Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1385
(Representatives Thoreson, Beadle, Keiser)
(Senators Armstrong, Poolman)

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to voice over internet protocol service and internet protocol-enabled service; and to amend and reenact section 49-21-01 of the North Dakota Century Code, relating to definitions.

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 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.

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 service" means the following services:

   a. Switched access;

   b. Installation of the service connection for other essential services from the end user's premises to the local exchange network; and

   c. Primary flat rate 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.

      (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.

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.].

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.

8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.

9. "Internet protocol-enabled service" means any service, capability, functionality, or application that uses internet protocol or any successor protocol and enables an end user to send or receive voice, data, or video communication in internet protocol format or a successor format.

10. "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.

~~10.~~11. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.

~~11.~~12. "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.

~~12.~~13. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service.

~~13.~~14. "Price" means any charge set and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.

~~14.~~15. "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.

~~15.~~16. "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.

~~16.~~17. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.

~~17.~~18. "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.~~19. "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 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.~~20. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

~~20.~~21. "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.

22. "Voice over internet protocol service" means any service that enables real time, two-way voice communication originating from or terminating at the user's location in internet protocol or a successor protocol, utilizes a broadband connection at the user's location, and permits a user to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

SECTION 2. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Voice over internet protocol service and internet protocol-enabled service.

1. Notwithstanding any other law, a state entity or political subdivision of the state may not by rule, order, or other means directly or indirectly regulate the entry, rates, terms, or conditions for internet protocol-enabled or voice over internet protocol service.

2. Voice over internet protocol service is subject to the following:

a. Any required assessments under any state high-cost universal service fund.

b. Any required assessment of 911 or E911 fees.

c. Any required surcharge under section 54-44.8-08.

d. Any required tax under chapter 57-34.

3. Nothing in this section affects or modifies:

a. Any applicable wholesale tariff or any commission authority to implement or enforce any rights, duties, or obligations of any party related to wholesale services.

b. Any entity's obligations or rights or commission authority under sections 251 and 252 of the federal Communications Act of 1934 [47 U.S.C. 251 and 252].

c. Any commission jurisdiction over intrastate switched access rates, terms and conditions, including the implementation of federal law with respect to intercarrier compensation or existing commission authority to address or affect the resolution of disputes regarding intercarrier compensation.

d. Any obligation for the provision of video or cable service by any entity under applicable law.

e. Any commission jurisdiction or authority to address federal high-cost fund or federal universal service fund issues.

f. Any obligation to offer essential telecommunications services.

g. Authority to enforce criminal or civil laws, including consumer protection and unfair or deceptive trade practice laws under title 51, which apply generally to the conduct of business.

h. Authority of a political subdivision of the state to exercise its zoning power under chapters 40-47, 58-03, or 11-33.

i. Any obligation arising out of chapter 49-23.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1385.

House Vote:	Yeas 86	Nays 0	Absent 8
Senate Vote:	Yeas 46	Nays 0	Absent 1

Chief Clerk of the House

Received by the Governor at 11:40 A.M. on March 11, 2015.

Approved at 1:44 P.M. on March 12, 2015.

Governor

Filed in this office this 12th day of March, 2015,

at 425 o'clock P M.

Secretary of State