



ORIGINAL
RECEIVED

EX PARTE OR LATE FILED

NOV 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

American Public Power Association

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

November 7, 2000

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
Eighth Floor
Washington, DC 20554
By Messenger

Re: Notice of *Ex Parte* Communications in Petition for Preemption of
Section 392.410(7) of the Revised Statutes of Missouri;
CC ~~Pol Docket~~ No 98-122
PACKET

Dear Secretary Salas:

On November 6, 2000, Jane Cirrincione and Richard Geltman of the American Public Power Association (APPA) participated in an *ex parte* meeting with Kyle Dixon, Legal Advisor to FCC Commissioner Powell. The meeting occurred in Conference Room 3 on the eighth floor at the Portals and lasted approximately fifteen minutes.

During the meeting we discussed our September 28, 2000 supplementary memorandum to Christopher Wright, outlining two preemption arguments: 1) that when a state gives its political subdivisions authority to engage in activities that are subject to federal law, state laws that are preempted if applied to privately-owned providers of service must also be preempted as applied to the same activity by publicly-owned providers; and 2) a state law that imposes barriers to entry directly conflicts with the pro-competitive provisions and policies of the Telecommunications Act of 1996 and Section 253(a) and exceeds the authority reserved for state action under Section 253(b), (c) and (f).

Mr. Dixon was provided with a copy of the September 28th memorandum that the American Public Power Association had previously distributed to the persons on the attached list. Having distributed the memorandum once, APPA is not distributing it again this time, but it will make the memorandum available on request.

No. of Copies rec'd 012
List ABCDE

In accordance with the Commission's rules governing *ex parte* presentations, I am providing two (2) copies of this letter.

Thank you for your consideration

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard B. Geltman".

Richard B. Geltman
General Counsel

cc: Attached Service List

CERTIFICATE OF SERVICE

I, Richard B. Geltman, hereby certify that on this 7th day of November 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:

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

Honorable William E. Kennard, Chairman
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Honorable Susan Ness, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Honorable Harold W. Furchtgott-Roth,
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Honorable Michael K. Powell, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Honorable Gloria Tristani, Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Anna Gomez
Legal Advisors to Commissioner Kennard
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

ITS, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Rebecca Beynon
Legal Advisors to
Commissioner Furchtgott-Roth-F.C.C.
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Kyle Dixon
Legal Advisor to Commissioner Powell
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

David Goodfriend
Legal Advisor to Commissioner Ness
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Deena Shetler
Legal Advisor to Commissioner Tristani
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Christopher J. Wright, General Counsel
James Carr
Paula Silberthau
Debra Weiner
Office of the General Counsel
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Ms. Kathryn Brown, Chief of Staff
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Dorothy Attwood
Janice M. Myles
Margaret Egler
Jodie Donovan-May
Jared Carlson
Federal Communications Commission
Common Carrier Bureau, Room 544
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Kecia Boney
R. Dale Dixon, Jr.
Lisa Smith
Jodie Kelly
MCI Telecommunications Corporation
1801 Pennsylvania Avenue
Washington, D.C. 20006

L. Marie Guillory
Jill Canfield
National Telephone Cooperative Association
4121 Wilson Boulevard
Arlington, Virginia 22203-1801

Michael K. Kellogg
Geoffrey M. Klineberg
Paul G. Lane
Durward D. Dupre
Michael J. Zpevak
Kellogg, Huber, Hansen,

Todd & Evans, P.L.L.C.
1301 K Street, N.W.
Suite 1000 West
Washington, D.C. 20005

Jeffrey L. Sheldon
UTC, The Telecommunications Association
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

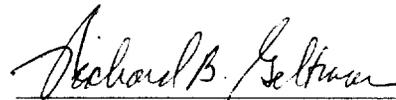
Gail L. Polivy
John F. Rapoza
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Jeremiah W. (Jay) Nixon
Ronald Molteni
Office of the Attorney General
Supreme Court Building
P.O. Box 899
207 W. High Street
Jefferson City, MO 65102

Carol Matthey
Claudia Pabo
Policy Division
Common Carrier Bureau
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Jordan Goldstein
Legal Advisor to Commissioner Ness
Common Carrier Issues
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

James Baller
Sean A. Stokes
Lana L. Meller
The Baller Herbst Law Group, P.C.
1820 Jefferson Place, N.W.
Suite 200
Washington, D.C. 20036



Richard B. Geltman
General Counsel
American Public Power Association
2301 M. Street, NW
Washington, DC 20037
(202) 467-2934 (phone)
(202) 467-2992 (fax)
rgeltman@appanet.org

Attorney for the
American Public Power Association

November 7, 2000