(c) For purposes of this subdivision, when a telephone company uses an investment to provide competitive services to end-user customers and another company provides a competing service that requires, in part, the use of a similar investment to provide the telephone company's noncompetitive services or service elements, the telephone company shall treat both investments and related costs as though they are providing noncompetitive services and shall attribute revenues to the noncompetitive category using the rates for the noncompetitive service or service elements multiplied by the appropriate current volumes for the telephone company's competitive service instead of determining the investment, associated expenses, and common and joint costs under paragraph (b), clauses (1) and (3) to determine the revenue requirement for the noncompetitive category.

(d) A telephone company that receives annual revenues from Minnesota intrastate services of less than \$100,000,000 may demonstrate the revenue requirement for its noncompetitive services by removing from the telephone company's total revenues, expenses, and embedded investments the revenues, expenses, and embedded investments of:

(1) interstate services, determined using:

(i) the specific jurisdictional separations procedures adopted by the Federal Communications Commission, if the telephone company is an actual cost company for interstate services; or

(ii) applicable jurisdictional separations principles, if the telephone company is an average schedule company for interstate services; and

(2) competitive intrastate services, determined as follows:

(i) revenues must be directly assigned based on the related services;

(ii) revenues from services with both competitive and noncompetitive elements must be assigned first to noncompetitive elements based on tariffs, with the remainder assigned to competitive elements;

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(iii) expenses must be directly assigned to either competitive or noncompetitive services when possible, based on the origin of those expenses;

(iv) joint expenses, which are those that cannot be directly assigned to any single competitive or noncompetitive service, must be allocated using a cost causal methodology in accordance with the following hierarchy:

(A) whenever practicable, the allocation of expenses must be based on a measurable assignment method; then

(B) other expenses, to the extent practicable, must be allocated by employing surrogate measures; and then

(C) any remaining joint expenses must be allocated to competitive services based on the ratio of related direct and joint expenses assigned to the competitive services to total related direct and joint expenses;

(v) expenses that are common to all services must be allocated based on the ratio of all direct and joint expenses of competitive and noncompetitive services; and

(vi) embedded investments must be assigned and allocated using a hierarchy comparable to the hierarchy used for the assignment and allocation of expenses.

(e) A telephone company shall also treat the net income from the sale of telephone number listings, charges, and advertising for use in the white pages directory, yellow pages directory, other directories, and other related services as provided in paragraph (b), clause (2).

(f) Unless otherwise ordered by the commission, a telephone company may omit the determination and removal of the revenues, expenses, and embedded investments related to competitive services that:

(1) generate, in the aggregate, annual revenues less than \$50,000; or

(2) individually generate annual revenues less than one-tenth of one percent of the company's annual gross revenues for the test year period.

However, the telephone company shall not omit determination based on clauses (1) and (2).

Sec. 12. Minnesota Statutes 1992, section 237.625, subdivision 1, is amended to read:

Subdivision 1. **INCENTIVE PLANS.** (a) A telephone company whose general revenue requirement is determined under section 237.075 may petition the commission for approval of an incentive plan. The incentive plan must apply to the noncompetitive services of a company covered by section 237.62, subdivision 1, and must apply to noncompetitive services and services subject to emerging competition if the company has chosen to be governed by section 237.62,

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subdivision 1a. The purpose of the plan is to provide an incentive to the company to improve its operating efficiency while maintaining or improving the quality of its service. If a telephone company is able to increase its earnings, the telephone company shall share the increased earnings with its customers to the extent and in the manner set forth in the commission-approved plan. The commission may not approve a plan that does not meet the requirements of this paragraph and paragraphs (b) to (e) ~~(f)~~.

(b) A telephone company shall share increased earnings during the term of the incentive plan with its customers either by giving them credits against bills or by lowering rates. The division of increased earnings between the company and the customers must reflect the degree to which the company has assumed a risk of earning less than its revenue requirement and the degree to which the customers have assumed a risk of rate increases. Any plan approved or renewed under this section after August 1, 1994, must require that the percentage of increased earnings shared with customers change in relation to the amount that earnings exceed the last authorized return on equity for that company.

(c) The incentive plan must be in effect for at least two years.

(d) The incentive plan must provide for periodic reporting to the commission to document that the sharing requirements of the plan are being properly implemented. The company's rates and earnings under the plan are not subject to section 237.081, subdivision 2, paragraph (b), except to the extent necessary to enforce the sharing provisions of the incentive plan.

(e) An incentive plan may not permit rate increases except under other provisions in this chapter. The plan may, however, permit the direct pass-through of cost decreases and increases approved or reallocated by a governmental entity, except for changes in intrastate depreciation schedules.

(f) An incentive plan approved or renewed by the commission pursuant to this section after August 1, 1994, must contain:

(1) specific standards for measuring the quality of noncompetitive services and services subject to emerging competition in all areas served by the company and including, but not limited to, standards concerning installation and time intervals for restoration or repair of service, trouble rates, exchange access line held orders, customer satisfaction, and dial tone speed;

(2) quality reports provisions for reporting to the commission at least annually the company's performance as to the quality of service standards;

(3) indexing provisions that index quality of service improvements for local residence services to similar improvements for local business services; and

(4) appropriate remedies, which may include incentives and sanctions, that may apply to ensure substantial compliance with the quality of service standards set forth in the plan.

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Sec. 13. REPEALER.

Laws 1987, chapter 340, section 26; Laws 1989, chapter 74, sections 25 and 27; Laws 1990, chapter 513, section 3; and Laws 1993, chapter 41, section 1, are repealed.

Minnesota Rules, parts 7815.0700; 7815.0800; 7815.0900; 7815.1000; 7815.1100; 7815.1200; 7815.1300; 7815.1400; and 7815.1500, are repealed.

Sec. 14. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Sections 2 to 13 are effective June 1, 1994.

ARTICLE 2

Section 1. Minnesota Statutes 1992, section 325E.26, is amended by adding a subdivision to read:

Subd. 6. MESSAGE. "Message" means any call, regardless of its content.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective July 1, 1994.

Presented to the governor April 26, 1994

Signed by the governor April 28, 1994, 2:30 p.m.

CHAPTER 535—H.F.No. 2680

An act relating to charitable organizations; changing definitions; modifying registration requirements; amending Minnesota Statutes 1993 Supplement, section 309.501, subdivisions 1 and 3.

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

Section 1. Minnesota Statutes 1993 Supplement, section 309.501, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** (a) As used in this section, the following terms have the meanings given them.

(b) "Registered combined charitable organization" means a federated funding organization:

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