

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petitions Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	
for Removal of State Barriers to	)	WC Docket No. 14-115 (Wilson)
Broadband Investment	)	WC Docket No. 14-116 (Chattanooga)
and Competition	)	
	)	

**COMMENTS OF THE NORTH CAROLINA NEXT GENERATION NETWORK**

**I. INTRODUCTION**

The North Carolina Next Generation Network (“NCNGN”) is a regional initiative focused on stimulating the deployment of next generation broadband networks in North Carolina. The coordinated effort is led by six municipalities and four leading research universities and supported by local Chambers of Commerce and businesses in the Research Triangle and Triad regions of North Carolina. NCNGN members include the municipalities of Carrboro, Cary, Chapel Hill, Durham, Raleigh, and Winston-Salem and their university partners Duke University, North Carolina State University, University of North Carolina at Chapel Hill, and Wake Forest University/Wake Forest Baptist Medical Center. NCNGN<sup>1</sup> submits these comments in full support of the dual Petitions of the City of Wilson, North Carolina (“Wilson”)<sup>2</sup> and the Electric Power Board of Chattanooga, Tennessee (“EPB”)<sup>3</sup> (collectively “Petitioners”) filed on July 24, 2014 and released for public comment on July 28, 2014, in the above-captioned proceedings.

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<sup>1</sup> The views expressed in these comments are those of the NCNGN Steering Committee and should not be attributed to any of the individual municipal or university members of NCNGN.

<sup>2</sup> See Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by City of Wilson, North Carolina, WC Docket No. 14-115 (filed July 24, 2014) (Wilson, NC Petition).

<sup>3</sup> See Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by Electric Power Board, Chattanooga, Tennessee, WC Docket No. 14-116 (filed July 24, 2014) (EPB Petition).

## **II. STATEMENT OF SUPPORT**

NCNGN strongly supports and encourages the Commission to preempt these state laws to the extent requested by Petitioners on the grounds that they create artificial barriers to broadband infrastructure investment, deployment, competition and innovation, by severely restricting and unreasonably delaying the options available to local communities to obtain 21st Century broadband infrastructure and services for all of their businesses and residents.

### **A. State Broadband Laws like those in North Carolina and Tennessee Create Artificial Barriers to Broadband Infrastructure Investment, Deployment, Competition and Innovation**

Both the North Carolina and Tennessee laws described, respectively, in the Wilson and the EPB Petitions are examples of state imposed barriers to broadband infrastructure investment and deployment that have the purpose and effect of preventing municipalities around the country from providing the kind of high-capacity network and services that America needs to remain competitive in the emerging knowledge-based global economy. As the Petitions note, these broadband networks provide countless benefits to their communities – including enhanced economic development and competitiveness, educational opportunity, public safety, homeland security, energy efficiency, environmental protection and sustainability, affordable modern health care, quality government services, and the many other advantages that contribute to a high quality of life.

NCNGN was organized to help our member communities stimulate local deployments of next-generation broadband networks so that they could realize those benefits of advanced telecommunications capabilities. As Wilson’s Petition underscores, HB 129 effectively prohibits local communities from deploying modern broadband networks and services to their citizens,<sup>4</sup> which limited our communities’ options and required NCNGN members to identify private service providers willing to upgrade local networks.<sup>5</sup> In February 2013, NCNGN, through the Triangle J Council of Governments, issued a Request for Proposals (RFP) inviting one or more private companies to build and operate network(s) to deliver ultra-fast bandwidth at highly affordable prices. After reviewing the eight responses received by the deadline and negotiating with qualified respondents, NCNGN developed a model master network agreement with AT&T.

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<sup>4</sup> Wilson, NC Petition at page 14, pages 27-38.

<sup>5</sup> Some or all of our members may have chosen to issue an RFP and work with private sector providers even in the absence of HB 129 if local elected officials considered it to be in the best interest of their constituents.

Each of the six municipal NCNGN members subsequently approved the model agreement which outlines plans by AT&T to upgrade or deploy networks capable of delivering up to 1 Gigabit per second.

AT&T is expected to begin its U-verse with GigaPower gigabit service in all six NCNGN communities by mid-2015 or earlier.<sup>6</sup> Five of the NCNGN municipal members are also being considered for the next wave of Google Fiber deployments, and Raleigh is one of eight markets that Time Warner Cable plans to upgrade to its “TWC Maxx” service in 2015. Local start-up RST Fiber has also started deploying a gigabit network in the Raleigh metro area.

Some may suggest that NCNGN communities’ apparent success is evidence that HB129 is not a barrier to robust broadband investment, deployment, competition, and innovation in North Carolina. That would be a mistake.

NCNGN member communities include the 2<sup>nd</sup> (Raleigh), 4<sup>th</sup> (Durham), 5<sup>th</sup> (Winston-Salem), and 7<sup>th</sup> (Cary) largest municipalities in North Carolina, and all 6 municipal members of NCNGN are among the fifty largest of 553 municipalities in the state of North Carolina. The counties in which these communities are located are home to four leading research universities and over 50,000 businesses. These demographic and economic factors make us well positioned to rely on an RFP process to spur competition and interest from private sector providers. However, our ability to attract interest and potential investments from private ISPs using an RFP process (or at all) is not necessarily indicative of what would be expected by the majority of the other 547, mostly smaller, more rural, and poorer municipalities in North Carolina.

Even within NCNGN member communities there are no guarantees that advanced telecommunications capabilities will be deployed to all citizens in a timely manner. The agreements with AT&T and the increasingly competitive landscape in our communities are encouraging, but providers like AT&T and Google Fiber, understandably, generally only extend their networks to areas where they believe demand is sufficient to meet or exceed their target rates of return on investment or other financial objectives. This approach could mean that providers will never deploy to some low-income or high-cost areas within our communities. Our members have no regulatory authority to require network build-outs, and HB 129 effectively prevents them from providing municipal broadband services to these areas.<sup>7</sup> Thus, HB 129 is an

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<sup>6</sup> Service is expected to begin before the end of 2014 in the five NCNGN municipalities within AT&T’s existing footprint.

<sup>7</sup> Even if a municipality were technically able to get around the restrictions in HB 129, the cost of providing service solely to un-served areas would be unnecessarily expensive and likely cost-prohibitive.

artificial barrier to the deployment of advanced telecommunications capabilities to all Americans in a reasonable and timely manner.

**B. Local Communities Must be Able to Evaluate Local Market Forces and Make Their Own Broadband Infrastructure Deployment Choices**

In today's global knowledge-based economy, all local communities -- rural, tribal, and urban -- recognize that access to modern broadband Internet infrastructure is essential to enable economic and democratic activity. Modern broadband Internet infrastructure is the lifeblood of our 21st century global knowledge economy. Likewise, local communities are the lifeblood of America. Local elected officials live among their local constituents, and as such are on the pulse of local needs, local resources, local tolerance for risk, and are easily held accountable for their decisions, whether in the local grocery store, church, soccer field or voting booth.

NCNGN communities' apparent success in attracting interest from multiple providers demonstrates the importance and benefits of competition. Local communities are best positioned to evaluate the local competitive landscape and determine the best options for their citizens, businesses and institutions, whether this means working with willing incumbents or new entrants, entering into public-private partnerships, developing their own networks, or being served by other local communities who have the capacity to provide Gigabit services.

**III. CONCLUSION**

We fully support the Commission's removal of these artificial state barriers to broadband infrastructure investment, deployment, competition, and innovation. While the rest of the world is rapidly deploying this essential 21st century infrastructure, all options must be on the table for our country to remain globally competitive.

Respectfully submitted by,

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