STATE OF MINNESOTA

TWIN CITIES AREA METROPOLITAN
TRANSIT COMMISSION

In the Matter of the Proposed Repeal of Rules of the Twin Cities Area Metropolitan Transit Commission Relating to Operations of Transit Carriers, Transit Carrier Tariff, Accounting and Insurance Rules, and Rules of Practice, MTC 1-48, 14 M.C.A.R. §2	)	STATEMENT OF NEED AND REASONABLENESS

The Twin Cities Area Metropolitan Transit Commission proposes to repeal the above-entitled rules, pursuant to the procedures set forth in Minn. Stat. 1980, §15.0412, subdivision 4h. This memorandum constitutes the Statement of Need and Reasonableness of the Commission with respect to the proposed repeal, as required by subdivision 4h.

The Twin Cities Area Metropolitan Transit Commission promulgated the above-cited rules, which were filed with the Secretary of State on October 2, 1970, to implement Minn. Stat. 1969, §473A.09, subdivision 6 (whose successor is Minn. Stat. 1980, §473.413, subdivision 6). The relevant operative language, which is identical in both provisions cited above, is as follows:

> "There shall be transferred to and vested in the transit commission,

> all of the powers and functions of the Minnesota department of public service with respect to any public transit system or part thereof which has been or is acquired or constructed by and is owned and operated by or under the authority of the transit commission.

Minn. Stat. Chapter 221 authorizes the Public Service Department to regulate carriers, including motor carriers, operating in the State of Minnesota. See e.g., Minn. Stat. §221.031 ("The department shall prescribe rules and regulations for operations of all motor carriers . . . ."). Based upon this regulatory authority of the Public Service Department, transferred to the Commission pursuant to Minn. Stat. §473A.09, it was determined that appropriate rules should be issued by the Commission to regulate motor carriers "under the authority of" the Commission.

The Commission is not an "agency" within the terms of Minn. Stat §15.0411, since it is not a "state" agency and since it does not have a "statewide jurisdiction". Nonetheless, the Commission may voluntarily choose to issue rules under the procedures provided in the Administrative Procedure Act, pursuant to Minn. Stat. 1969, §473A.05, subdivision 9, which provides:

> "The commission may prescribe and promulgate rules and regulations as it deems necessary or expedient in furtherance of the purposes of sections 473A.01 to 473A.18 upon like procedure and with like force and effect as provided for a state agency by sections 15.0411 to 15.0422,

and acts mandatory thereof and supplementary thereto. (Successor at Minn. Stat. 1980, §473.405, subdivision 3).

Choosing to follow this procedure in this instance, the Commission issued the above-entitled rules.

The Commission, from time to time, had occasion to apply and enforce these rules with reference to other public transit systems within its area of authority. One such system, the Richfield Bus Company, challenged the Commission's efforts to enforce these rules with respect to its own operations. When the Commission sought to enjoin the Richfield Bus Company's violation of its cease and desist order issued pursuant to these rules, Judge Harold Kalina of the District Court of Hennepin County denied enforcement of the order and held that Minn. Stat §473A.09, subdivision 6 (whose successor is Minn. Stat. 1980, §473.413, subdivision 6), was unconstitutional insofar as it authorized the Commission to regulate other public transit systems in its area. This matter came before the Supreme Court of Minnesota on appeal and this finding was not reversed. Twin Cities Metropolitan Public Transit Area v. Holter, 249 N.W. 2d. 458 (1977).

On January 13, 1982 the U.S. Supreme Court announced its decision in the case of Community Communications Co., Inc. v. City of Boulder. The Court held that a cable television ordin-

ance issued by the City of Boulder was not exempt from scrutiny under the Federal Anti-Trust Laws. The Commission's enforcement of the above-entitled rules with respect to Public Transit Systems which are its own competitors, determined to be unconstitutional in the Holter case, would also present a clear and serious issue of violation of the anti-trust laws.

Because of the decision in the Holter case and the implications of the U.S. Supreme Court's decision in the City of Boulder case the Commission has determined that the above-entitled rules are subject to constitutional challenge and thus without adequate statutory authority, and that any attempt by the Commission to enforce these rules with respect to any operator of a public transit system other than itself would subject it to legal challenge and legal liability. Since the transfer of the regulatory authority of the Department of Public Service with respect to other operators of public transit systems attempted by §473.413, subdivision 6, is ineffective under the Holter decision, this power is retained by and may be exercised by the Public Service Department with respect to other operators of public transit systems. The Commission continues to have authority to regulate its own operations, to the exclusion of any regulation by the Public Service Department, under Minn. Stat. (1980), §473.413, subdivision 6, and §473.449. Thus, the repeal of the above-entitled rules does not create a gap in regulatory authority with respect to any operator of a public transit system.

Because the Commission's authority to enforce these rules with respect to any operator of a public transit system other than itself has been seriously undermined, because any attempt to do so may subject it to legal challenge and liability, and because equivalent authority (See PSC 1-48, 4 M.C.A.R. §3) to regulate other operators of mass transit systems are retained by the Public Service Commission, and, with respect to its own opertions, by the Commission, the Commission believes that the repeal of these rules is needful and reasonable.

Dated: _____, 1982.

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Louis B. Olsen
Chief Administrator