

2009 SENATE FINANCE AND TAXATION

SB 2040

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2040

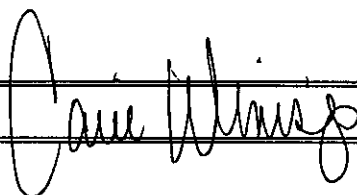
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 01/13/2009

Recorder Job Number: 6876

Committee Clerk Signature



Minutes:

**Chairman Cook:** Opened the hearing on SB 2040

**John Bjornson, Legislative Council:** Industry, Business, and Labor Interim Committee was assigned a study to look at the wireless industry and determine the impact of wireless service on business development, and the committee took a little broader approach in its view. The committee went into great depth into finding out the actual impact. It became obvious to them that further development of the industry in the state would enhance business opportunities, particularly in the rural areas. The committee had representatives of wireless carriers and asked what types of things would encourage development in the state, and one of them said that tax exemptions for equipment that would be used in infrastructure development. That is where the bill draft came from. It would not only apply to the wireless industry, but to the entire telecommunications industry. This is a general tax exemption for all equipment used in telecommunications infrastructure development. Essentially it is real clear as to what it states. (Refers to bill). The committee intentionally left the bill draft a little vague in not defining telecommunications infrastructure development; there was some feeling that it was a little difficult to get a handle on, but they wanted to allow for some flexibility to the Tax

Commissioner to determine what would be appropriate. In respect to the wireless industry, the committee wanted it to focus on towers and things along those lines, equipment, switches, etc.

**Chairman Cook:** The ambiguity in the bill that you talk about, is that why you see in the fiscal note, I see the work assumed a lot?

**John Bjornson:** I assume so. We heard a lot of with respect to the wireless industry, and the larger carriers that they spend 20 million dollars in development a year. I assume that that is where they got their figures for the fiscal note.

**Chairman Cook:** Were you including cable when you mentioned all telecommunications providers?

**John Bjornson:** The interim committee did not specifically discuss cable. I believe that would follow what their expectations were.

**Chairman Cook:** When I read the physical note, it says that assuming that it does not.

**John Bjornson:** I am not sure about that, again we did not specifically address that.

**Senator Oehlke:** Who suggested that this would be a good thing to do?

**John Bjornson:** The committee's Chairman and Representative Berg asked us to invite representatives of wireless carriers to the meeting for the committee and after hearing some of the testimony, made a specific request to the wireless carriers to bring to the committee suggestions for areas that are developed in the state by their industries. One of the suggestions that were provided by the representatives of at least one wireless carrier was sales tax exemptions.

**Senator Oehlke:** Has this been suggested before? I don't find cell service that difficult any more for many areas.

**John Bjornson:** Last session there was discussion of similar content, and it lead to the feeling that ways to encourage locating business in the state.

**Vice Chairman Miller:** Do you know of any business that would be put at a disadvantage by not qualifying for these exemptions? Or at a disadvantage because of this?

**John Bjornson:** I don't believe so.

**Senator Anderson:** Do think this can be construed that if equipment became obsolete and replaced that they would be exempt.

**John Bjornson:** I believe so based on line 10 of the bill draft and the way the word "expansion" is used.

**Todd Kranda, Kelsh Law Firm, and Verizon Wireless Lobbyist:** See Attachment #1 for testimony in support of the bill.

**Chairman Cook:** Is it your expectations of this bill that it includes not just wireless, but landlines and cable companies.

**Todd Kranda:** I think it is a very broad bill, and we did submit a little different draft, and with Mr. Bjornson, we were able to find a way to insert it into the code.

**Chairman Cook:** What is it that you expect to be tax exempt?

**Todd Kranda:** It is the towers, the infrastructure to create the system. There are pockets, areas of rural ND that don't have coverage.

**Chairman Cook:** Are replacement parts included? Do you think the bill is clear on that?, Does it need to be clarified?

**Todd Kranda:** I think so. If you look at some of the info and line 10 of the bill.

**Senator Oehlke:** Is there a guarantee that the expansion to areas of no service will happen?

**Todd Kranda:** The incentive is to make it more economically feasible to reach out to the less densely populated areas. We want the incentives that many other states have.

**Senator Oehlke:** It is great for us to look good, but where is the guarantee?

**Todd Kranda:** I don't think there can be a guarantee, but the incentive would be there.

**Senator Hogue:** Was there discussion of a sunset clause in the exemption? It does seem fairly broad. When wireless companies get the contract, they have an obligation to build out the territory. I am troubled by the idea that we need to incentivize where there is already an obligation.

**Todd Kranda:** I attended the majority of the meetings; I don't recall a sunset clause being discussed.

**Senator Triplett:** Do you have a map of the current coverage area in ND?

Todd Kranda: I do not have one, but I believe it is online at the PFC website.

**Senator Dotzenrod:** If there is a fiber optic line placed, would that be exempt?

**Todd Kranda:** If Tax Commissioner defines it being within the telecommunications application, that I believe so.

**Senator Dotzenrod:** If you look at the exemptions in the state law, there is a long list, if you look at the justification for them; some of them are for necessities, and others are for a competitive advantage. In this case, is it going to make a difference? Will it be used?

**Todd Kranda:** Stacey Sprinkles outline with my testimony I believe answers that.

Senator Triplett: Do carriers try to find existing locations for adding/expanding equipment for service. Is that option less expensive?

**Todd Kranda:** Yes, one tower costs \$500,000 to \$1,000,000. Co-existence on a tower helps reduce the cost, but there can be issues with that.

**Senator Triplett:** When you say tower, you mean location, not just an actual tower?

But, I guess, yes, I took the information that was in the minutes from the interim committee, and he said that there are roughly 150 – 160 towers and 50 – 60 more sites to saturate. I believe that means that there are that many locations.

**Jeb Oehlke, ND Chamber of Commerce:** See attached #2 testimony in support

**Kent Buckensderfer, Quest Public Policy Director:** here in support of the bill.

Although Quest no longer sells wireless, we do resale the Version product, and we were delighted that the bill included telecommunications infrastructure in the sales tax exemption.

**Chairman Cook:** Do you believe this bill covers cable? Or should it?

**Kent Buckensderfer:** I believe cable companies would want to interpret it that way.

**David Crothers, ND Association of Telecommunications Cooperatives:** We are in support of bill and this legislation is important for the telecommunication industry. Technology changes and we may have people coming in to provide telecommunications and this may be of help to them. It also provides competitive neutrality.

**Chairman Cook:** How do you explain when I look at a Fiscal Note and there are different assumptions than what I have heard from people here? How do we straighten out what is covered?

**David Crothers:** In what respect? I do not know why, as it is written, it is open to anyone providing telecommunications services.

**Chairman Cook:** I disagree with that. Maybe it needs to be modified.

**David Crothers:** It appears some answers need to be gotten on that.

**Senator Triplett:** Isn't it true that all of these companies pass on costs to their consumers? I am trying to understand what the point is here.

**David Crothers:** I believe the answer is to be able to meet the needs of the customer at the end of the line and as quickly as possible. There are areas that cost does not get covered for some areas. There is a fund that covers high costs.

**Senator Triplett:** Do we need to target this more precisely for the rural areas or the ones that need it? This could be very expensive to the state once it is revised.

**David Crothers:** You would literally be talking about neighborhoods in that case, and secondly the demands increase from the customer as far as what they want to use.

**Thomas Kelsh, Kelsh Law Firm:** in support of this bill. I would like to answer any questions you might have of me.

**Senator Dotzenrod:** If a tower is built someplace where there isn't much service and it is built by a company, and then another company comes along, what happens?

**Thomas Kelsh:** Sometimes companies will share a tower if they can reach an agreement or they will put up their own tower.

**Senator Dotzenrod:** Do we have situations in the state where they cannot work out an agreement, and you end up with a number of towers in one area?

**Thomas Kelsh:** I think that is probably true.

**Vice Chairman Miller:** Is there a limit to the number of towers that can be in one area?

**Thomas Kelsh:** Tony Clark can answer that question.

**Tony Clark, ND Public Service Commission:** We have not taken a position on this issue, but I can answer any questions you might have. We did participate in the interim committee discussion, and assisted with some information provided. In response to Senator Miller's question, the FCC gives licenses for portions of the spectrum, and companies to vary to how they allocate their spectrum rights. The companies cannot interfere with each other, but they can build as many as they want within their area given.

**Vice Chairman Miller:** If they purchase rights to the entire state of North Dakota, then can they build towers wherever they want?

**Tony Clark:** Within the context of the spectrum. There are some issues that interfere with certain things like air space, etc.

**Senator Triplett:** If we do this across the board, what is the benefit?

**Tony Clark:** It is a competitive industry, this would help with some of the costs of doing business, and that is money that they will use for growth, etc. These are not costs passed onto the consumer. A large portion of the stimulus money coming out of Washington DC has been targeted to the telecommunications infrastructure investment. It would be more dollars to expand service with the exemption.

**Vice Chairman Miller:** How many signals can exist on the spectrum?

**Tony Clark:** I am not sure I have the exact answer. It is a limited resource.

**Senator Dotzenrod:** If we encourage this bill, are we providing a revenue generator?

**Tony Clark:** It is a fair observation. Usually the telecommunications industry is a big revenue generator.

**Senator Triplett:** You mentioned incentives to businesses with this exemption, what are they?

**Tony Clark:** Most of the ones discussed by the interim committee were on the negative tone. You want a positive tone. We found that a tax break would be a good way to offer an incentive and make it a level playing field.

**Senator Triplett:** Will this give ND a competitive advantage to North Dakota?

**Tony Clark:** We are trying to do just that. We want to remove hurdles. Many states provide this kind of tax break, either specific or a general sales tax break.

**Myles Vosberg, Tax Commissioners Office:** in reference to the fiscal note; I believe that the biggest issue is in reference to cable. We assumed that that was not included, and that ties to the language in line 9 of the bill where it talks about property used "exclusively" in constructing telecommunications.

**Chairman Cook:** I see that as well. Do you think that the bill is clear as far as whether it is replacing parts or building something new?



**Myles Vosberg:** For me, as long as it is improving the network, it would qualify as expansion.

**Chairman Cook:** Closed hearing in SB 2040.

## 2009 SENATE STANDING COMMITTEE MINUTES

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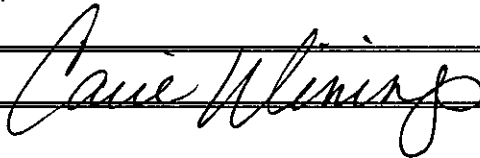
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7821

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened the hearing on SB 2040.

**Senator Hogue:** I have drafted amendments that addresses when the sales tax exemption would be applicable. The testimony I heard was that the purpose of the bill was to encourage investment in infrastructure in areas where there wasn't adequate coverage. The amendment would limit the exemption to area in which outside the city limits of cities with populations of 6,000 or more. So the telecommunications companies that are updating their network or improving a tower in those cities would not get the exemption; only if they are improving service outside those areas. I believe that SB 2040 as written was too broad.

**Chairman Cook:** We will have other amendments, and maybe we should act on these together. The other question I had, in reading this over, I think it may do the opposite.

**Discussion:** There was discussion between Chairman Cook, Senator Hogue, and Senator Oehlke on the terminology of the amendment presented on city limits being included and what it means.

**Vice Chairman Miller:** One concern I have is the towers that are outside the city limits that would still apply to the cities over 6,000.

**Senator Hogue:** The bill as written, there is a definition for telecommunications, and that would include all the land line companies, all the wireless companies, and everywhere they did. These companies are continually updating their networks to change out old copper and put in fiber, and I don't feel that is the type of transaction we should be exempting, it should be more targeted towards improving service in rural North Dakota. The bill as written basically exempts the entire industry from paying sales tax.

**Senator Triplett:** Did you have any conversation with anyone in the tax department about what this might do to the fiscal note?

**Senator Hogue:** I didn't.

**Senator Triplett:** It should reduce it significantly.

**Senator Hogue:** It will.

**Senator Triplett:** How many cities are over 6,000?

**Senator Anderson:** I believe it is 13.

**Chairman Cook:** Asked someone to have the tax department look at this.

**Dan Rause, Tax Department:** We did share some concerns that there were a number of phrases used in the bill that do not have definitions. One of them is telecommunications? "infrastructure". In getting that defined, we would better be able to administer the law.

**Chairman Cook:** These amendments were handed to us from the industry; you had no input in drafting them.

**Dan Rause:** I offered our services and did not hear from them again. We would be willing to work with the industry to help refine these definitions.

**Chairman Cook:** We will revisit the bill this afternoon.

Closed hearing on SB 2040.

## 2009 SENATE STANDING COMMITTEE MINUTES

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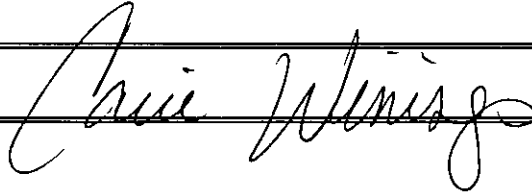
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: 8510

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2040.

**Todd Kranda, Verison Wireless:** Appeared to explain proposed amendments (Attachment #1 and #2); Proceeded to walk through the amendments.

Myles Vosberg, Tax Department: Appeared to answer questions by the committee.

**Chairman Cook:** I have questions on the fiscal note. I see the word assumed, it appeared about 3 times. Are you still assuming that, or do you know that?

**Myles Vosberg:** Based on the discussions during the time of the amendment, you will notice some language there in the amendment that says to be exempt, potential personal property must be incorporated into telecommunication service infrastructure owned by a telecommunications company. As long as it is owned by the telecommunications company.

**Chairman Cook:** That statement could come out of the fiscal note?

**Myles Vosberg:** Yes.

**Chairman Cook:** the next statement is assumed that purchases by cable television systems that carry communications in their lines also might qualify, what is the status of that assumption?

**Myles Vosberg:** With the new language now we all believe that cable companies are included.

**Chairman Cook:** Cable companies are?

**Myles Vosberg:** We have calculated an additional \$400,000 for the biennium because of the addition or our incorrect assumptions of cable companies.

**Senator Triplett:** Are cable companies different than cable service or am I reading this different?

**Myles Vosberg:** The providing of cable TV service is not defined as telecommunication service, but a cable television company can provide telecommunication service.

**Senator Triplett:** To the extent that they are providing this service.

**Myles Vosberg:** Correct.

**Senator Anderson:** I am guessing that the reduction to the state general fund, and the state aid distribution fund would be from what it currently is; it is not on new construction?

**Myles Vosberg:** There is no exemption in place at all now, so it would be any construction that is in progress for the next biennium that is included in the fiscal note.

**Senator Anderson:** Would it reduce what is going in the general fund and the state aid fund right now?

**Myles Vosberg:** Yes, it would. Assuming that this construction, there is always a question of whether this encourages more construction or not. Assuming this construction would be done anyway, it would reduce.

**Senator Triplett:** You had some numbers for the revised fiscal note, could you repeat those?

**Myles Vosberg:** We have calculated that the additional loss of revenue would be \$400,000 for the biennium, and the general fund would be \$4,738,000, and \$412,000 for the other funds.

**Chairman Cook:** there will be a new fiscal note?

**Myles Vosberg:** Yes if you want one.

**Discussion:** A discussion occurred between Myles Vosberg and Chairman Cook over Senator Hogue's amendment and whether that was administrable, as well as whether or not it would be in refund.

**Myles Vosberg:** See attachment #1 for a proposed amendment. Explains the amendment.

**Senator Dotzenrod:** On the original bill, line 9, the work exclusively was used; I thought that was a benefit to the tax department. Does that create problems with administering?

**Myles Vosberg:** By taking it out it makes it more administrable, it does not create any problem.

**Chairman Cook:** Have we taken a good look at all of the telecommunication taxes that are paid by the consumer paid in North Dakota?

**Myles Vosberg:** I do not know that there has been an interim study on that.

**Chairman Cook:** Could you work with Walstad and draft a study resolution that would direct the legislative council to consider a study during the next interim of telecommunication taxes relative to the degree that they are discriminatory, relative to the fairness, relative to challenges that we are all aware of with 911 taxes?

**Myles Vosberg:** I will check with him.

**Chairman Cook:** I think that you can put the rest of the language together.

**Myles Vosberg:** We will work on that.

**Todd Kranda:** See attachment #2 for a proposed sunset amendment. We think that it is important to move forward with this for at least the next two years and look at it again.

**Chairman Cook:** We have before us everything, amendments, sunset, Senator Hogue's suggestion, what are your wishes?

**Senator Triplett:** My preference would be to see formal amendment drafted that included the amendments we have received before we vote. Is that asking too much?

**Chairman Cook:** No, I think I can put it together in my mind.

**Senator Triplett:** Moves the 2 pages of amendments, the sunset, and the study.

**Vice Chairman Miller:** Seconded.

**Chairman Cook:** Discussion? We had a discussion on Senator Hogue's proposal and determined that it would be a challenge.

**Senator Triplett:** The tax department clearly stated that it would be difficult.

**A Roll Call vote was taken on the amendments: 7 yeas, 0 nays.**

**Senator Triplett:** Motioned for a Do Pass As Amended and Re-Referred to Appropriations.

**Senator Dotzenrod:** Seconded.

**A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.**

**Senator Triplett will carry the bill.**

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2040


Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/04/2009

Recorder Job Number: 8663

Committee Clerk Signature



Minutes:

**Chairman Cook:** Reopened discussion on SB 2040. See Attachment #1 for Amendments brought for review. Asked committee to look at and approve.

**Senator Triplett:** Will Legislative Council accept the language on the sunset clause?

**Chairman Cook:** I believe that is the requirement. Had intern check with legislative council.

The discussion was suspended waiting for an answer.



**FISCAL NOTE**  
**Requested by Legislative Council**  
02/09/2009

Amendment to: SB 2040

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$4,738,000)	(\$412,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2040 provides a sales and use tax exemption for expanding or constructing telecommunications infrastructure. It also provides for a Legislative Council study.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, Engrossed SB 2040 is expected to reduce state general fund and state aid distribution fund revenues by \$5.15 million in the 2009-2011 biennium. This is based on historical use tax collections remitted by telecommunications providers, and includes cable companies that provide telecommunications services.

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

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

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

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/12/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/08/2008

Bill/Resolution No.: SB 2040

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			(\$4,370,000)	(\$380,000)		
Expenditures						
Appropriations						

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2040 provides a sales and use tax exemption for expanding or constructing telecommunications infrastructure.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, SB 2040 is expected to reduce state general fund and state aid distribution fund revenues by \$4.75 million in the 2009-2011 biennium. This is based on historical use tax collections remitted by telecommunications providers.

It is assumed that telephone systems installed into new buildings do not qualify for this exemption. Additionally, it is assumed that purchases by cable television systems that carry communications in their lines also do not qualify. Our assumptions are that this exemption applies to infrastructure purchases made primarily by telecommunications service providers.

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

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

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

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	12/31/2008

PROPOSED AMENDMENTS TO SENATE BILL NO. 2040

Page 1, line 11, after "chapter" insert "if that property is installed outside the city limits of any city with a population of six thousand or more"

Renumber accordingly

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. : 2012

**Senate Finance and Taxation**

Committee

☐ Check here for Conference Committee

2 page of amendments  
sunset & study

Legislative Council Amendment Number

### Action Taken

☐ Do Pass☐ Do Not Pass☐ Amended

**Motion Made By**

Triplet

### Seconded By

Miller

[illegible]

**Total: Yes**

**Yes**

7

No

0

**Absent**

## Floor Assignment

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

Date: 02/03/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. :

2040

Senate Finance and Taxation

Committee

☐ Check here for Conference Committee

Re-Refer to Appropriations

Legislative Council Amendment Number

Action Taken

☒ Do Pass

☐ Do Not Pass

☒ Amended

Motion Made By

Triplet

Seconded By

Dotzenrod

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes

7

No

0

Absent

0

Floor Assignment

Senator Triplett

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

**REPORT OF STANDING COMMITTEE**

**SB 2040: Finance and Taxation Committee (Sen. Cook, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2040 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "two new subsections to section 57-39.2-01 and"

Page 1, line 2, after "to" insert "the definition of telecommunications company and telecommunications service and to"

Page 1, line 3, after "development" insert "; to provide for a legislative council study; and to provide an expiration date"

Page 1, after line 4, insert:

**"SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. The term does not include:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
- b. Installation or maintenance of wiring or equipment on a customer's premises;
- c. Tangible personal property;
- d. Advertising, including directory advertising;
- e. Billing and collection services provided to third parties;
- f. Internet access service;
- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

- h. Ancillary services; or
- i. Digital products delivered electronically, including software, music, video, reading materials, and ringtones."

Page 1, line 9, remove "exclusively in"

Page 1, line 10, replace "expanding or constructing" with "to construct or expand"

Page 1, line 11, after the underscored period insert "To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company."

Page 1, line 12, replace "the purchaser of the property" with "a telecommunications company"

Page 1, line 15, remove "owner of the"

Page 1, line 16, replace "service infrastructure" with "company"

Page 1, after line 21, insert:

**"SECTION 3. LEGISLATIVE COUNCIL STUDY OF TELECOMMUNICATIONS TAXES.** During the 2009-10 interim, the legislative council shall consider studying all taxes imposed on telecommunications services in this state. The legislative council shall analyze all taxes and fees imposed on providers and consumers of telecommunications services, evaluate the fairness of the taxes, and determine if the tax structure impacts the business climate and economic development of the state. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 4. EXPIRATION DATE.** This Act is effective through June 30, 2011, and after that date is ineffective."

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2040



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2040

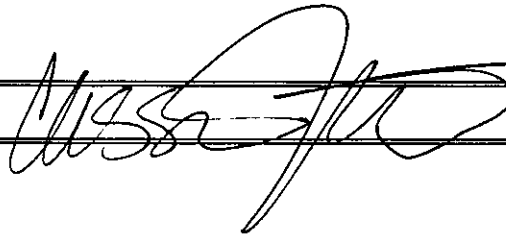
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-13-09

Recorder Job Number: 9549

Committee Clerk Signature



Minutes:

**V. Chair Sen. Bowman** called the committee back to order at 3:00 pm in reference to SB 2040 in regards to the definition of telecommunications company and telecommunications service.

**John Bjornson**, Legislative Council, came to explain the bill and amendments to the committee.

**John Bjornson**- I am neither for or against this bill I am here to explain it to you. In the interim committee they were asked to take a look at the wireless industry in the state and its impact of business development. One thing that was talked about in adding industry in the state was adding towers or other stuff for info structure development. This bill was a result of that discussion. The committee asked some of the telecommunication carriers to give them some ideas, so the bill was sent out from the interim simply to provide a exemption for property of info structure development. In the standing committee meeting I believe there was some amendments added that just kind of verified what the telecommunications company is and the service is and it just added definitions. The language was also changed on the implementation and the tax exemptions.

**V. Chair Bowman**- is there going to be amendments?

**John Bjornson**- they are in the engrossed version of the bill.

**Todd Kranda**, Lobbyist on behalf of Verizon Wireless, testified in favor of the bill. See attached testimony, attachment #1.

**Sen. Seymour**- when you look at Verizon and all their sectors in ND, what was their profit last year?

**Todd Kranda**- I do not have those financial details but I assume they are available through their annual reports.

**Sen. Krauter** – in the fiscal note, is there someone who is going to explain this?

**Todd Kranda**- we worked closely with the Tax Department who helped draft those amendments so I think they could help you out with that.

No opposition to the bill.

**Miles Fosberg**, Tax commissioner's office, spoke in neutral to answer questions on the bill.

**Miles Fosberg**- we did prepare the fiscal note, and the fiscal note is based on historical information as what has been reported on taxes on purchases in the past.

**Sen. Krauter** – so you are paying use tax on this equipment and that goes into a general fund and then it distributed back to the cities and counties, so this would be a reduction of those dollars?

**Miles** – that is correct.

**Sen. Krauter**- so where did you come up with the gross figure of the tax that would be paid, cause my thought process here is that the expansion of towers is going to be where we need more service which means limited service and I don't want to jeopardize any of those funds, so how did u come to that?

**Miles**- the bill is for all telecommunication companies which includes cable companies. That was the purpose of the definitions that were added into the bill. We added that so the bill could

identify those who do provide communication services. So what we did is went back to our sales tax reports and records and looked at the use tax as being reported by those entities now.

**Sen. Krauter**-so in subsection 2 it could mean a telecommunications company, a cable company in the community of Bismarck?

**Miles** – yes as long as they are providing telecommunications service.

**Sen. Wardner**- so in the fiscal note we have from 12-08-08, so we need to calculate the impact of the cities and counties by applying the percentage times what you have in the fiscal note?

**Miles**- yes we did calculate that already, the other funds are funds that would normally go to the state. There is a updated fiscal note that was dated from 2-12-09 and the total fiscal amount is \$5.15 million and \$412,000 of that total is the amount that would be the reduction in the state interest.

**Sen. Krauter**- I remember back a couple years ago and they had a brochure that talked about all the sales tax and use exempt, is that expired?

**Miles**- I think what you are talking about is that there is an incentive type exemption that are for telecommunications and computer equipment for a primary sector of business that is not a manufactured business. The telecommunications industry is not included in there. It was for computer hardware and software and telecommunications equipment. So that was primarily directed for service companies like software companies and other types of service companies.

**V. Chair Bowman**- how profitable are these telecommunication systems when they are brought into ND and set up, do they charge a fee that brings a substantiate income?

**Miles**- I do not have an answer to that.

**V. Chair Bowman**- is there any one here that can answer that question?

**Todd Kranda-** I don't have details but I can try to get information. The purpose of this bill isn't to give version this, it is for any telecommunications company to build out infrastructure to benefit the business community and their transactions of dealing with the public as a whole. What it does is give ND similar to what that map is, an advantage for when we look at the rural areas, the development of our next tower.

**Sen. Wardner-** what you are saying if a company is going to put up a tower and is going to go out in a rural area and if they don't have a lot of customers, this would help them to make a decision to put one out there?

**Todd Kranda-** yes, what it does is provide that additional incentive possibility that if you look at the cost of the project. There will be some revenue generated by the business that's developed and hopefully the infrastructure that they create for other businesses and purchases of services on sales on products that are purchased as a result of this networking of the infrastructure.

**Sen. Krauter-** has the universal service fund gone away?

**Todd Kranda-** that is still there and is being used by different companies.

**Sen. Krauter-** and your intent is to add this too?

**Todd Kranda-** this is another tool that can be used.

**David Krothers** is called to the podium to answer a question.

**Sen. Warner-** in reference to universal service fund I understand that is federal, is that correct?

**David Krothers** –yes that is correct.

**Sen. Warner-** I think the most concerning thing is the huge fiscal note, would there be some way to piggy back the definition of the tax exemption to the universal service fund?

**David Krothers-** that may be an avenue to pursue and I don't have an answer for that. I think that most of the discussion that has taken place on this particular piece of legislature is almost parallel to what the federal government is doing with their stimulus package.

**V. Chair Grindberg** – does anyone have what the total amount of investment for the state infrastructure would be to equate to this revenue loss?

**Miles Fosberg-** we have a total amount of 5% tax rate, and what we did is looked at historical purchases and tax reported and purchases by the communication company in order to determine this fiscal note.

**Jeb Oehlke,** ND Chamber of Commerce, testified in favor to the bill. See attached testimony, attachment #2.

**Sen. Mathern-** what about reducing the costs in the areas where the service is not available, would that help so the business would kind of spur the development of the networks so it would get more help out there, we all pay the same whether it works or not?

**Jeb O-** typically there are areas where one company has better coverage than the other so that is the consumer's choice as to which company to go with, if there is not coverage in the area that the person is most of the time they will not even be able to use that cell.

**V. Chair Bowman-** anybody here could you provide the information how many different companies get this kind of a reduction in tax dealing with this so that we have an idea that we are not treating the companies that do the same thing differently? Someone made the statement that we do this for other people, well who do we do it for? And how many dollars have we given them in this kind of a reduction to do the same thing?

**Miles Fosberg**- yes, we'll provide you that information. Information provided, see attachment #3.

**Sen. Wardner**- in the amendment it has a sunset it is a one biennium bill and so it is a one time expenditure.

**V. Chair Bowman**- well we have been down that road with the sunsets too.

No opposition to the bill.

**Sen. Bowman** closed the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2040

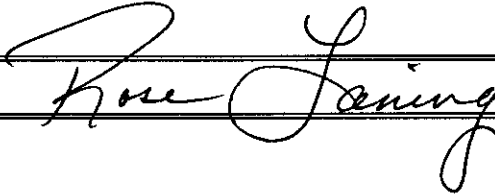
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9602

Committee Clerk Signature



Minutes:

**V. Chair Bowman** opened the hearing on SB 2040.

**Senator Mathern** asked if this benefit applies to cooperative telephone companies.

**Senator Christmann** said he's not positive of status in this amendment. The gist of the bill is that it includes wireless companies, landline companies and both cooperative and investor owned. He stated that this bill came from interim committee, so he wasn't real familiar with it.

**V. Chair Bowman** asked if anyone on the interim committee was here. He asked if these investments not happen if they don't get their money. Is this the only thing that's going to make the incentive or is this the carrot that hopefully they'll take to get them to invest.

**Senator Robinson** said these dollars will go to the areas where we have voids; where we don't have cell service; there's low customer base, but there high importance in terms of safety and security and health issues. Many people are going full time to wireless.

**V. Chair Grindberg** said after looking at the map from previous testimony, ND does have sales tax exemptions for telecommunications and computer equipment for primary sector businesses that add jobs to the state. The telecom industry should be supply and demand and market driven. He was struggling whether they should forego the income tax credits. It's largely based on critical mass.

**V. Chair Bowman** said as far as towers, there is no reception in SW part of state. I thought a lot of this had to happen in Washington, but maybe I'm wrong. They needed the right group to come out, make a decision and see if it's feasible to do this in that area. Is the appropriation the only thing that will enhance them to do that or is it that there's a need and they have to do it because people demand it.

**Senator Krauter** said it's based upon a business model that gets a return. I don't think it's anything where the FCC has to say yes or no to come out and do it. The reality is that there's a universal service that everyone pays into and that money is used back to provide infrastructure in limited areas. This also includes cable companies that provide telecommunication services. Is that really what we want to do – to expand it that far. If this passes, it's not going to improve any cellular service out there other than infrastructure in upgrades and things that are located in the high dollar value areas where the returns are very very different than they are in rural areas.

**V. Chair Grindberg moved Do Not Pass.**

**Senator Krebsbach seconded.**

**Senator Mathern** can't kill bill without section 3. I don't think we have to accept that we have blind spots in North Dakota. Evidently this bill doesn't clarify how we're going to do that, but to kill the bill without even section three, I don't know how we're going to figure it out either.

**Senator Christmann** states that blind spots are without cell coverage. If we ever expect to get a completely seamless cellular service, we're going to need a lot of tax credits. The towers are three quarters of a million dollars apiece. If you set one up that reaches one rancher, it's an enormous amount of money.

**Senator Krauter asked if the chairman would accept a substitute motion, and he moved to leave in section three.**



Chairman Holmberg asked if Senator Krauter was moving to amend the bill?

V. Chair Grindberg withdrew his motion, but didn't want to have another study to study it before you studied it.

Senator Christmann said he was going to resist the motion because there was a study done and this would be turning aside recommendation of study and asking them to do another study.

**Senator Mathern seconded the motion.**

**Voice vote on the amendment which would leave the bill just section three as study.**

**Motion failed.**

**V. Chair Grindberg moved Do Not Pass.**

**Senator Krebsbach seconded.**

**A Roll Call vote was taken. Yea: 7 Nay: 7 Absent: 0**

**Motion failed.**

**Senator Krebsbach moved Without Committee Recommendation (WCR)**

**Senator Fischer seconded.**

**A Roll Call vote was taken. Yea: 12 Nay: 2 Absent: 0**

**Senator Warner will carry it on the floor.**

Date: 2-16-09Roll Call Vote # 12009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2040Senate Senate Appropriations Committee☐ Check here for Conference Committee

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

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ AmendedMotion Made By Grindberg Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Sen. Ray Holmberg, Chairman			Sen. Aaron Krauter		
Sen. Bill Bowman, VCh			Sen. Elroy N. Lindaas		
Sen. Tony S. Grindberg, VCh			Sen. Tim Mathern		
Sen. Randel Christmann			Sen. Larry J. Robinson		
Sen. Tom Fischer			Sen. Tom Seymour		
Sen. Ralph Kilzer			Sen. John Warner		
Sen. Karen K. Krebsbach					
Sen. Rich Wardner					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Motion was  
withdrawn*

Date: 2-16-09  
Roll Call Vote #: 2

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2040**

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

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

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Krauter Seconded By Sen Mathern

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner			Senator Robinson		
Senator Fischer			Senator Lindaas		
V. Chair Bowman			Senator Warner		
Senator Krebsbach			Senator Krauter		
Senator Christmann			Senator Seymour		
Chairman Holmberg			Senator Mathern		
Senator Kilzer					
V. Chair Grindberg					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Voice vote -  
Motion failed*

Date: 2-16-09  
Roll Call Vote #: 3

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

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

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Sen Grindberg Seconded By Sen Krebsbach

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	✓		Senator Robinson		✓
Senator Fischer	✓		Senator Lindaas		✓
V. Chair Bowman		✓	Senator Warner	✓	
Senator Krebsbach	✓		Senator Krauter		✓
Senator Christmann		✓	Senator Seymour		✓
Chairman Holmberg	✓		Senator Mathern		✓
Senator Kilzer	✓				
V. Chair Grindberg	✓				

Total Yes 7 No 7

Absent 0

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

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

*Motion failed*

Date: 2-16-09  
Roll Call Vote #: 4

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2040

Senate Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number WCR

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Krebsbach Seconded By Sen Fischer

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	✓		Senator Robinson	✓	
Senator Fischer	✓		Senator Lindaas	✓	
V. Chair Bowman	✓		Senator Warner	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Christmann	✓		Senator Seymour		✓
Chairman Holmberg	✓		Senator Mathern		✓
Senator Kilzer	✓				
V. Chair Grindberg	✓				

Total Yes 12 No 2

Absent 0

Floor Assignment Sen Warner

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

REPORT OF STANDING COMMITTEE (410)  
February 16, 2009 6:27 p.m.

Module No: SR-30-2992  
Carrier: Warner  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2040, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2040 was placed on the Eleventh order on the calendar.

2009 HOUSE FINANCE AND TAXATION

SB 2040

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2040**

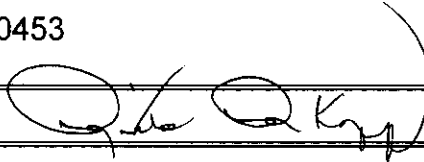
House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10453

Committee Clerk Signature



Minutes:

**Chairman Belter:** We will open the hearing on SB 2040.

**Representative Rick Berg:** This bill came out of an interim IBL committee. I think the premise behind this bill really is for North Dakota to have continued economic growth, communications are going to be key. I got an email from Steve Cochran. Steve Cochran is the chief financial forecaster for Economy.com that provides our state's forecasting. I asked him to give me the top three things we need to do as a state. One of those was and I will just read this, "Communications, rural broadband services --Similar to transport, the economy of today and tomorrow depends on the constant flow of communications." There are two ways to do it. One is to do like many government entities have and build their own infrastructure; I think Minnesota, Minneapolis did that; and this place in California put in their own infrastructure owned by the government. Or we can take the other route and say, we want to give a little incentive to the private sector, get them investing and keep that competition strong. We have a lot of gaps in ND in our coverage. I think we want our state to be on the leading edge of this. That is really the essence of this bill. The fiscal note is \$5 million. What that means is that if you used a 5% sales tax is that \$100 million needs to be invested in infrastructure before any benefit would go to the people who are putting that infrastructure in. So again, what we are



saying here is we want ND to be the best state in the country if you are looking at investing and expanding your towers or your communications systems. We will give you an incentive, but only after you invest the capital. With that, Mr. Chairman, I will turn it over to John Bjornson, who is the staff unless there are any questions for Representative Berg.

**John Bjornson, Legislative Council Staff:** I was counsel for the interim IBL committee, which recommended this bill to you, and I will try and answer any questions you might have about the bill. Representative Berg gave you the background. The interim committee was tasked with taking a look at the wireless industry in the state and seeing the impact of the wireless industry on business development in the state. As you might imagine, the committee heard testimony that indicated there are areas in the state where there is a lack of coverage of wireless and broadband as well. The committee looked at ideas as to how to promote further development in the state and that is why the bill is in front of you; it would basically provide a sales and use tax exemption for equipment used in telecommunications infrastructure development. The bill was amended while it was in the Senate to define a telecommunications company and telecommunications services, and I believe it was a cooperation between some of the telecommunication businesses and the Tax Department in developing that definition. Probably the easiest way to look at the definition is to look at what it doesn't include. If you have the engrossed version of the bill, look at page 1, line 18 through page 2, those are the exceptions as to what telecommunications service does not include. It is not going to include the installation of wiring on a customer's business, it is not going to include things like ring tones or software products, it is not going to include internet access service, and it is not going to include things like radio and television audio and video programming services. The bill was also amended in the Senate to include a provision that would call for a legislative council discretionary study as you see on page 3, the last section. That makes a

proposal for the next interim. Then finally the bill was amended to include an expiration date of June 30, 2011 so it would be essentially a two-year (inaudible). That, Mr. Chairman, is about all I can add at this point unless there are questions.

**Representative Pinkerton:** Is there some way, was the goal to create better cell service across the state .....from the sponsors?

**John Bjornson:** The beginning of the study was looking at wireless service in general and cell service in the process. There was some talk in the Senate Finance and Tax Committee as to how broad this should go. As the bill left the interim committee, there was no definition of telecommunications service and the definitions were put in in the Senate (section 1). It is a fairly broad definition of what this would apply to.

**Representative Pinkerton:** So there is really no focus on wireless communications gaps that exist in ND as you drive across the state?

**John Bjornson:** The bottom line intent was to fill that void, whether it is just plain cell service, but I think it became a little broader focus perhaps in the end. That is the primary focus to provide for infrastructure, whether it is development of towers or other infrastructure needs that might be necessary for that purpose.

**Representative Headland:** The way I understand it in the exemption, can we conclude that pretty much anything purchased at the consumer level would not receive the tax credit?

**John Bjornson:** I think there are others here who can answer that question better than I can, but I think that was the intent—infrastructure development and not at the consumer level.

(07:34)

**Representative Weiler:** If the primary reason for this bill was to improve the cell service around the state, I believe in Representative Berg's testimony, he talked about becoming the

best state in the U.S. and everything that we can do to achieve that. How is a little more cell service going to make us be the best state in the U.S.?

**John Bjornson:** During the interim, the committee heard some testimony, one suggesting that if we bring somebody into the state to look at bringing a business here and they travel in the rural area and have no cell service, they are not as likely to be attracted to that area. Another issue discussed was young people. Their expectation is of having a certain degree of technology available and if they don't have that, they are less likely perhaps to stay and go into business as well. Whether it is just basic cell service or most of you have one just cell service and you carry that phone around as well. (?) (09:05)

**Representative Weiler:** Is there any data on....I don't know what the percentage of the area of ND that does not have adequate cell service is; let's just say that 90% of the state does have adequate cell service. Are there any numbers or studies around the country that would compare our number of other rural states like Iowa, Montana? Are we really low in that category or is there no information available?

**John Bjornson:** I couldn't answer that. I assume there may be some data that some of the telecommunications representatives may have. I know that in the interim there were statements made that our service that we get through .....areas quickly that there might be some lag in some of the areas, but there is nothing comparable in many areas of the state. (10:15) Certainly there are gaps in rural areas, in particular, but I couldn't tell you how it rates with other states.

**Representative Headland:** The effective date—it says when it ends, but I am not real clear on when it begins.

**John Bjornson:** It should become effective July 1 this year.

**Representative Winrich:** Most of the bills we see in this committee that deal with sales and use taxes typically have two similar sections, one pertaining to sales tax and one pertaining to use tax. This one seems to affect both of them with one section of the law. Can you explain that?

**John Bjornson:** Probably not. I generally don't draft the tax related bills. I believe this is something that we ran through John Walstad and it seemed to be okay. I can't tell you why other ones may have that; but this one really doesn't.

**Representative Winrich:** The other thing I was curious about was section 3, which is a mandatory study by the legislative council. Can you tell us a little bit about that and what the point is there?

**John Bjornson:** Actually it is a discretionary study; line 4 says shall consider study. It did come in through the Senate. I can't tell you why they thought it was necessary, but it came through as an amendment during deliberations in the Senate.

**Representative Kelsh:** Was there any discussion as to how tax policy particularly could attract competing providers in ND?

**John Bjornson:** Much of the discussion at that time was on the proposed merger between Alltel and Verizon, the two dominant carriers in the state. The committee did hear from SRT as well. As far as attracting new carriers, there was a whole lot of discussion in that area, but just the general idea that if there were an incentive, it could encourage more development.

**Todd Kranda, Kelsh Law Firm Representing Verizon Wireless: (Testimony 1).** Behind my testimony I have attached the testimony of Stacey Sprinkle, Verizon Wireless representative. (13:47-19:25) Some of the information that I didn't include, but it came out the interim committee that I think would be important for you to understand is the average price of putting up a cellular tower is \$500,000 to \$1 million. 50% of the cost is because of the

geographic location; most of the easier sites have already been located so more of the rural and difficult areas have more high-end costs involved. Currently ND has 150-160 cell tower sites. We had a tech person come in from Verizon and he indicated that that is the case and that we would need about 50-60 more locations to saturate the market. I have included in my testimony the mapping which shows the different towers for the different companies. This was taken off the PSC website and you can get a copy of it; the PSC provides some information. It is called "zap the gap program". As part of that, they help facilitate communications with local communities and concerns over cellular service. There are several maps that show the different locations of the different towers and the sites. So what we would like to see, I guess, is an incentive to help increase the opportunity for ND to compete with investments in the state. I think this would help my company look at some of these more remote areas, where without it, it may be a marginal project; but with it, it might be the project that can tip the scale to put us into a more rural area or improve a location that doesn't have as good coverage. I think with that, I will conclude and try to answer any questions, Mr. Chairman. (21:17)

**Representative Schmidt:** All these sales tax exemptions in the world don't help if these towers aren't compatible. We have a tower south of Fessenden; I park under it and I can't get a farmer three miles away. When I finally drove out there, he said, "What are you on?" When I said, "Alltel", he said, "You have to be on Verizon" so there are things there that have to be fixed.

**Todd Kranda:** I don't know the technology of that, but you may have two different channels and the different software of each company. I could certainly try to find a Verizon representative or if you are on Alltel, maybe they might be better able to explain why their system may or may not work on a certain tower.

**Representative Schmidt:** Well, when I go home 148 miles, there are very few areas....by Hurdsville, south of Steel, my cell phone is dead.

**Todd Kranda:** This bill could help; I am not saying that it would absolutely, but if we take a look at that and say there is something that Verizon could do in an investment in infrastructure that will facilitate coverage for you and others that are served in that area, it might make it more feasible for that investment to occur. For the small price that Representative Berg indicated, \$5 million for a possible \$100 million investment into the state is, I think, a pretty good return.

**Representative Schmidt:** If you guarantee that, I will vote for this bill.

**Representative Headland:** The language that you alluded to, I just need some clarification.

Stepped up boxes owned by telecommunications or cable companies that are installed in

homes, if they are owned by the communication companies, considered part of that network?

**Todd Kranda:** I have to read closer to see exactly how that might be within the exception; but what it certainly seems to me is what we are talking about is the tower, the lines, the infrastructure build up, that seems more of a product that is retail like a cell phone which is not covered or ring tones. The type of box converter doesn't seem to be something that would be included, in my opinion; but I would have to take a closer look at that. I guess it talks about tangible personal property in sub c. on the top of page 2, 1. It is quite possible that might get under that as not being included as part of the exemption.

**Representative Drovdal:** We all appreciate these towers when we are driving down the road, but they are kind of ugly. In order to have fewer towers, do you lease space on the towers that your company owns or do you lease from other people's towers to put your equipment on?

**Todd Kranda:** I think that the company attempts to co-locate or facilitate. A number of times, my understanding is that you have both channel a and channel b or the tower that has both

companies available. To a certain extent, it stays the expenses of that infrastructure if they are able to facilitate that. To the extent that they can, I am certain that that is a business decision.

**Representative Froseth:** I am a little unclear as to how the whole industry is taxed now. Do you pay the property taxes on those towers, the telecommunications industry? What is the overall taxation policy?

**Todd Kranda:** I don't know that I am as familiar with the overall taxation of my company in terms of property taxes. I assume if they own the property, they would. I know that right now they are certainly paying the sales tax. I am not sure if any other company would be able to answer that. I just heard gross receipts tax is what their company pays.

**Chairman Belter:** We can have the Tax Department address that or somebody from the industry. Any other questions? Any further testimony in support of 2040?

**Kent Blickensderfer, Qwest Corporation: (Testimony 2).** ((26:06-28:04))

**Representative Pinkerton:** Is there somewhere in the bill where it specifically addresses that it is targeted toward rural areas or is it simply because they are underserved and this is likely how to get towers built?

**Kent Blickensderfer:** It is not specifically listed in the bill that it is targeted toward rural. As I said earlier, the bill itself targets rural areas because a lot of the major investments for advanced services have already been aiming for urban areas because it makes more sense when you have more people to make those investments first. We may or may not hear from a representative from the rural telephone cooperatives who would probably argue with the underserved portion of that, but I will leave that up to him.

**Representative Drovdal:** In looking at the language in the suggested study, it has nothing to do with the location of towers. It proposes studying the taxes of telecommunications and they

are taxed on the business climate and economic development. Should we include the study of locations? It doesn't address that at all.

**Kent Blickensderfer:** If I could shed a little light on the impetus behind the study I think was that there were certain members of the Senate Finance and Tax Committee that as the discussion grew on this issue and got away a little bit from the focus of just a sales tax exemption on infrastructure investments, it came up that maybe we should talk about taxes on all telecommunications phone bills, which is to speak to Representative Headland's question. To be clear, this doesn't exempt any products or services from sales tax. I think that the reason for that was this kind of opened up into a broader discussion about taxes on telecommunications in general and then got down to the consumer level and that is how you see that study added.

**Representative Drovdal:** Was that amendment from the Senate Finance and Tax and this came out of IBL?

**Kent Blickensderfer:** Yes, that was added on by Senate Finance and Tax. If I could, I would like to add just one thing. I don't know if this was fully answered. I think Todd Kranda spoke to it but Representative Headland had talked about step up boxes, when you talk about the specific exemptions on page 1, line 19, I think the term does not include on line 18 and then it goes to line 19, I think that those would be exempted there.

**David Crothers, ND Association of Telephone Co-ops:** The association is likewise supportive of SB 2040. There have been a number of questions raised that we would be pleased to address and answer. We believe that further deployment is necessary. We concur with the previous witnesses in that respect. We have also drawn an analogy to what is happening on the state side of this which is available with the federal stimulus package, there has been a great deal of emphasis on the deployment of broadband if in fact rural Americans



are going to be able to compete at the same level with the same efficiency as others throughout the nations, regardless of whether it is for economic opportunities, education or even in entertainment. We find that in the 21<sup>st</sup> century economy increasingly relies on broadband availability at speeds that allow an individual to take full advantage of that. With that, Mr. Chairman, I would be pleased to answer any questions.

**Jeb Oehlke, ND Chamber of Commerce:** The business community of ND supports this bill because it encourages all telecommunications companies within ND to expand their networks, which will directly affect or benefit the business community of this state. The sales tax exemption enclosed in this bill will mean the difference between a company simply maintaining its current network or expanding the size, capacity and services offered. It will also mean greater wireless coverage in areas of the state where coverage is currently typically sporadic or non-existent. Almost all businesses in the state's economy rely on the ability to communicate quickly. The passage of this bill will help telecommunications companies provide the services needed to keep our businesses competitive and growing. With that we ask for a favorable recommendation from the committee and I will stand for any questions.

**Jack McDonald, ND Cable Television Association:** We would just echo the testimony of the previous telecommunications suppliers and cable television is certainly now in the area of providing more than just television services. We provide telephone services, we provide broadband services, and we provide data and transmission services. We are developing a new northern tier network and I believe this would eventually help support the additional work done in this regard so we would also support SB 2040 and ask for your favorable consideration.

**Deana Wiese, Executive Director, Information Technology Council of ND: (36:55)**  
**(Testimony 3).**

**Chairman Belter:** Any questions? Any further testimony in support of SB 2040? Any opposition to SB 2040? Myles, I have a question here. The figure was thrown out that a cell tower costs approximately \$500,000 and I assume a good share of that cost would be labor. Now labor does not have a sales tax on it, is that correct?

**Myles Vosberg, Tax Commissioner's Office:** That is correct; it would be materials that would go into the tower that would be taxed.

**Chairman Belter:** Any other questions of the Tax Department? Do you have any comments on this bill, Myles?

**Myles Vosberg:** Not unless you have any questions, Mr. Chairman.

**Chairman Belter:** Any other questions on tax issues committee members have? If there is no further testimony on SB 2040, I will close the hearing.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2040**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10533

Committee Clerk Signature

Minutes:

**Chairman Belter:** Where is Representative Headland? This is his ...

**Vice Chairman Drovdal:** The question I have on 2040 is when they get up there, they use the rural areas as an excuse for all this stuff and yet, it doesn't touch the rural areas. It doesn't have anything to do with the rural areas at all. If they are going to study it if they are going to use that excuse, should we put the rural areas in a study, the tower location in the study?

I don't know where the towers are going to be and if they would do any good or not but I just get upset when they use rural areas for their arguments and it has nothing to do with rural areas.

**Representative Brandenburg:** Did you notice when they were talking is there more to this one and I just couldn't figure it out? There is something more to this; I just haven't got the whole story.

**Representative Weiler:** Can I check on that?

**Chairman Belter:** You can check on that.

**Representative Wrangham:** Where are we going to draw the line? Where are we going to draw the line? Here we've got multi-million dollar companies that are making record profits that come looking for sales tax cuts to do what they should already be doing (inaudible). How

about the grocer? If somebody wants to expand and build a new grocery store in Casselton or Leonard or Washburn or somewhere, do we give a sales tax break for them to expand? If they want to remodel the store? Those are businesses that really need it, that could really use it to help our small towns and our rural areas keep going. I am not necessarily opposed to just this tax, but this whole business of sales tax relief for expansion. If it is something that is going to bring in a bunch of permanent jobs, we could look at that. If it is something that is going to help us (inaudible), but I just don't see this bill doing any of those good things. Thank you for listening.

**Representative Pinkerton:** I do have a feeling that the lobbyists sit down some place in a bar or a coffee shop and discuss what they have gotten in free money.....

**Representative Froseth:** I was I guess the only one on this committee that served on that interim study committee. I guess the emphasis they put on basically the whole issue was the coverage gaps in the states and when you look at the map, there are some coverage gaps in the state. They aren't that great actually. It came out of our interim study committee with a recommendation, I don't know. It is up to this committee what they want to do.

**Representative Weiler:** I think one of the issues this bill is trying to address is that these companies that come in—it is easy for them to invest in the urban areas but for them to go out in the smaller cities, it is going to take them a very long time to recoup the costs because of the low population out in the rural areas. I think it is all about if they can't recoup their costs very quickly, then they are going to come to the state and ask for sales tax exemptions or whatever. I understand what you are saying Representative and I don't think you are far off. But I just think that is the purpose of it. They can't recoup their costs out in rural areas.

**Chairman Belter:** I guess my question is where does it say this is only for rural areas?

**Representative Weiler:** That is what they said.

**Chairman Belter:** I know. The second question I would have is is this tax going to make any difference?

**Representative Weiler:** It is going to make us the best state we can be.

**Chairman Belter:** I am just saying is removal of the 5% sales tax going to really make any difference when you take into consideration what percentage of the investment is labor, which does not have a sales tax on and it is still competition between the companies. I really really have doubts if this is going to make any difference. We are always, regardless of how much we spent, we are always going to have gaps. You can travel all over this country and be in some of the most densely populated areas and all of a sudden your cell phone goes dead. Where do you draw the line?

**Representative Grande:** I had three dropped calls driving here yesterday.

**Representative Schmidt:** Does this outfit have something to do? I see they mention digital TV in here and you know at home we heard all winter about digital TV. Now people are getting their new television bills. For a quarter it went up pretty near 50%; we have old ladies back home who are going to start playing checkers again because they can't afford ...it went up almost double all of a sudden. Digital TV is the greatest thing in the world; they got it and the bill goes up.

**Chairman Belter:** We need an amendment so we can tax checkers.

**Representative Schmidt:** From \$54 a quarter, now they are \$80 something.

**Representative Headland:** Representative Froseth was on the committee. He said originally was this specifically for wireless and it got expanded to all telecommunications?

**Representative Froseth:** It started out as wireless gap coverage, to fill in the gaps basically as close to 100% coverage as you could get. Where we are at now is not that bad, about 90% or whatever.

**Representative Headland:** The reason I bring that up and it is certainly fine with me that it is all-inclusive if the bill would encourage systems to be built out, I think that is a good thing for everybody especially people who live in areas where they don't have broadband or cell service or anything (inaudible).

**Representative Weiler:** Again I guess I am just going to play devil's advocate for Representative Headland. How is that going to make life better and businesses come here to all of a sudden have cell service in every corner and every pocket in the state? Is that really going to attract businesses to the state of ND?

**Representative Headland:** I am certainly not the one to answer that but the people who brought forward the bill must have believed it would have some type of impact.

**Representative Weiler:** The question that I asked during testimony, that was one of the issues. I said how is this going to make us a better state? They said businesses maybe don't come here because we don't have the cell service and we don't have, all of a sudden they are going to come here. I question that.

**Representative Winrich:** I think it is sort of the reverse, Dave, that businesses don't like the fact that they don't have communications in certain areas of the state. It is more of a deterrent in its present form. I don't know that anyone can guarantee that we will be overwhelmed if we put them in, but at least it won't be something negative.

**Chairman Belter:** The question I would ask is communication any worse in this state than any place else in the country? I live out on my farm 35 miles from Fargo. I didn't have high-speed internet at my farm, but yet people who live in much more rural areas or proximity to big towns have high-speed internet.

**Representative Grande:** Just a point for you. I spent a little over a week in upper state New York and rarely could use my cell phone. To adhere to that, what they have done is put phones along the highway you can stop and make calls from.

**Representative Winrich:** My son lives in southern Vermont and your cell phone is useless where he lives.

**Representative Wrangham:** For business promotion, I challenge anybody to show me any place in ND that could sustain a business of any sort that doesn't have availability of high-speed internet. We are talking about cell phone use. There are probably more people who would come to ND if we outlawed cell phone use than would come than are going to come because they may not be able to get cell phone service in some valley somewhere.

**Representative Brandenburg:** I think this bill would help and there is really some important business I need to discuss. When I drive, I want to talk to my good friend, Representative Headland. We can't even get three paragraphs and we are gone. I have even called you, Mr. Chairman, and what happens is I have to call you back. It takes five; it's just a terrible area; it is awful.

**Chairman Belter:** I think your problem is he is hanging up on you.

**Representative Froseth:** I was kind of surprised to see this study in here because we had a study last interim. This study calls for analyzing all taxes and fees of both providers and consumers of telecommunication services and to evaluate the fairness of the taxes and so forth. That is somewhat part of the study we had last ..

**Representative Headland:** It is curious you bring up the study because I think the study muddies up the legislation, but we can go back and taken care of. Mr. Chairman, this is probably more of a quality of life here in ND bill than anything. If it can provide services out in the rural areas where Representative Brandenburg and I reside, more power to them.

**Representative Brandenburg:** I just have to add it is so bad when I drive one way with the tractor, I can talk and when I turn around and go the other direction.....and I have no signal. It is that bad.

**Representative Headland:** It is so bad where I live that I don't even have to turn around, I just have to turn my head.

**Representative Weiler:** One last comment. The last time I checked we all have choices of where we choose to live.

**Chairman Belter:** Let's move to 2201.



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2040**

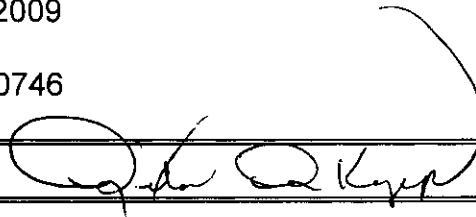
House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March, 11, 2009

Recorder Job Number: 10746

Committee Clerk Signature



Minutes:

**Chairman Belter:** Let's look at SB 2040.

**Representative Headland:** I want to just delete section 3; can I do that?

**Chairman Belter:** You can just make a motion and delete that.

**Representative Headland:** I would like to move an amendment that we delete section 3 of the bill.

**Chairman Belter:** We have a motion from Representative Headland and a second from Representative Brandenburg to delete section 3 of SB 2040. Is there any discussion?

**Representative Froseth:** Our interim committee had a study last interim on this same issue so I don't see any reason to have another one.

**Chairman Belter:** Any other discussion? **(The motion carried by a voice vote.)** What are your wishes on 2040?

**Chairman Grande:** I have a note here, no particular reason why, but it just says expiration date. Why do I have a start date July 1, 2009? I don't understand why....it becomes effective July 1, 2009.

**Representative Brandenburg:** I have a note here too saying (inaudible) language effective July 1, 2009 through June 30, 2011.

**Representative Drovdal:** We would have to put an emergency clause on it to get it effective before July 1.

(General discussion on effective date.)

**Chairman Belter:** Either we put the emergency clause on it or it becomes effective when a bill normally becomes effective, doesn't it? We can get this clarified. Representative Pinkerton will check on whether we need to put a start date on the project to qualify for this credit.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2040**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 16, 2009

Recorder Job Number: 11006

Committee Clerk Signature

Minutes:

**Chairman Belter:** Let's look at SB 2040. That's the one that removes the sales tax on telecommunications equipment and it has a sunset on it in 2011.

**Chairman Belter:** I have a "do pass" from Representative Headland and a second from Representative Brandenburg and that needs to be rereferred to appropriations.

**Representative Wrangham:** Mr. Chairman I have a note about the starting date. We were going to revisit; the current verbage included projects that have already been started.

**Representative Headland:** I had that clarified with John Walstad. The starting date is the normal starting date of any tax policy bill which will be July 1. If it is pre that, it doesn't qualify

**Representative Wrangham:** It has to start after July 1, is that right?

**Chairman Belter:** Any other discussion? The "**do pass as amended and rereferred to appropriations**" on SB 2040 resulted in 9 ayes, 3 nays, and 1 absent/not voting (Schmidt). Representative Froseth will carry the bill. (This was changed later in day on Recording 11067 (04:47) to Representative Headland.)

March 16, 2009

VR  
3/16/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2040

Page 1, line 4, remove "to provide for"

Page 1, line 5, remove "a legislative council study;"

Page 3, remove lines 3 through 10

Renumber accordingly

Date: March 11, 2009

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2040**

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Delete Sec 3

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Headland Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Representative Froelich		
Vice Chairman David Drovda			Representative Kelsh		
Representative Brandenburg			Representative Pinkerton		
Representative Froseth			Representative Schmidt		
Representative Grande			Representative Winrich		
Representative Headland					
Representative Weiler					
Representative Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: March 16, 2009

Roll Call Vote #: 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2040**

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

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

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Headland Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	/		Representative Froelich	/	
Vice Chairman David Drovdal	/		Representative Kelsh	/	
Representative Brandenburg	/		Representative Pinkerton	/	
Representative Froseth	/		Representative Schmidt		
Representative Grande		/	Representative Winrich	/	
Representative Headland	/				
Representative Weiler		/			
Representative Wrangham		/			

Total (Yes) 9 No 3

Absent 1 (Schmidt)

Floor Assignment Rep Froseth Headland

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

*Rever to Appropriations  
 changed to Headland on  
 Recording 11067  
 (4.47)*

**REPORT OF STANDING COMMITTEE**

**SB 2040, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (9 YEAS,  
3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2040 was placed on the  
Sixth order on the calendar.

Page 1, line 4, remove "to provide for"

Page 1, line 5, remove "a legislative council study;"

Page 3, remove lines 3 through 10

Renumber accordingly

2009 HOUSE APPROPRIATIONS

SB 2040



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2040

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11398

Committee Clerk Signature

*Nancy L. Gerhardt*

Minutes:

Rep. Craig Headland approached the podium to discuss SB 2040. This bill exempts sales tax on the purchase of new equipment.

Chm. Svedjan: What is the push for this to happen?

Rep. Headland: The industry believes there is an opportunity to enhance services provided, whether they are wireless, broadband, or anything else. I'm not sure why it this was initiated, but I believe it came from one of the wireless companies.

Rep. Berg: North Dakota is not fully covered with wireless. What we want to do is keep the private sector encouraged to expand and create more coverage. We want to create an opportunity for companies to invest in ND. If someone's going to invest \$80 million in our community we are going to get more back in return.

Rep. Skarphol: I'm not sure why we include some things like advertising, billing and collection services provided to 3<sup>rd</sup> parties.

Rep. Headland: That is what is NOT included. The language on p. 1, line 18. It's everything listed.

Rep. Berg: Move Do Pass.

Rep. Thoreson: 2<sup>nd</sup>.

Chm. Skarphol: We have a motion for a Do Pass by Rep. Berg and a 2<sup>nd</sup> by Rep. Thoreson.

Is there any discussion?

Rep. Kerzman: What happened to the expansion of services in the rural areas?

Rep. Headland: I am not aware of the fund you are speaking to. Our committee felt that the overall investment would benefit and that's why the FTX committee thought it was a good bill.

Chm. Skarphol: Any further discussion? Seeing none we will have a roll call vote for a Do Pass on SB 2040.

Vote: 21 Yes      1 No      3 Absent      Carrier: Rep. Headland      Motion carries

Date: 3/23/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2040

**Full House Appropriations Committee**

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Berg Seconded By Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim		✓
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 21 No 1

Absent 3

Floor Assignment Headland

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

**REPORT OF STANDING COMMITTEE (410)**  
March 23, 2009 12:53 p.m.

**Module No: HR-52-5553**  
**Carrier: Headland**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2040, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)**  
recommends **DO PASS** (21 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING).  
Engrossed SB 2040 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY ·

SB 2040

#1  
**Testimony in Support of  
SENATE BILL NO. 2040**

**Senate Finance and Taxation Committee**

**January 13, 2009**

Chairman Cook, Senate Finance and Taxation Committee members, my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of Verizon Wireless to express support for SB 2040. Unfortunately, a Verizon Wireless company representative was unable to make it here for today's hearing but instead has forwarded an outline which I have attached to this testimony regarding the benefits of tax incentives such as proposed in SB 2040.

As you may be aware, part of HB 1018, namely Section 28, was passed by the 2007 Legislature directing a study of wireless providers in the state and how wireless service impacts the business climate in the state. The interim study was assigned to the Industry Business & Labor Committee.

SB 2040 is a result of that study by the interim Industry Business & Labor Committee. Attached is a copy of a portion of the Industry Business and Labor Committee report regarding the wireless study and the background for SB 2040.

SB 2040 provides a sales and use tax exemption for equipment used in telecommunications infrastructure development. Attached for your review is a color coded map that shows the different type of exemptions existing in the different states.

The tax incentives in SB 2040 are an efficient way to decrease the cost to deploy telecommunications infrastructure necessary to provide advanced wireless telecommunication services to more areas across the state.

Accordingly, I would urge a DO PASS recommendation for SB 2040.

**Ensuring Broadband Deployment  
Through Tax Incentives  
North Dakota  
(Stacey Sprinkle – Verizon Wireless)**

*Same handout  
given to  
Senate Appropriations  
Committee.*

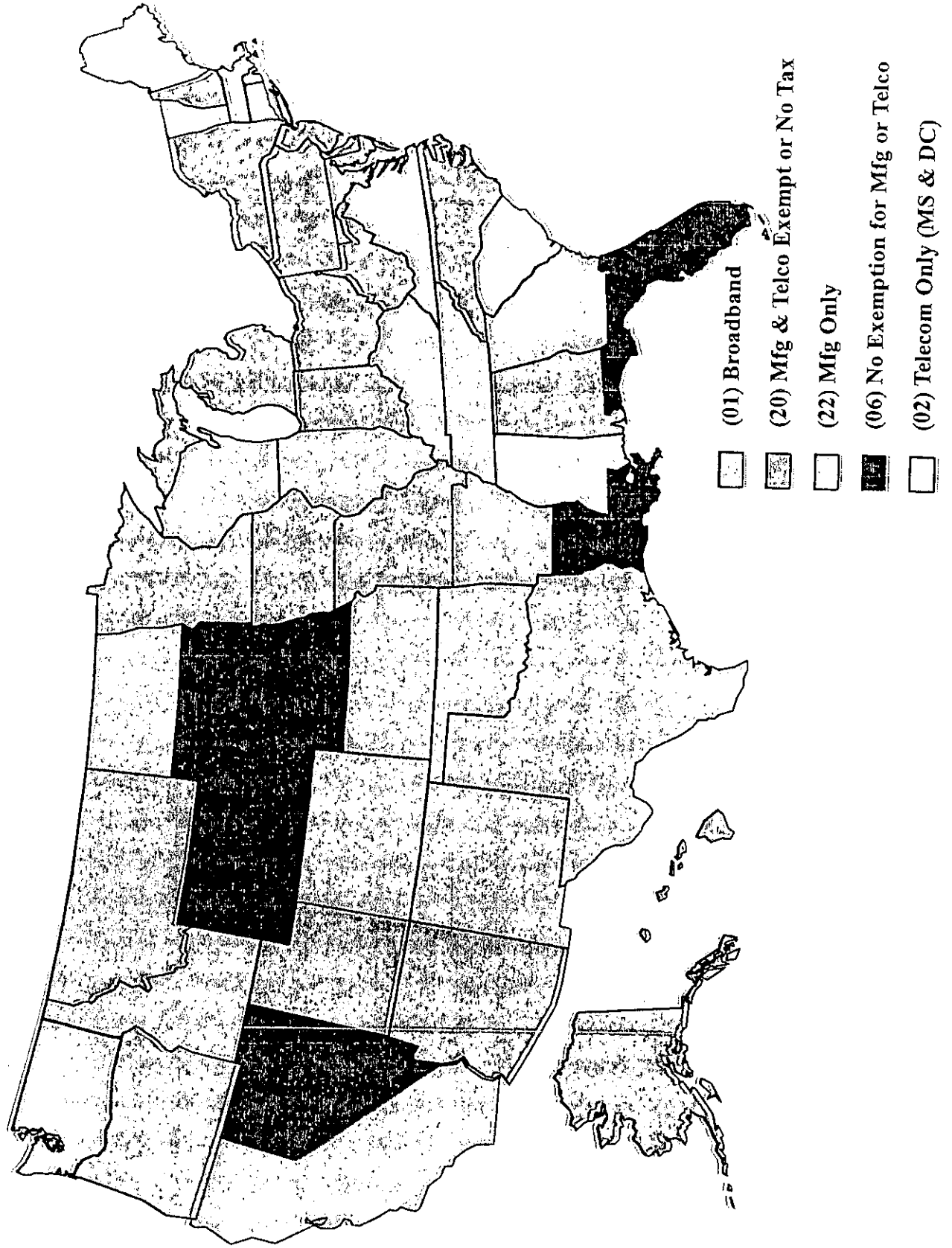
Both the Democratic and Republican parties have identified broadband deployment and ubiquitous access to the Internet as policy goals. Accordingly, as policymakers continue to look for ways to help ensure that all Americans can have affordable access to advanced communication services, specifically those that live in rural and outlying areas where the digital divide may still exist, tax incentives for investments made in the infrastructure necessary to provide such services are an efficient and economical way to help further these critical policy goals. Providing tax incentives to help continue broadband deployment will help strategically position Americans to compete in the national and global economy.

- **Tax incentives are an efficient way to decrease the cost of deploying the infrastructure necessary to provide advanced communication services.** With the intensely competitive nature of the communications industry today, specifically as evidenced by the wireless industry, economics are at the fore front of all network deployment decisions. Decreasing the cost to deploy network assets through tax incentives, like the equipment exemption being considered in North Dakota, would substantially help continue to advance the needed infrastructure to provide advanced communication services to more areas, particularly rural and outlying areas. Establishing a cost reduction mechanism under the general tax system versus creating another program (which would incur additional costs to administer) would provide the most immediate and beneficial catalyst to the overall economy through the creation of construction jobs in the near term but more importantly through the creation of permanent jobs as a result of the productivity gains made by the other businesses that rely on broadband networks that are more effective and efficient in their day to day operations.
- **Advanced communication facilities allow consumers the ability to access information and commerce, providing a gateway of opportunities for all Americans.** Deployment of advanced communications systems is critical to ensure that these opportunities are provided to small- and medium-sized business and consumers in outlying and more rural areas, which will have significant impact on the American economy. These facilities are the gateway to entrepreneurship, regardless of race, income or neighborhood. Thousands of small businesses, many minority owned, have been born because of the Internet and the ability to access advanced communications systems. Efficient infrastructure deployment will be critical to providing that access, when decisions are based upon economic models.
- **Advanced communication facilities will improve the education level of our children, allowing families greater access to information services through the Internet at home.** Deployment of advanced communications systems is critical to help expand the educational opportunities children can receive through the state education system as well as at home. Distance learning opportunities are also dependent on access to advanced communications systems and efficient and economical infrastructure deployment is critical to providing that access.

- **Reducing the cost of infrastructure deployment through tax incentives will also help spur competition in the communications industry.** Continuing to facilitate deployment of advanced communication services through tax incentives will help promote competition by allowing more providers the ability to enter more markets. Increased competition, as well as reduced deployment costs, will also help reduce the cost of providing advanced communication services to consumers. This will help increase demand for such services, which will in turn bring in more revenue to the overall economy.



# Telecommunications/Manufacturing Equipment Sales Tax Exemptions



# INDUSTRY, BUSINESS, AND LABOR COMMITTEE

The Industry, Business, and Labor Committee was assigned five studies. In addition, the chairman of the Legislative Council assigned to the committee the responsibility to review Workforce Safety and Insurance (WSI) premiums, benefits, and accountability and transparency methods and the results of the WSI consultant reviews of claims processing, human resources, and management areas.

Section 2 of House Bill No. 1299 (2007) directed a study of the regulation and licensing of pharmacists in this state, including an examination of the State Board of Pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists; the state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services; pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and statutory interplay between the board and the North Dakota Pharmaceutical Association and whether the regulatory function of the board conflicts with the advocacy function of the association.

Section 28 of House Bill No. 1018 (2007) directed a study of wireless providers in the state and how wireless service impacts the business climate in the state.

Section 2 of House Bill No. 1218 (2007) directed a study of the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in this state.

Section 21 of House Bill No. 1018 directed a study of the organization, powers, duties, and effectiveness of the Department of Commerce, including review of the legislative history leading to the creation of the department; review of the legislative and executive branch expectations in the creation of the department and whether those expectations are being met; evaluation of the effectiveness of the North Dakota Economic Development Foundation in providing a nonpartisan, private sector perspective to the department's approach to the department's duties; evaluation of the organizational structure of the department, including whether the department should include a division of science and technology; and evaluation of the strategic planning process of the department and its effectiveness.

Section 19 of House Bill No. 1018 directed participation in the Department of Commerce Renaissance Zone Conference to review the list of projects in the state which have been undertaken under the renaissance zone program, evaluate whether the

projects have positively impacted the renaissance zone communities, consider options for smaller communities to become involved in the renaissance zone program or a similar program, and make recommendations regarding how the program could be improved to further meet the needs of the state and local communities.

The Legislative Council also assigned to the committee the responsibility to receive a report from the Insurance Commissioner on findings regarding insurers' use of modified community rating for health insurance or health benefits coverage policies pursuant to North Dakota Century Code (NDCC) Section 26.1-36.4-06; a report from WSI on recommendations based on the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program as provided under Section 65-06.2-09; and a report from the Commissioner of Financial Institutions on the outcome of the commissioner's study of how the state's building and loan association and mutual savings bank laws relate to conversions of state credit unions to building and loan associations or mutual savings banks and any proposed legislation the Department of Financial Institutions determined necessary to replace Title 7 as required by Section 7 of Senate Bill No. 2295 (2007).

Committee members were Representatives Rick Berg (Chairman), Bill Amerman, Tracy Boe, Donald L. Clark, Mark A. Dosch, Glen Froseth, Jim Kasper, Darrell D. Nottestad, Gary Sukut, Elwood Thorpe, Don Vigesaa, and Steve Zaiser and Senators Arthur H. Behm, Nicholas P. Hacker, Robert M. Horne, Jerry Klein, and Terry M. Wanzek.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61<sup>st</sup> Legislative Assembly.

## WORKFORCE SAFETY AND INSURANCE REVIEW

### Background

In 1919 the Legislative Assembly created the Workmen's Compensation Bureau to provide "sure and certain relief" for work injuries regardless of fault. From 1919 until 1931, the bureau was governed by a commission within the Department of Agriculture and Labor. In 1931 the Legislative Assembly removed the bureau from the Department of Agriculture and Labor and made the bureau a separate agency administered by three full-time commissioners. The governance of the bureau remained under the direction of the commissioners until in 1989 the Legislative Assembly replaced the commissioners with an executive director appointed by the Governor and serving at the pleasure of the Governor. The Legislative Assembly also created a Workers' Compensation Advisory Council, equally representing employers and employees, to advise the bureau.

The 1991-93 biennial report of the Workers' Compensation Bureau revealed that the bureau had an

Pharmacy--a registered pharmacy technician and a public member, and to reduce the maximum amount the State Board of Pharmacy may charge for an annual pharmacist license from \$200 to \$100.

## **WIRELESS STUDY**

### **Background**

#### **2007 Legislative Proposal**

Following a study by the Legislative Council's Economic Development Committee during the 2005-06 interim, the Legislative Council recommended House Bill No. 1027 (2007), which included provisions that would have provided a sales tax exemption for the gross receipts from sales of wireless service provider equipment that is an integral part of a new or expanding wireless service provider. The bill failed to pass.

#### **Wireless Industry Growth**

Statistics from the Federal Communications Commission (FCC) indicate the number of mobile wireless subscribers in the United States has increased from 92,000 in 1984 to over 217,000,000 on June 30, 2006. By June 2005 the percentage of wireless subscribers per 100 population in the United States exceeded the percentage of wire telephone lines. The FCC also reports that the number of wireless subscribers in North Dakota has increased from 388,609 in June 2005 to 481,655 in June 2006. In 2006 the Public Service Commission reported that the number of wireless accounts had surpassed the number of traditional wire telephone lines in the state. According to the Commission on International Trans-Regional Accreditation, the international wireless association, the current estimated number of wireless subscribers in the United States is over 245,000,000. The Commission on International Trans-Regional Accreditation also reports that by the end of 2006, there were over 195,000 cell sites in the United States.

#### **Universal Service Fund**

In 1996 the United States Congress adopted the Telecommunications Act of 1996 to require interstate telecommunications carriers to contribute to a Universal Service Fund to subsidize telephone service to low-income households and rural and high-cost areas. During the first 10 years of the existence of the Universal Service Fund, over \$44 billion was collected as a result of surcharges assessed on consumers' telephone bills. Distributions from the Universal Service Fund support four purposes--high-cost areas, low-income households and individuals, schools and libraries, and rural health care. A majority of the distributions have been for the purpose of high-cost support. In 2006 approximately \$4.1 billion was distributed through the high-cost support program. Under the high-cost support program, funds are distributed directly to telecommunications providers that operate in high-cost areas. Distributions under the high-cost support program are made to providers on a per subscriber basis and may be made to landline and wireless providers. Records of the FCC indicate that the share of distributions to wireless carriers increased from

3.3 percent in 1997 to approximately one-third of the total by early 2006.

High-cost payments to providers for subscribers in this state increased from about \$21 million in 1998 to nearly \$80 million in 2006. According to the 2006 FCC *Monitoring Report on Universal Service*, Western Wireless was the recipient of the largest share of payments in North Dakota for 2003, 2004, 2005, and 2006. The report indicates that Western Wireless received \$17,824,152 in payments in 2006. The North Dakota provider receiving the second largest amount of payments for 2006 was Northwest Dakota Cellular of North Dakota LP with payments of \$7,275,264. Two other carriers received over \$5 million in payments in 2006--BEK Communications Cooperative (\$5,167,026) and SRT Communications, Inc. (\$5,003,316).

#### **Public Service Commission Role**

Although the Public Service Commission has no specific regulatory authority over wireless providers operating in the state, the commission has launched a program designated as the *Wireless Outreach Initiative: Zap the Gap/Connecting Consumers*. After launching the initiative in 2005, the commission held forums throughout the state regarding wireless service and held a statewide wireless conference in September 2005. The commission describes the *Zap the Gap* portion of the initiative as being designed to:

1. Encourage wireless investment in North Dakota, especially currently underserved areas through the collection of information from consumers to determine areas where there is demand but low wireless coverage.
2. Provide a clearinghouse of useful planning information for wireless companies, including approximations of the number of wireless telephones per capita in different counties in the state, traffic counts on major roads, and lists of suitable structures for wireless antennas.
3. Help facilitate discussions between communities that want wireless service and providers that may be able to fill the gap.
4. Identify strategies to advocate the state's interests in wireless matters with other government agencies.

The *Connecting Consumers* portion of the initiative is described by the commission as being designed to:

1. Help consumers with wireless questions and concerns that they may have with their current service.
2. Assist consumers by reserving an e-mail address for consumers wishing to contact the commission with questions and concerns over wireless telephone issues.

#### **Testimony and Committee Considerations**

The committee received testimony from representatives of the wireless industry indicating that the wireless service providers have made significant financial investments in the state over the last several years. Representatives of Verizon Wireless provided data indicating that the company invested approximately

\$130 million in building its network in this state since 2001. A representative of SRT Wireless testified that the business has invested over \$21 million in wireless development in its service area and has plans to continue to expand its service through the addition of more tower sites. A representative of Alltel testified that the company invested approximately \$80 million in the state between 2005 and the middle of 2007.

The committee received testimony from a representative of the Department of Commerce regarding the impact of wireless service in the state upon business development. To compete in the global market, key industries in the state such as agriculture, energy development, information technology, and tourism rely heavily upon the workforce and customers being able to have access to wireless communications throughout the state. Because of the increase in oil development in the western portions of the state, demand for wireless service and broadband access has increased substantially during the last few years.

Committee members expressed concerns that the lack of wireless service and broadband service in rural areas of the state hindered or discouraged economic development in those areas and may discourage young people from moving to or staying in rural areas. Although the rural nature of the state poses some problems with respect to the expansion of wireless service in the state, representatives of the wireless carriers contended that wireless and broadband services in this state are comparable with services provided in other states. The representatives of the wireless carriers indicated that expansion and enhancement of services in this state will continue as long as regulatory barriers, such as local ordinances restricting the building of towers, are minimized. The committee was assured that the merger of Alltel with Verizon Wireless would not affect the cost or availability of wireless service in the state or the continued expansion and enhancement of wireless services in the state.

The committee received testimony from a member of the Public Service Commission regarding activities of the Public Service Commission which are intended to aid the expansion of wireless service in the state. The commissioner testified that the commission has maintained a good relationship with representatives of wireless carriers and has encouraged wireless carriers to expand coverage in areas of the state that have demonstrated a need for additional coverage.

The committee considered a bill draft to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development. Proponents of the bill draft contended that additional investment in wireless infrastructure in the state is needed and a sales tax exemption would demonstrate to wireless providers that the state supports expansion of the businesses in the state.

### **Recommendation**

The committee recommends Senate Bill No. 2040 to provide a sales and use tax exemption for equipment used in telecommunications infrastructure development.

## **LICENSURE, EDUCATION, AND TRAINING OF ELECTRICIANS STUDY**

### **Background**

#### **Licensure Requirements**

North Dakota Century Code Chapter 43-09 provides that the State Electrical Board is responsible for licensing electricians. The State Electrical Board consists of five members appointed by the Governor. Section 43-09-09 requires any person undertaking or offering to undertake with another to plan, lay out, supervise, install, make additions, make alterations, or make repairs, in the installation of wiring, apparatus, or equipment for electric light, heat, or power to apply to the board for a license. The board is required to examine applicants and issue licenses to applicants that meet the qualifications established for that class of licensure.

North Dakota Century Code Section 43-09-11 establishes three classes of licensure and provides the experience and training requirements for those classes. That section provides that an applicant for licensure as a master electrician must have completed one year's experience as a licensed journeyman electrician. The experience requirement for an applicant for a journeyman electrician license, as amended by the Legislative Assembly in 2007, mandates completion of 8,000 hours' experience, which may not be obtained in fewer than three years. An applicant for licensure as a journeyman electrician who registers with the State Electrical Board as an apprentice after January 31, 2008, must have either successfully completed apprenticeship and training approved by the federal Bureau of Apprenticeship and Training and completed 8,000 hours' experience in installing and repairing electrical wiring, apparatus, and equipment or successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed 8,000 hours' experience. An applicant for licensure as a Class B electrician must have 18 months' experience in farmstead or residential wiring.

North Dakota Century Code Section 43-09-13.1 requires an apprentice electrician to register with the State Electrical Board within the first six months of employment. That section limits an apprentice electrician to working on installations only under the personal supervision of a licensed electrician. Under administrative rules adopted by the board, an electrical contractor is required to maintain records of all employees providing electrical work for that electrical contractor.

A license issued to an electrician is valid for one year and may be renewed upon payment of the license fee and proof of successful completion of continuing education as prescribed by the board but not to exceed 16 hours each biennium.

North Dakota Century Code Section 43-09-20 limits the scope of work of a Class B electrician to the installation of farmstead electrical wiring or residential electrical wiring in one or two family dwellings located in municipalities of 2,500 or fewer population, and the installation of electrical equipment, appliances, and

#2



**Testimony of Jeb Oehlke  
North Dakota Chamber of Commerce  
Presented to the  
Senate Finance and Taxation Committee  
January 13, 2009**

**Senate Bill 2040**

Mr. Chairman and members of the Senate Finance and Taxation Committee, my name is Jeb Oehlke. I am here today representing a business coalition which in addition to the ND Chamber includes local chambers of commerce within the state and their member businesses to ask you to **support** Senate Bill 2040.

The business community supports this bill because it encourages all telecommunications providers within North Dakota to expand their networks, which will directly benefit the business community of this state. The sales tax exemption proposed in this bill may mean the difference between a company simply maintaining its current network or expanding the size, capacity and services offered. It may also mean greater wireless coverage in areas of the state where coverage is typically sporadic or nonexistent.

Almost all businesses in today's economy rely heavily on the ability to communicate quickly. Passage of SB 2040 will help telecommunications companies provide the services that will keep our businesses competitive and growing.

Thank you Chairman Cook and members of the Senate Finance and Taxation Committee, for the opportunity to discuss the business community's position on SB 2040. We ask for a **DO PASS** on SB 2040. I am happy to answer any questions at this time.

*THE VOICE OF NORTH DAKOTA BUSINESS*

## PROPOSED AMENDMENTS TO SENATE BILL NO. 2040

Page 1, line 3, after "enact" insert "two new subsections to section 57-39.2-01 and"

Page 1, line 2, after "to" insert "the definition of telecommunications company and telecommunication services and"

Page 1, after line 4 insert:

"SECTION 1. Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications service" does not include:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- b. Installation or maintenance of wiring or equipment on a customer's premises;
- c. Tangible personal property;
- d. Advertising, including but not limited to directory advertising;
- e. Billing and collection services provided to third parties;
- f. Internet access service;
- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- h. "Ancillary services"; or
- i. Digital products "delivered electronically", including but not limited to software, music, video, reading materials or ring tones."

Page 1, line 5, replace "1" with "2"

Page 1, line 9, remove "exclusively in"

Page 1, line 10, remove "expanding or constructing" and insert immediately thereafter "to construct or expand"

Page 1, line 11, after the period insert "To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company."

Page 1, line 12, remove "purchaser of the property" and insert immediately thereafter "telecommunications company"

Page 1, line 15 remove "owner of the"

Page 1, line 16, remove "service infrastructure" and insert immediately thereafter "company"

Re-number accordingly

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2040**

Page 1, line 1, after "enact" insert "two new subsections to section 57-39.2-01 and"

Page 1, line 2, after "to" insert "the definition of telecommunications company and telecommunication services and"

Page 1, line 3, after "development" insert "; and to provide legislative council study; and to provide an expiration date"

Page 1, after line 4 insert:

**"SECTION 1.** Two new subsections to section 57-39.2-01 of the North Dakota Century Code are created and enacted as follows:

"Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. "Telecommunications service" does not include:

- a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- b. Installation or maintenance of wiring or equipment on a customer's premises;
- c. Tangible personal property;
- d. Advertising, including but not limited to directory advertising;
- e. Billing and collection services provided to third parties;
- f. Internet access service;
- g. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- h. "Ancillary services"; or
- i. Digital products "delivered electronically", including but not limited to software, music, video, reading materials or ring tones."

Page 1, line 9, remove "exclusively in"



Page 1, line 10, replace "expanding or constructing" with "to construct or expand"

Page 1, line 11, after the period insert "To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company."

Page 1, line 12, replace "purchaser of the property" with "telecommunications company"

Page 1, line 15 remove "owner of the"

Page 1, line 16, remove "service infrastructure" and insert immediately thereafter "company"

Page 1, after line 21 insert:

**"SECTION 3. LEGISLATIVE COUNCIL STUDY OF TELECOMUNICATION TAXES.** During the 2009-11 interim, the legislative council shall study all taxes imposed on telecommunication services in this state. The legislative council shall analyze all taxes and fees imposed on providers and consumers of telecommunication service, evaluate the fairness of these taxes, and determine if the current tax structure impacts the business climate and economic development of the state. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 4. EXPIRATION DATE.** This Act is effective through July 30, 2011 and after that date is ineffective."

Renumber accordingly

#1  
Senate Bill 2040

Explanation to proposed amendment

Sales tax exemption for telecommunications infrastructure

Section 1

- Add definition of telecommunications company – includes cable company
- Add definition of telecommunications service

Section 2

1. Gross receipts from sales of tangible personal property used ~~exclusively in expanding or constructing to construct or expand~~ telecommunications service infrastructure in this state are exempt from taxes under this chapter. To be exempt, the tangible personal property must be incorporated into telecommunications service infrastructure owned by a telecommunications company.
2. To qualify for exemption at the time of purchase, the ~~purchaser of the property~~ telecommunications company must receive a certificate from the commissioner stating that the property qualifies for the exemption. If a certificate is not received before the purchase or the purchase is made by a contractor, subcontractor, or builder, the ~~owner of the telecommunications company service infrastructure~~ must apply to the commissioner for a refund of sales and use taxes paid for which the exemption is claimed under this section. Application for refund must be made at the times and in the manner directed by the commissioner and must include sufficient information to permit the commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

Explanation prepared by:

Office of State Tax Commissioner

February 3, 2009

Myles Vosberg

#2

**PROPOSED AMENDMENTS TO  
SENATE BILL NO. 2040**

Page 1, line 3, after "development" insert "; and to provide an expiration date"

Page 1, after line 21 insert "**SECTION 2. EXPIRATION DATE.** This Act is effective through  
~~July 31~~, 2011 and after that date is ineffective."

~~June 30~~

Renumber accordingly

Testimony in Support of  
**ENGROSSED SENATE BILL NO. 2040**  
Senate Appropriations Committee - February 13, 2009

Attachment #1

Chairman Holmberg, Senate Appropriations Committee members, my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of Verizon Wireless to express support for Engrossed Senate Bill 2040. Unfortunately, a Verizon Wireless company representative was unable to make it here for today's hearing but instead has forwarded an outline which I have attached to this testimony regarding the benefits of tax incentives such as proposed in ESB 2040.

As you may be aware, the 2007 Legislature passed HB 1018, which included in Section 28, a study of wireless providers in the state and how wireless service impacts the business climate in the state. The interim study was assigned to the Industry Business & Labor Committee.

ESB 2040 is a result of that study by the interim Industry Business & Labor Committee. Attached is a copy of a portion of the Industry Business and Labor Committee report regarding the wireless study and the background for ESB 2040.

ESB 2040 provides a sales and use tax exemption for equipment used in telecommunications infrastructure development. Attached for your review is a color coded map that shows the different type of exemptions existing in the different states.

The tax incentives in ESB 2040 are an efficient way to decrease the cost to deploy telecommunications infrastructure necessary to provide advanced wireless telecommunication services to more areas across the state.

The Senate Finance and Taxation committee recently gave this bill a favorable recommendation and I would urge that this Senate Appropriations committee also give a **DO PASS** recommendation for ESB 2040.



**Testimony of Jeb Oehlke  
Senate Bill 2040  
January 13, 2009**

Mr. Chairman and committee members my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the voice of North Dakota Business. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing fifteen local chambers with total membership over 6,500 members. A list of those associations is attached. As a group we stand in support of Senate Bill 2040.

The business community supports this bill because it encourages all telecommunications providers within North Dakota to expand their networks, which will directly benefit the business community of this state. The sales tax exemption proposed in this bill will mean the difference between a company simply maintaining its current network or expanding the size, capacity and services offered. It will also mean greater wireless coverage in areas of the state where coverage is typically sporadic or nonexistent.

Almost all businesses in today's economy rely heavily on the ability to communicate quickly. Passage of this bill will help telecommunications companies provide the services needed to keep our businesses competitive and growing.

The business community asks you to support SB 2040 by giving it a favorable committee recommendation. I am happy to answer any questions at this time.

*THE VOICE OF NORTH DAKOTA BUSINESS*



**The following chambers are members of a coalition that support our 2009 Legislative Policy Statements:**

Beulah Chamber of Commerce – 130 members

Bismarck-Mandan Chamber of Commerce – 1,200 members

Chamber of Commerce of Fargo Moorhead – 1,800 members

Devils Lake Area Chamber of Commerce

Grafton Area Chamber of Commerce

Greater Bottineau Area Chamber of Commerce – 155 members

Harvey Area Chamber of Commerce

Hettinger Area Chamber of Commerce – 145 members

Jamestown Area Chamber of Commerce – 360 members

Kenmare Association of Commerce

Minot Chamber of Commerce – 700 members

North Dakota Chamber of Commerce – 1100 members

Oakes Area Chamber of Commerce – 170 members

Wahpeton Breckenridge Chamber of Commerce – 290 members

Williston Chamber of Commerce – 450 members

Total Businesses Represented = 6,500 members

*THE VOICE OF NORTH DAKOTA BUSINESS*



STATE OF NORTH DAKOTA  
**OFFICE OF STATE TAX COMMISSIONER**  
Cory Fong, Commissioner

*provided  
after the  
hearing.*

*Attachment #3*

## Memorandum

**To:** Senator Bowman, Co-Vice Chair, Senate Appropriations Committee  
**From:** Myles Vosberg, Director, Tax Administration Division  
**Date:** February 13, 2009  
**Subject:** Senate Bill 2040

Attached is the information you requested during today's hearing for Senate Bill 2040, which provides a sales tax exemption on tangible personal property used to build or expand telecommunications infrastructure.

The attached pages identify the amount of purchases and sales/use tax exemption granted for fiscal years 2004 through 2008 by type of industry. Please note that because of confidentiality requirements, we are unable to disclose information when less than five taxpayers benefit from the exemption in any year.

If you have any questions on this information, please contact me. I may be reached at 328-3471 or by e-mail at [msvosberg@nd.gov](mailto:msvosberg@nd.gov).

Sales Tax Business Incentive Exemption

	FY 04		FY 05	
	Est. Value	Est. Tax	Est. Value	Est. Tax
Machinery & Equipment - Build or Expand Manufacturing Facility	57,866,459	2,893,430	104,434,580	5,221,735
Machinery & Equipment - Build or Expand Recycling Facility		(1)	1,083,679	56,384
Tangible Pers. Property - Build or Expand Ag Commodity Proc. Facility	19,685,854	984,293	12,381,035	619,053
Computer & Telecomm Equip - Integral Part of New or Expanding Primary Sector Business	8,859,161	442,959	1,579,718	78,986
Tangible Personal Property & Production Equipment to Construct Power Plant				
Environ, Upgrade Equipment - for Power Plant or Processing Unit (Oil & Gas Plant)				
Tangible Personal Property - Build or Expand Gas Gathering or Compressing Facility or Gas Processing Plant				
Tangible Personal Property - Construct or Expand an Oil Refinery				
Total By Fiscal Year	86,411,474	4,320,682	119,479,012	5,976,158

(1) Note - Information on the above exemptions is not provided due to confidentiality laws. There were less than 5 taxpayers who claimed the exemptions in the referenced tax year.

Prepared by: ND Office of State Tax  
Commissioner - January 9, 2009



# Sales Tax Business Incentive Exemption

	FY 06		FY 07	
	Est. Value	Est. Tax	Est. Value	Est. Tax
Machinery & Equipment - Build or Expand Manufacturing Facility	45,444,477	2,272,226	46,304,526	2,303,930
Machinery & Equipment - Build or Expand Recycling Facility	1,808,973	90,449	2,454,305	122,715
Tangible Pers. Property - Build or Expand Ag Commodity Proc. Facility	146,227,601	7,297,738	305,410,347	15,270,519
Computer & Telecomm Equip - Integral Part of New or Expanding Primary Sector Business	16,950,136	869,519	1,494,520	74,725
Tangible Personal Property & Production Equipment to Construct Power Plant		(1)		(1)
Environ, Upgrade Equipment - for Power Plant or Processing Unit (Oil & Gas Plant)				
Tangible Personal Property - Build or Expand Gas Gathering or Compressing Facility or Gas Processing Plant				
Tangible Personal Property - Construct or Expand an Oil Refinery				
Total By Fiscal Year	210,431,187	10,529,932	355,663,698	17,771,889

(1) Note – Information on the above exemptions is not provided due to confidentiality laws. There were less than 5 taxpayers who claimed the exemptions in the referenced tax year.

Prepared by: ND Office of State Tax  
Commissioner - January 9, 2009

# Sales Tax Business Incentive Exemption

	FY 08	
	Est. Value	Est. Tax
Machinery & Equipment - Build or Expand Manufacturing Facility	90,232,128	4,511,618
Machinery & Equipment - Build or Expand Recycling Facility	1,197,242	59,863
Tangible Pers. Property - Build or Expand Ag Commodity Proc. Facility	582,287,995	29,114,400
Computer & Telecomm Equip - Integral Part of New or Expanding Primary Sector Business	5,714,300	285,714
Tangible Personal Property & Production Equipment to Construct Power Plant		(1)
Environ, Upgrade Equipment - for Power Plant or Processing Unit (Oil & Gas Plant)		(1)
Tangible Personal Property - Build or Expand Gas Gathering or Compressing Facility or Gas Processing Plant		(1)
Tangible Personal Property - Construct or Expand an Oil Refinery		(1)
Total By Fiscal Year	<u>679,431,665</u>	<u>33,971,595</u>

(1) Note -- Information on the above exemptions is not provided due to confidentiality laws. There were less than 5 taxpayers who claimed the exemptions in the referenced tax year.

Prepared by: ND Office of State Tax  
Commissioner - January 9, 2009

Testimony 1

Testimony in Support of  
**ENGROSSED SENATE BILL NO. 2040**  
House Finance & Taxation Committee  
March 9, 2009

Chairman Belter, House Finance & Taxation Committee members, my name is Todd D. Kranda. I am an attorney with the Kelsch Law Firm in Mandan and I appear before you today as a lobbyist on behalf of Verizon Wireless to express support for Engrossed Senate Bill 2040. Unfortunately, a Verizon Wireless company representative was unable to make it here for today's hearing but instead has forwarded an outline which I have attached to this testimony regarding the benefits of tax incentives such as proposed in Engrossed Senate Bill 2040.

As you may be aware, the 2007 Legislature passed HB 1018, which included in Section 28, a study of wireless providers in the state and how wireless service impacts the business climate in the state. The interim study was assigned to the Industry Business & Labor Committee.

Engrossed Senate Bill 2040 is a result of that study by the interim Industry Business & Labor Committee. The expansion of businesses in the state will be supported by the additional investments that are made with the construction and expansion of telecommunication infrastructure. Attached is a copy of a portion of the Industry Business and Labor Committee report regarding the wireless study and the background for Engrossed Senate Bill 2040.

Engrossed Senate Bill 2040 provides a sales and use tax exemption for equipment used in telecommunications infrastructure development. Attached for your review is a color coded map that shows the different type of exemptions existing in the different states. Also attached is a series of colored coded maps obtained from the ND Public Service Commission website showing the existing coverage areas by different wireless companies and cellular towers.

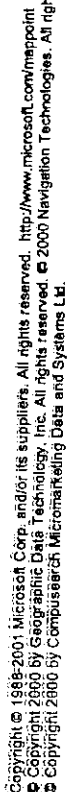
Section 1 of the bill provides for definitions of telecommunication company and services which were taken from the definitions used in the Streamlined Sales Tax and are identical to the definitions currently used by the ND Tax Department in the Administrative Code (Section 81-04.1-04-41.1). Section 2 is the sales tax exemption provision that applies to the construction

and expansion of telecommunications infrastructure. Section 3 provides for a study of taxes on telecommunication services during the interim. Section 4 establishes a sunset provision.

The tax incentives in Engrossed Senate Bill 2040 are an efficient way to decrease the cost to deploy telecommunications infrastructure necessary to provide advanced wireless telecommunication services to more areas across the state. North Dakota has several other sales tax exemptions that have been implemented in the past to help promote building or expanding certain industries and attached is an outline of a Memorandum that was recently provided to the Senate Appropriations Committee from the ND Tax Department that shows the amount of purchases and sales/use tax exemptions granted for other industries. The tax exemption in Engrossed Senate Bill 2040 will help facilitate deployment of advanced communications systems across the state and in rural areas where it may not otherwise be feasible to do so.

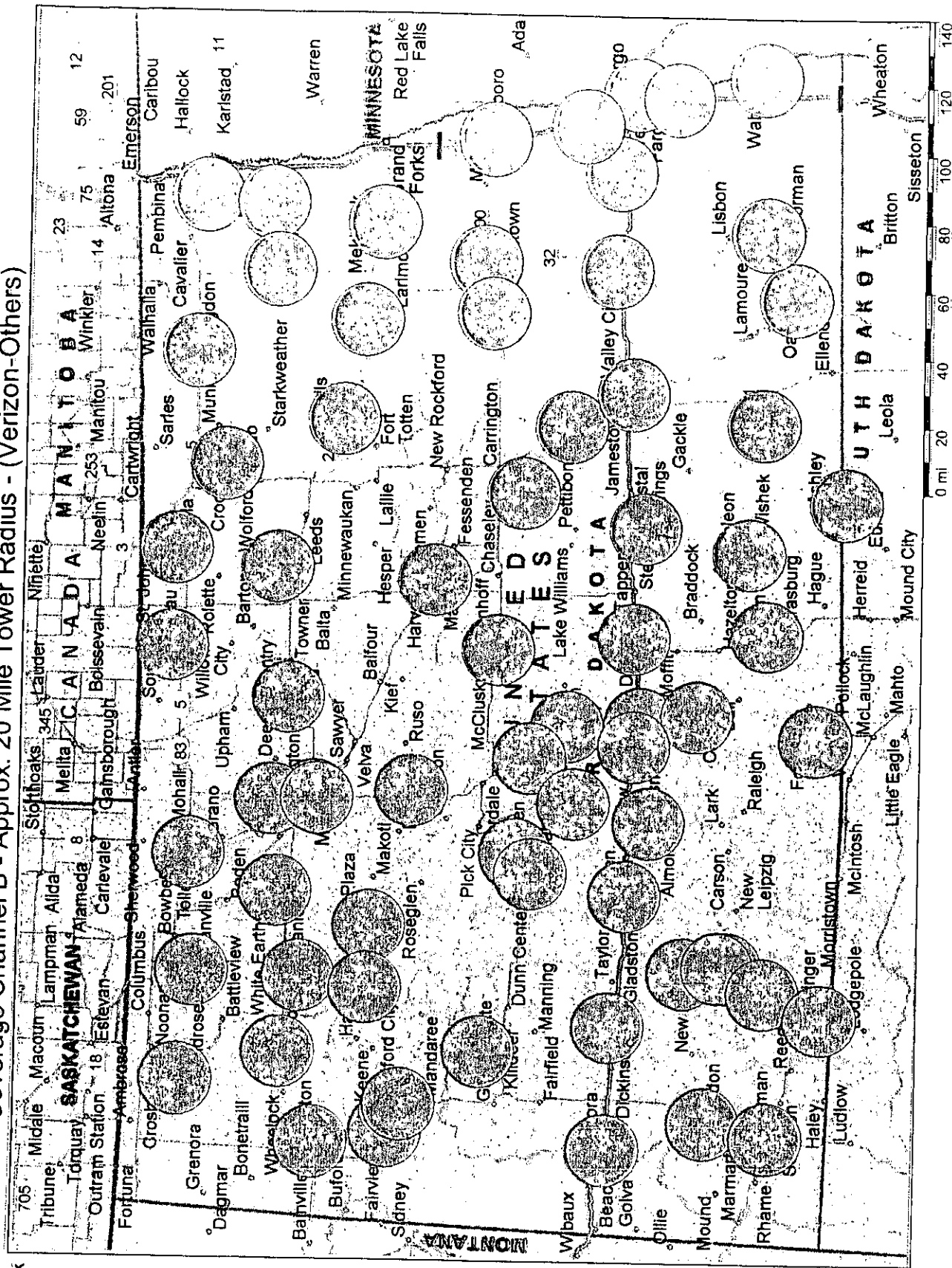
In conclusion I would urge that this House Finance & Taxation committee give a **DO PASS** recommendation for Engrossed Senate Bill 2040.

Channel/Block  
by Latitude &  
Longitude



# Coverage Channel B - Approx. 20 Mile Tower Radius - (Verizon-Others)

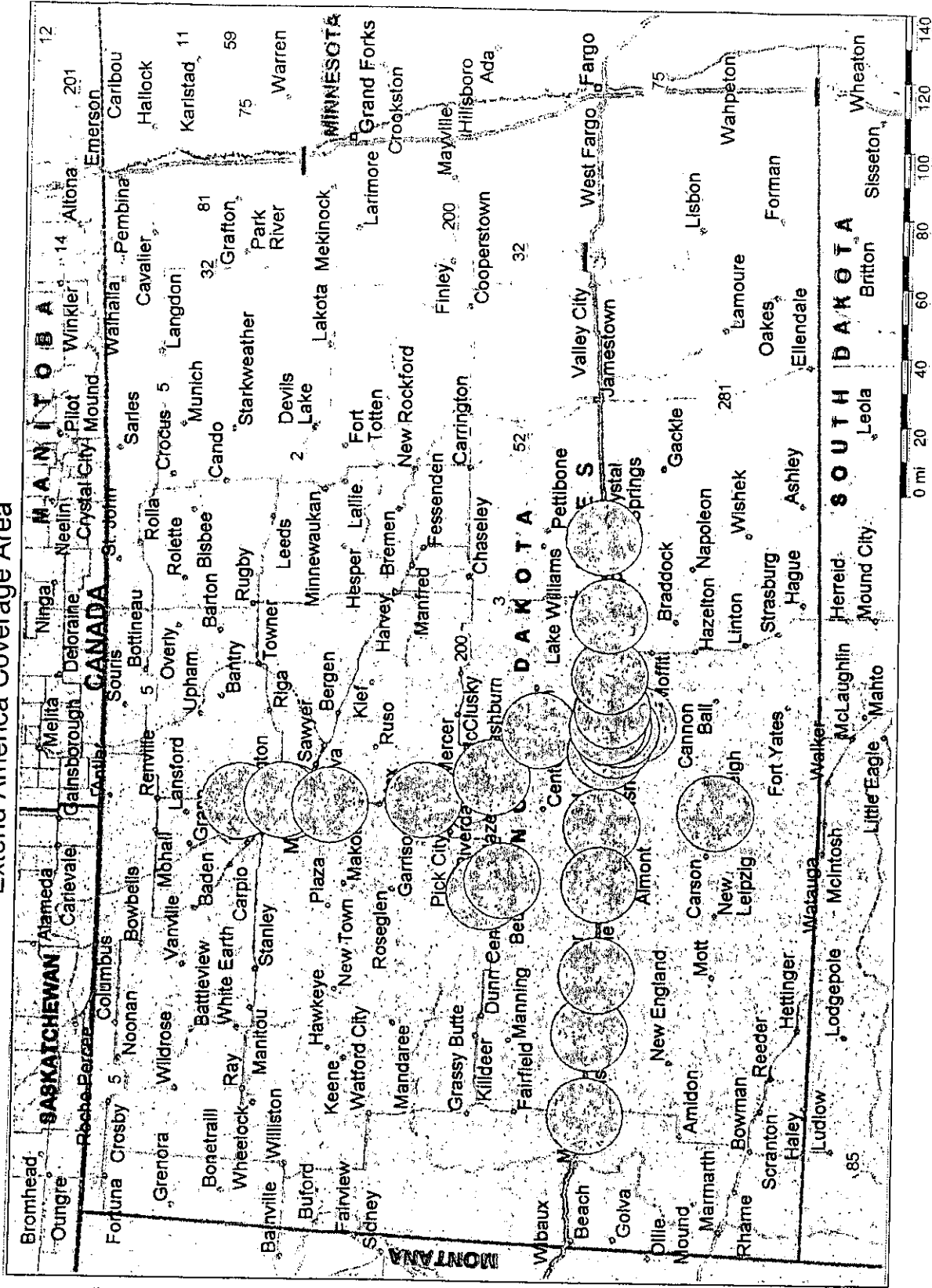
ChannelBlock  
by Latitude &  
Longitude



# Extend America Coverage Area

Extend America Coverage Area

20 Miles



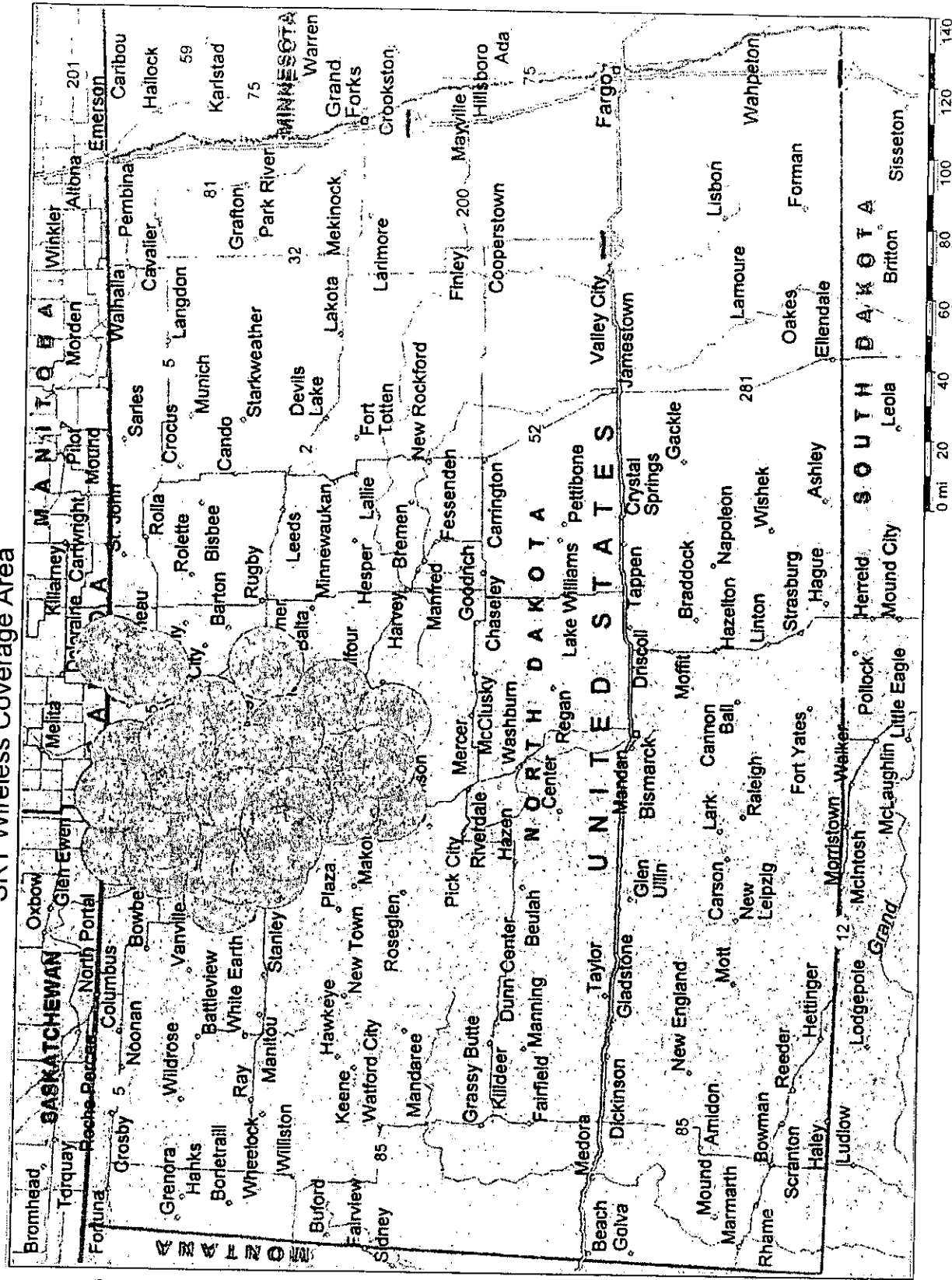
The information contained in this document is from sources believed to be reliable, but is not guaranteed. All consumers should use their own best efforts to ascertain information they consider pertinent to their personal situation. All coverage areas are approximate.

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 © Copyright 2000 by Geographic Data Technology, Inc. All rights reserved. © 2000 Navigation Technologies. All rights reserved. This data includes information taken with permission from Canadian authorities © Her Majesty the Queen in Right of Canada.  
 © Copyright 2000 by CompuSearch MicroMarketing Data and Systems Ltd.

# SRT Wireless Coverage Area

SRT Wireless Coverage

20 Miles



The information contained in this document is from sources believed to be reliable, but is not guaranteed. All consumers should use their own best efforts to ascertain information they consider pertinent to their personal situation. All coverage areas are approximate.



**North Dakota House Finance and Tax Committee  
Representative Wes Belter, Chairman**

**Testimony in support of SB2040  
March 9, 2009  
Kent Blickensderfer, Qwest Corporation**

Chairman Belter and committee members, my name is Kent Blickensderfer and I'm the state vice-president for Qwest in North Dakota. I am here today to support SB2040, a product of study by the Industry, Business and Labor Committee. SB2040 allows the state to partner with private industry to encourage investment in telecom infrastructure at relatively minor cost and for a small test period of time. To be clear, we understand the fiscal note on this bill is around \$5 million. I don't argue its accuracy or imply that isn't a significant amount. That figure assumes an estimated \$100 million investment in telecom infrastructure. But what's missing from this exercise is the almost certain offsetting amount of revenue the state will receive from all the new traffic carried on this infrastructure. We believe the high-tech broadband, wireless and other services traveling over these facilities will provide substantial new sales tax dollars to the state of North Dakota. Conversely, it's important to note the potential for lower sales tax revenue from a lack of or reduced infrastructure investment here due to the economy or a more favorable investment climate elsewhere.

Tax incentives are an effective way to help deploy and expand advanced services. SB2040 is aimed at North Dakota's more rural areas due to the fact that beneficial economies of scale achieved by investing in denser populated areas have already targeted many of North Dakota's more urban areas with advanced infrastructure.

Thank you for your time and consideration of SB2040. I am happy to try to answer any questions you may have.



Testimony 3

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**Testimony of Deana Wiese**

Executive Director, Information Technology Council of North Dakota  
In Support of SB 2040  
March 9, 2009

Chairman Belter and members of the House Finance and Taxation Committee:

For the record, my name is Deana Wiese, and I am the executive director of the Information Technology Council of North Dakota (ITCND). On behalf of ITCND, I would like to encourage your support of SB 2040.

ITCND was created in 2000 by North Dakota business, government and university leaders who recognized the need to strengthen the state's information technology infrastructure and reposition the state as a national leader in IT. ITCND has nearly 90 member organizations, with representatives from both the public and private sector.

ITCND supports SB 2040 as it provides an incentive for the enhancement and expansion of North Dakota's telecommunications infrastructure. The continued expansion of wireless data coverage across North Dakota is essential to ensuring the state is competitive in business retention and attraction, including IT businesses. It will also provide increased opportunities for the state's rural communities through the ability to reliably conduct business globally from remote locations.

For these reasons, we ask for your favorable consideration of SB 2040.

Wiese testimony in support of SB 2040.