

CHAPTER 224—S.F.No. 685

An act relating to telecommunications; deregulating coin-operated or public pay telephones under state law; authorizing the public utilities commission to assess administrative penalties for anticompetitive activities by telecommunication providers; amending Minnesota Statutes 1998, sections 237.461, subdivision 2, and by adding subdivisions; and 237.5799; proposing coding for new law in Minnesota Statutes, chapter 237.

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

Section 1. **[237.036] COIN-OPERATED OR PUBLIC PAY TELEPHONES.**

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. **[237.462] COMPETITIVE ENFORCEMENT; ADMINISTRATIVE PENALTIES TO PROMOTE AND PROTECT LOCAL TELEPHONE COMPETITION.**

Subdivision 1. **AUTHORITY TO ISSUE PENALTY ORDERS.** After a proceeding under section 237.081, the commission may issue an order administratively assessing monetary penalties for knowing and intentional violations of:

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(1) sections 237.09, 237.121, and 237.16 and any rules adopted under those sections;

(2) any standards, limitations, or conditions established in a commission order pursuant to sections 237.09, 237.121, and 237.16;

(3) an approved interconnection agreement if the violation is material; and

(4) any duty or obligation of a telephone company, a telecommunications carrier, or a telecommunications provider imposed upon such telephone company, telecommunications carrier, or telecommunications provider by section 251, paragraph (a), (b), or (c) of the Telecommunications Act of 1996 that relates to service provided in the state. The penalty order must be issued as provided in this section.

Subd. 2. AMOUNT OF PENALTY; CONSIDERATIONS. (a) The commission may issue an order assessing a penalty of between \$100 and \$10,000 per day for each violation.

(b) In determining the amount of a penalty, the commission shall consider:

(1) the willfulness or intent of the violation;

(2) the gravity of the violation, including the harm to customers or competitors;

(3) the history of past violations, including the gravity of past violations, similarity of previous violations to the current violation to be penalized, number of previous violations, the response of the person to the most recent previous violation identified, and the time lapsed since the last violation;

(4) the number of violations;

(5) the economic benefit gained by the person committing the violation;

(6) any corrective action taken or planned by the person committing the violation;

(7) the annual revenue and assets of the company committing the violation, including the assets and revenue of any affiliates that have 50 percent or more common ownership or that own more than 50 percent of the company;

(8) the financial ability of the company, including any affiliates that have 50 percent or more common ownership or that own more than 50 percent of the company, to pay the penalty; and

(9) other factors that justice may require, as determined by the commission. The commission shall specifically identify any additional factors in the commission's order.

Subd. 3. BURDEN OF PROOF. The commission may not assess a penalty under this section unless the record in the proceeding establishes by a preponderance of the evidence that the penalty is justified based on the factors identified in subdivision 2.

Subd. 4. CONTENTS OF ORDER. An order assessing an administrative penalty under this section shall include:

(1) a concise statement of the facts alleged to constitute a violation;

(2) a reference to the section of the statute, rule, or order that has been violated;

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(3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and

(4) a statement of the person's right to review of the order.

Subd. 5. PENALTY STAYED. A penalty imposed under this section shall not be payable sooner than 31 days after the commission issues its final order assessing the penalty. The person subject to the penalty may appeal the commission's penalty order under sections 14.63 to 14.68. If the person does appeal the commission's penalty order, the penalty shall not be payable until either all appeals have been exhausted or the person withdraws the appeal.

Subd. 6. EXPEDITED PROCEEDING. (a) The commission may order an expedited proceeding under section 237.61 and this subdivision, in lieu of a contested case under chapter 14, to develop an evidentiary record in any proceeding that involves contested issues of material fact either upon request of a party or upon the commission's own motion if the complaint alleges a violation described in subdivision 1, clauses (1) to (4). The commission may order an expedited proceeding under this subdivision if the commission finds an expedited proceeding is in the public interest, regardless of whether all parties agree to the expedited proceeding. In determining whether to grant an expedited proceeding, the commission may consider any evidence of impairment of the provision of telecommunications service to subscribers in the state or impairment of the provision of any service or network element subject to the jurisdiction of the commission.

(b) Any request for an expedited proceeding under this subdivision must be noted in the title of the first filing by a party. The filing shall also state the specific circumstances that the party believes warrant an expedited proceeding under this subdivision.

(c) A complaint requesting an expedited proceeding, unless filed by the department of public service or the attorney general, must set forth the actions and the dates of the actions taken by the party filing the complaint to attempt to resolve the alleged violations with the party against whom the complaint is filed, including any requests that the party against whom the complaint is filed correct the conduct giving rise to the violations alleged in the complaint. If no such actions were taken by the complainant, the complaint shall set forth the reasons why no such actions were taken. The commission may order an expedited proceeding even if the filing complaint fails to meet this requirement if the commission determines that it would be in the public interest to go forward with the expedited proceeding without information in the complaint on attempts to resolve the dispute.

(d) The complaining party shall serve the complaint along with any written discovery requests by hand delivery and facsimile on the party against whom the complaint is filed, the department of public service, and the office of the attorney general on the same day the complaint is filed with the commission.

(e) The party responding to a complaint that includes a request for an expedited proceeding under this subdivision shall file an answer within 15 days after receiving the complaint. The responding party shall state in the answer the party's position on the request for an expedited proceeding. The responding party shall serve with the answer any objections to any written discovery requests as well as any written discovery requests the responding party wishes to serve on the complaining party. Except for stating any objections, the responding party is not required to answer any written discovery requests under this subdivision until a time established at a prehearing conference. The responding party

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shall serve a copy of the answer and any discovery requests and objections on the complaining party, the department of public service, and office of the attorney general by hand delivery and facsimile on the same day as the answer is filed with the commission.

(f) Within 15 days of receiving the answer to a complaint in a proceeding in which a party has requested an expedited hearing, the commission shall determine whether the filing warrants an expedited proceeding. If the commission decides to grant a request by a party or if the commission orders an expedited proceeding on its own motion, the commission shall conduct within seven days of the decision a prehearing conference to schedule the evidentiary hearing. During the prehearing conference, the commission shall establish a discovery schedule that requires all discovery to be completed no later than three days before the start of the hearing. An evidentiary hearing under this subdivision must commence no later than 45 days after the commission's decision to order an expedited proceeding. A quorum of the commission shall preside at any evidentiary hearing under this subdivision unless all the parties to the proceeding agree otherwise.

(g) All pleadings submitted under this subdivision must be verified and all oral statements of fact made in a hearing or deposition under this subdivision must be made under oath or affirmation.

(h) The commission shall issue a written decision and final order on the complaint within 15 days after the close of the evidentiary hearing under this subdivision. On the day of issuance, the commission shall notify the parties by facsimile that a final order has been issued and shall provide each party with a copy of the final order.

(i) The commission may extend any time periods under this subdivision if all parties to the proceeding agree to the extension or if the commission finds the extension is necessary to ensure a just resolution of the complaint.

(j) Except as otherwise provided in this subdivision, an expedited proceeding under this subdivision shall be governed by the following procedural rules:

(1) the parties shall have the discovery rights provided in Minnesota Rules, parts 1400.6700 to 1400.7000;

(2) the parties shall have the right to cross-examine witnesses as provided in section 14.60, subdivision 3;

(3) the admissibility of evidence and development of record for decision shall be governed by section 14.60 and Minnesota Rules, part 1400.7300; and

(4) the commission may apply other procedures or standards included in the rules of the office of administrative hearings, as necessary to ensure the fair and expeditious resolution of disputes under this section.

Subd. 7. TEMPORARY RELIEF PENDING DISPUTE RESOLUTION. (a) A person filing a complaint may include in the complaint a request that the commission issue an order granting temporary relief under paragraph (c) if the complaint alleges a violation described in subdivision 1, clauses (1) to (4). Any request for temporary relief under this subdivision must be noted in the title of the complaint. The complaining party shall provide a copy of the complaint requesting temporary relief by hand delivery and facsimile to the party alleged to be in violation on the same day a complaint requesting such relief is filed with the commission. The commission shall issue a decision upon such a request within 20 days of the filing of the complaint.

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(b) The commission may also order temporary relief on its own motion for an alleged violation of one or more of the provisions of subdivision 1, clauses (1) to (4), in accordance with this subdivision.

(c) After notice and an opportunity for comment, the commission may grant an order for temporary relief under this subdivision upon a verified factual showing that:

(1) the party seeking relief will likely succeed on the merits;

(2) the order is necessary to protect the public's interest in fair and reasonable competition; and

(3) the relief sought is technically feasible.

An order for temporary relief must include a finding that the requirements of this subdivision have been fulfilled.

(d) In an order granting temporary relief, the commission shall require the responding party to act or refrain from acting as the commission deems necessary to avoid, prevent, or mitigate the complained-of harm to subscribers or local exchange telephone service providers resulting from the alleged violation of one or more of the provisions in subdivision 1, clauses (1) to (4). The commission must give the responding party a reasonable period of time to comply with the order.

(e) A party may seek review, reconsideration, or rehearing of a temporary relief order prior to a final decision on the complaint by the commission.

(f) If there is a material issue of fact and the commission issues an order based on written pleadings without an evidentiary hearing, the order may not remain in effect for more than 30 days prior to which time the commission shall hold an evidentiary hearing to determine whether the order for temporary relief should be continued, modified, or reversed. Otherwise, an order for temporary relief shall remain in effect until a final order is issued by the commission unless the commission or a court issues an order or decision reversing the order for temporary relief.

Subd. 8. ENFORCEMENT. The attorney general, on behalf of the state, may proceed to enforce and collect penalties that are due and payable under this section in any manner provided to the attorney general by other law.

Subd. 9. CUMULATIVE REMEDIES. The attorney general may not seek civil penalties under section 237.461 for the same violations for which the commission has issued an order imposing administrative monetary penalties under this section. The imposition of administrative penalties in accordance with this section is in addition to all other remedies available under statutory or common law. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation or violations for which the penalty was assessed.

Subd. 10. PENALTY PROCEEDS DEPOSITED IN GENERAL FUND. The proceeds of any penalty assessed under this section paid to the state shall be deposited in the general fund.

Subd. 11. PRIVATE REMEDIES. Nothing in this section affects the ability of a telephone company, telecommunications provider, telecommunications carrier, or sub-

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scriber to bring a private cause of action in court against a provider of local exchange telephone service based on conduct for which a penalty is imposed under this section.

Subd. 12. APPLICATION. This section applies to any telecommunications provider, telephone company, or telecommunications carrier that offers local exchange telephone service within the service territory of a telephone company with 50,000 subscribers or more, regardless of where the violation occurs.

Sec. 3. Minnesota Statutes 1998, 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 \$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. 4. Minnesota Statutes 1998, section 237.461, is amended by adding a subdivision to read:

Subd. 3. CIVIL PENALTY FOR LOCAL COMPETITION VIOLATIONS. Notwithstanding subdivision 2, a person who knowingly and intentionally commits a violation described in section 237.462, subdivision 1, clauses (1) to (4), 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 \$55,000 for each day of each violation. In determining the amount of the penalty under this subdivision, the court shall consider the factors in section 237.462, subdivision 2, paragraph (b).

Sec. 5. Minnesota Statutes 1998, section 237.461, is amended by adding a subdivision to read:

Subd. 4. CIVIL PENALTY ACTION; TREASURY. 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. 6. Minnesota Statutes 1998, section 237.5799, is amended to read:

237.5799 EXPIRATION OF COMPETITIVE SERVICE LAWS.

Sections 237.58, 237.59, 237.60, subdivisions 1, 2, and 5, 237.61, 237.62, and 237.625, 237.63, 237.64, 237.65, and 237.68 expire on August 1, 1999.

Sec. 7. SUNSET.

Sections 2 and 4 and Minnesota Statutes 1998, sections 237.63, 237.65, and 237.68, expire on December 31, 2004.

Sec. 8. EFFECTIVE DATE.

This act is effective the day following final enactment. Sections 2 and 4 do not apply to dockets pending on the date of enactment.

Presented to the governor May 21, 1999

Signed by the governor May 25, 1999, 11:28 a.m.

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