

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. [Renumbered subd 7]

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 [Repealed, 1984 c 557 s 4]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.

Subd. 6a. **Telecommunications service.** "Telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public regardless of the facilities used.

Subd. 6b. **Telecommunications service provider.** "Telecommunications service provider" means any provider of telecommunications service.

Subd. 7. **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. 8. **Local exchange carrier.** "Local exchange carrier" means a telephone company or telecommunications carrier providing local exchange service.

Subd. 9. **Wholesale transport provider.** "Wholesale transport provider" means any person, firm, association, or corporation that carries, delivers, routes, or transports any telecommunications service subject to the commission's jurisdiction, directly or indirectly, but is not certified in Minnesota to provide retail telecommunications service to the public.

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 1,2,5; 2003 c 97 s 2; 2004 c 261 art 1 s 1; 2016 c 115 s 1-3

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*

237.012 BROADBAND GOALS.

Subdivision 1. **Universal access and high-speed goal.** It is a state goal that:

(1) no later than 2022, all Minnesota businesses and homes have access to high-speed broadband that provides minimum download speeds of at least 25 megabits per second and minimum upload speeds of at least three megabits per second; and

(2) no later than 2026, all Minnesota businesses and homes have access to at least one provider of broadband with download speeds of at least 100 megabits per second and upload speeds of at least 20 megabits per second.

Subd. 2. **State broadband leadership position.** It is a goal of the state that by 2022 and thereafter, the state be in:

(1) the top five states of the United States for broadband speed universally accessible to residents and businesses;

(2) the top five states for broadband access; and

(3) the top 15 when compared to countries globally for broadband penetration.

Subd. 3. [Repealed, 2013 c 85 art 3 s 28]

History: *2010 c 277 s 1; 2016 c 189 art 5 s 9*

237.02 GENERAL AUTHORITY OF DEPARTMENT AND COMMISSION; DEFINITIONS.

The Department of Commerce and the Public Utilities Commission are hereby vested with the same jurisdiction and supervisory power over telephone and telecommunications companies doing business in this state as the commission's predecessor, the railroad and warehouse commission, had over railroad and express companies. The definitions set forth in sections 216A.02 and 216B.02 also apply to this chapter.

History: *(5286) 1915 c 152 s 1; 1971 c 25 s 67; 1980 c 614 s 118; 1Sp2001 c 4 art 6 s 53*

237.025 COMPETITIVE MARKET REGULATION.

Subdivision 1. **Definitions.** (a) Except as otherwise provided in this subdivision, a "competitive service provider" means:

(1) a wireless voice service provider; or

(2) any other provider of local voice service who owns a substantial proportion of the last-mile or loop facilities delivering service to a majority of households in an exchange service area, without regard to the technology used to deliver the service.

"Competitive service provider" does not include:

(i) a provider using satellite technology;

(ii) a wireless voice service provider who resells voice services purchased at wholesale;

(iii) a competitive local exchange carrier, as defined in Minnesota Rules, parts 7811.0100, subpart 12, and 7812.0100, subpart 12, who does not own a substantial proportion of the last-mile or loop facilities over which they provide local voice service;

(iv) an over-the-top VOIP provider; or

(v) a local exchange carrier petitioning to be regulated under this section or any affiliate of the petitioning local exchange carrier.

(b) "Exchange service area" has the meaning given in Minnesota Rules, part 7810.0100, subpart 15.

(c) "Local exchange carrier" means a telephone company, as defined in section 237.01, subdivision 7, or the corporate successor to a telephone company, providing local telephone service pursuant to a certificate granted by the commission under section 237.16 before August 1, 1995.

(d) "Over-the-top VOIP provider" means a VOIP provider that:

(1) requires the end user to obtain broadband transmission from a third-party provider; and

(2) has no business relationship with the provider of the Internet connection used by the VOIP provider to deliver voice service.

(e) "VOIP" or "Voice over Internet Protocol" means any service that:

(1) enables real-time two-way voice communications that originate from or terminate at the user's location in Internet protocol or any successor protocol; and

(2) permits users to receive calls that originate on the public switched telephone network and terminate calls to the public switched telephone network.

Subd. 2. **Petition.** (a) A local exchange carrier may petition the commission to have its residential voice services and business voice services to customers subscribing to three or fewer business lines regulated under this section in any exchange service area in which the carrier provides local voice service. The petition must be served on the commission, the department, the Office of the Attorney General, all telephone companies and telecommunications carriers with which the local exchange carrier has an interconnection agreement, and any other person designated by the commission.

(b) A petition filed under this subdivision must include:

(1) a list of exchange service areas in which the local exchange carrier is seeking to be regulated under this section;

(2) the local services offered by the local exchange carrier in each exchange service area;

(3) a list of competitive service providers in each exchange service area;

(4) a description of affiliate relationships the petitioning local exchange carrier has with any provider of local service in each exchange service area;

(5) documentation demonstrating the local exchange carrier's loss of local voice service customers to unaffiliated competitive service providers in each exchange service area over, at a minimum, the previous five years;

(6) evidence demonstrating that the local exchange carrier satisfies the competitive criteria under subdivision 4 in each exchange service area; and

(7) other information requested by the commission that is relevant to the applicable competitive criteria under subdivision 4.

Subd. 3. **Process; objection; review.** (a) A petition by a local exchange carrier seeking to be regulated under this section shall be reviewed by the commission as provided under this subdivision.

(b) A party objecting to a local exchange carrier's petition filed under this section must file an objection within 45 days.

(c) If no party objects to a petitioning local exchange carrier's proposed election within 45 days of the filing of the petition, the petition is deemed approved.

(d) If a party raises an objection to a local exchange carrier's petition, the commission must provide interested parties and the petitioning carrier an opportunity to comment on the merits of the petition.

(e) The commission shall make a final determination regarding a petition filed under this section within 180 days of the date all information required under subdivision 2 was submitted.

(f) In reviewing the petition, the commission may request additional information from the petitioning local exchange carrier and other service providers under the commission's jurisdiction that provide service in the relevant exchange service area.

Subd. 4. **Competitive criteria.** The commission shall approve a petition under this section if a petitioning local exchange carrier demonstrates to the commission's satisfaction that:

(1) it serves fewer than 50 percent of the households in an exchange service area, and at least 60 percent of households in the exchange service area can choose voice service from at least one additional unaffiliated competitive service provider; or

(2) it serves more than 50 percent of the households in an exchange service area, and:

(i) at least 60 percent of households in the exchange service area can choose voice service from at least one additional unaffiliated competitive service provider;

(ii) no significant economic, technological, or other barriers to market entry and exit exist;

(iii) no single provider has the ability to maintain prices above competitive levels for a significant period of time or otherwise deter competition; and

(iv) the petitioning local exchange carrier will continue to offer basic local service, as defined in subdivision 8, consistent with its tariffs in effect at the time of its petition.

Subd. 5. **Burden of proof.** The burden of proof to show that the competitive criteria of subdivision 4 have been met shall be on the petitioning local exchange carrier.

Subd. 6. **Market regulation and consumer protection.** (a) A local exchange carrier that has received approval from the commission to be regulated under this section in one or more of its exchange service areas shall be subject to regulation in those approved exchange service areas as a telecommunications carrier under section 237.035, and as a competitive local exchange carrier under Minnesota Rules, parts 7811.2210 and 7812.2210, as applicable. Nothing in this section shall be construed to provide or imply that a local exchange carrier regulated under this section is exempted from Minnesota Statutes and Minnesota Rules applying to competitive local exchange carriers, including, but not limited to:

- (1) sections 237.50 to 237.56;
- (2) sections 237.66, 237.661, 237.663, and 237.665;
- (3) sections 237.69 to 237.71; and
- (4) Minnesota Rules, chapter 7810.

(b) Regulation under this section is effective 30 days after a petition is deemed approved under subdivision 3 or approved by the commission under subdivision 4.

Subd. 7. **Effect on existing alternative form of regulation plans.** (a) Approval of a petition for regulation under this section does not relieve an incumbent local exchange carrier of its obligation to fulfill all the terms of an existing alternative form of regulation plan under sections 237.76 to 237.774 for the duration of the plan.

(b) Following the expiration of the alternative form of regulation plan, an incumbent local exchange carrier whose petition is approved by the commission shall be subject to applicable provisions of this section in the approved local exchange areas.

Subd. 8. **Basic local service protection.** (a) For purposes of this subdivision, "basic local service" means:

- (1) single party voice-grade service and touch-tone capability;
- (2) access to the public switched network;
- (3) 911 or enhanced 911 access; and

(4) telecommunications relay service capability and access necessary to comply with state and federal regulations.

(b) Except as provided in paragraph (d) below:

(1) prior to January 1, 2018, basic local service rates may not be increased beyond the rates in effect on May 20, 2016;

(2) on or after January 1, 2018, basic local service rates for residential customers and business customers subscribing to three or fewer lines may not be increased on a per month basis by more than \$2.00. Any new basic local service rate established must remain in effect for a minimum of 12 months. Until December 31, 2022, basic local service rates may not exceed \$25.00; or

(3) on or after January 1, 2023, basic local service rates for residential customers and business customers subscribing to three or fewer lines may not be increased on a per month basis by more than \$2.00. Any new basic local service rate established must remain in effect for a minimum of 12 months. Any rate change effective after January 1, 2023, is deemed approved 90 days after the commission's receiving notice of the rate change, unless the commission begins an investigation pursuant to Minnesota Rules, part 7811.2210, subpart 17, or 7812.2210, subpart 17, to determine if the rate will result in substantial customer harm, in which case the commission must make a final determination within 180 days of receiving notice of the rate change.

(c) Notwithstanding any statute or rule to the contrary, basic local service rates must be uniform within an exchange service area.

(d) The provisions of paragraph (b) shall not apply to a rate of return carrier, as defined in Code of Federal Regulations, title 47, section 54.5.

Subd. 9. **Obligation to serve.** Nothing in this section affects the obligation of a local exchange carrier that petitions the commission to be regulated under this section to provide service to customers, when requested, in accordance with this chapter, commission rules, and its duly authorized tariffs.

Subd. 10. **Relation to other law.** Nothing in this section restricts, creates, expands, or otherwise affects or modifies:

(1) any entity's obligations or rights or the commission's authority under the Federal Communications Act of 1934, United States Code, title 47, sections 251 and 252;

(2) any commission authority or existing orders related to wholesale services;

(3) any commission jurisdiction:

(i) over intrastate switched access rates, terms, and conditions, including the implementation of federal law with respect to intercarrier compensation, and

(ii) to address or affect the resolution of disputes regarding intercarrier compensation; or

(4) the rights of any entity, or the authority of the commission and local government authorities, with respect to the use and regulation of public rights-of-way under sections 237.162 and 237.163.

Subd. 11. **Reexamining competitiveness of markets.** The commission may, upon petition or on its own motion, open a proceeding to examine whether the competitive criteria in subdivision 4 continue to be met in an exchange service area in which a local exchange carrier previously received commission approval to be regulated under this section. If the commission determines that the competitive criteria are no longer met, it shall determine the appropriate level of regulation for that provider in that exchange service area.

History: 2016 c 115 s 4

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 2,25; 2003 c 97 s 2

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, and 237.295, 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 people with communication disabilities.

(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; 2013 c 62 s 14; 2014 c 222 art 1 s 30

RATES AND PRACTICES

237.04 WIRE CROSSING OR PARALLELING UTILITY LINE; RULES.

(a) The department, upon the complaint of any person, railroad, municipal utility, cooperative electric association, telephone company, telecommunications carrier, cable company, fiber optic carrier, or other public utility claiming to be injuriously affected or subjected to hazard by any crossing or paralleling of the lines of any railroad or other similar public service corporation, 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, public utility, telephone company, telecommunications carrier, cable company, or fiber optic carrier determine the just and reasonable charge which a railroad, or owner of an abandoned railroad right-of-way, other than the state or a regional railroad authority, can prescribe for a new or existing crossing of a railroad right-of-way by any telephone, telegraph, telecommunications, cable, fiber optic, electric, or gas line, or new or existing telephone, telegraph, telecommunications, cable, fiber optic, electric, or gas line more or less paralleling a railroad right-of-way, based on the diminution in value caused by the crossing or paralleling of the right-of-way by the telephone, telegraph, telecommunications, cable, fiber optic, 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, other than the state or a regional railroad authority, asserts in writing that the proposed crossing or paralleling 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.

(d) For the purposes of this section, "parallel" or "paralleling" means that the relevant utility facilities run adjacent to and alongside the lines of a railroad for no more than one mile, or another distance agreed to by the parties, before the utility facilities cross the railroad lines, terminate, or exit the railroad right-of-way.

History: (4718-1) 1925 c 152 s 1; 1971 c 25 s 67; 1985 c 248 s 70; 1997 c 123 s 1; 1Sp2001 c 8 art 2 s 61; 2014 c 222 art 1 s 31

237.045 RAILROAD RIGHTS-OF-WAY; CROSSING OR PARALLELING BY UTILITIES.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Crossing" means a utility facility constructed over, under, or across a railroad right-of-way. The term does not include longitudinal occupancy of railroad right-of-way.

(c) "Facility" or "utility facility" means any item of personal property placed over, across, or underground for use in connection with the storage or conveyance of:

- (1) water;
- (2) sewage;
- (3) electronic, telephone, or telegraphic communications;
- (4) fiber optics;
- (5) cable television;
- (6) electric energy;
- (7) oil;
- (8) natural gas; or
- (9) hazardous liquids.

Facility includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments.

(d) "Parallel" or "paralleling" means a utility facility that runs adjacent to and alongside the lines of a railroad for no more than one mile, or another distance agreed to by the parties, after which the utility facility crosses the railroad lines, terminates, or exits the railroad right-of-way.

(e) "Railroad" means any association, corporation, or other entity engaged in operating a common carrier by rail, or its agents or assigns, including any entity responsible for the management of crossings or collection of crossing fees.

(f) "Utility" means cooperative electric association, electric utility, public utility, transmission company, gas utility, municipal utility, municipal power agency, municipality, joint action agency, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable, or fiber optic carrier. Utility includes contractors or agents.

Subd. 2. **Application.** (a) This section applies to:

(1) any crossing in existence before July 1, 2016, if an agreement concerning the crossing has expired or has been terminated. In such instance, if the collective amount that equals or exceeds the standard crossing fee under subdivision 6 has been paid to the railroad during the existence of the crossing, no additional fee is required; and

(2) any crossing commenced on or after July 1, 2016.

(b) This section does not apply to a crossing or paralleling of a large energy facility, as defined in section 216B.2421, subdivision 2, regardless of length.

Subd. 3. **Right-of-way crossing; application for permission.** (a) Any utility that intends to place a facility across or upon a railroad right-of-way shall request prior permission from the railroad.

(b) The request must be in the form of a completed crossing application, including an engineering design showing the location of the proposed crossing and the railroad's property, tracks, and wires that the utility will cross. The engineering design must conform with guidelines published in the most recent edition of the (1) National Electric Safety Code, or (2) Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association. The utility must submit the crossing application on a form provided or approved by the railroad, if available.

(c) The application must be accompanied by the standard crossing fee specified in subdivision 6 and evidence of insurance as required in subdivision 7. The utility must send the application to the railroad by certified mail, with return receipt requested.

(d) Within 15 calendar days of receipt of an application that is not complete, the railroad must inform the applicant regarding any additional necessary information and submittals.

Subd. 4. Inductive interference study. (a) A railroad may require an electric utility to conduct an inductive interference study if:

(1) the facility is for an electric energy transmission line of at least 125 kilovolts; and

(2) in accordance with guidelines in the National Electric Safety Code and the Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association, the railroad reasonably determines that the proposed facility poses a material possibility of creating induction issues or interference with railroad property.

(b) The utility must arrange and pay for the study, perform and pay for any costs of modifications to the proposed facility, and pay for any costs of modifications to railroad property that are necessary to ensure safe and reliable railroad operations. The study must be performed by a qualified engineer approved by the railroad.

(c) A utility facility for which an inductive interference study has been performed under this subdivision may not be energized until at least 30 calendar days after the railroad receives notice from the utility that the facility is ready to be energized. Within 30 days of receiving notice that the facility is ready to be energized, the railroad shall conduct any appropriate tests to ensure that there will not be any interference with safe operation of the railroad following energization.

Subd. 5. Right-of-way crossing; construction. Beginning 35 calendar days after the receipt by the railroad of a completed crossing application, crossing fee, and certificate of insurance, the utility may commence the construction of the crossing unless the railroad notifies the utility in writing that the proposed crossing or paralleling is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

Subd. 6. Standard crossing fee. (a) Unless otherwise agreed by the parties or determined under section 237.04, a utility that crosses a railroad right-of-way, other than a crossing within a public right-of-way, must pay the railroad a onetime standard crossing fee of \$1,250, adjusted as provided in paragraph (e), for each crossing. Except as otherwise provided in this subdivision, the standard crossing fee is paid in lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse the railroad for direct expenses incurred by the railroad as a result of the crossing. No other fee or charge may be assessed to the utility by the railroad.

(b) In addition to the standard crossing fee, the utility shall also reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing, based on the railroad traffic at the crossing.

(c) No crossing fee is required if the crossing is located within a public right-of-way.

(d) The placement of a single conduit and its content is a single facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the conduit.

(e) Annually each May 1, the standard crossing fee under paragraph (a) must be adjusted based on the percentage change in the annual average producer price index for the preceding year compared to the year

prior to the preceding year. Each adjustment is effective for applications submitted on or after June 1. The producer price index is final demand, finished consumer energy goods, as prepared by the Bureau of Labor Statistics of the United States Department of Labor.

Subd. 7. Certificate of insurance; coverage. (a) The certificate of insurance or coverage submitted by:

(1) a municipal utility or municipality must include commercial general liability insurance or an equivalent form with a limit of at least \$1,000,000 for each occurrence and an aggregate of at least \$2,000,000;

(2) a utility providing natural gas service must include commercial general liability insurance with a combined single limit of at least \$5,000,000 for each occurrence and an aggregate limit of at least \$10,000,000; or

(3) a utility not specified in clauses (1) and (2) must include commercial general liability insurance with a combined single limit of at least \$2,000,000 for each occurrence and an aggregate limit of at least \$6,000,000.

(b) The railroad may require protective liability insurance with a combined single limit of \$2,000,000 for each occurrence and \$6,000,000 aggregate. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual crossing. The coverage is required only during the period of construction, repair, or replacement of the facility.

(c) The insurance coverage under paragraphs (a) and (b) must not contain an exclusion or limitation related to railroads or to activities within 50 feet of railroad property.

(d) The certificate of insurance must be from an insurer of the utility's choosing.

Subd. 8. Objection to crossing; petition to Public Utilities Commission. (a) If a railroad objects to the proposed crossing or paralleling due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad must notify the utility of the objection and the specific basis for the objection. The railroad shall send the notice of objection to the utility by certified mail, with return receipt requested.

(b) If the parties are unable to resolve the objection, either party may petition the Public Utilities Commission for assistance via mediation or arbitration of the disputed crossing application. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

(c) If a petition is filed, the Public Utilities Commission must issue an order within 120 days of filing of the petition. The order may be appealed under chapter 14 and section 216B.27. The Public Utilities Commission must assess the costs associated with a petition equitably among the parties.

Subd. 9. Additional requirements; objection and petition to Public Utilities Commission. (a) If a railroad imposes additional requirements on a utility for crossing its lines, other than the proposed crossing being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the utility may object to one or more of the requirements. If it objects, the utility shall provide notice of the objection and the specific basis for the objection to the railroad by certified mail, with return receipt requested.

(b) If the parties are unable to resolve the objection, either party may petition the Public Utilities Commission for resolution or modification of the additional requirements. The petition must be filed within

60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

(c) If a petition is filed, the Public Utilities Commission shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the crossing. The Public Utilities Commission must issue an order within 120 days of filing of the petition. The order may be appealed under chapter 14 and section 216B.27. The Public Utilities Commission shall assess the costs associated with a petition equitably among the parties.

Subd. 10. **Operational relocation.** (a) A railroad may require a utility to relocate a facility when the railroad determines that relocation is essential to accommodate railroad operations, and the relocation is not arbitrary or unreasonable. Before agreeing to the relocation, a utility may require a railroad to provide a statement and supporting documentation identifying the operational necessity for requesting the relocation. A utility must perform the relocation within a reasonable period of time following the agreement.

(b) Relocation is at the expense of the small utility. A standard fee under subdivision 6 may not be imposed for relocation.

Subd. 11. **Existing agreements.** Nothing in this section prevents a railroad and a utility from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing. A utility may elect to undertake a crossing or paralleling under this section or section 237.04. Nothing in this section impairs the authority of a utility to secure crossing rights by easement through exercise of the power of eminent domain.

History: 2016 c 180 s 2

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 RATES AND DEPOSITS.

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 may include in its charges a reasonable deposit fee for facilities furnished.

History: (5289) 1915 c 152 s 4; 1957 c 523; 2004 c 261 art 2 s 1

237.065 RATE FOR SCHOOL OR PURCHASING COOPERATIVE.

Subdivision 1. **Basic service; flat rate.** Each telephone company 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 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; 2001 c 7 s 47

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 16E.17

and 16E.18 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; 2005 c 156 art 5 s 23

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 [Repealed, 2014 c 222 art 1 s 58]

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 department 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 Commerce. 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; refund.** 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 50 percent of the qualified charitable contributions which the commission deems prudent for the use of any community chest, corporation, trust, fund, association, foundation, or organization, and only as long as the use is exclusively for religious, charitable, public cemetery, scientific, literary, artistic, or educational purposes or for the prevention of cruelty to children or animals. No part of a charitable contribution may inure to the benefit of any private stockholder or individual.

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 (1) 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 (2) 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. 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 (1) approved by resolution of the governing body of the municipality; or (2) 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. 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 (1) 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 (2) 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. 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; 1Sp2001 c 4 art 6 s 54,55; 2003 c 2 art 1 s 23

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*

237.078 INFORMAL REVIEW AND RESOLUTION OF DISPUTES.

(a) A telecommunications service provider that is unable to resolve a dispute with another telecommunications service provider concerning a matter subject to commission jurisdiction may file a petition for an informal review of the dispute by the department.

(b) The petitioner must provide a copy of the petition to the other telecommunications service provider involved in the dispute. Upon receipt of a request for informal review, the department must notify the telecommunications service providers within three days of the procedures to be followed under the informal review process.

(c) The respondent telecommunications service provider must answer the allegations stated in the petition within five business days of receipt of the petition. The answer must advise the petitioner and the department of the respondent's proposed resolution to the dispute, or provide a timetable to complete an investigation and propose a resolution.

(d) The petitioner must file a response to the respondent's answer within five business days to inform the respondent and department whether the proposed resolution or proposed timetable is acceptable. If the respondent's resolution is deemed acceptable, the petitioner must notify the department and the respondent that the department may suspend or terminate the informal review process. If the resolution proposed by the respondent is not acceptable, the petitioner must state how the proposal should be modified in order to be acceptable. If the respondent's answer proposes a timetable to complete any investigation and offer a resolution that the petitioner deems unacceptable, the petitioner must identify any harm that may occur as a result of the proposed timetable.

(e) If a dispute remains after the answer and response are filed, the department must make reasonable efforts to gather any additional facts and investigate alternatives to resolve the dispute within 20 calendar days of the date of its receipt of the petitioner's response. The petitioning and respondent telecommunications service providers must provide any documents, data, or other information requested by the department and needed to evaluate the dispute within five business days of the department's request, or as expeditiously as possible if the information requested cannot be provided within the five business days. The department must work with the telecommunications service providers to explore alternatives and provide guidance regarding how the department believes the matter should be resolved. The department may dismiss a petition for informal review if the department finds the complaint to be without merit. A dismissal by the department under this paragraph does not prejudice the petitioning telecommunications service provider from filing a formal complaint with the Public Utilities Commission under section 237.081.

(f) The department may petition the commission to review a dispute or complaint in any case the department deems appropriate.

(g) While a dispute is subject to an informal review by the department under this section, a telecommunications service provider is prohibited from terminating telecommunications service, subject to the right to terminate service as otherwise permitted by law.

History: *2016 c 115 s 5*

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 company, 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 RATE AND SERVICE GOALS.

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 may apply the same goals in its regulation of and recommendations regarding telecommunication services.

History: *1997 c 223 s 4; 1Sp2001 c 4 art 6 s 56*

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 3,25; 2003 c 97 s 2*

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

237.101 ELECTRONIC BILLING.

A telephone company may provide a customer's periodic account statement to the customer in electronic format in lieu of paper format if the customer has authorized the electronic format in writing.

History: 2002 c 329 s 1

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, except that a local exchange carrier or a competitive local exchange carrier, as defined in Minnesota Rules, chapter 7811, is only required to file an annual report that includes the company's name, contact person, annual revenue, and status of its 911 update plan.

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 commissioner of management and budget 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; 2003 c 112 art 2 s 50; 1Sp2005 c 1 art 4 s 54; 2009 c 101 art 2 s 109

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, or between its toll line and the toll line 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 sections 325F.692 and 325F.693, with regard to any of the services provided by the company or carrier.

History: 1995 c 156 s 4,25; 1997 c 68 s 1; 1997 c 223 s 6; 2003 c 97 s 2; 2016 c 115 s 6

237.13 [Repealed, 1987 c 340 s 25]

237.131 INTRASTATE CALL ROUTING.

A telecommunications service provider shall not participate in intrastate call routing practices that result in failures of calls to be delivered to a local provider within Minnesota. A telecommunications service

provider and a registered wholesale transport provider are prohibited from knowingly contracting with a wholesale transport provider that is not registered with the commission under section 237.132.

History: 2016 c 115 s 7

237.132 REGISTRATION OF WHOLESALE TRANSPORT PROVIDERS.

(a) A wholesale transport provider shall, within 30 days of May 20, 2016, or of the wholesale transport provider's initial offering of wholesale transport service in Minnesota, whichever is later, file a registration with the commission that includes the company name, address, a contact name, and a telephone number available to other carriers that will be answered within normal business hours, to address any failures of calls to complete within Minnesota. The contacts provided by each entity should be knowledgeable regarding call routing and call completion. Wholesale transport providers are subject to regulation under this chapter only to the extent required under section 237.131.

(b) The department shall maintain a contact list of all registered wholesale transport providers on its Web site to enable expeditious resolution of any call routing and call completion problems involving wholesale transport providers.

(c) Wholesale transport providers shall update their registration information when changes occur, but no less frequently than annually.

History: 2016 c 115 s 8

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.

History: (5297) 1915 c 152 s 11; 2014 c 222 art 1 s 32

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

237.155 CREDIT FOR INCORRECT DIRECTORY ASSISTANCE.

A local exchange carrier that provides directory assistance to customers for a fee, either directly or by contracting with a third party, must provide for an immediate credit to a customer that informs the directory assistance provider that the provider has given the customer incorrect information for which the provider

charged the customer a fee. A local exchange carrier must notify its customers of the right to the immediate credit for incorrect directory assistance. The notice must be in a writing labeled "NOTICE OF RIGHT TO INCORRECT DIRECTORY ASSISTANCE CREDIT." The notice must be given to a new customer within 45 days of commencing service and at least annually thereafter and the notification print must be of sufficient size to be clearly legible.

History: 2004 c 261 art 1 s 2

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) 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) 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.

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 people with hearing loss; 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.

Subd. 10. [Repealed, 2014 c 222 art 1 s 58]

Subd. 11. [Repealed, 2014 c 222 art 1 s 58]

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 incumbent local exchange companies in all areas where the facilities are located.

Subd. 13. [Repealed, 2014 c 222 art 1 s 58]

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; 2013 c 62 s 15; 2014 c 222 art 1 s 33-35

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).

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, town, or the Metropolitan Council.

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.** (a) "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 providing wireless service, or transporting telecommunications or other voice or data information.

(b) A cable communication system defined and regulated under chapter 238, and telecommunications activities related to providing natural gas or electric energy services, 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, except to the extent these entities are offering wireless services.

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. (a) "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 or small wireless facility 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 or small wireless facility permits.

(b) Management costs do not include:

(1) payment by a telecommunications right-of-way user for the use of the public right-of-way;

(2) unreasonable fees of a third-party contractor used by a local government unit as part of managing its public rights-of-way, including but not limited to any third-party contractor fee tied to or based upon customer counts, access lines, revenue generated by the telecommunications right-of-way user, or revenue generated for a local government unit; or

(3) 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.

Subd. 10. Collocate. "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

Subd. 11. Small wireless facility. "Small wireless facility" means:

(1) a wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

(ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or

(2) a micro wireless facility.

Subd. 12. Utility pole. "Utility pole" means a pole that is used in whole or in part to facilitate telecommunications or electric service.

Subd. 13. **Wireless facility.** (a) "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

(1) equipment associated with wireless service;

(2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and

(3) a small wireless facility.

(b) "Wireless facility" does not include:

(1) wireless support structures;

(2) wireline backhaul facilities; or

(3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

Subd. 14. **Micro wireless facility.** "Micro wireless facility" means a small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

Subd. 15. **Wireless service.** "Wireless service" means any service using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by means of a mobile device, that is provided using wireless facilities. Wireless service does not include services regulated under Title VI of the Communications Act of 1934, as amended, including a cable service under United States Code, title 47, section 522, clause (6).

Subd. 16. **Wireless support structure.** "Wireless support structure" means a new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

Subd. 17. **Wireline backhaul facility.** "Wireline backhaul facility" means a facility used to transport communications data by wire from a wireless facility to a communications network.

History: 1997 c 123 s 3; 2017 c 94 art 9 s 1-11

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 small wireless facilities, 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. Except as provided in subdivisions 3a, 3b, and 3c, the authority defined in this section may be exercised at the option of the local government unit and 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.

(d) Notwithstanding sections 394.34 and 462.355, or any other law, a local government unit must not establish a moratorium with respect to:

(1) filing, receiving, or processing applications for right-of-way or small wireless facility permits; or

(2) issuing or approving right-of-way or small wireless facility permits.

(e) A telecommunications right-of-way user may place a new wireless support structure or collocate small wireless facilities on wireless support structures located within a public right-of-way, subject to the approval procedures under this section and, for collocation on wireless support structures owned by a local government unit, the reasonable terms, conditions, and rates set forth under this section. A local government unit may prohibit, regulate, or charge a fee to install wireless support structures or to collocate small wireless facilities only as provided in this section.

(f) The placement of small wireless facilities and wireless support structures to accommodate small wireless facilities are a permitted use in a public right-of-way, except that a local government unit may require a person to obtain a special or conditional land use permit to install a new wireless support structure for the siting of a small wireless facility in a right-of-way in a district or area zoned for single-family

residential use or within a historic district established by federal or state law or city ordinance as of the date of application for a small wireless facility permit. This paragraph does not apply to areas outside a public right-of-way that are zoned and used exclusively for single-family residential use.

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

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

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

Subd. 3a. Small wireless facility permits; general. (a) A local government unit:

(1) may require a telecommunications right-of-way user to obtain a permit or permits under this section to place a new wireless support structure or collocate a small wireless facility in a public right-of-way managed by the local government unit;

(2) must not require an applicant for a small wireless facility permit to provide any information that:

(i) has previously been provided to the local government unit by the applicant in an application for a small wireless permit, which specific reference shall be provided to the local government unit by the applicant; and

(ii) is not reasonably necessary to review a permit application for compliance with generally applicable and reasonable health, safety, and welfare regulations, and to demonstrate compliance with applicable Federal Communications Commission regulations governing radio frequency exposure, or other information required by this section;

(3) must ensure that any application for a small wireless facility permit is processed on a nondiscriminatory basis; and

(4) must specify that the term of a small wireless facility permit is equal to the length of time that the small wireless facility is in use, unless the permit is revoked under this section.

(b) An applicant may file a consolidated permit application to collocate up to 15 small wireless facilities, or a greater number if agreed to by a local government unit, provided that all the small wireless facilities in the application:

(1) are located within a two-mile radius;

- (2) consist of substantially similar equipment; and
- (3) are to be placed on similar types of wireless support structures.

In rendering a decision on a consolidated permit application, a local government unit may approve a permit for some small wireless facilities and deny a permit for others, but may not use denial of one or more permits as a basis to deny all the small wireless facilities in the application.

(c) If a local government unit receives applications within a single seven-day period from one or more applicants seeking approval of permits for more than 30 small wireless facilities, the local government unit may extend the 90-day deadline imposed in subdivision 3c by an additional 30 days. If a local government unit elects to invoke this extension, it must inform in writing any applicant to whom the extension will be applied.

(d) A local government unit is prohibited from requiring a person to pay a small wireless facility permit fee, obtain a small wireless facility permit, or enter into a small wireless facility collocation agreement solely in order to conduct any of the following activities:

- (1) routine maintenance of a small wireless facility;
- (2) replacement of a small wireless facility with a new facility that is substantially similar or smaller in size, weight, height, and wind or structural loading than the small wireless facility being replaced; or
- (3) installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with national safety codes.

A local government unit may require advance notification of these activities if the work will obstruct a public right-of-way.

(e) Nothing in this subdivision affects the need for an entity seeking to place a small wireless facility on a wireless support structure that is not owned by a local government unit to obtain from the owner of the wireless support structure any necessary authority to place the small wireless facility, nor shall any provision of this chapter be deemed to affect the rates, terms, and conditions for access to or placement of a small wireless facility or a wireless support structure not owned by a local government unit. This subdivision does not affect any existing agreement between a local government unit and an entity concerning the placement of small wireless facilities on local government unit-owned wireless support structures.

(f) No later than six months after May 31, 2017, or three months after receiving a small wireless facility permit application from a wireless service provider, a local government unit that has elected to set forth terms and conditions of collocation in a standard small wireless facility collocation agreement shall develop and make available an agreement that complies with the requirements of this section and section 237.162. A standard small wireless facility collocation agreement shall be substantially complete. Notwithstanding any law to the contrary, the parties to a small wireless facility collocation agreement may incorporate additional terms and conditions mutually agreed upon into a small wireless facility collocation agreement. A small wireless facility collocation agreement between a local government unit and a wireless service provider is considered public data not on individuals and is accessible to the public under section 13.03.

(g) An approval of a small wireless facility permit under this section authorizes the installation, placement, maintenance, or operation of a small wireless facility to provide wireless service and shall not be construed to confer authorization to (1) provide any service other than a wireless service, or (2) install, place, maintain, or operate a wireline backhaul facility in the right-of-way.

(h) The terms and conditions of collocation under this subdivision:

(1) may be set forth in a small wireless facility collocation agreement, if a local government unit elects to utilize such an agreement;

(2) must be nondiscriminatory, competitively neutral, and commercially reasonable; and

(3) must comply with this section and section 237.162.

Subd. 3b. Small wireless facility permits; placement. (a) A local government unit may not require the placement of small wireless facilities on any specific wireless support structure other than the wireless support structure proposed in the permit application.

(b) A local government unit must not limit the placement of small wireless facilities, either by minimum separation distances between small wireless facilities or maximum height limitations, except that each wireless support structure installed in the right-of-way after May 31, 2017, shall not exceed 50 feet above ground level, unless the local government unit agrees to a greater height, subject to local zoning regulations, and may be subject to separation requirements in relation to other wireless support structures.

(c) Notwithstanding paragraph (b), a wireless support structure that replaces an existing wireless support structure that is higher than 50 feet above ground level may be placed at the height of the existing wireless support structure, unless the local government unit agrees to a greater height, subject to local zoning regulations.

(d) Wireless facilities constructed in the right-of-way after May 31, 2017, may not extend more than ten feet above an existing wireless support structure in place as of May 31, 2017.

Subd. 3c. Small wireless facility permits; approval. (a) Except as provided in subdivision 4, a local government unit shall issue a small wireless facility permit to a telecommunications right-of-way user seeking to install a new or replacement wireless support structure for a small wireless facility, or to collocate a small wireless facility on a wireless support structure in a public right-of-way. In processing and approving a small wireless facility permit, a local government unit may condition its approval on compliance with:

(1) generally applicable and reasonable health, safety, and welfare regulations consistent with the local government unit's public right-of-way management;

(2) reasonable accommodations for decorative wireless support structures or signs; and

(3) any reasonable restocking, replacement, or relocation requirements when a new wireless support structure is placed in a public right-of-way.

(b) A local government unit has 90 days after the date a small wireless facility permit application is filed to issue or deny the permit, or the permit is automatically issued. To toll the 90-day clock, the local government unit must provide a written notice of incompleteness to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Information delineated in the notice is limited to documents or information publicly required as of the date of application and reasonably related to a local government unit's determination whether the proposed equipment falls within the definition of a small wireless facility and whether the proposed deployment satisfies all health, safety, and welfare regulations applicable to the small wireless facility permit request. Upon an applicant's submittal of additional documents or information in response to a notice of incompleteness, the local government unit has ten days to notify the applicant in writing of any information requested in the initial notice of incompleteness that is still missing. Second or subsequent notices of incompleteness may not specify

documents or information that were not delineated in the original notice of incompleteness. Requests for information not requested in the initial notice of incompleteness do not toll the 90-day clock. Parties can mutually agree in writing to toll the 90-day clock at any time. Section 15.99 does not apply to this paragraph or paragraph (c).

For the purposes of this subdivision, "toll the 90-day clock" means to halt the progression of days that count towards the 90-day deadline.

(c) Except as provided in subdivision 3a, paragraph (c), a small wireless facility permit and any associated encroachment or building permit required by a local government unit, are deemed approved if the local government unit fails to approve or deny the application within 90 days after the permit application has been filed, unless the applicant and the local government unit have mutually agreed in writing to extend the 90-day deadline.

(d) Nothing in this subdivision precludes a local government unit from applying generally applicable and reasonable health, safety, and welfare regulations when evaluating and deciding to approve or deny a small wireless facility permit.

Subd. 4. Permit denial or revocation. (a) A local government unit may deny any application for a right-of-way or small wireless facility 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 or small wireless facility 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 or small wireless facility permit;

(2) an evasion or attempt to evade any material provision of the right-of-way or small wireless facility 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 or small wireless facility 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 or small wireless facility 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 or small wireless facility permit, or unreasonably revoke a permit.

(f) Any denial or revocation of a right-of-way or small wireless facility permit must be made in writing and must document the basis for the denial. The local government unit must notify the telecommunications right-of-way user in writing within three business days of the decision to deny or revoke a permit. If a permit application is denied, the telecommunications right-of-way user may cure the deficiencies identified by the local government unit and resubmit its application. If the telecommunications right-of-way user resubmits the application within 30 days of receiving written notice of the denial, it may not be charged an additional filing or processing fee. The local government unit must approve or deny the revised application within 30 days after the revised application is submitted.

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 or small wireless facility 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 costs from a telecommunications right-of-way user or an owner of a cable communications system awarded a franchise under chapter 238 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 aboveground 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.

(d) A wireless service provider may collocate small wireless facilities on wireless support structures owned or controlled by a local government unit and located within the public roads or rights-of-way without being required to apply for or enter into any individual license, franchise, or other agreement with the local

government unit or any other entity, other than a standard small wireless facility collocation agreement under subdivision 3a, paragraph (f), if the local unit of government elects to utilize such an agreement.

(e) Any initial engineering survey and preparatory construction work associated with collocation must be paid by the cost causer in the form of a onetime, nonrecurring, commercially reasonable, nondiscriminatory, and competitively neutral charge to recover the costs associated with a proposed attachment.

(f) Total application fees for a small wireless facility permit must comply with this subdivision with respect to costs related to the permit.

(g) A local government unit may elect to charge each small wireless facility attached to a wireless support structure owned by the local government unit a fee, in addition to other fees or charges allowed under this subdivision, consisting of:

(1) up to \$150 per year for rent to occupy space on a wireless support structure;

(2) up to \$25 per year for maintenance associated with the space occupied on a wireless support structure; and

(3) a monthly fee for electricity used to operate a small wireless facility, if not purchased directly from a utility, at the rate of:

(i) \$73 per radio node less than or equal to 100 max watts;

(ii) \$182 per radio node over 100 max watts; or

(iii) the actual costs of electricity, if the actual costs exceed the amount in item (i) or (ii).

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 or to obtain a small wireless facility permit.

(e) Except as provided in this chapter or required by federal law, a local government unit shall not adopt or enforce any regulation on the placement or operation of communications facilities in the right-of-way where the entity is already authorized to operate in the right-of-way, and shall not regulate or impose or collect fees on communications services except to the extent specifically provided for in the existing authorization, and unless expressly required by state or federal statute.

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).

Subd. 9. Authorized contractors. (a) Nothing in this section precludes a telecommunications right-of-way user from authorizing another entity or individual to act on its behalf to install, construct, maintain, or repair a facility or facilities owned or controlled by the telecommunications right-of-way user.

(b) A local government unit is prohibited from imposing fees or requirements on an authorized entity or individual for actions on behalf of a telecommunications right-of-way user that are in addition to or different from the fees and requirements it is authorized to impose on the telecommunications right-of-way user under this section.

Subd. 10. Exemptions. (a) Notwithstanding any other provision in this chapter, this section does not apply to a wireless support structure owned, operated, maintained, or served by a municipal electric utility.

(b) Subdivisions 3a, 3b, 3c, and subdivision 6, paragraphs (d) through (g), and subdivision 7, paragraph (e), do not apply to the collocation or regulation of small wireless facilities issued a permit by a local government unit before May 31, 2017, under an ordinance enacted before May 18, 2017, that regulates the collocation of small wireless facilities.

History: 1997 c 123 s 4; 1998 c 345 s 4; 2017 c 94 art 9 s 12-20

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 necessary to enable schools and libraries to receive federally supported discounts.

History: 1997 c 223 s 8; 2014 c 222 art 1 s 36

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 sections 237.162 and 237.163.

History: (5300) 1915 c 152 s 14; 1925 c 184 s 2; 1973 c 123 art 5 s 7; 1987 c 340 s 23; 2014 c 222 art 1 s 37

237.18 [Repealed, 2014 c 222 art 1 s 58]

MUNICIPAL TELECOMMUNICATIONS 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 ratemaking 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.

History: (5304) 1915 c 152 s 18; 1953 c 25 s 1,2; 1971 c 25 s 67; 1980 c 614 s 123; 1Sp2001 c 4 art 6 s 57

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. **Filing fee for new authority.** An application for a new authority must be accompanied by a payment not to exceed \$2,000 as determined by the Public Utilities Commission. This fee will be reviewed annually and adjusted accordingly.

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 transmitted via mail, personal delivery, or electronic service 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 three-eighths 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 transmittal 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 is 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 transmittal of a notice advising the telephone company or other party of the amount assessed against it, 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 must be assessed by the commissioner or the department against the parties to the proceeding. The assessment must 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 transmitted to the parties. Money received must 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. 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; 1Sp2001 c 4 art 6 s 77; 1Sp2005 c 1 art 4 s 55,56; 2007 c 10 s 13

237.30 TELEPHONE INVESTIGATION FUND; APPROPRIATION.

A Minnesota Telephone Investigation Fund shall exist for the use of the Department of Commerce 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 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. All subsequent credits to said revolving fund shall be paid upon the warrant of the commissioner of management and budget 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; 1Sp2001 c 4 art 6 s 58; 2009 c 101 art 2 s 109; 2014 c 222 art 1 s 38

237.31 [Repealed, 1951 c 113 s 2]

237.32 [Repealed, 1975 c 25 s 2]

237.33 [Repealed, 2014 c 222 art 1 s 58]

237.34 [Repealed, 2014 c 222 art 1 s 58]

237.35 [Repealed, 2014 c 222 art 1 s 58]

237.36 [Repealed, 2014 c 222 art 1 s 58]

237.37 [Repealed, 2014 c 222 art 1 s 58]

237.38 [Repealed, 2014 c 222 art 1 s 58]

237.39 [Repealed, 2014 c 222 art 1 s 58]

237.40 [Repealed, 2014 c 222 art 1 s 58]

237.41 [Repealed, 1987 c 340 s 25]

237.411 REDUCED RATE REGULATION FOR CERTAIN BUSINESS CUSTOMERS.

Subdivision 1. **Business customer; defined.** For the purpose of this section, "business customer" means a customer subscribing to four or more business lines.

Subd. 2. **Competitive area; defined.** A "competitive area" is an exchange located in Minnesota.

Subd. 3. **Reduced rate regulation.** The rates, prices, tariffs, or charges to a business customer in a competitive area by a telephone company or a telecommunications carrier offering local service are only subject to sections 237.07, subdivision 1; 237.66; and 237.663, and are not subject to any rules imposing

rate or price restrictions beyond those sections or to other order or investigation of local rates under section 237.081. A telephone company or telecommunications carrier subject to this subdivision is not required to file specific price information. However, upon request of the department, the commission, or the Office of Attorney General, a telephone company or telecommunications carrier must demonstrate that its pricing complies with subdivision 4.

Subd. 4. Protection from anticompetitive pricing. This subdivision applies to prices governed by subdivision 3. A telephone company must not price its local telephone services, whether offered singly or as part of a bundle of services, below the total service long-run incremental cost of providing the service or services.

Subd. 5. Enforcement. (a) The powers and duties granted to the commission by section 237.081 apply to violations or suspected violations of this section. A person aggrieved by a violation of this section may file a complaint as provided in section 237.081, which shall be treated as any other complaint filed under that section. The commissioner of commerce may investigate violations or alleged violations of this section.

(b) Section 237.461 applies to violations of this section.

History: 2004 c 261 art 6 s 1,5; 2005 c 10 art 1 s 80; 2008 c 277 art 1 s 30; 2009 c 57 s 1,4; 2010 c 247 s 1

237.414 EXPANDED CALLING AREAS; TRANSPORT FACILITIES; TERMINATIONS.

Subdivision 1. **Expanded calling areas.** (a) In addition to any existing authority applicable to telephone companies, a telephone company may expand the area to which it can provide calling to its customers upon filing with the commission any agreements between the telephone company and other telephone companies and telecommunications carriers entered into under subdivision 3. Calling to these expanded areas must be optional to customers and must be in addition to the customers' existing local service and any extended area service. Subject to sections 237.06 and 237.09, the telephone company may determine the quantity of expanded calling to provide, the prices for that calling, and whether to offer calling alone or in combination with one or more other telephone or unregulated services.

(b) Prices for expanded calling service or for bundles of services that include expanded calling must exceed the variable cost of the expanded calling service or bundles of services, determined on an aggregate basis. A telephone company is not required to file cost information before implementing its prices and is not required to file cost information except on request of the department, Office of the Attorney General, or commission. Customers must be notified of local service options and prices, including options that do not include expanded calling, as required under section 237.66. The telephone company shall clearly identify the distinction between the expanded calling area and the basic local calling area to customers. The telephone company is not required to offer unlimited flat-rate calling to these expanded calling areas. The telephone company shall file tariffs setting forth the expanded calling area along with the applicable prices and quantities of calling.

(c) A rate increase or a substantial change in terms and conditions of the expanded calling service may be effective 30 days after filing with the commission and 30 days after providing written notice to affected customers. Rate decreases may be effective immediately upon filing. Minor changes to terms and conditions may be effective immediately upon filing and upon notice to customers. This section does not apply to extended area service or to calling areas previously or hereafter established by order of the commission. This section does not limit the existing rights and obligations of telephone companies and telecommunications carriers to provide local calling, including the obligation to offer unlimited flat rate calling in the basic local calling area or expanded calling area.

Subd. 2. **Obtaining transport, switching facilities.** A telephone company may construct, purchase, lease, or rent transport and switching facilities between its existing local area and the expanded calling area that are needed to provide the expanded calling. If the telephone company is unable to reach agreement with other telephone companies or telecommunications carriers, the company or carrier may petition the commission under section 237.12 to resolve issues regarding prices, terms, and conditions for use of any transport facilities that are subject to the jurisdiction of the commission.

Subd. 3. **Termination of expanded calling traffic.** (a) A telephone company providing an expanded calling area under this section may enter into an agreement to terminate calls with telephone companies and telecommunications carriers providing service within the expanded calling area. Compensation to the telephone company or telecommunications carrier to terminate expanded calling into such areas must be the intrastate access charges of the telephone company or telecommunications carrier terminating the call or other rates agreed upon by the companies.

(b) Two telephone companies that provide expanded calling between their respective areas may also enter into "bill and keep" arrangements for exchange of the expanded calling area traffic.

(c) The telephone company shall file with the commission any agreements for termination of calling by telephone companies and telecommunications carriers providing service within the expanded calling area. The prices, terms, and conditions contained in the agreements required to be filed shall be publicly disclosed in their entirety, and other terminating carriers may elect to adopt those prices, terms, and conditions in whole or in part for technically similar services provided in the exchanges included in the agreement.

Subd. 4. **Amending or terminating expanded calling service.** Except for calling areas that result from a prior or subsequent order of the commission, a telephone company may amend or terminate the expanded calling area service upon 30 days' written notice to customers, the commission, and other telephone companies and telecommunications carriers providing local service in the expanded area. The notice to customers of an amendment to the expanded calling area or termination of an expanded calling area must be sent separately from other mailings and clearly explain how the expanded calling area is being changed. The notice to customers of an amendment must also clearly identify that calls to areas outside of the expanded calling area will be long-distance calls billed at the applicable rate of the customer's long-distance carrier. The notice to customers of a termination must clearly identify that calls to the terminated expanded calling area will become long-distance calls billed at the applicable rate of the customer's long-distance carrier.

History: 2004 c 261 art 4 s 1

237.42 [Repealed, 1987 c 340 s 25]

237.43 [Repealed, 1987 c 340 s 25]

237.435 ANNUAL UNIVERSAL SERVICE FUNDING CERTIFICATION.

In determining whether to provide the annual certification of any eligible telecommunications carrier for continued receipt of federal universal service funding, the commission shall apply the same standards and criteria to all eligible telecommunications carriers.

History: 2004 c 261 art 4 s 2

237.44 [Repealed, 2014 c 222 art 1 s 58]

237.45 [Repealed, 2014 c 222 art 1 s 58]

VIOLATIONS, PENALTIES, ENFORCEMENT

237.46 GROSS MISDEMEANOR VIOLATION.

Any telephone company or telecommunications carrier and, if it be a corporation, the officers thereof, violating any provisions of this chapter shall be guilty of a gross misdemeanor.

History: (5310) 1915 c 152 s 24; 1919 c 183 s 6; 2014 c 222 art 1 s 39

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. MS 2004 [Expired, 1999 c 224 s 7; 2004 c 261 art 6 s 3; 1Sp2005 c 1 art 4 s 117]

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 6,25; 1999 c 224 s 3-5; 2003 c 97 s 2

237.462 MS 2004 [Expired, 1999 c 224 s 7; 2004 c 261 art 6 s 3; 1Sp2005 c 1 art 4 s 117]

237.47 [Repealed, 2014 c 222 art 1 s 58]

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 commissioner of public safety in the manner prescribed in section 403.11. The commissioner of public safety shall divide the amounts received and deposit them in the appropriate accounts. The commissioner of public safety may recover from the agencies receiving the surcharges the personnel and administrative costs to collect and distribute the surcharge. A company or the billing agent for a company may itemize the surcharges on a billing statement sent to a subscriber.

History: 1988 c 621 s 1; 1993 c 272 s 1; 1Sp2003 c 1 art 2 s 66; 2006 c 260 art 6 s 1; 2016 c 115 s 9

COMBINED PER NUMBER FEE

237.491 COMBINED PER NUMBER FEE.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "911 emergency and public safety communications program" means the program governed by chapter 403.

(c) "Minnesota telephone number" means a ten-digit telephone number being used to connect to the public switched telephone network and starting with area code 218, 320, 507, 612, 651, 763, or 952, or any subsequent area code assigned to this state.

(d) "Service provider" means a provider doing business in this state who provides real-time, two-way voice service with a Minnesota telephone number.

(e) "Telecommunications access Minnesota program" means the program governed by sections 237.50 to 237.55.

(f) "Telephone assistance program" means the program governed by sections 237.69 to 237.71.

Subd. 2. **Per number fee.** (a) The fee shall be set at a level calculated to generate only the amount of revenue necessary to fund:

(1) the telephone assistance program and the telecommunications access Minnesota program at the levels established by the commission under sections 237.52, subdivision 2, and 237.70; and

(2) the 911 emergency and public safety communications program at the levels appropriated by law to the commissioner of public safety and the commissioner of management and budget for purposes of sections 403.11, 403.113, 403.27, 403.30, and 403.31 for each fiscal year.

(b) The recommendations must include any changes to Minnesota Statutes necessary to establish the procedures whereby each service provider, to the extent allowed under federal law, would collect and remit the fee proceeds to the commissioner of revenue. The commissioner of revenue would allocate the fee proceeds to the three funding areas in paragraph (a) and credit the allocations to the appropriate accounts.

History: 2005 c 136 art 10 s 1; 1Sp2005 c 1 art 4 s 57; 2009 c 101 art 2 s 109; 2014 c 222 art 1 s 40

PERSONS WITH COMMUNICATION DISABILITIES

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 disability.** "Communication disability" means certified as having a hearing loss, speech disability, or physical disability that makes it difficult or impossible to use telecommunications services and equipment.

Subd. 4. [Repealed by amendment, 2012 c 216 art 10 s 1]

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

Subd. 4b. **Deafblind.** "Deafblind" means any combination of vision and hearing loss which interferes with acquiring information from the environment to the extent that compensatory strategies and skills are necessary to access that or other information.

Subd. 5. [Repealed by amendment, 2012 c 216 art 10 s 1]

Subd. 6. **Fund.** "Fund" means the telecommunications access Minnesota fund established in section 237.52.

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

Subd. 7. [Repealed by amendment, 2012 c 216 art 10 s 1]

Subd. 8. [Repealed by amendment, 2012 c 216 art 10 s 1]

Subd. 9. [Repealed by amendment, 2012 c 216 art 10 s 1]

Subd. 10. [Repealed by amendment, 2012 c 216 art 10 s 1]

Subd. 10a. **Telecommunications device.** "Telecommunications device" means a device that (1) allows a person with a communication disability to have access to telecommunications services as defined in subdivision 13, and (2) is specifically selected by the Department of Human Services for its capacity to allow persons with communication disabilities to use telecommunications services in a manner that is functionally equivalent to the ability of an individual who does not have a communication disability. A telecommunications device may include a ring signaler, an amplified telephone, a hands-free telephone, a text telephone, a captioned telephone, a wireless device, a device that produces Braille output for use with a telephone, and any other device the Department of Human Services deems appropriate.

Subd. 11. **Telecommunications Relay Services.** "Telecommunications Relay Services" or "TRS" means the telecommunications transmission services required under Federal Communications Commission regulations at Code of Federal Regulations, title 47, sections 64.604 to 64.606. TRS allows an individual who has a communication disability to use telecommunications services in a manner that is functionally equivalent to the ability of an individual who does not have a communication disability.

Subd. 12. **Telecommunications.** "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Subd. 13. **Telecommunications services.** "Telecommunications services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.

History: 1987 c 308 s 1,8; 1988 c 621 s 2; 1993 c 272 s 2-6,17; 1995 c 190 s 1; 2004 c 228 art 1 s 74; 2012 c 216 art 10 s 1

237.51 TELECOMMUNICATIONS ACCESS MINNESOTA PROGRAM ADMINISTRATION.

Subdivision 1. **Creation.** The commissioner of commerce shall:

(1) administer through interagency agreement with the commissioner of human services a program to distribute telecommunications devices to eligible persons who have communication disabilities; and

(2) contract with one or more qualified vendors that serve persons who have communication disabilities to provide telecommunications relay services.

For purposes of sections 237.51 to 237.56, the Department of Commerce 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. **Commissioner of commerce duties.** In addition to any duties specified elsewhere in sections 237.51 to 237.56, the commissioner of commerce 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. **Commissioner of human services duties.** (a) In addition to any duties specified elsewhere in sections 237.51 to 237.56, the commissioner 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 telecommunications device per household;

(2) establish a method to verify eligibility requirements;

(3) establish specifications for telecommunications devices to be provided under section 237.53, subdivision 3;

(4) inform the public and specifically persons who have communication disabilities of the program; and

(5) provide devices based on the assessed need of eligible applicants.

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

(1) at least one member who is deaf;

(2) at least one member who has a speech disability;

(3) at least one member who has a physical disability that makes it difficult or impossible for the person to access telecommunications services; 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; 1Sp2001 c 4 art 6 s 60-62; 2002 c 329 s 2; 2012 c 216 art 10 s 2

237.52 TELECOMMUNICATIONS ACCESS MINNESOTA FUND.

Subdivision 1. **Fund established.** A telecommunications access Minnesota 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.** (a) The commissioner of commerce, the commissioner of employment and economic development, and the commissioner of human services shall annually recommend to the Public Utilities Commission an adequate and appropriate surcharge and budget to implement sections 237.50 to 237.56, 248.062, and 256C.30, respectively. The maximum annual budget for section 248.062 must not exceed \$100,000 and for section 256C.30 must not exceed \$300,000. The Public Utilities Commission shall review the budgets 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 departments 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.

(b) If the fund balance falls below a level capable of fully supporting all programs eligible under subdivision 5 and sections 248.062 and 256C.30, expenditures under sections 248.062 and 256C.30 shall be reduced on a pro rata basis and expenditures under sections 237.53 and 237.54 shall be fully funded. Expenditures under sections 248.062 and 256C.30 shall resume at fully funded levels when the commissioner of commerce determines there is a sufficient fund balance to fully fund those expenditures.

Subd. 3. **Collection.** Every provider of services capable of originating a TRS call, including cellular communications and other nonwire access services, in this state shall, except as provided in subdivision 3a, collect the charges established by the commission under subdivision 2 and transfer amounts collected to the commissioner of public safety in the same manner as provided in section 403.11, subdivision 1, paragraph (d). The commissioner of public safety must deposit the receipts in the fund established in subdivision 1.

Subd. 3a. **Fee for prepaid wireless telecommunications service.** The fee established in subdivision 2 does not apply to prepaid wireless telecommunications services as defined in section 403.02, subdivision 17b, which are instead subject to the prepaid wireless telecommunications access Minnesota fee established in section 403.161, subdivision 1, paragraph (b). Collection, remittance, and deposit of prepaid wireless telecommunications access Minnesota fees are governed by sections 403.161 and 403.162.

Subd. 4. **Appropriation.** Money in the fund is appropriated to the commissioner of commerce to implement sections 237.51 to 237.56, to the commissioner of employment and economic development to implement section 248.062, and to the commissioner of human services to implement section 256C.30.

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

(1) expenses of the Department of Commerce, 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; and

(3) contracting for the provision of TRS required by section 237.54.

(b) All costs directly associated with the establishment of the program, the purchase and distribution of telecommunications devices, and the provision of TRS are either reimbursable or directly payable from the fund after authorization by the commissioner of commerce. The commissioner of commerce shall contract with one or more TRS providers to indemnify the telecommunications service providers 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 commissioner may advance money to the TRS providers if the providers establish to the commissioner's satisfaction that the advance payment is necessary for the provision 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; 1Sp2001 c 4 art 6 s 63-65; 2002 c 329 s 3; 1Sp2003 c 1 art 2 s 67; 2005 c 81 s 1,2; 2012 c 216 art 10 s 3; 2013 c 143 art 13 s 3,4

237.53 TELECOMMUNICATIONS DEVICE.

Subdivision 1. **Application.** A person applying for a telecommunications 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 telecommunications device under this section, a person must:

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

(4) be a resident in a household that has a median income at or below the applicable median household income in the state, except a person who is deafblind applying for a Braille device 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) be a resident in a household that has telecommunications 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 telecommunications 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 telecommunications devices so that each eligible household receives appropriate devices as determined under section 237.51, subdivision 5a. The commissioner of human services shall distribute the devices to eligible households free of charge.

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

Subd. 5. [Repealed by amendment, 2012 c 216 art 10 s 4]

Subd. 6. **Ownership.** Telecommunications devices purchased pursuant to subdivision 3 are the property of the state of Minnesota. Policies and procedures for the return of devices from individuals who withdraw from the program or whose eligibility status changes shall be determined by the commissioner of human services.

Subd. 7. **Standards.** The telecommunications devices distributed under this section must comply with the electronic industries alliance standards and be 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 text telephone, and a retail value of \$7,000 for a Braille device, or an amount authorized by the Department of Human Services for all other telecommunications devices and auxiliary equipment it deems cost-effective and appropriate to distribute according to sections 237.51 to 237.56.

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; 2012 c 216 art 10 s 4

237.54 TELECOMMUNICATIONS RELAY SERVICES (TRS).

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

Subd. 2. **Operation.** (a) The commissioner of commerce shall contract with one or more qualified vendors for the provision of Telecommunications Relay Services (TRS).

(b) The TRS providers shall operate the relay service within the state of Minnesota. The TRS providers shall comply with all current and subsequent Federal Communications Commission regulations at Code of Federal Regulations, title 47, sections 64.601 to 64.606, and shall inform persons who have communication disabilities and the public of the availability and use of TRS.

History: 1987 c 308 s 5,8; 1993 c 272 s 14,17; 1995 c 190 s 12; 1Sp2001 c 4 art 6 s 66; 2002 c 329 s 4; 2012 c 216 art 10 s 5

237.55 ANNUAL REPORT ON TELECOMMUNICATIONS ACCESS.

The commissioner of commerce must prepare a report for presentation to the Public Utilities Commission by January 31 of each year. Each report must review the accessibility of telecommunications services to persons who have communication disabilities, describe services provided, account for annual revenues and expenditures for each aspect of the fund to date, and include predicted program future operation.

History: 1987 c 308 s 6,8; 1993 c 272 s 15,17; 1995 c 190 s 13; 1Sp2001 c 4 art 6 s 67; 2012 c 216 art 10 s 6

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 persons within the service area of any one telecommunications service provider, provided that if only one person within the service area of a company is receiving service under sections 237.50 to 237.55, the Public Utilities Commission may proceed upon a complaint from that person.

History: 1987 c 308 s 7,8; 1993 c 272 s 17; 2012 c 216 art 10 s 7

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, 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 Minnesota Rules, parts 7811.2210 and 7812.2210.

(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.** (a) 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.

(b) 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; 1Sp2001 c 4 art 6 s 68; 2017 c 40 art 1 s 46

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.

Subdivision 1. **Promotions.** A telephone company or telecommunications carrier 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. 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.

Subd. 2. **Bundled service.** (a) A telephone company or telecommunications carrier may offer telecommunications services subject to the regulatory jurisdiction of the commission as part of a package of services that may include goods and services other than those subject to the commission's regulatory jurisdiction. Subject to the requirements of this chapter and the associated rules and orders of the commission applicable to those regulated services, a telephone company may establish the prices, terms, and conditions of a package of services, except that:

(1) each telecommunications service subject to the regulatory jurisdiction of the commission must be available to customers on a stand-alone basis; and

(2) at the time the packaged offering is introduced or at the time the packaged 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.

(b) Nothing in this subdivision is intended to extend or diminish the regulatory authority of the commission or the department.

Subd. 3. **Promotions available for resale.** Any promotional offering lasting more than 90 days and filed with the commission under subdivision 1 must be available to qualifying carriers for resale. A qualifying carrier must hold a certificate of authority from the commission and must have an approved interconnection agreement with the company offering the promotion, the terms of which include language governing the resale of services.

History: 1992 c 493 s 8; 2003 c 97 s 1; 2009 c 57 s 2

237.63 MS 2002 [Expired, 1999 c 224 s 7; 2004 c 261 art 6 s 3]

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 7, 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 MS 2002 [Expired, 1999 c 224 s 7; 2004 c 261 art 6 s 3]

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 checkoff 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 checkoff 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 checkoff" 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 onetime 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 Commerce 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; 1Sp2001 c 4 art 6 s 77

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

237.665 PROHIBITION AGAINST BILLING FOR UNAUTHORIZED CHARGES.

(a) A telephone company or telecommunications carrier providing local service shall not include on a customer's bill a charge for goods or services on behalf of a third-party service provider unless the third-party service provider has obtained the customer's prior express authorization to include such charges on the customer's bill.

(b) If a customer of a telephone company or telecommunications carrier notifies the telephone company or telecommunications carrier that an unauthorized charge from a third-party service provider has been included on the customer's bill, then the telephone company or telecommunications carrier shall remove the unauthorized charge. The telephone company or telecommunications carrier shall credit to the customer any amounts paid for the unauthorized charges that were billed by the telephone company or telecommunications carrier during the six months prior to the customer's complaint, unless the third-party service provider can

produce within 14 calendar days of the complaint evidence to the customer and the telephone company or the telecommunications carrier of prior express authorization by the customer.

(c) A third-party service provider meets the prior express authorization requirements of this section only if it obtains or receives a customer's written authorization in the form of a letter of agency, a customer's oral authorization verified by an independent third party, or a copy of an e-mail notice of verification as described in clause (3).

(1) If the third-party service provider obtains the customer's written authorization in the form of a letter of agency, it must be a separate or easily separable document. The sole purpose of the letter of agency shall be to authorize a charge for goods or services to appear on the customer's telephone bill. The letter of agency must be of sufficient size to be clearly legible and must contain clear and unambiguous language that contains separate statements for each good or service for which the customer is agreeing to be billed. The letter of agency must be signed and dated by the customer.

(2) If the customer's authorization is oral, the authorization must be verified by an independent third-party verifier. The verification is valid only if:

(i) the independent third party confirms the customer's identity with information unique to the customer unless the customer refuses, then that fact must be noted; and

(ii) the independent third party informs the customer that the customer is agreeing to be billed for goods or services that will appear as a charge on the customer's telephone bill.

(3) If a customer enters a contract via the Internet with a third-party service provider for goods or services which are charged to the bill issued by the customer's telephone company or telecommunications carrier providing local service, the third-party service provider must, within 48 hours of receiving the customer's authorization, send the customer, via e-mail, a notice of verification confirming the authorization. The third-party service provider shall maintain a copy of the notice of verification for the duration of the contract as a record of the customer's express authorization to be charged for the goods or services on the customer's telephone bill for local service.

(d) For direct-dialed calls, where the call itself represents the service for which the charge is placed on a customer's local telephone bill, such as "900 number" services and "dial around" services, evidence that the call was placed from the number that is subject to the telephone bill shall be considered sufficient evidence of authorization for that call for billing authorization purposes established in this section. Nothing in this section shall be construed to change a telephone company's or telecommunication carrier's obligations or affect a telephone subscriber's rights under section 325F.692.

(e) This section does not apply to charges for collect calls.

(f) Nothing in this section restricts the right of a telephone company or telecommunications carrier to seek to recover from a third-party service provider unauthorized charges credited to the customer by the telephone company or telecommunications carrier.

History: 2004 c 214 s 1

237.67 [Repealed, 2014 c 222 art 1 s 58]

237.68 MS 2002 [Expired, 1999 c 224 s 7; 2004 c 261 art 6 s 3]

PRIVATE SHARED SERVICES**237.681 PRIVATE SHARED SERVICES.**

Subdivision 1. **Definitions.** For the purposes of this section:

(1) "private shared services" means the provision of telephone services and equipment, the provision of video programming services, or the provision of broadband services 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; and

(2) "property owner" means a person who owns or, under a contract with the owner, manages a building, property, complex, or other facility where private shared services are provided.

Subd. 2. **Requirements.** A property owner shall establish a single demarcation point for services and facilities provided by a telephone company providing local exchange service in the area that is mutually agreeable to the property owner, commercial shared services provider, and the telephone company. The obligation of a telephone company to provide service to a customer at a location where private shared services are operating is limited to providing telephone company service and facilities up to the demarcation point established for the property where the private shared services are operating. The property owner may not (1) impose unreasonable restrictions on access to the demarcation point on the premises by a telephone company or (2) discriminate against or in favor of an occupant in any manner, including charging the occupant higher or lower rental charges, because of the occupant's choice of telephone company.

Subd. 3. **Access to alternative provider.** A tenant of a building, property, complex, or other facility where private shared services are operating may establish a direct connection to and receive telephone service from a telephone company providing local exchange service in the area where the private shared services are operating. At the request of a tenant where a private shared system is operated, the property owner shall make its 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 property owner's existing facilities. The property owner must provide its facilities or conduit space 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 a property owner has failed to comply with a request under this section, the commission may order the property owner to make its 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 commercial shared services provider is exempt from section 237.16 if the private shared services are only provided to tenants or for the provider's own use.

Subd. 6. **Service by local telephone company.** A telephone company providing local exchange service shall provide service to any person in a property served by a commercial shared services provider at the demarcation point within a reasonable time upon request.

Subd. 7. **Obligation of property owners.** Nothing in this section requires a commercial shared services provider to share its wiring, cabling, or other facilities unless the commercial shared services provider is the property owner.

History: 2010 c 247 s 3

TELEPHONE ASSISTANCE PLAN

237.69 TELEPHONE ASSISTANCE PLAN; DEFINITIONS.

Subdivision 1. **Scope.** The terms used in sections 237.69 to 237.71 have the meanings given them in this section.

Subd. 2. [Renumbered subd 11]

Subd. 3. [Repealed, 1Sp2001 c 4 art 6 s 76]

Subd. 4. [Renumbered subd 17]

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. [Renumbered subd 13]

Subd. 7. [Renumbered subd 16]

Subd. 8. [Renumbered subd 15]

Subd. 9. [Renumbered subd 12]

Subd. 10. [Renumbered subd 14]

Subd. 11. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subd. 12. **Disabled.** "Disabled" has the meaning given it in section 363A.03, subdivision 12.

Subd. 13. **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. 14. **Fund.** "Fund" means the telephone assistance fund established in section 237.701.

Subd. 15. **Income.** For purposes of sections 237.69 to 237.71, "income" has the meaning given it in section 290A.03, subdivision 3.

Subd. 16. **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 237.71.

Subd. 17. **Telephone company.** "Telephone company" has the meanings given it in section 237.01, subdivisions 3 and 7, that provides local exchange telephone service.

History: 1987 c 340 s 13; 1988 c 621 s 9-11; 1989 c 209 art 2 s 1; 1990 c 567 s 10; 2014 c 222 art 1 s 41-43

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 local service providers that provide local exchange service in Minnesota.

Subd. 3. **Federal matching plan.** The telephone assistance plan must contain adequate provisions to enable local service providers 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 is eligible for the federal Lifeline telephone service discount.

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 local service provider; 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 local service provider in the state.

Subd. 7. **Application, notice, financial administration, complaint investigation.** The telephone assistance plan must be administered jointly by the commission, the Department of Commerce, and the local service providers in accordance with the following guidelines:

(a) The commission and the Department of Commerce 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 local service provider. 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 also include a statement that the applicant household is currently eligible for one of the programs that confers eligibility for the federal Lifeline Program. The application must be signed by the applicant, certifying, under penalty of perjury, that the information provided by the applicant is true.

(b) Each local service provider 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 RECEIVE BENEFITS FROM CERTAIN LOW-INCOME ASSISTANCE PROGRAMS. FOR MORE INFORMATION OR AN APPLICATION FORM PLEASE CONTACT

(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 the subscriber's local service provider. On receiving a completed application from an applicant, the subscriber's local service provider shall provide telephone assistance plan credits against monthly charges in the earliest possible month following receipt of the application. The applicant must receive telephone assistance plan credits until the earliest possible month following the service provider's receipt of information that the applicant is ineligible.

If the telephone assistance plan credit is not itemized on the subscriber's monthly charges bill for local telephone service, the local service provider 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 local service provider shall extend to each eligible household in its service area;

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

(4) require each local service provider to remit surcharge revenues to the Department of Public Safety for deposit in the fund; and

(5) remit to each local service provider from the surcharge revenue pool the amount necessary to compensate the provider 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 local service provider 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 Commerce 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 Commerce shall investigate complaints against local service providers 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; 1Sp2001 c 4 art 6 s 77; 2003 c 79 s 1-6; 2005 c 136 art 10 s 2

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 commissioner of public safety 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 local service providers for expenses and credits allowed in section 237.70, subdivision 7, paragraph (d), clause (5);

(2) reimbursement of the reasonable administrative expenses of the commission, a portion of which may be used for periodic promotional activities, including, but not limited to, radio or newspaper advertisements, to inform eligible households of the availability of the telephone assistance program;

(3) reimbursement of the statewide indirect cost of the commission; and

(4) reimbursement of the reasonable expenses of the commissioner of commerce and the commissioner of human services for administering section 216C.266, subdivisions 2 and 4.

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; 2003 c 79 s 7; 1Sp2003 c 1 art 2 s 68; 1Sp2005 c 1 art 4 s 58; 2012 c 290 s 71

237.71 TAP RULES.

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

History: 1987 c 340 s 15; 2014 c 222 art 1 s 44

237.711 [Repealed, 2014 c 222 art 1 s 58]

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, but may not require connections with a telecommunications carrier certified to provide only interexchange service.

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.

[See Note.]

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; 2010 c 247 s 2

NOTE: The application of subdivision 12 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).

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 7,25; 2003 c 97 s 2

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 Minnesota Rules, parts 7811.2210 and 7812.2210, 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 broadband 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 8,25; 1997 c 223 s 9,10; 2003 c 97 s 2; 2017 c 40 art 1 s 47

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 9,25; 1997 c 223 s 11-13; 2003 c 97 s 2

237.763 EXEMPTION FROM EARNINGS REGULATION AND 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; 237.59; or 237.60, subdivisions 1, 2, 4, and 5, 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 10,25; 2001 c 7 s 48; 2003 c 97 s 2; 2005 c 10 art 1 s 35; 2006 c 212 art 3 s 16

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, prior to its expiration on August 1, 1999, upon the effective date of the plan approved under this section. 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 11,25; 1997 c 223 s 14; 2001 c 7 s 49; 2003 c 97 s 2

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 12,25; 1997 c 223 s 15; 2003 c 97 s 2

237.766 PLAN DURATION AND EXTENSION.

Subdivision 1. **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. Except as otherwise provided in this section, within six months prior to the termination of the plan the company shall give notice that it will propose a new plan, extend an existing plan, or revert to rate of return regulation.

Subd. 2. **New plan.** A new plan proposed by a company must be reviewed by the commission and, with the consent of the company, revised or approved 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 new plan. Any new 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 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. A new plan is not an extension, which must be made pursuant to subdivision 3.

Subd. 3. **Plan extension.** (a) Notwithstanding the provisions of its plan, a telephone company operating under a plan as of May 20, 2004, may elect to extend that plan for up to three years from the expiration date of the plan or until December 31, 2007, whichever is earlier. The election is effective upon notification to customers, the commission, the department, and the Office of the Attorney General. A telephone company must provide notification of its election within 30 days of May 20, 2004, or within six months of the expiration of its current or expired plan, whichever is later. Once a telephone company has elected to exercise the option provided under this subdivision, the company may elect at any time to terminate the plan by notifying customers, the commission, the department, and the Office of the Attorney General, in writing, six months prior to the termination date. Upon termination of a plan, the company shall be regulated as provided in this chapter.

(b) A telephone company may elect to extend a plan entered into after May 20, 2004, in lieu of proposing a new plan only if the company is in substantial compliance with the plan's service quality provisions and has met its infrastructure obligations under the plan. If the company elects to extend a plan, the rates for price-regulated services shall be capped at the rate levels in effect at the time the extension commences,

provided, however, exceptions to a price cap contained in the plan being extended may remain in force. Unless otherwise specified in the plan, all other provisions of the plan shall continue in effect throughout the extension period. A plan may not be extended for less than one year or more than three years, and may only be extended once.

(c) The Department of Commerce or the Office of the Attorney General may file an objection to the extension with the commission if the company is not in substantial compliance with the service quality provisions of its plan or has not met its infrastructure obligations under the plan. An objection must be filed within 45 days of the company's notice of its intention to extend the plan.

(d) If an objection is filed by the Department of Commerce or the Office of the Attorney General, the commission may hold a hearing on the issues raised in the objection. The hearings shall be completed within 30 days of the deadline for filing the objections. If the commission finds that the issues raised in the objection are valid, it may reject the extension. If the commission finds that the issues raised in the objection are not valid, it shall approve the extension. The commission shall issue its decision within 15 days of the completion of the hearings concerning the objection.

(e) If the Department of Commerce or the Office of the Attorney General does not file an objection, the commission shall approve the extension within 60 days of the company's filing of its notice of its intention to extend the plan.

Subd. 4. Joining an existing plan. (a) A telephone company may elect to opt into another company's plan if:

- (1) the chosen plan is from a company that is larger than the electing company; or
- (2) the chosen plan is from an affiliated company; and
- (3) the plan is currently in effect.

(b) A telephone company electing to enter an existing plan in lieu of proposing a new plan must operate under the terms of that plan for at least three years. If the original term of the existing plan was longer than three years, then the adopting company must operate under the plan for that longer period.

(c) A telephone company that desires to adopt an existing plan must give notice to the commission at least 90 days prior to the proposed effective date of the adoption and to its customers at least 60 days prior to the proposed effective date.

(d) The Department of Commerce or the Office of the Attorney General may file an objection to a telephone company that has previously operated under a plan from electing to opt into the plan of another company if the electing company is not in substantial compliance with the service quality provisions or has not met the infrastructure obligations of its plan.

(e) If a telephone company has not previously operated under an alternative regulation plan, the rates for its price-regulated services must be capped for the first three years at the rates in effect at the time of opt in, except for any plan provisions that address exogenous changes.

(f) Within 30 days of the electing company filing notice to the commission, interested parties may file comments identifying any aspect of the adoption that the party believes is contrary to the public interest. Reply comments may be filed within 45 days following the notice to the commission. The commission shall accept the adoption unless it finds adoption of the existing plan by the electing telephone company is not in the public interest, in which case it may reject or modify the election to opt into the provisions of the existing

plan. If the commission modifies the election, the electing company may withdraw its proposed adoption of the existing plan by filing notice with the commission within 30 days of the commission's modification order.

History: 1995 c 156 s 13,25; 1997 c 223 s 16; 2003 c 97 s 2; 2004 c 214 s 2; 2008 c 254 s 1

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 14,25; 2003 c 97 s 2

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 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 15,25; 1Sp2001 c 4 art 6 s 69; 2003 c 97 s 2

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 16,25; 1997 c 223 s 17; 2003 c 97 s 2

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 17,25; 2003 c 97 s 2

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 18,25; 2003 c 97 s 2

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 19,25; 2003 c 97 s 2

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 237.59 and 237.60, subdivisions 1, 2, and 5.

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 and the company shall jointly 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. Within 30 days of validating the petition, 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 and the company shall jointly 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. Within 30 days of validating the petition, 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 20,25; 2001 c 7 s 50; 2003 c 97 s 2; 2004 c 214 s 3

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 21,25; 2003 c 97 s 2

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

TELEPHONE COMPANY WITH CABLE SERVICES

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. [Repealed, 2014 c 222 art 1 s 58]

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 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 section 222.37, and any ordinance, regulation, or rule to the contrary.

History: 1997 c 123 s 7; 2005 c 69 art 3 s 19

237.82 DEFINITIONS; CALL LOCATION INFORMATION.

Subdivision 1. **Scope.** The definitions in this section apply to section 237.83.

Subd. 2. **Call location information.** "Call location information" means information indicating the geographical location of a telecommunications device.

Subd. 3. **Law enforcement agency.** "Law enforcement agency" means:

(1) a unit of state or local government that is authorized by law to grant full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of the state; and

(2) subject to the limitations in section 626.93, a law enforcement agency of a federally recognized tribe, as defined in United States Code, title 25, section 450b(e).

Subd. 4. **Wireless telecommunications service provider.** "Wireless telecommunications service provider" means a provider of commercial mobile radio services, as that term is defined in United States Code, title 47, section 332, subsection (d), including all broadband personal communications services, wireless radio telephone services, geographic area specialized and enhanced specialized mobile radio services, and incumbent wide area specialized mobile radio licensees, that offers real-time, two-way voice service interconnected with the public switched telephone network and that is doing business in this state.

History: 2010 c 342 s 1

237.83 DISCLOSURE OF CALL LOCATION INFORMATION; EMERGENCY SITUATIONS.

Subdivision 1. **Written request.** Upon receipt of a written request from a law enforcement agency stating that the disclosure of call location information is needed in an emergency situation that involves the risk of death or serious physical harm to a person who possesses a telecommunications device, a wireless telecommunications service provider shall provide the requested call location information concerning that device to the requesting agency.

Subd. 2. **Protocols.** A wireless telecommunications service provider shall establish protocols consistent with this section that govern its response to a request from a law enforcement agency under subdivision 1.

Subd. 3. **Cause of action limitation.** No cause of action shall lie in any court against a wireless telecommunications service provider, its officers, employees, agents, or other specified persons for providing call location information while acting in good faith and according to this section.

Subd. 4. [Repealed, 2014 c 212 art 4 s 3]

History: 2010 c 342 s 2