

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

BRPA  
RECEIVED

MAR 23 1999

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

Noted  
Refer To 5: BRPA Nominating ACTS Monitors,  
DICK, Nipper, Baller  
FROM (A) LEG/FED/CONG. COMM

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.

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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,

A handwritten signature in black ink that reads "Rick". The signature is stylized and appears to be written over a large, faint letter "D".

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. DISTRICT COURT

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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WASHINGTON, DC 20543  
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MEDFORD, MA 02155  
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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.

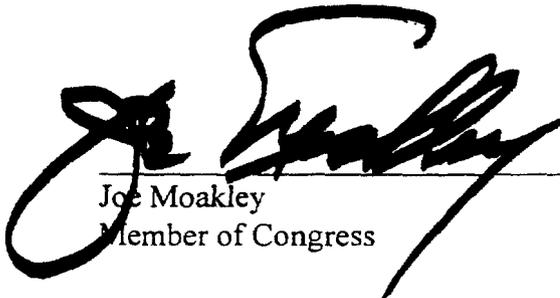
The Commission now has pending before it a petition, filed by the municipally-owned utilities in the State of Missouri. This petition requests that the Commission fully implement Section 253 of the Act by preempting the restrictions imposed on the provision of communications services by municipal utilities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

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,



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Joe Moakley  
Member of Congress



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Edward J. Markey  
Member of Congress



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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,



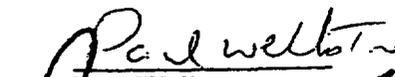
J. Robert Kerrey



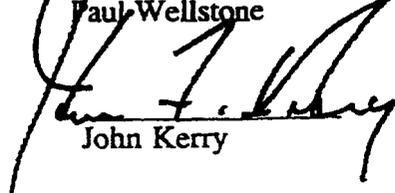
Tom Harkin



Byron Dorgan



Paul Wellstone



John Kerry



American Public Power Association

2301 M Street, N.W.  
Washington, D.C. 20037-1484  
202/467-2900  
202/467-2910

July 3, 2000

The Honorable Michael K. Powell  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W., Room 8A204  
Washington, DC 20554

Dear Commissioner Powell:

Thank you for meeting with Alan Richardson, Jane Cirrincione and me last Thursday. At that meeting we provided you a summary of the legal position of the American Public Power Association and the Missouri Municipals in FCC Docket No. 98-122. The summary sets out the essential legal arguments supporting the petition requesting FCC preemption of the Missouri state law that erects a barrier for municipal utilities wanting to provide telecommunications services in the state.

At your request, I am enclosing the Summary Attachments (we initially omitted) that set out some of the key source documents that are relied upon in the legal analysis that was contained in the packet of material we presented to you at the meeting.

Any of us would be delighted to respond to any policy or legal questions, concerns or clarifications that you or Kyle might have or want about the petition, the summary, the attachments or the handouts. Our general number is (202)467-2900, but please feel free to contact me directly at (202)467-2934 or at [rgeltman@APPAnet.org](mailto:rgeltman@APPAnet.org).

Sincerely,

A handwritten signature in black ink that reads 'Richard B. Geltman'.

Richard B. Geltman  
General Counsel

Cc: Kyle D. Dixon, Legal Advisor to Commissioner Powell

Enclosures

# Advanced Communications Services Provided by Muncipal Electric Utilities

## Sorted alphabetically by utility (Incomplete Listing)

Utility	State	Population	External - Cable TV	External - Internet	External - High speed data	External - Broadband Resale	External - Dark Fiber Leasing	External - Data network	Internal - Internet Acct	Internal - Municipal data	Description of Program
Akron, City of	IA	1,445									In a referendum in 1994, 91 percent of the voters in Akron supported the creation of a telecommunications network.
Alameda Power & Telecom	CA	78,695	C	C				Y			Alameda City Council has authorized the sale of bonds to build a hybrid fiber-coax network including cable TV. The utility is partnering with SIGCORP Communications Services. Alameda's SchoolNet Project is operational connecting the Alameda schools and district offices. The utility awarded a grant to the school district to purchase equipment under the Public Benefits Program. The utility has a fiber optic cable infrastructure for the utility's distribution system. In 1997, a business plan was conducted and in 1998, voters amended the city charter to allow the municipal utility to engage in telecom services.
Alexandria Light & Power	MN	8,351		Y	Y	Y					Alexandria Light & Power is deploying a new 48-strand fiber optic backbone with an Ethernet switch to network city hall, the county services and public works centers and courthouse, Alexandria Light & Power, and other businesses. The network will eventually connect more than 30 local, county and state departments at an estimated cost of \$100,000. Alexandria Light & Power will plan, construct, maintain and manage the network. Public entities will use about 20 percent of the system's capacity. ALP plans to sell the rest to private industry. ALP has partnered with an electric cooperative and a local telephone company to provide Internet service to its customers. ALP hoped for 300 customers. It has 3,200.
Algona Municipal Util.	IA	5,766									In a referendum in 1997, 74 percent of the voters in Algona supported the creation of a telecommunications network.

Friday, June 16, 2000

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\*\*\* Population data taken from www.census.gov and are based on 1998 estimates

<i>Utility</i>	<i>State</i>	<i>Population</i>	<i>External - Cable TV</i>	<i>External - Internet</i>	<i>External - High speed data</i>	<i>External - Broadband Resale</i>	<i>External - Dark Fiber Leasing</i>	<i>External - Data network</i>	<i>Internal - Internet Acct</i>	<i>Internal - Municipal data</i>	<i>Description of Program</i>
Alta, City of	IA	1,748									Early this year in Alta, 88 percent of the voters supported the creation of a municipal video and telecommunications network, despite a campaign by the local cable-television company.
Altamont Cable Systems	KS	1,024	Y								
American Samoa Power Board	AS	**		Y							
Anderson Municipal Light & Power	IN	58,528					Y			Y	
Austin Energy	TX	552,443								Y	Austin Energy is preparing to utilize OC-48 backbone for undecided services.
Bagley Public Utilities	MN	1,386	Y								

<i>Utility</i>	<i>State</i>	<i>Population</i>	<i>External - Cable TV</i>	<i>External - Internet</i>	<i>External - High speed data</i>	<i>External - Broadband Resale</i>	<i>External - Dark Fiber Leasing</i>	<i>External - Data network</i>	<i>Internal - Internet Acct Access</i>	<i>Internal - Municipal data</i>	<i>Description of Program</i>
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Bancroft Municipal Utility	IA	804									In a referendum in 1994, 85 percent of the voters in Bancroft supported the creation of a telecommunications network.
Bardstown Cable TV	KY	7,879	Y								
Batavia, City of	IL	22,306	C	C						Y	The City of Batavia is installing a fiber optic backbone to provide WAN for City and electric communication, schools, plus future businesses. May expand to provide Internet and Cable TV.
Bellevue Municipal Utilities	IA	2,231	Y								
Beresford Cablevision	SD	1,860	Y								
Borough of New Wilmington	PA	2,519	Y								

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Braintree Electric Light Dept	MA	33,836	C	Y	Y	Y		P		Y	2/21/00 Braintree Electric Light Department recently offered its customers a choice for Internet service. The utility plans to market its ISP service to the town's commercial customers this year.  12/1/99 The Braintree Electric Light Dept installed a comprehensive fiber optic cable network improving internal communications between the town hall, high school, fire dept, and the light & water depts. The utility used its own crew to install the cable within existing duct banks. The utility also offers high-speed Internet access to residents using a hybrid fiber coaxial system it installed for load management and meter reading and is expanding into dark fiber leasing. They may provide Cable TV and telephone.
Brookings Municipal Utilities	SD	17,138		Y	Y						
Brownsville Public Utilities Board	TX	137,883								Y	
Bryan Municipal Light & Water	OH	8,510	Y	C	Y						The city of Bryan's new fiber optic system is providing high-speed data transmission between government offices, schools, attorneys' offices, the power plant, the city's billing department and other businesses. They are now expanding the service to Bryan's residents. Bryan's system will provide a unique box that will hang on the outside of the residents' home and allow the village to control their channel lineups. Eventually, the box will read their utility meters as well. Bryan plans to provide cable TV, high-speed data transmission, Internet access and possibly telephone service in the future.

<i>Utility</i>	<i>State</i>	<i>Population</i>	<i>External - Cable TV</i>	<i>External - Internet</i>	<i>External - High speed data</i>	<i>External - Broadband Resale</i>	<i>External - Dark Fiber Leasing</i>	<i>External - Data network</i>	<i>Internal - Internet Acct Access</i>	<i>Internal - Municipal data</i>	<i>Description of Program</i>
Buffalo Municipal Utility	MN	9,090					Y	Y		Y	
Burbank Public Service Department	CA	97,430	C		C		Y				Expanding fiber optic leasing to telephone, Cable TV, HS data, etc.
Burlington Electric Department	VT	38,453	C	C	C						Burlington Networks, LLC, will be a partnership between the city government and Aptus Networks. The company will finance and construct a state-of-the-art fiber optic and coaxial cable network for telephone, data, Internet and cable television.
Butler County Rural Public Power District	NE	8,607	Y								
Canton Municipal Utilities	MS	12,221								Y	
Cedar Falls Utilities	IA	34,721	Y	Y			Y	Y		Y	The Cedar Falls City Council and voters approved the creation of a public communications utility in October 1994. The 50 mile-long fiber optic system consists of AT&T and Alco dielectric self-supporting cable. With the fiber/coax system, the utility can offer cable television, Internet access, telephone service, and video conferencing.



*Utility*      *State*    *Population*    *External - Cable TV*    *External - Internet*    *External - High speed data*    *External - Broadband Resale*    *External - Dark Fiber Leasing*    *External - Data network*    *Internal - Internet Acct*    *Internal - Municipal Access data*    *Description of Program*

City of Ashland	OR	18,095	Y	Y	Y							
City of Barbourville	KY	3,973	Y	Y			Y	Y			Y	
City of Bedford	VA	6,317		Y			Y				Y	
City of Benson	MN	3,135									Y	
City of Bryan	TX	58,763									Y	
City of Calhoun	GA	8,439					Y	Y			Y	

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<i>Utility</i>	<i>State</i>	<i>Population</i>	<i>External - Cable TV</i>	<i>External - Internet</i>	<i>External - High speed data</i>	<i>External - Broadband Resale</i>	<i>External - Dark Fiber Leasing</i>	<i>External - Data network</i>	<i>Internal - Internet Acct Access</i>	<i>Internal - Municipal data</i>	<i>Description of Program</i>
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City of College Station	TX	59,742					Y			Y	
City of Colton	CA	44,675								Y	
City of Cookeville	TN	25,471								Y	
City of Covington	GA	10,056	Y	Y	Y						Also real-time pricing of power.
City of Crete	NE	5,136								Y	
City of Crystal Falls	MI	1,824	Y								

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City of Doerun	GA	994	Y					Y			
City of Fairburn	GA	4,077	Y	Y							The city of Fairburn offers cable television and Internet service in the city.
City of Fairhope	AL	12,734								Y	
City of Forsyth	GA	4,037	Y	Y	Y						
City of Fort Collins	CO	108,905					Y				
City of Fosston	MN	1,425	Y								



<i>Utility</i>	<i>State</i>	<i>Population</i>	<i>External - Cable TV</i>	<i>External - Internet</i>	<i>External - High speed data</i>	<i>External - Broadband Resale</i>	<i>External - Dark Fiber Leasing</i>	<i>External - Data network</i>	<i>Internal - Internet Acct Access</i>	<i>Internal - Municipal data</i>	<i>Description of Program</i>
City of Groton	CT	9,394		P	P					C	The city of Groton, Conn., plans to begin offering high-speed data transmission, Internet, and telephone service. Residents voted to approve \$6.9 million in funding for the construction of a 32-mile fiber optic network. The initial users of the fiber optic network are expected to be the utility itself, other municipal departments, local schools and business customers, the utility said. The second phase of the project is expected to bring local Internet service to the residential customer.
City of Hogoton	KS	3,400		Y							
City of Holyoke	MA	40,964		Y		Y	Y	Y		Y	Holyoke has a OC-3 backbone and LAN utilizing ATM switches from FORE. The utility provides customers with a choice of either 10BaseFL or 100BaseFX switched Ethernet to the desktop.
City of Jackson	MN	3,524	Y								
City of Kahoka	MO	2,168	Y								

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City of Kotlik	AK	515	Y								
City of La Junta	CO	7,950								Y	
City of LaGrange	GA	25,111		Y			Y				LaGrange will provide free Internet access to all cable TV households beginning June 2000. It will be done through a partnership with the local cable company, Charter Communications. The city partnered with the cable company in 1998. The city financed and built a two way hybrid co-ax fiber network and then leased part of it to the cable company.
City of Lakeland	FL	74,204		Y	Y						
City of Lebanon	OH	13,802	Y	P							Lebanon's new municipal cable system has already signed up nearly 3,000 customers and is connecting about 75 households per week. Approximately 600 customers are now receiving service from the city cable system, which provides competition for Time-Warner. An Internet component of the cable service is being tested, and should be ready for customers within the week. The telecommunications system will become a separate utility in January 2000, with electric, water and safety departments paying for their use of the fiber.

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City of Leesburg	FL	16,911		Y		Y					The City of Leesburg offers Internet service to its customers with the New Smyrna Beach Utilities Commission providing backroom services. Leesburg's subscribers dial an 800 number to connect to the system and to contact New Smyrna Beach for guidance and problems. Leesburg will offer unlimited service for residential subscribers for \$17.95 a month and extended unlimited residential services with three e-mail addresses for \$19.95 a month. Different rates will apply to small business and commercial customers.
City of Lubbock	TX	190,974							Y	Y	4-00, City and County are on internal HS internet access.
City of Manassas	VA	35,336								Y	The City of Manassas Electric Dept. has administered and maintained the city government's voice and data communication network for over a decade. The network uses a variety of technologies including VHF, UHF, microwave radio and fiber optics. The utility also operates an eight mile fiber optic network and carries an Ethernet LAN connected to the city's GIS network and the utility's SCADA system.
City of Martinsville	VA	15,668					Y			Y	
City of Milford	DE	6,665								P	Installing fiber optic backbone for internal use.

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City of Monroe	NC	23,792								Y	
City of Morganton	NC	14,892	Y	Y							
City of Natchitoches	LA	16,713								Y	
City of Newberry	FL	2,495	Y								
City of Nixa	MO	11,483		Y							
City of North Little Rock	AR	59,186								Y	

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*Utility State Population External - External - External - External - External - External - Internal - Internal - Description of Program*  
*Cable TV Internet High Broadband Dark Fiber Data Internet Municipal*  
*speed data Resale Leasing network Acct Access data*

City of Odessa	MO	4,091										Y	
City of Paris	KY	8,898											The governor of Kentucky has signed legislation allowing Owensboro, Henderson and Paris, KY to offer telecommunications services.
City of Philippi	WV	3,089	Y										
City of Pryor	OK	9,056		Y									
City of Richland	WA	37,291										Y	
City of Sandersville	GA	6,580						Y					

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City of Schulenburg	TX	2,730								Y	Y	
City of Seymour	TX	3,051							Y			
City of Shasta	CA	9,462									Y	
City of Shelby	NC	15,568									Y	
City of St. George	UT	46,186									Y	
City of Sumas	WA	858	Y									

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**Utility**      **State**    **Population**    **External - Cable TV**    **External - Internet**    **External - High speed data**    **External - Broadband Resale**    **External - Dark Fiber Leasing**    **External - Data network**    **Internal - Internet Acct Access**    **Internal - Municipal data**    **Description of Program**

City of Tallahassee	FL	136,628						Y		Y		
City of Tenakee Springs	AK	103										
City of Vero Beach	FL	16,387						Y				
City of Wadsworth	OH	17,567	Y	P								The City of Wadsworth constructed a 90 mile fiber optic/coaxial cable system which allows the utility to offer cable service to customers. Pending approval, Wadsworth will become an ISP with Hometown Connections. Wadsworth is also exploring automated meter reading, load management, telephone service, security systems and traffic signaling.
City Utilities of Springfield	MO	142,898										The city of Springfield has installed 231 miles of cable between 1988 and 1988.
Clark Public Utilities	WA	336,268						Y				

Friday, June 16, 2000

**Y = Providing**  
**P = Pending**  
**C = Considering**

**\* See last page for Definitions of Services**

**\*\* Joint action agencies and state/regional agencies represent multiple political jurisdictions**

**\*\*\* Population data taken from www.census.gov and are based on 1998 estimates**