

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

11/43

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1143

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1143

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1074

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1143.

Don Negaard, Attorney, Minot, ND: See written testimony #1.

David Crothers, ND Association of Telecommunications Cooperatives: See written testimony #2.

Rep. Keiser: So, with a large company they have to allow it. This bill just puts into code that the PSC does if fact have the authority to provide local former.

David: That's exactly right. HB 1143 does not direct the commission to do something, it does not prohibit the commission to do something.

Tom Kelsch, Kelsch Law Firm: Opposed to HB 1143. See written testimony #3.

Rep. Thorpe: Do you have any thoughts or interest in the fire bill, HB 1142?

Tom: Our company is not taking a position on that, since our company is not subject to some of those regulations.

Rep. Zaiser: In your first bullet point, you indicated that it was not needed, that potentially previous legislation allowed modifications and suspensions. Do you essentially see this particular bill as a lot of redundancies to the previous bill?

Tom: The FCC has some dual regulations on this issue. There is a course that they could go through the FCC, and it'll have to go through the PSC.

Rep. Keiser: The feds allow it. If we put it into statute, do the two ever come into contact with each other? Does one supersede the other?

Tom: I think there is a two track system that you can go. I know there have been court cases in some states where they've challenged certain regulations over the wireless industry, and the wireless industry has been successful. Our concern is if you specifically put this into law, then our rural telephone companies will be petitioning the PSC.

Rep. Johnson: I was companying the petitions in the ND PSC, but they really don't want to hear it. Is that an option they would have?

Tom: If you would pass this law as it is, could the PSC say they don't want to hear the issue, I think they would have the authority to make that decision.

Lloyd Benick, PSC: The PSC is not taking a position on this bill. Under section 251 F, this particular division is exemption, suspensions, and modifications. The ND legislator and ND century code 49-21-01.7 subsection 11, the authority of the PSC is to determine whether to terminate a rural telephone company's exemption under section 251 of the federal act. That language refers only to the rural telephone company's exemption, not suspensions and modifications.

Don: Discussion about Western Wireless, the dispute was not about interconnection, the dispute had to do with Western Wireless's desire to access federal money that had been earmarked for rural telephone. The way the law currently is, before you can go to the FCC to get a waiver, suspension or modification, you first have to go to the state commission to get a ruling that they don't have authority to do that, and then you can go to the FCC. It is very time consuming, a lot of paperwork, and extra cost to the rural companies.

Rep. Amerman: In Mr. Kelsh's testimony, he said that if this would pass, it's going to clog the PSC's agendas. Give me your opinion if this is going to happen.

Don: I think that the rural companies in ND have been pretty responsible with their applications to the commission. It does cost money to go to the commission, it's not something you do as a working matter. I don't think it's going to clog their agendas by any means.

Rep. Dietrich: Under current law, suspension modification can be granted by the PSC upon showing a significant adverse economic impact on users. Do you feel that would be in the best interest, but not of ND? Could the PSC handle rather than the FCC?

Don: I think it would. It is a lot easier to access a local commission than it is to file papers with the FCC, and we would much rather do that here in Bismarck.

Rep. Zaiser: Entering the expediency of going to the local PSC, but hearing Mr. Kelsh's testimony, he felt that there was some redundancy and perhaps unnecessary step. This is a step you think should be used to improve efficiency by going through the PSC as opposed to going to the FCC?

Don: We believe that it is more cost efficient and effective for local ND companies to go here in Bismarck than it is to go to the PSC.

Rep. Dietrich: Are you familiar that SD passed a similar bill about the economic burden and impact on the staff of the PSC? How much of an impact was there, and how much burden was there?

Don: I'm not familiar with SD. Every state has had its own experience dealing with the competition.

Hearing Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1143

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1253

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1143.

Rep. Dietrich: Some of the discussion we had in committee pertains to reporting and my understanding from all parties concerned; they had no problems reporting in ND. One of the questions I asked council from the PSC was if there was a problem in SD, and in the document provided today, my council for PSC states that the 28 relevant cases in SD, they had to do with recording, the same problem we have in ND.

Rep. Keiser: So, they're obligated to inner connect, but this would give the commission the authority to modify or suspend the requirement of inner connection.

Rep. Dietrich: I move a do pass.

Rep. Zaiser: Second.

Roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent, Carrier: Rep. Dietrich

Hearing closed.

Date: 1-17-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1143

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep. Dietrich Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Dietrich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 17, 2007 12:42 p.m.

Module No: HR-11-0695
Carrier: Dietrich
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1143: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1143 was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1143

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1143

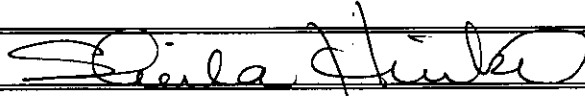
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3827

Committee Clerk Signature



Rural telephone companies, Fed. Telecommunications Act. 1996:

Representative Craig Hedland – District 29 - In Favor

Simple bill, just going to give the Public Service Commission another tool in which to implement 251 which is the real exemption of the Telecommunications Act.

David Crothers – ND Association of Telecommunications - In Favor

It is a highly technical and substantially detailed issue more than anything else, we have asked Don Negaard, attorney from Minot, ND to speak. *Presented by David Grothers*

Don Negaard – Attorney for Rural Telecommunications in Minot, ND

TESTIMONY # 1 *Covered testimony.*

S Hacker, Vice Chair took over position temporarily

Tom Kelsch – Kelsch Law Firm - In Opposition

TESTIMONY # 2 *Covered testimony*

Senator Klein returned

S Klein: I sense you are in opposition, and Alltel would be in opposition, how is Alltel regulated by the PSC?

Tom K: We are not regulated on entry or rate regulations, we have limited regulation other than that, IF the legislature gives them that authority. This is seeking to give the PSC

regulatory authority in connection agreements between wireless companies and other competing companies.

S Klein: Your concern is the cost that they would have?

Tom K: The system's working, the agreements that we've negotiated with the companies in the past 5 years. ND has worked, SD hasn't, the line number portability not only where there are costs for all the companies; we had 23 separate hearings in SD. The competition is handling this and it's not a big need. The cost and the additional regulation for no real benefit other than potentially in SD adding all these hearings which just delayed that competiion in some of those markets.

S Potter: The PSC may already have this authority, we're just clarifying it?

Tom K: The PSC has restrictive authority, they have the power if you give it to them. The issue is the FCC said they can, and have not yet given them the authority.

S Wanzek: Your concern is in giving them authority. Is it the argument of how it impacts your company?

Tom K: In order for us to do business in the rural area, we have our towers, but our towers are connected to rural switches and certainly rural customers call our people and so we have to have an inter-connection agreement with every rural telephone company in the state, and Quest and what happens on those is that they are negotiated agreements that we pay for services to be able to hook up to their switches, and those have been handled between the two companies through agreement process. They haven't gone through the PSC, as they said, "we don't have authority," but they haven't gone to the PSC and said, "this isn't working." It's two companies getting together, negotiating, and signing agreements.

S Heitkamp: You said you reserve the right, I'd like to visit with Mr. Crothers, I think it matters.

David Crothers takes the podium

The line portability matters a lot to people out there, is that a concern here? Is that going to be an issue on the ND side as stated, if that is one of the things I need to be looking out for in this bill, I should. I want to know the position of the ND rural telephones.

David Crothers: That will never be an issue in ND. The example from SD is not applicable in ND. There is "number portability agreements" in every single company in ND, so it cannot exist, it's already been resolved in ND. The Federal Act in 1996, mandated inter-connection, Congress instructed them to do this. In ND, the PSC, the duties and responsibility by legislation are applicable. What happened in ND, we have not finished the job. Congress envisioned inter-connection, while this legislature envisioned inter-connection, and making provisions for it in Chapter 49, we stopped short of doing *everything* that Congress envisioned. We're not creating anything new, whatsoever. The second point on suspension modification, is this legislation does not mandate the commission do ANYTHING. It allows them to use their digression. Does not state you HAVE to suspend or modify, it does not require them to do it, it gives them the digression to do it.

Tom Kelsch: I realize the portability issue is no longer in ND, it's been resolved through agreements by everybody and the only reason I brought that issue out is that two different ways that the states addressed that one issue. There will be more issues, I just can't predict what all the other issues may be, but comparing ND to SD; ND handled that issue much better and much better for the consumer under the existing system. By changing the way SD has, I'm assuming, if we had the system in SD, this year passed 6 years ago, things would probably have happened the same in ND.

Ilona Jeffcoat Sacco - from Public Service Commission

S Potter: I want you to respond to the point about the Fiscal note not being, being "O", and think he signed it, Mr. Kelsch thinks that that's not accurate, want to talk about that?

Ilona JS: Because number portability is over and because I don't know the next big issue that Tom mentioned, the next big issue that would come down from the Feds were that the rural companies might ask for an extension of modification. Portability originally was, "we don't know if we can do it right away," a little bit different time frame. Change things a little bit.

I have no idea, the companies may have a better idea, what that next issue is, and I don't know if it's coming in the next biennium, or the biennium after that, so from my current knowledge, I don't know if there is going to be any changes and that's why there's no Fiscal note impact.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1143 B**

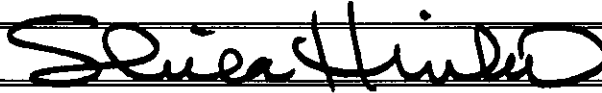
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **February 26, 2007**

Recorder Job Number: **3828 @ 11:25**

Committee Clerk Signature



Rural telephone companies, Fed. Telecommunications Act, 1996:

Motion for DO PASS by S Heitkamp

Second by S Behm

Vote for DO PASS on HB 1143 – 7 – 0 – 0 Passed

S Heitkamp: The only thing that's been brought up is something that's been dealt with from here. No offense to Tom, who I think is a fine guy, but he stands up there and makes the case that we're giving him the house here, you're going to lose your phone number, you better come with something more than that to the dance.

S Behm: Cell phones aren't regulated by PSC. I can't understand how they can get by with that and the other ones can't.

S Andrist: Neither are cable fees, are they?

S Heitkamp: Neither is rural water.

S Klein: Neither is rural electric.

S Wanzek: I can go to Dakota Central, I can go to Quest, you can go to Verizon.

S Heitkamp: If you move to a place right now, I would really question what kind of service I'd get from my cell phone, I'd really question if I'd get a land line. Once you move, my daughters

will never have a land line again. Everyone in the countryside knows our numbers and how to get a hold of us.

S Behm: When I got my cell phone, they recommended I keep at least one line in the house for the simple reason if you lose power, your cell phone is no good.

S Klein: We've gotten off the issue a bit.

S Andrist: Just a comment, there are so many things emerging in this whole marketplace that I think the more the state stays out of the way, the better the industry and the people will be.

S Wanzek: I'm a little confused on this bill, doesn't this allow the state to get it's fingers in there? I think that was Tom's point.

S Heitkamp: This bill allows them to grant suspensions. Before they felt they COULD grant suspensions, because the PSC only does what we tell them to do on a strict guideline supposedly, they need that in law.

S Klein: This will grant suspensions under that rural exemptions part of the law.

S Wanzek: So it's one of these areas where we're trying to make explicit words in the law.

Roll Call on DO PASS on HB 1143 – 7-0-0 Passed

Carrier: Wanzek

Date: 5-20-01

Roll Call Vote : _____

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1143

Senate **INDUSTRY BUSINESS & LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

[illegible]

Total Yes 1 No 0

Absent 0

Floor Assignment Wanter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 26, 2007 11:04 a.m.

Module No: SR-36-3836
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1143: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1143 was placed
on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1143

My name is Don Negaard. I am an attorney from Minot, North Dakota. A part of my practice includes working on behalf of rural telecommunications carriers before the North Dakota Public Service Commission.

HB 1143 seeks to give the Public Service Commission additional authority to "issue or grant" suspensions or modifications when considering interconnection issues for rural telephone companies.

Section 251 is the section of the Federal Telecommunications Act that addresses a telephone company's obligation to interconnect with other telephone companies. Interconnection may be necessary for telephone companies who want to compete in another company's service area, but don't want to build their own facilities. Section 251 also deals with other duties imposed on these companies, such as allowing access to rights of way and line number portability.

Section "f" of Section 251 deals exclusively with rural telephone companies.

The Federal law recognizes that rural companies are different so Congress included a provision in the law that allows for Public Service Commissions throughout the nation to "suspend or modify" an application of a competitor when they want to interconnect with the rural telephone company or make requests that would impose undue burdens on the rural company.

A problem has arisen in North Dakota. The North Dakota Public Service Commission has said they do not have the ability to issue the "suspensions or modifications" because the Legislature has never given the Public Service Commission that authority. While we have disagreed at times and have suggested that the Public Service Commission already has that authority, this bill would clarify the issue. Under HB 1143 suspension and modification authority is granted to the Public Service Commission if it finds it necessary to avoid a significant adverse economic impact on users of telecommunications generally, to avoid an impact that is unduly economically burdensome or to avoid a requirement that is technically infeasible.

In addition, the law requires a showing that the suspensions or modifications are consistent with the public interest, convenience and necessity. This is a standard that the Public Service Commission is familiar with because it mirrors the standard traditionally guiding state commissions and the North Dakota Public Service Commission in particular.

In closing, please note that a copy of Section 251 of the Federal Act that I reference is attached to my testimony. Thank you for the opportunity to appear before you today. I would be pleased to answer any questions.

*same testimony
given to
Senate*

TITLE 47 > CHAPTER 5 > SUBCHAPTER II > Part II > § 251
§ 251. Interconnection

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty—

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
- (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

#1
1143

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale

The duty—

- (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just,

#1
1143

reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation

(1) In general

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether—

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for

#1
1143

reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on October 26, 1999.

(f) Exemptions, suspensions, and modifications

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until

- (i) such company has received a bona fide request for interconnection, services, or network elements, and
- (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) Suspensions and modifications for rural carriers

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

- (A)** is necessary—

#1
1143

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) "Incumbent local exchange carrier" defined

(1) Definition

For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)

(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

#1
1143

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

#1
1143



NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES

P.O. Box 1144 • Mandan, ND 58554
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HOUSE BILL 1143

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

JANUARY 15, 2007

DAVID CROTHERS
NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 160,000 homes and small businesses and approximately 96 percent of the geographic territory of North Dakota.

The Association strongly supports the adoption of House Bill 1143. Although we believe the North Dakota Public Service Commission already has this authority under NDCC 49-21-01.7, that view is not shared by all. Adoption of House Bill 1143 will remove that uncertainty.

Members of the Association urge a "Do Pass" recommendation on House Bill 1143.

Testimony in Opposition to House Bill 1143

Chairman Kaiser and members of the House Industry, Business and Labor Committee, my name is Tom Kelsch with the Kelsch Law Firm. I am here today on behalf of Alltel Communications to testify in opposition to HB 1143.

The Telecommunications Act of 1996 fundamentally restructured local telephone markets by focusing delivery of telecommunications services squarely on competition rather than the protected monopolies of incumbent local exchange carriers, ILECs, or rural local exchange carriers, RLECs. Congress mandated that ILECs give competitive local exchange carriers access to their existing networks. This access is accomplished through interconnection agreements. The Act requires that the interconnection must be equal in quality to the ILECs and must be available to the CLECs on rates, terms and conditions that are just, reasonable and non-discriminatory.

Interconnection agreements have been entered into in North Dakota for at least the last 5 years. North Dakota consumers have realized the benefit of this competition. We have a number of companies, competing for our service and offering us better plans and rates at lower costs. HB 1143 is an effort to take a step backward and put up an unnecessary roadblock to that competition.

Alltel is opposed to HB 1143 for the following reasons.

1. It is not needed. The federal Telecommunications Act of 1996 already provides for the granting of suspensions or modifications for Rural Local Exchange Carriers. Under current law suspensions/modifications can be granted by the FCC upon a showing of "significant adverse economic impact on users", requirements that are "unduly burdensome", or "technically infeasible", and such suspension/modification is in the public interest.

2. The fact that telecommunications companies need to petition the FCC for relief serves to minimize the number of such petitions and encourages the parties to focus on implementation of the interconnection agreements and reaching negotiated settlements rather than ending up in costly and time consuming hearings.

3. In South Dakota , which has passed similar legislation to HB 1143, the suspension/modification claims have become a political protectionist issue that have little to do with any real burdens associated with telecom rules. One of the results of these protectionist suspensions is that South Dakota telephone consumers still cannot port their phone numbers. In North Dakota, Local Number Portability, (LNP), was implemented without a hitch.

4. In some states RLECs file for arbitration of an interconnection agreement, asserting their rights under section 251, and then file a separate petition to suspend a significant portion of their obligations under 251. In effect the RLECs, through these actions are seeking to undermine the competition mandated by the 1996 Telecom Act.

5. If HB 1143 is passed it will place both an economic burden and a burden on the limited staff at the ND PSC. If HB 1143 is passed the PSC's agenda will be clogged with a stack of petitions seeking suspension. The PSC can also expect that every one of those petitions will be challenged by the competitive carriers.

Competition in telecommunications is working in North Dakota for the benefit of the consumer. HB 1143 will only serve to lower the bar to invite costly unnecessary hearings before the PSC on issues that have been being successfully resolved through inter-carrier negotiations for the past 4-5 years.

I urge the House Industry, Business and Labor Committee give a recommendation of "DO NOT PASS" on HB 1143.



Public Service Commission

State of North Dakota

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January 16, 2007

Honorable George J. Keiser, Chairman
Industry, Business and Labor Committee
North Dakota House
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill 1143

Dear Chairman Keiser:

Thank you for the opportunity to respond to questions of the committee regarding the experience of the South Dakota Public Utilities Commission with provisions similar to those in HB 1143.

I have talked with one of the attorneys at the South Dakota Public Utilities Commission. She informed me that the South Dakota Commission has had the authority to modify or suspend a rural exemption since 1998, when the South Dakota Commission acquired general state authority to implement the Federal Telecommunications Act of 1996.

I was further informed that the South Dakota Commission's authority tracks the federal authority and imposes no standards different than those imposed federally. South Dakota has one relevant case pending today. There have been 28 relevant cases filed in South Dakota, and all concerned number portability (a separate case was filed for each impacted telephone company).

As was mentioned at the hearing, the issue of number portability in North Dakota is settled.

Honorable George J. Keiser, Chairman
Industry, Business and Labor Committee
Page 2
January 16, 2007

If you have any additional questions, or I can be of further assistance,
please do not hesitate to call or e-mail me at ijs@nd.gov.

Best regards,


Illona A. Jeffcoat-Sacco
Executive Director

c:	Representative Nancy Johnson, Vice Chair	Representative Donald Vigesaa
	Representative Donald L. Clark	Representative Bill Amerman
	Representative Donald D. Dietrich	Representative Tracy Boe
	Representative Mark A. Dosch	Representative Ed Gruchalla
	Representative Jim Kasper	Representative Elwood Thorpe
	Representative Darrell D. Nottestad	Representative Steven Zaiser
	Representative Dan J. Ruby	

Testimony in Opposition to HB 1143

Senator Klein and members of the Senate Industry, Business and Labor Committee, my name is Tom Kelsch with the Kelsch Law Firm. I am here today on behalf of Alltel Communications to testify in opposition to HB 1143.

The Telecommunications Act of 1996 restructured local telephone markets by focusing on the delivery of telecommunications services directly on competition rather than on protected monopolies of incumbent local exchange carriers, (ILEC's). Congress mandated that ILEC's give competitive phone carriers access to their networks. This is accomplished through interconnection agreements. Congress mandated that the interconnection must be equal in quality and available on rates, terms and conditions that are just, reasonable and non-discriminatory.

Interconnection agreements have been entered into without the necessity of PSC regulation in ND over the last five years without any real problem. The respective companies have been able to negotiate agreements that have been acceptable to both the ILEC's and the competitive companies. As a direct result the citizens of ND have more companies competing for our phone business, and offering us better plans, more local coverage and lower rates. HB 1143 is a step backwards and provides an unnecessary regulatory roadblock to this competition, which is currently working.

1. HB1143 is not needed. The system in ND has been working for the past 5 years. The proponents have not documented any good reason why this bill is needed.
2. One only has to look at SD to see that HB 1143 is not a good idea. The SD PSC has authority, similar to that sought hear in ND, to have hearings on interconnection agreements. As a result, every rural telephone company in SD separately requested a hearing before the SD PSC on interconnection agreements on the issue of number portability. Portability is where you own your telephone number and can take it with you regardless of which company is providing you service. The ILEC's said that the requirements were unduly burdensome. This resulted in regulatory costs associated with over 20 different hearings, for the state of SD and the companies. More importantly, the citizens of SD still do not have number portability, while we in North Dakota have it statewide.

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3. The PSC claims that there is no fiscal impact of this legislation. I submit that HB 1143 would not have been introduced by the ILEC's if it were not intended to be used. If, as in SD, every ILEC requested a PSC hearing on its interconnection agreements there will definitely be a cost in time and manpower to the PSC as well as to the companies.
4. Competition in telecommunication is working in ND for the benefit of the consumer. HB 1143 will only serve to lower the bar to invite costly unnecessary hearings before the PSC that have been successfully resolved through inter-carrier negotiations for the past 5 years.

On behalf of Alltel I respectfully request a **"Do Not Pass"** committee recommendation on HB 1143.

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