

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

11/43

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1143

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1143

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1074

Committee Clerk Signature



Minutes:

**Chair Keiser** opened the hearing on HB 1143.

**Don Negaard, Attorney, Minot, ND:** See written testimony #1.

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

**Rep. Keiser:** So, with a large company they have to allow it. This bill just puts into code that the PSC does if fact have the authority to provide local former.

**David:** That's exactly right. HB 1143 does not direct the commission to do something, it does not prohibit the commission to do something.

**Tom Kelsch, Kelsch Law Firm:** Opposed to HB 1143. See written testimony #3.

**Rep. Thorpe:** Do you have any thoughts or interest in the fire bill, HB 1142?

**Tom:** Our company is not taking a position on that, since our company is not subject to some of those regulations.

**Rep. Zaiser:** In your first bullet point, you indicated that it was not needed, that potentially previous legislation allowed modifications and suspensions. Do you essentially see this particular bill as a lot of redundancies to the previous bill?

**Tom:** The FCC has some dual regulations on this issue. There is a course that they could go through the FCC, and it'll have to go through the PSC.

**Rep. Keiser:** The feds allow it. If we put it into statute, do the two ever come into contact with each other? Does one supersede the other?

**Tom:** I think there is a two track system that you can go. I know there have been court cases in some states where they've challenged certain regulations over the wireless industry, and the wireless industry has been successful. Our concern is if you specifically put this into law, then our rural telephone companies will be petitioning the PSC.

**Rep. Johnson:** I was companying the petitions in the ND PSC, but they really don't want to hear it. Is that an option they would have?

**Tom:** If you would pass this law as it is, could the PSC say they don't want to hear the issue, I think they would have the authority to make that decision.

**Lloyd Benick, PSC:** The PSC is not taking a position on this bill. Under section 251 F, this particular division is exemption, suspensions, and modifications. The ND legislator and ND century code 49-21-01.7 subsection 11, the authority of the PSC is to determine whether to terminate a rural telephone company's exemption under section 251 of the federal act. That language refers only to the rural telephone company's exemption, not suspensions and modifications.

**Don:** Discussion about Western Wireless, the dispute was not about interconnection, the dispute had to do with Western Wireless's desire to access federal money that had been earmarked for rural telephone. The way the law currently is, before you can go to the FCC to get a waiver, suspension or modification, you first have to go to the state commission to get a ruling that they don't have authority to do that, and then you can go to the FCC. It is very time consuming, a lot of paperwork, and extra cost to the rural companies.

**Rep. Amerman:** In Mr. Kelsh's testimony, he said that if this would pass, it's going to clog the PSC's agendas. Give me your opinion if this is going to happen.

**Don:** I think that the rural companies in ND have been pretty responsible with their applications to the commission. It does cost money to go to the commission, it's not something you do as a working matter. I don't think it's going to clog their agendas by any means.

**Rep. Dietrich:** Under current law, suspension modification can be granted by the PSC upon showing a significant adverse economic impact on users. Do you feel that would be in the best interest, but not of ND? Could the PSC handle rather than the FCC?

**Don:** I think it would. It is a lot easier to access a local commission than it is to file papers with the FCC, and we would much rather do that here in Bismarck.

**Rep. Zaiser:** Entering the expediency of going to the local PSC, but hearing Mr. Kelsh's testimony, he felt that there was some redundancy and perhaps unnecessary step. This is a step you think should be used to improve efficiency by going through the PSC as opposed to going to the FCC?

**Don:** We believe that it is more cost efficient and effective for local ND companies to go here in Bismarck than it is to go to the PSC.

**Rep. Dietrich:** Are you familiar that SD passed a similar bill about the economic burden and impact on the staff of the PSC? How much of an impact was there, and how much burden was there?

**Don:** I'm not familiar with SD. Every state has had its own experience dealing with the competition.

Hearing Closed.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1143

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1253

Committee Clerk Signature 

Minutes:

**Chair Keiser** opened the hearing on HB 1143.

**Rep. Dietrich:** Some of the discussion we had in committee pertains to reporting and my understanding from all parties concerned; they had no problems reporting in ND. One of the questions I asked council from the PSC was if there was a problem in SD, and in the document provided today, my council for PSC states that the 28 relevant cases in SD, they had to do with recording, the same problem we have in ND.

**Rep. Keiser:** So, they're obligated to inner connect, but this would give the commission the authority to modify or suspend the requirement of inner connection.

**Rep. Dietrich:** I move a do pass.

**Rep. Zaiser:** Second.

**Roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent, Carrier: Rep. Dietrich**

Hearing closed.

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

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1143

House Industry Business & Labor Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Dietrich Seconded By Rep. Zaiser

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

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Dietrich

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

REPORT OF STANDING COMMITTEE (410)  
January 17, 2007 12:42 p.m.

Module No: HR-11-0695  
Carrier: Dietrich  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1143: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1143 was placed on the Eleventh order on the calendar.



2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1143

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1143**

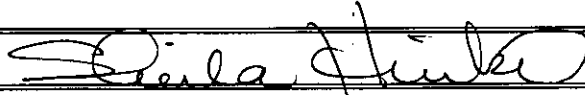
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 26, 2007**

Recorder Job Number: **3827**

Committee Clerk Signature



*Rural telephone companies, Fed. Telecommunications Act. 1996:*

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

Simple bill, just going to give the Public Service Commission another tool in which to implement 251 which is the real exemption of the Telecommunications Act.

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

It is a highly technical and substantially detailed issue more than anything else, we have asked Don Negaard, attorney from Minot, ND to speak. *Presented by David Grothers*

**Don Negaard – Attorney for Rural Telecommunications in Minot, ND**

**TESTIMONY # 1** *Covered testimony.*

***S Hacker, Vice Chair took over position temporarily***

**Tom Kelsch – Kelsch Law Firm - In Opposition**

**TESTIMONY # 2** *Covered testimony*

***Senator Klein returned***

**S Klein:** I sense you are in opposition, and Alltel would be in opposition, how is Alltel regulated by the PSC?

**Tom K:** We are not regulated on entry or rate regulations, we have limited regulation other than that, IF the legislature gives them that authority. This is seeking to give the PSC

regulatory authority in connection agreements between wireless companies and other competing companies.

**S Klein:** Your concern is the cost that they would have?

**Tom K:** The system's working, the agreements that we've negotiated with the companies in the past 5 years. ND has worked, SD hasn't, the line number portability not only where there are costs for all the companies; we had 23 separate hearings in SD. The competition is handling this and it's not a big need. The cost and the additional regulation for no real benefit other than potentially in SD adding all these hearings which just delayed that competiion in some of those markets.

**S Potter:** The PSC may already have this authority, we're just clarifying it?

**Tom K:** The PSC has restrictive authority, they have the power if you give it to them. The issue is the FCC said they can, and have not yet given them the authority.

**S Wanzek:** Your concern is in giving them authority. Is it the argument of how it impacts your company?

**Tom K:** In order for us to do business in the rural area, we have our towers, but our towers are connected to rural switches and certainly rural customers call our people and so we have to have an inter-connection agreement with every rural telephone company in the state, and Quest and what happens on those is that they are negotiated agreements that we pay for services to be able to hook up to their switches, and those have been handled between the two companies through agreement process. They haven't gone through the PSC, as they said, "we don't have authority," but they haven't gone to the PSC and said, "this isn't working." It's two companies getting together, negotiating, and signing agreements.

**S Heitkamp:** You said you reserve the right, I'd like to visit with Mr. Crothers, I think it matters.

*David Crothers takes the podium*

The line portability matters a lot to people out there, is that a concern here? Is that going to be an issue on the ND side as stated, if that is one of the things I need to be looking out for in this bill, I should. I want to know the position of the ND rural telephones.

**David Crothers:** That will never be an issue in ND. The example from SD is not applicable in ND. There is "number portability agreements" in every single company in ND, so it cannot exist, it's already been resolved in ND. The Federal Act in 1996, mandated inter-connection, Congress instructed them to do this. In ND, the PSC, the duties and responsibility by legislation are applicable. What happened in ND, we have not finished the job. Congress envisioned inter-connection, while this legislature envisioned inter-connection, and making provisions for it in Chapter 49, we stopped short of doing *everything* that Congress envisioned. We're not creating anything new, whatsoever. The second point on suspension modification, is this legislation does not mandate the commission do ANYTHING. It allows them to use their digression. Does not state you HAVE to suspend or modify, it does not require them to do it, it gives them the digression to do it.

**Tom Kelsch:** I realize the portability issue is no longer in ND, it's been resolved through agreements by everybody and the only reason I brought that issue out is that two different ways that the states addressed that one issue. There will be more issues, I just can't predict what all the other issues may be, but comparing ND to SD; ND handled that issue much better and much better for the consumer under the existing system. By changing the way SD has, I'm assuming, if we had the system in SD, this year passed 6 years ago, things would probably have happened the same in ND.

**Ilona Jeffcoat Sacco - from Public Service Commission**

**S Potter:** I want you to respond to the point about the Fiscal note not being, being "O", and think he signed it, Mr. Kelsch thinks that that's not accurate, want to talk about that?

**Ilona JS:** Because number portability is over and because I don't know the next big issue that Tom mentioned, the next big issue that would come down from the Feds were that the rural companies might ask for an extension of modification. Portability originally was, "we don't know if we can do it right away," a little bit different time frame. Change things a little bit.

I have no idea, the companies may have a better idea, what that next issue is, and I don't know if it's coming in the next biennium, or the biennium after that, so from my current knowledge, I don't know if there is going to be any changes and that's why there's no Fiscal note impact.

**CLOSE**

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1143 B**

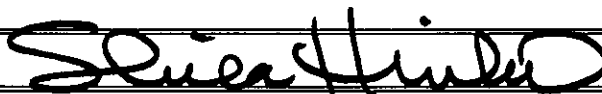
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 26, 2007**

Recorder Job Number: **3828 @ 11:25**

Committee Clerk Signature



*Rural telephone companies, Fed. Telecommunications Act, 1996:*

**Motion for DO PASS by S Heitkamp**

**Second by S Behm**

**Vote for DO PASS on HB 1143 – 7 – 0 – 0 Passed**

**S Heitkamp:** The only thing that's been brought up is something that's been dealt with from here. No offense to Tom, who I think is a fine guy, but he stands up there and makes the case that we're giving him the house here, you're going to lose your phone number, you better come with something more than that to the dance.

**S Behm:** Cell phones aren't regulated by PSC. I can't understand how they can get by with that and the other ones can't.

**S Andrist:** Neither are cable fees, are they?

**S Heitkamp:** Neither is rural water.

**S Klein:** Neither is rural electric.

**S Wanzek:** I can go to Dakota Central, I can go to Quest, you can go to Verizon.

**S Heitkamp:** If you move to a place right now, I would really question what kind of service I'd get from my cell phone, I'd really question if I'd get a land line. Once you move, my daughters

will never have a land line again. Everyone in the countryside knows our numbers and how to get a hold of us.

**S Behm:** When I got my cell phone, they recommended I keep at least one line in the house for the simple reason if you lose power, your cell phone is no good.

**S Klein:** We've gotten off the issue a bit.

**S Andrist:** Just a comment, there are so many things emerging in this whole marketplace that I think the more the state stays out of the way, the better the industry and the people will be.

**S Wanzek:** I'm a little confused on this bill, doesn't this allow the state to get it's fingers in there? I think that was Tom's point.

**S Heitkamp:** This bill allows them to grant suspensions. Before they felt they COULD grant suspensions, because the PSC only does what we tell them to do on a strict guideline supposedly, they need that in law.

**S Klein:** This will grant suspensions under that rural exemptions part of the law.

**S Wanzek:** So it's one of these areas where we're trying to make explicit words in the law.

**Roll Call on DO PASS on HB 1143 – 7-0-0 Passed**

**Carrier: Wanzek**

Date: 2-26-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1143

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Heitkamp Seconded By Behm

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 7 No 0

Absent 0

Floor Assignment Wanzek

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



**REPORT OF STANDING COMMITTEE (410)**  
February 26, 2007 11:04 a.m.

**Module No: SR-36-3836**  
**Carrier: Wanzek**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1143: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1143 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1143

My name is Don Negaard. I am an attorney from Minot, North Dakota. A part of my practice includes working on behalf of rural telecommunications carriers before the North Dakota Public Service Commission.

HB 1143 seeks to give the Public Service Commission additional authority to "issue or grant" suspensions or modifications when considering interconnection issues for rural telephone companies.

Section 251 is the section of the Federal Telecommunications Act that addresses a telephone company's obligation to interconnect with other telephone companies. Interconnection may be necessary for telephone companies who want to compete in another company's service area, but don't want to build their own facilities. Section 251 also deals with other duties imposed on these companies, such as allowing access to rights of way and line number portability.

Section "f" of Section 251 deals exclusively with rural telephone companies.

The Federal law recognizes that rural companies are different so Congress included a provision in the law that allows for Public Service Commissions throughout the nation to "suspend or modify" an application of a competitor when they want to interconnect with the rural telephone company or make requests that would impose undue burdens on the rural company.

A problem has arisen in North Dakota. The North Dakota Public Service Commission has said they do not have the ability to issue the "suspensions or modifications" because the Legislature has never given the Public Service Commission that authority. While we have disagreed at times and have suggested that the Public Service Commission already has that authority, this bill would clarify the issue. Under HB 1143 suspension and modification authority is granted to the Public Service Commission if it finds it necessary to avoid a significant adverse economic impact on users of telecommunications generally, to avoid an impact that is unduly economically burdensome or to avoid a requirement that is technically infeasible.

In addition, the law requires a showing that the suspensions or modifications are consistent with the public interest, convenience and necessity. This is a standard that the Public Service Commission is familiar with because it mirrors the standard traditionally guiding state commissions and the North Dakota Public Service Commission in particular.

In closing, please note that a copy of Section 251 of the Federal Act that I reference is attached to my testimony. Thank you for the opportunity to appear before you today. I would be pleased to answer any questions.

*same testimony given to Senate*

**TITLE 47 > CHAPTER 5 > SUBCHAPTER II > Part II > § 251**  
**§ 251. Interconnection**

**(a) General duty of telecommunications carriers**

Each telecommunications carrier has the duty—

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
- (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

**(b) Obligations of all local exchange carriers**

Each local exchange carrier has the following duties:

**(1) Resale**

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

**(2) Number portability**

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

**(3) Dialing parity**

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

**(4) Access to rights-of-way**

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

**(5) Reciprocal compensation**

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

**(c) Additional obligations of incumbent local exchange carriers**

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

**(1) Duty to negotiate**

#1  
1143

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

**(2) Interconnection**

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

**(3) Unbundled access**

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

**(4) Resale**

The duty—

- (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

**(5) Notice of changes**

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

**(6) Collocation**

The duty to provide, on rates, terms, and conditions that are just,

#1  
1143

reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

**(d) Implementation**

**(1) In general**

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

**(2) Access standards**

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether—

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

**(3) Preservation of State access regulations**

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

**(e) Numbering administration**

**(1) Commission authority and jurisdiction**

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

**(2) Costs**

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

**(3) Universal emergency telephone number**

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for

# 1  
1143

reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on October 26, 1999.

**(f) Exemptions, suspensions, and modifications**

**(1) Exemption for certain rural telephone companies**

**(A) Exemption**

Subsection (c) of this section shall not apply to a rural telephone company until

- (i) such company has received a bona fide request for interconnection, services, or network elements, and
- (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

**(B) State termination of exemption and implementation schedule**

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

**(C) Limitation on exemption**

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

**(2) Suspensions and modifications for rural carriers**

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

- (A) is necessary—

#1  
1143

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

**(g) Continued enforcement of exchange access and interconnection requirements**

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

**(h) "Incumbent local exchange carrier" defined**

**(1) Definition**

For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

**(B)**

(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

**(2) Treatment of comparable carriers as incumbents**

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

#1  
1143



(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

**(i) Savings provision**

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

#1  
1143



NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

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

HOUSE BILL 1143

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

JANUARY 15, 2007

DAVID CROTHERS  
NORTH DAKOTA ASSOCIATION OF  
TELECOMMUNICATIONS COOPERATIVES

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

The Association strongly supports the adoption of House Bill 1143. Although we believe the North Dakota Public Service Commission already has this authority under NDCC 49-21-01.7, that view is not shared by all. Adoption of House Bill 1143 will remove that uncertainty.

Members of the Association urge a "Do Pass" recommendation on House Bill 1143.

