

Telecommunications

CHAPTER 237

TELEPHONE, TELEGRAPH, TELECOMMUNICATIONS

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237.01 DEFINITIONS.

Subdivision 1. **Generally.** As used in this chapter, the following terms have the meanings given.

Subd. 2. **Telephone company.** "Telephone company," means and applies to any person, firm, association or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire, wholly or partly within this state, or furnishing any telephone service to the public.

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

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

Subd. 3. **Independent telephone company.** "Independent telephone company" means a telephone company organized and operating under chapter 301 or 302A or authorized to do business in Minnesota under chapter 303 as of January 1, 1983, and providing local exchange service to fewer than 30,000 subscribers within the state.

Subd. 4. **Radio common carrier.** "Radio common carrier" means a person, firm, association, or corporation which owns, operates, or otherwise furnishes to the public any paging or other mobile telecommunications service by means of the use of radio signals and connection to a telephone network.

Subd. 5. [Repealed, 1984 c 557 s 4]

Subd. 6. **Telecommunications carrier.** "Telecommunications carrier" means a person, firm, association, or corporation authorized to furnish one or more of the following telephone 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.

History: (5287) 1915 c 152 s 2; 1981 c 248 s 1; 1984 c 451 s 1; 1984 c 557 s 1-3; 1985 c 22 s 1; 1987 c 340 s 18; 1993 c 268 s 1,2; 1995 c 156 s 1

NOTE: The amendment to subdivision 6 by Laws 1995, chapter 156, section 1, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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

237.02 GENERAL AUTHORITY OF DEPARTMENT AND COMMISSION; DEFINITIONS.

The department of public service and the public utilities commission, now existing under the laws of this state, are hereby vested with the same jurisdiction and supervisory power over telephone companies doing business in this state as it now has over railroad and express companies. The definitions set forth in section 216A.02 shall apply also to this chapter.

History: (5286) 1915 c 152 s 1; 1971 c 25 s 67; 1980 c 614 s 118

237.03 SCOPE OF LAW.

Except as otherwise provided in this chapter, all the provisions of Revised Laws 1905, chapter 28, and acts amendatory thereof applying to railroad and express companies, shall insofar as the same are applicable apply also to telephone companies.

History: (5288) 1915 c 152 s 3

237.035 TELECOMMUNICATIONS CARRIER EXEMPTION.

- (a) Telecommunications carriers are subject to regulation under this chapter only to the extent required under paragraphs (b) to (e).
- (b) Telecommunications carriers shall comply with 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.

History: 1993 c 268 s 3; 1995 c 156 s 2

NOTE: The amendment to this section by Laws 1995, chapter 156, section 2, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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 May 26, 1999. 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.

History: 1999 c 224 s 1

RATES AND PRACTICES

237.04 WIRE CROSSING OR PARALLELING UTILITY LINE; 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.

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

History: (4718-1) 1925 c 152 s 1; 1971 c 25 s 67; 1985 c 248 s 70; 1997 c 123 s 1

237.05 ENFORCEMENT AUTHORITY.

The department shall see that the provisions of section 237.04 are enforced; and, for that purpose shall have power to cause the removal or reconstruction of such telephone, telegraph, electric light, power, or other electric wires of any kind crossing or paralleling such other lines and not in accordance with the orders and rules issued by the department.

History: (4718-2) 1925 c 152 s 2; 1971 c 25 s 67; 1985 c 248 s 70

237.06 REASONABLE RATE AND SERVICE.

It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful. Any telephone company organized after January 1, 1949, may include in its charges a reasonable deposit fee not exceeding \$50 for facilities furnished.

History: (5289) 1915 c 152 s 4; 1957 c 523

237.065 RATE FOR SPECIAL SERVICE TO SCHOOL OR TELECOMMUNICATION SERVICES PURCHASING COOPERATIVE.

Subdivision 1. **Basic service; flat rate.** 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 service; reduced rate.** (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 120A.05, nonpublic, and church or religious organization schools that provide instruction in compliance with sections 120A.22, 120A.24, and 120A.41.

History: 1990 c 562 art 8 s 35; 1Sp1995 c 3 art 12 s 6; 1996 c 412 art 12 s 5; 1997 c 208 s 1; 1998 c 397 art 11 s 3

237.066 STATE GOVERNMENT PRICING PLANS.

Subdivision 1. **Purpose.** A state government telecommunications pricing plan is authorized and found to be in the public interest as it will:

(1) provide and ensure availability of high quality, technologically advanced telecommunications services at a reasonable cost to the state; and

(2) further the state telecommunications goals as set forth in section 237.011.

Subd. 2. **Program participation.** A state government telecommunications pricing plan may be available to serve individually or collectively: state agencies; educational institutions, including public schools complying with section 120A.05, subdivision 9, 11, 13, or 17, and nonpublic schools complying with sections 120A.22, 120A.24, and 120A.41; private colleges; public corporations; and political subdivisions of the state. Plans shall be available to carry out the commissioner of administration's duties under sections 16B.46 and 16B.465 and shall also be available to those entities not using the commissioner for contracting for telecommunications services.

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

Subd. 4. **Applicability to other customers.** A telephone company or telecommunications carrier providing telecommunications services under a state government telecommunications pricing plan is not required to provide any other person or entity those services at the rates made available to the state.

Subd. 5. **Commission review.** The terms and conditions of any state government telecommunications pricing plan must be submitted to the commission for its review and approval within 90 days before implementation to:

(1) ensure that the terms and conditions benefit the state and not any private entity;

(2) ensure that the rates for any telecommunications service in any state government telecommunications pricing plan are at or below any applicable tariffed rates; and

(3) ensure that the state telecommunications pricing plan meets the requirements of this section and is in the public interest.

The commission shall reject any state government telecommunications pricing plan that does not meet these criteria.

History: 1999 c 228 s 1

237.067 ESTABLISHMENT EXEMPT FROM REGULATION.

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

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

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

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

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

History: 1991 c 154 s 1

237.068 MULTIPARTY LINE TELEPHONE SERVICE.

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

History: 1991 c 152 s 1

237.069 TRACER; HARASSING TELEPHONE CALL; RULES.

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

History: 1992 c 442 s 1

237.07 FILING REQUIREMENTS.

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

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

History: (5290) 1915 c 152 s 5; 1971 c 25 s 67; 1985 c 248 s 70; 1989 c 74 s 1

237.071 SPECIAL PRICING.

Except as prohibited by section 237.60, subdivision 3, prices unique to a particular customer or group of customers may be allowed for noncompetitive services and for services subject to emerging competition when differences in the cost of providing a service or a service element justifies a different price for a particular customer or group of customers. Individual pricing for services subject to emerging competition may be allowed when a uniform price should not be required because of market conditions.

Unique or individual prices for services or service elements in effect before July 1, 1989, are deemed to have been approved under this section.

History: 1989 c 74 s 2

237.072 LIMITATION ON RATE CHANGE.

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

(b) If, prior to December 15, 1997, the incumbent telephone company petitions the commission to become subject to an alternative regulation plan under sections 237.76 to 237.773, paragraph (a) shall not apply to the petitioning company until 270 days after the date of the filing of the petition.

History: 1997 c 223 s 3; 1998 c 345 s 3

237.075 RATE CHANGE.

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

Subd. 1a. [Repealed, 1989 c 74 s 26]

Subd. 2. **Suspension of proposed rate; hearing; final determination defined.** (a) Whenever there is filed with the commission as provided in subdivision 1 a schedule modifying or resulting in a change in any rate then in force, the commission may suspend the operation of the schedule by filing with the schedule of rates and delivering to the affected telephone company a statement in writing of its reasons for the suspension at any time before the rates become effective. The suspension shall not be for a longer period than ten months beyond the initial filing date except as provided in paragraph (b). During the suspension the commission shall determine whether all questions of the reasonableness of the rates requested raised by persons deemed interested or by the administrative division of the department of public service can be resolved to the satisfaction of the commission. If the commission finds that all significant issues raised have not been resolved to its satisfaction, or upon petition by ten percent of the affected customers or 250 affected customers, whichever is less, it shall refer the matter to the office of administrative hearings with instructions for a public hearing as a contested case pursuant to chapter 14, except as otherwise provided in this section. The commission may order that the issues presented by the proposed rate changes be bifurcated into two separate hearings as follows: (1) determination of the telephone company's revenue requirements and (2) determination of the rate design. Upon issuance of both administrative law judge reports, the issues shall again be joined for consideration and final determination by the commission. All prehearing discovery activities of state agency intervenors shall be consolidated and conducted by the department of public service. If the commission does not make a final determination concerning a schedule of rates within ten months after the initial filing date, the schedule shall be deemed to have been approved by the commission; except if a settlement has been submitted to and rejected by the commission, the schedule is deemed to have been approved 12 months after the initial filing.

(b) If the commission finds that it has insufficient time during the suspension period to make a final determination of a case involving changes in general rates because of the need to make final determinations of other previously filed cases involving changes in general rates under this section or section 216B.16, the commission may extend the suspension period to the extent necessary to allow itself 20 working days to make the final determination after it has made final determinations in the previously filed cases. An extension of the suspension period under this paragraph does not alter the setting of interim rates under subdivision 3.

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

Subd. 3. **Interim rate.** Notwithstanding any order of suspension of a proposed increase in rates, the commission shall order an interim rate schedule into effect not later than 60 days after the initial filing date. The commission shall order the interim rate schedule ex parte without a public hearing. Notwithstanding the provisions of sections 216.25 and 237.25, no interim rate schedule ordered by the commission pursuant to this subdivision shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination. Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test-year cost of capital, rate base, and expenses, except that it shall include: (1) a rate of return on common equity for the company equal to that authorized by the commission in the company's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the company's most recent rate proceeding; and (3) no change in the existing rate design, except for products and services offered by nonregulated competitors. In the case of a company which has not been subject to a prior commission determination or has not had a general rate adjustment in the preceding three years, the commission shall base the interim rate schedule on its most recent determination concerning a similar company.

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the company to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. The company shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the company will recover the difference in revenues from the date of the final determination to the date the new rate schedules are put into effect.

If the telephone company fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and may recover on behalf of all persons entitled to a refund. In addition to the amount of the refund and interest due, the commission shall be entitled to recover reasonable attorney's fees, court costs and estimated cost of administering the distribution of the refund to persons entitled thereto. No suit under this subdivision shall be maintained unless instituted within two years after the end of the period of time prescribed by the commission for repayment of refunds. The commission shall not order an interim rate schedule in a general rate case into effect as provided by this subdivision until at least four months after it has made a final determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2, unless:

(1) the commission finds that a four-month delay would unreasonably burden the company, its customers, or its shareholders and that an earlier imposition of interim rates is therefore necessary; or

(2) the company files a second general rate case at least 12 months after it has filed a previous general rate case for which the commission has extended the suspension period under subdivision 2.

Subd. 4. Burden of proof. The burden of proof to show that the rate change is just and reasonable shall be upon the telephone company seeking the change.

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

Subd. 6. Factors considered, generally. The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for telephone companies, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the telephone company for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its telephone company property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in the property. In determining the rate base upon which the telephone company is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to prudent acquisition cost to the telephone company, less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature. To the extent that construction work in progress is included in the rate base, the income used in determining the actual return on the telephone company property may include an allowance for funds used during construction. For purposes of determining rate base, the commission shall consider the original cost of telephone company property included in the base and shall make no allowance for its estimated current replacement value.

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

Subd. 8. Charitable contribution. The commission shall allow as operating expenses only those charitable contributions which the commission deems prudent and which qualify under section 290.21, subdivision 3, clause (b) or (e). Only 50 percent of the qualified contributions shall be allowed as operating expenses.

Subd. 9. Election on regulation; cooperative, municipal, independent. For the purposes of this section, "telephone company" shall not include a cooperative telephone association organized under the provisions of chapter 308A, an independent telephone company, or a municipal, unless the cooperative telephone association, independent telephone company, or municipal makes the election provided in this subdivision.

A cooperative telephone association may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (a) approved by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308A.135, excluding the filing requirements; or (b) approved by a majority of members or stockholders voting by mail ballot initiated by petition of no fewer than five percent of the members or stockholders of the association. The ballot to be used for the election shall be approved by the board of directors and the department of public service. The department shall mail the ballots to the association's members who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the association shall count the ballots. If a majority of the association's members

who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after the date the ballots are counted. For purposes of this section, the term "member or stockholder" shall mean either the member or stockholder of record or the spouse of the member or stockholder unless the association has been notified otherwise in writing.

A municipal may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (a) approved by resolution of the governing body of the municipality; or (b) approved by a majority of the customers of the municipal voting by mail ballot initiated by petition of no fewer than 20 percent of the customers of the municipal. The ballot to be used for the election shall be approved by the governing body of the municipality and the department of public service. The department shall mail the ballots to the municipal's customers who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the governing body of the municipality. On this date, representatives of the department and the municipal shall count the ballots. If a majority of the customers of the municipal who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after the date the ballots are counted. For purposes of this section, the term "customer" shall mean either the person in whose name the telephone service is registered or the spouse of the person unless the municipal utility has been notified otherwise in writing.

An independent telephone company may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (a) approved by the board of directors of the company in accordance with the procedures for amending the articles of incorporation contained in sections 302A.133 to 302A.139, excluding the filing requirements; or (b) approved by a majority of subscribers voting by mail ballot initiated by petition of no fewer than five percent of the subscribers of the company. The ballot to be used for the election shall be approved by the board of directors and the department of public service. The department shall mail the ballots to the company's subscribers who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the company shall count the ballots. If a majority of the company's subscribers who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after the date the ballots are counted. For purposes of this section the term "subscriber" shall mean either the person in whose name the telephone service is registered or the spouse of the person unless the independent telephone company has been notified otherwise in writing.

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

Subd. 11. Recovery of expenses of segregating billing charges. The public utilities commission shall allow each telephone company and independent telephone company subject to the requirements of section 325F.692 to automatically adjust tariffs or rates paid by information service providers to reflect the reasonable cost to the company to comply with section 325F.692.

History: 1977 c 359 s 7; 1978 c 694 s 2; 1979 c 319 s 1; 1980 c 615 s 60; 1981 c 248 s 2; 1981 c 357 s 73; 1Sp1981 c 4 art 4 s 17; 1982 c 414 s 7-12; 1982 c 424 s 130; 1983 c 247 s 98; 1984 c 611 s 1; 1984 c 640 s 32; 1986 c 409 s 8,9; 1987 c 384 art 2 s 1; 1988 c 457 s 4,5; 1988 c 719 art 2 s 6; 1989 c 144 art 2 s 4; 1989 c 356 s 12; 1994 c 449 s 3

237.076 SETTLEMENT; PROCEDURES.

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

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

History: 1989 c 74 s 3

237.08 [Repealed, 1977 c 359 s 8]

237.081 INVESTIGATION.

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

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

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

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

(c) For other investigations, the commission shall order that a contested case hearing be conducted under chapter 14 unless the complainant, the telephone compa-

ny, and the commission agree that an expedited hearing under section 237.61 is appropriate.

Subd. 3. [Repealed, 1989 c 74 s 26]

Subd. 4. **Establishment of rate and price.** Whenever the commission finds, after a proceeding under subdivision 2, that (1) a service that can be reasonably demanded cannot be obtained, (2) that any rate, toll, tariff, charge, or schedule, or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of telephone service or any service in connection with telephone service, is in any respect unreasonable, insufficient, or unjustly discriminatory, or (3) that any service is inadequate, the commission shall make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable and, if applicable, shall establish just and reasonable rates and prices.

Subd. 5. **Service; notice.** A copy of an order issued under this section must be served upon the person against whom it runs or the person's attorney, and notice of the order must be given to the other parties to the proceedings or their attorneys.

History: 1974 c 40 s 1; 1979 c 319 s 2,3; 1981 c 248 s 3; 1986 c 444; 1987 c 340 s 19; 1989 c 74 s 4

237.082 TELECOMMUNICATION SERVICE; POLICY OF INCREASED SPEED AND SERVICE.

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

237.09 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.

History: (5292) 1915 c 152 s 7; 1995 c 156 s 3

NOTE: The amendment to this section by Laws 1995, chapter 156, section 3, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.10 UNIFORM RULES, CLASSIFICATIONS, PRACTICES; FORMS.

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

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

History: (5293) 1915 c 152 s 8; 1969 c 1031 s 10; 1971 c 25 s 67; 1980 c 614 s 123

237.11 INSPECTING RECORDS AND PROPERTY; REPORTS REQUIRED.

Every telephone company subject to the provisions of this chapter, wherever organized, shall keep an office in this state, and make such reports to the department as it shall from time to time require. All books, records, and files, whether they relate to competitive or noncompetitive services, and all of its property shall be at all times subject to inspection by the commission and the department. It shall close its accounts and take therefrom a balance sheet on December 31 of each year, and on or before May 1 following, such balance sheet, together with such other information as the department shall require, verified by an officer of the telephone company, shall be filed with the commission and the department.

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

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

History: (5294) 1915 c 152 s 9; 1919 c 183 s 1; 1961 c 341 s 1; 1971 c 25 s 67; 1986 c 444; 1987 c 340 s 20

237.115 INFORMATION SUBJECT TO PROTECTIVE ORDER.

In any meeting of the commission during which information that is subject to a protective order is discussed, the commission shall employ the procedures of section 14.60 to close to all persons who are not authorized to obtain the information under the protective order that portion of the meeting during which the information will be discussed and take other appropriate measures to ensure that the data is not disclosed to persons who are not authorized to obtain the information under the protective order.

History: 1992 c 493 s 6

237.12 SERVICE CONNECTION BETWEEN TELEPHONE COMPANIES.

Subdivision 1. **Interconnection.** When public convenience requires the same, every telephone company shall, for a reasonable compensation, permit a physical connection or connections to be made, and telephone service to be furnished between any telephone exchange system operated by it, and the telephone toll line or lines operated by another company, or between its telephone toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another company, whenever such physical connection or connections are practicable and will not result in irreparable injury to the telephone system so compelled to be connected. The term "physical connection," as used in this section, means such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonable and adequate service between such telephone lines and exchanges and shall not be deemed to provide for any connection whereby one line or circuit is to be bridged upon another line or circuit. In case of failure of the telephone companies concerned to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the commission for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the commission shall find that such physical connections will not result in irreparable injury to such telephone properties, the commission shall by order direct that such connections be made, and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid. When application is made requesting physical connection it shall be presumed that such connection is necessary, and that the public convenience will be promoted thereby, and the burden of overcoming such presumption shall be upon the party resisting such application. The telephone companies so connecting shall give service over the connecting line or lines without preference to or discrimination against any service or telephone company whatever.

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

Subd. 3. **Compensation.** Telephone companies providing long-distance telephone services shall pay compensation to telephone companies providing local telephone services that includes a fair and reasonable portion of:

(1) the costs of local exchange facilities used in connection with long-distance telephone services, including facilities connecting a customer to local switching facilities; and

(2) the common costs of companies providing local telephone services.

Subd. 4. **Price for interconnection or network element.** 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: (5295) 1915 c 152 s 10; 1919 c 183 s 2; 1971 c 25 s 67; 1980 c 614 s 119; 1987 c 340 s 21; 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: 1995 c 156 s 4; 1997 c 68 s 1; 1997 c 223 s 6

NOTE: This section, as added by Laws 1995, chapter 156, section 4, expires January 1, 2006. Laws 1995, chapter 156, section 25

237.13 [Repealed, 1987 c 340 s 25]

237.14 RATE FOR SERVICE TO OFFICER.

A telephone company may furnish service free or at reduced rates to its officers, agents, or employees in furtherance of their employment, but it shall charge full schedule rates without discrimination for all other services. Nothing herein shall release any telephone company from carrying out any contract now existing between it and any municipality for the furnishing of any service free or at reduced rates. Any contract for telephone service, at discriminatory rates, other than those with municipalities, shall be terminated by the company as soon as the same becomes terminable by its terms.

History: (5297) 1915 c 152 s 11

237.15 INVESTIGATION AND HEARING; AUTHORITY DELEGATED.

The department shall whenever it deems the same necessary determine the value of all the property of any telephone company devoted to the public use, and in so doing it shall, after notice to the telephone company, hold such public hearing as will give all

interested parties a chance to furnish evidence and be heard. For the purpose of this chapter the department is authorized to appoint engineers, examiners, experts, clerks, accountants, and other assistants as it may deem necessary at such rates of compensation as it may prescribe.

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

History: (5298) 1915 c 152 s 12; 1919 c 183 s 3; 1971 c 25 s 67

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.

Subd. 2. [Repealed by amendment, 1995 c 156 s 5]

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

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

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

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

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

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

- (1) define procedures for competitive entry and exit;
- (2) require the provisions of equal access and interconnection with the company's network and other features, functions, and services which the commission considers necessary to promote fair and reasonable competition;
- (3) require unbundling of network services and functions to at least the level required by existing federal standards;
- (4) prescribe, if necessary, methods of reciprocal compensation between telephone companies;
- (5) provide for local telephone number portability;
- (6) prescribe appropriate regulatory standards for new local telephone service providers, that facilitate and support the development of competitive services;
- (7) protect against cross-subsidization, unfair competition, and other practices harmful to promoting fair and reasonable competition;
- (8) prescribe methods for the preservation of universal and affordable local telephone services;
- (9) prescribe standards for quality of service;
- (10) provide for the continued provision of local emergency telephone services under chapter 403; and
- (11) protect residential and commercial customers from unauthorized changes in service providers in a competitively neutral manner.

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

Subd. 9. **Universal service fund.** The commission shall establish and require contributions to a universal service fund, to be supported by all providers of telephone services, whether or not they are telephone companies under section 237.01, including, but not limited to, local telephone companies, independent telephone companies, cooperative telephone companies, municipal telephone companies, telecommunications carriers, radio common carriers, personal communication service providers, and cellular

carriers. Services that should be considered for inclusion as universal include, at a minimum, single-party service including access, usage and touch-tone capability; line quality capable of carrying facsimile and data transmissions; equal access; emergency services number capability; statewide telecommunications relay service for the hearing-impaired; and blocking of long-distance toll services. The fund must be administered and distributed in accordance with rules adopted by the commission and designed to preserve the availability of universal service throughout the state. Any state universal service fund must be coordinated with any federal universal service fund and be consistent with section 254(b)(1) to (5) of the federal Telecommunications Act of 1996, Public Law 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.

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

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

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

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

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

Subd. 11. Interim authority in area served by small telephone company. (a) Before adopting the rules required under subdivision 8 for telephone companies with less than 50,000 subscribers, when an applicant requests certification to provide local telephone service in an area served by a telephone company with less than 50,000 subscribers originally certified to provide local telephone service before January 1, 1988, the commission shall grant the application if it finds the applicant meets the requirements of subdivision 1. The commission shall make its determination on the application, including whether to provide a temporary arrangement for the effective interconnection

of the local exchange networks, after a hearing under chapter 14 or expedited proceeding under section 237.61, within nine months of the application, and considering any facts unique to that telephone company. In addition, if an application is granted, that telephone company shall:

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

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

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

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

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

History: (5299) 1915 c 152 s 13; 1925 c 184 s 1; 1961 c 637 s 1; 1971 c 25 s 67; 1980 c 614 s 123; 1985 c 248 s 70; 1987 c 340 s 22; 1995 c 156 s 5; 1996 c 305 art 1 s 56; 1996 c 340 s 1; 1997 c 68 s 2; 1997 c 123 s 2; 1997 c 223 s 7

NOTE: The amendment to this section by Laws 1995, chapter 156, section 5, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.161 [Expired]

237.162 PUBLIC RIGHT-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

237.163 USE AND REGULATION OF PUBLIC RIGHT-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 telecommu-

nications 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 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.

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 right-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 June 1, 1999, 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; 1998 c 345 s 4

237.164 UNIVERSAL SERVICE DISCOUNT FOR SCHOOL OR LIBRARY.

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

History: 1997 c 223 s 8

237.17 EXTENSION OF LONG-DISTANCE LINE.

Any telephone company may extend its long-distance lines into or through any city of this state for the furnishing of long-distance service only, subject to the regulation of the governing body of such city relative to the location of the poles and wires and the preservation of the safe and convenient use of such streets and alleys to the public.

History: (5300) 1915 c 152 s 14; 1925 c 184 s 2; 1973 c 123 art 5 s 7; 1987 c 340 s 23

237.18 SURRENDERING OLD LICENSE; NEW AUTHORITY.

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

History: (5301) 1915 c 152 s 15; 1971 c 25 s 67; 1980 c 614 s 123

MUNICIPAL TELEPHONE SERVICES

237.19 MUNICIPAL TELECOMMUNICATIONS SERVICES.

Any municipality shall have the right to own and operate a telephone exchange within its own borders, subject to the provisions of this chapter. It may construct such plant, or purchase an existing plant by agreement with the owner, or where it cannot agree with the owner on price, it may acquire an existing plant by condemnation, as

hereinafter provided, but in no case shall a municipality construct or purchase such a plant or proceed to acquire an existing plant by condemnation until such action by it is authorized by a majority of the electors voting upon the proposition at a general election or a special election called for that purpose, and if the proposal is to construct a new exchange where an exchange already exists, it shall not be authorized to do so unless 65 percent of those voting thereon vote in favor of the undertaking. A municipality that owns and operates a telephone exchange may enter into a joint venture as a partner or shareholder with a telecommunications organization to provide telecommunications services within its service area.

History: (5302) 1915 c 152 s 16; 1991 c 79 s 1

237.20 CONDEMNATION: NOTICE, COMPENSATION, APPEAL.

When a municipality decides in the manner above provided to acquire an existing plant by condemnation, it shall give notice to the commission which shall determine the just compensation which the owner of the plant is entitled to receive from the municipality. Before deciding upon the compensation, the commission shall, at a public meeting which may be adjourned from time to time, hear all interested parties on the question involved. The commission shall by order fix the compensation and furnish a copy of its order to the municipality and to the telephone company concerned. An appeal may be taken to the district court of the county in which the plant is situated from that part of the order fixing the compensation to be paid, within 30 days, by either party. The appeal shall be tried the same as other appeals hereunder. If no appeal is taken, the order of the commission shall become final at the end of 30 days.

History: (5303) 1915 c 152 s 17; 1971 c 25 s 67; 1980 c 614 s 123; 1983 c 247 s 99

PROPERTY VALUATION AND ACQUISITION

237.21 VALUATION OF TELEPHONE PROPERTY.

In determining the value of any telephone property for rate making purposes, no valuation shall be allowed upon the value of any franchise granted by the state or any municipality where no payment was or is being made to the state or municipality on account thereof. The requirement as to reasonableness of rates shall apply to each exchange unit as well as to telephone plants as a whole. Provided, that in the case of a company operating a telephone system consisting of more than one exchange in the state, reasonableness of rates, as measured by earnings, shall be determined by a reasonable return from the total operations of the system within the state rather than by the return from individual exchanges or services. No telephone rates or charges shall be allowed or approved by the commission under any circumstances, which are inadequate and which are intended to or naturally tend to destroy competition or produce a monopoly in telephone service in the locality affected.

Laws 1953, chapter 25, shall have no effect on proceedings pending before the courts or the department of public service at the time of its enactment.

History: (5304) 1915 c 152 s 18; 1953 c 25 s 1,2; 1971 c 25 s 67; 1980 c 614 s 123

237.22 DEPRECIATION; AMORTIZATION.

(a) For purposes of a proceeding to determine or investigate any wholesale or retail rate, or to set any universal service support level, the commission may fix proper and adequate rates and methods of depreciation and amortization with respect to a telephone company's property.

(b) All telephone companies shall retain data in sufficient detail for the purpose of determining depreciation accruals and reserves by depreciable telephone plant account. Depreciable plant accounts are those specified by the Federal Communications Commission for the class to which a telephone company belongs. All telephone companies shall maintain, and have available for inspection by the commission upon request, adequate accounts and records related to depreciation practices as defined herein.

History: (5305) 1915 c 152 s 19; 1971 c 25 s 67; 1977 c 364 s 10; 1980 c 614 s 123; 1987 c 340 s 24; 2000 c 436 s 2

237.23 ACQUIRING PROPERTY OF ANOTHER COMPANY.

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

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

History: (5306) 1915 c 152 s 20; 1919 c 183 s 4; 1945 c 143 s 1; 1971 c 25 s 67; 1980 c 614 s 123

237.231 SALE OF LOCAL EXCHANGE SERVICE.

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

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

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

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

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

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

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

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

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

History: 1995 c 191 s 1

ADMINISTRATIVE PROCEEDINGS, APPEALS, REMEDIES

237.24 TRANSCRIBED COPY OF RECORD, EXPENSE.

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

When an appeal is taken from any order of the commission under the provisions of this chapter, the commission shall forthwith cause a certified transcript of all proceedings had, of all pleadings and files, and all testimony taken or offered before it upon which such order was based, showing particularly what, if any evidence, offered was excluded, to be made and filed with the court administrator of the district court where such appeal is pending.

History: (5307) 1915 c 152 s 21; 1919 c 183 s 5; 1971 c 25 s 67; 1980 c 614 s 123; 1Sp1986 c 3 art 1 s 82

237.25 APPEAL FROM DECISION OF COMMISSION.

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

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

History: (5308) 1915 c 152 s 22; 1971 c 25 s 67; 1980 c 614 s 123; 1983 c 247 s 100

237.26 ORDER FINAL AND CONCLUSIVE.

If no appeal is taken from any order of the commission, as above provided, then in all litigation thereafter arising between the state and any telephone company or between private parties and any telephone company, the order shall be deemed final and conclusive.

History: (5309) 1915 c 152 s 23; 1971 c 25 s 67; 1980 c 614 s 123

237.27 ATTORNEY GENERAL TO COMPEL OBEDIENCE.

When any telephone company fails to comply with any law of the state or any order of the commission after it has become final, or any order or judgment of the district court, the court of appeals, or the supreme court in any cases taken to any of the courts on appeal, after the judgment or order has become final, the attorney general shall apply to the district court in the name of the state in any county in which the plant of the telephone company, or any part of it, is situated, for a mandatory injunction or other appropriate writ to compel obedience to the law, order, or

judgment. The district court shall punish any disobedience of its orders in the enforcement proceedings as for contempt of court.

History: (5311) 1915 c 152 s 25; 1971 c 25 s 67; 1980 c 614 s 123; 1983 c 247 s 101

237.28 BURDEN OF PROOF.

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

History: (5311-1) 1937 c 426 s 1; 1971 c 25 s 67; 1980 c 614 s 123

237.29 [Repealed, 1978 c 694 s 4]

ASSESSMENTS

237.295 ASSESSMENT OF REGULATORY EXPENSES.

Subdivision 1. **Payment for investigation.** (a) Whenever the department or commission, in a proceeding upon its own motion, on complaint, or upon an application to it, considers it necessary, in order to carry out the duties imposed on it, to investigate the books, accounts, practices, and activities of any company, parties to the proceeding shall pay the expenses reasonably attributable to the proceeding. The department and commission shall ascertain the expenses, and the department shall render a bill for those expenses to the parties, at the conclusion of the proceeding. The department is authorized to submit billings to parties at intervals selected by the department during the course of a proceeding.

(b) The allocation of costs may be adjusted for cause by the commission during the course of the proceeding, or upon the closing of the docket and issuance of an order. In addition to the rights granted in subdivision 3, parties to a proceeding may object to the allocation at any time during the proceeding. Withdrawal by a party to a proceeding does not absolve the party from paying allocated costs as determined by the commission. The commission may decide that a party should not pay any allocated costs of the proceeding.

(c) The bill constitutes notice of the assessment and a demand for payment. The amount of the bills assessed by the department under this subdivision must be paid by the parties into the state treasury within 30 days from the date of assessment. The total amount, in a calendar year, for which a telephone company may become liable, by reason of costs incurred by the department and commission within that calendar year, may not exceed two-fifths of one percent of the gross jurisdictional operating revenue of the telephone company in the last preceding calendar year. Direct charges may be assessed without regard to this limitation until the gross jurisdictional operating revenue of the telephone company for the preceding calendar year has been reported for the first time. Where, under this subdivision, costs are incurred within a calendar year that are in excess of two-fifths of one percent of the gross jurisdictional operating revenues, the excess costs are not chargeable as part of the remainder under subdivision 2.

(d) Except as otherwise provided in paragraph (e), for purposes of assessing the cost of a proceeding to a party, "party" means any entity or group subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political, such as a business or commercial enterprise organized as any type or combination of corporation, limited liability company, partnership, limited liability partnership, proprietorship, association, cooperative, joint venture, carrier, or utility, and any successor or assignee of any of them; a social or charitable organization; and any type or combination of political subdivision, which includes the executive, judicial, or legislative branch of the state, a local government unit, an agency of the state or a local government unit, or a combination of any of them.

(e) For assessment and billing purposes, "party" does not include the department of public service or the residential utilities division of the office of attorney general; any entity or group instituted primarily for the purpose of mutual help and not conducted for profit; intervenors awarded compensation under section 237.075, subdivision 10; or any individual or group or counsel for the individual or group representing the interests of end users or classes of end users of services provided by telephone companies or telecommunications carriers, as determined by the commission.

Subd. 2. Assessment of costs. The department and commission shall quarterly, at least 30 days before the start of each quarter, estimate the total of their expenditures in the performance of their duties relating to telephone companies, other than amounts chargeable to telephone companies under subdivision 1, 5, or 6. The remainder must be assessed by the department to the telephone companies operating in this state in proportion to their respective gross jurisdictional operating revenues during the last calendar year. The assessment must be paid into the state treasury within 30 days after the bill has been mailed to the telephone companies. The bill constitutes notice of the assessment and demand of payment. The total amount that may be assessed to the telephone companies under this subdivision may not exceed one-eighth of one percent of the total gross jurisdictional operating revenues during the calendar year. The assessment for the third quarter of each fiscal year must be adjusted to compensate for the amount by which actual expenditures by the commission and department for the preceding fiscal year were more or less than the estimated expenditures previously assessed. A telephone company with gross jurisdictional operating revenues of less than \$5,000 is exempt from assessments under this subdivision.

Subd. 3. Objection. Within 30 days after the date of the mailing of any bill as provided by subdivisions 1, 2, 5, and 6, the parties to the proceeding, against which the bill has been assessed, may file with the commission objections setting out the grounds upon which it is claimed the bill is excessive, erroneous, unlawful, or invalid. The commission shall within 60 days issue an order in accordance with its findings. The order shall be appealable in the same manner as other final orders of the commission.

Subd. 4. Interest imposed. The amounts assessed against any telephone company or other party that is not paid after 30 days after the mailing of a notice advising the telephone company or other party of the amount assessed against it, shall draw interest at the rate of six percent per annum, and upon failure to pay the assessment the attorney general shall proceed by action in the name of the state against the telephone company or other party to collect the amount due, together with interest and the cost of the suit.

Subd. 5. Administrative hearing costs; appropriation. Any amounts billed to the commission or the department by the office of administrative hearings for contested case hearings held pursuant to section 237.25 shall be assessed by the commissioner or the department against the parties to the proceeding. The assessment shall be paid into the state treasury within 30 days after a bill, which constitutes notice of the assessment and demand for payment of it, has been mailed to the parties. Money received shall be credited to a special account and is appropriated to the commissioner or the department for payment to the office of administrative hearings.

Subd. 6. Extended area service balloting account; appropriation. The extended area service balloting account is created as a separate account in the special revenue fund in the state treasury. The commission shall render separate bills to telephone companies only for direct balloting costs incurred by the commission under section 237.161. The bill constitutes notice of the assessment and demand of payment. The amount of a bill assessed by the commission under this subdivision must be paid by the telephone company into the state treasury within 30 days from the date of assessment. Money received under this subdivision must be credited to the extended area service balloting account and is appropriated to the commission.

History: 1978 c 694 s 3; 1979 c 50 s 24; 1980 c 614 s 120,121; 1981 c 357 s 74,75; 1989 c 74 s 5,6; 1992 c 478 s 5; 1993 c 369 s 68,69; 1998 c 345 s 5

237.30 TELEPHONE INVESTIGATION FUND; APPROPRIATION.

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

History: (5311-2a) 1939 c 333 s 2; 1969 c 399 s 1; 1971 c 25 s 67; 1973 c 492 s 14; 1Sp1981 c 4 art 1 s 96; 1989 c 269 s 43

237.31 [Repealed, 1951 c 113 s 2]

237.32 [Repealed, 1975 c 25 s 2]

TOWN TELEPHONE SYSTEMS**237.33 TOWN TELEPHONE SYSTEM.**

For the purpose of preventing the starting and spreading of forest or prairie fires and extinguishing the same, promoting public welfare, public health, and public safety, and facilitating the work of public improvements, the electors of any organized town of this state shall have power, at their annual town meeting or at any special town meeting called in the manner provided by law for special town meetings, to authorize the town to construct, or otherwise acquire, operate, and maintain a township telephone system, including the necessary poles, wires, telephones and telephone equipment, and by itself or in conjunction with one or more other towns to construct, equip, acquire, operate, and maintain a local telephone exchange, or one or more trunk lines of wires connecting such town or towns with the local exchange, or with a local exchange owned by some other corporation or persons, and to determine by ballot the amount of money to be raised for the purposes aforesaid. No such local exchange as herein provided for shall be constructed or maintained in municipalities where a local exchange is already in operation.

History: (5312) 1921 c 439 s 1

237.34 TOWN TELEPHONE LINE OUTSIDE CORPORATE LIMITS.

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

History: (5313) 1921 c 439 s 2; 1927 c 193 s 1; 1971 c 25 s 67

237.35 TAX LEVY FOR CONSTRUCTION.

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

History: (5314) 1921 c 439 s 3; 1949 c 238 s 1; 1973 c 773 s 1; 1989 c 277 art 4 s 19; 1994 c 505 art 5 s 3

237.36 RENTAL, CHARGE, TOLL; TAXATION; NONPAYMENT.

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

History: (5315) 1921 c 439 s 4

237.37 BONDS TO CONSTRUCT.

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

History: (5316) 1921 c 439 s 5

237.38 LOCAL EXCHANGE PERMITS CONNECTION.

When public convenience requires the same, every local telephone exchange shall for a reasonable compensation permit a physical connection or connections to be made and telephone service to be furnished between such local telephone exchange system and township telephone system. In case of failure of the local telephone exchange to allow or agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, application may be made to the department for an order requiring such connection, and fixing the compensation, terms, and conditions thereof; and if after investigation and hearing the department shall find that such physical connections will not result in irreparable injury to such telephone properties, it shall by order direct such connections to be made and prescribe reasonable conditions and compensation therefor and for the joint use thereof, and by whom the expense of making and maintaining such connection or connections shall be paid. When application is made to the department requesting physical connection, it shall be presumed that such connection is necessary and that the public convenience will be promoted thereby, and the burden of overcoming such presumption shall be upon the party resisting such application.

History: (5317) 1921 c 439 s 6; 1971 c 25 s 67

237.39 ACQUIRING OR SELLING TELEPHONE SYSTEM.

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

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

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

History: (5318) 1921 c 439 s 7; 1929 c 150 s 1; 1971 c 25 s 67; 1983 c 247 s 102

237.40 MANAGEMENT.

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

History: (5319) 1921 c 439 s 8; 1929 c 150 s 2; 1971 c 25 s 67

237.41 [Repealed, 1987 c 340 s 25]

237.42 [Repealed, 1987 c 340 s 25]

237.43 [Repealed, 1987 c 340 s 25]

TELEGRAPH AND TELEPHONE LINES**237.44 TELEGRAPH LINE, LIABILITY.**

If any person or corporation owning or operating a telegraph line wholly or partly within the state shall fail to transmit any message within a reasonable time, or to exercise due diligence to that end, after its reception, or shall fail to deliver any message to the party to whom it is addressed within a reasonable time after its arrival at the place of destination, the person or corporation shall be liable in a civil action at the suit of the party injured for all damages sustained by reason of such neglect or omission. The company delivering the message shall state plainly thereon the exact time when it was received at the original point for transmission.

History: (7548) *RL s 2931; 1986 c 444*

237.45 TELEPHONE AND TELEGRAPH LINES CONSTRUCTED.

Natural persons, copartnerships, and associations may construct, maintain, and operate telephone and telegraph lines, and shall have and possess the same rights, powers, and privileges with reference thereto as corporations formed for such purpose.

History: (7549) *RL s 2932*

VIOLATIONS, PENALTIES, ENFORCEMENT**237.46 GROSS MISDEMEANOR VIOLATION.**

Any telephone company and, if it be a corporation, the officers thereof, violating any provisions of sections 237.01 to 237.27, shall be guilty of a gross misdemeanor.

History: (5310) *1915 c 152 s 24; 1919 c 183 s 6*

237.461 ENFORCEMENT.

Subdivision 1. **Actions.** This chapter and rules and orders of the commission adopted under this chapter may be enforced by any one or combination of: criminal prosecution, action to recover civil penalties, injunction, action to compel performance, and other appropriate action.

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.

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).

Subd. 4. **Civil penalty proceeds deposited in 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.

History: 1990 c 598 s 2; 1995 c 156 s 6; 1999 c 224 s 3-5

NOTE: The amendment to subdivision 2 by Laws 1995, chapter 156, section 6, expires January 1, 2006. Laws 1995, chapter 156, section 25.

NOTE: Subdivision 3, as added by Laws 1999, chapter 224, section 4, expires on December 31, 2004. Laws 1999, chapter 224, section 7.

237.462 COMPETITIVE ENFORCEMENT; ADMINISTRATIVE PENALTY ORDERS.

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:

(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;

(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 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.

(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 by attorney general.** 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 subscriber 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.

History: 1999 c 224 s 2

NOTE: This section, as added by Laws 1999, chapter 224, section 2, expires on December 31, 2004. Laws 1999, chapter 224, section 7.

ALARM TRANSMISSION DEVICES

237.47 ALARM TRANSMISSION TELEPHONE DEVICE; RULES.

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

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

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

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

History: 1969 c 1057 s 1-4; 1980 c 614 s 123; 1985 c 248 s 70; 1986 c 444

SURCHARGE COLLECTION

237.49 COMBINED LOCAL ACCESS SURCHARGE.

Each local telephone company shall collect from each subscriber an amount per telephone access line representing the total of the surcharges required under sections 237.52, 237.70, and 403.11. Amounts collected must be remitted to the department of administration in the manner prescribed in section 403.11. The department of adminis-

tration shall divide the amounts received proportional to the individual surcharges and deposit them in the appropriate accounts. A company or the billing agent for a company shall list the surcharges as one amount on a billing statement sent to a subscriber.

History: 1988 c 621 s 1; 1993 c 272 s 1

COMMUNICATION-IMPAIRED PERSONS

237.50 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 237.50 to 237.56 have the meanings given them in this section.

Subd. 2. [Repealed, 1995 c 190 s 17]

Subd. 3. **Communication impaired.** "Communication impaired" means certified as deaf, severely hearing impaired, hard-of-hearing, speech impaired, deaf and blind, or mobility impaired if the mobility impairment significantly impedes the ability to use standard customer premises equipment.

Subd. 4. **Communication device.** "Communication device" means a device that when connected to a telephone enables a communication-impaired person to communicate with another person utilizing the telephone system. A "communication device" includes a ring signaler, an amplification device, a telephone device for the deaf, a Braille device for use with a telephone, and any other device the department of human services deems necessary.

Subd. 4a. **Deaf.** "Deaf" means a hearing impairment of such severity that the individual must depend primarily upon visual communication such as writing, lip reading, manual communication, and gestures.

Subd. 5. **Exchange.** "Exchange" means a unit area established and described by the tariff of a telephone company for the administration of telephone service in a specified geographical area, usually embracing a city, town, or village and its environs, and served by one or more central offices, together with associated facilities used in providing service within that area.

Subd. 6. **Fund.** "Fund" means the telecommunication access for communication-impaired persons fund established in section 237.52.

Subd. 6a. **Hard-of-hearing.** "Hard-of-hearing" means a hearing impairment resulting in a functional loss, but not to the extent that the individual must depend primarily upon visual communication.

Subd. 7. **Interexchange service.** "Interexchange service" means telephone service between points in two or more exchanges.

Subd. 8. **Inter-LATA interexchange service.** "Inter-LATA interexchange service" means interexchange service originating and terminating in different LATAs.

Subd. 9. **Local access and transport area.** "Local access and transport area (LATA)" means a geographical area designated by the Modification of Final Judgment in *U.S. v. Western Electric Co., Inc.*, 552 F. Supp. 131 (D.D.C. 1982), including modifications in effect on the effective date of sections 237.51 to 237.54.

Subd. 10. **Local exchange service.** "Local exchange service" means telephone service between points within an exchange.

Subd. 11. **Telecommunication relay service.** "Telecommunication relay service" means a central statewide service through which a communication-impaired person, using a communication device, may send and receive messages to and from a non-communication-impaired person whose telephone is not equipped with a communication device and through which a non-communication-impaired person may, by using voice communication, send and receive messages to and from a communication-impaired person.

History: 1987 c 308 s 1,8; 1988 c 621 s 2; 1993 c 272 s 2-6,17; 1995 c 190 s 1

237.51 TACIP PROGRAM ADMINISTRATION.

Subdivision 1. **Creation.** The department of public service shall administer through interagency agreement with the department of human services a program to distribute communication devices to eligible communication-impaired persons and contract with a local consumer group that serves communication-impaired persons to create and maintain a telecommunication relay service. For purposes of sections 237.51 to 237.56, the department of public service and any organization with which it contracts pursuant to this section or section 237.54, subdivision 2, are not telephone companies or telecommunications carriers as defined in section 237.01.

Subd. 2. [Repealed, 1995 c 190 s 17]

Subd. 3. [Repealed, 1995 c 190 s 17]

Subd. 4. [Repealed, 1995 c 190 s 17]

Subd. 5. **Department of public service duties.** In addition to any duties specified elsewhere in sections 237.51 to 237.56, the department of public service shall:

- (1) prepare the reports required by section 237.55;
- (2) administer the fund created in section 237.52; and
- (3) adopt rules under chapter 14 to implement the provisions of sections 237.50 to 237.56.

Subd. 5a. **Department of human services duties.** (a) In addition to any duties specified elsewhere in sections 237.51 to 237.56, the department of human services shall:

(1) define economic hardship, special needs, and household criteria so as to determine the priority of eligible applicants for initial distribution of devices and to determine circumstances necessitating provision of more than one communication device per household;

(2) establish a method to verify eligibility requirements;

(3) establish specifications for communication devices to be purchased under section 237.53, subdivision 3; and

(4) inform the public and specifically the community of communication-impaired persons of the program.

(b) The department may establish an advisory board to advise the department in carrying out the duties specified in this section and to advise the department of public service in carrying out its duties under section 237.54. If so established, the advisory board must include, at a minimum, the following communication-impaired persons:

- (1) at least one member who is deaf;
- (2) at least one member who is speech impaired;
- (3) at least one member who is mobility impaired; and
- (4) at least one member who is hard-of-hearing.

The membership terms, compensation, and removal of members and the filling of membership vacancies are governed by section 15.059. Advisory board meetings shall be held at the discretion of the commissioner.

Subd. 6. [Repealed, 1995 c 190 s 17]

History: 1987 c 186 s 15; 1987 c 308 s 2,8; 1988 c 621 s 3; 1990 c 571 s 41; 1990 c 598 s 3; 1992 c 430 s 1,2; 1992 c 518 s 1; 1993 c 272 s 7-11,17; 1995 c 190 s 2-4; 1998 c 386 art 2 s 70; 1999 c 149 s 1

237.52 TACIP FUND.

Subdivision 1. **Fund established.** A telecommunication access for communication-impaired persons fund is established as an account in the state treasury. Earnings, such as interest, dividends, and any other earnings arising from fund assets, must be credited to the fund.

Subd. 2. **Assessment.** The department of public service shall annually recommend to the commission an adequate and appropriate surcharge and budget to implement sections 237.50 to 237.56. The public utilities commission shall review the budget for reasonableness and may modify the budget to the extent it is unreasonable. The commission shall annually determine the funding mechanism to be used within 60 days of receipt of the recommendation of the department and shall order the imposition of surcharges effective on the earliest practicable date. The commission shall establish a monthly charge no greater than 20 cents for each customer access line, including trunk equivalents as designated by the commission pursuant to section 403.11, subdivision 1.

Subd. 3. **Collection.** Every telephone company or communications carrier that provides service capable of originating a telecommunications relay call, including cellular communications and other nonwire access services, in this state shall collect the charges established by the commission under subdivision 2 and transfer amounts collected to the commissioner of administration in the same manner as provided in section 403.11, subdivision 1, paragraph (c). The commissioner of administration must deposit the receipts in the fund established in subdivision 1.

Subd. 4. **Appropriation.** Money in the fund is appropriated to the department of public service to implement sections 237.51 to 237.56.

Subd. 5. **Expenditures.** Money in the fund may only be used for:

(1) expenses of the department of public service, including personnel cost, public relations, advisory board members' expenses, preparation of reports, and other reasonable expenses not to exceed ten percent of total program expenditures;

(2) reimbursing the commissioner of human services for purchases made or services provided pursuant to section 237.53;

(3) reimbursing telephone companies for purchases made or services provided under section 237.53, subdivision 5; and

(4) contracting for establishment and operation of the telecommunication relay service required by section 237.54.

All costs directly associated with the establishment of the program, the purchase and distribution of communication devices, and the establishment and operation of the telecommunication relay service are either reimbursable or directly payable from the fund after authorization by the department of public service. The department of public service shall contract with the message relay service operator to indemnify the local exchange carriers of the relay service for any fines imposed by the Federal Communications Commission related to the failure of the relay service to comply with federal service standards. Notwithstanding section 16A.41, the department of public service may advance money to the contractor of the telecommunication relay service if the contractor establishes to the department's satisfaction that the advance payment is necessary for the operation of the service. The advance payment may be used only for working capital reserve for the operation of the service. The advance payment must be offset or repaid by the end of the contract fiscal year together with interest accrued from the date of payment.

History: 1987 c 308 s 3,8; 1988 c 621 s 4; 1992 c 518 s 2; 1993 c 272 s 12,13,17; 1995 c 190 s 5-7; 1995 c 201 s 1

237.53 COMMUNICATION DEVICE.

Subdivision 1. **Application.** A person applying for a communication device under this section must apply to the program administrator on a form prescribed by the department of human services.

Subd. 2. **Eligibility.** To be eligible to obtain a communication device under this section, a person must be:

- (1) able to benefit from and use the equipment for its intended purpose;
- (2) communication impaired;
- (3) a resident of the state;

(4) a resident in a household that has a median income at or below the applicable median household income in the state, except a deaf and blind person applying for a telebraille unit may reside in a household that has a median income no more than 150 percent of the applicable median household income in the state; and

(5) a resident in a household that has telephone service or that has made application for service and has been assigned a telephone number; or a resident in a residential care facility, such as a nursing home or group home where telephone service is not included as part of overall service provision.

Subd. 3. Distribution. The commissioner of human services shall purchase and distribute a sufficient number of communication devices so that each eligible household receives an appropriate device. The commissioner of human services shall distribute the devices to eligible households in each service area free of charge as determined under section 237.51, subdivision 5a.

Subd. 4. Training; maintenance. The commissioner of human services shall maintain the communication devices until the warranty period expires, and provide training, without charge, to first-time users of the devices.

Subd. 5. Wiring installation. If a communication-impaired person is not served by telephone service and is subject to economic hardship as determined by the department of human services, the telephone company providing local service shall at the direction of the administrator of the program install necessary outside wiring without charge to the household.

Subd. 6. Ownership. All communication devices purchased pursuant to subdivision 3 will become the property of the state of Minnesota.

Subd. 7. Standards. The communication devices distributed under this section must comply with the electronic industries association standards and approved by the Federal Communications Commission. The commissioner of human services must provide each eligible person a choice of several models of devices, the retail value of which may not exceed \$600 for a communication device for the deaf, and a retail value of \$7,000 for a telebraille device, or an amount authorized by the department of human services for a telephone device for the deaf with auxiliary equipment.

Subd. 8. [Repealed, 1988 c 621 s 19]

History: 1987 c 308 s 4,8; 1988 c 621 s 5-8; 1993 c 272 s 17; 1995 c 190 s 8-11; 1995 c 201 s 2

237.54 TELECOMMUNICATION RELAY SERVICE.

Subdivision 1. [Repealed, 1995 c 190 s 17]

Subd. 2. Operation. The department of public service shall contract with a local consumer organization that serves communication-impaired persons for operation and maintenance of the telecommunication relay system. The department may contract with other than a local consumer organization if no local consumer organization is available to enter into or perform a reasonable contract or the only available consumer organization fails to comply with terms of a contract. The operator of the system shall keep all messages confidential, shall train personnel in the unique needs of communication-impaired people, and shall inform communication-impaired persons and the public of the availability and use of the system. The operator shall not relay a message unless it originates or terminates through a communication device for the deaf or a Braille device for use with a telephone.

History: 1987 c 308 s 5,8; 1993 c 272 s 14,17; 1995 c 190 s 12

237.55 ANNUAL REPORT ON COMMUNICATION ACCESS.

The department of public service must prepare a report for presentation to the commission by January 31 of each year. Each report must review the accessibility of the telephone system to communication-impaired persons, review the ability of non-communication-impaired persons to communicate with communication-impaired per-

sons via the telephone system, describe services provided, account for money received and disbursed annually for each aspect of the program to date, and include predicted future operation.

History: 1987 c 308 s 6,8; 1993 c 272 s 15,17; 1995 c 190 s 13

237.56 ADEQUATE SERVICE ENFORCEMENT.

The services required to be provided under sections 237.50 to 237.55 may be enforced under section 237.081 upon a complaint of at least two communication-impaired persons within the service area of any one telephone company, provided that if only one person within the service area of a company is receiving service under sections 237.50 to 237.55, the commission may proceed upon a complaint from that person.

History: 1987 c 308 s 7,8; 1993 c 272 s 17

COMPETITIVE SERVICES, INCENTIVES

237.57 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given them in this section.

Subd. 2. **Competitive service.** "Competitive service" means a service that has been determined to be subject to effective competition or emerging competition.

Subd. 3. **Effective competition.** "Effective competition" exists when the criteria of section 237.59, subdivision 5, have been satisfied for a service.

Subd. 4. **Emerging competition.** A service will be regulated under "emerging competition" provisions when the criteria of section 237.59, subdivision 5, have not been satisfied, but there is a trend toward effective competition, or if it is a new service offered for the first time after August 1, 1994, that is not integrally related to the provision of adequate telephone service or access to the telephone network or to the privacy, health, or safety of the company's customers, whether or not it meets the criteria of section 237.59, subdivision 5.

Subd. 5. **Local access and transport area.** "Local access and transport area (LATA)" means a geographical area designated by the Modification of Final Judgment in *U.S. v. Western Electric Co., Inc.*, 552 F. Supp. 131 (D.D.C. 1982).

Subd. 6. **Noncompetitive service.** "Noncompetitive service" means a service that has not been classified as competitive by the commission.

History: 1987 c 340 s 1,26; 1989 c 74 s 7,25; 1994 c 534 art 1 s 2

237.5799 [Expired]

237.58 [Expired]

237.59 CLASSIFICATION OF COMPETITIVE SERVICE; HEARING.

Subdivision 1. **Emerging competitive service.** (a) The following services provided by the telephone company are subject to emerging competition unless and until reclassified as noncompetitive or subject to effective competition under this section:

- (1) apartment door answering services;
- (2) automatic call distribution;
- (3) billing and collection services;
- (4) call waiting, call forwarding, and three-way calling services for businesses with three or more lines;
- (5) central office-based pricing packages providing switched business access lines which substitute for private branch exchange systems which may or may not share intelligence with customer premises equipment;

- (6) command link-type services for network reconfiguring to rearrange cross-connections between channel services;
- (7) custom network services and special assemblies;
- (8) digicom switchnet services for full duplex, synchronous, information transport;
- (9) direct customer access services for telephone number information;
- (10) teleconferencing services;
- (11) inter-LATA and intra-LATA message toll service;
- (12) inter-LATA and intra-LATA private line services;
- (13) inter-LATA and intra-LATA wide area telephone service;
- (14) mobile radio services;
- (15) operator services, excluding local operator services;
- (16) public pay telephone services, excluding charges for access to the central office;
- (17) special construction of facilities;
- (18) systems for automatic dialing; and
- (19) versanet-type service access line involving continuous monitoring and transmission of data from customer's premises to the central office.

(b) A service classified as subject to emerging competition before June 1, 1994, retains that classification unless and until it is reclassified pursuant to subdivision 3 or 10.

Subd. 1a. **CLASS service.** Notwithstanding the terms of subdivision 1, paragraph (b), CLASS services may be classified as competitive services only when so classified according to subdivision 3 or 10.

Subd. 2. **Petition.** (a) A telephone company, or the commission on its own motion, may petition to have a service of that telephone company classified as subject to effective competition or emerging competition. The petition must be served on the commission, the department of public service, the office of the attorney general, and any other person designated by the commission. The petition must contain at least:

- (1) a list of the known alternative providers of the service available to the company's customers; and
- (2) a description of affiliate relationships with any other provider of the service in the company's market.

(b) At the time the company first offers a service, it shall also file a petition with the commission for a determination as to how the service should be classified. In the event that no interested party or the commission objects to the company's proposed classification within 20 days of the filing of the petition, the company's proposed classification of the service is deemed approved. If an objection is filed, the commission shall determine the appropriate classification after a hearing conducted pursuant to section 237.61. In either event, the company may offer the new service to its customers ten days after the company files the price list and incremental cost study as provided in section 237.60, subdivision 2, paragraph (f).

(c) A new service may be classified as subject to effective competition or emerging competition pursuant to the criteria set forth in subdivision 5. A new service must be regulated under the emerging competition provisions if it is not integrally related to the provision of adequate local service or access to the telephone network or to the privacy, health, or safety of the company's customers, whether or not it meets the criteria set forth in subdivision 5.

Subd. 3. **Expedited proceeding.** An interested party wishing to contest the change of classification of a service must file an objection with the commission within 20 days after the filing of the petition. If no party files an objection, the service must be reclassified in accordance with the petition. If a petition is contested, a telephone company that is the subject of a petition under subdivision 2 may request that the

commission determine the classification of the service through an expedited proceeding under section 237.61 or a contested case hearing. If an expedited proceeding is requested, the commission must provide interested persons an opportunity to comment on the appropriateness of the process and the merits of the petition.

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

Subd. 4. **Contested case hearing.** If a contested case hearing is held under this section, the commission shall make a final determination on the petition within eight months from the date the petitioning party requests a contested case hearing or from the date the commission orders a contested case hearing under subdivision 3. When a contested case hearing is requested in the petition or when the commission acts on its own motion, this deadline may be extended for no more than 60 days by agreement of all parties or by order of the commission if the commission finds that the case cannot be completed within the required time and that without an extension there is substantial probability that the public interest will be harmed.

Subd. 5. **Criteria.** (a) If a proposed classification is objected to pursuant to subdivision 2, paragraph (b), on the basis that the service does not meet the criteria of this subdivision, the commission shall consider, in determining whether a service is subject to either effective competition or emerging competition from available alternative service providers, the following factors:

(1) the number and sizes of alternative providers of service and affiliation to other providers;

(2) the extent to which services are available from alternative providers in the relevant market;

(3) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions of service;

(4) the market share, the ability of the market to hold prices close to cost, and other economic measures of market power; and

(5) the necessity of the service to the well-being of the customer.

(b) In order for the commission to find a service subject to effective competition alternative services must be available to over 50 percent of the company's customers for that service.

(c) In order for the commission to find a service subject to emerging competition alternative services must be available to over 20 percent of the company's customers for that service.

Subd. 6. **Burden of proof.** The classification of a service may not be changed so as to result in lessened regulation unless it is demonstrated by a preponderance of the evidence that the criteria of subdivision 5 have been met.

Subd. 7. [Repealed, 1993 c 268 s 6]

Subd. 8. **Interim relief.** A telephone company that has a petition pending before the commission under this section to declare a service competitive may decrease its price for that service without notice while the commission considers the petition. A company must provide an incremental cost study if requested by the commission. The commission shall suspend a company's right under this subdivision to decrease rates if, after an expedited hearing conducted under section 237.61, the commission finds that the service is being priced below cost, or that the company has within the previous 12 months charged customers interim rates under this subdivision for the same service, and that service was determined by the commission to be noncompetitive.

Subd. 9. **Reporting requirements; exception.** A telephone company that offers only competitive services is not subject to the accounting and reporting requirements of this chapter unless otherwise ordered by the commission for good cause. A telephone

company that offers both competitive and noncompetitive services is not subject to the reporting requirements with regard to its effective competition services unless otherwise ordered by the commission for good cause.

Subd. 10. Regulation reinstated. The commission, on its own motion or upon complaint, shall reclassify a service as noncompetitive or as subject to emerging competition and reinstate, in whole or in part, rate regulation of the service, if, after notice and hearing, the commission finds either:

(1) that the competitive market for that service, on review of the criteria found in subdivision 5, has failed so that rate regulation of that service is necessary to protect the interest of consumers, that it has considered the alternatives to rate regulation, and that the benefits of rate regulation outweigh the burdens of rate regulation; or

(2) that unreasonable discrimination has occurred between different areas of the state.

In any proceeding to reclassify a service the person initiating the complaint has the burden of proving that the existing classification is inappropriate, except the telephone company providing the service has the burden of proving that the classification is appropriate when the proceeding is commenced by the commission on its own motion or when the complainant is the department or the attorney general.

History: 1987 c 340 s 3; 1989 c 74 s 9-12; 1994 c 534 art 1 s 5-9

237.60 DISCRIMINATORY PRACTICES; SERVICE COSTS.

Subdivision 1. [Expired]

Subd. 2. [Expired]

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

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

Subd. 5. [Expired]

History: 1987 c 340 s 4; 1989 c 74 s 13,14; 1992 c 493 s 7; 1994 c 465 art 1 s 28; 1994 c 534 art 1 s 10

237.61 EXPEDITED PROCEEDING.

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

be made under oath or affirmation. The commission shall make a decision in an expedited proceeding based on the record.

History: 1987 c 340 s 5

237.62 [Expired]

237.625 [Expired]

237.626 PROMOTION ACTIVITIES.

A telephone company may promote the use of its services by offering a waiver of part or all of a recurring or a nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. Section 237.09 does not apply to promotions under this section, but the customer group to which the promotion is available must be based on reasonable distinctions among customers. No single promotion may be effective for longer than 90 days at a time. The service being promoted must have a price that is above the incremental cost of the service, including amortized cost of the promotion. A promotion may take effect the day after the notice is filed with the commission. The notice must identify customers to whom the promotion is available and include cost information demonstrating that the revenue from the service covers incremental cost, including cost of the promotion. A telephone company that offers a promotion under this section shall file a report on the promotion with the commission and the department within 90 days of the conclusion of the promotion.

History: 1992 c 493 s 8

237.63 MISCELLANEOUS TARIFFS.

Subdivision 1. **Generally.** A telephone company whose general revenue requirement is determined under section 237.075 may also set or change its rates for noncompetitive services under this section.

Subd. 2. **Language change.** If language describing a rate, term, or condition of service in a tariff is changed, without substantially altering the application of the tariff, the change may take effect upon one-day notice to the public utilities commission.

Subd. 3. **Cost increase.** If the actual costs of providing a particular service have increased since the last proceeding under section 237.075, the rate for that service may be increased to recover those costs. The company requesting this rate increase shall file with its request the cost data it relies upon for the increase. The department shall review the request and make a recommendation to the commission regarding the appropriateness of the request within 20 calendar days of filing the request by the telephone company. If the department notifies the company within 15 days of the filing that additional information is required, the department shall make its recommendation to the commission within 20 calendar days after receipt of that additional information. If the company fails to provide adequate information within 20 calendar days of the department request, the department shall recommend denial of the company request on the basis of failure to provide adequate information. The commission shall either approve or reject the request under this subdivision within 20 calendar days of the receipt of the department recommendation. In order to qualify as a change in costs, it must be a cost change related to a particular service rather than a general overall increase applicable to most of the company's services, and an actual change in costs must have occurred rather than the discovery of a change in costs as a result of conducting a new cost study.

Subd. 4. **Reducing rate.** A company may reduce its rates for one or more services effective 20 days after filing the rates with the commission.

Subd. 4a. **Significant change in condition of service.** If the terms or conditions of service in a tariff are changed in a way that substantially changes the application of the tariff, but the price is not changed, the change in the tariff may take effect according to the schedule governing rate reductions in subdivision 4.

Subd. 4b. **New service.** A telephone company may offer a new service to its customers ten days after it files a tariff with the department and the commission.

Subd. 4c. **Other change.** A tariff change not covered by subdivisions 1 to 4b and not requiring a review of a telephone company's gross revenues must be reviewed in accordance with section 237.075, subdivisions 1 and 2, except that the commission may order the company to provide whatever notice to potentially affected customers that the commission considers appropriate.

Subd. 5. **Burden of proof.** The burden of proof that the requested rates are reasonable under this section is on the telephone company providing the service.

Subd. 6. **Filing.** A copy of filings made under this section must be served on the commission, the department, and the attorney general.

Subd. 7. **Commission review.** Nothing in this section prevents the commission from ordering that a requested change not take effect, or from subsequently amending the rates either through a complaint proceeding, a commission investigation, or through a proceeding conducted under section 237.075.

History: 1987 c 340 s 7; 1989 c 74 s 19-22

NOTE: This section expires December 31, 2004. Laws 1999, chapter 224, section 7.

237.64 REGISTRATION; BOND.

Subdivision 1. **Registration.** A person, firm, or corporation seeking to become a telephone company, as defined by section 237.01, subdivision 2, and not required to be certified under section 237.16, shall register with the department and the commission 90 days before beginning operation in the state. The commission may review the proposed rates and services and the financial conditions of the telephone company and may, under section 237.081, investigate any other matter it considers appropriate to protect the public interest. A telephone company that has been authorized by the commission to provide telephone services in this state prior to August 1, 1987, is not required to register under this subdivision. A person, firm, or corporation seeking to offer a noncompetitive service to the public must obtain authority from the commission under section 237.16.

Subd. 2. **Bond.** Telephone companies that have registered under subdivision 1 shall maintain a bond if the company requires advance payments or deposits from its customers, unless waived by the commission. The bond must be issued by a surety company admitted to do business in this state in the principal sum of all deposits and advance payments to be held by the company. The department shall determine the amount of the bond and may require the company to supply information to determine the appropriate amount of the bond. The bond must be in favor of the state for the benefit of any customer who suffers the loss of a deposit or advance payment due to insolvency, cessation of business, or failure to return any unused portion of the deposit or advance payment. The bond must be filed with the department.

History: 1987 c 340 s 8; 1989 c 74 s 23,24

237.65 AFFILIATED TRANSACTION.

Subdivision 1. **Definition.** For the purposes of this section, "affiliated company" means a person, company, corporation, or other entity in which the telephone company has an affiliated interest as defined under section 216B.48, subdivision 1.

Subd. 2. **Records.** Telephone companies, except companies that provide only services that have been found to be competitive, shall maintain records for a period of three years documenting transactions in excess of \$50,000 with an affiliated company. The documentation must contain:

- (1) the name of the affiliate;
- (2) a description of the transaction or contract;
- (3) the dollar value of the transaction or contract;

(4) in the case of goods and services purchased from an affiliate, any evidence of efforts made by the telephone company to secure the same or functionally equivalent goods or services from a nonaffiliated supplier; and

(5) in the case of services provided to an affiliate, any evidence of the fair market value of those goods or services.

Subd. 3. **Commission review; burden of proof.** In a proceeding for the approval of rates for noncompetitive services, the burden is on the company to prove that goods or services acquired from or sold to affiliates were transferred at reasonable value. The determination of reasonable value shall include but not be limited to durability, quality, service, and price.

History: 1987 c 340 s 9

NOTE: This section expires December 31, 2004 Laws 1999, chapter 224, section 7.

237.66 DISCLOSURE OF LOCAL SERVICE OPTIONS.

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

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

Subd. 1b. [Repealed, 1998 c 345 s 16]

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

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

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

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

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

History: 1987 c 340 s 10; 1994 c 449 s 1; 1996 c 340 s 2,3; 1997 c 68 s 4; 1998 c 345 s 6-9

237.661 ANTISLAMMING.

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

Subd. 2. **Antislamming duties of soliciting carrier.** (a) A telecommunications carrier may request that the telephone company serving a customer process a change in that customer's long-distance provider, if the customer has authorized the change either orally or in writing signed by the customer. Prior to requesting a change in a customer's long-distance service provider, the carrier must confirm:

(1) the customer's identity with information unique to the customer, unless the customer refused to provide identifying information, then that fact should be noted;

(2) that the customer has been informed of the offering made by the carrier;

(3) that the customer understands that the customer is being requested to change telecommunication carriers;

(4) that the customer has the authority to authorize the change; and

(5) that the customer agrees to the change.

(b) After requesting the change in long-distance service provider, the carrier must:

(1) notify the customer in writing that the request has been processed; and

(2) be able to produce, upon complaint by the customer, evidence that the carrier verified the authorization by the customer to change the customer's long-distance service provider. If the carrier used a negative check-off verification procedure as defined in subdivision 4, paragraph (c), the evidence must include a tape recording of the initial oral authorization.

Subd. 3. **Penalty for slamming.** If the carrier is not able to present, upon complaint by the customer, evidence that complies with subdivision 2, paragraph (b), clause (2), the change to the service of the carrier is deemed to be unauthorized from the date the carrier requested the change. In that event, the carrier shall:

(1) bear all costs of immediately returning the customer to the service of the customer's original service provider; and

(2) bear all costs of serving that customer during the period of unauthorized service.

Subd. 4. **Verification procedures; evidence of authorization.** (a) Customer authorization for a change in the customer's long-distance service provider may be verified using a verification procedure that complies with federal law or regulation. Except as provided in paragraph (b), the requirement that the carrier be able to produce evidence of customer authorization is satisfied if the carrier uses a federally authorized verification procedure.

(b) If federal law or regulation authorizes a carrier to use a negative check-off verification procedure, and the carrier does so, the carrier must be able to produce a tape recording of the initial oral authorization by the customer to change long-distance service providers as evidence of the authorization. The initial oral authorization must include confirmation of the items listed in subdivision 2, paragraph (a).

(c) "Negative check-off" means a verification procedure that consists of:

(1) an initial oral authorization by the customer to change long-distance service providers; and

(2) a mailing to the customer by the soliciting telecommunications carrier regarding the change in service providers that informs the customer that if the customer fails

to cancel the change in service providers, the change will be deemed authorized and verified.

History: 1998 c 345 s 10

237.662 NOTICE AND DISCLOSURE REQUIREMENTS OF LONG-DISTANCE PROVIDERS.

Subdivision 1. Information required. When contacted by a customer regarding the purchase of long-distance telecommunications services, or when soliciting customers via mail or telephone, a provider of long-distance services shall provide the customer with the following information, if the service is being offered to the customer, about the service offering either orally or in writing:

(1) the price or range of prices of interstate message toll service accessed by dialing "1+" or "10-xxx", including any difference in prices for evening, night, or weekend calls;

(2) the price or range of prices of intrastate interLATA message toll service accessed by dialing "1+" or "10-xxx", including any difference in prices for evening, night, or weekend calls;

(3) the price or range of prices of intrastate intraLATA message toll service accessed by dialing "1+" or "10-xxx", including any difference in prices for evening, night, or weekend;

(4) any minimum volume requirements, fixed flat fees, service charges, surcharges, termination charges or other non-service-specific charges, including the fact that the provider of local service may charge a one-time fee for changing carriers; and

(5) any special promotional rate or promotional offering related to the services or prices described in clauses (1) to (4) above, including any limitations or restrictions on the promotional rates or offerings.

Subd. 2. Price, terms, and restrictions in writing. If a customer agrees to purchase telecommunications services from the provider of long-distance services on a presubscription basis, the provider shall send the customer written information regarding services subscribed to, containing:

(1) the information regarding prices and charges described in subdivision 1, clauses (1) to (5);

(2) the price for calls placed with a calling card issued to the customer by the provider and any surcharge for placing calls with a calling card;

(3) the price for calls charged to the customer when a personal "1-800" number for long-distance services issued to the customer by the provider is used; and

(4) the price of directory assistance calls.

This written information must be sent to the customer within seven business days from the date of the verification of the customer's authorization, unless federal law or regulation requires notice to be sent by an earlier date.

Subd. 3. Filed tariff no defense. That a telecommunications carrier has intrastate tariffs or price lists for the services listed in subdivisions 1 and 2 on file with the public utilities commission or department of public service is not a defense to any action brought for failure to disclose intrastate prices for which disclosure is required under this section.

History: 1998 c 345 s 11

237.663 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 must 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.

History: 1998 c 345 s 12

237.67 ANNUAL LEGISLATIVE REPORT.

Beginning January 1, 1988, the commission and the department shall annually report to the legislature on the implementation of Laws 1987, chapter 340, and recommend changes necessary to assure high quality and affordable telephone services for the residents of the state.

History: 1987 c 340 s 11,26; 1989 c 74 s 25; 1994 c 534 art 1 s 13

PRIVATE TELEPHONE SERVICES

237.68 PRIVATE SHARED TELECOMMUNICATIONS SERVICE.

Subdivision 1. **Definition.** For the purposes of this section, "private shared telecommunications services" means the provision of telephone services and equipment within a user group located in discrete private premises, in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to long-distance telephone companies.

Subd. 2. **Requirements.** A person who owns or operates a building, property, complex, or other facility where a private shared telecommunications system is operated shall establish a single demarcation point for services and facilities provided by the telephone company providing local exchange service in the area that is mutually agreeable to the property owner or operator and the telephone company. The obligation of a telephone company to provide service to a customer at a location where a private shared telecommunications system is operated is limited to providing telephone company service and facilities up to the demarcation point established for the property where the private shared telecommunications system is located.

Subd. 3. **Access to alternative provider.** A tenant of a building, property, complex, or other facility where a private shared telecommunications system is operated may establish a direct connection to and receive telephone service from the telephone company providing local exchange service in the area where the private shared telecommunications system is located. At the request of a tenant where a private shared telecommunications system is operated, the owner or manager of the property shall make facilities or conduit space available to the tenant to allow the tenant to make separate connection to and to receive telephone service directly from the telephone company operating local exchange service in the area. The tenant has the choice of installing the tenant's own facilities or using the existing facilities. The facilities or conduit space must be provided by the owner or operator to the tenant at a reasonable rate and on reasonable terms and conditions. It is the obligation of the tenant to arrange for premises wire, cable, or other equipment necessary to connect the tenant's telephone equipment with the facilities of the telephone company operating local exchange service at the location of the demarcation point.

Subd. 4. **Enforcement.** If the commission finds that the owner or operator of a private shared telecommunications system has failed to comply with a request under this section, the commission may order the owner or operator to make facilities or conduit space available sufficient to allow the tenant to make separate connection with the telephone company, and provide the services at reasonable prices and on reasonable terms and conditions.

Subd. 5. **Exemption.** A provider of private shared telecommunications services is exempt from section 237.16 if the telecommunications services are only provided to tenants or for the provider's own use.

Subd. 6. **Service by local telephone company.** The telephone company providing local exchange service shall provide service to anyone located within a shared services building at the demarcation point within a reasonable time upon request.

History: 1987 c 340 s 12

NOTE: This section expires December 31, 2004. Laws 1999, chapter 224, section 7

TELEPHONE ASSISTANCE PLAN

237.69 TELEPHONE ASSISTANCE PLAN; DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 237.69 to 237.711 have the meanings given them in this section.

Subd. 2. **Commission.** "Commission" means the Minnesota public utilities commission.

Subd. 3. **Department.** "Department" means the Minnesota department of public service.

Subd. 4. **Telephone company.** "Telephone company" has the meanings given it in section 237.01, subdivisions 2 and 3, that provides local exchange telephone service.

Subd. 5. **Access line.** "Access line" means telephone company-owned facilities furnished to permit switched access to the telecommunications network that extend from a central office to the demarcation point on the property where the subscriber is served. The term includes access lines provided to residential and business subscribers, includes centrex access lines on a trunk-equivalent basis, but does not include private nonswitched or wide area telephone service access lines.

Subd. 6. **Federal matching plan.** "Federal matching plan" means any telephone assistance plan formulated by the Federal Communications Commission that provides federal assistance to local telephone subscribers.

Subd. 7. **Telephone assistance plan.** "Telephone assistance plan" means the plan to be adopted by the commission and to be jointly administered by the commission, the department of human services, and the telephone companies, as required by sections 237.69 to 237.711.

Subd. 8. **Income.** For purposes of sections 237.69 to 237.711, income has the meaning given it in section 290A.03, subdivision 3.

Subd. 9. **Disabled.** "Disabled" has the meaning given it in section 363.01, subdivision 13.

Subd. 10. **Fund.** "Fund" means the telephone assistance fund established in section 237.701.

History: 1987 c 340 s 13; 1988 c 621 s 9-11; 1989 c 209 art 2 s 1; 1990 c 567 s 10

237.70 DEVELOPMENT OF TELEPHONE ASSISTANCE PLAN.

Subdivision 1. **Commission responsibility.** The commission shall develop a telephone assistance plan under this section.

Subd. 2. **Scope.** The telephone assistance plan must be statewide and apply to telephone companies that provide local exchange service in Minnesota.

Subd. 3. **Federal matching plan.** The telephone assistance plan must contain adequate provisions to enable telephone companies to qualify for waiver of the federal interstate access charge and to enable eligible subscribers to take advantage of the federal matching plan.

Subd. 4. [Repealed, 1988 c 621 s 19]

Subd. 4a. **Household eligible for credit.** 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) the Minnesota family investment program;
 - (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.

Subd. 5. **Nature and extent of credits.** The telephone assistance plan may provide for telephone assistance credits to eligible households up to the amounts available under the federal matching plan. However, the credits available under the telephone assistance plan may not exceed:

- (1) more than 50 percent of the local exchange rate charged for the local exchange service provided to the household by that household's telephone company; and
- (2) the level of credits that can actually be funded in accordance with the limitations contained in subdivision 6.

Subd. 6. **Funding.** The commission shall provide for the funding of the telephone assistance plan by assessing a uniform recurring monthly surcharge, not to exceed ten cents per access line, applicable to all classes and grades of access lines provided by each telephone company in the state.

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 security 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 companies 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 overcollection 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: 1987 c 340 s 14; 1988 c 621 s 12-15; 1989 c 282 art 5 s 2; 1991 c 292 art 5 s 5; 1997 c 7 art 2 s 29; 1997 c 85 art 4 s 6; 1999 c 159 s 29

237.701 TELEPHONE ASSISTANCE FUND; APPROPRIATION.

Subdivision 1. **Fund created; authorized expenditures.** The telephone assistance fund is created as a separate account in the state treasury to consist of amounts received by the department of administration representing the surcharge authorized by section 237.70, subdivision 6, and amounts earned on the fund assets. Money in the fund may be used only for:

- (1) reimbursement to telephone companies for expenses and credits allowed in section 237.70, subdivision 7, paragraph (d), clause (5);
- (2) reimbursement of the administrative expenses of the department of human services to implement sections 237.69 to 237.71, not to exceed \$314,000 annually;
- (3) reimbursement of the administrative expenses of the commission not to exceed \$25,000 annually; and
- (4) reimbursement of the statewide indirect cost of the commission.

Subd. 2. **Appropriation.** Money in the fund is appropriated to the commission to be disbursed pursuant to section 237.70, subdivision 7.

History: 1988 c 621 s 16; 1989 c 282 art 5 s 3; 1992 c 513 art 5 s 11; 1995 c 224 s 78

237.71 TAP RULES.

The commission shall adopt rules under the Administrative Procedure Act necessary or appropriate to establish the telephone assistance plan in accordance with this

chapter so that the telephone assistance plan is effective as of January 1, 1988, or as soon after that date as Federal Communications Commission approval of the telephone assistance plan is obtained.

History: 1987 c 340 s 15

237.711 TAP IMPLEMENTATION RULES.

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

History: 1988 c 621 s 18; 1997 c 7 art 5 s 20

237.72 [Repealed, 1988 c 621 s 19]

TELECOMMUNICATIONS REGULATIONS

237.73 OBTAINING SERVICE BY FRAUD; INJUNCTION.

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

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

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

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

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

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

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

History: 1990 c 494 s 1; 1990 c 612 s 9

237.74 REGULATION OF TELECOMMUNICATIONS CARRIER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A telecommunications carrier may give notice to its customers by bill inserts, by publication in newspapers of general circulation, or by any other reasonable means. However, notice of increases for intrastate residential rates for the services referenced

in section 237.662, subdivision 1, shall be made by bill inserts prominently displaying the notice of price increase on the customer's bill, or by a direct mailing or phone call to the customer. Customer notices for increases of intrastate rates for those services must include as a heading "NOTICE OF PRICE INCREASE".

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

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

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

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

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

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

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

Subd. 13. **International call blocking.** A telecommunications carrier, on its own or in conjunction with the telephone subscriber's provider of local telephone service, shall

offer comprehensive international toll blocking of nondomestic area codes that are part of the North American numbering plans, as a condition of offering service in Minnesota.

History: 1993 c 268 s 4; 1997 c 123 s 5; 1998 c 345 s 13,14

CUSTOM TELEPHONE SERVICES

237.75 CLASS SERVICE.

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

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

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

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

History: 1993 c 268 s 5

ALTERNATIVE REGULATION PLAN

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.

History: 1995 c 156 s 7

NOTE: This section, as added by Laws 1995, chapter 156, section 7, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.761 ALTERNATIVE REGULATION PLAN; SERVICE.

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

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

(1) essential for providing local telephone service and access to the local telephone network;

(2) integrally related to privacy, health, and safety of the company's customers; and

(3) for which no reasonable alternative exists within the relevant market or geographic area on reasonably comparable terms and conditions.

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

(1) residential and business service for local calling, including measured local service, two-party service, private branch exchange (PBX) trunks, trunk type hunting services, direct inward dialing, the network access portion of central office switched exchange service, and public access lines for customer-owned coin-operated telephones;

(2) extended area service;

(3) switched network access service;

(4) call tracing;

(5) calling number blocking;

(6) touch tone service when provided separately from basic local exchange service;

(7) local exchange, white-page, printed directories;

(8) 911 emergency services;

(9) installation and repair of local network access;

(10) local operator services, excluding directory assistance; and

(11) toll service blocking and 1-900 or 976 access blocking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) a description of the planned deployment of fiber-optic facilities or 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: 1995 c 156 s 8; 1997 c 223 s 9,10

NOTE: This section, as added by Laws 1995, chapter 156, section 8, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.762 ALTERNATIVE REGULATION PLAN RATE, PRICE.

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

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

Subd. 3. **Rate change.** (a) An alternative regulation plan must set forth the procedures under which the telephone company may reduce the rates or prices for price-regulated services below the initial rates or prices or thereafter increase the rates or prices during the term of the plan. The rates or prices may not be reduced below the total service long-run incremental cost of providing the service. Except as provided in paragraph (b), the rates or prices may not exceed the initial rates or prices for the

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

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

(1) changes in state and federal taxes;

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

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

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

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

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

Subd. 7. Packaged services. This section does not prevent a telephone company from packaging any service classified as price regulated or flexibly priced pursuant to section 237.761, 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: 1995 c 156 s 9; 1997 c 223 s 11-13

NOTE: This section, as added by Laws 1995, chapter 156, section 9, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.763 EXEMPTION FROM RATE-OF-RETURN REGULATION AND RATE INVESTIGATION.

Except as provided in the plan and any subsequent plans, a company that has an alternative regulation plan approved under section 237.764, is not subject to the rate-of-return regulation or earnings investigations provisions of section 237.075 or 237.081 during the term of the plan. A company with an approved plan is not subject to the provisions of section 237.57; 237.58; 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.

History: 1995 c 156 s 10

NOTE: This section, as added by Laws 1995, chapter 156, section 10, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.764 PLAN ADOPTION; EFFECT.

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

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

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

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

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

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

Subd. 2. **Settlement; stipulation; final order.** Upon receipt of a petition for an alternative regulation plan, the commission shall convene a conference including all interested parties to encourage settlement or stipulation of issues. Any settlement or stipulation must be submitted to the commission, which shall accept or reject the proposal in its entirety or modify it. If the commission modifies the proposal, all parties have 30 days to comment on the proposed modifications, after which the commission shall issue its final order. If the final order contains modifications to the proposal, each party to the settlement has ten days to reject the proposed modifications, in which case

the matter must be decided under section 237.61. After appropriate notice and hearing for all parties, the commission may adopt a stipulation submitted by a substantial number of, but less than all, parties.

Subd. 3. **Effect on incentive plan.** The approval of a plan under this section automatically terminates any existing incentive plan previously approved under section 237.625 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 termination of that plan and also is required to complete the performance of any other unexecuted commitments under the incentive plan.

History: 1995 c 156 s 11; 1997 c 223 s 14

NOTE: This section, as added by Laws 1995, chapter 156, section 11, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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: 1995 c 156 s 12; 1997 c 223 s 15

NOTE: This section, as added by Laws 1995, chapter 156, section 12, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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: 1995 c 156 s 13; 1997 c 223 s 16

NOTE: This section, as added by Laws 1995, chapter 156, section 13, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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.

History: 1995 c 156 s 14

NOTE: This section, as added by Laws 1995, chapter 156, section 14, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.768 PERIODIC FINANCIAL REPORT.

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

History: 1995 c 156 s 15

NOTE: This section, as added by Laws 1995, chapter 156, section 15, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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: 1995 c 156 s 16; 1997 c 223 s 17

NOTE: This section, as added by Laws 1995, chapter 156, section 16, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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.

History: 1995 c 156 s 17

NOTE: This section, as added by Laws 1995, chapter 156, section 17, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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.

History: 1995 c 156 s 18

NOTE: This section, as added by Laws 1995, chapter 156, section 18, expires January 1, 2006. Laws 1995, chapter 156, section 25.

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.

History: 1995 c 156 s 19

NOTE: This section, as added by Laws 1995, chapter 156, section 19, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.773 ALTERNATIVE REGULATION FOR SMALL TELEPHONE COMPANY.

Subdivision 1. **Definition.** For purposes of this section, "small telephone company" means a local exchange telephone company with fewer than 50,000 subscribers that has made an election under subdivision 2 whether or not the company is subject to sections 237.58, 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 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 rate.** (a) Except as provided in paragraph (b), a small telephone company shall not implement a rate increase for any service listed in section 237.761, subdivision 3, beyond the level in effect 60 days prior to an election under subdivision 2, until the later of January 1, 1998, or two years after making an election. However, a small telephone company may implement any new service and establish rates for any new service and may change rates for any other service at any time subject to the requirements of section 237.761, subdivision 4.

A small company shall provide to its customers the ability to block, at no extra charge, any new service which it offers, provides, or bills. This requirement shall not apply to services that require affirmative subscription by the customer. Nothing in this section shall prevent the commission from requiring blocking or other privacy or safety protections for other types of telecommunications services under section 237.081.

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

(1) changes in state and federal taxes;

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

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

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

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

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

A small telephone company proposing an increase under this subdivision shall provide 60 days' advance written notice to the department and each of the company's customers including the individual rates affected and the procedure necessary for the customers to petition for investigation. If the department receives a petition within 45 days after the notice from five percent or 500, whichever is fewer, of the customers of the small telephone company, the department 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 rate.** (a) No election by a small telephone company may in any way change the terms or conditions of any interexchange access charge settlements approved by the commission before an election under subdivision 2.

(b) While any interexchange access charge settlement approved by the commission remains in effect, the commission and department shall enforce the agreement without further investigation of interexchange access charges or earnings relating to the interexchange access service. Except as specifically provided in this section, the commission retains all of its authority 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. [Repealed, 2000 c 436 s 3]

History: 1995 c 156 s 20

NOTE: This section, as added by Laws 1995, chapter 156, section 20, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.774 APPLICATION OF OTHER LAWS.

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

History: 1995 c 156 s 21

NOTE: This section, as added by Laws 1995, chapter 156, section 21, expires January 1, 2006. Laws 1995, chapter 156, section 25.

237.775 EXISTING PLAN NOT AFFECTED.

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

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

INTEREXCHANGE TELEPHONE SERVICE

237.80 INTEREXCHANGE TELEPHONE SERVICE.

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

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

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

Subd. 2. **Consultation with FCC.** Any investigation or proceeding by the Minnesota public utilities commission for the purpose of verifying compliance with the competitive checklist requirements of section 271(c) of the act must be completed by

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the commission and the resulting certification provided to the Federal Communications Commission within 90 days after receipt of a request for verification from the Federal Communications Commission.

History: 1996 c 445 s 1

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