



Chairman Tom Wheeler
Federal Communications Commission
44 12th Street, SW
Washington, D.C. 20554
RE: WCB Docket Nos. 14-115 and 14-116

Dear Chairman Wheeler,

We are writing as state lawmakers in strong opposition to the petitions now before the Commission, which ask you to preempt state lawmaking authority. The Commission should reject federal preemption of states' responsibility over local governments and their broadband networks.

The preemptive action urged by the petitioners would require a federal power grab of breathtaking dimensions. Preempting state legislative authority over municipal broadband networks is unsound policy, lacks Congressional authorization, has been rejected in principle by the U.S. Supreme Court, and violates core tenets of constitutional federalism.

First, states – not the federal government – are responsible for creating and overseeing local governments. Federal preemption would sever accountability between local and state governments. States would find themselves in an untenable situation in which they could not exercise governing responsibility over their own agents.

Nineteen states currently restrict municipal broadband operations in some manner. Those states recognize the importance of limited and impartial government. Typically, private marketplace competitors are subject to local governments' taxing power and rights-of-way authority. Preemption by the Commission would encourage the inherent conflicts-of-interest posed by local governments possessing power to regulate its private-sector competitors.

Preemption of state-level safeguards on local government-owned networks would also strip taxpayer protections and creates the possibility of new public debt burdens. North Carolina requires voter approval before local governments can incur public debts to fund municipal broadband projects. That state also prohibits local governments from raiding revenues from general budgets or other public services in order to prop up the finances of faltering municipal broadband projects. Many other states have adopted safeguards to protect taxpayers. The Commission must not gut these protections.

Lack of technical know-how and good business sense has tanked many municipal broadband networks. For example, at the end of fiscal year 2013, Utah's UTOPIA had net

assets totaling negative \$146 million, with a total debt exceeding \$500 million. Just six years into operations in Lafayette, Louisiana, LUS Fiber's debt exceeds \$160 million, with revenues falling 30 percent below its business plan projections.

When municipal broadband projects run deep in the red, taxpayers are routinely forced to bail them out. Some local governments have hit taxpayers with rate hikes on local services such as water or electricity to make up for municipal broadband project losses. The broadband Internet services industry is capital-intensive and its financiers take serious financial risks. Taxpayers should not be left on the hook for poorly run local broadband networks.

The legal and constitutional defects posed by preemption in this matter are both evident and egregious. In *Nixon v. Missouri Municipal League* (2004), the U.S. Supreme Court soundly rejected claims that Section 253 of the Communications Act preempted state restrictions on municipal telecommunications.

In the Court's words: "*preemption would come only by interposing federal authority between a State and its municipal subdivisions, which our precedents teach, 'are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion.'*"

Contrary to the petitioners' claims, the principled importance of local government accountability to states identified in *Nixon* applies with equal force to Section 706.

In addition, Congress has **never** granted the Commission the power to preempt states on municipal broadband networks. For that matter, the Constitution prohibits the type of preemption now contemplated by the Commission. The Tenth Amendment provides that "*[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*"

Nowhere does the Constitution give federal bureaucrats the power they now seek to entangle themselves in state legislative judgments about the specific purposes, geographic limits, and electoral accountability of local governments.

We strongly urge you *not* to preempt states' responsibility and ultimate authority over local governments and municipal broadband networks.

Sincerely,

Lisa B. Nelson
CEO, of American Legislative Exchange
Council

Rep. Linda Upmeyer
ALEC National Chairman
Iowa

Sen. Joel Anderson
California

Representative Andrew Brenner
Ohio

Rep. Jason Saine
North Carolina

Rep. Blair Thoreson
North Dakota

Senator Doug Libla
Missouri

Rep. Sue Allen
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Sen. Mary Pilcher-Cook
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Del. Kathy Afzali
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Rep. Blaine B. Campbell
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Sen. Ed Emery
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Rep. John Wood
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Rep. Garry R. Smith
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Rep. Tom Rice
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Rep. Mike Holmes
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