

# PUBLIC UTILITIES

## CHAPTER 397

### SENATE BILL NO. 2115

(Natural Resources Committee)

(At the request of the Public Service Commission)

## MISO INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact subsection 7 of section 49-02-02 of the North Dakota Century Code, relating to market monitoring information received from the market monitor of the midwest independent system operator, incorporated.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 7 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes. Information received by the commission which was developed or obtained by the market monitor of the midwest independent system operator, incorporated, or its successor, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved March 19, 2003

Filed March 19, 2003

## CHAPTER 398

### HOUSE BILL NO. 1363

(Representatives Wald, Delmore, Grande, M. Klein)  
(Senators Fischer, Tollefson)

### PSC RATE CHANGE HEARINGS

AN ACT to amend and reenact section 49-05-06 of the North Dakota Century Code, relating to public service commission rates change hearings.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-05-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-05-06. Hearing by commission on proposed change of rates.**

1. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice, or rule but the period of suspension may not extend more than ~~seven~~ six months beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.
2. Notwithstanding that the commission may suspend a filing and order a hearing, a public utility may file for interim rate relief as part of its general rate increase application and filing. If interim rates are requested, the commission shall order that the interim rate schedule take effect no later than sixty days after the initial filing date and without a public hearing. The interim rate schedule must be calculated using the proposed test year cost of capital, rate base, and expenses, except that the schedule must include:

  - a. A rate of return on common equity for the public utility equal to that authorized by the commission in the public utility's most recent rate proceeding;

- b. Rate base or expense items the same in nature and kind as those allowed by a currently effective commission order in the public utility's most recent rate proceeding; and
  - c. No change in existing rate design.
- 3. In ordering an interim rate schedule, the commission may require a bond to secure any projected refund required by subsection 4. The terms of the bond, including the amount and surety, are subject to the commission's approval.
- 4. As ordered by the commission, the utility shall promptly refund to persons entitled thereto all interim rate amounts collected by the public utility in excess of the final rates approved by the commission plus reasonable interest at a rate to be determined by the commission.

Approved April 16, 2003

Filed April 16, 2003

## CHAPTER 399

### HOUSE BILL NO. 1291

(Representatives Nelson, Brusegaard, Headland, Mueller)  
(Senators Heitkamp, Urlacher)

## ABANDONED RAILROAD RIGHT-OF-WAY SALE

AN ACT to amend and reenact sections 49-09-04.2 and 49-09-04.3 of the North Dakota Century Code, relating to the abandonment and the sale of abandoned railroad right of way.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-09-04.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-09-04.2. Abandoned railroad right of way - Sale.**

1. When service is discontinued on any railroad right of way in the state and the property is offered for sale, lease, exchange, or other disposal by the railroad or an affiliated entity, the property must first be offered ~~for public purposes~~ to the following persons in the order of priority as follows:
  - a. The present owner or operator-lessee of fixed assets located on the property;
  - b. A person owning land contiguous to the right of way on opposite sides of the right of way;
  - c. A person presenting a reasonable plan for public recreational use of the abandoned property which includes the continuation of current private and public crossings; and
  - d. The adjoining landowner if the adjoining land, at the time of abandonment, is assessed for tax purposes as agricultural land.
2. ~~If right-of-way property along abandoned rail lines is first offered for public purposes and refused, the lessee operators of grain and potato warehouses located on the property must be given the next option to purchase, lease, exchange, or otherwise acquire the property described in their lease. Adjoining agricultural landowners must thereafter be given the next option to acquire the property adjoining their land. The railroad company shall provide written notice to present owners and operator-lessees of fixed assets located on the property and shall publish notice of its intent to dispose of railroad right of way in two consecutive issues of the official county newspaper in each county in which the property is located. A railroad company is not required to give a priority party an option to purchase the property unless the party provides a written statement of interest to purchase the property within thirty days after final publication of notice of the railroad company's intent to dispose of the property. The sale price of abandoned railroad property must be equitable.~~

3. When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be approved by the board of county commissioners of the county or counties in which the right of way is located under section 20.1-02-17.1 if offered to the state game and fish department or under section 20.1-02-18.1 if offered to the United States department of the interior.
4. If a railroad complies with subsections 1 and 2 and five years have passed since abandonment or since service was discontinued, the railroad may deed the right of way to the county in which the right of way is located upon the acceptance of the county.

**SECTION 2. AMENDMENT.** Section 49-09-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**49-09-04.3. Abandoned railway lines - Removal of abandoned materials - Charge by city, county, or state.** Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in this state shall remove and clear all rail, ties, materials, supplies, and debris from the railway line and leave the surface in a condition easily traversable by a motor vehicle, and shall control noxious weeds on; the railway line right of way within a reasonable time. On request of a city or county in which there is an abandoned line, the commission shall require the railroad corporation, as to railway line right of way in that city or county, within a reasonable time, to take the action required by this section. On request of any state agency having an interest in any property abutting an abandoned railway line right of way, the commission shall require the railroad corporation, as to that railway line right of way, within a reasonable time, to take the action required by this section. The commission shall take all action necessary and appropriate, including the adoption of rules under chapter 28-32, to enforce this section. If a railroad corporation fails to take action required by this section, the requesting entity may do the work on the parts of the abandoned railway line right of way under that entity's jurisdiction. A county may do the work on the parts of the abandoned railway line right of way in the county, regardless of whether those parts are inside city limits. The entity doing the work may charge the railroad corporation the reasonable expense of doing the work. If the charges remain unpaid after ninety days, the entity may certify to the county auditor the amount of the charges imposed under this section. These charges become part of the taxes levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes and placed to the credit of the jurisdiction entitled to the charges. The taxpayer's right to appeal the assessment is governed by chapter 57-23.

Approved April 21, 2003  
Filed April 21, 2003

## CHAPTER 400

### SENATE BILL NO. 2179

(Senators Cook, Bercier, Trenbeath)  
(Representatives Dosch, Schmidt, Weisz)

## RAILROAD INCIDENT POLICY POSTING

AN ACT to amend and reenact section 49-10.1-19 of the North Dakota Century Code, relating to the provision of a written critical incident stress debriefing policy.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-10.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**49-10.1-19. ~~(Effective through July 31, 2003)~~ Critical incident stress debriefing policy.** Each railroad corporation shall develop a written critical incident stress debriefing policy ~~and shall provide a copy of the policy to each employee.~~ The railroad corporation shall keep a copy of the policy posted in a conspicuous place on an area of its premises commonly frequented by its employees. Penalties for a violation of this section are limited to those allowed in section 49-07-01.1.

Approved March 17, 2003

Filed March 17, 2003

## CHAPTER 401

### HOUSE BILL NO. 1372

(Representatives D. Johnson, Gulleason, Severson)  
(Senators Fischer, Heitkamp, G. Lee)

## TRAIN BLOCKING ROADWAY

AN ACT to amend and reenact section 49-11-19 of the North Dakota Century Code, relating to obstructing a crossing by a train; and to provide a penalty.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-11-19 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-11-19. Blocking or obstructing crossing with train - Penalty. ~~No~~**

1. ~~A person shall~~ may not operate any train in ~~such~~ a manner as to prevent vehicular use of any roadway for a period of time in excess of ten consecutive minutes except:
  4. a. When necessary to comply with safety signals affecting the safety of the movement of trains;
  - ~~2.~~ b. When necessary to avoid striking any object or person on the track;
  - ~~3.~~ c. When the train is disabled, by accident or otherwise;
  4. d. When the train is in motion except when engaged in switching operations or loading or unloading operations;
  - ~~5.~~ e. When ~~there is no~~ vehicular traffic is not waiting to use the crossing; ~~or~~
  - ~~6.~~ f. When necessary to comply with a government statute or regulation; or
  - g. When allowed by written agreement between the governmental entity that controls the roadway and the interested commercial entities. The agreement must indicate which party is responsible for the timely notification of local emergency service providers regarding the crossing that will be blocked and the period of time the crossing will be blocked. Any
2. ~~A person who~~ that violates this section is guilty of ~~an infraction~~ a class B misdemeanor. ~~The provisions of this~~ This section ~~do~~ does not apply to ~~cities which have on the date of such obstruction ordinances~~ a city that has an ordinance covering the same subject matter.

## CHAPTER 402

### SENATE BILL NO. 2358

(Senators Mutch, Tallackson, Thane, Trenbeath)  
(Representative Weisz)

## RAILROAD INDEMNITY PROVISIONS VOID

AN ACT to create and enact section 49-16-01.1 of the North Dakota Century Code, relating to indemnity provisions on use of railroad rights of way; to amend and reenact sections 49-16-05, 60-06-06.1, and 60-06-15 of the North Dakota Century Code, relating to prohibition of railroad indemnity agreements in right-of-way leases; to provide for a legislative council study; and to provide for application.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Section 49-16-01.1 of the North Dakota Century Code is created and enacted as follows:

#### **49-16-01.1. Indemnity terms void and unenforceable.**

1. Except as provided in this section, any provision of a lease, license, or other agreement for the use or occupancy of railroad right of way, or other adjoining property, between a railroad or its representative and a state or federal licensed public grain warehouse or potato warehouse is void to the extent it does any of the following:

  - a. Purports to indemnify or require the defense of the railroad, or its employees, agents, or independent contractors against any loss, liability, or other damage to the extent caused by the sole or concurrent fault of the railroad or its employees, agents, or independent contractors arising out of any claims or actions for bodily injury, death, property damage, or environmental damage or liability.
  - b. Requires the state or federal licensed public grain warehouse or potato warehouse to purchase insurance providing coverage for the railroad or its employees, agents, or independent contractors against any loss, liability, or other damage to the extent caused by the sole or concurrent fault of the railroad or its employees, agents, or independent contractors.
  - c. Purports to exempt, or otherwise excuse, the railroad from any fault or other responsibility for bodily injury, death, property damage other than property damage subject to Public Law No. 104-88 [109 Stat. 847; 49 U.S.C. 11706], or environmental damage or liability to the extent caused by sole or concurrent acts of the railroad or its employees, agents, or independent contractors, or for any environmental damage or condition which exists at the time the lease, license, or other agreement is entered.
2. As used in this section, "fault" is defined under section 32-03.2-01.



3. Notwithstanding any other provision of law, a railroad may require that a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of railroad right of way, or other adjoining property, provide the following:
- a. Commercial general liability insurance of not more than two million dollars per occurrence and not more than four million dollars for multiple occurrences coverage for bodily injury, death, and property damage arising out of the use or occupancy of the property by the contracting party, including:
    - (1) Damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors;
    - (2) An endorsement naming the railroad as an additional insured; and
    - (3) An endorsement under the Federal Employers Liability Act [45 U.S.C. et seq.] if the warehouse engages in the business of transporting goods from the warehouse by means of the railroad in an annual volume in excess of two hundred fifty loaded railroad cars.
  - b. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, environmental damage, and property damage claims and liability up to two million dollars per occurrence arising out of the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors.
  - c. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, property damage, and environmental damage suffered by the lessee, licensee, or other contracting party, its employees, agents, and invitees, arising from the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors unless caused solely by the acts or omission of the railroad that are willful, wanton, or grossly negligent.
  - d. Pollution legal liability insurance up to one million dollars, unless the lessee agrees to a greater amount, to cover liabilities arising from hazardous substances or bulk storage of petroleum products brought on the property, or released on or near the property, or violations of environmental laws, by the lessee, licensee, or other contracting party, its employees, agents, and invitees.
4. Each party to the agreement is responsible for all liability resulting from the environmental condition of the property to the extent caused, aggravated, or contributed to by that party, its employees, agents, and invitees.

**SECTION 2. AMENDMENT.** Section 49-16-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-16-05. Contracts exempting railroad from liability void.** Any contract, rule, regulation, or device ~~whatsoever~~ with the purpose or intent of which shall be to enable enabling any railroad ~~corporation~~ corporation to exempt ~~itself~~ that railroad from any liability created by sections 49-16-01.1, 49-16-02, 49-16-03, 49-16-04, 49-16-05, and 49-16-08 to that extent ~~shall be~~ is void. In any action brought against the railroad ~~corporation~~, under or by virtue of any of the provisions of this chapter, the ~~corporation~~ railroad may set off ~~therein~~ in that action any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or to the person entitled ~~thereto~~ to the payment on account of the injury or death for which ~~said~~ the action was brought.

**SECTION 3. AMENDMENT.** Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-06-06.1. Determination - Appropriation.** Any party may petition the public service commission to determine rights governed under this chapter. The commission shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. ~~The commission shall conduct each hearing required under this section in the county where the right of way at issue is located. The parties to the determination proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered mail. Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the general fund in the state treasury. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the commission, directly to the entities owed. The commission may adopt rules to carry out this section.~~

**SECTION 4. AMENDMENT.** Section 60-06-15 of the North Dakota Century Code is amended and reenacted as follows:

**60-06-15. Application to existing leaseholds.** The provisions of this chapter apply to the renewal or sale of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought.

**SECTION 5. LEGISLATIVE COUNCIL STUDY - ABANDONED AND SURPLUS RAILROAD RIGHTS OF WAY.** The legislative council shall study, during the 2003-04 interim, the sale and lease of railroad rights of way. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

**SECTION 6. APPLICATION.** Section 49-16-01.1 applies to any lease, license, or other agreement for the use or occupancy of railroad right of way or other adjoining property entered after the effective date of this Act, and to any written renewal or amendment of any prior agreement occurring after the effective date of this Act.

Approved April 24, 2003

Filed April 24, 2003

## CHAPTER 403

### SENATE BILL NO. 2231

(Senators Espegard, Tallackson)  
(Representatives Carlson, Froelich)

## TELECOMMUNICATIONS PRICES AND REFUNDS

AN ACT to amend and reenact sections 49-21-01, 49-21-01.3, 49-21-04, 49-21-05, 49-21-07, 49-21-08.1, 49-21-10.1, 49-21-20, and 49-21-23 of the North Dakota Century Code, relating to definitions, price changes, price schedules, dialing parity, refunds, penalties, and cost recovery for telecommunications services and telecommunications companies; and to repeal section 49-21-19 of the North Dakota Century Code, relating to telephone directory notices.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01. Definitions.** As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services. ~~"Switched access" includes:~~
  - a. ~~Local exchange central office switching and signaling;~~
  - b. ~~Operator and recording intercept of calls;~~
  - c. ~~Termination of end user lines in the local exchange central office;~~
  - d. ~~The carrier common line charge for the line between the end user's premises and the local exchange central office; and~~
  - e. ~~Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.~~
2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.

4. "Essential telecommunications price factor" means:
- a. In the case of group I telecommunications companies, a factor determined annually as the lower of:
    - (1) 41.6667 percent of the percentage change of the average annual gross national product price index; or
    - (2) The percentage change of the average annual gross national product price index minus 2.75 percentage points.
  - b. In the case of group II telecommunications companies, a factor determined annually as the lower of:
    - (1) 52.0834 percent of the percentage change of the average annual gross national product price index; or
    - (2) The percentage change of the average annual gross national product price index minus 2.0625 percentage points.
  - c. For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.
5. "Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area. A charge based on measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:
- a. Switched access;
  - b. Any new product or service offered in North Dakota after July 1, 1989, deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
  - c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group G access service;
  - d. Primary directory listing, including nonlisted and nonpublished service, and access to directory assistance;
  - e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;
  - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;

- ~~g.~~ Installation of the service connection for essential services from the end user's premises to the local exchange network;
- ~~h.~~ Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has direct inward dialing and necessary signaling service such as touchtone used by end users for essential telecommunications services;
- ~~i.~~ Single or multiparty flat-rate or measured residence and business service;
- ~~j.~~ Single or multiparty flat-rate or measured combination business and residence service; and
- ~~k.~~ The transmission service line for a coin or pay telephone.

4. "Essential telecommunications service" means the following services:

- a. Switched access;
- b. The transmission service line for a coin or pay telephone;
- c. Installation of the service connection for other essential services from the end user's premises to the local exchange network;
- d. Flat rate or measured residence, business and combination business and residence basic telephone service including the following service elements:
  - (1) Billing and collecting of the telecommunications company's charges for the service.
  - (2) Primary directory listing, including nonlisted and nonpublished service.
  - (3) Access to directory assistance.
  - (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
  - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
  - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.

- ~~6.~~ 5. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].

7. "Gross national product price index" means the fixed-weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. "Average annual gross national product price index" means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.
8. 6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
9. 8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
- ~~10.~~ 9. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
- ~~11.~~ 10. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
- ~~12.~~ 11. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
- ~~13.~~ 12. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection ~~5~~ 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. Nonessential telecommunications services include, but are not limited to:
- a. InterLATA and intraLATA message toll service;
  - ~~b.~~ b. ~~Private line transport service;~~
  - ~~c.~~ c. Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;
  - ~~d.~~ d. Centrex services and features, ~~not including transmission service described in subdivision h of subsection 5;~~

- ~~e.~~ d. Installation of service connections in addition or supplementary to that described in subdivision ~~g~~ c of subsection ~~5~~ 4 which also provides transmission service between the end user's premises and the local exchange central office switch;
  - ~~f.~~ e. Mobile telecommunications services using radio spectrum or cellular technology; and
  - ~~g.~~ f. Packet-switched services.
- ~~44.~~ 13. "Price" means any charge set ~~and published in accordance with chapter 49-24~~ and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
- ~~45.~~ 14. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
- ~~46.~~ 15. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
- ~~47.~~ 16. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
- ~~48.~~ 17. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
- 18. "Switched access" means access to include:
  - a. Local exchange central office switching and signaling;
  - b. Operator and recording intercept of calls;
  - c. Termination of end user lines in the local exchange central office;
  - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;
  - e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service; and



f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.

19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

**SECTION 2. AMENDMENT.** Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.3. Certain price increases prohibited - Essential telecommunications services.** Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
2. The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall publish the essential telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four calendar quarters ending with the second calendar quarter of the preceding calendar year. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection. A discounted price for an essential telecommunications service is not the price of a service for purposes of this section. Discontinuing or altering any discount price for an essential telecommunications service is not a price change as regulated by this subsection.
3. 2. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
4. 3. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this

section, a telecommunications company may accumulate such changes in price subject to the following conditions:

- a. Price increases may be accumulated up to a percentage total of five percent.
- b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
- c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
- d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
- e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

~~5.~~ 4. The monthly price of residence service for ~~group 1~~ telecommunications companies ~~defined in subsection 2 of section 49-21-04~~ with over fifty thousand subscribers may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.

~~6.~~ 5. The commission may investigate an increased price allowed pursuant to subsection ~~5~~ 4 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.

~~7.~~ 6. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange

service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

**SECTION 3. AMENDMENT.** Section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-04. Price schedules filed with the commission.** Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered ~~to the public~~ by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such essential service; and
3. All new prices and any price ~~changes~~ increases of essential services at least twenty days before the effective date of the new price or price ~~change~~ increase, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.

**SECTION 4. AMENDMENT.** Section 49-21-05 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-05. Schedule of prices to be ~~on file~~ available for public inspection.** The commission may require any telecommunications company to ~~keep on file and accessible~~ make available to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, ~~at any city in which the telecommunications company has a public office,~~ a printed or electronic schedule of such prices for ~~essential~~ telecommunications services offered by the telecommunications company as the commission may deem necessary.

**SECTION 5. AMENDMENT.** Section 49-21-07 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-07. Discrimination unlawful.** It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing

local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; from contracting with a retail subscriber to provide telecommunications services at prices negotiated with the subscriber to meet service requests of the subscriber or competitive offerings of another telecommunications company; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

**SECTION 6. AMENDMENT.** Section 49-21-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-08.1. Dialing parity - IntraLATA equal access.** ~~The provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be required to be provided by any company providing local exchange service prior to January 1, 2000.~~ Every local exchange carrier shall provide intraLATA 1 + equal access dialing parity ~~no later than January 1, 2000.~~

**SECTION 7. AMENDMENT.** Section 49-21-10.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-10.1. Excessive charges - Refunds.** When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or reparations, with interest from ~~the~~ a date of collection not earlier than two years from when the complaint was filed.

**SECTION 8. AMENDMENT.** Section 49-21-20 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-20. Penalty.** Any person who shall violate any of the provisions of ~~sections~~ section 49-21-18 ~~and 49-21-49~~ shall be guilty of a class B misdemeanor.

**SECTION 9. AMENDMENT.** Section 49-21-23 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-23. Construction of facilities - Cost recovery.**

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred at the request of another telecommunications company, a particular customer, or to comply with a commission order, including any order issued under section 49-21-10.2, for construction, modification or

extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:

- a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
- b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
- c. Costs for which some other recovery treatment is specifically provided in federal or state law.

**SECTION 10. REPEAL.** Section 49-21-19 of the North Dakota Century Code is repealed.

Approved March 25, 2003  
Filed March 25, 2003

**CHAPTER 404****HOUSE BILL NO. 1134**

(Industry, Business and Labor Committee)  
(At the request of the Public Service Commission)

**ESSENTIAL TELECOMMUNICATIONS SERVICES  
UNBUNDLING**

AN ACT to amend and reenact section 49-21-01.4 of the North Dakota Century Code, relating to unbundling of essential services in telecommunications services.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 49-21-01.4 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.4. Purchase of essential telecommunications services.** Customers of any telecommunications company that provides essential telecommunications services must be permitted to purchase essential telecommunications services separate from all other telecommunications services. A telecommunications company may disconnect local exchange or essential telecommunications services only pursuant to rules adopted by the commission.

Approved March 12, 2003

Filed March 12, 2003

## CHAPTER 405

### HOUSE BILL NO. 1135

(Industry, Business and Labor Committee)  
(At the request of the Public Service Commission)

## TELECOMMUNICATIONS SERVICE REGULATION

AN ACT to amend and reenact section 49-21-01.7 of the North Dakota Century Code, relating to powers of the public service commission relating to the regulation for the provision of telecommunication service.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.7. Powers in general.** The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the

rate of six percent per annum. Amounts collected by the commission under this subsection relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Investigate and resolve numbering issues relating to assignment of NII dialing codes.
15. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are ~~different or~~ greater than obligations imposed under the act.

Approved March 12, 2003  
Filed March 12, 2003



## CHAPTER 406

### HOUSE BILL NO. 1052

(Legislative Council)  
(Regulatory Reform Review Commission)

## PERFORMANCE ASSURANCE PLAN

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to a performance assurance plan by the public service commission; to provide a continuing appropriation; to provide an expiration date; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

**Performance assurance fund - Continuing appropriation - Report to budget section.** The performance assurance fund is a special fund in the state treasury. The commission shall deposit payments received by the commission under the performance assurance plan in the performance assurance fund until deposits during a biennium equal one hundred thousand dollars. All moneys deposited in the fund are appropriated on a continuing basis to the commission to monitor the operation and effect of the performance assurance plan. All the payments received by the commission in excess of the one hundred thousand dollars deposited in the performance assurance fund must be deposited in the general fund. The commission shall report annually to the budget section of the legislative council with respect to the payments received under the plan and the expenditures from the performance assurance fund.

**SECTION 2. EXPIRATION DATE.** This Act is effective through June 30, 2005, and after that date is ineffective.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 27, 2003  
Filed March 28, 2003