EFFECT OF FEDERAL ANTITRUST LAWS ON THE LICENSING OF BUSINESSES BY LOCAL GOVERNMENTS

Bulletin No. 85-19

LEGISLATIVE COMMISSION

OF THE

LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA

October 1984

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Assembly Concurrent Resolution No. 18—Committee on Legislative Functions

FILE NUMBER 117

ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to conduct an interim study of the effect of federal antitrust laws on the licensing of businesses by local governments.

WHEREAS, The United States Supreme Court has recently held in Community Communications Co., Inc. v. City of Boulder, 102 S.Ct. 835 (1982), that an action of a local government temporarily prohibiting a company from expanding its system of cable television was not exempt from scrutiny under the federal antitrust laws unless the action constituted a state action; and

WHEREAS, To be considered a state action, the court held that an action must be an action of the state in its sovereign capacity or the action of a municipality in furtherance of a clearly articulated or affirmatively expressed state policy which is being actively supervised by the state itself; and

WHEREAS, As a result of that Supreme Court decision the possibility exists that a particular action by a local government may not be considered exempted state action but may have to be in compliance with the federal antitrust laws; and

WHEREAS, Some local governments in this state have levied franchise and license fees on business enterprises or imposed controls over their activities in a manner which would not meet the requirements for exemption from federal antitrust laws under the rule expressed in the Boulder case; and

WHEREAS, Such actions by local governments help to protect the interests of the citizens of this state; and

WHEREAS, Litigation over such actions could prove to be costly for the local governments and the State of Nevada; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to:

1. Study the effect of federal antitrust laws on the licensing of businesses by local governments;

2. Examine the activities of local governments to determine which do not constitute state action as described in the Boulder case and are therefore subject to scrutiny by the courts for compliance with the federal antitrust laws; and

3. Examine the relevant state laws and submit recommendations for any new legislation or amendments needed to protect the local governments from potential liability under federal antitrust laws; and be it further

Resolved, That the legislative commission report the results of the study and any recommended legislation to the 63rd session of the legislature.

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REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 63RD SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 18 of the 62nd session of the Nevada legislature. Assembly Concurrent Resolution No. 18 directed the legislative commission to study the effect of federal antitrust laws on the licensing businesses by local governments.

In order to conduct the study, the legislative commission appointed a subcommittee with Assemblyman John E. Jeffrey as its member.

This report presents the subcommittee's recommendations as they were approved by the legislative commission. A brief discussion of the major issue and the factors associated with this issue is also included. All supporting documents and minutes of meetings are on file with the legislative counsel bureau.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
October 1984

* *

LEGISLATIVE COMMISSION

Senator James I. Gibson, Chairman

Senator Thomas J. Hickey
Senator Robert E. Robinson
Senator Randolph J. Townsend
Senator Sue Wagner

Assemblyman Louis W. Bergevin
Assemblyman Joseph E. Dini, Jr.
Assemblyman John E. Jeffrey
Assemblyman Michael O. Malone
Assemblyman David D. Nicholas
Assemblyman John M. Vergiels

REPORT TO THE 63RD SESSION OF THE NEVADA LEGISLATURE BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY THE EFFECT OF FEDERAL ANTITRUST LAWS ON THE LICENSING OF BUSINESSES BY LOCAL GOVERNMENTS

In a series of recent cases culminating in Community Communications Co., Inc. v. City of Boulder, 102 S.Ct. 835 (1982), the United States Supreme Court has held that an action of a local government may not be exempt from scrutiny under the federal antitrust laws, particularly the Sherman Antitrust Act (15 U.S.C. §§ 1 et seq.), which makes it illegal to contract, combine or conspire to restrain trade or commerce or to monopolize or attempt to monopolize any part of trade or commerce. Under current law, a local government may be held liable under the federal antitrust laws if it fails to satisfy the standard established by the Supreme Court that some type of authorization from the state is required for all local governmental activity which is found to be anti-competitive.

The Supreme Court first enunciated the doctrine of state governmental immunity from federal antitrust laws in Parker v. Brown, 317 U.S. 341 (1943). In that case, the Court held that if an activity of a state restrains or displaces competition, it is an act of government and, as such, cannot be challenged as violating federal antitrust law. Noting that Congress did not pass the Sherman Antitrust Act to restrain legitimate state action, the Court held that the state had acted lawfully to replace competition with regulation in authorizing state organizations to develop marketing policies for the state's crop of raisins.

After Parker, federal courts assumed that this doctrine of state governmental immunity extended to a local government acting pursuant to authority granted by the state. See E. W. Wissins Airways, Inc. v. Massachusetts Port Auth., 362 F.2d 52 (1st Cir.), cert. denied, 385 U.S. 947 (1966). Since Parker, however, the Supreme Court has decided several cases that have narrowed the scope of exemptions for a state's action by holding that a local government is not automatically immune from liability under federal antitrust laws simply because it is a political subdivision of the state.

In 1978, the Supreme Court addressed for the first time the question of local governmental immunity in City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978). In rejecting the cities' claim of absolute immunity, the Court held that the cities must have acted directly for the state or pursuant to a "clearly articulated and affirmatively expressed" state policy to replace competition with a monopoly or with regulation before their actions would be exempt from liability under federal antitrust laws. In addition, the Court stated that a specific statutory mandate was not required to satisfy this requirement, but that sufficient authorization from the state existed if the state legislature, in granting that authorization, "contemplated" the kind of action taken by the cities which was identified in the complaint.

In 1980, the Supreme Court established a test in two parts for determining what constitutes proper state authorization in California Retail Liquor Dealers Association v. Midcal Aluminum,

Inc., 445 U.S. 97 (1980). In that case, the Court held that California's statutory plan for pricing wine constituted the maintenance of resale prices in violation of the Sherman Antitrust Act because, although the state's policy was articulated clearly, it was not actively supervised by the state, as the state merely authorized the setting of prices and did not establish those prices or review the reasonableness of the prices established by the private producers of wine. The Court, however, did not decide whether this test applied to a local government's claim of immunity from liability under federal antitrust laws.

Finally, in Community Communications Co. v. City of Boulder, 102 S.Ct. 835 (1982), the Supreme Court held that the city's ordinance prohibiting the expansion of a local community antenna television company for 3 months was not exempt from scrutiny as a restraint of competition under the doctrine of state governmental immunity because the state's grant of home rule under which the ordinance was adopted did not satisfy the requirement for a clearly articulated and affirmatively expressed state policy to replace competition. Therefore, the ordinance was not an act of government performed by the city acting for the state so as to make the adoption of the ordinance a state action.

It must be noted, however, that in failing to find a clearly articulated state policy to support the city's ordinance in Boulder, the Supreme Court did not consider whether active state supervision of the anticompetitive activity was required in order for immunity to apply to a local government. In the absence of any clear direction by the Court, many lower federal courts have

required local governments to satisfy the requirement for active state supervision. However, cases decided since Boulder also indicate that the responsibility of states to supervise anticompetitive activity actively will not be great and that the nature of the activity, whether it is governmental or proprietary, will continue to play a role in the decisions of federal courts, even though the Court in Boulder rejected the city's attempt to classify the challenged ordinance as a traditional governmental action, distinguishable from a proprietary activity.

For example, in Gold Cross Ambulance v. City of Kansas City, 538 F. Supp. 956 (W.D. Mo. 1982), the District Court for the Western District of Missouri noted that the city had acted under a comprehensive state statutory scheme regulating ambulance service which indicated a clearly articulated and affirmatively expressed state policy to regulate that service on the basis of public need. The court then found the requirement for active supervision satisfied by the interaction of the state statute authorizing the city to adopt regulations for the use of ambulances and equipment used in ambulances with the system adopted by the city for review and enforcement, emphasizing the nature of ambulance service and the fact that state and local governments traditionally have regulated this type of service.

Courts, thus, disagree on the interpretation of the requirement for active state supervision as some courts require the state to control local regulation when it has indicated an otherwise legitimate state policy to displace competition at the local level,

while others require only moderate state supervision by examining the question of whether the challenged activity is governmental or proprietary in nature and by allowing the local government to rely on the supervisory scheme it has adopted in order to satisfy this requirement.

As the test stands after Boulder, a state may grant immunity to a local government which is equivalent to its own if it adopts a statute which clearly articulates and affirmatively expresses its intent to displace competition with regulation and is involved in supervising the anticompetitive program, although the extend of that supervision has not yet been determined.

Recognizing the public need for services provided by public utilities, the legislature of this state has adopted a regulatory scheme which provides for the supervision and regulation of the operation and maintenance of public utilities pursuant to standards established by the legislature in chapters 704, 704A, 706, 708, 711 and 712 of NRS. In so doing, the legislature has clearly and affirmatively expressed a state policy of replacing competition with a coordinated state regulatory scheme to protect the public interest in a potentially monopolistic market. In addition, the requirement for active state supervision of these activities has been satisfied. First, the legislature created the public service commission to oversee the enforcement of this state regulatory scheme (NRS 703.020). Second, the commission has the duty to make and publish biennial reports showing its proceedings (NRS 703.180). Third, a procedure for the receipt and investigation of customers' complaints was established to ensure that

customers receive adequate services (NRS 703.290 et. seq.) Finally, a final decision of the commission is subject to judicial review by a state court (NRS 703.373). Therefore, under the requirements adopted by the Supreme Court, the state is exempt from federal antitrust liability in regard to its regulatory actions over public utilities.

In those areas where a local government may be subject to liability under the federal antitrust law, the surest method of avoiding that liability is to adopt legislation which clearly and affirmatively expresses a state policy of replacing competition with regulation for the interest of the public and which delegates to local governments the responsibility of carrying out that policy either by providing the needed services themselves or by granting exclusive franchises and adopting regulations governing the operations of those franchises. However, it is not sufficient simply to authorize the local governments to act anticompetitively. Instead, the legislation must authorize specific anticompetitive activity and provide clearly delineated standards under which that activity may be conducted. For example, local governments may be allowed to award franchises based upon such factors as the quality of the proposed service, the rates to be charged, the applicants' incomes and financial experience, and any other considerations which will protect the local public interests.

In addition, an attempt should be made to comply with the requirement for active state supervision, even though the Supreme Court has not yet specifically applied this requirement to cases

in which the activities of a local government are being challenged. Sufficient supervision of local activities can be accomplished by requiring objective standards and procedures to be used by the local governments in granting contracts or franchises so that the anticompetitive activities are conducted in an open, ministerial manner, and by regulating the process of granting contracts or franchises so that they are subject to periodic review to determine whether they merit continuation or modification. For example, in awarding contracts or franchises, local governments may be required to use procedures for competitive bidding or to hold public meetings or hearings at which the public need for the proposed governmental action is ascertained. Additionally, contracts or franchises awarded by local governments may be limited to 5 years or some other short, definite period so that they are periodically subject to review. For this reason, BDR 20-151 (see Appendix B) includes language which limits a franchise granted by a local government in most areas in which the local government may displace or limit competition to 5 years, and a franchise granted by a local government to a community antenna television company to 15 years. The difference is based upon the nature of the capital investment.

Local governments can carefully scrutinize their actions to determine whether they restrict or displace competition, but their only current resource is to seek grants of immunity from the state. Until this area of the law is clarified by the Supreme Court, however, it is not certain what standards will apply in finding acceptable grants of immunity. Although additional decisions are

needed to clarify the extent to which local governments will be held accountable under the federal antitrust laws, the recommendations contained in this report may reduce the risk of local governments becoming involved in antitrust litigation. None of these recommendations guarantees immunity for local governments from antitrust liability, but they will lessen exposure to litigation.

To determine which activities of local governments in this state may be subject to scrutiny by the courts for not complying with federal antitrust laws, a questionnaire was written and sent to the city manager of each city and to the chief appointed official of each county in this state. The areas of public services in which the local governments were authorized to displace or limit competition (see BDR 20-151) were then chosen from the responses to the questionnaire.

APPENDIX A

QUESTIONNAIRE USED TO DETERMINE WHICH ACTIVITIES OF LOCAL GOVERNMENTS MAY BE CHALLENGED FOR NOT COMPLYING WITH FEDERAL ANTITRUST LAWS AND A CCOMPILATION OF THE RESPONSES TO THAT QUESTIONNAIRE

1. In which of the following areas, if any, has the local government levied a franchising or licensing fee on businesses or imposed regulatory constraints on their activities in a manner which reduces or eliminates competition in that area?

6	Ambulance service.
3	Health and care facility.
14	Community antenna television system.
4	Zoning and urban redevelopment.
1	Public transportation.
12	Disposal of waste.
0	Motor vehicles.
2	Taxicabs.
5	Operations at airport (leasing of motor vehicles, licensing of concession stands, etc.)
8	Regulation of occupations or businesses.
8	Water and sewage treatment.
1	Any other area, other than public utilities.

Television translators.

2. In which areas, if any, does the local government provide services without competition from private businesses?

6	Fire protedtion.	3	Police
12	Water	1	Golf course
13	Sewer	1	Library
3	Garbage	1	Baseball park
7	Ambulance	3	Landfill
2	Health and care facility	2	Fairgrounds
5	Television	2	Occupations and businesses
2	Public transportation	1	Building inspection
2	Electric	1	Repair of streets

3. In which areas, if any, has the local government allowed a single private business to provide services without competition from other businesses?

5	Garbage	1	Ambulance
7	Community antenna television system	3	Electric
4	Sewer	3	Gas
2	Airport	3	Telephone
		1	Public transportation

4. In which areas, if any, has the local government granted a private business exclusive access to the use of municipal facilities?

2	Physicians at hospitals	2	Concession at park
1	Sewer	2	Airport
1	Community antenna television system	1	Lease of parking garage
1	Ambulance	2	Golf course

5. If the local government has allowed a single business to provide services in an area without competition or has granted a business exclusive access to a municipal facility:

(a) Was this action taken pursuant to a comprehensive plan adopted by the local government for the purpose of protecting the health, welfare and safety of the people in the community?

1 Yes 5 No 1 Possibly

(b) Was open bidding used to determine which business would have exclusive rights?

7 Yes 4 No

(c) Were alternative businesses considered and, if so, what process was used in making these decisions?

6 Yes 6 No

Competitive bidding

6. Have any actions taken by the local government in any of these areas been challenged as violating antitrust laws? If yes, please provide a brief explanation.

2 Yes 13 No

7. Are there any problems which you have in any of these areas that you wish to discuss in person? If yes, please provide a brief explanation.

APPENDIX B

SUGGESTED LEGISLATION

SUMMARY--Authorizes local governments to displace or limit competition to provide adequately for certain public services. (BDR 20-151)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to local governments; authorizing those governments to replace economic competition in certain areas of public services with regulated anticompetitive services; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 244.187 is hereby amended to read as follows:

244.187 [1. Any board of county commissioners may grant exclusive franchises to operate any of the following services outside the limits of incorporated cities within the county:

(a) Garbage and disposal.

(b) Fire protection and suppression.

(c) Ambulance service to pick up patients outside the limits of such incorporated cities.

2. Nothing in paragraph (c) of subsection 1 shall prevent any ambulance service from transporting patients from any county in which it is franchised to another county.

3. The board of county commissioners may, by ordinance, regulate such services and fix fees or rates to be charged by the franchiseholder.

4. A notice of the intention to grant any franchise shall be published once in a newspaper of general circulation in the county, and the franchise may not be granted until 30 days after such publication. The board of county commissioners shall give full consideration to any application or bid to supply such services, if received prior to the expiration of such 30-day period, and shall grant the franchise on terms most advantageous to the county and the persons to be served.

5. The provisions of chapter 709 of NRS shall not apply to any franchise granted under the provisions of this section.

6. Nothing in this section shall be construed to prevent any individual, partnership, corporation or association from hauling his or its own garbage subject to the regulations of the board of county commissioners promulgated under the provisions of this section.] A board of county commissioners may, to provide adequate, economical and efficient services to the inhabitants of the county and to promote the general welfare of those inhabitants, displace or limit competition in any of the following areas:

1. Ambulance service.

2. Health and care facilities.

3. Public transportation.

4. Disposal of garbage and other waste.

5. Planning and zoning.

6. Taxicabs.

7. Operations at an airport, including but not limited to the leasing of motor vehicles and the licensing of concession stands.

8. Water and sewage treatment.

9. Fire protection.

10. Concessions on, over or under property owned or leased by the county.

11. Operation of landfills.

Sec. 2. Chapter 244 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. 1. A board of county commissioners may, outside the boundaries of incorporated cities:

(a) Provide those services on an exclusive basis or, by ordinance, adopt a regulatory scheme for controlling the provision of those services or controlling development in those areas on an exclusive basis; or

(b) Grant an exclusive franchise to any person to provide those services.

2. The authority conferred by this section is in addition and

supplemental to, and not in substitution for any other law. No part of this section repeals or affects any other law or any part thereof, it being intended that this section provide a separate method of accomplishing its objectives, and not an exclusive one.

Sec. 4. 1. If a board of county commissioners intends to grant an exclusive franchise to provide services, a notice of that intention must be published once in a newspaper of general circulation in the county, and the franchise may not be granted until 30 days after that publication.

2. The board of county commissioners shall give full consideration to any application or bid to provide those services, if received before the expiration of the 30-day period, and shall grant the franchise on the basis of:

(a) The quality of service to be provided;

(b) The proposed rates to be charged;

(c) Any income to be received by the county;

(d) The experience and financial responsibility of the applicant or bidder; and

(e) Such other considerations as will protect the interests of the inhabitants of the county.

3. The board of county commissioners may, by ordinance:

(a) Regulate the operation of the franchise;

(b) Fix fees or rates to be charged by the holder of the franchise;

(c) Provide for the resolution of customers' complaints; and

(d) Adopt such other regulations as are necessary to ensure the adequate provision of services in order to promote the general welfare of the inhabitants of the county.

4. No franchise may be granted for longer than 5 years.

5. The provisions of chapter 709 of NRS do not apply to a franchise granted pursuant to this section.

Sec. 5. NRS 266.295 is hereby amended to read as follows:

266.295 The city council may:

1. License, regulate or prohibit the location, construction or laying of tracks of any railroad [or streetcar] in any public right of way.

2. Grant franchises to any person or corporation to operate a railroad [or streetcar] upon public rights of way and adjacent property.

3. Declare a nuisance and take up and remove, or cause to be taken up and removed, the tracks of any railway which have been laid upon, in, along, through or across any of the streets, alleys, avenues or public places of the city and which have not been operated with cars for public use for [a period of] 1 year after the laying thereof.

4. Subject to the provisions of NRS 704.300, condemn rights of way for any public purpose across any railroad right of way.

5. Prescribe the length of time any public right of way may be obstructed by trains standing thereon.

6. Require railroad companies to fence their tracks and to construct cattle guards and crossings and to keep them in repair.

7. Require railroad companies to provide protection against injury to persons or property.

8. Compel railroad companies to raise or lower their tracks to conform to any grade established by the city, so that tracks may be crossed at any place on any street, alley or avenue.

9. Compel railroad companies to provide that drainage from property adjacent to their tracks not be impaired.

Sec. 6. NRS 268.081 is hereby amended to read as follows:

268.081 [An incorporated city may provide by lease, contract or franchise any of the following services which by charter or general law can be performed by the city itself within the corporate limits of the city:

1. Ambulance services.

2. Computer services.

3. Fire protection and suppression services.

4. Garbage and disposal services.

5. Police protection and watchman services.

6. Search and rescue services.

7. Specific city inspection services.

8. Any other service demanded by the inhabitants of the city which is within the power of the city by charter or law to provide.] The governing body of an incorporated city may, to provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, displace or limit competition in any of the following areas:

1. Ambulance service.

2. Health and care facilities.

3. Public transportation.

4. Disposal of garbage and other waste.

5. Planning and zoning.

6. Taxicabs.

7. Operations at an airport, including but not limited to the leasing of motor vehicles and the licensing of concession stands.

8. Water and sewage treatment.

9. Fire protection.

10. Police protection or watchmen.

11. Concessions on, over or under property owned or leased by the city.

12. Operation of landfills.

13. Search and rescue.

14. Inspection required by any city ordinance otherwise authorized by law.

15. Any other service demanded by the inhabitants of the city which the city itself is otherwise authorized by law to provide.

Sec. 7. Chapter 268 of NRS is hereby amended by adding thereto the provisions set forth as sections 8 and 9 of this act.

Sec. 8. 1. The governing body of an incorporated city may:

(a) Provide those services on an exclusive basis or, by ordinance, adopt a regulatory scheme for providing those services or controlling development on an exclusive basis within the boundaries of the city; or

(b) Grant an exclusive franchise to any person to provide those services within the boundaries of the city.

2. The authority conferred by this section is in addition and supplemental to, and not in substitution for any other law. No part of this section repeals or affects any other law or any part thereof, it being intended that this section provide a separate method of accomplishing its objectives, and not an exclusive one.

Sec. 9. 1. If the governing body of an incorporated city intends to grant an exclusive franchise to provide services, a notice of that intention must be published once in a newspaper of general circulation in the city, and the franchise may not be granted until 30 days after that publication.

2. The governing body shall give full consideration to any application or bid to provide those services, if received before

the expiration of the 30-day period, and shall grant the franchise on the basis of:

(a) The quality of service to be provided;

(b) The proposed rates to be charged;

(c) Any income to be received by the city;

(d) The experience and financial responsibility of the applicant or bidder; and

(e) Such other considerations as will protect the interests of the inhabitants of the city.

3. The governing body may, by ordinance:

(a) Regulate the operation of the franchise;

(b) Fix fees or rates to be charged by the holder of the franchise;

(c) Provide for the resolution of customers' complaints; and

(d) Adopt such other regulations as are necessary to ensure the adequate provision of services in order to promote the general welfare of the inhabitants of the city.

4. No franchise may be granted for longer than 5 years.

5. The provisions of chapter 709 of NRS do not apply to a franchise granted pursuant to this section.

Sec. 10. Chapter 269 of NRS is hereby amended by adding thereto the provisions set forth as sections 11, 12 and 13 of this act.

Sec. 11. A town board or board of county commissioners may, t provide adequate, economical and efficient services to the inhab itants of the town and to promote the general welfare of those inhabitants, displace or limit competition in any of the follow- ing areas:

1. Ambulance service.

2. Health and care facilities.

3. Public transportation.

4. Disposal of garbage and other waste.

5. Planning and zoning.

6. Taxicabs.

7. Operations at an airport, including but not limited to the leasing of motor vehicles and the licensing of concession stands

8. Water and sewage treatment.

9. Fire protection.

10. Concessions on, over or under property owned or leased by the town.

11. Operation of landfills.

Sec. 12. 1. A town board or board of county commissioners may:

(a) Provide those services on an exclusive basis or, by ordi- nance, adopt a regulatory scheme for providing those services o

controlling development on an exclusive basis within the boundaries of the town; or

(b) Grant an exclusive franchise to any person to provide those services within the boundaries of the town.

2. The authority conferred by this section is in addition and supplemental to, and not in substitution for any other law. No part of this section repeals or affects any other law or any part thereof, it being intended that this section provide a separate method of accomplishing its objectives, and not an exclusive one.

Sec. 13. 1. If a town board or board of county commissioners intends to grant an exclusive franchise, a notice of that intention must be published once in a newspaper of general circulation in the town, and the franchise may not be granted until 30 days after that publication.

2. The town board or board of county commissioners shall give full consideration to any application or bid to provide those services, if received before the expiration of the 30-day period, and shall grant the franchise on the basis of:

(a) The quality of service to be provided;

(b) The proposed rates to be charged;

(c) Any income to be received by the town;

(d) The experience and financial responsibility of the applicant or bidder; and

(e) Such other considerations as will protect the interests of the inhabitants of the town.

3. The town board or board of county commissioners may, by ordinance:

(a) Regulate the operation of the franchise;

(b) Fix fees or rates to be charged by the holder of the franchise;

(c) Provide for the resolution of customers' complaints; and

(d) Adopt such other regulations as are necessary to ensure th adequate provision of services in order to promote the general welfare of the inhabitants of the town.

4. No franchise may be granted for longer than 5 years.

5. The provisions of chapter 709 of NRS do not apply to a franchise granted pursuant to this section.

Sec. 14. Chapter 495 of NRS is hereby amended by adding thereto a new section to read as follows:

In contracting with persons to furnish facilities or services for the purposes of this chapter, a county, city or airport authority may award exclusive or limited rights or franchises which would, absent this grant of authority, violate state or federal laws prohibiting antitrust activities. A county, city or airport authority may grant exclusive or limited agreements whic replace business competition with regulated anticompetitive

services, subject only to the regulatory authority vested by law in the public service commission of Nevada or the taxicab authority.

Sec. 15. NRS 711.190 is hereby amended to read as follows:

711.190 1. Except as otherwise provided in NRS 318.1194:

[1.] (a) A city council may grant a franchise to a community antenna television company for the construction, maintenance and operation of a community antenna television system which requires the use of city property or that portion of the city dedicated to public use for the maintenance of cables or wires underground, on the surface or on poles for the transmission of a television picture.

[2.] (b) A county may grant a franchise to a community antenna television company for the construction, maintenance and operation of a community antenna television system which requires the use of the property of the county or any town in the county or that portion of the county or town dedicated to public use for the maintenance of cables or wires underground, on the surface or on poles for the transmission of a television picture.

2. No franchise granted pursuant to this section may be granted for longer than 15 years.

Sec. 16. The following sections are hereby repealed:

1. NRS 496.095.

2. Section 7.040 of the charter of the City of Carlin, being chapter 344, Statutes of Nevada 1971, at page 618.

3. Section 2.285 of the charter of Carson City, being chapter 690, Statutes of Nevada 1979, as last amended by chapter 313, Statutes of Nevada 1983, at page 756.

4. Section 7.040 of the charter of Carson City, being chapter 213, Statutes of Nevada 1969, as last amended by chapter 313, Statutes of Nevada 1983, at page 758.

5. Section 7.030 of the charter of the City of Elko, being chapter 276, Statutes of Nevada 1971, at page 491.

6. Section 7.040 of the charter of the City of Gabbs, being chapter 265, Statutes of Nevada 1971, at page 400.

7. Section 7.050 of the charter of the City of Henderson, being chapter 266, Statutes of Nevada 1971, at page 419.

8. Section 2.340 of the charter of the City of Las Vegas, being chapter 517, Statutes of Nevada 1983, at page 1405.

9. Section 7.050 of the charter of the City of North Las Vegas, being chapter 573, Statutes of Nevada 1971, at page 1226.

10. Section 7.040 of the charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1981.

11. Section 7.040 of the charter of the City of Sparks, being chapter 470, Statutes of Nevada 1975, at page 739.

12. Section 7.040 of the charter of the City of Wells, being chapter 275, Statutes of Nevada 1971, at page 472.

13. Section 7.040 of the charter of the City of Yerington, being chapter 465, Statutes of Nevada 1971, at page 915.

Sec. 17. This act becomes effective upon passage and approval.