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Dennis G. Ball
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10/2/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1135

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Deanna Ballantyne
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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1135

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
1	XX		27.4--end
1		XX	3.0--14.0
Committee Clerk Signature <i>Pam Owen</i>			

Minutes:Chair Kelsner: Let's take up HB 1135.

Ilona Jeffcoat-Sacco, PSC: In support. (SEE ATTACHED)

Rep. N. Johnson: Can you give us a for instance? I have no clue what might be, has happened.

Ilona: I would like to ask Tony Clark because he can better respond.

Tony Clark, PSC Commissioner: (31.7) In support. There are network elements that phone companies are required to lease to other phone companies. The types of network elements they are required to lease are defined in the federal act. The FCC is in the process of deciding what elements have to be offered and which do not. The FCC is thinking about creating a national minimum list that a company is required to provide in the network element. The FCC is trying to leave a flexibility to the state. We may have another state rule that may hamper the federal flexibility. (34.6) The term "greater" is of concern because it is somewhat subjective. One company's definition of what a greater obligation is may be different from another company's.

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Donna Hall
Operator's Signature

1/14/03
Date

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1135
Hearing Date 1-14-03

Rep. Ruby: Are we required to under the federal provision on this? Are we allowed to have our own freedom?

Tony Clark: (35.5) If the FCC is intending for some state action, the FCC will say so. In some cases, the state commissions don't have authority to do certain things then the FCC takes over and makes the decision for them.

Rep. Ruby: When you talk about obligating one company as compared to another, is that more from state to state?

Tony Clark: It would be the case where it is two companies that are doing business in the state. If one was not involved in the state at all, we would not have regulatory authority over them. The testimony refers more to the notion that it's sometimes hard to determine when an obligation is greater or not. We can't supersede federal rule.

Rep. Ekstrom: (40.1) Is 211, which is Health and Human Services, the same system that the Mental Health Assoc. is using?

Tony: That is the one that the Mental Health Assoc. has been trying to get. That is the case that brought this issue to a head.

Rep. Ekstrom: Is there a possibility, in the future, that a commercial interest would get an N11 number?

Tony: They are starting to run out of them. Pretty tough for that to happen. The FCC has set out broad standards for each of these numbers. This will give control for all N11 numbers to PSC.

Dan Kuntz, Q-West : Opposed. We have some amendments to this bill. Phone companies are regulated by FCC and by the state within they operate. We are concerned when one entity tells you to do one thing and another entity tells you to do something else. We suggest an amendment

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10/2/03
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Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1135
Hearing Date 1-14-03

to the last page. We want the commission's authority to include investigating resolved numbering issues relating to assignment of 911 dialing codes. We believe that fits with the authority the FCC is authorizing. (49.0)--explained the Telecom Act of 1996 and how it introduced competition.

Rep. Kasper: Before deregulation, was Q-West not a monopoly? Isn't that a true statement?

Dan: (4.0) Prior to 1996 the company had exclusive service areas. No competitors allowed in the local exchange market. There were competitors in the long distance market. Were they guaranteed returns? No. You are guaranteed reasonable prices that allow you the opportunity. The commission sets prices for all utility companies. If you are not able to sell what you projected to sell in your rate proceedings, you can't come back to the commission and say I did not make enough money. In ND, prior to 1996, telephone price (local) were price capped for essential services.

Susan Wefald, PSC Commissioner: I have a comment on the amendment. These are my own comments. I have a concern with section 16 of the amendment. (SEE ATTACHED)

Rep. Ekstrom: (7.0) Is there a half way point we can find? You are in conversation with the regulated community.

Susan: In rulemaking process, you have to have conversation with the parties involved. The commission has always been very responsible to listening, hearing, and acting on what we hear. You will find that we have some of the shortest rules of any state regulatory agency in the country. We get to the point. If you look at other states, you will see this. We are only asking for rulemaking authority on the sections that have already been defined by the legislature that the

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1/14/03
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Page 4
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1135
Hearing Date 1-14-03

commission can take action on. (sect. 7 through 14). The commission came in thinking this was a compromise that we would be able to write rules that relate to those areas.

Chairman Keiser: The federal legislation was enacted because telecommunication is an interstate phenomenon. They were trying to bring consistency. This bill is a move away from that. What problems have we encountered at PSC that would warrant moving away from national standards? What potential problems do you see if each state passes laws that make it unique and may have problems interstate?

Susan: (9.2) I can understand the committee's concern about that. PSC shares this. We wanted companies to be able to do business in many states and not have so many regional differences. Maybe we should take our "greater than". That might make the industry feel better.

Dan Kuntz: To clarify, existing law allows the PSC to enact rules to carry out the authority in sect. 7--14. Our concern is they should not go beyond the federal act. We don't want them to go beyond without any legislative guidelines or policy.

Rep. Klein: Looking at the last statement in the amendment, I really have a problem with that.

Dan Kuntz: Understand that this is authority right now that PSC doesn't have. We came up with this because we thought this is what PSC was concerned about. If there are areas outside of sect. 7--14 that are not covered in those subsections, then PSC to enter orders on. This would clear up their authority question. This imposes an obligation on the company. There are no other guidelines in terms of what would limit the PSC's ability to enter an order imposing an obligation on say Q-West that was not otherwise required to do under the act. That was out concern. **Hearing closed on HB 1135.**

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Dorinda Bell
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1/14/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1135

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/15/03

Tape Number	Side A	Side B	Meter #
4	x		0.0-15.0

Committee Clerk Signature Judith Hammer

Minutes: Chairman Keiser called for committee work on HB 1135.

The committee agreed that they have no problems with the N11 Section.

The committee discussed whether the Public Service Commission have more control than they do currently over the numbering outside the N11, such as area codes etc.

The committee reworked language of the amendment that was submitted by Dan Kuntz of Qwest Communications so that it was more specific.

Rep. Ekstrom will work with Rep. Zaiser on getting an adequate final draft of the proposed amendment.

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Doreen Holbrook
Operator's Signature

1/21/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1135

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/20/03

Tape Number	Side A	Side B	Meter #
2	x		11.0-22.0

Committee Clerk Signature *Judith Hammen*

Minutes: Chairman Keiser called for committee work on HB 1135. This is the bill relative to the N11 numbering system and also to area codes. Representatives Zaiser, Ekstrom & Klein met as a subcommittee.

Rep. Klein requested that Rep. Zaiser read through the proposed amendment.

Chairman Keiser moved to adopt the amendment, seconded by Rep. Zaiser. A roll call vote on the proposed amendment carried.

Rep. Zaiser moved for a Do Pass As Amended on HB 1135. Rep. Nottestad seconded. Motion passed unanimously. 14-0-0

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Dorena Ballerath
Operator's Signature

1/21/03
Date

38127.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 24, 2003

VR
1/27/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1135 IRL 1-28-03

Page 3, line 1, replace "~~including numbering resource~~" with "relating"

Page 3, line 2, remove "~~administration and the designation of entities entitled~~"

Page 3, line 5, remove the overstrike over "~~13 provided the rules may not impose obligations~~
~~on a~~"

Page 3, line 6, remove the overstrike over "~~telecommunications company that are~~" and remove
the overstrike over "~~greater than obligations imposed~~"

Page 3, line 7, remove the overstrike over "~~under the act~~" and remove "14"

Renumber accordingly

Page No. 1

38127.0101

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Deanna Baller
Operator's Signature

1/27/03
Date

Date: 1/20/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1135

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 38127.0101 / .0200

(20.6)

Action Taken Do Pass As Amended.

Motion Made By Zaiser Seconded By Nottlestad.

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	/		Rep.Boe	/	
Rep. Severson, Vice-Chair	/		Rep. Ekstrom	/	
Rep. Dosch	/		Rep. Thorpe	/	
Rep. Froseth	/		Rep. Zaiser	/	
Rep. Johnson	/				
Rep. Kasper	/				
Rep. Klein	/				
Rep. Nottlestad	/				
Rep. Ruby	/				
Rep. Tieman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Zaiser

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

6th Order.
Consent-

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Dannan Holm Operator's Signature 1/20/03 Date

REPORT OF STANDING COMMITTEE (410)
January 28, 2003 10:33 a.m.

Module No: HR-16-1172
Carrier: Zaiser
Insert LC: 38127.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1135: Industry, Business and Labor Committee (Rep. Kelsor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1135 was placed on the Sixth order on the calendar.

Page 3, line 1, replace "including numbering resource" with "relating"

Page 3, line 2, remove "administration and the designation of entities entitled"

Page 3, line 5, remove the overstrike over "~~13 provided the rules may not impose obligations on a~~"

Page 3, line 6, remove the overstrike over "~~telecommunications company that are~~" and remove the overstrike over "~~greater than obligations imposed~~"

Page 3, line 7, remove the overstrike over "~~under the act~~" and remove "14"

Renumber accordingly

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Dannan Hall
Operator's Signature

1/2/03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1135

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Deanna Holladay
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1135

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 02-17-03

Tape Number	Side A	Side B	Meter #
1	xxx		6200-end

Committee Clerk Signature *Lisa VanBerkom*

Minutes: Chairman Mutch opened the hearing on HB 1135. All Senators were present. Engrossed HB 1135 relates to the powers of the public service commission relating to the regulation for the provision of telecommunication service.

Illona Jeffcoat-Sacco, PSC, introduced the bill. See attached testimony.

Senator Nething: It has been seven years since the Act of 1996, why is this just coming up now?

Illona: It was at the hand of the commission.

Senator Krebsbach: What if we took the word "different" out?

Illona: That is what this bill does.

Mel Kambertz, Qwest, wanted to go on the record in support of the bill.

There was no opposition. Hearing was closed.

Senator Nething moved a DO PASS. Senator Krebsbach seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Nething

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Dorena Ballerich
Operator's Signature

10/2/03
Date

Date: 2-17-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1135

Senate _____ Committee _____

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Nothing Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X	*			
Sen. Duane Mutch, Chairman	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Nothing

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

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Deanna Baller 10/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 26, 2003 1:52 p.m.

Module No: SR-34-3527
Carrier: Nothing
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1135, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1135 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-34-3527

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10/2/03
Date

2003 TESTIMONY

HB 1135

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10/2/03
Date

H.B. 1135

Presented by: **Ilona A. Jeffcoat-Sacco**
Director, Public Utilities Division
Public Service Commission

Before: **House Committee on Industry, Business and Labor**
Honorable George J. Keiser, Chairman

Date: **14 January 2003**

TESTIMONY

Chairman and committee members, my name is Ilona Jeffcoat-Sacco. I am the director of the Public Service Commission's Public Utilities Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. The commission asked me to appear here today to testify in favor of House Bill 1135, introduced at our request.

The purpose of House Bill 1135 is to slightly expand, in two ways, the Commission's telecommunications authority. The first area in which the Commission requests additional authority involves numbering issues. The second area involves the Commission's role in implementing the federal Telecommunications Act of 1996.

There are two numbering issues that prompted this request. The first involves designation of "N11" dialing codes. The "N11" dialing code with which you may be most familiar is "911," designated as an emergency response dialing code. In addition, you might recall using "411" for directory assistance.

Ilona A. Jeffcoat-Sacco
Operator's Signature

10/2/03
Date

The Federal communications Commission (FCC) has reserved other N11 dialing codes for certain specific public uses. For example, 211 is reserved for health and human service information and referral. 511 is reserved for traffic and transportation information. The FCC has allowed the states the latitude to designate the users of these dialing codes. The Commission requests the additional authority in this bill in order to have the ability to designate users of these dialing codes as may be necessary and appropriate, and to resolve any disputes that may come up regarding designation and use of these dialing codes.

The Commission also requests additional numbering administration authority to enable the Commission to handle any numbering shortage issues that may occur in North Dakota. While numbering problems in North Dakota may be a distant concern, we know that if and when they do occur, it is best to resolve them at the state level. If an area code will need to be split, for example, it will be far better that the required decisions be made close to home rather than at the federal level.

The second area in which the Commission requests expanded authority concerns the Commission's ability to implement standards that might differ from federal standards under the Telecommunications Act of 1996. As the telecommunications industry continues to transition to competition, the Commission's role is often more of a referee than a regulator. In such situations, one player's burden may be another player's benefit. In addition, the needs of North Dakota may vary substantially from those of other states and those on the federal level.

The limitation currently contained in current subsection 14 of section 49-21-01.7, that the Commission not impose obligations greater or different than those imposed under the federal act, can work against both industry

Deanna Holbrook
Operator's Signature

10/2/03
Date

and the public. It is possible that the best decision might impose an obligation on one player that is greater than is imposed by the federal act, yet the benefits to other stakeholders might substantially outweigh that burden. Under the current provision, the Commission is prohibited from making the best decision because of the "greater obligation" limitation. In addition, it is possible that in a certain situation the best decision for North Dakota is different from what is envisioned at the federal level, and all parties, including industry, agree. The limitation in current law would prohibit the Commission from choosing the best decision, because it could be interpreted as imposing an obligation different from that envisioned by the federal act. The Commission believes these restrictions should be lifted if the Commission is to have the ability to act in North Dakota's best interests.

This completes my testimony. I will be happy to answer any questions you may have.

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Operator's Signature

10/2/03
Date

HB 1135

**Presented By: Susan E. Wefald
Public Service Commissioner**

**Before: House Industry, Business, and Labor Committee
Representative George J. Keiser, Chairman**

Date: January 14, 2003

TESTIMONY

I have several concerns regarding the section 16 amendment, which is proposed by Qwest, all of which relate the final words "and entered with the consent of the telecommunications company."

1. This section gives us permission to only issue orders that are agreeable to telecommunications companies. This language does not appear anywhere else in our state law that governs utility companies, and it sets a bad precedent. The Commission always tries in any order to be fair to all parties in a case. In this situation, the only party who matters is the telecommunications company.
2. Basically, these orders would need to be drafted by the telecommunication company. The Commission's only authority in these matters would be whether or not to order the company to do what the company wanted.
3. If several telecommunications companies were involved, all would have to agree to the end result of the order, or no order would be promulgated.
4. With this amendment language in place, the commission could not issue an order that addresses issues that are of concern to the general public, if the telecommunications company did not agree.

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Diana Hall
Operator's Signature

1/14/03
Date

I suggest that you consider section 16, only if you delete the phrase "and entered with the consent of the telecommunications company."

Also, This committee should adopt the language in section 15 requested by the Commission and pass this important section of law. As you are aware, the legislative rules committee always reviews all new agency rulemakings. The Commission is aware of the legislature's oversight in this area, and has always worked to be very responsible to all parties in its rulemakings.

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Deanna G. D. Smith
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10/2/03
Date

North Dakota PSC

Memo

To: House IBL Committee Members
From: Public Service Commissioners Clark, Reinbold & Weiland, JLD
Date: 1/14/2003
Re: HB 1135

After the January 14th hearing on HB 1135, a number of committee members asked us to type a brief memo further explaining the reason for eliminating the "different or greater than" language currently in NDCC 49-21-01.7(14).

In plain terms, the FCC is constantly changing the rules by which state commissions are supposed to implement the federal act. They have and will continue to come up with regulatory schemes that have not even yet been contemplated anywhere in our state law. Often, the FCC will set out a national framework -- but then will specifically grant state commissions the flexibility to modify and craft rules based on state specific determinations.

The problem we have in North Dakota is that the language of our law can be read to prohibit the Commission from taking advantage of that flexibility -- even when the FCC wants us to have it.

An industry witness expressed fear that the PSC would enact some new regulatory scheme out of thin air -- and that if all states did that, telecom law would become unmanageable across the country. We believe this is an unjustified fear.

In reality-- there is simply no way the PSC could ever implement a regulatory scheme that contradicted the federal act itself. The FCC either outright preempts states or, if a state commission abuses the flexibility it is granted, the FCC preempts those specific state modifications. Furthermore, all rules would go before the Interim Administrative Rules Committee and would be subject to constant review by the legislative assembly itself. This slight change in the law only allows the PSC the ability to make North Dakota specific rules when the FCC wants and allows state commissions to make those rules.

The real question is not whether there is uniformity across states (the FCC and federal courts will decide whether states have flexibility in particular areas of the law), the real question is whether this legislature wants state specific decisions about North Dakota's telecommunications business made in North Dakota or Washington, DC.

In conclusion, we again wish to emphasize that we feel this is a good effort at compromise. In many states, if not most, the legislatures simply have granted state commissions authority to implement the federal act. In the past, the PSC has supported that regulatory framework as the most straightforward. However, we also understand that the legislature in the past has rejected that approach, instead preferring to specifically provide areas of PSC authority. Rather than again attempt to achieve the more broad power, we are instead asking the legislature to simply allow us the ability to respond to changes in those areas where both the legislature and FCC intend us to act.

Attached you will find a summary of statements made by FCC Commissioners before Congress just this morning on their view of the state commissions various roles under the Telecom Act.

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1/14/03
Date

FCC Commissioner Jonathon Adlstein: "Congress clearly made State Commissions our partners in implementing the Act... Decisions on competition policy should reflect Congress' directive that we are to achieve the goals it established with the assistance of the State Commissions."

FCC Commissioner Michael Copps: "In all of these areas, as we make decisions in our proceedings this year, we must work closely and cooperatively with our colleagues at the State Commissions. The Telecom Act is very much a federal activity, using the term "federal" in its historical context of the state and national governments working together. The Commission and the State Commissions have a joint responsibility under the Act to ensure that conditions are right for competition to flourish. The path to success is not through preemption of the role of the States... State Commissions are often best positioned to make the granular, fact-intensive determinations about any impairment faced by competitors in their local markets. The importance of Federal-State cooperation cannot be overstated. It would be worse than unfortunate if our decisions in the upcoming proceedings led to less cooperation with our State partners."

FCC Commissioner Kevin Martin: "Assessments of whether access to an element is necessary to provide service may vary significantly among different markets, states, and regions. State commissions have worked well with the Commission in implementing the requirements of the 1995 Act. A more granular review could allow for state cooperation and input, especially regarding highly fact intensive and local determinations."

FCC Chairman Michael Powell: "In examining possible performance requirements, however, we must be mindful of the important work that state commissions around the country have done in this area, and make sure that any federal standards we adopt advance our common goal of fully and faithfully implementing the Act. Enforcement should be something carriers take seriously, and not merely a cost of doing business, and one way to do this is to make sure that we are working together, and not at cross-purposes, with the states."

• Page 2

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10/2/03
Date

H.B. 1135

Presented by: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division
Public Service Commission

Before: Senate Industry, Business and Labor Committee
Honorable Duane Mutch, Chairman

Date: 17 February 2003

TESTIMONY

Chairman and committee members, my name is Illona Jeffcoat-Sacco. I am the director of the Public Service Commission's Public Utilities Division. The Public Utilities Division administers the Commission's jurisdiction over telephone, gas and electric public utilities in North Dakota. The commission asked me to appear here today to testify in favor of House Bill 1135, introduced at our request.

The purpose of House Bill 1135 is to slightly change, in two ways, the Commission's telecommunications authority. The first area involves assignment of N11 dialing codes. The second area involves the Commission's role in implementing the federal Telecommunications Act of 1996.

The "N11" dialing code with which you may be most familiar is "911," designated as an emergency response dialing code. In addition, you might recall using "411" for directory assistance, and may now be seeing ads for "511" travel information.

The Federal communications Commission (FCC) has reserved certain N11 dialing codes for certain specific public uses. For example,

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211 is reserved for health and human service information and referral. 511 is reserved for traffic and transportation information. The FCC has allowed the states the latitude to designate the users of these dialing codes. The Commission requests the additional authority in this bill in order to have the ability to designate users of these dialing codes as may be necessary and appropriate, and to resolve any disputes that may come up regarding designation and use of these dialing codes.

The second area in which the Commission requests different authority concerns the Commission's ability to implement standards that might differ from federal standards under the Telecommunications Act of 1996. The needs of North Dakota may vary substantially from those of other states and those on the federal level and the Commission should have the ability to recognize those differences as it implements the Act.

The limitation currently contained in current subsection 14 of section 49-21-01.7, that the Commission not impose obligations greater or different than those imposed under the federal act, can work against both industry and the public. Under the current provision, it is possible that in a certain situation the best decision for North Dakota is different from what is envisioned at the federal level, and all parties, including industry, agree. The limitation in current law would prohibit the Commission from choosing the best decision, because it could be interpreted as imposing an obligation different from that envisioned by the federal act. The Commission believes this restriction should be lifted if the Commission is to have the ability to act in North Dakota's best interests.

This completes my testimony. I will be happy to answer any questions you may have.

Deanna Ballman
Operator's Signature

10/2/03
Date