BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
	)	
City of Wilson, North Carolina	)	
	)	File No. 14-115
Petition for Preemption of North Carolina General Statutes § 160A-340 *et seq.*	)	
	)	
The Electric Power Board of Chattanooga, Tennessee	)	
	)	File No. 14-116
Petition for Preemption of a Portion of Section 7-52-601 of the Tennessee Code Annotated	)	

COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association ("APPA") submits these comments in the above-captioned proceedings to underscore the important role that community broadband networks, and in particular, public power systems can play in facilitating widespread broadband availability. For the past twenty years, APPA has actively supported and championed the vital role that municipal broadband networks can play in helping to meet our national goal of ensuring that all Americans have access to robust, affordable broadband. Both the City of Wilson, North Carolina, ("Wilson") and the Electric Power Board of Chattanooga, Tennessee, ("EPB") are members of APPA, and are shining examples of the public good that community broadband networks can achieve. Moreover, many public power utilities, like Wilson and EPB, are

facilitating the provision of advanced broadband services in rural areas, and in the absence of barriers to entry, could do so in many others.

I. INTRODUCTION AND BACKGROUND

APPA is the national service organization that represents the interests of more than 2,000 publicly-owned, not-for-profit electric utilities located in all states except Hawaii. Many of these utilities developed in communities that were literally left in the dark as private-sector electric companies pursued more lucrative opportunities in larger population centers. Residents of these unserved or underserved communities banded together to create their own power systems, in recognition that electrification was critical to their economic development, educational opportunity, and quality of life. Public power systems also emerged in several large cities – including Cleveland, Jacksonville, Los Angeles, Memphis, Nashville, San Antonio, Seattle, and Tacoma – where residents believed that competition was necessary to obtain lower prices, higher quality of service, or both. Today, approximately 47 million Americans receive their electricity from public power systems operated by municipalities, counties, authorities, states, or public utility districts. Approximately seventy percent of the nation's public power systems serve communities with less than 10,000 residents.

The patterns that marked the evolution of the electric power industry are now repeating themselves in the communications industry. As incumbent private communications providers focus on large population centers, many smaller communities are at risk of falling behind in obtaining the full benefits of the Information Age. These benefits include vigorous economic development, global competitiveness, rich educational and occupational opportunity, affordable access to modern health care, public safety, and homeland security, energy security, environmental sustainability, efficient government service, digital equity, and the many other the

factors that contribute to a high quality of life. At the same time, America's larger cities are also falling rapidly behind their counterparts in Asia and Europe, many of which are currently developing next-generation high-capacity communications networks.

As was the case when America was electrifying a century ago, many unserved or underserved communities are ready, willing, and able to take matters into their own hands, if necessary, to facilitate the development of ultra-high speed broadband communications networks that will enable their communities and America to continue to be a leader in the global economy. Indeed, currently more than 700 public power utilities provide some kind of advanced communication service, whether for internal or external purposes. This is a 10-fold increase since 1996, and the number of public power utilities providing or planning to provide services continues to increase. The services delivered by public power utilities include high-speed Internet access, cable television, local and long-distance telephone, and voice-over-Internet-protocol (VoIP). According to MuniNetworks.org, there are 89 publicly-owned and operated fiber-to-the-home (FTTH) systems operating as of 2014.[1]

In a number of states, however, units of local government, including publicly owned electric utilities, have been restricted, or even prohibited, from providing broadband services. Large, incumbent cable television and telephone companies have successfully pushed 20 states to prohibit or limit municipalities, including public power utilities, from entry into the communications and cable television markets. These actions come despite the pressing need for the widespread availability of advanced broadband services and the candid acknowledgement by these same incumbent providers that they do not intend to provide advanced services in the

[1] http://www.muninetworks.org/communitymap

immediate foreseeable future in many of the communities where they have sought to restrict municipal entry.

Given the critical and growing importance of high-speed broadband capabilities for nearly every segment of our society, America cannot afford to peremptorily exclude any viable options for facilitating the development and availability of such services. While by no means a panacea, municipal broadband must at least be an available option for individual communities to consider in ensuring that all segments of our society are able to receive the true benefits of broadband in a timely and meaningful manner.

II. BROADBAND IS THE GREAT INFRASRUCTURE CHALLENGE AND OUR NATION NEEDS ALL TOOLS AND OPTIONS, INCLUDING COMMUNITY BROADBAND, TO BE AVAILABLE TO MEET THIS CHALLENEGE

A. Access to High-Speed Broadband Is an Essential Utility Service

The challenges presented in making broadband infrastructure and capabilities widely available throughout the country are often compared to the challenges of rural electrification faced by our nation during the early part of the last century. This is not a mere rhetorical argument, but an accurate analogy in both scope and importance. Access to broadband, like electricity before it, is a transformative enabler and platform for access to a myriad of essential technologies, and like electrification, presents a tremendous challenge to our country that will necessitate public, as well as private participation, to succeed.

It has been a little over eighteen years since the enactment of the Telecommunications Act of 1996 ("TA96"), and since that time, the communications industry has changed dramatically, and our county has experienced an exponential growth and dependence on broadband Internet services and capabilities. At the time of the adoption of TA96, broadband was in its infancy and was considered more as a luxury than as an essential service, with very few Americans having

access to residential broadband services. Dial-up was by far the predominant means of accessing the Internet and current household names such as Amazon, Google, Netflix, and YouTube were either just tiny start-ups, or did not even exist, and no one had ever heard of an i-Phone, much less an app.

In the intervening decades, as average broadband speeds have increased and usage has become more pervasive, broadband has begun to reach a tipping point, where the widespread availability of broadband capabilities is of critical importance to economic development, education, healthcare, energy, safety, civic engagement, and indeed, nearly every facet of our economy and global competiveness. As a result, as part of the American Recovery and Reinvestment Act of 2009,[2] Congress directed the Commission to develop a National Broadband Plan "to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal."[3]

In directing the Commission to develop a National Broadband Plan, Congress explicitly recognized the fundamental and transformative importance of access to broadband for our nation. Like access to electricity and water, access to broadband is quickly becoming an essential service. Indeed, in developing the National Broadband Plan, the Commission found that "[b]roadband is *the* great infrastructure challenge of the early 21st century."[4] The Commission observed,

> Today, high-speed Internet is transforming the landscape of America more rapidly and more pervasively than earlier infrastructure networks. Like railroads and highways, broadband accelerates the velocity of commerce, reducing the costs of distance. Like electricity, it creates a platform for America's creativity to lead in developing better ways to solve old

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2 *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115 (2009) (*Recovery Act*).

3 *Id.*, at 516.

4 *Connecting America: the National Broadband Plan*, adopted March 15, 2010 at 3.

> problems. Like telephony and broadcasting, it expands our ability to communicate, inform and entertain.
>
> Broadband is *the* great infrastructure challenge of the early 21st century.
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> But as with electricity and telephony, ubiquitous connections are means, not ends. It is what those connections enable that matters. Broadband is a platform to create today's high-performance America—an America of universal opportunity and unceasing innovation, an America that can continue to lead the global economy, an America with world-leading, broadband-enabled health care, education, energy, job training, civic engagement, government performance and public safety.[5]

Moreover, as the EPB and Wilson Petitions note, the National Broadband Plan did not just focus on ensuring that all Americans have access to minimal levels of broadband connectivity. Rather, the Plan also underscored the importance of higher-end broadband connectivity to the advancement of America's "National Purposes" in several areas, including Health Care (Chapter 10), Education (Chapter 11), Economic Development (Chapter 12), Energy and Environment, including smart transportation systems (Chapter 13), Government Performance (Chapter 14), Civic Engagement (Chapter 15), and Public Safety (Chapter 16).

In the National Broadband Plan and in its accompanying *Sixth Broadband Deployment Report*, the Commission found for the first time that there are significant gaps in broadband deployment and that broadband connectivity to the Internet was not being made available on a reasonable and timely basis to all Americans.[6] In the National Broadband Plan, the Commission succinctly summarized the scale of the issue and the potential ramifications to our nation if the shortfalls are not addressed.

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5 *Id*., at 3.

6 *Sixth Broadband Deployment Report, In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, released July 20, 2010.

> This is a broad mandate. It calls for broadband networks that reach higher and farther, filling the troubling gaps we face in the deployment of broadband networks, in the adoption of broadband by people and businesses and in the use of broadband to further our national priorities.
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> Nearly 100 million Americans do not have broadband today. Fourteen million Americans do not have access to broadband infrastructure that can support today's and tomorrow's applications. More than 10 million school-age children do not have home access to this primary research tool used by most students for homework. Jobs increasingly require Internet skills; the share of Americans using high-speed Internet at work grew by 50% between 2003 and 2007 and the number of jobs in information and communications technology is growing 50% faster than in other sectors. Yet millions of Americans lack the skills necessary to use the Internet.
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> What's more, there are significant gaps in the utilization of broadband for other national priorities. In nearly every metric used to measure the adoption of health information technology (IT), the United States ranks in the bottom half among comparable countries, yet electronic health records could alone save more than $500 billion over 15 years. Much of the electric grid is not connected to broadband, even though a Smart Grid could prevent 360 million metric tons of carbon emissions per year by 2030, equivalent to taking 65 million of today's cars off the road. Online courses can dramatically reduce the time required to learn a subject while greatly increasing course completion rates, yet only 16% of public community colleges—which have seen a surge in enrollment—have high-speed connections comparable to our research universities. Nearly a decade after 9/11, our first responders still require access to better communications.
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> Unless we reform our approach to these gaps, we will fail to seize the opportunity to improve our nation, and we will fall behind those countries that do.[7]

Recognizing that the existing standards for broadband speeds were woefully inadequate to meet many routine requirements, let alone the more advanced and bandwidth-intense applications that were beginning to arise, the Commission announced a new definition of broadband – 4 megabits per second downstream and 1 megabits per second upstream -- and found that, under the new definition, advanced telecommunications capabilities were not being deployed to all

[7] *Connecting America: the National Broadband Plan*, at 3-4 (footnotes omitted).

Americans in a reasonable and timely manner.[8] Now, having found that the 4/1 Mbps benchmark has largely outlived its usefulness, the Commission is considering the adoption of an even more robust standard of 10 Mbps download.[9] The adoption of such a revised standard will even more starkly illustrate the degree to which large segments of our country are either unserved, or underserved by the types of broadband that the Commission considers to be essential to nearly every facet of our economy and global competiveness.

B. Community Broadband Can Help Facilitate the Widespread Availability of Broadband

While the entrance of Google into the broadband market is welcome news and has spurred a great deal of excitement, Google and a handful of other firms following its lead will only be entering a relatively small number of markets in the foreseeable future. While recent announcements by of some of the large incumbent broadband providers of their intentions to develop FTTH gigabit networks in select markets are welcome developments, at this stage, most of these announcements are just that – announcements. More significant, even if all of these networks were built out as promised, it would still leave the majority of the country without such services or capabilities. This then is the infrastructure challenge that we face as a nation.

As was the case with the electric industry last century, many smaller and rural communities are now at risk of falling behind in obtaining the full benefits of the Information Age. For thousands of communities, the private sector simply cannot, or will not, meet their needs any time soon. For these communities, it is just as necessary and appropriate for them to

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8 *Sixth Broadband Deployment Report*, at ¶¶ 4-5.

9 *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, Tenth Broadband Progress Notice of Inquiry*, GN Docket 14-126, released August 5, 2014.

serve their own communications needs as it was for communities a century ago to develop their own electric utilities. It is completely unfair and contrary to America's national interests to tell these communities that they must put their economic development, educational opportunity, public safety, and all of the benefits that advanced communications networks on hold until the incumbent carriers exhaust demand elsewhere and finally get around to them.

Simply put, many Americans live in areas where there is no business case for a private-sector provider to provide high-speed broadband service or to improve current slow-speed service. Faced with such a situation, communities should be able to opt for "self-help" to construct their own community networks or to partner with private providers to provide local residents and businesses broadband capabilities.

As Franklin D. Roosevelt maintained with respect to electricity:

> [W]here a community, or a city, or a county, or a district, is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable right as one of its functions of government ... to set up ... its own governmentally owned and operated service ... the very fact that a community can, by vote of the electorate, create a yardstick of its own, will, in most cases, guarantee good service and low rates to its population. I might call the right of the people to own and operate their own utility a birch rod in the cupboard, to be taken out and used only when the child gets beyond the point where more scolding does any good.[10]

These same principles are equally applicable to community broadband deployment. If our nation expects to realize its broadband deployment goals for all Americans, it must recognize that we need to enhance, not diminish, the ability of municipal and community entities to participate in such endeavors

In their respective Petitions, both EPB and Wilson described in detail the many benefits provided to their communities by their development of municipal broadband networks. As EPB

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[10] Franklin Delano Roosevelt's speech, delivered in Portland, Oregon in September 1932, quoted in *Taking Charge: A New Look at Power* by Morgan, T. Riesenberg and M. Troutman at 9.

discussed, its development and operation of a fiber network was integral to its implementation of a smart grid network and the safe, secure, and efficient operation of its electric system. And both Petitions underscored the critical role that the development of their broadband networks have played in fostering economic development for their communities.

Stories such as these can be found in public power communities around the country. Given the critical and growing importance of high-speed broadband capabilities for nearly every facet of our society, and the daunting challenge of building such networks throughout the country, the question should not be whether communities should be allowed to build broadband networks, but instead, how can America afford to not let them have this choice.

Respectfully Submitted,

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