

LEGISLATIVE REPORT

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

From: David Crothers, Executive Vice President

It has been a busy week at the Capitol in Bismarck. Monday evening marked the effective end of bills being introduced during the sixty-fourth legislative assembly with the deadline for Senators to initiate new legislation. Bill deadlines have passed in both the House and Senate so any further measures must come through the delayed bills committee, which is an extremely difficult process.

To date, members of the House have introduced 474 bills this session compared to a total of 467 two years ago. The Senate has 378 bills this year versus 375 in 2013. Additionally, there have been 54 resolutions introduced in the two chambers.

The final day of bill introduction stunned members of the independent telecom industry when a number of members in both bodies brought forth Senate Bill 2347. Despite the discussions we have had regarding the onerous requirements of existing One Call statutes in the State, a group of western legislators introduced a measure that would transfer the obligation to pick up “markers” that underground facility owners use to denote their facilities from the excavator to the “operator”, or owner, of the facilities. Additionally, the “operator” must retrieve the flags within 10 days following the completion of excavation. Current law requires the excavators to assume ownership of the marking materials when they begin excavation. We have shared our disappointment with the legislation with several of the sponsors. It will obviously double the costs for independent telecom companies because the facility owner is not obliged to go to the site twice.....first to mark the facility; a second time to remove the markers. Additionally, the bill is impracticable because the underground facility owner will have no idea when an excavator completes their work.

A hearing on Senate Bill 2347 will be held before the Senate Industry, Business and Labor Committee at 9:45 Monday morning. The Association will have prepared testimony in opposition to the measure.

Yesterday, the Association testified in favor of a broadband initiative to create a \$50 million revolving loan fund and \$10 million grant program in North Dakota. The legislation, Senate Bill 2296, was to be administered by the Department of Commerce and funded by the Bank of North Dakota. Despite the Association's support of the concept, we suggested a number of amendments to improve the legislation, such as a definition of "broadband". We also registered our opposition to allowing resellers to access the fund and making political subdivisions eligible for funding under the bill.

It is anticipated that Senate Bill 2096 will be defeated. The Bank of North Dakota cited their inability to fund the program. Right now there is an agreement between budget planners and the Bank for a \$140 million transfer during the 2015-2017 biennium. Requests today...without factoring in Senate Bill 2096...exceed \$250 million. The reduced revenue the State is currently experiencing will put further pressure on the agreed upon amount.

Also this week, the Association participated in the committee hearing on House Bill 1163, which provides penalties for bad faith assertions of patent infringement. Virtually all of the independent telecom companies in North Dakota have experienced "patent trolls" claiming that they have an enforceable patent on some piece of equipment used in the telco's operations. Following the hearing, committee members gave the bill a "do pass", as amended, recommendation by a 13-0 vote.

Next week will be a busy week in the State Capitol for the telecommunications industry. There will be two hearings on Monday, including a House Bill 1375 that removes the \$18.00 ceiling for Century Link residential rates. Following that hearing the Senate Industry, Business and Labor Committee will hear the measure transferring the obligation to pick up flags used to denoted our underground facilities from excavators to operators.

House Bill 1385, AT&T and Century Links initiative to deregulate Voice over Internet Protocol and Internet Protocol services in North Dakota will be heard in the House Industry, Business and Labor Committee. On Thursday, House Bill 1395, which is legislation that requires public safety answering points (PSAP's) to implement supplemental data bases that contain personalized information, including photos, medical histories and other personal information will be heard by the House Transportation Committee.

Members of the Association’s Legislative Committee include: 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.

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.

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. Apparently the bill has been introduced at the request of a number of Grand Forks legislators and is tailored very narrowly to limit the benefits to, at most, a handful of facilities.

- Jan. 6 Introduced.
- Jan. 14 Finance and Taxation Committee Hearing.

HB 1107

Legislation that eliminates the 20,000 population ceiling that State Radio is allowed to provide 911 services to. 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.

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. 15 Political Subdivisions Committee Hearing.

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.

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.

- 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. 2 Industry, Business and Labor Committee Hearing – 9:00 a.m.

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 Hearing – 8:00 a.m.

HB 1395

Legislation requiring 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 requires 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.

Jan. 19 Introduced.

Feb. 5 Transportation Committee Hearing – 9:45 a.m.

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.

- Jan. 6 Introduced.
- Jan. 20 Finance and Taxation Committee Recommended “Do Pass”, as amended, 6-1.
- Jan. 30 Appropriations Committee Hearing.

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. 8 Senate Passed 46-0.

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. 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.

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. Referred to Government and Veteran’s Affairs Committee.

SB 2167

A proposal creating a pilot program administered by the Public Service Commission to assist the owners of underground facilities with the expenses incurred doing locates in oil and gas areas of North Dakota. The Public Service Commission is charged with developing valid criteria before disbursing monies from the \$2 million appropriation. Underground facility owners have seen the number of “locates” they are required to do increase four and fivefold in the last five years and have incurred tremendous expense...unreimbursed...hiring and contracting locators to meet their obligations under State law.

Jan. 9 Introduced. Referred to Political Subdivisions Committee.

Jan. 22 Political Subdivisions Committee Recommended “Do Pass”, as amended, 6-0.

SB 2214

A bill expanding the obligation of companies maintaining databases containing their customers’ personal information to notify when those databases have been breached and there is a reasonable belief that material has been accessed. Current law requires the company maintaining the database to affected customers. The expansion found in this legislation would also require the company to notify the State’s Attorney General.

- Jan. 14 Introduced.
- Jan. 21 Judiciary Committee Recommended “Do Pass”, as amended, 6-0.
- Jan. 23 Senate Passed 45-0.

SB 2296

Legislation creating a \$50,000,000 million revolving loan fund and \$10,000,000 grant program to be used to deploy new and improved broadband services across North Dakota. The initiative, which is to be administered by the State’s Department of Commerce, would fund:

- a) The construction and improvement of facilities required to provide broadband service.
- b) The installation and upgrading of existing broadband facilities on a one-time capital improvement basis to expand broadband access and increase capacity.
- c) The cost of leases of facilities required to provide broadband service.
- d) Reasonable expenses incurred as a result of providing broadband services, and
- e) Reasonable indirect costs.

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.

Jan. 19 Introduced.

Jan. 29 Political Subdivisions Committee Hearing.

SB 2347

Legislation that increases the burden upon telecom companies and other owners of underground infrastructure. The initiative by western legislators requires 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”.

Jan. 26 Introduced. Referred to Industry, Business and Labor Committee.

Feb. 2 Industry, Business and Labor Committee Hearing – 9:45 a.m.