



August 29, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WCB Docket No 14-116 Petition of the City of Chattanooga, Tennessee, Pursuant to Section 706

Dear Ms. Dortch:

On behalf of the Americans for Prosperity activists in Tennessee, I write to express strong opposition to any action by the Federal Communications Commission to preempt municipal broadband laws passed by the Tennessee legislature. The large debt accrued by the Electric Power Board's (EPB) smart grid network and its transparency practices raise serious concerns for citizens. Also, the FCC's authority to preempt state law in this situation is questionable.

The long list of failed municipal broadband networks across the country indicates that government run broadband networks simply don't work. Municipal networks have burdened residents with colossal amounts of debt, taxes, and other associated costs imposed to keep failing networks afloat. The fact that Tennessee lawmakers recognize this shows they care about the well-being of their constituents and wish to protect them from greater financial liabilities.

Any action by the FCC to block Tennessee law would not only undermine the power of the state government but the principles of constitutional federalism. No matter what authority the FCC may think they have pursuant to Section 706, the U.S. Supreme Court decision in *Gregory v. Ashcroft* (1991) established that federal preemption of a "sovereign entity" cannot occur without Congress issuing a clear statement of intent. The U.S. Supreme Court later reinforced this rule and constitutional federalism principles in *Nixon v. Missouri Municipal League* (2004). In *Nixon*, the court rejected federal preemption stating that the Telecommunications Act of 1996 is not "a source of federal authority granting municipalities local power that state law does not."

EPB's risky financial structure and outstanding debt are troubling. With almost 30 percent of EPB's infrastructure build-out coming from federal stimulus dollars –the largest per capita in the

country –EPB has still managed to accumulate a staggering \$200 million in debt.¹ Further, the city was able to utilize an already existing electrical smart grid infrastructure as part of its network. If the network were to expand, such luxuries would not be available to other areas which in turn would only increase the cost of already expensive network infrastructure.

The non-profit status of EPB also raises concerns over transparency and potential hidden costs to citizens. If EPB is unable to pay off its debt, creditors have the right to collect money via electric pay rates and can also increase rates on all electric customers throughout the city if necessary.¹ Worse is that EPB, despite it being a public service, charges citizens hefty amounts of money to obtain the network’s records.² Such practices call into question EPB’s dedication to transparency and ability the ability of citizens to hold them accountable.

State lawmakers are far more aware of local issues and the needs of their constituency. Unelected FCC officials in Washington, D.C. shouldn’t attempt to override initiatives passed by representatives who the people directly elected. Federal preemption of state law would only bring the problems of EPB –massive debt and non-transparent practices –to other parts of Tennessee. We urge the FCC to stay out of this matter.

Sincerely,

Mac Zimmerman
Director of Policy
Americans for Prosperity

Americans for Prosperity® (AFP) is a nationwide organization of citizen leaders committed to advancing every individual's right to economic freedom and opportunity. AFP believes reducing the size and scope of government is the best safeguard to ensuring individual productivity and prosperity for all Americans. AFP educates and engages citizens in support of restraining state and federal government growth and returning government to its constitutional limits. AFP has more than 2 million members, including members in all 50 states, and 36 state chapters and affiliates. More than 90,000 Americans in all 50 states have made a financial investment in AFP or AFP Foundation. For more information, visit www.americansforprosperity.org. Americans for Prosperity does not support or oppose candidates for public office.

###

¹ Charles M. Davidson, Michael J. Santorelli, “Understanding the Debate Over Government-Owned Broadband Networks: Context, Lessons Learned, and a Way Forward for Policy Makers”, June 2014, *Advanced Communications Law & Policy Institute at New York Law School*. <http://www.nyls.edu/advanced-communications-law-and-policy-institute/wp-content/uploads/sites/169/2013/08/ACLP-Government-Owned-Broadband-Networks-FINAL-June-2014.pdf>

² Louie Brogdon, *Taxpayers Protection Alliance Criticizes EPB's records charge*, August 2nd, 2014, Times Free Press. <http://www.timesfreepress.com/news/2014/aug/02/epb-records-charge-criticized/?breakingnews>