

CHAPTER 156—S.F.No. 752

An act relating to telecommunications; allowing for alternative regulation of telephone companies for a limited period; authorizing rulemaking to promote fair and reasonable competition for local exchange service; making technical changes; amending Minnesota Statutes 1994, sections 237.01, subdivision 6; 237.035; 237.09; 237.16; and 237.461, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 237.

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

Section 1. Minnesota Statutes 1994, section 237.01, subdivision 6, is amended to read:

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

Sec. 2. Minnesota Statutes 1994, section 237.035, is amended to read:

237.035 TELECOMMUNICATIONS CARRIER EXEMPTION.

(a) Telecommunications carriers are not subject to regulation under this chapter, except that only to the extent required under paragraphs (b) to (e).

(b) Telecommunications carriers shall comply with the requirements of sections 237.121 and 237.74.

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

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

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

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

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

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Sec. 3. Minnesota Statutes 1994, section 237.09, is amended to read:

237.09 DISCRIMINATION PROHIBITED.

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

Subd. 2. PARTICULAR SERVICES. (a) A telephone company that offers or provides a service or services, service elements, features, or functionalities on a separate, stand-alone basis to any customer shall provide that service, service element, feature, or functionality pursuant to tariff to all similarly situated persons, including all telecommunications carriers and competitors. To the extent prohibited by the Federal Communications Commission or public utilities commission, a telephone company shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers.

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

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

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

Sec. 4. [237.121] PROHIBITED PRACTICES.

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

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

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

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

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

(5) impose restrictions on the resale or shared use of its services or network functions, provided that:

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

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

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

Sec. 5. Minnesota Statutes 1994, section 237.16, is amended to read:

237.16 CONSTRUCTING TELEPHONE LINES AND EXCHANGES LOCAL EXCHANGE COMPETITION, RULES.

Subdivision 1. **LOCAL NEW SERVICE, CERTIFICATE OF AUTHORITY.** (a) For the purpose of bringing about uniformity of practice fair and reasonable competition for local exchange telephone services, the commission ~~shall~~ have has the exclusive ~~right~~ authority to grant authority to:

(1) authorize any telephone company person to construct telephone lines or exchanges for furnishing 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 whenever the commission grants such authority, it shall be in the form of a permit of indeterminate duration — coupled with the right to the municipality to purchase the telephone plant within the city, as hereinafter provided. No lines or equipment shall be constructed or installed for the purpose of furnishing local telephone service to the inhabitants or telephone users in any locality in this state, where there is then in operation in the locality or territory affected thereby another telephone company already furnishing such service, without first securing from the commission a declaration, after a public hearing, that public convenience requires such proposed telephone lines or equipment; but

(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.

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(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 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.

(d) The governing body of any municipality or town shall have the same powers of regulation which it now possesses with reference to the location of poles and wires, and other equipment or facilities on, below, or above the streets, alleys, or other public grounds so as to prevent any interference with the safe and convenient use of streets and, alleys, and other public grounds by the public.

(e) A telephone company or telecommunications carrier shall provide for repair or restoration of streets, alleys, and other public areas to their original condition if necessitated by the installation or operation of telephone or telecommunications carrier facilities.

Subd. 2. CERTIFICATE OF TERRITORIAL AUTHORITY. All telephone companies operating exchanges in the state of Minnesota as of April 21, 1961, shall be entitled to receive a certificate of territorial authority from the commission authorizing such company to continue to serve the areas presently included within the exchange boundaries as indicated by the exchange boundary maps now on record with the commission provided however that such exchange boundaries shall be subject to review by the commission upon the filing of a complaint by any interested party, the time for filing such complaints to be limited to 60 days after the passage of Laws 1961, chapter 637. If more than one company files maps indicating service in the same territory, the commission shall, after hearing, on reasonable notice to the interested parties, determine, from such evidence as it may reasonably require, which of such companies shall be entitled to a certificate of territorial authority. In making such determination, the commission shall consider the ability of such company to furnish thereafter reasonably adequate service in the territory in question. Any company operating a switchboard that does not presently have a map on record with the commission shall have three months from April 21, 1961, to file such map showing the territory being served by such company.

Subd. 3. MAPS; RULES. The style, size and kind of map, together with the information to be shown thereon, shall be as required by 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. Such rules shall indicate the time and place for filing such maps and shall require that such maps be kept current.

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Subd. 4. **NEW AMENDED CERTIFICATE REQUIRED FOR EXPANSION.** No company ~~authorized to provide local service shall construct or operate any line, plant or system, or any extension thereof, or provide local telephone service in any area for which it has not been certified nor shall any person acquire ownership or control thereof, of another telephone company~~ 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 such construction, operation, or acquisition, and a new an amended certificate of territorial authority; provided that, 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 of this section. 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.** Any certificate of ~~territorial~~ authority may, after notice of hearing and a hearing, be revoked by the commission, in whole or in part, for; the failure of the its holder thereof to furnish reasonably adequate telephone service within the area or areas determined and defined in such the certificate of territorial authority; failure to meet the terms and conditions of its certificate; or intentional violation of the commission's rules or orders.

Subd. 6. **EXPANSION OF SERVICE AREA NOT REQUIRED.** ~~Nothing contained in This section shall be construed to does not~~ require any telephone company ~~operating exchanges providing local service~~ in the state of Minnesota to render telephone service in any portion of any territorial area ~~in which such not included on the telephone company does not render and does not propose to render telephone service~~ company's territorial map.

Subd. 7. **EXISTING CERTIFICATES RETAINED.** 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

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

(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 (10), 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 with touch-tone capability, line quality capable of carrying facsimile and data transmissions, equal access, emergency services number capability, statewide

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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. 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.

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Subd. 11. INTERIM AUTHORITY IN AREAS SERVED BY TELEPHONE COMPANIES WITH LESS THAN 50,000 SUBSCRIBERS. (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 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.

(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 FACILITIES. 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.

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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.

Sec. 6. Minnesota Statutes 1994, section 237.461, subdivision 2, is amended to read:

Subd. 2. **CIVIL PENALTY.** A person who knowingly and intentionally violates a provision of this chapter or rule or order of the commission adopted under this chapter 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~~ \$5,000 for each day of each violation. The civil penalties provided for in this section may be recovered by a civil action brought by the attorney general in the name of the state. Amounts recovered under this section must be paid into the state treasury.

Sec. 7. **[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.

Sec. 8. **[237.761] ALTERNATIVE REGULATION PLAN; SERVICES.**

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.

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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;

(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 SERVICES. (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 are considered approved if no objection is filed or raised by an interested party or the commission within ten days after the filing; and

(2) rate increases may be effective 20 days after filing and are considered approved if no objection is filed or raised by an interested party or the commission within 20 days after the filing.

Subd. 5. NON-PRICE-REGULATED SERVICES. (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:

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(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 SERVICES; CLASSIFICATION; RATES. 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 COMMITMENTS. (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; and

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(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.

Sec. 9. [237.762] RATES; PRICES.

Subdivision 1. INITIAL RATES. As part of its evaluation of an alternative regulation plan, the commission shall determine whether the telephone company's existing service substantially complies with commission rules and if its rates and rate design are appropriate in light of the proposed plan or whether changes should be made before the plan is implemented or phased in during the course of the plan. 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; RATES. 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 CHANGES. (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. 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 three years to reflect:

(1) substantial financial impacts of government mandates to construct specific telephone infrastructure and increases or decreases in state and federal taxes, if the mandate applies to local telephone companies and the company would not otherwise be compensated through some other manner under the plan; and

(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.

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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 CHANGES. 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. RATES FOR OTHER SERVICES. 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.

Sec. 10. [237.763] EXEMPTION FROM RATE-OF-RETURN REGULATION AND RATE INVESTIGATIONS.

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; 237.58; 237.59; 237.60, subdivisions 1, 2, 4, and 5; 237.62; 237.625; 237.63; or 237.65, 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.

Sec. 11. [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.

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(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.

(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 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 upon the effective date of the plan approved under this section, provided, however, the company remains obligated to share earnings under the terms of the incentive plan through the date of the termina-

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

Sec. 12. [237.765] **QUALITY OF SERVICE.**

For an alternative regulation plan to be approved by the commission under sections 237.76 to 237.774, the plan must contain and 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.

Any penalties under clause (5) may be paid into a universal service fund or returned to customers under a method set forth in the plan.

Sec. 13. [237.766] **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 four years. Within six months prior to the termination of the plan, the plan must be reviewed by the commission and, with the consent of the company, revised or renewed consistent with sections 237.76 to 237.774, except that the justification of earnings levels in section 237.764, subdivision 1, paragraph (c), 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 revised or renewed 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.

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Sec. 14. [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.

Sec. 15. [237.768] PERIODIC FINANCIAL REPORTS.

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 of public service in the same manner as is required of other telephone companies on August 1, 1995. In 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.

Sec. 16. [237.769] UNBUNDLING AND INTERCONNECTION.

Every plan must contain, and the commission shall approve, rates for and procedures under which the telephone company will, on or before the effective date of the plan, permit interconnection with and unbundle its intrastate services and facilities to the same extent and in the same manner as the Federal Communications Commission requires the interconnection and unbundling for interstate purposes for that company. 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.

Sec. 17. [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.

Sec. 18. [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.

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Sec. 19. [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.

Sec. 20. [237.773] ALTERNATIVE REGULATION FOR SMALL TELEPHONE COMPANIES.

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 237.58, 237.59, 237.60, subdivisions 1, 2, and 5, 237.62, and 237.625.

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

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been found by the commission to have significant quality of service problems in violation of applicable 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 RATES. (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,

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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 shall 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. 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 shall 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. 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 RATES. (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 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.

Subd. 5. DEPRECIATION. While an election under subdivision 2 is in effect, the company shall be subject to complaints by the department or others concerning its depreciation rates and practices pursuant to section 237.081, subdivision 1a, and shall submit to the department the information required by Minnesota Rules, parts 7810.7700 and 7810.7800, but shall not otherwise be subject to section 237.22 or the certification procedures of Minnesota Rules, part 7810.7000.

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Sec. 21. [237.774] 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.

Sec. 22. PUBLIC ACCESS.

The department of public service shall investigate how to ensure citizen access to local government and other public access programming on emerging communication technologies such as video dial-tone and satellite transmission equivalent to that required of cable franchise operators pursuant to Minnesota Statutes, chapter 238, and the alternatives available to the state to ensure that access.

The department shall make recommendations to the legislature by February 15, 1996, concerning public access.

Sec. 23. STATEMENT OF INTENT.

The amendments to Minnesota Statutes, section 237.16, subdivision 1, paragraph (d), in this law are solely intended for clarification. No substantive changes in powers of regulation are intended, nor are to be implied.

Sec. 24. MUNICIPAL FRANCHISE FEES; UTILITIES.

The department of public service shall study the issue of franchise fees and related compensation paid to local governments by utilities and cable communication companies. The study shall include a survey of fees and related compensation currently paid to municipalities by utilities and cable communication companies, and the purpose for which the franchise fees and related compensation are remitted to municipalities by utilities and cable communication companies. The department shall develop recommendations on a state policy regarding these fees and related compensation, particularly addressing the issues of the purposes for which such fees may be assessed and paid, the amount of the fees, and uses of such fee revenue and related compensation. The department shall report its findings and recommendations to the legislature by February 15, 1996.

Sec. 25. EFFECTIVE DATE; EXPIRATION.

Sections 1 to 22 are effective August 1, 1995, and expire January 1, 2006.

Presented to the governor May 9, 1995

Signed by the governor May 10, 1995, 10:16 a.m.

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