

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.

[See Note.]

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 [Repealed by amendment, 1995 c 156 s 5]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 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 5,25; 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; 2003 c 97 s 2

NOTE: In subdivision 1, the application of paragraph (b) to Voice over Internet Protocol (VoIP) providers was permanently enjoined on grounds of federal preemption in *Vonage Holdings Corp. v. The Minnesota Public Utilities Commission*, 290 F.Supp.2d 993 (D.Minn. 2003).