

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## REGULATORY REFORM REVIEW COMMISSION

Friday, June 14, 2002  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Rick Berg, Eliot Glassheim; Senators Steven W. Tomac, Rich Wardner; Public Service Commissioner Tony Clark

**Others present:** See attached appendix

### BACKGROUND INFORMATION

At the request of Chairman Berg, commission counsel presented a memorandum entitled *Regulatory Reform Review Commission - Background Memorandum*. He said the memorandum traces state legislative action since 1983 and provides information on federal and state universal service funds. He said prior to the meeting, Chairman Berg requested a letter from certain telecommunications service providers on issues that the commission may consider. He said there were responses from the North Dakota Association of Telephone Cooperatives, the North Dakota Cable Television Association, Western Wireless, and Qwest. A copy of each letter is on file in the Legislative Council office.

### UPDATE ON PUBLIC SERVICE COMMISSION ACTIVITY

Public Service Commissioner Tony Clark presented written testimony that provided an update on current telecommunications topics and potential legislative changes. He provided an update on the Section 271 filing by Qwest, on the Department of Human Services notification of eligible participants in the Lifeline and Link Up programs, and the monitoring of quality of service by the Public Service Commission. He suggested legislation that would allow the Public Service Commission to use money received from fines of Qwest to administer the Qwest Section 271 performance assurance plan over Qwest. He suggested legislation clarifying the Public Service Commission powers in relation to the Telecommunications Act of 1996. He suggested legislation requiring prior notice of increased rates of customers by intrastate telephone service providers. He suggested an annual license of long-distance resellers. He suggested clarifying the term "packet-switched services" in North Dakota Century Code Section 49-21-01 so that plain old telephone service is an essential service regardless of whether it is

packet-switched. He suggested clarifying Section 49-21-25 to provide for exceptions for certain competitive local exchange carriers for which dialing parity is not relevant. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Berg, Commissioner Clark said the performance assurance plan is focused on local service. He said Qwest historically has had a monopoly on local service and the performance assurance plan is to ensure fair opening of the local network. He said Qwest is allowed entry into the long-distance market upon approval of the Section 271 filing.

In response to a question from Senator Tomac, Commissioner Clark said he is cautiously optimistic that the Federal Communications Commission will approve the Qwest Section 271 filing. He said Qwest has had approval in other states, but no Bell operating company has received approval on the first attempt.

In response to a question from Representative Glassheim, Commissioner Clark said the performance assurance plan is very detailed with very particular standards with self-executing fines. He said a plan does not require much discretion in its administration. He said the plan will be administered through audits.

In response to a question from Representative Glassheim, Commissioner Clark said he anticipates that some money will be obtained through fines against Qwest. He said Qwest has agreed to provide some funding for the initial administration of the plan.

In response to a question from Senator Tomac, Commissioner Clark said fines are stated for certain bad acts, including not complying with standards for hooking up new customers for a competitor within a certain number of days, billing, colocation within time limits, and basic parity for providing competitors services at the same level Qwest provides services to itself.

In response to a question from Senator Tomac, Commissioner Clark said the plan is self-executing and fault is generally not an issue. He said although fault could arise as an issue, it has not been an issue in other states.

In response to a question from Senator Wardner, Commissioner Clark said in large states there is competition between large companies. He said in this state competition happens among local and regional

companies, including McLeod, US Link, and cooperative groups. He said there is competition in Dickinson.

### UNIVERSAL SERVICE FUND

Mr. Steven W. Haas, Director, State and International Universal Service Programs, National Exchange Carrier Association, Inc., and Mr. Eric D. Seguin, Manager, State Universal Service Fund Programs, National Exchange Carrier Association, Inc., presented written testimony on state universal funds. A copy of their presentation is on file in the Legislative Council office.

In response to a question from Representative Berg, Mr. Haas said some of the states that have more recently established a state universal service fund include Oregon and Pennsylvania, as well as Puerto Rico.

In response to a question from Representative Berg, Mr. Haas said nonrural carriers would receive \$9.4 million in federal universal service support if support was provided on a wire center basis instead of a statewide average. He said there are six wire centers that are below the benchmark level and consist of over 80 percent of the switched lines in this state.

In response to a question from Representative Berg, Commissioner Clark said disaggregation relates to what level funds are paid. He said this level could be at a per line basis for the average cost for an entire service area or it could be disaggregated to an area smaller than a service area. He said the Federal Communications Commission allows disaggregation to an area smaller than a service area for rural carriers.

In response to a question from Representative Berg, Commissioner Clark said Qwest does not receive federal universal service funding in the nonrural market in which it operates. He said rural areas do receive federal universal service funding.

Mr. Jim Blundell, Director of External Affairs, Western Wireless, presented testimony on a state universal service fund. He testified in favor of a state universal service fund for rural customers with portability of subsidies to allow competition by the wireless industry in rural areas. He said there is a revenue gap created by implicit subsidies in incumbent rural telephone company rates. He said the main implicit subsidy is intrastate access charges. He said wireless companies do not have access to access charges. He said other implicit subsidies include cross-subsidization, including raising business rates to cover the cost of residential service. A copy of his presentation is on file in the Legislative Council office. He provided a copy of a model state universal service fund act which is on file in the Legislative Council office.

In response to a question from Representative Berg, Mr. Blundell said even if a fund reduces access

fees in a phased-in approach, it is better than leaving the implicit subsidies.

In response to a question from Senator Tomac, Mr. Blundell said there are two different cellular markets. He said one market is the traditional market and the other is as a basic service provider. He said government should not support one player in a market over other players in that market.

In response to a question from Senator Tomac, Mr. Blundell said Western Wireless needs government funding because its competitor has an unfair advantage.

In response to a question from Senator Tomac, Mr. Blundell said customers should have a choice. He said each competitor offers something different in the marketplace. He said Western Wireless provides mobility and a large calling area. He said Western Wireless will provide high-speed information services in the future.

In response to a question from Commissioner Clark, Mr. Blundell said to get the implicit support numbers in the tables he provided, he subtracted the cost minus the federal support. He said he does not have the information to break down the cost.

In response to a question from Representative Glassheim, Mr. Blundell said the numbers used for federal support come from the Universal Service Administrative Company. He said the cost per line per month comes from an HAI cost model which is a forward-looking cost model. He said if the cost numbers are not accurate, the cooperatives would have to refute them.

In response to a question from Representative Berg, Commissioner Clark said there are many cost models that produce varying results. He said the numbers provided can be considered somewhat in the ballpark.

In response to a question from Commissioner Clark, Mr. Blundell said a universal fund is not a cost recovery system and should be forward-looking. He said the same dollar amount of subsidy should apply to the incumbent and the competitor for the universal fund system to be fair. He said the portability of the subsidy is a very important part of a fund. He said as long as two competitors are competing on the same playing field, they should receive the same subsidy.

In response to a question from Senator Wardner, Mr. Blundell said a long-distance telephone call that terminates on a cell phone does not result in any access charges going to the cellular company.

In response to a question from Representative Berg, Mr. Blundell said the wireless industry is not governed by the Public Service Commission. He says nothing obligates long-distance carriers to pay wireless providers' access. He said long-distance companies save money by having long-distance calls go through cellular phones.

Representative Glassheim said if more people make cell phone calls, then the cooperatives will have declining access income.

Representative Berg said better service at a lower price is better for everyone.

In response to a question from Representative Berg, Mr. Blundell said in the 19 states in which Western Wireless operates, there is rural competition in Texas. He said some markets in Texas exceed 50 percent penetration for basic service by wireless service.

In response to a question from Representative Berg, Mr. Blundell says the Texas support is on a per line basis and results in an offering to consumers at \$14.99 per month.

Mr. David Crothers, North Dakota Association of Telephone Cooperatives, provided written testimony to the commission. He said the independent cooperatives are good community neighbors. He said there is little if no digital divide in North Dakota because of the investment of independent cooperatives. He said the Federal Communications Commission and National Exchange Carrier Association have specifically rejected forward-looking cost models for rural companies. He said a subsidy based on the incumbent's costs for a competitor is nonsensical. For example, he said, no one would use a competitor's cost to build a highway. He said recovery should be based on actual cost. He said the independent cooperatives serve everyone in their area and provide better service than cellular. He said this is why there is a higher cost. He said if the lowest cost is chosen, then there would have not been the broadband development there has been. He said the independent cooperatives did not build broadband because it was the lowest cost thing to do. He said the federal universal service fund system for rural carriers will hold rural companies harmless for the next four years. He said if intrastate access income levels are lowered, then cooperatives will have to charge higher rates or will need a state universal service fund. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Berg, Mr. Crothers said the rural areas of the state do not need a state universal service fund for broadband. He said the rural areas of the state have good high-speed service. He said the federal universal service fund continues to grow in size. He said the Federal Communications Commission may force states to create a state universal service fund by reducing federal amounts. He said this state may not be able to afford anything beyond the gap created by the Federal Communications Commission and should limit a state universal service fund. He said the universal service fund is not large enough federally and North Dakota would have a hard time raising enough money to subsidize Western Wireless for competition's sake. He said a universal service fund should be narrowly tailored.

Mr. Blundell said a universal service fund should not be used to support broadband services. He said universal service is for basic services. He said if government supports advanced services, it would be

supporting one technology over another. He said once there is competition, consumers will drive high-speed data services without subsidies.

Senator Tomac said the universal service fund is for basic telephone service. He said Western Wireless wants an equal playing field but is comparing apples and oranges. He said Western Wireless does not serve every customer and does not have the same commitment that the independent cooperatives have to their customers.

In response to a question from Senator Tomac, Mr. Blundell said the universal service offering that Western Wireless would provide would consist of a pizza box-sized, three-watt telephone with a jack for data and fax. He said Western Wireless would provide this service to everyone in the service area. He said Western Wireless is obligated to offer and advertise throughout the service area the services provided as an eligible telecommunications carrier.

Commissioner Clark said an eligible telecommunications carrier is obligated to get the signal to anyone requesting service within the service area. This is the same for Western Wireless as it is for the cooperatives.

In response to a question from Commissioner Clark, Mr. Blundell said even though Western Wireless could provide eligible telecommunications service with a regular cell phone, the company would not do this. He said it would cannibalize its conventional service.

In response to a question from Commissioner Clark, Mr. Blundell said Western Wireless's eligible telecommunications status results in the receipt of federal universal service funding. He said Western Wireless receives universal service federal funding for the Regent area. He said although this funding is being appealed, there is no stay on the appeal.

Senator Tomac said he is concerned that the competition will engage in cherry picking and bankrupt the cooperative. He said if this is the result of a state universal service fund then the state would have subsidized the replacement of one carrier with another with no increased competition.

In response to a question from Senator Tomac, Mr. Blundell said Western Wireless has never bankrupted the incumbent carrier. He said the argument assumes that an incumbent faced with competition will do nothing. He said competition causes change by the cooperative.

Senator Tomac said the cooperatives are not stagnant even without competition. He said before any changes are made, the commission should review what free enterprise has done for other industries, e.g., the airline and rail industries.

In response to a question from Senator Tomac, Mr. Crothers said the reason there is no competition in rural North Dakota is because of the low density of customers and the high cost of service. He said the cooperatives can compete with wireless companies but may have to reduce services and raise prices. He

said that would result in a detriment to the rural consumers in this state. He said there is no reason to have a universal service fund that results in damage to the consumer.

In response to a question from Representative Glassheim, Mr. Crothers said the wireless industry is not regulated by federal law and states are prohibited from regulating the industry. He said cooperatives must give a choice of long-distance carriers. He said Western Wireless could limit the long-distance carrier to itself. He said it is unfair to receive universal service funding without being regulated in the same manner.

In response to a question from Representative Berg, Mr. Crothers said cooperatives are member-owned and there is no need to protect the members from themselves through regulation.

In response to a question from Representative Berg, Mr. Blundell said fairness in regulation should come by lowering the regulation on the incumbent instead of raising the regulation on the competitor. He said this would foster competition and deregulation. He said it is nonsensical to demand all carriers have the same services in a competitive market.

In response to a question from Representative Berg, Mr. Crothers said the cooperatives work with Verizon Wireless and are part owner and agent.

In response to a question from Representative Berg, Mr. Crothers said Western Wireless' plan would result in the government paying for competition.

In response to a question from Senator Wardner, Mr. Blundell said cellular customers pay a federal universal service fund fee. He said Western Wireless cannot compete without a state subsidy because it is not cost-effective. He said the subsidy should not be based on Western Wireless' cost but on what the incumbent receives.

Mr. Blundell said if a universal service fund is created and based on actual cost, it would be created to support the high-cost service of the incumbent. He said if Western Wireless is viewed as presently competing with cooperatives, then local cooperatives do not presently need support. However, if the marketplace is viewed as two markets, then Western Wireless is not competing with cooperatives.

Senator Tomac said Western Wireless can compete with the pizza box-sized telephone presently. He said subsidized competition does not make any sense. He said there has to be a basis for a subsidy other than what your competitor receives.

In response to a question from Senator Tomac, Mr. Blundell said support should be based on the most efficient cost per wire center. He said cost should be based on a forward-looking cost model. He said to have different subsidies for the competitor than for the incumbent is more problematic than to have no support for the competitor because this would drive down incentives for initiative.

In response to a question from Senator Tomac, Mr. Blundell said the consumer should have a choice as to what is wanted. He said it is difficult to know what consumers will choose. He said Western Wireless wants a system that provides an open door to competition. He said the present system keeps Western Wireless out of the marketplace.

Mr. Crothers said the commission should compare apples to apples. He said the people of rural North Dakota want more services and the cooperatives have been providing more services.

Mr. Blundell said if there were true competition, there would be more people with only wireless in rural areas. He said there is robust competition among wireless carriers, but there is hardly any competition for basic service with cooperatives. He said this is evidenced by very little churn.

## DISCUSSION

Representative Berg said the major issues for the commission are whether to create a state universal service fund and whether to continue the Regulatory Reform Review Commission. He said the major issue as to universal service is whether this state needs a universal service fund. He said the commission can address the details after answering this question. He said the first step should be to see if there is a need for funding in high-cost areas. He said the commission needs to look at its role and the role of other legislative committees, especially the Information Technology Committee. He said the primary purpose of this commission is to have legislators well versed in telecommunications issues.

Senator Tomac said whether to create a state universal service fund could be reviewed under the criteria of what would happen to rural North Dakota if nothing is done by this commission.

Senator Tomac said it took 13 months until the first meeting of the commission and there is a short agenda. He said the commission was created to provide oversight of the deregulation of the telecommunications industry. He said the commission has served its original purpose. However, he said, there are complex issues still remaining. He said he favors disbanding the commission.

Senator Wardner said the Information Technology Committee could manage many of the duties of this commission.

No further business appearing, Chairman Berg adjourned the meeting at 2:05 p.m.

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Timothy J. Dawson  
Commission Counsel

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