

LEGISLATIVE REPORT

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

From: David Crothers, Executive Vice President

It is Day 24 of the Sixty-Fourth Legislative Assembly. North Dakota's Constitution limits legislative sessions to 80 days.

Members of the Association were pleased late yesterday when we learned the Senate's Government and Veteran's Affairs Committee had scheduled a hearing for Senate Bill 2147. The legislation will be amended to limit excavators to only calling in locate tickets for the amount of work they can do during the 21 day period of a valid locate ticket. Secondly, an amendment will be introduced during the hearing that will allow underground facility owners to charge excavators when the telecom company is required to locate and mark the same construction sites the third and subsequent times. In short, excavators get two free locates and will pay after that. The amendment will also remove the provision that currently exists in the One Call statutes that prohibits an underground facility owner from charging for locates in excess of three when "excavation has occurred". The hearing will be a week from today...Friday, February 13th. The Association is working closely with those telcos most affected by the current problems in the One Call law. It is going to be a difficult piece of legislation that will have virtually no support by anyone other than Century Link. We have been informed that MDU, Excel, Whiting Petroleum, the Underground Alliance, the investor owned electric utilities and Excel will be opposing Senate Bill 2147.

As we noted in the last issue of the Legislative Report, both Century Link's legislation to remove the ceiling on their mandated \$18.00 rates and AT&T's Voice over Internet Protocol (VoIP) hearings were this week at the Capitol. Both received overwhelming support in the House Industry, Business and Labor Committee. Additionally, Century Link's bill was passed 91-1 on the floor of the House on Wednesday. The VoIP bill will likely be voted upon in the House today.

Neither bill generated interest from committee members, the Public Service Commission or opponents. There were no questions from committee members on Century Link's legislation, which is House Bill 1375. The only comments on AT&T's VoIP bill were registered by Verizon Wireless, who presented an amendment to the Industry, Business and Labor Committee that would have removed the provision that affirms VoIP traffics inclusion in any future State universal service fund.

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. 30 Political Subdivisions Committee Recommended “Do Pass”, as amended, 12-1.
- Feb. 2 Re-referred to Appropriations..

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.

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.

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.

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.

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.
- Feb. 13 Government and Veteran’s Affairs Committee Hearing – 9:15 a.m.

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.

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. The amendment adopted by the Senate Committee proscribes the method by which data base administrators must notify the 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. 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 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”. 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.

- Jan. 26 Introduced. Referred to Industry, Business and Labor Committee.
- Feb. 2 Industry, Business and Labor Committee Hearing.