

**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 CITY OF FAYETTEVILLE, NORTH CAROLINA

I. INTRODUCTION

The City of Fayetteville, North Carolina (Fayetteville) is a municipality with over 200,000 residents that has invested millions in a local broadband system. Fayetteville submits these comments in full support of the dual Petitions of the City of Wilson, North Carolina (“Wilson”)¹ and the Electric Power Board of Chattanooga, Tennessee (“EPB”)² (collectively “Petitioners”) filed on July 24, 2014 and released for public comment on July 28, 2014, in the above-captioned proceedings.

II. STATEMENT OF SUPPORT

The City of Fayetteville strongly supports and encourages the Commission to preempt these state laws to the extent requested in the respective Petitions 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 their businesses and residents.

¹ 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).

² 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).

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

Numerous plans that were in the works by various local North Carolina communities to build fiber networks for retail business and residential use ground to a halt with the passage of Section 160A-340 (known as “H129”). Specifically, Fayetteville had already built its network and was in the process of extending it network to provide service to parts of the City that were not served by Time Warner Cable. As Wilson’s Petition underscores, H129 was a bill sponsored by the incumbent providers, and in no manner subjected these companies to the numerous and varied restrictions that in part and in whole effectively prohibit local communities from deploying modern broadband networks and services to their citizens.³ In addition, the law had the collateral effect of suppressing the desire of numerous communities to even creatively engage in public-private partnerships for fear of exposing themselves to a legal challenge by any incumbent hungry to suppress potential local broadband options, and finding ample provisions under which to do so using the numerous ambiguities in their law. As such, laws like those in North Carolina have unreasonably delayed and suppressed local options and competition, and broadband deployment and innovation.

B. Congress Provided the FCC the Authority to Preempt

As the Petitioners clearly describe, Congress foresaw as far back as 1994, that access to advanced telecommunications capabilities would become critically important to all Americans in the years ahead. Through Section 706(a) of the Telecommunications Act of 1996, Congress gave the Commission broad authority and discretion to determine when, where, and how to ensure that “all Americans would have such access ““on a reasonable and timely basis.”⁴ In Section 706(b), Congress also required the Commission to take affirmative action to acquire information about the pace of deployment of advanced telecommunications capabilities, to decide whether such deployment was occurring on a reasonable and timely basis, and, if the Commission ever answered that question in the negative, to act immediately to remove barriers to infrastructure investment and to promote competition.⁵ The Petitioners note, that in charging the Commission

³ Wilson, NC Petition at page 14, pages 27-38.

⁴ Wilson, NC Petition at pages 3-5; EPB Petition at page 14.

⁵ Wilson, NC Petition at page 5; EPB Petition at page 41.

with this responsibility Congress was well aware of the significant contributions that municipalities could make and undoubtedly understood that it would be impossible to make the benefits of broadband connectivity available to all Americans without the participation of municipalities, particularly in areas in which the private sector found investment unremunerative.⁶

C. Local Communities Must be Able to Make Their Own 21st Century 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. Towns, counties, and cities are where economic activity and civic engagement happen. 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. Local communities are best positioned to determine the best options for their citizens, businesses and institutions, whether this means working with willing incumbents, entering into public-private partnerships, developing their own networks, or being served by other local communities who have the capacity to provide Gigabit services.

As Wilson succinctly stated:

“[A]t the end of the day local governments, accountable to local citizens understand their own needs and should have the freedom to find local solutions to local problems. We should not require citizens to beg big corporations to deploy systems when these citizens have the power to take matters into their own hands.” Section 160A-340 thoroughly undermines these principles.”⁷

D. North Carolina's Section 160A-340 Must Be Preempted in its Entirety

As Wilson has articulated in its Petition, Section 160A-340 must be preempted

⁶ Wilson, NC Petition at pages 3-5; EPB Petition at page 15.

⁷ Wilson, NC Petition at page 43.

in its entirety.⁸ The law contains multiple tiers of barriers and restrictions (including among others rate regulations, limited funding options, and census-block speed litmus tests) so that removing one (such as the geographical service area limit) in no manner frees communities to engage all options within their resources.

III. CONCLUSION

We fully support the Commission's removal of these artificial state barriers to broadband infrastructure investment, deployment, competition, and innovation. Ultimately it is about preserving local choice. At this critical time in our country's history, when 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. Removing the barriers to broadband investment and competition as requested in the Petitions will enable more communities to be self-reliant, and better enable America to maximize all resources so that no one is left behind and unable to participate in this knowledge-based global economy.

Respectfully submitted by,



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⁸ Wilson, NC Petition at pages 25-39.