

# NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

## REGULATORY REFORM REVIEW COMMISSION

Wednesday, July 23, 1997  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative Mick Grosz, Chairman, called the meeting to order at 8:30 a.m.

**Members present:** Representatives Mick Grosz, Eliot Glassheim; Senators John M. Andrist, Joel C. Heitkamp; Public Service Commissioner Bruce Hagen

**Others present:** See attached appendix

At the request of Chairman Grosz, Mr. Jay E. Buringrud, Assistant Director of the Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

At the request of Chairman Grosz, commission counsel presented a background memorandum on the development of North Dakota's telecommunications law and on extended area service.

At the request of Chairman Grosz, commission counsel reviewed the federal Telecommunications Act of 1996 and its effect on this state's telecommunications law. Commission counsel provided a handout entitled *NARUC's Summary of State Responsibilities Under the Telecommunications Act of 1996*, which is on file in the Legislative Council office.

At the request of Chairman Grosz, Ms. Illona Jeffcoat-Sacco, Director of the Public Service Commission's Public Utilities Division, provided testimony on the operation of this state's telecommunications law after the enactment of the federal Telecommunications Act of 1996. She reviewed recent Public Service Commission and Federal Communications Commission action. A copy of her testimony is on file in the Legislative Council office. She also provided a memorandum regarding a recent Eighth Circuit decision rejecting Federal Communication Commission rules on interconnection, which is on file in the Legislative Council office.

In response to a question from Senator Andrist, Ms. Jeffcoat-Sacco said the price U S West charges for switching a customer from one long-distance carrier to another is included in the tariff filed by U S West. She said a person could file a complaint against the price if that person thinks it is unreasonable. She says the Public Service Commission does not review the prices charged customers by small local exchange carriers.

In response to a question from Representative Glassheim, commission counsel said the federal Telecommunications Act of 1996 does not give authority to the Public Service Commission.

In response to a question from Senator Andrist, Ms. Jeffcoat-Sacco said if the price factor is over 1.0, the price charged to customers for service goes up.

In response to a question from Representative Grosz, Ms. Jeffcoat-Sacco said a condition of schools receiving a discount under the federal universal service fund is that there is an intrastate discount at least the same as the Federal Communications Commission sets for interstate discounts. She said the Public Service Commission, in order to set an intrastate discount has opened a rulemaking, sent out a notice of order to set a discount at the federal level, and has asked the Federal Communications Commission for a waiver. She said there is a jurisdictional problem because the small local exchange carriers are not under the jurisdiction of the Public Service Commission for purposes of a discount. She said this problem may require legislative action. She said if the discount is more than the federal discount, then this state needs a universal service fund. She said the federal funds for schools and libraries will be distributed on a first-come first-service basis. She said a minimum amount will be reserved for distribution on a need basis.

Commissioner Hagen commented that there is an assessment on interstate carriers for the universal service fund. He said 25 percent of universal service needs will be funded by interstate carriers. He said the Public Service Commission is sending a letter to the Federal Communications Commission to request a national, joint federal and state universal service fund.

At the request of Chairman Grosz, Mr. William P. Heaston, Senior Attorney, U S West Communications, Inc., presented testimony on U S West's perspective on how this state's telecommunications law is working and what needs to be done in light of the federal Telecommunications Act of 1996. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Grosz, Mr. Heaston said the resale price for the unbundled loop was set at \$19.75 by an arbitrator and this price was approved by the Public Service Commission. He said the trigger for regulatory parity has already happened with AT&T being able to provide local exchange services in North Dakota. He said the federal Act requires explicit subsidies that would not necessarily have to be a line item on a customer's phone bill, but may be folded into the basic service price.

In response to a question from Senator Andrist, Mr. Heaston said the idea of measured local service rates is alive and is being used in the provision of internet services.

In response to a question from Senator Heitkamp, Mr. Heaston said McLeod makes a profit by providing an extra service. He said Centrex is offered by U S West as well as McLeod. However, McLeod combines lots of customers under one Centrex system.

In response to a question from Senator Andrist, Mr. Heaston said McLeod purchases a common block of 20 lines from U S West and uses one Centrex line for five customers.

In response to a question from Representative Glassheim, Mr. Heaston said there is a margin of profit for McLeod in leasing lines from U S West at retail price and providing Centrex service. He said the cost of investing in equipment is part of the cost of doing business. He said U S West should be able to recover historical and embedded costs and not be subject to a pricing methodology based on long run incremental costs.

Commissioner Hagen said the Federal Communications Commission has set a deadline of August 15, 1997, for a state to decide if it will determine the pricing methodology. He said if the state does not determine the pricing methodology, the Federal Communications Commission will.

In response to a question from Commissioner Hagen, Mr. Heaston said Idaho and Wyoming have a state universal fund.

In response to a question from Representative Grosz, Mr. Heaston said other companies are building facilities in U S West territory and cherry picking large business customers. He said U S West should be allowed to reciprocate.

At the request of Chairman Grosz, Mr. Gary Witt, AT&T, provided testimony on AT&T's recommendations for legislative action. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Heitkamp, Mr. Witt said that forward-looking cost methodologies would result in a cheaper price for consumers.

In response to a question from Representative Grosz, Mr. Witt said the small local exchange carriers should not be reregulated unless the people of this

state want them to be reregulated. He said reregulation is not the position of AT&T. He said there needs to be a facilities-based competitor providing a substantial market share for there to be true competition. He said resellers are dependent on another company. He said it is unfair to let companies recover embedded cost. He said AT&T was in the same situation as U S West when the Sprint network started to compete with AT&T. He said AT&T had to update its equipment. He said AT&T is now fully digital. He said shareholders paid the difference. He said U S West does not have a competitor and that is why it wants embedded costs. He said rural carriers may have a different cost methodology applied than what is applied to U S West. He said AT&T wants a statewide permit to do activity on rights of ways within cities so that cities cannot use right-of-way activities as a profit-generating item.

At the request of Chairman Grosz, Mr. Jack McDonald, North Dakota Cable Television Association, said there are many nontraditional players in the telecommunications industry. He said these players include power companies and cable television companies. He said he would provide information on how commission action affected these entities.

At the request of Chairman Grosz, Mr. David Crothers, North Dakota Association of Telephone Cooperatives, provided testimony on the concerns of rural telephone companies. He said the companies' greatest concern is the recovery of costs. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Heitkamp, Ms. Jeffcoat-Sacco said there are no rules for extended area service. She said development of extended area service has been a matter of public pressure. Commissioner Hagen said historically extended area of service was adopted after a poll of telecommunications customers if that poll resulted in a two-thirds vote for extended area service.

Senator Andrist said extended area service is going to be the wave of the future. He said a factor in its development is going to be protecting the businesses with the infrastructure in this state.

In response to a question from Representative Glassheim, Mr. Crothers said local service is subsidized by universal service fund payments, higher business rates, access payments, and other federal programs. He said as a result of the sale of U S West exchanges to individual cooperatives there has not been any problem with quality of service.

**It was moved by Representative Glassheim, seconded by Senator Andrist, and approved on a roll call vote that the commission counsel prepare a letter in cooperation with the Public Service Commission in support of a joint state and federal**

**universal service fund to be sent to the Federal Communications Commission and the Joint Universal Service Board upon the approval of the chairman of the Legislative Council.** Representatives Grosz and Glassheim and Senators Andrist and Heitkamp and Commissioner Hagen voted "aye." No negative votes were cast.

Chairman Grosz adjourned the meeting at 12:35 p.m.

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Timothy J. Dawson  
Counsel

ATTACH:1