

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

REGULATORY REFORM REVIEW COMMISSION

Wednesday, September 13, 2000
Harvest Room, State Capitol
Bismarck, North Dakota

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

Members present: Representatives Mick Grosz, Eliot Glassheim; Senators Vern Thompson, Rich Wardner

Member absent: Public Service Commissioner Bruce Hagen

Others present: See attached appendix

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

Chairman Grosz read a letter from Commissioner Hagen explaining his absence from the meeting and expressing support for a state universal service fund. A copy of the letter is on file in the Legislative Council office.

1999 SENATE BILL NO. 2420

Chairman Grosz reviewed a letter dated May 26, 2000, from Mr. Gary Witt, Senior Attorney, AT&T, to the Regulatory Reform Review Commission and a letter in response dated June 2, 2000, from Mr. Mel Kambeitz, Director-Public Affairs, U S West. Mr. Witt said the questions and concerns about the latest round of access charge reductions by U S West raised in his November testimony have been answered and addressed to AT&T's satisfaction. Mr. Kambeitz said the concerns raised by Mr. Witt were sensational and unsubstantiated. He said U S West has lowered access charges as required by 1999 Senate Bill No. 2420. He said AT&T should provide the Regulatory Reform Review Commission the relevant data demonstrating that AT&T has passed on access reductions it has received to customers in this state. A copy of each letter is on file in the Legislative Council office.

STATE UNIVERSAL SERVICE FUND BILL DRAFT

Commission counsel presented a bill draft to create a state universal service fund. He said the bill draft creates a high-cost fund for rural areas. He said the bill draft is based on Montana's law.

Mr. David Crothers, North Dakota Association of Telephone Cooperatives, Mandan, provided

testimony on the bill draft. He said the association is analyzing the technical aspects of the bill draft, for example, whether the use of the Federal Communication Commission's jurisdictional separation rules will have an impact on association members different from the rules used in North Dakota. He made the following recommendations for changes:

1. The concept of an affordability benchmark should be expanded to give the Public Service Commission some parameters for determining the benchmark. He said the Legislative Assembly should create a statement or definition that provides for a philosophy in determining the affordability benchmark.
2. The words "on the basis of relative distribution factors established by a cost proxy model adopted by the commission" on page 9, lines 6 and 7, should be removed. He said the United States Eighth Circuit Court of Appeals recently rejected this concept.
3. The reference to North Dakota Century Code Section 49-21-34 on page 8, line 18, may restrict the cost to local service only and may not extend to extended area service. He said this language should be clarified.
4. The language on page 7, lines 6 through 10, which requires a reduction in access rates for increased funding, should be moved to Section 8 of the bill draft.

A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Thompson, Mr. Crothers said he is unable to say how many people would benefit from a state universal service fund because there is no formula or benchmark of affordability to determine which lines would receive funding.

Mr. Crothers said access is going down in price. He said making rural access rates comparable with urban access rates is important to economic development in rural areas. He said rural companies need high-access rates if there is not any universal service funding but may not be able to keep higher rates under competitive pressures.

Mr. Thomas D. Kelsch, an attorney representing Western Wireless, provided testimony on the bill draft. He requested that:

1. The reference to 47 U.S.C. 254 on page 2, line 31, be removed.
2. The language in subsection 2 of Section 49-21-32 be changed. He said it is unfair to require a competitor to serve the whole area of the incumbent and then get paid based on a smaller area. He said this punishes the competitor for providing less expensive service. He said the language should be changed to either let the competitor serve smaller areas or get support for the whole area.
3. The reference on page 3, line 23, to 47 U.S.C. 254(c) be changed to 47 U.S.C. 214(e)(1).
4. Section 4 of the Act include language requiring portability of support.
5. The requirement of providing data service of at least 128,000 baud be removed. He said this is not technologically neutral. He said 128,000 baud is not required at the federal level.
6. The requirement of some usage to the public-switched network be defined to mean local usage.
7. The requirement of customer's choice in access to interexchange services be removed because it is inconsistent with the federal scheme.
8. Life line and toll limitations for life line be added to the list for services supported by the fund.

Mr. Kelsch said the concept of having a universal service fund is for that fund to support basic service in high-cost areas. He said 128,000 baud is a luxury. He said taxpayers should not have to pay for this luxury. He said the cheapest service should be encouraged because it is good for taxpayers and consumers.

Representative Grosz said the state can have requirements different from what the federal government has for the federal universal service fund. He said the requirement of 128,000 baud is meant to encourage high-speed Internet access to the rural areas of this state. He said he wants a minimum standard that provides for fairness between urban and rural areas. He said access to the Internet is not a luxury anymore. He said this state should be more progressive than the federal government. He said allowing customers to choose their interexchange carriers keeps customers from becoming captive to the local exchange's interexchange carrier of choice. He said taxpayers should not have to pay the same amount of money to a company that is able through technology to provide cheaper services as it has to pay to more expensive service providers. He said the

amount should be based on cost, and a lower cost to provide a service should result in lower payments under the fund. He said the purpose of a state universal fund is not to benefit the telecommunications companies but to benefit the high-cost consumers and citizens of this state.

Senator Thompson said a lot has changed since the passage of the Telecommunications Act of 1996. He said 96,000 baud is inadequate for use in a business. He said in 1996 he had to call to Fargo for an Internet service provider. He said he presently has a digital subscriber line. He said the universal service fund should help schools and businesses.

In response to a question from Representative Glassheim, Mr. Kelsch said 128,000 baud would be very expensive for Western Wireless to provide. He said 9,600 is the current rate for wireless. He said the digital subscriber line is paid for by the customer who uses it and should not be paid for by a universal service fund.

In response to a question from Representative Grosz, Mr. Kelsch said Western Wireless wants to be treated the same as rural telephone companies, not necessarily receive the same amount of money.

In response to a question from Senator Thompson, Mr. Kelsch said the idea of competition includes within it the idea of rewarding efficiency. He said a state universal service fund should not penalize efficiency or reward inefficiency. He said it is in the best interest of rural customers to have competition.

In response to a question from Senator Thompson, Mr. Kelsch said Western Wireless agrees with the federal law, and this state should follow the federal example by providing funding for basic service, not luxury items like 128,000 baud. He said future changes in technology may make 128,000 baud basic service; however, it is a luxury item at this time. He said it is within the Legislative Assembly's purview to decide if a state universal service fund is for economic development or for fulfilling the purposes of universal service.

In response to a question from Representative Glassheim, Mr. Kelsch said all urban areas do not have 128,000 baud. He said the concept of the fund is that the funding goes to each line and not to subscribers.

In response to a question from Senator Wardner, Mr. Crothers said the Information Technology Department's plan is to have high-speed connections to communities throughout this state.

In response to a question from Senator Wardner, Mr. Crothers said the last-mile problem encompasses many problems including the fact that the digital subscriber line is technologically limited to 18,000 feet from the service provider. He said in years past it was thought there needed to be fiber to everyone's house for there to be a digital subscriber line. He said now telephone companies can use copper.

Senator Wardner said the residents of Dickinson have to pay for high-speed data services, and it would be unfair for them to have to pay for high-speed data services for rural areas through the fund.

Representative Grosz said the subsidy for the 128,000 baud is for the line, not for the service. He said under the bill, people will have to pay for the service.

Representative Grosz said there needs to be a pod at 18,000 feet for a digital subscriber line to be extended past that point.

In response to a question from Senator Wardner, Mr. Kelsch said Western Wireless does not receive universal service funding in this state.

Mr. Tom Simmons, Midcontinent Communications, Sioux Falls, South Dakota, provided testimony to the commission. He said Midcontinent Communications will not be an essential telecommunications carrier, but will pay into the fund. He said he was concerned about what percentage of revenues would be required as a contribution.

In response to a question from Representative Glasheim, Mr. Simmons said Internet service is the fastest growing part of the cable business. He said Midcontinent Communications provides high-speed home and commercial services and telecommunications services in certain markets. He said they can provide 500,000 to 1,440,000 baud through cable lines.

In response to a question from Representative Glasheim, Mr. Simmons said cable can only provide services on the network as it now exists. He said Midcontinent Communications is looking at wireless options for serving rural areas. He said cable provides Internet on an ethernet in which resources are shared. He said a digital subscriber line provides point-to-point service and baud rates are more certain.

Ms. Illona Jeffcoat-Sacco, Public Service Commission, said the Public Service Commission would provide information at the meeting. She said Commissioner Hagen is out of the country and his

comments should be heard before the commission makes recommendations on the many technical issues within the bill draft.

DISCUSSION

Representative Grosz said until the Federal Communications Commission makes decisions concerning federal universal service, it will be difficult to determine the percentage of revenues required to produce the amount of income needed for a state universal service fund.

In response to a question from Representative Glasheim, Representative Grosz said a cap could be placed on the fund and that may be an option for the Legislative Assembly.

Representative Grosz said there should be a recommendation from the Rural Task Force to the joint board on October 1. He said this recommendation may provide some particulars that may help in drafting amendments to the bill draft.

In response to a question from Senator Wardner, Representative Grosz said one purpose of the state universal service fund would be to supplement an underfunded federal fund. He said there may be no need for a state universal service fund. He said an increase or creation of a state universal service fund would not result in a lowering of the assessment made by the federal government for the federal universal service fund.

Representative Grosz said it is better to set up a universal service fund and not use it than not set up a universal service fund and regret it.

Chairman Grosz adjourned the meeting at 11:15 a.m.

Timothy J. Dawson
Commission Counsel

ATTACH:1