

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

REGULATORY REFORM REVIEW COMMISSION

Thursday, July 25, 2002
Cityscape Room, Radisson Hotel
Fargo, North Dakota

Representative Rick Berg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Rick Berg, Eliot Glassheim; Senators Steven W. Tomac, Rich Wardner; Public Service Commissioner Tony Clark

Others present: See attached appendix

It was moved by Representative Glassheim, seconded by Senator Wardner, and carried on a voice vote that the minutes of the previous meeting be approved as distributed.

Chairman Berg said the main issues before the commission are the creation of a state universal fund, whether to continue the commission, and whether to recommend bill drafts proposed by the Public Service Commission. He said Mr. Jim Blundell, Director, External Affairs, Western Wireless, sent a letter to the commission after its last meeting. A copy of the letter is on file in the Legislative Council office.

INFORMATION TECHNOLOGY

Mr. Curtis L. Wolfe, Chief Information Officer, Information Technology Department, presented testimony on information technology development in this state. He said there is a reverse digital divide in North Dakota. He said there are more services in small towns than in the cities. He reviewed the work of the Information Technology Committee and reviewed the development of the state information technology network. He reviewed *North Dakota Business Use of Information Technology* and *E Government Services and Computer and Internet Use in North Dakota* that were prepared for the Legislative Council and the Information Technology Department. A copy of each of these documents is on file in the Legislative Council office.

Mr. Wolfe said a state universal service fund is not necessary. He said the fund would be a new tax and does not bring anything to the marketplace. He reviewed alternatives in other states, including providing grants and the sale of right of way in exchange for usage. He said the Information Technology Committee meets frequently and has a full agenda. He said universal service fund issues would place an unworkable burden on the committee.

In response to a question from Senator Tim Mathern, Fargo, Mr. Wolfe said there has not been a demonstrated value of broadband to consumers. He

said the younger population wants more speed, but the older population is generally satisfied with Internet speeds. He said as the population ages there will be more interest in broadband.

Senator Tomac said he wants broadband but cannot get it in his area. He said one reason broadband is not popular in rural areas is because monthly payments are not common. He said many people in rural areas are on an annual budget. He said the problem is not just pricing, but budgeting as well.

Mr. Kent Blickensderfer, Qwest, provided testimony to the commission. He said Qwest invests large sums of money in broadband. He said Qwest is looking to expand DSL service as allowed by the marketplace. He said Qwest has to offer DSL service to competition at cost. He said rural companies do not have to provide broadband to competitors at cost.

In response to a question from Representative Glassheim, Mr. Blickensderfer said DSL takes a large investment. He said Qwest is in 14 states and makes decisions on expanding DSL based upon demand, so a city such as Grand Forks competes against larger markets.

PERFORMANCE ASSURANCE PLAN

Public Service Commissioner Tony Clark presented written testimony to the commission. He provided a bill draft to provide for the use of funds collected by the Public Service Commission under the performance assurance plan with Qwest. The bill draft created a special fund and appropriated money from that fund on a continuing basis for the purposes of monitoring the operation and effect of the North Dakota performance assurance plan. He said the bill draft will expire after two years. A copy of his testimony and bill draft is on file in the Legislative Council office.

Representative Glassheim suggested placing a cap on the fund at which time the Public Service Commission would have to go to the Budget Section for approval to use more funds.

In response to a question from Representative Glassheim, Commissioner Clark said Qwest has given the Public Service Commission estimates as to the amount of penalties; however, these estimates are trade secret information and may not be shared at this meeting.

In response to a question from Representative Berg, Commissioner Clark said the major expenditure from the special fund would be for an outside auditor to review Qwest's activities in the 14-state region. He said other costs would include travel and six-month reviews of the performance assurance plan.

Representative Berg said it is difficult to consider a bill draft when the relevant revenues and expenses are unknown.

In response to a question from Senator Tomac, Commissioner Clark said without legislation the fines would go to the general fund.

Representative Glassheim said the cost of administering the performance assurance plan should be covered by the fines and any excess should go into the general fund. He said it is difficult to make a general fund appropriation when the Public Service Commission does not know the extent of the expenses. He said it appears a special fund is needed. He said the bill draft should have the mechanism for a governmental body to review if the money is being spent appropriately.

In response to a question from Representative Berg, Commissioner Clark said the Public Service Commission would not be able to estimate expenses by August when the executive budget is due.

Commissioner Clark said he is not against a cap on special funds if it increases the comfort level of the commission. He said the fines will not come into the fund steadily and there will be some need to keep some funds from biennium to biennium.

Representative Berg said after reviewing the discussion, all commission members do not want an open-ended continuing appropriation. He said he does not like special funds because it makes it difficult to control a budget.

Senator Tomac said the commission should do nothing and the Public Service Commission should ask for funding in its budget. He said creating a cap on a special fund does not seem like a workable solution.

Commissioner Clark said he understands the dislike of special funds; however, the performance assurance plan is part of a contract with Qwest and is not part of state law. He said the fines collected are not statutory fines but contractual fines and, therefore, there are special circumstances requiring a special fund. He said the Public Service Commission does not know how much expenses will be because this is something new. He said having a general fund appropriation would be too rigid for a situation which requires flexibility.

Senator Wardner said after one biennium a general fund appropriation might be workable.

In response to a question from Senator Tomac, Commissioner Clark said it would be surprising if there were not any fines collected under the performance assurance plan.

Representative Berg suggested a special fund in which the Public Service Commission can spend money up to a certain amount without any approval and which expires in two years with the excess going to the general fund.

STATE UNIVERSAL SERVICE FUND

Commissioner Clark said the Federal Communications Commission timetable for the Tenth Circuit Court of Appeals remand is for a decision in December of this year. He said this would be bad timing for this state's legislative process. He said the timetables may be pushed back. He said it is a good idea for legislators to have a good grasp on a state universal fund. He suggested reviewing a few drafts but not recommending any drafts.

In response to a question from Senator Tomac, Commissioner Clark said the Public Service Commission is not for or against a state universal service fund. He said the Public Service Commission believes the creation of a fund is a legislative decision.

Senator Wardner said the commission should be prepared and have bill drafts ready.

Senator Tomac said he is against a state universal fund to subsidize wireless providers in rural areas. He said he is not opposed to having the commission be educated on a state universal service fund; however, lacking a concrete mandate there is no reason to study the issue this biennium.

In response to a question from Representative Glassheim, Commissioner Clark said he does not know what the Federal Communications Commission will order but is concerned it may say that states have one year to have a state universal fund, and if it does not, a certain amount of money will be withheld from the federal universal service fund.

Senator Tomac said Commissioner Clark's statements assume the Federal Communications Commission will not listen to any testimony and will not recognize that this state only has a biennial legislative session.

Senator Tomac said no one on the commission wants a fund. If a legislator determines that legislator wants a fund at a later time, that legislator can always ask the Legislative Council to prepare a bill draft.

Representative Glassheim said he is opposed to a state universal service fund. He said his base rate is higher than in rural areas. He said a state universal service fund would raise his rates to help rural areas. He said he would support a state universal service fund if required to have one by the Federal Communications Commission. He said the commission should have a bill draft prepared in case of this scenario.

Senator Tomac said the groups affected by the Federal Communications Commission decision would bring in bill drafts. He said a commission bill draft would not add much.

CONTINUATION OF REGULATORY REFORM REVIEW COMMISSION

Representative Berg said he is against a bill draft to continue the commission at this time.

Senator Tomac said maybe the commission has outlived its purpose. He said the Public Service Commission should assume the responsibilities of this commission and recommend legislation to the Legislative Assembly.

Senator Wardner said any telecommunications issues could be reviewed by the Information Technology Committee.

Representative Glassheim said the commission is not proactive but reactive to the decisions of the Federal Communications Commission. He said the Legislative Council could assign a study to whatever

committee it wanted if a decision of the Federal Communications Commission required the study of a state universal service fund. He said he does not think the commission is needed.

Representative Berg said it appears to be a commission consensus not to continue the Regulatory Reform Review Commission.

No further business appearing, Chairman Berg adjourned the meeting at noon.

Timothy J. Dawson
Commission Counsel

ATTACH:1