

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

1142

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1142

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1142

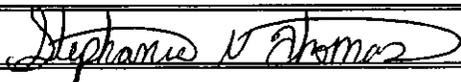
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 15, 2006

Recorder Job Number: 1073

Committee Clerk Signature



Minutes:

**Chair Keiser** opened the hearing on HB 1142, relating to the jurisdiction of the public service commission over telecommunications companies.

**Rep. Craig Headland, District 29:** The ever-changing telecommunications industry requires constant modifications in policies, as well as evolving technologies. In many instances, the administrative agencies regulatory bodies can change that policy on there own initiative, but that's not the case in this instance. The PSC only has jurisdiction granted to them exclusively by the legislature, therefore I ask for your support in passing HB 1142.

**Rep. Keiser:** It's such a simple bill, why do you want to change it from 8,000 to 18,000?

**Rep. Headland:** It's because of ongoing competition in the state. As you're aware, telecommunications has several different carriers providing Intel communications today. You have wireless carriers, you have cable TV companies, you have voice over internet protocol, and it's hard for local telephone companies to compete against these companies when they are under regulation.

**Rep. Ruby:** What companies would this affect?

**Rep. Headland:** There are 2 companies in the state that this bill could affect. One of them is ND Telephone Company in Devils Lake, and the other one is Missouri Valley telecommunications in Bozeman.

**David Crothers, ND Association of Telecommunications Cooperatives:** See written testimony #2.

**Rep. Keiser:** 18,000, is that based on 1 of the 2 companies?

**David:** It is greater. There is a company that is somewhat close to that, however that company is in fact losing lines, largely the results of competition.

**Rep. Ruby:** What regulations or oversight go away?

**David:** We have an expert that we brought in that does all of our regulatory work, and we have 2 witnesses that experience it. To take a crack at it, but not go into depth is the requirement for prices to be approved, which those other 18 companies do not have services approved. In some cases, have a filing requirement that is far more extensive than the paperwork that we're required to do to comply with those monopoly era rules that we're adopted 50 years ago.

**Dave Dircks, ND Telephone Company:** See written testimony #3.

**Rep. Nottestad:** If 1142 would have been in place prior to your request for an increase, how would you have handles it then?

**Dave:** I guess the big thing is we wouldn't have your permission prior to doing that, which is what enabled us to adjust the rates.

**Rep. Nottestad:** What preparation for that adjustment would you have done?

**Dave:** We probably would have done our own financial study on what type of rate increase or decrease we might have needed.

**Rep. Nottestad:** Are you saying that it would have been an in house type of thing, not a consultant?

**Dave:** Possibly we would have hired a consultant to take a look at it, but it would have been an in house proceeding by the board of directors of the company.

**Rep. Boe:** I am a customer of ND Telephone Cooperative for my long distance; Turtle Mountain Communications is my local provider, which is owned by United Telephone. Where do I fit into this law?

**David:** Turtle Mountain and United Telephone are both not affected by this. You as a customer would not be affected by 1142. They are both under those 8,000 exemptions, in the case of Turtle Mountain and United cooperative exemption. This is limited to two companies that this would affect. In the ND Telephone Company, the long distance is exempt from any of this. We're just talking about local service.

**Rep. Boe:** I understand being that it's a cooperative, but why the exemption? I am not a holding member, I don't get to vote at an annual meeting, so why do I not get in this exemption?

**David:** It is for those companies with fewer than 8,000 that are regulated identically to those as cooperatives. That was a determination made in the 1990's. There were a couple of reasons for that. The state of ND felt because of local ownership, they refer to it as almost coffee shop regulation. That input by the customers is still very heavily felt. Second, are the local ownership, and the view by ND in this body 10 years ago that these companies have no interest beyond the states borders. Their success is going to be no greater than the success of there members and customers.

**Rep. Lee Kaldor, District 20:** In support of HB 1142.

**Roger Del Fiacco, Nemont Telephone Cooperative, Inc., MT:** See written testimony #4.

**David Dunning, CEO Polar Communications, Park River, ND:** See written testimony #5.

**Susan Wheatland, PSC:** I'm speaking on my own not on behalf of my fellow commissioner's.

I have some concerns about this, and I'd like to have the opportunity to explore them a bit more. The folks in these 2 companies, who are supposed to be regulated, are not members of those companies. We do have some companies that are 8,000 and under at the present time, who also are not members of the company. In this case, these companies are just now under 18,000 people, and they are bigger companies run by cooperatives, but they are not members of the cooperatives. I would also note that there are some competitive pressures in these companies, particularly in the ND Telephone Company jurisdiction, and in the Devils Lake area, but I'm not so sure about in some other exchanges. ND Telephone Company is considered a rural telephone company in the view of the federal system. People have to ask permission in order to be able to go in and provide competition with regular telephone service.

Hearing Closed.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1142

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1252

Committee Clerk Signature

*Stephanne N. Thomas*

Minutes:

**Chair Keiser** opened the hearing on HB 1142.

Discussion of HB 1142, and discussion of testimony.

**Rep. Nottestad:** This bill changes what a company can do if they were under the law before, that's under \$18,000. This would permit them to fall in the same lines as the cooperatives in that same situation while making changes. There are two companies involved in this, the ND Telephone Company, and the Missouri Valley one.

**Rep. Ruby:** I recommend a do pass.

**Rep. Vigesaa:** Second.

**Rep. Kasper:** On Susan Wefald's written testimony where she says on the first page, the second concern is do all customers in the affected companies have an ability to choose between at least two line based companies for local telecommunications services, the answer to that is yes?

**Rep. Keiser:** Her testimony says there were about 4 or 5 different options out there, and that's why they were bringing it forward.

**Rep. Johnson:** The way I read it she wrote at least two line based companies, she didn't talk about wireless.

**Rep. Keiser:** That's one of my problems with her thinking. Young people today don't have lines anymore, and to require it to be two lines whether it is computer connections and/or wireless, anybody with a landline ten years from now, I'll be surprised.

**Rep. Dietrich:** We found that not only young folks, but in the real-estate business we found that outside city limits people are reluctant to go with cell phones.

**Rep. Kasper:** Even now, another land based company could subcontract with that area, without actually building a line.

**Rep. Keiser:** If you only had one landline company now, there's no land line company that would ever come in, in the future.

**Rep. Boe:** This is the one where I asked where I would fit into this, and I currently am exempt from the law right now. My provider is a for profit entity of a coop, and I'm exempt from PSC jurisdiction, so I'm sitting where everybody else will be with this law, and my service is very adequate, and I'm happy.

**Roll call vote was taken. 13 Yeas, 1 Nay, 0 Absent, Carrier: Rep. Nottestad**

Hearing closed.

# FISCAL NOTE

Requested by Legislative Council

01/15/2007

**REVISION**

Bill/Resolution No.: HB 1142

**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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**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).*

Currently privately owned phone companies with less than 8000 access lines are regulated in the same way as cooperative phone companies. This bill increases the 8,000 line cut-off to 18,000 lines. This will impact only two companies. We envision no fiscal impact from this change.

**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.*

n/a

**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.*

n/a

**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.*

n/a

**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.*

n/a

<b>Name:</b>	Illona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	328-2407	<b>Date Prepared:</b>	01/09/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/05/2007

Bill/Resolution No.: HB 1142

**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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**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).*

Currently privately owned phone companies with less than 8000 access lines are regulated in the same way as cooperative phone companies. This bill increases the 8,000 line cut-off to 18,000 lines. This will impact only one company. We envision no fiscal impact from this change.

**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.*

n/a

**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.*

n/a

**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.*

n/a

**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.*

n/a

<b>Name:</b>	Ilona Jeffcoat-Sacco	<b>Agency:</b>	PSC
<b>Phone Number:</b>	328-2407	<b>Date Prepared:</b>	01/09/2007

Date: 1-17-07  
Roll Call Vote #: \_\_\_\_\_

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1142

House Industry Business & Labor Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Ruby Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 1

Absent 0

Floor Assignment Rep Nottestad.

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

REPORT OF STANDING COMMITTEE (410)  
January 17, 2007 12:40 p.m.

Module No: HR-11-0694  
Carrier: Nottestad  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1142: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1142  
was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1142

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1142**

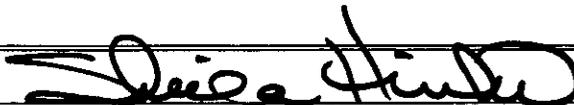
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 26, 2007**

Recorder Job Number: **3826**

Committee Clerk Signature



*PSC Telecommunications Companies:*

**David Crothers –ND Association of Telecommunications Cooperatives - In Favor**

**TESTIMONY # 1** *Read over testimony ended 8:08m*

**Representative Craig Hedland – Distict 29 - In Favor**

**S Klein:** 18,000, why, where's that level, is that a number? Where did we pick that from?

**David C:** 18,000 will include the locally owned telecommunications companies in the state.

**S Klein:** So this covers all groups and opportunity to expand.

**David C:** Yes. All of the competitors that now exist, anyone offering new prices in essence, that is the heart of what this is. Price cap regulation is not the determining factor when you have competitors in a marketplace. The customers are at a multitude of companies. 18,000 is an adequate number.

**S Klein:** In years past we have had bills that put they put everyone under regulation with PSC, I always felt they did a pretty good job, as explained and you don't see a problem with expanding those numbers to keep that same regulation within your smaller telcos.

**David C:** We've adopted a regulatory model which is proven successful, it is no different with a larger company and that's why it's chosen.

**Dave Dircks – GM of ND Telephone company NDTC – Devils Lake - *In Favor***

**TESTIMONY # 2** *Covered Testimony ending 15:02m*

**S Klein:** Is working through the PSC is that a timely issue or costly? Is that some of the things you run into?

**Dave D:** Yes, in July of 2005, we filed a PSC to rebalance our rates because of the changes in the towns. We tried to get one local rate a year before the rate was approved.

**S Klein:** Is there a struggle with you and the other companies on the outside but still part of the greater group as you work through and work at whether it's conventions or meetings of similar interests? The same rules don't apply to you, is that a problem?

**Dave D:** It is a little bit of a problem. We are on different regulations.

**S Potter:** You're at 17,400 customers already and only 3.5% of the new limit, why are you happy with that?

**Dave D:** We have competition, we lost couple 100 customers to cable services. We sold our Velva exchange to Minot and lost a good number to that.

**S Behm:** I don't understand how the cell phones aren't regulated by the PSC.

**Dave D:** Not sure.

**S Klein:** *Asked Crothers to answer.*

**David Crothers:** When the Federal Telcom Act was passed, they included several provisions that specifically barred states from regulating rates on a number of issues with wireless carriers including rates and "entry" and that has to do with the terms and conditions of offering service to their wireless customers, so the state is literally prohibited from making any rule regulation statute affecting wireless carriers by the Fed. Telecommunications Act.

**Roger Del Fiacco – Finance, Accounting and Regulatory Mgr. for Nemont Telephone Cooperative, MT (NEMONT) *In Favor***

**TESTIMONY # 3** *Went over testimony, ended 25:10m*

**S Klein:** I'm hearing about the competitive issues, there are some major concerns with hanging on to what you got and are you expanding your services to help with that?

**Roger D:** We are attempting to expand in the High Speed internet and offering wireless alternatives for voice. We are not currently in the cable business; that will be a long-term approach. We don't have cable.

**S Heitkamp:** Some of what you said surprises me. I use Red River and get great service, the nature of ND is to hang with the neighbors. Are the times changing, is it marketing from the other companies? Are we going far enough in this bill?

**Roger D:** We're at 8900 lines, that's not counting 1200 lost to Midco. This bill would cover 2 companies involved today.

**S Heitkamp:** You think you know NDakotans through and through and someone calls me at 6 pm and sells me that "I've got better service for you than what you can get through Red River," and I feel rude after I hang up. What's happening?

**Roger D:** The ones owned by US West, they're not members of the co op.

**S Potter:** It's regional differences, I have an ethnic voting study of ND. Why do we regulate coops at all? How does Montana differ in this?

**Roger D:** Montana is pretty much the same, there is no access line for commercial companies. Commercial companies are regulated in the state and the coops are not

**Dave Dunning – CEO Polar Communications, Park River, ND - In Favor**

**TESTIMONY #4** *Covered testimony, 29:25-31:42m*

**S Wanzek:** When I hear you talk, I think about all the different options there are out there and the changing times and the better things to come, would there be any companies that would be companies regulated over 18,000? Why is there a threshold at all?

**Dave D:** It was decided that 18,000 would work for us now, the only company that's left is Quest.

**S Wanzek:** If we eliminated threshold you wouldn't object.

**Dave D:** We wouldn't object at all.

**S Heitkamp:** You could eliminate the threshold for coops. We could be specific.

**Dave D:** These are commercial companies.

## **OPPOSITION**

**Susan Wefald, Public Service Commisisoner - Oppose**

**TESTIMONY # 5** *Read testimony 34:24 – 43:02m*

Is there enough competition to justify deregulation? Suggest for 2 years and not put off forever. Will have cellular competition. If you want competition, need price control.

**S Hacker:** Cellular companies, line-based competition, heat is not a substitute, you can't change heat easily, but you can change phone services. I don't have a house line, I use a cell phone. How can you explain to me that there is no competition with cellular and line based?

**Susan W:** Line based is still important, some of those folks still want to have a line based phone for computer even if they don't use on a daily basis, that's why we want to have line based available.

**S Hacker:** Do they have cable carriers that carry internet?

**Susan W:** I don't have that information

**S Heitkamp:** A statement that you made, "I would hope that a company that serves 18,000 subscribers in ND would always hire a consultant to prepare cost study to insure the proper rates." I managed a utility for 23 years and I don't think I could have brought in a consultant that understood our rate structure better than we did, board, staff, our numbers were beyond

this. Why do you feel it is necessary to expend that amount of money when you know what the needs are to have a rate study? Why an outside consultant, why would they know better?

**Susan W:** They offer their own expertise.

**S Heitkamp:** So you're going back to the case study with YOU.

I'm talking about this statement in general. To me, if I go to one of my rural telephone managers, I'm going to trust them better on what they need to do with their rates than someone I'm going to hire out of Minneapolis.

**Susan W:** I do have some faith in outside consulting. They can take a look at rates presently being offered, costs are allocated and make an unbiased determination.

**S Heitkamp:** What's fair, what is the service area? What does it take to speak from the commission as you said you were speaking for yourself and not the commission? If two of you say "yes," and one says "no," then do you come to the room with the power of the commissioner or does it take a unanimous vote?

**Susan W:** It takes two. My fellow commissioners are neutral on this bill.

**S Potter:** Have the coops that make up these private telephone companies, have they given up their control, or just added another layer of management and the consumer still votes for his coop board of directors?

**Susan W:** My understanding is that the ND Telephone companies, there are 3 coops that have their own members, this is a group with 18,000 customers

**S Potter:** The coops still run that company.

**Susan W:** Yes

**S Wanzek:** We passed this bill on the major regulatory authority that removes the rate.

**Susan W:** Yes.

**S Wanzek:** My concern is in the areas of competition. If it is major competition, shouldn't you want to lower rates? Do you also control the rate control structure if rates are raised or lowered? Couldn't that be good for consumers?

**Susan W:** Yes, in the future. It could be good for customers in short term.

**S Klein:** We have 160,000 of rural customers currently and now we're suggesting in here to add an additional 27,000 who are now going to be under the rules of what the other coops have used, what I believe, is a good job in the state. Do you think that releasing those 27,000 is going to create an anti-competitive swallowing up or throwing away of competition?

**Susan W:** We are medium cities in the state of ND where companies compete. Small towns, small exchanges are protected from competition. We haven't had competition requests in small areas.

**S Heitkamp:** Potential competition will lower rates. The fear would be that without this regulation, what we pay for that service might be inflated by the existing carrier, is that what we're talking about?

**Susan W:** *Covered discount* If the price is lowered, then Midcontinent communications get the 16% discount gets a much lower level of profit. The amount of money would be much less.

**S Wanzek:** Are you proposing that maybe we should pass the bill and amend it to an effective date or....?

**Susan W:** Either one.

**CLOSE**

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1142 B**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 26, 2007**

Recorder Job Number: **3828 @ 10:36**

Committee Clerk Signature



*Telecommunications Companies and PSC:*

**Move a DO PASS by S Heitkamp**

**Second by S Wanzek**

**Roll Call on a DO PASS HB 1142 – 7-0-0 – Passed**

**Carrier: S Hacker**



REPORT OF STANDING COMMITTEE (410)  
February 26, 2007 10:57 a.m.

Module No: SR-36-3833  
Carrier: Hacker  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1142: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1142 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1142



NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

P.O. Box 1144 • Mandan, ND 58554  
Phone 701-663-1099 • Fax 701-663-0707  
www.ndatc.com

HOUSE BILL 1142

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

JANUARY 15, 2007

DAVID CROTHERS  
NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 160,000 homes and small businesses and approximately 96 percent of the geographic territory of the State.

House Bill 1142 is a proposal to end monopoly era regulation for two independent telecommunications companies in North Dakota and adopt a regulatory model for those telcos that has already been proven successful in the State. The level of regulation in place for a telephone company with greater than 8,000 lines, and any that surpass that threshold in the future, is virtually identical to how telephone companies were regulated fifty years ago when there was no competition, the subscriber had no choice in whom their telephone company would be, what services that customer would take, what long distance company they would use or the color of their telephone.

The introduction of competition and evolution of technology have made the telecommunications market a vastly different landscape than it was when this level of regulation was adopted by the State of North Dakota. Voice over Internet Protocol (VoIP) providers, wireless telecommunications companies and cable television firms providing telephony all are robust competitors using the latest technologies while facing a fraction, if any, of the regulatory oversight of the incumbent, locally-owned

telephone companies in North Dakota. House Bill 1142 will allow the telcos with greater than 8,000 lines, but fewer than 18,000 the ability to more effectively compete with these new providers.

Very generally speaking, there are three tiers of regulation for incumbent telecommunications companies in North Dakota. The first level is for all of the telephone cooperatives and commercial companies with fewer than 8,000 lines; the second is for commercial companies with greater than 8,000 lines; and the third level is Qwest's regulation, which is substantially similar to other commercial companies in level two but has its local service rate established in State statutes.

House Bill 1142, if adopted, would regulate telcos with fewer than 18,000 lines identically to how the State of North Dakota currently regulates cooperatives and telecom companies with fewer than 8,000 lines. The Association believes that level of regulatory oversight has been extremely successful for both the telecommunications companies and the members and customers they serve.

There is a common misperception that cooperatives and small commercial companies are deregulated and face no Public Service Commission oversight. While those companies are not rate regulated or required to have the services they offer approved by the Commission, the PSC still retains jurisdiction for:

- NDCC 49-21-01.4: A customer's right to purchase essential services separately from a bundled service offering.
- NDCC 49-21-02.4: Telecom companies prohibited from slamming or cramming.
- NDCC 49-21-23: Determination of whether construction costs are recoverable.
- NDCC 49-21-24: Prohibits discrimination against another telecommunications company.
- NDCC 49-21-25: Regulation of competitive local exchange carriers (CLEC's).

- Sections 6-14 of  
NDCC 49-21-01.7: PSC authority to enact competition provisions of the Federal Telecommunications Act of 1996.
- NDCC 49-21-01.2: Statute creating price cap regulation.
- NDCC 49-21-01.3: Regulation of price cap charges for essential telecommunications.
- NDCC 49-21-06: Hearing of complaints about access charges.
- NDCC 49-21-07: Prohibition against discrimination against customers or other telecommunications company.
- NDCC 49-21-09: Authority to require connections between two telecommunications companies.
- NDCC 49-21-10: Prohibition against delaying another telecom companies traffic.
- NDCC 49-03.1: Telcos required to request certificate of Public, Convenience and Necessity (PC&N) before offering service.
- NDCC 49-04-05: Requirement that telcos receive permission before selling or encumbering.
- NDCC 49-04-06: Permission required to purchase assets of another utility.

The current level of Public Service Commission jurisdiction has been proven quite successful for all parties. Traditionally, it was telephone cooperatives and commercial companies with fewer than 3,000 subscriber lines that were subject to the lesser standard of Public Service Commission authority. In 1997, however, the subscriber line ceiling was raised to the current 8,000 line limit. The belief at that time was that a locally-owned telecommunications industry would have every incentive to keep rates reasonable and deploy the latest technologies to further its own interests, as well as those of the customer.

There was also discussion of a "social contract" between the State of North Dakota and the small telecom companies, which provided that the State would impose minimal regulation in exchange for those telcos keeping rates reasonable and investing in the company's infrastructure. In essence, making sure the customer is treated right. The telecommunications companies in the State have kept up their end of the bargain by investing heavily in infrastructure and new services, deploying high speed broadband to 290 North Dakota communities and keeping rates affordable.

The following companies in North Dakota currently operate under the "cooperative and fewer than 8,000 local exchange subscriber" exclusion:

- |  |                   |
|--|-------------------|
| 1) Absaraka Telephone Cooperative        | Absaraka, N.D.    |
| 2) BEK Communications                    | Steele, N.D.      |
| 3) Consolidated Telcom                   | Dickinson, N.D.   |
| 4) Dakota Central Telecom                | Carrington, N.D.  |
| 5) Dickey Rural Telephone                | Ellendale, N.D.   |
| 6) Griggs County Telephone Company       | Cooperstown, N.D. |
| 7) Inter-Community Telephone Company     | Nome, N.D.        |
| 8) Midstate Telephone Company            | Stanley, N.D.     |
| 9) Moore and Liberty Telephone Company   | Enderlin, N.D.    |
| 10) Nemont Telephone Cooperative         | Scobey, Montana   |
| 11) Northwest Communications Cooperative | Ray, N.D.         |
| 12) Polar Communications                 | Park River, N.D.  |
| 13) Red River Rural Telephone            | Abercrombie, N.D. |
| 14) Reservation Telephone Cooperative    | Parshall, N.D.    |
| 15) SRT Communications                   | Minot, N.D.       |
| 16) United Telephone Cooperative         | Langdon, N.D.     |
| 17) West River Telecommunications        | Hazen, N.D.       |

House Bill 1142 will add two companies, which are locally-owned and have a long history of investing in their customers and infrastructure to this list.

The Association believes it is important to note, however, that even if House Bill 1142 is adopted and incumbent local exchange companies with fewer than 18,000 lines are subject to less regulatory scrutiny, they will still be regulated far more stringently than any of their competitors.

Wireless carriers and Voice over Internet Protocol (VoIP) providers are not subject to any regulation for their prices, quality of service, service offerings or anything else by the State of North Dakota. Competitive local exchange carriers

(CLEC's) are only required to meet the obligations set forth in NDCC 49-21-25.

The Association believes that the level of competition that has occurred in North Dakota and the implementation of new technologies warrant expanding the current statute to 18,000 access lines. This body recognized that telecom regulation would need to be changed when it adopted NDCC 49-21-02(2) which provides, in part:

**"Telecommunications Companies--Common carriers--Public Policy,**

2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition." Emphasis added.

Finally, members of the Association believe that the standard set by this body in NDCC 49-21-02(2) has been met with the dramatic increase in competition from a multitude of providers using different technologies. We further believe that simply expanding the standard from 8,000 to 18,000 lines is a reasonable alternative to asking for the minimal or nonexistent regulation of our competitors.

Members of the Association urge a "Do Pass" recommendation on House Bill 1142.

Good Morning, My name is Dave Dircks. I am the General Manager of North Dakota Telephone Company (NDTC) headquartered in Devils Lake. NDTC serves approximately 17,400 telephone customers and 6,500 Internet customers in North Central North Dakota.

NDTC was established in 1993 when it was purchased from Contel of North Dakota. The company is a wholly owned subsidiary of Polar Communications of Park River, United Telephone of Langdon, and Dakota Central of Carrington. In 1996 NDTC nearly doubled in size when it purchased 9 telephone exchanges from U S West. The governing board of NDTC is comprised of Directors of the cooperative boards of the 3 owner companies mentioned above.

NDTC is operated as a commercial company with rate of return regulation under the jurisdiction of the North Dakota Public Service Commission. H.B.1142 proposes to increase the threshold for de-regulation of a commercial telephone company in North Dakota from 8,000 access lines to 18,000 access lines.

Since NDTC exceeds the current 8,000 line requirement, NDTC must receive approval from the Public Service Commission to rebalance or increase local rates, expand calling areas or introduce new service offerings. In addition, any bundled package (i.e., voice, video, or data) promotions offered to our customers that exceed a 90-day period, must also be approved. The approval process can be time consuming and expensive from a direct financial standpoint and from a lost opportunity standpoint. In order to make these filings with the Public Service Commission it requires the company to engage outside consultants to prepare and testify to the reasonableness and appropriateness of any proposed changes. For example, on June 1, 2005 NDTC filed an application with the Commission to revise its rates for local exchange telephone service. The proposal equalized the local rates by service type across the 26 communities that are served by NDTC. Outside consultants were hired to perform a local rate re-balancing study, rewrite NDTC's local tariff, and assist in pricing of services at a cost to the company of approximately \$27,000. The Commission agreed that the rates, charges and rules filed by NDTC were just and reasonable and ordered on December 30, 2005 that they be approved. The time delays and additional expenses due to regulated approval process not only impact NDTC but could have a direct impact on our subscribers since it results in delays to them and possible additional price increase due to the cost of the Commission process. In addition to the above mentioned regulatory requirements, NDTC must also submit annual data to the Commission and be prepared to answer questions relating to earnings review.

NDTC seeks to be afforded the same de-regulated benefits and opportunities relating to local rate setting, rate rebalancing, calling scope area, bundling and other such issues that have been previously granted to Telephone Cooperatives (some which are larger than 8,000 lines and even encompass more lines than NDTC) and to Commercially owned companies with less than 8,000 lines. It is our understanding that some companies that are currently de-regulated have indeed increased local rates, rebalanced their local rates, and have expanded their local calling areas (offered company-wide Extended Area Service) and have done so in a timely and efficient manner with minimal consumer complaint.

The market place conditions and the competitive landscape have changed drastically since the initial de-regulation legislation was passed. Today NDTC faces increasing Competition

(company-wide) from wireless carriers, from Voice Over Internet Protocol Providers, and from cable companies that resale our local service in our Devils lake exchange with future plans to offer facility based local services. Cellular providers and cable companies providing telephone services in NDTC exchanges are not subject to the same regulation as NDTC and therefore have an apparent competitive advantage in the market place over NDTC. Since NDTC must seek Commission approval for rate and service changes, modifications and for promotions that exceed 90 days, our competitor's would know any plans for service offerings and pricing long before NDTC has a chance to implement them. Thus our competitors would have the opportunity to influence and change the market conditions before NDTC could even roll out their plans to the consumers.

In closing, I would like to impress upon you NDTC favors competition and in fact welcomes it. We would simply like to compete without the restrictions that the current regulations have on NDTC. To have the ability and opportunity to make adjustments, modifications and changes as other Telephone companies that are currently de-regulated and to have the same opportunity as our competitors to react in a timely manner to market conditions.. Your support of H.B. 1142 would be appreciated.

Testimony of Roger P. Del Fiacco in regard to HB 1142

Good Morning, my name is Roger Del Fiacco. I am Finance, Accounting and Regulatory Manager for Nemont Telephone Cooperative, Inc. – MT (NEMONT), headquartered in Scobey, Montana. NEMONT has served the Northwest corner of North Dakota for 50 + years and has had a commitment to building infrastructure and providing quality service to its subscribers in North Dakota. NEMONT and its affiliated companies, Nemont Telephone Cooperative, Inc –ND (NTCI-ND), Nemont Communications Inc., and Sagebrush Cellular, Inc serve approximately 9,164 telephone subscribers, 1,700 internet subscribers, and 100 wireless subscribers in North Dakota. NEMONT also operates Nemont Long Distance with provides long distance services to subscribers in ND. The subscribers listed above are substantially served by Missouri Valley Communications, Inc. (MVCI), a commercial telephone company, (8,900 access lines, 1,700 internet, and 100 wireless), is part of the NTCI-ND study area, and owned by NEMONT.

Relevant to this hearing is MVCI's service to 8,900 telephone subscribers in the town of Williston, ND. MVCI was formed in 2002 when NEMONT purchased the Williston exchange from Citizens and agreed to keep the same local rates in place that Citizens had, and adopted the same Access rates that were in effect for NEMONT's NTCI-ND exchanges.

HB 1142 proposes to increase the threshold for deregulation of a commercial telephone company in North Dakota from 8,000 access lines to 18,000 access lines. If MVCI was under rate of return regulation, HB1142 would effectively place the responsibility for setting local telephone rates on the MVCI's Board of Directors, instead of having the constraints and lack of pricing flexibility that is presently has.

1. One of the primary historic justifications for regulation was that the marketplace did not have enough competition to protect consumers.
2. Market place conditions and the competitive landscape have changed dramatically since MVCI acquired the telephone local exchange business previously owned/operated by Citizens and Qwest. These significant changes include the following:
  - a. The incumbent Cable TV provider in Williston has upgraded its hybrid fiber/coax network and competes directly against MVCI for basic voice telephone service, features, long distance, and high speed internet.
  - b. Wireless substitution by means of Verizon, AllTel, and Sagebrush offering extensive cellular service in the Williston and northwest ND and many customers, especially in the younger demographics, are using cellular phones to meet all of their voice communications needs. Additionally, since Verizon and AllTel offer competitively priced national plans, we are finding that many customers who retain their local landline telephone service no longer use it to place long distance calls. These long distance calls are placed via their cellular phone as part of their pre-paid bucket of nationwide minutes.
  - c. Another emerging competitive alternative for consumers that have high speed internet connections is through "Voice Over Internet Protocol" – VOIP providers. Two leading providers of this service include Vonage and Skype (owned by E-Bay). Consumers who subscribe to these services have the capability to make/receive unlimited nationwide and international calls at incredibly low flat annual fees.
  - d. In addition to facilities based high speed internet alternatives from MVCI and the Cable TV company, high speed internet alternatives are also available from

Satellite based providers. In addition, a neighboring telecommunications carrier offers internet service to the Williston market through use of unlicensed wireless spectrum.

- e. Finally, nontraditional providers and self provisioned networks have entered the landscape in Williston. Examples of this include the fact that MDU is placing fiber optic cable and will lease "dark fibers" on these cables to customers who will use their own terminating electronics to "light it up" and establish data and communications networks. MDU has pursued this on behalf of the State of ND and one of the Oil Companies with facilities in Williston.
3. These market place and competitive conditions protect consumer interests in a much more efficient manner than formal regulation. Consumers have the opportunity to easily shift to an alternative provider if they have a poor service experience; if they think another provider offers greater functionality; or if they believe they can save money.

In closing, if MVCI is constrained by regulation it may impede the ability of the independent telephone industry in North Dakota to continue expanding calling scopes, perhaps even impede a statewide scope. Secondly, MVCI is governed by the cooperative board of directors of NEMONT whose governing body has a long history of acting in the best interest of the subscribers of North Dakota. Third, MVCI may not be able to respond to competition on rates and calling scope in a timely manner under the current rules and regulations.

#5

**North Dakota House Committee-Testimony- Industry, Business and Labor  
Committee Hearing**

Good morning, my name is David Dunning. I am the General Manager/CEO of Polar Communications headquartered in Park River, North Dakota. Polar Communications and it's wholly owned subsidiaries, Polar Telcom and Polar Cablevision serve approximately 12,500 telephone subscribers, 2,800 cable television subscribers and 7,000 Internet subscribers in eastern North Dakota. In addition, we provide alarm, video, paging, business telephone systems and other related communications services. Polar Communications also is part owner of the Dakota Carrier Network, North Dakota Long Distance and North Dakota Telcom.

Relevant to this hearing, we are also part owners of North Dakota Telephone Company in Devils Lake, North Dakota. North Dakota Telephone Company was established in 1993 when Polar Communications along with United Telephone, Langdon, North Dakota and Dakota Central Telephone, Carrington, North Dakota purchased the former Contel properties in the state of North Dakota. North Dakota Telephone Company' subscriber base and service territory increased significantly in 1996 in conjunction with the sale of rural telephone exchanges by US West. The governing board of North Dakota Telephone Company is comprised of directors from the cooperative boards of Polar Communications, United Telephone and Dakota Central Telephone. Board representation coincides with ownership interests.

HB 1142 proposes to increase the threshold for de-regulation of a commercial telephone company in North Dakota from 8,000 access lines to 18,000 access lines. This would effectively place the responsibility for setting local telephone rates on the North Dakota Telephone Company board of directors.

On July 1, 2005 Polar Communications expanded it's local calling scope and re-balanced rates. This rate adjustment, the first since January 1, 1979, was implemented in response to competitive pressures and customer demand. Specifically, the competitive pressures for expanded calling scopes and flat rate pricing come from cellular providers, cable television companies and VOIP (voice over Internet protocol) providers.

In contrast, due to present regulatory constraints, North Dakota Telephone Company has been unable to expand calling scopes. At the same time, North Dakota Telephone Company' competitors (cellular, cable companies, and VOIP providers) are free to set rates and respond to the market place.

In closing I would like to make two points. First, if North Dakota Telephone continues to be constrained by regulation it will impede the ability of the independent telephone industry in North Dakota to continue expanding calling scopes, perhaps some day on a statewide basis. Secondly, North Dakota Telephone Company is governed by the cooperative directors of its owner companies whose governing bodies have a long history of acting in the best interest of the citizens of North Dakota.

Mr. Chairman, committee members Polar Communications stands in support of HB 1142 and respectfully requests a "do pass" recommendation from this committee.

**8AM January 15, 2007**



Public Service Commission  
State of North Dakota

COMMISSIONERS

Tony Clark, President  
Susan E. Wefald  
Kevin Cramer

Executive Secretary  
Illona A. Jeffcoat-Sacco

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January 16, 2007

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

Re: House Bill 1142

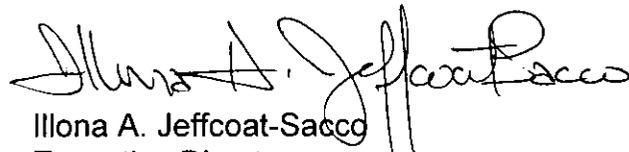
Dear Chairman Keiser:

Thank you for the opportunity to provide the Commission's position on HB 1142.

Commissioners Tony Clark and Kevin Cramer are neutral on the bill. Commissioner Susan Wefald has some concerns about the bill that she plans to share with you.

If you have any questions, please do not hesitate to call or e-mail me at [ijs@nd.gov](mailto:ijs@nd.gov).

Best regards,

  
Illona A. Jeffcoat-Sacco  
Executive Director

- |    |  |                               |
|----|--|-------------------------------|
| c: | Representative Nancy Johnson, Vice Chair | Representative Donald Vigesaa |
|    | Representative Donald L. Clark           | Representative Bill Amerman   |
|    | Representative Donald D. Dietrich        | Representative Tracy Boe      |
|    | Representative Mark A. Dosch             | Representative Ed Gruchalla   |
|    | Representative Jim Kasper                | Representative Elwood Thorpe  |
|    | Representative Darrell D. Nottestad      | Representative Steven Zaiser  |
|    | Representative Dan J. Ruby               |                               |

H. B. 1142

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

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

**Date:** January 15, 2007

**TESTIMONY**

Mr Chairman and Members of the Committee, I am Commissioner Susan Wefald, President of the North Dakota Public Service Commission. The testimony that I am presenting is my own testimony, and not that of the whole Public Service Commission.

**This bill involves significant deregulation for approximately 27,000 telephone customers in the state, served by two *private* companies.** I have two main concerns about House Bill 1142.

First, what ability will customers of these companies have to resolve price and service issues without any assistance from the Public Service Commission?

Second, do all customers in the affected companies have an ability to choose between at least two line based companies for local telecommunications services? In other words, is there enough effective competition to justify deregulation in these service territories?

*There is an important connection between effective competition and deregulation, and my recommendation is that the Legislature delay passing this bill for two years, to allow emerging competition a chance to get established before deregulating these two companies.*

***It is very important that regulation continue when competition is just starting to emerge, because deregulated incumbent telecommunications companies have a great deal of power to kill beginning competition. There is debate about whether to even count "resale" as competition, because***

***the incumbent company receives substantial revenue for the use of their facilities. (see below).***

***1. What ability will customers of these companies have to resolve price and service issues without any assistance from the Public Service Commission?***

Customers who are members of Telephone Cooperatives in North Dakota have an ability to vote for their board of directors, and this provides them with local control of their local telephone company. They also share in profits from the company. This is not the case with the two companies who will be affected by this bill.

The North Dakota Telephone Company, which has close to 18,000 subscribers, is owned by several cooperative companies, but the subscribers of North Dakota Telephone Company are not members of the company. Customers have no vote in local affairs, are not allowed to vote for the board of directors, and receive no share of the profits.

The same situation exists with Missouri Valley Telephone Company in Williston. This company is owned by Nemont Telephone Cooperative, Inc. in Scobey, Montana. These 8700 customers are not members of the telephone company, and will have no vote in local affairs and do not share any profits from the company. Also, Nemont Telephone Cooperative, Inc is an out of state company which owns Missouri Valley Telephone Company. This means that it is more difficult to "see the owners and talk to them in the coffee shop," which is supposedly the protection for customers that exists with the current regulation with fewer than 8000 customers.

Second, customers of the North Dakota Telephone Company, have brought concerns to the North Dakota Public Service Commission. For example, in 2005, the North Dakota Telephone Company filed a proposal to rebalance rates for local telephone service and establish rates for extended area service for local calling throughout the North Dakota Telephone Company service area. The Commission held public hearings and received a number of public comments regarding the filing. North Dakota Telephone Company voluntarily decided to

withdraw its proposal to establish rates for extended area service for local calling throughout its service area, however, the Commission did approve the company's rebalanced rates for local telephone service.

Third, North Dakota Telephone Company mentioned at the Legislative hearing on Monday morning that it cost them \$27,000 to prepare a cost study to show that the rates they were proposing were fair to their subscribers and fair in an emerging competitive market. They implied that this was a waste of money and stated that in the future their board would not need to have this type of work done, and could just decide on correct rates. I would hope that a company that serves 18,000 subscribers in North Dakota would always hire a consultant to prepare a cost study to ensure that proposed rates are fair and reasonable.

*2. Do all customers in the affected companies have an ability to choose between at least two line based companies for local telecommunications services? In other words, is there enough effective competition to justify deregulation in these service territories?*

The short answer to this question is "No."

#### North Dakota Telephone Company

Customers of North Dakota Telephone Company (NDTC) do have a choice between two cellular companies, but in 25 out of 26 exchanges served by NDTC, *there is only one choice for local line based service*. That one choice is NDTC.

Devils Lake is the only exchange which has just started (in 2006) to have any local competition and that is from Midcontinent Communications (MCC). MCC has just gone through the process mandated by federal law to be allowed to compete for local telephone customers in the Devils Lake Exchange. MCC is a reseller of local service, which means that they purchase telephone services at a 17% discount from the price established by the NDTC. For example, the current price for residential local service is established at \$13.12 without extended area service which means that MCC pays NDTC \$10.89 for each residential customer who makes a switch to MCC.

*It is very important that regulation continue when competition is just starting to emerge, because deregulated incumbent telecommunications companies have a great deal of power to kill beginning competition. There is debate about whether to even count "resale" as competition, because the incumbent company receives substantial revenue for the use of their facilities. It is for this reason that I suggest that the legislature wait two years and then examine how line based competition has emerged in the NDTC service area before deregulating this company.*

Missouri Valley Communications, Inc.

Customers of Missouri Valley Communications, Inc. (MVC) in Williston do have a choice of two cellular companies, and have a choice between Missouri Valley Communications and Midcontinent Communications, a reseller, for local line based telephone service.

A number of years ago, Northwest Communications Cooperative was "overbuilding" Williston to provide local line based service with their own facilities, but they have sold all of these facilities to Nemont Telephone Cooperative, Inc, the owner of MVC.

Midcontinent Communications (MCC) started to provide local service in Williston in 2004. At the present time they serve approximately 1200 customers. MCC is a reseller of local service, which means that they purchase telephone services at a 16.5% discount from the price established by the Nemont Telephone Cooperative. For example, the current price for residential local service is established at \$18.12 without extended area service which means that MCC pays MVC \$15.13 for each residential customer who makes a switch to MCC.

*It is very important that price regulation continue when competition is just starting to emerge, because deregulated incumbent telecommunications companies have a great deal of power to kill beginning competition. There is debate about whether to even count "resale" as competition, because the incumbent company receives substantial revenue for the use of their facilities.*

*It is for this reason that I suggest that the legislature wait two years and then examine how line based competition has emerged in the MVC service area before deregulating this company.*



NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

P.O. Box 1144 • Mandan, ND 58554  
Phone 701-663-1099 • Fax 701-663-0707  
www.ndatc.com

HOUSE BILL 1142

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE

FEBRUARY 26, 2007

DAVID CROTHERS  
NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 160,000 homes and small businesses and approximately 96 percent of the geographic territory of the State.

House Bill 1142 is a proposal to end monopoly era regulation for two independent telecommunications companies in North Dakota and adopt a regulatory model for those telcos that has already been proven successful in the State. The level of regulation in place for a telephone company with greater than 8,000 lines, and any that surpass that threshold in the future, is virtually identical to how telephone companies were regulated fifty years ago when there was no competition, the subscriber had no choice in whom their telephone company would be, what services that customer would take, what long distance company they would use or the color of their telephone.

The introduction of competition and evolution of technology have made the telecommunications market a vastly different landscape than it was when this level of regulation was adopted by the State of North Dakota. Voice over Internet Protocol (VoIP) providers, wireless telecommunications companies and cable television firms providing telephony all are robust competitors using the latest technologies while facing a fraction, if any, of the regulatory oversight of the incumbent, locally-owned

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telephone companies in North Dakota. House Bill 1142 will allow the telcos with greater than 8,000 lines, but fewer than 18,000 the ability to more effectively compete with these new providers.

Very generally speaking, there are three tiers of regulation for incumbent telecommunications companies in North Dakota. The first level is for all of the telephone cooperatives and commercial companies with fewer than 8,000 lines; the second is for commercial companies with greater than 8,000 lines; and the third level is Qwest's regulation, which is substantially similar to other commercial companies in level two but has its local service rate established in State statutes.

House Bill 1142, if adopted, would regulate telcos with fewer than 18,000 lines identically to how the State of North Dakota currently regulates cooperatives and telecom companies with fewer than 8,000 lines. The Association believes that level of regulatory oversight has been extremely successful for both the telecommunications companies and the members and customers they serve.

There is a common misperception that cooperatives and small commercial companies are deregulated and face no Public Service Commission oversight. While those companies are not rate regulated or required to have the services they offer approved by the Commission, the PSC still retains jurisdiction for:

- NDCC 49-21-01.4: A customer's right to purchase essential services separately from a bundled service offering.
- NDCC 49-21-02.4: Telecom companies prohibited from slamming or cramming.
- NDCC 49-21-23: Determination of whether construction costs are recoverable.
- NDCC 49-21-24: Prohibits discrimination against another telecommunications company.
- NDCC 49-21-25: Regulation of competitive local exchange carriers (CLEC's).

- Sections 6-14 of  
NDCC 49-21-01.7: PSC authority to enact competition provisions of the Federal Telecommunications Act of 1996.
- NDCC 49-21-01.2: Statute creating price cap regulation.
- NDCC 49-21-01.3: Regulation of price cap charges for essential telecommunications.
- NDCC 49-21-06: Hearing of complaints about access charges.
- NDCC 49-21-07: Prohibition against discrimination against customers or other telecommunications company.
- NDCC 49-21-09: Authority to require connections between two telecommunications companies.
- NDCC 49-21-10: Prohibition against delaying another telecom companies traffic.
- NDCC 49-03.1: Telcos required to request certificate of Public, Convenience and Necessity (PC&N) before offering service.
- NDCC 49-04-05: Requirement that telcos receive permission before selling or encumbering.
- NDCC 49-04-06: Permission required to purchase assets of another utility.

The current level of Public Service Commission jurisdiction has been proven quite successful for all parties. Traditionally, it was telephone cooperatives and commercial companies with fewer than 3,000 subscriber lines that were subject to the lesser standard of Public Service Commission authority. In 1997, however, the subscriber line ceiling was raised to the current 8,000 line limit. The belief at that time was that a locally-owned telecommunications industry would have every incentive to keep rates reasonable and deploy the latest technologies to further its own interests, as well as those of the customer.

There was also discussion of a "social contract" between the State of North Dakota and the small telecom companies, which provided that the State would impose minimal regulation in exchange for those telcos keeping rates reasonable and investing in the company's infrastructure. In essence, making sure the customer is treated right. The telecommunications companies in the State have kept up their end of the bargain by investing heavily in infrastructure and new services, deploying high speed broadband to 290 North Dakota communities and keeping rates affordable.

The following companies in North Dakota currently operate under the "cooperative and fewer than 8,000 local exchange subscriber" exclusion:

- |  |                   |
|--|-------------------|
| 1) Absaraka Telephone Cooperative        | Absaraka, N.D.    |
| 2) BEK Communications                    | Steele, N.D.      |
| 3) Consolidated Telcom                   | Dickinson, N.D.   |
| 4) Dakota Central Telecom                | Carrington, N.D.  |
| 5) Dickey Rural Telephone                | Ellendale, N.D.   |
| 6) Griggs County Telephone Company       | Cooperstown, N.D. |
| 7) Inter-Community Telephone Company     | Nome, N.D.        |
| 8) Midstate Telephone Company            | Stanley, N.D.     |
| 9) Moore and Liberty Telephone Company   | Enderlin, N.D.    |
| 10) Nemont Telephone Cooperative         | Scobey, Montana   |
| 11) Northwest Communications Cooperative | Ray, N.D.         |
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House Bill 1142 will add two companies, which are locally-owned and have a long history of investing in their customers and infrastructure to this list.

The Association believes it is important to note, however, that even if House Bill 1142 is adopted and incumbent local exchange companies with fewer than 18,000 lines are subject to less regulatory scrutiny, they will still be regulated far more stringently than any of their competitors.

Wireless carriers and Voice over Internet Protocol (VoIP) providers are not subject to any regulation for their prices, quality of service, service offerings or anything else by the State of North Dakota. Competitive local exchange carriers

(CLEC's) are only required to meet the obligations set forth in NDCC 49-21-25.

The Association believes that the level of competition that has occurred in North Dakota and the implementation of new technologies warrant expanding the current statute to 18,000 access lines. This body recognized that telecom regulation would need to be changed when it adopted NDCC 49-21-02(2) which provides, in part:

**"Telecommunications Companies—Common carriers—Public Policy,**

2. To allow the development of competitive markets for telecommunications services where such competition does not unreasonably distract from the efficient provision of telecommunications services to the public, and to lessen regulation in whole or in part of those telecommunications services which become subject to effective competition." Emphasis added.

Finally, members of the Association believe that the standard set by this body in NDCC 49-21-02(2) has been met with the dramatic increase in competition from a multitude of providers using different technologies. We further believe that simply expanding the standard from 8,000 to 18,000 lines is a reasonable alternative to asking for the minimal or nonexistent regulation of our competitors.

Members of the Association urge a "Do Pass" recommendation on House Bill 1142.

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NDTC was established in 1993 when it was purchased from Contel of North Dakota. The company is a wholly owned subsidiary of Polar Communications of Park River, United Telephone of Langdon, and Dakota Central of Carrington. In 1996 NDTC nearly doubled in size when it purchased 9 telephone exchanges from U S West. The governing board of NDTC is comprised of Directors of the cooperative boards of the 3 owner companies mentioned above.

NDTC is operated as a commercial company with rate of return regulation under the jurisdiction of the North Dakota Public Service Commission. H.B. 1142 proposes to increase the threshold for deregulation of a commercial telephone company in North Dakota from 8,000 access lines to 18,000 access lines.

Since NDTC exceeds the current 8,000 line requirement, NDTC must receive approval from the Public Service Commission to rebalance or increase local rates, expand calling areas or introduce new service offerings. In addition, any bundled package (i.e., voice, video, or data) promotions offered to our customers that exceed a 90-day period, must also be approved.

NDTC seeks to be afforded the same deregulated benefits and opportunities relating to local rate setting, rate rebalancing, calling scope area, bundling and other such issues that have been previously granted to Telephone Cooperatives (some which are larger than 8,000 lines and even encompass more lines than NDTC) and to Commercially owned companies with less than 8,000 lines. It is our understanding that some companies that are currently deregulated have indeed increased local rates, rebalanced their local rates, and have expanded their local calling areas (offered company-wide Extended Area Service) and have done so in a timely and efficient manner with minimal consumer complaint.

NDTC faces company-wide Competition from wireless carriers, Voice Over Internet Protocol Providers, and from cable companies that resale our local service in our Devils lake exchange with future plans to offer facility based local services. Cellular providers and cable companies providing telephone services in NDTC exchanges are not subject to the same regulation as NDTC and therefore have an apparent competitive advantage in the market place over NDTC.

In closing, I would like to impress upon you that NDTC favors competition and in fact welcomes it. We would simply like to compete without the restrictions that the current regulations have on NDTC, and have the ability and opportunity to make adjustments, modifications and changes as other deregulated Telephone companies and to have the same opportunity as our competitors to react in a timely manner to market conditions. Your support of H.B. 1142 would be appreciated.

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## Testimony of Roger P. Del Fiacco in regard to HB 1142 before the "Senate Industry, Business and Labor Committee"

Good Morning, my name is Roger Del Fiacco. I am Finance, Accounting and Regulatory Manager for Nemont Telephone Cooperative, Inc. – MT (NEMONT), headquartered in Scobey, Montana. NEMONT has served the Northwest corner of North Dakota for 50 + years and has had a commitment to building infrastructure and providing quality service to its subscribers in North Dakota. NEMONT and its affiliated companies, Nemont Telephone Cooperative, Inc –ND (NTCI-ND), Nemont Communications Inc., and Sagebrush Cellular, Inc serve approximately 9,164 telephone subscribers, 1,700 internet subscribers, and 100 wireless subscribers in North Dakota. NEMONT also operates Nemont Long Distance with provides long distance services to subscribers in ND. The subscribers listed above are substantially served by Missouri Valley Communications, Inc. (MVCI), a commercial telephone company, (8,900 access lines, 1,700 internet, and 100 wireless), is part of the NTCI-ND study area, and owned by NEMONT.

Relevant to this hearing is MVCI's service to 8,900 telephone subscribers in the town of Williston, ND. MVCI was formed in 2002 when NEMONT purchased the Williston exchange from Citizens and agreed to keep the same local rates in place that Citizens had, and adopted the same Access rates that were in effect for NEMONT's NTCI-ND exchanges.

HB 1142 proposes to increase the threshold for deregulation of a commercial telephone company in North Dakota from 8,000 access lines to 18,000 access lines. If MVCI was under rate of return regulation, HB1142 would effectively place the responsibility for setting local telephone rates on the MVCI's Board of Directors, instead of having the constraints and lack of pricing flexibility that is presently has.

1. One of the primary historic justifications for regulation was that the marketplace did not have enough competition to protect consumers.
2. Market place conditions and the competitive landscape have changed dramatically since MVCI acquired the telephone local exchange business previously owned/operated by Citizens and Qwest. These significant changes include the following:
  - a. The incumbent Cable TV provider in Williston has upgraded its hybrid fiber/coax network and competes directly against MVCI for basic voice telephone service, features, long distance, and high speed internet.
  - b. Wireless substitution by means of Verizon, AllTel, and Sagebrush offering extensive cellular service in the Williston and northwest ND and many customers, especially in the younger demographics, are using cellular phones to meet all of their voice communications needs. Additionally, since Verizon and AllTel offer competitively priced national plans, we are finding that many customers who retain their local landline telephone service no longer use it to place long distance calls. These long distance calls are placed via their cellular phone as part of their pre-paid bucket of nationwide minutes.
  - c. Another emerging competitive alternative for consumers that have high speed internet connections is through "Voice Over Internet Protocol" – VOIP providers. Two leading providers of this service include Vonage and Skype (owned by E-Bay). Consumers who subscribe to these services have the capability to make/receive unlimited nationwide and international calls at incredibly low flat annual fees.

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- d. In addition to facilities based high speed internet alternatives from MVCI and the Cable TV company, high speed internet alternatives are also available from Satellite based providers. In addition, a neighboring telecommunications carrier offers internet service to the Williston market through use of unlicensed wireless spectrum.
  - e. Finally, nontraditional providers and self provisioned networks have entered the landscape in Williston. Examples of this include the fact that MDU is placing fiber optic cable and will lease "dark fibers" on these cables to customers who will use their own terminating electronics to "light it up" and establish data and communications networks. MDU has pursued this on behalf of the State of ND and one of the Oil Companies with facilities in Williston.
3. These market place and competitive conditions protect consumer interests in a much more efficient manner than formal regulation. Consumers have the opportunity to easily shift to an alternative provider if they have a poor service experience; if they think another provider offers greater functionality; or if they believe they can save money.

In closing, if MVCI is constrained by regulation it may impede the ability of the independent telephone industry in North Dakota to continue expanding calling scopes, perhaps even impede a statewide scope. Secondly, MVCI is governed by the cooperative board of directors of NEMONT whose governing body has a long history of acting in the best interest of the subscribers of North Dakota. Third, MVCI may not be able to respond to competition on rates and calling scope in a timely manner under the current rules and regulations.

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**North Dakota Senate Committee-Testimony- Industry, Business and Labor  
Committee Hearing**

Good morning, my name is David Dunning. I am the General Manager/CEO of Polar Communications headquartered in Park River, North Dakota. Polar Communications and it's wholly owned subsidiaries, Polar Telcom and Polar Cablevision serve approximately 12,500 telephone subscribers, 2,800 cable television subscribers and 7,000 Internet subscribers in eastern North Dakota. In addition, we provide alarm, video, paging, business telephone systems and other related communications services. Polar Communications also is part owner of the Dakota Carrier Network, North Dakota Long Distance and North Dakota Telcom.

Relevant to this hearing, we are also part owners of North Dakota Telephone Company in Devils Lake, North Dakota. North Dakota Telephone Company was established in 1993 when Polar Communications along with United Telephone, Langdon, North Dakota and Dakota Central Telephone, Carrington, North Dakota purchased the former Contel properties in the state of North Dakota. North Dakota Telephone Company' subscriber base and service territory increased significantly in 1996 in conjunction with the sale of rural telephone exchanges by US West. The governing board of North Dakota Telephone Company is comprised of directors from the cooperative boards of Polar Communications, United Telephone and Dakota Central Telephone. Board representation coincides with ownership interests.

HB 1142 proposes to increase the threshold for de-regulation of a commercial telephone company in North Dakota from 8,000 access lines to 18,000 access lines. This would effectively place the responsibility for setting local telephone rates on the North Dakota Telephone Company board of directors.

On July 1, 2005 Polar Communications expanded it's local calling scope and re-balanced rates. This rate adjustment, the first since January 1, 1979, was implemented in response to competitive pressures and customer demand. Specifically, the competitive pressures for expanded calling scopes and flat rate pricing come from cellular providers, cable television companies and VOIP (voice over Internet protocol) providers.

In contrast, due to present regulatory constraints, North Dakota Telephone Company has been unable to expand calling scopes. At the same time, North Dakota Telephone Company' competitors (cellular, cable companies, and VOIP providers) are free to set rates and respond to the market place.

In closing I would like to make two points. First, if North Dakota Telephone continues to be constrained by regulation it will impede the ability of the independent telephone industry in North Dakota to continue expanding calling scopes, perhaps some day on a statewide basis. Secondly, North Dakota Telephone Company is governed by the cooperative directors of its owner companies whose governing bodies have a long history of acting in the best interest of the citizens of North Dakota.

Mr. Chairman, committee members Polar Communications stands in support of HB 1142 and respectfully requests a "do pass" recommendation from this committee.

9AM February 26, 2007

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H. B. 1142

Presented by: Susan Wefald, President  
Public Service Commission

Before: Senate Industry, Business and Labor  
Honorable Jerry Klein

Date: February 26, 2007

TESTIMONY

Mr Chairman and Members of the Committee, I am Commissioner Susan Wefald, President of the North Dakota Public Service Commission. The testimony that I am presenting is my own testimony, and not that of the whole Public Service Commission.

**This bill involves significant deregulation for approximately 27,000 telephone customers in the state, served by two *private* companies.** I have two main concerns about House Bill 1142.

First, what ability will customers of these companies have to resolve price and service issues without any assistance from the Public Service Commission?

Second, do all customers in the affected companies have an ability to choose between at least two line based companies for local telecommunications services? In other words, is there enough effective competition to justify deregulation in these service territories?

*There is an important connection between effective competition and deregulation, and my recommendation is that the Legislature delay passing this bill for two years, to allow emerging competition a chance to get established before deregulating these two companies.*

***It is very important that regulation continue when competition is just starting to emerge, because deregulated incumbent telecommunications companies have a great deal of power to kill beginning competition. There is debate about whether to even count "resale" as competition, because***

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***the incumbent company receives substantial revenue for the use of their facilities. (see below).***

1. *What ability will customers of these companies have to resolve price and service issues without any assistance from the Public Service Commission?*

Customers who are members of Telephone Cooperatives in North Dakota have an ability to vote for their board of directors, and this provides them with local control of their local telephone company. They also share in profits from the company. This is not the case with the two companies who will be affected by this bill.

The North Dakota Telephone Company, which has close to 18,000 subscribers, is owned by several cooperative companies, but the subscribers of North Dakota Telephone Company are not members of the company. Customers have no vote in local affairs, are not allowed to vote for the board of directors, and receive no share of the profits.

The same situation exists with Missouri Valley Telephone Company in Williston. This company is owned by Nemont Telephone Cooperative, Inc. in Scobey, Montana. These 8700 customers are not members of the telephone company, and will have no vote in local affairs and do not share any profits from the company. Also, Nemont Telephone Cooperative, Inc is an out of state company which owns Missouri Valley Telephone Company. This means that it is more difficult to "see the owners and talk to them in the coffee shop," which is supposedly the protection for customers that exists with the current regulation with fewer than 8000 customers.

Second, customers of the North Dakota Telephone Company, have brought concerns to the North Dakota Public Service Commission. For example, in 2005, the North Dakota Telephone Company filed a proposal to rebalance rates for local telephone service and establish rates for extended area service for local calling throughout the North Dakota Telephone Company service area. The Commission held public hearings and received a number of public comments regarding the filing. North Dakota Telephone Company voluntarily decided to

withdraw its proposal to establish rates for extended area service for local calling throughout its service area, however, the Commission did approve the company's rebalanced rates for local telephone service.

Third, North Dakota Telephone Company mentioned at the House hearing last month, that it cost them \$27,000 to prepare a cost study to show that the rates they were proposing to the Commission were fair to their subscribers and fair in an emerging competitive market. They implied that this was a waste of money and stated that in the future their board would not need to have this type of work done, and could just decide on correct rates. I would hope that a company that serves 18,000 subscribers in North Dakota would always hire a consultant to prepare a cost study to ensure that proposed rates are fair and reasonable.

*2. Do all customers in the affected companies have an ability to choose between at least two line based companies for local telecommunications services? In other words, is there enough effective competition to justify deregulation in these service territories?*

The short answer to this question is "No."

North Dakota Telephone Company

Customers of North Dakota Telephone Company (NDTC) do have a choice between two cellular companies, but in 25 out of 26 exchanges served by NDTC, *there is only one choice for local line based service*. That one choice is NDTC.

Devils Lake is the only exchange which has just started (in 2006) to have any local competition and that is from Midcontinent Communications (MCC). MCC has just gone through the process mandated by federal law to be allowed to compete for local telephone customers in the Devils Lake Exchange. MCC is a reseller of local service, which means that they purchase telephone services at a 17% discount from the price established by the NDTC. For example, the current price for residential local service is established at \$13.12 without

extended area service which means that MCC pays NDTC \$10.89 for each residential customer who makes a switch to MCC.

*It is very important that regulation continue when competition is just starting to emerge, because deregulated incumbent telecommunications companies have a great deal of power to kill beginning competition. There is debate about whether to even count "resale" as competition, because the incumbent company receives substantial revenue for the use of their facilities. It is for this reason that I suggest that the legislature wait two years and then examine how line based competition has emerged in the NDTC service area before deregulating this company.*

#### Missouri Valley Communications, Inc.

Customers of Missouri Valley Communications, Inc. (MVC) in Williston do have a choice of two cellular companies, and have a choice between Missouri Valley Communications and Midcontinent Communications, a reseller, for local line based telephone service.

A number of years ago, Northwest Communications Cooperative was "overbuilding" Williston to provide local line based service with their own facilities, but they have sold all of these facilities to Nemont Telephone Cooperative, Inc, the owner of MVC.

Midcontinent Communications (MCC) started to provide local service in Williston in 2004. At the present time they serve approximately 1200 customers. MCC is a reseller of local service, which means that they purchase telephone services at a 16.5% discount from the price established by the Nemont Telephone Cooperative. For example, the current price for residential local service is established at \$18.12 without extended area service which means that MCC pays MVC \$15.13 for each residential customer who makes a switch to MCC.

*It is very important that price regulation continue when competition is just starting to emerge, because deregulated incumbent telecommunications companies have a great deal of power to kill beginning competition. There is*

*debate about whether to even count "resale" as competition, because the incumbent company receives substantial revenue for the use of their facilities. It is for this reason that I suggest that the legislature wait two years and then examine how line based competition has emerged in the MVC service area before deregulating this company.*