

LETTER OPINION
93-L-286

October 5, 1993

Mr. Jim Heck, Director
Information Services Division
Office of Management and Budget
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0100

Dear Mr. Heck:

Thank you for your letter asking whether the access number or line surcharge imposed under 1993 House Bill 1028, North Dakota Century Code (N.D.C.C.) ch. 54-44.8, applies to paging services and to mobile radio telephone services.

N.D.C.C. ch. 54-44.8 was enacted in furtherance of part of the Americans With Disabilities Act of 1990, ? 401, and its amendments to the Federal Communications Act of 1934. 47 U.S.C. ? 225. See N.D.C.C. ? 54-44.8-08.

The North Dakota act establishes a program for a telecommunications relay service for persons who are communications-impaired. The act defines the service as:

. . . a statewide service through which a communications-impaired individual, using specialized telecommunications equipment, may send and receive messages to and from a noncommunications-impaired individual whose telephone is not equipped with specialized telecommunications equipment and through which a noncommunications-impaired individual, by using voice communication, may send and receive messages to and from a communications-impaired individual.

The act defines a radio communications service provider as "a telecommunications company that

Mr. Jim Heck
October 5, 1993
Page 2

provides radio communication service or cellular service to members of the general public who are its customers." N.D.C.C. ? 54-44.8-01(8).

N.D.C.C. ? 54-44.8-01(10). The Information Services Division of the State of North Dakota, through contractors, is to create and administer the program to provide this service.

To pay for the service, the Public Service Commission will annually establish a surcharge to cover the cost.

The surcharge will be billed to every customer of a "local exchange company or radio communications service provider." N.D.C.C. ? 54-44.8-08.

Your question concerns the applicability of this act to mobile radio telephone or paging services. It is my understanding that a mobile radio telephone system allows users to communicate in a two-way conversation with a mobile radio telephone to a regular wired telephone or another mobile radio telephone. A mobile radio telephone in use is assigned a number that allows it access to the mobile radio telephone communication system. A paging system, on the other hand, is normally a one-way communication system where the user of the paging device ("beeper") merely gets a signal to call a certain number or a prearranged number. To get access to the paging system, one must use a touch tone phone, dial a regular telephone access number, and then use the touch tones to dial the relevant code numbers to activate the pager. After the message is received, the person with the pager uses regular two-way telephone or radio communication to call and converse. ATS Mobile Telephone, Inc. v. General Communications Company, Inc., 282 N.W.2d 16, 18 (Neb. 1979).

It is my opinion that radio communication service providers includes providers of mobile radio telephone systems. The North Dakota telecommunications relay service is intended to allow the exchange of messages in a manner equivalent to customary two-way telephone communication. Mobile telephone systems are another method of conducting a two-way telephone communication.

Mr. Jim Heck
October 5, 1993
Page 3

Application of the telecommunications relay service to two-way communication is consistent with federal law.

Under the federal statute, the telecommunications relay service must allow a hearing or speech impaired person to communicate "by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device." 47 U.S.C. ? 225(a)(3).

Because a paging system is normally a one-way communication, it is my opinion that a paging system is not covered under the act.

It is therefore my opinion that N.D.C.C. ch. 54-44.8 applies to telephone and radio communications service providers providing a two-way communications system, and that the surcharge applies to mobile radio telephone service numbers but not to paging services.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg