

# LEGISLATIVE REPORT

**Broadband Association of North Dakota**

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To: Members

From: David Crothers, Executive Vice President

The Sixty-Sixth Legislative Assembly adjourned Sine Die shortly after 10:00 p.m. Friday night. It was Day 76. The North Dakota Constitution limits the legislature to meeting for 80 days each biennium. Legislative leadership always tries to “save” several days of the 80 in the event unforeseen issues arise or they wish to come back in to session to override a Governor’s veto.

This legislature addressed more bills impacting members of the Broadband Association of North Dakota than perhaps any assembly in the last 20 years. Initiatives ranging from the Association’s own advocacy and responsibility to shepherd a bill leveling the playing field between utilities and railroads for crossings, robocalling, government competition with the State’s broadband providers, critical infrastructure, regulation of our companies’ employees and efforts to change the relationship between broadband providers in North Dakota and their customers were all bills the Association made our members’ voices heard during the session.

Without that advocacy, cities and counties in North Dakota would be eligible for grants to overbuild their communities with fiber optic infrastructure in one bill and take out government subsidized low interest loans to do the same thing in another bill. There were two separate bills requiring the Power Limited Technicians employed by your company to be licensed by the State Electrical Board that the Association successfully amended to exempt telecom providers. The bill requiring broadband providers to send notices and have each customer initial each clause in a consumer contract before an “auto-renewal” now features an exemption for telecom companies. The Association was the only one who objected to an effort interfering with a contract between Dakota Carrier Network and the State of North Dakota that provides broadband to the State’s college and university housing facilities and completely change the bill to create improvements within the local area infrastructure within the housing units themselves.

The Association was also the only one to discover an amendment brought by Higher Education in the last two weeks of the session that proposed to fund Northern Tier Network at the unprecedented amount of \$5.7 million. The Association successfully advocated its rejection and instead adoption of language that appropriates \$1.5 million each to North Dakota State University and the University of North Dakota for on-campus broadband infrastructure. Northern Tier Network will not be funded by the legislature in the 2019-2021 biennium.

In total, the legislature adopted 10 Association amendments affecting the broadband industry and your company's ability to deliver services effectively and affordably and passed the Association's utility railroad crossing bill. There were 8 other bills such as robocalling, the prohibition of entering false information into caller identification systems, the Information Technology Department appropriations bill, skilled workforce program initiative and the \$120 million proposed statewide interoperable radio network the Association worked with legislative committee members to ensure that additional obligations were not imposed on the State's broadband providers.

In reality, the Association does not "adopt" or "pass" any amendment or bill. It is the members of the legislature who recognize the importance of the work the rural broadband providers do and their value to the future of North Dakota. Representative Craig Headland, a director at Dakota Central Telecom, has been a relentless advocate of the independent broadband providers and members of the Association. Representative Headland's work with his peers on the floor of the House and his position as Chairman of the Finance and Taxation Committee makes him an influential voice within the House majority party. Senator Randy Burckhard of Minot has provided that same leadership in the Senate. Mr. Burckhard, a retired employee of SRT, is chairman of that body's Political Subdivisions Committee and a member of the Industry, Business and Labor Committee. His extensive knowledge of the industry and the role members of the Association play in North Dakota's rural and urban areas is a tremendous asset to fellow senators.

There are literally too many leaders within both legislative bodies to properly recognize their many contributions. It should be noted however that Senator Jerry Klein, chairman of the Senate Industry, Business and Labor Committee, of Fessenden with constituents in both of the service territories of BEK Communications and Dakota Central Telecom brought a unique understanding of the industry because of the relationship he has developed with them over the years. Representative Dave Monson of Osnabrock and a member of United Telecom was the prime sponsor of the railroad crossing bill. Members of the Association owe a tremendous debt of gratitude to them both.

It should also be noted the leadership in both houses is uniquely rural this session. Rich Wardner of Dickinson is the Senate Majority Leader and has a close relationship with Consolidated Telcom. The Senate Minority Leader is Joan Heckaman from New Rockford and a member of Dakota Central Telcom. House Majority Leader Chet Pollert is from

Carrington and a member of Dakota Central Telecom also. In an earlier Legislative Report we chronicled Representative Headland's efforts authoring amendments prohibiting the cities from installing fiber optic infrastructure with grants and low interest loans. It was Senator Wardner who led the effort in the Senate.

While the Association is at the Capitol every day meeting with legislators, it is the members themselves who tell the most compelling story. Derrick Bulawa, CEO at BEK; Shane Hart, CEO of Reservation Telephone Cooperative; Jeff Olson, CEO of Red River Communications, Deb Syvertsen, Plant Maintenance Manager of Red River Communications; Brooks Goodall, Chief Operations Officer of Reservation Telephone Cooperative; Dennis Mitchell, Outside Plant Manager at Red River Communications; and, Seth Arndorfer, CEO of Dakota Carrier Network, all appeared before legislative committees in the last four months to advocate on behalf of the rural broadband industry.

However, the North Dakota legislature is an overwhelmingly urban body. There are more legislative districts in Cass County than there are in the entire area west of the Missouri River, and that includes separate districts for Dickinson and Mandan. Legislative districts in rural North Dakota are getting larger and larger; cities and their immediate surrounding areas are getting more and more legislative representation. As a practical matter, members of the Association need urban support to successfully advocate and have their legislative priorities adopted. The Association member's comprehensive approach to developing relationships through the Legislative Dinner, Political Action Committee support, newspaper editorials, mailings, the companies' ongoing education with their own rural legislators and the personal relationships the Association continues to develop with legislators are all elements of that success and illustrate the necessity of doing it if our companies' voices will be heard in the future.

Finally, the Association extends its gratitude and appreciation to the BAND Legislative Committee members who have provided direction and counsel prior and during the session. Please join us in recognizing the efforts of Derrick Bulawa, BEK Communications; Paul Schuetzler, Consolidated Telcom; Keith Larson, Dakota Central; Kent Schimke, Dickey Rural Networks; Tyler Kilde, MLGC; Jeremy Becker, NCC; Karl Blake, Polar Communications; Dave Gauslow, Red River; Brooks Goodall, Reservation Telephone, Jim Newman, SRT and Troy Schilling of 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](mailto:dcrothers@yahoo.com).

## **HB 1021**

The Information Technology Department's appropriations bill for the next two years. The agency's appropriation pays for, among other things, the costs of providing network and telecom to all of the State agencies, K-12, cities, counties and the higher education system. Dakota Carrier Network currently holds that contract. The Association seldom testifies or advocates for agency appropriations, but monitors them and attends hearings to ensure that adverse policy is not adopted.

Jan. 11      Introduced in House.  
Feb. 18      Appropriations Committee Recommended "Do Pass", as amended, 21-0.  
Feb. 20      House Passed 78-11.  
Apr. 12      Appropriations Committee Recommended "Do Pass", as amended, 14-0.  
Apr. 16      Senate Passed 46-1.

## **HB 1066**

The legislation is one of the centerpieces of Republican leaderships' initiatives this session. In essence, it is a redistribution of monies generated by the oil and gas revenues to governmental entities. It is a complex formula. This bill creates a new fund, the Municipal Infrastructure Fund, for the purpose of providing grants to cities located in non-oil producing counties and may only be used for essential infrastructure projects. The term "essential infrastructure project" means capital construction projects to construct new infrastructure or to replace existing infrastructure. It does not include debt repayments and routine maintenance or repair projects. There are 9 eligible uses for these grants including "communications infrastructure". The Association has a concern that may include cities providing their own telecom and broadband infrastructure. HB 1066 also creates a "County and Township Infrastructure Fund", but its eligible uses are limited to road and bridge projects.

Jan. 3      Introduced in House.  
Feb. 5      Finance and Taxation Committee Recommended "Do Pass", as amended, 9-5.  
Feb. 6      Rereferred to Appropriations.  
Feb. 18      Appropriations Committee Recommended "Do Pass" 80-12.  
Feb. 20      House Passed 80-12.  
Feb. 20      Introduced in Senate.  
Mar. 5      Finance and Taxation Committee Recommended "Do Pass" 14-0.

Mar. 14 Senate Passed 46-0.  
Mar. 21 Signed by Governor.

### **HB 1157**

A bill that prohibits those who are planning, installing, altering or repairing a fire detection system from doing the work unless they were licensed by the State Electrical Board. The legislation specifically excludes those who are doing similar low-voltage work on audio systems, video system, computer network system, home automation system or security system. This bill is significant because of another bill the Association is watching for where the State Electrical Board is seeking to expand its jurisdiction over “Power Limited Technicians”. Essentially, members within the electrical industry are in conflict about who and what projects should be subject to licensure by the State Board. BAND’s concerns this bill would be amended to include broadband company employees were realized when the legislation’s original sponsor came to the Senate I, B & L committee with language that proposed to recreate a licensing structure for Power Limited Technicians (PLT’s). Sponsors ultimately adopted an amendment exempting telco company employees.

Jan. 3 Introduced in House.  
Jan. 15 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 7-4.  
Feb. 1 House Passed 57-34.  
Feb. 18 Introduced in Senate.  
Mar. 27 Industry, Business and Labor Committee Recommended “Do Not Pass” 6-0.  
Mar. 28 Re-referred to Industry, Business and Labor Committee.  
Apr. 3 Industry, Business and Labor Committee Recommended “Do Pass” 6-0.  
Apr. 4 Senate Passed 46-1.  
Apr. 8 House Refused to Concur.  
Apr. 23 Conference Committee Amended.  
Apr. 23 House Passed 85-7.  
Apr. 23 Senate Passed 44-3.  
Apr. 24 Sent to Governor.

### **HB 1161**

A bill prohibiting the entry of false information into a “telephone caller identification system” with the intent to deceive, defraud or mislead. The legislation outlaws entering false information or placing a call knowing that false information was entered into the Caller ID system with the

intent to mislead or defraud. The Association believes the bill was introduced to target one of the most common practices of robocallers. There are a number of exemptions to the bill, including a provision exempting telecom, VoIP and broadband providers who are acting solely as a means of transmission of a “call” between recipient and sender. Other exemptions are afforded the blocking of caller identification information, law enforcement agencies and intelligence and security agencies of the Federal government.

Jan. 3 Introduced in House.  
Feb. 18 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 12-0.  
Feb. 19 House Passed 92-1.  
Feb. 20 Introduced in Senate.  
Mar. 12 Industry, Business and Labor Committee Recommended, as amended “Do Pass” 6-0.  
Mar. 14 Senate Passed 46-0.  
Apr. 10 Signed by Governor.

## **HB 1171**

Legislation to create a skilled workforce student grant program. The bill directs the Bank of North Dakota to develop in conjunction with Higher Ed in the State and the North Dakota Workforce Development Council a grant program to attract and retain individuals for technical and professional skills in North Dakota. The grant to each participant would be \$8,500 annually with a cap of \$17,500. The Workforce Council will determine each year which professions qualify for the funding. The program, under the bill as introduced, will initially receive \$10,000,000 in seed money to establish the fund and the initiative will be treated as a revolving loan fund after that.

Jan. 3 Introduced in House.  
Jan. 16 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 11-1.  
Feb. 11 House Passed 83-10.  
Feb. 18 Introduced in Senate.  
Mar. 11 Education Committee Hearing.  
Mar. 27 Appropriations Committee Hearing Recommended “Do Pass” 14-0.  
Mar. 28 Senate Passed 45-0.  
Apr. 3 House Refused to Concur with Senate Amendments.  
Apr. 19 Conference Committee Reported Back Amended.  
Apr. 19 House Passed 70-21.

Apr. 22 Senate Passed 46-0.  
Apr. 23 Sent to Governor.

### **HB 1195**

The bill expands upon the duties of merchants when using “automatic renewals” in consumer agreements. It would apply to a consumer who borrows, buys, leases or obtains personal property, real property or services for consideration. It would require consumers to initial each clause. It would require a merchant to provide a “cost-effective, timely and simple procedure” for cancellation. The legislation requires that a customer be sent by registered mail a notice if there is a renewal for in excess of 31 days explaining how to cancel the contract. It would also require affirmative action by the consumer before there can be a renewal. House Bill 1195 contains a provision exempting the “sale of public utilities” regulated under Title 49 of the North Dakota Century Code, which would address the telecom services provided by BAND Association members, but it was the organization’s opinion that it would not include broadband or video services. An amendment advocated by the Association was adopted by the House exempting all services provided by BAND members.

Jan. 3 Introduced in House.  
Feb. 1 Industry, Business and Labor Committee Recommended  
“Do Pass” 13-0, as amended.  
Feb. 7 House Passed 90-0.  
Feb. 18 Introduced in Senate.  
Mar. 11 Industry, Business and Labor Committee Recommended “Do  
Pass, as amended, 6-0.  
Mar. 13 Senate Passed 45-0.  
Apr. 2 House Concurred with Senate Amendments.  
Apr. 2 House Passed 90-0.  
Apr. 9 Signed by Governor.

### **HB 1217**

Legislation that effectively outlaws competition from North Dakota State government with private industry. The bill allows an individual directly affected by competition with a State agency or institution to petition the Public Service Commission for a hearing. If the PSC finds that a government entity is competing with private industry to provide goods or services it shall direct the agency to terminate the activity unless; 1) Cessation of the activity will create an emergency; 2) the cost of providing the service through private enterprise will cost at least ten percent more than the government is providing it for, or; 3) private

enterprise cannot adequately provide the service, or; 4) ceasing the activity will cause irreparable harm or loss of substantial invested funds. If the Public Service Commission finds a State agency is competing with private industry the activity must cease upon the completion of any contracts it may have to provide that service. HB 1217 will be monitored by the Association because of its pertinence to municipalities or State agencies providing, or contemplating, market entry for broadband services.

Jan. 3        Introduced in House.  
Jan. 28       Government and Veterans Affairs Committee Recommended  
                  “Do Not Pass” 10-4.  
Jan. 31        Failed to Pass 24-67.

### **HB 1329**

A bill to appropriate \$225,000 to the Department of Human Services for a grant to enhance and expand services to connect telephone callers to behavioral health services. The money will be used to expand Statewide access for callers and those texting to health and human service programs, mental health support, substance abuse services, gambling addiction, services for the elderly, residents with disabilities and support for military, veterans and military families. The Association will work to ensure that broadband companies are not required to provide any services without compensation or unreasonable regulatory filings.

Jan. 8        Introduced in House.  
Jan. 22       Human Services Committee Recommended “Do Pass” 7-6.  
Feb. 14       Appropriations Committee Recommended “Do Not Pass”, as  
                  amended, 11-8.  
Feb. 19        Failed to Pass 26-67.

### **HB 1362**

Legislation to put into statute the ability and requirements for utilities to cross railroad property in the State of North Dakota. The 6 railroad companies serving the State have always resisted having a policy in State law and, instead, only offered agreements with affected industries. The result has been widely disparate agreements between utilities and the railroads. House Bill 1362 has three fundamental principles: First, it establishes the cost of a permit for a utility seeking to cross railroad property at \$750. Second, the legislation allows a utility to begin crossing the railroad property 31 days after sending a registered letter with the permit fee, proof of insurance coverage and engineer’s drawings of the proposed crossing. Third, establishes the right of utilities to use the

public right of way without paying the railroad a fee. The utilities included in HB 1362 are 1) water, 2) sewage, 3) electronic, 4) telephone, data and telegraphic communications, 5) fiber optics, 6) cablevision, 7) electric energy, 8) oil, gas, hazardous liquids or 9) other substances, including pipes, sewers, conduits, cables, valves, lines, wires, manholes or attachments. The Association agreed with a Senate amendment to extend the time limit for railroads to reply to 35 days.

Jan. 10 Introduced in House.  
Feb. 18 Political Subdivisions Committee Recommended “Do Pass”, as amended, 11-3.  
Feb. 20 Introduced in Senate. Referred to Political Subdivisions Committee.  
Mar. 19 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 6-0.  
Mar. 21 Senate Passed 46-0.  
Apr. 1 House Concurred with Senate Amendments 79-8.  
Apr. 1 House Passed 79-8.  
Apr. 11 Signed by Governor.

### **HB 1435**

Legislation that furthers State and local governments’ attempt to build a Statewide radio network in North Dakota. Today, the radios used by emergency personnel in North Dakota are “unable to talk to each other” and there are not enough towers. This bill is the third in the last three sessions to eliminate that problem. HB 1435 creates an \$80 million line of credit at the Bank of North Dakota for the Information Technology Department to carry out “Statewide interoperable radio network projects” as they are approved by the State legislature. Motorola is heavily involved in this bill and is one of the prime advocates of it in the legislature. Presumably Dakota Carrier Network would be a primary carrier for carrying the backhaul from the hundreds of towers throughout the State that would be required to carry the State’s traffic. This bill also appropriates \$40 million additional dollars from the Strategic Investment and Improvements Fund to pay for the network.

Jan. 14 Introduced in House.  
Feb. 11 Government and Veteran’s Affairs Committee Recommended “Do Pass”, as amended, 13-1.  
Feb. 12 Referred to Appropriations.  
Feb. 18 Appropriations Committee Recommended “Do Pass”, as amended, 19-1.  
Feb. 20 House Passed 85-5.

Feb. 27 Introduced in Senate.  
 Mar. 22 Government and Veterans Affairs Committee Recommended  
 “Do Pass”, as amended, 7-0.  
 Mar. 29 Appropriations Committee Recommended “Do Pass” 14-0.  
 Apr. 1 Senate Passed 47-0.  
 Apr. 9 House Refused to Concur.  
 Apr. 18 Conference Committee Reported back Amended.  
 Apr. 19 House Passed 86-6.  
 Apr. 19 Senate Passed 47-0.  
 Apr. 23 Sent to Governor.

**HB 1474**

A measure that allows cities and counties to implement an infrastructure tax in lieu of a city adopting special assessments to fund road repair and construction and other projects of public benefit. It allows the government to levy an “infrastructure tax” on all residential and commercial utility bills. If a municipality implements the infrastructure tax it also has the authority to levy and collect a “green field” special assessment tax. Green fields are undeveloped property that infrastructure is brought to. The Association has long opposed placing taxes on utility bills as a means of funding other areas of political subdivisions. We are particularly concerned the authorized tax on utilities will not include a similar tax on wireless, video and other broadband providers. House Political Subdivisions committee members adopted an amendment and exempted communications services during the final deliberations on the measure. The Senate amended the bill and converted it to a study resolution.

Jan. 14 Introduced in House.  
 Feb. 15 Political Subdivisions Committee Recommended “Do Pass”,  
 as amended, 10-3.  
 Feb. 19 House Passed 81-12.  
 Feb. 20 Introduced in Senate.  
 Mar. 21 Finance and Taxation Committee Recommended “Do Pass”,  
 as amended, 6-0.  
 Mar. 21 Senate Passed 45-1.  
 Apr. 3 House Refused to Concur with Senate.  
 Apr. 18 House Acceded to Conference Committee Report.  
 Apr. 18 House Passed 85-6.  
 Apr. 23 Sent to Governor.

## **HB 1542**

A bill to create a task force to study the needs and challenges of North Dakota's autonomous ecosystem. The legislation names representatives to the task force and charges them with assessing the State's current capabilities and needs going forward. Presumably it will focus on unmanned aerial vehicles and autonomous use of highways. Both will use immense amounts of data. The Association intends to participate in the hearings and ensuring the task force understands the capacity and expertise the broadband providers of North Dakota.

Jan. 14      Introduced in House.  
Jan. 28      Industry, Business and Labor Committee Recommended "Do Not Pass" 13-1.  
Feb. 11      House Defeated 70-23.

## **HCR 3005**

A concurrent resolution urging Congress and the President of the United States to coordinate efforts to fight and provide an effective and innovative solution to combat illegal and unsolicited robocalls. Sponsors of the resolution testified that robocalls account for 98 million separate calls each day to United States households that result in \$9.5 billion annually in fraud. They further testified that small business in the nation waste an estimated 20 million hours annually dealing with illegal, unsolicited and unwanted robocalls, which lead to a minimum of \$475 million in lost productivity each year.

Jan. 3      Introduced in House.  
Jan. 10      House Passed 89-0.  
Feb. 18      Introduced in Senate.  
Mar. 13      Industry, Business and Labor Committee Recommended "Do Pass", as amended, 6-0.  
Mar. 14      Senate Adopted on Voice Vote.

## **SB 2044**

A bill updating and expanding the definition and penalties for tampering with or damaging critical infrastructure facilities or a public service. There has long been a law in North Dakota making criminal the act of damage to public communications, transportation, water, gas or power facilities. This legislation expands the law and defines it as all "critical infrastructure" and adds more industries to the list, including a telecom's central office and wireless telecom infrastructure. The bill further expands the current law by including "conspirators" of those damaging the infrastructure and provides an enhanced penalty. The Association testified during the Senate Committee hearing and urged them to adopt

more expansive language protecting wireline companies network. The committee subsequently adopted an amendment prepared by BAND that protects a wireline company's entire infrastructure. That language is included in the measure sent to the Governor for his signature.

Jan. 3 Introduced in House.  
Jan. 18 Energy and Natural Resources Committee Recommended "Do Pass", as amended, 6-0.  
Feb. 15 Senate Passed 42-3.  
Feb. 27 Introduced in House.  
Mar. 18 Energy and Natural Resources Committee Recommended "Do Pass", as amended, 10-1-3.  
Mar. 25 House Passed 76-14.  
Apr. 3 Senate Concurred with House Amendments 43-4.  
Apr. 11 Signed by Governor.

### **SB 2318**

A bill saying it is the Legislature's "intent" that ITD enter a contract to "provide broadband capabilities within student housing facilities at institutions under the control of the State Board of Higher Education. The Association has long been aware of an effort to separate student housing from the StageNet contract. That contract is currently held by Dakota Carrier Network. The legislation further directs ITD to work with colleges when developing requirements and selecting the broadband service solution. The Association is trying to determine exactly what SB 2318 means. First, we don't believe we have ever seen a bill that says it is the "intent" of the Legislature that a State agency enter a contract. They would normally just direct the agency to do it. Second, providing broadband to University student housing outside of the ITD master contract would violate a separate State law. Derrick Bulawa testified on behalf of the Association and told committee members the problem was not the quality or capacity of broadband being delivered, but rather inferior infrastructure within the housing units themselves. An amendment submitted by BAND limiting the scope to "Local Area Networks" and remove "broadband services" was adopted by the committee and approved by the full Senate. The House adopted the amended bill in its entirety, so the bill now goes to the Governor.

Jan. 18 Introduced in Senate.  
Feb. 1 Political Subdivisions Committee Recommended "Do Pass", as amended, 5-2.  
Feb. 7 Senate Passed 47-0.  
Feb. 18 Introduced in House.

Mar. 14 Education Committee Recommended “Do Pass” 11-2-1.  
Mar. 18 House Passed 77-15.  
Mar. 27 Signed by Governor.

**SB 2359**

Legislation that will give the State Electrical Board jurisdiction over “Power Limited Technicians”. The electrical board does not currently license them or regulate their work, training or education. All members of the Association employ power limited technicians in a variety of capacities including fiber to the home work, as well as a multitude of other services offered by the broadband company such as security systems, video, automation and television. The bill is sweeping in its breadth. It gives the State Electrical Board the authority to license “power limited technicians”, require continuing education, establishes different classes of licenses and mandates supervision for those with fewer than 6,000 hours of experience. Senate Bill requires their work be inspected by an “inspector” designated by the State Electrical Board. The Association believes that it overreaches and fails to recognize the professionalism or levels of training that exist today in North Dakota’s broadband and telecom companies. Although the Association was successful prior to the hearing in persuading sponsors of the bill to include an amendment exempting broadband company employees “acting within the scope” of their employment, the committee ultimately converted the bill to a study resolution.

Jan. 21 Introduced.  
Feb. 12 Industry, Business and Labor Committee Recommended “Do Pass”, as amended, 5-1.  
Feb. 13 Senate Passed 44-3.  
Feb. 27 Introduced in House.  
Mar. 13 Industry, Business and Labor Committee Recommended “Do Pass” 10-0-4.  
Mar. 21 House Passed 81-10.  
Apr. 1 Signed by Governor.