3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 22, 2014

The Honorable Tom Rooney
U.S. House of Representatives
221 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Rooney:

Thank you for your letter concerning the critical issue of broadband deployment. 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.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act 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.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2 Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[,]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC* 11-161. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 22, 2014

The Honorable Dennis Ross
U.S. House of Representatives
229 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Ross:

Thank you for your letter concerning the critical issue of broadband deployment. 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.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act 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.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2 Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[,]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC* 11-161. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 22, 2014

The Honorable Keith Rothfus
U.S. House of Representatives
503 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Rothfus:

Thank you for your letter concerning the critical issue of broadband deployment. 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.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act 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.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2 Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[,]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC* 11-161. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 22, 2014

The Honorable Matt Salmon
U.S. House of Representatives
2349 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Salmon:

Thank you for your letter concerning the critical issue of broadband deployment. 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.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act 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.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2 Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[,]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC* 11-161. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 22, 2014

The Honorable Steve Scalise
U.S. House of Representatives
2338 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Scalise:

Thank you for your letter concerning the critical issue of broadband deployment. 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.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act 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.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2 Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[,]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC* 11-161. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 22, 2014

The Honorable Adrian Smith
U.S. House of Representatives
2241 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Smith:

Thank you for your letter concerning the critical issue of broadband deployment. 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.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act 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.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2 Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." If the Commission determines that such services are not "being deployed to all Americans in a reasonable and timely fashion[,]" Section 706 provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." In *Verizon v. FCC*, all three judges agreed with the Commission's conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC* 11-161. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a "paradigmatic" example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential "crowding out" of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.