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DESCRIPTION

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Deanna Waller
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10/21/03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2231

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10/21/03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2231

Senate Industry, Business and Labor

☐ Conference Committee

Hearing Date 01/27/03

Tape Number	Side A	Side B	Meter #
Tape 1		x	4400 toend
Tape 2	x		0-4300
Committee Clerk Signature <i>Sue VanBerkom</i>			

Minutes:

Senator Mutch open SB 2231. All senators present.

Senator Espegard introduces bill and gives explanation.

Dan Kuntz, Qwest (testimony attached)

Senator Heltkamp: How long does it take to run through a complaint?

Kuntz: It goes back to the date of complaint, that was the original and the commission had some problems with that so we put in a year to go back a little farther than the complaint. It depends.

Senator Every: Do some state colleges still use party lines?

Kuntz: Not that I am aware of.

Senator Mutch: Section 6, qwest couldn't provide long distance service from east to west doe this section have anything to do with this?

Kuntz: No

Ilona A. Jeffcoat-Sacco, Director, Public utilities Division, Public Service Commission

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Senate Industry, Business, and Labor

Bill/Resolution Number SB 2231

Hearing Date 01/27/03

(testimony attached) in neutrality of bill.

Senator Klein: When talking about erroneous charges on a bill is it a long list?

Sacco: Yes, very long, and all different types. And sometimes the problems are not caught for awhile and the charges could go back much farther than a year.

Senator Krebsbach: What do you think is a suffice time amount?

Sacco: It all depends, I would settle for even 2 years but if it were going into court it would go back 6 years.

Susan wefald, ND Public Services Commissioner, want to provide amendment to bill

(testimony and amendment attached)

Senator Mutch: You still have problems with rental units and the owner would be the other to pay.

How would you handle that? Letting people pick and choose what they want?

Wefald: yes, I think those are legitimate concerns, the demarcation point is so important with a competitive market.

Senator Klein: Isn't that a competitive disadvantage?

Wefald: Yes, it would eliminate that. we could do that through a rule making.

Senator Nething: Why do we need a PCS rule why can't they negotiate it out?

Wefald: that might work out just fine but if it doesn't the commission doesn't have the ability to hold a hearing.

Senator Nething: Wouldn't it be better to have a problem and then a solution not the solution before the problem?

Wefald: there have been problems across the nation

Page 3
Senate Industry, Business, and Labor
Bill/Resolution Number SB 2231
Hearing Date 01/27/03

Senator Heitkamp: there sounds to be problems between your office and Qwest?

Senator Mutch: Maybe you and Qwest could have a subcommittee and figure out a common ground.

Marilyn Foss, Worldcomm: Our concern is that we don't know what types of costs this will incur and if they are to be paid in advance.

Senator Nething: I didn't think we were changing that part of it.

Foss: Worldcomm can't tell what Qwest is attempting to recover, we don't know what problems have occurred.

Senator Heitkamp: If that section comes out you can support this bill?

Foss : we believe that Commissioner Wefald's testimony would be

Senator Heitkamp: is there any need for the bill to be here?

Foss: I would have to say Worldcomm does not believe the bill is necessary, and we actually would oppose it.

Dan Kuntz returns to podium and clarifies a few points they want to restate.

Closed SB 2231

FISCAL NOTE
Requested by Legislative Council
01/20/2003

Bill/Resolution No.: SB 2231

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill is not expected to have any fiscal impact.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

0

Name:	Ilona Jeffcoat-Sacco	Agency:	PSC
Phone Number:	328-2407	Date Prepared:	01/22/2003

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10/21/03

REPORT OF STANDING COMMITTEE

SB 2231: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2231 was placed on the Sixth order on the calendar.

Page 1, line 15, remove the overstrike over the overstruck period

Page 4, line 30, remove "mutually acceptable"

Page 5, line 2, after "owner" insert "established under title 47, Code of Federal Regulations, part 68, section 68.105"

Page 12, line 2, replace "one year" with "two years"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2243: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2243 was placed on the Sixth order on the calendar.

Page 1, line 13, overstrike "reside in and" and after "township" insert "by having an interest in real or personal property assessed for taxation in the township the director is representing."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2256: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2256 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to plant and seed records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-12 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2262: Transportation Committee (Sen. Trenbeath, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2262 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on uninsured or underinsured coverage.

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2231

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2231

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
2	x		18.1-end
2		x	0.0-7.0
Committee Clerk Signature <i>Kaiser Hammer</i>			

Minutes: **Chairman Kelsor** opened the hearing on SB 2231.

Senator Carlson, District 41, introduced SB 2231 and testified in its support. He stated that it is not substantive, it cleans up language and makes our laws consistent with federal statutes. He turned the hearing over to **Dan Kuntz**, representing **Qwest Communications**, who presented testimony in support of SB 2231. (See attached #1) North Dakota law handles or defines which telecommunications services are regulated and how that is achieved. Services are classified as exempt or regulated. Regulated can either be classified as essential or nonessential.

Key components of this bill are the removal or repeal of the essential price factor so that it is easier for business customers to negotiate individual packages (this is similar to cell phone packages) and price filing guidelines which lessen administrative burdens and enable the Commission to adopt rules so that nonessential services are subject to review upon complaints. Refunds can now go back as far as two years from date of collection. This is consistent with federal law.

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10/21/03
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2231

Hearing Date March 5, 2003

Rep. Klieg: Does this also affect Rural Telephone Cooperatives? Has this demarcation line been established by the FCC? Who decides where that is? And what about the rural tie in?

Chintz: Yes, I suppose it does from the standpoint that they are subject to essential telecommunications price factor. The question came in regarding demarcation lines in multi-tenant environments. The customer, i.e. the owner, gets to decide where the demarcation line is. And your third question, the 1+ equal access, is that what you are asking about? Yes they are required to comply with that.

Illona Jeffcoat-Sacco, Director of the Public Utilities Division, Public Service Commission, testified that the PSC is ostensibly neutral regarding this legislation. (See attached #2) Changes were made in this bill on the Senate side and those addressed the original concerns we had with SB 2231.

Regarding refunds, we don't believe that we can order refunds back to the date of the complaint. Those rates go into effect the day we issue the order. This applies to electrical rates.

We appreciate the potential liability for these companies if active rates are challenged. We understand what a burden that would be. We appreciate the two year protection that this affords the private customer.

The two areas of prior concern we had involved the demarcation point and whether or not that was consistent with FCC regulations and secondly the one year time limit for consumers.

As there was no one else present to testify either in support of or in opposition to SB 2231, the hearing was closed.

Rep. Klein moved a Do Pass. Rep. Severson seconded the motion.

Results of the roll call vote were: 14-0-0. Rep. Severson will carry this on the floor.

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Date: 3/ 5/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2231

House INDUSTRY BUSINESS & LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Klein

Seconded By

Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Boe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice-Chair Severson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ekstrom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dosch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Thorpe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Froseth	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Zaiser	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Kasper	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Klein	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Nottestad	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Ruby	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Tleman	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total (Yes)

14

No

0

Absent

0

Floor Assignment

Severson

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

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Deanna Wallis

Date

10/21/03

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 5:28 p.m.

Module No: HR-39-4045
Carrier: Severson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2231, as engrossed: Industry, Business and Labor Committee (Rep. Kelsor, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2231 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-39-4045

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2003 TESTIMONY

SB 2231

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10/21/03
Date

SB 2231

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

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

Date: 27 January 2003

TESTIMONY

Mr. Chairman and members of the committee, I am Illona Jeffcoat-Sacco, 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 discuss certain provisions of Senate Bill 2231.

Section 1 of the bill revises the definition of essential services and the definition of nonessential services. One part of the change concerns Centrex service.

Under Qwest's current price schedule, Centrex service consists of charges for the lines between the central office and a business customer's tenants, and charges for the special features that configure the service into a product that is specialized for each business customer. Existing statutory definitions provide that the line is an essential service and is therefore subject to the price factor, while the special features are nonessential and are not subject to the price factor. Under SB 2231, the Centrex line (which was specifically excluded from the definition of

nonessential service under existing statute) will become a nonessential service. In short, the charges for the Centrex line would no longer be price capped.

Section 1 of SB 2231 (new subsection 6 on page 4) provides by definition that the local exchange carrier providing local service to the customer (whether incumbent or competitor) and the customer will mutually agree to a point on the customer's property where the company's facilities end and the customer's facilities begin. This connection point is known as the demarcation point. At the present time, it is the incumbent telephone company, not the competing company, that owns most of the network on the company side of the demarcation point.

In the past, the Commission has defined the location of the demarcation point. Under the proposed definition, the incumbent company would be the company negotiating with the building owner over the location of the demarcation point. The location of the demarcation point is an important factor affecting the ability of local competitors to compete with incumbent providers in multi-tenant environments, and the cost competitors pay for interconnection. The Commission is concerned that the interests of building owners are not necessarily aligned with those of their tenants, and the interests of incumbents are not necessarily aligned with those of competitors. We believe it is important for the Commission to retain the authority to determine the demarcation point and to resolve disputes that may arise regarding the demarcation point.

Section 7 of the bill amends N.D.C.C. section 49-21-10.1 concerning excessive charges and refunds. Currently, if a complaint is

brought against a company for excessive charges, and the company is found to be in the wrong, the Commission can order that the company refund all amounts that it wrongly collected. The proposed change limits refunds to a date one year prior to the filing of the complaint, even if the over charges began before that.

The Commission is concerned with this limitation. We recognize that companies may need to limit their exposure, but for errors affecting typical residential and business customers, the one year limitation is simply unfair. Customers do not always notice erroneous charges on their bills and may pay these charges for months before contacting the company or us. Once we become involved, it may take some time before a formal complaint is filed. The change in SB 2231 would hinder our ability to resolve complaints informally because the refund clock would be ticking.

The Commission would be happy to work with the committee to develop amendments to this bill to address these concerns.

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

Senate Bill 2231

Presented by: Commissioner Susan Wefald

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

Date: 27 January 2003

Mr. Chairman and Members of the Committee, I am Commissioner Susan Wefald. The comments that I am making today reflect my own thinking on SB 2231.

I agree with all of the points made in the Commission testimony. However, I feel more strongly about the problems with the definition of "inside wire" and "premise cable." When I first read this definition I thought that it sounded very reasonable. The telecommunications company and the customer or premise owner make the decision on the point on the customer's property where the company's facilities and the customer's facilities begin (the demarcation point.)

However, then I did some reading about Multi-tenant (MTE) environments. The Federal Communications Commission has been concerned about demarcation points multi tenant environments such as office buildings, apartments, office parks, shopping centers and manufactured housing communities because these are very attractive places to offer local telephone service. If the demarcation point is set correctly, it can lower prices for tenants of these facilities, and also work to promote more competition in local telephone markets.

On October 25, ²⁰⁰⁰ the FCC stated:

document42

"We are concerned that, at least in certain cases, both building owners and incumbent LEC's retain the ability and incentive to discriminate among and impose unreasonable terms on new entrants. As a result, end users have likely been forced to pay unnecessarily high rates for local telecommunications services, and have been denied the benefits of advanced and innovative service options."

At the present time, the Commission has in place an order from 1989 that addresses the correct placement of the "demarcation point." This spring, we planned to address this issue again, since it is a very important part of creating competitive local telephone markets in our state. However, if this definition is added to state law, it will preclude the important hearings that were planned to address this issue, which would give many people a chance to study this issue in more detail and provide the Commission to make the best decision on this important issue.

Please amend this bill, by deleting this definition. I will be happy to work with the Committee on this important matter.

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10/21/03
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Presented by
Dan Kuntz
Before the Senate
Business, Industry and
Labor Committee

**TESTIMONY OF QWEST CORPORATION ON
SENATE BILL 2231**

Mr. Chairman and Committee members, Qwest Corporation supports SB 2231 which would amend North Dakota's laws regarding the regulation of telecommunications companies. Qwest believes the changes are appropriate as the telecommunications industry moves from a regulated to a competitive industry. The following is a section by section explanation of the Bill.

Section 1. Section 1 would amend some of the definitions in section 49-21-01 regarding the regulation of telecommunications services.

Subsection 1 regarding the definition of "Access" is amended to remove the definition of "Switched Access." The definition of "Switched Access" is revised and set out as a separate definition in subsection 18.

The definition of "Essential Telecommunications Price Factor" is deleted. Because the Bill would delete the use of the essential telecommunications price factor, this definition would no longer be needed.

The definition of "Essential telecommunications service" is deleted and replaced with a new definition. The current definition of "Essential telecommunications service" mixes the concept of essential telecommunications services with elements of essential telecommunications services. The existing definition includes not only flat-rate residence and business service but also primary directory listing, emergency 911 service and extended area services. Some of these service elements do not have individual price caps and none are offered as stand-alone services. Therefore, they are not essential services but rather elements of essential service. In addition, Centrex services and features are nonessential services, however, the transmission service between the end user's premises and the local exchange central office is included in the definition of essential services. The Bill would amend the definition of essential telecommunications services to include only: (1) switched access, (2) the transmission service line for coin or pay telephones, (3) installation of the service connection for essential services, and (4) flat-rate or measured business, residence or combination business and residence basic telephone service. The proposed definition further clarifies that flat-rate or measured service includes the service

elements previously included in the definition of essential service such as billing and collection service, primary directory listing, access to directory assistance, etc.

In addition to clarifying the current definition of essential telecommunications service, the definition amendments have some substantive changes. The Public Service Commission would not have the ability to declare new product offerings as essential services. In addition, all residential and business retail services, other than flat-rate basic telephone service, would be deemed a nonessential service. These services would not be subject to price caps nor would telecommunications companies be required to file price schedules or contracts for those services with the Public Service Commission. This should provide telecommunications companies more flexibility in negotiating individual services and prices with end users in a competitive environment.

The Bill deletes the definition of "Gross national product price index" because the definition would no longer be necessary if the essential telecommunications price factor is repealed.

Changes are also proposed to the definition of "Nonessential telecommunications service." "Private line transport service" is removed from the list of nonessential services. Private line transport was added to the list of exempt telecommunications services in 1999, however, it was not removed from the list of nonessential telecommunications services at the same time. The Bill would also remove the provision that transmission service used for the provision of Centrex service is not a nonessential service.

The definition of "price" would be amended to remove the publication requirement. This change is consistent with a later amendment limiting the price filing requirement to essential services.

A new definition is added for "Inside wire and premise cable" to address an issue that is currently pending before the Commission. Based upon a 1988 Commission order that deregulated the installation and maintenance of inside wire and premise cable, the NDPSC staff takes the position that Qwest is prohibited from owning any premise cable in multiple tenant environments. The staff does not extend this interpretation to other local exchange companies, including CLECs, and therefore Qwest is at a competitive disadvantage in competing for these customers. The deregulation of the installation and maintenance of inside wire and premise cable was codified at N.D.C.C. § 49-21-01.1; however, the statute does not resolve the current disagreement regarding the demarcation point between network cable provided by the telecommunications company and customer owned premise cable. The proposed definition is consistent with the FCC rules by providing that the demarcation point would be a point mutually acceptable to the telecommunications company and the customer or premise owner.

The definition of "Switched access" has been separated from the definition of "Access." The proposed definition is slightly different from the current definition because it adds "billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service." This service element is currently included as an essential telecommunications service. This billing and collection service is a component of switched access rather than a separate essential service.

Section 2. This section removes the provisions in subsection 2 of 49-21-01.3 for the essential telecommunications price factor. The essential telecommunications price factor was intended to allow automatic changes in the essential service price caps to reflect inflationary and efficiency changes. In recent years these price changes have been small adjustments which are administratively burdensome to implement.

This section also changes the statutory reference in subsection 5 of N.D.C.C. § 49-21-01.3 because the definition of "Group I" telecommunications companies (i.e., Qwest) is currently contained in the definition of "Essential telecommunications price factor" which would be deleted.

Section 3. N.D.C.C. § 49-21-04 currently requires that all telecommunications companies file price schedules showing all prices in effect for any telecommunications service rendered to the public. All new prices and price changes for essential services must be filed 20 days in advance of the effective date. In reality, however, resellers and the new competitive companies are usually not filing price schedules. The Bill proposes to limit the filing of price schedules to essential telecommunications services. The Bill removes the reference to services rendered "to the public" to clarify that the filing requirement includes switched access prices for other telecommunications companies. The Bill would also allow price decreases for essential services to become effective upon filing without advance notice.

Section 4. N.D.C.C. § 49-21-05 currently allows the NDPSC to require telecommunications companies to keep price schedules on file and accessible to the public at any city in which the company has a public office. The Commission has not adopted such a requirement. Indeed, most telecommunications companies do not have a public office in North Dakota. The Bill would allow the NDPSC to require a telecommunications company to make a printed or electronic schedule of its prices available to the public. This would enable the commission to require telecommunications companies to specify a web address where its price schedules could be inspected by the Commission and the public. This requirement would essentially replace the current requirement under N.D.C.C. § 49-21-04 for filing of nonessential prices with the NDPSC.

Section 5. The Bill proposes to clarify that local exchange companies can contract with retail subscribers for nonessential telecommunications services at negotiated prices to meet special requests of the customer or competitive offerings. This change combined with the removal of the requirement to file prices for nonessential

services with the NDPSC will provide more flexibility in the marketing of services to individual customers.

Section 6. Prior to 1999, N.D.C.C. § 49-21-08.1 provided that a local exchange company could not be required to provide intraLATA 1+ equal access. As a result of federal requirements and a 1999 statutory change, local exchange companies are now required to provide both intraLATA and interLATA 1+ equal access dialing parity. The proposed change reflects the current situation.

Section 7. N.D.C.C. § 49-21-10.1 allows the NDPSC to order refunds of rates that have been found to be discriminatory or violate a rule or statute. The statute allows that such refunds can be awarded with interest from the date of collection. With unregulated prices for nonessential services, this creates the possibility for substantial liability in the event the Commission determines that a price is discriminatory or otherwise violates a statute or Commission rule. The Bill would limit the period of time for refunds from one year prior to the date the price complaint was filed.

Section 8. This section removes a reference to a statute that is proposed for repeal in Section 10.

Section 9. N.D.C.C. § 49-21-23 provides that the Commission must allow a telecommunications company to recover in advance from another company or customer any nonrecurring costs incurred to comply with a Commission order for construction, modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of the other telecommunications company or the customer. The proposed amendment clarifies that a telecommunications company is entitled to recover such nonrecurring costs regardless of whether the costs are incurred at the request of the customer or to comply with a Commission order.

Section 10. N.D.C.C. § 49-21-19 requires that publishers of local directories include a notice that that refusal to surrender a party line in case of an emergency is prohibited. Party lines are almost nonexistent and it does not appear that directory publishers are complying with this provision. Therefore, this section is proposed for repeal.

SB 2231

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

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

Date: 5 March 2003

TESTIMONY

Mr. Chairman and members of the committee, I am Illona Jeffcoat-Sacco, 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 is neutral on Engrossed Senate Bill 2231. We did raise two concerns at the Senate hearing on SB 2231 which have been addressed by the amendments incorporated into this bill in the Senate.

Section 1 of SB 2231 includes a provision regarding the point on a customer's property where company facilities end and customer facilities begin. We were concerned with how the original bill determined this demarcation point. The new language conforms this matter to the rules of the Federal Communications Commission and satisfies our concerns.

Section 7 amends N.D.C.C. section 49-21-10.1 concerning excessive charges and refunds. We were concerned that the original language limited refunds to a date one year prior to the filing of the complaint. The engrossed version satisfactorily addresses our concerns by extending that window to two years.

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

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Deanna D. Smith
Operator's Signature

10/21/03
Date

Presented by
Dan Kuntz
Before the House
Industry, Business and
Labor Committee

**TESTIMONY OF QWEST CORPORATION ON
SENATE BILL 2231**

Mr. Chairman and Committee members, Qwest Corporation supports SB 2231 which would amend and update North Dakota's laws regarding the regulation of telecommunications companies. Qwest believes the changes are appropriate as the telecommunications industry moves from a regulated to a competitive industry. The following is a section by section explanation of the Bill.

Section 1. Section 1 would amend some of the definitions in section 49-21-01 regarding the regulation of telecommunications services.

Subsection 1 regarding the definition of "Access" is amended to remove the definition of "Switched Access." The definition of "Switched Access" is revised and set out as a separate definition in subsection 1B.

The definition of "Essential Telecommunications Price Factor" is deleted. Because the Bill would delete the use of the essential telecommunications price factor, this definition would no longer be needed.

The definition of "Essential telecommunications service" is deleted and replaced with a new definition. The current definition of "Essential telecommunications service" mixes the concept of essential telecommunications services with elements of essential telecommunications services. The existing definition includes not only flat-rate residence and business service but also primary directory listing, emergency 911 service and extended area services. Some of these service elements do not have individual price caps and none are offered as stand-alone services. Therefore, they are not essential services but rather elements of essential service. In addition, Centrex services and features are nonessential services, however, the transmission service between the end user's premises and the local exchange central office is included in the definition of essential services. The Bill would amend the definition of essential telecommunications services to include only: (1) switched access, (2) the transmission service line for coin or pay telephones, (3) installation of the service connection for essential services, and (4) flat-rate or measured business, residence or combination business and residence basic telephone service. The proposed definition further clarifies that flat-rate or measured service includes the service

Deanna D. Kuntz
Operator's Signature

10/21/03
Date

elements previously included in the definition of essential service such as billing and collection service, primary directory listing, access to directory assistance, etc.

In addition to clarifying the current definition of essential telecommunications service, the definition amendments have some substantive changes. The Public Service Commission would not have the ability to declare new product offerings as essential services. In addition, all residential and business retail services, other than flat-rate basic telephone service, would be deemed a nonessential service. These services would not be subject to price caps nor would telecommunications companies be required to file price schedules or contracts for those services with the Public Service Commission. This should provide telecommunications companies more flexibility in negotiating individual services and prices with end users in a competitive environment.

The Bill deletes the definition of "Gross national product price index" because the definition would no longer be necessary if the essential telecommunications price factor is repealed.

Changes are also proposed to the definition of "Nonessential telecommunications service." "Private line transport service" is removed from the list of nonessential services. Private line transport was added to the list of exempt telecommunications services in 1999, however, it was not removed from the list of nonessential telecommunications services at the same time. The Bill would also remove the provision that transmission service used for the provision of Centrex service is not a nonessential service.

The definition of "price" would be amended to remove the publication requirement. This change is consistent with a later amendment limiting the price filing requirement to essential services.

A new definition is added for "Inside wire and premise cable" to address an issue regarding the demarcation point for customer ownership of premise cable in multiple tenant environments. The deregulation of the installation and maintenance of inside wire and premise cable is codified at N.D.C.C. § 49-21-01.1 allowing for customer ownership of premise cable. The statute, however, does not define the location of the demarcation point between the network cable provided by the telecommunications company and the customer owned premise cable. The proposed definition provides that the demarcation will be established in accordance with the rules of the Federal Communications Commission.

The definition of "Switched access" has been separated from the definition of "Access." The proposed definition is slightly different from the current definition because it adds subsection e. "billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service." This service element is currently included as an essential telecommunications

service. This billing and collection service is a component of switched access rather than a separate essential service.

Section 2. This section removes the provisions in subsection 2 of 49-21-01.3 for the essential telecommunications price factor. The essential telecommunications price factor was intended to allow automatic changes in the essential service price caps to reflect inflationary and efficiency changes. In recent years these price changes have been small adjustments which are administratively burdensome to implement.

This section also changes the statutory reference in subsection 5 of N.D.C.C. § 49-21-01.3 because the definition of "Group I" telecommunications companies (i.e., Qwest) is currently contained in the definition of "Essential telecommunications price factor" which would be deleted.

Section 3. N.D.C.C. § 49-21-04 currently requires that all telecommunications companies file price schedules showing all prices in effect for any telecommunications service rendered to the public. All new prices and price changes for essential services must be filed 20 days in advance of the effective date. In reality, however, resellers and the new competitive companies are usually not filing price schedules. The Bill proposes to limit the filing of price schedules to essential telecommunications services. The Bill removes the reference to services rendered "to the public" to clarify that the filing requirement includes switched access prices for other telecommunications companies. The Bill would also allow price decreases for essential services to become effective upon filing without advance notice.

Section 4. N.D.C.C. § 49-21-05 currently allows the NDPSC to require telecommunications companies to keep price schedules on file and accessible to the public at any city in which the company has a public office. The Commission has not adopted such a requirement. Indeed, most telecommunications companies do not have a public office in North Dakota. The Bill would allow the NDPSC to require a telecommunications company to make a printed or electronic schedule of its prices available to the public. This would enable the commission to require telecommunications companies to specify a web address where its price schedules could be inspected by the Commission and the public. This requirement would essentially replace the current requirement under N.D.C.C. § 49-21-04 for filing of nonessential prices with the NDPSC.

Section 5. The Bill proposes to clarify that local exchange companies can contract with retail subscribers for telecommunications services at negotiated prices to meet special requests of the customer or competitive offerings. This change combined with the removal of the requirement to file prices for nonessential services with the NDPSC will provide more flexibility in the marketing of services to individual customers.

Section 6. Prior to 1999, N.D.C.C. § 49-21-08.1 provided that a local exchange company could not be required to provide IntraLATA 1+ equal access. As a result of

federal requirements and a 1999 statutory change, local exchange companies are now required to provide both IntraLATA and InterLATA 1+ equal access dialing parity. The proposed change reflects the current situation.

Section 7. N.D.C.C. § 49-21-10.1 allows the NDPSC to order refunds of rates that have been found to be discriminatory or violate a rule or statute. The statute allows that such refunds can be awarded with interest from the date of collection. With unregulated prices for nonessential services, this creates the possibility for substantial liability in the event the Commission determines that a price is discriminatory or otherwise violates a statute or Commission rule. The Bill would limit the period of time for refunds from two years prior to the date the price complaint was filed.

Section 8. This section removes a reference to a statute that is proposed for repeal in Section 10.

Section 9. N.D.C.C. § 49-21-23 provides that the Commission must allow a telecommunications company to recover in advance from another company or customer any nonrecurring costs incurred to comply with a Commission order for construction, modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of the other telecommunications company or the customer. The proposed amendment clarifies that a telecommunications company is entitled to recover such nonrecurring costs regardless of whether the costs are incurred at the request of the customer or to comply with a Commission order. This change does not affect services a company is required to provide to another company under the Federal Telecommunications Act.

Section 10. N.D.C.C. § 49-21-19 requires that publishers of local directories include a notice that that refusal to surrender a party line in case of an emergency is prohibited. Party lines are almost nonexistent and it does not appear that directory publishers are complying with this provision. Therefore, this section is proposed for repeal.