

The study could not determine any effect on wages in those communities.

#### CHALLENGES AHEAD

A FTTP network wouldn't be easy or cheap to build, officials said. And a political fight would be likely once the N.C. General Assembly convenes in early 2007.

The city has already strung more than 30 miles of fiberoptic lines that link city offices and utility outposts, such as electrical substations. It also owns the utility poles, bucket trucks, a billing system that already goes to every city address and other necessities.

But a true FTTP network would run fiberoptic lines down every city street, hundreds of miles of fiber. The city would have to build a network operations center, plus wiring and other equipment to connect to individual homes or businesses.

A business plan, developed by Uptown Services LLC., projects that Wilson would need more than \$27,700,000 to build the system out to the city limits.

The only way to pay for that would be to sell cable television, Internet and phone services — called the "triple play" in FTTP communities. City officials believe they could offer those at a discount on what local residents pay now and even greater savings if they buy all three.

Wilson would be the first N.C. city to build a FTTP network, according to the N.C. League of Municipalities. Salisbury is also investigating the possibility, but it has more logistical problems to overcome than Wilson, according to Michael Crowell, Salisbury's technical services director.

Nationally, however, more than 665 cities and towns sell some form of broadband services, according to the American Public Power Association.

And in nearly every state, private telecommunication firms have fought them every step of the way. Some have sued the municipalities directly, but others have gone to the state legislatures and sought legislation to prohibit or limit these municipal networks.

Fourteen states have enacted laws that make it tough, if not impossible, for cities to market broadband services. The association tracks such legislation on its website, [www.APPAnet.org](http://www.APPAnet.org).

#### POTENTIAL ROADBLOCKS

In fact, North Carolina's Umstead Act prohibits the state government or its agencies from competing with private companies, said Matthews, the Embarq spokesman. "That's going to be Wilson's biggest challenge, the state law barring them from getting into the business."

Wilson could seek an exception from the N.C. General Assembly, Matthews said.

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City officials say that the N.C. Supreme Court has already upheld the city of Laurinburg's right to sell fiberoptic services to a private company after it was sued by BellSouth. "That set a precedent," Goings said.

Also, in 2005 the General Assembly approved statewide franchising for cable television providers. That is a sign that the state wants to encourage more competition, not less, which is what Wilson might provide, Shows said.

But Matthews questioned if it would be worthwhile, given the availability of high-speed Internet throughout the county. Embarq has more than 7,300 miles worth of fiber in Wilson County, about \$84 million of infrastructure, he said.

The company can provide DSL service up to 5 mbps to 90 percent of the addresses in the city and 77 percent in the county. The company also has customers here who have 10 mbps service, 100 mbps, even a gigabit service, he said.

"It doesn't make economic sense for us to run fiber to consumer premises in most cases," he said, adding, "It could be a real stretch for them (the City Council) to have to install the necessary infrastructure without some significant debt that would be on taxpayers' backs."

Brad Phillips, vice president for public affairs for Time Warner, said Friday that he has reviewed the city's business plan.

"I really don't see anything in the plan that's not already being offered by Time Warner right now," Phillips said. "We have a cable system with 400 channels, high speed Internet, digital phone service, all with great quality and reliability and at a great price."

"I don't see why they would want to spend all that money if they wouldn't be getting anything new."

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**WILSON EXHIBIT 6**

**City of Wilson Defends Research  
of Fiber Optic Potential**

**News Release**

**News Release**

**News Release**



**FOR IMMEDIATE RELEASE**

**CONTACT: Brian Bowman**

**(252) 296.3341**

**October 9, 2006**

## **City of Wilson Defends Research of Fiber Optic Network Potential**

WILSON, NC – The City of Wilson announced today, it will continue to research the potential of the city's fiber optic network. The move comes in an effort to improve the city's infrastructure, education potential and economic development competitiveness as was reported in a Wilson Daily News article on October 7, 2006.

Wilson City Manager, Grant Goings, says that despite public criticism from two private vendors in that same article, the overwhelming response has been very positive. Goings goes on to defend the city's exploration of its fiber network by stating, "As city officials, it is our responsibility to address issues relevant to the well-being and future of our community. We want to make sure we have the best infrastructure, which includes the technology to compete in a global society. This is about the city's future growth."

Also in the article, one vendor accused the city of violating the Umstead Act. "Not so," says Wilson City Attorney, Jim Cauley, "Nothing in the Umstead Act, the law cited by the spokesman for Embarq, prevents the City of Wilson from directly supplying cable and internet to its citizens. In fact, cities and counties are specifically excluded from the provisions of the Umstead Act."

Dathan Shows, City of Wilson Director of Technical Services says it's naïve to think an existing vendor can provide the quality of services capable of being provided through a fiber optic network; "The reason the city decided to explore this potential is because there was, and is, no private vendor offering the quality, reliability and coverage area that the city's fiber optic network could provide."

The Wilson City Council will hold a work session later this month to consider a business plan for construction of the expanded construction of the fiber optic network.

More information on the City of Wilson and its services is available at the city's website: [www.wilsonnc.org](http://www.wilsonnc.org) or call Brian Bowman at 252-296-3341.

- Nothing in the Umstead Act, the law cited by the spokesman for Embarq, prevents the City of Wilson from directly supplying cable and internet to its citizens. In fact, cities and counties are specifically excluded from the provisions of the Umstead Act.
- Cities have express legal authority to operate certain public enterprises, including cable television systems.
- The Telecoms have argued unsuccessfully at every level of our State courts that municipalities do not have the authority to operate fiber optic systems. In 2005, the courts said clearly that the City of Laurinburg was acting within its municipal authority to operate a fiber optic network.
- The Telecoms' mantra in the General Assembly last summer was that increased competition is a good thing that will drive down the cost of telecommunication services. Now faced with the possibility of a competing provider offering a service four times faster, less expensive, and to all citizens, the response from the private companies is to mislead the public by citing a law that does not apply to municipalities to say that the City cannot compete with them.
- The City of Wilson has been providing its citizens with services that the private sector would not or could not adequately supply for more than a century. The Council is now considering a service that could be as important for Wilson in the next century as electricity was 100 years ago.

**WILSON EXHIBIT 7**

**Time Warner Public Records Request**

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

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THORNTON H. BROOKS (1812-1888)  
G. MEL DANIELS (1811-1887)  
HUBERT HUMPHREY (1828-1883)

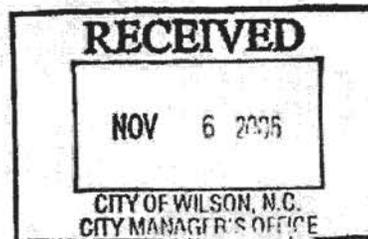
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WRITER'S DIRECT DIAL

November 3, 2006

Mr. Grant W. Goings  
Wilson City Manager  
Post Office Box 10  
Wilson, NC 27894-0010



Dear Mr. Goings:

I write on behalf of our client, Time Warner Cable ("TWC"), to request that the City of Wilson (the "City") provide TWC with copies of certain public records pursuant to N.C. GEN. STAT. § 132-6 (custodian of public records "shall permit any record in the custodian's custody to be inspected and examined ... by any person."). These public records are possessed or maintained by the City and concern financial information relating to the City's potential construction of a fiber to the premises ("FTTP") network (the "FTTP Network").

Specifically, TWC requests that you send it or allow it to inspect and copy the following documents or categories of documents:

- (1) All reports, correspondence, and documentation relating to the business plan titled the "Wilson, North Carolina Municipal Broadband Business Plan - Presentation of Findings," (the "Plan") by Uptown Services, LLC ("Uptown"), including, without limitation, copies of all reports, correspondence, and documentation supporting, discussing, or underlying purchase intent bench marking, sample product plans, broadband video and telephone services, business case

assumptions, capital expenditure assumptions, financial assumptions, business case results, and findings in the Plan.

- (2) Any contract the City has or has had with Uptown, along with related documentation, including without limitation invoices, correspondence, estimates, and information pertaining to third party service providers.
- (3) Minutes of any meeting, whether closed or open, in which the City Council or any committee thereof discussed the FTTP Network, and any documentation concerning the FTTP Network reviewed or considered by any City Council members in relation to such meeting(s).
- (4) Documents evidencing or discussing how the City would pay for or otherwise finance construction or acquisition of the FTTP Network, including without limitation, documents evidencing or discussing any proposed loan(s) from city funds to construct or support the FTTP Network, or any other financial subsidization of the FTTP Network (either directly or indirectly) by the City.
- (5) Documents evidencing or discussing whether expenses are projected to exceed revenues with respect to the FTTP Network in FY 2006-2007 or at any time thereafter.
- (6) Documents evidencing or discussing how the City paid for or otherwise financed construction or acquisition of its current fiber optic network (the "Current Network"), including without limitation, documents relating to the City's accounting treatment of the acquisition and operating expenses associated with the Current Network, and documents prepared by the City's accountants or auditors (whether external or internal) and relating to the Current Network, whether audited or unaudited, interim or final.
- (7) Any debt or other financing or budgets approved by the City Council, used to acquire, operate, or upgrade the Current Network, including, without limitation, documents relating to payments made upon any such debt(s) and the City's accounting treatment of those payments.
- (8) Documents evidencing or describing the City's annual budget, annual revenues, and annual expenses with relation to the Current Network from the time the Current Network was acquired to the present.

TWC requests the opportunity to inspect these documents as soon as possible.

Mr. Grant W. Goings  
November 3, 2006  
Page 3

As you know, public records compiled or maintained by the agencies or subdivisions of North Carolina—including cities and their departments—"are the property of the people." N.C. GEN. STAT. § 132-1(b). Access to those public records is governed generally by the Public Records Act, codified as Chapter 132 of the North Carolina General Statutes. Chapter 132 provides for liberal access to public records. See *News & Observer Publ'g Co. v. Poole*, 330 N.C. 465, 475, 412 S.E.2d 7, 13 (1992). Absent "clear statutory exemption or exception, documents falling within the definition of 'public records' in the Public Records Law must be made available for public inspection." *Id.*, 330 N.C. at 486, 412 S.E.2d at 19. The term "public records," as used in G.S. § 132-1, includes all documents and papers made or received by a government entity in the course of conducting its public business. N.C. GEN. STAT. § 132-1(a). A custodian of such "public records" has no discretion to prevent public inspection and copying of such records. N.C. GEN. STAT. § 132-6.

If you contend that the City has any documents falling within the categories listed above that you believe are exempt from disclosure under any provision of North Carolina law, please inform me immediately. With respect to any such documents, TWC requests that you identify each specific document withheld and, with respect to each such document, that you explain your basis for withholding the document.

If you have any questions regarding this matter, please do not hesitate to contact me. Otherwise, we look forward to your prompt response to this request.

Sincerely,



Mark J. Prak

cc: Mr. Tom Adams