

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2216

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2216


2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2216

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 19, 2005

Tape Number	Side A	Side B	Meter #
2	X		725-4438
Committee Clerk Signature 			

Minutes:

**Senator Mutch opened the hearing on SB 2216, relating to telecommunications regulation.**

**All Senators were present.**

**Senator Espgaard introduced the bill.** See written testimony

**Melissa Thompson**, an attorney with Qwest appeared in support of the bill. She went through clarifications on various sections of the bill, and presented a proposed amendment to the bill.

See attached.

**Senator Nething-** In a couple instances you are talking about removing a provision because of federal coverage? Is that authority still left for the Public Service Commission under the federal law?

**Melissa-** It is under the jurisdiction of the Public Service Commission.

**Senator Nething-** So, we are not taking away anything from the PSC?

**Melissa-** No, we are not.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2216

Hearing Date January 19, 2005

**Commissioner Tony Clark, President of the ND Public Service Commission** appeared in support of the bill, and delivered testimony on behalf of himself and fellow PSC Commissioner Kevin Cramer. See attached.

**Kelvin Hullet, President of the Bismarck-Mandan Chamber of Commerce** delivered written testimony in support of the bill. See attached.

**Commissioner Susan Wefald of the Public Service Commission** appeared in opposition to the bill. See written testimony.

**Senator Espgaard-** Why would you take a position on a price issue?

**Commissioner Wefald-** This bill would allow a 42 cent price increase to customers. That does not in anyway depend on what I would do if you chose to have a price case come to me. If this bill goes through the way it is, you are allowing Qwest to have a 42 cent increase for customers all across the state.

**David Crothers, Executive Vice-President of the North Dakota Association of Telecommunications Cooperatives** delivered a proposed amendment to the bill. See attached.

**David-** Ms. Thompson said that federal laws trump state laws, and the ETC requirement is addressed by federal law. She is correct to the extent that it is the federal universal service fund program. When this was adopted several sessions ago, there was a lot of discussion about a state universal service fund, since the passage of the 1996 act. We have talked about acts that would mandate a state service fund to complement that federal service. We believe it is imminent that there will be a state service fund. It is an affordability issue in what the state can offer high cost customers in North Dakota.

**Heitkamp-** Have you talked to the Qwest management about this?

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2216

Hearing Date January 19, 2005

**David-** To the best of my understanding, they are not concerned with the provision remaining in the bill.

**Senator Nething-** Is there a price per month that goes with this?

**David-** The 42 cents has to do with the local rate that Qwest has provided. I am referring to a prospective state universal service fund. This is a big deal for states like North Dakota.

This concludes the testimony for SB 2216.

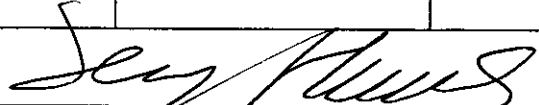
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2216

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date "January 19, 2005

Tape Number	Side A	Side B	Meter #
2	X		4,720-5400
Committee Clerk Signature 			

Minutes:

Vice-Chairman Klein opened discussion on SB 2216. All Senators were present with the exception of Senator Mutch.

**Senator Espegaard moves to pass all 3 amendments to the bill.** The amendments were separately sponsored by the Public Service Commission, Qwest, and the North Dakota Public Service Commission. **Seconded by Senator Krebsbach.**

**The amendments passed unanimously.**

**Senator Espegaard moves a DO PASS recommendation for SB 2216 as amended.**

**Seconded by Senator Krebsbach. The bill passed with five members voting in favor and one member voted in opposition.**

**Senator Espegaard is the carrier of the bill.**

**FISCAL NOTE**  
 Requested by Legislative Council  
 01/14/2005

Bill/Resolution No.: SB 2216

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
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$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.

SB 2216 changes certain aspects of telecommunications regulation, but not in any way that would 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.

No revenue impact is 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 expenditure impact is 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 is necessary

<b>Name:</b>	Ilona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	701-328-2400	<b>Date Prepared:</b>	01/16/2005

Date: 1-19-05  
Roll Call Vote #: 1

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

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 2216

Action Taken DO PASS 3 amendments

Motion Made By Espegard Seconded By ~~Heitkamp~~ Krebsbach

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman			Senator Fairfield	X	
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment ~~Espegard~~ Espegard

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



Date: 1-19-05  
 Roll Call Vote #: 2

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

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 2216

Action Taken DO PASS AS Amended

Motion Made By Espegard Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Senator Mutch, Chairman			Senator Fairfield		X
Senator Klein, Vice Chairman	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Nething	X				
Senator Espegard	X				

Total (Yes) 5 No 1

Absent \_\_\_\_\_

Floor Assignment Espegard

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

**REPORT OF STANDING COMMITTEE**

**SB 2216: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2216 was placed on the Sixth order on the calendar.**

Page 1, line 5, remove "49-21-01.8,"

Page 7, line 14, remove the overstrike over "~~chapter 49-21 and~~"

Page 8, line 11, overstrike "increased"

Page 12, line 12, remove "49-21-01.8,"

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2216

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2216

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-2-05

Tape Number	Side A	Side B	Meter #
1	x		10.1-end
Committee Clerk Signature <i>Jody Renke</i>			

Minutes:

**Chairman Keiser:** Opened the hearing on SB 2216.

**Senator Espgaard:** Appeared in support of bill and also was one of the sponsors. Over the years the legislator has practiced what is known as deregulation with respect to the telecommunication law, and allow the bill in 2216 is that again this year.

**Melissa K. Thompson, Attorney, Owest Corporation:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Scott McIntosh, State President, Owest:** Centrax Services is a central office based business, primarily used by business has been around for many years, basically replaces the need for business to buy their own local switch, like a PBX based switch, its all the features they would use in their business or could be in the case of a county, or government building, basically a business based service, that would no longer be a essential type service. We have lost 50% of the

business market in North Dakota to other providers so this is a extremely segment that were doing.

**Representative Kasper:** Why can't you compete if you own the lines?

**Scott McIntosh:** There is a price cap that goes along with that service, you can't raise it you can lower it. It does impede you to package those services together in combination with other services to attract customers. The market force should determine pricing.

**Representative Kasper:** What determines your cost?

**Scott McIntosh:** That is the thorny issue that would take many days to discuss, there are a number of different theories and generally there is no agreement on what the actuarial cost is we believe that most of those services end up being priced below our cost. In 1989 we went from a traditional rate of return regulatory setup in a totally noncompetitive market since then the law has evolved and there are categories of services that determine the level of oversight that they have a few of. Essential services were originally defined as just that basic service you need to get minimal access to the network.

**Tony Clark, Public Service Commission, North Dakota:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Representative Iverson:** Appeared in support of bill and provided a written statement and also amendments (SEE ATTACHED TESTIMONY).

**Marilyn Foss, Attorney, MCI:** Appeared in support of bill and provided amendments.

We have looked at the bill and were concerned about the provisions in the bill that remove Sect. 49-21-24 and discussed this with Quest and some other competitors and we support the bill with the amendment sponsored by Quest.

**Representative Kasper:** I thought I read in the paper that Quest and MCI are in negotiations either that one buy the other or vice versa?

**Marilyn Foss:** I would say that is incorrect, the merger partner that I have been advised to expect is Verizon.

**Representative Kasper:** There has been negotiations with MCI and Quest to purchase one another is that not correct?

**Marilyn Foss:** It's my understanding that Quest made a proposal, to acquire MCI, Verizon made a competitive to acquire MCI which was more than Quest, and MCI said they were sticking with Verizon.

**Representative Kasper:** So there have been negotiations?

**Marilyn Foss:** I don't know if there were negotiations at all.

**Tom Simmons, VP Public Policy, Midcontinent:** Appeared in support of bill, we are a premier provider in cable television, local, long distance telephone, high speed Internet access and cable advertising also network data services, we serve over 200 communities with our services and in those states we have 192 franchises, and 115 are in North Dakota.

**Carol Wirbinski, SVP, Integra Telecom, North Dakota:** We are based out of Portland, OR., and are here in support of SB 2216 with the amendment that Representative Iverson provided this morning (SEE ATTACHED TESTIMONY).

**Representative Keiser:** The question is the conflict in the Iverson amendment, that created when it states that the services must be provided at cost or above, it cannot be provided at the low cost and then at another section of the code, "or the public service commission by ruling creates the price condition that is below cost"?

**Greg Scott, VP, Regulator Affairs, Integra:** I think the description is that a part of the bill that allows below cost pricing relates to essential services, what we are talking about is the part that relates to non essential services, and I believe it's consistent with what the Quest folks have said this morning, the commission can decide essentially the price residential service below cost and subsidize it in some way, but today now with this change in this bill, that would just be residential, just be essential service, there is nothing in the statute that prohibits below cost pricing for non essential unless you leave that language in.

**Illona Jeffcoat Sacco, Attorney, PSC:** The last sentence where we are talking about deleting the overstrike does not deal with essential services, essential services have traditionally at least it has been argued, not necessarily being at or above cost, in the old days when we first had competition, there wasn't worry, that if you had monopoly service over essentials, that you could price them far enough cost to use some of that extra money, to compete unfairly, which is the reason for saying essential cannot subsidize or give advantage, to the de regulated portion, and that's the old language that's been preserved, as I understand it. The last sentence to me is different then what we are talking about above, the last sentence is saying you can't under cut your competitive services so far you can't compete unfairly, but you might not be getting that revenue to under cut some essential, you might be getting from television or what ever else you do.

**Representative Keiser:** Can the cable company offer me 3 months of free cable if I sign up?

**Illona Jeffcoat-Sacco:** The cable company are not govern by this statute so yes they can.

**Representative Keiser:** If they are coming through a phone line?

Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2216

Hearing Date 3-2-05

**Illona Jeffcoat-Sacco:** The cable company with their phone permission, is governed by the statutes. The cable company would have to follow this but there may be some way that even though they give you 3 free months, they are considering may the other 9 months cover the costs.

**Susan Wefald, Public Service Commission:** Appeared in opposition of SB 2216 and provided a written statement (SEE ATTACHED TESTIMONY). The commission has the responsibility to look at all sides of an issue not just the view point of the party that comes in and says that their prices are not adequate. We have to look at all of the information on the record and in developing the record there is other information that is presented as well that may have a different point of view.

Hearing closed.



2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2216

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-8-05

Tape Number	Side A	Side B	Meter #
3		x	8.3-22.5
Committee Clerk Signature <i>Gray Runkle</i>			

Minutes:

**Chairman Keiser:** Reconvened on SB 2216.

**Representative Ruby:** I move to **ADOPT** the **QUEST** amendment.

**Representative Johnson:** I **SECOND** the **ADOPTION** of **QUEST** amendments.

Motion carried voice vote.

Hearing closed

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2216

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-14-05

Tape Number	Side A	Side B	Meter #
2	x		23.1-45.3
Committee Clerk Signature			

Minutes:

**Chairman Keiser:** Reconvened on SB 2216. Let's look at the letter signed by the three Commissioners.

**Representative Kasper:** My interpretation of the letter signed by all three commissioners, it does verify what my concern was about not deleting lines 13, 14, on page 11, second paragraph starts out by stating deletion of last sentence of the section page 11, lines 13-15. it goes on to say that of course they couldn't recover there below costs charges, they don't ever have to tie into the low cost charge to the other services, they just have to justify the other services on a rate increase, that they wish to do, so this is exactly what my concern was about deletion, so for that reason I would want to amend the bill to remove the overstrike on lines 13, 14, 15.

**Representative Kasper:** I move to remove overstrike on page 11, lines 13, 14, 15.

**Representative Vigasaa:** I SECOND that motion

Motion fails. **VOTE: 7-YES 7-NO 0-Absent.**

Page 2  
House Industry, Business and Labor Committee  
Bill/Resolution Number SB 2216  
Hearing Date 3-14-05

**Representative Ruby:** I Move a **DO PASS AS AMENDED BY QUEST.**

**Representative Vigesaa:** I **SECOND** the **DO PASS AS AMENDED** on **SB 2216.**

Motion carried **VOTE: 9-YES 5-NO 0-Absent.**

**Representative Boe will carry the bill on the floor.**

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2216

Page 1, line 5, after the sixth comma insert "and" and remove ", and 49-21-24"

Page 1, line 19, remove the overstrike over "~~49-21-24,~~"

Page 11, line 13, remove the overstrike over "~~The price charged for an~~"

Page 11, remove the overstrike over lines 14 and 15

Page 12, line 13, after the first comma insert "and" and remove ", and 49-21-24"

Renumber accordingly

Date: 3-8-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2216

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number 50514.0203 -0300

Action Taken Adopt Quest Amendments

Motion Made By Rep. Ruby Seconded By Rep. N. Johnson

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 14 No 0

Absent \_\_\_\_\_

Floor Assignment Rep. Boe

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

Date: 3-14-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2216

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken Amend - Remove overstrike on page 11 lines 13, 14, 15

Motion Made By Rep. Kasper Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman		^
N. Johnson-Vice Chairman		X	Rep. T. Boe		X
Rep. D. Clark	X		Rep. M. Ekstrom	^	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch		X			
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby		X			
Rep. D. Vigesaa		^			

Total (Yes) 7 No 7

Absent fails tie

Floor Assignment \_\_\_\_\_

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

Date: 3-14-05

Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2216

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken Do Pass As Amended by Quest.

Motion Made By Rep. Ruby Seconded By Rep. Vigasaa

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom		X
Rep. D. Dietrich		X	Rep. E. Thorpe		X
Rep. M. Dosch	X				
Rep. G. Froseth		X			
Rep. J. Kasper		X			
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. Boe

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

**REPORT OF STANDING COMMITTEE**

**SB 2216, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2216 was placed on the Sixth order on the calendar.**

Page 1, line 5, after the sixth comma insert "and" and remove ", and 49-21-24"

Page 1, line 19, remove the overstrike over "~~49-21-24,~~"

Page 12, line 13, after the first comma insert "and" and remove ", and 49-21-24"

Renumber accordingly



2005 TESTIMONY

SB 2216



NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

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P.O. Box 1144 • Mandan, ND 58554  
Phone 701-663-1099 • Fax 701-663-0707  
[www.ndatc.com](http://www.ndatc.com)

**Amendment to Senate Bill 2216**

Page 12 Line 12

12           **SECTION 9. REPEAL.** Sections ~~49-21-01.8~~, 49-21-04.1,  
13   49-21-08, 49-21-14, 49-21-15, 49-21-17, 49-21-18, 49-21-20,  
14   and 49-21-24 of the North Dakota Century Code are repealed.

January 18, 2005

The Honorable Duane Mutch  
Chairman, Senate Industry, Business and Labor Committee  
600 E. Boulevard Ave.  
Bismarck, ND 58505

RE: Senate Bill 2216

Dear Senator Mutch:

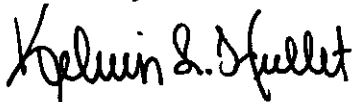
The Bismarck-Mandan Chamber of Commerce would like to express its support for the passage of SB 2216. This bill, relating to telecommunications regulation:

1. Deregulates what are already competitive services like lines sold to businesses. As we review the business environment today, it is apparent that businesses and consumers have more than one choice when it comes to purchasing telecommunications services.
2. This bill cleans up several outdated sections of the statute to reflect the current business environment for the telecommunications companies operating today. For example, the bill will remove transmission service lines for coin phones from the definition of essential services to account for the on-set and continued growth of wireless technology.
3. The Bill also repeals outdated sections of law that are no longer applicable, outdated or somehow run contrary to the Federal Telecom Act of 1996.

The Bismarck-Mandan Chamber of Commerce represents more than 1,000 businesses in the Bismarck-Mandan area. Our mission is to enhance the business environment and economic base of the community.

We would ask for your favorable consideration of Senate Bill 2216. If you have further questions, please feel free to contact the Chamber at 701 223 5660

Sincerely,



Kelvin L. Hullet, President  
Bismarck-Mandan Chamber of Commerce



**Testimony of David Straley  
Greater North Dakota Chamber of Commerce  
Presented to the  
House Industry, Business and Labor Committee  
January 19, 2005**

**SB 2216**

Mr. Chairman and members of the Senate Industry, Business and Labor Committee, my name is David Straley. I am here today representing the North Dakota Chamber of Commerce and urge you to **support** Senate Bill 2216.

SB 2216 deregulates what are already competitive services like lines sold to businesses.

Regulating only one company when it comes to these types of services stifles investment in new technology in North Dakota. As I understand it, customers and the Commission still retain the ability to bring price complaints.

This bill also cleans up several outdated sections of the statute to reflect the current business environment for telecom companies operating today. It also repeals nine outdated sections of law which are no longer applicable, outdated or somehow run contrary to the Federal Telecom Act of 1996.

Thank you, Chairman Mutch and members of the Senate Industry Business and Labor Committee, for this opportunity to discuss the business community's position on SB 2216. We

urge a **DO PASS** for SB 2216. Thank you and I would be happy to answer any questions at this time.

**The following chambers are members of a coalition that support our policy statements:**

Beulah  
Bismarck-Mandan  
Bottineau  
Cando  
Crosby  
Devils Lake  
Dickinson  
Fargo  
Grand Forks  
Greater North Dakota Chamber of Commerce  
Hettinger  
Jamestown  
Langdon  
Minot  
Wahpeton  
Watford City  
West Fargo  
Williston

Total Businesses Represented= 7429

**The Business Coalition**

ND Automobile and Implement Dealers Association  
Greater North Dakota Chamber of Commerce  
Hospitality Association  
ND Petroleum Council  
ND Retail and Petroleum Marketers Association

## S. B. 2216

**Presented by:** Commissioner Tony Clark  
Public Service Commission

**Before:** Industry, Business and Labor  
Honorable Duane Mutch, Chairman

**Date:** January 19, 2005

*Same  
given to  
H. Lee*

### TESTIMONY

Mr. Chairman and members of the committee, for the record, I am Tony Clark, President of the Public Service Commission. The testimony I am delivering today is on behalf of myself and Commissioner Kevin Cramer. We are generally supportive of the provisions of SB 2216. The bill cleans-up a good deal of anachronistic language in the Century Code, and also takes reasonable steps to nudge North Dakota's laws in a direction that better reflects the reality of the where the telecommunications market is today, while continuing to protect consumers. I will highlight a few of the more substantive changes.

Section 2 eliminates price cap regulation in those areas of the telecom marketplace where there appears to be the most robust competition. For example, this bill deregulates business rates. Just a few years ago, the PSC concluded a case that studied market competition. At that point competitive companies had captured over 40 percent of the business lines in Qwest territory. This percentage is likely even higher today. By most any standard, this would indicate that sufficient competitive forces exist to allow more market-based

pricing in this market. This bill also creates a new primary residential line designation that ensures that the individual who only needs a basic, reliable phone line will be able to get it at an affordable rate. This is important because it recognizes that while there appears to be a growing competitive market for customers buying bundles of telecom products, and for more technologically savvy customers, there seems to be fewer companies vying for that segment of the market that only wants and needs a basic, low cost line. Section 2, on pages 3 and 4 also eliminates some confusing and unhelpful language in the nonessential telecom services section.

Changes in section 4, combined with changes made in the last legislative session, make the state's price cap law for essential services easier to administer for both government and industry. In previous years, a number of minute calculations in the law would allow basic rates to rise or fall a few pennies a month depending on various circumstances. More confusing yet, these increases and decreases could be accumulated and banked, which increased tracking compliance complexity for all parties involved. If adopted the new law would simply set the price in law, which is essentially what has been the case, plus or minus a few pennies, since the late 1980's. If anything, we would even recommend that all adjustments to the price cap be eliminated. This bill still keeps allowable adjustments and a tracking mechanism for just one category of cost, government accounting practices, taxes and fees. To the extent future modifications are needed due to things like tax changes, we would argue that

case should be made before future legislative sessions, just as changes to other outside factors like depreciation, inflation, and pension and labor costs.

I would like to stress that our support of the new mechanism for setting the price is a much different question than whether \$18 is the correct price. On this portion of the bill we must emphasize for the record that we are neutral. This figure was chosen by the legislature and presumed fair and reasonable by statute. But there still exists a rebuttable presumption under the law via a complaint to the Commission on matters of essential and nonessential telecommunications services. In other words, there exists at least the possibility that the Commission could yet hear a case on the fairness and reasonableness of these or similar rates, and we believe it would be inappropriate for us to speak to the merits of a particular price currently set in law, when that price could theoretically become a contested issue in a Commission docket.

Mr. Chairman, that ends my testimony. I would be happy to answer any questions you may have.



**Senate Industry Business and Labor Committee**  
**Wednesday, January 19, 2005**  
**Testimony (Legislative Summary) of Melissa K. Thompson, Qwest Corporation**  
**Senate Bill 2216**

**SECTION 1:**

This section amends § 49-02-01.1 to delete two references, one to § 49-21-08 and the other to § 49-21-24, both of which this bill proposes to repeal and are addressed later in this legislative summary.

**SECTION 2:**

This section amends § 49-21-01 to eliminate several items from the statutory definition of "essential services". These items are: transmission service lines for coin or pay telephones, measured residence service and measured and combination business service, and nonlisted and nonpublished service. The amendment also makes clear that primary flat rate residence basis service is an essential service. Finally, this section simplifies the statutory definition of "non-essential services", and eliminates a reference to "feature group C", which is obsolete now.

**SECTION 3:**

This section amends § 49-21-01.1 by clarifying what type of directory services are not subject to Title 49.

**SECTION 4:**

This section amends § 49-21-01.3 by eliminating provisions related to price investigations in 1999 and related studies, which have been concluded.

Originally, this section also amended § 49-21-01.3 to clarify that changes in prices for essential telecommunications services are prohibited in § 49-21-01.1 and "in this section". However, there was a typo in the draft bill so Qwest will be offering an amendment at the conclusion of this testimony to remove the overstrike of the reference to "chapter 49-21."

**SECTION 5:**

This section amends § 49-21-01.7 and gives the Public Utilities Commission the ability to accept electronic filings in lieu of hard copies. Also, this section deletes a reference to the regulatory reform review commission, which was disbanded in 2003.

**SECTION 6:**

This section amends § 49-21-02.2 and maintains that telecommunications companies cannot use revenues obtained from essential services to cross subsidize nonessential services. It eliminates the same limitation with respect to nonessential services. Also, this amendment eliminates references to commission requirements concerning separate books of account, cost allocation, and other commission acts.

**SECTION 7:**

This section corresponds to Section 1. This amendment of § 49-21-10.2 deletes the provisions related to violations and complaints, which now constitute subsection 10.3, and leaves quality of service as a stand alone topic under § 49-21-10.2.

**SECTION 8:**

This section creates a new subsection numbered 10.3 that duplicates part of a statute that Qwest proposes to amend. Previously, § 49-21-10.2 addressed both quality of service and complaints. To make the statutes clearer and better organized, Qwest has proposed creating this new section to separate the two topics. Subsection 10.3 concerns violations and complaints exclusively. Subsection 10.2 concerns quality of service exclusively.

**SECTION 9:**

Qwest proposes to repeal § 49-21-01.8 concerning eligible telecommunications company ("ETC") requirements because federal law governs ETC requirements and universal service funds.

Section 49-21-04.1 addresses minimum and maximum rates and notice to the public. Qwest proposes to repeal § 49-21-04.1 because other provisions in the ND Century Code cap the prices for essential services and § 49-21-05 provides for the Commission to require telecommunications companies to make price schedules available to the public.

Section 49-21-08 creates a state prohibition on the unnecessary duplication of exchanges. Qwest proposes to repeal this section because it duplicates and conflicts with federal law. The Telecommunications Act of 1996 provides rural safeguards. This repeal does not affect those safeguards.

Section 49-21-14 is a companion statute to § 49-21-08 and provides that § 49-21-08 shall not be construed to prohibit telecommunications companies from making physical connections. Qwest proposes to repeal § 49-21-14 because it has proposed repealing § 49-21-08 and because § 49-21-14 does not add any substantive meaning to the Century Code.

Section 49-21-15 provides that a telecommunications company within a city may not deny physical connection to other companies or enter into contracts that abridge either company's rights to extend lines or make physical connections. Qwest proposes to repeal this section because it duplicates federal law and is antiquated.

Section 49-21-17 contains definitions that apply to the statutes governing party lines. Qwest proposes to repeal this statute because party lines are no longer used in North Dakota.

Section 49-21-18 addresses party lines. Qwest proposes to repeal this statute because party lines are no longer used in North Dakota.

Section 49-21-20 provides for a penalty for violations of § 49-21-18, which Qwest also proposes to repeal because party lines are no longer in use in North Dakota.

Section 49-21-24 addresses discrimination and provides for arbitration. Qwest proposes to repeal this section because it is duplicative and unnecessary. Section 49-21-07 prohibits discrimination; § 49-21-06 provides for the filing of complaints with the Commission. Federal law provides for arbitration, and parties to a telecommunications interconnection agreement can provide for arbitration by contract.

Prepared by Melissa Thompson, Qwest Corporation  
January 18, 2005

PROPOSED AMENDMENT TO SENATE BILL NO. 2216

Page 7, line 14, remove the overstrike over "~~chapter 40-21 and~~"

Renumber accordingly



Public Service Commission  
State of North Dakota

---

COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

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January 19, 2005

Honorable Duane Mutch, Chairman  
Senate Industry, Business and Labor Committee  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: SB 2216

Dear Chairman Mutch:

Enclosed is a fax the Public Service Commission received from Ideacon Telecom regarding Senate Bill 2216, for distribution to the Senate Industry, Business and Labor Committee.

If you have any questions, please contact us.

Sincerely,

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

Enclosure

cc: Senator Jerry Klein, Vice Chairman  
Senator Duaine C. Espegard  
Senator Karen K. Krebsbach  
Senator Dave Nething  
Senator April Fairfield  
Senator Joel C. Heitkamp



January 18, 2005

North Dakota Public Service Commission  
Attn: Donna Jeffcoat-Sacco  
State Capitol Building  
600 East Boulevard, Detp. 408  
Bismarck ND 58505-0480

VIA FACSIMILE - 701-328-2410

Re: IdeaOne's Position on Senate Bill No. 2216

Dear Ms. Jeffcoate-Saccco:

As a follow up to our attorney's telephone conversation with you respecting Senate Bill No. 2216, I am providing to you IdeaOne's comments respecting this bill.

We do not understand the reason to repeal N.D.C.C. Section 49-21-08, which requires that the PSC approve an application of public convenience and necessity in connection with a competitive local exchange carrier ("CLEC"). It would seem that this process has worked satisfactorily in the past, and we are not aware of any reasons why it should be changed.

We also oppose the repeal of N.D.C.C. Section 49-21-24. In particular, 49-21-24(1) prevents discrimination by a provider of telecommunications services against another provider of telecommunications services. We feel that this protection should remain intact. Moreover, we do not believe that the scope of the unlawful discrimination set forth in Section 49-21-07 provides the same protection as afforded under Section 49-21-24. We recommend that Section 49-21-24 remain in force and effect.

Please feel free to call me if you have any additional questions or comments respecting this letter.

Also, please provide this letter to the legislative committee hearing testimony on this Bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert K. Johnson", is written over a horizontal line.

Robert K. Johnson  
General Manager



S. B. 2216

**Presented by:** Susan Wefald, Commissioner  
Public Service Commission

**Before:** Industry Business and Labor  
Honorable Duane Mutch, Chairman

**Date:** January 19, 2005

**TESTIMONY**

Mr. Chairman and committee members, I am Public Service Commissioner Susan Wefald. I am appearing today to discuss concerns about certain provisions of Senate Bill 2216. There are a number of sections of this bill that I support and some sections on which I am neutral while I learn about concerns of different stakeholders in the industry. However, my concerns about important services that are being eliminated from essential services in section 2, and a probable price increase for residential customers in section 4, are the reasons I cannot support this bill at this time. The comments that I am making today reflect my own thinking on this bill.

Once again we have a chance to define exactly what telecommunications services we wish to have defined as "essential." These services are defined in 49-21-01 (4). The changes proposed

are in Section 2 of this bill, on page 2. The main impact of being defined as "essential" is that there is price regulation for all of these services for QWEST customers and price regulation for switched access for QWEST and Telephone Cooperatives and Independents listed in 49.02.01.1.

First, I have concerns regarding eliminating definition (b): "The transmission service line for a coin or a pay telephone." This would only affect QWEST and its customers. At the present time, all pay telephones and the rates that they charge are deregulated. The owner of the pay phone can determine how much to charge per call, and arranges for long distance services from the pay phone. At the time all of this was deregulated, the legislature determined that it was important to keep the line that extends from the telephone office to the pay phone as an essential service. At the present time, the tariffed charge for a pay phone line is \$11.74. According to information QWEST filed with the Commission as part of its 2004 annual report, QWEST has 1063 access lines to pay phones. QWEST representatives have told me that with cellular service available, pay telephones are really no longer necessary. I disagree with that. Not everyone has a cellular phone, and in some areas of

the state, there is not good cellular coverage. It is still important to have pay phones in locations for safety and the public good. If (b) remains in place, Qwest has the responsibility to provide a line for a pay phone if the Commission determines that a pay phone is needed at a certain location. We have not used this power in the past, when pay phones were located in many places, but it is a good tool to have in our "tool kit" at the present time.

Recommendation: Keep the transmission service line for a coin or pay telephone as an essential service.

Next please look at the services defined in (c). In the proposed bill, the only service which would remain essential is one flat rate line coming into a residence. One service which is being deleted is "measured service." At the present time, customers who do not use a lot of telephone service have the ability to sign up for measured service for \$13.00 a month, which allows them to use <sup>180</sup> minutes a month of outgoing local calls and unlimited incoming calls. Of course, the customers have to also pay all taxes and surcharges on their phone bills. Why is this service being eliminated as an essential service, when it may be the only phone line that some customers

have coming into their home? Recommendation: leave the primary line for measured service as an essential service.

Also, in (c) please take a look at business and residence service. This is a service which small business owner- families use as their "primary" line. I have been told that many farms and ranches used to be on this rate, and that they have been changed to the "residential" rate listed in the tariff. However, in the future, if this business and residential rate is eliminated, QWEST will be able to charge what they wish for this service, and even the primary line for these customers will not be price regulated. Recommendation: leave the primary line for combination business and residence customers as an essential service.

All business service is also being eliminated from this definition of essential telecommunications service in (c). I have no concerns with this definition for large businesses in the large cities of North Dakota. However, I would like you to think about maintaining at least two primary lines for business as an essential service. This would allow the small businesses in our small North Dakota towns served by QWEST ( such as Gardner and Belfield) who may not receive much attention from competing local service providers, to continue to

have affordable rates. At the present time, the monthly basic business rate on file for a customer in Gardner is \$30.94 without EAS and \$32.75 with EAS, the same as for a business customer in Fargo. The rate for a business customer in Belfield is \$28.36 without EAS and \$34.30 with EAS, the same as for a business customer in Bismarck. At the present time, QWEST can lower its prices for essential services, but it cannot charge more than the current rates.

Recommendation: consider at least 2 primary flat rate lines for business customers as essential telecommunications service.

Now please look at (4)(c)(2). Another concern is the proposed elimination of "nonlisted and nonpublished service" as an essential service. (Line 25, page 2) Privacy is an important concept to people when it comes to their telecommunications services. North Dakota QWEST customers should be able to continue to pay a reasonable amount if they wish to keep their number out of the phone book, but (1) available if someone calls directory assistance and asks for their number (non-listed) or not available at all to the public (non-published). With all of the concern about privacy today, it is important that the Commission have some jurisdiction in this area.

Recommendation: Do not eliminate nonlisted and nonpublished service as essential services.

Next, please look at Section 4 ( page 7). There are two concerns I have with this section. The first is that the proposed language in the bill allows QWEST to raise its price for basic local service to \$18.00, which is a 42 cent increase. (line 10, page 8) At present, the price is set at \$17.5794. The Commission, following principles set by the legislature in 1999, determined a price for residential service in 2000 and the price has been recalculated since that time following state law. Since QWEST reported close to 100,000 residential customers in its 2004 annual report, reflecting # of customers at the end of 2003, this proposed increase could cost QWEST residential customers \$500,000 a year. QWEST's rate of return for all services in North Dakota has been excellent in recent years. Recommendation: The legislature should consider a lower number than \$18.00 in section 4, such as the present \$17.5794 or less.

The second issue under Section 4 is the strikeout of the words "chapter 49-21 and" from line 14, page 7. I support the Commission amendment to this bill to reinstate this language.

There is one more concern I would like to share with you. One section of the law which QWEST proposes to eliminate is 49-21-24. In 1999 this section was added by the legislature to Chapter 49. This section has been used at least two times, since enacted, by competing local telephone carriers to bring complaints to the Commission. Since it seems to be helpful to some carriers, it may be premature to eliminate it from this chapter.

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

SB 2216

January 19, 2005

SENATE BUSINESS, INDUSTRY AND LABOR

Chairman Mutch and members of the committee, for the record my name is Duaine Espegard and I represent District 43 in Grand Forks.

I appear for SB 2216 which was drafted to update the telecom section of the North Dakota century code and put it more in line with the competitive landscape in which telecommunications companies operate. For years, the North Dakota legislature has practiced what has become known as "piece-meal deregulation" with respect to telecommunications law.

With that same philosophy in mind, this bill seeks to further amend the code and recognize the substantial competition in the telecommunications hear. It also cleans up the law in other areas where certain sections are no longer needed. Companies like Qwest have been updating their North Dakota telecom networks with constant investment in new technology. We must ensure that our regulatory scheme keeps pace with this dynamic and important part of our states economy.

SB 2216 has 9 sections, but it mainly accomplishes the following:

1. Deregulates what are already competitive services like telecom lines sold to businesses. Any business out there will tell you they have more the one choice when it comes to purchasing telecom services. Regulating only one company when it comes to these types of service stifles investment in new technology in North Dakota. Customers and the commission still retain the ability to bring price complaints.
2. With the help and advice of PSC members and staff, it cleans up several outdated and \or unneeded sections of the statute to reflect the current business environment for telecom companies operating today.
3. Repeals 9 outdated sections of law which are no longer applicable, outdated or may somehow run contrary to the federal telecom act of 1996

This concludes my testimony and would be happy to take any questions.



74-2542-01-104

Attachment A

**st Corporation  
Exchange and Network Services  
Price Schedule**

**SECTION 5  
Page 44  
Release 1**

State of North Dakota  
Effective: 3-9-2001

**5. EXCHANGE SERVICES**

**5.2 LOCAL EXCHANGE SERVICE (Cont'd)**

**B. Application of Rates for Residence and Business Service**

**1. Residence Rates**

Residence rates apply when the service is furnished at a location used primarily for domestic purposes; a residence location typically contains cooking and sleeping facilities. Residence service will be allowed for individual rooms at group homes, e.g., fraternities, sororities, convents, patients' rooms at retirement homes, boarding houses, when the service to the rooms is not provided through a reseller of local exchange service. Residence service will be allowed in church living quarters and the clergy person's private study. A residence service may not have a business directory listing nor be part of a hunting or call forwarding sequence that contains business lines.

**2. Combination Residence/Business Rates (Classified as Residence Service)**

Combination Residence/Business rates apply for service at residential premises, churches, elementary, and secondary school locations and locations where the service is used for occupational, administrative, professional, agricultural, nonprofit organizations, or commercial purposes. Business listings and yellow page listings are not provided except for churches, schools, nonprofit organizations, senior citizen meeting locations, convents, priorities, sororities, fraternities and group homes. Additional lines may be billed as one-party flat rate service as long as the primary usage of the additional line is for personal use in a residence. Combination Residence/Business service is not provided through a reseller of local exchange service.

SB. 2216

32-05

changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.

**49-21-04.1. Maximum and minimum rates - Changes.** Notwithstanding the provisions of section 49-05-05 to the contrary, for a telecommunications company that elects to remain subject to the commission's rate and rate of return regulation, the commission may approve schedules of rates for a service that establishes only maximum rates, only minimum rates, or both minimum and maximum rates. A telecommunications company having such an approved schedule may, with respect to the services covered by the schedule, change its rates after such notice to the public and commission as the commission prescribes.

**49-21-05. Schedule of prices to be available for public inspection.** The commission may require any telecommunications company to make available to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, a printed or electronic schedule of prices for telecommunications services offered by the telecommunications company as the commission may deem necessary.

**49-21-06. Complaint against prices.** There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any person may complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be provided in accordance with chapter 28-32 and the commission can only set aside, after notice and hearing, any price for a service it investigates pursuant to this section which it determines to be unreasonable, unfair, or inadequate. This section must be construed to authorize the commission to set aside any unreasonable, unfair, or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications, provided this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is unreasonably high.

**49-21-07. Discrimination unlawful.** It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; from contracting with a retail subscriber to provide telecommunications services at prices negotiated with the subscriber to meet service requests of the subscriber or competitive offerings of another telecommunications company; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

**49-21-08. Unnecessary duplication of exchanges prohibited.** Whenever any telecommunications company furnishes adequate local exchange telecommunications service and supplies the reasonable wants of the people of the city or community in which it is operating, and complies with the orders of the commission, the commission shall not grant to any other telecommunications company the right to compete with such telecommunications company in

the provision of local exchange telecommunications service until after a public hearing of all parties interested, and a finding by the commission that the public convenience and necessity may require such competing plant. Nothing contained in this chapter shall be held to prevent any telecommunications company from extending its lines within the limits of any city in which it at the time is lawfully operating a local exchange.

**49-21-08.1. Dialing parity - IntraLATA equal access.** Every local exchange carrier shall provide 1 + equal access dialing parity.

**49-21-09. Telecommunications - Connections.** Whenever a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and public convenience and necessity will be subserved thereby, the commission may require that such connection be made and may order that telecommunications be transmitted and transferred by the companies, as provided in this section. When, after notice and hearing in accordance with chapter 28-32, the commission finds that public convenience and necessity require the use by one telecommunications company of facilities or services of another telecommunications company, and that such use will not result in irreparable injury to the owner or other users of such facilities or services, nor any substantial detriment to the facilities or services, and that such telecommunications companies have failed to agree upon such use or the terms and conditions or compensation for the same, the commission, by order, may direct that such use be permitted, and may prescribe reasonable compensation, terms, and conditions. If such use is directed, the telecommunications company to which the use is permitted is liable to the owner or other users of such facilities or services for such damage as may result therefrom to the property of such owner or other users thereof.

**49-21-10. Transmitting telecommunications from other telecommunications companies.** Every telecommunications company operating in this state shall receive, transmit, and deliver, without discrimination or delay, the telecommunications of every other telecommunications company with which a connection has been made.

**49-21-10.1. Excessive charges - Refunds.** When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or reparations, with interest from a date not earlier than two years from when the complaint was filed.

**49-21-10.2. Quality of service - Procedure and remedies.** Any customer, and the commission on its own motion, may complain concerning the quality of service provided by a telecommunications company providing telecommunications services in the state. Any person, and the commission on its own motion, may complain concerning any violation of law or rule or order of the commission. The commission, pursuant to chapter 28-32, will provide notice of the complaint and the time and place of hearing. Whenever the commission finds, after notice and hearing in accordance with chapter 28-32, that the services of a telecommunications company are inadequate, or the company is in violation of a law, rule, or order, the commission may, in addition to the penalties prescribed in chapter 49-07, direct the telecommunications company to take whatever remedial actions are reasonable and necessary to provide adequate service or to bring the company into compliance with the applicable law, rule, or order. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

**49-21-11. Mutual telephone company - Company carrier.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-12. Assessments - Expenses - Sinking fund.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-13. Extension of line and system.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-13.1. Telephone cooperatives - Sale of physical plant - Approval.** No mutual aid cooperative or cooperative association that is a telecommunications company as defined in section 49-21-01 may sell, transfer, or convey, within the period of any single calendar year, physical plant in excess of five percent in value of the cooperative, based upon the most recent audit of the books of the cooperative, unless consent has been obtained by vote of not less than two-thirds of the entire membership of the cooperative cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of the cooperative not less than twenty nor more than thirty days prior to the date of such meeting. Nothing in this section prohibits the transfer of assets in exchange for physical plant of equal monetary value to any public or private person or organization.

**49-21-14. Connections with other telephone systems permitted.** Section 49-21-08 shall not be construed to prohibit any mutual telephone company, corporation, or limited liability company with lines in rural sections from making physical connections with the telephone systems of two or more cities through such lines, as the benefits to its members may merit.

**49-21-15. Physical connections.** Any telephone company operating within a city shall not deny physical connection to any mutual telephone company operating in the community adjoining said city, nor shall any contract between any such companies abridge in any way the rights of either company to extend its lines or to make physical connection with any other telephone company.

**49-21-16. Forfeiture for failure to comply with order.** Repealed by S.L. 1985, ch. 515, § 26.

**49-21-17. Additional definitions.** In section 49-21-18 unless the context or other subject matter otherwise requires:

1. "Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.
2. "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

**49-21-18. Party line - Refusal to surrender - Emergency.** It shall be unlawful for any person willfully to refuse to yield or surrender the use of a party line to another person when such party line is needed by such other person requesting it for the purpose of permitting such other person to report a fire or summon police, medical, or other aid in case of emergency. It shall also be unlawful for any person willfully to ask for or request the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.

**49-21-19. Distributors of telephone directories to print notice therein.** Repealed by S.L. 2003, ch. 403, § 10.

**49-21-20. Penalty.** Any person who shall violate any of the provisions of section 49-21-18 shall be guilty of a class B misdemeanor.

**49-21-21. Fraudulent telecommunications - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.

**49-21-22. Regulatory reform review commission - Appointments - Compensation - Report to legislative council.** Repealed by S.L. 1991, ch. 600, § 17.

**49-21-22.1. Regulatory reform review commission - Appointments - Compensation - Report to legislative council.** Expired under S.L. 1995, ch. 453, § 2.

**49-21-22.2. Regulatory reform review commission - Appointments - Compensation**

**- Report to legislative council.** The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and the public service commission staff providing technical assistance while carrying out their duties.

**49-21-23. Construction of facilities - Cost recovery.**

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred at the request of another telecommunications company, a particular customer, or to comply with a commission order, including any order issued under section 49-21-10.2, for construction, modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:
  - a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
  - b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
  - c. Costs for which some other recovery treatment is specifically provided in federal or state law.

**49-21-24. Prohibited acts - Arbitration.**

1. A telecommunications company may not:
  - a. Discriminate against another provider of telecommunications services by refusing or delaying access to the company's services;

- b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:
  - (1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
  - (2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
  - (3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
  - (4) The facility, feature, function, or capability will enable competition; or
- c. Degrade the quality of access or service provided to another provider of telecommunications services.

2. A claim that a telecommunications company has violated this section may be resolved by arbitration or by a complaint filed with the commission. Arbitration of a claim must be conducted by a single arbitrator engaged in the practice of law under the rules of the American arbitration association. All expedited procedures prescribed by the American arbitration association rules apply. The arbitrator's award is final and binding and may be entered in any court having jurisdiction thereof. A complaint filed with the commission must be referred to the office of administrative hearings for hearing and issuance of recommended findings of fact, conclusions of law, and an order pursuant to chapter 28-32. Each party shall bear its own costs and attorney's fees and shall equally share in the fees and expenses of the arbitration or administrative hearing.

**49-21-25. Competitive local exchange companies.** All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross-subsidization, section 49-21-02.2; price schedules, sections 49-21-04 and 49-21-05; price complaints, section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

**49-21-26. Fees.** Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee, a political subdivision may not impose after December 31, 1998, any fee to recover from a telecommunications company for the use of its right of way, other than a fee for its management costs. If requested by a political subdivision, in order to accomplish a necessary public improvement on the right of way, a telecommunications company promptly shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety. A political subdivision may recover from a telecommunications company only those management costs caused by the telecommunications company activity in the public right of way. A fee or other obligation under this section must be imposed on a competitively neutral basis. When a political subdivision's management costs cannot be attributed to only one entity, those costs must be allocated among all users of the public rights of way, including the political subdivision itself. The allocation must reflect proportionately the costs incurred by the political subdivision as a

**House Industry Business and Labor Committee**  
**Wednesday, March 2, 2005**  
**Testimony (Legislative Summary) of Melissa K. Thompson, Qwest Corporation**  
**Engrossed Senate Bill No. 2216**

**SECTION 1:**

This section amends § 49-02-01.1 to delete the references to § 49-21-08 and § 49-21-24, both of which this bill proposes to repeal and are addressed later in this legislative summary. However, at the end of the presentation of this legislative summary, Qwest will propose an amendment to the bill to remove the language repealing § 49-21-24.

**SECTION 2:**

This section amends § 49-21-01 to eliminate several items from the statutory definition of "essential services". These items are: transmission service lines for coin or pay telephones, measured residence service and measured and combination business service, and nonlisted and nonpublished service. The amendment also makes clear that primary flat rate residence basic service is an essential service. Finally, this section simplifies the statutory definition of "non-essential services", and eliminates a reference to "feature group C", which is obsolete now.

**SECTION 3:**

This section amends § 49-21-01.1 by clarifying what type of directory services are not subject to Title 49.

**SECTION 4:**

This section amends § 49-21-01.3 by eliminating provisions related to price investigations in 1999 and related studies, which have been concluded.

**SECTION 5:**

This section amends § 49-21-01.7 and gives the Public Utilities Commission the ability to accept electronic filings in lieu of hard copies. Also, this section deletes a reference to the regulatory reform review commission, which was disbanded in 2003.

**SECTION 6:**

This section amends § 49-21-02.2 and maintains that telecommunications companies cannot use revenues obtained from essential services to cross subsidize nonessential services. It eliminates the same limitation with respect to nonessential services. Also, this amendment eliminates references to commission requirements concerning separate books of account, cost allocation, and other commission acts.

Of importance with respect to this amendment is the fact that § 49-21-06 provides that any person may file a complaint with the Commission, or the Commission may on its own motion complain and initiate an investigation, of the "reasonableness, fairness or adequacy" of any price for an essential or nonessential service. Section 49-21-06 authorizes the Commission to set aside any "unreasonable," "unfair", or "inadequate" price.

Secondly, as noted by Commissioner Clark in his testimony before the Senate Committee on this bill, as of a few years ago, Qwest's competitors had captured over



40% of the business customers in North Dakota, and that percentage has increased since then. Prices for telecommunications services should be market-based.

**SECTION 7:**

This section corresponds to Section 1. This amendment of § 49-21-10.2 deletes the provisions related to violations and complaints, which now constitute subsection 10.3, and leaves quality of service as a stand alone topic under § 49-21-10.2. Subsection 10.3 is Section 8 of the Engrossed Senate Bill No. 2216.

**SECTION 8:**

This section creates a new subsection numbered 10.3 that duplicates part of a statute that Qwest proposes to amend. Previously, § 49-21-10.2 addressed both quality of service and complaints. To make the statutes clearer and better organized, Qwest has proposed creating this new section to separate the two topics. Subsection 10.3 concerns violations and complaints exclusively. Subsection 10.2 concerns quality of service exclusively.

**SECTION 9:**

Section 49-21-04.1 addresses minimum and maximum rates and notice to the public. Qwest proposes to repeal § 49-21-04.1 because other provisions in the ND Century Code cap the prices for essential services and § 49-21-05 provides for the Commission to require telecommunications companies to make price schedules available to the public.

Section 49-21-08 creates a state prohibition on the unnecessary duplication of exchanges. Qwest proposes to repeal this section because it duplicates and conflicts with federal law. The Telecommunications Act of 1996 provides rural safeguards. This repeal does not affect those safeguards.

Section 49-21-14 is a companion statute to § 49-21-08 and provides that § 49-21-08 shall not be construed to prohibit telecommunications companies from making physical connections. Qwest proposes to repeal § 49-21-14 because it has proposed repealing § 49-21-08 and because § 49-21-14 does not add any substantive meaning to the Century Code.

Section 49-21-15 provides that a telecommunications company within a city may not deny physical connection to other companies or enter into contracts that abridge either company's rights to extend lines or make physical connections. Qwest proposes to repeal this section because it duplicates federal law and is antiquated.

Section 49-21-17 contains definitions that apply to the statutes governing party lines. Qwest proposes to repeal this statute because party lines are no longer used in North Dakota.

Section 49-21-18 addresses party lines. Qwest proposes to repeal this statute because party lines are no longer used in North Dakota.

Section 49-21-20 provides for a penalty for violations of § 49-21-18, which Qwest also proposes to repeal because party lines are no longer in use in North Dakota.

Section 49-21-24 addresses discrimination and provides for arbitration. Qwest proposes to repeal this section because it is duplicative and unnecessary. Section 49-21-07 prohibits discrimination; § 49-21-06 provides for the filing of complaints with the Commission. Federal law provides for arbitration, and parties to a telecommunications interconnection agreement can provide for arbitration by contract.

However, Qwest will propose an amendment at the close of this legislative summary that strikes the repeal of § 49-21-24.

March 2, 2005

Mr. Chairman and Members of the House Business Industry and Labor Committee

Regarding Senate Bill 2216

Today at the hearing on Senate Bill 2216, I asked Qwest to identify the section of law that gave the Commission the authority to take complaints on prices. They asserted throughout the hearing that it is no problem moving services from essential to non essential definition, since the Commission can always consider complaints about unfair prices. Qwest correctly responded that Section 49-21-06 gives the Commission the authority to take complaints on prices for both essential and non-essential services.

However, at the present time, when a service is defined as essential, *Qwest can only raise the price of that service by filing a complaint with the Commission and bearing the burden of proof in the proceeding.* \*

Once a service is defined as nonessential, *Qwest can raise the price of that service at will.*

As you can see, there is a definite difference in price proceedings, **in favor of Qwest**, once a service is determined to be non-essential.

If you have further questions about this issue, please contact me at 328-4497.

Sincerely,

Commissioner Susan Wefald  
North Dakota Public Service Commission

\*An exception to this is that governmentally imposed surcharges and changes are automatically reflected in price changes.

**MARILYN FOSS**

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3-805

March 7, 2004

House Industry Business and Labor Committee  
State Capitol Building  
Bismarck, ND 58505

RE: Senate Bill 2216  
MCI Support for Rep. Iverson amendment

Members of the House IBL Committee:

Last Wednesday at the hearing on SB 2216, Vice Chair Johnson asked me whether MCI had a position on the amendment which was sponsored by Representative Iverson. At that time I had not seen the amendment and so took no position regarding it.

I am writing now to respond to Vice Chair Johnson's question and to inform all committee members that MCI supports the amendment to retain the requirement for the price charged for an unregulated telecommunication service or a nonessential telecommunications service to cover the cost of that service. (Engrossed SB 2216, Page 11, lines 13 through 15.) It may be that the state of competition in the telecommunication industry in the future will be such that this requirement is not necessary, but at the present time the requirement remains good policy and good law.

Thank you for your consideration of MCI's support for the Iverson amendment as well as the proposed amendment to preserve the role of the PSC in adjudicating complaints about alleged discrimination.

Sincerely Yours,

*Marilyn Foss*

Marilyn Foss  
Lobbyist No. 18  
On Behalf of MCI

Quest. 32-05

PROPOSED AMENDMENTS TO ENGROSSED SB 2216

Page 1, line 5, after the sixth comma insert "and", remove the seventh comma, and remove "and 49-21-24"

Page 1, line 19, remove the overstrike over "~~49-21-24,~~"

Page 12, line 13, after the first comma insert "and", remove the second comma, and remove "and 49-21-24"

Renumber accordingly

3-7-05



March 7, 2005

Representative George Keiser  
House Industry, Business & Labor Committee  
600 E Boulevard Ave.  
Bismarck, ND 58505

RE: SB 2216

Dear Chairman Keiser:

On behalf of the Greater North Dakota Chamber of Commerce, please accept this letter to support Senate Bill 2216.

SB 2216 deregulates what are already competitive services like lines sold to businesses. Regulating only one company when it comes to these types of services stifles investment in new technology in North Dakota. As we understand it, customers and the Commission still retain the ability to bring price complaints.

This bill also cleans up several outdated sections of the statute to reflect the current business environment for telecom companies operating today. It also repeals nine outdated sections of law which are no longer applicable, outdated or somehow run contrary to the Federal Telecom Act of 1996.

We look forward to your favorable consideration of SB 2216. Please let me know if I can be of assistance to you regarding SB 2216.

Thank you,

David Straley



THE CHAMBER

[www.bismarckmandan.com](http://www.bismarckmandan.com)

March 3, 2005

The Honorable George Keiser  
Chairman, House Industry, Business and Labor Committee  
600 E. Boulevard Ave.  
Bismarck, ND 58505

RE: Senate Bill 2216

Dear Representative Keiser:

The Bismarck-Mandan Chamber of Commerce would like to express its support for the passage of SB 2216. This bill, relating to telecommunications regulation:

1. Deregulates what are already competitive services like lines sold to businesses. As we review the business environment today, it is apparent that businesses and consumers have more than one choice when it comes to purchasing telecommunications services.
2. This bill cleans up several outdated sections of the statute to reflect the current business environment for the telecommunications companies operating today. For example, the bill will remove transmission service lines for coin phones from the definition of essential services to account for the on-set and continued growth of wireless technology.
3. The Bill also repeals outdated sections of law that are no longer applicable, outdated or somehow run contrary to the Federal Telecom Act of 1996.

The Bismarck-Mandan Chamber of Commerce represents more than 1,000 businesses in the Bismarck-Mandan area. Our mission is to enhance the business environment and economic base of the community.

We would ask for your favorable consideration of Senate Bill 2216. If you have further questions, please feel free to contact the Chamber at 701 223 5660

Sincerely,

Kelvin L. Hullet, President  
Bismarck-Mandan Chamber of Commerce



*Presentation to the*  
**NORTH DAKOTA HOUSE INDUSTRY, BUSINESS, AND LABOR COMMITTEE**  
on Senate Bill 2216, First Engrossment

**March 2, 2005**

INCORPORATED IN 1996, INTEGRA TELECOM IS A FULL-SERVICE PROVIDER OF VOICE AND DATA TELECOMMUNICATIONS SERVICES DOING BUSINESS IN NORTH DAKOTA SINCE 2000.

- **North Dakota Offices:** Fargo and Grand Forks
- **North Dakota Employees:** 12
- **North Dakota Customers:** approximately 1,300 small to medium sized businesses
- **North Dakota Access Lines:** approximately 6,000 (*an average of 4-5 lines per business*)
- **Integra Telecom Headquarters:** Portland, Oregon
- **Integra Service Territory:** five states, including North Dakota, Minnesota, Oregon, Washington, and Utah.
- **Total Integra Employees:** approximately 600
- **Total Integra Investment in Plant and Infrastructure:** \$156 million
- **Four consecutive years - Integra Telecom has been in the Inc. 500, Inc. magazine's listing of fastest growing privately held companies in America.**

**PROBLEMS WITH SENATE BILL 2216, FIRST ENGROSSMENT:**

- Page 11, lines 13-16: The sentence in 49-21-02.2 requiring above cost pricing must be retained, not deleted.
- Page 1, lines 5 and 19, and page 12, line 13: 49-21-24 of the North Dakota Century Code must not be deleted. This is a basic anti-discrimination provision that is found in every state and is essential to Integra's success. Qwest continues to be a monopoly provider of loops and transport in North Dakota.

Presenters

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## Integra Telecom No. 344

**108.2% Annual Growth 541% Total Growth**

**2003 Revenue: \$120.9 million**

**Employees: 617 Portland, Oreg.**

How has Integra Telecom managed to make the Inc. 500 for the fourth time? "By marrying what we are good at with a tremendous unmet need in the marketplace," says Dudley Slater, CEO of Integra. Integra delivers a full range of customized telephony and Internet products to small and medium-size businesses over its own multimillion-dollar network. He says businesses turn to Integra because they are frustrated by the poor customer service they receive from larger carriers.

**Company Profile** Integra Telecom, Inc. is a fast-growing, integrated communications carrier committed to providing a high-quality service alternative to the incumbent monopoly Baby Bell telecom providers. Their services include local dial tone, long-distance, and high-speed Internet and data services.

Thousands of small to mid-sized businesses in the upper Midwest, Mountain, and Pacific Northwest regions embrace the company's practice of providing a local, user-friendly relationship for their telecommunications needs. Integra enjoys one of the industry's leading customer retention rates and customer satisfaction rankings.

Integra employs approximately 600 people and serves more than 220,000 access line equivalents. Integra is free cash flow positive and became the first facilities-based competitive local exchange carrier (CLEC) to repay in full all of its original debt funding since the downturn in the capital markets in 2000.

**Testimonial** "Through disciplined management, business model innovation, efficient use of capital, and consistently improving financial performance, Integra continues to outperform its peers. Integra has proven itself to be a leader for other companies to follow in the competitive telecommunications industry."

Carlyn Taylor, Senior Managing Director, FTI Consulting

# Inc. 500

### About the Inc. 500

Currently in its 23rd year, the Inc. 500 is *Inc.* magazine's renowned annual ranking of the fastest-growing privately held companies in the United States. These turbo-charged enterprises are the pulse of the real economy. They are fast-growth success stories that cross a wide range of sectors from consumer products, financial services and retail to high-tech hotbeds such as software, computers and electronics, and telecom. Microsoft, Timberland, Oracle, The Sharper Image, E\*Trade, and Domino's Pizza are just a few of the corporate superstars that have graced the Inc. 500 list.

*integra*  
TELECOM

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## Senate Bill 2216

**Presented by:** Susan Wefald, Commissioner  
Public Service Commission

**Before:** Industry Business and Labor  
Honorable George Keiser, Chairman

**Date:** March 2, 2005

### TESTIMONY

Mr. Chairman and committee members, I am Public Service Commissioner Susan Wefald. I am appearing today to discuss concerns about certain provisions of Senate Bill 2216. There are a number of sections of this bill that I support and some sections on which I am neutral while I learn about concerns of different stakeholders in the industry. However, I have serious concerns about important services that are being eliminated from essential services in section 2, and a probable price increase for residential customers in section 4, and therefore I cannot support this bill at this time. The comments that I am making today reflect my own thinking on this bill.

Once again we have a chance to define exactly what telecommunications services we wish to have defined as "essential." These services are defined in 49-21-01 (4). The changes proposed

are in Section 2 of this bill, on page 2. The main impact of being defined as "essential" is that there is price regulation for all of these services for QWEST customers and price regulation for switched access for QWEST and Telephone Cooperatives and Independents listed in 49.02.01.1.

First, I have concerns regarding eliminating definition (b): "The transmission service line for a coin or a pay telephone." This would only affect QWEST and its customers. At the present time, all pay telephones and the rates that they charge are deregulated. The owner of the pay phone can determine how much to charge per call, and arranges for long distance services from the pay phone. At the time all of this was deregulated, the legislature determined that it was important to keep the line that extends from the telephone office to the pay phone as an essential service. At the present time, the tariffed charge for a pay phone line is \$11.74. According to information QWEST filed with the Commission as part of its 2004 annual report, QWEST has <sup>265 - today</sup> 1063 access lines to pay phones. QWEST representatives have told me that with cellular service available, pay telephones are really no longer necessary. I disagree with that. Not everyone has a cellular phone, and in some areas of

the state, there is not good cellular coverage. It is still important to have pay phones in locations for safety and the public good. If (b) remains in place, Qwest has the responsibility to provide a line for a pay phone if the Commission determines that a pay phone is needed at a certain location. We have not used this power in the past, when pay phones were located in many places, but it is a good tool to have in our "tool kit" at the present time.

Recommendation: Keep the transmission service line for a coin or pay telephone as an essential service.

Next please look at the services defined in (c). In the proposed bill, the only service which would remain essential is one flat rate line coming into a residence. One service which is being deleted is "measured service." At the present time, customers who do not use a lot of telephone service have the ability to sign up for measured service for \$13.00 a month, which allows them to use 300 minutes a month of outgoing local calls and unlimited incoming calls. Of course, the customers have to also pay all taxes and surcharges on their phone bills. Why is this service being eliminated as an essential service, when it may be the only phone line that some customers

have coming into their home? Recommendation: leave the primary line for measured service as an essential service.

Also, in (c) please take a look at business and residence service. A few days ago I looked at the definition of Combination Residence/Business Rates. See attachment A. **It includes, among other uses, service provided at all churches, elementary, and secondary school locations.** At the present time, the rate for Combination Residence/Business is the same as the Residential Rate. (\$17.57) Yesterday, Qwest told me that they have 1400 users of this rate, which include churches and elementary and secondary school locations. I have been told that many farms and ranches used to be on this rate, and that they have been changed to the "residential" rate listed in the tariff. However, in the future, if this business and residential rate is eliminated, QWEST will be able to charge what they wish for this service, and even the primary line for these customers will not be price regulated. Recommendation: leave the primary line for combination business and residence customers as an essential service.

All business service is also being eliminated from this definition of essential telecommunications service in (c). I have no concerns

with this definition for large businesses in the large cities of North Dakota. However, I would like you to think about maintaining at least two primary lines for business as an essential service. This would allow the small businesses in our small North Dakota towns served by QWEST (such as Gardner and Belfield) who may not receive much attention from competing local service providers, to continue to have affordable rates. At the present time, the monthly basic business rate on file for a customer in Gardner is \$30.94 without EAS and \$32.75 with EAS, the same as for a business customer in Fargo. The rate for a business customer in Belfield is \$28.36 without EAS and \$34.30 with EAS, the same as for a business customer in Bismarck. At the present time, QWEST can lower its prices for essential services, but it cannot charge more than the current rates.

Recommendation: consider at least 2 primary flat rate lines for business customers as essential telecommunications service.

Now please look at (4)(c)(2). Another concern is the proposed elimination of "nonlisted and nonpublished service" as an essential service. (Line 25, page 2) Privacy is an important concept to people when it comes to their telecommunications services. North Dakota QWEST customers should be able to continue to pay a reasonable

amount if they wish to keep their number out of the phone book, but (1) available if someone calls directory assistance and asks for their number (non-listed) or not available at all to the public (non-published). With all of the concern about privacy today, it is important that the Commission have some jurisdiction in this area.

Recommendation: Do not eliminate nonlisted and nonpublished service as essential services.

Next, please look at Section 4 ( page 7). There are two concerns I have with this section. The first is that the proposed language in the bill allows QWEST to raise its price for basic local service to \$18.00, which is a 42 cent increase. (line 10, page 8) At present, the price is set at \$17.5794. The Commission, following principles set by the legislature in 1999, determined a price for residential service in 2000 and the price has been recalculated since that time following state law. Since QWEST reported close to 100,000 residential customers in its 2004 annual report, reflecting # of customers at the end of 2003, this proposed increase could cost QWEST residential customers \$500,000 a year. QWEST's rate of return for all services in North Dakota has been excellent in recent years. Recommendation: The legislature should consider a lower



number than \$18.00 in section 4, such as the present \$17.5794 or less. The Senate passed an amendment for this section which eliminated the word "increased" on page 8 line 11. This shows that they were trying to address this problem, but this amendment alone does not solve this problem.

There is one more concern I would like to share with you. One section of the law which QWEST proposes to eliminate is 49-21-24. In 1999 this section was added by the legislature to Chapter 49. This section has been used at least two times, since enacted, by competing local telephone carriers to bring complaints to the Commission. Since it seems to be helpful to some carriers, it may be premature to eliminate it from this chapter.

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

*Wefalls  
Amendments  
→*

## Suggested Amendments

Page 2, line 17, remove the overstrike over "The transmission service line for a coin or pay telephone;"

Page 2, line 20 and 21, remove the overstrike over "or measured residence, business and combination business and"

(Note: This amendment would keep **one** primary line as an essential service for all customer categories that presently exist. This would be very helpful, since it would enable all customer groups to pay, for the primary line, no more than the tariff rate.)

Page 2, line 25, remove the overstrike over ", including non-listed and nonpublished service

(Note: Keeps nonlisted and nonpublished service as essential services.)

Page 8, lines, 12 and 13, remove "eighteen dollars." Insert, "seventeen dollars and fifty-eight cents."

(This amendment would keep the price of the one primary line into residential homes the same as it is at present - \$17.58)

Page 12, line 13, overstrike "49-21-24"

(This amendment would keep in place a section of law which is used by competing local telephone carriers to bring complaints before the Commission.)

## Senate Bill 2216

### ***Qwest Small Customers Need You to Make Amendments to this Bill***

Senate Bill 2216 deregulates prices on all direct customer services except for **one line going into a private residence**. (page 2, line 20)

Senate Bill 2216 allows Qwest to raise rates at will for business customers, schools, churches, senior citizen centers, non-profits. These organizations may now be customers under either Qwest's business tariff, or its residence/business tariff. **Small business customers, schools, churches, senior citizen centers and non-profits would no longer have even one line which is price capped.** (page 2, line 20, 21)

**Senate Bill 2216 allows Qwest to raise rates at will for non-listed and non-published service.** Privacy is an important concept to people when it comes to their telecommunications services. North Dakota Qwest customers should be able to continue to pay a reasonable amount for privacy services and the Commission should continue to have some jurisdiction in this area. (page 2, line 25)

At the present time, charges at pay phones are deregulated, but the legislature left the line to pay phones an essential service. This should be left in the law so that Qwest has the responsibility to provide a line for a pay phone if the Commission determines that a pay phone is needed at a certain location. **Not everyone has cell phones, and pay phones are still needed in key locations.** (page 2, line b)

Even on the **one line going into a private residence** which remains an essential service, **SB 2216 allows Qwest to increase its monthly rates** from \$17.48 to \$18.00 a month. (page 8, line 12 and 13)

#### **Some thoughts to consider:**

Is there sufficient competition in the Qwest service territory to keep prices low? Qwest still has a significant share of business customers. Even though business service is an essential service at present, Qwest can lower prices at will, it just cannot raise them at will.

Qwest has had excellent rates of return in recent years in North Dakota.

Large mergers are on the horizon to recreate regional "Ma Bells." Should we be deregulating most of Qwest's remaining direct customer services at this time?

*A Quote on my desk: Government will not need to protect the interests of the large, strong and articulate players in the market, and it should not stand back and assume that benefits of competition will trickle down to all users. If government has any role at all, it is to guard the interests for those who are too busy, too preoccupied, too small or too politically insignificant to achieve what the more fortunate are able to achieve. – Dan Fessler*

Distributed by Public Service Commissioner Susan Wefald, March 9, 2005.



# Public Service Commission

## State of North Dakota

### COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

March 11, 2004

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Honorable George J. Keiser, Chairman  
House Industry, Business and Labor  
600 East Boulevard Avenue  
Bismarck, ND 58505

Re: Engrossed Senate Bill 2216

Dear Chairman Keiser:


At Representative Kasper's request, the Commission has reviewed the 8 March 2005 e-mail from representatives of Integra regarding the proposed changes in Section 6 of Engrossed SB 2216. That e-mail generally asserts that by deleting the last sentence of section 49-21-02.2, page 11, lines 13-15, Qwest can "use the one regulated service (one residential line at \$18 per line) to support its entire business and subsidize all its other services." You asked the Commission to respond to the e-mail with our interpretation of these proposed changes.

Deletion of the last sentence of the section, page 11, lines 13-15, would allow Qwest to sell certain services below cost. However, because of the prohibition found earlier in that section against using the revenues from essential services to subsidize other services, Qwest could not support any of the nonessential services that it chose to sell below cost with any revenue from the primary residential line. The \$18 that I would pay Qwest, since I buy only plain old telephone service, could not be used to support Qwest selling business service, or second and third line residential service, below cost. If Qwest chose to sell these services below cost it would have to subsidize them with revenues from other nonessential or unregulated services.

Thank you for the opportunity to provide this information. If you have any questions, please do not hesitate to call or e-mail.

Sincerely,

  
Susan E. Wefald  
Commissioner

  
Tony Clark  
President

  
Kevin Cramer  
Commissioner

cc: Rep. Nancy Johnson, Vice Chair    Rep. Donald L. Clark    Rep. Elwood Thorpe  
Rep. Donald D. Dietrich    Rep. Mark A. Dosch    Rep. Glen Froseth  
Rep. Jim Kasper    Rep. Darrell D. Nottestad    Rep. Dan J. Ruby  
Rep. Donald Vigesaa    Rep. Bill Amerman    Rep. Tracy Boe  
Rep. Mary Ekstrom

2216

3.2.05

Good morning Chairman Keiser and Members of the House IBL Committee. For the record my name is Ron Iverson. I represent Southwest Fargo and part of West Frago.

SB 2216 is a good bill I think you should give it a DO Pass recommendation but not until you make two small changes.

Rep Boehning's Amendments are fair and consumer friendly. Here in North Dakota we love competition. And that's what these amendments are all about.

By re inserting 49-21-24 you make sure that there cannot be discrimination among telecom companies. No one likes to discriminate and I am sure that includes members of this committee.

With the amendments on page 11 you insure that there is a fair and level playing field for all companies and not just the biggest player.

What we are asking the committee to do is not groundbreaking it is fair. Fair to Qwest and fair to Integra and fair to all of the other Telecom companies in the state.

Finally, with these amendments the CONSUMER wins. By having competition we all know that service gets better and the price for that service goes down.

Chairman Keiser and members of the House IBL committee please adopt these amendments and give SB 2166 a do pass.

I will stand for any questions.