

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 736

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DATE	D-PG	OFFICIAL STATUS
02/12/2015	265	Introduction and first reading
		Referred to Jobs, Agriculture and Rural Development
04/07/2015		Comm report: To pass as amended and re-refer to Finance

A bill for an act

1.1 relating to telecommunications; providing for competitive market regulation
 1.2 for certain local exchange carriers; regulating municipal provision of
 1.3 telecommunication services; clarifying state and local regulatory authority of
 1.4 voice-over-Internet protocol services and Internet protocol-enabled services;
 1.5 amending Minnesota Statutes 2014, sections 237.01, by adding subdivisions;
 1.6 237.19; proposing coding for new law in Minnesota Statutes, chapter 237.
 1.7

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

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

1.11 Subd. 9. **Voice-over-Internet protocol service.** "Voice-over-Internet protocol
 1.12 service" or "VoIP service" means any service that (1) enables real-time two-way voice
 1.13 communications that originate from or terminate to the user's location in Internet protocol
 1.14 or any successor protocol, and (2) permits users generally to receive calls that originate
 1.15 on the public switched telephone network and terminate calls to the public switched
 1.16 telephone network.

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

1.19 Subd. 10. **Internet protocol-enabled service.** "Internet protocol-enabled service"
 1.20 or "IP-enabled service" means any service, capability, functionality, or application
 1.21 provided using Internet protocol, or any successor protocol, that enables an end user to
 1.22 send or receive a communication in Internet protocol format or any successor format,
 1.23 regardless of whether that communication is voice, data, or video.

2.1 Sec. 3. [237.025] COMPETITIVE MARKET REGULATION.

2.2 Subdivision 1. Definitions. (a) "Competitive service provider" means a provider
 2.3 of local residential voice service who owns a substantial proportion of the last-mile or
 2.4 loop facilities delivering the service in an exchange service area, without regard to the
 2.5 technology used to deliver the service. "Competitive service provider" includes, but is
 2.6 not limited to, a wireless or Voice over Internet Protocol provider who offers service to
 2.7 a majority of households in an exchange service area with the wireless provider's own
 2.8 facilities and the remainder by roaming through another wireless carrier's facilities, but
 2.9 does not include:

2.10 (1) satellite technology;

2.11 (2) wireless providers who resell voice services purchased at wholesale;

2.12 (3) competitive local exchange carriers who do not who own a substantial proportion
 2.13 of the last-mile or loop facilities over which they provide local residential voice service; or

2.14 (4) over-the-top VOIP providers.

2.15 (b) "Exchange service area" has the meaning given in Minnesota Rules, part
 2.16 7810.0100, subpart 15.

2.17 (c) "Over-the-top VOIP provider" means a VOIP provider that has no business
 2.18 relationship with the provider of the Internet connection used by the VOIP provider to
 2.19 deliver voice service.

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

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

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

2.25 Subd. 2. Petition. (a) A local exchange carrier may petition the commission to be
 2.26 regulated under this section in any exchange service area in which the carrier provides
 2.27 local exchange service. The petition must be served on the commission, the department,
 2.28 the Office of the Attorney General, and any other person designated by the commission.

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

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

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

2.34 (3) a list of alternative providers of local services in each exchange service area;

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

3.1 (5) documentation demonstrating the loss of local residential voice customers in
3.2 each local calling area over, at a minimum, the previous five years;

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

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

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

3.10 (b) A party objecting to a local exchange carrier's petition must file an objection
3.11 within 20 days.

3.12 (c) If no party objects to a petitioning local exchange carrier's proposed election
3.13 within 20 days of the filing of the petition, the petition is deemed approved.

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

3.16 (e) The commission shall make a final determination regarding the petition within
3.17 180 days of the date all information required under subdivision 2 was submitted.

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

3.21 Subd. 4. **Competitive criteria.** (a) If a petitioning local exchange carrier
3.22 demonstrates that it serves fewer than 50 percent of the households in an exchange service
3.23 area, and at least 50 percent of households in the exchange service area can choose voice
3.24 service from at least one additional competitive service provider, the commission shall
3.25 approve the petition.

3.26 (b) If a petitioning local exchange carrier serves more than 50 percent of the
3.27 households in an exchange service area, the commission shall approve the petition if
3.28 the petitioner demonstrates that:

3.29 (1) at least 50 percent of households in the exchange service area can choose voice
3.30 service from at least one additional competitive service provider;

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

3.33 (3) no single provider has the ability to maintain prices above competitive levels for
3.34 a significant period of time or otherwise deter competition.

3.35 Subd. 5. **Market regulations.** (a) A local exchange carrier that has received
3.36 approval from the commission to be regulated under this section in one or more of its

4.1 exchange service areas shall be subject to regulation as a telecommunications carrier
 4.2 under section 237.035 and as a competitive local exchange carrier in Minnesota Rules,
 4.3 parts 7811.2210 and 7812.2210, as applicable, in the approved exchange service areas.
 4.4 Regulation under this section is effective 30 days after a petition is approved by the
 4.5 commission under subdivision 4.

4.6 (b) If a local exchange carrier receives commission approval to be regulated under
 4.7 this section, any existing alternative form of plan, price, or service regulation terminates
 4.8 on the day the regulation under this section becomes effective.

4.9 Subd. 6. **Relation to other law.** Nothing in this section affects or modifies:

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

4.12 (2) any commission jurisdiction over:

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

4.15 (ii) commission authority to address or affect the resolution of disputes regarding
 4.16 intercarrier compensation; and

4.17 (3) the rights of any entity, or the authority of the commission or local government
 4.18 authorities, with respect to the use and regulation of public rights-of-way under sections
 4.19 237.162 and 237.163.

4.20 Subd. 7. **Reexamining applicability of competitive criteria.** The commission
 4.21 may, upon petition or on its own motion, open a proceeding to examine whether the
 4.22 competitive criteria in subdivision 4 continue to be met in an exchange service area in
 4.23 which a local exchange carrier previously received commission approval to be regulated
 4.24 under this section. If the commission determines that the competitive criteria are no
 4.25 longer met, it shall determine the appropriate level of regulation for that provider in that
 4.26 exchange service area.

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

4.28 Sec. 4. **[237.037] VOICE-OVER-INTERNET PROTOCOL SERVICE AND**
 4.29 **INTERNET PROTOCOL-ENABLED SERVICE.**

4.30 Subdivision 1. **Regulation prohibited.** Except as provided in this section, no
 4.31 state agency, including the commission and the Department of Commerce, or political
 4.32 subdivision of this state shall, by rule, order, or other means directly or indirectly regulate
 4.33 the entry, rates, terms, quality of service, availability, classification, or any other aspect of
 4.34 VoIP service or IP-enabled service.

5.1 Subd. 2. **VoIP regulation.** (a) To the extent permitted by federal law, VoIP service
 5.2 is subject to the requirements of sections 237.49, 237.52, 237.70, and 403.11 with regard
 5.3 to the collection and remittance of the surcharges governed by those sections.

5.4 (b) A provider of VoIP service must comply with the requirements of chapter 403,
 5.5 applicable to service providers with respect to providing access to 911 service, except to
 5.6 the extent those requirements conflict with the federal requirements for the provision of
 5.7 911 service by VoIP providers contained in Code of Federal Regulations, title 47, part 9. A
 5.8 VoIP provider shall also be entitled to the benefit of the limitation of liability provisions of
 5.9 chapter 403. Each VoIP provider must file a plan with the commission describing how it
 5.10 will comply with the requirements of this paragraph. On an annual basis, a VoIP provider
 5.11 must file with the commission either an update of the plan or a statement that the plan and
 5.12 personnel contact information previously filed is still current.

5.13 Subd. 3. **Relation to other law.** Nothing in this section restricts, creates, expands,
 5.14 or otherwise affects or modifies:

5.15 (1) the commission's authority under the Federal Communications Act of 1934,
 5.16 United States Code, title 47, sections 251 and 252;

5.17 (2) any applicable wholesale tariff or any commission authority related to wholesale
 5.18 services;

5.19 (3) any commission jurisdiction over (i) intrastate switched access rates, terms,
 5.20 and conditions, including the implementation of federal law with respect to intercarrier
 5.21 compensation, or (ii) existing commission authority to address or affect the resolution of
 5.22 disputes regarding intercarrier compensation; or

5.23 (4) the rights of any entity, or the authority of the commission and local government
 5.24 authorities, with respect to the use and regulation of public rights-of-way under sections
 5.25 237.162 and 237.163.

5.26 Sec. 5. Minnesota Statutes 2014, section 237.19, is amended to read:

5.27 **237.19 MUNICIPAL TELECOMMUNICATIONS SERVICES.**

5.28 Any municipality shall have the right to own and operate a telephone exchange within
 5.29 its own borders, subject to the provisions of this chapter. It may construct such plant, or
 5.30 purchase an existing plant by agreement with the owner, or where it cannot agree with the
 5.31 owner on price, it may acquire an existing plant by condemnation, ~~as hereinafter provided,~~
 5.32 ~~but in no case shall a municipality construct or purchase such a plant or proceed to acquire~~
 5.33 ~~an existing plant by condemnation until such action by it is authorized by a majority of the~~
 5.34 ~~electors voting upon the proposition at a general election or a special election called for~~
 5.35 ~~that purpose, and if the proposal is to construct a new exchange where an exchange already~~

6.1 ~~exists, it shall not be authorized to do so unless 65 percent of those voting thereon vote in~~
6.2 ~~favor of the undertaking.~~ A municipality that owns and operates a telephone exchange
6.3 may enter into a joint venture as a partner or shareholder with a telecommunications
6.4 organization to provide telecommunications services within its service area.