

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2420

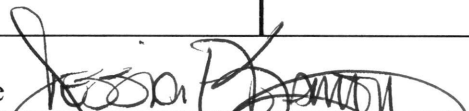
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2420

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 2, 1999

Tape Number	Side A	Side B	Meter #
1	x	x	1090-end, 0-2330
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on SB2420. All senators were present.

Senator Wardner introduced the bill. He said that a lot of work went into this bill. He acknowledged the fact that there are a lot of sensitive areas but he felt that in the long run this will provide cheaper telephone service for everyone.

Senator Tullickson testified in support of SB2420.

Dan Kuntz, US West, testified in support of SB2420. His testimony is included. Senator Thompson asked him if he could explain how this would be revenue neutral. Mr. Kuntz said that it would be revenue neutral for US West.

Bill Courter, McCloud USA, testified in support of SB2420. He felt that this piece of legislation would help promote development.

Tom Kelsh, AT&T, testified in support of SB2420.

Illona Jeffcoat-Sacco testified in support of SB2420. Her testimony is included. Senator Thompson asked her if she felt that this bill had enough safeguards. She felt that it does and that if it didn't she said that she would bring it up in the next legislative session. Senator Krebsbach asked her what the status of that fund. Illona Jeffcoat-Sacco said that the July was set as the time frame to figure out federal issues. Senator Mutch asked if the other providers will have to file their rates. Ms. Jeffcoat-Sacco said that the larger competitive companies will have to.

David Crothers said that he had a concern with some of the issues in the bill. He said that he was concerned with section 8 of the bill. Senator Krebsbach asked him if and when they plan to go to the 1+ dialing in the telephone coops. He said that they were unsure of the exact time.

Susan Wefald testified in opposition to SB2420. Her testimony is included.  
discussion took place.

Senator Mutch closed the hearing on SB2420.

Senator Sand motioned for a do pass committee recommendation on SB2420. Senator Krebsbach seconded his motion. The motion carried with a 7-0-0 vote.

Senator Klein will carry the bill.

FISCAL NOTE

(Return original and 13 copies)

Bill/Resolution No.: SB 2420

Amendment to:

Requested by Legislative Council

Date of Request: 1-27-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: *This bill, in part, eliminates the \$50 filing fee paid by a telecommunication company when filing a tariff revision with the Public Service Commission. Over the past 18 months the Public Service Commission has collected \$7500 in tariff filing fees and estimates that it will collect \$10,000 in filing fees over the 1997-1999 biennium. That revenue will be lost to the general fund if this bill is passed.*

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues: N/A	N/A	N/A	-\$10,000	N/A	-\$10,000	
Expenditures:	N/A	N/A	N/A	N/A	N/A	N/A

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

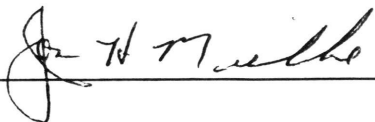
- a. For rest of 1997-99 biennium: N/A
- b. For the 1999-2001 biennium: N/A
- c. For the 2001-03 biennium: N/A

4. County, City, and School District fiscal effect in dollar amounts: *No Effect*

	1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
	Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Date Prepared: *January 29, 1999*

Signed: 

Typed Name: Jon H. Mielke, Executive Secretary

Department: Public Service Commission

Phone Number: 328-2400

PROPOSED AMENDMENTS TO SB 2420

Page 2, line 17, replace "215(h)" with "251(h)"

Page 3, line 10, after the underscored period insert "Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order."

Page 3, line 18, after "representative" remove "-"

Renumber accordingly

Date: 2/2/99  
Roll Call Vote #: 2420

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken ADOPT AMENDMENTS BY ~~THE~~ UNLWEST

Motion Made By KREBSBACH Seconded By MATHERN.

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

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

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

Date: 2/6/99  
 Roll Call Vote #: 240  
 SR2178

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

- Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

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

Action Taken DO PASS AS AMENDED

Motion Made By SANO Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment KLEIN

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

**REPORT OF STANDING COMMITTEE**

**SB 2420: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2420 was placed on the Sixth order on the calendar.

Page 2, line 17, replace "215(h)" with "251(h)"

Page 3, line 10, after the underscored period insert "Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order."

Page 3, line 18, replace "representative-embedded" with "representative embedded"

Renumber accordingly



1999 SENATE APPROPRIATIONS

SB 2420

Date: 2-8-99  
 Roll Call Vote #: ~~00000~~ 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2420

Senate APPROPRIATIONS Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

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

Action Taken DO PASS

Motion Made By SENATOR SOLBERG Seconded By SENATOR HOLMBERG

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter					
Senator St. Aubyn					
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment SENATOR KLEIN

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

REPORT OF STANDING COMMITTEE (410)  
February 8, 1999 2:47 p.m.

Module No: SR-25-2205  
Carrier: Klein  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2420, as engrossed: Appropriations Committee (Sen. Nething, Chairman)**  
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2420 was placed on the Eleventh order on the calendar.

1999 HOUSE FINANCE AND TAXATION

SB 2420

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2420

House Finance and Taxation Committee

Conference Committee

Hearing Date March 3, 1999

Tape Number	Side A	Side B	Meter #
1	✓		0.5
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

SEN. RICH WARDNER, DIST. 37, DICKINSON, Introduced the bill. Testified in support of the bill. The state of North Dakota is fighting to survive, as far as keeping people here. As I look at it, there are three or four issues that we have to address all the time in order to keep people here. #1. We need to have a good educational system. #2. We have to make sure we have funding for economic development. #3. We have to have a good solid communication system to help in keeping up with educational links and economic development issues. We need to be aggressive as far as setting the stage for business and for our citizens in the state. This bill will move us forward making sure that the incumbent carrier can provide the development of technology in order to keep us competitive with the rest of the nation and the rest of the world.

I think we are moving in the right direction. In my area, we have more than one telecommunications company competing. They aren't completely facility based, but they are moving in that direction. In this bill we are trying to rebalance rates so we raised the local rates and then reduce the access charges and reduce the intralata long distance telephone rate so the incumbent can compete. Right now, what is happening, the customers in our community, who are going to competitors, are the ones that make the long distance calls. Gave an example of a radio station in town and the university. I think it is important to provide the technical infrastructure so that we stay on the cutting edge of technology in the telecommunications industry.

SEN. LARRY ROBINSON, DIST. 24, Testified in support as a co-sponsor of the bill.

There are a lot of bills floating around each session, few have the potential impact that this bill brings before you. The bill represents a tremendous amount of work and a tremendous amount of compromise. In our community, we are very interested in this bill and the hopes that the bill is approved. Without the latest state-of-the-art infrastructure in place, our struggles will be that much more difficult.

REP. JIM KERZMAN, DIST. 35, Testified in support of the bill. Agree with senators who testified. This bill is moving in the right direction.

DAN KUNTZ,, REPRESENTING U S WEST COMMUNICATIONS, Testified in support of the bill. See written testimony. Included charts. Explained the services talked about in the bill.

REP. RENNER Asked questions relating to the basic service of twelve dollars per month and the long distance fee of twenty dollars, he stated it was a twenty five percent increase, for a three dollar reduction on the long distance fee.

DAN KUNTZ Stated they are estimating about a seventeen to twenty percent reduction in toll calls. At twenty five dollars it is about the break even level. If all of those are intra state calls, it would be a break even bill.

REP. RENNER What about folks on fixed incomes or folks that don't use long distance, their bill would go up?

DAN KUNTZ If they don't make any long distance calls, their bill will go up. There are a couple of safety nets in place for those people. There is a measured service option available for people that want to do measured service. There is a life line link up program for low income individuals that offers discounts. These prices are not affected by this bill.

REP. RENNER How do they get access to these programs?

DAN KUNTZ Those programs are available if you qualify under a social service type criteria, then you qualify for the life line, I think it is a ten dollar discount off the rate. The measured service rate, just ask for it.

REP. RENNER If there is a credit on their bill, with computer technology, if the basic service goes up, and they didn't make long distance calls, the credit would get used up.

DAN KUNTZ I hadn't thought about that, but the main focus of this bill is to get the cost of the individual service as closer to the cost of removing, not all necessarily, but some of those subsidies so that people will be able to get full prices that are cheaper and closer to dividing those services which is what the people want.

REP. RENNER What is the impact of this bill to the farmers?

DAN KUNTZ Farmers that are linked to U S West territory are on what is called a combination rate, it is halfway between a residential rate and a business rate, which is about thirty dollars.

This bill does not affect that rate.

REP. GROSZ Related to Section 9, when two companies are offering the same service, a standard is set, if there is no competition, why would you set any standards?

DAN KUNTZ I think the quality of service in North Dakota is as good as you are going to find anywhere. They haven't imposed those types of quality of service standards in some states. But, if they do that, what this is intended to do, is that they don't pick on one company to the disadvantage of another. If they are going to impose them, then everybody is going to play by the same rules.

REP. GROSZ The theory of competition is to have some regulation, it seems it would be better if there was competition in the field, there would be no regulation.

DAN KUNTZ Perhaps, in future sessions, we will be able to talk about removing regulations, when competition is at a level where we don't need this type of supervision, I think people are uncomfortable by going that far.

REP. WINRICH Referred to Section 4, there is a statement that telecommunications companies must submit a report to the commission indicating it has reduced prices in other areas, etc., but I don't see any requirement when that report has to be submitted. How soon after increasing prices does that report have to be submitted to the commission?

DAN KUNTZ I would suspect the company would submit that report in thirty to sixty days. In order to implement those reductions, you have to calculate it. Reductions have to occur at the same time as the increases.



REP. WINRICH Both Sen. Wardner and Sen. Robinson testified that this bill would sort of assure adequate infrastructure for telecommunications systems in the state, if any price increases that you impose on local service have to be challenged by price reductions, you said there is no gain in this bill, where do we get additional resources for infrastructure, if it is just shifting costs from one portion of the spectrum to the other?

DAN KUNTZ As it is going forward, it gets the cost closer to the actual cost of providing the service. If we don't do this, eventually, those subsidies will be eroded. The subsidies that are now supporting the local exchange markets will be eroded.

REP. SCHMIDT Referred to Section 13, if the company doesn't comply with the statute, you will wait to correct that when the legislature meets?

DAN KUNTZ Right now, there is an existing section of law that says that the Public Service Commission can exempt a company from a statute. This would take that power away. The only way a company can be exempt from the statute so they didn't have to comply with it anymore, was if they came to the legislature. Gave an example.

JOHN OLSON, REPRESENTING MCLEOD USA, Testified in support of the bill. Stated McLeod is a local exchange carrier who is a new company in North Dakota for about two years. This bill can give companies the opportunity to provide growth to customers in North Dakota. They are in about thirteen states, their headquarters are in Iowa. McLeod USA purchased Frontier Directory, the redbook.

THOMAS KELSCH, REPRESENTING AT & T CORPORATION, Testified in support of the bill. See written testimony.

CHARLES E. JOHNSON, PUBLIC SERVICE COMMISSION, Testified in support of the bill.

See written testimony by Charles Johnson.

JESS COOPER, GREATER NORTH DAKOTA ASSOCIATION, Testified in support of the bill. See written testimony.

MICHAEL LINDBLOOM, BISMARCK/MANDAN CHAMBER OF COMMERCE, Testified in support of the bill. Saying this will stimulate competition.

SUSAN WEFALD, PUBLIC SERVICE COMMISSION, Testified in opposition of the bill. See written testimony. Also submitted amendments to the bill.

REP. BELTER Referred to Page 3, regarding the statement about the long distance rates, do you feel there is such a lack of competition in the long distance business, consequently, there is a reduction in access charges the competition will not lower the overall rates so we have to have specific legislation to dictate this. I have a little problem with the concept, that there is no such thing as competition.

SUSAN WEFALD Referred to something she read by Alfred Conn which referred to rate rebalance. One of the issues he talked about was, on the federal level, after charge reductions had been put in place by the FTC from about 1992 to 1997, what they found was that consumer groups got involved in the issue because they found that during that time, there is more competition on interstate long distance than there is on intrastate long distance. They found during that time period, that people who subscribed to the most basic long distance plan, those that didn't make a lot of long distance calls, didn't qualify for discounts, their rates came up about forty five percent during that time period. That is why states are taking a look at this issue now. They are taking a look at actually putting provisions in state law that actually say these reductions should be tax free to all customer groups.

REP. WARNER Referred to Amendment D, can you describe the difference between current law and the concept under this bill, both the cause and the effect relationship.

SUSAN WEFALD Stated she would try to answer but maybe Chuck Johnson could answer it.

At the present time, we are able to set aside prices if we find it is unreasonable or unfair or inadequate. The way the present bill is set up, the commission may not set aside a price. The company is going to be filing two different cost studies with the commission, or it may choose to file only one cost study. They are going to be able to put forth to the commission a cost study which could in place costs which are more favorable to them. This provision that is presently in place in the law, might make it more difficult for the commission to set aside a price. I could put this down on paper and submit this to you in a memo.

REP. WARNER My understanding is the differences between the embedded costs and the forward looking economic costs. Is that correct, and that the embedded costs are in the older technology and the forward looking process which is experimental high tech nature?

SUSAN WEFALD Yes, you described them correctly.

REP. WARNER Your contention is the company will use whichever one shows its most favorable light?

SUSAN WEFALD I don't know those details.

REP. WINRICH As I understand it, the current monthly charge for local service averages around \$12.50?

SUSAN WEFALD That is what U S West testified this morning.

REP. WINRICH How is that charged, is that set in law, how did we arrive at \$12.50 per month?

SUSAN WEFALD The prices have been in place pretty much the same since 1989. The commission has not looked at those prices since then. The prices were set by the commission.

CHUCK JOHNSON Intervened stating the prices were set in 1983, then in 1989 when the price cap law was passed, the prices that were in place at that time were deemed reasonable, those are still the prices, since 1989, the prices were adjusted by the price cap factor, although the price adjustments have been fairly minimal.

SUSAN WEFALD At the time the price cap was put in place, I believe the commission expressed a concern that there needed to be a rate increase.

REP. WINRICH Related to what Rep. Renner was talking about earlier, in going from \$12.50 to \$18.00 within a six month time period, that is a price increase of greater than forty percent, it seems somewhat bizarre that it is going to be legislated in statute rather than through some sort of examination of cost as was traditionally done by the PSC. Is there a precedent for doing this?

SUSAN WEFALD The first cost increase will go into place on July 31, 1999, and that price will go up to \$15.50. I am concerned that it doesn't give the commission a lot of time to take a look at a cost study. Recently, when we asked US west when they would be able to provide us with cost study, we were told by U S West that they wouldn't be able to have a cost study to the PSC until sometime this summer. One year after that, the next price increase goes into place which is \$18.00. One of the amendments which I suggested, Amendment A, it talks about delaying the price increase to January 1, 2000. There is another part, in Amendment D, which talks about the legislation would stipulate that we would have time to look at this before the price increase went into effect.

REP. WARNER I understand that this bill only deals with U S West, do you anticipate there are other mechanisms to allow them to echo this?

SUSAN WEFALD I understand the board of directors of each co-op would take a look at this.

DAVID CROUTHERS Intervened stating the sponsors have indicated that the intent of the bill is to remain status quo. Earlier in testimony, they did a tremendous job of outlining it to establish a wonderful record so it continues into the future. I have checked with the association attorney, he believes it remains status quo. It is of critical importance to rural North Dakota that all these routes are averaged. I don't know how I can be absolutely sure, I have relied on everyone else.

REP. KROEBER In doing checking, Minot has a monthly charge of \$5.50 per month of whatever carrier they are using, what is the effect when these move up to \$15.50 and \$18.00 per month?

DAVID CROUTHERS This only applies to U S West. That is the distinction between the group one companies. Group two companies includes Souris River Telecommunication which services the City of Minot, having a six dollar rate, and the North Dakota Telephone Company which serves the Devils Lake area.

MARY EVANSON, STATE LEGISLATIVE COMMITTEE OF AARP, Testified in opposition of the bill. See written testimony.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 3-10-99, Tape #1, Side A, Meter #2.9

REP. MICKELSON Made a motion for a DO PASS.

REP. GRANDE Second the motion. MOTION CARRIED.

12 Yes 1 No 2 Absent

REP. MICKELSON Was given the floor assignment.

Please type or use black pen to complete

Date 3-10-99  
Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2420

House HOUSE FINANCE & TAX Committee

- Subcommittee on \_\_\_\_\_
- Conference Committee

} Identify or check where appropriate

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

Action Taken Do Pass

Motion Made By Rep. Mickelson Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH	✓	
RENNERFELDT	✓				
CLARK	✓				
FROELICH	A				
GRANDE	✓				
GROSZ	✓				
HERBEL		✓			
KROEBER	A				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 12 1  
(Yes) (No)

Absent 2

Floor Assignment Rep. Mickelson

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

**REPORT OF STANDING COMMITTEE (410)**  
**March 10, 1999 10:35 a.m.**

**Module No: HR-43-4426**  
**Carrier: Mickelson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2420, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman)**  
recommends **DO PASS** (12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2420 was placed on the Fourteenth order on the calendar.



1999 TESTIMONY  
SB 2420

## TESTIMONY OF U S WEST ON SB 2420

Mr. Chairman, members of the committee, I appear here on behalf of U S WEST in support of SB 2420 which would amend North Dakota's laws regarding the regulation of telecommunications companies. U S WEST believes the changes contained in this bill are necessary as North Dakota continues to move from a regulated to a competitive telecommunications industry. While the proposed changes will help foster a more competitive telecommunications market, they also include provisions to ensure protections for consumers during this transition period.

The following is a section by section explanation of the Bill.

### **Section 1.**

This section amends the provisions of present law at § 49-02-01.1 regarding the Commission's jurisdiction over cooperative and small telephone companies of less than 8000 lines. The Commission currently has very limited jurisdiction over these companies. The amendment specifies which new provisions of the bill will apply to these small companies. In general, the proposed new sections regarding: (1) the Commission's jurisdiction to implement the federal Telecommunications Act; (2) cost recovery for construction of new facilities; (3) prohibited acts by telecommunications companies; and (4) the regulatory requirements for competitive local exchange companies, will extend to these companies.

### **Section 2.**

This section would add five new definitions to current law.

“Competitive local exchange company” would include any telecommunications company providing local exchange telephone service other than the companies that were providing that service prior to when these markets were opened to competition. Competitive local exchange companies would include companies that are providing local exchange service either with their own facilities or by reselling the services provided by other carriers.

“Eligible telecommunications carrier” would be a telecommunications company designated by the Public Service Commission as eligible to receive federal support to provide universal service in high cost areas.

“Federal Act” would mean the federal Communications Act of 1934 that was amended by Congress in 1996 to allow competition in the local telecommunications market.

“Incumbent local exchange carrier” would mean the companies that were providing local exchange telephone service in their respective exchange areas at the time that the Telecommunications Act of 1996 was passed. For example, in Bismarck, U S WEST would be the incumbent local exchange company and any other company providing local exchange service would be considered a competitive local exchange company.

“Rural telephone company” means the same as that term is defined under the federal Act. The rural companies are entitled to certain exemptions from competition under the federal Act. There are a number of tests under the federal Act to determine whether a company is a rural company including companies that serve less than 50,000 access lines.

### **Section 3.**

Some of you may have been told that this is a telephone deregulation bill. The only service that is deregulated by this bill is private line transport service that is deregulated under Section 3. Private line transport service is when a company provides full-time dedicated lines between two points for a customer. Banks often use private line transport to provide dedicated facilities between their branches and central bank offices. The service has been classified as a nonessential service for 10 years. The service is appropriate for deregulation so the service and the prices can be customized for individual subscriber's purposes. Competitors are providing private line services and customers are also building their own private line networks.

### **Section 4.**

This section deals with what is commonly called price rebalancing. Historically, the price for residential local service has been kept artificially low. The difference between the price and the cost of providing the service was made up by contributions from other services such as long distance. Attached to this testimony is a chart that shows the relative relationship between the revenues and the costs of providing the three primary residential services offered by U S WEST. While the revenues from local exchange service are 46 percent of the total received from providing these services for residential customers, the costs of providing local exchange service are approximately 97 percent of the total. Of that amount, 84 percent represents the cost of providing and maintaining the wires or loops to the individual residential customers. The balance of those costs represents the costs of providing and operating the switching services to handle calls

between customers within the same exchange.

While the revenues U S WEST receives from it's intraLATA toll business and from switched access each account for approximately 27 percent of these residential revenues, the cost of actually providing these services is about 1 and 2 percent. As you can see, the cost of providing local exchange service is heavily subsidized by the switched access and toll revenues.

In a totally regulated environment, these implicit subsidies to residential service were not a big problem as long as the total revenues received by the companies were sufficient to cover its total costs. In a competitive environment, however, these implicit subsidies must be reduced. Three things happen when implicit subsidies from one service are used to support other services that are priced below their costs:

1. New companies will not invest in facilities to provide the subsidized service. Competitors will not invest to provide a service if the price for that service is not sufficient to recover the cost and return a profit to the company.
2. Competitors will target and compete for those services such as long distance calls that contain the implicit subsidies and eventually the subsidies will be lost. Because competitors are not required to provide the implicit subsidies to support local services, they can offer services such as toll at a lower price and still make a profit. Because of competition, the U S WEST toll market will steadily erode and the implicit subsidies provided by that service to support residential local exchange service will be lost. Likewise, customers are demanding lower toll prices. Companies cannot deliver the toll prices that customers want if those prices must contain the implicit subsidies that are presently contained within toll and switched access prices. In some instances, large toll users simply bypass the local exchange network and connect directly with a long distance company to avoid paying switched access charges. When that happens, the local exchange company loses all the implicit support from that customer for residential service.
3. As the implicit subsidies for residential service are lost, companies will be unwilling and unable to reinvest in upgrading their networks to provide

residential service when the revenues from the service do not recover the cost of providing the service . Not only will companies be unwilling to invest in new technologies to upgrade their networks to the residential customer, but eventually the quality of service over the existing networks will deteriorate.

Section 4 of SB 2420 would reduce the implicit subsidies that currently exist in U S WEST's intrastate switched access and toll prices by rebalancing those prices with an increase in residential local exchange prices. U S WEST's current residential local exchange prices, which average approximately \$12.65 per month, could be increased to \$15.50 after July 31, 1999 and could be increased up to \$18 per month after June 30, 2000.

If U S WEST increases its prices under this section it must then reduce its intrastate toll and switched access prices by an amount equal to the revenues it will receive from the increased residential local exchange prices. In round numbers, U S WEST anticipates that its intraLATA toll and switched access prices would be reduced approximately 17-20 percent as a result of this rebalancing.

U S WEST would be required to submit a report to the Public Service Commission showing that it made the reductions required by the statute. The Commission would also have the authority to investigate the increased prices and could set aside all or part of the increase if it determined the price was unfair or unreasonable. The Commission, however, could not set aside the increase if studies showed that the cost of providing the service exceeded the increased price. The final subsection provides that residential prices could be set below the maximum price and the same price would not have to be charged in each exchange as long as no price could exceed the price cap set under the statute.

This section of the bill addresses the primary objections that were voiced to HB 1067 in the last legislative session. First, it establishes a maximum price increase. Second, it requires that U S WEST flow through any additional revenues its receives from the price increase by lowering prices for switched access and toll services. Third, it gives the Public Service Commission the authority to investigate the price increase to make sure it is cost justified.

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The federal Telecommunications Act allows state public service commissions the authority to implement certain provisions of the federal Act in their states. For example, Public Service Commissions were given the authority to arbitrate agreements for connections between companies to exchange telephone traffic. It also gave the state commissions the authority to designate companies eligible to receive federal universal service fund support and to designate the geographic areas for which they could receive such support.

Although the federal Act gave the state commissions the authority to implement provisions of the federal Act, the Public Service Commission gets its authority from the State Legislature and not the federal government. Therefore, in order for the Public Service Commission to actually carry out the authority that was provided under the federal Telecommunications Act, it must also receive authority to do so from the State Legislature.

Section 5 of the bill specifies the areas where the Public Service Commission is given authority to implement the federal Telecommunications Act. In addition, the Commission would have authority under this section to adopt rules consistent with state

law to implement these new powers provided the rules could not impose obligations on a telecommunications company that were greater or different from the obligations imposed under the federal Act.

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The current law is scheduled to sunset on August 1, 1999. Section 8 of the bill will extend that date to January 1, 2000, however, by that date all local exchange companies must provide 1+ dialing parity with the exception of the incumbent cooperative and small telephone companies. This provision will bring increased competition in the intraLATA long distance market.

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**Section 10.**

This section deals with the facilities and the recovery of costs for facilities that a company is required to construct for the benefit of another. Under subsection 1, a company cannot be required to construct facilities at the request or for the use of another telecommunications company except to the extent required by the federal Act. Subsection 2 clarifies that if a telecommunications company is required to incur costs for the benefit of another company or for a customer, the Commission must allow the company to recover such costs in advance unless the cost is necessary to remedy some misconduct by the company, to comply with the requirements of the federal Act, or some other recovery mechanism is specifically provided for under federal or state law.

**Section 11.**

This section prohibits a company from discriminating against another company by refusing or delaying to provide access to the company's services or providing those services on terms that are less favorable than those the company provides to itself or by degrading the quality of service provided to another company. A company that believes this section has been violated can file an arbitration claim or it can file a complaint with the Public Service Commission.

**Section 12.**

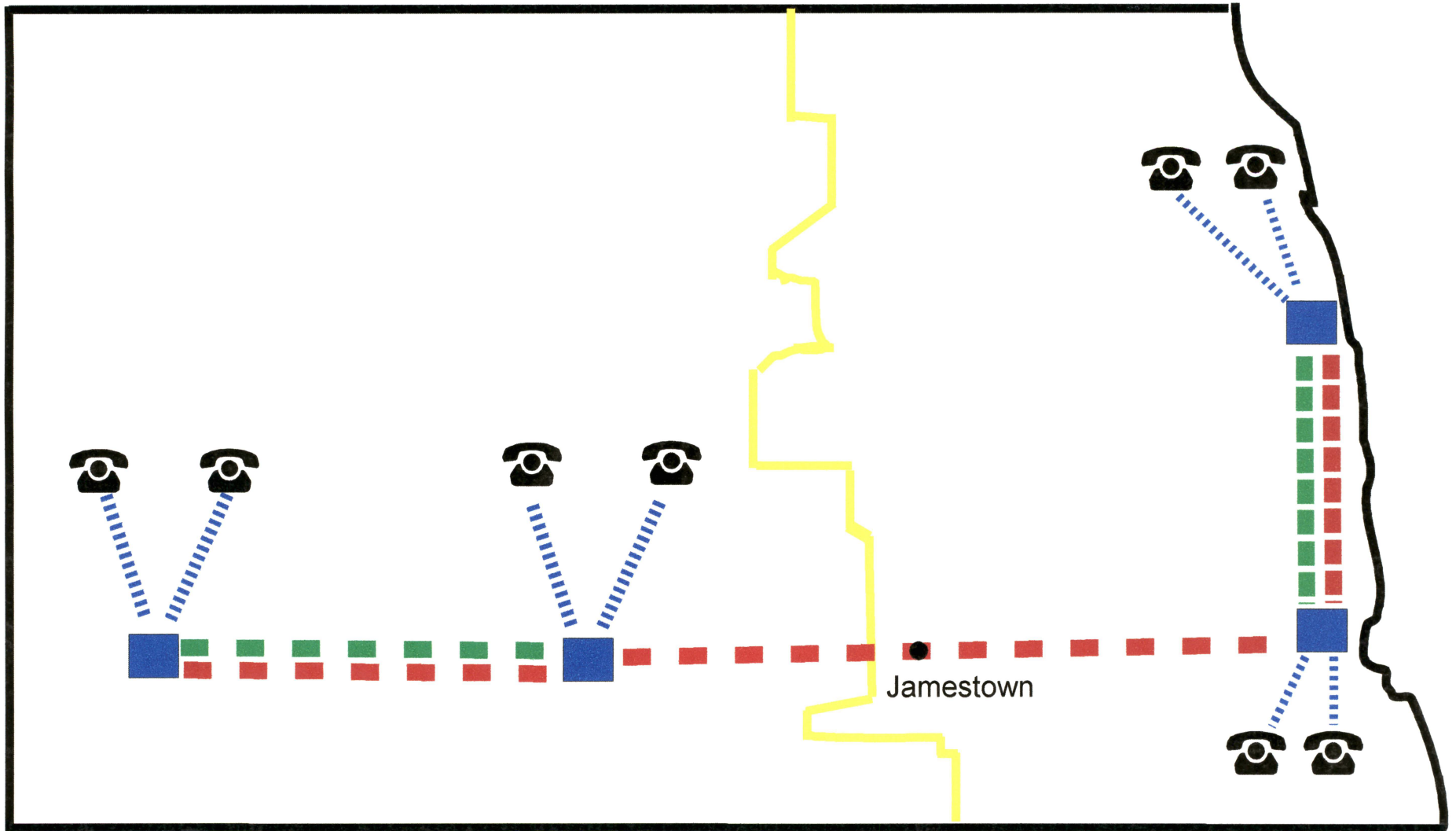
This section clearly identifies those sections of law which competitive local exchange carriers are required to meet and clarifies the Commission's jurisdiction over those companies regardless of size. In general, those sections include a requirement that companies offer essential services separately from other services, that they meet the

statutory requirements regarding access codes and caller identification services, that they not subsidize nonessential services with essential services, that they provide price schedules and file those price schedules with the Commission, that they are subject to complaints filed with the Commission regarding their prices, that they cannot discriminate between their customers, that they must provide 1+ dialing parity for intraLATA service, that they must provide connections with other telephone companies, they must provide refunds when required by law and they must meet the quality of service rules adopted by the Commission.

**Section 13.**

Currently, § 49-21-02.1 of the Century Code allows the Commission to exempt telecommunications companies or services from the law. This section of the law would repeal the Commission's authority to exempt a company or a service because the bill now specifically sets out the statutes with which each company is required to comply. If it is determined that a company or a service should be exempted from these statutes, the request would be presented to and acted upon by the Legislature.

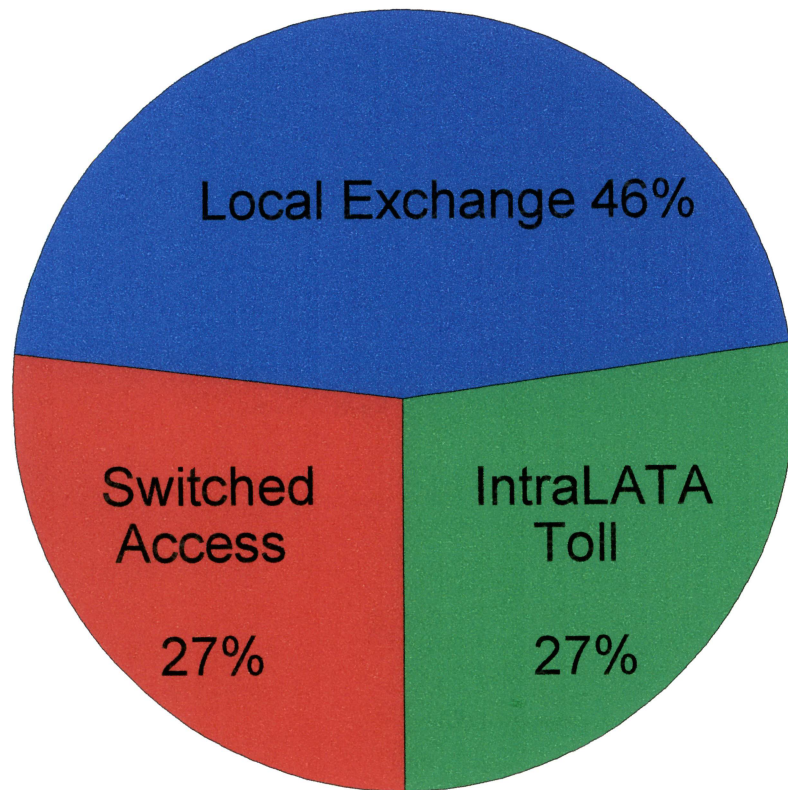
# US West Telephone Services



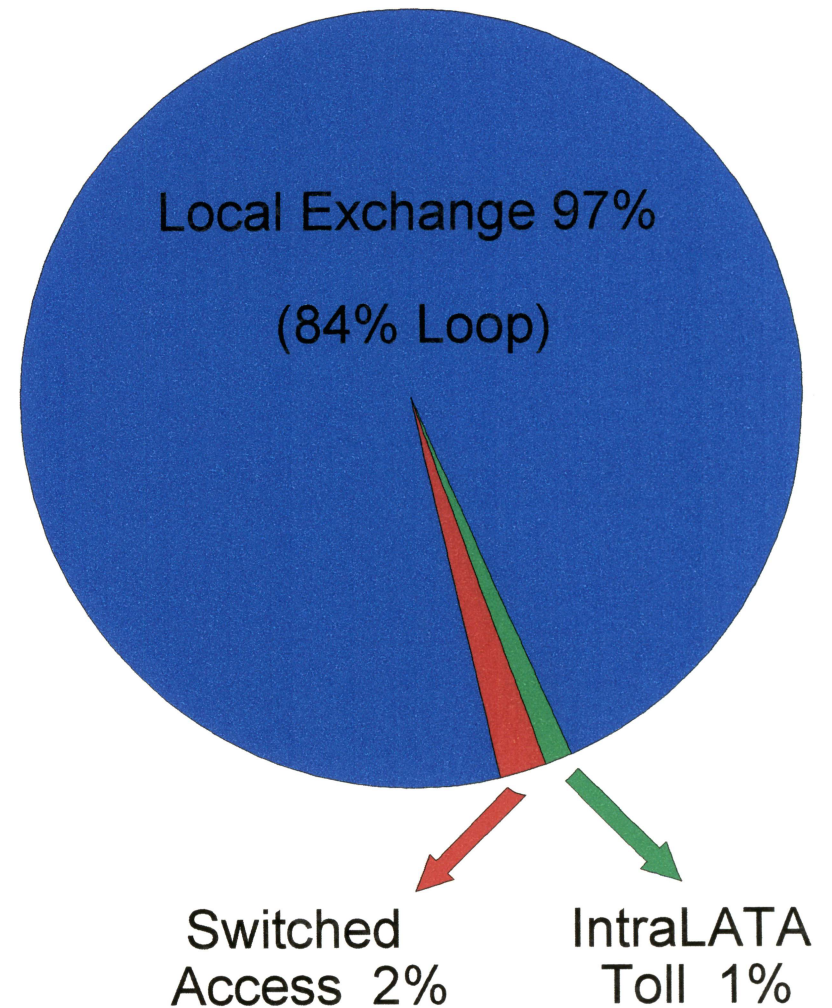
- Central Office
- ■ ■ ■ ■ US WEST Long Distance
- ■ ■ ■ ■ Interexchange Company Long Distance
- ⋯ Local Loop
- LATA Boundry

# Residential Telephone Services

## Revenues



## Costs



## S.B. 2420

**Presented by:** Illona Jeffcoat-Sacco  
Public Service Commission

**Before:** Industry, Business and Labor Committee  
Senator Duane Mutch, Chairman

**Date:** February 2, 1999

### TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, director of the Public Utilities Division of the Public Service Commission (Commission). Commissioners Hagen and Reinbold asked me to appear in support of SB 2420. Commissioner Wefald has some concerns about the bill and cannot support it at this time. However, all three Commissioners are in agreement regarding the following points.

We are finding our way through an exciting and sometimes scary time in the evolution of the telecommunications industry. Over a decade ago, Ma Bell was "reengineered" and the long distance market was opened to competition. We are still finding our way on the path from regulation of long distance to a market where competition is sufficiently viable that "customer choice maximizes consumer welfare."<sup>1</sup> As you can tell from the need for slamming and cramming legislation, we have not yet "arrived."

Three years ago Congress enacted the Telecommunications Act of 1996, which promised to bring competition and all its consumer benefits to the local

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<sup>1</sup> A phrase borrowed from academic literature on anti-trust and consumer protection.

service market. Today industry, customers and regulators are struggling with the very first steps on the path to competition. New providers struggle to gain a presence in a market while incumbents work toward "leveling the playing field." Customers want high technology, variety and choice, and the comfortable protections of the old days.

We believe that SB 2420 represents a very reasonable attempt to address many of those seemingly contradictory objectives. We understand that the bill incorporates the results of discussions and negotiations between U S WEST and at least some competitive and long distance providers. It is very important that the interests of these other players be taken into consideration because they represent the forces that will eventually develop a competitive local market.

In addition, SB 2420 clarifies the authority of the Commission over certain issues that may arise as competition develops, and begins to identify what regulations should apply to competitors and incumbents alike. These are important steps toward a viable competitive market for local service. Finally, the Commission recognizes the need for and benefit of applying the expected increased local revenues to reduce access and toll prices in North Dakota.

The Commission cannot say whether or not the prices identified in SB 2420 for U S WEST's local service are correct. However, the Commission will do its best under the investigation provisions of SB 2420 and other statutes to determine whether the increases are reasonable.

Thank you for the opportunity to testify on this important piece of legislation.

## SB 2420

**Present by:** Susan E. Wefald  
Commissioner

**Before:** Senate Business, Industry, and Labor Committee

**Date:** February 2, 1999

### TESTIMONY

Mr. Chairman and members of the Committee,

There are a number of good things in this bill.

For example, Section 8 of this bill includes the provision that all customers in the state should have the ability to use 1 plus equal access. Rural as well as urban customers need this service. This section is so good for all North Dakotans.

So many of our rural residents have to rely on long distance to make a majority of their phone calls. 1 plus equal access for both interlata and intralata calls is important because it encourages more competition, and usually lower prices, in the long distance market. (Please see the chart I've attached to my testimony.)

Section 12 is also good for customers. We have so few telephone customer protections that are currently in state law, and this section ensures that customers will continue to have these protections.

I can live with sections 1, 2, 5, 6, 9, 10, and 11.

I have just a few concerns with this bill that I would like to share with you, and some suggestions to make this proposed legislation better.

First, I am concerned about the procedure for rate changes in Section 4. **In this bill, the legislature is putting in place a rate increase before it asks U S WEST to prove that it is necessary.**

**What difference does this make to customers? Even if the Commission determines that the price is not correct, and sets the price aside, U S WEST can appeal the decision and the higher prices that U S WEST has put in place will stay in place until an appeal is completed. It is**



not clear that the refund law applies, even if an appeal court agrees that the rates are not set correctly for residential customers.

In order to help this situation, change the effective date of the first increase to January 1, 2000. This would give the Commission 8 months to finish a case on this matter. Also U S WEST should be required to file its cost studies (see line 18, page 3) with the Commission by June 1, 1999.

I am also concerned about the pricing flexibility that is added in 49-21-07. (Section 7) **If a company gives one small business a price waiver, will it be required to offer other small companies a price waiver? Or will just certain businesses be offered these good deals?** What is discrimination in these circumstances?

When I asked U S WEST about these provisions, they said that they should have the same abilities to offer special deals as other competitive markets. For example, car dealerships can offer different people different prices on cars.

However, there is a difference between the number of car dealers and the number of companies providing basic telephone services. **If I don't like the deal I am offered by one car dealer, I can go to many others. In U S WEST territory, we don't have that kind of competition.** I love promotional offerings, but I want the same chance to get them as anyone else. The language in this section needs changes.

Section 13 repeals the Commissions' ability to determine when services should be deregulated. Just when good information and approaches on deregulation are needed, the legislature is deleting the Commissions ability to look at these issues. **Instead of deleting this section, the proposed legislation should state that the Commission can not deregulate any services during this biennium. It should ask the Commission to study deregulation and make recommendations to the RRRC on this important topic.**

Also, in Section 3, the proposed legislation deregulates "private line transport service." This is the first time that proposed legislation says that a telecommunication service should no longer be considered a telecommunication service, according to North Dakota law. **Put section 3 of the bill on hold for two years, and ask the Commission to include this service in the above mentioned study on deregulation.**

**Next, I would like to address access charge reductions.** (Section 4, part 5) Access charges are the charges a long distance company pays to U S WEST to connect U S WEST customers to its long distance service. Access charges affect the cost per minute of long distance telephone calls. Therefore,

when access charges are high, the long distance company may charge more for its per minute long distance rates. When access charges go down, the long distance company may choose to reduce its long distance rates.

**However, there is nothing in this bill that says that passing through access charge reductions is going to result in lower rates for long distance customers in North Dakota. The long distance companies could just pocket these access charge reductions as more profit for themselves. Since long distance pricing is deregulated, we will never know if the access charge reductions are actually passed through to the customers. Commitments of price reductions are needed for North Dakotans.**

Finally, long distance charge reductions. U S WEST has the ability to reduce its long distance charges right now if it chooses to do so. Very soon, it will have to open its intrastate long distance market to competition. **U S WEST will need to reduce its long distance prices in order to effectively compete in the intrastate long distance market. U S WEST has stated for several years that if it loses revenue from long distance services, then it will have to increase basic local service prices.**

Legislators should remember that U S WEST has been active in marketing a number of new services in recent years, which provide it with additional income. For example, recently U S WEST added a feature called automatic redial. This service was added to every U S WEST customer's line in North Dakota, whether they wanted it or not. Every time you reach a busy signal, you are told that for an additional 75 cents, U S WEST will redial the number for you.

Services like these which U S WEST adds to its system, are not price regulated. I am glad that U S West is adding new services, and I think that it is just fine that they can determine the new price for these innovative services. **I am mentioning this to remind you that U S WEST has the ability to make additional profits in North Dakota from marketing new services. Revenue reductions from long distance services do not mean that they will not be able to make profits on telecommunications services in our state.**

With these few changes, I will support this bill.

**ONE PLUS DIALING SURVEY**  
**October 13, 1998**

**Question #1:** Do you have interlata 1+ equal access:

YES: Go to Question #3

NO

**Question #2:** What company is providing 1+ interlata toll service to your customers?

**Question #3:** Do you have intralata 1+ equal access?

YES - Stop

NO

**Question #4:** What company is providing 1+ intralata toll service to your customers?

	<u>#1</u>	<u>#2</u>	<u>#3</u>	<u>#4</u>
Absaraka Co-operative Telephone Company, Inc.	NO	AT&T	NO	U S WEST
Accent Communications, Inc.	YES		NO	Express Comm.
BEK Communications Cooperative	YES		NO	U S WEST
BEK Communications I, Inc.	YES		NO	U S WEST
Consolidated Telephone Cooperative	YES		NO	U S WEST
CTC Communications, Inc.	YES		NO	U S WEST
Dakota Central Communications Cooperative	YES		NO	U S WEST
Dakota Central Telecom I, Inc.	YES		NO	U S WEST
Dickey Rural Telephone Cooperative	YES		NO	U S WEST
Dickey Rural Communications, Inc.	YES		NO	U S WEST
Griggs County Telephone Co.	YES		NO	U S WEST
Halstad Telephone Company	YES		YES	
Inter-Community Telephone Company	YES		NO	U S WEST
Inter-Community Telephone Company II	YES		NO	U S WEST
Loretel Systems, Inc.	YES		YES	
McLeod USA Telecommunications Services, Inc.	YES		NO	U S WEST
Mid-Rivers Telephone Cooperative, Inc.	YES		NO	U S WEST
Midstate Communications Incorporated	YES		NO	U S WEST
Midstate Telephone Company	YES		NO	U S WEST
Moore and Liberty Telephone Company	YES		NO	U S WEST
Nemont Telephone Cooperative, Inc.	YES		NO	U S WEST
Noonan Farmers Telephone Company	YES		NO	U S WEST

	<u>#1</u>	<u>#2</u>	<u>#3</u>	<u>#4</u>
North Dakota Telephone Company				
11 exchanges purchased from U S WEST	YES		NO	U S WEST
9 exchanges	YES		NO	U S WEST
6 exchanges	NO	AT&T	NO	U S WEST
Northwest Communications Cooperative	YES		NO	U S WEST
Polar Communications Mutual Aid Corporation	YES		NO	U S WEST
Polar Telecommunications, Inc.	YES		NO	U S WEST
RC Communications, Inc.	YES		YES	
Red River Rural Telephone Association	YES		YES	
Red River Telecom, Inc.	YES		YES	
Reservation Telephone Cooperative	YES			
3 exchanges purchased from U S WEST	YES		NO	U S WEST
15 other exchanges	NO	AT&T	NO	U S WEST
Roberts County Telephone Cooperative	YES		YES	
SRT Communications, Inc.	YES		YES	
Souris River Telecommunications Cooperative	YES		YES	
Stateline Telecommunications, Inc.	YES		NO	Express Comm.
Turtle Mountain Communications, Inc.	YES		NO	U S WEST
U S WEST Communications, Inc.	YES		NO	U S WEST
United Telephone Mutual Aid Corporation	YES		NO	U S WEST
West River Communications, Inc.	YES		NO	U S WEST
West River Telecommunications Cooperative	YES		NO	West River LD
Wolverton Telephone Company	YES		YES	



GARY J. NELSON  
State Senator  
Chairman

JOHN D. OLSRUD  
Director

JAY E. BURINGRUD  
Assistant Director

CHESTER E. NELSON, Jr.  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

# North Dakota Legislative Council

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

February 2, 1999

Honorable Duane Mutch  
State Senator  
State Capitol  
Bismarck, ND 58505


Dear Senator Mutch:

This letter is in response to your question of whether Section 8 of 1999 Senate Bill No. 2420 applies to small and nonprofit telecommunications companies.

A small or nonprofit telephone company is a company that is owned and operated by a governmental entity; any nonprofit public utility that is operated as a nonprofit, cooperative, or mutual telecommunications company; or is a telecommunications company having fewer than 8,000 local exchange subscribers. Section 8 of Senate Bill No. 2420 requires a local exchange carrier to provide intraLATA dialing parity no later than January 1, 2000. The plain meaning of "[e]very local exchange carrier" would appear to apply to small and nonprofit telephone companies. However, this section does not appear to be enforceable against a nonprofit and small telephone company, because under North Dakota Century Code Section 49-02-01.1, the Public Service Commission does not have jurisdiction over nonprofit or small telecommunications companies for the purpose of dialing parity and Section 49-21-08.1 (which is amended by Section 8 of the bill) is not listed as a section that applies to nonprofit or small telecommunications companies.

Please contact this office with any questions.

Sincerely,

  
Timothy J. Dawson  
Counsel

TJD/LMM

## TESTIMONY OF U S WEST ON SB 2420

Mr. Chairman, members of the committee, U S WEST supports SB 2420 which would amend North Dakota's laws regarding the regulation of telecommunications companies. The changes contained in this bill are necessary as North Dakota continues to move from a regulated to a competitive telecommunications industry. While these proposed changes will help foster a more competitive telecommunications market, they also include provisions to ensure protections for consumers during this transition period.

The following is a section by section explanation of the Bill.

**Section 1.**

This section amends the provisions of present law at § 49-02-01.1 regarding the Commission's jurisdiction over cooperative and small telephone companies of less than 8000 lines. The Commission currently has very limited jurisdiction over these companies. The amendment specifies which new provisions of the bill will apply to these small companies. In general, the proposed new sections regarding: (1) the Commission's jurisdiction to implement the federal Telecommunications Act; (2) cost recovery for construction of new facilities; (3) prohibited acts by telecommunications companies; and (4) the regulatory requirements for competitive local exchange companies, will extend to these companies.

**Section 2.**

This section would add five new definitions to current law.

"Competitive local exchange company" would include any telecommunications

company providing local exchange telephone service other than the companies that were providing that service prior to when these markets were opened to competition. Competitive local exchange companies would be companies that are providing local exchange service either with their own facilities or by reselling the services provided by other carriers.

“Eligible telecommunications carrier” would be a telecommunications company designated by the Public Service Commission as eligible to receive federal support to provide universal service in high cost areas.

“Federal Act” would mean the federal Communications Act of 1934 that was amended by Congress in 1996 to allow competition in the local telecommunications market.

“Incumbent local exchange carrier” would mean the companies that were providing local exchange telephone service in their respective exchange areas at the time that the Telecommunications Act of 1996 was passed. For example, in Bismarck, U S WEST would be the incumbent local exchange company and any other company providing local exchange service would be considered a competitive local exchange company.

“Rural telephone company” means the same as that term is defined under the federal Act. The rural companies are entitled to certain exemptions from competition under the federal Act. There are a number of tests under the federal Act to determine whether a company is a rural company including companies that serve less than 50,000 access lines.

### **Section 3.**

The only service that is deregulated by this bill is private line transport service that

is deregulated under Section 3. Private line transport service is when a company provides full-time dedicated lines between two points for a customer. Banks often use private line transport to provide dedicated facilities between their branches and central bank offices. The service has been classified as a nonessential service for 10 years. The service is appropriate for deregulation so the service and the prices can be customized for individual subscriber's purposes. Competitors are providing private line services and customers are also building their own private line networks.

#### **Section 4.**

This section deals with what is commonly called price rebalancing. Historically, the price for residential local service has been kept artificially low. The difference between the price and the cost of providing the service was made up by contributions from other services such as long distance. Attached to this testimony is a chart that shows the relative relationship between the revenues and the incremental costs of providing the three primary residential services offered by U S WEST. While the revenues from local exchange service are 46 percent of the total received from providing these services for residential customers, the costs of providing local exchange service are approximately 97 percent of the total. Of that amount, 84 percent represents the cost of providing and maintaining the wires or loops to the individual residential customers. The balance of those costs represents the costs of providing and operating the switching services to handle calls between customers within the same exchange.

While the revenues U S WEST receives from it's intraLATA toll business and from switched access each account for approximately 27 percent of these residential revenues,



the incremental cost of actually providing these services is about 1 and 2 percent. As a result, the cost of providing local exchange service is heavily subsidized by the switched access and toll revenues.

In a totally regulated environment, these implicit subsidies to residential service were not a big problem as long as the total revenues received by the companies were sufficient to cover its total costs. In a competitive environment, however, these implicit subsidies must be reduced. Three things happen when implicit subsidies from one service are used to support other services that are priced below their costs:

1. New companies will not invest in facilities to provide the subsidized service. Competitors will not invest to provide a service if the price for that service is not sufficient to recover the cost and return a profit to the company.
2. Competitors will target and compete for those services such as long distance calls that contain the implicit subsidies and eventually the subsidies will be lost. Because competitors are not required to provide the implicit subsidies to support local services, they can offer services such as toll at a lower price and still make a profit. Because of competition, the U S WEST toll market will steadily erode and the implicit subsidies provided by that service to support residential local exchange service will be lost. Likewise, customers are demanding lower toll prices. Companies cannot deliver the toll prices that customers want if those prices must contain the implicit subsidies that are presently contained within toll and switched access prices. In some instances, large toll users simply bypass the local exchange network and connect directly with a long distance company to avoid paying switched access charges. When that happens, the local exchange company loses all the implicit support from that customer for residential service.
3. As the implicit subsidies for residential service are lost, companies will be unwilling and unable to reinvest in upgrading their networks to provide residential service when the revenues from the service do not recover the cost of providing the service. Not only will companies be unwilling to invest in new technologies to upgrade their networks to the residential customer, but eventually the quality of service over the existing networks will deteriorate.

Section 4 of SB 2420 would reduce the implicit subsidies that currently exist in U S WEST's intrastate switched access and toll prices by rebalancing those prices with an increase in residential local exchange prices. U S WEST's current residential local exchange prices, which average approximately \$12.65 per month, could be increased to \$15.50 after July 31, 1999 and could be increased up to \$18 per month after June 30, 2000.

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U S WEST would be required to submit a report to the Public Service Commission showing that it made the reductions required by the statute. The Commission would also have the authority to investigate the increased prices and could set aside all or part of the increase if it determined the price was unfair or unreasonable. The Commission, however, could not set aside the increase if either embedded cost studies or forward looking cost studies showed that the cost of providing the service exceeded the increased price. The final subsection provides that residential prices could be set below the maximum price and the same price would not have to be charged in each exchange as long as no price could exceed the price cap set under the statute.

This section of the bill addresses the primary objections that were voiced to HB 1067 in the last legislative session. First, it establishes a limit on the price increases.

Second, it requires that U S WEST flow through any additional revenues its receives from the price increase by lowering prices for switched access and toll services. Third, it gives the Public Service Commission the authority to investigate the price increase to make sure it is cost justified.

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This section deals with the facilities and the recovery of costs for facilities that a company is required to construct for the benefit of another. Under subsection 1, a company cannot be required to construct facilities at the request or for the use of another telecommunications company except to the extent required by the federal Act. Subsection 2 clarifies that if a telecommunications company is required to incur costs for the benefit of another company or for a customer, the Commission must allow the company to recover such costs in advance unless the cost is necessary to remedy some misconduct by the company, to comply with the requirements of the federal Act, or some other recovery mechanism is specifically provided for under federal or state law.

**Section 11.**

This section prohibits a company from discriminating against another company by refusing or delaying to provide access to the company's services or providing those services on terms that are less favorable than those the company provides to itself or by degrading the quality of service provided to another company. A company that believes this section has been violated can file an arbitration claim or it can file a complaint with the Public Service Commission.

**Section 12.**

This section clearly identifies those sections of law which competitive local exchange carriers are required to meet and clarifies the Commission's jurisdiction over those companies regardless of size. In general, those sections include a requirement that companies offer essential services separately from other services, that they meet the

statutory requirements regarding access codes and caller identification services, that they not subsidize nonessential services with essential services, that they provide price schedules and file those price schedules with the Commission, that they are subject to complaints filed with the Commission regarding their prices, that they cannot discriminate between their customers, that they must provide 1+ dialing parity for intraLATA service, that they must provide connections with other telephone companies, they must provide refunds when required by law and they must meet the quality of service rules adopted by the Commission.

**Section 13.**

Currently, § 49-21-02.1 of the Century Code allows the Commission to exempt telecommunications companies or services from the law. This section of the law would repeal the Commission's authority to exempt a company or a service because the bill now specifically sets out the statutes with which each company is required to comply. If the Commission or anyone else believes that a company or a service should be exempted from these statutes, the request would be presented to and acted upon by the Legislature.

## Engrossed S.B. 2420

**Presented by:** Charles E. Johnson  
Public Service Commission

**Before:** Finance and Taxation Committee  
Representative Wesley R. Belter

**Date:** March 3, 1999

### TESTIMONY

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission). Commissioners Hagen and Reinbold asked me to appear in support of Engrossed SB 2420. Commissioner Wefald has some concerns about the bill and cannot support it at this time. However, all three Commissioners are in agreement regarding the following points.

We are finding our way through an exciting and sometimes scary time in the evolution of the telecommunications industry. Over a decade ago, Ma Bell was "reengineered" and the long distance market was opened to competition. We are still finding our way on the path from regulation of long distance to a market where competition is sufficiently viable that "customer choice maximizes consumer welfare."<sup>1</sup> As you can tell from the need for slamming and cramming legislation, we have not yet "arrived."

Three years ago Congress enacted the Telecommunications Act of 1996, which promised to bring competition and all its consumer benefits to the local service market. Today industry, customers and regulators are struggling with the very first steps on the path to competition. New providers struggle to gain a presence in a market while incumbents work toward "leveling the playing field." Customers want high technology, variety and choice, and the comfortable protections of the old days.

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<sup>1</sup> A phrase borrowed from academic literature on anti-trust and consumer protection.



We believe that Engrossed SB 2420 represents a very reasonable attempt to address many of those seemingly contradictory objectives. We understand that the bill incorporates the results of discussions and negotiations between U S WEST and at least some competitive and long distance providers. It is very important that the interests of these other players be taken into consideration because they represent the forces that will eventually develop a competitive local market.

In addition, Engrossed SB 2420 clarifies the authority of the Commission over certain issues that may arise as competition develops, and begins to identify what regulations should apply to competitors and incumbents alike. These are important steps toward a viable competitive market for local service. Finally, the Commission recognizes the need for and benefit of applying the expected increased local revenues to reduce access and toll prices in North Dakota.

The Commission cannot say whether or not the prices identified in Engrossed SB 2420 for U S WEST's local service are correct. However, the Commission will do its best under the investigation provisions of Engrossed SB 2420 and other statutes to determine whether the increases are reasonable.

Since Engrossed SB 2420 was heard in the Senate, we have had an opportunity to consider its impact on the status and regulation of long distance resellers in North Dakota.

Currently, both long distance and local resellers are deregulated by previous Commission decisions under N.D.C.C. section 49-21-02.1, a section repealed by section 13 of Engrossed SB 2420. The Commission has rules in place outlining how resellers are regulated. Resellers must obtain a certificate of registration from the Commission before providing service in the state. They need not file price schedules or annual reports, and they are under no price regulation.

While section 12 of Engrossed SB 2420 identifies certain statutory provisions that will soon be applicable to local resellers (CLECs), the bill does not

specifically identify any provisions that will be applicable to long distance resellers. Section 5 of Engrossed SB 2420 provides that resellers need not obtain certificates of public convenience and necessity, and section 7 of Engrossed SB 2420 deletes a reference to companies deregulated under 49-21-02.1. in the sentence discussing uniform toll rates.

It is our understanding from discussions with the bill's drafters that Engrossed SB 2420 was not intended to change the way any resellers are registered to provide service in North Dakota, nor the way long distance resellers are regulated. It is our understanding that resellers and all providers of long distance service will have to continue to charge uniform rates. We intend to continue the current method of registering resellers and the current method of regulation of long distance resellers. In addition, we recognize that Engrossed SB 2420 does affect the regulation of local resellers.

Thank you for the opportunity to testify on this important piece of legislation.

TESTIMONY ON SENATE BILL NO. 2420  
By: Thomas Kelsch on behalf of AT&T Corp.

Mr. Chairman, members of the committee, my name is Thomas Kelsch, and I am here on behalf of AT&T. I am here today to voice AT&T's support for SB 2420.

This bill is the result of discussions between US West, McLeod USA, and AT&T over the past several months. It is a compromise and therefore contains certain elements which AT&T would not ordinarily seek or support in the legislative arena. From AT&T's perspective, however, there are three important and positive elements to this bill: first, as a result of this bill, North Dakota intrastate access charges will begin to come down, slowly moving closer to costs and AT&T is committed to the policy that reductions in access charges resulting from compliance with this Act shall be used to reduce intrastate long distance prices for consumers within the State of North Dakota. Second, the bill provides a starting point for establishing necessary rules for nondiscriminatory behavior between and among telecommunications carriers; and third, any efforts to deaverage retail rates for local exchange service must now be linked to the deaveraging of wholesale, interconnection rates as well.

AT&T believes that this bill must be viewed as a starting point for possible future action, specifically to bring access charges down much further, toward cost.

Nevertheless, in view of the circumstances surrounding this bill, AT&T is in support. Moreover, in light of the discussions which have occurred between US West, McLeod USA, and AT&T, it is clear that a very delicate balance has been struck with this measure, a balance reflected by the language currently contained in this version of the bill. Any amendment to SB 2420, either by way of addition or subtraction of one or more elements of the bill, will certainly upset that balance, and unhinge that compromise. I therefore urge you to vote in favor of this

current version of SB 2420, without amendment.

This concludes my testimony. I would be pleased to respond to any questions you may have.



Greater North Dakota Association

Statement by Jess Cooper, Vice President, Greater North Dakota Association, regarding SB 2420, North Dakota House Finance and Tax Committee; March 3, 1999.

Chairman Belter and members of the House Finance and Tax Committee, I am Jess Cooper of the Greater North Dakota Association. GNDA supports SB 2420 as passed by the Senate. It will help facilitate more robust competition in business and residential telecommunications services and allow prices to move closer to covering costs for all services. This legislation provides an incentive for investment in the local telecommunications network and future high-tech data systems.

GNDA believes the legislation reduces in-state long distance calling rates for North Dakota business and residential customers while not hindering the efforts of competing local service providers, rural cooperatives or interstate long-distance carriers. North Dakota needs to encourage investments in the state and allow all companies to fairly compete for business customers and enhance competition for residential customers.

SB 2420 is pro-competition, pro-business and pro-consumer. GNDA strongly supports passage of this legislation as approved by the Senate.

## SB 2420

**Presented By:** Susan E. Wefald  
Public Service Commission

**Before:** House Finance and Taxation Committee  
Wesley R. Belter, Chairman

**Date:** March 3, 1999

### TESTIMONY

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

You have before you some amendments that would enable the spirit of this bill to move forward while providing some very basic protections to U S WEST customers. **These amendments simply make this a fairer bill.**

**Private Transport Service** - SB 2420 (section 2, page 2) changes private line transport service from a non-essential (price deregulated) service to a section of the law which says that it is no longer considered a telecommunication service. The legislature should consider this change very carefully since it could affect funding for universal service in the future and may affect present taxes paid.

Private line transport services are dedicated lines that are bought by high volume users of telecommunications services. For example, if you pay \$5000 a month for long distance charges, you may want to explore the possibility of purchasing private line transport service.

We don't know yet how we will be funding universal service in North Dakota in the coming years. However, we will want to keep the base of funding for universal service as broad as possible in order to generate the funds that are needed. At this time, we can anticipate some type of tax on telecommunications services that will be used for this purpose.

This bill says that **private line transport will no longer be considered a telecommunications service. This provision in this bill may have an impact**

on funding of universal service if this section is not amended as proposed.  
(amendment G)

It also may have an impact on the amount of tax revenues that telecommunications companies presently pay into the state. You may wish to ask for a fiscal note from the Tax Department on this matter, if you have not already checked on this.

**One Plus Dialing by next January** – This bill requires U S WEST to provide one plus equal access by January 1, 2000. The U S Supreme Court held in late January that the FCC rules on 1+ equal access which now require large local companies to put in place one plus intralata equal access are valid and enforceable. Therefore, this provision regarding U S WEST in our bill may be redundant depending on the FCC's implementation schedule. Last week at a meeting in Washington D.C., FCC staff said that a company like U S WEST might be required to provide 1+ equal access as early as May 1999.

**Long distance rate reductions** – at the present time, U S WEST has price schedules on file with the Commission which state the long distance rates that residential and business customers pay for long distance. Both customer groups pay the same rates at this time. These services have been price deregulated since 1989, and so U S WEST has had the ability to make pricing decisions on these matters for some time. Large telecommunications customers are able to receive volume discounts.

U S WEST has not put any information on the record about how it will implement the long distance rate decreases. Will it continue to have the same rate schedules for business and residential customers? These questions are unanswered, and this is why it is so important to put in place **amendment C**.

**Access charge reductions** – Access charges are the charges a long distance company pays to U S WEST to connect U S WEST customers to its long distance service. Access charges affect the cost per minute of long distance telephone calls. Therefore, when access charges are high, the long distance company may charge more for its per minute long distance rates. When

access charges go down, the long distance company may choose to reduce its long distance rates.

However, there is nothing in this bill that says that passing through access charge reductions is going to result in lower rates for long distance customers in North Dakota. MCI, Sprint, and AT&T are the main long distance companies that will pay less access charges. If these long distance companies choose not to share these access charge reductions, it would provide greater profits for their company. Other states have required these companies to pass on savings to customers in their state. See **Amendment B**

**Deaveraging of long distance rates** – this is an important issue because it can result in higher long distance rates for customers in rural North Dakota. It is of vital importance to homes and businesses in rural areas that do a lot of calling to neighboring towns that involves a long distance call. When our staff called attention to this matter to the telephone companies, the companies originally discussed a needed amendment to the bill, but recently said that putting a statement in testimony would take care of this concern. Therefore, our Commission included a statement in our testimony regarding this matter. You may also want a statement in company testimony regarding this matter since it is so important to rural customers.

There are several other amendments which are listed on the attached sheet which also need to be adopted to make this bill as fair as possible to U S WEST customers. I will be glad to answer questions on any of these amendments.

Let me close my thoughts by saying it is discouraging to a person involved in the public process to be told by companies supporting this bill that there will be no amendments made to this bill unless the companies all agree to the amendments. While I understand that the companies need to watch out for their competitive and financial interests, I am a firm believer in a fair legislative process. I know that these amendments will make a difference to your constituents and mine.



## MEMORANDUM

FROM: Commissioner Susan Wefald (328-4559)  
DATE: February 26, 1999  
RE: The 1999 Telecommunications Bill - SB 2420

The attached amendments would enable the spirit of this bill to move forward, while providing some very basic protections to U S WEST customers. These amendments simply make this a fairer bill. Please call if further explanation is necessary.

- **Amendment A** delays the date of the first price increase until January 1, 2000, so that the Commission would have time to perform a fair and thorough cost study before the first price increase goes into effect. The Fargo Forum suggested that the first increase not go into effect for one year. (The present bill requires that the first price increase go into effect on July 31, 1999.)
- **Amendment B** requires companies such as AT&T, Sprint, and MCI who receive access rate reductions to reduce intrastate rates. At present, nothing in the bill states that this will happen. Other states have required this in their legislation or Commission orders. (see attached position paper)
- **Amendment C** requires U S WEST to generally spread the long distance rate reductions across all customer groups. There is nothing in the present bill that requires U S WEST to do this.
- **Amendment D** puts in place a process more consistent with present law regarding review of the price increases.
- **Amendment E** clarifies that special promotions shall be made available to all persons on a non-discriminatory basis.
- **Amendment F** reinstates the Commission's ability to deregulate services, but adds language that states that the Commission cannot deregulate any services this biennium. It also requires that the Commission submit a report on the status of local competition and make recommendations to the RRRC on deregulation of telecommunication services, including private transport service.
- **Amendment G** deletes the section of the bill that deregulates private transport service. (see Amendment F)

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2420

Page 2, remove lines 20 through 22

Page 2, line 26, replace "July 31, 1999" with "January 1, 2000"

Page 3, line 12, after the period insert "Any interexchange telecommunications company whose intrastate switched access rate is reduced as a result of the rate decreases made by a group 1 telecommunications company in accordance with this subsection, shall decrease its intrastate long distance rates by the amount necessary to return the benefits of such reduction to its customers. Interexchange carriers may determine the specific intrastate rates to be decreased, as long as they generally spread the reductions across all consumers. Interexchange carriers must file price schedule with the commission within 45 days of access rate reductions.

A group 1 telecommunications company increasing prices under this subsection must file a price schedule with the commission reflecting the reduction in prices of its intrastate intraLATA message toll service, as such prices existed on January 1, 1999. A group 1 telecommunications company may determine the specific message toll rates to be decreased, as long as it generally spreads the reductions across all consumers. The price schedule must be filed with the commission within 45 days of the effective date of residence price increases."

Page 3, line 17, replace "The commission may not set aside all or part of an increased price as" with "After notice and opportunity for hearing, the commission shall set aside all or part of an increased price which it determines to be unfair, unreasonable or inadequate. The commission shall make this determination based on the cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs. A telecommunications company increasing prices under this subsection must file with the commission by June 1, 1999 cost data and analysis that support the cost of providing residential basic local telecommunications service, as prescribed by the commission for purposes of investigating and determining whether a rate should be set aside."

Page 3, delete lines 18 through 21

Page 5, line 25 after ";" insert "as long as they are made available to all persons on a non discriminatory basis. Nothing in this chapter shall be construed to prevent any telecommunications company"

Page 8, replace lines 29 through 30 with:

"SECTION 13. AMENDMENT. A new subsection to Section 49-21-02.1 of the 1997 Supplement to the North Dakota Century code.

The commission may not deregulate a service prior to July 31, 2001. By July 31, 2000 the commission shall submit a report to the Regulatory Reform Review Committee regarding the status of local exchange competition and make recommendations regarding deregulation of telecommunications services, including recommendations on private line transport service."

Renumber accordingly

SIs/AmendSB2420.doc

## Talking Points – Senate Bill 2420

Senate Bill 2420 fails to balance the interests of industry and the consumer. This bill addresses competitive issues between companies, but not important customer issues. Legislators will want to make changes to the bill that will help the people in their districts.

This bill has a very great impact on US WEST residential customers since it puts in place rate increases from 25-60% before there is proof that these increases are necessary. It also does not ensure that these same customers will receive any rate decreases in long distance.

**Investment in Telecommunications Services** - In the future, competition will determine where US WEST invests money into high tech, high quality telecommunications services for North Dakotans. This bill is revenue neutral. US WEST has a lot of regulatory flexibility in North Dakota, and this bill, even if amended, gives US WEST a lot of encouragement to invest in North Dakota.

**PSC Cost Verification** – The language in Section 4, subsection 6 is “gamed” against the residential customer. The cost study method which is in this bill is very different from the way cost studies have been done by the Commission in other price increase cases. The language in this section needs to be changed.

**Promises of long distance rate reductions** – It is important to note that this bill does not require that North Dakota long distance rates be reduced for all customers. Other states have required that both residential and business long distance customers benefit from rate decreases and that rate decreases should be generally spread across all customers. This should be subject to commission verification. This is an important customer issue that has to be addressed.

**Elderly and Low Income** – Only 5% of US WEST customers are presently signed up for the Lifeline and Link up program which provides direct, explicit subsidies of up to \$10.50 per month.

Statistics show that 45% of telephone users are modest users of telecommunications services. They have only one phone line. They do not own a cellular phone. They do not do a lot of long distance calling. These are the customers who will be impacted by the rate increases being put in place with this legislation. (See current sample bill attached)

**One-Plus Dialing by next January** – This bill requires US WEST to provide one plus equal access by January 1, 2000. The US Supreme Court held in late January that the FCC rules on 1+ equal access which now require large local companies to put in place one plus intralata equal access are valid and enforceable. Therefore, this provision regarding US WEST in our bill maybe redundant, depending on the FCC's implementation schedule. (Currently, the

FCC rules require large companies to start providing 1+ intralata equal access on February 8, 1999.)

**Deregulation** – Section 13 repeals the Commission's ability to determine when services should be deregulated. Just when good information and approaches on deregulation are needed, the legislature is deleting the Commission's ability to look at these issues. Instead of deleting this section, the proposed legislation should state that the Commission cannot deregulate any services this biennium. It should ask the Commission to study competition and make recommendations on deregulation to the RRRC.

**Private Line Transport** - This is the first time that proposed legislation says that a telecommunication service should no longer be considered a telecommunication service, according to ND law. This section should be omitted from this bill, and the legislature should require the Commission to include this service in the above mentioned study on deregulation.

**No provision for refunds** - Since there is no provision for refunds, the date for starting the price hike should be moved back to January 1, 2000, and US WEST should be required to file cost information with the Commission by June 1, 1999. That would give the Commission 7 months to complete a thorough and fair cost study.

**Measured Service** - We are not certain if the base price (\$8.50) of Measured Service will be included in the price increase (up to \$18.00 a month) proposed by US WEST. Even if it is not included in the price increases, the maximum price of measured service would increase to \$27.00 per month.

## TESTIMONY FOR BILL 2420

Mr. Chairman, members of the committee, my name is Mary Evanson, I am a member of the State Legislative Committee of AARP.

We have several concerns about Bill 2420 and I would like to call your attention to these concerns.

We have a concern that there will be a rate increase prior to a rate case hearing. It does not appear to us that that is how these types of things should be handled or as they have been handled in the past. We feel there should be a rate case hearing prior to implementing a rate increase. If the study shows an increase in rates is warranted, only then should the rate increase go into effect.

Another concern we have is that the burden of proof is with the PSC rather than the other way around. The industry should have to prove that a rate increase is justified. If it indeed can show this the PSC would be charged with the task of granting the rate increase. In this bill where the rate increase would go into effect prior to a rate case hearing and the hearing shows that a rate increase was not warranted, there are no provisions made for refunding the fees collected.

We are aware that the elderly and low income people can get relief for phone services through the Lifeline program and they can purchase measured services at a reduced rate and then pay a low per-minute usage charge of about one cent per minute. We also understand that these same people are eligible for the Link-up America program which requires them to pay a low \$30.00 for a one-time hookup charge. People who are already on some sort of subsistence help are told about these relief programs by Human Services. Our concern here is that there are people not on any kind of subsistence who have no way of knowing about these relief programs. Whose responsibility is it to inform them that there is a relief program that they may access?

Our final concern is not dealt with in this bill but I feel it should be mentioned here. That concern is that the PSC is scheduled to lose one attorney due to a cut in the PSC budget. On the one hand we are asking the PSC to be a watchdog for the consumer of North Dakota and on the other hand we are

stripping them of 50% of their legal staff to do that job.

Mr. Chairman, committee members, I want to thank you for this opportunity to share with you the concerns of AARP. I will try to answer any questions you may have.