

1999 HOUSE FINANCE AND TAXATION

HB 1451

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1451

House Finance and Taxation Committee

Conference Committee

Hearing Date February 1, 1999

Tape Number	Side A	Side B	Meter #
1	x		27.9
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

REP. MICK GROSZ, DIST. 8 Introduced the bill. This bill prohibits political subdivisions from using right-of-way fees as revenue sources. Referred to the bill, covered and explained what all of the subsections meant. Presented amendments at the request of the league of counties which would require the utility companies pay for moving the right-of-way costs.

TERRY TRAYNOR, ASSOCIATION OF COUNTIES, Testified in support of the bill with the amendments as presented.

MEL KAMBEITZ, US WEST, Testified in support of the bill. Are working well with the cities and counties, also support the amendment the counties presented.

BILL WOCKEN, CITY ADMINISTRATOR, BISMARCK, Testified in opposition of the bill.

Stated problems with the bill, on page 4, line 1 and 2, subsection 7 in the definition of management costs. There are three terms there of concern. Definition of reasonable, definition of director and the definition of actual. Those terms could be reasonably debated by parties for some period of time. I would be concerned that there should be some definition of those terms. Section 4, pages 6 and 7, move into the litigation process, in the justification of costs. The cost accounting would be something we would take a look at. On the basis of which that accounting would be done, could be debated by a number of persons for a period of time. We believe this could lead to almost a constant set of arbitration or litigation sessions. The concern we have is the utility company has an opportunity to recover those costs, the local government does not. The third item I have is trying to find in the bill, the opportunity to include the costs of the capital holding costs for the introduction of the telecommunications lines on the public right-of-way. Likened this to taking the family car and paying for gas and oil and not worrying about the tires, etc. We are taking a look at a very narrow slice of time here, without taking a look at all of the costs. We do have problems in public right-of-ways, utilities right-of-ways, construction seams, when they have to dig a trench in the right-of-way, etc. Also referred to the traditional mutual agreement franchise contracts which they have had with the public utilities. Felt this has worked quite well.

REP. WINRICH You spoke about mutual agreement with utility companies, etc., what sort of practice is in place now in the city of Bismarck?

BILL WOCKEN We do have a franchise with all of our major utilities in the City of Bismarck. U.S. West is our local telecommunications carrier. We have franchise agreements with all of the

carriers. We have the opportunity to impose a franchise fee, but we have not imposed that at this point in time.

REP. GROSZ Stated that was one of the concerns the industry has, we can't put a price on it, so we just put a big franchise fee and it will cover it all. They see a problem with that.

CHARLIE WHITMAN, BISMARCK CITY ATTORNEY, Testified in opposition of the bill.

Related to Section 5 of the bill regarding the City of Bismarck's position. They have in their franchise with U.S. West they reserve the right to charge a franchise fee, but have never charged it. If you look at Section 5 and how it relates back to the prior section, it is not clear whether or not if we are not collecting it, we would lose that right. That section you have the right, under an existing franchise, but if we weren't collecting it on January 1, 1999, would we lose that ability to collect it when that franchise expired. That gets back to the word "existing". Another comment was a right-of-way is an extremely expensive thing that cities do and provide for their citizens. That cost is generally borne by property taxation. Some cities may choose to spread that cost a little differently then through property taxation. Using a franchise fee is just a different way of replenishing the cost. Basically, this bill says that the telecommunications companies will pay their actual impact into the right-of-way, but nothing forms a pact of using the right-of-way itself.

CONNIE SPRYNCYNATYK, LEAGUE OF CITIES, Testified in opposition of the bill. I don't know why this bill would be necessary. I don't know why you want to take away that local control. Submitted comments from the Board of City Commissioners of the City of Williston. See attached copy.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 2-1-99, Tape #2, Side A, Meter 10.5

REP. GROSZ Stated he would meet with the League of Cities representative to have some amendments drafted that would meet with their approval.

The bill will be acted on at a later date.

COMMITTEE ACTION 2-10-99, Tape #1, Side A, Meter #7.0

REP. GROSZ Presented amendments to committee members which had been prepared by the legislative council. He explained what the amendments did.

REP. GROSZ Made a motion to adopt the amendments as presented.

REP. RENNERFELDT Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. WARNER Questioned whether there was not a problem with the century code relating to the amendments.

REP. GROSZ Felt if there was a problem, they would need to go to court.

REP. WARNER Made a motion to adopt amendments which had been presented by Connie Spryncynatyk.

REP. WINRICH Second the motion. MOTION FAILED BY VOICE VOTE.

REP. GRANDE Made a motion for a DO PASS AS AMENDED.

REP. GROSZ Second the motion. MOTION CARRIED

12 Yes 2 No 1 Absent

REP. GROSZ Was given the floor assignment.

Please type or use black pen to complete

Date 2-10-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1451

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Rep. Grande Seconded By Rep. Grosz

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH		✓
RENNERFELDT	✓				
CLARK	✓				
FROELICH	A				
GRANDE	✓				
GROSZ	✓				
HERBEL		✓			
KROEBER	✓				
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT	✓				
WARNER	✓				
WIKENHEISER	✓				

Total 12 2
(Yes) (No)

Absent 1

Floor Assignment Rep. Grosz

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

HB 1451: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1451 was placed on the Sixth order on the calendar.

Page 5, line 6, replace "and" with an underscored comma and after "easements" insert ", and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42"

Page 5, line 22, after the underscored period insert "If requested by a political subdivision, a telecommunications company promptly shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at the company's sole cost and expense."

Page 6, line 4, replace "49-21-24" with "49-21-23"

Page 6, line 15, replace "sixty" with "thirty"

Page 7, line 15, after "assessed" insert "either"

Page 7, line 16, after "49-21-23" insert "or a city franchise fee pursuant to section 49-21-26"

Renumber accordingly

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1451

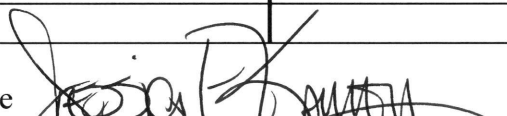
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1451

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 10, 1999

Tape Number	Side A	Side B	Meter #
1	x	x	4000-end, 0-5700
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1451. All senators were present.

Senator Nething introduced HB1451 to the committee. His testimony is included.

Representative Grosz testified in support of HB1451.

Senator Heitkamp asked Representative Grosz if this would cover other areas, like cable t.v.

Representative Grosz said that the main reason that they did it like that was because this area has a bigger need. He said that he knows that cable t.v will have a problem in the future and said that, if they were to amend them on, he would not have a problem with that.

Senator Heitkamp asked him why they are using 75 instead of 66. He said that it was just the number that political subdivisions felt comfortable using.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1451

Hearing Date March 10, 1999

Terry Traynor, Assistant Director for the Association of Counties, testified in support of HB1451. He said that 75 was used because that is what is consistent now in Title 24. 75 feet is the limit where a utility has to go to a political subdivision.

Bob Zent, Stark County Commissioner, testified in support of HB1451. He said that they want this to apply to all roads.

John Olsen, McCloud USA, testified on HB1451. He said that they support the bill and the amendments. He said that this will help them in gaining their right-of-way.

Mel Kambietz, US West, testified in support of HB1451.

Senator Krebsbach if this bill impacts US West. He said if they didn't pass this bill they would be impacted.

Jack McDonald, North Dakota Cable Television, testified in support of HB1451. He said that at the present time they are covered by franchise fees.

Bill Sorenson, Mayor of Bismarck, testified in opposition to HB1451. His testimony is included. Also included in his testimony are letters from other cities (Watford City, Williston, Jamestown, Killdeer and Fargo) that are opposed to this legislation.

Gregg Sund, Dickinson City Administrator, testified in opposition to HB1451. He said these are real issues that need to be dealt with, but he felt that this may be too early to deal with this type of legislation. He said that it is very far reaching and it has potential for a considerable effect on the cost of running a city and switching the cost of running many parts of the general fund operation back to the property tax payers.

Connie Sprynczynatik, League of Cities, testified in opposition to HB1451. Her testimony is included. She said that this is a classic example of a solution looking for a problem. She said that the authority should stay local and that this is bad for the tax payers.

Senator Mutch closed the hearing on HB1451.

Senator Heitkamp motioned for the committee to adopt the amendment number 90317.0301.

Senator Klein seconded his motion. The motion carried with a 7-0-0 vote.

Senator Heitkamp motioned to adopt the amendments that were offered by Terry Traynor.

Senator Krebsbach seconded his motion. The motion carried with a 7-0-0 vote.

Senator Krebsbach motioned to adopt the committee amendment. Senator Heitkamp seconded her motion. The motion carried with a 7-0-0 vote.

Senator Sand motioned for a do pass with amendments committee recommendation on HB1451.

Senator Klein seconded his motion. The motion carried with a 6-1-0 vote.

Senator Heitkamp will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 1, line 3, after "49-21-01" insert "and subdivision g of subsection 3 of section 49-23-04"

Page 1, line 4, after "definitions" insert "and time periods under the one-call excavation notice system", remove "and", and after "application" insert "; and to declare an emergency"

Page 7, after line 26, insert:

"SECTION 7. AMENDMENT. Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

Page 7, line 27, remove "**OF ACT**", replace "This" with "Sections 1 through 6 of this", and replace "applies" with "apply"

Page 7, after line 28, insert:

"SECTION 9. EMERGENCY. Section 7 of this Act is declared to be an emergency measure."

Renumber accordingly

*Amend
adopted*

Date: 3/16

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1451

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 90317.0301

Action Taken AMEND (90317.0301)

Motion Made By HEITKAMP Seconded By KLEIN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 5, line 29, after “subdivision,” insert “ in order to accomplish a necessary public improvement on the right of way”

Page 5, line 30, replace “the company’s” with “no cost to the political subdivision.
Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety.”

Page 5, line 31, delete “sole cost and expense.”

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 5, line 29, after "subdivision," insert "in order to accomplish a necessary public improvement on the right of way"

Page 5, line 30, replace "the company's" with "no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety."

Page 5, line 31, ^{remove} delete "sole cost and expense."

Renumber accordingly

Amend
Adopted

Date: 3/14

Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
H52 BILL/RESOLUTION NO. H51

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken AMEND (TECH TILTING)

Motion Made By HEITKAMP Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

March 16, 1999

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 1, line 3, after "49-21-01" insert "and subdivision g of subsection 3 of section 49-23-04"

Page 1, line 4, after "definitions" insert "and time periods under the one-call excavation notice system", remove "and", and after "application" insert "; and to declare an emergency"

Page 5, line 29, after the underscored comma insert "in order to accomplish a necessary public improvement on the right of way"

Page 5, line 30, replace "the company's" with "no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety"

Page 5, line 31, remove "sole cost and expense"

Page 7, after line 26, insert:

"SECTION 7. AMENDMENT. Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

Page 7, line 27, remove "**OF ACT**", replace "This" with "Sections 1 through 6 of this", and replace "applies" with "apply"

Page 7, after line 28, insert:

"SECTION 9. EMERGENCY. Section 7 of this Act is declared to be an emergency measure."

Re-number accordingly

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Page 1, line 3, after "49-21-01" insert "and subdivision g of subsection 3 of section 49-23-04"

Page 1, line 4, after "definitions" insert "and time periods under the one-call excavation notice system", remove "and", and after "application" insert "; and to declare an emergency"

Page 5, line 26, replace "Notwithstanding any other provision of law or home rule charter" with "Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee"

Page 5, line 27, replace "recover" with "impose after December 31, 1999," and after "fee" insert "to recover"

Page 5, line 29, after the underscored comma insert "in order to accomplish a necessary public improvement on the right of way"

Page 5, line 30, replace "the company's" with "no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety"

Page 5, line 31, remove "sole cost and expense"

Page 7, after line 26, insert:

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- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

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"SECTION 9. EMERGENCY. Section 7 of this Act is declared to be an emergency measure."

Re-number accordingly

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- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected."

Page 7, line 27, remove "**OF ACT**", replace "This" with "Sections 1 through 6 of this", and replace "applies" with "apply"

Page 7, after line 28, insert:

"SECTION 9. EMERGENCY. Section 7 of this Act is declared to be an emergency measure."

Re-number accordingly

March 24, 1999

JC3
3/24/99

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1451

Page 1, line 3, after "49-21-01" insert "and subdivision g of subsection 3 of section 49-23-04"

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Page 7, after line 28, insert:

"SECTION 9. EMERGENCY. Section 7 of this Act is declared to be an emergency measure."

Renumber accordingly

Date: 3/17
Roll Call Vote #: 7

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1451

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 90317.0303

Action Taken Do Pass Amendment (Committee)

Motion Made By Krebsbach Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Mutch	✓				
Senator Sand	✓				
Senator Krebsbach	✓				
Senator Klein	✓				
Senator Mathern	✓				
Senator Heitkamp	✓				
Senator Thompson	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment _____

Date: 3/17
Roll Call Vote #: 2 SR 5455065

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1451

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sand Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch	✓				
Senator Sand	✓				
Senator Krebsbach	✓				
Senator Klein	✓				
Senator Mathern		✓			
Senator Heitkamp	✓				
Senator Thompson	✓				

Total (Yes) 6 No 1

Absent _____

Floor Assignment Senator Heitkamp

REPORT OF STANDING COMMITTEE

HB 1451, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1451 was placed on the Sixth order on the calendar.

Page 1, line 3, after "49-21-01" insert "and subdivision g of subsection 3 of section 49-23-04"

Page 1, line 4, after "definitions" insert "and time periods under the one-call excavation notice system", remove "and", and after "application" insert "; and to declare an emergency"

Page 5, line 26, replace "Notwithstanding any other provision of law or home rule charter" with "Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee"

Page 5, line 27, replace "recover" with "impose after December 31, 1998," and after "fee" insert "to recover"

Page 5, line 29, after the underscored comma insert "in order to accomplish a necessary public improvement on the right of way,"

Page 5, line 30, replace "the company's" with "no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety"

Page 5, line 31, remove "sole cost and expense"

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Page 7, after line 28, insert:

"SECTION 9. EMERGENCY. Section 7 of this Act is declared to be an emergency measure."

Re-number accordingly

1999 TESTIMONY

HB 1451



POST OFFICE BOX 1306
WILLISTON, NORTH DAKOTA 58802-1306
PHONE (701) 572-8161
FAX (701) 572-8880
TDD (800) 366-6888
(State Relay)

CITY OF *Williston*

NORTH DAKOTA

*Submitted by
Connie Spryney atyk*

February 1, 1999

Finance and Tax Committee
North Dakota House of Representatives
State Capitol
Bismarck ND 58505

Dear Committee Members:

On behalf of the Board of City Commissioners, I wish to convey our opposition to HB1451 relating to telecommunications.

The City of Williston currently collects a fee for excavations by franchise holders, including telecommunications companies. The integrity of street or alley surfaces is damaged whenever a telecommunications company excavates, even though the excavation is repaired. This cost cannot be recovered through special assessments, since the telecommunications company does not own the property wherever its lines are located. This fee helps offset the cost for more frequent improvements to the street or alley, which are the result of the excavations and would otherwise be unfairly placed upon the property owners. HB1451 would not allow this fee or any others that would offset damages to city infrastructure.

We ask that you consider the burden that you would be placing upon our taxpayers and recommend "Do not pass" on HB1451.

Sincerely,

E. Ward Koeser
President
Board of City Commissioners

Ashley: Phone 288-3457 Fax 288-3457
Supt. Don Kosel
Prin. Gary Arlion

Beulah: Phone 873-2263 Fax 873-5273
Supt. Wilfred Volesky
Prin. Kelly Rasch

Bismarck Century: Phone 221-3705 Fax 221-3429
Supt. Dr. Lowell Jensen
Principal Dr. Rita Kelly
Century ITV Classroom Fax/Phone-

Bismarck High: Phone 221-3705 Fax 221-3730
Supt. Dr. Lowell Jensen
Prin. Tom Hesford
BHS Room #1(Art)
BHS Room #2 (Spanish)

Bismarck State College: Phone 224-5484 Fax 224-5536
Pat Gross
Denise Aberle
BSC ITV Classroom

Center: Phone 794-8778 Fax 794-3659
Supt.
Prin. Ed Boger

Glen Ullin: Phone 348-3590 Fax 348-3084
Supt. Pat Feist
Prin. Bob Johnson

Golden Valley: Phone 983-4256 Fax 983-4257
Supt. Walter Beseler

Halliday: Phone 938-4391 Fax 938-4373
Supt. Merlin Dahl
Prin. Maureen Olson

Hazen: Phone 748-2345 Fax 748-2342
Supt. Jerome Enget
Prin. Gary Zimmerman

Hebron: Phone 878-4442 Fax 878-4345
Supt. George Ding
Prin. Steve Maerschbecker

Linton: Phone 254-4138 Fax 254-4313
Sup/Prin Steve Nelson
Dep. FURMAN - Tech - Linton Grades - 254-7067

Mandan: Phone 663-0328 Fax 663-5398
Supt. Dr. Kent Hjelmstad
Prin. Dale Ekstrom

Napoleon: Phone 754-2244 Fax 754-2233
Supt. Tim Ketterling
Prin. Ed Sehn

New Salem: Phone 843-7846 Fax 843-7011
Supt. Gordon Davis
Prin. John Lynch

Stanton: Phone 745-3319 Fax 745-3718
Supt./Prin Dick Schaffan

Steele-Dawson: Phone 475-2243 Fax 475-2737
Supt. Mick Ableidinger
Prin. Dean Hieb

Tuttle: Phone 887-2564 Fax 887-2565
Supt. Mike Obrien
Prin. Scott Ulland

Turtle Lake-Mercer: Phone 448-2365 Fax 448-2368
Supt. Jack Adkins
Prin. Lui Ravnaas

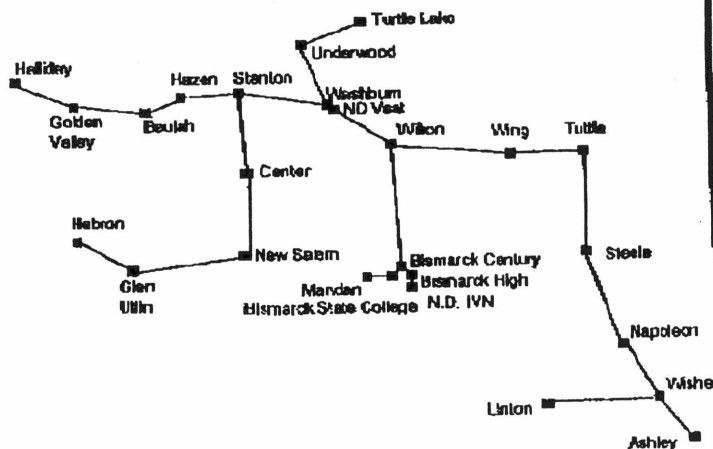
Underwood: Phone 442-3201 Fax 442-3704
Supt. Dan Martin
Prin. Lorell Jungling

Washburn: Phone 462-3228 Fax 462-3561
Supt. Bob Tollefson
Prin. Glen Weinmann

Wilson: Phone 734-8559 Fax 734-6944
Supt. Les Kramer
Prin. Roger Norris

Wing: Phone 943-2310 Fax 943-2318
Supt. Gene Kotaska
Prin. Gary Simmons

Wishek: Phone 452-2892 Fax 452-4273
Supt. Cleo Boschee
Prin. Brian Duhscherer



Great Western Network - Officers

	<u>Phone</u>	<u>Fax</u>
Director:		
Bill Strasser	462-8260	462-3574
Washburn School		
Box 280	228-2541 (cell phone)	
Washburn, ND 58577	strasser@sendit.nodak.edu	

Chairman: Bob Tollefson (Washburn)
Vice Chairman: Jerome Enget (Hazen)
Treasurer - LEA: Sharon Hanson
(Turtle Lake School District)

GWN Web Site:
<http://gwn.wrtc.com>



POST OFFICE BOX 1306
WILLISTON, NORTH DAKOTA 58802-1306
PHONE (701) 572-8161
FAX (701) 572-8880
TDD (800) 366-6888
(State Relay)

CITY OF *Williston* NORTH DAKOTA

March 1, 1999

Industry, Business and Labor Committee
North Dakota State Senate
State Capitol
Bismarck ND 58505

Dear Committee Members:

On behalf of the Board of City Commissioners, I wish to convey our opposition to HB1451 relating to telecommunications.

The City of Williston currently collects a fee for excavations by franchise holders, including telecommunications companies. The integrity of street or alley surfaces is damaged whenever a telecommunications company excavates, even though the excavation is repaired. This cost cannot be recovered through special assessments, since the telecommunications company does not own the property wherever its lines are located. This fee helps offset the cost for more frequent improvements to the street or alley, which are the result of the excavations and would otherwise be unfairly placed upon the property owners. HB1451 would not allow any inflationary increase to our existing fee or any others that would offset damages to city infrastructure, nor would it allow the combination of this fee with a franchise fee, as we currently have in place.

We ask that you consider the burden that you would be placing upon our taxpayers and recommend "Do not pass" on HB1451.

Sincerely,

E. Ward Koeser
President
Board of City Commissioners

RESOLUTION

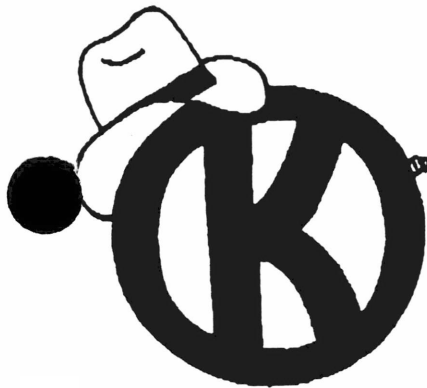
The City Council of Watford City, North Dakota, having considered House Bill 1451, specifically §49-21-23 "Fees", believes that such a law, if passed by the North Dakota State Legislature, is not in the best interests of the residents of Watford City. The main reason why House Bill 1451, specifically §49-21-23 "Fees", is not in the best interests of the residents of Watford City, is because it restricts Watford City's rights to charge a fee for telecommunication easements, which reduces revenue for the City.

THEREFORE, upon motion made and passed by the City Council at its regularly held meeting on March 1, 1999, the City Council of Watford City does hereby resolve to publicly oppose House Bill 1451, specifically §49-21-23 "Fees."

Dated this 1st. day of March, 1999.

CITY OF WATFORD CITY

By: 
Mayor William G. Bolken



"Home of the Cowboys"

City of Killdeer

P.O. Box 270

Killdeer, ND 58640-0270

701-764-5295

March 9, 1999

Chairman Duane Mutch
Industry, Business and Labor Committee
State House of Representatives
State Capitol
Bismarck, ND 58505

In Regard: Opposition to HB 1451.

Dear Chairman Mutch:

Please be aware that the City Commissioners for the City of Killdeer are in strong opposition to IIB 1451 and urge your defeat of the Bill. The Bill appears to prohibit Cities from charging fees for the use of its right-of-way for telecommunication carriers. The Bill also raises questions about applying franchise fees and other costs to repair, monitor, or administer the use of the right-of-way.

The City of Killdeer is most concerned about keeping municipal authority and decision making at the local level. The Bill, HB 1451, usurps municipal authority in favor of a Bismarck mandate.

The City of Killdeer strongly urges your taking a position opposing IIB 1451. Thank you.

Sincerely,

Paul A. Temanson (ID # 04468)
PAT/nb

CITY OF JAMESTOWN



NORTH DAKOTA

OFFICE OF MAYOR
102 THIRD AVENUE SOUTHEAST

PHONE 701/252-5900
FAX 701/252-5903

March 9, 1999

RE: HOUSE BILL 1451 - PROHIBITION OF RIGHT OF WAY FEES
FOR TELECOMMUNICATION CARRIERS

Dear Senator Mutch and members of the Senate Industry,
Business and Labor Committee:

I am writing to you on behalf of the City of Jamestown
relative to House Bill 1451 which will be heard by the Senate
Committee on Industry, Business, and Labor on Wednesday,
March 10, 1999, at 9:00 A.M.

The City of Jamestown, by motion made and passed unanimously,
went on record in strict opposition to this bill.

The language of the bill is believed to be an inappropriate
infringement upon the rights of local governments to control
the right of ways existing within its jurisdictional
boundaries.

In addition, the language of the bill, as drafted, raises
serious questions relative to the rights of cities to assess
franchise fees for the use of its right of ways, and
enforcement and requirements of the use of city right of
ways.

The City of Jamestown, by its passage of the motion, requests
that this bill be rejected.

Sincerely,

Charles Kourajian
Mayor
City of Jamestown



CITY OF FARGO

OFFICE OF THE CITY ATTORNEY

March 9, 1999

Senate Committee on Industry,
Business and Labor

SENT BY FAX
1-701-223-5174

RE: House Bill 1451 – Prohibition of Right-of-Way Fees for Telecommunications Carriers

Ladies and Gentlemen:

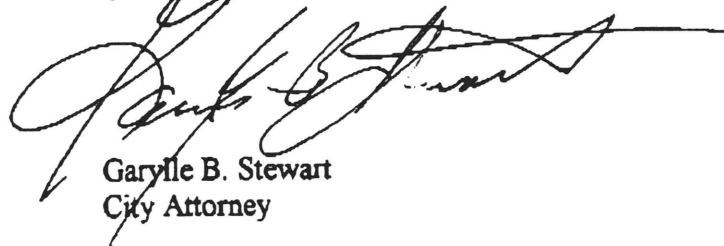
I am writing on behalf of the City of Fargo concerning House Bill 1451 to be heard by your committee on Wednesday, March 10, 1999, at 9:00 a.m. The bill in its present form has been opposed by the City of Fargo and, I believe, other cities.

I have always understood the purpose of Home Rule was to vest decisions of this kind with the entity concerned, namely, the city. The bill in its present form appears to remove local decision making which seems contrary to the provisions of Article VII of our Constitution relating to political subdivisions.

Further, the constitutionality of this bill could be called into question by virtue of Article VII, § 11 of the North Dakota Constitution.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY



Garylle B. Stewart
City Attorney

GBS/skr

cc: Board of City Commissioners

101-gbs\city\commission\senate bill 1451 – ltr to committee

March 24, 1999

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
HB 1451

CHAIRMAN MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of The North Dakota Cable Television Association. We ask that you consider our proposed amendments* and then give the bill a do pass.

We apologize for this late appeal. We had originally not pushed for inclusion in the bill because I thought most of our cable was already covered by existing franchises. However, I have since learned that MidContinent Cable Television, which is a co-owner of the Bismarck franchise, leases fiber optic cable to the Great Western Network, a consortium of 22 school districts in central North Dakota, for the consortium's interactive television project that enables them to share in programs generated through the Bismarck School District. Other cable stations have done likewise in other parts of the state.

As you can see from the attached exhibit, MidCo has had to lay cable through a considerable portion of central ND, including many political subdivisions where it does not have any franchise agreements. When putting cable down in these areas, it has had to pay a multitude of right of way fees, all determined on a seemingly arbitrary basis with no real relationship to actual costs incurred.

While cable television is committed to providing low cost access by educational entities (we cabled most of the various schools in North Dakota's major cities for free), we are forced to charge back to the Great Western Network the costs we incur to lay this cable outside our franchised areas.

HB 1451 will bring a greater element of fairness to the question of right of way fees, and for this reason we respectfully request your **FAVORABLE CONSIDERATION** of the amendments* and the bill as amended. If you have any questions, I'll be happy to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

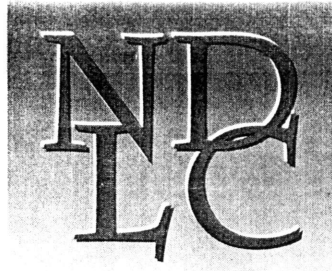
*SEE AMENDMENTS ON THE REVERSE SIDE

PROPOSED AMENDMENTS TO ENGROSSED HB 1451

- On page 5, line 15, after the word "telecommunications" insert "or cable television"
- On page 5, line 27, after the word "telecommunications" insert "or cable television"
- On page 5, line 29, after the word "telecommunications" insert "or cable television"
- On page 5, line 31, after the word "telecommunications" insert "or cable television"
- On page 6, line 1, after the word "telecommunications" insert "or cable television"
- On page 6, line 12, after the word "telecommunications" insert "or cable television"
- On page 6, line 18, after the word "telecommunications" insert "or cable television"
- On page 6, line 28, after the word "telecommunications" insert "or cable television"
- On page 6, line 31, after the word "telecommunications" insert "or cable television"
- On page 7, line 3, after the word "telecommunications" insert "or cable television"
- On page 7, line 6, after the word "telecommunications" insert "or cable television"
- On page 7, line 16, after the word "telecommunications" insert "or cable television"
- On page 7, line 22, after the word "telecommunications" insert "or cable television"
- On page 7, line 24, after the word "telecommunications" insert "or cable television"

Renumber accordingly

1710 Burnt Boat Drive
PO Box 2235
Bismarck, ND 58502-2235



Phone: (701) 223-3518
Fax: (701) 223-5174
Web: www.ndlc.org

North Dakota League of Cities

March 24, 1999

Members of the Senate Industry, Business and Labor Committee

Existing franchise agreements contain clauses that reserve the right to assess a franchise fee, even if one is not put into effect when the agreement is signed.

The attached agreements from Dickinson, Bismarck, Minot and Williston are examples. Included are franchise agreements included from gas, electric, telephone and cable television franchises. Please note the contract language about fees.

HB 1451 reaches into existing franchises which are contracts negotiated in good faith between the city and the private company. Passage of this bill will dictate changes in these signed contracts.

Telephone Companies

February 21, 1992

City Commission
City of Bismarck
Bismarck, North Dakota 58501

Gentlemen:

The U S WEST Communications Company, a corporation, its successors and assigns, hereby agrees to furnish telephone service primarily for use in transacting city business for the City of Bismarck, North Dakota, for a period of twenty (20) years beginning April 25, 1992, under terms and conditions stated as follows:

The U S WEST Communications Company agrees to furnish 25 Network Access Registers at 50 percent of the regular local exchange rate lawfully in effect at such locations in Bismarck as the City Commission may by resolution direct during the twenty (20) year period mentioned.

The Network Access Registers are to be located within the U S WEST Communications Company's Bismarck Base Rate Area.

Respectfully submitted,

U S WEST COMMUNICATIONS

Jessie Wahlert

The City Commission of the City of Bismarck, North Dakota, hereby agrees to and accepts the above.

ATTEST:

ACCEPTED BY:

Walter Bergquist
City Auditor

Bill Johnson
Mayor, City of Bismarck, North Dakota

April 25, 19 92

April 25, 19 92

ACCEPTANCE

Please take notice that U S WEST Communications, Inc. hereby accepts all the terms and provisions of an Ordinance of the city of Bismarck, North Dakota, entitled:

"AN ORDINANCE GRANTING TO U S WEST COMMUNICATIONS, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO USE AND OCCUPY THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES OF BISMARCK, NORTH DAKOTA, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING AND OPERATING A GENERAL TELEPHONE AND TELEGRAPH SYSTEM WITHIN SAID CITY."

Dated this 28 day of Feb., 1992.

U S WEST Communications, Inc.

By R. A. [Signature]

ATTEST:

Geri Lewis

Secretary
(My Commission Expires 11-19-92)

RESOLUTION

A Resolution granting to U.S. West Communications, Inc., a Corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Bismarck, North Dakota, a telephone communication system.

WHEREAS, pursuant to law, the City has the power to grant a non-exclusive franchise for a term of no more than 20 years; and,

WHEREAS, pursuant to City ordinance, the City may grant a franchise, by resolution, following public hearing; and,

WHEREAS, on the 25th day of February, 1992, a public hearing was held by the Board of City Commissioners; and,

WHEREAS, it is in the public interest that a franchise be granted to U.S. West Communications, Inc., for a telephone communication system.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

Article I. Definitions. As used herein, the following words and terms are defined as follows:

1. "City" means the City of Bismarck, North Dakota.
2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
3. "Grantee" means U.S. West Communications, Inc.

Article II. Grant of Authority . There is hereby granted by the City of Bismarck to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys, public ways of the City as now or hereafter constituted, necessary or proper for the maintenance and operation in the City of a telephone exchange and lines connected therewith for the purpose of constructing, maintaining, and operating, within, upon, and under the same, a telephone communication system for public and private use.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for telephone communication services for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

Article IV. Non-Exclusive Grant. The right to use and occupy the streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of the streets, alleys, public ways and places, to any person at any time during the period of this Franchise.

Article V. Compliance with Applicable Laws and Ordinances. The Grantee shall at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

Article VI. Insurance and Indemnification. Grantee shall maintain, at all times during the term of the Franchise, liability insurance, or a self-insurance program insuring Grantee against any and all damages, losses or claims of any nature arising out of Grantee's operations under the Franchise. A copy of the policy, or a statement outlining the coverages and funding level of the Grantee's self-insurance program shall be filed with the City at the time of acceptance of the Franchise. In addition, evidence of payment of required premiums, copies of endorsements, and notices of cancellation or non-renewal, or notice of material changes in the self-insurance program or its funding levels, shall be provided to the City, during the term of the Franchise. Grantee agrees to protect and save harmless City from any claims for damages or injuries resulting from Grantee's operations under the Franchise, and to defend and indemnify City against all claims, actions, proceedings, costs, damages and liabilities, including attorneys fees.

Article VII. Reservation of Rights. City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of the streets, alleys and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power. City also reserves the right, pursuant to state laws and rules and regulations of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, and City ordinances as such ordinances may be amended from time to time, to impose, by ordinance, a reasonable franchise tax for revenue purposes applicable to all franchises of like kind. This Franchise does not include the right to transmit a television or broadcast signal over the telephone lines, and the City specifically reserves any and all regulatory authority, including the right to change a franchise or use fee, that may be hereafter legislated.

Article VIII. Conditions on Street Occupancy.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, or trees or green areas, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, or City Forester, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, or trees or green areas, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of 20 years.

3. In the event that at any time during the period of this Franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. The Grantee shall not place poles or other fixtures where the same will interfere with any electric light, water hydrant or water main, or in such a manner as to interfere with the usual travel on said streets, alleys and public ways.

5. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

Article IX. Approval of Transfer. The Grantee shall not sell or transfer its plant or system to another, nor transfer any rights under this Franchise to another without the written approval of the City. In addition, no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise, and agreeing to perform all of the conditions thereof.

Article X. City Rights in Franchise.

1. City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of North Dakota.

2. Supervisions and Inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.

3. Procedure after Termination or Revocation. Upon the revocation of this Franchise by the Council, or at the end of this Franchise, the City shall have the right to determine whether the Company shall continue to operate and maintain its plant and distributing system pending the decision of the City as to the future maintenance and operation of the plant and distribution system.

Article XI. Term of Franchise. The Franchise and rights herein granted shall take effect and be in force from and after the final passage here, as required by law, and upon filing of acceptance by the Grantee with the City Auditor, and shall continue in force and effect

for a term of twenty (20) years after the effective date of this Franchise. Provided, that if the acceptance is not filed within thirty (30) days, the provisions of this Franchise shall be null and void.

APPROVED:

Bill Johnson
President, Board of City
Commissioners

ATTEST:

Grant Bergquist

ORDINANCE NO. 3067

AN ORDINANCE GRANTING PERMISSION TO MINOT TELEPHONE COMPANY, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN, AND OPERATE IN THE CITY OF MINOT, NORTH DAKOTA, FOR A TERM OF TWENTY (20) YEARS, A TELEPHONE AND COMMUNICATIONS SYSTEM FOR THE PURPOSE OF PROVIDING TELEPHONE AND COMMUNICATIONS SERVICE IN, THROUGH, AND TO SAID CITY AND TO ITS INHABITANTS, AND OTHERS, AND TO USE THE STREETS, ALLEYS, AND PUBLIC GROUNDS OF SAID CITY FOR SAID PURPOSES.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT, NORTH DAKOTA, THAT:

Section 1. DEFINITIONS. For the purposes of this ordinance, the following terms, phrases, words, and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directly.

(1) "City" is the City of Minot, North Dakota.

(2) "Company" is the grantee of the rights under this franchise.

(3) "Council" is the city council of the City of Minot, North Dakota.

(4) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

(5) "Indemnify" means that Indemnitor shall save Indemnitee harmless from all loss sustained by Indemnitee on account of any suit, judgement, execution, claim, or demand, whatsoever, including attorneys' fees and court costs, resulting from negligence on the part of Indemnitor arising out of the operations referred to. The Indemnitee shall notify the Indemnitor within ten (10) days after presentation of any claim or demand, either by suit or otherwise, made against the Indemnitee on account of any negligence as aforesaid on the part of the Indemnitor.

Section 2. GRANT OF AUTHORITY. There is granted to Minot Telephone Company, a North Dakota corporation, its successors and assigns, hereinafter referred to as the "Company", during the term hereof, the right and privilege of constructing, operating, and maintaining in the City of Minot, North Dakota, a telephone and communications system, and to use the public right-of-way accordingly, as long as the company's plant and improvements therein shall be located so as not to interfere unnecessarily with the safety and convenience of ordinary travel along and over said

service shall be at the will of the Company except that the Company does hereby agree that it shall not cease providing service or remove its facilities except upon reasonable notice to the City, and the City does hereby agree that it shall not direct company to cease providing service or to remove its facilities except upon reasonable notice to Company.

(3) RIGHT OF ACQUISITION BY THE CITY. Pursuant to the North Dakota constitution and State Law, the City at any time shall have the right, by eminent domain to condemn and take over the property of the utility as provided by law.

Section 7. TAXATION. The City reserves the full right of taxation of the Company allowed to it under applicable Federal and State laws.

Section 8. RATES. The Company agrees that it shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having competent jurisdiction to fix just, reasonable and compensatory telephone rates.

Section 9. TERM OF FRANCHISE. This ordinance shall be in full force and effect from and after its passage and publication, as provided by law, and shall continue in force and effect for a term of twenty (20) years after the effective date. Upon written request of either party, the terms and conditions of this franchise may be reviewed at the end of each five (5) year period. Any changes made by agreement of the parties involved as a result of one of these reviews shall become binding insofar as the balance of the franchise term is concerned. The Company shall, if it accepts this ordinance, and the rights hereby granted, file a written acceptance of the franchise rights hereby granted with the City Clerk within ninety (90) days from the date of the publication of this ordinance. If said acceptance is not filed, the provisions of this ordinance shall be null and void.

Section 10. ASSIGNMENT. Company shall have full right and authority to assign to any person, persons, firm, or corporation all the rights conferred upon it by this Ordinance, provided that the assignee of such rights, by accepting such assignment, shall become subject to the terms and provisions of this Ordinance, and amendments thereto.

Section 11. UNDERGROUNDING OF EXISTING OVERHEAD FACILITIES. The City recognizes that a need exists for the placement of telephone facilities underground in certain instances and it will adopt appropriate ordinances as necessary to meet the needs of the public and municipality in this respect.

SECTION 12. EFFECTIVE DATE. This ordinance shall take effect and be in force on its passage and approval or upon expiration of the existing franchise, whichever is later.

PASSED FIRST READING: February 3, 1992


PASSED SECOND READING: March 2, 1992

APPROVED:



Dr. George M. Christensen, Mayor

ATTEST:



David W. Waing, City Clerk

Investor-owned Electric Companies

RESOLUTION

A Resolution granting to Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., a Corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Bismarck, North Dakota, an electric distribution system for transmitting and distributing electric energy for public and private use.

WHEREAS, pursuant to law the City has the power to grant a non-exclusive franchise for a term of no more than twenty years; and,

WHEREAS, pursuant to city ordinance the City may grant a franchise, by resolution, following public hearing; and,

WHEREAS, on the 12th day of May, 1987, a public hearing was held by the Board of City Commissioners; and,

WHEREAS, it is in the public interest that a franchise be granted to Montana Dakota Utilities Co., a division of MDU Resources Group, Inc., for an electric distribution system.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

Article I. Definitions. As used herein, the following words and terms are defined as follows:

1. "City" means the City of Bismarck, North Dakota.
2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
3. "Grantee" means Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

Article II. Grant of Authority. There is hereby granted by the City to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys and public grounds of the city as now, or hereafter constituted, for the purpose of constructing, maintaining and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

Article IV. Non-Exclusive Grant. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys and public grounds of the City for like purposes.

Article V. Compliance With Laws and Ordinances. Grantee shall at all times during the life of this franchise comply with all applicable laws and ordinances of the City.

Article VI. Reservation of Rights. City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of the streets, alleys and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power. City also reserves the right, pursuant to state laws and rules and regulations of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, and City ordinances as such ordinances may be amended from time to time, to impose, by ordinance, a reasonable franchise tax for revenue purposes applicable to all franchises of like kind.

Article VII. Conditions on Street Occupancy.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Wherever feasible and practical, new transmission lines, and existing lines whenever they are modernized, upgraded or extensively rehabilitated, shall be placed underground, or they shall be constructed in a manner that causes minimum interference with the landscape or appearance of the city.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of six years.

3. In event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. The Grantee shall not place poles or other fixtures where the same will interfere with any electric light, water hydrant or water main, or in such a manner as to interfere with the usual travel on said streets, alleys and public ways.

ACCEPTANCE OF FRANCHISE

MONTANA-DAKOTA UTILITIES CO., a Division of MDU Resources Group, Inc., a corporation, hereby accepts the terms and conditions of that certain Resolution _____ enacted by the governing body of the City of BISMARCK, BURLEIGH County, North Dakota, the same being an ordinance granting to said Company, its successors and assigns, a franchise to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of said City, an electric distribution system for transmitting and distributing electric energy for public and private use, which ordinance was duly and finally passed, adopted and approved by the governing body of said City on the 12th day of May, 19 87.

Dated this 29th day of May, 19 87.

MONTANA-DAKOTA UTILITIES CO.
A Division of MDU Resources Group, Inc.

BY Joseph R. Mitchell
President

ORDINANCE NO. 3092

AN ORDINANCE GRANTING TO NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF MINOT, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHINGS OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF MINOT, WARD COUNTY, NORTH DAKOTA, DOES ORDAIN:

SECTION 1. Definitions

- (1) In this Ordinance "City" means the City of Minot, County of Ward, State of North Dakota.
- (2) "City Utility System" refers to the facilities used for providing any public utility service owned or operated by City or agency thereof, including sewer and water service.
- (3) "Company" means Northern States Power Company, a Minnesota corporation, its successors and assigns.
- (4) "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Manager and Chief Executive, thereof at Northern States Power Company 1206 - 5th Ave. So., Grand Forks, North Dakota, 58201. Notice to City shall be mailed to the City Manager.
- (5) "Public grounds" means city parks and squares as well as land held by the City for the purpose of open space.
- (6) "Public ways" means streets, avenues, alleys, parkways, walkways, easements and other public rights of way within the City.

SECTION 2. Grant of Franchise

City hereby grants Company, for a period of 20 years from the date hereof, the right to transmit and furnish electric energy for light, heat, power and other purposes for public and private use within and through the limits of City as its boundaries now exist or as they may be extended in the future. For these purposes, Company may construct, operate, repair and maintain electric distribution system and electric transmission lines, including poles, pole lines, duct lines, fixtures, and any other necessary appurtenances in, on, over, under and across the public ways and public grounds of City. Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to the further provisions of this franchise.

such performance is nevertheless ordered or directed by City after notice of Company's determination. In the event a suit shall be brought against City under circumstances where the above agreement to indemnify applies, Company at its sole cost and expense shall defend City in such suit if written notice thereof is promptly given to Company within a period wherein Company is not prejudiced by lack of such notice. If such notice is not reasonably given as hereinbefore provided, Company shall have no duty to indemnify nor defend. If Company is required to indemnify and defend, it will thereafter have complete control of such litigation, but Company may not settle such litigation without the consent of City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense of immunity otherwise available to City; and Company, in defending any action on behalf of City shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

SECTION 8. Vacation of Public Ways

The City shall give the Company at least two weeks' prior notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electrical facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to the Company for failure to specifically preserve a right-of-way, under North Dakota law.

SECTION 9. Revenue Rights Reserved

Nothing herein shall be construed as an abandonment by the City of its right to impose taxes and fees on the Company under the then applicable law.

SECTION 10. Written Acceptance

Company shall, if it accepts this ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this ordinance.

SECTION 11. Provisions of Ordinance

(1) Every section, provision, or part of this ordinance is declared separate from every other section, provision or part; and if any section, provision or part shall be held invalid, it shall not affect any other section, provision or part. Where a provision of any other City ordinance conflicts with the provisions of this ordinance, the provisions of this ordinance shall prevail.

(2) If either party (City or Company) asserts that the other party is in default in performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. If the dispute is not resolved within 30 days of the written notice, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

(3) This ordinance constitutes a franchise agreement between the City and the Company as only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 12. Publication Expense

The expense of any publication of this franchise ordinance required by law shall be paid by Company.

SECTION 13. Effective Date

This ordinance shall take effect and be in force after its passage, approval, and any publication as required by law, and upon acceptance by the Company as required by Section 10.


PASSED FIRST READING: July 6, 1992

PASSED SECOND READING: September 8, 1992

APPROVED:


George Christensen, Mayor

ATTEST:


David W. Waand, City Clerk

Electric Cooperatives

ORDINANCE NO. 1146

AN ORDINANCE GRANTING TO WEST PLAINS ELECTRIC COOPERATIVE, INC., A COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A LIMITED FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF DICKINSON, STARK COUNTY, NORTH DAKOTA AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRIC ENERGY FOR ALL PUBLIC AND PRIVATE USES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF DICKINSON, NORTH DAKOTA, AS FOLLOWS:

Section 1: For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and West Plains Electric Cooperative, Inc. is designated and referred to as "Grantee". Any reference to either includes their respective successors and assigns.

Section 2: There is hereby granted to Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, and in and under the same, an electric distribution system for transmitting and distributing electric energy for all public and private uses. Grantee's franchise rights shall be limited as follows:

- (a) To all platted additions of the municipality, including additions identified as Auditor's Plats, in which Grantee is now and has heretofore operated its electric distribution or transmission system, and
- (b) To all areas which are hereafter annexed to the municipality and in which Grantee is, at the time of annexation, operating its electric distribution or transmission system, and
- (c) To all areas of the municipality, now existing or hereafter annexed, in which Grantee may legally operate its electric distribution or transmission system, and
- (d) Notwithstanding the foregoing, the Grantee shall have the right to extend its electric distribution or transmission system within the areas described above and may use all streets, alleys and public grounds of municipality outside the areas described above to transmit electricity to other areas.

The rights herein granted to Grantee shall further be subject to all valid laws, rules and regulations now or hereafter adopted and promulgated by any State or Federal authority having jurisdiction over Grantee and which may expand or limit Grantee's right to serve pursuant to this franchise.

Section 3: Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use during twenty-four (24) hours of each day at such reasonable rates as may be promulgated by Grantee and as the same may be regulated by United States of America, its agencies, or by the State of North Dakota or its agencies.

Section 4: This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

Section 5: During the construction, maintenance or enlargement of any part of said system, said Grantee shall not unnecessarily impede or block travel in said streets and highways in said

City and shall leave all streets, highways, alleys, sidewalks, curbs, lanes and public places and all grounds disturbed by said construction in good condition upon the completion of said work. All signing and traffic regulation shall conform to the Manual on Uniform Traffic Control Devices (MUTCD).

The City reserves the right to make and adopt, and the rights and privileges hereby granted shall at all times be and remain subject to such reasonable regulations of a police nature as it may deem necessary for the best interests of the City, but the city will not by any such regulations or by acts of its own or agents do anything to prevent or interfere with the Grantee carrying on its business in accordance with the franchise hereby granted.

Section 6: In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in manner approved by the Engineering Superintendent or Engineer, replace and restore such street, sidewalk, alley, public way, or paved areas in as good a condition as before the work involving such disturbance was done. Prior to the disturbance of any street, sidewalk, alley, public way or paved area, Grantee shall obtain a permit from the City Engineering Department at least two (2) days prior to said disturbance. Grantee shall not be required to pay a fee for said permit.

Section 7: Grantee, at its expense, shall protect, support, temporarily disconnect, relocate along, under, or over any street, alley, or public place, or remove from any street, alley, or public place, any equipment or facilities when required by the City Engineer of City by reason of traffic conditions, public safety, street excavation, street construction, change or establishment of street grade, installations of sewers, drains, water pipes, power lines or tracks, or any other type of structures or improvements by City or other public agencies when acting in as governmental or in a proprietary capacity, or for any public improvement, not limited to the foregoing, of any character whatever.

Section 8: The City reserves the right, if not prohibited by the laws of the State of North Dakota, to make charge of the Grantee for this franchise, which charge shall be subject to change by the Dickinson City Commission at its first meeting in January in every year of the franchise period, except for the year 1997, during which year it can be changed at any time. Prior to the imposition of any franchise charge or fee, or change to an existing franchise charge or fee, the City shall provide the Grantee thirty (30) days written notice of its intent to impose or change said fee, and shall hold a public hearing thereon.

Section 9: The municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee.

Section 10: Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution systems, and its use of the streets, alleys, and public grounds of the Municipality.


Section 11: Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.


Section 12: Within thirty (30) days after passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the municipality, its written acceptance of this franchise.

Section 13: This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

Section 14: ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED

Section 15: EFFECTIVE DATE: THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER FINAL PASSAGE.


Fred S. Gengler, President
Board of City Commissioners

ATTEST

Greg Sund, City Administrator

First Reading: April 08, 1997
Second Reading: April 21, 1997
Final Passage: April 21, 1997

RECEIVED

MAY 06 1997

ACCEPTANCE OF FRANCHISE

FINANCE DEPT.

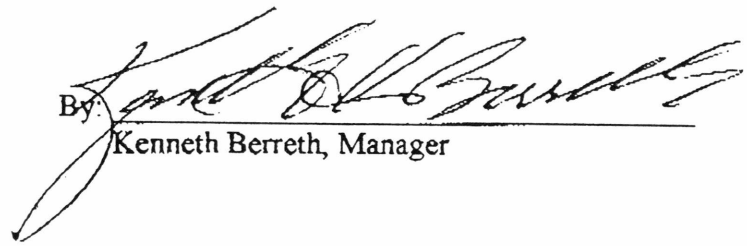
WEST PLAINS ELECTRIC COOPERATIVE, INC., does hereby accept the franchise granted it by the City of Dickinson pursuant to Ordinance No. 1146 adopted April 21, 1997 and entitled:

AN ORDINANCE GRANTING TO WEST PLAINS ELECTRIC COOPERATIVE, INC., A COOPERATIVE CORPORATION, ITS SUCCESSORS AND ASSIGNS, A LIMITED FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF DICKINSON, STARK COUNTY, NORTH DAKOTA AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRIC ENERGY FOR ALL PUBLIC AND PRIVATE USES.

That said ordinance and franchise was duly accepted, together with all of the terms and conditions therein contained by franchisee, West Plains Electric Cooperative, Inc., at a special meeting of its Board of Directors on April 23, 1997 with direction that its manager file with the City Auditor of the City of Dickinson written acceptance of the same.

Dated this 5 day of May, 1997.

WEST PLAINS ELECTRIC COOPERATIVE, INC

By: 
Kenneth Berreth, Manager

ORDINANCE NO. 3101

AN ORDINANCE GRANTING TO VERENDRYE ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF MINOT, NORTH DAKOTA, AN ELECTRIC DISTRIBUTION SYSTEM AND TRANSMISSION LINES, INCLUDING NECESSARY POLES, POLE LINES, FIXTURES AND APPURTENANCES, FOR THE FURNISHINGS OF ELECTRIC ENERGY TO THE CITY AND ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC WAYS AND PUBLIC GROUNDS OF SAID CITY FOR SUCH PURPOSES.

THE CITY COUNCIL OF THE CITY OF MINOT, WARD COUNTY, NORTH DAKOTA, DOES ORDAIN:

SECTION 1. Definitions

(1) In this Ordinance "City" means the City of Minot, County of Ward, State of North Dakota.

(2) "City Utility System" refers to the facilities used for providing any public utility service owned or operated by City or agency thereof, including sewer and water service.

(3) "Company" means Verendrye Electric Cooperative, Inc., its successors and assigns.

(4) "Notice" means a writing served by any party or parties on any other party or parties. Notice to Company shall be mailed to the General Manager and Chief Executive, thereof at Verendrye Electric Cooperative, Inc., Route 1, Box 13, Velva, North Dakota, 58790-0083. Notice to City shall be mailed to the City Manager.

(5) "Public grounds" means city parks and squares as well as land held by the City for the purpose of open space.

(6) "Public ways" means streets, avenues, alleys, parkways, walkways, easements and other public rights of way within the City.

SECTION 2. Grant of Franchise

There is hereby granted to Verendrye Electric Cooperative, Inc. (company) for a period of 20 years from the date hereof, the right and privilege of erecting and enlarging, operating, repairing and maintaining, in, on, over, under and across the streets, alleys and public ways of city, electric transmission lines and an electric distributing system, including all poles, pole lines, masts, wires, cables, lamps, transformers, and other fixtures and appurtenances, usually, conveniently or necessarily used in connection therewith, for the purpose of transmitting to and through city electric energy, and for the purpose of transmitting and furnishing electric energy for light, heat, power and other purposes, for public and private use in and to city and the inhabitants thereof, and others, and for the purpose of transmitting to and through city such electric energy.

of City shall be entitled to assert in any action every defense or immunity that City could assert in its own behalf.

SECTION 8. Vacation of Public Ways

The City shall give the Company at least two weeks' prior notice of a proposed vacation of a public way. Except where required solely for a City improvement project, the vacation of any public way, after the installation of electric facilities, shall not operate to deprive Company of its rights to operate and maintain such electrical facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to Company. In no case, however, shall City be liable to the Company for failure to specifically preserve a right-of-way, under North Dakota law.

SECTION 9. Privilege Tax.

For the privilege of distribution and furnishing electric power to consumers in the city, the city may impose an annual tax upon the company, the amount of such tax to be measured and limited in the manner provided by the North Dakota Century Code Chapter 57-33-04.

SECTION 10. Written Acceptance

Company shall, if it accepts this ordinance and the rights and obligations hereby granted, file a written acceptance of the rights hereby granted with the City Clerk within ninety (90) days after the final passage and any required publication of this ordinance.

SECTION 11. Provisions of Ordinance

(1) Every section, provision, or part of this ordinance is declared separate from every other section, provision or part; and if any section, provision or part shall be held invalid, it shall not affect any other section, provision or part. Where a provision of any other City ordinance conflicts with the provisions of this ordinance, the provisions of this ordinance shall prevail.

(2) If either party (City or Company) asserts that the other party is in default in performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. If the dispute is not resolved within 30 days of the written notice, either party may commence an action in District Court to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

(3) This ordinance constitutes a franchise agreement between the City and the Company as only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person

as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 12. Publication Expense

The expense of any publication of this franchise ordinance required by law shall be paid by Company.

SECTION 13. Effective Date

This ordinance shall take effect and be in force after its passage, approval, and any publication as required by law, and upon acceptance by the Company as required by Section 10.

PASSED FIRST READING: August 3, 1992

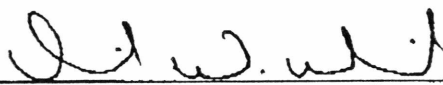
PASSED SECOND READING: September 8, 1992

APPROVED:



George Christensen, Mayor

ATTEST:



David W. Waing, City Clerk

RESOLUTION

A Resolution granting to Capital Electric Cooperative, Inc., a corporation, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Bismarck, North Dakota, an electric distribution system for transmitting and distributing electric energy for public and private use.

WHEREAS, pursuant to law the City has the power to grant a non-exclusive franchise for a term of no more than twenty years; and

WHEREAS, pursuant to city ordinance the City may grant a franchise, by resolution, following public hearing; and

WHEREAS, on the 25th day of May, 1993, a public hearing was held by the Board of City Commissioners; and

WHEREAS, it is in the public interest that a franchise be granted to Capital Electric Cooperative, Inc., for an electric distribution system.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Bismarck, North Dakota:

Article I. Definitions. As used herein, the following words and terms are defined as follows:

1. "City" means the City of Bismarck, North Dakota.
2. "Franchise" means all of the rights and obligations extended by City to Grantee herein.
3. "Grantee" means Capital Electric Cooperative, Inc.

Article II. Grant of Authority. There is hereby granted by the City to the Grantee, subject to the conditions contained herein, the right and privilege to occupy and use the streets, alleys and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electric energy for public and private use.

1. In order to avoid a duplication of facilities between the Grantee and other electrical franchises, the authority granted Capital Electric under this franchise is limited geographically to the areas within the city described in the Area Service Agreement dated July 5, 1973 executed by Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Co., as modified by Amendment dated October 25, 1990, and any future amendments to the Area Service Agreement agreed to by Grantee and Montana-Dakota Utilities. The Grantee shall enjoy all of the privileges and rights described in the Area Service Agreement. If

the Area Service Agreement and Amendments thereto are canceled by either electric supplier during the term of this franchise, all privileges, rights, obligations and restrictions as therein stated shall continue to apply to both Capital Electric Cooperative, Inc., and Montana-Dakota Utilities Co. A copy of the Area Service Agreement and Amendment are attached as Exhibits A and B to this resolution.

Article III. Grantee's Obligations. Grantee shall maintain an efficient distribution system for furnishing electric energy for public and private use at such reasonable rates as may be approved by and under such orders, rules or regulations as may be issued by any federal or state agency having or obtaining jurisdiction thereof.

Article IV. Non-Exclusive Grant. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys and public grounds of the City for like purposes.

Article V. Compliance With Laws and Ordinances. Grantee shall at all times during the life of this franchise comply with all applicable laws and ordinances of the City.

Article VI. Reservation of Rights. City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of the streets, alleys and public grounds by Grantee, and to enact all ordinances necessary and proper in the exercise of that power. City also reserves the right, pursuant to state laws and rules and regulations of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, and City ordinances as such ordinances may be amended from time to time, to impose, by ordinance, a reasonable franchise tax for revenue purposes applicable to all franchises of like kind.

Article VII. Conditions on Street Occupancy.

1. All transmission and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. Wherever feasible and practical, new transmission lines, and existing lines whenever they are modernized, upgraded or extensively rehabilitated, shall be placed underground, or they shall be constructed in a manner that causes minimum interference with the landscape or appearance of the city.

2. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good

condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of six years.

3. In event that at any time during the period of this franchise the City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. The Grantee shall not place poles or other fixtures where the same will interfere with any electric light, water hydrant or water main, or in such a manner as to interfere with the usual travel on said streets, alleys and public ways.

5. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

Article VIII. Insurance and Indemnification. Grantee shall maintain, at all times during the term of the franchise, liability insurance, insuring Grantee and the City against any and all damages, losses or claims of any nature arising out of Grantee's operations under the franchise, in the minimum amount of \$500,000. A copy of the policy shall be filed with the City at the time of acceptance of the franchise, along with evidence of payment of required premiums and copies of endorsements, and notices of cancellation or non-renewal, during the term of the franchise. Grantee agrees to protect and save harmless the City from any claims for damages or injuries resulting from Grantee's operations under the franchise, and to defend and indemnify the City against all claims, actions, proceedings, costs, damages and liabilities, including attorneys fees.

Article IX. Assignment. Grantee may assign this franchise to another party or corporation, subject to all obligations of the Grantee hereunder, with the consent of the City, which may not be unreasonably withheld.

Article X. Acceptance. Within thirty days after Grantee is notified of adoption of this Resolution, Grantee shall file with the City Auditor its written acceptance of this franchise, subject to all of its terms and conditions.

Article XI. Term. This franchise shall continue and remain in full force and effect for a period of twenty years from the date upon which it is accepted by the Grantee.

Adopted this 25th day of May, 1993.

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

I, Dan Dahlgren, do hereby certify that I am duly appointed and qualified to execute contracts and certify documents on behalf of the City of Bismarck, North Dakota, and that the attached is a full, true and correct copy of the Resolution adopted by the Board of City Commissioners at its meeting of May 25, 1993.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Bismarck, North Dakota, this 26th day of May, 1993.

(S E A L)



Dan Dahlgren, City Coordinator
Bismarck, North Dakota

R2/CAPIT

Gas Company

RESOLUTION GRANTING FRANCHISE

A RESOLUTION GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC. A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS, AND PUBLIC GROUNDS OF THE CITY OF BISMARCK, NORTH DAKOTA, A GAS DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING NATURAL OR MANUFACTURED GAS, OR A MIXTURE OF BOTH, FOR PUBLIC AND PRIVATE USE.

WHEREAS, pursuant to law, the City of Bismarck has the power to grant a non-exclusive franchise for a term of no more than twenty (20) years; and,

WHEREAS, pursuant to City ordinance, the City may grant a franchise, by resolution, following public hearing; and,

WHEREAS, on the _____ day of _____, 1999, a public hearing was held by the Board of City Commissioners; and,

WHEREAS, it is in the public interest that a franchise be granted to Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., for a gas distribution system.

NOW, THEREFORE, BE IT RESOLVED BY the Board of City Commissioners of the City of Bismarck, North Dakota:

Section 1. For convenience, herein, the City of Bismarck is designated and referred to as "City" and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

Section 2. There is hereby granted to Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys, and public grounds of the City as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use. Such gas distribution system shall be so located in the streets, alleys, or public places as not to obstruct or interfere with any pipes, sewers, drains, or other structures already installed or hereafter to be installed. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good condition as before said work was commenced and shall maintain said restoration in an approved condition for two (2) years.

Section 3. Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota. The Grantee shall keep on file with the City Administrator, for public use, copies of its rate rules and regulations applicable to the furnishing of gas service in the City of Bismarck.

Section 4. This franchise shall not be exclusive and shall not be construed to prevent the City from granting to any other party the right to use the streets, alleys, and public grounds of the City for like purposes.

Section 5. The City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee. If at any time during the period of this franchise the City shall lawfully elect to alter or change the grade of any street, alley, or other public way, or shall elect any construction, reconstruction, relocation or change of streets, alleys, or public ways, the Grantee, on written notice, shall remove, relay, and relocate its mains and service pipes and gas fixtures at its own expense.

Section 6. Grantee shall indemnify and save and hold the City harmless from any loss or damage on account of any suit, judgment, claim or demand whatsoever due to the construction, installation and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the City. Grantee shall maintain liability coverage, either through insurance policies or through a self-insurance fund, in an amount of not less than \$1,000,000.

Section 7. Grantee shall not assign this franchise to any other party, or corporation, without City approval, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

Section 8. Within thirty (30) days after Grantee is notified of passage and final approval of this Resolution, Grantee shall file with the City Administrator of the City its written acceptance of this franchise.

Section 9. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date of passage of this resolution.

Section 10. The right is reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police powers, provided such regulations shall be reasonable and not in conflict with the rights herein granted. The city also reserves the right, pursuant to state laws and rules of the Public Service Commission and the City's Home Rule Charter, as such charter may be amended from time to time, to impose, by ordinance, a reasonable franchise fee for cost recovery, rental and/or revenue purposes applicable to all franchises of like kind.

City of Bismarck

ATTEST

Bill Sorensen
President
Board of City Commissioners

W.C. Wocken
City Administrator

STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

On this _____ day of March 1999, before me personally appeared Bill Sorensen, President of Board of City Commissioners and W.C. Wocken, City Administrator, known to me to be the persons who are described in, and who executed the within and foregoing instrument and who severally acknowledged to me that they executed the same.

Kimberla K. Bohrer
Notary Public
State of North Dakota
My Commission Expires: _____

Cable Television Companies

ORDINANCE NO. 3157

AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE ORDINANCE, AND CONDITIONALLY EXTENDING THE CABLE TELEVISION FRANCHISE OF TCI OF NORTH DAKOTA, INC.

Be it Ordained by the City Council of the City of Minot:

§1. Section 8(e) of Appendix B, Subpart V, Division 3 of the City of Minot Code of Ordinances relating to cable television franchises is hereby amended to read as follows:

(8)(e) The franchisee shall have the authority at its own expense to trim trees to the extent they are located within streets, so as to prevent interference with the physical plant of the franchisee, but the trimming is to be done with the approval and under the supervision and direction of the City Forester.

§2. Section 12 of Appendix B, Subpart V, Division 3 of the City of Minot Code of Ordinances relating to cable television franchises is hereby repealed.

§3. The ^{follows this page} fifteen (15) year cable television franchise previously granted to TCI of North Dakota, Inc., shall be extended so as to expire fifteen years from the effective date of this ordinance, upon the occurrence of both of the following two conditions precedent:

- (a) TCI of North Dakota, Inc. begins rebuilding its cable television system in Minot with fiber optics within one year of the effective date of this ordinance.
- (b) TCI of North Dakota, Inc. completes the rebuilding of all or substantially all of its cable television system in Minot with fiber optics within two years of the effective date of this ordinance.

§4. This ordinance shall be in effect upon final passage and approval.

PASSED FIRST READING: July 6, 1993

PASSED SECOND READING: September 7, 1993

APPROVED:

George M. Christensen
George M. Christensen, Mayor

ATTEST:

David W. Waand
David W. Waand, City Clerk

ORDINANCE 2503

AN ORDINANCE TO CREATE DIVISION 3 ENTITLED "CABLE TELEVISION FRANCHISES" OF SUBPART V OF APPENDIX B OF THE CITY OF MINOT CODE OF ORDINANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:

§1. Division 3 entitled "Cable Television Franchises" of subpart V of appendix B of the City of Minot Code of Ordinances is hereby enacted to read as follows:

DIVISION 3

CABLE TELEVISION FRANCHISES

Sec. 1. Definitions.

City means the City of Minot as a governmental entity or as geographical area or both as the context may suggest.

Council means the City of Minot City Council.

Franchisee means the person holding a City of Minot franchise under this division.

Street means any public street, public avenue, public highway, public thoroughfare, or other public right-of-way.

System means a cable television system which in turn means any arrangement or means of transmitting a television signal other than by electromagnetic radiation through the ether.

Sec. 2. Franchise Required.

No person shall operate a system within the City of Minot without a franchise issued by the City Clerk at the direction of the Council, if any portion of the physical plant of the system is located within the City streets.

Sec. 3. Obtaining Franchise.

(a) Any person may obtain a franchise by (1) paying the franchise application fee, (2) submitting a properly completed application for a franchise, and (3) filing the appropriate franchise bond.

(b) The franchise application fee shall be in the amount of Three Thousand Dollars (\$3,000.00) and shall not be refundable.

(c) The franchise bond shall either be a cash deposit in the amount of Ten Thousand Dollars (\$10,000.00), or, alternatively,

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Sec. 6. Reservation of Taxing Power and Exercise Thereof.

(a) Nothing herein is to be construed as waiving or relinquishing the authority of the City to impose taxes or service fees upon the business affairs and operations of the franchisee.

(b) To the extent that any financial imposition by the City against the franchisee cannot be supported upon any other theory than as an exercise of the City's authority to impose taxes, it shall be treated as a tax to the maximum extent that is permissible to do so.

Sec. 7. Regulations Established By City Council.

(a) In addition to the specific provisions of this ordinance which regulate the business affairs and operations of the franchisee, the City Council from time to time, after a public hearing upon reasonable notice and the provision of a reasonable opportunity to be heard, may by resolution establish new regulations or amend the existing regulations pertaining to the business affairs and operations of the franchisee.

(b) Without limiting the scope of other permissible regulations which can be created under the authority of subsection (a), and because the City Council finds that the business of cable casting is a business charged with the public interest, there is specifically reserved the right to regulate the fees or charges imposed by the franchisee upon its customers and the quantity and quality of services which it renders, provided that, however, the rights reserved hereunder shall not be so exercised cumulatively, as opposed to individually, to deny to the franchisee a fair and reasonable return on its investment, under efficient and economical management.

Sec. 8. Use of the City's Streets.

(a) All portions of the franchisee's physical plant which are located within streets shall be approved by the City Engineer as to location, which location shall cause minimum interference with the proper use of the street, with the rights or reasonable convenience of property owners who adjoin the streets, and with existing or contemplated utilities.

(b) In the case of any disturbance of the surface of the streets, including all areas in the platted right-of-way, the franchisee at its own expense will restore it in as good condition as before it was disturbed, and shall maintain the restoration to such standards for a period of five (5) years thereafter.

(c) In the event the City shall elect to alter the grade of any street or otherwise to modify the street the franchisee upon reasonable notice by the City shall make such changes of that portion of its physical plant affected by the change in grade or other modification as may be required by the City Engineer, such work to be done at the franchisee's expense.

(d) The franchisee shall, at all times, save the City harmless from and against any and all damages, lawful claims and demands for injury to person or property which may be made against the City in any manner growing out of the maintenance or operation, or both, of the system, and in case suit shall be filed against the City, either independently or jointly with the franchisee, to recover for any said claim or damages, the franchisee, upon notice to it by the City, shall defend the City against said action and, in the event of a final judgment being obtained against the City, either independently or jointly with the franchisee on account solely of the acts of the franchisee aforesaid, the franchisee will pay said judgment and all costs and hold the City harmless therefrom.

Sec. 15. Separability.

If any section, subsection, sentence, clause, phrase or portion of this division is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof unless the legislative purpose is wholly frustrated by such invalidation.


§2. Written regulations with respect to cable casting pursuant to and under the authority of a City franchise, which regulations are of even date with the second reading of this ordinance, are on file with the City Clerk. These regulations until amended, repealed, or supplemented shall constitute the regulations referred to in section 7 (a) of §1 of this ordinance.

§3. This ordinance shall become effective upon final passage and approval.

PASSED FIRST READING: April 5, 1982


PASSED SECOND READING: April 20, 1982

APPROVED:



 Mayor

ATTEST:



 City Clerk

A G R E E M E N T

ARTICLE 1. STATEMENT OF INTENT AND PURPOSE, AUTHORITY, FRANCHISE APPLICATIONS.

1.01 Statement of Intent and Purpose. City intends, by the grant of a franchise, to bring about the continued development and operation of a cable communications system. Such a development can contribute significantly to the communication needs and desires of citizens of the City of Bismarck. Further, by the continued development and operation of a System, City may help achieve better utilization and improvement of public service.

The purpose of this agreement is to effectuate the City's award of a franchise to Grantee on May 1, 1991, and to establish the terms and conditions governing the franchise and regulation thereof.

1.02 Franchise Processing Fee. Grantee shall be required to reimburse City for its actual costs incurred in the franchise renewal consideration process including but not limited to advertising and other administrative costs, not to exceed one thousand dollars (\$1,000.00).

ARTICLE 2. SHORT TITLE.

This ordinance shall be known and cited as the "City of Bismarck Meyer Broadcasting Company Cable Television Agreement", hereinafter in this document referred to as "Agreement".

ARTICLE 3. DEFINITIONS.

For the purpose of this agreement, the following terms, phrases, words and their derivations shall have the meaning given herein. When not consistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

3.01 "Channel" shall mean a portion of the electromagnetic Frequency spectrum which is used in a cable system and is capable of delivering a television channel (as television channel is defined by FCC regulation).

3.02 "City" shall mean the City of Bismarck and all of the territory within its present and future boundaries. City Commission is authority of City.

3.03 "Franchise" shall mean the rights and obligations extended by City to Grantee herein.

3.04 "Grantee" shall mean Meyer Broadcasting Company, its agents, employees, lawful successors, transferees or assignees.

3.05 "Offering of Grantee" or "Offering" shall mean the proposal or application submitted by Grantee in 1984 in response to City's Request for Proposals.

3.06 "Pay Television" means the delivery over system of per channel or per program audio-visual signals to subscriber for a fee or charge, for Basic Service.

3.07 "Person" shall mean any corporation, partnership, proprietorship, individual or organization authorized to do business in the State of North Dakota or any natural person.

3.08 "Public Property" shall mean any real property owned by the City or any other governmental unit, other than a street.

3.09 "Street" shall mean the surface of and the space above and below any public street, road, cartway, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to System.

3.10 "System" shall mean a cable system as that term is defined by Federal law.

3.11 "Subscriber" shall mean any person or entity who lawfully subscribes to a service provided by Grantee by means of or in connection with the System and pays a fee unless such fee is lawfully waived.

ARTICLE 4. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

4.01 Grant of Franchise. The Franchise is granted pursuant to the terms and conditions contained herein. Such terms and conditions shall be subordinate to all applicable provisions of local, state and federal laws, rules and regulations now in effect or promulgated during the term of the franchise.

4.02 Criteria of Selection. Grantee's technical ability, financial condition and legal qualifications were considered and approved by City in a full public proceeding which afforded reasonable notice and a reasonable opportunity to be heard. Also considered was the Grantee's intention to improve and expand their existing system.

4.03 Authority for Use of Streets.

A. For the purposes of operating and maintaining System in the City, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, across and along the streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of System, provided that all applicable permits are applied for and granted, all fees paid and all other City codes and ordinances are otherwise complied with.

B. Prior to construction or alteration, Grantee shall in each case file plans with all appropriate City agencies and utility companies and receive written approval of such plans.

C. Grantee shall construct and maintain System so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to Grantee.

D. Notwithstanding the above grant to use streets, no street shall be used by Grantee if City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street was created or dedicated, or presently used.

4.04 Franchise Term. This Franchise shall commence upon the effective date of this agreement and shall be for a total period of 20 years with an initial term of 15 years and an optional term for an additional 5 years. The additional 5 year term will automatically renew unless either party gives notice to the other that it wishes to review the franchise or parts of the franchise. The 5 year option period may then be granted or a new franchise term may be granted.

4.05 Franchise Non-Exclusive. The Franchise granted herein is non-exclusive. City specifically reserves the right to grant, at any time, such additional franchises for a System as it deems appropriate. City also reserves the right to grant one or more franchises for the provision of specifically defined services not being provided by any Grantee including but not limited to institutional communications services and interactive residential services. If the City should grant a franchise to another entity with terms more favorable than those contained in this Agreement, then this Agreement's terms shall be adjusted to include or adopt those more favorable terms.

4.06 Police Powers. Grantee's rights hereunder are subject to the police powers of City to adopt and enforce general ordinances necessary to the safety and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by City pursuant to that power. Any

conflict between the provisions of this Franchise and any other present or future lawful exercise of City's police powers shall be resolved in favor of City.

4.07 Written Notice. All notices, reports or demands required to be given in writing under the Franchise shall be deemed to be given when delivered personally to any officer of Company or City, or when 48 hours have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, addressed to the party to which notice is being given, as follows:

If to Company: Meyer Broadcasting Company
Bismarck-Mandan Cable TV
318 East Broadway Avenue
Bismarck, ND 58501

If to City: City Auditor
City of Bismarck
P. O. Box 5503
Bismarck, ND 58502

Such addresses may be changed by either party upon notice to the other party given as provided in this section.

4.08 1984 Offering. The standards and guarantees provided by Grantee in its 1984 offering shall remain in full force and affect unless superceded by this Agreement.

ARTICLE 5. CONSTRUCTION PROVISIONS.

5.01 Permits. Grantee shall obtain a permit from the proper City authority before commencing construction or alteration of System, including the opening or disturbance of any street, sidewalk, driveway or public place. Any and all streets which are disturbed or damaged during the construction, alteration, operation, maintenance or reconstruction of System shall be promptly repaired by Grantee, in accordance with Title 10 and other applicable ordinances.

5.02 Construction Codes. All wires, conduits, cable and other property and facilities of Grantee shall be located, constructed, installed and maintained in compliance with applicable codes. Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the City or endanger the lives or property of any person. In the event of such interference, City may require the removal of Grantee's lines, cables and appurtenances from the street or property in question. City shall have the right to inspect all construction or installation work performed subject to the provisions of the Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the Franchise and pertinent provisions of law and ordinances that are applicable.

5.03 Reservation of Street Rights.

A. Nothing in the Franchise shall be construed to prevent City from constructing sewers, grading, paving, repairing and/or altering any street, or laying down, repairing or removing water mains, or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.

B. If any such property of Grantee herein shall interfere with the construction or repair of any street or improvement, thirty days notice shall be given to Grantee by City and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee in such manner as shall be directed by City so that the same shall not interfere with the said public work of City, and such removal or replacement shall be at the expense of Grantee herein.

5.04 Undergrounding of Cable. The placement of cables underground is encouraged. Cables shall be installed in underground conduit where all existing utilities are already underground. Previously installed aerial cable shall be placed underground in concert with all other utilities, when all other utilities may convert from aerial to underground construction. City shall notify Grantee of all pending changes from aerial to underground utility installations. Developers shall be required by City to give reasonable notification to Grantee of pending underground trenching. Grantee shall place cable underground in newly platted areas in concert with the other utilities.

5.05 Trimming of Trees. Nothing contained in the Franchise shall be deemed to empower or authorize Grantee to cut or trim any trees, ornamental or otherwise, in any of the streets, alleys or public highways, and all trimming of trees shall be done pursuant to Title 13, Bismarck City Ordinances.

5.06 Street Vacation or Abandonment. In the event any street or portion thereof used by Grantee shall be vacated or the use thereof discontinued by Grantee, during the term of the Franchise, Grantee shall forthwith remove its facilities therefrom unless specifically permitted to continue the same, and on the removal thereof restore, repair or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be required by City. In the event of failure, neglect or refusal of Grantee, after thirty days notice by City to repair, improve or maintain such street portion, City may do such work or cause it to be done. In the event use of System is discontinued by Grantee, all costs of removal shall be borne by Grantee. In the event removal is necessitated by vacation of a street or a portion thereof, all costs of removal shall be

borne by the petitioner pursuant to N.D.C.C. §40-39-04 and §40-39-09.

5.07 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities places pursuant to the Franchise, in order lawfully to move a large object, building or other structure over the streets of City, Grantee, upon reasonable notice, shall move at the expense of the person requesting the temporary removal of such utilities as may be required to facilitate such movements. Grantee reserves the right to require payment in advance for such moving services. Additionally, any service disruption sections of the Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary service disruptions; however, Grantee shall give notice to subscribers by providing notice for five days, each day between 7:00 p.m. and 9:00 p.m. on one channel if such removal will result in temporary disruption.

5.08 Erection of Poles Prohibited. Grantee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system. If additional poles in an existing aerial route are required, Grantee shall negotiate with the utility for the installation of the needed poles. Any such additional poles shall require the advance written approval of the City.

5.09 Use of Company's Facilities.

A. City shall have the right to install, free of charge, upon the poles and within the underground pipes and conduits of Company any wires and fixtures desired by City to the extent such installation and maintenance does not interfere with Company's operations.

B. Company waives any claim against City arising from the exercise of these rights except that City shall be responsible for its own negligence or willful injury to person or property as a result of City's operation.

5.10 Construction Standards.

A. All of the Company's plant and equipment, including but not limited to the antenna site, head-end and distribution system, towers, house connections, structures, poles, wire, cable, coaxial cable, fiber optic cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements City may deem property to make, or to interfere in any manner with the rights or any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic on City properties.

B. Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

ARTICLE 6. GENERAL ADMINISTRATION.

6.01 Annual Reports.

A. City shall have the authority to collect a franchise fee and to audit Grantee's accounting and financial records upon reasonable notice.

B. By April 15 of each year, Grantee shall submit a written annual report, in a form approved by the City, including, but not limited to the following information:

1. A summary of the previous year's (or, in the case of the initial reporting year, the initial year's) activities in the development of the System, including but not limited to services begun or discontinued during the reported year.

2. A financial statement for the System including a statement of income, revenues, operating expenses, value of plant, annual capital expenditures, depreciation with an attached depreciation schedule, interest paid, taxes paid, balance sheets, and a statement of sources and application of funds prepared in accordance with generally accepted accounting principles.

3. A projected income statement, balance sheet and statement of projected construction for the next fiscal year.

4. A reconciliation between previous projections and actual results.

5. A list of Company officers, members of its Board of Directors and other principals of the Company.

6. To the extent that money, other than profits, is paid to a parent, subsidiary, or other person affiliated with Company, the amounts of such payments and the basis for computation of such amounts (e.g., the basis for computing any management fees or share of "home office" overhead).

7. A copy of each document filed with all federal, state and local agencies during the preceding fiscal year and not previously filed with City (each of these filings shall be provided at the time the filing is made).

6.02 Maintenance and Complaints. A toll-free or collect telephone number for the reception of complaints shall be provided to subscribers and Grantee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours exclusive of Sundays and holidays, after receipt of the complaint or request. Grantee shall investigate and resolve all complaints regarding quality of service, equipment malfunction, billing disputes and other matters pursuant to the procedure set forth in this ordinance. Grantee will bear the costs included in making such repairs, adjustments or installations unless Grantee deems such repairs necessary due to neglect or abuse of subscriber. All costs for repairs necessary due to neglect or abuse of subscriber shall be borne by the subscriber.

6.03 Rates and Other Charges.

A. In the absence of any City action taken to exercise rate regulation, Grantee shall be subject to the rate regulation provisions provided herein. City expressly reserves the right, during the term of Franchise, to exercise any authority to regulate rates to the extent permitted by law and reserves the right to exercise any powers of rate regulation granted by law during the term of this franchise.

B. Rates and charges charged by Grantee for monthly service and installation and all other charges hereunder shall be uniform, fair and reasonable and designed to meet all necessary costs of service, including a fair rate of return on the original cost, less depreciation, of the properties devoted to such service.

C. Grantee may offer both its initial and additional installation services to subscribers at uniformly applied reduced rates.

6.04 Rate Changes. Notwithstanding Section 6.03, Grantee may change or amend rates in accordance with the Communications Policy Act of 1984 or subsequent legislation.

6.05 Regulatory Authority Reserved. Nothing herein or within the Franchise shall limit the authority of City to regulate any rate when such regulation is not specifically prohibited or preempted by federal or state law or regulation.

ARTICLE 7. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

7.01 Duty to Grantee. Nothing contained in the Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading or changing the line of any street or public place or with the construction or reconstructions of any sewer or water system.

7:02 Payment to City.

A. Company shall pay to City an annual amount equal to five percent (5%) of its gross revenue. Gross revenues shall include all revenue derived from the delivery of cable services to both residential and commercial customers. This includes but is not limited to all basic, tier, premium channel, pay-per-view, digital cable radio, remote control, additional outlets, video conferences, leased channels and installation revenue. In addition, Gross Revenue shall include the lease payment from the Cable Advantage, a division of Meyer Broadcasting Company.

B. Payments due City under this provision shall be computed at the end of each quarter year for that quarter year. Payments shall be due and payable for each quarter or a portion of a quarter year and payable to the City on January 30, April 30, July 30, and October 30. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the City.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this permit. All amounts paid shall be subject to audit and recomputation by the City.

D. Such payment may be renegotiated by the parties in the event franchise fee limitations imposed by federal or state authorities are removed or adjusted. In the event that a competing entity offers cable or wire TV services using the City's streets and rights-of-way and is not subject to the City's franchise fee, Company and City shall, upon request of Company, renegotiate Company's franchise fee to determine what, if any, fee is appropriate. Meyer does not waive its right to challenge franchise fees under applicable federal or state law.

E. In the event that any payment or recomputed amount is not made on or before the date specified herein, Company shall pay as additional compensation:

1. An interest charge, computed from such due date, at the annual rate equal to the commercial prime interest rate in effect upon the due date;

2. A sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by City by reason of delinquent payment.

ordinance to include such provision effective as of the date of commencement of this Agreement or any such rule effective as of the date of the commencement of this Agreement or adoption of the rule, whichever is later. Grantee, by acceptance of this Agreement and the Franchise authorized by it, consents to and agrees to be bound by any such amendment.

H. In the event the Franchise is not accepted by Grantee within ten days of approval of this Agreement, the Franchise shall be void, and City shall have no further obligations to Grantee and Grantee shall have no claim in law or equity against City.

Dated this _____ day of April, 1991.

CITY OF BISMARCK:

Attest Grant L. Berglund By Bill Adams
City Auditor President, Board of City
Commissioners

Dated this 23rd day of April, 1991.

MEYER BROADCASTING COMPANY:

By _____

March 10, 1982

ORDINANCE NO. 590

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO CHARLES L. SCOFIELD, HIS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN WITHIN, UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF WILLISTON, NORTH DAKOTA, A TRANSMITTING AND DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING TELEVISION AND OTHER ELECTRONIC SIGNALS BY CABLE, MICROWAVE, OR ANY OTHER FEASIBLE METHOD, FOR ALL PUBLIC AND PRIVATE USES, AND PROVIDING FOR CITY REGULATION OF THE TELEVISION TRANSMITTING AND DISTRIBUTION SYSTEM.

WHEREAS, Charles L. Scofield has held a nonexclusive franchise to operate a cable television transmitting and distribution system within the City of Williston North Dakota, since November 17, 1964, and

WHEREAS, Charles L. Scofield has complied with the terms of the franchise by providing quality service to the citizens of Williston, North Dakota, in compliance with the provisions of said franchise, and

WHEREAS, it is the desire of Charles L. Scofield and the City Commission of the City of Williston, North Dakota, to grant the franchise.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WILLISTON, NORTH DAKOTA:

SECTION I. For convenience herein, the City of Williston, North Dakota, is designated and referred to as "Municipality", and Charles L. Scofield is designated and referred to as "Grantee". Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to the Grantee the franchise and right to construct, maintain, extend and operate, within, upon, in and under the streets, alleys, and public grounds of the City of Williston, and the territory under its jurisdiction and control, a transmitting and distribution system for transmitting and distributing television and other electronic signals by cable, microwave, or any other feasible method, for all public and private uses. Grantee agrees to serve any residence within the City of Williston on a uniform basis.

SECTION III. Grantee shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Municipality or by the proper Federal and/or State regulatory body.

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys and public grounds of the Municipality for like purposes.

SECTION V. Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the power by the Municipality, and to such reasonable regulations as the Municipality shall hereafter by resolution or ordinance provide. The right is hereby reserved to the Municipality to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its power, by ordinance or otherwise.

SECTION VI. Grantee shall, at all times, hold the Municipality harmless from and against any and all damages, lawful claims and demands for injury to persons or property which may be made against the Municipality in any manner growing out of the maintenance or operation, or both, of such system for transmitting and distributing television or other electronic signals, or any equipment of the Grantee including, but not limited to, copyright infringement, and in case suit shall be filed against said Municipality, either independently or jointly with Grantee, to recover for any claim or damages, Grantee, upon written notice to him by the Municipality, shall defend the Municipality against said action and, in the event of a final judgment being obtained against the Municipality, either independently or jointly with Grantee on account solely of the acts of the Grantee, the Grantee will pay said judgment and all costs and hold the Municipality harmless therefrom.

Grantee shall furnish public liability insurance with the Municipality as one of the named insureds in such amounts as the governing body of the Municipality may from time to time determine.

SECTION VII. Grantee shall not have the right to sell or assign this franchise to any party or corporation without the written consent of the Municipality. All obligations of Grantee hereunder shall be binding upon his successors and assigns.

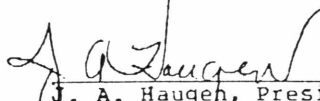
SECTION VIII. Grantee shall pay to the Municipality to defray the Municipality's costs in administering this ordinance and for the privilege of operating the system under this franchise, a sum to be set by resolution by the City Commission of the City of Williston, said sum not to exceed that allowed by any State or Federal regulation. Said fee shall be based upon the revenues on a quarterly basis, payable within thirty (30) days following the close of each quarter.

SECTION IX. Within thirty (30) days after passage and final approval of this ordinance, Grantee shall file with the Auditor of the Municipality his written acceptance of this franchise.

SECTION X. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this Ordinance shall become effective as provided by law.

This ordinance replaces Ordinance 415.

Commissioner Reep moved the adoption of this ordinance. Commissioner Clausen seconded the motion, and upon roll call vote, the following Commissioners voted "AYE": Kuschel, Shae, Clausen, Reep, and Haugen and the following voted "NAY": None
 Absent and not voting: None


 J. A. Haugen, President of the Board of City Commissioners

ATTEST:

Jordis Larvick
Jordis Larvick, City Auditor

First Reading: February 23, 1982

Second Reading: March 23, 1982