

CHAPTER 237

TELEPHONE AND TELEGRAPH COMPANIES

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237.01 TELEPHONE COMPANY DEFINED.

The term "telephone company," as used in this chapter, 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.

History: 1915 c 152 s 2 (5287)

237.02 UNDER DEPARTMENT OF PUBLIC SERVICE AND PUBLIC UTILITIES COMMISSION.

The department of public service and the public utilities commission, now existing under the laws of this state, are hereby vested with the same jurisdiction and supervisory power over telephone companies doing business in this state as it now has over railroad and express companies. The definitions set forth in section 216A.02 shall apply also to this chapter.

History: 1915 c 152 s 1; 1971 c 25 s 67; 1980 c 614 s 118 (5286)

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: 1915 c 152 s 3 (5288)

237.04 WIRES CROSSING OR PARALLELING LINES OF PUBLIC UTILITIES; REGULATIONS.

The department shall determine and promulgate reasonable regulations covering the maintenance and operation, also the nature, location, and character of the construction to be used; where telephone, telegraph, electric light, power,

or other electric wires of any kind cross, or more or less parallel the lines of any railroad, interurban railway, or any other public utility; and, to this end, shall formulate and from time to time, issue general regulations covering each class of construction, maintenance, and operation of such electric wire crossing, or paralleling, under the various conditions existing; and the department, upon the complaint of any person, railroad, interurban railway, or other public utility claiming to be injuriously affected or subjected to hazard by any such crossing or paralleling lines 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.

History: 1925 c 152 s 1; 1971 c 25 s 67 (4718-1)

237.05 ENFORCEMENT OF ORDERS AND REGULATIONS.

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, rules, and regulations issued by the department.

History: 1925 c 152 s 2; 1971 c 25 s 67 (4718-2)

237.06 RATES TO BE FAIR AND REASONABLE.

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 organized after January 1, 1949, may include in its charges a reasonable deposit fee not exceeding \$50 for facilities furnished.

History: 1915 c 152 s 4; 1957 c 523 (5289)

237.07 SCHEDULE OF RATES FILED.

It shall be the duty of every telephone company to file with the department a schedule of its exchange rates, tolls, and charges for every kind of service, together with all rules, regulations, and classifications used by it in the conduct of the telephone business, all of which shall be kept on file by the department subject to public inspection. The department shall require each telephone company to keep open for public inspection at designated offices, so much of these schedules and regulations as it deems necessary for the public information.

History: 1915 c 152 s 5; 1971 c 25 s 67 (5290)

237.075 RATE CHANGES.

Subdivision 1. Unless the commission otherwise orders, no telephone company shall change any rate which has been duly established under this chapter, except after 90 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. 2. When 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 of 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 90 days beyond the time when the schedule of rates would otherwise go into effect. 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 administrative division of the department of public service 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 100 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 15, and may further extend the period of suspension, but in no event shall the period of suspension be more than nine months from the date when the schedule of rates would otherwise go into effect. If the commission does not make a final determination on or before the expiration of 12 months from the date the rates were initially filed, the schedule of rates shall be deemed to have been approved by the commission. The overcharge resulting from implementation of the schedule prior to the final determination of the commission shall be refunded to the customers of the telephone company in a manner prescribed by rules of the commission. For the purposes of this subdivision "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 such petitions.

Subd. 3. Notwithstanding any order of suspension of a proposed increase in rates, the telephone company may put the suspended schedule into effect on the date when it would have become effective if not suspended, or any date subsequent thereto within the suspension period, by filing with the commission a bond in an amount approved by the commission with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, of the excess in increased rates, including interest thereon which shall be at the current rate of interest as determined by the commission, collected during the period of the suspension if the schedule so put into effect is finally disallowed by the commission. There may be substituted for the bond other arrangements satisfactory to the commission for the protection of persons affected. If the telephone company fails to make refunds within the period of time prescribed by the commission, the commission shall sue therefor and is authorized to 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. However, no telephone company shall put a suspended rate schedule into effect as provided by this subdivision until at least 90 days after the commission has made a determination concerning any previously filed change of the rate schedule or the change has otherwise become effective under subdivision 2.

Subd. 4. 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. 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 or rates requested by the telephone company, except that individual rates may be adjusted upward or downward.

Subd. 6. 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 cost, 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 shall 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. The commission shall not make an allowance for operating expenses incurred by a telephone company for institutional advertising.

Subd. 8. The commission shall allow as operating expenses only those charitable contributions which the commission deems prudent and which qualify under section 290.21, subdivision 3, clause (b). Only 50 percent of the qualified contributions shall be allowed as operating expenses.

Subd. 9. For the purposes of this section, "telephone company" shall not include a cooperative telephone association organized under the provisions of chapter 308, or a municipal, unless the cooperative telephone association 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 (a) approved by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308.15, subdivision 1, excluding the filing requirements; or (b) 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 of public service. 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.

A municipal may elect to become subject to rate regulation by the commission pursuant to this section. The election shall be (a) approved by resolution of the governing body of the municipality; or (b) 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 of public service. 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.

History: 1977 c 359 s 7; 1978 c 694 s 2; 1979 c 319 s 1; 1980 c 615 s 60

237.08 [Repealed, 1977 c 359 s 8]

237.081 SUMMARY INVESTIGATIONS OF INADEQUATE SERVICE.

Subdivision 1. Whenever the commission shall believe that any 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 summarily investigate the same with or without notice.

Subd. 1a. Upon a complaint made against any cooperative telephone association or a municipal telephone utility by the governing body of any political subdivision, or by no fewer than five percent of the consumers of the particular cooperative telephone association or municipal telephone utility, 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 therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed to make an investigation as it may deem necessary. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest.

Subd. 2. If, after making such summary investigation, the commission becomes satisfied that sufficient grounds exist to warrant a formal hearing being ordered as to the matters investigated, it shall set a time and place for a hearing.

Subd. 3. Notice of the time and place for such hearing shall be made to all interested parties by postage paid, first class mail.

Subd. 4. Whenever the commission shall find that any service which can be reasonably demanded cannot be obtained, or 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 therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate, the commission shall make an order respecting the rates, tolls, tariffs, regulation, act, omission, practice or service that is just and reasonable.

Subd. 5. A copy of such order shall be served upon the person against whom it runs or his attorney, and notice thereof shall be given to the other parties to the proceedings or their attorneys.

History: 1974 c 40 s 1; 1979 c 319 s 2,3

237.09 DISCRIMINATION PROHIBITED.

No telephone company, or any agent or officer thereof, shall, directly or indirectly, in any manner, knowingly or wilfully, 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.

History: 1915 c 152 s 7 (5292)

237.10 UNIFORM RULES.

It shall be the duty of the department 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 department 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: 1915 c 152 s 8; 1969 c 1031 s 10; 1971 c 25 s 67 (5293)

237.11 INSPECTION OF BOOKS OF TELEPHONE COMPANIES IN CASE OF FAILURE TO MAKE REPORTS.

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 and all of its property shall be at all times subject to inspection by 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 department.

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 state treasurer to funds in his hands 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: 1915 c 152 s 9; 1919 c 183 s 1; 1961 c 341 s 1; 1971 c 25 s 67 (5294)

237.12 CONNECTIONS BETWEEN TELEPHONE COMPANIES DISCONTINUED ONLY ON ORDER.

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 department for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the department shall find that such physical connections will not result in irreparable injury to such telephone properties, it 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 to the department 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.

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 department 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.

History: 1915 c 152 s 10; 1919 c 183 s 2; 1971 c 25 s 67; 1980 c 614 s 119 (5295)

237.13 TELEPHONE COMPANIES TO PERMIT PHYSICAL CONNECTION.

When public convenience requires the same, every telephone company operating an exchange in any city 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 line or lines owned and operated by another telephone company, serving rural subscribers located within a territory reasonably tributary to and outside of the corporate limits of the city in which the telephone company is operating an exchange, 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 connections," as used in this section, means such number of complete wire circuits and connections as may be required to furnish reasonable and adequate service between such telephone lines and exchanges. 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 department for an order requiring such connection and fixing the compensation, terms and conditions thereof, and if after investigation and hearing the department shall find that such physical connections will not result in irreparable injury to such telephone properties, it 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. The public convenience shall not be deemed to demand a connection between an exchange and any rural telephone line where,

by existing connections or telephone lines, adequate service is already furnished or available to the inhabitants of the territory affected. 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.

History: 1921 c 354 s 1; 1971 c 25 s 67; 1973 c 123 art 5 s 7 (5296)

237.14 FREE OR REDUCED RATES TO OFFICERS.

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. Nothing herein shall release any telephone company from carrying out any contract now existing between it and any municipality for the furnishing of any service free or at reduced rates. Any contract for telephone service, at discriminatory rates, other than those with municipalities, shall be terminated by the company as soon as the same becomes terminable by its terms.

History: 1915 c 152 s 11 (5297)

237.15 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: 1915 c 152 s 12; 1919 c 183 s 3; 1971 c 25 s 67 (5298)

237.16 AUTHORITY FOR CONSTRUCTING TELEPHONE LINES AND EXCHANGES.

Subdivision 1. For the purpose of bringing about uniformity of practice, the department shall have the exclusive right to grant authority to any telephone company to construct telephone lines or exchanges for furnishing local service to subscribers in any municipality of this state, and to prescribe the terms and conditions upon which construction may be carried on, and whenever the department grants such authority, it shall be in the form of a permit of indeterminate duration — coupled with the right to the municipality to purchase the telephone plant within the city, as hereinafter provided. No lines or equipment shall be constructed or installed for the purpose of furnishing local rural or toll telephone service to the inhabitants or telephone users in any locality in this state, where there is then in operation in the locality or territory affected thereby another telephone company already furnishing such service, without first securing from the department a declaration, after a public hearing, that public convenience requires such proposed telephone lines or equipment; but the governing body of any municipality shall have the same powers of regulation which it now possesses with reference to the location of poles and wires so as to prevent any interference with the safe and convenient use of streets and alleys by the public.

Subd. 2. All telephone companies operating exchanges in the state of Minnesota as of the effective date of Laws 1961, Chapter 637, shall be entitled to

receive a certificate of territorial authority from the department authorizing such company to continue to serve the areas presently included within the exchange boundaries as indicated by the exchange boundary maps now on record with the department provided however that such exchange boundaries shall be subject to review by the department upon the filing of a complaint by any interested party, the time for filing such complaints to be limited to 60 days after the passage of Laws 1961, Chapter 637. If more than one company files maps indicating service in the same territory, the department shall, after hearing, on reasonable notice to the interested parties, determine, from such evidence as it may reasonably require, which of such companies shall be entitled to a certificate of territorial authority. In making such determination, the department shall consider the ability of such company to furnish thereafter reasonably adequate service in the territory in question. Any company operating a switchboard that does not presently have a map on record with the department shall have three months from the effective date of Laws 1961, Chapter 637 to file such map showing the territory being served by such company.

Subd. 3. The style, size and kind of map, together with the information to be shown thereon, shall be as required by the rules and regulations prescribed by the department. Such rules and regulations shall indicate the time and place for filing such maps and shall require that such maps be kept current.

Subd. 4. No company shall construct or operate any line, plant or system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the department a determination that the present or future public convenience and necessity require or will require such construction, operation, or acquisition, and a new certificate of territorial authority; provided that 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. Any certificate of territorial authority may, after notice of hearing and a hearing, be revoked by the department, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate telephone service within the area or areas determined and defined in such certificate of territorial authority.

Subd. 6. Nothing contained in this section shall be construed to require any telephone company operating exchanges in the state of Minnesota to render telephone service in any portion of any territorial area in which such telephone company does not render and does not propose to render telephone service.

History: 1915 c 152 s 13; 1925 c 184 s 1; 1961 c 637 s 1; 1971 c 25 s 67 (5299)

237.17 EXTENSION OF LONG DISTANCE LINES.

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 the regulation of the governing body of such city relative to the location of the poles and wires and the preservation of the safe and convenient use of such streets and alleys to the public, provided that if such lines are to furnish service between communities or localities then served by another company, a certificate of public convenience must first be obtained as required by section 237.16.

History: 1915 c 152 s 14; 1925 c 184 s 2; 1973 c 123 art 5 s 7 (5300)

237.18 SURRENDERING OF LICENSE; NEW AUTHORITY.

Any telephone company operating under any existing license, permit, or franchise or which shall, before the taking effect of Laws 1915, Chapter 152, acquire any license, permit, or franchise, upon filing with the clerk of the municipality which granted such franchise, a written declaration that it surrenders such license, permit, or franchise, may receive in lieu thereof, an indeterminate permit, as defined in this chapter; and such telephone company shall thereafter hold such permit under all the terms, conditions, and limitations of this chapter. The filing of such declaration shall be deemed a waiver by such telephone company of the right to insist upon the fulfillment by any municipality of any contract theretofore entered into relating to any rate, charge, or service made subject to regulation by this chapter. Upon filing such written declaration by the telephone company, the clerk of the municipality shall file with the department a certificate showing that fact and the date thereof, and thereupon it shall receive an indeterminate permit from the department conferring the same rights as if originally granted under this chapter.

History: 1915 c 152 s 15; 1971 c 25 s 67 (5301)

237.19 MUNICIPALITIES MAY OPERATE TELEPHONE EXCHANGES.

Any municipality shall have the right to own and operate a telephone exchange within its own borders, subject to the provisions of this chapter, and 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.

History: 1915 c 152 s 16 (5302)

237.20 NOTICE TO DEPARTMENT AND PROCEDURE.

When a municipality decides in the manner above provided to acquire an existing plant by condemnation it shall give notice to the department whose duty it shall be thereupon to determine the just compensation which the owner of the plant is entitled to receive therefor from the municipality. Before deciding upon such compensation the department shall, at a public meeting which may be adjourned from time to time, hear all interested parties on the question involved. The department 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 wherein such plant is situated from that part of the order fixing the compensation to be paid, within 30 days, by either party, which appeal shall be tried the same as other appeals hereunder; if no such appeal is taken the order of the department shall become final at the end of 30 days; and when appeal is taken the decision of the district court or of the supreme court, if taken there from the district court, shall be final.

History: 1915 c 152 s 17; 1971 c 25 s 67 (5303)

237.21 VALUATION OF TELEPHONE PROPERTY.

In determining the value of any telephone property for rate making 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 department 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.

Laws 1953, Chapter 25, shall have no effect on proceedings pending before the courts or the department of public service at the time of its enactment.

History: 1915 c 152 s 18; 1953 c 25 s 1,2; 1971 c 25 s 67 (5304)

237.22 DEPRECIATION; AMORTIZATION.

The department shall fix proper and adequate rates and methods of depreciation and amortization with respect to telephone company property and every telephone company shall conform its depreciation accounts to the rates and methods fixed by the department.

History: 1915 c 152 s 19; 1971 c 25 s 67; 1977 c 364 s 10 (5305)

237.23 COMPANIES MAY PURCHASE PROPERTY OF OTHER COMPANIES.

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 department thereto; and telephone companies, corporations, persons, partnerships, or associations are hereby given the right with the consent of the department 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 department 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 department.

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: 1915 c 152 s 20; 1919 c 183 s 4; 1945 c 143 s 1; 1971 c 25 s 67 (5306)

237.24 TRANSCRIBED COPY OF RECORD, EXPENSE.

A full and complete record shall be kept by the department 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 department 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 department under the provisions of this chapter, the department 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 clerk of the district court where such appeal is pending.

History: 1915 c 152 s 21; 1919 c 183 s. 5; 1971 c 25 s 67 (5307)

237.25 APPEALS FROM DECISIONS OF DEPARTMENT.

Any party to a proceeding before the department or the attorney general may make and perfect an appeal from such order as provided in sections 216.24 and 216.25.

Upon such appeal being so perfected it may be brought on for trial at any time by either party upon ten days' notice to the other and shall then be tried by the court without the intervention of a jury, and determined upon the pleadings, evidence, and exhibits introduced before the department and so certified by it. At such trial the findings of fact made by the department shall be prima facie evidence of the matters therein stated, and the order shall be deemed prima facie reasonable, and if the court finds that the order appealed from is unjust, unreasonable, and not supported by the evidence, it shall make such order to take the place of the order appealed from as is justified by the record before it. If the court finds from an examination of the record that the department erroneously rejected evidence which should have been admitted; it shall remand the proceedings to the department with instructions to receive such evidence so rejected and any rebutting evidence and make new findings and return the same to the court for further proceedings. In such case the department after notice to the parties in interest shall proceed to rehear the matter in controversy, and receive such wrongfully rejected evidence and any rebutting evidence offered and make new findings, as upon the original hearing, and transmit the same and such new record, properly certified, to the court wherein the appeal is pending, whereupon the matter shall be again considered in the court in the same manner as in an original appeal. Either party may appeal to the supreme court from the judgment of the district court, as in other civil actions except that the appeal must be taken within 30 days from the date of notice of the entry of such judgment.

Where an appeal is taken to the supreme court the appellant shall cause a return to be made to the court within 30 days from the date of appeal, otherwise the appeal shall be deemed abandoned and may be dismissed upon motion of the respondent. When the return on the appeal is received by the clerk of the supreme court, the cause shall be placed on the calendar of the term then pending, or if none is then pending then of the one next ensuing and it shall be assigned and brought on for hearing as other causes on such calendar.

History: 1915 c 152 s 22; 1971 c 25 s 67 (5308)

237.26 ORDER FINAL AND CONCLUSIVE.

If no appeal is taken from any order of the department, 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: 1915 c 152 s 23; 1971 c 25 s 67 (5309)

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 department after it has become final, or any order or judgment of the district court or the supreme court in any cases taken to the courts, or either of them, on appeal, after such judgment or order has become final, it

shall be the duty of the attorney general to 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 thereof, is situated, for a mandatory injunction or other appropriate writ to compel obedience to the law, order, or judgment and the district court shall punish any disobedience of its orders in such enforcement proceedings as for contempt of court.

History: 1915 c 152 s 25; 1971 c 25 s 67 (5311)

237.28 BURDEN OF PROOF.

In any investigation, action or proceeding arising under, or growing out of, an action initiated by the department upon its own motion, the burden of proof shall be upon the telephone company to establish the reasonableness of the existing rates.

History: 1937 c 426 s 1; 1971 c 25 s 67 (5311-1)

237.29 [Repealed, 1978 c 694 s 4]

237.295 COST OF EXAMINATION; ASSESSMENT OF EXPENSES; LIMITATION; OBJECTIONS.

Subdivision 1. Whenever the department or commission, in a proceeding upon its own motion, on complaint, or upon an application to it, shall deem it necessary in order to carry out the duties imposed on it to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any telephone company, or to render any engineering or accounting services to any telephone company, the telephone company shall pay the expenses reasonably attributable to the investigation, appraisal, or service. The department and commission shall ascertain the expenses, and the department shall render a bill therefor to the telephone company, either at the conclusion of the investigation, appraisal, or services, or from time to time during its progress, which bill shall constitute notice of the assessment and a demand for payment. The amount of the bills so assessed by the department shall be paid by the telephone company into the state treasury within 30 days from the date of assessment. The total amount, in any one calendar year, for which any telephone company shall become liable, by reason of costs incurred by the department and commission within that calendar year, shall not exceed two-fifths of one percent of the gross jurisdictional operating revenue of the telephone company in the last preceding calendar year. Where, pursuant to this subdivision, costs are incurred within any calendar year which are in excess of two-fifths of one percent of the gross jurisdictional operating revenues, the excess costs shall not be chargeable as part of the remainder under subdivision 2, but shall be paid out of the general appropriation of the department.

Subd. 2. The department and commission shall annually, within 90 days after the close of each fiscal year, ascertain the total of its expenditures to the performance of its duties relating to telephone companies, and shall deduct therefrom all amounts chargeable to telephone companies under subdivision 1. The remainder shall be assessed by the department to the several telephone companies in proportion to their respective gross jurisdictional operating revenues during the last calendar year. The assessment shall be paid into the state treasury within 30 days after the bill has been mailed to the several telephone companies, which shall constitute notice of the assessment and demand of payment thereof. The total amount which may be assessed to the telephone companies, under authority of this subdivision, shall not exceed one-eighth of one percent of the total gross jurisdictional operating revenues during such calendar year.

Subd. 3. Within 30 days after the date of the mailing of any bill as provided by subdivisions 1 and 2, the telephone company 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 provide for a contested case hearing and issue an order in accordance with its findings. The order shall be appealable in the same manner as other final orders of the commission.

Subd. 4. The amounts assessed against any telephone company not paid after 30 days after the mailing of a notice advising the telephone company of the amount assessed against it, shall 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 to collect the amount due, together with interest and the cost of the suit.

History: 1978 c 694 s 3; 1979 c 50 s 24; 1980 c 614 s 120,121

237.30 TELEPHONE INVESTIGATION REVOLVING FUND.

The sum of \$25,000 is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to establish and provide a revolving fund to be known as the Minnesota Telephone Investigation Fund for the use of the department of public service and of the Attorney General in investigations, valuations, and revaluations under section 237.29. All sums paid by the telephone companies pursuant to section 237.29 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. The sum of \$25,000 herein appropriated and all subsequent credits to said revolving fund shall be paid upon the warrant of the commissioner of finance 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: 1939 c 333 s 2; 1969 c 399 s 1; 1971 c 25 s 67; 1973 c 492 s 14 (5311-2a)

237.31 [Repealed, 1951 c 113 s 2]

237.32 [Repealed, 1975 c 25 s 2]

237.33 TOWN BOARDS MAY CONSTRUCT TELEPHONE SYSTEMS FOR FIRE PROTECTION.

For the purpose of preventing the starting and spreading of forest or prairie fires and extinguishing the same, promoting public welfare, public health, and public safety, and facilitating the work of public improvements, the electors of any organized town of this state shall have power, at their annual town meeting or at any special town meeting called in the manner provided by law for special town meetings, to authorize the town to construct, or otherwise acquire, operate, and maintain a township telephone system, including the necessary poles, wires, telephones and telephone equipment, and by itself or in conjunction with one or more other towns to construct, equip, acquire, operate, and maintain a local telephone exchange, or one or more trunk lines of wires connecting such town or towns with the local exchange, or with a local exchange owned by some other corporation or persons, and to determine by ballot the amount of money to be raised for the purposes aforesaid. No such local exchange as herein provided for shall be constructed or maintained in municipalities where a local exchange is already in operation.

History: 1921 c 439 s 1 (5312)

237.34 TOWN TELEPHONE LINES OUTSIDE CORPORATE LIMITS.

For the purpose of carrying out the provisions of section 237.33, any town may, by itself or in conjunction with one or more other towns, construct, maintain, acquire, own, or lease telephone lines, telephone equipment, or a local exchange outside the corporate limits of such town. The authority herein granted to any town to acquire, construct, or maintain, by itself, lines outside of its corporate limits shall be solely for the purpose of connecting telephones inside its corporate limits with a telephone exchange or switching center outside its corporate limits. The department may order any service to be extended across any township line to any person or concern adjacent thereto when, in the judgment of the department, such person or concern is entitled to telephone service and the same cannot be reasonably required of any other telephone company.

History: 1921 c 439 s 2; 1927 c 193 s 1; 1971 c 25 s 67 (5313)

237.35 TAX LEVY FOR CONSTRUCTION.

When any town shall have authorized the construction, acquiring, operation, or maintenance of a telephone system, as set forth in sections 237.33 and 237.34, and determined the amount of money to be raised for that purpose, the town board of supervisors may levy a tax for the amount of money to be raised therefor. The annual tax levy for such purpose shall not exceed 3 1/3 mills upon the taxable property of such town.

History: 1921 c 439 s 3; 1949 c 238 s 1; 1973 c 773 s 1 (5314)

237.36 RENTALS FIXED.

The electors of such town shall have power at their annual town meeting, or at any special meeting, to determine and, in case the electors fail to do so, the town board of supervisors shall determine, the manner of payment of rentals and charges to be paid per phone for operating a local exchange service; and such charges and all tolls payable by the users of such township system shall, in the first instance, be collected by the town board or under its direction. Any local exchange may, by agreement with any town board of supervisors, collect the long distance tolls directly from the users. No such town shall be subjected to or liable for any gross earnings or other tax by reason of moneys collected or property owned by it for such township telephone system. In case of the failure on the part of any user to pay such charges or tolls in the manner so provided, the town board may institute an action at law to collect such charges or tolls in arrears, and may also discontinue telephone service to such user, until all charges and tolls in arrears, the court costs, if any, taxed and allowed in an action to collect such arrears, and the reasonable cost of disconnecting the telephone from the general service, and reconnecting the same shall have been paid.

History: 1921 c 439 s 4 (5315)

237.37 BONDS TO CONSTRUCT.

For the purpose of constructing, acquiring, operating, or maintaining a township telephone system or local exchange, as in sections 237.33 to 237.40 provided, any organized town is hereby authorized to issue and sell its bonds in the same manner, under the same procedure, and within the same limitations as provided by law for the issuance and sale of town road and bridge bonds; and the board of supervisors and their successors are hereby authorized to levy and in due form certify to the auditor of the county in which such town is situated, a tax upon the taxable property of the town to provide for the payment of instalments of principal and interest as they mature, in the manner provided in the case of town road and bridge bonds.

History: 1921 c 439 s 5 (5316)

237.38 LOCAL EXCHANGES SHALL PERMIT CONNECTION.

When public convenience requires the same, every local telephone exchange shall for a reasonable compensation permit a physical connection or connections to be made and telephone service to be furnished between such local telephone exchange system and township telephone system. In case of failure of the local telephone exchange 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 department for an order requiring such connection, and fixing the compensation, terms, and conditions thereof; and if after investigation and hearing the department shall find that such physical connections will not result in irreparable injury to such telephone properties, it shall by order direct such connections to 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 to the department 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.

History: 1921 c 439 s 6; 1971 c 25 s 67 (5317)

237.39 PRIVATE TELEPHONE LINES SOLD TO TOWN.

When, under the provisions of sections 237.33 to 237.40, a township telephone system shall be established in any township wherein any of the inhabitants of such town are already provided with telephone service furnished by any other telephone company or person, such town shall, when so requested by the telephone company or person, acquire from the telephone company all telephone equipment used by the telephone company or person in furnishing telephone service to the inhabitants of such town exclusively. For the purpose of determining the purchase price of such equipment application shall be made to the department whose duty it shall be thereupon to determine the just compensation which the owner of such telephone equipment is entitled to receive therefor from the town. Before deciding upon such compensation, the department shall at a public meeting, which may be adjourned from time to time, hear all interested persons of the question involved. The department shall by order fix the compensation and furnish a copy of its order to the town, and to the telephone company or person concerned. An appeal may be taken to the district court of the county wherein such town is situated from that part of the order fixing the compensation to be paid, within 30 days, by either party, which appeal shall be tried in the same manner as other appeals hereunder; if no such appeal is taken the order of the department shall become final at the end of 30 days, and when appeal is taken the decision of the district court or of the supreme court, if taken there from the district court, shall be final.

When, under the provisions of sections 237.33 to 237.40 a township telephone system has been established in any town, and it has been determined by the board of supervisors of the town to be for the best interest of public service and all persons concerned, to sell and transfer the township telephone system to any telephone company or person giving service organized for that purpose and qualified to purchase the system and operate the same, the board of supervisors shall have authority to sell, transfer, and convey the township telephone system upon such reasonable price and terms as it may determine; provided, that there shall be presented to the board of supervisors by a petition signed by at least 25 percent of the freeholders of the town asking the sale thereof; and, if such sale and agreed sale price be approved at an annual or special town meeting, it being

stated in the notice of such annual and special meeting that the proposition will be considered thereat, by 66 percent of the legal voters attending such meeting.

If any township telephone lines are sold under the provisions of sections 237.33 to 237.40, and the town has theretofore issued bonds for the construction thereof, and any part of the bonds are then outstanding and unpaid, the entire consideration received from the sale, or such part as may be necessary, shall be held and applied only for the payment and retirement of such bonds.

History: 1921 c 439 s 7; 1929 c 150 s 1; 1971 c 25 s 67 (5318)

237.40 MANAGEMENT.

The board of supervisors of any such town is hereby vested with all necessary authority to manage, maintain, and operate any township telephone system constructed under the provisions of sections 237.33 to 237.40; and, to that end, may, among other things, contract for the connection of such town lines with exchanges owned by others for switching, lease the system for a reasonable compensation, local exchange and toll connections, hire and discharge such employees as may be necessary to operate and maintain such township system, establish rules and regulations; and, subject to the approval of the department, establish and from time to time, change rates and charges covering the service furnished the users.

History: 1921 c 439 s 8; 1929 c 150 s 2; 1971 c 25 s 67 (5319)

237.41 TELEGRAPH COMPANIES COMMON CARRIERS.

Persons and corporations engaged in the business of transmitting messages by telegraph lines are common carriers, and as such shall serve all persons, without discrimination or preference, for reasonable compensation; and every contract, notice, or condition stipulating for exemption from liability for the consequences of their neglect shall be void.

History: RL s 2928 (7545)

237.42 DELIVERY OF MESSAGE.

When the party to whom a message is addressed resides or does business within the corporate limits of any city where a telegraph office is situated, the same shall be promptly delivered at his place of residence or business, if the same is known or can with reasonable diligence be ascertained. Otherwise he shall be notified by the first mail where it can be found.

History: RL s 2929; 1973 c 123 art 5 s 7 (7546)

237.43 PRECEDENCE OF MESSAGES.

Messages delivered to the owner or agent of any telegraph line operated in whole or in part within this state shall be transmitted in the order in which they are received, except that government dispatches and messages relating to the movement of railroad trains, to cases of sickness or death, and to the administration of criminal laws shall take precedence if the sender shall so request.

History: RL s 2930 (7547)

237.44 LIABILITY FOR DAMAGES.

If any person or corporation owning or operating a telegraph line wholly or partly within the state shall fail to transmit any message within a reasonable time, or to exercise due diligence to that end, after its reception, or shall fail to deliver any message to the party to whom it is addressed within a reasonable time after its arrival at the place of destination, he or it shall be liable in a civil action at the suit of the party injured for all damages sustained by reason of such neglect or omission. The company delivering the message shall state plainly

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thereon the exact time when it was received at the original point for transmission.

History: *RL s 2931 (7548)*

237.45 TELEPHONE AND TELEGRAPH LINES CONSTRUCTED.

Natural persons, copartnerships, and associations may construct, maintain, and operate telephone and telegraph lines, and shall have and possess the same rights, powers, and privileges with reference thereto as corporations formed for such purpose.

History: *RL s 2932 (7549)*

237.46 VIOLATION A GROSS MISDEMEANOR.

Any telephone company and, if it be a corporation, the officers thereof, violating any provisions of sections 237.01 to 237.27, shall be guilty of a gross misdemeanor.

History: *1915 c 152 s 24; 1919 c 183 s 6 (5310)*

237.47 ALARM TRANSMISSION TELEPHONE DEVICES; REGULATIONS.

Subdivision 1. Any person desiring to install or use any automatic, electrical, or mechanical device or attachment to any telephone that reproduces any taped or prerecorded message to report any police, fire, or other emergency to any official emergency reporting telephone number shall obtain permission, in writing, from the sheriff of the county in which located or the police chief or fire chief of the municipality into whose emergency telephone number the attachment or device is connected.

Subd. 2. The sheriff, police chief, or fire chief may determine the conditions, if any, under which the device or attachment may be connected, provided such conditions are reasonable in accordance with local conditions and further provided that the device or attachment complies with the rules and regulations of the Minnesota public utilities commission.

Subd. 3. Whenever the sheriff, police chief, or fire chief has knowledge of the use of any such attachment or device not operated or maintained in accordance with the provisions of this section he may order its removal.

Subd. 4. Violation of any of the provisions of this section shall constitute a misdemeanor.

History: *1969 c 1057 s 1-4; 1980 c 614 s 123*