

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1156

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1156

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1156


House Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 14, 2005

Tape Number	Side A	Side B	Meter #
1	x		0.5 to 33.8

Committee Clerk Signature



Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1156, A Bill for an Act to create and enact a new section to chapter 49-03.1 of the North Dakota Century Code, relating to registration of telecommunications companies that are not incumbent telecommunications companies; to amend and reenact subsection 2 of section 49-03.1-02 of the North Dakota Century Code, relating to the definition of public utility and certificates of public convenience and necessity; and to provide a penalty.

Illona Jeffcoat-Saco : Executive Secretary to the Director of Public Utilities Division of the North Dakota Public Service Commission appeared to explain HB 1156 and representing the sponsoring agency. A copy of her written testimony is attached.

(9.1) End of her prepared testimony but want to add these additional comments. These are addition comments on the case she had just referenced in her prepared statement. She had brought with a copy of the order that went out on that case. There was a company that was a pure re-seller. They were selling packages of long distance several years' service -- they were

targeting small businesses --- say a car dealership that had two or three branch --- they would sell five years of service and charge \$10,000 up front which they would turn over to a finance company like there was a loan involved. Then they were gone not providing any service to people. The order actually lists people who lost thousands of dollars. They had prepaid. One of them -- \$13,600 , Jobbers Moving Service of Bismarck. Regular business people you would not get caught were talked into these contracts with prepayments. The order was totally ignored because it was a felony -- yet the commission has to be careful about putting such companies totally out business because the might still be providing somebody service somewhere. We did think at the end of that experience that if there was that kind of money involved in prepayments and violations of that size it should be a felony penalty. So we inserted a very narrow cease and desist authority and a very narrow penalty -- just to cover something like that.

Rep. Koppelman (10.5) The penalty you referred to I think is on page 2, line 14 -- how is a penalty like that enforced against a company versus an individual?

Illona Jeffcoat-Saco: that is criminal law -- we basically turn it over to the States Attorneys or to the Attorney General. In this case we could not extradite the individuals from south Dakota because it was a misdemeanor -- therefore the provision in this bill.

Rep. Ekstrom (11.3) In your testimony you talked about those "bad actors" would it be better to revoke their licenses?

Illona Jeffcoat-Saco : If you get all your facts together you can asses the fines, revokes the licenses but in some of these cases there is not blessing from the government so there is nothing to revoke.

Rep. Kretschmar (12.8) Is there a definition in your rules which defines what a telecom company is?

Illona Jeffcoat-Saco: Yes there is in 49- 21 -- telecommunications company and incumbent telecommunications company are both defined. The incumbent part is defined according to federal law. While some people will question which is which we did not muddy the waters here, this bill does not get into that discussion at all. This cover those under especially define under 49-21.

Rep. Kretschmar (13.6) Can you tell us the difference between an incumbent telecommunications company and a telecommunications company?

Illona Jeffcoat-Saco : The incumbent company is in the simplest terms is the original monopoly provider. Back when there was only one company granted authority to be the phone company in a certain exchange area -- that company according to federal law turned into the incumbent company. The reason that it is defined that way -- in 1996 the feds were saying we are going to open these local markets to competition. But the one and only company that is there is the incumbent --- Quest for Bismarck -- is going to have start selling or allowing competitors to use -- pay rent so to speak to use their facilities to compete with them.

Rep. Ekstrom (14.5) . Had a prepaid phone card that stopped working after a small amount of use?

Illona Jeffcoat-Saco : Prepaid phone cards are covered under the PSC jurisdiction -- There are a lot of things to watch for -- there are a lot of sellers of prepaid phone cards -- the retailer -- of course they are not providing any of the services so they don't need any registration -- you can go

into K-Mart and buy a card -- its going to be an ATT phone card or some other company. Taking it one step further the company that is providing the service on that card -- that companies is supposed to be registered with the PSC -- the company that is going to do up those numbers. But there are often three or four middlemen -- we don't care about any of the middlemen. We care about the company providing the service . Yes they are supposed to be registered with us.

Rep. Kaldor (16.1) How can the buyer beware?

Illona Jeffcoat-Saco : I have my own personal opinions but can't say them here.

Rep. Kaldor : On the phone cards is the ultimate provider disclosed?

Illona Jeffcoat-Saco : I don't know for certain -- the fine print on the back of the card may.

Rep. Dietrich (17.3) Are incumbent telecommunications companies required to file a bond with the PSC? If so what is the amount and also on line 14 section 2 paragraph 3 you have may require the posting of the bond instead of shall -- why?

Illona Jeffcoat-Saco : Incumbent companies are not required -- as we know incumbent companies does take prepayment -- on your phone service you pay a month in advance not a month back -- but incumbent companies have invested so much in the state by building plants that the chances of them taking all of your prepayment for a month and leaving are zip-- so there is no bond requirement for the incumbent and that is one of the most important differences between them -- it is not the differences between them but it is because of the infrastructure. The second question -- the reason that I used may on line 14 -- the commission does currently have a rule -- and there are a few exceptions to it -- we have had it for many years -- one exception is the cellular companies. Cellular companies that register is based on the fact that they are resellers and some of what they sell is use of land lines -- there is a little bit of that in there. They have or

many years leased those lines and so we recognize that they have a vested interest in those lines and we also recognize that they have invested in plant as they have built towers and have put money into the state -- so a provisions allow that after a year the bond can be waived. So in that provision I was thinking discretion instead of mandatory.

Rep. Herbel, Vice Chairman (19.1) How do internet sales on calling services -- is there a connection there?

Illona Jeffcoat-Saco : The is a \$64,000 question. That is being decide by people much smarter than we but there are arguments that internet phone service should be considered telecommunication service and if the eventual decision and we do have a case before the PSC but there is more on the federal level pending but we are kind of waiting.

Rep. Herbal, Vice Chairman (20.3) My wife recently bought phone cards over the internet and then we were noticed that they are no longer good after January 18th this year. Use or loose.

Illona Jeffcoat-Saco : We may be able to help -- let me look into it.

Rep. Dietrich (21.0) What are the amounts of the surety bonds?

Illona Jeffcoat-Saco : There is a formula I don't have memorized but it deals with what the company estimates a monthly amount of prepayments. I do know that for a local provider there is a minimum of \$25,000. For a long distance reseller there is formula and a maximum - - I will have to provide that for you -- it is in the rules.

Rep. Koppelman (21.9) How does this bill square with other states around the country?

Illona Jeffcoat- Saco : It is consistent with several states because we did look at several other states. Montana adopted something very similar to this several years ago. There has more

questions than this but then it is several ago when it was written. I am sure that it is ahead of many states.

Commissioner Susan Wefald : I want to emphasize that on page 2 of the bill -- it talks about registration included as a minimum with the following information within 15 days after any change. This is an opportunity for companies to register more quickly with the commission and get into business quickly. Item "g" is one of the items put there so that consumer, customers can know any formal actions or sanctions within the last 5 years. It is not actions that have been filed but those that have been completed.

Rep. Herbel, Vice Chairman (25.0) How was this 15 days arrived at?

Commissioner Wefald : We thought that was a common time period and it seems that others states has used that. If the committee thought that should be 30 days or 10 days, the commission would be open to that.

Rep. Herbel, Vice Chairman (25.8) I was looking at the penalty and was wondering adequate or it seem that felonies --- ?

Commissioner Wefald : The only time penalties would be assessed would be for failure to file. It is a very limited situation where penalties would be assessed. It would only be if a company made off with \$5,000 or more.

Rep. Kaldor (26.7) Let's say a company has already filed and has an address change -- do they have 15 days and file again?

Illona Jeffcoat-Saco : What we are intending is that once they have filed they can keep their own records up via the internet -- making it as easy as possible we hope is an incentive.

Opposition testimony:

Thomas Kelsch : I am not in opposition but Western Wireless, Cellular One along with Verizon and Singular ATT Wireless are working with the PSC concerning this bill. We are trying to come up with some amendments that give the wireless industry a little more comfort. We are not opposed with the registration requirements but that some portions could be interpreted as barriers to entry for commercial mobile radio service companies in the State of North Dakota. The PSC does agree that North Dakota is preempted in regulating commercial mobile radio service companies by the federal government. We are planning to get some amendments to the PSC this afternoon.

Rep. Koppelman (29.7) What provisions of the bill specifically are of concern to you?

Thomas Kelsch : Under 2 g. Our companies are not opposed to providing certain information like that to the commission on a confidential basis. The other issue is that some of our companies are quite large and operate in a lot of states and have been doing business in North Dakota for quite a few years -- so is it or do we really need to go and get all that information from other states and to provide it for what benefit. Another example is in the wording -- the issue of the bonding process having provided bonds in the past and since it has been over the year and that is what is what it says in the rules but now putting it into the statute does say that exactly.

Rep. Koppelman (31.6) conceptually , you indicate that the federal government preempts the state wireless service, and you talk about the bond this requires -- is disclosure defined as regulation or what is the ?

Thomas Kelsch : I think that is the concern the companies have with the cease and desist order and -- part of it is interpretation -- if there is a violation of these rule be not providing something

could they issue a cease and desist order say the Cellular One couldn't do business in North Dakota. That could be construed as a regulation of these companies.

There being no other testimony for nor against **Rep.Devlin, Chairman** closed the hearing HB 1156. (33.8).

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1156 b

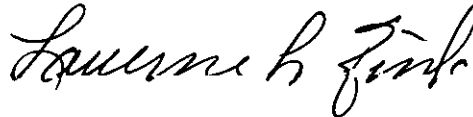
House Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 21, 2005

Tape Number	Side A	Side B	Meter #
2	x		3.2 to 5.5

Committee Clerk Signature



Minutes: In work session **Rep. Devlin, Chairman** opened the discussion for committee action

HB 1156 . The chairman advised that all parties had reviewed the amendments and all had indicated that they were all in agreement. **Rep. Wrangham** moved to adopt the amendments.

Rep. Koppelman seconded the motion. The motion carried on a voice vote. **Rep. Zaiser** moved a 'Do Pass as amended' motion for HB 1156. **Rep. Wrangham** seconded the motion. On a roll call vote the motion carried 12 ayes 0 Nays 0 absent. **Rep. Kaldor** was designated to carry HB 1156 on the floor. **End of record (5.6).**

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1156

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

No aspect of this bill causes 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.*

No revenues are expected

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.*

No expenditures are expected

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.*

No appropriation necessary.

Name: Illona A. Jeffcoat-Sacco
Phone Number: 701-328-2400

Agency: PSC
Date Prepared: 01/03/2005

January 21, 2005

VK
1/21/05

HOUSE / AMENDMENTS TO HOUSE BILL NO. 1156 P.S. 1-21-05

Page 2, line 12, replace "Formal actions against the company in other jurisdictions resulting in a" with "Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation."

Page 2, remove line 13

HOUSE AMENDMENTS TO HB 1156 P.S. 1-21-05

Page 3, after line 8, insert:

"Z. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3."

Renumber accordingly

Date: January 21, 2005
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1156

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Wra 1 - more amended than 2nd
Voice can't

Action Taken

Do Pass as Amended

Motion Made By

Rep Zai

Seconded By

Rep Wrangham

Representatives
Rep. Devlin, Chairman
Rep. Herbel, Vice Chairman
Rep. Dietrich
Rep. Johnson
Rep. Koppelman
Rep. Kretschmar
Rep. Maragos
Rep. Pietsch
Rep. Wrangham

Yes	No
✓	
✓	
✓	
✓	
✓	
✓	
✓	
✓	
✓	

Representatives	Yes	No
Rep. Ekstrom	✓	
Rep. Kaldor	✓	
Rep. Zaiser	✓	

Total (Yes)

12

No

0

Absent

0

Floor Assignment

Rep. Kaldor

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

REPORT OF STANDING COMMITTEE

HB 1156: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1156 was placed on the Sixth order on the calendar.

Page 2, line 12, replace "Formal actions against the company in other jurisdictions resulting in a" with "Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation."

Page 2, remove line 13

Page 3, after line 8, insert:

"7. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3."

Renumber accordingly

2005 SENATE POLITICAL SUBDIVISIONS

HB 1156

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1156

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 4, 2005

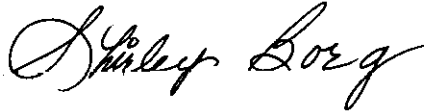
Tape Number
1

Side A

Side B
X

Meter #
4435 -5812

Committee Clerk Signature



Minutes:

Chairman Cook opened the hearing on HB1156 relating to the definition of a public utility and certificates of public convenience and necessity. All members (6) present.

Illona A. Jeffcoat-Sacco, Executive Secretary, Director, Public Utilities Division, Public Service Commission introduced HB 1156 and testified in favor of the bill. (See attachment # 1)

No further testimony in support or in opposition of HB 1156.

Chairman Cook closed the hearing on HB 1156

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1156

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 10, 2005

Tape Number
1

Side A

Side B
X

Meter #
4125 - 4385

Committee Clerk Signature



Minutes:

Chairman Cook opened the discussion on HB 1156. All members (6) present. There was no opposition on this bill. My understanding was that everybody was happy.

Senator Hacker motioned a Do Pass.

Senator Fairfield seconded the motion.

Roll call vote; Yes 6 No 0 Absent 0

Carrier: **Senator Hacker**

Date: 3-10-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1156

Senate Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Senator Hacker Seconded By Senator Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator Nicholas P. Hacker, VC	X				
Senator Dick Dever	X				
Senator Gary A. Lee	X				
Senator April Fairfield	X				
Senator Constance Triplett	X				

Total Yes 6 No 0

Absent

Floor Assignment Senator Hacker

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

REPORT OF STANDING COMMITTEE (410)
March 10, 2005 5:10 p.m.

Module No: SR-44-4707
Carrier: Hacker
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1156, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman)
recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1156 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1156

House Bill 1156

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

Before: House Political Subdivisions
Honorable Bill Devlin, Chair

Date: 14 January 2005

TESTIMONY

Chairman Devlin and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Secretary of the Public Service Commission and 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 before you today to testify in favor of House Bill 1156, introduced at our request.

The purpose of this proposal is to lessen and streamline entry regulation for telecommunications companies. For entry regulation purposes, there are three main types of telecommunications companies: 1) incumbent telecommunications companies, 2) competitive telecommunications companies with all or some of their own facilities, and 3) companies which resell, or use, the facilities of others to provide service.

Historically, since the Commission deregulated resale of telecommunications service almost 20 years ago, entry requirements for facility based companies (both incumbents and some competitors) have been different from the entry requirements for resellers. This is because in order to best protect consumers, there was good reason to scrutinize companies building plant more closely than those that did not build plant and

only used the facilities of others. Today the industry is substantially different and much more competitive. The status of competition in the industry, the ways companies interconnect to provide service and the investment decisions companies make today are very different from those 20 years ago. Consequently, we believe it is appropriate to change how we regulate entry into the telecommunications market.

Entry into the business of providing utility service, including telecommunications service, traditionally required a Certificate of Public Convenience and Necessity. A utility was granted monopoly status for a certain service area, and its rates were regulated, upon a finding the public convenience and necessity required such. For telecommunications companies, this requirement is found in chapter 49-03.1. Today the monopoly/public convenience and necessity concept is no longer applicable to telecommunications. Telecommunications monopolies granted by the government are a thing of the past (although in practice some areas still have available only monopoly providers) and for the vast majority of companies, rates are not regulated. It is time to change the law that concerns certificates of public convenience and necessity for telecommunications companies.

House Bill 1156 does this first by changing the definition of public utility in chapter 49-03.1 to **exclude** telecommunications companies that are **not** incumbent telecommunications companies. Eliminating non-incumbent telecommunications companies from the definition of public utility removes the requirement that a non-incumbent telecommunications company obtain a certificate of public convenience and necessity in order to provide service to end users in North Dakota over its own facilities. This change will put all companies that are not incumbent phone companies on equal

footing, at least as far as entry regulation is concerned. We believe this is an important step in the transition of this industry from regulation to competition.

Under this bill, incumbent companies would remain entry regulated as they are today. An incumbent company is the original, monopoly company in each telephone exchange area, the company with the most telecommunications plant, the company with the most critical infrastructure, and the company from which other, competing companies often purchase facilities or service in order to compete. All existing incumbent companies in the state have active certificates of public convenience and necessity for the exchanges in which they currently provide service. This bill would not change that, or require incumbent companies to do anything different than they do today.

For facility based providers that are not incumbents and for resellers, those companies which provide service using the facilities of another company, this bill will lessen and simplify entry requirements. As stated above, nonincumbent facility based providers would no longer have to apply for and obtain a certificate of public convenience and necessity to provide service in North Dakota. This means they would have no notice or hearing costs (and hopefully no legal services costs) and no waiting period during which the case was processed, in order to provide service in the state.

Resellers would also enjoy a more streamlined process. Currently, the Commission uses a registration certificate process to authorize resellers to provide service in North Dakota. This process evolved from decisions made by the Commission since the mid-1980's to deregulate resale by lessening the requirements of chapter 49-

03.1 for resellers, because they were progressively subject to more effective competition.

To receive a registration certificate a reseller files a form and a copy of corporate papers showing that the applicant is authorized to do business in North Dakota, and a bond, if required. Today a reseller application requires no notice or hearing, and the registration certificate is routinely granted unless there are unusual circumstances. The certificate is then effective until surrendered or revoked.

House Bill 1156 would require telecommunication companies that are not incumbent telecommunications companies to complete a one-time registration process. The companies would submit some basic information to the Commission, much as they do now, ideally via a web based process. No certificate would be issued so there would be no waiting period for a Commission meeting. The process would be very simple and inexpensive for the companies and for us. Once registration is complete, the company could begin providing service—there would be minimal lag time. While we process registration certificate applications fairly quickly, still a few weeks do pass between application and authorization, more if the application is filed incomplete.

The purpose this modification is to really twofold: one, to move to a more efficient and accurate process by which the Commission maintains current information on each company that is providing telecommunications services in North Dakota; and two, to impose less of a burden on industry while providing industry with control over the process. These objectives are consistent with the more competitive status of the industry today.

Currently, we have telecommunication companies on our list of providers that have gone out of business, changed addresses, changed telephone numbers, changed owners or business names, or changed the services provided. The Commission has no knowledge of these changes unless the company chooses to provide this information to us, or unless we spend an inordinate amount of resources trying to find out. This bill shifts the burden of providing and maintaining updated information to the companies by requiring updates within 15 days of any change.

Specifically, the registration process would:

- Include some required, but not burdensome, information from each company.
- Continue the bonding requirement that is currently in our rules. Bonds are required **only** if a company is a reseller offering **only** prepaid service.
- Allow the Commission to issue a cease and desist order under certain conditions **only** against a company requiring prepayments without a bond.
- Provide that requiring prepayments in violation of the law (without registration and an appropriate bond) is a felony if the accumulated customer loss is greater than five thousand dollars.

These last two bullet points are really the only new or additional provisions that this bill would impose over and above our current registration process. These two provisions were included to specifically address one situation which occurred in which customers were swindled out of thousands of dollars by an unscrupulous reseller. The

case made us realize that we needed a few extra tools in our toolbox to protect consumers. We have crafted these provisions as specifically and narrowly as possible so that they only apply to situations where they are really needed.

We believe the process proposed by House Bill 1156 would streamline, simplify and eliminate burdens from the process by which companies become authorized to provide telecommunications service in North Dakota.

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



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

January 18, 2005

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Honorable William R. Devlin, Chairman
House Committee on Political Subdivisions
600 East Boulevard Avenue
Bismarck, ND 58505

RE: H. B. 1156

Dear Chairman Devlin:

As the committee requested at the hearing last Friday, attached is a copy of the Commission's reseller bond rule. The committee also asked about bond amounts. For resellers providing long distance service or providing only prepaid calling cards, the performance bond amount is the product of the estimated level of customers after three years of operation times the amount of required customer prepayments, or \$2,500, whichever is greater. For resellers providing local service other than solely by means of a prepaid calling card, the bond amount will be calculated using the same formula, but the minimum bond amount is \$25,000.

Also, regarding the question about identification of the service provider on phone cards, we have a rule (copy also attached) requiring operator service providers to identify themselves on any bill. We interpret that to include identifying themselves on any prepaid phone card. Attached is a consumer brochure issued by the Federal Communications Commission regarding prepaid phone cards that you may find useful. We would probably equate operator service providers with the "issuer" discussed in the brochure, so in North Dakota the phone number of the "issuer" should be on the back of the card.

Thank you for the opportunity to provide this information. We hope to have the results of our discussions with the cellular industry for you soon. If you have additional questions or need further information, please let us know.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary
Director, Public Utilities Division

Enclosure

cc: Rep. Gil Herbel, Vice Chairman
Rep. Donald D. Dietrich
Rep. Nancy Johnson
Rep. Kim Koppleman
Rep. Andrew G. Maragos
Rep. Dwight Wrangham

Rep. Mary Ekstrom
Rep. Lee Kaldor
Rep. Steve L. Zaiser
Rep. William E. Kretschmar
Rep. Vonnie Pietsch

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

- a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
- b. "Prepayment" means payments made by customers of a reseller in advance of receiving service.
- c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.
- d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include cellular and personal communication service providers who resell wireline service as part of their cellular or personal communication service.
- e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.
- f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

- a. Obtain a certificate of registration from the commission, on a form provided by the commission, authorizing the provision of local resale or long-distance resale services in the state of North Dakota.
- b. If a reseller requires prepayment for service, it shall:

- (1) Submit a performance bond in an amount specified by the commission; or
 - (2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data. --
 - (3) The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest.
 - (4) The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card.
- c. Forfeit its registration certificate if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.
3. A reseller may not be identified as an optional intrastate interexchange carrier without a certificate of registration from the commission.
 4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.
 5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.
 6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to reregulation by the commission, revocation of its certificate, and the penalties provided in North Dakota Century Code chapter 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective certificate of public convenience and necessity or a current certificate of registration authorizing the provision of intrastate interexchange service.
2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-04.2. Unauthorized service changes. A telecommunications company may not change a customer's local or long-distance carrier without authorization from the customer.

History: Effective July 1, 1997.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-02.4, 49-21-07

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

- a. "End user" means the person to whom operator service is provided.

- b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.
- c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

- a. Obtain a certificate of registration from the commission authorizing the provision of operator services in the state of North Dakota.
- b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.
- c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.
- d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.
- e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.
- f. Not charge for incompleting calls.
- g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

**Consumer & Governmental Affairs Bureau**[FCC](#) > [CGB Home](#) > Consumer Info Directory > Pre-paid Phone Cards[FCC site map](#)

PRE-PAID PHONE CARDS: WHAT CONSUMERS SHOULD KNOW

What Is a Pre-paid Phone Card?

A pre-paid phone card is a card you purchase (for a set price) and use to make long distance phone calls. These cards are usually sold in dollar amounts or by number of minutes.

Why Do People Buy Pre-paid Phone Cards?

Many people use a pre-paid phone card because of the card's convenience - it can be used anywhere and, since you pay in advance, there is no bill. Pre-paid phone cards are popular among travelers, students, people who frequently call overseas, and those who haven't selected a long-distance service. In addition, pre-paid phone cards are sold in convenient places, such as newsstands, post offices, and stores.

What about International Calls?

Rates for international calls can vary dramatically, based on the country that you call or the way that you make the call. Pre-paid phone cards often offer rates that are much lower than a telephone company's basic international rates.

How Do I Use a Pre-paid Phone Card?

A toll-free access phone number and a personal identification number (PIN) are usually printed on each phone card. To make a phone call, you dial the access number and then enter the PIN. An automated voice will ask you to enter the phone number you are trying to call, and it will tell you how much time you have left on your card. It might also give you other information/options.

Phone card companies keep track of how much of a card's calling time is used by the card's PIN number. You can add time to some pre-paid phone cards, and the added cost can usually be billed to a credit card. If you cannot add time to your card, you will need to buy a new one once all the time has been used. Also, pre-paid phone cards often have expiration dates. Make sure to keep track of the date your card expires so you don't lose unused minutes.

Who Makes Your Phone Card Work?

- **Carriers** are responsible for the telephone lines that carry calls.
- **Resellers** buy telephone minutes from the carriers.

- **Issuers** set the card rates and provide toll-free customer service and access numbers.
- **Distributors** sell the cards to the retailers.
- **Retailers** sell the cards to consumers (though it is important to remember that a store may not have control over the quality of the card or the service it provides).

What Are Common Complaints about Pre-paid Phone Cards?

As pre-paid phone cards are increasing in popularity, some common complaints are becoming evident. They are:

- Access numbers and/or PINs that don't work;
- Service or access numbers that are always busy;
- Card issuers that go out of business, leaving people with useless cards;
- Rates that are higher than advertised, or hidden charges;
- Cards that charge you even when your call does not go through;
- Poor quality connections; and
- Cards that expire without the purchaser's knowledge.

How Can I Avoid the Problems Associated with Pre-paid Phone Cards?

Make sure you understand the rates for your particular phone card. Also check the expiration date, look for a toll-free customer service number provided with or on the card, and make sure you understand the instructions on how to use the card. You may also want to ask your friends and family to recommend cards they have used and liked.

What Should I Do if My Pre-paid Phone Card Doesn't Work?

First, try calling the customer service number provided with the card. If that doesn't work, call or write your local Consumer Affairs Department or state Attorney General. (These phone numbers are often found in the blue pages of your telephone book.) You can also file a complaint or research the company through your local Better Business Bureau, or contact the Federal Trade Commission (FTC). To contact the FTC, call 1-877-FTC-HELP (1-877-382-4357).

To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on www.fcc.gov/cgb/emailservice.html.



Public Service Commission
State of North Dakota

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January 20, 2005

Honorable William R. Devlin, Chairman
House Political Subdivisions Committee
600 E. Boulevard Ave.
Bismarck, ND 58505

Re: Proposed Amendment to H. B. 1156

Dear Chairman Devlin:

Enclosed is a proposed amendment to H. B. 1156 to address the concerns raised by the wireless industry at last week's hearing on this bill. The amendment is the product of several discussions between Commission staff and representatives of Western Wireless, Verizon Wireless and Cingular. These three cellular companies agree with the proposed amendment and if adopted, they can support the bill.

If you have any questions, please contact us.

Sincerely,

Illona A. Jeffcoat-Sacco
Executive Secretary
Director, Public Utilities Division

Enclosure

cc: Rep. Gil Herbel, Vice Chairman Rep. Mary Eckstrom
Rep. Donald D. Dietrich Rep. Lee Kaldor
Rep. Nancy Johnson Rep. Steve L. Zaiser
Rep. Kim Koppelman Rep. William E. Kretschmar
Rep. Andrew G. Maragos Rep. Vonnie Pietsch
Rep. Dwight Wrangham

PROPOSED AMENDMENT TO HOUSE BILL NO. 1156

Page 2, line 12, remove "Formal actions against the company in other jurisdictions resulting in a" and replace with "Whether the company has ever had its authority to provide service revoked, and if so, the date and jurisdiction of revocation."

Page 2, remove line 13

Page 3, after line 8, insert:

7. Subsections 3 through 6 do not apply to a facilities-based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

Renumber accordingly

House Bill 1156

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

Before: Senate Political Subdivisions
Honorable Dwight Cook, Chairman

Date: 4 March 2005

TESTIMONY

Chairman Cook and committee members, my name is Illona Jeffcoat-Sacco. I am the Executive Secretary of the Public Service Commission and 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 before you today to testify in favor of House Bill 1156, introduced at our request.

The purpose of this proposal is to lessen and streamline entry regulation for telecommunications companies. For entry regulation purposes, there are three main types of telecommunications companies: incumbent telecommunications companies, competitive telecommunications companies with all or some of their own facilities, and companies which resell, or use, the facilities of others to provide service.

Historically, since the Commission deregulated resale of telecommunications service almost 20 years ago, entry requirements for facility based companies (both incumbents and some competitors) have been different from the entry requirements for resellers. This is because in order to best protect consumers, there was good reason to scrutinize companies building plant more closely than those that did not build plant and

only used the facilities of others. Today the industry is substantially different and much more competitive. The status of competition in the industry, the ways companies interconnect to provide service and the investment decisions companies make today are very different from those 20 years ago. Consequently, we believe it is appropriate to change how we regulate entry into the telecommunications market.

Entry into the business of providing utility service, including telecommunications service, traditionally required a Certificate of Public Convenience and Necessity. A utility was granted monopoly status for a certain service area, and its rates were regulated, upon a finding the public convenience and necessity required such. For telecommunications companies, this requirement is found in chapter 49-03.1. Today the monopoly/public convenience and necessity concept is no longer applicable to telecommunications. Telecommunications monopolies granted by the government are a thing of the past (although in practice some areas still have available only monopoly providers) and for the vast majority of companies, rates are not regulated. It is time to change the law that concerns certificates of public convenience and necessity for telecommunications companies.

Engrossed House Bill 1156 does this first by changing the definition of public utility in chapter 49-03.1 to **exclude** telecommunications companies that are **not** incumbent telecommunications companies. Eliminating non-incumbent telecommunications companies from the definition of public utility removes the requirement that a non-incumbent telecommunications company obtain a certificate of public convenience and necessity in order to provide service to end users in North Dakota over its own facilities. This change will put all companies that are not incumbent

phone companies on equal footing, at least as far as entry regulation is concerned. We believe this is an important step in the transition of this industry from regulation to competition.

Under this bill, incumbent companies would remain entry regulated as they are today. An incumbent company is the original, monopoly company in each telephone exchange area, the company with the most telecommunications plant, the company with the most critical infrastructure, and the company from which other, competing companies often purchase facilities or service in order to compete. All existing incumbent companies in the state have active certificates of public convenience and necessity for the exchanges in which they currently provide service. This bill would not change that, or require incumbent companies to do anything different than they do today.

For facility based providers that are not incumbents and for resellers, those companies which provide service using the facilities of another company, this bill will lessen and simplify entry requirements. As stated above, nonincumbent facility based providers would no longer have to apply for and obtain a certificate of public convenience and necessity to provide service in North Dakota. This means they would have no notice or hearing costs (and hopefully no legal services costs) and no waiting period during which the case was processed, in order to provide service in the state.

Resellers would also enjoy a more streamlined process. Currently, the Commission uses a registration certificate process to authorize resellers to provide service in North Dakota. This process evolved from decisions made by the Commission since the mid-1980's to deregulate resale by lessening the requirements of chapter 49-

03.1 for resellers, because they were progressively subject to more effective competition.

To receive a registration certificate a reseller files a form and a copy of corporate papers showing that the applicant is authorized to do business in North Dakota, and a bond, if required. Today a reseller application requires no notice or hearing, and the registration certificate is routinely granted unless there are unusual circumstances. The certificate is then effective until surrendered or revoked.

House Bill 1156 would require telecommunication companies that are not incumbent telecommunications companies to complete a one-time registration process. The companies would submit some basic information to the Commission, much as they do now, ideally via a web based process. No certificate would be issued so there would be no waiting period for a Commission meeting. The process would be very simple and inexpensive for the companies and for us. Once registration is complete, the company could begin providing service—there would be minimal lag time. While we process registration certificate applications fairly quickly, still a few weeks do pass between application and authorization, more if the application is filed incomplete.

The purpose this modification is to really twofold: one, to move to a more efficient and accurate process by which the Commission maintains current information on each company that is providing telecommunications services in North Dakota; and two, to impose less of a burden on industry while providing industry with control over the process. These objectives are consistent with the more competitive status of the industry today.

Currently, we have telecommunication companies on our list of providers that have gone out of business, changed addresses, changed telephone numbers, changed owners or business names, or changed the services provided. The Commission has no knowledge of these changes unless the company chooses to provide this information to us, or unless we spend an inordinate amount of resources trying to find out. This bill shifts the burden of providing and maintaining updated information to the companies by requiring updates within 15 days of any change.

Specifically, the registration process would:

- Include some required, but not burdensome, information from each company.
- Continue the bonding requirement that is currently in our rules, with one minor exception. Bonds will be required **only** if a company is a reseller offering **only** prepaid service. Facility based wireless providers will be exempt from this requirement.
- Allow the Commission to issue a cease and desist order under certain conditions **only** against a company requiring prepayments without a bond.
- Provide that requiring prepayments in violation of the law (without registration and an appropriate bond) is a felony if the accumulated customer loss is greater than five thousand dollars.

These last two bullet points are really the only new or additional provisions that this bill would impose over and above our current registration process. These two provisions were included to specifically address one situation which occurred in which

customers were swindled out of thousands of dollars by an unscrupulous reseller. The case made us realize that we needed a few extra tools in our toolbox to protect consumers. We have crafted these provisions as specifically and narrowly as possible so that they only apply to situations where they are really needed.

We believe the process proposed by Engrossed House Bill 1156 would streamline, simplify and eliminate burdens from the process by which companies become authorized to provide telecommunications service in North Dakota.

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