

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

REGULATORY REFORM REVIEW COMMISSION

Tuesday, November 16, 1999
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Mick Grosz, Chairman, called the meeting to order at 10:00 a.m.

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

Others present: See attached appendix

Commission counsel presented a memorandum entitled *Regulatory Reform Review Commission - Background Memorandum*, which reviewed this state's telecommunications law and the federal Telecommunications Act of 1996 including issues relating to competition with regional Bell operating companies, rural protections from competition, and universal service.

Ms. Illona Jeffcoat-Sacco, Director, Public Utilities Division, Public Service Commission, provided testimony on an update of North Dakota telecommunications law. In addition, she provided a handout on interconnection agreements in North Dakota and local exchange carriers registered with the Public Service Commission. A copy of her testimony and the handout is on file in the Legislative Council office.

Ms. Jeffcoat-Sacco said the Public Service Commission has opened an investigation to determine U S West's cost of providing local exchange service in North Dakota. She said 1999 Senate Bill No. 2420 included a provision allowing the Public Service Commission to set aside some or all of the increase allowed by the bill if an investigation finds the resulting rates to be in excess of the cost of providing residential local exchange service. She said the Public Service Commission is also reviewing U S West's access and toll price reductions taken in compliance with 1999 Senate Bill No. 2420. She said these reductions are to be revenue and competitively neutral.

Ms. Jeffcoat-Sacco said local number portability has been implemented in Belfield, Bismarck, Casselton, Dickinson, and Fargo and will soon be implemented in Grand Forks, Grafton, Manvel, Minto, Mayville, Reynolds, and Thompson. In addition, she said, the Public Service Commission has opened an investigation into U S West's compliance with Section 271 of the Telecommunications Act of 1996 regarding entry into interLATA services. She said this investigation was started before U S West filed a Section 271 application in this state.

Ms. Jeffcoat-Sacco said the Federal Communications Commission has allowed suspensions of its rule that 1+ dialing parity must be offered by July 22, 1999. She said the Federal Communications Commission offered suspensions to rural companies to the extent that is allowed by state law. She said 1999 Senate Bill No. 2420 requires a local exchange carrier to provide 1+ dialing parity no later than January 1, 2000.

Ms. Jeffcoat-Sacco said the Public Service Commission has issued an order concerning the confrontation between Consolidated Telephone Cooperative and Western Wireless in which Consolidated disconnected Western Wireless and Western Wireless filed a complaint with the Public Service Commission, and after reinstating service to Western Wireless, in which Consolidated filed a counterclaim alleging that Western Wireless needs a certificate of public convenience and necessity before offering fixed wireless service. She said the commission issued a decision finding Consolidated violated North Dakota law and that the Public Service Commission is preempted from imposing an entry requirement of a certificate of public convenience and necessity on Western Wireless.

Ms. Jeffcoat-Sacco said Western Wireless has filed an application to be designated as an eligible telecommunications carrier. She said the hearing has been held and a decision is now pending.

In response to a question from Representative Glassheim, Ms. Jeffcoat-Sacco said the Federal Communications Commission has answered many of the questions the Public Service Commission needed answered in its last few orders. She said a major area in which the Public Service Commission is waiting for information from the Federal Communications Commission is in the area of rural universal service.

In response to a question from Senator Thompson, Ms. Jeffcoat-Sacco said state law provides a basis for the Federal Communications Commission to provide a suspension of 1+ dialing parity until January 1, 2000. She said most rural telecommunications companies, about 20, asked for and received a suspension.

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

universal service. He said the term "universal service" is used to refer to the policy that everyone should have a telephone and to universal service funds at the state or federal level, or both. He said rural cooperatives have three concerns based on previous Federal Communications Commission decisions. He said the rural cooperatives are concerned that the Federal Communications Commission will cap universal service funding at present levels; that the Federal Communications Commission will adopt a forwardlooking cost model instead of one based on actual or historical costs; and that the benchmark will be set at a single national cost benchmark of 135 percent. A copy of his testimony is on file in the Legislative Council office. He provided a handout entitled *Rural Task Force Mission and Purpose: Rural Task Force White Paper 1, September 1999*. A copy of his handout is on file in the Legislative Council office.

In response to a question from Senator Wardner, Mr. Crothers said embedded and historical costs are the best indicator of true cost. He said a forward-looking cost model does not take into account the difficulty and expense of providing telephone service in rough terrain with great expanses. He said the new 135 percent standard of high cost for nonrurals, instead of the previous 115 percent, eliminates companies, customers, and states from the receipt of federal universal service funds.

In response to a question from Senator Wardner, Mr. Crothers said the term "universal service" is an evolving term that takes into account the access every American should have and that term could include broadband in the future.

In response to a question from Commissioner Hagen, Mr. Crothers said the rural cooperatives are waiting for the September report from the Rural Task Force before making a recommendation on a particular universal service fund. He said he has no recommendation as to a specific state universal service fund that this state should model legislation after.

In response to a question from Senator Thompson, Mr. Crothers recommended that the Regulatory Reform Review Commission examine other states and set priorities based on those other states' statutes before receiving the Rural Task Force report.

In response to a question from Senator Thompson, Mr. Crothers said the Rural Task Force has a broad cross-section of the telecommunications industry within its membership. He said the duty of the Rural Task Force is to develop a cost model for a federal universal service fund.

In response to a question from Representative Glassheim, Mr. Crothers said the rural cooperatives have fiber optic systems, toll-free access to the Internet, and increasing speeds. He said there is consumer demand for more speed.

In response to a question from Representative Glassheim, Mr. Crothers said rural cooperatives provide dial tone below cost. He said the federal universal service fund and access charges provide for profitability for rural cooperatives.

In response to a question from Representative Grosz, Mr. Crothers said there is no specific study on the effect of a 135 percent benchmark on rural companies. He said the 135 percent benchmark is days old. He said he does not know if a similar benchmark will apply to rural companies.

Ms. RaeAnn G. Kelsch, Western Wireless, provided testimony on competition provided by Western Wireless. She discussed the benefits of having Western Wireless provide rural service and receive universal service funding. She said the Minnesota Public Utilities Commission has issued an order providing eligible telecommunications carrier status for Western Wireless so as to be eligible for universal service funds. She said Western Wireless can effectively compete once it is eligible for universal service funding. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Grosz, Ms. Kelsch said wireless service does not provide high rates of speed and is a good option for a second line. She said customers are told that Western Wireless does offer Internet connections; however, the speed is not at a speed at which customers are accustomed to receiving through wire line. She said wireless does have the ability to offer higher speeds.

In response to a question from Representative Grosz, Ms. Kelsch said the Federal Communications Commission has not determined whether universal service funding will apply to a second line.

In response to a question from Senator Thompson, Ms. Kelsch said Western Wireless is not designated as an eligible telecommunications carrier in this state and is only offering local service in the Regent area. As such, she said, no one is using the Life Line or Link-Up programs through these limited wireless offerings.

Mr. Mel Kambeitz, U S West Communications, presented testimony on the operation and effect of 1999 Senate Bill No. 2420. He said 1999 Senate Bill No. 2420 has been a success. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Thompson, Mr. Kambeitz said the rebalancing allowed by 1999 Senate Bill No. 2420, which allowed rates to be raised to \$15.50 per month, caused a 24 percent (approximately \$6.7 million) decrease in intrastate long-distance and switched access prices.

In response to a question from Representative Grosz, Mr. Kambeitz said all customers received some benefit from the toll and access reductions; however, some received more than others by taking advantage of promotional rates.

Mr. Gary Witt, AT&T, Denver, Colorado, presented testimony on 1999 Senate Bill No. 2420. He said AT&T supported the bill, especially the reduction in access charges, the Public Service Commission's authority to implement the federal Telecommunications Act of 1996, and the provisions that provided for prohibited acts which were meant to foster competition. He said AT&T doubts the revenue neutrality of the proposals by U S West to change rates. He said the rates and rate structures are changing at the same time, making it difficult to evaluate the fiscal impact. He said North Dakota has the highest access charge rates in U S West's 14-state territory. He said U S West's net revenues in 1998 were \$54,363,249. He said consumers are paying too much for intrastate access, and it is difficult for AT&T to compete with U S West. According to U S West's figures, he said, interexchange carriers are charged six cents a minute on each end of a conversation for access. He said a very conservative estimate of the cost of access for originating and terminating a telephone call is two cents per minute. He said AT&T needs to charge 16 cents per minute to make four cents per minute on carrying intrastate telephone calls between U S West customers. He said if U S West charges 16 cents, it makes 14 cents per minute. He said U S West charges under 10 cents per minute to its own customers. He said AT&T cannot compete at these prices because it would cost AT&T more money than it would receive from customers and would enrich U S West at the same time. He said there needs to be a reduction in access charges so that Senate Bill No. 2420 can work as intended by the Legislative Assembly. In addition, he said, under no circumstance should U S West receive any state universal service funds. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Thompson, Mr. Witt said a reduction of access rates would have a direct positive impact on AT&T and its customers. He said it is assumed that toll rates will come down with reduced access.

In response to a question from Senator Thompson, Mr. Witt said all AT&T's customers are paying for AT&T customers in this state receiving time per minute rates cheaper than the cost to AT&T.

In response to a question from Senator Thompson, Mr. Witt said if AT&T pays 12 cents to U S West, then consumers are paying too much. In addition, he said, AT&T is unable to compete with U S West's eight or nine cents a minute plans.

In response to a question from Senator Wardner, Mr. Witt said AT&T only competes with U S West on an intraLATA basis. He said access is priced lower on an interstate basis than on an intrastate basis.

In response to a question from Senator Thompson, Mr. Witt said LATA lines are within the sole jurisdiction of the Federal Communications Commission.

In response to a question from Senator Wardner, Mr. Witt said state law sets a floor for the price of access charged by rural telephone companies at the price on January 1, 1999. He said this floor expires on July 31, 2001. He said the rates charged for access by rural companies are very high.

No further business appearing, Chairman Grosz adjourned the meeting at 1:55 p.m.

Timothy J. Dawson
Commission Counsel

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