MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

1485

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1485

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1485

HOUSE INDUSTRY, BUSINESS AND LABOR

☐ Conference Committee

Hearing Date 2-8-05

Tape Number	Side A	Side B	Meter #
1	x		0-end
1		x	0-end
2	x		0-end
Committee Clerk Signature	Jody Reinke		

Minutes:

Rep. Keiser: Called the meeting to order on HB 1485. All committee members were present.

Representative Headland: Appeared in support of HB 1485 and provided a written amendment to the bill and also was a sponsor.

Representative Lee Kaldor: Appeared in support of HB 1485. I just want to make a reference to our experience Mayville, for several years we have been served by Midcontinent Cable and they are a fine company and have provided service to the area for some time. In the community we were in need of Internet services and cable services competition created some really good services, on this particular issue because of the choice I made, I don't have the opportunity unless I go to one of the neighboring water holes to watch fighting Sioux Hockey, and I think what this is about is what kind of rights do accrue to our institutions of higher learning is this a separate entity, but it is a ND activity.

Keith Larson, General Manager, of Dakota Central Telecommunications Cooperative:

Appeared in support and provided written testimony. (SEE ATTACHED TESTIMONY).

David Dunning, General Manager, CEO, Polar Communications, Park River, ND:

Appeared in support of HB 1485 and provided a written statement (SEE ATTACHED TESTIMONY).

Ron Laqua, General Manager of the Halstad Telphone Company: Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Mick Grosz, CEO, of West River Telecommunications: Appeared in support of bill and provided written statement (SEE ATTACHED TESTIMONY).

Jack McDonald, ND, Broadcasters Association: Appeared in opposition of HB 1485 and provided a written statement (SEE ATTACHED TESTIMONY).

Mark Prather, General Manager, WDAY/WDAZ TV, WDAY AM RADIO: Appeared in opposition of HB 1485 and provided written statement (SEE ATTACHED TESTIMONY).

Roy Sheppard, Owner, Cable Services, Inc. Jamestown, ND: Appeared in opposition of HB 1485 and provided a written statement (SEE ATTACHED TESTIMONY).

Phil Harmeson, President, of University of North Dakota: UND athletic department contracts with Ralph Englestad Arena to bid and provide TV coverage, so REA is the group that actually does all of the negotiation with all of the providers through out the state. The way it works of course is through WDAY, WDAZ, they have the right to air broadcast the ones they elect not to then Mid-continent Cable picks those up because they are the exclusive provider.

In the areas where Mid-continent is not covered we then through REA, allow providing of that signal to post it, negotiate it out by game by game basis. The value of exclusivity of state

colleges or universities, is a product that is aggregated using the raw material of those particular entities, when we put a team on the court, yes it is in a public arena, you can charge to go to those events, so everyone can come and pay to see the event, or they could watch over the air, or they could listen to it over the air, through money that has been paid through an indirect fashion by the providers. In the real world competition on bids derives the ultimate value of what that product is. I'm just here to say through Ralph Engelstad Arena, is very, very, concerned on behalf of my colleagues in public interest, they have a very keen interest in retaining that exclusivity, because pretty soon they will have a product that will be worthless and yet everyone can see it, but it will be worthless, it will dramatically change the way to do business. Ralph Englestad Arena is a private corporation, they are owned by REA, Inc.

Pat Seaworth, Legal Council, State Board of Higher Education: I want to make just one comment, The ultimate impact would result in reduced coverage, or lack of coverage of the event because the company would not be able or willing to make the investment to broadcast the event without the ability to sell the rights. REA Inc. is a privately held corporation established by Mr. Englestad for the purpose for operating the arena, located on the UND campus, under a lease agreement between the State Board of Higher Ed. and a couple of corporations that are involved with the construction of the building, its a long term contract.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1485

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-9-05

Tape Number	Side A	Side B	Meter #
3		xx	Blank until 10.--12.1
Committee Clerk Signature	Pam Dever		

Minutes: **Chair Keiser:** What are committee wishes concerning HB 1485?.

Rep. N. Johnson: I move the Headland amendments .0102.

Rep. Kasper: I second.

Vote: 13 Yes, 0 No, 1 Absent amendment passed.

(Discussion followed but the tape is blank in the beginning of side B)

Rep. Ruby: 10.0 I don't like the amendments brought forth. **I move a DO NOT PASS as AMENDED on HB 1485.**

Rep. Amerman: I second.

Rep. Dosch: As a UND alumni and Fighting Sioux fan, I have a real problem that some areas in our state that are denied access to this broadcast. I don't have a problem with an exclusive contract, but you then when you are excluding, or not make it available, it is wrong.

Rep. Vigesaa: I don't think that Rep. Headland helped the cause.

VOTE: 11 Yes, 2 No, 1 absent, Do Not Pass - passed. Rep. Vigesaa will carry bill.

50595.0102
Title.0200

Prepared by the Legislative Council staff for
Representative Headland
February 4, 2005

House Amendments to HB 1485 - Industry, Business and Labor Committee 02/10/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for terms of broadcast agreements with public entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Broadcast agreements with public entities - Terms. A public entity as defined in section 44-04-17.1 may not grant broadcast rights of a public event to any person which result in a cable television system operator being the exclusive broadcaster in a city in which there exists one or more competing cable television operators that collectively serve at least twenty-five percent of that city's total cable television subscribers. If a cable television system operator broadcasts a public event in such a city, the public entity shall provide on similar terms the same content provided to that cable television system operator to any other cable television system operators in that city."

Renumber accordingly

Date: 2-9-05

Roll Call Vote #: #1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1485

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Headland Amendments .0102

Motion Made By Rep. Johnson Seconded By Rep. Kasper

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	A	A
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 13 No 0

Absent (1) Rep. Ekstrom

Floor Assignment Rep. Vigesaa

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

Date: 2-9-05

Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1485

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50595.0102 .0200

Action Taken Do Not Pass As Amended .0102

Motion Made By Rep. Ruby Seconded By Rep. Amerman

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe		X
Rep. D. Clark	X		Rep. M. Ekstrom	AB	AB
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch		X			
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 11 No 2

Absent (1) Rep. Ekstrom

Floor Assignment Rep. Vigesaa

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

REPORT OF STANDING COMMITTEE

HB 1485: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1485 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for terms of broadcast agreements with public entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Broadcast agreements with public entities - Terms. A public entity as defined in section 44-04-17.1 may not grant broadcast rights of a public event to any person which result in a cable television system operator being the exclusive broadcaster in a city in which there exists one or more competing cable television operators that collectively serve at least twenty-five percent of that city's total cable television subscribers. If a cable television system operator broadcasts a public event in such a city, the public entity shall provide on similar terms the same content provided to that cable television system operator to any other cable television system operators in that city."

Renumber accordingly

2005 TESTIMONY

HB 1485

Comments on House Bill 1485

Mark Prather – General Manager, WDAY/WDAZ TV, WDAY AM RADIO

1. A lack of an exclusive agreement will cause us **not** to broadcast as many local games as we do today. If it's not exclusive, we may not be able to cover the cost of the broadcast, let alone make a profit.

2. In the past NCAA Division II Broadcast rights of playoff games have been awarded exclusively to the broadcast stations by the NCAA, not the University.

3. Universities in the past have issued invitations to bid to broadcasters. The University then awards the broadcast Rights to the station that best fits the University's needs. Along with the arrangement for broadcast rights, the University usually receives additional promotional consideration.

4. In dealing with the NCAA at the Division I level, the NCAA may control the broadcast rights - not the University. IE... March Madness on CBS, the BCA Championship Football Series on ABC.

5. FCC regulations and Network affiliation agreements restrict carriage of where stations may be broadcast.

6. Broadcast stations may enter into agreements with individual satellite companies, cable operators and other distribution outlets. The idea of allowing any distribution system to "cherry-pick" specific programs is not feasible. An example of how this bill is not workable... If WDAY has not reached an agreement with a satellite company for carriage of WDAY, this law would allow this satellite company to come in and require the same game broadcast package as those that WDAY has long term agreements with.

7. When broadcast rights are awarded to a station, it is absolutely necessary that the station controls the distribution of its' stations product. Without the exclusivity, it's highly unlikely that broadcast stations would enter into broadcast agreements with any public entity.

Testimony against **HB 1485 - A BILL for an Act to provide for nonexclusivity in broadcasting agreements of public entities.**

2005 House Industry, Business and Labor Committee – February 8, 2005
George J. Keiser – R-Bismarck, Chairman

Roy A. Sheppard, Business owner – Cable Services, Inc., 308 Second St SW.
Jamestown, ND. 701-252-2225 roy@csicable.com

Chairman Keiser, members of the Committee. For the record my name is Roy A. Sheppard , Jamestown, ND. I am speaking today in opposition to HB 1485.

I am speaking as an owner of a family operated cable television business started 41 years ago by my father and as a taxpayer of North Dakota. I am speaking as an entrepreneur and life-long investor in North Dakota. I am speaking for my parents, my family, and myself. We oppose House Bill 1485 introduced by Representative Craig Headland for three reasons:

1. **This bill is BAD Public Policy**
2. **Daktel President Headland's self-serving vendetta against me**

We apologize that the assault on my private business – my "family farm" by Mr. Headland has spilled over to occupy your time.

For several seasons my business has proudly distributed and promoted Fighting Sioux Sports Network events in the Jamestown market. In May of 2004, I signed and paid for an agreement with Ralph Engelstad Arena and Forum Communications for the current season. For that payment, we were granted by REA, the agent for UND, the exclusive distribution rights. It was a lawfully executed agreement, the same as was extended to other affiliates. It should be noted that while we purchase the right to distribute the events, we cannot run any commercials within the programs. We are also responsible for all local promotional costs to attract viewers.

To make a long story short, Mr. Headland and his group, Daktel Communications, LLC telecast the events in the Jamestown market, even though Mr. Headland received notice prior to the season that I held the rights. In November, as reported in the Grand Forks Herald, Earl Strinden, on behalf of REA, Forum Communications, and UND, was quoted saying, **"When the mistake was discovered, Daktel's contract was canceled**..." It

was recently discovered that in late November Daktel remitted a payment to REA, after the cease and desist letters were sent. My check had been cashed by REA on June 10, 2004, five months earlier.

To date, Mr. Headland and Daktel refuse to accept the cancellation request by Ralph Engelstad Arena on behalf of UND. It is the contention of Mr. Headland that there can be two exclusive agreements, that a second agreement extended in error with no payment and two withdrawal-cancellation notices somehow equals a lawfully executed agreement. **It does not. Two people really can't have the exclusive right to hay the same land**. It was not until a temporary restraining order was issued that Daktel stopped telecasting the events. This matter will shortly be back in District Court for legal resolution. I have no quarrel with UND or REA, as they have tried everything to resolve this matter.

More importantly, this is very bad public policy. This bill implies that the elected, appointed, and or hired officials of **all** the public entities in North Dakota are not capable or knowledgeable enough to negotiate broadcast agreements in the best interest of their entity. I have far more faith in our public entities. If their goal is to maximize revenue to make up shortfalls in funding, or to create and expand new programming and distribution networks, they will need to structure agreements to accomplish those goals. Each agreement is different. Each event is different. Each entity is different.

It would be cleaner to prohibit all public entities from entering into any type of exclusive agreement, but still bad public policy. To engage in selective gerrymandering of the law is extremely bad public policy.

The bill is a self-serving vendetta against me:

Representative Craig Headland is President of Daktel Communications LLC and a Director of Dakota Central Telecommunications Cooperative.

He and Daktel Communications are using USDA funds intended to bring High Speed Internet service to rural areas with none to overbuild my local

business and the facilities of others, to be the 4th Broadband provider in Jamestown, not exactly the intended purpose of the government program to benefit rural areas with no service. While the money was for Broadband service, Daktel President Headland is employing every tactic possible to steal away TV and telephone customers, including offering product to which the rights were held by someone else. If it were not a **personal vendetta**, Daktel President Headland would have respected the agreement granting my business the rights for this season. He has to beat me at any cost. I stand in the way of any possible success of his faulty business plan. For Craig to succeed, my business must fail, or so they keep telling my customers.

On the Daktel TV channel 15 message board they stated, **"It is our hope <u>that recent legislation introduced on our behalf</u>, HB 1485 will allow..."** and it goes on. Legislation introduced on behalf of Daktel by Daktel President Headland. This is a problem.

Daktel President Craig Headland does not seem to care that this bill will harm the High Schools, Colleges, University, Agencies and broadcasters – both radio and TV, and ultimately the taxpayers of the state. He only cares about himself. The solution presented today is to fix his problem that he created for himself in Jamestown. To defy the request to cease and desist issued by Engelstad Arena on behalf of UND is the same as telling the ND Legislature that he had no intent in adhering to the current laws of North Dakota. Such a proverbial "stick-in-the-eye" action might affect his future negotiations; therefore, a special bill for his company is needed, regardless of the consequences to the State, just to excuse his poor behavior. He has to hate me "real bad" to go to that extreme.

I have television and cable business operations in District 29. Our family owned cable business has been in Jamestown 41 years. I have 33 years of television and cable experience, ranging from local and state to regional and national experience. Nine years on the North Dakota Educational Telecommunications Council, two terms as Chair. All that experience and:

Representative Headland never discussed the proposed bill with me. He never sought my advice or counsel. HB 1485: Introduced for the benefit of Daktel at my expense by Daktel President Headland. It does not get any more personal than that. Thank you for listening to me.

HB 1485 Testimony
Keith A. Larson
Industry, Business & Labor Committee
February 8, 2004

Mr. Chairman, Committee Members, my name is Keith Larson. I am the General Manager of Dakota Central Telecommunications Cooperative and its subsidiaries. One of the subsidiaries, Daktel Communications, is a competing telephone, Internet and cable TV provider in Jamestown, North Dakota. Another subsidiary, Dakota Central Telecom I, provides telephone and Internet service in Carrington, North Dakota and intends to add cable TV to the services it provides during 2005.

Daktel Communications began offering dial-up Internet service in Jamestown in 1996. Thereafter, it expanded its service offerings to include high-speed wireless data service followed by telephone and high-speed data service to business customers utilizing fiber optic cable to the premise. In 2004, financing was obtained to construct a fiber-to-the-home (FTTH) network that would include telephone, high-speed data and cable TV to residential customers. Approximately 50% of the network was constructed in 2005 with the initial service beginning in July. The balance of the network will be constructed this year. The company has achieved a substantial portion of the market in the areas it has constructed facilities thus far.

Our cable TV programming includes over 100 channels of video content and 45 channels of digital music. The Fighting Sioux Network is one of the channels we offer in Jamestown and would like to continue to offer next year. Daktel Communications has an exclusive agreement for Jamestown. However, since Ralph Engelstad Arena has expressed their desire to cancel the contract as a result of another exclusive agreement they have with Cable Services Inc. for Jamestown, we believe we will be without the Fighting Sioux Network's content for Jamestown next year. In addition, Midcontinent Communications has an exclusive agreement for Carrington. Therefore, we believe we will be prevented from acquiring the content for Carrington also.

We believe the University of North Dakota has entered into agreements assigning the broadcasting rights of UND sporting events held in the Ralph Engelstad Arena to the Ralph Engelstad Arena and the Forum Communications Company. The Forum Communications Company broadcasts the events to the general public through its local affiliates of ABC known as WDAY and WDAZ.

In addition, Ralph Engelstad Arena and the Forum Communications have been providing exclusive broadcasting contracts for the Fighting Sioux Network to cable companies for select communities. The current agreements are for the 2004/2005 sports season, but are subject to renewal on the terms and conditions satisfactory to the parties. Therefore, the current agreement seems to provide for exclusivity, but only for the existing season. Any renewal would not need to include the exclusivity terms.

The exclusive agreements with the incumbent cable companies prevent competing cable providers from gaining access to the Fighting Sioux Network's content. We have over 100 contracts for video content with other video content providers and none of them offer exclusive agreements to a cable company for an entire community.

The University of North Dakota is a publicly funded institution. Therefore all the taxpayers of ND should have an equal opportunity to view UND's games if they are going to be commercially broadcast. The public should not be prohibited from viewing the Fighting Sioux Network's content based on the cable company they select to provide their service.

As a result of new technologies, communities may no longer just have one video provider. Currently, Hillsboro, Mayville/Portland and Jamestown have two providers. We intend to offer video in Carrington this year which will compete with Midcontinent's service offering. In addition, we are aware of a number of other telephone companies that intend to offer video in the communities they serve over the next year or two.

We are not opposed to the University of North Dakota making agreements with the local affiliates of the national broadcasting companies (ABC, CBS, NBC, FOX, etc.) to air their content as it would be available to the entire population of a community through their public broadcasts. However, we are opposed to exclusive agreements with cable companies that would exclude large portions of a community from viewing content of publicly funded entities.

We believe the University of North Dakota would enhance their revenue by entering into agreements that provide for their content to be distributed to all the tax-paying citizens rather than excluding large portions of communities as result of the consumer selecting one cable company over another. With the elimination of the exclusive broadcasting agreements, both cable providers within a community would pay a fee per subscriber rather than only one of the companies paying as currently occurs.

In summary we believe it is in the best interests of the University of North Dakota and the residents of North Dakota to eliminate the current practice of public entities allowing the offering of exclusive broadcasting contracts for their content to cable companies. Broadcasting agreements should be offered to all video providers within a community and include identical terms and conditions for that particular community.

We are hopeful the Industry, Business and Labor Committee will support the legislation in order that taxpayers supporting public entities will have an equal opportunity to view their broadcast content.

We respectfully request that the committee vote "do pass" on HB 1485.

Mr. Chairman, Committee Members, that concludes my testimony. I would be happy to answer any questions that you may have.

February 8, 2005

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
HB 1485

REPRESENTATIVE KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Cable Television Association and the North Dakota Broadcasters Association. We oppose this bill and urge a do not pass.

The exclusivity of a commercial broadcast of a sporting event is the essential element of its attractiveness to a broadcaster or a cable network. This is what enables the company to sell advertising, attract viewers or customers and make some money with the broadcast. All professional sports bid their broadcast rights on an exclusive basis. The Olympics are bid on an exclusive basis. The ND High School Activities Association bids its tournaments on an exclusive basis.

This bill deprives all state institutions of the ability to commercially market its sports broadcasts. The theory that because these are public institutions all citizens have a right to these broadcasts is incorrect. If this is the case, then no college could sign any agreements regarding its logos, t-shirts and other marketable products. No college or university could limit the availability of its research and development activities.

Additionally, while the ND High School Activities Association is not a public institution, its tournaments are comprised of teams from public institutions, so I believe a good case could be made that this bill applies to its tournaments as well.

The dispute that caused this bill to be introduced is a contractual matter that should be resolved through normal business channels and not by legislation. We respectfully request you give this a do not pass.

If you have any questions, I'd be glad to try and answer them. Thank you for your time and consideration.

HB 1485 Testimony
David L. Dunning
Industry, Business & Labor Committee

Good morning Mr. Chairman, committee members, my name is David Dunning. I am the General Manager/CEO of Polar Communications in Park River, North Dakota. Polar Communications provides local telephone, Internet services and cable television services to a large portion of eastern North Dakota and a small segment of western Minnesota.

Polar Communications' entry into the provision of cable television service began in the mid 1960's, when many small towns in Polar' service territory approached the company to request service where none had been provided and where systems badly needed upgrading. Since that time, Polar has continued to make significant improvements to the cable television system in those communities, including constructing a new master/digital head-end configuration in 2001, that today provides Polar subscribers with an impressive 132 channel selection.

Also, in 2001, Polar Communications, through it's subsidiary Polar Telcom, began building a "state of the art" modern telecommunications system in the communities of Mayville/Portland. Polar built the system as a result of the requests of several community leaders who were seeking expanded local calling options, high-speed Internet service and upgraded cable television services. Prior to Polar' entry into the Mayville/Portland market, the same city leaders had requested these system upgrades from the incumbent providers.

Polar Telcom began service to the community of Mayville/Portland in February 2002. Since that time the project has been a great success and Polar' service has been accepted by the community. In addition, Polar has provided three quality jobs and maintains a local office in the community. As I discussed earlier in my testimony, the community requested a system that would provide telephone, high Speed Internet and cable television service. Consequently, our business model showed that the revenue from all three of these services was necessary to justify the substantial investment.

That brings me to the point of this hearing. Polar presently provides the "Fighting Sioux Sports Network" to all its cable television subscribers, with the exception of the Mayville/Portland community. Polar Communications has been *denied* the opportunity to broadcast the "Fighting Sioux Sports Network" in that community because the Ralph Engelstad Arena and Forum Communications has given the incumbent provider, Midcontinent Communications, exclusive rights to that network in the Mayville/Portland community. Polar Communications presently has approximately 50 programming contracts with content providers, none of which have this type of restriction.

Mr. Chairman, Committee Members, these type of arrangements not only deny select citizens of North Dakota access to a tremendous asset of the state of North Dakota, specifically the Fighting Sioux Sports Network, but also will impede investment in North Dakota.

In conclusion, Mr. Chairman, Committee Members, Polar Communications views the present "Fighting Sioux Sports Network" programming contract as anti-competitive as well as reducing the ability or incentive for companies such as Polar, Dakota Central and Halstad to invest in North Dakota.

As a result, Mr. Chairman, Committee Members, Polar Communications would respectively request that the committee vote **"do pass"** on HB 1485.

Thank you for your time and consideration and I would be glad to answer any questions.

HB 1485 Testimony
Ronald W. Laqua
Industry, Business & Labor Committee

Mr. Chairman, Committee Members, thank you for this opportunity to speak with you today. I am Ron Laqua, General Manager of the Halstad Telephone Company, which provides telecommunication and Cable TV services in both Minnesota and North Dakota.

In Hillsboro, North Dakota we provide competitive telephone services, with Qwest as our competitor, and competitive broadband Internet and Cable TV services, with Midcontinent as our competitor. In addition, we are rather unique among Cable TV operators by the fact that we provide Cable TV along with our telephone and Internet services to many rural Hillsboro residents. Although we provide the often-referenced "triple play" of these three services, I will limit my testimony to our provision of Cable TV service in the Hillsboro area, but will be glad to answer questions on any of our services and geographic service areas.

Halstad Telephone has an overwhelming majority of the Cable TV customers in Hillsboro's town market, and it is the only provider to the rural Hillsboro TV customers that I mentioned. I will clarify my use of the term "overwhelming majority." In the town of Hillsboro where the sources of Cable TV service include over-the-air reception by antenna or satellite, and the Cable TV providers are Midcontinent and Halstad Telephone, our best calculation shows that Halstad Telephone has over 80% of the market share in the town of Hillsboro.

For our Hillsboro customers, we included in our TV lineup the UND Fighting Sioux Network during its initial sports season of 2003-2004. We were allowed to do that because we had entered into a programming contract with the Ralph Engelstad Arena and Forum Communications which had no exclusivity clause, so both Halstad Telephone and Midcontinent were able to distribute the Fighting Sioux Network in Hillsboro.

However, the following fall, when Ralph Engelstad Arena and Forum Communications presented us with the 2004-2005 season contract to air the Fighting Sioux Network, I learned that Halstad Telephone would be restricted from showing that network in Hillsboro, due to the fact that wording was added to give Midcontinent exclusive rights to air that channel there. Despite my best efforts to explain to those in charge of the Fighting Sioux Network that Halstad Telephone served the overwhelming majority of the Hillsboro market, my efforts were to no avail, and Midcontinent is now the sole provider of the Fighting Sioux Network in Hillsboro, leaving the overwhelming majority of Hillsboro's taxpayers unable to watch their Sioux teams.

I would also like to share with this committee a different, yet related story of a valuable service we provide to our Hillsboro TV customers. Halstad Telephone contributed funds toward and provides at no charge to the Hillsboro Public School system a high speed video grade circuit to the school for its use in broadcasting its football and basketball games, as well as concerts and any other events, plus any local school and community announcements – basically whatever the school may wish to broadcast to its constituents.

This extra step that Halstad Telephone initiated to better serve the Hillsboro community has been accepted with great enthusiasm by the school, its students, and those who may not be able to attend such events in person. Those associated with the Hillsboro Public School have enhanced these broadcasts with excellent play-by-play commentary by both school and community people, and the availability of this channel has fostered discussion among school officials to possibly offer a broadcast media class for its students. Halstad Telephone initiated the idea for this service and is proud to be contributing in a major way to its becoming a reality.

Yet, the same signal that the Hillsboro Public School feeds into Halstad Telephone's Cable TV network for its customers, is also fed into Midcontinent's system for its customers to watch as well. We at Halstad Telephone made no effort to require any exclusivity rights which would have prevented Midcontinent from sharing with its customers the events of the Hillsboro Public School system. We do not feel that anyone should be deprived of participating in public school events – in this example, the public can participate by watching on TV their children, grandchildren or friends shoot a basket, make a touchdown, or play beautiful music.

Whether it's the Hillsboro public grade and high schools or the UND college events, the events of both public institutions are made possible because of taxes paid by the public. To us, restricting any taxpayer from participating in such publicly funded events runs contrary to the inherent right of benefiting from the taxes that one pays. This point was driven home to me in a very poignant way when a young volleyball player thanked Halstad Telephone for allowing her ailing grandpa to watch her game from home, where he was tethered to a kidney machine and would otherwise have missed seeing his granddaughter play.

We in the Cable TV industry are fortunate to have jobs which allow technology to bring these public events into such homes as these and for the enjoyment of all. Halstad Telephone has made significant investment in state-of-the art technology to allow just this type of service to be distributed. We ask that we be allowed to make that technology work for the shared use of <u>everyone</u>.

Mr. Chairman and Committee members, Halstad Telephone Company respectfully requests that the Committee vote "**do pass**" on HB 1485.

House Industry, Business & Labor Committee
HB 1485
February 8, 2005
Mick Grosz

Mr. Chairman, Members of the IBL Committee, for the record my name is Mick Grosz. I am the CEO/General Manager of West River Telecommunications Cooperative headquartered in Hazen.

WRT provides voice and data services throughout its service area. At this time WRT does not provide video service. We have been asked by many of our customers to provide video services. I believe many of these customers, who are seeking better video service, also would like to have access to the Fighting Sioux Sports Network. This is especially true for Fighting Sioux hockey.

UND is a North Dakota taxpayer supported institution. I believe no North Dakota taxpayer should be unnecessarily denied the opportunity to enjoy watching the Sioux hockey team in action.

Others who will testify against this bill will say that denying a public entity the right to sell exclusive franchises will hurt them financially. This bill does not prohibit exclusive franchises. It simply allows that if a significant number of North Dakota residents in any city choose a competitive company they will have access to the UND Fighting Sioux Sports Network. The competitive company will pay for this service at the same rate as the franchise holder. This will not only mean there is no loss in the value of the franchise but will actually increase its value because of a larger customer base.

Passage of HB 1485 will be a service to the taxpayers of North Dakota by allowing more North Dakotans to view and enjoy UND sports.

Mr. Chairman, Committee members, I ask for your vote for a Do Pass recommendation on HB 1485.

Mick Grosz, CEO/General Manager
West River Telecommunications Coop.
PO Box 467
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From: Robin Anderson [randerson@daktel.com]
Sent: Tuesday, February 08, 2005 7:30 PM
To: Amerman, Bill D.; Ruby, Dan J.; Nottestad, Darrell D.; Vigesaa, Donald W.; Clark, Dennis D.; Dietrich, Donald D.; Thorpe, Elwood C.; Keiser, George J.; Froseth, Glen A.; Kasper, Jim M.; Ekstrom, Mary O.; Johnson, Nancy; Boe, Tracy L.
Subject: HB 1485

Dear Chairman Keiser and members of the Industry, Business and Labor Committee:

My name is Robin Anderson and I am Marketing Manager for Dakota Central Telecommunications. Thank you for allowing our company to testify this morning in favor of House Bill 1485. While I personally did not testify, I would like to respond to some of the comments made by the opposition.

After listening to today's testimony, it seems the bill could better reflect our intent by being modified to say that the public entity shall not enter broadcasting agreements whereby the "holder of the broadcast rights" intends to resell the rights they obtained to cable companies on an exclusive basis.

I felt that a large portion of the testimony centered around infringing on the exclusive contract rights of broadcast companies, such as WDAZ/WDAY and others. While the initial draft may have included such companies, this was never our intention nor is it now. I believe the ammended draft is much narrower in scope and excludes those companies, but the above paragraph may narrow it even more.

While the representative from WDAZ/WDAY did a good job of pleading his case, there was really no need for it.
As the broadcasting company, we do not see any problem with bidding for the production as they(WDAZ) have always done.
Just as we have no problem with the University choosing coke for the vending machines over pepsi.

The problem exists (just as Representative Kasper pointed out) when REA begins to tell the students that only half of them are allowed to purchase the coke, even though they are all willing to pay for it.

During Mr. McDonald's testimony he stated that exclusive rights in the industry are common such as Fox receiving the rights to broadcast the Super Bowl. Again, this is a broadcast agreement. Virtually all citizens have the opportunity to watch the Super Bowl as the majority of cable companies carry the Fox network. The statement was also made that Fox may not be available in all areas. While this may be a true statement, if the channel is not available it is because the cable company chose not to carry it either due to the cost of the content or because they lack the technical capabilities to carry the specific network. This is NOT because Fox signed exclusive agreements with one or more cable companies.

I manage content acquisition for our company and have dealt with more than 100 content providers. Until my communications with the Fighting Sioux Sports Network, I had never heard of an exclusive agreement for content. All content providers set the price per subscriber for their programming and then try to sell it to as many companies as possible for that same price. This is the norm.

The representative from UND said that it is common for contracts to be let via the bidding process. Again, it may be common practice when working with broadcasters, but it is virtually unheard of when talking about content to the cable companies.

I apologize for the confusion that has been caused in differentiating the exclusivity between broadcasters and cable companies. As I mentioned above, it was never our intention. The opposition in today's hearing would have had very little to say had we made that differentiation more clear at the onset.

I welcome any questions that any of you may have regarding content acquisition or communications I have had with representatives from Ralph Englestad Arena throughout this process.

I can be reached at:

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Again, thank you for the opportunity to comment.

Best regards,

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