

## LEGISLATIVE BILL 1285

Approved by the Governor April 6, 2000

Introduced by Transportation and Telecommunications Committee:  
 Bromm, 23, Chairperson; Byars, 30; Hudkins, 21;  
 Dw. Pedersen, 39; Thompson, 14; and Landis, 46

AN ACT relating to the Public Service Commission; to amend sections 75-122.01, 75-134, 75-136, 75-136.01, 75-137, 75-139.01, 75-156, 75-606, 75-610, 75-722, 86-803, 86-811, 86-1005, 86-1110, 86-1111, 86-1219, 86-1222, 86-1306, 86-1405, and 86-1909, Reissue Revised Statutes of Nebraska, and sections 75-109 and 75-609, Revised Statutes Supplement, 1999; to change provisions relating to commission orders and jurisdiction; to change certain stay and appeal provisions; to change, authorize, and limit certain administrative fines; to eliminate certain penalties and obsolete provisions; to harmonize provisions; to repeal the original sections; to outright repeal section 75-145, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 75-109, Revised Statutes Supplement, 1999, is amended to read:

75-109. (1) Except as provided in sections 19-4603, 86-803, and 86-808, the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

(2) The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996, Public Law 104-104, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets. In addition, the commission may administratively fine pursuant to section 75-156 any person who violates any enforcement mechanism or procedure established pursuant to this subsection. The authority granted to the commission pursuant to this subsection shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.

Sec. 2. Section 75-122.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-122.01. Except as otherwise provided in section 75-134, the The district courts shall have jurisdiction to enjoin a commission order only when the order was not entered in accordance with the provisions of Chapter 75 and the commission's rules adopted pursuant to such sections.

Sec. 3. Section 75-134, Reissue Revised Statutes of Nebraska, is amended to read:

75-134. (1) A commission order entered after a hearing shall be written and shall recite (1) (a) a discussion of the facts of a basic or underlying nature, (2) (b) the ultimate facts, and (3) (c) the commission's reasoning or other authority relied upon by the commission.

(2) Every order of the commission Except as otherwise provided in sections 75-121 and 75-139 and except for cease and desist orders issued pursuant to section 75-133, all commission orders shall become operative effective ten days after the date of the mailing of a copy of the order to the parties of record unless except (a) when the commission prescribes a later effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) as otherwise provided for cease and desist orders issued pursuant to section 75-133, or (d) for orders - An order entered pursuant to section 75-319 which shall be effective on the date of entry. of the order by the commission.

(3) Except as otherwise provided in this section or for to rate orders provided for in section 75-139, if one of the parties of record commences one of the appeal proceedings provided in an appeal pursuant to section 75-137, the order appealed shall be in abeyance until the Court of Appeals or Supreme Court issues its mandate. Nothing in this section shall hold in abeyance an order authorizing the issuance of a certificate or permit, an order denying relief or authority, or an order entered pursuant to section

75-319.

(4) If a party of record to a telecommunications order commences an appeal in accordance with the Administrative Procedure Act, the order appealed shall become effective on the date prescribed in subsection (2) of this section and remain in effect unless upon application (a) the commission or district court issues an order staying the underlying commission order or (b) the commission, district court, Court of Appeals, or Supreme Court issues an order reversing or modifying the underlying commission order. For purposes of this subsection, telecommunications order means an order entered by the commission pursuant to the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, subsection (2) of section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to 86-1222.

(5) The commission or district court may only issue a stay pursuant to subsection (4) of this section if it finds that (a) the applicant for the stay is likely to prevail when the matter is finally decided, (b) without relief, the applicant will suffer irreparable injury, and (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings. The commission or district court may require the party requesting such stay to give bond in such amount and conditioned as the commission or court may direct. The grant or denial of a stay shall not be considered to be a final order.

Sec. 4. Section 75-136, Reissue Revised Statutes of Nebraska, is amended to read:

75-136. (1) Except as otherwise provided by law, if ~~if~~ a party to any proceeding is not satisfied with the order entered by the commission, other than an order entered under sections 75-156 to 75-158, such party may appeal to the Court of Appeals as provided in section 75-137 to reverse, vacate, or modify the order.

(2) In the case of an order assessing a civil penalty entered under subdivision (1)(b) of section 75-156, the party may seek judicial review in accordance with the Administrative Procedure Act. In the case of ~~an~~ any other order entered under sections 75-156 to 75-158, the party may ~~(1)~~ (a) seek the review of the Court of Appeals as provided in section 75-137 or ~~(2)~~ (b) seek judicial review of the order under section 75-136.01. Subdivisions ~~(1)~~ (a) and ~~(2)~~ (b) of this section subsection are mutually exclusive and the choice of either section 75-136.01 or 75-137 shall govern the appeal process.

Sec. 5. Section 75-136.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-136.01. (1) Proceedings for review of an order entered under sections 75-156 to 75-158, except for review of an order assessing a civil penalty entered pursuant to subdivision (1)(b) of section 75-156, shall be instituted by filing a petition in the district court of Lancaster County or in the district court of the county in which the party is domiciled within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing. All parties of record shall be made parties to the proceedings for review. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in a civil action. The court, in its discretion, may permit other interested persons to intervene. The filing of the petition or the service of the summons upon the commission shall not automatically stay enforcement of a decision. The commission may stay enforcement of a decision, or the court may order a stay after notice to the commission of application for a stay upon such terms as it deems proper and shall require the party requesting such stay to give bond in the amount specified in the commission order entered under sections 75-156 to 75-158 and conditioned as the court directs. Within fifteen days after service of the petition or within such further time as the court for good cause shown allows, the commission shall prepare and transmit to the court the verbatim testimony transcribed by the official stenographer, including all exhibits, which shall constitute the bill of exceptions. The pleadings, order appealed, and bill of exceptions duly certified to by the executive director of the commission shall constitute the complete record. A copy of the original order appealed, certified to be a true and correct copy by the executive director or a commissioner, shall be admitted in evidence as prima facie evidence of every fact found and that such order is prima facie just and reasonable.

(2) The review shall be conducted by the court without a jury on the record of the commission.

(3) The court may affirm the decision of the commission or remand the case for further proceedings or may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is:

(a) In violation of constitutional provisions;  
 (b) In excess of the statutory authority or jurisdiction of the commission; or

(c) Arbitrary or capricious.

(4) The commission or such party shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals to the Court of Appeals, except that in no case shall security for such appeal be required when the appeal is taken by the commission.

(5) The review provided by this section shall not be available in any case when other provisions of law prescribe the method of appeal.

Sec. 6. (1) Notwithstanding the provisions of section 75-131, the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810 by a telecommunications company. After all administrative remedies before the commission have been exhausted, any interested party to an action may appeal in accordance with the Administrative Procedure Act.

(2) If the commission enters an order declining jurisdiction under subsection (1) of this section, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

(3) For purposes of the section, telecommunications company has the same meaning as in section 86-802.

Sec. 7. Section 75-137, Reissue Revised Statutes of Nebraska, is amended to read:

75-137. The procedure to obtain reversal, modification, or vacation of an order entered by the commission shall be (1) by filing a notice of appeal with the commission within thirty days after the date of the mailing of a copy of the order by the commission to the party appealing or (2) by filing a motion for rehearing within ten days after the date of the mailing of a copy of the order by the commission to the party appealing. If the commission overrules the motion for rehearing, a notice of appeal shall be filed with the commission within thirty days after the date of the mailing of a copy of the order overruling the motion to the party appealing. When the commission fails to enter an order ruling on the motion for rehearing within thirty days after such motion is filed, the appeal may be perfected by filing a notice of appeal before the commission enters an order ruling on the motion for rehearing, and the review by the appellate court shall be the same as if the commission had overruled the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested and such arguments shall be heard by a majority of the commission. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when a notice of appeal has been filed and the docket fee required by section 33-103 has been deposited in the office of the executive director of the commission. After being perfected, no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional.

Sec. 8. Section 75-139.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-139.01. For purposes of sections 75-140 to 75-145 75-101 to 75-158, person shall mean any individual, corporation, governmental agency or subdivision, partnership, limited liability company, company, or association and any other legal or commercial entity including any common or contract carrier and its owners, directors, officers, limited liability company members, agents, and employees.

Sec. 9. Section 75-156, Reissue Revised Statutes of Nebraska, is amended to read:

75-156. (1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to five ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, or contract carrier for the each violation of (a) any provision of Chapter 75, article 3, sections 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3 sections 75-301 to

75-390, (b) a commission order entered pursuant to the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, subsection (2) of section 75-109, or sections 75-604 to 75-616, 86-801 to 86-811, 86-1001 to 86-1009, or 86-1201 to 86-1222, (c) any term, condition, or limitation of any certificate or permit issued by the commission pursuant to Chapter 75, article 3 sections 75-301 to 75-390, or (d) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to Chapter 75, article 3 sections 75-301 to 75-390. The civil penalty assessed under this section shall not exceed two million dollars per year for each violation. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(2) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for (a) the violation of any provision of sections 75-604 and 86-805 or (b) failure to file an annual report as required by section 75-116 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section, except an order assessing a civil penalty issued under subdivision (1)(b) of this section, has the rights of appeal set forth in section 75-136.01. For an order assessing a civil penalty issued under subdivision (1)(b) of this section, any party aggrieved may appeal in accordance with the Administrative Procedure Act.

(3) When any person, motor carrier, regulated motor carrier, common carrier, or contract carrier is accused of any violation listed in subsection (1) of this section or when any person, firm, partnership, limited liability company, corporation, cooperative, or association or party is accused of any violation listed in subsection (2) of this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Sec. 10. Section 75-606, Reissue Revised Statutes of Nebraska, is amended to read:

75-606. The commission may revoke or suspend the certificate of convenience of any violator of section 75-605. Any person who violates any provision of such section shall be guilty of a Class V misdemeanor. The commission shall enforce such section, and the Attorney General or any county attorney shall, upon request of the commission, assist in the prosecution of any violations of such section. In addition, the commission may administratively fine pursuant to section 75-156 any person who violates section 75-605.

Sec. 11. Section 75-609, Revised Statutes Supplement, 1999, is amended to read:

75-609. (1) When two or more telephone carriers jointly furnish interexchange service or extended area service, the revenue from such jointly furnished service shall be divided in such manner as may be agreed upon by the carriers furnishing such service. In the event of inability to agree, any one of the carriers jointly furnishing such service may file an application with the commission requesting that the commission enter an order prescribing an equitable division of revenue from such jointly furnished service. The order entered pursuant to such application may be appealed from by any party to the proceeding in the same manner as from other orders of the commission accordance with the Administrative Procedure Act.

(2) Access charges imposed by telephone carriers for access to a local exchange network for interexchange services shall be negotiated by the carriers involved. Any affected carrier may apply for review of such charges by the commission or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing

thereon within sixty days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

(3) Reductions made to access charges pursuant to subsection (2) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges have been reduced. The commission shall have the power and authority to ensure that any access charge reductions made pursuant to subsection (2) of this section are passed on in a manner that is fair and reasonable. The commission shall have the power to review actions taken by any telephone carrier to ensure that this subsection is carried out.

(4) Any party to a proceeding under this section may appeal an order of the commission in accordance with the Administrative Procedure Act.

(5) For purposes of this section, access charges means the charges paid by telephone carriers to local exchange carriers in order to originate and terminate calls using local exchange facilities.

Sec. 12. Section 75-610, Reissue Revised Statutes of Nebraska, is amended to read:

75-610. Any telephone carrier or its agent who fails or neglects to comply with sections 75-607 to 75-609.01 or who violates any of the provisions of such sections shall be guilty of a Class IV misdemeanor. In addition, the commission may administratively fine pursuant to section 75-156 any such carrier or agent who violates sections 75-607 to 75-609.01.

Sec. 13. The commission may administratively fine pursuant to section 75-156 any person who violates sections 75-611 to 75-616.

Sec. 14. Section 75-722, Reissue Revised Statutes of Nebraska, is amended to read:

75-722. The law and rules of procedure before the commission and for appeal from its findings shall apply to electric transmission, telephone, and telegraph lines Commission hearings concerning the provisions of sections 75-709 to 75-724 and any appeals therefrom shall be in accordance with the Administrative Procedure Act.

Sec. 15. Section 86-803, Reissue Revised Statutes of Nebraska, is amended to read:

86-803. (1) Telecommunications companies shall not be subject to rate regulation by the commission except as provided in sections 75-609.01 and 86-801 to 86-811 and shall not be subject to provisions as to rates and charges prescribed in Chapter 75, articles 1 and 6 sections 75-101 to 75-158 and 75-604 to 75-616, except as otherwise provided in sections 75-609.01 and 86-801 to 86-811. In an exchange in which local competition exists, telecommunications companies shall file rate lists for all telecommunications services which shall be effective after ten days' notice to the commission.

(2) In an exchange in which local competition does not exist, telecommunications companies shall file rate lists which, for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission. In such exchanges, basic local exchange rates may be increased by a telecommunications company only after ninety days' notice to all affected subscribers. Such notice of increase shall include (a) the reasons for the rate increase, (b) a description of the affected service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section. A telecommunications company which proposes to increase its basic local exchange rates shall hold at least one public informational meeting in each public service commissioner district as established by section 75-101.01 in which there is an exchange affected by the increase.

(3) Basic local exchange rates increased by any telecommunications company pursuant to subsection (2) of this section shall be reviewed by the commission only upon formal complaint signed by (a) five percent of all affected subscribers if the telecommunications company has up to fifty

thousand access lines affected by the increase, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines affected by the increase, or (c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines affected by the increase. The complaint shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. If a proper complaint is presented to the commission within ninety days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission shall accept and file the complaint and, upon proper notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission shall not set any rate or charge below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services.

In an exchange in which local competition does not exist, a telecommunications company shall not increase its basic local exchange rates without the approval of the commission for six months from the date the commission enters such order. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates and charges shall be deemed approved for all purposes, including for purposes of appeal.

For purposes of this section, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(4) Notwithstanding the provisions of subsections (2), (3), and (8) of this section, a telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceedings shall be governed by Chapter 75, articles 1 and 6, sections 75-101 to 75-158 and 75-604 to 75-616 and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (2) and (3) of this section.

(5) In setting rates for interexchange services, telecommunications companies that provide such services shall continue to average their rates for all such services on a statewide basis unless the commission, upon application and hearing, orders otherwise. This subsection shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange telecommunications services, nothing in sections 86-801 to 86-811 shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

(6) No telecommunications company shall be required to deaverage its wholesale basic local exchange rates to reflect the differences in the costs of providing basic local exchange service in the various exchanges that the company serves until the retail basic local exchange rates for those exchanges are also deaveraged or until funds are disbursed to that telecommunications company from federal or state universal service or high-cost funds to offset the higher-than-average costs which that company incurs in serving high-cost exchanges.

(7) The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence

presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-145 75-144 and may be appealed in accordance with the Administrative Procedure Act.

(8) In an exchange where local competition does not exist, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission shall not set any rate or charge below the actual cost of providing such service, which may include a reasonable profit, as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. If the commission fails to enter any order within sixty days after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal. For purposes of this subsection, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(9) Notwithstanding any other provisions of this section providing procedures governing review of basic local exchange rate increases, when a telecommunications company files a rate list to increase its basic local exchange rates by more than ten percent within any consecutive twelve-month period, the commission shall conduct only the limited review provided in this subsection if (a) such increase, when considered together with all other rate changes which the telecommunications company proposes to implement simultaneously with the basic local exchange rate increase, does not increase the telecommunications company's aggregate annual revenue resulting from such rate changes in this state by more than one percent and (b) the basic local exchange rates specified in the rate list do not exceed the telecommunications company's actual cost of providing basic local exchange service to the affected subscribers.

A telecommunications company filing rate lists in accordance with the procedures provided in this subsection shall submit to the commission with such filing: (i) Documentation to demonstrate that the combined effect of the proposed rate changes, in the aggregate, will not increase such company's annual revenue resulting from such rate changes in this state by more than one percent and (ii) if the commission so requires, documentation to demonstrate that the proposed basic local exchange rates do not exceed such company's actual cost of providing such service to the affected subscribers.

The commission shall hold a public hearing to receive evidence concerning the basic local exchange rate increase proposed by the telecommunications company. Unless an extension is granted, such hearing shall be held within sixty days after the date on which the rate list providing for such increase was filed with the commission or, if the commission requires further documentation to be filed with the rate list filing, within sixty days after the date of receipt by the telecommunications company of notice for further documentation from the commission. The commission upon its own motion may grant a one-time, thirty-day extension for the hearing date. If the telecommunications company presents evidence at the hearing that such increase is in accordance with the requirements of this subsection, not more than sixty days after the close of such hearing the commission shall enter an order approving or disapproving the proposed basic local exchange rate increase and, if approved, the revised basic local exchange rates shall become effective upon the entry of such order.

(10) The commission may order that flat rate services shall be available whenever measured service is implemented and that for such services the price restrictions prescribed in sections 86-801 to 86-811 shall be retained. Measured service means basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of call, distance, and time of day.

(11) The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission

proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days after the filing of the plan or the plan shall be deemed approved.

(12) No telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to subsections (4) and (8) of this section.

(13) Any order of the commission entered pursuant to authority granted in sections 86-801 to 86-811 may be appealed by any party to the proceeding in accordance with ~~sections 75-136 to 75-139~~ the Administrative Procedure Act.

(14) No telecommunications company that obtains at wholesale rates basic local exchange service from another telecommunications company that is available at retail to a specific class of subscribers shall offer such service to a different class of subscribers.

(15) The commission shall not mandate any arrangement that requires interconnecting telecommunications companies to engage in mutual recovery of costs through offsetting of reciprocal obligations. This subsection shall not prohibit telecommunications companies from entering voluntary agreements to engage in such an agreement.

(16) Local competition shall be deemed to exist in an exchange if a telecommunications company files an application with the commission requesting a determination as to whether local competition exists in one or more exchanges specified in the application and the commission enters an order after public notice and a hearing which determines that local competition exists in such exchange or exchanges. The commission may, on its own motion at any time after a determination as to whether local competition exists, reexamine and redetermine the determination after notice and a hearing on the issue. Notwithstanding any other provision of Chapter 86, article 8 sections 86-801 to 86-811, the commission may consider any wireless telecommunications services provided in the exchange or exchanges when determining whether local competition exists. The notice of the hearing on the telecommunications company's application shall be given once each week for two consecutive weeks in a newspaper of general circulation in the affected area and shall state that a determination of local competition may result in the freeing of the telecommunications company from rate regulation by the commission. The notice of the hearing on the commission's motion shall be sent to the telecommunications company by certified mail, return receipt requested, and notice of such hearing shall be published in a newspaper of general circulation in the exchange area. The hearing on the commission's motion shall be held no sooner than ten days after the receipt of notice to the telecommunications company.

Sec. 16. Section 86-811, Reissue Revised Statutes of Nebraska, is amended to read:

86-811. (1) An original action or appeal concerning a violation of any provision of section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810 by a telecommunications company shall follow the procedures set forth in section 6 of this act.

(2) In addition, the commission may administratively fine pursuant to section 75-156 any person who violates subsection (2) of section 75-109 or section 75-604, 75-609, 75-609.01, or 86-801 to 86-810. If any telecommunications company violates any provision of sections 75-109, 75-604, 75-609, and 75-609.01 or 86-801 to 86-810, any interested person may petition the district court of the county in which such alleged violation has occurred. If it appears to the court, after a hearing, that a provision of such sections has been violated, the court may issue an injunction or other proper process to restrain the telecommunications company and its directors, officers, employees, or agents from continuing such violation and may order additional relief. Any party to the case shall have the right to appeal the decision of the district court to the Court of Appeals under the rules provided by law for appeals in civil cases.

Sec. 17. Section 86-1005, Reissue Revised Statutes of Nebraska, is amended to read:

86-1005. (1) The amount of service surcharges collected in one calendar quarter by a service supplier shall be remitted to the governing body no later than sixty days after the close of that calendar quarter. At the time of the remittance, the service supplier shall file a return for the remittance with the governing body in such form as the governing body and the service supplier agree upon. The service supplier shall maintain a record of the amount of service surcharges collected. The record shall be maintained for a period of one year after the date the amount was billed. A governing body may at its own expense require an annual audit of a service supplier's

books and records concerning the collection and remittance of a service surcharge.

(2) Each service supplier shall report to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the surcharge, (c) the location of the public safety answering point, (d) whether the governing body belongs to an interlocal agreement or other agreement with another governing body and, if so, the name of the other governing body, and (e) the amount of revenue collected by the surcharge.

The initial report shall be due April 30, 1994, for calendar year 1993 and subsequent reports shall be due no later than April 30 of each year. The report period shall be the preceding calendar year.

(3) The commission shall compile and place the information from such reports required in subsection (2) of this section into its annual telecommunications report to the Legislature, including the availability and location of 911 service and E-911 service in the State of Nebraska.

(4) The commission shall adopt and promulgate rules and regulations to carry out subsections (2) and (3) of this section.

(5) The commission may administratively fine pursuant to section 75-156 any person who violates sections 86-1001 to 86-1009.

Sec. 18. Section 86-1110, Reissue Revised Statutes of Nebraska, is amended to read:

86-1110. (1) The commission shall adopt and promulgate rules and regulations necessary to carry out the Intrastate Pay-Per-Call Regulation Act.

(2) The commission may conduct investigations and shall enforce the act.

(3) Upon written complaint and supporting affidavit that an applicable rule or regulation or any provision of the act has been or is being violated, the commission may enter a cease and desist order on an ex parte basis against a party named in a complaint alleging violation of the act. The order shall have duration of no more than twenty days, and a hearing upon the complaint shall be held no later than twenty days after the order is entered by the commission.

(4) A decision of the commission made pursuant to the act and rules and regulations of the commission may be appealed in the manner provided in section 75-137 in accordance with the Administrative Procedure Act.

Sec. 19. Section 86-1111, Reissue Revised Statutes of Nebraska, is amended to read:

86-1111. After notice and a hearing, the commission may administratively fine pursuant to section 75-156 violators of the Intrastate Pay-Per-Call Regulation Act or the applicable rules and regulations adopted pursuant to and promulgated under the act. in an amount not to exceed one thousand dollars per violation. In addition to any other penalties available at law, any person who violates the act shall be guilty of a Class II misdemeanor.

Sec. 20. Section 86-1219, Reissue Revised Statutes of Nebraska, is amended to read:

86-1219. Any decision of the commission made pursuant to sections 86-1201 to 86-1222 or the rules and regulations may be appealed in the manner provided in section 75-137 accordance with the Administrative Procedure Act.

Sec. 21. Section 86-1222, Reissue Revised Statutes of Nebraska, is amended to read:

86-1222. The commission may administratively fine pursuant to section 75-156 any person who violates sections 86-1201 to 86-1222 or the rules and regulations adopted and promulgated thereunder in an amount not to exceed one thousand dollars per violation after notice and hearing. In addition to any other penalties available at law, any person who violates such sections shall be guilty of a Class II misdemeanor under such sections.

Sec. 22. Section 86-1306, Reissue Revised Statutes of Nebraska, is amended to read:

86-1306. (1) The commission shall establish standards, procedures, and training specifications for the telecommunications relay system and shall supervise its operation. The system shall assure prompt and accurate relay of all messages seven days per week, twenty-four hours per day, including holidays, and shall provide at least the following services to all deaf, hard of hearing, or speech-impaired persons living in Nebraska who possess specialized telecommunications equipment: (a) Statewide instate calls with charges for long-distance calls billed to the person making the call in a manner which the commission determines will recover the cost of long-distance calls to the system; (b) out-of-state calls with charges billed to the person making the call; and (c) emergency calls. Any person using the system shall not be charged for access to the system other than charges billed for instate

and out-of-state long-distance service.

(2) The commission shall establish standards and criteria and shall determine the eligibility of qualified deaf, hard of hearing, and speech-impaired persons applying for specialized telecommunications equipment, which include the following: (a) Only one person per household may be a recipient of the telecommunications equipment; (b) an applicant shall reside in a household that has telephone service; (c) a recipient of equipment may not reapply for assistance more than once every five years; and (d) a nursing home or institution resident is eligible for specialized telecommunications equipment only if he or she has personal telephone service. Applications may be approved if they meet the guidelines established by the commission. The commission shall adopt and promulgate rules and regulations necessary for implementation of the Telecommunications Relay System Act and guidelines for the specialized telecommunications equipment program. The commission may enter into contracts with other agencies or private organizations, which may include the Commission for the Deaf and Hard of Hearing, to operate the telecommunications relay system and the specialized telecommunications equipment program.

(3) The commission may administratively fine pursuant to section 75-156 any person who violates the act.

Sec. 23. Section 86-1405, Reissue Revised Statutes of Nebraska, is amended to read:

86-1405. (1) The Nebraska Telecommunications Universal Service Fund is hereby created. The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act. Only eligible telecommunications companies designated by the commission pursuant to 47 U.S.C. 214(e) and in substantial compliance with the law and commission orders shall be eligible to receive support to serve high-cost areas from the fund. A telecommunications company that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purpose of the Nebraska Telecommunications Universal Service Fund Act. The commission shall have authority and power to issue orders carrying out its responsibilities, and any such support shall not be distributed to an eligible telecommunications company until a commission order is adopted that ensures corresponding reductions in the price of services currently subsidizing service in high-cost areas. The commission shall have the authority to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such order and may withhold all or a portion of the funds to be distributed from any telecommunications company failing to continue compliance with its order. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The commission may administratively fine pursuant to section 75-156 any person who violates the Nebraska Telecommunications Universal Service Fund Act.

Sec. 24. Section 86-1909, Reissue Revised Statutes of Nebraska, is amended to read:

86-1909. (1) The Public Service Commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

(a) The nature, circumstances, extent, and gravity of a prohibited act;

(b) The history of previous violations;

(c) The amount necessary to deter future violations; and

(d) Any efforts to correct the violation.

(3) Any administrative penalty may be appealed, and the appeal shall be in accordance with sections 75-136 to 75-139 the Administrative Procedure Act.

Sec. 25. Original sections 75-122.01, 75-134, 75-136, 75-136.01, 75-137, 75-139.01, 75-156, 75-606, 75-610, 75-722, 86-803, 86-811, 86-1005, 86-1110, 86-1111, 86-1219, 86-1222, 86-1306, 86-1405, and 86-1909, Reissue Revised Statutes of Nebraska, and sections 75-109 and 75-609, Revised Statutes Supplement, 1999, are repealed.

Sec. 26. The following section is outright repealed: Section 75-145, Reissue Revised Statutes of Nebraska.

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Sec. 27. Since an emergency exists, this act takes effect when passed and approved according to law.