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June 2, 2000

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street
Eighth Floor
Washington, D.C., 20554

RECEIVED
JUN - 2 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

re: Notice of *Ex parte* Communications in Petition for Preemption of Section 392.410(7) of the Revised Statutes of Missouri, ~~CC#~~ Docket No. 98-122

Dear Secretary Salas:

On May 31, 2000, Kenneth McClure, Executive Senior Manager of City Utilities of Springfield, Missouri, met with Commissioner Harold Furchtgott-Roth and with Dorothy Attwood, Chairman William Kennard's Senior Legal Advisor, to discuss this matter. On June 1, 2000, Richard Geltman, General Counsel of the American Public Power Association (APPA) and James Baller, legal counsel to the Missouri petitioners and APPA, met with Ms. Attwood for the same purpose. The meetings occurred at the Commission's offices at the Portals and lasted approximately one half-hour each.

During the meetings, we made the following points:

- APPA is a national service organization that represents the interests of approximately 2,000 public power utilities located in all states except Hawaii. Some public power utilities serve large cities such as Los Angeles, Seattle, Nashville, San Antonio and Cleveland, but about three-fourth of APPA's members serve rural communities with populations of 10,000 or less. In many of these communities, the history of the electric power industry – in which the private sector focused first on more lucrative urban markets and left rural communities behind – is repeating itself in the telecommunications area in what has come to be known as the "Digital Divide."
- Public power utilities have for decades played a critical role in filling service gaps and bringing competition to their communities in the electric power industry and can play a similar role in telecommunications. As electric utilities, they have a need for, and

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Ms. Rosalie Salas

June 2, 2000

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experience with, operating sophisticated telecommunications systems. They also have necessary telecommunications infrastructure; long experience with customer relations, billing and technical service; and a century-long history of universal service. If freed from barriers to entry, public power utilities can therefore act *immediately* to bring advanced telecommunications services to their communities and thus enhance economic development, educational opportunity and quality of life.

- Unfortunately, in at least eight states, incumbent telecommunications and cable service providers have persuaded state legislatures to enact barriers to entry by public power utilities. In several other states, similar measures are under consideration.
- The need of public power utilities to be able to provide telecommunications services free of barriers to entry affects not only the telecommunications industry but also the electric power industry. Congress and the states are striving to maintain a competitive balance between the public and private sectors. As privately-owned electric utilities move into telecommunications, state barriers that inhibit the ability of public power utilities to offer similar services could decisively tip this competitive balance in favor of the private sector, contrary to Congress's intent.
- The Missouri case differs from the *Abilene* case because in the latter, both the Commission and the D.C. Circuit Court of Appeals expressly declined to rule on whether the term "any entity" in Section 253 of the Telecommunications Act applies to public power utilities. The Missouri preemption proceeding squarely presents and emphasizes this issue.
- In the *Abilene* case, the Commission acknowledged that it had not considered the legislative history of Section 253 in issuing the *Texas Order*, because it believed that this history applied only to public power utilities and not to municipalities, such as Abilene, that do not operate their own electric utilities. The Commission also acknowledged that the legislative history is replete with references to public power utilities.
- Public power utilities also differ from municipalities that do not operate electric utilities in that they engage in business activities rather than purely governmental activities.
- Public power utilities that engage in telecommunications activities are regulated in a variety of ways. Some are subject to the jurisdiction of state public service or public utility commissions. Some are regulated by an independent utility board. Some operate as offices or divisions of the local government and are regulated by the ballot box. Some are subject to a combination of these regulatory schemes. For example, City Utilities of Springfield, MO, is governed by a virtually independent local utilities board, but for telecommunications purposes, it is also subject to the jurisdiction of the Missouri Public Service Commission.

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Ms. Rosalie Salas

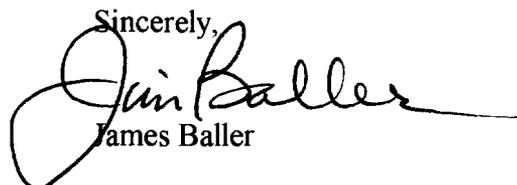
June 2, 2000

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- In interpreting a statute, it is essential for the Commission to examine Congress's policies in enacting the statute. Here, the Telecommunication Act's policies of facilitating competition in all communications markets, promoting universal service, and fostering the rapid deployment of advanced telecommunications services to all Americans, including those in rural and low income areas, strongly support interpreting the term "any entity" in Section 253 as encompassing public power utilities. Indeed, reading that term any other way would impair or defeat these policies, particularly in rural areas. As the Commission itself recognized in paragraph 179 of the Texas *Order*, municipal involvement in telecommunications contributes to facilities-based competition, and laws such as the Texas barrier to municipal entry not only deprive consumers of that benefit and are also unnecessary to achieve any legitimate state purpose. Unfortunately, the Commission did not rely on these policy considerations in interpreting Section 253 in the Texas *Order*, nor did the Commission even mention the purposes of the Act in its briefs and oral argument in the ensuing *Abilene* case. We strongly urge the Commission to do so now.
- Where barriers to their entry do not exist, public power utilities are engaging in a broad range of telecommunications activities. Some are developing broadband networks that are fulfilling the goals of the Telecommunications Act in their communities. Chairman Kennard recently observed examples of this in rural Iowa. Copies of news articles covering his visit are attached.
- The need for a prompt decision in the Missouri Municipals' favor is also underscored by a recent joint report of the National Telecommunications and Information Administration and the Rural Utilities Service, excerpts of which are attached. The report confirms that the Digital Divide between urban and rural areas is not only a reality but is growing rapidly. The report also observes that public power utilities can be an important part of the solution to that problem.

In addition to the documents referred to above, Mr. Geltman and I gave Ms. Attwood a set of the materials that we have previously distributed in *ex parte* meetings and sent to the persons on the attached list. Because these materials are quite lengthy, we are not distributing them again this time but will make them available on request.

Sincerely,



James Baller

Enclosures

cc: Attached List

CERTIFICATE OF SERVICE

I, James Baller, hereby certify that on this 2nd day of June 2000, I caused copies of the foregoing letter to be served on the parties on the attached Service List by first-class U.S. Mail.

By U.S. Mail:

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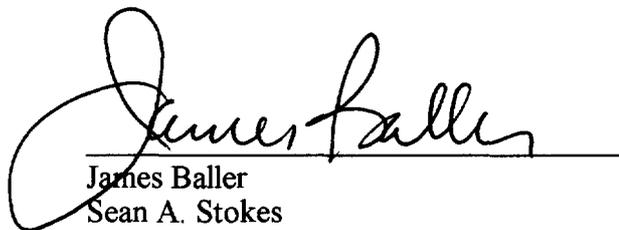
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Attorneys for the
Missouri Municipals

June 2, 2000

are honored

Few mention two who did shooting

LITTLETON, Colo. (AP) — A father fell to his knees and kissed the grass on his son's grave. A mother watched 13 white balloons soar into a brilliant blue sky over the cemetery where her son now rests.

And at 11:21 a.m. — the precise moment two teenagers opened fire inside their high school on April 20, 1999 — Coloradans quietly reflected as a church bell tolled 13 times in memory of the victims of the Columbine High School massacre.

At private ceremonies and public remembrances all day and into the night Thursday, students, staff, survivors and strangers came together to mark the first anniversary of the nation's deadliest school shooting.

"Today is about the angels who are watching over us — helping us to heal and helping us to remember," Gov. Bill Owens told a crowd at the state Capitol in Denver.

Owens presided over the moment of silence that marked the instant Dylan Klebold and Eric Harris began the bloodbath, killing 12 students and a teacher and wounding 26 before taking their own lives.

There was little mention of the gunman Thursday, and the acts of remembrance — the 13 balloons, the bell tolling 13 times, 13 crosses erected — were meant to recall the victims and not the killers. The victims' families had even asked the news media to avoid any references to Klebold and Harris.

"Too often over the last year, the coverage of the tragedy at Columbine High School has focused on the two young men who so viciously took the lives of our loved ones and friends. But not today," the governor said in opening the ceremony at the Capitol. "Because today is about the victims of Columbine and their families."

The killers' parents apologized again last week for their sons' actions. Their whereabouts Thursday were not clear.

As a lone bagpiper played "Amazing Grace," the governor and



Ken Praters, right, of Hawarden, Iowa, explains a component of the city's cable, telephone and Internet systems to FCC Chairman William Kennard during a field trip to visit the municipal system's central office Thursday morning. (Staff photo by Tim Hynnis)

Hawarden, Orange City high-tech partnerships impress FCC chief

By Michele Linck
Journalist

FCC Chairman William Kennard got a look at two innovative telecommunication projects in rural Iowa Thursday. He said he would talk about the partnerships that gave birth to them when he gets back to Washington, D.C.

Kennard, Jo Anne Sanford, who is chairwoman of the North Carolina Utilities Board and a member of the Federal-State Joint Conference on Advanced Services, and about 150 others interested in advancing the broadband communications infrastructure took a field trip to Hawarden, about 30 miles from Sioux City, and then to Orange City, 25 miles farther.

Kennard had also attended the public hearing held by Kennard in Sioux

"I've seen municipals own a cable system, but never one that brings it all together — cable, television, telephone service and high-speed Internet access."
William Kennard, FCC chairman

City Wednesday. It was one of six field hearings to determine the state of advanced broadband communications throughout the country and to find out "what works and what doesn't." Thursday's field trip was to see what works.

"It's unique," Kennard said after touring the facilities of Hawarden Integrated Technology, Energy and Communications, a municipal telecommunications company the

City receives \$925,000 grant for stockyards

By Judi Hazlett
Journalist

Sioux City's Stockyard redevelopment project got a boost Thursday as Sen. Tom Harkin, D-Iowa, announced the U.S. Department of Housing and Urban Development (HUD) will award \$925,000 to the project.

"The stockyards is a huge project and this is certainly going to be a help," Todd Moss, mayor pro tem, said. "It's estimated we have another \$15 million to be spent over a period of time to make it attractive for development and to get that property on the tax rolls to provide additional income."

Harkin said the funds would be a boost for economic development in

Sioux City. ... This will help make the area once again a major location for economic development."

This is the official release of the award that was first announced last fall, said Community Development Director Roger Causton. "We have been going through the process with the execution of the agreements with HUD. There's a time delay on the release of the funds, and we're getting toward that. In effect, we've been doing the paper work and now we're ready to have the funds released."

The city will use the money for acquisition of additional properties and demolition of the existing

SEE SOME continued on page A3

4-21-00

Sioux City native named Le Mars superintendent

By Glada Koorebelman
Journalist

LE MARS, Iowa — Sioux City native Todd Wendt, 39, will become superintendent of the Le Mars Community School District July 1.

He succeeds Roy Meserole, who announced his retirement in December after 13 years as superintendent.

Wendt has served the last four years as superintendent of the Avoca-Hancock-Shelby-Towant Community School District in Iowa. That district has an enrollment of 725 and a faculty of 64. Le Mars enrollment exceeds 2,000.

He is scheduled to sign his contract with the Le Mars district Monday.

Wendt's father, Roger, is min

Sioux City. His sister, Nanette Beber, teaches second grade in Omaha.

Wendt's experience includes seven years as a secondary principal at Cherokee, Mason City and Farrago high schools.

He and his wife, Betty, are the parents of a son, Blake, 5, who will begin kindergarten in the fall. Wendt said his family's excited about coming to Le Mars. "It is such an excellent school," he said.

After he graduated from Sioux City West High School in 1979, Wendt earned a business education degree from the University of South Dakota in Vermillion. He received a master's degree in administration at USD in 1986 and completed his doctorate at USD in 1993. He earned an education

SEE THIRTEEN continued on page A3

SEEHAWARDEN

Man changes plea in woman's death

By Nick Hynek
Journal staff writer

A man charged with first-degree murder for the death of his common-law wife changed his plea Thursday and pleaded guilty to five amended charges.

As part of a plea agreement, Robert R. Butler, 49, pleaded guilty to attempted murder, voluntary manslaughter, willful injury, assault while participating in a felony resulting in serious injury and going armed with intent.

Under the terms of the plea agreement, Butler would receive prison terms ranging from 5 to 25 years that would add up to one 60-

year prison term. He also agreed to pay at least \$150,000 in restitution to the estate of Jean Steele.

Woodbury County District Judge Michael S. Walsh said he would not approve the plea agreement until receiving and reviewing a completed presentence investigation report. Walsh said he was not aware of any reason to reject the plea agreement.

Butler admitted that late in the night of Sept. 3, 1998, or early in the morning of Sept. 4, he struck Steele, 44, in the head with a skillet. The blow caused a skull fracture that led to her death.

Police learned of the death after Butler called 911 early that morning to report a burglary at the couple's

home at 1812 Hawkeye Drive. Steele was dead when police arrived.

During Thursday's hearing, Walsh explained the implications of the plea agreement, most importantly that agreeing to plead guilty meant Butler gave up the right to trial.

Butler gave simple, one-word answers of yes or no in a voice barely above a whisper.

If the prison sentence is approved, Butler will serve at least 21 years in prison before being eligible for parole. Because attempted murder is a forcible felony, Butler must serve at least 85 percent of the 25-year term for that crime.

Sentencing was scheduled for May 19.

Some money from federal grant will be spent for landscaping

from page one

buildings, Caudron said.

KD Station demolition has been completed, Caudron said. The city spent \$1 million to demolish the hog hotel, a structure that covered 11 acres and was once used to store hogs overnight prior to slaughter.

Some of the funds will also be used for landscaping, Caudron said, and for removing a portion of the

Interstate 29 wall. Landscaping will replace the portion of wall that was knocked out by a car accident.

"We're very happy with the assistance the senator's office has been able to give us," Caudron said.

Moss said the city's exterior borders were expanding, "but in the heart of our city we have an unused portion. It's important to get that contributing to the tax base of our community."

"The more commercial and industrial development we can do in the center of our city, the fewer demands we have to place on expensive expansion and maintenance of infrastructure," Moss said, "and the lower the demand on our residential taxpayers."

Eventually the city will do something different with the old Floyd Channel, which runs through the Stockyards area, and there will be some potential road realignments, Moss said.

Hawarden expects to start high-speed Internet service in June

from page one

Hawarden battled regulatory questions and a lawsuit by a private telephone company that went to the Iowa State Supreme Court. The court shut down the system Oct. 20, 1998, the same day it placed its first telephone call. It reversed itself in February the next year and HITEC was back in business in March 1999.

It now has more than 1,200 telephone customers, 845 cable television customers and is testing high-speed Internet service now set at 256k, but which could run much faster. The service is expected to be available in June, said Patty Anderson, HITEC director.

HITEC is a partnership between

the city and Pioneer Holdings, itself a partnership of MCI WorldCom, the Northwest Iowa Power Cooperative and Long Lines Ltd. HITEC is also partnering with the North West Rural Electric Cooperative in a test project for fixed wireless communications.

The test is being carried out in Orange City, where a similar public/private telecommunications service, Orange City Communications, started up last year in partnership with North West REC and Long Lines Ltd.

The visit by Kenward and Sanford was a validation of Hawarden's struggle to own its own telecommunications facilities and to determine its own destiny, said Chuck Long of Long Lines Ltd., who was on the field trip.

"The big companies pulled out of

towns and lost touch. Without high-speed Internet, these communities won't be here," Long said.

Jerry Klemme, manager of Coitcraft in Hawarden, was on the City Council when the project began. Speaking to the tour group, he confirmed Long's opinion. His company manufactures electrical coils for cellular phones. Coitcraft, one of the high-speed test customers, is in real-time touch with computers all over the world, but might not be able to stay in a small Midwestern town without that capability. "We find our need for high-speed data transmission is more and more every year," Klemme said.

"This project is not about being on the cutting edge," Hawarden Mayor George Jacobs said. "In reality, we didn't advance anything." He

said the city just wanted to offer current technology to its residents. "We dealt with each obstacle as it happened. It gave us an opportunity to experience first hand — the American Dream lives on."

Sanford noted the importance of that spirit later in Orange City. "It really takes someone with intelligence, energy, vision and commitment," she said. "Hawarden and Orange City are examples of communities that have actually done it in a very innovative and progressive way. It puts a lie to the notion that we can't get (broadband services) out to rural areas."

In Orange City, the group was given a demonstration of the fixed wireless test Orange City Communications is doing prior to offering wireless voice and data service. Ken-

ward said he thinks wireless will be the best means to provide universal Internet access, especially to sparsely populated areas. He said fixed wireless capabilities meet the needs of most people for e-mail and Internet use.

Using a large screen, Dennis Hill, NIPCO vice president of telecommunications services, called up CNN's Web site. Within seconds, streaming video appeared, along with an audio report, all transmitted through the air via an antenna on a city water tower.

The trial, which includes eight voice pairs and six 128k data units, will last about four months.

Orange City started its telecommunications effort in 1997, winning an 84 percent citizen approval for proceeding. Orange City Com-

munications was formed in April 1999. It offers a Direct TV satellite service and a 56k Internet service. OCC will connect soon to NIPCO's fiber optic ring for high-speed Internet service.

The company was formed by a partnership of the city, Long Lines Ltd. and North West REC, a fact noted by Kenward.

"When I get back to Washington, I'm going to talk a lot about the partnerships I saw in Iowa," the chairman told the group. "The partnerships we've seen in Iowa are alive and thriving; it's absolutely essential they do so."

Kenward will hold three more hearings, in Boston, Miami and Cheyenne, Wyo., before making his report to Congress.

P. 05

FAX NO. 712 551 1117

MAY-31-00 WED 02:00 PM CITY OF HAWARDEN

FCC chief gets input for broadband

He says broadband service crucial to rural America

By Michele Linck
Sioux City staff writer

Chairman William Kennard opened a public hearing on the topic at the Marina Inn Wednesday.

Kennard listened for over four hours to the success stories and frustrations of people working to install broadband services in their rural Nebraska and Iowa communities. Broadband is an indefinite term that refers to the ability to transmit large amounts of data quickly; the broader the band, the faster the transmission.

"What we hear today will be very important in getting broadband deployed."

The discussion was often technical and often financial. Some of those who testified asked for a change of

SOUTH SIOUX CITY — Declaring that access to broadband communication services is "crucial to the economic future of communities in rural America," Federal Communications Commission

Kennard listened for over four hours to the success stories and frustrations of people working to install broadband services in their rural Nebraska and Iowa communities. Broadband is an indefinite term

"We're here to determine what's working and what's not working and deploy it in the law," Kennard told the audience of nearly 400 people from across Nebraska and Iowa.

SEE TWO
continued on page A3



U.S. Sen. Bob Kerrey, D-Neb., middle, laughs as FCC Chairman William Kennard, right, tells a joke during a hearing Wednesday. At left is Chris McClean, a native Nebraskan and a deputy secretary of agriculture. (Staff photo by Tim Hynds)

Big brothers needed



Memorial marks 5th anniversary of bombing

OKLAHOMA CITY (AP) — and placed a hand gently on her shoulder. Church bells chimed on streets that once rang with a bomb's blast. Children saw their reflections in a clear pool where there was once an ugly crater. And families found serenity Wednesday in a place that has pained them for five years.

On the anniversary of the April 19, 1995, bombing of the Alfred P. Murrah Federal Building, 168 sculpted chairs stood in silent tribute to the 168 victims of the most deadly terrorist attack on American soil.

"To me it's like my funeral for him, my time to say goodbye," said 26-year-old Sarah Broxterman, who lingered over the stone-and-bronze chair inscribed with the name of her late father, bombing victim...

Clinton dedicated the memorial with the promise that "America will never forget" the suffering inflicted by the bombing. "As the governor said in alluding to Gettysburg, there are places in our national landscape so scarred by freedom's sacrifice that they shape forever the soul of America — Valley Forge, Gettysburg, Selma," the president said. "This place is such sacred ground."

The gate enshrined with 9:01, the time just before the blast, glowed in the evening sun as Clinton officially opened the memorial by waving symbolic colored ribbons: white for

House, Senate differ

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FAX NO. 712 551 1117

CITY OF HAWARDEN

MAY-31-00 WED 01:58 PM

Sports

Home debut tonight



Arts

Page B1

Friday April 21 2000

SIoux CITY Journal "Celebrating Stoveland Pride" Sioux City, Iowa

Vol. 136 No. 230

Columbine's 13 victims are honored Few mention two who did shooting

LITTLETON, Colo. (AP) — A man fell to his knees and kissed the earth on his son's grave. A mother released 13 white balloons... And at 11:21 a.m. — the precise moment two teen-agers opened fire... Bill Owens told a crowd at the Capitol in Denver... Today is about the angels who watch over us — helping us to grieve and helping us to remember... There was little mention of the two teen-agers Thursday, and the acts of violence — the 13 balloons, the tolling 13 times, 13 crosses — were meant to recall the victims and not the killers... killers' parents apologized last week for their sons' actions... a lone bagpiper played "Amazing Grace," the governor and...



Ron Prothiero, right, of Hawarden, Iowa, explains a component of the city's cable, telephone and Internet system to FCC Chairman William Kennard during a field trip to visit the munic system's central office Thursday morning. (E photo by Tim Hynds)

nard during a field trip to visit the munic system's central office Thursday morning. (E photo by Tim Hynds)

Hawarden, Orange City high-tech partnerships impress FCC chief

By Michele Linck Journal staff writer

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William Kennard, FCC chairman

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"It's unique," Kennard said after touring the facilities of Hawarden Integrated Technology Energy and Communications...

1994 with a 96 percent voter approval.

"I've seen municipals own a cable system, but never one that brings all together — cable, television, telephone service and high-speed Internet access," Kennard said. "I'm sure there are many communities in the country where a system like this could work, and work well."

ADVANCED TELECOMMUNICATIONS IN RURAL AMERICA

The Challenge of Bringing Broadband Service to All Americans



**UNITED STATES DEPARTMENT OF
COMMERCE**

William M. Daley
Secretary

**NATIONAL TELECOMMUNICATIONS
AND INFORMATION ADMINISTRATION**

Gregory L. Rohde
Assistant Secretary for Communications
and Information



**UNITED STATES DEPARTMENT OF
AGRICULTURE**

Dan Glickman
Secretary

RURAL DEVELOPMENT

Bill Long Thompson
Under Secretary

RURAL UTILITIES SERVICE

Christopher A. McLean
Acting Administrator

April 2000

EXECUTIVE SUMMARY

Advanced Telecommunications in Rural America is a response by the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) to a request by ten U.S. Senators on the status of broadband deployment in rural versus non-rural areas in the United States. This report also responds to a call by President Clinton and Vice President Gore to bridge the digital divide and create digital opportunities for more Americans. The rate of deployment of broadband services will be key to the future economic growth of every region, particularly in rural areas that can benefit from high-speed connections to urban and world markets.

This report finds that rural areas are currently lagging far behind urban areas in broadband availability. Deployment in rural towns (populations of fewer than 2,500) is more likely to occur than in remote areas outside of towns. These latter areas present a special challenge for broadband deployment.

Only two technologies, cable modem and digital subscriber line (DSL), are being deployed at a high rate, but the deployment is occurring primarily in urban markets. Broadband over cable, which provides most broadband service, has been deployed in large cities, suburban areas, and towns. One survey found that, while less than five percent of towns of 10,000 or less have cable modem service, more than 65 percent of all cities with populations over 250,000 have such service.

DSL technology also has been deployed primarily in urban areas. The Regional Bell Operating Companies (RBOCs) are providing DSL service primarily in cities with populations above 25,000 according to public RBOC data. While more than 56 percent of all cities with populations exceeding 100,000 had DSL available, less than five percent of cities with populations less than 10,000 had such service. Deployment of both cable modems and DSL service in remote rural areas is far lower.

The primary reason for the slower deployment rate in rural areas is economic. For wireline construction, the cost to serve a customer increases the greater the distance among customers. Broadband service over cable and DSL is also limited by technical problems incurred with distance and service to a smaller number of customers. Both technologies, however, promise to serve certain portions of rural areas. Cable operators promise to serve smaller rural towns, and smaller, independent telecommunications companies and competitive providers may soon be able to offer DSL to remote rural customers on a broader scale.

Advanced services in rural areas are likely also to be provided through new technologies, which are still in the early stages of deployment or are in a testing and trial phase. Satellite broadband service has particular potential for rural areas as the geographic location of the customer has virtually no effect on the cost of providing service. Several broadband satellite services are planned. Their actual deployment remains uncertain, especially in light of the recent entry into Chapter 11 bankruptcy of two satellite service companies.

Wireless broadband services are also planned for rural areas. More immediately, multipoint-multichannel distribution system (and potentially local-multipoint distribution system) fixed service capabilities may provide a solution for some rural areas. In as little as five years, third generation mobile wireless services providing data rates as high as two megabits/second may be operational.

Policymakers should promote competition, where possible. Using the pro-competitive provisions of the Telecommunications Act, some competitive local exchange carriers have deployed advanced services in rural areas of the country. Some wireless carriers have also indicated an interest in providing voice and high rate data, especially if universal service policies can be reformed.

Competition leads to lower prices, more customer choice, rapid technological advances, and faster deployment of new services. Given unique challenges faced by rural Americans, however, other government policies must be considered as well.

In order to support advanced services in rural areas, NTIA and RUS recommend a number of actions. We recommend the continued support and expansion of those government programs, such as the E-rate program, that ensure access to new technologies including broadband services. We also urge the Federal Communications Commission to consider a definition of universal service and new funding mechanisms to ensure that residents in rural areas have access to telecommunications and information services comparable to those available to residents of urban areas.

Support for alternative technologies will also be crucial to the deployment of advanced services in rural America. The Administration is committed to increasing investment in research and development to promote the next generation of broadband technologies. NTIA and RUS will also collect and disseminate "promising practices" that can promote private sector investment in rural broadband services.

DirecPC is provided over a system originally designed to deliver television programming. Subsequently, this system was adapted to provide limited high-rate Internet access. Downstream rates are shared and can be as high as 400 kilobits/second, while the upstream link is via standard phone lines. As such, it does not meet the FCC's definition of broadband. DirecPC also restricts heavier users under a "fairness" policy to rates that are a small fraction of the 400 kilobit/second maximum. This restriction may make DirecPC less attractive as a high-speed data link than other broadband technologies.

Because DirecPC provides customers in the most remote rural areas with the same quality of service provided to those in urban areas, it provides a preview of the potential for satellite broadband to eliminate geography and location as a cost factor. Several new broadband satellite systems are expected to come online in the next few years (as discussed in Part C), all of which will provide significantly higher capacities than DirecPC.

Summary on Capability and Availability

The problem with regard to broadband access in rural areas lies primarily with last mile connections rather than access to the backbone network. DSL and cable modems are the most widely available last mile broadband technologies. As discussed below, however, their deployment in rural areas lags that in urban areas. New technologies hold promise for broadband access in rural areas but may be years away from widespread availability.

B. Rates of Deployment in Rural and Non-Rural Areas

Issue 3. Rate of deployment of advanced telecommunications capability in rural areas compared with the deployment of such capabilities in non-rural areas and identify specific geographic areas where advanced telecommunications capability is being deployed at a significantly lower rate than such services are being deployed elsewhere in the Nation.

In responding to Issue 3, we address broadband services that are already widely deployed so that we can compare rural and non-rural areas and examine specific locales that are not yet served by these technologies. For this reason, we have limited our discussion to cable modems and DSL.

Deployment in urban and rural areas is not proceeding at a comparable pace. For various reasons, the major cable and DSL providers are both concentrating on serving metropolitan urban areas with high population densities. The likelihood of receiving broadband service through either technology declines with population density. As a result, residents in rural areas will generally be the last to receive service.

That said, the size of the provider and the nature of its service area are undoubtedly significant factors in determining which areas are served. Providers with both rural and non-rural service areas will likely bring broadband to their larger, urban, and more lucrative markets first, whereas rural providers are most likely to serve rural towns before remote, out-of-town areas. This means that those last served will be in the sparsely-settled countryside.

modem deployment, compared to less than five percent of towns with populations between 5,000 and 10,000 and less than one percent in towns with populations under 2,500. We recognize that companies may report their deployment with varying degrees of accuracy and that any list is probably not complete.

For several reasons, cable modem service is less successful in reaching some rural areas. It is estimated that cable is available to somewhere between 81% and 97% of Americans, depending on the method of calculation.⁶² Nevertheless, rural areas outside of towns still have less access to cable TV.⁶³ With the arrival of direct broadcast satellite for television, it is even less likely that cable systems will extend further into the countryside. Additionally, as with all types of wireline service, the costs of high-speed cable data deployment and operation in rural areas are high.⁶⁴ Because the subscriber base in rural areas is more dispersed than in more densely populated areas, there is less economic incentive to connect rural areas.

While the prospects for deploying cable modem service in remote areas outside of towns seems low, the prospects are higher in small rural towns. Appendix A shows that many small towns

62. Statistics for the availability of cable vary according to whether a comparison is made to TV households, all households, or housing units. The most commonly used statistic is to compare homes passed by cable to TV households. According to estimates developed by Paul Kagan Associates, Inc., and reported in the National Cable Television Association's (NCTA's) *Cable Television Developments*, there were 99 million TV households, 66 million cable customers, and 95.6 million homes passed by cable service. See NCTA, *23 Cable Television Developments I* (Summer 1999). Using these figures, the ratio of homes passed by cable to TV households was 96.6%. *Id.* The Warren Report, a second source reported by NCTA on its website, estimated that there were fewer homes (91 million) passed by cable in 1999 based on information collected from cable providers (ncta.cyberserv.com/qs/user_pages/Dev%28statedata%29.cfm). Comparing the Warren estimate of homes passed to the Kagan estimate for TV households yields a ratio of approximately 92%.

Another way to measure the availability of cable is to compare homes passed by cable to all households, not only TV households. According to a December 8, 1999 report, there were approximately 101 million households (occupied housing units) and 112 million housing units (occupied or unoccupied) as of July 1998. See Census Bureau, *Estimates of Housing Units, Households, Households by Age of Householder, and Persons per Household: July 1, 1998* (www.census.gov/population/estimates/housing/stuhh1.txt). Comparing the Kagan and Warren estimates for homes passed to total households yields ratios of 95% and 90%, respectively.

Finally, a third comparison is between houses passed by cable and total housing units. This comparison is especially useful because there is evidence that cable providers may be reporting housing units passed, not households or TV households passed. For example, the Warren report listed 258,832 homes passed by cable in Washington, D.C., while Census estimated 265,000 housing units but only 225,000 households for the same area. The cable provider in Arlington, Virginia reported 89,968 homes passed and 89,968 housing units in its franchise area. It is reasonable that providers report housing units passed because, when it does not serve a house, a cable provider has no easy way to distinguish among a household without TV, a household with TV, or an unoccupied housing unit. Comparing the Kagan and Warren estimates for homes passed to total housing units yields ratios of 86% and 81%, respectively.

63. National Telecommunications and Information Administration, U.S. Department of Commerce, *Survey of Rural Information Infrastructure Technologies* (September 1995) at 3-7 ("Cable television service providers are generally unwilling to extend their cables into rural areas where the subscriber density is less than 10 per mile.")

64. National Cable Television Association, *Imposing Common Carrier-Style Regulations On Cable Would Impede Deployment of Cable's High Speed Internet Service to Rural and Small Communities* (May 1999) ("In lower density rural markets, where computer penetration is generally less than the national average, the high fixed costs involved in establishing high speed networks are spread over a much smaller customer base. Although customers are responding favorably, these small cable system operators are still unsure about how many customers they will attract and what return they will see.")

with populations less than 2,500 are already receiving cable modem service, including Freeman, South Dakota (pop. 1,293); Hardin, Kentucky (pop. 595); and Machias, Maine (pop. 1,773).

Many mid-sized and small cable operators are installing turnkey systems that allow them to offer cable modem service. For example, cable companies in conjunction with the ISP Channel are offering data services in such towns as Atchison, Kansas; Kennebunk, Maine; Lake Travis, Texas; and Bonneville, Mississippi.⁶⁵ While these towns do not fall under our definition of rural, they are certainly smaller than the large metropolitan areas where cable modem service first appeared.

In addition, a number of municipal utilities are offering high rate data services, primarily over cable systems. The American Public Power Association reported that, of the 127 municipal electric utilities across the country that currently offer telecommunications, approximately one-sixth are providing cable modem service.⁶⁶ Four of these systems are in the rural towns of Coon Rapids, Hawarden, and Manning, Iowa; and Schulenburg, Texas. Electric utilities are also providing service in somewhat larger towns, such as Scottsboro, Alabama; Fairborn, Georgia; and Barbourville, Kentucky.

To gauge the likelihood of deployment in rural areas, NTIA spoke to approximately two dozen small cable companies serving 1,000 customers or fewer about the deployment of broadband over their cable systems. Approximately half of the companies currently offer, or plan to offer, cable modem service to small towns, some of which would likely be rural. These companies reiterated that, because cable service is more economical where there is a higher density of customers, it is unlikely that they will build out to isolated customers in the rural countryside.

DSL

To date, DSL has been deployed primarily in urban centers. The Regional Bell Operating Companies (RBOCs) and GTE, which serve a large majority of all DSL customers,⁶⁷ planned to offer DSL to as many as 45 million lines (approximately 45% of their customers) by the end of 1999.⁶⁸ As demonstrated in Appendix B, RBOC DSL deployment has primarily occurred in cities of 10,000 or more, while most localities with DSL have populations of 25,000 or higher. These data are based on public information provided by the RBOCs (primarily on the Web) in

65. Lee L. Selwyn *et al.*, *The Broadband Road to Rural America: The Competitive Keys to the Future of the Internet*, May 1999 at 72-3 and Table 3.3.

66. These municipal cable systems also provide Internet access, presumably over a cable modem system. See American Public Power Association, *Municipal Electric Utilities Providing Broadband Telecommunications Services* (1999). Other municipalities also reportedly offered "high speed data" service although it was not clear how this was delivered or at what rate and to whom it was delivered.

67. According to TeleChoice, 76.5% of DSL was provided by incumbent LECs. See Telechoice, *supra* note 35. The RBOCs serve the vast majority of ILEC customers.

68. Selwyn, *et al.*, *Bringing Broadband to Rural America: Investment and Innovation in the Wake of the Telecom Act*, September 1999, at 15. This figure may be somewhat ambitious because of extensive bridge taps in RBOC plant. However, bridge taps are easily remedied and do not represent a long-term roadblock to broadband like loading does for rural loops.

Issue Brief

American Public Power Association
2301 M St. N.W.
Washington, D.C. 20037-1484
202/467-2900

Overcoming Anticompetitive State Barriers to Entry for Municipal Utilities in Telecommunications January 2000

Summary: For more than a century, public power utilities have played a vital role in furnishing essential local competition in the electric power industry. This competition has kept prices low and quality of electric service high in the communities that operate their own electric utilities. In the absence of barriers to entry, public power utilities can now play a similar role in telecommunications.

Clearly, in enacting the Telecommunications Act of 1996, Congress envisioned that utilities – with their existing internal communications infrastructure – could help to further the goals of competition by providing an alternative means through which new competitive communications services could be offered.

Yet, in an effort to undermine this objective, existing cable TV and local telephone interests are working to prevent municipal utilities from providing telecommunications services within their own communities. These entities are utilizing their vast resources and long-standing relationships with state legislatures to inhibit the development of competition at the state level. In an effort to achieve in the states what they could not obtain at the federal level, they have pushed legislation in eight states to create barriers to entry for municipal utilities in telecommunications. This unfortunate trend is expected to grow – unless Congress and the Federal Communications Commission (FCC) make it clear that such statutes are out of step with the intent and language of the Telecommunications Act of 1996.

The FCC now has before it an opportunity to address this problem. Several municipalities in the State of Missouri have jointly asked the FCC to override a Missouri state statute that conflicts with the Telecommunications Act by prohibiting the provision of most telecommunications services by municipalities and municipal utilities. A plain reading of the language of the Telecommunications Act, and accompanying report language related to utilities in particular, makes it very clear that this barrier to entry must be nullified. A strong preemptive FCC ruling in this case will effectively bring an end to this ongoing effort to frustrate the goals of the Telecommunications Act through enactment of restrictive state statutes – and will reinstate the long tradition of local control that has been the driving principle behind municipal utilities since the inception of the electric industry over a century ago.

Regulatory and Legislative Background Regarding State Barriers to Entry for Municipal Utilities in Telecommunications: In the Telecommunications Act of 1996, Congress sought to open the telecommunications marketplace to all potential competitors, including electric



The American Public Power Association is the national service organization representing the nation's more than 2,000 local publicly owned electric utilities.



utilities without qualification. To ensure that those interests with existing market control over various aspects of the telecommunications industry would not be able to undermine the Act's pro-competitive policies at the state and local levels, Congress included the following language in Section 253(a) of the Act:

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, (emphasis added).

In enacting Section 253(a), Congress was well aware of the vital role that public power utilities could play in bringing competition to telecommunications markets, and took steps to include explicit language in the Act's conference committee agreement that reaffirmed the drafters' intention that all utilities be free from state barriers to entry. The Conference Committee Agreement specifically noted the conferees' clear understanding that "electric, gas, water or steam utilities" might "choose to provide telecommunications services," and they confirmed their understanding and intent that "explicit prohibitions on entry by a utility into telecommunications are preempted under this section [§ 253(a)]." Several recent letters to the FCC from Congress have reaffirmed that this provision was designed to ensure electric utility involvement in the provision of telecommunications services.

The petition that has been filed by the Missouri municipals asks the FCC to examine closely this legislative history that supports the involvement of municipal utilities in telecommunications. Senator Trent Lott (R-MS) commented upon passage of the Act that its goal is to "construct a framework where everybody can compete everywhere in everything." To fully achieve this objective, the FCC must take action to eliminate any state-enacted barriers to entry for any potential competitor.

How State Barriers to Entry for Municipal Utilities in Telecommunications Hurt Communities and Consumers: The vast majority of public power utilities in the U.S. are located in cities with less than 10,000 residents. Many of these municipal electric utilities developed largely due to the failure of private utilities to provide electrical service in many rural areas because they were viewed as unprofitable. In these cases, communities formed municipal electric utilities to do for themselves what they viewed to be of vital importance to their quality of life and future economic prosperity.

Once again, public power utilities are well-positioned to bring the infrastructure of the future to their communities by helping to facilitate the development of competition in the telecommunications industry, and the offering of new services in the very areas that may not receive them otherwise. Ultimately, preventing municipal utilities from providing telecommunications services within their own communities will not only inhibit competition in telecommunications, but it will also unfairly limit the telecommunications services available to residents of smaller communities, and impede economic development and growth in numerous rural communities throughout the country.

Moreover, this debate is not strictly related to competition between public and private sectors – despite the local telephone and cable TV companies' efforts to cast the issue in that light. In fact, a large percentage of municipal utilities are planning to provide communications services through partnerships with private companies, or by outsourcing the provision of



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State Barriers to Telecommunications Activities By Public Power Utilities
(As of November 8, 1999)

1. Arkansas prohibits municipal entities from providing local exchange services. (*Ark. Code § 23-17-409*)
2. Florida imposes various taxes to increase the prices of telecommunications services (as distinguished from other services) sold by public entities. (*Florida Statutes §§ 125.421, 166.047, 196.012, 199.183 and 212.08*)
3. Missouri bars municipalities and municipal electric utilities from selling or leasing telecommunications services or telecommunications facilities, except services for internal uses; services for educational, emergency and health care uses; and “Internet-type” services. (*Revised Statutes of Missouri § 392.410(7)*)
4. Minnesota requires municipalities to obtain a super-majority of 65% of the voters before providing telecommunications services. (*Minn. Stat. Ann. § 237.19*)
5. Nevada prohibits municipalities larger than 25,000 from providing “telecommunications services,” as defined by federal law. (*Nevada Statutes § 268.086*)
6. Tennessee bans municipal provision of paging and security service and allows provision of cable, two-way video, video programming, Internet and other “like” services only upon satisfying various anti-competitive public disclosure, hearing and voting requirements that a private provider would not have to meet. (*Tennessee Code Ann. § 7-52-601 et seq.*)
7. Texas bars municipalities and municipal electric utilities from offering telecommunications services to the public either directly or indirectly through a private telecommunications provider. (*Texas Utilities Code, § 54.201 et seq.*)
8. Virginia prohibits all localities except the Town of Abingdon (the home of a prominent member of Congress) from offering telecommunications services or facilities, but allows localities to sell the telecommunications infrastructure that they had in place on September 1, 1998, and also allows localities to sell or lease “dark fiber” subject to several onerous conditions. (*Virginia Code § 15.2-1500*)

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 legal requirements, that may prohibit or have the effect of prohibiting any entity from providing interstate or intrastate telecommunications services.

Subsection (b) of section 254 preserves a State's authority to impose, on a competitively neutral basis and consistent with universal service provisions, 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. States may not exercise this authority in a way that has the effect of imposing entry barriers or other prohibitions preempted by new section 254(a).

Subsection (c) of new section 254 provides that nothing in new section 254 affects the authority of States or local governments to manage the public rights-of-way or to require, on a competitively neutral and nondiscriminatory basis, fair and reasonable compensation for the use of public rights-of-way, on a nondiscriminatory basis, provided any compensation required is publicly disclosed.

Subsection (d) requires the Commission, after notice and an opportunity for public comment, to preempt the enforcement of any State or local statutes, regulations or legal requirements that violate or are inconsistent with the prohibition on entry barriers contained in subsections (a) or (b) of section 254.

Subsection (e) of new section 254 simply clarifies that new section 254 does not affect the application of section 332(c)(3) of the Communications Act to CMS providers.

Section 309 adds a new section 263 to the Communications Act and is intended to permit States to adopt certain statutes or regulations regarding the provision of service by competing telecommunications carriers in rural markets. Such statutes or regulations may be no more restrictive than the criteria set forth in section 309. The Commission is authorized to preempt any State statute or regulation that is inconsistent with the Commission's regulations implementing this section.

House amendment

The House provisions are identical or similar to subsections 254(a), (b) and (c). The House amendment does not have a similar provision (d) requiring the Commission to preempt State or local barriers to entry, if it makes a determination that they have been erected.

Conference agreement

The conference agreement adopts the Senate provisions.

 **New section 253(b) clarifies that nothing in this section shall affect the ability of a State to safeguard the rights of consumers.** In addition to consumers of telecommunications services, the conferees intend that this includes the consumers of electric, gas, water or steam utilities, to the extent such utilities choose to provide telecommunications services. Existing State laws or regulations that reasonably condition telecommunications activities of a monopoly utility and are designed to protect captive utility ratepayers from the potential harms caused by such activities are not preempted under this section. However, explicit prohibitions on entry by a

utility into telecommunications are preempted under this section.

The rural markets provision in section 309 of the Senate bill is simplified and moved to this section. The modification clarifies that, without violating the prohibition on barriers to entry, a State may require a competitor seeking to provide service in a rural market to meet the requirements for designation as an eligible telecommunications carrier. That is, the State may require the competitor to offer service and advertise throughout the service area served by a rural telephone company. The provision would not apply if the rural telephone company has obtained an exemption, suspension, or modification under new section 251(f) that effectively prevents a competitor from meeting the eligible telecommunications carrier requirements. In addition, the provision would not apply to providers of CMS.

New Section 254 - Universal Service

Senate bill

Section 103 of the bill establishes a Federal-State Joint Board to review existing universal service support mechanisms and make recommendations regarding steps necessary to preserve and advance this fundamental communications policy goal. Section 103 also adds a new section 253, entitled "Universal Service," to the Communications Act. As new section 253 explicitly provides, the Senate intends that States shall continue to have the primary role in implementing universal service for intrastate services, so long as the level of universal service provided by each State meets the minimum definition of universal service established under new section 253(b) and a State does not take any action inconsistent with the obligation for all telecommunications carriers to contribute to the preservation and advancement of universal service under new section 253(c).

Section 103(a) of the bill requires the Commission to institute a Federal-State Joint Board under section 410(c) of the Communications Act to recommend within 9 months of the date of enactment new rules regarding implementation of universal service.

Section 103(a) also provides that at least once every four years the Commission is required to institute a new Joint Board proceeding to review the implementation of new section 253 regarding universal service, and to make recommendations regarding any changes that are needed

Section 103(b) of the bill requires the Commission to complete any proceeding to implement the recommendations of the initial Joint Board within one year of the date of enactment of the bill, any other Joint Board on universal service matters within one year of receiving such recommendations

Section 103(c) of the bill simply clarifies that the amendments to the Communications Act made by the Senate bill do not necessarily affect the Commission's existing separations rules for local exchange or interexchange carriers. However, this subsection does not prohibit or restrict the Commission's ability to change those separations rules through an appropriate proceeding.

Section 103(d) establishes new section 253 in the Communications Act. New section 253(a) establishes seven principles on which the Joint Board and the Commission shall base policies for the preservation and advancement of universal service.

DAN SCHAEFER
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**Congress of the United States
House of Representatives
Washington, D.C.**

August 5, 1996

COMMITTEE ON COMMERCE

SUBCOMMITTEE
ENERGY AND POWER
CHAIRMAN

TELECOMMUNICATIONS AND FINANCE
COMMITTEE ON VETERANS' AFFAIRS

SUBCOMMITTEE
EDUCATION, TRAINING, EMPLOYMENT
AND HUMAN

The Honorable Reed H. Hundt
Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-98 and CCBPol 96-14

Dear Chairman Hundt:

One of the fundamentals of free market competition is the ability of firms to enter a business easily and rapidly. It is for that reason that we include a provision in the Telecommunications Act of 1996 -- section 253(a) -- prohibiting state or local governments from imposing barriers to the provision of telecommunications service by any entity. The Commission is considering the implementation of this section in numerous proceedings, including the major docket implementing sections 251 and 252 (CC Docket No. 96-98) and the proceeding considering the preemption of the Texas telecommunications law (CCBPol 96-14).

It is especially important for the Commission to note the fact that section 253(a) prohibits the imposition of barriers on "any entity". In other words, state and local governments are prohibited from adopting laws or regulations that permit some entities to enter the market while excluding others. Such discrimination is simply unlawful.

More specifically, it is clear from the report language in the Conference Agreement that Congress recognized that utilities may play a major role in the development of facilities-based local telecommunications competition and that any prohibition on their provision of service should be preempted. This language states: "[E]xplicit prohibitions on entry by a utility into telecommunications are preempted under this section." The Commission thus must reject any state or local action that prohibits entry into the telecommunications business by any utility, regardless of the form of ownership or control. In addition, the Commission should ensure its interconnection and access regulations treat utilities the same as other entities.

Thank you for your attention to this matter. We look forward to hearing from you and seeing the Commission's decisions implementing this critical provision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Schaefer', written over a large, hand-drawn loop.

DAN SCHAEFER
Member of Congress

Congress of the United States
House of Representatives
Washington, DC 20515-4605

February 12, 1999

The Honorable William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554-0001

Dear Mr. Kennard,

The Federal Communications Commission (FCC) now has pending before it a very important petition regarding the ability of municipal utilities to provide telecommunications services. The petition, filed by municipally-owned utilities in Missouri (CC Docket No. 98-122) asks that the FCC take action under Section 253 of the Telecommunications Act of 1996. This case has national implications because of similar laws in other states (Texas, Arkansas, Tennessee, Nevada, Minnesota, and Virginia) which restrict municipal utility entry into the telecommunications market.

State prohibitions on telecommunications activities by municipal utilities clearly conflict with the language and intent of Section 253 (a) of the Telecommunications Act of 1996 — which was designed to ensure that “*any entity*” could provide communications services in a newly competitive marketplace.

Approximately 75% of municipal power systems in the U.S. serve cities with populations of less than 10,000 residents. These utilities, just as they brought electrical service to traditionally underserved areas of the country, are now prepared to bring new telecommunications services to their communities. Barring municipal utilities from utilizing their communications infrastructure to provide the telecommunications services will undermine the benefits of local control - and unfairly restrict the availability of services and the development of competition in rural communities throughout the U.S.

I ask that you show every consideration to approve the petition for preemption filed by the municipally-owned utilities in Missouri because of its impact in jurisdictions like Virginia. Thank you again for your consideration and with kind regards, I am

Sincerely yours,

Virgil H. Goode

bcc: Mr. Duane S. Dahlquist

RICK BOUCHER
9TH DISTRICT, VIRGINIA

COMMITTEES:

COMMERCE
SUBCOMMITTEES:

TELECOMMUNICATIONS, TRADE AND
CONSUMER PROTECTION
ENERGY AND POWER

JUDICIARY
SUBCOMMITTEES:

COURTS AND INTELLECTUAL PROPERTY

ASSISTANT WHIP



Congress of the United States

House of Representatives

March 16, 1999

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BRPA
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MAR 16 1999

Noted
Refer To C. BRPA MEMORIAL ACTS Monahan,
DICK NIPPER, POLLEY
and ALLEG-FED KONG. COMM

The Honorable William Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Kennard:

The Commission now has pending before it a petition concerning the ability of local government-owned utility services to provide telecommunications services. The petition, filed by municipally-owned utilities in Missouri (CC Docket No. 98-122), asks that the FCC take action under Section 253 of the Telecommunications Act of 1996 to empower them to offer these services. This case has national implications because of laws in other states (Texas, Arkansas, Tennessee, Nevada, Minnesota, and Virginia) which restrict municipal utility entry into the telecommunications market. I hope that the Commission will, in conformance with all applicable Commission Rules, swiftly approve the petition. In so doing, you will give effect to Section 253 of the Telecommunications Act of 1996.

State prohibitions on telecommunications activities by local governments conflict with the language and intent of Section 253 (a) of the Telecommunications Act of 1996 – which was designed to ensure that “any entity” can provide communication services in a newly competitive marketplace. In addition, the conference report accompanying the Act recognized the inclusiveness of the term “any entity” by stating that, “nothing in this section shall affect the ability of a State to safeguard the rights of consumers...However explicit prohibitions on entry by a utility into telecommunications are preempted under this section.”

In enacting the 1996 Act, Congress envisioned electric utilities, with their existing and soon-to-be constructed modern communications infrastructures, as key participants in the effort to facilitate competition in the telecommunications industry.

Approximately 75% of municipal power systems in the U.S. serve cities with populations of less than 10,000 residents. It is precisely in these smaller communities that the need for the innovative entry of new telecommunications competitors is the greatest due to the general absence of any alternative to the incumbent monopoly providers. Municipal utility entry will in many instances be the only competition available.

Chairman William E. Kennard
Page 2
March 16, 1999

I urge you and your Commission colleagues to take immediate steps to eliminate barriers to telecommunications market entry for municipally-owned utilities in accordance with the intent and language of the Telecommunications Act of 1996. As always, I will appreciate your careful review of this matter. With kind regards and best wishes, I remain

Sincerely,



Rick Boucher
Member of Congress

RB/msr

cc. Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani

EDWARD J. MARKEY
U.S. SENATOR, MASSACHUSETTS

COMMERCE COMMITTEE
RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS, TRADE
AND CONSUMER PROTECTION

BUDGET COMMITTEE

RESOURCES COMMITTEE
(on leave)

COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

Congress of the United States
House of Representatives
Washington, DC 20515-2107

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April 20, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Dear Chairman Kennard:

We are writing to express our concern about the growing trend toward enactment of state barriers to entry for municipal utilities in telecommunications. In our view, State barriers to entry for municipal utilities have the effect of shutting the door on an important participant in providing greater telecommunications competition and consumer choice.

Congress approved Section 253 during consideration of the Telecommunications Act of 1996 in order to enable "any entity", without qualification, to provide communications services. Moreover, the related conference committee report explains that "explicit prohibitions on entry by a utility into telecommunications are preempted under this section." A number of statutes at the State level would appear to thwart congressional intent to encourage utility involvement in the telecommunications industry.

In enacting the Telecommunications Act, Congress recognized that utility infrastructure would provide valuable new opportunities through which new market entrants could enter the telecommunications marketplace. In fact, this goal has already been realized in many cities across the country where the municipal utility has teamed up in partnership with a private company to provide communications services in their community.

The Commission now has pending before it a petition, filed by the municipally-owned utilities in the State of Missouri. This petition requests that the Commission fully implement Section 253 of the Act by preempting the restrictions imposed on the provision of communications services by municipal utilities in Missouri.