

CHAPTER 115--H.F.No. 1066

An act relating to telecommunications; providing for competitive market regulation for certain local exchange carriers; providing for informal review and resolution of disputes; prohibiting certain call routing practices; providing for registration of wholesale transport providers; amending Minnesota Statutes 2014, sections 237.01, by adding subdivisions; 237.121; 237.49; proposing coding for new law in Minnesota Statutes, chapter 237.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision to read:

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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision to read:

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

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2014, section 237.01, is amended by adding a subdivision to read:

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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. **[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 at the time of the effective date of this section;

(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 subdivision 8, 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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. **[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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. Minnesota Statutes 2014, section 237.121, is amended to read:

237.121 PROHIBITED PRACTICES.

(a) A telephone company or telecommunications carrier may not do any of the following with respect to services regulated by the commission:

(1) upon request, fail to disclose in a timely and uniform manner information necessary for the design of equipment and services that will meet the specifications for interconnection;

(2) intentionally impair the speed, quality, or efficiency of services, products, or facilities offered to a consumer under a tariff, contract, or price list;

(3) fail to provide a service, product, or facility to a consumer other than a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the commission's rules and orders;

(4) refuse to provide a service, product, or facility to a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the commission's rules and orders;

(5) impose unreasonable or discriminatory restrictions on the resale of its services, provided that:

(i) it may require that residential service may not be resold as a different class of service; and

(ii) the commission may prohibit resale of services it has approved for provision for not-for-profit entities at rates less than those offered to the general public; or

(6) provide telephone service to a person acting as a telephone company or telecommunications carrier if the commission has ordered the telephone company or telecommunications carrier to discontinue service to that person.

(b) A telephone company or telecommunications carrier may not violate a provision of ~~section~~ sections 325F.692 and 325F.693, with regard to any of the services provided by the company or carrier.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. **[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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. **[237.132] REGISTRATION OF WHOLESALE TRANSPORT PROVIDERS.**

(a) A wholesale transport provider shall, within 30 days of the effective date of this act 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.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 9. Minnesota Statutes 2014, section 237.49, is amended to read:

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 ~~shall list~~ may itemize the surcharges ~~as one amount~~ on a billing statement sent to a subscriber.

EFFECTIVE DATE. This section is effective the day following final enactment.

Presented to the governor May 17, 2016

Signed by the governor May 19, 2016, 10:51 a.m.