

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

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

COMMENTS OF
INSTITUTE FOR LOCAL SELF-RELIANCE
COMMON CAUSE
CENTER FOR MEDIA JUSTICE
MEDIA MOBILIZING PROJECT
NATIONAL HISPANIC MEDIA COALITION
PUBLIC KNOWLEDGE
WRITERS GUILD OF AMERICA, WEST
BENTON FOUNDATION
THE UTILITY REFORM NETWORK (TURN)
HON. TOMMY WELLS
HON. DAVID GROSSO

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The undersigned nonprofit organizations – the Institute for Local Self-Reliance (ILSR), Common Cause, Center for Media Justice, Media Mobilizing Project, National Hispanic Media Coalition, Public Knowledge, Writers Guild of America West, Benton Foundation¹, The Utility Reform Network (TURN) – along with District of Columbia Councilmembers Wells and Gross are pleased to submit these comments in response to the petitions filed by Wilson, North Carolina and Chattanooga, Tennessee.

I. INTRODUCTION

The Institute for Local Self-Reliance’s mission is to provide innovative strategies, working models and timely information to support environmentally sound and equitable community development. To this end, ILSR works with citizens, activists, policymakers and entrepreneurs to design systems, policies and enterprises that meet local or regional needs; to maximize human, material, natural and financial resources; and to ensure that the benefits of these systems and resources accrue to all local citizens.

Founded in 1970 as a “citizens’ lobby,” Common Cause is a nonpartisan, grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest, and accountable government that works for the public interest, and empowering ordinary people to make their voices heard.

II. STATEMENT OF SUPPORT/SUMMARY

The undersigned support the petitions of both Wilson and Chattanooga in their request for the FCC to remove barriers to the deployment of high speed Internet access. Wilson and Chattanooga are two clear examples of how local governments can expand access to fast, affordable, and reliable Internet access. State laws restricting local authority to decide whether a public investment or partnership will improve Internet access have delayed and inhibited the deployment of fiber optic networks.

III. MUNICIPAL BROADBAND BASICS

Over 400 local governments have invested in wired infrastructure to expand high speed Internet access to businesses and/or residents in their communities.² The number of local governments that have built networks simply to connect schools, libraries, and municipal facilities with high speed services at affordable prices is unknown, but ILSR estimates it to be well above 1,000. Additionally, many local governments are actually

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

² MuniNetworks.org/communitymap

taking service from another local government, as where Dakota, Scott, and Carver Counties have built fiber networks in Minnesota that serve many of the towns within them. In short, local governments investing in high capacity networks is not particularly rare in the United States.

Municipal networks have been built using a multiplicity of models.³ Some offer services directly, some partner with providers, and some have invested only in passive elements – like leasing dark fiber. Some were built after borrowing funds, others were built without using debt at all.⁴ Some were built across an entire community over a short time frame and others have taken many years to expand incrementally. There is no single municipal model; though our comments below focus specifically on networks owned by local governments related to the petitions, we stand squarely in support of community networks broadly as a mechanism to improve Internet access.

IV. EXAMPLES OF LOCAL GOVERNMENT INVESTMENT TO EXPAND HIGH SPEED ACCESS

The record of local governments investing in essential infrastructure is quite long but a rather relevant piece is electrification. As noted in the city of Wilson’s Petition to the FCC,⁵ Wilson created an electric light plant in 1890, among the first municipalities to do so. And after a few rounds of upgrades, they began supplying power to other towns. Likewise, Chattanooga is one of the many municipal utilities that provide services beyond the political boundaries of the jurisdiction. Allowing local governments to expand services to nearby communities that wish to receive those services has been an important tool of expanding access to essential utilities.

Local governments, when not impeded by state laws, have invested in high speed networks to serve unserved populations beyond their immediate borders. For instance, three communities in the Midwest took advantage of federal broadband stimulus funds to expand their successful fiber networks outside of towns to unserved areas. Reedsburg, Wisconsin; Cedar Falls, Iowa; and Windom, Minnesota each reached beyond their borders to expand access.

Windom has worked with the eight nearby towns to form Southwest Minnesota Broadband Services, a full fiber-to-the-home network that today connects over 2,600 businesses and residents that otherwise were dependent on satellite, dial-up, or in some cases, slow wireless or DSL services. Cedar Falls expanded access to areas where households in some cases had to make a long distance to call to use dial-up. These are just a few of many more examples of where local governments have expanded high speed Internet access when not limited by state law.

³ For a broad spectrum of models, see the *Community Broadband Bits podcast*, ILSR. It features over 100 interviews, and covers a wide range of approaches.

<http://www.muninetworks.org/broadbandbits>

⁴ We created a fact sheet of the three most common ways municipal networks are financed in our experience: <http://www.ilsr.org/wp-content/uploads/2014/01/financing-munis-fact-sheet.pdf>

⁵ FCC Proceeding 14-115

Some communities have also invested in strategies to couple high speed Internet infrastructure with programs to train targeted households (often low income) in computer skills and to subsidize their access to high speed networks. One example is the SmartRiverside program in California.⁶

V. MUNICIPAL INVESTMENTS STIMULATE PRIVATE INVESTMENT

At the request of US Representatives Waxman, Pelosi, and Eshoo, the U.S Government Accountability Office studied by municipal networks and networks that had received stimulus dollars to discern an impact on local businesses. That study found such investments resulted in faster, more reliable, and less expensive connections for businesses. Moreover, it conducted interviews with existing providers in the markets studied and including this quote in the final report:

For example, following the construction of a fiber-to-the-home municipal network in Monticello, Minnesota, the two other broadband providers in the area made investments in their infrastructure to improve their broadband speeds. One of these providers stated that all of its networks undergo periodic upgrades to improve service, but upgrade schedules can change in order to stay competitive when there is a new service provider in a particular market.⁷

Economic theory validates this claim. Firms are far more likely to invest when they fear competition than when they do not. Evidence bears this out: when a municipality or other competitor breaks the DSL/cable duopoly, incumbents typically increase investment and decrease prices. After arguing vehemently that its DSL was meeting the needs of the community TDS, sued Monticello to stop its fiber deployment and began a crash program to convert its DSL into a FTTH system. Monticello is now the only city in North America with two citywide FTTH networks competing head to head.

Chattanooga's petition includes a chart of Comcast prices in the region, showing a historic decline around the time Chattanooga EPB began competing with it.⁸ Another example is Cox Cable in Lafayette, Louisiana. Though Cox fought Lafayette's decision to build a fiber network for many years, Lafayette was the first Cox territory to receive the DOCSIS 3 upgrade.⁹

VI. EXISTING PROVIDERS ARE NOT MEETING DEMAND

Over the years, our organizations have collected a number of telling examples that demonstrate not just the need for better Internet access, but the inability or unwillingness

⁶ <http://www.muninetworks.org/content/community-broadband-bits-11-steve-reneker-riverside-california>

⁷ Page 11, <http://www.gao.gov/assets/670/660734.pdf>

⁸ Page 27, EPB Petition, 14-116

⁹ See ILSR's Report *Broadband at the Speed of Light*. <http://www.ilsr.org/broadband-speed-light/>

of existing providers to meet those needs. In many cases, these examples have been motivators for communities to build their own networks to expand high speed Internet access. These examples demonstrate that local expand high speed Internet access when not limited by state restrictions.

- Local businesses in Cook County, Minnesota had approached incumbent providers for years begging for improved services prior to the American Recovery and Reinvestment Act (ARRA) broadband stimulus programs. The Lutsen Mountain Inn was told it was not possible to even get a T1, let alone a modern connection. The Cascade Lodge obtained a quote for installation of a T1 and was told \$600,000.¹⁰

In 2010, after a single fiber line was cut in an accident, all of Cook County was stranded with no telecommunications access for 12 hours. 911 was inoperable. Police could not run license plate checks. Credit card readers were useless. Ham radio operators helped health care facilities. US Border Control had to use Canadian comms.¹¹ In response to these and other problems, Cook County sought to build a fiber network but a Minnesota law restricting public investment thwarted their goal. Fortunately, they were able to work with a nonprofit, the Northeast Service Cooperative, and a local electric cooperative to build the necessary infrastructure with stimulus funds.

- In the Denver suburb of Centennial, a business was told it would have to pay a \$20,000 connect fee to get a fiber connection from Comcast.¹² Subsequently, the Colorado community voted in 2013 to recover its authority to invest in a fiber network as required by a Colorado law that requires a public referendum before a community can make its fiber available to the private sector or even partner for the same effect. Such referendums both delay and discourage investment in fiber networks because providers have all the advantages in such a process.¹³

North of Denver, Longmont had to try twice before overcoming Comcast's deep pockets in a referendum. Comcast spent over \$500,000 while the City was prohibited from taking an official position (standard on matters of referenda) and the grassroots group could barely raise a fraction of Comcast's war chest.¹⁴ Now

¹⁰ <http://www.ntia.doc.gov/legacy/broadbandgrants/applications/summaries/1902.pdf>

¹¹ <http://www.muninetworks.org/content/qwest-isolates-entire-minnesota-counties-fiber-cuts>

¹² <http://www.muninetworks.org/content/denver-suburb-seeks-take-back-local-authority>

¹³ For more details on the Colorado law, see <http://www.muninetworks.org/content/gigabit-network-expansion-moves-forward-longmont-colorado>

¹⁴ <http://www.washingtonpost.com/blogs/the-switch/wp/2013/11/06/big-cable-helped-defeat-seattles-mayor-mcginn-but-they-couldnt-stop-this-colorado-project/>

Longmont is rolling out a gigabit network to everyone in town, connecting every address without demanding a \$20,000 install fee. Though some communities have been able to overcome Colorado's restrictions, it is undeniable that Colorado's law is a barrier to investment in high speed networks.

- In southeast Kansas, a small business named MagnaTech in Chanute found that the two incumbent providers, AT&T and CableOne, would not provide broadband access to his location in the business park on reasonable terms. CableOne wanted to charge an install fee of at least \$3,900 and the resulting connection would have had data caps. The municipal utility in Chanute was already providing high speed access to community anchor institutions at a fraction of the cost the incumbent providers were charging. After local businesses requested access, Chanute connected them to the municipal network.¹⁵ Now Chanute is planning to expand fiber to every address in the community.¹⁶
- Often, but not always, municipalities enter the market as a last resort. Auburn, Indiana, and Franklin, Kentucky, are two communities that only built fiber to private businesses to keep the employers in town. Auburn has steadily built on that fiber line to dramatically increase access for over 6,500 properties in town.¹⁷ In Franklin, the city built fiber out to business parks only after the incumbents refused and explained how critical it was to their ability to attract and retain jobs:

"It's hard to recruit industry now if you don't have (fiber optics)," said Dennis Griffin, industrial recruiter for Simpson County. "A lot of industries, particularly in this area, are satellite plants connected to their corporate offices, somewhere else in the United States. They all need to be connected by fiber."

"So if you don't have that, it's hard to compete with communities that do," Griffin said. "Ten years ago, you could get by with T-1 lines – now most industries are just expecting that you have fiber."¹⁸

In summary, local governments have made investments across the country to expand access to entities that otherwise would not have had it. In some cases, they waited to invest until all other options had been exhausted. In other cases, they have recognized

¹⁵ ILSR published an entire case study on Chanute: <http://www.ilsr.org/wp-content/uploads/2012/10/Chanute-Muni-BB.pdf>

¹⁶ http://www.chanute.com/news/article_d031df7c-f1b1-11e3-a2cc-0017a43b2370.html

¹⁷ <http://www.muninetworks.org/content/auburn-essential-services-workhorse-northeast-indiana-saves-jobs-serves-public>

¹⁸ http://www.bgdailynews.com/news/local/fiber-optic-network-to-boost-job-hopes/article_e119dbe4-5c18-11e2-a6ec-001a4bcf887a.html

that in some circumstances, the incentives on the local government were sufficiently different from absentee-based providers that a publicly owned investment would be superior to other solutions.

VII. RESTRICTIONS ON LOCAL AUTHORITY ARE UNNECESSARY

Reviewing the legislative record of the laws that limit local authority to invest in high speed Internet access reveals many misconceptions, confusion, and outright lies regarding municipal networks. As such, it is worth reviewing the rigorous process local governments use prior to investing in a municipal network.

When local governments are confronted with a problem of access, whether reliability, pricing, speed, or other metric, they typically meet first with existing providers in the hopes that they will address the concern. Given the number of responsibilities local governments face, they would almost always prefer that an existing or new provider step up rather than making a municipal investment.

If a municipal investment is a possibility, they typically study the issue for months. They seek out examples of what other communities have done in similar circumstances and may hire a consultant to give them advice customized for their situation. They will engage in public meetings – Chattanooga may have the record with many hundreds, including one famously that was simply a few people in lawn chairs at the end of a cul-de-sac.¹⁹ They will do studies based on their particular circumstances. If they plan to borrow money – almost always using revenue bonds – the community’s plans will be vetted by investors. Depending on the state circumstances, they may require regulatory approval – in the case of Chattanooga that includes but the Tennessee Valley Authority and the state of Tennessee.

Elected officials tend to be very careful about these steps because they know that they will lose their jobs if the public sours on an investment they did not properly examine. Whereas absentee cable and telephone companies can raise rates every year and provide poor customer service if they so choose, elected officials have to maintain the public trust or they face electoral consequences.

Therefore, additional state barriers are unnecessary. This decision should be made at the local level, by the people that have to live with the consequences of either action or inaction. Communities know their circumstances better than any state official. State officials cannot know whether any given community is well served by existing providers - indeed, from a policy perspective we have found it is incredibly challenging to produce accurate state maps of service levels. More complicated variables like pricing and reliability can be even more difficult to ascertain statewide.

These state restrictions do not serve the public interest. Why then, do they exist? The answer is quite simple: powerful firms want to limit the competition. Big cable and

¹⁹ For the full stories of how Chattanooga, Lafayette, and Bristol built their gigabit fiber networks, see our case study, *Broadband at the Speed of Light*: <http://www.ilsr.org/wp-content/uploads/2012/04/muni-bb-speed-light.pdf> Lawn chairs on page 35.

telephone companies have a very strong presence in state capitals. On matters of telecommunications, public interest groups are outmatched by corporate interests in state capitals. The result is a one-sided process of decision-making in which local interests can be railroaded.

It is telling that since the public has become much more interested in broadband matters, few states have passed new restrictions. The majority of restrictions were passed in the 2004-5 period. Only North Carolina and South Carolina have since limited local authority to invest in high speed Internet networks. The case of North Carolina demonstrates how a million dollars, years of careful lobbying, and an electoral swing can suddenly limit investment in high speed networks.²⁰

The case of North Carolina is instructive. On three occasions – in 2007, 2009, and 2010, industry-backed attempts to curtail municipal broadband failed in the General Assembly. The 2010 campaign season brought unprecedented levels of outside spending – over \$2 million on traditionally low-profile state legislative races²¹ – resulting in a change in partisan control of the legislature. Cable and telecommunications lobbyists swarmed the legislature, and flooded campaign coffers with over \$90,000²² in contributions. They succeeded in passing H 129, a near carbon copy of the previous measures that failed to pass.

The industry's creation of barriers to municipal broadband in North Carolina was noteworthy for several reasons. It came in spite of the dramatic growth and market success of Wilson's network between launching and 2011. Competition from the municipal network forced local cable incumbent Time Warner Cable to improve bandwidth and slow price increases in the Wilson market. Moreover, the network was successful enough to inspire Salisbury, North Carolina to create a network modeled on Wilson's. Clearly, the industry was concerned that Wilson would serve as a model for other communities, which would force incumbent providers to invest in better products across the state.

VIII. CONCLUSION

The FCC is tasked with ensuring high speed access is expanded to all Americans on a reasonable basis and to remove barriers to broadband deployment. Local governments have proved to be an important tool in expanding access to high speed Internet access. Both Chattanooga and Wilson have neighbors that publicly want the local municipal network to expand access to them. Both Chattanooga and Wilson are prepared to invest in connecting their neighbors. Restoring authority to local governments, so they may decide for themselves if a municipal investment or partnership is an appropriate way

²⁰ See case study by Common Cause and ILSR on the North Carolina law <http://www.ilsr.org/wp-content/uploads/2013/01/nc-killing-competition.pdf> and Dialing Up the Dollars by the National Institute on Money in State Politics:

<http://www.followthemoney.org/press/ReportView.phtml?r=484>

²¹ See "State for Sale" <http://www.newyorker.com/magazine/2011/10/10/state-for-sale>

²² See <http://www.followthemoney.org/press/ReportView.phtml?r=484>

to expand high speed Internet access, will result in a more rapid deployment of high speed Internet access.

Respectfully submitted,

_____/s/_____

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