

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2095**

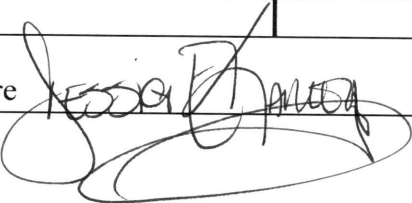
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO.SB2095

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date JANUARY 11, 1999

Tape Number	Side A	Side B	Meter #
1	x		
Committee Clerk Signature 			

Minutes:

The hearing for SB2095 was opened. All Senators were present.

CHARLES JOHNSON appeared on behalf of the Public Service Commission in support of SB2095. His testimony is attached.

SENATOR SAND You said in your testimony that possibly the reason the bill was rejected last time was that we thought the Public Service Commission would have too much authority. Were there any other reasons?

CHARLES JOHNSON That was the only reason we could think of.

SENATOR MUTCH Are you saying that if we pass this bill, the Federal Communications Act will be able to handle all the powers that you seek?

CHARLES JOHNSON Yes. If there is a dispute and if our authority is challenged, then the authority for carrying out the federal act refers to the FCC.

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SENATOR MUTCH. It wouldn't stop the grieved side from appealing the case to the federal anyway would it?

CHARLES JOHNSON. You are correct in that. If there is a dispute over our decision, then that dispute would go to the federal courts or to the Federal Communications Commission. What this bill would do is make it clear that the commission does have the authority to initially decide the case. After an appeal, it would go to the court or to the FCC.

SENATOR SAND. Are all three commissioners in favor of this bill?

CHARLES JOHNSON. I believe they are.

SENATOR THOMPSON. On Page 2 of your testimony, you talked about a dispute that has arisen designating the carrier eligible to receive Universal Service Funds, that it may go to the Supreme Court. Is that a North Dakota dispute, or is that a national dispute that is going on?

CHARLES JOHNSON. This is a North Dakota dispute. We have a case pending before the commission that has not been finalized yet, but Western Wireless has applied to be a designated carrier, so that it can receive Universal Service Funds under the act. During the hearing there is a coalition of rural and small carriers that filed a motion to dismiss the application on the grounds that the Public Service Commission did not have the authority to make the determination.

SENATOR THOMPSON. Would you say that the enactment of SB2095 would give you some authority in regards to the decision making in this particular suit?

CHARLES JOHNSON. Yes. That would make it clear that we have the authority to make a decision such as the eligible carrier decision.

SENATOR MUTCH. The Public Service Commission generally has the power to decide who is eligible to receive Universal Service Funds, is that right?

CHARLES JOHNSON. Yes.

DAVID CRUTHERS, from the North Dakota Association of Telephone Cooperatives spoke in opposition to SB2095. I think that there are a variety of reasons it was rejected 3 years ago. Those are still valid today. First, it has been the policy of this state that the legislature will set telecommunications policies in North Dakota. We think that is valid yet today. I believe that industry would be pleased to work with the Public Service Commission in a remedy to fixing this bill. We are not opposed to all areas of the commission having jurisdiction. Now even it is a concern and that is this broad open-ended statute and then none of us know what concern is. Second, we are very concerned in the independent industry. Since 1909, it has been the policy of the State that municipalities, cooperatives, and small independent owned telephone companies be deregulated to a degree.

SENATOR SAND. With Wireless Communications in a small locality, are North Dakota companies of any type of business or outsiders going to be able to come in and "cherry pick"?

DAVID CRUTHERS. The primary reason is that we have such a small base out there and such a small market out there, Congress realizes how fragile these companies are.

SENATOR SAND. You use the term "burdensome". How do we stop "cherry picking", and leave what is left a burdensome problem?

DAVID CRUTHERS. I don't know if "cherry picking" is ever avoidable.

SENATOR THOMPSON. The previous testimony said that basically that if we did not enact something, that the commission does not have the ability to regulate these issues locally and that they would be settled in Washington, D.C.. Would you agree with that statement?

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DAVID CRUTHERS. I don't think that is an unreasonable concern. I think that this situation can be remedied.

SENATOR THOMPSON. Do you think we as a legislature need to spell out those responsibilities so that these issues don't have to go to Washington, D.C. and so that we have some local control in them?

DAVID CRUTHERS. Yes sir, I think that is fair.

MEL KAMBEITZ, Director of Public Affairs at U. S. West, spoke in opposition to SB2095.

COMMISSIONER SUSAN WEFALD, spoke neutrally on the bill.

Discussion on the bill took place.

The hearing was closed on SB2095.

Committee discussion took place on January 18, 1999.

Senator Klein moved for a do not pass on SB2095. Senator Thompson seconded the motion.

Roll call vote took place. The motion was successful. ( 6 yes, 0 no, 1 absent and not voting)

Date: 01/18 here to type Date  
 Roll Call Vote #: ~~2095~~ 2095 here to type Roll Call Vote #

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS

Motion Made By KUEN Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp					
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment THOMPSON

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
January 20, 1999 12:59 p.m.

Module No: SR-12-0898  
Carrier: Thompson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2095: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2095 was placed on the Eleventh order on the calendar.

**1999 TESTIMONY**

**SB 2095**



Fifty-sixth  
Legislative Assembly  
of North Dakota

January 11, 1999

**Senate Bill 2095**  
**Testimony of Mel Kambeitz, Director – Public Affairs, U S WEST**  
**before the Senate Industry, Business and Labor Committee**

U S WEST supports the concept that the Public Service Commission be given the authority to carry out the responsibilities provided to state utilities regulators under the Federal Telecommunications Act. However, U S WEST cannot support SB 2095 in its present form.

We are concerned that SB 2095 is too vague and overly broad in defining the scope of PSC powers. There is a relatively small list of responsibilities given to states under the federal Act. SB 2095 could be interpreted to empower the PSC to go beyond the items specifically provided in the federal Act and to do anything the PSC believes “necessary and appropriate” to carry out their view of the intent of the federal Act even if those actions are inconsistent with North Dakota law. U S WEST believes this bill should be more specific so that the PSC and telecommunications companies know precisely what powers the Legislature has given to the PSC. Allowing the Commission to define its own authority based upon its interpretation of a federal law raises the question of whether this is an improper or unconstitutional delegation of legislative authority.

U S WEST would support a bill that specifically lists the PSC’s authority granted by the North Dakota Legislature to implement the federal Act. The PSC has worked with the federal Act for nearly three years so it and the telecommunications companies should have the experience needed to define the specific authority required by the PSC to implement the Act.

## **S.B. 2095**

**Presented by:** Charles E. Johnson  
Public Service Commission

**Before:** Industry, Business and Labor Committee  
Senator Duane Mutch, Chairman

**Date:** January 11, 1999

### **TESTIMONY**

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission). I appear on behalf of the Commission in support of SB 2095.

This bill gives the Public Service Commission specific authority to carry out the duties assigned to it by the Federal Telecommunications Act of 1996. It is identical to a bill that the Commission sponsored in 1997, but which was defeated.

The federal Act assigns numerous duties and responsibilities to the Commission. It provides, in part, that a state Commission:

1. arbitrate disputes over interconnection agreements,
2. determine whether a company is eligible to receive universal service funds,
3. determine whether or not a rural carrier will suffer undue economic harm if required to interconnect with a competing carrier,
4. determine a carrier's forward looking cost of providing universal service,

5. advise the Federal Commerce Commission as to whether or not an incumbent local carrier has satisfied a fourteen point checklist relating to allowing competing carriers into its local market, and
6. generally determine whether or not a company is carrying out the duties assigned to it by the Telecommunications Act.

The Commission's present powers do not specifically address each and every duty that is assigned by the federal Telecom Act. The Commission has general powers, such as that found in N.D.C.C. 49-21-09 which allow it to settle disputes between interconnecting carriers, that found in N.D.C.C. 49-21-07 relating to discrimination by a carrier, and than found in N.D.C.C. 49-21-10.2 relating to quality of service. Some of the powers apply to all carriers, some only to the non-rural cooperative carriers having over 8,000 lines.

The Commission has been carrying out its duties under the federal Act, but a dispute has risen as to whether the Commission has the authority to designate a carrier as eligible to receive universal service funds. Settling the dispute may involve an appeal to the Supreme Court. Other disputes may arise in the future as the Commission carries out the provisions federal Act.

To remove any doubt as to whether the Commission has the necessary authority to carry out all the duties assigned to it by the Federal Act, the Commission has sponsored this bill.

It is our understanding that those opposed to the bill last session felt that the authority granted to the Commission was too broad. It should be noted,

however, that this bill in fact limits the Commission's authority to those duties assigned to the Commission by the federal Telecommunications Act. The Commission will not be able to invoke the power except to address an issue which has arisen under the Federal Act. If the Commission does not address these issues locally, the issues will be settled in Washington, D.C., before the Federal Communications Commission.

The language in this bill was copied from a bill passed by the Florida legislature three years ago.