

With regards to fair competition, the constraints placed on the cities were intended to protect against inappropriate use by the government of its inherent advantages as a governmental body – for example, control and pricing of rights-of-way, exemption from laws and regulations applicable to private industry, and exemption from the payment of taxes.

The key protection for taxpayers was to require their vote before any debt could be issued by a city for construction of a communications system for the purpose of entering into competition with private entities. This requirement is consistent with state constitution's prohibition of the pledge of a city's faith and credit without a vote of the people, a requirement cities had purposefully avoided by issuing Certificates of Participation.

The "Level Playing Field" legislation was by no means punitive in that a number of allowances were made in addressing various issues. For example, all of the existing systems (including Wilson's) were grandfathered to exempt the cities from complying with the new provisions. In addition, the restrictions did not apply to cities with unserved areas (i.e., areas where 50% of the households do not have access to broadband) nor did they apply to a city's operation of a communication network for its own internal governmental purposes, including police, fire, rescue, smart grid services, and a city's provision of free services such as free wireless. The bill that became law was carefully negotiated, thoroughly discussed and debated over a number of years, and ultimately passed by wide bipartisan margins.

At its core, the law was a response to what members were seeing and hearing from their constituents and it reflected the members' desire to promote an environment in our state that promoted jobs and investment. Attached is an article ("North Carolina's Broadband Battle") that I prepared in 2011 that gives additional background on why the law was necessary what it does.

As a designated entity with delegated powers to serve the public in the state's stead, it is well within the scope of the state's authority to legislate how and under what conditions a city meets the needs of the citizens. In this regard, Wilson's petition raises numerous important questions about the extent of our state's legislative authority in relation to the federal government: is it the appropriate role of the Federal Communications Commission to sit in judgment of a state's exercise of regulatory authority over divisions of state government; what other statutes would the cities be able to challenge if they are dissatisfied with the enactments of the state legislature; who would regulate North Carolina cities if North Carolina's General Assembly cannot; if a state does not have sovereignty over its own internal governance what authority remains for states?

I urge you to keep these considerations in mind as you consider the City of Wilson's request.

Sincerely,



Marilyn Avila  
Member, N.C. House of Representatives