

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

In the Matter of)	
)	
Petition of the City of Wilson, North Carolina)	WC Docket No. 14-115
Pursuant to Section 706 of the)	
Telecommunications Act of 1996, for Removal of)	
Barriers to Broadband Investment and Competition)	
)	
Petition of the Electric Power Board of)	WC Docket No. 14-116
Chattanooga, Tennessee)	
Pursuant to Section 706 of the)	
Telecommunications Act of 1996, for Removal of)	
Barriers to Broadband Investment and Competition)	
)	

REPLY COMMENTS OF COGENT COMMUNICATIONS GROUP, INC.

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Cogent Communications Group, Inc. (“Cogent”) submits this reply to the comments filed regarding the petitions of the City of Wilson, North Carolina and the Electric Power Board of Chattanooga, Tennessee urging the Federal Communications Commission (“FCC” or “Commission”) to preempt state laws posing a barrier to broadband investment and competition under Section 706 of the Telecommunications Act of 1996 (“Section 706”).¹ In sum, Cogent concurs with the views offered by commenters such as Netflix, Inc. (“Netflix”), the City of Madison, Wisconsin, Harford County, Maryland and others who argue that the Commission should preempt state laws that pose an obstacle to the widespread deployment of high-speed, reliable, and affordable broadband Internet access for millions of Americans. Furthermore, Cogent seeks to emphasize a critical point that has not been given sufficient attention in the discussion thus far: deployment of public broadband networks that will compete with incumbent last-mile, private Internet service providers (“ISPs”) will discipline the anticompetitive and discriminatory practices of last-mile ISPs regarding interconnection. These reply comments address these two points in turn.

First, Cogent agrees that the “Commission can and should take a hard look at state laws that facilitate the efforts of incumbents to artificially constrain broadband availability and capacity.”² State laws preventing the deployment or expansion of municipal broadband networks not only harm communities who have no access to high-speed broadband, but also “restrict competition from community broadband” in areas where incumbent ISPs maintain local

¹ See *Pleading Cycle Established for Comments on Electric Power Board and City of Wilson Petitions, Pursuant to Section 706 of the Telecommunications Act of 1996, Seeking Preemption of State Laws Restricting the Deployment of Certain Broadband Networks*, Public Notice, WC Docket Nos. 14-115 and 14-116, DA 14-1072 (July 28, 2014).

² Comments of Netflix, Inc., WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 3 (“Netflix Comments”).

monopolies or duopolies and, consequently, face little competitive pressure to upgrade their networks or to maintain affordable prices.³ Wilson and Chattanooga, along with any other community seeking to build or expand a municipal broadband network, “should not be hamstrung by state laws enacted at the urging of incumbent broadband providers seeking to maintain market dominance.”⁴

Chairman Wheeler accurately recognizes that municipal broadband networks increase competition among last-mile ISPs to the benefit of consumers. As he writes:

The facts speak for themselves: competition works—when it is allowed to. Throughout the country where we have seen competitive broadband providers come in to a market, prices have gone down and broadband speeds have gone up. No wonder incumbent broadband providers want to legislate rather than innovate.⁵

Chattanooga and Wilson’s experiences demonstrate as much. After the introduction of municipal gigabit service, Comcast improved broadband speeds in Chattanooga,⁶ and private sector ISPs in Wilson offered “better services and rates to their customers.”⁷ This phenomenon is repeated in communities across the country. For example, Comcast Corp. (“Comcast”) and Time Warner Cable, Inc. (“TWC”) both announced increased speeds at no cost to their

³ Tom Wheeler, *Removing Barriers to Competitive Community Broadband*, Official FCC Blog (June 10, 2014), <http://www.fcc.gov/blog/removing-barriers-competitive-community-broadband>; *see also id.* (noting that Chattanooga built its gigabit broadband network “out of necessity” because “local phone and cable companies chose to delay improvements in broadband service”).

⁴ Netflix Comments at 2.

⁵ Wheeler, *Removing Barriers to Competitive Community Broadband*.

⁶ Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by The Electric Power Board of Chattanooga, Tennessee, WC Docket No. 14-116 (filed July 24, 2014), at 27-28 (“EPB Petition”).

⁷ Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by City of Wilson, North Carolina, WC Docket No. 14-115 (filed July 24, 2014), at 20 (“Wilson Petition”).

subscribers in Kansas City, where Google first deployed its gigabit fiber network.⁸ Similarly, after Google announced the deployment of its network in Austin, Texas, AT&T responded by offering consumers speeds more than fifteen times the speed they currently received, and at nearly half the cost.⁹ If Google were rolling out its high-speed fiber on a national basis, or if other firms with comparable resources were doing the same, perhaps the need for municipality-sponsored networks would not be as acute. That, however, is not the case.¹⁰ Unless and until this state of affairs changes in a meaningful way, municipalities wishing to deploy broadband networks should be able to compete with incumbent ISPs in the same way as companies like Google.

Moreover, state laws preventing municipal broadband networks “represent retrenchment and a move away from a pro-consumer policy of limitless bandwidth” that the Commission’s Section 706 authority is designed to foster.¹¹ Preemption of these state laws is another weapon in the Commission’s arsenal to help it fulfill its Section 706 mandate to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all

⁸ Conner Forrest, *Comcast, Time Warner take on Google Fiber in Kansas City; can the incumbents compete?*, TechRepublic (Aug. 12, 2014), <http://www.techrepublic.com/article/comcast-time-warner-take-on-google-fiber-in-kansas-city-can-the-incumbents-compete/>.

⁹ Marguerite Reardon, *Google’s fiber effect: Fuel for a broadband explosion*, CNet (Apr. 30, 2014), <http://www.cnet.com/news/googles-fiber-effect-fuel-for-a-broadband-explosion/> (“Call it the Google Fiber effect. Google makes a splashy announcement that it intends to build a super high-speed network in a city. Competition follows, which translates into higher-speed services and lower prices for consumers.”).

¹⁰ Google Fiber, *Let’s Get Up to Speed: Frequently Asked Questions*, <https://fiber.google.com/newcities/> (stating Google has no plans to expand fiber beyond 34 potential cities in nine major metropolitan areas) (last visited Sept. 22, 2014); Karl Bode, *Google Fiber Working With 34 Potential New Google Fiber Cities*, DSLReports.com, <http://www.dslreports.com/shownews/Google-Fiber-Working-With-34-Potential-New-Google-Fiber-Cities-127830> (Feb. 19, 2014) (opining that Google Fiber going nationwide is a “quiet illusion”).

¹¹ Netflix Comments at 1.

Americans.”¹² Policies that promote the deployment of additional broadband networks and increasing the capacity of existing networks are critical to ensuring competition among ISPs. In contrast, policies that stifle the competitive dynamic that is generated by the addition of viable and affordable broadband service choices for consumers are antithetical to the Commission’s statutory obligations and policy goals.

Second, a more robust launch of municipal broadband networks would spur incumbent ISPs to curb their anticompetitive interconnection practices. As Cogent has detailed in its submissions in the Comcast-TWC and AT&T-DIRECTV merger proceedings,¹³ as well as in its Open Internet rulemaking comments,¹⁴ major ISPs have purposefully congested interconnection points between their respective networks and transit providers like Cogent. These practices degrade the end user’s experience with bandwidth-intensive and latency-sensitive services like online video and voice-over-IP (“VOIP”) applications.

The reasons for this conduct—protecting vertically integrated video and voice services from nascent and established online competitors, along with deterring “cord cutting”—are well understood. Even worse, should the pending Comcast-TWC and AT&T-DIRECTV mergers be approved without specific conditions designed to ameliorate these anticompetitive practices, the

¹² 47 U.S.C. § 1302(a). Coupled with enhancing the transparency rule along the lines that Cogent has proposed in its Open Internet rulemaking comments and with extending the reach of Open Internet rules to include interconnection practices, as Cogent has urged, preemption of state laws like those at issue here will dramatically improve the availability, reliability, and affordability of competing broadband Internet access services for millions of Americans. *See* Comments of Cogent Commc’ns Grp., Inc., GN Docket No. 14-28 (filed Mar. 21, 2014) at 10-23 (“Cogent March 21, 2014 Comments”); Comments of Cogent Commc’ns Grp., Inc., GN Docket Nos. 14-28 and 10-127 (filed July 15, 2014) at 6-9, 23-25 (“Cogent July 15, 2014 Comments”); *see also* Reply Comments of Cogent Commc’ns Grp. (filed Sept. 15, 2014) at 7-16; 24-31.

¹³ *See* Petition to Deny of Cogent Commc’ns Grp. Inc., MB Docket Nos. 14-57 (filed Aug. 25, 2014), at 24-28 (detailing Comcast’s practices), Comments of Cogent Commc’ns Grp. Inc., MB Docket No. 14-90 (filed Sept. 16, 2014), at 11-15 (detailing AT&T’s practices).

¹⁴ *See* Cogent March 21, 2014 Comments at 18-19.

incentives and abilities of the merged firms to engage in such behavior will be augmented.

Municipal broadband networks, in contrast, would not degrade their end users' experiences by congesting interconnection points in part because these networks will not have affiliated content to prefer over unaffiliated content, as most of the major ISPs do. Put differently, the incentives that animate the behavior of ISPs like AT&T, Comcast and Verizon do not exist for municipal networks.

Moreover, municipal broadband networks would not degrade interconnection points because they need a free and clear network to fulfill their public mission. Such networks will serve not only residential subscribers, but also public entities such as libraries, schools, hospitals, and other governmental entities which require Internet access for bandwidth-intensive and latency-sensitive uses.¹⁵ To assist these entities in providing important public services and performing essential public functions, municipal broadband networks will have every reason to keep interconnection points open and uncongested.

And perhaps most significantly, many municipalities that have submitted comments in these proceedings note that public broadband networks are critical to their community's economic growth, job creation, and ability to stay competitive in the 21st century knowledge-based economy.¹⁶ As the North Carolina League of Municipalities puts it, the ability to build

¹⁵ See, e.g., Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 2 (“As the Petitions note, high-capacity broadband networks provide countless benefits to their communities—including enhanced economic development and competitiveness, educational opportunity, public safety, homeland security, energy efficiency, environmental protection and sustainability, affordable modern health care, quality government services, and many other advantages that contribute to a high quality of life.”); Comments of the North Carolina League of Municipalities, WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 5 (“These networks allow city leaders to improve the way they engage with their residents, enhance public services such as public safety, education, libraries and other public facilities, and foster innovation and local economic development.”) (“North Carolina League Comments”).

¹⁶ See, e.g., Comments of City of Madison, Wisc. WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014) at 4 (“At this critical time in our country's history, when the rest of the world is rapidly

municipal broadband networks would “stimulate local business’ development, foster work force retraining, and boost employment in economically underachieving areas.”¹⁷ High-speed, affordable and reliable broadband access attracts new businesses and people to their communities.¹⁸ As such, municipalities have every incentive to keep their broadband networks free and clear of any congestion so that these new businesses and job creators can thrive. Equally important, the widespread arrival of viable municipal broadband networks would spur a beneficial cycle of economic growth in communities across America.

Because municipal broadband networks would employ traffic management strategies to ensure that interconnection points remain uncongested, major ISPs may be disciplined into changing course. This is a matter of basic market forces. Notwithstanding the well-documented

deploying this essential 21st century infrastructure, all options must be on the table for our country to remain globally competitive. Removing the barriers to broadband investment and competition as requested in the Petitions will enable more communities to be self-reliant, and better enable America to maximize all resources so that no one is left behind and unable to participate in this knowledge-based global economy.”) (emphasis in original); Comments of the North Carolina Next Generation Network, WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 4 (“In today’s global knowledge-based economy, all local communities—rural, tribal, and urban—recognize that access to modern broadband Internet infrastructure is essential to enable economic and democratic activity.”); North Carolina League Comments at 1 (“To be able to compete in a global economy, building advanced communications networks and providing access should be explored by all stakeholders, including local governments.”); Comments of the City of Portland, Ore., WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 5 (“The City of Portland believes that affordable broadband is tantamount to and should be treated as a utility in today’s digital economy, providing residences, businesses, and government institutions equal access to the information highway.”); Comments of Harford County, WC Docket Nos. 14-115 and 14-116 (filed Aug. 29, 2014), at 2-3 (“We are deploying more than 100 route miles of fiber optic infrastructure and intend to establish fiber connectivity to key Internet peering locations and commercial datacenters in the Baltimore region. The County ultimately saves on the cost of telecommunications services by deploying its own network, while also having greater control over access afforded to its citizens We intend to leverage the [network] to advance the availability, affordability, and reliability of connectivity services to advance economic development and quality of life.”).

¹⁷ North Carolina League Comments at 2.

¹⁸ See Edward Wyatt, *Fast Internet Is Chattanooga’s New Locomotive*, N.Y. Times (Feb. 3, 2014), http://www.nytimes.com/2014/02/04/technology/fast-internet-service-speeds-business-development-in-chattanooga.html?_r=0 (quoting business owner stating that Chattanooga’s municipal broadband network “created a catalytic moment here” and “allowed us to attract capital and talent into this community that never would have been here otherwise”).

challenges consumers face in switching ISPs,¹⁹ at a minimum incumbent ISPs will face pressure to reconsider their congestion-creating tactics in order to compete for new customers. Rather than lose that competition to a municipal broadband network that can deliver what it sells, major ISPs would succumb to new competitive pressures to upgrade and maintain interconnection points to ensure adequate capacity. In turn, its subscribers would receive access to all lawful Internet content at speeds they were sold and with a measure of content-agnostic reliability exceeding what major ISPs deliver now. If the Commission preempts state laws standing in the way of municipal broadband deployment, it will further its Section 706 mandate by fostering the development of new, competitive dynamics among last-mile ISPs that incent each of them to provide fast, affordable, and reliable Internet connections devoid of any congestion. While such preemption is not a substitute for incorporating interconnection practices in the scope of the new Open Internet rules, it is an important complement to such rules and entirely consistent with the Commission’s Open Internet goals.

In sum, Cogent agrees with the multitude of voices urging the Commission to preempt state laws that prevent municipalities from deploying broadband networks. It is logically and evidentially true that municipal broadband networks increase competition among last-mile ISPs to the benefit of consumers. The addition of a municipal broadband network—that has no incentives to congest interconnection points—in any given locality will place new competitive pressures on the private last-mile broadband ISPs (or in many cases, the sole broadband ISP) in

¹⁹ See Tom Wheeler, Chairman, FCC, *The Facts and Future of Broadband Competition* (Sept. 4, 2014), at 1 (“Counting the number of choices the consumer has on the day before their Internet service is installed does not measure their competitive alternatives the day after. Once consumers choose a broadband provider, they face high switching costs that include early-termination fees, and equipment rental fees. And, if those disincentives to competition weren’t enough, the media is full of stories of consumers’ struggles to get ISPs to allow them to drop service”), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf (last visited Sept. 26, 2014).

that locality to cease discriminatory interconnection practices. Preemption is thus a critical tool to encouraging affordable, reliable and fast broadband to all Americans. Cogent joins the commenters urging the Commission to grant the petitions of the City of Wilson and the EPB.

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