

July 1997

REGULATORY REFORM REVIEW COMMISSION - BACKGROUND MEMORANDUM

The Regulatory Reform Review Commission is established by North Dakota Century Code (NDCC) Section 49-21-22.1. The commission is established to review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1995 and 1999 legislative sessions. Also, the commission may review the effect of taxation laws on North Dakota telecommunications law during the same time period.

Senate Concurrent Resolution No. 4055 (attached as an appendix) directs the Legislative Council to study the potential for expansion of extended area telecommunications service (there is no toll for telephone calls made within an extended service area).

NORTH DAKOTA TELECOMMUNICATIONS LAW

There have been several amendments to the telecommunications law since the beginning of major deregulation in 1989.

Senate Bill No. 2320 (1989)

The commission originally was created in 1989 to review the deregulation of the telecommunications industry resulting from enactment of Senate Bill No. 2320 (1989). The commission originally consisted of the three Public Service Commissioners, two members of the Senate, and two members of the House of Representatives.

Senate Bill No. 2320 exempted telecommunications companies and services from rate or rate of return regulation by the Public Service Commission unless a telecommunications company notified the commission that it wanted to be regulated in this manner. For telecommunications companies with over 50,000 end users, the election not to be exempt from rate or rate of return regulation was a one-time, irrevocable decision. Although the Legislative Assembly exempted essential telecommunications service and nonessential telecommunications service (service that is not included within the definition of essential telecommunications service) from rate or rate of return regulation by the commission, essential telecommunications service is still subject to a price cap based upon the essential telecommunications price factor. Essential telecommunications

service includes service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area.

1989-90 Interim and 1991 Session

During the 1989-90 interim, the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor, Minnesota's incentive regulations, and recommendations of interested parties. Even though the commission did not recommend any legislation, the 1991 Legislative Assembly enacted three main bills that primarily affected Title 49 (no changes were made to the substantive provisions of Senate Bill No. 2320).

House Bill No. 1556 (1991)

This bill required telecommunications companies and rural telephone cooperatives offering telephone call identification services to allow a caller to withhold display of the caller's telephone number from the person receiving the telephone call placed by the caller.

House Bill No. 1095 (1991)

This bill required a person who makes telephones available to the public for intrastate telephone calls on that person's premises to ensure that the telephones allow the consumer to use access code numbers ("800," "950," or "10XXX 0+") to obtain access to the provider of operator services desired by the consumer at a charge no greater than that charged for calls placed using the presubscribed provider of operator services.

House Bill No. 1557 (1991)

This bill required mutual aid telecommunications cooperatives and telecommunications cooperative associations to have the approval of two-thirds of the membership of the cooperative or association to sell a physical plant if the value of the plant is more than five percent of the value of the cooperative or association. In addition, the enabling statute for the commission, NDCC Section 49-21-22, was amended to transfer responsibility for providing staff services for the commission from the Legislative Council to the Public Service Commission.

1991-92 Interim and 1993 Session

The study of telecommunications law by the commission during the 1991-92 interim resulted in two main recommendations incorporated into Senate Bill No. 2440 (1993). The first related to the banking of essential telecommunications price factor changes and the second related to uniform long-distance rates. These recommendations came after the commission reviewed the Public Service Commission's determination of the essential telecommunications price factor and the Public Service Commission's decision that ordered equal access (intraLATA) and unbundling for the purpose of offering service on an equal and open nondiscriminatory basis. The 1993 Legislative Assembly enacted four bills that primarily affected Title 49.

Senate Bill No. 2440 (1993)

Senate Bill No. 2440 changed the definition of "essential telecommunications price factor" for purposes of telecommunications regulation from the annual change in a company's input cost index reduced by 50 percent of that company's productivity incentive adjustment to a factor determined annually which is the lower of 41.6667 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.75 percentage points for group I telecommunications companies or a factor determined annually which is the lower of 52.0834 percent of the percentage change of the average annual gross national product price index or the percentage change of the average annual gross national product price index minus 2.0625 percentage points for group II telecommunications companies. Group I telecommunications companies are those companies with over 50,000 subscribers and group II telecommunications companies are companies with 50,000 or fewer subscribers. The bill also revised the distinction between essential telecommunications services that are regulated or subject to the essential telecommunications price factor cap and nonessential services that are not subject to the essential telecommunications price factor cap. The bill also revised the definition of telecommunications services that are not subject to the telecommunications deregulation law, such as coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment, inside wire and premise cable installation and maintenance, and directory services that are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages."

Senate Bill No. 2317 (1993)

This bill exempted a public utility operated as a nonprofit, cooperative, or mutual telecommunications company or a telecommunications company having fewer than 3,000 local exchange subscribers from regulation under NDCC Chapters 49-02 and 49-21. However, these public utilities were still subject to Sections 49-21-01.4 and 49-21-08 and Sections 49-02-02(6), 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10 regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies.

Senate Bill No. 2385 (1993)

This bill, effective through July 31, 1999, provided that dialing parity on an intraLATA basis, otherwise known as 1+ intraLATA equal access, may not be required to be provided by any company providing local exchange service. This bill reversed a Public Service Commission ruling that forced U S West to open its "short haul" long-distance markets to other telephone companies.

Senate Bill No. 2393 (1993)

This bill reduced to one the number of Public Service Commissioners on the commission and required the Legislative Council to provide staff services rather than the Public Service Commission.

1993-94 Interim and 1995 Session

The study of telecommunications law by the commission during the 1993-94 interim resulted in the recommendation of two bills--Senate Bill Nos. 2078 and 2079. The commission made these recommendations after reviewing federal legislation and reviewing the North Dakota Supreme Court decision *MCI Telecommunications Corp. v. Heitkamp*, 523 N.W.2d 548 (1994). This case related to a challenge of Senate Bill No. 2385 (1993), which provided that dialing parity on an intraLATA basis may not be required to be provided by any company providing local exchange service. The statute withstood challenge on special law and unlawful delegation of legislative authority grounds. The 1995 Legislative Assembly enacted four bills that primarily affected Title 49.

Senate Bill No. 2078 (1995)

This bill included pay phones within regulation for the purpose of requiring access code numbers to the operator services desired by the consumer.

Senate Bill No. 2079 (1995)

This bill reestablished the commission until 1999.

House Bill No. 1274 (1995)

This bill required telecommunications companies to allow callers on a per line basis to withhold display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller. The bill required telecommunications companies to provide this option without charge on a per call basis and without charge on a per line basis to residential customers and business customers with special needs.

House Bill No. 1459 (1995)

This bill increased the size of a telecommunications company not subject to regulation by the Public Service Commission from a company having fewer than 3,000 local exchange subscribers to a company having fewer than 8,000 local exchange subscribers. As a result of this bill, only the three largest telephone companies are subject to price regulation--U S West, Souris River Telecommunications in Minot, and the North Dakota Telephone Company in Devils Lake.

1995-96 Interim and 1997 Session

The study of telecommunications law by the commission during the 1995-96 interim resulted in the recommendation of House Bill No. 1067. The commission made this recommendation after reviewing the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56; and jointly meeting with the Taxation Committee and reviewing the effect of taxation laws on North Dakota telecommunications law. The Act was the first major change to the federal telecommunications law since 1934 (the major change provided by the Act is the opening of local exchange markets to competition). House Bill No. 1067, which failed to pass, was meant to implement the federal Telecommunications Act of 1996. The 1995 Legislative Assembly did not enact any bill that primarily affected Title 49.

EXTENDED AREA SERVICE

Extended area service is a service by which a subscriber of one exchange may call a subscriber in another exchange without paying a toll fee or separate charge for the call. Usually, the costs of extended area service are spread over the rates paid by all the subscribers in the involved exchange. In addition, once extended area service is implemented, it is typically mandated for all subscribers within an exchange. Alternatives to extended area service include:

1. A uniform calling area. This type of calling plan allows a customer to call within a predetermined mileage radius of the customer's local exchange on a mandatory participation, flat-rate basis.
2. A discounted toll calling plan. This type of calling plan allows a customer for a flat rate fee to purchase various blocks of time at a certain percentage discount from regular rates for calling exchanges within a reasonable distance of the customer's home exchange.
3. A measured extension to flat rate local service. This type of calling plan allows a customer to purchase measured service at a lower rate.

In many states, the process for determining extended area service is consumer driven. For example, in Indiana the process begins with a consumer who files a petition, after which a study is completed by the public utility agency to see if there is a sufficient community of interest, after which cost studies are completed by the local exchange carrier and the public utility agency. An election is held and upon approval by a majority of the customers an area of extended service is created.

In this state the process for determining extended area service is telephone company driven. Telephone companies may extend service on their own volition. The Public Service Commission does not have jurisdiction over a nonprofit, cooperative, or mutual telecommunications company or a telecommunications company having fewer than 8,000 local exchange subscribers so as to dictate extended area service. As for other telecommunications companies, the Public Service Commission has jurisdiction over complaints on the terms, conditions, and prices in these companies' price schedules. These companies are required to file a new price schedule before the creation of an extended area service that results in a price change.

The 1997 Legislative Assembly considered, but did not pass, Senate Bill No. 2395. This bill would have given the Public Service Commission the power to create local calling areas that include Bismarck, Devils Lake, Dickinson, Fargo, Jamestown, Minot, or Williston. The Public Service Commission was to determine the boundaries of the calling areas after hearings in at least four different regions of this state and after considering the community of interest to be served.

CONCLUSION

The commission has a broad directive--to study the operation and effect of North Dakota telecommunications law. In addition, the commission has been assigned a study on extended area telecommunications service. The area of telecommunications law is

an area that is undergoing tremendous change. Major changes have occurred at the federal level. In the past, the commission has followed federal law changes throughout the interim. This role seems to be as important this interim as it has in the past, especially considering the Federal Communications Commission's rulemaking as a result of the Telecommunications Act of 1996. The commission may wish to remain updated on federal law issues.

The commission may also wish to remain abreast of the level of competition present in this state. The move from monopolies to a free market system is based on having enough competition to keep prices low and technological service current. In the past, the commission has received testimony from representatives of the telecommunications industry on these issues.

ATTACH:1