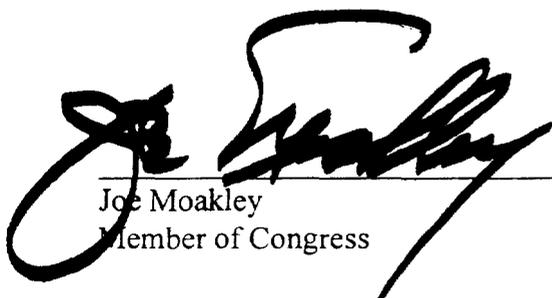


The Honorable William E. Kennard
April 20, 1999
Page Two

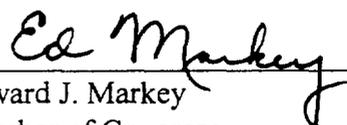
We strongly urge you to consider approving the Missouri municipals' petition for preemption consistent with Section 253 of the Act. We believe that doing so will allow municipal utilities to advance the pro-competitive and pro-consumer policies the Congress envisioned for such entities when it successfully legislated.

Thank you in advance for considering our views with respect to this matter. If you have any questions please do not hesitate to contact us.

Sincerely,



Joe Moakley
Member of Congress



Edward J. Markey
Member of Congress



Barney Frank
Member of Congress

United States Senate

WASHINGTON, DC 20510

March 26, 1999

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

Dear Chairman 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. In response to this petition, we ask that you take swift action to approve the petition for preemption, and thus bring to an end a growing anti-competitive trend toward the erection of state barriers to entry for municipal utilities.

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. 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."

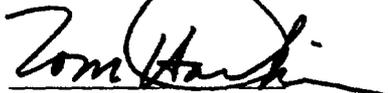
It is clear that in enacting the Telecommunications Act of 1996, Congress envisioned electric utilities, with their existing communications infrastructures, as key players in the effort to facilitate competition in the telecommunications industry. Their communications networks and facilities often provide an alternative source of access for the new entrants we depend upon to bring new services and increased competitiveness to the industry.

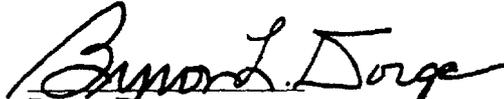
In addition, approximately 75% of municipal power systems in the U.S. serve cities with populations of less than 10,000 residents. These utilities, just as they brought electrical service to traditionally under-served areas of the country, are now prepared to bring new telecommunications services to 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.

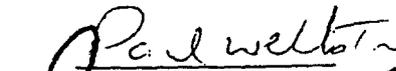
In order for widespread competition to develop effectively in the telecommunications industry, we must preserve local control and decision-making, effectively utilize existing utility infrastructure, and ensure that all parts of the country and all customers can enjoy the benefits of advanced telecommunications technology. We urge you to take immediate steps to eliminate barriers to entry for municipal utilities in accordance with the vision, intent and language of the Telecommunications Act of 1996.

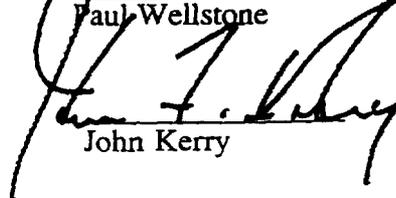
Sincerely,


J. Robert Kerrey


Tom Harkin


Byron Dorgan


Paul Wellstone


John Kerry

ALABAMA

Fairhope, City of ■ 7
 Box 429
 Fairhope, Ala. 36533-0429
 (street address: 161 N. Section St.; zip: 36532-2426)
 Aaron Norris, Superintendent
 (334) 928-2136 fax: (334) 990-0156
 email: info@cofairhope.com
 Telecommunications services:
 Municipal data network

Florence Utilities ■
 Box 2818
 Florence, Ala. 36530-0818
 Jack Hilliard, General Manager
 (256) 760-6523 fax: (256) 760-6542
 email: jhilliard@flweb.com
 Telecommunications services:
 Municipal data network
 Internet access

Opp Cablevision ■ 7
 P.O. Box 610
 Opp, Ala. 36467
 Charles McGowan
 (334) 493-4571 fax: (334) 493-6666
 Telecommunications services:
 Cable TV

Riviera Utilities ■ 7
 Box 2050
 Foley, Ala. 36536-2050
 (street address: 413 E. Laurel Ave.; zip: 36535-2619)
 H. Sewell St. John Jr., General Manager
 (334) 943-5001 fax: (334) 943-5275
 Telecommunications services:
 Cable TV

Scottsboro Electric Power Board ■ 7
 Box 550
 Scottsboro, Ala. 35768-0550
 James B. Sandlin, Manager
 (256) 259-5052 fax: (256) 574-5085
 jimmy@scottsboropower.com
 Telecommunications services:
 Internet access
 Cable TV
 High-speed data
 Internal electric utility use:
 Automatic meter reading
 SCADA
 Real-time pricing of power
 Internet-based usage information and/or bill payment

ALASKA

Ketchikan Public Utilities
 2930 Tongass Ave.
 Ketchikan, Alaska 99901
 Karl R. Amylon, General Manager
 (907) 225-1000 fax: (907) 225-1888
 Telecommunications services:
 Local phone

Kokhanok Electric
 Box 1007
 Kokhanok, Alaska 99606-1007
 John Nelson, President
 (907) 282-2202 fax: (907) 282-2264
 Telecommunications services:
 Data network for customers

Kotlik, City of
 Utility Office 20068
 Kotlik, Alaska 99620
 Joseph Mike
 907/899-4926
 Telecommunications services:
 Cable TV

Naterkaq Light Plant
 Box 11
 Chefornak, Alaska 99561-0011
 (907) 867-8213 fax: (907) 867-8724
 Telecommunications services:
 Local phone

Tenakee Springs, City of
 Box 52
 Tenakee Springs, Alaska 99841-0052
 John C. Wisenbaugh, Electric Manager
 (907) 736-2207 fax: (907) 736-2207
 Telecommunications services:
 Local phone

White Mountain, City of
 Box 84130
 White Mountain, Alaska 99784-0130
 Dorothy Barr, Utilities Clerk
 (907) 638-3411 fax: (907) 638-3421
 Telecommunications services:
 Cable TV

AMERICAN SAMOA

American Samoa Power Authority ■
 Box PPB
 Pago Pago, American Samoa
 96799-9730
 Abe U. Malae, Chief Executive Officer
 (684) 644-2772 fax: (684) 644-5005
 email: abe@satala.aspower.com
 Telecommunications services:
 Internet access

ARIZONA

Gila Resources ■
 Box 272
 Safford, Ariz. 85548-0272
 (street address: 373 W. 32nd St.; zip: 85546-2279)
 Kenneth Mecham, Utility Director
 (520) 348-3143 fax: (520) 348-3150
 email: kenm@safford.org
 Telecommunications services:
 Municipal data network

Salt River Project ■ 7
 Box 52025
 Phoenix, AZ 85072-2025
 Michael Sherman
 (602) 236-5806 fax: (602) 236-5240
 email: mcsherma@srpnet.com
 Telecommunications services:
 High speed data
 Fiber leasing
 Internal electric utility use:
 SCADA
 Utility Web site
 real-time pricing of power
 Internet-based usage information or bill payment

Tohono O'odham Utility Authority
 Box 816
 Sells, Ariz. 85634-0816
 Charles W. Wiese, General Manager
 (520) 383-2236 fax: (520) 383-2218
 Telecommunications services:
 Internet access
 Local phone
 Data network for customers

Wellton-Mohawk Irrigation and Drainage District ■ 7
 30570 E. Wellton-Mohawk Drive
 Wellton, Ariz. 85356-6500
 Clyde L. Gould, General Manager
 (520) 785-3351 fax: (520) 785-3389
 Telecommunications services:
 Cable TV

ARKANSAS

Conway Corp. ■
 Box 99
 Conway, Ark. 72033-0099
 (street address: 1307 Prairie St.; zip: 72032-5394)
 Richard Arnold, CEO
 (501) 450-6020 fax: (501) 450-6099
 Telecommunications services:
 Internet access
 Cable TV
 Internal electric utility use:
 SCADA
 Utility Web site

North Little Rock, City of ■
 Box 159
 North Little Rock, Ark. 72115-0159
 (street address: Eighth & Main Sts.; zip: 72114)
 Connie L. Woodard, General Manager
 (501) 372-0100 fax: (501) 372-6437
 email: cwoodard@nrlrelectric.com
 Telecommunications services:
 Municipal data network

Paragould Light & Water Commission ■ 7
 Box 9
 Paragould, Ark. 72451-0009
 (street address: 1901 Jones Road; zip: 72450-8866)
 Larry Watson, General Manager
 (870) 239-7700 fax: (870) 239-7798
 email: clw@clwlc.com
 Telecommunications services:
 Internet access
 Cable TV
 Internal electric utility use:
 SCADA
 Utility Web site

CALIFORNIA

Alameda Bureau of Electricity ■ 7
 2000 Grand St.
 Alameda, Calif. 94501-0263
 Thomas P. Evans, General Manager
 (510) 748-3905 fax: (510) 748-3956
 email: electricity@compuserve.com
 Telecommunications services:
 Fiber leasing

Anaheim, City of ■ 7
 201 S. Anaheim Blvd.
 Anaheim, Calif. 92805-3826
 Edward K. Aghajayan, General Manager
 (714) 765-5173 fax: (714) 765-4138
 Telecommunications services:
 Fiber leasing

Burbank Public Service Department ■ 7
 Box 631
 Burbank, Calif. 91503-0631
 (street address: 164 W. Magnolia Blvd.; zip: 91502-1720)
 Ronald E. Davis, General Manager
 (818) 238-3550 fax: (818) 238-3560
 Telecommunications services:
 Fiber leasing

Colton, City of ■ 7
 650 N. La Cadena Drive
 Colton, Calif. 92324-2823
 Tom Clarke, Utility Director
 (909) 370-5104 fax: (909) 370-5132
 Telecommunications services:
 Municipal data network

Imperial Irrigation District ■
 Box 937
 Imperial, Calif. 92251-0937
 (street address: 333 E. Barioni Blvd.; zip: 92251-1773)
 Ron E. Cox, Assistant General Manager-Power
 (760) 339-9225 fax: (760) 339-9297
 email: recox@iid.com
 Telecommunications services:
 Fiber leasing

Modesto Irrigation District ■ 7
 Box 4060
 Modesto, Calif. 95352-4060
 (street address: 1231 11th St.; zip: 95354-0701)
 David Klein, Asst. General Manager of Information Technology
 (209) 526-7415; fax 209/557-1414
 email: davidk@mid.org
 Telecommunications services:
 Fiber leasing
 Internal electric utility use:
 SCADA
 Security video
 Utility Web site

Fairburn, City of ■
 Box 145
 Fairburn, Ga. 30213-0145
 (street address: 56 Malone St. SW, 30213-1341)
 Karl Johnson, Utilities Director
 770/969-3481, fax 770/969-3490
 email: kjohnson@fairburnutilities.org
Telecommunications services:
 Cable TV
 Internet access
Internal electric utility use:
 Utility Web site

Forsyth, City of ■
 Box 1447
 Forsyth, Ga. 31029-1447
 Alvin Randall, Electrical Superintendent
 (912) 994-2444 fax: (912) 993-1002
 email: aurand@aol.com
Telecommunications services:
 Internet access
 Cable TV
 High-speed data

Fort Valley Utility Commission ■
 Box 1529
 Fort Valley, Ga. 31030-1529
 Kenneth Werner, General Manager
 (912) 825-7701 fax: (912) 825-7704
Telecommunications services:
 High-speed data
 Broadband resale for other carriers or telecommunications providers
Internal electric utility use:
 Automatic meter reading
 SCADA
 Real-time pricing of power
 Utility Web site
 Internet-based usage information and/or bill payment

LaGrange, City of ■
 Box 430
 LaGrange, Georgia 30241-0008
 (street address: 200 Ridley Ave., zip 30240-2726)
 Alan Slaughenaupt, Director of Information Technology
 (706) 883-2032 fax 706/883-2049
 Email: cas@lagrange-ga.org
Telecommunications services:
 Fiber leasing
Internal electric utility use:
 SCADA
 Utility Web site

Marietta Power ■
 675 N. Marietta Parkway
 Marietta, Ga. 30060-1528
 C. Gene Parsons, Electric Director
 (770) 794-5107 fax: (770) 794-5195
Telecommunications services:
 Municipal data network
 Internet access
 Local phone
 Data network for customers
 Fiber leasing

Monroe Water, Light and Gas Commission ■
 P.O. Box 725
 215 N. Broad St.
 Monroe, Ga. 30655-0725
 Mark Ennis, General Manager
 (770) 267-3429 fax: (770) 267-3698
Telecommunications services:
 Cable TV

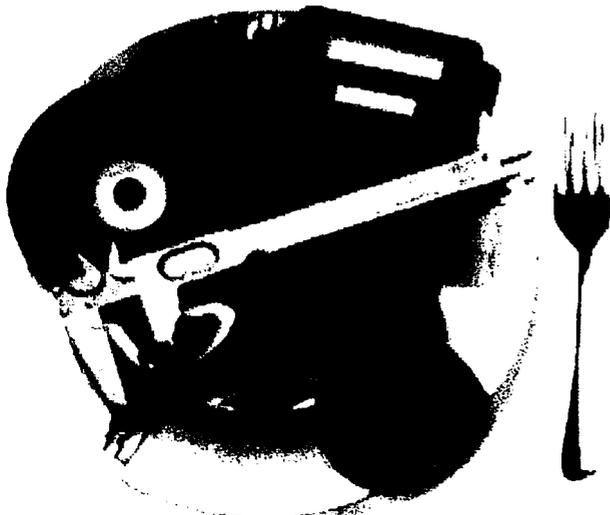
Newnan Water, Sewerage & Light Commission ■
 70 Sewell Road
 Newnan, Ga. 30263-2638
 Dennis McEntire, General Manager
 (770) 683-5516 fax: (770) 683-0292
 ellis@newnanutilities.org
Telecommunications services:
 Local telephone
 Long distance
 Internet access
 Cable TV
 High-speed data
 Broadband resale for other carriers or telecommunications providers
Internal electric utility use:
 SCADA
 Real-time pricing of power
 Utility Web site
 Internet-based usage information and/or bill payment

Sandersville, City of ■
 Box 71
 Sandersville, Ga. 31082-0071
 Pam Helton, City Clerk
 (912) 552-3475 fax: (912) 552-6006
Telecommunications services:
 fiber leasing

Batavia, City of ■
 100 N. Island Ave
 Batavia, Ill. 60510-1931
 Randy Wielgos, Electrical Engineer
 (630) 879-1424 fax 630/879-3110
 email: r.wielgos@cityofbatavia.net
Telecommunications services:
 municipal data network
Internal electric utility use:
 Utility Web site

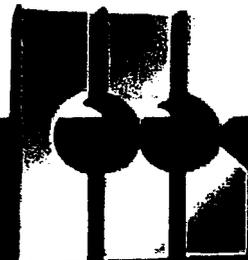
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 Long distance
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 High-speed data
 Wireless testing
Internal electric utility use:
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Laurens Municipal Communications Utility ■
 Box 148
 Laurens, Iowa 50554-0148
(street address: 272 N. Third St.)
 Michael D. Sangwin, Superintendent
 (712) 845-4610 fax: (712) 845-4611
Telecommunications services:
 Cable TV
Internal electric utility use:
 SCADA
 Internet-based usage information and/or bill payment

Lenox Municipal Utilities ■
 Box 96
 Lenox, Iowa 50851-0096
 David D. Ferris, Superintendent of Utilities
 (515) 333-2550 fax: (515) 333-2582
 email: Lmu@Lenox.Heartland.Net
Telecommunications services:
 Cable TV

Manilla, City of ■ 77
 Box 398
 Manilla, Iowa 51454-0398
(street address: 443 Main St.; zip: 51454)
 Glen Macumber, Superintendent
 (712) 654-3952 fax: (712) 654-9182
Telecommunications services:
 Cable TV

Manning Municipal Communication Television System ■
 719 Third St.
 Manning, Iowa 51455-1007
 Kent Hilsabeck, Manager
 (712) 653-3214 fax: (712) 653-3304
 email: mmmu@pionet.net
Telecommunications services:
 Internet access
 Cable TV
 High-speed data

Mapleton Municipal CATV
 513 Main St.
 Mapleton, Iowa 51034
 Karla Uhl
 (712) 882-1351 fax: (712) 882-2726
Telecommunications services:
 Cable TV

Muscatine Power & Water ■ 77
 3205 Cedar St.
 Muscatine, Iowa 52761-2204
 Jay D. Logel, General Manager
 (319) 263-2631 fax: (319) 262-3315
 email: jlogel@mpw.org
Telecommunications services:
 Cable TV
 High-speed data
 Broadband resale for other carriers or telecommunications providers
 Wireless voice communications
Internal electric utility use:
 SCADA
 Utility Web site

Orange City, City of ■ 77
 125 Central Ave SE
 Orange City, Iowa 51041-1738
 Duane Feeke, City Administrator
 712/737-4885
 email: cityoc@orangecitycom.net
Telecommunications services:
 Internet access
Internal electric utility use:
 Utility Web site

Osage Municipal Utilities ■
 Box 207
 Osage, Iowa 50461-0207
(street address: 720 Chestnut St.; zip: 50461-1462)
 Dennis M. Fannin, General Manager
 (515) 732-3731 fax: (515) 732-5498
 email: omu@osage.net
Telecommunications services:
 Internet access
Internal electric utility use:
 Utility Web site

Primghar Municipal Cable TV ■
 155 First St. S.W.
 Primghar, Iowa 51245
 Merle Negus
 (712) 757-2435
Telecommunications services:
 Cable TV

Rock Rapids Municipal Utilities ■ 77
 310 S. Third Ave.
 Rock Rapids, Iowa 51246-1631
 James E. Hoyer, Manager
 (712) 472-2511 fax: (712) 472-2512
Telecommunications services:
 Fiber leasing

Sanborn Electric & Telecommunications Board ■ 77
 Box 548
 Sanborn, Iowa 51248-0548
(street address: 102 Main St.)
 Allen Bonderman, General Manager
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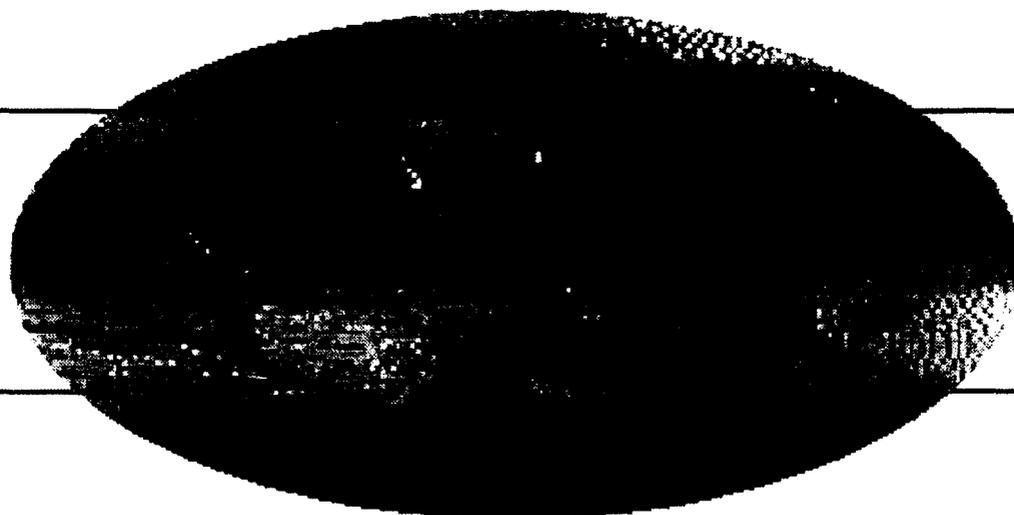
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email: service@freeportelectric.com
Telecommunications services:
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Fiber leasing

NORTH CAROLINA

Fayetteville Public Works Commission ■
Box 1089
Fayetteville, N.C. 28302-1089
(street address: 508 Person St.; zip: 28301-5841)
Steven K. Blanchard, General Manager
(910) 483-1401 fax: (910) 223-0207
email: steve.blanchard@faypwc.com
Telecommunications services:
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Internal electric utility use:
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SCADA
Utility Web site

Gastonia, City of ■
Box 1748
Gastonia, N.C. 28053-1748
Dale F. Becker, Director
(704) 866-6825 fax: (704) 867-0120
Telecommunications services:
Municipal data network
Fiber leasing

Monroe, City of ■
Box 69
Monroe, N.C. 28111-0069
(street address: 300 W. Crowell St.; zip: 28112-4648)
Jerry E. Cox, City manager
(704) 282-4500 fax: (704) 283-9098
Telecommunications services:
Municipal data network

Morganton Public Antenna System ■
Box 3448
Morganton, N.C. 28680-1029
(street address: 201 W. Meeting St.; zip: 28655-3761)
Dan Brown, Electric Director
(828) 438-5284 fax: (828) 438-5264
Telecommunications services:
Internet access
Cable TV

Shelby, City of ■
Box 207
Shelby, N.C. 28151-0207
(street address: City Hall; zip: 28150)
Smith Lingertell, Energy Services Director
(704) 484-6810 fax: (704) 481-8247
email: slinger@vnet.net
Telecommunications services:
Municipal data network

OHIO

Bryan Municipal Light & Water Utilities ■
841 E. Edgerton St.
Bryan, Ohio 43506-1413
Stephen Casebere, Director of Utilities
(419) 636-8944 fax: (419) 636-8026
email: scasebere@bmlw.com
Telecommunications services:
Cable TV
High-speed data
Internal electric utility use:
Automatic meter reading
SCADA

Hamilton Department of Public Utilities ■
10 Journal Square
Hamilton, Ohio 45011-2709
Richard J. Fleming, P.E., Public Utilities Director
(513) 868-5907 fax: (513) 867-7300
Telecommunications services:
Municipal data network

Orrville, City of ■ 7
Box 107
Orrville, Ohio 44667-0107
(street address: 207 N. Main St.; zip: 44667-1639)
Dan L. Preising, Director of Utilities
(330) 684-5012 fax: (330) 684-5040
email: preising@orrville.com
Telecommunications services:
Municipal data network
Fiber leasing

Wadsworth, City of ■
120 Maple St.
Wadsworth, Ohio 44281-1825
William J. Lyren, Director, Public Service
(330) 335-2707 fax: 330-335-2711
email: 102607.34@compuserve.com
Telecommunications services:
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Internal electric utility use:
SCADA

OKLAHOMA

Duncan Power & Light ■
Box 969
Duncan, Okla. 73534
(street address: 720 West Willow Ave.; zip: 73533)
David Yeager, General Manager
(580) 252-0250 fax: (580) 252-3491
Telecommunications services:
Municipal data network

Pryor, City of ■
Box 249
Pryor, Okla. 74362-0249
(street address: 6 N. Adair St.; zip: 74361-2454)
Gary Pruett, General Manager
(918) 825-2100
Telecommunications services:
Internet access

Stillwater Electric Utility ■
411 E. Third
Stillwater, Okla. 74074
Michael Herron, Electric Utility Director
(405) 747-8002 fax: (405) 624-9628
email: seudirector@stillwater.org
Telecommunications services:
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Internal electric utility use:
Utility Web site
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OREGON

Cascade Locks, City of ■
Box 308
Cascade Locks, Ore. 97014-0308
J.C. Yarde, City Administrator
(541) 374-8484 fax: (541) 374-8752
Telecommunications services:
Cable TV

Central Lincoln People's Utility District ■
Box 1126
Newport, Ore. 97365-0090
(street address: 2129 N. Coast Highway; zip: 97365-1705)
Paul Davies, General Manager
(541) 574-2041 fax: (541) 574-222
email: pdavies@cenocast.com
Telecommunications services:
Broadband resale for other carriers or telecommunications providers
Internal electric utility use:
SCADA

Emerald People's Utility District ■ 7
33733 Seavey Loop Road
Eugene, Ore. 97405-9614
Jeff Shields, General Manager
(541) 746-1583 fax: (541) 726-1128
email: jshields@epud.org
Telecommunications services:
Internet access
Internal electric utility use:
Utility Web site

Eugene Water & Electric Board ■ 7
Box 10148
Eugene, Ore. 97440-2148
(street address: 500 E. Fourth Ave. 97401-2465)
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Telecommunications services:
Fiber leasing
Internal electric utility use:
Utility Web site
SCADA

Springfield Utility Board ■
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Fiber leasing
Internal electric utility use:
Utility Web site
SCADA

PENNSYLVANIA

New Wilmington Borough Cable TV
134 High St.
New Wilmington, Pa. 16142
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Telecommunications services:
Cable TV

Pitcairn Power/Community Cable ■
582 Sixth St.
Pitcairn, Pa. 15140-1200
Josephine Higgins, Manager
(412) 372-6500 fax: (412) 373-1464
Telecommunications services:
Cable TV

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Fiber leasing

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Box 1146
Georgetown, S.C. 29442-1146
Manager of Electric Utility
(843) 546-5632 fax: (843) 520-0625
Telecommunications services:
Fiber leasing

Orangeburg, City of ■
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Orangeburg, S.C. 29116-1057
(street address: 1016 Russell Street; zip: 29115-5935)
Fred H. Boatwright, Manager
(803) 534-2821 fax: (803) 535-2218
Telecommunications services:
Municipal data network
Fiber leasing

Martinsville, City of ■
55 W. Church St.
Martinsville, Va. 24112-6209
Eugene Richardson, Manager, Electric Division
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Fiber leasing

WASHINGTON

Clark Public Utilities ■
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Fiber leasing

Douglas County, Public Utility District No. 1 of ■
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email: wdobbins@dcpud.org
Telecommunications services:
High-speed data
Broadband resale for other carriers or telecommunications providers
Internal electric utility use:
Automatic meter reading
SCADA
Utility Web site

Pacific County, Public Utility District No. 2 of ■ 7
Box 472
Raymond, Wash. 98577-0472
(street address: 405 Duryea St.; zip: 98577-1827)
Douglas L. Miller, General Manager
(360) 942-2411 fax: (360) 875-9388
email: doug@pacificpud.org
Telecommunications services:
Internet access
Internal electric utility use:
Utility Web site
Internet-based usage information and/or bill payment
High-speed data transfer
Substation monitoring of loads

Richland, City of - Richland Energy Services ■
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Richland, Wash. 99352-0190
(street address: 505 Swift Blvd.; zip: 99352-3510)
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Telecommunications services:
Municipal data network

Snohomish County, Public Utility District No. 1 of ■
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(street address: 2320 California St.; zip: 98201-3750)
Paul D. Elias, General Manager
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email: maschinman@shopud.com
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Fiber leasing

Sumas, City of
Box 9
Sumas, Wash. 98295-0009
Rod Fadden, Utility Superintendent
(360) 988-5711 fax: (360) 988-8855
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Telecommunications services:
Cable TV

Tacoma Public Utilities ■
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Tacoma, Wash. 98406
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email: mcrisson@ci.tacoma.wa.us
Telecommunications services:
Internet access
Cable TV
High-speed data
Broadband resale for other carriers or telecommunications providers
Cable TV Internet
Digital music
Broadband services
Internal electric utility use:
SCADA
Utility Web site
Internet-based usage information and/or bill payment

WEST VIRGINIA

Philippi, City of ■ 7
108 N. Main St.
Philippi, W.Va. 26416-1123
Joseph P. Mattaliano, City Manager
(304) 457-3701 fax: (304) 457-2703
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Telecommunications services:
Cable TV

WISCONSIN

Gresham, Village of
Box 50
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(street address: 1126 Main Street; zip: 54128)
Lee A. Ebert
(715) 787-3244 fax: (715) 787-1313
Telecommunications services:
Municipal data network

Hustisford, Village of ■ 7
210 S. Lake St.
Hustisford, Wis. 53034-0345
Richard Kirchoff, Superintendent
(920) 349-3650 fax: (920) 349-8150
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Telecommunications services:
Municipal data network

Manitowoc Public Utilities ■ 7
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Manitowoc, Wis. 54221-1090
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Municipal data network
Internet access
Fiber leasing

Menasha Electric & Water Utilities ■ 7
Box 340
Menasha, Wis. 54952-0340
(street address: 321 Milwaukee; zip: 54952-2704)
Dennis Rydzewski, General Manager
(920) 751-5177 fax: (920) 751-4748
email: drydzewski@wppisys.org
Telecommunications services:
Municipal data network

Oconto Falls Water & Light Commission ■
Box 70
Oconto Falls, Wis. 54154-1423
(street address: 104 S. Franklin St.; zip: 54154-1423)
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Telecommunications services:
Cable TV
Highspeed data
Internal electric utility use:
SCADA

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Shawano, Wis. 54166-0436
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Internet access
High-speed data
Broadband resale for other carriers or telecommunications providers
Internal electric utility use:
Automatic meter reading
SCADA
Utility Web site

Two Creeks Cable TV ■ 7
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Two Rivers, Wis. 54241
Mary Ann Cherveney
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Telecommunications services:
Cable TV

Wisconsin Public Power, Inc. ■ 7
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Sun Prairie, Wis. 53590-9109
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email: info@wppisys.org
Internal electric utility use:
SCADA
Utility Web site

Over three years, more than two dozen cities in Iowa vote to set up their own telecommunications systems

Fashion trends may begin on the coasts, but the more important groundswells of public opinion often start in the heartland. The Iowa presidential primaries are viewed as harbingers for the full election to come. Test marketers and focus group organizers go to the Midwest to learn how the American public as a whole will respond to their product.

Now a new trend is gaining momentum in Iowa, where, over the past three years, voters have overwhelmingly approved the formation of city-owned telecommunications businesses. In most of these cases, the city has a municipal electric utility that will run the new communications operation. In 32 separate votes since 1994—14 held last November—only two public power utilities were denied voter approval to establish a telecommunications system that could provide cable television, data transmission and even local telephone service. More than a third of the time, the measures were approved by majorities of 90% or more.

Why this turn to government to provide services usually offered through the private sector? According to the Iowa Association of Municipal Utilities, there are four common factors that influence voters on this issue: dissatisfaction with current service; the hope of economic development; a desire to improve local educational opportunities; and preparation by city electric and gas utilities for competition in those industries.

For Muscatine, an upsurge of dissatisfaction with private providers is part of its history. The residents of this Mississippi River town founded the public power utility in 1900 because they were unhappy with the service they received from privately owned water and electric utility companies. Recently, their disfavor focused on the company providing telecommunications services.

Gary Weiskamp, manager of public relations and utility services for

Muscatine Water & Power, explained, "Last year [in 1996], we were approached by a task force that included members of the Chamber of Commerce and the local development council about providing telecommunications services. They told us their needs were simply not being met by the present providers of telephone service and cable television."

In response, the public power utility hired a consulting firm to conduct a feasibility study and a polling group to do a market analysis. The results of both projects showed Muscatine that pursuing the development of telecommunications was both possible and desired by the town's citizens. The utility board of trustees asked the city council to hold a referendum on the issue.

That referendum, held this past summer, yielded an astonishing 94% approval from the voters of Muscatine for the utility to establish a municipally owned broadband cable system, and for the operation of the system to be governed by the utility board of trustees.

The utility's board of trustees approved a business plan for the new venture in October and Muscatine should be able to offer "some limited service" by next September, Weiskamp said. Those services could range from local and long distance telephone service to two-way data communications, cable TV, and a municipal area network that would make it possible for the utility to provide businesses in its heavily industrial area with direct two-way voice and data transmission between separate sites.

Like the citizens of Muscatine, residents of Spencer approached the public power utility about getting into the telecommunications business. "We told the citizens that they had to lead the drive to establish a telecommunications system, that it had to come from the desires of the people rather than the utility itself," Spencer Municipal Utilities Manager Neal Drefke

City/Year	Vote
Cedar Falls '94	70%
Hull '94	97%
Sibley '94	91%
Hawarden '94	96%
Grundy Center '96	93%
Manning '96	86%
Laurens '97	99%
Alta '97	88%
Lake View '97	84%
Danbury '97	90%
Hartley '97	86%
Indianola '97	58%
Orange City '97	84%
Sac City '97	77%
Tipton '97	86%
Westwood '97	91%
Akron '94	91%
Rock Rapids '94	83%
Bancroft '94	85%
Harlan '95	71%
Coon Rapids '96	87%
New London '96	77%
Spencer '97	91%
Muscatine '97	94%
Algona '97	74%
Denison '97	54%
Independence '97	57%
Mount Pleasant '97	64%
Primghar '97	90%
Sanborn '97	97%
Vinton '97	48%
Greenfield '97	42%

Election results: city-owned cable systems were approved in 30 of 32 referendums. In 12 of these elections, the margin was 90% or more. Source: Iowa Association of Municipal Utilities

explained. "They went to the City Council and utility board to ask if we would run a telecommunications utility if the city's residents voted to create one. The council and board said yes, so then the citizens went out and got the votes."

(continued on page 5)

(continued from page 4)

The group spearheading the drive got those votes in the face of an aggressive campaign mounted by the private cable television provider to vote down the proposal. Although the private company outspent the local citizens group that supported the ballot measure by a margin of 130 to 1, 91% of Spencer's citizens voted to create a new city-owned system.

Drefke attributes the victory not only to dissatisfaction with cable service, but also to a growing fear in Iowa over the potential loss of local control. "US West has sold some of its local telephone exchanges here," Drefke noted. "People are very concerned about losing the ability to speak with someone locally about problems, about the '1-800-Who Cares?' mentality that can happen when a service provider doesn't have a local presence."

And, Drefke said, Iowans in general have a high opinion of, and trust in, their local utilities. "Our ballot had two questions—whether the city should create a telecommunications system, and whether the municipal utility should run it. We had some people vote no on the first question, but yes on the second. They were saying that if we did decide to go forward, we should at least have a trusted local entity running the business. That shows a high level of trust."

In some situations, establishing a locally owned telecommunications system is the only way to get service at all. The public power utility in Primghar serves 568 customers. Primghar joined forces with the neighboring town of Sanborn in 1981 to set up a coaxial cable system so its citizens could have cable television. No private company was interested in serving such a small community. Primghar's utility Superintendent Merle Negus said the vote held there on Nov. 4, which was approved by 90% of the voters, was required to empower the city to improve the system. "State law changed, so we had to get voter approval before we could finance any upgrading of our cable system," Negus said. These communities, along with nearby Hartley, are now studying the feasibility



Founders of the municipal electric utility in Muscatine, above, were unhappy with the service they were getting from private companies nearly 100 years ago. Dissatisfaction with cable service led to the town's decision to create its own communications utility. Photo courtesy of Muscatine Water & Power

of upgrading to a hybrid coaxial-fiber optic system, Negus said.

Where public power utilities have established their own telecommunications systems, the competition seems to be having a positive effect, according to IAMU. Private cable giant Tele-Communications Inc. now offers Harlan residents 35-channel extended basic service for just \$16.95 per month, \$2 less than the cost of the city's 43-channel service. Some city customers have been offered every third month free for switching back to TCI for a year. By contrast, TCI service in neighboring communities can cost more than \$25 per month. Also, new service connections are free in Harlan, but cost nearly \$45 in neighboring towns served by TCI.

Among the most important factors driving public power utilities to offer telecommunications service are competitive positioning and economic development. Drefke said Spencer is designing a system that could provide

not only cable TV but also local telephone, high-speed data transmission, security systems and more. "We'll have to look carefully at what is feasible, based on costs and the number of potential customers," he explained. "But just as we've heard about distance learning, we're now beginning to see distance working—people moving away from large cities to small towns, and needing technology services that are better than those the larger cities provide." That trend can work in favor of smaller towns where public power utilities are capable of providing those services. "We even have to think about building a system that we can upgrade later to provide services that haven't even been invented yet," Drefke said.

Muscatine's Weiskamp concurs. "If we can offer a package of services—water, electricity and communications—then in my opinion, we're in the driver's seat" in a deregulated environment, he said. ■

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

_____)
In the Matter of)

The Missouri Municipal League;)
The Missouri Association of Municipal Utilities;)
City Utilities of Springfield;)
City of Columbia Water & Light;)
City of Sikeston Board of Utilities.)

) CCBPol 98 - _____

)
Petition for Preemption of)
Section 392.410(7) of the)
Revised Statutes of Missouri)
_____)

PETITION FOR PREEMPTION

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July 8, 1998

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

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City Utilities of Springfield;)	
City of Columbia Water & Light;)	CCBPol 98 - _____
City of Sikeston Board of Utilities.)	
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Petition for Preemption of)	
Section 392.410(7) of the)	
Revised Statutes of Missouri)	
_____)	

To the Commission:

PETITION FOR PREEMPTION

Pursuant to Section 253 of the Telecommunication Act of 1996, the Missouri Municipal League, the Missouri Association of Municipal Utilities, City Utilities of Springfield, Columbia Water & Light, and the Sikeston Board of Utilities (collectively "the Missouri Municipals") petition the Commission for an order preempting Section 392.410(7) of the Revised Statutes of Missouri ("HB 620"). The Missouri Municipals file this petition on behalf of more than 600 municipalities and 63 municipal electric utilities located throughout the State of Missouri.

HB 620 violates Section 253(a) of the Act because, with limited exceptions, it prohibits Missouri municipalities and municipal electric utilities from providing telecommunications services or making telecommunications infrastructure available to potential competitors of incumbent providers of telecommunications services. The Missouri legislature did not enact HB 620 to achieve any of the permissible public purposes set forth in Section 253(b) of the Act -- it simply succumbed to the vast lobbying effort that Southwestern Bell and other incumbents mounted to preserve their monopolies in local markets throughout the State. Section 253(d) therefore mandates that the Commission preempt HB 620.

OVERVIEW AND SUMMARY

As Chairman Kennard has observed, one of the main purposes of the Telecommunications Act is to eliminate all barriers that prevent consumers from choosing providers "from as wide a variety of providers as the market will bear."¹ Similarly, Senate Majority Leader Trent Lott has noted that the "primary objective" of the Telecommunications Act is to establish a "framework where everybody can compete everywhere in everything."² Judged by these standards, HB 620 is a thoroughly bad law. Unless the Commission preempts it, HB 620 will impede the development of effective local competition in Missouri for years. It will deny communities throughout the State a fair chance to obtain prompt and affordable access to the benefits of the Information Age. It will constrict economic growth, educational opportunity and quality of life, particularly in rural areas. It will thwart attainment of universal service goals of the Telecommunication Act by reducing both the number of potential service providers and the number of contributors to universal service support mechanisms. It will also disturb the competitive balance between public and private providers of electric power that has served Missouri well for decades.

The Missouri Municipals recognize that the Commission has declined to preempt a Texas law that prohibits municipalities and municipal electric utilities in Texas from engaging in telecommunications activities.³ In that case, which was decided shortly before four of the five current commissioners took office, the prior Commission determined that the term "any entity" in Section 253(a) of the Act does not apply to municipalities that do not operate electric utilities.

¹ *Statement of William E. Kennard Before the Senate Subcommittee on Antitrust, Business Rights, and Competition* (March 4, 1998), Attachment A.

² Statement of Senator Trent Lott (R-MS), June 7, 1995, Congressional Record at S.7906, Attachment B.

³ *In the Matter of the Public Utility Commission of Texas*, FCC 97-346, (rel. Oct. 1, 1997) ("Texas Order"), petition for review pending in *City of Abilene, TX, and the American Public Power Association v. Federal Communications Comm'n*, Case Nos. 97-1633 and 97-1634 (D.C. Cir.).

That ruling, however, did not address the major issues discussed here, did not consider several important new developments, and did not properly analyze congressional intent.

The Texas case involved four separate dockets, numerous complex issues in addition to the municipal-authority issue, an extraordinarily large number of parties, and a massive record. Shortly before the Commission issued its decision, ICG Telecom, Inc., which had sought preemption of the Texas law as applied to municipal electric utilities, withdrew its petition. In response, the Commission limited its decision to the facts presented in a separate petition by the City of Abilene, TX, which does not own or operate a municipal electric utility. Specifically, the Commission ruled that “we do not decide at this time whether section 253 bars the state of Texas from prohibiting the provision of telecommunications services by a municipally-owned electric utility.” *Texas Order*, ¶ 179. This proceeding squarely presents that issue.

Even as to municipalities that do not own or operate electric utilities, the *Texas Order* did not address the issues that the Commission had itself identified as the most important ones. According to the Commission, the key issue in determining whether the term “any entity” in Section 253(a) applies to municipalities is whether there is “some indication in the statute or its legislative history that Congress intended such a result.” *Texas Order*, ¶ 187, *see also* ¶ 181. Yet, the Commission did not present any substantive analysis of the language, structure or legislative history of the Act. Nor did the Commission even mention the correspondence that it had received from prominent members of Congress confirming that the term “any entity” covered municipalities and municipal electric utilities.

Because much of the relevant legislative history of Section 253 pertains to municipal electric utilities, it is possible that the Commission believed that its decision to defer consideration of their status obviated the need for a thorough review of that history. Whatever the reason, the Commission’s failure to perform the required analysis led it to overlook the compelling proof, discussed below, that Congress did, indeed, intend that Section 253 cover all municipalities, including those that do not operate electric utilities. The Commission would even have found

express statements to that effect in the Senate report discussing the preemption provision that ultimately became Section 253(a).

Several new developments reinforce the conclusion that the *Texas Order* was incorrect. First, the United States Court of Appeals for the District Columbia Circuit has recently issued two decisions that undermine the Commission's rationale in the *Texas Order*. In *Alarm Industry Communications Committee v. Federal Communications Comm'n*, 131 F.3d 1066, 1069-70 (D.C. Cir. 1997), the court struck down the Commission's narrow interpretation of the term "entity" in Section 275 of the Act, finding that "entity" is typically defined very broadly in common, non-technical dictionaries and that the Commission failed to interpret that term with due regard for the Act's underlying policies. The court also refused to afford the Commission's interpretation deference, finding that it "reflect[ed] no consideration of other possible interpretations, no assessment of statutory objectives, no weighing of congressional policy, no application of expertise in telecommunications." *Id.* Similar considerations apply here.

Second, in *Bell Atlantic Telephone Companies v. Federal Communications Comm'n*, 131 F.3d 1044 (D.C. Cir. 1997), the court found that, in determining the "plain" meaning of a statute, the Commission must perform a thorough analysis that exhausts all of the traditional tools of statutory construction, including the language, structure, legislative history and purposes of the Act. *Id.* at 1047. The Commission cannot simply scan the Act and its legislative history in search of an "express" statement of legislative intent, as the Commission has recently admitted that it did in deciding the *Texas* case.⁴

The Commission has itself made numerous statements in recent months that are inconsistent with the *Texas Order*. For example, in one order, the Commission held that Congress's use of the term "any" in the Telecommunications Act deprives the Commission of

⁴ In a recent letter to Congress, Chairman William Kennard, who was general counsel of the Commission at the time that it issued the *Texas Order*, confirmed that the Commission had looked for an "express" statement of legislative intent (Attachment C hereto).

authority to make distinctions that Congress did not make, that municipalities that provide telecommunications services or cable television services are "entities" whose pole attachments must be counted in allocating costs of a pole, and that municipalities are "entities" that must be covered in the Commission's regulatory flexibility analyses. *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, *Report and Order*, FCC 98-20, ¶ 40 (rel. Feb. 6, 1998) ("*Pole Attachment Order*"). Similarly, in several recent orders, forms and reports, the Commission has treated municipalities and municipal electric utilities as "entities" that must make contributions to the Universal Service program if they, like privately-owned entities, provide "telecommunications service" or "interstate telecommunications."

Recent developments have also undermined the Commission's assumption that local competition would emerge in Texas even if municipalities were denied protection under Section 253. *Texas Opinion*, ¶ 187. As the Texas Public Utility Commission has just found, Southwestern Bell's uncooperative and obstructive conduct has prevented its competitors from capturing more than a "miniscule" number of business and residential customers in Texas. Transcript of Open Meeting, May 21, 1998, pp. 186-208 (Attachment D hereto). In fact, two of the three commissioners observed that meaningful competition will not emerge in Texas unless and until Southwestern Bell fundamentally changes its corporate culture from top to bottom. *Id.* It is unreasonable to suppose that Southwestern Bell will act any less anti-competitively in Missouri.

Furthermore, in ¶190 of the *Texas Order*, the Commission urged other states not to do what Texas had done because "[m]unicipal entry can bring significant benefits by making additional facilities available for the provision of competitive services." Unfortunately, the Commission's plea has gone unheeded. In fact, the Commission's determination that it lacks authority to prevent states from banning municipal telecommunications activities has emboldened incumbent monopolists in many states to redouble their efforts to secure anti-competitive state legislation that reinforces their existing market dominance. The Commission can deter such

efforts -- as Congress intended -- only by issuing clear, forceful and unequivocal orders preempting measures such as HB 620.

Finally, as the Commission recognized in the *Texas Order*, Congress gave it extraordinarily broad authority to preempt state and local barriers to entry:

[S]ection 253 expressly empowers -- indeed, obligates -- the Commission to remove any state or local legal mandate that "prohibit[s] or has the effect of prohibiting" a firm from providing any interstate or intrastate telecommunications service. *We believe that this provision commands us to sweep away not only those state or local requirements that explicitly and directly bar an entity from providing any telecommunications service, but also those state or local requirements that have the practical effect of prohibiting an entity from providing service.* As to this latter category of indirect, effective prohibitions, we consider whether they materially inhibit or limit the ability of *any competitor or potential competitor* to compete in a fair and balanced legal and regulatory environment.

Texas Order, ¶ 22 (emphasis added). Yet, even though it could not find even one word in the language or legislative history of the Act to support its position, the Commission attributed to Congress an intent to deny public entities the benefits of this broad mandate. Thus, the Commission essentially made policy for Congress -- which the Commission had no authority to do. The Commission should now rescind that decision and enforce Section 253 as written.