

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

REGULATORY REFORM REVIEW COMMISSION

Tuesday, October 10, 2000
Roughrider 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 Commissioner Hagen, seconded by Senator Wardner, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

UNIVERSAL SERVICE FUND BILL DRAFT

Commission counsel presented the second draft of a bill draft to create a state universal service fund. He explained the changes between the first draft and the second draft. He said the changes to the draft were done as directed by the commission to make any minor changes requested by interested persons, to correct any drafting errors, and to provide clarification where appropriate.

Mr. David Crothers, North Dakota Association of Telephone Cooperatives, Mandan, provided testimony on the bill draft. Mr. Crothers said access to affordable and high-speed telecommunications services is necessary for participation in the new economy. He said high-speed telecommunications services at affordable rates are an important part of a universal service fund.

In response to a question from Commissioner Hagen, Mr. Crothers said although high-speed access may not be available from the telephone company if a person lives in or near a large city, there are competitive alternatives, e.g., cable. He said rural areas do not have alternatives at this time.

Mr. Crothers reviewed the Rural Task Force recommendations. He said until the Federal Communications Commission takes final action on the Rural Task Force recommendations, he is unable to tell whether there is need for a state universal fund that would address any shortfall in the federal fund. He provided a handout of a table that includes each state with a state universal service fund and a summary of that fund. A copy of his testimony and of the handout is on file in the Legislative Council office.

In response to a question from Senator Thompson, Mr. Crothers said the Rural Task Force

included a broad range in membership. He said the Rural Task Force report recommends embedded cost for determining the size of the rural universal service fund.

In response to a question from Commissioner Hagen, Mr. Crothers said the proxy model is wildly inaccurate in rural areas so the Rural Task Force adopted a modified embedded cost mechanism.

Ms. Natalie Baker, AT&T, presented testimony in opposition to the bill draft. Ms. Baker said she supports enabling legislation; however, the legislation should be based on need as created by federal action. She said the Rural Task Force recommends an increase in funding by at least \$118 million. She said present funding is at \$1.55 billion. She said the Rural Task Force recommends an expansion of supported services to include increased speed of 28.8 kilobytes per second. She said the Rural Task Force has recommended increased state oversight of the distribution of federal universal service funds. She said the Rural Task Force has recommended disaggregated distribution by the state to target the highest-cost areas of high-cost areas. She said the current national average loop costs are \$240 per line. She said the Rural Task Force recommends supporting the lines with a cost over \$265 per line. She said costs in this state range from \$291 to \$532 per line for rural carriers. In short, she said, the Rural Task Force has recommended an expanded program over the present program. She said given the recommendations of the Rural Task Force, there seems no need for the bill draft because the federal fund will provide more money, control, and services.

Ms. Baker said the purpose of the 1996 Act was to increase competition and reduce prices. She said competition, not regulation, is the manner by which the 1996 Act is meant to protect consumers. She said advanced services are being developed without any regulatory interference. She said the bill draft would create interference. She said the commission needs to determine whether the universal service fund is a social program or an economic development program. She said a social program to provide ubiquitous telecommunications services is much different from a program for economic development. She said the scope and expense of the program increases if the fund is for economic development. She said there

are policy decisions on how the fund should be funded if the fund is for economic development.

Ms. Baker said AT&T is concerned with the funding of high-speed telecommunications through a universal fund that is supported by the telecommunications industry. She said the development of high-speed service should be left to competition. She said cable, wireless, and digital subscriber lines are presently in heavy competition with each other, and it is too early to tell who will become dominant. She said choosing one over the other through a subsidy would be unwise. She said high-speed access is for economic development, not universal service, and as such is akin to other infrastructure supported by public moneys. She said other infrastructure is generally supported by a general tax.

Ms. Baker said contributions to an economic development fund or for the purposes of economic development would be borne entirely by the customers in this state if the services supported were in excess of those supported by the federal fund. She said 128,000 baud is not consistent with the federal fund and how distributions are calculated under that fund. She said 128,000 baud is administratively burdensome.

In response to a question from Senator Thompson, Ms. Baker said AT&T would be in favor of supporting services that are supported by the Federal Communications Commission.

In response to a question from Senator Thompson, Ms. Baker said 28.8 kilobytes per second is the minimum requirement of basic service at the federal level. She said if the state policy is for a higher rate, it should be supported by a general tax because it becomes an economic development policy instead of a universal service policy.

In response to a question from Senator Thompson, Ms. Baker said AT&T is for competitive neutrality as a means for expanding high-speed service into rural areas. She said competitive neutrality includes explicit subsidies, portability of distribution so that it moves when a customer changes carrier, a neutral third-party administration, broad funding, and narrowly targeted distribution of funds.

Ms. Baker said competition is the vehicle by which telecommunications service will improve. She said telecommunications companies want to serve all parts of the United States and will serve anyone that will pay for the service. She said to make competition attractive the Legislative Assembly should remove pricing discrepancies. She said for the use of Qwest's local network, the nonrecurring charges are exceptionally high for wholesale over that charge for retail.

In response to a question from Senator Wardner, Ms. Baker said funding for a universal service program would come from customers because companies would pass through any surcharge.

In response to a question from Commissioner Hagen, Ms. Baker said Section 8 of the bill is unclear as to eligibility and distribution.

Representative Grosz said the 1996 Act recognized that rural telephone companies are different from other telephone companies and should not be subject to the same competition. He said the purpose of the universal service fund is to provide needed services to high-cost areas at prices comparable to urban areas. He said no company is going to compete for the last person on the telephone line unless there is a high-cost fund. He said in rural areas competition is cost-prohibitive especially in the area of broadbands. He said there is no competition in many areas of this state. He said the universal service definition is changing to include more advanced services. He said universal service has evolved to encompass broadband as a basic service. He said Ms. Baker's assumptions are based on the Federal Communications Commission adopting the Rural Task Force recommendations in whole. He said although the bill draft may be obsolete because of the Rural Task Force report, the commission will not know until the Federal Communications Commission acts. He said adoption of the bill draft would show the citizens of this state the Legislative Assembly's commitment to universal service.

Ms. Illona Jeffcoat-Sacco, Director, Public Utilities Division, Public Service Commission, presented testimony to the commission on the bill draft. Ms. Jeffcoat-Sacco said her testimony is the comments of the Public Service Commission based upon staff discussion. She proposed numerous changes. She said the determination of cost in the bill draft should mirror the federal fund if the purpose of the bill draft is to make up a possible shortfall in federal funding. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Wardner, Ms. Jeffcoat-Sacco said she does not expect the implementation of the Federal Communications Commission determination to be longer than six months.

In response to a question from Senator Thompson, Ms. Jeffcoat-Sacco said the Federal Communications Commission should make its determination by the first of the year.

In response to a question from Senator Wardner, Ms. Baker said she suspects the Federal Communications Commission will adopt the Rural Task Force recommendations in whole.

Mr. Crothers said he is not confident that the Federal Communications Commission will adopt the recommendations of the Rural Task Force in whole. He said the Regulatory Reform Review Commission should not discard the bill draft until it is certain of the fate of the federal rural universal service fund.

In response to a question from Senator Wardner, Ms. Baker said the Federal Communications

Commission will receive comments from November 3 to November 30. She said the Rural Task Force recommends immediate change in the federal rural universal service fund.

Mr. Steven W. Haas, Director, New Business Development-State Telecommunications and Energy Public Benefit Programs, National Exchange Carrier Association, Inc., provided written testimony to the commission. A copy of his testimony is on file in the Legislative Council office.

COMMISSION DISCUSSION ON BILL DRAFT

Representative Grosz said universal service is an important concept. He said the bill draft is a work in progress. He said the commission should recommend the bill draft to show support for universal service. He said there may be many changes to the bill draft in the future. He said it is possible the bill draft may not even be needed.

Senator Wardner said although he agrees, he has concerns about the bill draft. He said constituents in Dickinson are concerned about the cost of telephone service. He said he wants to wait for a decision from the Federal Communications Commission before voting for a change that may increase the cost of telecommunications service. He said he was not going to support the bill draft.

Senator Thompson said he is unclear whether the bill draft is trying to fill a shortfall in federal funding,

provide an explicit subsidy for high access rates, or erase the digital divide. He said he is concerned there is no estimate as to the cost of the fund. He said voting for the bill draft would be an act of blind faith.

Commissioner Hagen said the state needs a state universal service fund. He said there is enough time to change the bill draft. He said the commission should meet one more time.

Representative Grosz said the commission does not have all the answers in this bill draft, but it is important to show through the bill draft that universal service is important. He said if changes are needed, the Legislative Assembly can change the bill draft. He said if the bill draft were law, he would not support it.

The commission requested the Legislative Council staff be requested to work with the Public Service Commission and interested parties and revise the bill draft to address the questions raised in testimony.

Chairman Grosz adjourned the meeting at 12:15 p.m. after tentatively scheduling the next commission meeting for October 27, 2000.

Timothy J. Dawson
Commission Counsel

ATTACH:1