

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
The Electric Power Board and City of Wilson) WCB Docket Nos. 14-115 and 14-116
Petitions, Pursuant to Section 706 of the)
Telecommunications Act of 1996, Seeking)
Preemption of State Laws Restricting the)
Deployment of Certain Broadband Networks)

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September 29, 2014

REPLY COMMENTS OF KHE COMMUNITY SOLUTIONS, LLC

KHE Community Solutions, LLC (“KHE”) hereby files these comments in response to the Federal Communication Commission’s (“Commission”) establishment of the pleading cycle, released July 28, 2014, in the above-captioned proceeding.

KHE has reviewed the petition of the Electric Power Board of Chattanooga (“EPB”) and Wilson County, North Carolina (collectively, the “Petitions”) and urges the Commission to support these Petitions and follow the directive of the United States Congress contained in Section 706 of the Telecommunications Act to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by removing barriers to infrastructure investment that are thwarting this progress. Although these comments discuss primarily the petition of EPB, KHE intends these comments to apply in support of both Petitions.

KHE is committed to Revitalizing Small Town AmericaSM. Many of our country’s greatest needs are met by hard-working Americans in small towns and rural areas.

This excerpt of a recent article discusses the decline of outlying areas:

“The real and perceived lack of opportunity is fueling an out-migration from these places. In fact in many rural counties, the departure of young people and reduced birth rates equates to actual reductions in overall population. The USDA reports that rural counties lost overall population in 2010-2012.”¹

¹ Charlie Spies “Getting to Work in Rural America,” *Huffington Post*, September 15, 2014, at http://www.huffingtonpost.com/charlie-spies/getting-to-work-in-rural-_b_5823200.html.

Mr. Spies goes on to describe very poignantly why this matters to all of us...

“In a nut shell (they provide those too) the natural resources harvested and processed in rural America begin the supply chain for our overall economy and our daily lives. So think more about the breakfast cereal or eggs or milk that start your day. Think about the paper and bio-plastics and other core items that make up your daily needs to get your own work done or remodel your home. Rural America is part of and completes your personal supply chain - and it's where we go to relax and enjoy free time. It preserves wildlife. It is worth saving the people and places that make rural America important to all of us.”²

Unfortunately, when it comes to technological advancements, these are the same people who are forgotten and rendered “not a sufficient return on investment” when large telecommunications providers determine infrastructure development. Many of our younger generation want to stay or return to small town life, but these towns and their surrounding areas often lack the amenities present in the cities, and families often simply find it too difficult to make a living there in the absence of 21st century technological capabilities.

Section 706 of The Telecommunications Act of 1996 (“Section 706”) sought to level this long-standing imbalanced playing field when Congress gave the Commission the explicit power to ensure that the free flow of opportunity in commerce was not restricted to those who desired access to it. The subsequent updates to the definition of “advanced telecommunications capability” by the Commission since that time acknowledge the rapid development of advanced capabilities and the need for Section 706 in practice by the Commission to keep pace with the intent of Congress in having all Americans have access to such services. Unfortunately, certain state laws have thus far prevented the ubiquitous delivery of such services to all Americans by instead establishing a state-mandated safeguard for providers who are averse to competition.

Tennessee recognized the intent behind Section 706 when it enacted Section 401³ in 1997 which allowed municipal providers to provide telecommunications services throughout the state of Tennessee. There must have been quite a stir among the traditional providers, however, because soon thereafter EPB applied for, and obtained, its certificate of convenience and necessity to do so, but was suddenly limited to its electric service area for the delivery of telecommunications services.⁴ This territorial restriction imposed on EPB was then applied statewide through legislation prohibiting municipal providers from providing Internet and video services beyond their electric service areas.⁵

This type of monopoly protection is not only anti-American, but is affecting small town and rural residents and business owners directly in their pocketbooks and prohibiting the kind of advancement envisioned for America by Congress in enacting Section 706. One has only to look

² *Id.*

³ Tenn. Code. Ann. § 7-52-401, *et seq.*

⁴ See Exhibit 5 to EPB Petition Pursuant to Section 706 of the Telecommunications Act of 1996; Timeline of EPB’s Development and Deployment of Gigabit Fiber Network

⁵ Tenn. Code. Ann. § 7-52-601, *et seq.*

at the job and business growth that resulted in cities such as Chattanooga and Tullahoma, Tennessee as a result of building out their own high-speed networks.⁶ Smaller towns and rural residential and business locations in the surrounding areas should be given the same opportunity when there is a provider willing to make the investment to engage in the expansion.

All Americans deserve to have the opportunity to raise their standard of living and contribute to the economic growth of this country, their own communities, and their families by not being denied access to what the majority of this country's population now considers a necessary component of life in the 21st century – high-speed Internet access. EPB offers Gigabit Internet access, the kind of service that can be a boon to rural communities trying to attract new businesses, and to small businesses trying to gain a foothold in this New Economy. We urge the Commission to support the Petitions and remove the state-imposed barriers to competition by municipal providers in the interest of all Americans, and as directed by Congress.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kyra F. Howell".

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⁶ Allan Holmes "Municipal Broadband Expansion Blocked in Many States," *Chattanooga Times Free-Press*, September 3, 2014, at <http://www.timesfreepress.com/news/2014/sep/03/fight-over-fibermunicipal-broadband-expansion/>.