



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

February 12, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**RE: 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
WCB Docket Nos. 14-115 and 14-116**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of Federal Communications Commission (FCC) rules, undersigned counsel files this letter providing clarification on a Pennsylvania statute that the Pennsylvania Public Utility Commission (PaPUC) believes pertinent to the above-captioned matters¹ and the FCC's understanding of the various state laws regarding municipal broadband networks.

This clarification is necessary because of a recent article that was published in the "Telecom. Reports Daily" (TR Daily) on Feb. 2, 2015 entitled "WHEELER TO SEEK PREEMPTION OF STATE LAWS ON MUNI BROADBAND" and a statement therein that three of the 21 states that restrict municipal broadband networks have laws that would constitute complete bans: Nebraska, Montana, and Pennsylvania (TRDaily, Feb. 2).² The particular article discussed a draft FCC order that would preempt Tennessee and North Carolina laws³ that restrict the expansion of existing municipal broadband networks. The conclusory statement about Pennsylvania law made in that article is incorrect.

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

² TR Daily has since published a correction to its February 2, 2015 article. See TRDaily, electronic edition, Feb. 9, 2015.

³ See fn. 1.

The relevant Pennsylvania law at issue here addressing municipal broadband deployment is Chapter 30 of the Public Utility Code, 66 Pa. C.S. § 3011 *et seq.* Specifically, Section 3014(h)(2) of Chapter 30 provides an incumbent local exchange carrier (ILEC) with a “right of first refusal” whenever a municipality seeks to deploy broadband. Chapter 30, however, contains no provision that “completely bans” municipal broadband networks. Thus, it is incorrect to group Pennsylvania with other states that may have statutorily instituted a “complete ban” on the deployment of municipal broadband networks.

Chapter 30 essentially provides Pennsylvania ILECs with a “right of first refusal,” which gives the companies two months from receipt of a request from the political subdivision in question to agree to provide the broadband data speeds requested. 66 Pa. C.S. § 3014(h)(2). If the ILEC or one of its affiliates does not agree to do so within that time frame, “the municipality is free to pursue its own municipal broadband network solution.” *Id.* The PaPUC asserts that this is not equivalent with a “complete ban” on municipal broadband networks in Pennsylvania, and that should be noted by the FCC. Additionally, Chapter 30 provides an exemption for municipal broadband and telecommunications networks that were in operation by January 1, 2006. 66 Pa. C.S. § 3014(h)(3). A copy of the pertinent statutory provisions is attached as Appendix A.

Conclusion

The trade press article does not accurately describe Pennsylvania’s relevant legal parameters on municipal broadband networks as set forth in the statutory provisions of its Chapter 30 law. The PaPUC requests the FCC to take note of this clarification and, if need be, incorporate the appropriate “correction” in reviewing its circulating draft order regarding potential federal preemption and state laws concerning municipal broadband as it pertains to Pennsylvania in the above-captioned matters.

Thank you for your attention to this correspondence.

Sincerely,

The Pennsylvania Public Utility Commission,

/s/ David E. Screven

David E. Screven, Assistant Counsel

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Attachments

APPENDIX A

66 Pa. C.S. § 3014.

3014 Network modernization plans.

* * *

(h) Prohibition against political subdivision advanced and broadband services deployment.--

(1) Except as otherwise provided for under paragraph (2), a political subdivision or any entity established by a political subdivision may not provide to the public for compensation any telecommunications services, including advanced and broadband services, within the service territory of a local exchange telecommunications company operating under a network modernization plan.

(2) A political subdivision may offer advanced or broadband services if the political subdivision has submitted a written request for the deployment of such service to the local exchange telecommunications company serving the area and, within two months of receipt of the request, the local exchange telecommunications company or one of its affiliates has not agreed to provide the data speeds requested. If the local exchange telecommunications company or one of its affiliates agrees to provide the data speeds requested, then it must do so within 14 months of receipt of the request.

(3) The prohibition in paragraph (1) shall not be construed to preclude the continued provision or offering of telecommunications services by a political subdivision of the same type and scope as were being provided on the effective date of this section.

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