

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

REGULATORY REFORM REVIEW COMMISSION

Thursday, March 30, 2000
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Mick Grosz, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representative Mick Grosz; Senators Vern Thompson, Rich Wardner; Public Service Commissioner Bruce Hagen

Member absent: Representative Eliot Glassheim

Others present: See attached appendix

It was moved by Senator Thompson, seconded by Commissioner Hagen, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

PUBLIC SERVICE COMMISSION TELECOMMUNICATIONS UPDATE

Ms. Illona Jeffcoat-Sacco, Director, Public Utilities Division, Public Service Commission, provided testimony on an update on North Dakota telecommunications law. Ms. Jeffcoat-Sacco said the Public Service Commission has opened an investigation to determine U S West's cost of providing local exchange service. She said the hearing will be on June 6, 2000. Under 1999 Senate Bill No. 2420, she said, the commission is allowed to set aside some or all of the increase in residential prices allowed by that bill if an investigation finds rates to be in excess of the cost of providing residential local exchange service. Immediately following the preceding hearing, she said, there will be another hearing on the revenue neutrality of access and toll price reductions made in response to the local price increase. She said the Public Service Commission also has opened an investigation into U S West's compliance Section 271 of the Telecommunications Act of 1996 regarding entry into inter-LATA services. She said there has been no formal filing by U S West. A copy of her testimony is on file in the Legislative Council office.

UNIVERSAL SERVICE

Mr. Steven Haas, Director, State and International Universal Service Programs, National Exchange Carrier Association, Inc., made a presentation on state universal service funds. He provided information on the National Exchange Carrier Association, Inc., and a general overview and background of universal service. He reviewed forces influencing states to institute their own universal service funds and described services most frequently supported by

state universal service funds. He said the forces that move states to adopt state universal service funds include changes in state and federal law or regulatory requirements, competition, the replacement of implicit with explicit subsidies, changes in federal or state support levels, the need for the reimbursement of providers of services and equipment to physically challenged people, and universal service goals and public policy. He said programs supported by state universal service funds include high-cost support, revenue recovery or rate rebalancing, emergency 911, telecommunications relay service, the Lifeline program, the Linkup program, state support for schools, libraries, and health care facilities, and the provision of special telecommunications equipment for physically challenged individuals.

Mr. Haas summarized the recent Federal Communications Commission high-cost universal service order and some potential implications. He outlined the general administrative responsibilities of a state fund manager. He reviewed the lessons learned by the National Exchange Carrier Association, Inc., relating to fund implementation and design. He recommended:

1. Broad industry participation during fund rule-making and establishment phases to lessen confusion and resistance during implementation.
2. A single collection mechanism for various universal service and other programs (e.g., enhanced-911, telecommunication relay service) to simplify processes and create cost-efficiencies.
3. An assessment based on percent of revenues, applied to all service providers, to ensure contributions are collected in a nondiscriminatory, competitively neutral manner.
4. An assessment of "retail" intrastate-only revenues to avoid double assessing. Precise definitions of assessable and exempt revenue categories (payphone, wireline, vertical services, etc.) clarifies requirements and reduces confusion.
5. A payment-after-collection methodology to reduce cash flow fluctuations and to decrease the possibility of fund shortfall.

6. Monthly billings and collections of service providers and the establishment of a de minimus threshold to exempt small contributors from assessments or require less frequent payments to offer administrative simplicity and reduce costs.
7. The legislature or regulatory agency should define explicit criteria for determining support payments disbursed from the fund.
8. Service providers' payments into the fund should not be treated as tax collections and should be held separate from the state's general fund.
9. Public benefit funds are "self-sustaining" so appropriations to "fund the fund" or a legislative-mandated cap on fund size is not required.
10. Documentation clearly delineating roles of the state regulatory agency staff and the fund administrator to streamline processes and reduce overlaps.
11. A "contingency factor" should be built into at least the initial funding requirements to offset cash flow fluctuations, cover initial delinquencies, and help account for revenue seasonality during fund startup.
12. The legislature should consider developing a fund shortfall payment prioritization plan, which provides the administrator with specific guidelines for prioritizing or prorating payments, etc., if fund requirements exceed collections for a period.

Mr. Eric Seguin, Manager, State Universal Service Fund Programs, National Exchange Carrier Association, Inc., made a presentation that summarized characteristics of the state programs the National Exchange Carrier Association, Inc., administers. He reviewed the universal service programs in Arizona, Arkansas, Kansas, Nevada, Oklahoma, Texas, and Vermont. He also provided information on Nebraska and Wyoming. In addition, he provided a table of the monthly cost per wire center for U S West and the wire center cost and federal support required if the Federal Communication Commission's model were averaged at the wire center level instead of the state level. He also provided a table that summarizes state universal service fund programs administered by the National Exchange Carrier Association, Inc. A copy of these tables is on file in the Legislative Council office. A copy of his presentation is included within the presentation by Mr. Haas which is on file in the Legislative Council office.

In response to a question from Commissioner Hagen, Mr. Haas said the National Exchange Carrier Association, Inc., is a private not-for-profit corporation. He said the Universal Service Administrative Company is a wholly owned subsidiary of the National Exchange Carrier Association, Inc. He said the National Exchange Carrier Association, Inc., is

beginning to administer electrical utility funds that provide funding for high-cost areas.

In response to a question from Senator Thompson, Mr. Haas said he expects the joint board to make a recommendation to the Federal Communication Commission in late summer or early fall. He said after the recommendation is made, the Federal Communication Commission would need time to act. He said there probably will not be any federal action in relation to a rural high-cost fund before January 2001.

In response to a question from Representative Grosz, Mr. Haas said the National Exchange Carrier Association, Inc., is in the process of completing a study that would use the same procedure applied to nonrural companies as to rural companies. He said it would be highly unlikely that the procedure applied to nonrural companies would be applied to rural companies.

In response to a question from Senator Thompson, Mr. Haas said enhanced-911 collections are often incorporated into a state universal service fund. He said the combination of enhanced-911 funding with universal service funding provides for ease of administration by having one collection system.

In response to a question from Commissioner Hagen, Mr. Seguin said Vermont and Texas assess interstate and international revenues as well as intra-state revenues. He said it would appear Vermont assesses these revenues because they were the first universal service fund and have a relatively small area to assess. He said Texas assesses these revenues because of the need for a large funding amount. He said no one has challenged these assessments in the courts. He said Texas had a history of assessing these sources. Before the universal service fund, he said, Texas had an infrastructure fund that required contributions from the same sources of revenue. He said revenue sources of hotels and motels were added in the creation of the state universal service fund.

In response to a question from Commissioner Hagen, Mr. Seguin said enabling legislation sometimes names the National Exchange Carrier Association, Inc., as administrator of a state's universal service fund. He said the cost of administering the fund is determined by the complexity rather than the size of the fund.

In response to a question from Commissioner Hagen, Mr. Haas said the key to having a good universal service fund is to have a good working relationship between commission staff and the administrator. He said precise definitions make it easy to administer a fund. He said Texas has a complex fund but has clear rules for the fund's administration. He said the fund is easier to administer than states with less complex funds.

In response to a question from Senator Thompson, Mr. Seguin said on average it takes

between 12 to 24 months from legislation until operation of a state universal service fund. He said nine months has been the shortest duration of time from legislation to operation.

Mr. David Crothers, North Dakota Association of Telephone Cooperatives, provided testimony on universal service. He said the cost of providing local service in rural areas is in excess of what rural cooperatives are charging for the service. He said he did not know how much of a universal fund would be needed for the rural companies. He said the size of the fund would depend upon federal action on universal service and access reform. He said a universal service fund in North Dakota should focus on rural high-cost areas.

Ms. RaeAnn G. Kelsch, Manager of External Affairs, Western Wireless, provided testimony on a state universal service fund. Ms. Kelsch reviewed the core principals of a universal service fund as included within the federal Telecommunications Act of 1996. She said a universal service fund must be competitively neutral. She said universal service support mechanisms should not unfairly advantage or disadvantage any technology or company over another technology or company. She said any kind of carrier should be able to be an eligible telecommunications carrier. She said universal service support should foster competition and not be biased against a telecommunications provider because of that provider's technology or size. She said rural service areas should be contiguous areas otherwise they will be a barrier to entry. She said subsidies must be portable.

In response to a question from Senator Thompson, Ms. Kelsch said the definition of a rural service area typically is left to the determination of the state Public Utilities Commission. However, she said, she understands the Legislative Assembly may want to make this determination.

Mr. Thomas F. Kelsch, AT&T Corporation, provided testimony on a state universal service fund. Mr. Kelsch said AT&T has five positions in relation to a state universal service fund. He said those positions are:

1. North Dakota should not create a state universal service fund until there is sufficient evidence of need.
2. If there is a state universal service fund, it should be narrowly targeted to the need.
3. The fund should prohibit double recovery.
4. Access charges should be reduced and based on cost.
5. State universal service funds should be portable.

Mr. Kelsch provided the results of an audit of the Rural Utilities Service of the United States Department of Agriculture. A copy of the results of the audit and his testimony are on file in the Legislative Council office.

In response to a question from Senator Thompson, Mr. Kelsch said the Legislative Assembly

could statutorily create a mechanism that would allow for the creation of a universal service fund based upon conditions that necessitate the need for a fund.

In response to a question from Senator Wardner, Mr. Kelsch said implicit subsidies should be removed and replaced with explicit subsidies.

Mr. Tom Simmons, MidContinent Communications, provided information on the inclusion of nontraditional telecommunications companies in the process of creating a state universal service fund. He said legislation creating a state universal service fund should allow for the inclusion of areas of technology that are not traditionally thought of as telecommunication carriers.

In response to a question from Senator Thompson, Mr. Simmons said cable broadband service is so new that he can only use forward-looking costs because there are no historical costs.

Representative Grosz said the focus of a state universal service fund should be on a high-cost rural fund.

Commission counsel provided an update of a memorandum entitled *State Universal Service Fund Legislation Created After the Federal Telecommunications Act of 1996*.

AGGREGATOR EXCEPTION

Mr. Rich Lehn, Director, Telecommunications, University of North Dakota, provided testimony on the designation of universities and colleges that provide telecommunication services as aggregators instead of resellers or facilities-based carriers. He said universities and colleges should be exempt from laws that foster competition for telecommunications services they offer on state-owned or leased properties or to educational-related entities. If the university is defined as a reseller, he said, the university would need to replace its telephone system and that would be extremely expensive. He said the replacement of the telephone system would be required because of laws and regulations requiring resellers to provide dialing number parity, local number portability, and enhanced-911 enhancements. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Grosz, Mr. Lehn said the university provides telecommunication services to Barnes & Noble, which is located on university property, to private vendors in the Memorial Union food court, to the credit union located on campus, and to the fraternity houses not located on university property.

In response to a question from Representative Grosz, Mr. Lehn said the telecommunication services are operated for a profit; however, income is generally used for reinvestment to provide better telecommunication services.

In response to a question from Commissioner Hagen, Ms. Jeffcoat-Sacco said the basic definition of a telecommunication service is all encompassing. It includes all services generally held out to the public.

She said the university provides services off campus and on campus to private entities.

In response to a question from Senator Thompson, Ms. Jeffcoat-Sacco said the University of North Dakota is a reseller and a facility-based provider and has to follow certain state and federal rules.

In response to a question from Representative Grosz, Mr. Lehn said the University of North Dakota pays gross receipts taxes on intrastate services.

Representative Grosz said drawing the boundary line of where a state-run telecommunication company may operate is a difficult matter.

Chairman Grosz adjourned the meeting at 12:15 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:1