

CHAPTER 237

TELEPHONE AND TELEGRAPH COMPANIES;
TELECOMMUNICATIONS CARRIERS

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237.011 TELECOMMUNICATIONS GOALS.

The following are state goals that should be considered as the commission executes its regulatory duties with respect to telecommunication services:

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
- (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

History: 1997 c 223 s 2

237.04 WIRES CROSSING OR PARALLELING UTILITY LINES; RULES.

(a) The department shall determine and promulgate reasonable rules covering the maintenance and operation, also the nature, location, and character of the construction to be used, where telephone, telegraph, electric light, power, or other electric wires of any kind, or any natural gas pipelines, cross, or more or less parallel the lines of any railroad, interurban railway, or any other similar public service corporation; and, to this end, shall formulate and from time to time, issue general rules covering each class of construction, maintenance, and operation of such electric wire or natural gas pipeline crossing, or paralleling, under the various conditions existing; and the department, upon the complaint of any person, railroad, interurban railway, municipal utility, cooperative electric association, or other public utility claiming to be injuriously affected or subjected to hazard by any such crossing or paralleling lines constructed or about to be constructed, shall, after a hearing, make such order and prescribe such terms and conditions for the construction, maintenance, and operation of the lines in question as may be just and reasonable.

(b) The department may, upon request of any municipal utility, electric cooperative association, or public utility, determine the just and reasonable charge which a railroad, or owner of an abandoned railroad right-of-way, can prescribe for a new or existing crossing of

a railroad right-of-way by an electric or gas line, based on the diminution in value caused by the crossing of the right-of-way by the electric or gas line. This section shall not be construed to eliminate the right of a public utility, municipal utility, or electric cooperative association to have any of the foregoing issues determined pursuant to an eminent domain proceeding commenced under chapter 117. Unless the railroad, or owner of an abandoned railroad right-of-way, asserts in writing that the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, a crossing can be constructed following filing of the requested action with the department, pending review of the requested action by the department.

The department shall assess the cost of reviewing the requested action, and of determining a just and reasonable charge, equally among the parties.

History: 1997 c 123 s 1

237.065 RATES FOR SPECIAL SERVICE TO SCHOOLS AND TELECOMMUNICATION SERVICES PURCHASING COOPERATIVES.

Subdivision 1. **Basic services.** Each telephone company, including a company that has developed an incentive plan under section 237.625, that provides local telephone service in a service area that includes a school that has classes within the range from kindergarten to 12th grade shall provide, upon request, additional service to the school that is sufficient to ensure access to basic telephone service from each classroom and other areas within the school, as determined by the school board. Each company shall set a flat rate for this additional service that is less than the company's flat rate for an access line for a business and the same as or greater than the company's flat rate for an access line for a residence in the same local telephone service exchange. When a company's flat rates for businesses and residences are the same, the company shall use the residential rate for service to schools under this section. The rate required under this section is available only for a school that installs additional service that includes access to basic telephone service from each classroom and other areas within the school, as determined by the school board.

Subd. 2. **Basic and advanced telecommunication services.** (a) Notwithstanding the provisions of sections 237.09, 237.14, 237.60, subdivision 3, and 237.74, each telephone company and telecommunications carrier that provides local telephone service in a service area that includes a school that has classes within the range from kindergarten to grade 12, a public library, or a telecommunication services purchasing cooperative may provide, upon request, basic and advanced telecommunication services at reduced or no cost to that school, library, or may provide, upon request, advanced telecommunication services at reduced wholesale rates to the members of a telecommunication services purchasing cooperative. For purposes of this section, a "telecommunication services purchasing cooperative" means a cooperative organized under section 308A.210. A school or library receiving telecommunications services at reduced or no cost may not resell or sublease the discounted services. No members of a telecommunication services purchasing cooperative may resell or sublease the discounted services. A purchasing cooperative is not required to negotiate or provide a uniform rate for its members. Telecommunications services shall be provided in accordance with Public Law Number 104-104, and the regulations of the Federal Communications Commission adopted under the act.

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

(c) For the purposes of this subdivision, "school" includes a public school as defined in section 120.05, nonpublic, and church or religious organization schools that provide instruction in compliance with sections 120.101 to 120.102.

History: 1997 c 208 s 1

237.072 LIMITATION ON RATE CHANGES.

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

(b) If, prior to December 15, 1997, the incumbent telephone company petitions the commission to become subject to an alternative regulation plan under sections 237.76 to 237.773, paragraph (a) shall not apply to the petitioning company until 180 days after the date of the filing of the petition.

History: 1997 c 223 s 3

237.082 TELECOMMUNICATION SERVICES; POLICY OF INCREASED SPEED AND SERVICES.

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

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

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

History: 1997 c 223 s 4

237.12 SERVICE CONNECTIONS BETWEEN TELEPHONE COMPANIES.

[For text of subds 1 to 3, see M.S.1996]

Subd. 4. Prices for interconnection and network elements. For telephone companies with more than 50,000 access lines, the prices for interconnection or network elements to be established by the commission in any pending or future proceeding shall be based on a forward-looking economic cost methodology which shall include, but is not limited to, consideration of the following:

- (1) the use of the most efficient telecommunications technology currently available and the least cost network configuration, given the existing location of the incumbent telephone company's wire centers;
- (2) forward-looking depreciation rates;
- (3) a reasonable allocation of forward-looking joint and common costs;
- (4) forward-looking cost of capital; and
- (5) Minnesota tax rates, and where applicable, Minnesota facility placement requirements, Minnesota topography, and Minnesota climate.

History: 1997 c 223 s 5

237.121 PROHIBITED PRACTICES.

(a) 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;
- (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 unreasonable or discriminatory restrictions on the resale of its services, 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.

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

History: 1997 c 68 s 1; 1997 c 223 s 6

237.16 LOCAL EXCHANGE COMPETITION, RULES.

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

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

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

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

[For text of subds 3 and 4, see M.S.1996]

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

[For text of subds 6 to 8, see M.S.1996]

Subd. 9. Universal service fund. The commission shall establish and require contributions to a universal service fund, to be supported by all providers of telephone services, whether or not they are telephone companies under section 237.01, including, but not limited to, local telephone companies, independent telephone companies, cooperative telephone companies, municipal telephone companies, telecommunications carriers, radio common carriers, personal communication service providers, and cellular carriers. Services that should be considered for inclusion as universal include, at a minimum, single-party service including access, usage and touch-tone capability; line quality capable of carrying facsimile and data transmissions; equal access; emergency services number capability; statewide telecommunications relay service for the hearing-impaired; and blocking of long-distance toll services. The fund must be administered and distributed in accordance with rules adopted by the commission and designed to preserve the availability of universal service throughout the

state. Any state universal service fund must be coordinated with any federal universal service fund and be consistent with section 254(b)(1) to (5) of the federal Telecommunications Act of 1996, Public Law Number 104-104. The department shall make recommendations to the legislature by January 1, 1996, regarding a plan for contributions to and expenditures from the universal service fund. In particular, the department shall address the following issues:

- (1) what additional services should be included in the basic set of essential telephone services which the state should encourage in its mandate to ensure universal service;
- (2) whether and how expenditures from the fund should be used to ensure citizens access to local government and other public access programming; and
- (3) whether expenditures from the fund should be used to encourage construction of infrastructure for, and access to, advanced services, especially in high-cost areas of the state, and, if the commission determines the fund should be used for this purpose, a plan to accomplish these goals.

[For text of subds 10 to 13, see M.S.1996]

History: 1997 c 68 s 2; 1997 c 123 s 2; 1997 c 223 s 7

237.162 PUBLIC RIGHTS-OF-WAY; DEFINITIONS.

Subdivision 1. **Generally.** The terms used in sections 237.162 and 237.163 have the meanings given to them in this section.

Subd. 2. **Local government unit.** "Local government unit" means a county, home rule charter or statutory city, or town.

Subd. 3. **Public right-of-way.** "Public right-of-way" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units.

A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast service.

Subd. 4. **Telecommunications right-of-way user.** "Telecommunications right-of-way user" means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunications or other voice or data information. A cable communication system defined and regulated under chapter 238, and telecommunications activities related to providing natural gas or electric energy services whether provided by a public utility as defined in section 216B.02, a municipality, a municipal gas or power agency organized under chapter 453 or 453A, or a cooperative electric association organized under chapter 308A, are not telecommunications right-of-way users for the purposes of this section and section 237.163.

Subd. 5. **Excavate.** "Excavate" means to dig into or in any way remove, physically disturb, or penetrate a part of a public right-of-way.

Subd. 6. **Obstruct.** "Obstruct" means to place a tangible object in a public right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Subd. 7. **Right-of-way permit.** "Right-of-way permit" means a permit to perform work in a public right-of-way, whether to excavate or obstruct the right-of-way.

Subd. 8. **Manage the public right-of-way.** "Manage the public right-of-way" means the authority of a local government unit to do any or all of the following:

- (1) require registration;
- (2) require construction performance bonds and insurance coverage;
- (3) establish installation and construction standards;
- (4) establish and define location and relocation requirements for equipment and facilities;
- (5) establish coordination and timing requirements;
- (6) require telecommunications right-of-way users to submit, for right-of-way projects commenced after May 10, 1997, whether initiated by a local government unit or any

telecommunications right-of-way user, project data reasonably necessary to allow the local government unit to develop a right-of-way mapping system, such as a geographical information mapping system;

(7) require telecommunication right-of-way users to submit, upon request of a local government unit, existing data on the location of the user's facilities occupying the public right-of-way within the local government unit. The data may be submitted in the form maintained by the user and in a reasonable time after receipt of the request based on the amount of data requested;

(8) establish right-of-way permitting requirements for street excavation and obstruction;

(9) establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation, or construction; and

(10) impose reasonable penalties for unreasonable delays in construction.

Subd. 9. Management costs or rights-of-way management costs. "Management costs" or "rights-of-way management costs" means the actual costs a local government unit incurs in managing its public rights-of-way, and includes such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during public right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications right-of-way user for the use of the public right-of-way, the fees and cost of litigation relating to the interpretation of this section or section 237.163 or any ordinance enacted under those sections, or the local unit of government's fees and costs related to appeals taken pursuant to section 237.163, subdivision 5.

History: 1997 c 123 s 3

NOTE: Subdivision 8, clause (3), of this section, as added by Laws 1997, chapter 123, section 3, is effective upon the earlier of March 1, 1998, or the adoption of the rules required under section 237.163, subdivision 8, but local government units may exercise the authority that existed before November 1, 1996, with regard to the powers described in that clause, until those rules are adopted. Laws 1997, chapter 123, section 12, clause (2).

237.163 USE AND REGULATION OF PUBLIC RIGHTS-OF-WAY.

Subdivision 1. Legislative finding. The legislature finds, and establishes the principle that, it is in the state's interest that the use and regulation of public rights-of-way be carried on in a fair, efficient, competitively neutral, and substantially uniform manner, while recognizing such regulation must reflect the distinct engineering, construction, operation, maintenance and public and worker safety requirements, and standards applicable to various users of public rights-of-way. Because of the potential for installation by telecommunication companies of multiple and competing facilities within the public rights-of-way, the legislature finds it is necessary to enact the provisions of this section and section 237.162 to specifically authorize local government units to regulate the use of public rights-of-way by telecommunications right-of-way users.

Subd. 2. Generally. (a) Subject to this section, a telecommunications right-of-way user authorized to do business under the laws of this state or by license of the Federal Communications Commission may construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities along, across, upon, above, and under any public right-of-way.

(b) Subject to this section, a local government unit has the authority to manage its public rights-of-way and to recover its rights-of-way management costs. The authority defined in this section may be exercised at the option of the local government unit. The exercise of this authority is not mandated under this section. A local government unit may, by ordinance:

(1) require a telecommunications right-of-way user seeking to excavate or obstruct a public right-of-way for the purpose of providing telecommunications services to obtain a right-of-way permit to do so and to impose permit conditions consistent with the local government unit's management of the right-of-way;

(2) require a telecommunications right-of-way user using, occupying, or seeking to use or occupy a public right-of-way for the purpose of providing telecommunications services to register with the local government unit by providing the local government unit with the following information:

(i) the applicant's name, gopher state one-call registration number under section 216D.03, address, and telephone and facsimile numbers;

(ii) the name, address, and telephone and facsimile numbers of the applicant's local representative;

(iii) proof of adequate insurance; and

(iv) other information deemed reasonably necessary by the local government unit for the efficient administration of the public right-of-way; and

(3) require telecommunications right-of-way users to submit to the local government unit plans for construction and major maintenance that provide reasonable notice to the local government unit of projects that the telecommunications right-of-way user expects to undertake that may require excavation and obstruction of public rights-of-way.

(c) A local government unit may also require a telecommunications right-of-way user that is registered with the local government unit pursuant to paragraph (b), clause (2), to periodically update the information in its registration application.

Subd. 3. Restoration. (a) A telecommunications right-of-way user, after an excavation of a public right-of-way, shall provide for restoration of the right-of-way and surrounding areas, including the pavement and its foundation, in the same condition that existed before the excavation. Local government units that choose to perform their own surface restoration required as a result of the excavation may require telecommunications right-of-way users to reimburse the reasonable costs of that surface restoration. Restoration of the public right-of-way must be completed within the dates specified in the right-of-way permit, unless the permittee obtains a waiver or a new or amended right-of-way permit.

(b) If a telecommunications right-of-way user elects not to restore the public right-of-way, a local government unit may impose a degradation fee in lieu of restoration to recover costs associated with a decrease in the useful life of the public right-of-way caused by the excavation of the right-of-way by a telecommunications right-of-way user.

(c) A telecommunications right-of-way user that disturbs uncultivated sod in the excavation or obstruction of a public right-of-way shall plant grasses that are native to Minnesota and, wherever practicable, that are of the local eco-type, as part of the restoration required under this subdivision, unless the owner of the real property over which the public right-of-way traverses objects. In restoring the right-of-way, the telecommunications right-of-way user shall consult with the department of natural resources regarding the species of native grasses that conform to the requirements of this paragraph.

Subd. 4. Permit denial or revocation. (a) A local government unit may deny any application for a right-of-way permit if the telecommunications right-of-way user does not comply with a provision of this section.

(b) A local government unit may deny an application for a right-of-way permit if the local government unit determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the public right-of-way and its current use.

(c) A local government unit may revoke a right-of-way permit granted to a telecommunications right-of-way user, with or without fee refund, in the event of a substantial breach of the terms and conditions of statute, ordinance, rule, or regulation or any material condition of the permit. A substantial breach by a permittee includes, but is not limited to, the following:

(1) a material violation of a provision of the right-of-way permit;

(2) an evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the local government unit or its citizens;

(3) a material misrepresentation of fact in the right-of-way permit application;

(4) a failure to complete work in a timely manner, unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; and

(5) a failure to correct, in a timely manner, work that does not conform to applicable standards, conditions, or codes, upon inspection and notification by the local government unit of the faulty condition.

(d) Subject to this subdivision, a local government unit may not deny an application for a right-of-way permit for failure to include a project in a plan submitted to the local government unit under subdivision 2, paragraph (b), clause (3), when the telecommunications right-of-way user has used commercially reasonable efforts to anticipate and plan for the project.

(e) In no event may a local government unit unreasonably withhold approval of an application for a right-of-way permit, or unreasonably revoke a permit.

Subd. 5. Appeal. (a) A telecommunications right-of-way user that: (1) has been denied registration; (2) has been denied a right-of-way permit; (3) has had its right-of-way permit revoked; or (4) believes that the fees imposed on the user by the local government unit do not conform to the requirements of subdivision 6, may have the denial, revocation, or fee imposition reviewed, upon written request, by the governing body of the local government unit. The governing body of the local government unit shall act on a timely written request at its next regularly scheduled meeting. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

(b) Upon affirmation by the governing body of the denial, revocation, or fee imposition, the telecommunications right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the local government unit and the telecommunications right-of-way user. If the parties cannot agree on an arbitrator, the matter must be resolved by a three-person arbitration panel made up of one arbitrator selected by the local government unit, one arbitrator selected by the telecommunications right-of-way user and one person selected by the other two arbitrators. The costs and fees of a single arbitrator shall be borne equally by the local government unit and the telecommunications right-of-way user.

In the event there is a third arbitrator, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

Subd. 6. Fees. (a) A local government unit may recover its right-of-way management costs by imposing a fee for registration, a fee for each right-of-way permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way user when that user causes the local government unit to incur costs as a result of actions or inactions of that user. A local government unit may not recover from a telecommunications right-of-way user costs caused by another entity's activity in the right-of-way.

(b) Fees, or other right-of-way obligations, imposed by a local government unit on telecommunications right-of-way users under this section must be:

(1) based on the actual costs incurred by the local government unit in managing the public right-of-way;

(2) based on an allocation among all users of the public right-of-way, including the local government unit itself, which shall reflect the proportionate costs imposed on the local government unit by each of the various types of uses of the public rights-of-way;

(3) imposed on a competitively neutral basis; and

(4) imposed in a manner so that above-ground uses of public rights-of-way do not bear costs incurred by the local government unit to regulate underground uses of public rights-of-way.

(c) The rights, duties, and obligations regarding the use of the public right-of-way imposed under this section must be applied to all users of the public right-of-way, including the local government unit while recognizing regulation must reflect the distinct engineering, construction, operation, maintenance and public and worker safety requirements, and standards applicable to various users of the public rights-of-way. For users subject to the franchising authority of a local government unit, to the extent those rights, duties, and obligations

are addressed in the terms of an applicable franchise agreement, the terms of the franchise shall prevail over any conflicting provision in an ordinance.

Subd. 7. Additional rights-of-way provisions. (a) In managing the public rights-of-way and in imposing fees under this section, no local government unit may:

- (1) unlawfully discriminate among telecommunications right-of-way users;
- (2) grant a preference to any telecommunications right-of-way user;
- (3) create or erect any unreasonable requirement for entry to the public rights-of-way by telecommunications right-of-way users; or
- (4) require a telecommunications right-of-way user to obtain a franchise or pay for the use of the right-of-way.

(b) A telecommunications right-of-way user need not apply for or obtain right-of-way permits for facilities that are located in public rights-of-way on May 10, 1997, for which the user has obtained the required consent of the local government unit, or that are otherwise lawfully occupying the public right-of-way. However, the telecommunications right-of-way user may be required to register and to obtain a right-of-way permit for an excavation or obstruction of existing facilities within the public right-of-way after May 10, 1997.

(c) Data and documents exchanged between a local government unit and a telecommunications right-of-way user are subject to the terms of chapter 13. A local government unit not complying with this paragraph is subject to the penalties set forth in section 13.08.

(d) A local government unit may not collect a fee imposed under this section through the provision of in-kind services by a telecommunications right-of-way user, nor may a local government unit require the provision of in-kind services as a condition of consent to use the local government unit's public right-of-way.

Subd. 8. Uniform statewide standards. (a) To ensure the safe and convenient use of public rights-of-way in the state, the public utilities commission shall develop and adopt by March 1, 1998, statewide construction standards for the purposes of achieving substantial statewide uniformity in construction standards where appropriate, providing competitive neutrality among telecommunications right-of-way users, and permitting efficient use of technology. The standards shall govern:

(1) the terms and conditions of right-of-way construction, excavation, maintenance, and repair; and

(2) the terms and conditions under which telecommunications facilities and equipment are placed in the public right-of-way.

(b) The public utilities commission is authorized to review, upon complaint by an aggrieved telecommunications right-of-way user, a decision or regulation by a local government unit that is alleged to violate a statewide standard.

(c) A local unit of government may not adopt an ordinance or other regulation that conflicts with a standard adopted by the commission for the purposes described in paragraph (a).

History: 1997 c 123 s 4

NOTE: Subdivision 3, paragraph (b), of this section, as added by Laws 1997, chapter 123, section 4, is effective upon the earlier of March 1, 1998, or the adoption by the public utilities commission of the rules required under subdivision 8. Laws 1997, chapter 123, section 12, clause (1).

NOTE: Subdivision 5 of this section, as added by Laws 1997, chapter 123, section 4, is repealed effective June 30, 1999. Laws 1997, chapter 123, section 11.

237.164 UNIVERSAL SERVICE DISCOUNTS FOR SCHOOLS AND LIBRARIES.

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

History: 1997 c 223 s 8

237.5799 EXPIRATION.

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

History: 1997 c 68 s 3

237.66 DISCLOSURE OF LOCAL SERVICE OPTIONS.*[For text of subds 1 and 1a, see M.S.1996]*

Subd. 1b. Loading. (a) Except as provided in paragraph (b) or (c), a telephone company or telecommunications carrier providing local service shall not charge a telephone service subscriber as defined in section 325F.692 for a telephone or telecommunications service that is not required by the commission to be offered and for which the subscriber did not explicitly contract.

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

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

*[For text of subds 2 to 3, see M.S.1996]***History:** 1997 c 68 s 4**237.70 DEVELOPMENT OF TELEPHONE ASSISTANCE PLAN.***[For text of subds 1 to 3, see M.S.1996]*

Subd. 4a. Households eligible for credits. The telephone assistance plan must provide telephone assistance credit for a residential household in Minnesota that meets each of the following criteria:

- (1) has a household member who:
 - (i) subscribes to local exchange service; and
 - (ii) is either disabled or 65 years of age or older;
- (2) whose household income is 150 percent or less of federal poverty guidelines or is currently eligible for:
 - (i) aid to families with dependent children or Minnesota family investment program—statewide;
 - (ii) medical assistance;
 - (iii) general assistance;
 - (iv) Minnesota supplemental aid;
 - (v) food stamps;
 - (vi) refugee cash assistance or refugee medical assistance;
 - (vii) energy assistance; or
 - (viii) supplemental security income; and
- (3) who has been certified as eligible for telephone assistance plan credits.

[For text of subds 5 and 6, see M.S.1996]

Subd. 7. Administration. The telephone assistance plan must be administered jointly by the commission, the department of human services, and the telephone companies in accordance with the following guidelines:

(a) The commission and the department of human services shall develop an application form that must be completed by the subscriber for the purpose of certifying eligibility for telephone assistance plan credits to the department of human services. The application must contain the applicant's social security number. Applicants who refuse to provide a social se-

curity number will be denied telephone assistance plan credits. The application form must include provisions for the applicant to show the name of the applicant's telephone company. The application must also advise the applicant to submit the required proof of age or disability, and income and must provide examples of acceptable proof. The application must state that failure to submit proof with the application will result in the applicant being found ineligible. Each telephone company shall annually mail a notice of the availability of the telephone assistance plan to each residential subscriber in a regular billing and shall mail the application form to customers when requested.

The notice must state the following:

YOU MAY BE ELIGIBLE FOR ASSISTANCE IN PAYING YOUR TELEPHONE BILL IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED AND IF YOU MEET CERTAIN HOUSEHOLD INCOME LIMITS. FOR MORE INFORMATION OR AN APPLICATION FORM PLEASE CONTACT

(b) The department of human services shall determine the eligibility for telephone assistance plan credits at least annually according to the criteria contained in subdivision 4a.

(c) An application may be made by the subscriber, the subscriber's spouse, or a person authorized by the subscriber to act on the subscriber's behalf. On completing the application certifying that the statutory criteria for eligibility are satisfied, the applicant must return the application to an office of the department of human services specially designated to process telephone assistance plan applications. On receiving a completed application from an applicant, the department of human services shall determine the applicant's eligibility or ineligibility within 120 days. If the department fails to do so, it shall within three working days provide written notice to the applicant's telephone company that the company shall provide telephone assistance plan credits against monthly charges in the earliest possible month following receipt of the written notice. The applicant must receive telephone assistance plan credits until the earliest possible month following the company's receipt of notice from the department that the applicant is ineligible.

If the department of human services determines that an applicant is not eligible to receive telephone assistance plan credits, it shall notify the applicant within ten working days of that determination.

Within ten working days of determining that an applicant is eligible to receive telephone assistance plan credits, the department of human services shall provide written notification to the telephone company that serves the applicant. The notice must include the applicant's name, address, and telephone number.

Each telephone company shall provide telephone assistance plan credits against monthly charges in the earliest possible month following receipt of notice from the department of human services.

By December 31 of each year, the department of human services shall redetermine eligibility of each person receiving telephone assistance plan credits, as required in paragraph (b). The department of human services shall submit an annual report to the commission by January 15 of each year showing that the department has determined the eligibility for telephone assistance plan credits of each person receiving the credits or explaining why the determination has not been made and showing how and when the determination will be completed.

If the department of human services determines that a current recipient of telephone assistance plan credits is not eligible to receive the credits, it shall notify, in writing, the recipient within ten working days and the telephone company serving the recipient within 20 working days of the determination. The notice must include the recipient's name, address, and telephone number.

Each telephone company shall remove telephone assistance plan credits against monthly charges in the earliest possible month following receipt of notice from the department of human services.

Each telephone company that disconnects a subscriber receiving the telephone assistance plan credit shall report the disconnection to the department of human services. The reports must be submitted monthly, identifying the subscribers disconnected. Telephone com-

panies that do not disconnect a subscriber receiving the telephone assistance plan credit are not required to report.

If the telephone assistance plan credit is not itemized on the subscriber's monthly charges bill for local telephone service, the telephone company must notify the subscriber of the approval for the telephone assistance plan credit.

(d) The commission shall serve as the coordinator of the telephone assistance plan and be reimbursed for its administrative expenses from the surcharge revenue pool. As the coordinator, the commission shall:

(1) establish a uniform statewide surcharge in accordance with subdivision 6;

(2) establish a uniform statewide level of telephone assistance plan credit that each telephone company shall extend to each eligible household in its service area;

(3) require each telephone company to account to the commission on a periodic basis for surcharge revenues collected by the company, expenses incurred by the company, not to include expenses of collecting surcharges, and credits extended by the company under the telephone assistance plan;

(4) require each telephone company to remit surcharge revenues to the department of administration for deposit in the fund; and

(5) remit to each telephone company from the surcharge revenue pool the amount necessary to compensate the company for expenses, not including expenses of collecting the surcharges, and telephone assistance plan credits. When it appears that the revenue generated by the maximum surcharge permitted under subdivision 6 will be inadequate to fund any particular established level of telephone assistance plan credits, the commission shall reduce the credits to a level that can be adequately funded by the maximum surcharge. Similarly, the commission may increase the level of the telephone assistance plan credit that is available or reduce the surcharge to a level and for a period of time that will prevent an unreasonable over-collection of surcharge revenues.

(e) Each telephone company shall maintain adequate records of surcharge revenues, expenses, and credits related to the telephone assistance plan and shall, as part of its annual report or separately, provide the commission and the department of public service with a financial report of its experience under the telephone assistance plan for the previous year. That report must also be adequate to satisfy the reporting requirements of the federal matching plan.

(f) The department of public service shall investigate complaints against telephone companies with regard to the telephone assistance plan and shall report the results of its investigation to the commission.

History: 1997 c 7 art 2 s 29; 1997 c 85 art 4 s 6

237.711 IMPLEMENTATION RULES.

The commission may adopt rules to implement Laws 1988, chapter 621, sections 1 to 16.

History: 1997 c 7 art 5 s 20

237.74 REGULATION OF TELECOMMUNICATIONS CARRIERS.

[For text of subds 1 to 4, see M.S.1996]

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

[For text of subds 6 to 12, see M.S.1996]

History: 1997 c 123 s 5

237.761 ALTERNATIVE REGULATION PLAN; SERVICES.*[For text of subs 1 to 3, see M.S.1996]*

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 upon notice to affected customers; and

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

[For text of subs 5 to 7, see M.S.1996]

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;

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

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

History: 1997 c 223 s 9,10

237.762 RATES; PRICES.

Subdivision 1. Initial rates. 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.

[For text of subd 2, see M.S.1996]

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. Except as provided in paragraph (b), the rates or prices may not exceed the initial rates or prices for the service determined under subdivision 1 for the first three years of the plan. After a plan has been in effect for three years, price-regulated rates may be changed as appropriate under a procedure set forth in an approved plan. Rates for price-regulated services may not be increased unless the company has demonstrated substantial compliance with the quality of service standards set forth in the plan.

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

- (1) changes in state and federal taxes;
- (2) changes in jurisdictional allocations from the Federal Communications Commission, the amount of which the telephone company cannot control and for which equal and opposite exogenous changes are made on the federal level; and
- (3) substantial financial impacts of investments in telecommunications infrastructure which are made: (i) if the investments, for any 12-month period, exceed 20 percent of the gross plant investment of the company; or (ii) are the result of government mandates to construct specific telephone infrastructure, the mandate applies to local telephone companies, and the company would not otherwise be compensated through some other manner under the plan.

[For text of subds 4 to 6, see M.S.1996]

Subd. 7. Packaged services. This section does not prevent a telephone company from packaging any service classified as price regulated or flexibly priced pursuant to section 237.761, subdivisions 2 to 4, with any other service, or engaging in promotional activities concerning such services, so long as:

- (1) the company also continues to offer these price-regulated and flexibly priced services as separate stand-alone services at prices required by this section; and
- (2) at the time the packaged offering is introduced, or at the time the package price is subsequently changed, the packaged rate or price may not exceed the sum of the unpackaged rates or prices for the individual service elements or services.

History: 1997 c 223 s 11-13

237.764 PLAN ADOPTION; EFFECT.

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

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

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

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

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

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

[For text of subds 2 and 3, see M.S.1996]

History: 1997 c 223 s 14

237.765 QUALITY OF SERVICE.

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

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

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

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

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

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

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

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

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

History: 1997 c 223 s 15

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 three 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), if required and the provisions prohibiting rate increases at the initiation of or during the first three years of a plan contained in section 237.762, shall not apply to a revised or renewed plan. Any revised or renewed plan must be approved by the commission and shall contain a mechanism under which a telephone company may reduce the rates for price-regulated services below the initial rates or prices or increase the rates or prices during the term of the 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.

History: 1997 c 223 s 16

237.769 RULES APPLICABLE.

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

History: 1997 c 223 s 17

237.775 EXISTING PLANS NOT AFFECTED.

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

History: 1997 c 223 s 18

237.79 TELEPHONE COMPANY PROVIDING CABLE SERVICE.

A telephone company that provides cable television services shall, with respect to provisioning of those services in Minnesota, be subject to the same franchise requirements, procedures, and fees, and public, educational, and government access requirements as a cable communication company under chapter 238.

History: 1997 c 123 s 6

237.81 SCOPE.

To the extent they regulate telecommunications right-of-way users, sections 237.04; 237.16, subdivision 1; 237.162; 237.163; and 237.74, subdivision 5, supersede sections 222.37, 300.03, and 300.04, and any ordinance, regulation, or rule to the contrary.

History: 1997 c 123 s 7