1 to be provided and areas to be served. Each telecommunications carrier providing local ex-
2 change service shall identify its exchanges in maps filed with the commission. The local
3 calling areas of incumbent local exchange carriers in existence as of the effective date of this
4 1997 Act shall be used to determine when a call between telecommunications carriers shall
5 be considered a local or interexchange call for purposes of determining access charges or call
6 termination charges.

7 (2) The commission shall grant a concurrent certificate or certificates of public authority
8 to provide telecommunications services in the service territory of a local exchange carrier
9 except as otherwise provided by or pursuant to law.

10 (3) The commission shall waive carrier of last resort obligations for any person request-
11 ing waiver in any area it serves for which another person has been designated a carrier of
12 last resort.

13 (4) A state agency, municipality, municipal electric system or public utility district shall
14 not offer for sale to the public, either directly or indirectly, a telecommunications service for
15 which a certificate of authority under this chapter is required.

16 (5) Prior to offering telecommunications services in any area, a telecommunications
17 carrier that has applied for and received a certificate of authority from the commission shall
18 provide a notice of intention to exercise operating authority to all local exchange carriers
19 providing service in the proposed operating area. The operating area shall be described in
20 exchange maps filed by the local exchange carrier indicating the specific areas in which op-
21 erations will be conducted.

22 (6) A telecommunications carrier that has been granted a certificate of authority by the
23 commission shall furnish to the commission such information as is reasonably required to
24 enable the commission to carry out the responsibilities set forth in section 3 of this 1997 Act.

25 (7) Except under the terms of a protective order, trade secrets and commercial or fi-
26 nancial information submitted under this chapter are exempt from disclosure to parties
27 other than the commission. If information is disclosed pursuant to a protective order, the
28 information may be included in the commission's evidentiary record, if admissible, and shall
29 remain confidential.

30 SECTION 5. Certificates of authority for persons, companies and corporations providing
31 services on date of enactment. (1) Notwithstanding section 4 of this 1997 Act, any person,
32 company or corporation providing intrastate telecommunications services on the effective
33 date of this 1997 Act shall continue to have the authority to provide those services on and
34 after the effective date of this 1997 Act.

35 (2) Notwithstanding any other provision of law, any cooperative corporation or
36 unincorporated association providing intrastate telecommunications service on the effective
37 date of this 1997 Act shall continue to have the authority to provide those services on and
38 after the effective date of this 1997 Act. Such actions shall not subject such cooperative
39 corporation or association to the commission's general powers of regulation.

40 SECTION 6. Application of law to certain local exchange carriers with less than 15,000
41 access lines. (1) For the purposes of this section, any local exchange carrier whose primary
42 business is local exchange service to less than 15,000 access lines within Oregon and that is
43 not affiliated or under common control with any other kind of public utility, or telecommu-
44 nications carrier providing service in Oregon, shall be considered an exempt local exchange
45 carrier.

L1

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 620

AN ACT

To repeal section 392.410, RSMo Supp. 1996, relating to certificate of public convenience and necessity for telecommunications service, and to enact in lieu thereof one new section relating to the same subject.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Section 392.410, RSMo Supp. 1996, is repealed and one new section enacted in lieu thereof, to be known as section 392.410, to read as follows:

392.410. 1. A telecommunications company not possessing a certificate of public convenience and necessity from the commission at the time this section goes into effect shall have not more than ninety days in which to apply for a certificate of service authority from the commission pursuant to this chapter unless a company holds a state charter issued in or prior to the year 1913 which charter authorizes a company to engage in the telephone business. No telecommunications company not exempt from this subsection shall transact any business in this state

Bell

until it shall have obtained a certificate of service authority from the commission pursuant to the provisions of this chapter, except that any telecommunications company which is providing telecommunications service on September 28, 1987, and which has not been granted or denied a certificate of public convenience and necessity prior to September 28, 1987, may continue to provide that service exempt from all other requirements of this chapter until a certificate of service authority is granted or denied by the commission so long as the telecommunications company applies for a certificate of service authority within ninety days from September 28, 1987.

2. No telecommunications company offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority pursuant to the provisions of subsection 1 of this section. No telecommunications company offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a certificate of local exchange service authority pursuant to the provisions of section 392.420.

3. No certificate of service authority issued by the

commission shall be construed as granting a monopoly or exclusive privilege, immunity or franchise. The issuance of a certificate of service authority to any telecommunications company shall not preclude the commission from issuing additional certificates of service authority to another telecommunications company providing the same or equivalent service or serving the same geographical area or customers as any previously certified company, except to the extent otherwise provided by section 392.450.

4. Any certificate of public convenience and necessity granted by the commission to a telecommunications company prior to September 28, 1987, shall remain in full force and effect unless modified by the commission, and such companies need not apply for a certificate of service authority in order to continue offering or providing service to the extent authorized in such certificate of public convenience and necessity. Any such carrier, however, prior to substantially altering the nature or scope of services provided under a certificate of public convenience and necessity, or adding or expanding services beyond the authority contained in such certificate, [must] **shall** apply for a certificate of service authority for such alterations or additions pursuant to the provisions of this section.

5. The commission may review and modify the terms of any

1 certificate of public convenience and necessity issued to a
2 telecommunications company prior to September 28, 1987, in order
3 to ensure its conformity with the requirements and policies of
4 this chapter. Any certificate of service authority may be
5 altered or modified by the commission after notice and hearing,
6 upon its own motion or upon application of the person or company
7 affected. Unless exercised within a period of one year from the
8 issuance thereof, authority conferred by a certificate of service
9 authority or a certificate of public convenience and necessity
10 shall be null and void.
11 6. The commission may issue a temporary certificate which
12 shall remain in force not to exceed one year to assure
13 maintenance of adequate service or to serve particular customers,
14 without notice and hearing, pending the determination of an
15 application for a certificate.
16 7. No political subdivision of this state shall provide or
17 offer for sale, either to the public or to a telecommunications
18 provider, a telecommunications service or telecommunications
19 facility used to provide a telecommunications service for which a
20 " certificate of public convenience and necessity is required "
21 pursuant to this section. Nothing in this subsection shall be
22 construed to restrict a political subdivision from allowing the

1 nondiscriminatory use of its rights-of-way by telecommunications
2 providers or from providing telecommunications services or
3 facilities:
4 (1) For its own use;
5 (2) For 911, E-911 or other emergency services;
6 (3) For medical or educational purposes; or
7 (4) To students by an educational institution.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matters of:	)	
Petitions for Preemption of Local	)	
Barriers Pursuant to Section 253 of	)	CCBPol 96-14
the Telecommunications Act of 1996	)	
	)	
Petition of Abilene, Texas	)	CCBPol 96-19
For Expedited Declaratory Ruling	)	

To the Commission:

NOTICE OF RECENT AUTHORITY

The American Public Power Association invites the Commission's attention to the recent decision in *Iowa Telephone Association v. City of Hawarden*, No 18320 (Iowa District Court for Sioux County, Dec. 12, 1996) (copy enclosed). In granting summary judgment for the City, the Iowa court rejected many of the same arguments that the State of Texas, Southwestern Bell and the Texas Cable & Telecommunications Association have made in preemption proceedings before the Commission concerning Section 3.251(d) of the Texas Public Utility Regulatory Act of 1995. APPA urges the Commission to reject these arguments for the same reasons that the Iowa court gave in the *Hawarden* case.

Respectfully submitted,

James Baller
Lana Meller
The Baller Law Group
1820 Jefferson Place, N.W.
Suite 200
Washington, D.C. 20036
(202) 833-5300
(202) 833-1180 (FAX)
JimB@Baller.com (INTERNET)
Attorneys for American Public Power Association

January 6, 1997

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

IOWA TELEPHONE ASSOCIATION, Plaintiff, vs. CITY OF HAWARDEN, Defendant.	No.18320 RULING RE: SUMMARY JUDGMENT MOTIONS MADE BY BOTH PLAINTIFF AND DEFENDANT

FILED
SIOUX COUNTY IOWA
96 DEC 12 A 9 58
CLERK OF COURT

On October 29, 1996, the Motions for Summary Judgment by both the Iowa Telephone Association (ITA) and the City of Hawarden came on for hearing before this Court. Steven Nelson appeared for Plaintiff ITA and Ivan Webber appeared on behalf of Hawarden. A hearing was held and the matter submitted. After considering the record and the written and oral arguments of counsel, the Court now rules as follows.

CASE STATEMENT

This Ruling and Order stems from an April 11, 1995, Petition for Declaratory Judgment filed by the Iowa Telephone Association asking the Court to declare that Hawarden is statutorily prohibited from providing land-line local telephone services to customers in the State of Iowa. ITA is an association whose members are companies that provide land-line local telephone service to customers in the State of Iowa. This request followed an election that took place in Hawarden where, by a vote of 588 for to 27 against, the citizens answered the following question in the affirmative: "Shall the City of Hawarden Iowa establish a Municipal Cable Communication System as a City Utility?" The city has proposed that this utility will offer Internet access, cable television, and land-line local telephone services. The desire to provide the telephone services has spawned the current litigation.

Pursuant to that plan Hawarden filed an "Application for Certificate of Public Convenience and Necessity or Request for Declaratory Ruling that a Certificate is not Needed." This Application was intended to ensure it had the proper clearances in order to operate a telecommunications cable system. In response, ITA filed the Declaratory Judgment action arguing that Hawarden erroneously contends Iowa Code section 388 allows it to establish a telecommunications facility and that the Noncompetition by Government Act of section 23A prohibits such a plan. Then, on August 6, 1996, Defendant Hawarden filed a Motion for Summary Judgment requesting that Plaintiff's Petition be dismissed. Likewise, ITA moved for Summary Judgment and now both of these motions are before the Court.

SUMMARY JUDGMENT STANDARDS

The purpose of summary judgment is to avoid trials where no factual issue exists. Neoco, Inc. v. Christenson, 312 N.W.2d 559, 560 (Iowa 1981). Accordingly, summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c) (1995); Bradshaw v. Wakonda Club, 476 N.W.2d 743, 745 (Iowa Ct. App. 1991). The moving party bears the burden of showing that no genuine issue of material fact exists. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984). Whether a genuine issue of material fact exists turns on whether reasonable minds could draw different inferences and reach different conclusions from them. Boge v. State, 309 N.W.2d 428, 430 (Iowa 1981). Summary judgment is proper where the only dispute concerns the legal consequences flowing from the underlying, uncontroverted facts. Brown v. Monticello State Bank of Monticello, Iowa, 360 N.W.2d 81, 84 (Iowa 1984).

RULING AND ORDER

Hawarden's first argument, which may be dispositive of this case, is that the recently enacted federal Telecommunications Act of 1996, Pub. L. No. 104-104 ("the Act"), preempts any state law that would have the effect of prohibiting the city from operating a telephone utility. If this Court finds that the Act preempts state law in the area, then the state law becomes irrelevant and only federal law need be dealt with. Principally, they rely on section 253(a) of the Act which provides:

> (a) IN GENERAL - No state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Hawarden also directs the Court to section 253(d) for the position that any prohibition on the provision of telecommunications services is preempted by the Act. Section 253(d) states:

> (d) PREEMPTION - If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.

The Supremacy Clause of the United States Constitution, Article VI, provides the basis for the doctrine of preemption, which provides that federal law preempts the concurrent exercise of state law in two situations. The Supremacy Clause states that the laws of the United States "shall be the supreme Law of the Land: ... any Thing in the Constitution or laws of any state to the Contrary notwithstanding." In determining whether an area of state law is precluded "the purpose of Congress is the ultimate touchstone," and Congressional intent is paramount. Malone v. White Motor Corp., 435 U.S. 497, 504, 98 S.Ct. 1185, 1189 (1978); City of Des Moines v. Master Builders of Iowa, 498 N.W.2d 702, 704 (Iowa 1993). As said before, that Congressional

intent may show that federal law may preempt state laws and local regulations in two manners - expressly and impliedly. Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516, 112 S.Ct. 2608, 2617 (1992).

Express preemption of a state law occurs when the federal law in question explicitly states an intent in its language, structure, or purpose to override and take precedence over the state law. Jones v. Rath Packing, 430 U.S. 519, 525, 97 S.Ct. 1305, 1309 (1977). In such circumstances, there is no need to infer Congressional intent to preempt state laws from the substantive provisions of the federal legislation. Freightliner Corp. V. Myrick, 115 S.Ct. 1483, 1488 (1995). The Supreme Court has given guidelines to consider when determining whether a federal statute has was intended to expressly preempt a state statute including "when congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue," and when the federal statute provides other reliable indicium of intent with respect to state authority. Malone v. White Motor Corp., 435 U.S. at 505, 98 S.Ct. at 1190.

Federal legislation may also impliedly preempt state and local laws, although the Supreme Court has cautioned that it is generally reluctant to find this sort of intent absent unmistakable evidence. N.Y. State Dept. Of Social Services v. Dublino, 413 U.S. 405, 413 (1973). For example, intent to preempt state law is apparent and "unmistakable" where state law actually conflicts with the federal law, either because it is impossible to comply with both laws or because compliance with the state law would frustrate the purpose of the federal law. Pacific Gas & Elec. V. State Energy Resources Conservation and Development Comm., 461 U.S. 190, 204, 103 S.Ct. 1713, 1722 (1983). Or, courts may find intent to preempt when the pervasiveness of the

federal legislation shows evidence of intent to "occupy the field to the exclusion of the states." Cipollone, 505 U.S. at 516, 112 S.Ct. At 2617.

What was the intent of Congress when it passed the Telecommunications Act of 1996? According to the legislative history of the Act, it is apparent that Congress was seeking to promote competition and openness in the provision of all forms of telecommunications whereby less regulation will presumably lead to more innovation and lower prices for consumers. H.R. Rep. No. 104-204, at p. 47 (1996). A main corollary of that objective is that the Act is to promote competition in the markets for *local telephone services* by pursuing various market opening initiatives. Id at 212. Indeed, the Act was intended to and does evince a strongly "deregulatory" flavor. Id at 207.

Other passages found in House Conference Report No. 104-458 illuminate the apparent intentions of Congress with regard to how the Telecommunications Act of 1996 was meant to interact with related state and local legislation. Under a heading entitled "NEW SECTION 253 - REMOVAL OF BARRIERS TO ENTRY," Congress numerous times unquestionably shows a preference to preempt certain laws regarding barriers of entry into providing telecommunications services. The question then becomes whether those express preemption provisions in the Act were intended to preempt the type of law that ITA claims prohibits Iowa municipalities from supplying telecommunications services. In doing so, this Court may not consider the reasonableness of the state law (primarily the Noncompetition Act and the definition of allowable city utilities) or state policy in the determination of congressional intent on preemption. Livadas v. Bradshaw, 114 S.Ct. 2068, 2070 (1994).

That there is an express preemption provision in the Telecommunications Act is clear. See

Section 253(a) & (d). Therefore, in such a case, there is no need to divine or infer congressional intent to preempt for it is clear on the face of the Act and this Court must simply determine whether the substantive effect of the Iowa provisions fits the type of laws Congress intended to be preempted . Freightliner corp. V. Myrick, 115 S.Ct. At 1488. In other words, where Congress intends to preempt and lays out the scope of its preemptive reach, the only question that remains is whether the state law falls within that sphere. Schneidewind v. ANR Pipeline Corp, 485 U.S. 293, 299, 108 S.Ct. 1145, 1150 (1988).

How far does Congress' preemptive intent reach in this instance? "[E]xplicit prohibitions on entry by a utility into telecommunications are preempted under this section." House Conf. Rep. 104-458, p. 127. The Report also states:

> Section 20(a) adds a new section 254 to the Communications Act and is intended to remove all barriers to entry in the provision of telecommunications services.
>
> Subsection (a) of new section 254 preempts any state and local statutes and regulations, or other State and local requirements, that may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.
>
> States may not exercise this authority [the ability to impose competitively neutral regulations on telecommunications providers] in a way that has the effect of imposing any entry barriers or other prohibitions preempted by new section 254(a).

Id.

When determining whether the Iowa laws in question construct any barrier to entry that would subject the law to federal preemption, this Court must keep in mind that not every state regulation that outwardly may appear to be a barrier to entry is preempted under the Act. States still do have certain authority and prerogatives with regard to governing and regulating telecommunications providers. Section 253(b) of the Act leaves these powers to the states:

> (b) STATE REGULATORY AUTHORITY - Nothing in this section shall affect the ability of a state to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Therefore, if this Court determines that the Iowa laws which are argued by ITA to be preclusive of Hawarden's effort to provide local telephone services are merely of the type that advance consumer rights, public safety, or universal service then the state law is not preempted. The law must constitute a true "barrier to entry" or prohibition on the provision of telecommunications services in order to be preempted.

The Court finds, if we assume without deciding that the Iowa noncompetition and/or city utility laws act as the Plaintiff charges and prohibits entry by cities into the local telephone arena, that there clearly is a complete barrier to entry of the type envisioned by the 104th Congress and is, therefore, preempted by the Telecommunications Act of 1996.

Findings of preemption have been made in the past in this general area of the law and under similar circumstances. The United States Supreme Court and other courts have found numerous times in various precursors and regulations analogous to the Telecommunications Act of 1996 that Congress had intended to preempt a particular area. For example, in Capital Cities Cable Inc. V. Crisp, 467 U.S. 691, 104 S.Ct. 2694 (1984), the Court ruled that FCC regulations preempted an Oklahoma law regarding content and carriage of cable signals. Also, in Marketing Research Services, Inc. v. Public Utilities Commission of Ohio, 517 N.E.2d 540, 544 (Ohio 1987), the Ohio Supreme Court held that the Communications Act of 1934 preempted state law regarding common carriers involved in interstate telecommunications. See also Cable Television Ass'n. V. Finneran, 954 F.2d 91, 98 (2nd Cir. 1992) (mentioning other preempted

areas such as the regulation of rates charged by cable companies under 47 U.S.C. §543(a)); Iowa Op.Atty.Gen. No. 95-6-3(L) (advising that provisions of Cable Communications Policy Act of 1984 preempt Iowa law regarding granting of cable franchises).

ITA directs the Court to section 601(c)(1) of the Telecommunications in arguing against preemption. That section states:

> This act and the amendments made by this act shall not be construed to modify, impair, or supersede federal, state, or local law unless expressly so provided in such act or amendments.

However, we find that Congress *has* expressly so provided that states may not enact statutes of the type that Plaintiff envisions as negating the authority of cities to establish telecommunications services as a utility. This was done in section 253 (a) & (d) of the Act. ITA further argues that a finding that state law is preempted will have the effect of intruding into an area of state sovereignty and authority. (ITA Resistance at p. 3) The Court finds this to be the very nature of preemption. Every time Congress intends a federal law to preempt a state law, an inescapable concomitant of that is that some authority is taken by the federal government at the expense of the states. That is not an argument against preemption in this case.

In a case with similar facts as the case at hand, Warner Cable Comm. v. Borough Schuylkill Haven, 784 F.Supp. 203 (E.D. Pa. 1992), a United States District Court held under the Cable Communications Policy Act of 1984 that a borough was not empowered to operate its own cable television system. The court so reasoned on grounds somewhat analogous to Plaintiff's above argument - that absent some indication Congress intended to "upset traditional spheres of state and federal power" they would not lightly find that a federal law purported to legislate a power usually deemed a prerogative of the states such as regulation of its municipalities. The

court also found that the federal law did not preempt the state law and thus permit a borough to operate a cable television system because the two laws were not actually inconsistent and nor was there an express preemption provision in the 1984 Ac t. Id at 214, fn. 13. However, this case is distinguishable because this Court finds that any state act prohibiting an entity's entry into the telecommunications field is inconsistent with the intent of and the preemption provisions of the Telecommunications Act of 1996. The broadly worded preemption provision in the Act can only lead the Court to conclude that Congress intended a similarly broad reach of those particular sections.

According to the Plaintiff, allowing a city to establish a telephone service by federal preemption would bring with it other untoward effects and shows that Congress surely did not intend such a result. Plaintiff refers to Iowa Code section 490.1420 which allows the state to dissolve a corporation that does not file annual reports or pay its taxes. ITA asserts that Hawarden's argument "would prohibit a state from dissolving a telephone utility under §490.1420 because that would 'prohibit or have the effect of prohibiting the ability of [the] entity to provide interstate or intrastate telecommunications service.'" This is not the case. The preemption provisions of section 253 only apply to barriers to entry not to regulatory rules or any actions a state later may take in order to protect its or its citizens interests. The Court finds that this specific type of problem was exempted from the preemption provisions by section 253 (b) of the Act which leaves states free to "protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Additionally, the Joint Explanatory Statement of the Committee of Conference states that nothing in the Act "shall be construed to modify, impair, or supersede any State or local tax law." (Joint Statement at p.

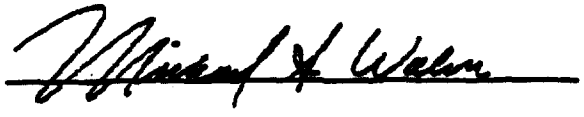
197).

The Act broadly states that no state or local law may prevent "any entity" from providing telecommunications services. The Court finds that cities at least were not exempted from section 253 (a), if not clearly contemplated by Congress as being included in the phrase "any entity." Generally, the word "any" is used in its fullest and all inclusive sense meaning all or every, State v. Bishop, 132 N.W.2d 455, 458 (Iowa 1965), but its use is still restricted and limited by the context of the statute. U.S. v. Weil, 46 F.Supp. 323, 325 (E.D. Ark. 1942). This Court finds that the goals and context of the Telecommunications Act - universal service, openness of entry, and deregulation - will be served best by applying the word in its fullest sense, and this usage includes municipalities and cities. Also, in construing statutes, courts must ascribe to statutory terms their ordinary meaning unless the legislature otherwise defines them. State v. White, 319 N.W.2d 213, 215 (Iowa 1982). Because "entity" was otherwise left undefined in the Telecommunications Act this Court must presume that cities, as utility providers, are considered to be included within its reach.

As this Court holds that the Telecommunications Act of 1996 preempts state laws regarding barriers to entry and prohibitions on the provision of phone services, any Iowa law that would so operate is inapplicable. Therefore, federal law rules this area bringing with it a policy of openness in the provision of telecommunications services. As such, this analysis need not reach the remainder of Plaintiff's arguments. Accordingly, Iowa Telephone Association's Motion for Summary Judgment is Denied and Hawarden's is Granted. Plaintiff's Petition for Declaratory Judgment is Denied with costs assessed to ITA.

Dated this 16th day of December, 1996.

By the Court



Michael S. Walsh

Judge, Third Judicial District of Iowa

12/16/96 Copy mailed to: Robert Holz, Steve Nelson, Ivan Webber & Thomas Polking

DF

Hawarden's Connection

to the World

Hang on Hawarden...We're going HITEC!

Hawarden is just months away from the 21st Century, as City Council, Mayor and staff finalize plans for a network of fiber optic cable to residences, businesses, schools and institutions in Hawarden.

The state-of-the-art communications utility--to be called **Hawarden Integrated Technology, Energy and Communications (HITEC)**--is designed to handle telephone, cable TV, utility load control, interactive video, high-speed data transmission and a variety of other modern communications services.

The new communications utility will be installed, owned, maintained and managed by the City of Hawarden much like the current electric, gas, water and sewer utilities. Hawarden is one of the first communities in the U.S. to launch a municipally owned communications utility.

Current plans call for construction of the new utility to begin in late summer or early fall of 1996 and to be operational by fall of 1997.

It All Started When...

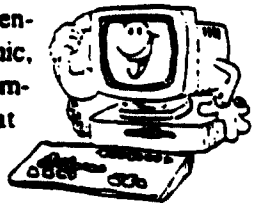
- Government deregulation allows municipalities to compete with for-profits in telecommunications.
- US West announces it will sell the Hawarden telephone exchange.
- Citizens of Hawarden vote overwhelming approval of a city communications utility.
- US West rejects Hawarden bid for local exchange--sells to a for-profit consortium.
- Council says we'll do it ourselves.

Mayor and Council – "The Future Is NOW!"

High-technology is the wave of the future, right?

"If you believe that, you probably still own a rotary dial phone and a black and white television," says Hawarden Mayor Mose Hendricks. "That high-tech wave is on top of us and it's sink or swim time."

The intent of city leaders has never been to just establish a communications system for Hawarden, explains the Mayor. "Our decision was to bring Hawarden into the next century as a dynamic, competitive community that maintains our small town quality of life, yet offers all the economic, cultural, social and educational advantages as any other part of the country."



"There is always the question of why don't we let the phone company do this for us," says Councilman Jerry Klemme. "The simple answer to that is that they don't have the equipment for this type of system and are not likely to install it. They cannot make a large profit in a small market. That's why US West sold the Hawarden exchange. We have utility experience

and we know we can provide a good system at a very good price."

"This is a very visionary project," says Councilman Mike Kallsen. "But we know that it's very much a necessity for Hawarden. A community that does not offer citizens and business access to high-quality communications will be left on the sidelines. We can't afford not to have this system."

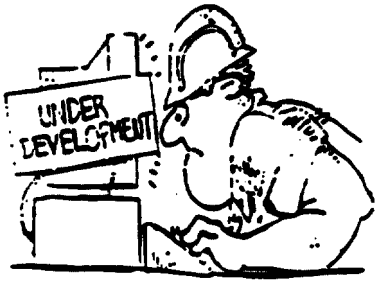
It's a David and Goliath Battle

"When was the last time you did anything really progressive and didn't run into a few roadblocks?" says City Councilman Larry Armstrong. "We knew going in that we'd have opposition, and we are prepared for it."

Hickory Communications, the purchaser of the Hawarden telephone exchange, asked the Iowa Utilities Board to intervene to keep Hawarden from operating a phone system. The Utilities Board ruled that it has no jurisdiction.

The Iowa Telephone Association has requested that the District Court stop Hawarden from operating a phone system. The court has not yet ruled.

"US West is very big and very wealthy," says Councilman Armstrong. "Of course they don't want municipalities competing with them, so they're going to use their muscle and do whatever they have to do to stop Hawarden from setting this precedent. But this is a time when the big guy isn't going to win. We feel very confident we have a right to operate a communications utility. We're going nose-to-nose with them and we will win this one."



This newsletter is published by the City of Hawarden, Hawarden, Iowa.

Hawarden Sets the Pace

All eyes are on Hawarden as our city leads the way among municipalities by designing and building a municipally owned communications system.

"There are a lot of cities and other organizations out there watching us very closely," says Superintendent of Public Works, Bob Borchers. "I've had calls from people all over the country wanting to know how they can do what Hawarden is doing and offering encouragement. We're getting strong support from the Iowa Association of Municipal Utilities, Northwest Iowa Power Coop, and the American Public Power Association. It really makes you proud that our community has the vision to be on the cutting edge of something like this."

Expert Advice Every Step of the Way

"The real expert knows what he doesn't know," says Councilman Jack Andela. "We knew when we started this that we would need much advice from many experts. We are working with attorneys, architects, communications specialists, financial experts and marketing companies to put this together.

"The City of Hawarden is ready to offer a communications system that will grow and change as fast as the industry changes. We hope to make a profit on this system, but that's not why we're doing it. We're in it to give our residents the communications services they want and need."

Cell Phone Users, You're Going to Love HITEC

As the rest of the world enjoys the convenience of portable cellular phones, the people of Hawarden have to set on the sidelines and watch because there are no cellular towers close enough to send and receive the signals. But HITEC offers a solution to this problem.

"We hope to lease space on our HITEC tower to a cellular company to provide cellular service to Hawarden," says City Clerk Tim Waddell. "We get help paying for our system, the cell company has a low-cost solution to the problem and the people of Hawarden get a service they want and need."

HITEC has Something for Everyone

"You don't have to surf the Internet or dress in a lab coat to benefit from HITEC. This system offers more benefits to every citizen than nearly anything else the city does," says City Councilman Glenn Gregg.

"A telephone system with all the bells and whistles is obviously beneficial to the community," says Gregg. "But our vision for HITEC goes far beyond that. We want to provide Internet access, cable TV, automated meter reading, access to the Iowa Communications Network for our schools, and high-speed data transmission for businesses like the hospital. Even if you don't have telephone service, we'll offer you a phone that can dial 911 only, so everyone can access emergency service."

HITEC is Plugged Into the World

HITEC won't be alone in this communications venture.

To connect Hawarden to the world the City Council is negotiating with PTI of Sergeant Bluff to supply local residential and business service, Northwest Rural Electric Cooperative to connect rural customers to HITEC, and several other companies that can help Hawarden set up the new system.

By making these outside connections, Hawarden citizens may have the possibility of making local calls in a much greater area than we have now, and many other advantages. These companies have a great deal of experience and expertise to put together the best system possible.

509-372-5330

The Honorable Grant L. Anderson

FILED
DEPT. 12
IN OPEN COURT
DEC 13 1996
Pierce County Clerk
By Deputy

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation, Plaintiff, v. THE TAXPAYERS AND RATEPAYERS OF THE CITY OF TACOMA, Defendants.	No. 96 2 09938 0 ORDER GRANTING CITY OF TACOMA'S MOTION FOR SUMMARY JUDGMENT

This matter came on this day for hearing before the undersigned upon the City of Tacoma's ("City's") Motion for Summary Judgment. Plaintiff City of Tacoma appeared through its counsel, Elizabeth Thomas. Defendants Taxpayers and Ratepayers of the City of Tacoma appeared through their counsel, Ronald E. Thompson.

Counsel for the parties have drawn the Court's attention to the following documents: Summons, Complaint for Declaratory Judgment; Acceptance of Service; City of Tacoma's Motion for Summary Judgment; Memorandum in Support of Motion for Summary Judgment; Declaration of Jon Athow in Support of Motion for Summary Judgment; Defendants' Responsive Memorandum in Opposition to City of Tacoma's Motion for Summary Judgment; and City of Tacoma's Reply Brief.

Based on these documents, the Court finds that there is no genuine issue as to any material fact and that the facts set forth in the Declaration of Jon Athow are true.

PRESTON GATES & ELLIS
[illegible] COLUMBIA CENTER
[illegible] FIFTH AVENUE
SEATTLE, WASHINGTON [illegible]
TELEPHONE: [illegible]
FACSIMILE: [illegible]

Having considered the documents identified by the parties, the arguments of counsel and the record herein, the Court concludes that the following order should be entered.

1. The Court has jurisdiction over the subject matter and parties in this action.

2. Tacoma City Ordinance No. 25930 (the "Bond Ordinance") was properly enacted.

3. The City has authority under the laws of the State of Washington and the United States to provide cable television service in the Light Division service area.

4. The City has authority under the laws of the State of Washington and the United States to lease telecommunications facilities and capacity to telecommunications providers.

~~5. The City has authority under the laws of the State of Washington and the United States to issue the Bonds for the purposes set for in paragraphs (3) and (4) above and in the manner set forth in the Bond Ordinance.~~

DONE IN OPEN COURT this 13 day of December, 1996.

GRANT L. ANDERSON

JUDGE

FILED
DEPT. 12
IN OPEN COURT
DEC 13 1996
Pierce County Clerk
By [signature] Deputy

Presented by:

PRESTON GATES & ELLIS

By /S/
Elizabeth Thomas, WSBA # 11944
Laura A. Rosenwald, WSBA # 25722

CITY OF TACOMA

By /S/
Mark Bubenik, WSBA # 2000
Chief Assistant City Attorney
Attorneys for Plaintiff City of Tacoma

PRESTON GATES & ELLIS
5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

Tacoma Public Utilities

NEWS RELEASE

COMMUNITY/MEDIA SERVICES
P.O. BOX 11007
TACOMA, WA 98411-0007

Court upholds City Light authority to enter telecommunications business

December 17, 1996

Contact: Sue Veseth, (206) 502-8223

Tacoma City Light may legally offer telecommunications services in its service area, according to a December 13 ruling by Superior Court Judge Grant L. Anderson.

The ruling allows City Light to offer cable television and other telecommunications services and to lease its facilities to other telecommunications providers. City Light is completing a study to determine if it is economically feasible for City Light to offer telecommunications services. The study is due in early 1997.

"We're delighted with the judge's ruling," City Light Superintendent Steve Klein said. "We wanted clear, legal authority to develop our business plan and investigate how Tacoma could benefit from a modern, state-of-the-art telecommunications system. The decision in our favor also assures the financial markets of our authority to build a telecommunications network."

City Light initially studied the possibility of building a fiber-optic communications system to allow the utility to automatically operate equipment and substations. Consultants who reviewed the fiber-optic proposal said that for a little more

— more —

than twice the cost, City Light could extend the network to every home and business in Tacoma, sell television cable service, and use the subscription revenue to pay for the whole thing.

An interactive fiber-optic network reaching to all of City Light's substations would cost an estimated $15 million. The consultants estimated extending connections from the substations to individual homes and businesses would raise the cost to about $40 million.

The network would be available for cable television service, Internet access, data services, voice communications and potentially even video-on-demand to homes. Under one scenario, City Light would operate the cable television service and lease out the rest of the network to interested businesses to provide other services.

It would provide every customer in City Light's service area access to high-speed data services. It would provide far faster data movement than is available over phone lines and much sharper television images than are available over the wire systems available now and could provide Internet access for every classroom and library in the City Light service area.

A state-of-the-art fiber-optic network also could provide a significant advantage to Tacoma and Pierce County in attracting high-technology businesses.

# # #