



Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096

THOM TILLIS  
Speaker

August 28, 2014

The Honorable Tom Wheeler  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

*VIA ELECTRONIC SUBMISSION*

Re: **City of Wilson Preemption Petition**  
**Docket No. 14-115**

Dear Chairman Wheeler:

I am writing in response to the City of Wilson, North Carolina's petition that N.C. Gen. Stat. § 160A-340, *et seq.* be deemed to be preempted pursuant to the Telecommunications Act of 1996.

By now, you are more than familiar with the key components of North Carolina's "Level Playing Field Law." Critically, this law does not prohibit cities from competing with private business in offering broadband or other communication services. It does, however, contain multiple provisions that protect the residents of North Carolina municipalities – the very individuals who are ultimately on the hook for the costs of maintaining municipal communications systems. For example, it makes it unlawful for a municipality to subsidize the provision of communications services with funds from non-communications services which also happen to be offered by the municipality. This provision is aimed squarely at ensuring that the costs of the communications services are not borne by a broader class of citizens than those that actually benefit from or participate in the offering of those services. The law also provides that a municipality cannot price a communications service below the actual cost of providing that service. This serves several purposes, not the least of which is promoting sound business practice for any entity that plans to operate for more than a very brief period of time.

As a legislator, I supported the Level Playing Field Law because I sensed the need to protect citizens and taxpayers from poor local government financial decision making. The legislation enjoyed broad, bipartisan support and was extensively debated in the General Assembly before adoption. Notably, both I and my colleagues were all too familiar with some of our municipalities' experimentation with speculative proprietary endeavors. As representatives of the people, we felt bound to act to curb the ever growing list of examples where precarious investments ultimately left innocent taxpayers holding the bag.

The Level Playing Field Law reflects North Carolina's strong public policy of disfavoring local (and state) government competition with private industry. This express public policy is particularly strong in cases such as this one, where a single municipality's short term objectives may actually prove to be counterproductive to the state's interests as a whole. In my view, this is precisely the scenario that calls for statewide regulation.

Perhaps the most astounding result that would obtain from preemption of the Level Playing Field Law is that municipalities here – creatures of state statutes enacted by the General Assembly – would somehow be deemed to derive independent authority from the federal government to engage in inherently risky and politically controversial endeavors which threaten greater job creation and economic development across our state. To rule that the North Carolina General Assembly is powerless to prevent such a result brings Chief Justice John Roberts' warnings regarding the “growing power of the administrative state” to mind. What would be left of the well-established limits on local fiscal affairs that have been in our state's laws for decades?

I certainly recognize the value of ensuring that broadband services are widely available across North Carolina. I respectfully request, however, that decisions regarding how best to do that be left to North Carolina's elected officials, and that you reject the request to preempt North Carolina's laws.

Sincerely,

*/s/ Thom R. Tillis*

Thom R. Tillis  
Speaker of the House