Federal Communications Commission
445 12th St., S.W.
Washington DC, 20554

Comments – NBP Public Notice # 7

GN Docket Nos. 09-47, 09-51, 09-137

The organizations filing these comments believe there is an important role for state and local government to play in ensuring universal, affordable access to high quality broadband. We support policies as part of the National Broadband Plan (NBP) that would further empower local government in creating or supporting locally owned or controlled broadband networks. We also believe the NBP should ensure that local governments retain authority over public rights of way, so as to manage them in the best interests of local residents.

While these comments respond to FCC's query on the role of local governments in broadband deployment, we also urge the Commission to support the development of community-owned broadband networks run by non-profits or other forms of community collaborations.

As Government Services Move On-Line, Digital Divide Must Be Addressed

State and local governments are increasingly using technology to fulfill their responsibilities to residents. Cities are accepting reports of pot holes on-line, process payments for water and sewer bills, post real-time election results, and have created searchable databases of property values. States are providing residents with on-line "one stop shops" to apply for benefits for housing, medical assistance, food subsidies and heating help. These, and many other similar services, allow residents to communicate with their local governments in a much more efficient manner.

At a time when local and state governments face massive budget shortfalls and must do more with less, technology-driven efficiencies in service delivery is a must. Yet advocates for the poorest and sickest populations have some cause for concern. It is not alarmist to anticipate that short-staffed government agencies will phase out administration of some services over traditional methods, such as through walk-in assistance centers, in favor of on-line only methods. This is problematic for the significant number of residents that lack access to affordable, high quality broadband. Only 35% of households with incomes $20,000 and under had access to broadband in 2009, compared to the national average of 63% of adult Americans.[1]

Local government would be derelict in its duties if it failed to make an effort to address its digital divide, and ensure that all residents have equal access to e-government services, as well as the tools needed to participate in today's digital society. Indeed, community groups are increasingly calling on local policy makers to address the digital divide through local initiatives.

As entities that are directly responsive to residents, we believe local government can play an extremely valuable role in meeting local communication needs, and that it has an obligation to do so.

Government has an obligation to the taxpaying public to operate efficient communication networks

In good economic times and bad, taxpayers expect that government will operate in the most fiscally efficient way possible, as well as achieve maximum benefit for the public for its investments. Those expectations extend to the way government manages its communications. Police, fire, utilities, and other local government departments must rely on fail-safe, high quality communications systems at the lowest possible cost.

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[1] *Home Broadband Adoption 2009*, Pew Internet & American Life Project, June 17 2009.

While some local governments find that private telecommunications companies can build and operate those networks, many others determine that the private market cannot meet its needs affordably or effectively. In turn, many governments have invested in publicly-owned and operated networks for use by public safety and intra-government communications. Seattle, Washington operates a highly successful fiber network that serves police, schools, libraries, transportation, utilities, parks and other city, county and national government departments. According to Seattle officials, the network provides high capacity broadband at costs far lower than what is available from private providers.

Many of these networks use fiber optics, which can be scaled out to provide nearly unlimited capacity, far beyond what government needs. It is perfectly reasonable then, and good fiscal policy, for government to use excess capacity to provide affordable, high quality broadband access to area residents, particularly those that are un- or underserved by the private market. In the case of the Seattle network, the city is now looking for ways to expand the network for low-income residents of Seattle that lack affordable access to high-speed connections. In Palm Beach County, Florida, a fiber network linking county and municipal departments, as well as area universities, is being used to provide wireless high-speed Internet service and hardware for no cost to dozens of low-income families.

There is room for public, private and non-profit broadband networks

With 37% of U.S. residents still without broadband access at home,[2] there is plenty of room in the marketplace for public, private and non-profit broadband providers. The market is far from saturated, and consumers' needs are far from met.

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[2] Pew Research Center's Internet & American Life Project 2009 study shows 63% of adult Americans now have broadband Internet connections at home.

For example, in many urban and suburban areas most residents have access to cable and/or DSL, yet 33% still do not subscribe. While many factors may be at play, the rates charged by incumbents are undoubtedly a factor for many residents. In many rural areas, incumbents do not offer high-speed broadband services at all, contributing to the fact that 54% of rural residents do not have broadband at home.[3] Institutions such as schools, libraries, hospitals and businesses find that the services offered by the incumbent are not of the quality they need.

These are perfect examples of the need for other players in the market, be they private, public or non-profit, to respond to the needs unmet by incumbents. Government may be able to use its economic development resources to provide high capacity broadband to a company that provides jobs for its residents, as in the example of St. Clair, Minnesota. According to Colleen Landkamer, the Minnesota State Director of the USDA's Rural Development program, an elevator company in St. Clair could no longer remain in this small MN town that lacked adequate broadband access.[4] Faced with losing an important employer, town officials had an antenna mounted on a water tower to bring wireless broadband to the company.

Local governments have had many successes in building and operating communications networks where existing service was inadequate, such as in Lafayette, Louisiana. This municipal Fiber to the Home (FTTH) network is projected to be complete in 2010, and already offers triple-play services of video, voice and data to homes and businesses at a price and quality private providers were not offering. Municipalities are launching projects that serve the most low-income consumers in urban areas, such as in San Francisco, where a city fiber network provides wired or wireless access to over 12 public housing developments, serving 3,000 households for no charge.

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[3] *Home Broadband Adoption 2009*, Pew Internet & American Life Project, June 17 2009

[4] According to a statement given by Ms. Landkamer at the Midwest Rural Assembly, Sioux Falls, ID, August 2009.

The presence of public networks could also lead to better quality of service and lower prices from the private providers, many of which operated with little to zero competition for years. For example, Cox Communications announced in April 2009 that Lafayette would be one of the first cities the company would offer its high speed broadband services.

Lafayette provides the example that municipal networks do not prevent a private provider or incumbent from providing similar services. Private, public and non-profit entities provide complimentary services in other sectors. In transportation, public subways, private cars, taxis and shuttles for-hire all offer important services to commuters. Public schools, private institutions, and non-profit charter schools each meet a region's education needs. The same can be said for health care delivery and housing, as well as for broadband deployment.

Furthermore, some local governments have deployed fiber backbone on an open access model, allowing any entity – including private providers – to lease capacity to offer broadband services. In Ontario County, New York, the Finger Lakes Regional Telecommunications Development Corporation (FLRTDC) is expected to complete a project late in 2010 to deploy 180 miles of high-capacity fiber backbone reaching all municipalities in the county, including police, fire and communication towers. According to the FLRTDC, this is spurring service providers to invest in last-mile solutions into un- and underserved areas.

Many municipal communications networks have been successful

Local governments manage incredibly complex and critical public services – police and fire, sanitation, water, energy, education, transportation, and so on. Many also already manage their own internal communications, such as the District of Columbia's D.C. Net. Similar to other examples referenced in these comments, DC Net provides voice and data services for more than 76 government and public educational institutions, as well as help desk support. "

In some cases, local governments have worked closely with local private-sector entities such as hospitals, colleges, libraries, and economic development agencies to create private, non-profit community broadband networks, similar to rural electric and telephone cooperatives. Such locally-owned networks are more likely to resist out-sourcing and to keep jobs local, while providing critical social capital formation to support economic development, innovation and job-creation.

Some have commented in this proceeding that government is both simultaneously incapable of managing communications networks, yet also has an unfair advantage over private providers.[5] This argument is inconsistent. If government broadband services were of poor quality and little value to users, it could not compete with a better service offered by a private provider.

More likely than the stated argument, private providers do not want to compete with an entity whose primary goal is to offer the best quality service at the lowest possible cost. This explains why 18 state legislatures responded to pressure from incumbents and passed laws that prohibited or severely restricted municipalities' abilities to create these networks. We support efforts that would re-empower local governments by lifting these unnecessary and unproductive preemptive laws.

Surely, examples can be found in both the private and public sector where broadband projects faced set-backs, or failed. But no empirical evidence exists that either private or public entities are more capable than the other to provide services. Evidence does exist, however, that private entities are simply *unwilling* to offer services in some areas, at rates consumers can afford, or of the quality needed by others. This is where local governments are stepping up.

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[5] Blooston Rural Carriers; Qwest Communications

Local authority should be maintained

Local government's authority in managing public rights of way can be credited with extending broadband services to more residents than otherwise may have been served. Local cable franchising rules, which also extend to telecom companies offering video services, have allowed government to insist on network build-out to all or a significant portion of residents, many of whom may otherwise not have been served.

Local franchising rules have also been used to provide other important benefit to local communities, such as support for reduced cost access for libraries and educational institutions, and creation of public, educational and government access centers. Approximately 16 states, again at the urging of incumbent telephone companies, have passed legislation that removes the authority of municipalities to negotiate franchise agreements, replacing it with a state-wide franchise that often fails to include important public benefits. Several years after state franchising laws were adopted, there is a lack of evidence that consumers are enjoying lower prices or better quality for video or broadband services. We support maintaining control over franchising at the local level, where local governments are better suited to understand the needs of its residents.

Local government control over rights of way also ensures that wireless tower citing meets local standards, and that construction of broadband facilities does not disrupt access to rights of way by others (including police or fire services).

Comments in this docket[6] urge the Commission to restrict the ability of local governments to manage their rights of way and protect the interests and safety of their citizens through their zoning authority. The commenters urge the Commission to dramatically alter their interpretation of Section 253, which establishes federal limits on the use of local rights of way authority to prevent unfair market barriers

[6] Sunesys, LLC, Blooston Rural Carriers

while preserving local government's rights. The commenters also request that the Commission impose that new interpretation on the Courts that have also been consistently correct in their interpretation of Section 253.

Carriers continue to claim that current Section 253 interpretation harms them, yet they have provided no evidence that local government systematically acts in a way that is unreasonable.[7] As was pointed out in the comments submitted previously on this notice, " the Commission's own data and the arguments of industry show[8] there has been broadband deployment by at least one or two major incumbent carriers in most, if not all, of our nation's metropolitan urban and suburban areas, while broadband deployment in our nation's less populous, more rural areas, lags considerably behind. Yet it is those very same metropolitan areas where right-of-way compensation and management requirements, as well as local zoning requirements, tend to be most rigorous. In most rural areas, by contrast, local right-of-way and zoning requirements tend to be far more lenient and, in many cases, non-existent."[9]

The preemption of local right-of-way and zoning requirements, beyond the case-by-case adjudication that is currently in place under Sections 253 and 332(c)(7), would not promote broadband deployment in the areas that need it most. Rather, it would only provide the carriers with "windfall protection from local laws that other industries must comply with, while leaving rural areas no better off in terms of broadband deployment than they are now."[10]

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[7] *See Comments of NATOA, NLC, USCM, and NACo*, National Broadband Plan Public Notice # 7, GN Docket Nos. 09-47, 09-51, 09-137 (filed Nov. 6, 2009) at 58.
[8] *See*, *e.g.*, Verizon Reply Comments, *A National Broadband Plan for Our Future*, DN 09-51 ("*NBP*"), at 5-9 (filed July 22, 2009); Comcast Reply Comments, *NBP*, at 3-12 (filed July 21, 2009); FCC National Broadband Plan, *September Commission Meeting: 141 Days Until Plan Is Due*, Slides 41 & 44 (Sept. 29, 2009).
[9] Comments of NATOA, et. al at 58.
[10] *See id.*

The Commission should not remove or diminish the authority of local governments to manage public rights of way and deploy broadband networks unless the carriers supply meaningful documentation that demonstrates that local governments systematically act in an unfairly obstructive manner. Enforcement of reasonable local standards to protect the public interest should not qualify as "unfair" or obstructive.

In closing, the undersigned organizations see an important role for local government in deploying affordable, high quality broadband networks. These networks, as well as those deployed by non-profit organizations, provide opportunities to advance social goals including economic development, public health and safety, civic engagement, and education in ways that private networks cannot always achieve. We hope the Commission will further empower local government to deploy more broadband networks, and resist any efforts to restrict local authority.

Respectfully Submitted,

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