



January 29, 2015

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WC Docket Nos. 14-115 and 14-116

Dear Ms. Dortch:

On January 28, 2015, Jonathan Banks and B. Lynn Follansbee of USTelecom, Mike Romano and Brian Ford of NTCA and Michael Kellogg of Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC met with Deena Shetler, Greg Kawn, Brittany Davidson, Claudia Pabo and Randy Clark of the Wireline Competition Bureau and Madeleine Findley, Matthew Dunne, Andrew Erber and Richard Welch of the Office of General Counsel. The subject of discussion was the municipal broadband preemption cases pending before the Commission.¹

USTelecom and NTCA met with Commission staff to make their argument that the Commission lacks legal authority to preempt state laws limiting municipal authority to provide broadband services. On behalf of USTelecom and NTCA, Mr. Kellogg outlined a variety of legal arguments and the supporting case law indicating why Section 706 of the Communications Act does not authorize the FCC to preempt a state's regulation of its own political subdivisions. Specifically, Mr. Kellogg argued that the preeminent case in this context is *Nixon v. Missouri Municipal League*, 541 U.S. 125 (2004), which clearly forecloses the petitioners' argument for preemption, and leads us to conclude that a court will reverse any contrary conclusion by the Commission.

¹ See *Petition of the City of Wilson, North Carolina Pursuant to Section 706 of the Telecommunications Act of 1996, for Removal of Barriers to Broadband Investment and Competition*, WC Docket No. 14-115 (filed July 24, 2014); *Petition of the Electric Power Board of Chattanooga, Tennessee Pursuant to Section 706 of the Telecommunications Act of 1996, for Removal of Barriers to Broadband Investment and Competition*, WC Docket No. 14-116 (filed July 24, 2014).

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Please contact the undersigned should you have any questions.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION



By: _____

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