

The Utah Telecommunications Open Infrastructure Agency is an interlocal entity under Utah law offering private companies the opportunity to sell ultra-high-speed broadband services. For approximately 10 years, this platform has offered a fiber-optic “open access” platform for private-sector broadband providers. Amidst the vibrant national debate about municipalities offering Internet services, policy-makers should not neglect the role of “open access” networks. Indeed, David Shaw and Drew Clark of Kirton McConkie offer these reply comments to emphasize the strong synergies between a municipality’s obligations to serve as the guardian of its rights-of-way; the emerging opportunities for government entities to work with public-private partners in constructing or enhancing universal fiber-optic infrastructure; and the role that “open access” plays in fostering robust private-sector competition.

It is vital that public dialogue reflect an understanding of why the 11 pledging cities participating in the Utah Telecommunications Open Infrastructure Agency – Brigham City, Centerville, Layton, Lindon, Midvale, Murray, Orem, Payson, Perry, Tremonton and West Valley City – value universal access to Gigabit Networks so highly.

Grass-roots dissatisfaction with low Internet speeds and high prices charged by large cable and telecommunications companies has ramped interest in bringing Gigabit Networks to cities across the country. Google Fiber, for example, garnered extensive publicity with its "Think Big with a Gig" competition in 2010. More than 1,100 cities applied to get fiber. As is well known, the company picked Kansas City, and later Austin, Texas, and Provo, Utah. It is currently exploring potential partnerships with an additional nine cities.

But Google can't go everywhere. That's why more than 143 communities¹ – in states from Alabama to Wyoming – are currently developing or considering the use of public-private partnerships to ensure deployments for our beyond-Gigabit future.

Unfortunately, most discussions of Gigabit Networks simply continue along the entrenched monopoly mindset. Below are important representative examples of communities deploying open-access fiber networks.

Danville, Virginia. The filing by the National League of Cities, National Association of Counties, U.S. Conference of Mayors, and National Association of Telecommunications Officers and Advisors reads:

The City of Danville (population 42,996) once had the highest unemployment in the state. Their low-skilled, poorly educated population made it difficult to attract the types of industry that would sustain development in the region. While general communications access (telephone, cable TV, and Internet) was adequate for the home consumer, it was not optimized for businesses. Building a network that would help expand business opportunities as well as wire public anchor institutions was one of the key features of Danville's approach to local economic development. The resulting open access, multiservice fiber network – nDanville –allows the city to provide direct service to schools and other city buildings as well as residential and business service. The network has been able to attract new businesses to the city and Danville has now gone from having the highest unemployment in Virginia to boasting a world-class technology infrastructure, revitalized downtown, new jobs, and a skilled workforce.²

Powell, Wyoming. The filing by the Coalition for Local Internet Choice makes these important observations:

Powell exemplifies the way in which municipalities are using advanced communications systems to shrink the world and give its residents an opportunity to perform on a global platform. A South Korean venture capital firm has agreed to pay up to \$5.5 million to engage 150 certified teachers in rural Wyoming to teach English to students in South Korea using high-speed video teleconferencing over Powell's fiber-to-the-home system. The Powell fiber system will enable the Wyoming-based teachers to work from home. The company that developed this project is now planning similar projects for students in China, Japan, and Taiwan. The project has been so

¹ "Number of Community FTTP Networks Reaches 143," Masha Zager, *Broadband Communities*, August/September 2014, pp. 10-22.

² Comments of the National League of Cities, National Association of Counties, U.S. Conference of Mayors, and National Association of Telecommunications Officers and Advisors, FCC Docket 14-115, FCC Docket 14-116, August 29, 2014. (Internal citations omitted.)

successful that the City was able to acquire full ownership of the project 18 years ahead of schedule.³

Utahns along the Wasatch Front can take pride in the role that the open-access Utah Telecommunications Open Infrastructure Agency (“UTOPIA”) has played in bringing Utah to the forefront of broadband innovation. Together with UTOPIA’s retail Internet service providers – 17 of whom are currently available on the UTOPIA network – the speeds of UTOPIA service are second to none, anywhere in the country.

With the right public-private partnership, the communities of the Utah cities along the Wasatch Front will be well-prepared for future economic development.

A public-private partnership is a way of leveraging government resources without incurring the expense of going to the capital markets and incurring more debt. Public-private partnerships also give governments a means of ensuring “asset performance,” since payments to the private entity are based on fulfillment and performance. Such normal burdens as labor issues, debt and managing costs fall to the private partner.

Under the public-private partnership model, municipalities have oversight responsibility, but no direct day-to-day role in the build-out and operations of the network. A public-private partner becomes the network operator and wholesaler, overseen by a public entity composed of participating municipalities, to ensure that the contractually agreed performance standards are achieved. The network remains an open access network, with the public-private partner’s role being maximization of competition between providers on the network. The cities retain ownership of the network assets, and the public-private partner takes operational responsibility for the network over a 30-year period, effectively leasing the network from the cities.

Under the public-private partnership/”open access” model, the network operator

³ Comments of the Coalition for Local Internet Choice, FCC Docket 14-115, FCC Docket 14-116. August 29, 2014. (Internal citations omitted.)

becomes the provider of the “fiber highway” that an existing or new entrant can use to deliver data, voice, video and other services to customers. This highway is open to any provider that wishes to use it, including the incumbents.

We believe that the combination of public-private partnerships, together with “open access,” must become a more central part of the discussion around municipal broadband.