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December 15, 2014

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, NW
Washington, D.C., 20554

Re: *Notice of Ex Parte Communication*
WCB Nos. 14-115 (Wilson) and WCB 14-116 (Chattanooga EPB)

Dear Secretary Dortch:

During previously noticed *ex parte* meetings on October 23 and November 12, 2014, members of the staff of the Commission asked for clarification or elaboration of some of issues raised in the proceedings listed above. Representatives of the petitioners promised to respond in writing, which we do below. These responses were prepared with the assistance of Wilson's local counsel, James Cauley and Gabriel Dusablon, and of Chattanooga EPB's local counsel, Rick Hitchcock and Tom Greenholtz.

Q1. The City of Wilson has asked the Commission to declare North Carolina Session Law 2011-84 unlawful and unenforceable in its entirety under Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 1302. Section 7 of Session Law 2011-84 states that: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable." Does Section 7 require the Commission to act on a section-by-section basis and preclude it from declaring Session Law 2011-84 invalid in its entirety?

A1. North Carolina's case law on severability would support a Commission declaration that Session Law 2011-84 is invalid in its entirety.

As the City of Wilson showed in the text of its petition (at pp. 26-42) and in its section-by-section analysis appended as Attachment A to the petition, Session Law 2011-84 added to North Carolina law a broad range of severe barriers to community broadband initiatives. While opponents of Wilson's petition claim that the purpose of S.L. 2011-84 was to create a level playing field for public and private communication service providers and to protect taxpayers and State governments from the

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follies of local governments, Wilson showed that the various interrelated provisions of S.L. 2011-84 work together to create an effective prohibition on broadband investments by North Carolina's municipalities. In fact, since S.L. 2011-84 became law in 2011, not a single North Carolina community has been able to enter the field.

Almost a century ago, the Supreme Court of North Carolina articulated the standard that the State's courts must apply in deciding whether a statute (or a contract) is severable: "Where a part of a statute is invalid, the remainder, if valid, will be enforced, provided it is complete in itself, and capable of being executed in accordance with the apparent legislative intent, but if the void clause cannot be rejected without causing the statute to enact what the Legislature did not intend, the whole of it must fall." *Commissioners of Bladen County v. Boring*, 175 N.C. 105, 95 S.E. 43 (1918). A corollary of this rule is that "[w]here the various clauses of a statute are so interrelated and mutually dependent that one clause cannot be enforced without reference to another, the statute must stand or fall as a whole." *Flippin v. Jarrell*, 301 N.C. 108, 118, 270 S.E.2d 482, 488 (1980); *accord Fulton Corp. v. Faulkner*, 345 N.C. 419, 421-22, 481 S.E.2d 8, 9 (1997).

In assessing severability, North Carolina courts typically review the overall purpose and effect of the challenged statute in order to establish whether the non-severed remainder still fits within the overall legislative intent. *Sheffield v. Consol. Foods Corp.*, 302 N.C. 403, 421-22, 276 S.E.2d 422, 434 (1981) (considering "the act as a whole"); *Commissioners of Bladen County v. Boring*, 175 N.C. 105, 95 S.E. 43, 46 (1918) (a court should review the legislature's "leading or dominant intent in passing the statute").

If the non-severed language alone would not achieve the legislature's purpose, courts cannot make adjustments to achieve the intent of the legislators or parties to a contract. For example, in *Jackson v. Associated Scaffolders & Equip. Co.*, 152 N.C. App. 687, 691-92, 568 S.E.2d 666, 668-69 (2002), the court invalidated an entire contract instead of just severing an illegal indemnity clause because, had it not done so, the Court would have been "required to add language, rather than simply excise portions of the agreements which violate the statute." Similarly, in *Carson v. National Inc.*, 267 N.C. 229, 233, 147 S.E.2d 898, 901 (1966), the Supreme Court of North Carolina stated that courts "cannot under the guise of construction rewrite contracts executed by the litigants." Although these latter two cases dealt with the severability of contracts rather than statutes, the principles are the same.

North Carolina courts are particularly reluctant to apply a severability clause in a statute where doing so could have significant regulatory consequences. For example, in *City of Roanoke Rapids v. Peedin*, 124 N.C. App. 578, 591, 478 S.E.2d 528, 535-36 (1996), the court declined to give effect to a severability clause and struck down the entirety of an anti-smoking ban, finding that it was "pragmatically impossible, as well as jurisprudentially unsound, for [the court] to attempt to identify and excise particular provisions while leaving the remainder of the [administrative agency's] antismoking code intact." *Id.* The Court concluded that "[t]he result would itself constitute a regulatory scheme crafted by "the judicial branch of government acting as part of the legislative branch of government." *Id.*

Last, and perhaps most important, North Carolina courts recognize that statutes are typically written as unified wholes and that all of their provisions should be interpreted as having the same legislative purpose. As a result, in determining whether to leave certain provisions standing, a court should consider that the legislature probably intended that language to be interpreted as furthering the same unlawful purposes as the severed provisions. For example, in *Sheffield v. Consol. Foods Corp.*, 302 N.C. 403, 421-22, 276 S.E.2d 422, 434 (1981), the Supreme Court of North Carolina stated (with our emphasis added):

In order to discover and give effect to the legislative intent we must consider the act as a whole, having due regard to each of its expressed provisions; for there is no presumption that any provision is useless or redundant. That the act consists of several sections is altogether immaterial on the question of its unity. The construction of a statute can ordinarily be in no wise affected by the fact that it is subdivided into sections or titles. A statute (is) passed as a whole and not in parts or sections and is animated by one general purpose or intent. Consequently the several parts or sections of an act are to be construed in connection with every other part or section and all are to be considered as parts of a connected whole and harmonized, if possible, so as to aid in giving effect to the intention of the lawmakers.

Taking all of these considerations into account, the Commission should find that invalidating S.L. 2011-84 in its entirety is appropriate here. First, S.L. 2011-84 is not reasonably capable of separation. Although a few of its provisions might be capable of operating in isolation of the other parts, most of its provisions are closely interconnected and intertwined. There is also a large degree of cross-referencing within the provisions that would be rendered meaningless and confusing if any affected portion was removed. In short, severing some provisions of S.L. 2011-84 and not others would leave an incoherent, fractured statute that would no longer resemble the comprehensive regulatory scheme envisioned by the legislature.¹

Second, as Wilson has shown, the illegality of S.L. 2011-84 stems in large part from the cumulative effect of provisions that collectively amount to a clear and impermissible barrier to the deployment of advanced communications capabilities. While each individual provision of S.L. 2011-84 might not itself constitute an insurmountable barrier to entry in every possible fact situation, a provision-

¹ The same principle applies under federal law. See, e.g., *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1181 (9th Cir. 2001), *overruled on other grounds*, *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) (“This is not to say that the Counterclaim Cities cannot enact ordinances to manage the rights-of-way under § 253(c). But we cannot say that the objectionable portions of the present ordinances may be excised without rendering the end product a Swiss cheese regulation that would not be capable of ‘accomplishing the ordinances’ legislative purposes.”) (citations omitted); see also *Cellco Partnership v. Hatch*, 431 F.3d 1077, 1084 (8th Cir. 2005) (it is inappropriate to sever provisions that were “conceived together as a unified effort to regulate”).

by-provision approach that failed to give appropriate weight to the cumulative effects of the individual provisions would be inconsistent with the letter and spirit of Section 706.

A quick illustration helps to explain this point. Suppose for the sake of argument that S.L. 2011-84 consisted of only five separate provisions instead of the dozens of barriers discussed in Wilson's petition and section-by-section analysis. Suppose further that the Commission determined that no single provision, standing alone, would serve as an impermissible barrier to communications services, but any two of them operating together would do so. How could the Commission resolve this dilemma and fulfill its mission under Section 706 without declaring the whole statute invalid? Specifically, the Commission would not be able to justify invalidating provisions 1 & 2, 3 & 4, 1 & 4, etc., while retaining provision 5, especially given that the Commission could just as easily have invalidated provisions 2 & 5, 3 & 5, etc., while retaining provision 1.

Instead, applying the North Carolina Supreme Court's teaching in the cases cited above, the Commission should invalidate S.L. 2011-84 in its entirety. In short, as the North Carolina Court of Appeals stated in *City of Roanoke Rapids v. Peedin*, 124 N.C. App. 578, 591, 478 S.E.2d 528, 535-36 (1996), it would be "pragmatically impossible, as well as jurisprudentially unsound, for [the Commission] to attempt to identify and excise particular provisions while leaving the remainder of the [law] intact..." as "[t]he result would itself constitute a regulatory scheme crafted by the judicial branch of government acting as part of the legislative branch of government."

Q2. The City of Wilson has asserted that several provisions of Session Law 2011-84 overlap and are inconsistent with other provisions of North Carolina law. Please elaborate and provide examples.

A2. Discussion and examples follow.

S.L. 2011-84 imposes on North Carolina municipalities that want to invest in advanced communications capabilities a variety of obligations that are either unnecessary or are significantly more burdensome, costly, time-consuming, and collectively prohibitory, than the requirements that municipalities must generally meet when engaging in other activities of comparable nature and scale. As a result, if the Commission declared S.L. 2011-84 invalid and unenforceable, it would not leave municipalities unregulated but would restore them to the position they were in before S.L. 2011-84 was enacted – that of having to comply with the requirements of general applicability discussed below.

1. Section 160A-340.1(3)

G.S. § 160A-340.1(3) states that a municipality shall:

Limit the provision of communications service to within the corporate limits of the city providing the communications service.

This provision is inconsistent with G.S. § 160A-312, which permits a city to "acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations." The term "public enterprise" is defined in G.S. § 160A-311 and includes

(1) Electric power generation, transmission, and distribution systems, (2) Water supply and distribution systems, (3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems, (4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without, (5) Public transportation systems, (6) Solid waste collection and disposal systems and facilities, (7) *Cable television systems*,² (8) Off-street parking facilities and systems, (9) Airports, and (10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types.

Removal of S.L. 2011-84 – including G.S. § 160A-340.1(3) – would thus leave Wilson and other North Carolina municipalities subject to G.S. § 160A-312, which allows them to invest in broadband networks outside a city’s corporate limits to “within reasonable limitations.”

2. G.S. § 160A-340.1(4)

G.S. §160A-340.1(4) states that a municipality:

Shall not, directly or indirectly, under the powers of a city, exercise power or authority in any area, including zoning or land-use regulation, or exercise power to withhold or delay the provision of monopoly utility service, to require any person, including residents of a particular development, to use or subscribe to any communications service provided by the city-owned communications service provider.

This provision uses different, and potentially inconsistent, language to describe a prohibition to which municipalities are already subject under common law:

[T]he duty now imposed by G.S. § 62-140 upon privately owned distributors and sellers of electric power not to discriminate in service or rates is merely a development of “the common-law obligation of equal and undiscriminating service.”...

...

A city may not deprive an inhabitant, otherwise entitled thereto, of light, water or other utility service as a means of compelling obedience to its police regulations, however valid and otherwise enforceable those regulations may be. The right of a city to cut off or refuse a service rendered by it in its proprietary capacity must be determined as if the city, in its capacity of supplier of such service, were a person separate and apart from the city as a unit of government. ...

² In *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 168 N.C. App. 75, 606 S.E.2d 721 (2005), appeal dismissed, *BellSouth v. City of Laurinburg*, 615 S.E.2d 660 (N.C. Apr 06, 2005) the court found that the term “cable television system” as including fiber optic communications networks, whether or not they provided video programming services.

Dale v. City of Morganton, 270 N.C. 567, 572-73, 155 S.E.2d 136, 141-42 (1967) (citations omitted).³

Further, the City's zoning authority is constrained to the following purposes, as set forth in G.S. § 160A-383:

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

A municipality is therefore already prohibited from taking the sort of zoning action targeted by G.S. § 160A-340.1(4), as such action would surely fall outside of the enumerated purposes.

3. G.S. § 160A-340.1(5)

G.S. § 160A-340.1(5) states that a municipality:

Shall provide nondiscriminatory access to private communications service providers on a first-come, first-served basis to rights-of-way, poles, or conduits owned, leased, or operated by the city unless the facilities have insufficient capacity for the access and additional capacity cannot reasonably be added to the facilities. For purposes of this subdivision, the term "nondiscriminatory access" means that, at a minimum, access shall be granted on the same terms and conditions as that given to a city-owned communications service provider.

Again, this provision overlaps existing requirements and uses language that may create inconsistent obligations. In particular, G.S. § 62-350 states in part as follows:

A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or conduits shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant

³ There are a few exceptions – e.g., a municipality is permitted to withhold electric service for non-payment of fees, see G.S. § 160A-314(b); or for unsafe conditions (e.g., dangerous wiring), see *Dale*, 270 N.C. at 573, 155 S.E.2d at 142. These exceptions, however, are consistent with the principle enunciated in *Dale* that any such action must relate to the service itself and must not be intended to achieve some other purpose.

to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

G.S. § 62-350 also states that negotiations between a municipality and a communications service provider with respect to the terms of a pole attachment agreement “shall include matters customary to such negotiations, including a fair and reasonable rate for use of facilities, indemnification by the attaching entity for losses caused in connection with the attachments, and the removal, replacement, or repair of installed facilities for safety reasons.” G.S. §160A-340.1(5) effectively removes from municipalities their right under G.S. § 62-350 to negotiate fair and reasonable rates, terms and conditions, and instead forces them to give private providers the *same* terms and conditions as apply to a municipally-owned communications service provider, regardless of any significant differences between them.

Elimination of G.S. § 160A-340.1(5) would not leave attaching entities without protection or legal recourse when making attachments to municipally-owned poles, ducts, or conduit. They would still have the protections afforded them G.S. § 62-350.

4. G.S. § 160A-340.1(7)

G.S. §160A-340.1(7) provides that a city:

Shall not subsidize the provision of communications service with funds from any other non-communications service, operation, or other revenue source, including any funds or revenue generated from electric, gas, water, sewer, or garbage services.

This provision conflicts with G.S. § 160A-313, which states that

Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source on behalf thereof.”

Except for a limit on the amount of transfers out of the electric fund imposed by G.S. § 159B-39 (and applicable only to a subset of cities and towns), there are generally no restrictions on the ability of a

city to make appropriations between enterprise funds, so long as sufficient funds remain to pay the expenses and debts of the originating fund in accordance with generally accepted accounting practices.

5. G.S. § 60A-340.1(8)

G.S. §160A-340.1(8) states that a municipality:

Shall not price any communications service below the cost of providing the service, including any direct or indirect subsidies received by the city-owned communications service provider and allocation of costs associated with any shared use of buildings, equipment, vehicles, and personnel with other city departments. The city shall, in calculating the costs of providing the communications service, impute (i) the cost of the capital component that is equivalent to the cost of capital available to private communications service providers in the same locality and (ii) an amount equal to all taxes, including property taxes, licenses, fees, and other assessments that would apply to a private communications service provider, including federal, State, and local taxes; rights-of-way, franchise, consent, or administrative fees; and pole attachment fees. In calculating the costs of the service the city may amortize the capital assets of the communications system over the useful life of the assets in accordance with generally accepted principles of governmental accounting.

This provision conflicts with a municipality's generally unrestricted ability pursuant to G.S. § 160A-314 to set public enterprise rates as it deems appropriate in its sole judgment and discretion. *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 816, 517 S.E.2d 874, 881 (1999) (stating that the grant of authority to set public enterprise rates under G.S. § 160A-314 is a broad, unfettered grant; that the setting of such rates and charges is a matter for the judgment and discretion of municipal authorities; and this right is not to be invalidated by the courts absent some showing of arbitrary or discriminatory action.). G.S. § 160A-340.1(8), which applies only to communications services, is a radical departure from this tradition of preference for, and deference to, local rate-making authority for public enterprise services.

6. G.S. § 160A-340.4 and §159-175.10

G.S. §160A-340.4 requires municipalities to conduct a special election before purchasing or financing a communications network, and G.S. § 159-175.10 (Section 3 of S.L.2011-84) adds a complex Local Government Commission approval process. These requirements are unique to the provision of communications services, as compared to the other public enterprise services that a municipality may offer in North Carolina.

A municipality has far greater leeway with respect to financing public enterprise capital projects other than communication service projects. In short, except when dealing with a communication service project, a city has access to all available types of financing under the Local Government Finance Act (G.S. Chapter 159) and as otherwise provided in Chapter 160A. Examples of such financing options include General Obligation Bonds (G.S. Chapter 159, Art. 4), Revenue Bonds (including Special

Assessment Revenue Bonds) (G.S. Chapter 159, Art. 5; G.S. Chapter 160A, Art. 10A), Installment Purchase Financings (G.S. § 160A-20)(including COPs), Special Obligation Bonds (G.S. Chapter 159I), and Project Development Financings (G.S. Chapter 159, Art. 6).

Of all these options, the only one that S.L. 2011-84 (via G.S. § 160A-340.4) allows municipalities to use is financing through general obligation bonds. This is the only option that puts taxpayers at risk, as it involves a pledge of the full faith and credit of the municipality. It is also the only one that requires voter approval through a referendum. Consider how cynical, biased, and anticompetitive this scheme is, as S.L. 2011-84

- removes the right of municipalities to insulate their taxpayers from the risks of project failure, as municipalities can and routinely do for all other kinds of projects;
- removes the right of potential lenders (usually private-sector banks or investment funds) to determine, through their own intensive due diligence reviews, how much security a project requires and how much additional interest they should charge to protect themselves from the additional risks they will bear;
- requires municipalities to seek voter approval in a referendum in which one of the key issues will inevitably be the one that most frightens voters – whether to put themselves on the line if the project fails; and
- gives the incumbents a tremendous substantive advantage in any such referendum, thus adding to their existing advantages in being able to greatly outspend proponents of the project and in being able to use their cable systems to dominate daily communications with voters.

All this steeply tips the playing field in favor of the incumbents.

- Q3. Please provide support for the City of Wilson’s contention that S.L. 2011-84 would cause substantial delays in the development of a public broadband project.**
- A3. The procedures required by S.L. 2011-84 would add at least 24 months to the time that it would take a municipality to launch a broadband project. A detailed timeline is attached as Exhibit A.**
- Q4. Would the States of North Carolina and Tennessee, respectively, be at financial risk if the Wilson or Chattanooga EPB projects failed?**
- A4. No. The Wilson project was financed through Certificates of Participation and bank loans. The Chattanooga EPB project was financed through revenue bonds. In neither case would the State government be at financial risk if the project failed.**

Like most communities that develop their own broadband networks, the City of Wilson and the Chattanooga Electric Power Board used financing options that did not involve taxpayer financing and did not put their State governments at risk in the event of project failure.⁴

City of Wilson

The City of Wilson financed its Greenlight construction project through Certificates of Participation. A Certificate of Participation (COP) is a type of financing instrument, approved by the Local Government Commission for municipal projects, that is secured by the project revenues and/or the facilities purchased with the proceeds of the financing.

The Greenlight project was financed by two separate COPs installments, one in FY 2006-07 (Series 2007), the second in FY 2008-09 (Series 2008). Although the total Series 2007 COPs issuance was approximately \$35.9 million, the larger portion of that financing was for City electric system upgrades. The portion of the Series 2007 COPs issuance attributable to the City's broadband network construction was approximately \$15.7 million. Out of the approximately \$33.7 million COPs financing in FY 2008-09, \$13.49 million was allocated to the fiber optic network construction to complete the build out. Combined, the total COP debt issued to finance construction of the Greenlight network was approximately \$29.2 million.

The Master Installment Financing Agreements pursuant to which the Series 2007 and Series 2008 COPs were issued state that:

NO PROVISION OF THE AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION...[and]...NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN ANY ACTION FOR BREACH OF A CONTRACTUAL OBLIGATION UNDER THE AGREEMENT, AND THE TAXING POWER OF THE CITY IS NOT AND MAY NOT BE PLEDGED DIRECTLY OR INDIRECTLY OR CONTINGENTLY TO SECURE ANY MONEYS DUE UNDER THE AGREEMENT.

In connection with the issuance of the Series 2007 and Series 2008 COPs financing instruments, the legal opinion of Womble Carlyle Sandridge & Rice, PLLC, acting as special counsel to the City of Wilson, opined with respect to each that "[t]he taxing power of the City is not and may not be pledged in any way, directly or indirectly, to secure any payments due under the Agreement, including the Installment Payments." A copy of the respective legal opinions are attached hereto as Exhibits D and E.

⁴ The financing methods commonly used to fund community broadband projects are discussed in Cathy Swirbul, "Financing Community Broadband," *Public Power Magazine* (November – December 2005), <http://goo.gl/CFmmCn> (Exhibit B); and Christopher Mitchell, "How Municipal Networks Are Financed," *Institute for Local Self Reliance*, <http://goo.gl/7d5pfk> (Exhibit C).

In 2010, the City of Wilson borrowed an additional \$5.4 million from Wells Fargo Bank to finance customer connections and to provide service to the Wilson County School system. That debt, which was issued pursuant to installment contracts, was secured solely by the equipment purchased thereby. The installment contracts contained language—nearly identical to that reproduced above—disclaiming any pledge of the City’s taxing authority in connection with the debt. That debt will be paid in full within a few months.

Any risk of default or other financial risk cause by a failure of the Greenlight network to perform as expected would fall solely on the investors who purchased the Certificates of Participation and/or the installment debt issued by Wells Fargo. The State of North Carolina would be not “on the hook” due to such failure.⁵

Chattanooga EPB

Similarly, no State of Tennessee funds would be at risk if Chattanooga EPB’s communications services operations failed.⁶ EPB has used nothing but revenue-based financing for its Smart Grid fiber system and for its communications service investments. None of this debt has ever been general obligation debt or any other sort of tax-supported debt.

It is also important to note that EPB’s fiber network was financed and built, and is maintained, as the communications backbone for EPB’s Smart Grid system, and it is an Electric System asset. EPB’s communications services are provided by a separate division, the Fiber Optic Division, which pays for use of the Electric System fiber through a cost allocation formula approved by the Tennessee Valley Authority.⁷

Specifically, the following revenue financing was used (i) to pay for the Electric System’s fiber communications backbone and Smart Grid and (ii) to pay for communications system equipment and working capital. No general obligation debt was used at any time.

In 2008, the City of Chattanooga, for the use and benefit of EPB, issued Electric System Revenue Bonds in a total amount of \$219,830,000. Some \$169,000,000 of these bond proceeds were used to build the fiber system that provides the communications backbone for EPB’s Smart Grid system and to

⁵ As mentioned in the City’s petition, at 20, and in Attachment 4 to the petition, Moody’s recently maintained the City’s strong bond rating, specifically mentioning the City’s Series 2007 and 2008 COPs as a strength.

⁶ Indeed, no State of Tennessee funds of any nature have ever been at risk of failure of any EPB operations of any kind. The State of Tennessee has provided no financing for EPB’s Electric System or its communications systems operations, the State has no ownership interest in EPB, and the State bears no risk related to it.

⁷ As the table on page 23 of EPB’s Petition shows, payments by the Fiber Optic Division to the Electric System for use of the fiber system totaled nearly \$20,000,000 in the fiscal year ended June, 2013, alone.

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begin installing smart meters and intelligent switching components of the Smart Grid. None of these bond proceeds paid for communications system assets or expenses. The \$111,000,000 DOE grant was used to speed the completion of the Electric System Smart Grid, turning a planned 10-year deployment into a 3-year deployment. (The DOE grant was not used to provide financing for the Fiber Optics Division's Internet or other communications services).

The Fiber Optics Division's communications system facilities and working capital needs were initially financed through inter-division loans of surplus Electric System revenue from the Electric System to the Fiber Optics Division. The inter-division loans carried rates of interest equal to or greater than the highest rate earned by the Electric System on investment of its surplus revenues.

The balances of all of the inter-division loans have been repaid by the Fiber Optics Division out of net income from communications services operations or from the proceeds of commercial bank loans obtained by the Fiber Optics Division. The bank loans are secured by communications services revenue of the Fiber Optics Division. The banks have no claim to any Electric System revenue or assets, nor do they have any claim to any tax revenue of the State or any local government.

Q5. How, if at all, is the North Carolina Next Generation Network project affected by S.L. 2011-84?

A5. The NC NGN project is not subject to S.L. 2011-84. As the project's website states:

Q: Will the municipalities be providing services?

No. State law prevents municipalities from competing with commercial providers. NCNGN seeks one or more private-sector providers to design, build, operate, and own the network.⁸

If you have any other questions or need additional information, we would be glad to provide it.

Sincerely,



James Baller

Sean Stokes

cc: James Cauley
Gabriel Dusablon
Rick Hitchcock
Tom Greenholtz

⁸ N.C. Next Generation Network, *Frequently Asked Questions*, <http://ncngn.net/wp/faqs/>.

Exhibit A

EXHIBIT A

Communications Network Project Timetable

<u>Feasibility Study</u>	90 days*	3 mo.
– This could be done either before or after solicitation of proposals, but conducting study before solicitation would better inform the negotiations required under G.S. §160A-340.6.		
<u>Solicitation of Proposals</u> (G.S. §160A-340.6)		9-10 mo.
– Schedule Notice	30 days*	
– Publish Notice	30 days	
– Time to Respond	60-90 days*	
– Open Proposal/Negotiate	60 days	
– Negotiate with 2 nd Proposer	60 days**	
– Proceed with Providing Service		
<u>Notice</u> (G.S. §160A-340.3)		3-4 mo.
– Schedule Hearings	30 days*	
– 2 Public Hearings	30 days apart = 60 days	
– Publication of Notice	4 consecutive weeks	
– Mailing Notice to Private Companies	45 days	
<u>Financing</u> (G.S. §159-175.10 / G.S. §160A-340.4)		9-12 mo.
– LGC Approval Process		
▪ LGC Application	60 days	
▪ Comment Period	30-60 days*	
– Special Election		
▪ Council Approval	30 days*	
▪ Election	180 days*/***	
<u>TOTAL TIME REQUIRED</u>		27-29 mo.

Notes:

* Estimation of required time period, not dictated by statute.

** Note: what if City does not receive 2 proposals? Is a re-advertisement required?

*** See G.S. §163-287 providing that election may only be at same time as state, county, or municipal election or primary (November or May); this could add 6 mo. delay.

Exhibit B

COMMUNITY BROADBAND

Financing Community Broadband

By Cathy Swirbul

Municipal utilities are expanding into offering broadband service for a variety of reasons. Some communities have a history of providing utility services through public ownership. Other areas pursue community broadband when the incumbent cable and telecommunications companies fail to provide the service. What these projects have in common is the need for financing. The reality of financing in today's market, though, may be different from commonly held perceptions.

Critics of publicly owned broadband contend that municipalities have an unfair advantage over private telecom providers because public entities have the ability to issue tax-exempt municipal bonds. But that is not necessarily true, said municipal broadband attorney Jim Baller.

"The supposed benefits of tax-advantaged financing can be illusory, particularly in today's financial market," Baller said. "Tax-advantaged financing comes with strings attached, and local governments may decide that the restrictions and burdens involved are simply not worth the potential savings in costs. As a result, local governments are increasingly financing broadband projects through taxable instruments. For example, the fiber-to-the-home (FTTH) system in Kutztown, Pa., was financed through taxable bonds. Critics of community broadband also fail to acknowledge that major cable and telephone companies have access to the best com-

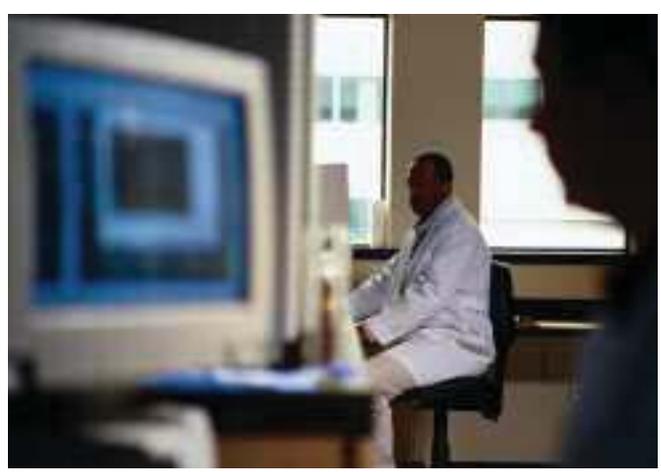
mercial rates, and they benefit greatly from being able to obtain financing for multiple projects at the same time rather than for each market separately."

Three primary vehicles exist for municipal utilities to fund broadband projects: bond financing; various types of loans; and grants.

"General obligation bonds typically are the least expensive for the municipality because the lenders know the municipality will be on the hook if the project doesn't succeed," Baller said. "At the same time, however, such bonds often have stricter procedural requirements, such as voter approval in many cases.

"Revenue bonds, by definition, are funded by the revenues of the project and thus do not put the municipality at financial risk if the project fails," Baller said. "As a result, they are riskier for lenders and more expensive for municipalities. Sometimes such funding may not be available at all, or may be prohibitively expensive, unless the municipality can pledge resources of some kind."

Banks and financial institutions a utility has worked with on other projects offer a good place for a municipality to start when seeking to issue bonds. "Electric utilities are regularly going to the market for upgrades and extensions," Baller said. "Working with banks and institutions that know a utility well can save everyone a lot of time and money. Even so, it is prudent to shop around for the



best available financing."

The Lafayette Utilities System in Louisiana is using revenue bonds to build a fiber-to-the-home project. Last July voters approved up to \$125 million in bonding.

"We suspected from the beginning that we would use revenue bonds, as that has traditionally been the borrowing approach for our utility," said Terry Huval, Lafayette Utilities System director. "The remainder of our local government tends to issue general obligation bonds, but because the utility is a stand-alone, revenue-producing entity, it issues revenue bonds. Our underwriters have advised us that the utility system's past financial strength allows revenue to be a very good option for our pursuit of this project."

Loans for broadband projects may be available through banks, from the municipality's other utilities (inter-utility loans), the federal government, and private investors. The municipality's other utilities are often the best source for loans. "To avoid claims of cross-subsidization, however, it is important to include a fair and reasonable rate of interest and other terms and conditions," Baller said.

"Incumbents will often try to scare the public into believing that inter-utility loans will result in losses for other utility ratepayers," Baller said. "A municipality must be prepared to allay these concerns during the

extensive public dialog that will occur as the community considers every aspect of the proposed project. The best way to do this is to present a sound and conservative business plan that will succeed even if revenues fall short and costs exceed expectations."

Cedar Falls, Iowa, built its community broadband system in 1995 using \$6 million in initial financing. Voters approved a \$3 million general obligation bond issue, and the communications utility borrowed \$3 million from the city's electric utility. The interfund loan carries a market rate of interest and is being repaid on schedule from cable TV and Internet service revenues.

"When our community voted to build a municipal communications plant, we structured it to stand on its own financially from day one," said Cedar Falls Utilities General Manager Jim Krieg. "The interfund loan generates a competitive rate of return on the relatively small portion of the electric utility's cash reserves that are invested in this way," he said.

"Our electric utility keeps cash and cash reserves of roughly \$30 million in its normal course of business, and this money is always earning interest for us in various types of safe investments," Krieg said. "We make sure the electric utility earns as good a return by lending cash reserves to the communications

utility as it would from other safe investments.”

Krieg said the general obligation bond portion of the utility’s initial financing is paid solely from communication service revenues. “We had 70 percent voter approval on the general obligation bond in 1994, and we have over 75 percent market share in cable TV today,” he said. “Our citizens have made the city’s broadband system successful by signing up for service with us.”

In California, the city of Lompoc’s broadband project is divided into two phases: building broadcasting antennae for a wireless system and eventually building a fiber to the home system. Lompoc has used loans from its electric fund to finance the wireless operation. That loan will be repaid using revenue generated by subscriptions.

The federal government offers broadband loans through the U.S. Department of Agriculture’s Rural Development telecommunications program. The loans are available to communities of 20,000 or fewer residents to cover construction, improvement and acquisition of facilities, but not for operating expenses. A municipality must have either 20 percent in equity or a year’s operating expenses to get a loan from the Rural Development program.

The Rural Development program has yet to provide a loan to a municipality, but the agency has had very few applications. “A community needs to contact someone in the RD broadband team and develop an application,” said Claiborn Crain, a USDA legislative and public affairs adviser. “The finances are the part that make the application the most chal-

lenging for a community. As a government agency, we must look at the ability of the project to pay back the loan.”

The value of USDA broadband loans is low compared to other financing avenues open to municipal utilities, said Baller. “The application process is burdensome and the requirements are too high to obtain an RD loan. It’s unfortunate because the purpose of the RD funds is to finance these very types of projects. An RD loan would not save a municipality very much money over public-sector financing.”

Burlington Telecom in Vermont is building its broadband project primarily through private investor Koch Financial Corp. of Scottsdale, Ariz. The first and second phases of the Burlington Telecom project consisted of an all-fiber city government network providing Ethernet connectivity, Internet and voice services to 40 municipal sites and a dozen outside institutions. This was financed as a tax-exempt capital lease from Koch Financial. It was secured by “subject to appropriations” backing from the city (meaning the recourse is moral only—there is no legal obligation) as well as the de facto service contract with the pre-eminent customer being the city government. The total cost was approximately \$2.6 million.

The next phase of the Burlington Telecom project involves extending a voice/data/video fiber-to-the-premises network to the entire city of about 20,000 residential and business subscribers. Because of the strong performance of the first phase, Koch agreed to finance the second phase on the same basis—even though

there is not the same customer security as there was with the first. The initial portion of this phase—about \$10 million—has been disbursed and will cover central office equipment, cable head-end and other details, plus wiring about 40 percent of the city.

Voters have twice approved a resolution to raise the money by issuing bonds but thus far the utility has avoided a bond issue. Timothy Nulty, who has spearheaded the project and heads Burlington Telecom, is adamant that funding won’t come from taxpayers.

“We call this the “Build the Barn You Can Afford” approach,” Nulty said. “The formula is simple: start small based on guaranteed markets. If all goes well—construction is on time and under budget, performance is per specifications, and finances are satisfactory—build an addition to the barn, install more cows and go on from there ... bit by bit, building from within, making sure that each stage of expansion is economically solid before embarking on the next. And never expose too much of your capital.”

USDA’s Rural Development program also issues grants through its Community Connect program. The program is closed for 2005 but will be accepting 2006 grant applications sometime after the first of the new year. This program is contingent on funds appropriated by Congress.

“Community Connect is a very competitive program,” Crain said. “We had \$9 million in grant funds and applications requesting \$70 million to \$100 million. A community must have no more than 20,000 residents.

“We hook up central broadband facilities for their fire, police, rescue, local government, schools and library,” Crain said. “In return, they set up a community center or library with computers hooked to the Internet that the public can use. Making the broadband service available to the public, there will be more demand for service in their homes or businesses.”

Federal grants may also be available through:

■ The Department of Commerce’s Economic Development Administration, which issues grants through state offices for infrastructure development;

■ The Department of Homeland Security, which has awarded \$19 billion to the states, including grants for interoperable communications systems;

■ The Justice Department, which awards grants for emergency-preparedness projects; and

■ The Appalachian Regional Commission, which has funding for wireless projects in 13 Appalachian states.

Broadband financing options may be limited now, but Baller sees that changing in the next several years. “As more broadband projects get moving, there will be more traditional and new lenders to whom municipalities will be able to turn for financing,” Baller said. “These lenders will have a growing body of experts who won’t need to start from scratch with each project.” ●

Cathy Swirbul, based in Kansas City, specializes in writing for the power industry. She can be reached at cswirbul@kc.rr.com

Exhibit C

How Municipal Networks are Financed

Hundreds of local governments across the U.S. are offering Internet access to local businesses and/or residents, often in reaction to a lack of fast, affordable, and reliable connections in their community. Contrary to popular belief, none of the most common means of financing the network involves increasing local taxes. These are the three most common methods, but many networks have used a combination of these tools.



Revenue Bonds

How It Works

A local government or utility issues bonds to private investors that are repaid over many years with revenues from the network. Certificates of Participation work along similar principles. Fewer than 2% of municipal networks have defaulted on bonds

Examples: Lafayette, Louisiana; Cedar Falls, Iowa; Longmont, Colorado.



Internal Loans

How It Works

A department within the local government loans another department the necessary capital for building the network. Many states regulate the minimum interest rate and requirements for such a loan.

Examples: Chattanooga, Tenn.; Spanish Fork, Utah; Auburn, Indiana.



Avoided Cost

How It Works

A local government redirects existing funds used to lease connections from an existing provider to build and operate its own network, often resulting in faster connections at lower prices. If payback is longer than one year, bonds may be issued and repaid with the budget that had been used to lease lines. This approach is most common with smaller networks built incrementally, not citywide projects.

Examples: Santa Monica, California; Scott County, Minnesota.



Tax Dollars?

The vast majority of municipal networks **have not used taxpayer dollars** for a variety of reasons, the most common being that local elected officials are very reluctant to raise taxes. Though distant cable companies can get away with regular price hikes and subsidizing across borders, **elected officials have to be accountable to citizens.**



Common Results

More jobs, economic development in the community; lower prices; more choices for telecommunications services; better educational opportunities; more local economic activity. There are over 400 municipal networks offering service to local businesses and/or residents in the U.S.

Exhibit D



April 4, 2007

City Council of the
City of Wilson, North Carolina

Board of Directors of
City of Wilson Financing Assistance Corporation

As special counsel to the City of Wilson, North Carolina (the "City"), we have examined a certified copy of the record of proceedings relative to the execution and delivery by City of Wilson Financing Assistance Corporation (the "Corporation") of \$31,195,000 Certificates of Participation (Public Facilities Project), Series 2007A (the "Series 2007A Certificates") and \$4,745,000 Certificates of Participation (Public Facilities Project), Series 2007B – Taxable Interest (the "Series 2007B Certificates" and, together with the Series 2007A Certificates, the "Series 2007 Certificates"), dated as of the date of delivery thereof, representing proportionate and undivided interests in the right to receive Installment Payments (hereinafter defined) to be made by the City pursuant to a Master Installment Financing Agreement, dated as of April 1, 2007 (the "Master Agreement"), between the City and the Corporation, as supplemented by a First Supplemental Installment Financing Agreement, dated as of April 1, 2007 (the "First Supplemental Agreement" and, together with the Master Agreement, the "Agreement"), between the City and the Corporation. The Agreement is being entered into by the City pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended.

The Series 2007 Certificates are being delivered for the purpose of providing funds to be advanced by the Corporation to the City to provide funds, together with any other available funds, to (a) acquire, construct and equip certain capital improvements consisting of (i) the expansion of the City's existing fiber-optic network to provide cable television, telephone and internet access to residents, businesses and other entities located in the City, including improvements to a City operations center and the cost of refinancing the City's obligations under a prior installment financing contract relating to such operations center and (ii) certain improvements to the City's electric system (collectively, the "Project") and (b) pay certain costs incurred in connection with the sale, execution and delivery of the Series 2007 Certificates.

Under the terms of the Agreement, the City has agreed to repay the advances made by the Corporation to the City, with interest, in installments (the "Installment Payments"). As security for the performance of its obligations under the Agreement, including the payment of the Installment Payments, the City has executed and delivered a Deed of Trust and Security Agreement, dated as of April 1, 2007 (the "Deed of Trust"), granting to the Corporation a lien on certain real and personal property financed with the funds advanced under the Master

Agreement, and certain improvements thereto (the "Mortgaged Property"), subject to Permitted Encumbrances (as defined in the Master Agreement).

All of the Corporation's rights, title and interest in and to the Agreement (except certain reserved rights), including its right to receive the Installment Payments thereunder, and all of the Corporation's rights, title and interest in and to the Deed of Trust have been assigned to Branch Banking and Trust Company, as trustee (the "Trustee"), pursuant to a Master Trust Agreement, dated as of April 1, 2007 (the "Master Trust Agreement"), between the Corporation and the Trustee, as supplemented by a First Supplemental Trust Agreement, dated as of April 1, 2007 (the "First Supplemental Trust Agreement" and, together with the Master Trust Agreement, the "Trust Agreement"), between the Corporation and the Trustee. The Series 2007 Certificates have been executed and delivered by the Corporation pursuant to the terms of the Trust Agreement

We have not examined the title to the Mortgaged Property under the Deed of Trust and therefore express no opinion with regard to (a) the title to the Mortgaged Property, (b) the adequacy or correctness of the description of the Mortgaged Property contained in the Deed of Trust or (c) the priority of the lien or security interest created by the Deed of Trust on the Mortgaged Property. Any statement made with regard to title to, and liens on, the Mortgaged Property under the Deed of Trust are based exclusively on a commitment to issue a mortgagee title insurance policy by a title insurance company.

Based upon such examination, we are of the opinion, as of the date hereof and under existing law, that:

1. The City is a municipal corporation duly organized and existing under the Constitution and laws of the State of North Carolina and has full legal right, power and authority to enter into and perform its obligations under the Agreement and the Deed of Trust.

2. The Agreement has been duly authorized, executed and delivered by the City and the Corporation and constitutes a legal, valid and binding agreement of the City and the Corporation enforceable in accordance with its terms. No deficiency judgment may be rendered against the City in any action for breach of a contractual obligation under the Agreement, the remedies provided under the Agreement, including foreclosure on the Mortgaged Property under the Deed of Trust, being the sole remedies available. The taxing power of the City is not and may not be pledged in any way, directly or indirectly, to secure any payments due under the Agreement, including the Installment Payments.

3. The Deed of Trust has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

4. The Trust Agreement has been duly authorized, executed and delivered by the Corporation and, assuming due authorization, execution and delivery thereof by the Trustee,

constitutes a legal, valid and binding agreement of the Corporation enforceable in accordance with its terms.

5. The Series 2007 Certificates are entitled to the benefits of the Trust Agreement, the Agreement and the Deed of Trust, and the Trust Agreement evidences a valid and binding assignment of the right to receive the Installment Payments pursuant to the Agreement, enforceable against the City in accordance with the terms of the Agreement.

6. Assuming continuing compliance by the City and the Corporation with certain covenants to comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), regarding the use, expenditure and investment of the proceeds of the Series 2007A Certificates, and the timely payment of certain investment earnings to the United States Treasury, interest with respect to the Series 2007A Certificates is not includable in the gross income of the owners thereof for purposes of federal income taxation and is not a specific preference item for purposes of computing the alternative minimum tax imposed by the Code on corporations and other taxpayers, including individuals; however, such interest is includable in the adjusted current earnings of corporations for purposes of computing the alternative minimum tax imposed by the Code on corporations.

7. Interest on the Series 2007B Certificates is not excluded from the gross income of the owners of the Series 2007B Certificates for purposes of federal income taxation.

8. Interest with respect to the Series 2007 Certificates is exempt from all State of North Carolina income taxes.

We express no opinion as to whether, in the event of a failure by the City Council of the City to appropriate sufficient amounts to pay the Installment Payments to fall due under the Agreement, any amounts received by an owner of a Series 2007A Certificate from certificate insurance proceeds would be includable in the gross income of such owner for purposes of federal income taxation or be exempt from State of North Carolina income taxes.

The Code and other laws of taxation, including the laws of taxation of the State of North Carolina, of other states and of local jurisdictions, may contain other provisions that could result in tax consequences, upon which we render no opinion, as a result of the ownership or transfer of the Series 2007A Certificates or the inclusion in certain computations of interest that is excluded from gross income for purposes of either federal or State of North Carolina income taxation.

The enforceability of the Agreement, the Trust Agreement and the Deed of Trust, and the obligations of the aforementioned parties with respect thereto, are subject to bankruptcy, insolvency and other laws affecting creditors' rights generally. To the extent that remedies under the Agreement, the Trust Agreement and the Deed of Trust require enforcement by a court of equity, the enforceability thereof may be limited by such principles of equity as the court having jurisdiction may impose.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Series 2007 Certificates.

This opinion is given as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

By: G. Thomas Lee
G. Thomas Lee
Member/Manager

Exhibit E



August 19, 2008

City Council of the
City of Wilson, North Carolina

Board of Directors of
City of Wilson Financing Assistance Corporation

Assured Guaranty Corp.
New York, New York

As special counsel to the City of Wilson, North Carolina (the "City"), we have examined a certified copy of the record of proceedings relative to the execution and delivery by City of Wilson Financing Assistance Corporation (the "Corporation") of \$33,710,000 Certificates of Participation (Public Facilities Project), Series 2008 (the "Series 2008 Certificates"), dated as of the date of delivery thereof, representing proportionate and undivided interests in the right to receive Installment Payments (hereinafter defined) to be made by the City pursuant to a Master Installment Financing Agreement, dated as of April 1, 2007 (the "Master Agreement"), between the City and the Corporation, as supplemented by a First Supplemental Installment Financing Agreement, dated as of April 1, 2007 (the "First Supplemental Agreement"), between the City and the Corporation, and a Second Supplemental Installment Financing Agreement, dated as of August 1, 2008 (the "Second Supplemental Agreement" and, together with the Master Agreement and the First Supplemental Agreement, the "Agreement"), between the City and the Corporation. The Agreement is being entered into by the City pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended.

The Series 2008 Certificates are being delivered for the purpose of providing funds to be advanced by the Corporation to the City to provide funds, together with any other available funds, to (a) acquire, construct and equip various improvements to the City's fiber optic system and electric distribution system, (b) pay the premium for a financial guaranty insurance policy for the Series 2008 Certificates, (c) pay the premium for a debt service reserve fund financial guaranty insurance policy, and (d) pay certain costs and expenses incurred in connection with the execution and delivery of the Series 2008 Certificates.

Under the terms of the Agreement, the City has agreed to repay the advances made by the Corporation to the City, with interest, in installments (the "Installment Payments"). As security for the performance of its obligations under the Agreement, including the payment of the Installment Payments, the City has executed and delivered a Deed of Trust and Security Agreement, dated as of April 1, 2007 (the "Deed of Trust"), granting to the Corporation a lien on certain real and personal property financed or improved with the funds advanced under the Agreement, and certain improvements thereto, and a security interest in certain equipment and other personal property (the "Mortgaged Property"), subject to Permitted Encumbrances (as defined in the Master Agreement).

All of the Corporation's rights, title and interest in and to the Agreement (except certain reserved rights), including its right to receive the Installment Payments thereunder, and all of the Corporation's rights, title and interest in and to the Deed of Trust have been assigned to Branch Banking and Trust Company, as trustee (the "Trustee"), pursuant to a Master Trust Agreement, dated as of April 1, 2007 (the "Master Trust Agreement"), between the Corporation and the Trustee, as supplemented by a First Supplemental Trust Agreement, dated as of April 1, 2007 (the "First Supplemental Trust Agreement"), between the Corporation and the Trustee, and a Second Supplemental Trust Agreement, dated as of August 1, 2008 (the "Second Supplemental Trust Agreement" and, together with the Master Trust Agreement and the First Supplemental Trust Agreement, the "Trust Agreement"), between the Corporation and the Trustee. The Series 2008 Certificates have been executed and delivered by the Corporation pursuant to the terms of the Trust Agreement

We have not examined the title to the Mortgaged Property under the Deed of Trust and therefore express no opinion with regard to (a) the title to the Mortgaged Property, (b) the adequacy or correctness of the description of the Mortgaged Property contained in the Deed of Trust or (c) the priority of the lien or security interest created by the Deed of Trust on the Mortgaged Property. Any statement made with regard to title to, and liens on, the Mortgaged Property under the Deed of Trust are based exclusively on a commitment to issue a mortgagee title insurance policy by a title insurance company.

Based upon such examination, we are of the opinion, as of the date hereof and under existing law, that:

1. The City is a municipal corporation duly organized and existing under the Constitution and laws of the State of North Carolina and has full legal right, power and authority to enter into and perform its obligations under the Agreement and the Deed of Trust.

2. The Agreement has been duly authorized, executed and delivered by the City and the Corporation and constitutes a legal, valid and binding agreement of the City and the Corporation enforceable in accordance with its terms. No deficiency judgment may be rendered against the City in any action for breach of a contractual obligation under the Agreement, the remedies provided under the Agreement, including foreclosure on the Mortgaged Property under the Deed of Trust, being the sole remedies available. The taxing power of the City is not and may not be pledged in any way, directly or indirectly, to secure any payments due under the Agreement, including the Installment Payments.

3. The Deed of Trust has been duly authorized, executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable in accordance with its terms.

4. The Trust Agreement has been duly authorized, executed and delivered by the Corporation and, assuming due authorization, execution and delivery thereof by the Trustee, constitutes a legal, valid and binding agreement of the Corporation enforceable in accordance with its terms.

5. The Series 2008 Certificates are entitled to the benefits of the Trust Agreement, the Agreement and the Deed of Trust, and the Trust Agreement evidences a valid and binding assignment of the right to receive the Installment Payments pursuant to the Agreement, enforceable against the City in accordance with the terms of the Agreement.

6. Assuming continuing compliance by the City and the Corporation with certain covenants to comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), regarding, among other matters, use, expenditure and investment of the proceeds of the Series 2008 Certificates, and the timely payment of certain investment earnings to the United States Treasury, interest with respect to the Series 2008 Certificates is not includable in the gross income of the owners thereof for purposes of federal income taxation and is not a specific preference item for purposes of computing the alternative minimum tax imposed by the Code on corporations and other taxpayers, including individuals; however, such interest is includable in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax imposed by the Code on corporations.

7. Interest with respect to the Series 2008 Certificates is exempt from all State of North Carolina income taxes.

We express no opinion as to whether, in the event of a failure by the City Council of the City to appropriate sufficient amounts to pay the Installment Payments to fall due under the Agreement, any amounts received by an owner of a Series 2008 Certificate from certificate insurance proceeds would be includable in the gross income of such owner for purposes of federal income taxation or be exempt from State of North Carolina income taxes.

The Code and other laws of taxation, including the laws of taxation of the State of North Carolina, of other states and of local jurisdictions, may contain other provisions that could result in tax consequences, upon which we render no opinion, as a result of the ownership or transfer of the Series 2008 Certificates or the inclusion in certain computations of interest that is excluded from gross income for purposes of either federal or State of North Carolina income taxation.

The enforceability of the Agreement, the Trust Agreement and the Deed of Trust, and the obligations of the aforementioned parties with respect thereto, are subject to bankruptcy, insolvency and other laws affecting creditors' rights generally. To the extent that remedies under the Agreement, the Trust Agreement and the Deed of Trust require enforcement by a court of equity, the enforceability thereof may be limited by such principles of equity as the court having jurisdiction may impose.

We express no opinion herein as to the accuracy, adequacy or completeness of the Official Statement relating to the Series 2008 Certificates.

This opinion is given as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

By: *G. Thomas Lee*
G. Thomas Lee
Member/Manager