

LEGISLATIVE REPORT

**North Dakota Association of
Telecommunications Cooperatives**
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To: Members

From: David Crothers, Executive Vice President

The 64th legislative assembly adjourned after using 78 of the 80 days they had available to them under the North Dakota constitution.

The session brought a number of developments of interest to the North Dakota independent telecom industry. Members of the Association were pleased to see legislators adopt a measure that prohibits bad faith assertions of patent infringement, which is a problem that virtually all of our members have faced during the last decade. Legislators also rebuffed efforts by a number of constituencies to require telecom companies to return to construction and excavation sites to retrieve materials used to mark their facilities within 10 days following the completion of a project.

There were two particular issues that our industry should note going forward: first, Governor Dalrymple signed a measure passed by legislators (Senate Bill 2096) that eliminates sales tax on the sale of internet access services. As you review the language in NDCC 57-39.2-01 and NDCC 57-39.2-02.1, though, you will note the State will continue to tax one and two way communications services.

The second bill, Senate Bill 2214, requires companies operating in North Dakota and maintaining data bases containing their customers' personal information to make notifications, including to the Attorney General, when those companies believe the information in the data base has been accessed.

Also of note, we discussed extensively throughout the session Century Link's initiative in House Bill 1375 to remove any ceiling for their local rates, which were capped at \$18.00 and AT&T's request in House Bill 1385 to deregulate any VoIP service in the State. Both were successful, although the Association was heavily involved in expanding the exemptions to deregulation above and beyond what AT&T advocated.

Of more immediate concern is Senate Bill 2167, which originally provided for a \$2 million appropriation from the State of North Dakota to reimburse owners of underground facilities in oil producing counties for their extraordinary expenses. That legislation was converted to a study resolution that will review the financial and operational impact on the underground facility owners because of the increase in locates; a review of who should be responsible for expenses incurred locating underground facilities; whether penalties for violations of the One Call statutes are appropriate; and whether State agencies have sufficient ability to enforce penalties assessed by the Public Service Commission.

When Senate Bill 2167 was converted to a study resolution, however, all references to oil producing counties and the underground facility owners operating were dropped.

The procedure for acting (or not acting) on the study resolutions adopted by the legislature and signed by the Governor in North Dakota is unique. Not only do both the House of Representatives and Senate have to pass the measure. The Governor also has to sign it. However, in North Dakota the legislature's Legislative Management Committee meets (Wednesday, May 27th) approximately a month after sessions convene to determine which of the approximately 80 resolutions they will study. The committee has the ability to reject, or not study, any of the study resolutions they passed during the session.

As a result, next Wednesday members of the Legislative Management Committee will determine whether an interim committee comprised of representatives and senators will study the above One Call issues and make recommendations or introduce legislation to the sixty-fifth legislative assembly.

As we noted during the last issue of the Legislative Report, we remain profoundly disappointed in the defeat of Senate Bill 2147 in the House of Representatives, which would have given underground facility owners the ability to charge excavators "reasonable costs" for the third and subsequent locates they perform on the same project.

The Association faced tremendous organized opposition to our initiative by Xcel, Montana Dakota Utilities, the North Dakota Association of General Contractors, oil companies and pipeline companies.

We are extremely gratified by the support and "yes" vote from Representatives Bill Amerman, Bet Anderson, Randy Boehning, Mike Brandenburg, Majority Leader Al Carlson, Jeff Delzer, Bill Devlin, Glen Froseth, Jessica Haak, Ben Hanson, Craig Headland, Jerry Kelsh, Keith Kempenich, Bill Kretchsmar, Scott Louser, Andy Maragos, Alisa Mitskog, Naomi Muschha, Christopher Olson, Minority Leader Kenton Onstad, Gary Paur, Chet Pollert, Cindy Schreiber Beck and Denton Zubke.

Conversely, we were tremendously disappointed with those who voted against the independent telecom industry in North Dakota. They included Representatives Dick Anderson, Pamela Anderson, Thomas Beadle, Richard Becker, Rick Becker, Larry Bellew, Tracy Boe, Joshua Boschee, Roger Brabandt, Chuck Damschen, Lois Delmore, Jason Dockter, Mark Dosch, Alan Fehr, Eliot Glassheim, Ron Guggisberg, Patrick Hatlestad, Kathy Hawken, Curt Hofstad, Kathy Hogan, Richard Holman, Robert Hunskor, Dennis Johnson, Mary Johnson, Tom Kading, Karen Karls, Jim Kasper, Dwight Kiefert, Matt Klein, Lawrence Klemin, Ben Koppelman, Kim Koppelman, Gary Kreidt, Vernon Laning, Diane Larson, Mike Lefor, Alex Looyson, Bob Martinson, Kisa Meier, Corey Mock, David Monson, Gail Mooney, Mike Nathe, Jon Nelson, Marvin Nelson, Kylioe Oversen, Mark Owens, Todd Porter, Karen Rohr, Dan Ruby, Mark Sanford, Mike Schatz, Jim Schmidt, Mary Schneider, Jay Seibel, Peter Silbernagel, Vicky Steiner, Roscoe Streyle, Marie Strinden, Gary Sukut, Blair Thoreson, Nathan Toman, Don Vigesaa, Kris Wallman and Robin Weisz.

Again, the Association wants to thank members of the organization's Legislative Committee including, Paul Schuetzler, Consolidated Telcom; Keith Larson, Dakota Central; Ralph Greer, Dickey Rural; Ralph Neu, Dickey Rural; Tyler Kilde, MLGC; Mike Steffan, NCC; Dave Gauslow, Red River; Jeanette Hoff, Reservation Telephone; Barb Steinmetz, Reservation Telephone, Jim Newman, SRT; and Bonnie Krause, West River.

Finally, as you reviewed the updated narratives for each piece of legislation in this document, please contact me if you have questions regarding any these issues or anything else of interest. Also, the Association thanks you for your support throughout the session, your calls and contacts with members of the legislature and attendance at the organization's Legislative Dinner in January.

Please contact me at any time regarding any of the legislation or any other matter of concern. I can be reached at work: 701-663-1099; cell: 701-471-3838 or dcrothers@yahoo.com.

HB 1053

Legislation addressing the powers and duties of the Information Technology Department (ITD). While State law has long required state agencies to receive their telecom services from the department, HB 1053 specifically lists those entities that are exempt from the requirement. It also creates a new provision mandating the Office of Management and Budget to establish policies for other agencies' use, procurement and support of telecom services. The bill also mandates that ITD provide both hardware and software to other State agencies.

Jan. 6 Introduced.
 Jan. 15 Government and Veteran’s Affairs Committee Hearing.
 Jan. 19 Re-referred to Appropriations.
 Feb. 19 Appropriations Committee Recommended “Do Pass” 22-1.
 Feb. 23 House Passed 72-21.
 Feb. 25 Introduced in House.
 Mar. 27 Government and Veterans Affairs Committee Recommended
 “Do Not Pass” 6-0.
 Mar. 30 Senate Defeated 43-3.

HB 1089

Creates both sales tax and use tax exemptions for “enterprise information technology equipment and computer software” that is purchased for use in qualified data centers. The legislation goes into great detail defining a “qualified data center”, including uninterrupted power supply, sophisticated fire suppression and enhanced security. The bill also requires the building be in excess of 25,000 square feet in size, an investment of \$10 million or more and be located on a single or contiguous parcel of land. The construction must be substantially completed after December 31, 2014. The bill was subsequently amended to lower the necessary square footage to 16,000 and removing the \$10 million floor.

Jan. 6 Introduced.
 Feb. 10 Finance and Taxation Committee Recommended “Do Pass”,
 as amended, 12-2.
 Feb. 12 House Passed 64-27.
 Feb. 23 Introduced in Senate.
 Mar. 10 Finance and Taxation Committee Recommended “Do Pass”,
 as amended, 6-1.
 Apr. 2 Senate Passed 45-1.
 Apr. 10 Signed by Governor.

HB 1107

Legislation that eliminates the 20,000 population ceiling that State Radio is allowed to provide 911 services to. The House amended the population bar to 25,000. Under existing law, State Radio is not permitted to offer 911 when the population of a county exceeds the 20,000 threshold. The State agency provides the service is approximately 22 counties across North Dakota. The problem State Radio has run into is that McKenzie County...in the midst of oil country...has exceeded the population threshold and, under current law, should be required to eliminate it service there.

Jan. 6 Introduced.
 Jan. 9 Political Subdivisions Recommended “Do Pass”, as amended,
 14-0.
 Jan. 14 House Passed 73-8.
 Feb. 23 Introduced in Senate.
 Mar. 17 Political Subdivisions Committee Recommended “Do Pass”,
 as amended, 6-0.
 Mar. 19 Senate Passed 45-0.
 Apr. 9 Signed by Governor.

HB 1137

A bill to create a \$100 million capital infrastructure revolving loan fund within the Commerce Department that would be used by political subdivisions for “essential infrastructure projects”. The new program would be in addition to the existing loan programs administered by the State’s Public Finance Authority. Language within the legislation specifically notes that communities may access the money for critical infrastructure such as sewer lines, water lines, storm-water and transportation infrastructure and curb and gutter construction. However, there also has been advocacy for including underground conduits in the loan program that would be designated for telecommunications infrastructure. The Association’s legislative committee concluded that conduit would be valuable in the State’s largest cities and in high-density areas to constrain construction costs, but also cautioned that it was important that broadband itself not be considered “essential infrastructure”. The Association has met with proponents of the legislation to express our concerns and add language to their testimony that warns of the more expanded interpretation of the legislation’s intent.

Jan. 6 Introduced
 Jan. 30 Political Subdivisions Committee Recommended “Do Pass”,
 as amended, 12-1.
 Feb. 24 Appropriations Committee Recommended “Do Not Pass”
 22-1.
 Feb. 26 House Defeated 79-9.

HB 1163

Model legislation that will prohibit bad faith assertions of patent infringement. Similar bills are being introduced in a number of States throughout the nation. The language, which is quite detailed, sets out factors that will be considered by a court including requirements someone asserting patent infringement must include in their demand letter and examples of good faith communications. The bill allows the target of a prima facie case of bad faith claims to ask a court to require the claimant to post a bond in the amount of a target's estimated legal costs. The legislation also provides that a target may make a claim for civil damages and seek equitable relief, damages, costs and fees and exemplary damages in the amount of \$50,000 or three times the total costs incurred by the target, whichever is greater. Members of the Association have cited a number of instances where they and their vendors have been contacted by such claims and have asked that NDATC strongly support the bill.

Jan. 8 Introduced. Referred to Human Services Committee.
Jan. 12 Request return from Committee.
Jan. 12 Re-referred to Industry, Business and Labor Committee.
Jan. 28 Industry, Business and Labor Committee Recommended "Do Pass", as amended, 13-0.
Jan. 30 House Passed 90-0.
Feb. 23 Introduced in Senate.
Mar. 16 Industry, Business and Labor Committee Recommended "Do Pass" 7-0.
Mar. 17 Senate Passed 47-0.
Mar. 27 Signed by Governor.

HB 1222

Legislation introduced that will require new smartphones manufactured, sold or purchased in North Dakota to either have antitheft functionality preloaded or capable of downloading at no cost. CTIA...the wireless association...has created a "Smartphone Anti-Theft Voluntary Commitment", which commits to all new phones manufactured after July 1, 2015 be equipped to meet the North Dakota's proposed law. It will allow the owner to "wipe" their personal data off of the phone in the event that it is lost or stolen. Second, the individual who owns, but no longer possess the phone, will be able to render it inoperable by remotely locking the smart phone. Third, the owner can also reactivate the phone if they reacquire it. Steve Lysne, CEO of SRT Communications and SRT Wireless, testified against the bill.

- Jan. 13 Introduced. Referred to Industry, Business and Labor Committee.
- Jan. 21 Industry, Business and Labor Committee Recommended “Do Not Pass” 11-3.
- Jan. 23 House Defeated 71-19.

HB 1375

Legislation removing the \$18.00 maximum residential rate that companies serving over 50,000 subscribers may charge for monthly service. The bill was introduced at the request of Century Link. If the measure passes, Century Link, which is the only price regulated telecommunications company in the State, will be able to charge whatever amount it desires for monthly residential service without oversight from the Public Service Commission.

- Jan. 19 Introduced.
- Feb. 3 Industry, Business and Labor Committee Recommended “Do Pass” 11-0.
- Feb. 4 House Passed 91-1.
- Feb. 23 Introduced in Senate.
- Mar. 16 Industry, Business and Labor Committee Recommended “Do Pass” 6-1.
- Mar. 17 Senate Passed 46-1.
- Mar. 27 Signed by Governor.

HB 1385

A measure prohibiting the State or any political subdivision from making any rule, statute or order that would “directly or indirectly” regulate the entry, rates, terms, or conditions for internet protocol-enabled or voice over internet protocol (VoIP) services. The language is an expanded version of the legislation introduced last session at the request of AT&T. They have been joined in their effort this year by Century Link.

- Jan. 19 Introduced.
- Feb. 4 Industry, Business and Labor Committee Recommended “Do Pass” 13-0.
- Feb. 6 House Passed 86-0.
- Feb. 9 Introduced in Senate.
- Feb. 18 Industry, Business and Labor Committee Recommended “Do Pass” 7-0.

Mar. 4 Senate Passed 46-0.
Mar. 13 Signed by Governor.

HB 1395

Legislation introduced that would require operators of 911 and emergency management databases to deploy a supplemental database that has the capability of holding photographs of individuals at a residence, physical descriptions, medical conditions, allergies, household data, primary language spoken and emergency contacts. It also required that every public safety answering point (PSAP) implements the product. Access to the supplemental database will be limited to “telecommunicators”, first responders and emergency personnel. The original bill was converted to a study resolution.

Jan. 19 Introduced.
Feb. 9 Transportation Committee Recommended “Do Pass”, as amended, 9-3.
Feb. 12 House Passed 59-32.
Feb. 23 Introduced in Senate.
Mar. 26 Transportation Committee Recommended “Do Pass” 12-0.
Apr. 9 Signed by Governor.

SB 2096

A bill that proposes to eliminate sales tax on the sale of internet access services. The sales tax that telecom companies assess and remit to the State for other communications services would continue. Apparently this legislation is similar to many bills being introduced in State legislatures around the country. A representative of the North Dakota League of Cities testified against the bill, but all other commentators were supportive of the bill. The legislation modifies NDCC 57-39.2-01 and subsection 1 of section 57-39.2-02.1.

Jan. 6 Introduced.
Jan. 20 Finance and Taxation Committee Recommended “Do Pass”, as amended, 6-1.
Feb. 18 Appropriations Committee Recommended “Do Not Pass” 12-1.
Feb. 19 Senate Passed 31-15.
Feb. 25 Introduced.

Mar. 17 Finance and Taxation Committee Recommended “Do Pass”,
as amended, 9-4.
Mar. 20 House Passed 62-24.
Mar. 27 Senate Concurred 45-2.
Apr. 1 Signed by Governor.

SB 2101

Emergency system and 911 service legislation that primarily updates definitions within the century code as North Dakota continues to migrate from the traditional provision of the service to an IP based system.

Jan. 6 Introduced.
Jan. 8 Political Subdivisions Committee Recommended “Do Pass”
6-0.
Jan. 9 Senate Passed 46-0.
Feb. 20 Introduced in House. Referred to Political Subdivisions
Committee.
Mar. 9 House Political Subdivisions Committee Recommended “Do
Pass” 13-0.
Mar. 10 House Passed 90-1.
Mar. 13 Signed by Governor.

SB 2123

Legislation introduced at the request of the Public Service Commission that proposed to give the agency the authority to require up to a \$175,000 application fee before issuing a certificate of public convenience and necessity. The House lowered the amount to \$50,000. It also allows the PSC to assess additional amounts if their costs exceed the maximum application fee. The Association discussed the applicability of this section of law with Public Service Commission staff and determined that members were subject to the provisions of the chapter. However, the Commission has always used...and will continue to...the authority given to it in other chapters of the century code to use the “valuation fund” when considering certificates of public convenience and necessity for telecommunications companies in the State. Prior to a committee hearing on the bill the Association joined a number of other interested parties and expressed our concern over the high application fee. The Commission agreed to lower the maximum application fee to \$50,000.

Jan. 6	Introduced.
Jan. 14	Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 5-1.
Jan. 19	Senate Passed 43-4.
Feb. 20	Introduced in House.
Mar. 19	Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 12-0.
Mar. 23	House Passed 87-0.
Apr. 8	Signed by Governor.

SB 2147

A bill addressing two issues that have proved extremely problematic for the owners of underground facilities in North Dakota. Although the State legislature adopted far reaching reforms of One Call statutes two years ago there are a number of problems that still exist. Underground facility owners continue to incur substantial expenses doing “relocates” of their plant simply because the excavators placing the initial call have not done the work during the 21 day period a locate is valid. Following the three week window the law requires that excavators call in and request another locate for the designated area. The legislation makes two changes: first, it limits the original request for a locate to only that area that may “reasonably” be excavated during the twenty-one day period. Second, it will allow facility owners to charge excavators “reasonable costs” for the relocate when no excavation has occurred after the first locate done by the owner of the underground facility.

Jan. 8	Introduced.
Feb. 13	Government and Veteran’s Affairs Committee.
Feb. 23	Senate Passed 28-18.
Feb. 25	Introduced in House.
Mar. 25	Industry, Business and Labor Committee Hearing Recommended “Do Not Pass” 10-4.
Mar. 27	House Defeated 65-24.

SB 2167

Legislation that originally proposed a \$2 million appropriation from the State of North Dakota to reimburse owners of underground facilities in the oil producing counties for a portion of their One Call expenses. Because of lack of support and a dwindling amount of money available for new

programs the bill was converted into a study resolution. If adopted, an interim committee that meets beginning this summer will study four specific areas of One Call law:

- 1) The financial and operational impact on the underground facilities owners because of the increase in the number of locates.
- 2) A review of who should be responsible for expenses incurred locating underground facilities.
- 3) Whether penalties for violations of the One Call statutes are appropriate.
- 4) Do State agencies have sufficient ability to enforce the penalties assessed by the Public Service Commission.

The committee charged with studying this issue would be responsible for reporting their results, conclusions, recommendations and, perhaps, legislation to the incoming 2017 legislature.

Even if the Association is successful in advocating passage of Senate Bill 2167 through both bodies and being signed by the Governor, it does not ensure the study will take place. Following adjournment of this legislative session the Legislative Management Committee made up of members of each body will meet to determine which of the study resolutions will actually be studied by an interim committee. There is no guarantee that it will be studied unless it is selected at that time.

Jan. 9	Introduced. Referred to Political Subdivisions Committee.
Jan. 22	Political Subdivisions Committee Recommended "Do Pass", as amended, 6-0.
Jan. 30	Senate Passed 47-0.
Feb. 20	Introduced in House. Referred to Political Subdivisions Committee.
Mar. 9	House Political Subdivisions Committee Hearing Recommended "Do Pass" 12-0.
Mar. 10	House Passed 88-3.
Mar. 13	Signed by Governor.

Senate Bill 2296 further prioritizes applications for grants and loans based upon the following criteria:

- a) The need of an area for broadband services.
- b) The provision of internet access to the public in public areas, to health care providers and to economically distressed areas.
- c) The comprehensiveness of the plan, including the provision of digital literacy training, addressing affordability, providing training for the business sectors, and increasing awareness.
- d) The leveraging of existing infrastructure and funding sources, and
- e) Community support and collaboration.

Eligible recipients include incorporated organizations, limited liability companies, a tribe or tribal organization, a political subdivision and cooperatives. The Association strongly opposes the ability of political subdivisions to access either loans or grants that create a scenario where taxpayer-subsidized competition exists in the marketplace. While the Association supported the legislation, our testimony noted that there should be a definition of “broadband” within the bill. We also noted our strong opposition to allowing Political Subdivisions to access the monies.

Jan. 19	Introduced.
Feb. 3	Political Subdivisions Committee Recommended “Do Not Pass” 4-2.
Feb. 4	Senate Defeated 31-15.

SB 2347

Legislation that would have increased the burden upon telecom companies and other owners of underground infrastructure. The initiative by western legislators required the owner/operator of buried facilities to remove the “markers” they originally placed when locating the facilities. The removal must be completed within 10 days following the completion of the excavation. Members of the Association are extremely disappointed in the legislation’s introduction. Telecom companies, especially those located in the west, have endeavored to share with legislators the increasingly unreasonable burdens North Dakota’s One Call statutes are placing on them. Senate Bill 2347 is impossible for our members to effectively comply with because they have no way of knowing when an excavator concludes excavation on the designated site, although the legislation mandates the telco remove the marking material within 10 days

following completion of the work. Also, the bill requires a second trip to simply pick up the flags despite existing State law requiring the excavator to “assume ownership of materials used to mark the facility”. The Association testified against adoption of the bill. Following the committee meeting we met with sponsors of the Legislation to craft an amendment that reaffirms the excavator’s ownership of the “markers” and makes explicit their obligation to remove and dispose of them following completion of the excavation. The Senate amended the bill to reaffirm excavators are responsible for removing marking materials.

- Jan. 26 Introduced. Referred to Industry, Business and Labor Committee.
- Feb. 9 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 7-0.
- Feb. 10 Senate Passed 44-2.
- Feb. 20 Introduced in House. Referred to Industry, Business and Labor Committee.
- Mar. 10 House Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 13-1.
- Mar. 12 House Passed, as amended, 60-28.
- Mar. 31 Senate Refused to Concur.
- Apr. 9 House Recessed.
- Apr. 10 House Passed 86-4.
- Apr. 15 Signed by Governor.