United States Senate
WASHINGTON, DC 20510

1214

December 11, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to express our serious concern about the Federal Communications Commission's (FCC) recent efforts, irrespective of existing privately-owned broadband networks, to encourage the deployment of broadband networks owned by municipal governments.

In February, the FCC adopted a troubling order that preempted Tennessee and North Carolina state laws regulating government-owned broadband networks. You suggested that this action was needed because "community broadband efforts have been blocked or severely curtailed by restrictive state laws — laws often passed due to heavy lobbying support by incumbent broadband providers." Many parties, including Commissioners Pai and O'Rielly, criticized the FCC's decision for unlawfully overriding these states' sovereign authority to regulate their own municipalities. Both the state of Tennessee and the state of North Carolina have filed legal challenges to the FCC's decision, and, tellingly, the Department of Justice recently declined to defend the FCC in court.

We understand that, in the months following the FCC's decision, agency officials have begun engaging in outreach to persuade communities to deploy municipal broadband networks. For example, one agency official recently remarked, "Where you've got a community infrastructure or a rural electric company, a rural electric co-op, states shouldn't be telling local communities what they can and cannot do." Moreover, the FCC recently committed funding to deploy government-owned networks through the Universal Service Fund's Rural Broadband Experiments program.

It is vitally important to ensure that broadband service is made available to all Americans, particularly people in rural areas for whom a broadband connection is truly a lifeline. However, the FCC is promoting government-owned networks at the possible expense of private sector broadband providers — both incumbents and competitors —who have made strides to deploy networks throughout the country. Municipal broadband networks not only run the risk of overbuilding existing private networks, they could also result in the loss of limited universal service funds for carriers who are delivering broadband to rural Americans. The FCC should not be in the business of choosing winners and losers in the competitive broadband marketplace.

Further, we urge the FCC to proceed cautiously where its actions would impinge on the sovereignty of fundamental state decisions about economic and fiscal policy. States are far better positioned than the federal government to understand the needs of their citizens and protect

taxpayers from unnecessary and wasteful spending. It is both inappropriate and legally questionable for FCC officials to suggest that state governments, who are elected and accountable to the voters of the state, lack authority to regulate the economic and fiscal activities of local governments. This callous disregard for states' rights is very concerning, and we would encourage the FCC to halt its outreach campaign against the exercise of state sovereignty.

To better understand the FCC's activities relating to municipal broadband, we ask that you respond to the following questions by January 4, 2016:

1) Please provide the total dollar amount that the FCC has committed to municipal broadband providers through the Universal Service Fund's Rural Broadband Experiments program. Do any limitations exist to prevent government-owned networks from using universal service funds to compete with private sector networks?

2) Please clarify whether there is a situation in which the emergence of a new government-owned network could result in the loss of universal service funding for an existing private sector provider.

3) Please detail any plans the FCC has to adopt additional policies relating to municipal broadband. For example, does the FCC intend to extend its February 2015 decision to additional states?

4) Please highlight the FCC's outreach plans for fiscal year 2016 with respect to government-owned networks. Please identify any state or local officials with whom the FCC plans to meet and why.

We look forward to your timely response, and we hope that, going forward, you will give thought to the appropriate role for the FCC in working with states and the private sector to encourage broadband deployment.

Sincerely,

Deb Fischer
United States Senator

Ron Johnson
United States Senator

Marco Rubio
United States Senator

John Cornyn
United States Senator

Pat Roberts
United States Senator

John Barrasso
United States Senator

Michael B. Enzi
United States Senator

Tim Scott
United States Senator

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable Tim Scott
United States Senate
113 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Scott:

Thank you for your letter regarding broadband networks owned by municipal governments. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

The deployment of broadband is, as you know, a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety, and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

Though private sector companies have invested billions of dollars in broadband deployment in the past decade—greatly benefitting our Nation in many ways—that investment has not reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband. Some of these communities have concluded that investing in their own broadband efforts or authorizing others to invest on their behalf will provide more competition, allowing improved economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Telecommunications Act of 1996 charges the Federal Communications Commission with ensuring that broadband is being deployed to all Americans in a reasonable and timely fashion. I believe that competition is a strong means to that critical goal.

In response to your specific questions:

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   Response: Under the Commission's existing rules, if a municipally-owned provider deployed a voice and broadband network covering 100 percent of a rate-of-return incumbent telephone company's service area with service that meets the Commission's minimum requirements, that would result in a loss of support for the rate-of-return company. However, that situation does not exist today.

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I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

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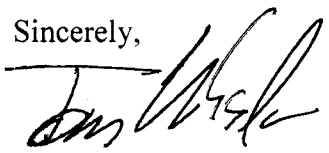

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable Pat Roberts
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Roberts:

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Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable Michael B. Enzi
United States Senate
379A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Enzi:

Thank you for your letter regarding broadband networks owned by municipal governments. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

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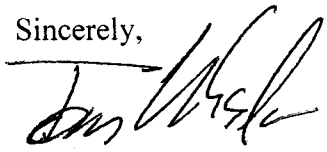

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable John Barrasso
United States Senate
307 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Barrasso:

Thank you for your letter regarding broadband networks owned by municipal governments. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

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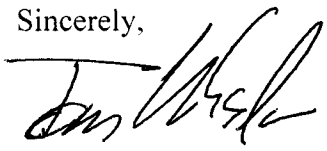

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable John Cornyn
United States Senate
517 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cornyn:

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable Deb Fischer
United States Senate
825 Hart Senate Office Building
Washington, D.C. 20510

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Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

January 15, 2016

The Honorable Ron Johnson
United States Senate
386 Russell Senate Office Building
Washington, D.C. 20510

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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
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January 15, 2016

The Honorable Marco Rubio
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Rubio:

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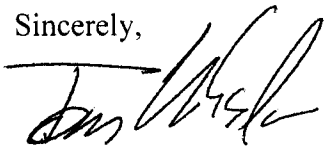

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