

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

REGULATORY REFORM REVIEW COMMISSION

Friday, October 27, 2000
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Mick Grosz, Chairman, called the meeting to order at 11:00 a.m.

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

Others present: See attached appendix

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

Commission counsel provided three handouts entitled *Consumer Benefits Multi-Association Group Plan, Disaggregation and Targeting of Rural Service Support*, and *Competition and Universal Service*. The last two handouts listed are reports by the Rural Task Force. A copy of each of these handouts is on file in the Legislative Council office.

UNIVERSAL SERVICE FUND BILL DRAFT

Commission counsel presented the third draft of the bill draft to create a state universal service fund. He said the major substantive changes in the bill draft were that the cost methodology would be the same as that used by the Federal Communications Commission to determine the federal universal service fund and the provision of 128,000 baud had been separated into one section of the bill draft. He said the bill draft provided funding for 128,000 baud through an advanced services fund. He said the advanced services fund would operate even if the remainder of the bill was not made operative. He said the advanced services fund provided support for rural companies for costs above a benchmark that is equal to rates offered in competitive urban areas. He said any eligible telecommunications carrier, including U S West, could receive funding; however, nonrural companies would receive funding for high-cost areas without a competitive alternative.

In response to a question from Senator Wardner, commission counsel said the concept of access reduction is not addressed in the bill draft, and anything related to that concept has been removed from the bill draft.

In response to a question from Representative Glassheim, commission counsel said access reduction is lowering rates for beginning or ending a

long-distance telephone call. He said funding access to certain universal services in the bill draft means you can get the service, but you have to pay for the service. For example, he said access to interexchange services means you can get long-distance service, but you have to pay for it. He said the cost for access to the basic services listed in the bill draft are minimal because they are closely intertwined with the other services that are provided.

In response to a question from Representative Glassheim, Mr. Pat Fahn, Public Service Commission, said access to directory assistance means you have the ability to use directory assistance. He said the terms used for supported basic services in the bill draft are based on those used by the Federal Communications Commission.

Ms. Ilona Jeffcoat-Sacco, Director, Public Utilities Division, Public Service Commission, presented testimony from the Public Service Commission on the bill draft. She said the bill draft is an improvement from the previous bill drafts. She listed a number of questions:

- Should the bill draft include a start date for distributions and collections?
- Should the bill draft include an upper limit to the size of the fund?
- Should specific provisions be included for passthrough of charges to customers?
- Should the bill draft address private line services as a telecommunications service?
- Should the Public Service Commission be given more jurisdiction over the bill draft, especially regarding the billing for, payment, and collection of contributions?
- Is there a problem by referencing federal methodology in the bill draft and having the methodology change after the adoption of the Act?
- Is the process and timeframe in the bill draft consistent with the process and timeframe used by the administrator of the federal high-cost fund?

Ms. Jeffcoat-Sacco provided a handout entitled *Responses to Questions on State Universal Service Funds*. A copy of her testimony and the handout is on file in the Legislative Council office.

In response to a question from Senator Wardner, Ms. Jeffcoat-Sacco said the bill draft does not become effective unless there is a shortfall in federal funding except for the provisions on advanced universal service. She said the advanced universal service fund operates independently of the basic universal service fund.

In response to a question from Representative Glassheim, Ms. Jeffcoat-Sacco said everyone pays for universal service funding because contributions apply to local and long-distance calls. Under the bill, she said, carriers decide how to recover the percentage of revenue surcharge against each carrier. She said in the federal system, some companies flow through the charge and some recover the cost through a set fee.

In response to a question from Representative Glassheim, Ms. Jeffcoat-Sacco said a private line is a dedicated line that is not switched. She said a private line is mainly used between branches of a large business.

In response to a question from Senator Thompson, Ms. Jeffcoat-Sacco said there are two different ways in which the state could provide provisions different from federal law. First, she said, the state could provide a different administrative procedure. She said it is very important to use the same administrative procedure as the federal law because of administrative convenience. She said the Public Service Commission would be unable to manage the fund unless it copied the federal fund. She said telephone companies would do exactly as they do for the federal fund and send a copy to the state. Second, she said, the state could have different policy decisions. She said the bill draft differs from federal law in providing advanced services and by having the distribution based upon each carriers' cost.

In response to a question from Representative Glassheim, commission counsel said noted access to basic service has a minimal cost; however, access to advanced services may cost more because advanced services may not be intertwined with services presently being offered.

Representative Gross said the reason U S West may receive funding for advanced services under the bill draft is because U S West has rural areas comparable to those areas served by rural carriers. He said it is a policy decision as to whether U S West may receive funds under the bill draft. He said the bill draft takes into account that U S West may have high-cost lines. He said the commission should leave the provision in the bill draft and let the Legislative Assembly decide whether to keep it in the bill draft.

In response to a question from Representative Glassheim, Ms. Jeffcoat-Sacco said there will be differences of opinion on the terms "competitive alternative" and "high cost" as used to determine which nonrural carriers will receive advanced services funding.

In response to a question from Representative Glassheim, Ms. Jeffcoat-Sacco said the removal of "high-cost areas" as areas that may receive advanced services funding within nonrural areas would remove one limitation on nonrurals receiving funding and may increase the need of the fund.

Representative Glassheim said he agrees that basic service may include high-speed access; however, he wants that high-speed access to be universal in this state. He said he wants urban areas to have the same benefits as rural areas do under this bill draft. He said he is leery of subsidizing rural areas with advanced services that are better than those offered in Grand Forks.

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Representative Grosz said it should be the policy of this state to have broadband access available to everyone in this state. He said broadband is needed for economic survival. He said this is a policy decision that this bill addresses and would receive attention by the Legislative Assembly if the bill is recommended.

Ms. Natalie Baker, AT&T, presented testimony on the bill draft. She said the revisions to the bill draft make the intent of the bill draft clearer. She said the bill draft has two major problems. It is inconsistent with the federal fund and does not use a general tax to fund the advanced services fund. She said the bill draft provides for two different ways to determine subsidies when there is competition in a rural area. She said this conflicts with Section 254(f) of the federal Act and with the concept of portability. She said under the federal Act if you win a customer you get the subsidy. She said either a loop is high cost or is not and that is not dependent upon who provides the service, the incumbent or the competitor.

Representative Grosz said this state does not have to follow the federal fund.

Ms. Baker said Section 254 of the federal Act says the state may provide more than the federal Act, but cannot be inconsistent with the federal Act. She said funding the universal service fund through interstate revenues is inconsistent with the federal Act and is not good policy. She said if every state taxed interstate revenues each interstate telephone call would be taxed four times. She said the advanced services fund should not refer to 128,000 baud because it is suggestive of supporting integrated services digital networks. She said this is not technologically neutral.

She said the language should include DSL, cable, satellite, and wireless.

Representative Grosz said the bill draft is not intended to sell integrated services digital networks and is meant to be technologically neutral.

In response to a question from Representative Glasheim, Ms. Baker said she would define advanced services the same as the federal Act. She said the federal Act defines advanced services broadly.

Ms. Baker said the bill draft should provide for a proceeding to determine need and determine the price of the state universal service fund. She said although it is attractive to make the entities tax as broad as possible, there is a social value in providing affordable long-distance service that is as important as providing local service. She said taxing interstate revenues is draconian.

Mr. Curtis L. Wolfe, Director, Information Technology Department, provided testimony on the statewide network. He said the advanced services fund appears to be in addition to and not in conflict with the statewide network. He said the advanced services fund raises the issue of providing reasonable low-cost service to private businesses. He said many businesses want postalized advanced service rates. He said the advanced services fund would encourage economic development. He said in two years 128,000 baud will be inadequate advanced service. He said deployment of the state plan is going well.

Mr. David Crothers, Executive Vice President, North Dakota Association of Telephone Cooperatives, provided written testimony on the bill draft. He said the association generally is supportive of the draft legislation; however, the specifics of the bill draft may need to be addressed in the future. A copy of his testimony is on file in the Legislative Council office.

COMMITTEE DISCUSSION

Representative Glasheim said the bill draft should be amended to guarantee that rural customers are not paying less for basic service than urban customers. He suggested an amendment to provide that the level of the affordability benchmark may not be less than 115 percent of the average price charge within cities with a population in excess of 10,000 people.

Representative Grosz said the amendment does not do what Representative Glasheim said he wants it to do. He said the suggested amendment removes 15 percent of the subsidy to rurals, whereas it appeared that Representative Glasheim wants to prohibit subsidies to rural areas not charging customers 115 percent of the rate charged in urban areas.

Representative Glasheim said customers in rural areas should pay a little more than what urban customers pay to take advantage of a subsidy. He said some burden should be borne by the individuals taking advantage of the subsidy. He said individuals

get an advantage by living in a rural area, e.g., lower taxes and less regulation.

Senator Wardner said he does not have a problem with requiring rural customers to pay 115 percent because the rural customer will receive a benefit from the universal service fund, and the urban customer will not receive a benefit.

Senator Thompson said some rural telephone companies are charging less than the cost to providing residential services because of implicit subsidies. He said rural telephone companies should be given the flexibility to collect their cost.

Representative Grosz said requiring rurals to raise their rates to 115 percent of those rates charged in urban areas would be symbolic. He said the extra revenue would be passed back to rural cooperative members. He said some rural companies can charge less than urban areas because of subsidizing residential rates with other income sources. He said the affordability benchmark sets the minimum level of subsidy, and setting the price for rural areas will not affect the subsidy.

Representative Grosz said people in rural areas are not charged more for using roads in rural places and should not be charged more for using the phone. He said everyone benefits from having ubiquitous telephone service.

Representative Glasheim said the bill draft should be amended to create an arbitrary standard for fairness for rural companies to receive universal service funding. He said the amendment does not mandate raising rates.

Representative Grosz said the affordability benchmark should be set at what the average person can afford and should not be an arbitrary rate. He said finding a benchmark is part of creating a universal service fund; however, setting price is not part of a universal service fund.

Commissioner Hagen said 115 percent of the average rate in urban areas with populations exceeding 10,000 people is approximately \$20.41.

In response to a question from Commissioner Hagen, Mr. Fahn said some rural companies are able to charge under the cost of urban areas because of a misallocation of federal universal service funds. He said the federal fund pays for costs above the benchmark.

It was moved by Representative Glasheim, seconded by Senator Wardner, and failed on a roll call vote that the bill draft be amended to add language requiring rates of at least 115 percent of urban rates for those in rural areas before there is eligibility for universal service funding. Representative Glasheim and Senator Wardner voted "aye." Representative Grosz and Senator Thompson, and Commissioner Hagen voted "nay."

In response to a question from Senator Wardner, Ms. Jeffcoat-Sacco said the bill draft does not become effective unless there is a shortfall in federal

funding except for the provisions on advanced universal service. She said the advanced universal service fund operates independently of the basic universal service fund.

Representative Glassheim expressed concern there is no limit on what fees could be charged individuals. He suggested limiting the increase to no more than 10 percent per person per year.

In response to a question from Representative Glassheim, Mr. Fahn said one way to limit what end users pay is to put a limit on the fund.

Representative Grosz said to know whether to limit the fund, more information is needed from the Federal Communications Commission. He said it appears this information will be available during the legislative session. He said he thinks the Legislative Assembly will put a cap on the fund. He said he supports the principles and philosophy of the bill draft, and any changes will be made with better information during the legislative session.

It was moved by Representative Glassheim that local rates be limited to a maximum of a 10 percent increase for universal service funding. Chairman Grosz declared the motion failed for lack of a second.

It was moved by Representative Glassheim, seconded by Senator Thompson, and carried on a roll call vote that the language in the bill draft be clarified to affirm that the advanced services fund operates independent from the existence of a basic universal service fund. Representatives Grosz and Glassheim and Senators Thompson and Wardner, and Commissioner Hagen voted "aye." No negative votes were cast.

In response to a question from Commissioner Hagen, Mr. Fahn said a formula to base, in part, a company's claim from the fund on excluding costs equivalent to 115 percent of rates charged in urban areas, may satisfy Representative Glassheim.

It was moved by Commissioner Hagen, seconded by Senator Thompson, and passed on a roll call vote that the bill draft incorporate the

formula suggested by Mr. Fahn. Representatives Grosz and Glassheim, and Senator Thompson, and Commissioner Hagen voted "aye." Senator Wardner voted "nay."

Representative Glassheim said the amendment does not accomplish what he wants.

Senator Thompson said he is not satisfied with the bill draft, but supports the philosophy in the bill draft. He said the bill draft is a good start and a tool for dialogue and debate; however, the bill draft needs to be simpler.

Representative Grosz said the bill is simple, and the commission has addressed many issues that can be further addressed by the Legislative Assembly.

It was moved by Commissioner Hagen, seconded by Representative Glassheim, and failed on a roll call vote that the bill draft, as amended, be recommended to the Legislative Council. Representative Grosz and Commissioner Hagen voted "aye." Representative Glassheim and Senators Thompson and Wardner voted "nay."

COMMITTEE WRAPUP

It was moved by Senator Thompson, seconded by Representative Glassheim, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Council.

It was moved by Senator Wardner, seconded by Commissioner Hagen, and carried that the meeting be adjourned sine die.

Vice Chairman Wardner adjourned the meeting sine die at 2:20 p.m.

Timothy J. Dawson
Commission Counsel

ATTACH:1