

# State of South Dakota

EIGHTY-SIXTH SESSION  
LEGISLATIVE ASSEMBLY, 2011

528S0347

## SENATE BILL NO. 87

Introduced by: Senators Peters, Brown, Cutler, Haverly, Hunhoff (Jean), Krebs, Schlekeway, and Tidemann and Representatives Conzet, Abdallah, Blake, Boomgarden, Dryden, Feinstein, Hunhoff (Bernie), Lucas, Van Gerpen, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to prohibit local exchange carriers from assessing certain  
2 access stimulation charges and to establish certain penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For the purposes of this Act, the term, access stimulation charge, means any  
5 switched access charge assessed by a local exchange carrier for delivery of intrastate  
6 telecommunications to an entity that:

- 7 (1) Provides a free or below cost service, discount, credit, or other product offering to  
8 any person calling a telephone number assigned by the local exchange carrier to an  
9 entity's service; and
- 10 (2) Purchases no end user services for the provision of the free service and has a  
11 financial or contractual interest, which is either direct or indirect, in the intercarrier  
12 compensation revenue received by a telecommunications carrier, including access  
13 charges or reciprocal compensation for delivering calls to the telephone numbers  
14 assigned to any entity providing the free or below cost service.



1 Section 2. No local exchange carrier may assess an access stimulation charge. No access  
2 stimulation charge may be applied to any intrastate intraMTA telecommunications service  
3 which is originated by a commercial mobile radio service provider and terminated by a local  
4 exchange carrier.

5 Section 3. A local exchange carrier is not engaged in the provisions of local exchange  
6 service if the carrier delivers calls to an entity that has a financial or contractual interest, which  
7 is either direct or indirect, in the intercarrier compensation revenue received by the local  
8 exchange carrier for processing any telephone traffic that is subject to an access stimulation  
9 charge as defined in section 1 of this Act.

10 Section 4. An entity that has a financial or contractual interest, which is either direct or  
11 indirect, in the intercarrier compensation revenue received by a local exchange carrier for  
12 delivering calls to the telephone numbers assigned to the entity is not an end user of or  
13 subscriber of the local exchange carrier's telecommunications services.

14 Section 5. Nothing in this Act may be construed as indicating that access stimulation charges  
15 assessed prior to the effective date of this Act were just, reasonable, or in accordance with the  
16 laws of South Dakota or any other regulation, tariff, or policy.

17 Section 6. Any person who violates section 2 of this Act is subject to a civil penalty to be  
18 imposed by the Public Utilities Commission after notice and opportunity for hearing. The civil  
19 penalty may not exceed twenty thousand dollars for each day there is a violation of section 2 of  
20 this Act. In determining the amount of the penalty upon finding a violation, or the amount of  
21 the compromise settlement, the commission shall consider the appropriateness of the penalty  
22 to the size of the business of the person charged, prior offenses and compliance history, the good  
23 faith efforts of the person charged in attempting to achieve compliance, and such other matters  
24 as justice may require. All penalties collected pursuant to this section shall be deposited in the

1 state treasury. In addition to assessing a civil penalty for a violation of section 2 of this Act, the  
2 commission may revoke or suspend a telecommunications company's certificate of authority for  
3 repeated offenses.