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

In the Matter of	)	
	)	
Petition of the City of Wilson, North Carolina	)	WC Docket No. 14-115
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996, for Removal of	)	
Barriers to Broadband Investment and Competition	)	
	)	
Petition of the Electric Power Board of	)	WC Docket No. 14-116
Chattanooga, Tennessee	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996, for Removal of	)	
Barriers to Broadband Investment and Competition	)	

COMMENTS OF AT&T INC.

AT&T[1] appreciates this opportunity to comment on the petitions of the Electric Power Board of Chattanooga, Tennessee, and the City of Wilson, North Carolina, asking the Commission to act pursuant to section 706 of the Telecommunications Act of 1996[2] to preempt portions of Tennessee and North Carolina statutes that they claim restrict their ability to provide broadband services. AT&T shares petitioners' desire to ensure that all Americans, including, but not limited to, those living in and around Chattanooga and Wilson, have access to world class broadband infrastructure. AT&T is skeptical, however, as to whether government owned networks (GONs) will help advance that goal. Although AT&T does not necessarily oppose the use of GONs in areas where advanced infrastructure has not been, and is not likely to be, reasonably and timely deployed, we believe there are better and more effective ways of spurring

[1] AT&T Services, Inc. files these comments on behalf of itself and its operating company affiliates.

[2] 47 U.S.C. § 1302.

broadband deployment in these areas, including through the FCC's Connect America Fund (CAF).

GONs should not be utilized where the private sector already is providing broadband or can be expected to do so in a reasonable timeframe. Although many GONs have failed, or at least failed to live up to expectations,[3] GONs can nonetheless discourage private sector investment because of understandable concerns by private sector entities of a non-level playing field. And any policy that risks diminishing private sector investment would be short-sighted and unwise.

Although there remain pockets of the country without advanced telecommunications capability, they are few and far between. According to the most recent NTIA data, as of June 30, 2013, over 98 percent of Americans had access to broadband at combined speeds of 6 Mbps downstream and 1.5 Mbps upstream, and 83 percent of the population had access to broadband speeds of at least 25 Mbps, up from just under 50 percent in 2010.[4] And more than half – 57 percent — had access to broadband speeds of 100 Mbps or more, compared with only 10 percent in June 2010. The remarkable growth and quality of broadband availability in the United States is directly attributable to private sector investment and innovation. Indeed, a recent study found

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[3] The Advanced Communications Law & Policy Institute at New York Law School recently released a report regarding the efficacy and viability of GONs, which comprehensively analyzes, *inter alia*, the ability of municipalities to construct and maintain broadband networks, as well as the opportunity costs of doing so. Charles M. Davidson and Michael J. Santorelli, *Understanding the Debate Over Government-Owned Broadband Networks: Context, Lessons Learned, and a Way Forward for Policy Makers*, ACLP (June 2014), available at http://www.nyls.edu/advanced-communications-law-and-policy-institute/wp-content/uploads/sites/169/2013/08/ACLP-Government-Owned-Broadband-Networks-FINAL-June-2014.pdf. The report presents ten case studies of major GONs and concludes that overly optimistic assumptions about costs and take rates often doom GONs even before they launch. It further concludes that those GONS that are moderately successful had their genesis in unique circumstances that are difficult (if not impossible) to replicate. *Id.* at xiii.

[4] *See* NTIA, "Nationwide Availability of Broadband Download Speed by Technology Type," in *Broadband Statistics Report*, Feb. 2014, *available at* http://www.broadbandmap.gov/download/Technology%20by%20Speed.pdf; NTIA, "All Broadband Availability by Speed: June 2010, June 2011, and June 2012," Figure 1 in U.S. Broadband Availability: June 2010 – June 2012, http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf.

that network investment in the United States greatly outpaces Europe with $562 of broadband investment per household in the United States compared with $244 per household in Europe."[5] AT&T has certainly done its part; in the last six years, AT&T has invested more capital in the U.S. economy than any other public company.[6] Expanding on U-verse, AT&T's new GigaPower service offers speeds up to 1 Gbps. Deployment is underway in seven major markets and AT&T already has announced plans to expand the service to up to an additional 100 cities.

Given this track record of proven success, the path forward should be clear: continue policies that spur private sector investment in broadband infrastructure and eschew policies that could derail that investment. At the same time, the Commission should use CAF funding to spur broadband deployment in the few areas of the country in which such deployment is not otherwise likely. And, in addition, policymakers should focus attention on the more pressing problem of improving digital literacy and bridging the digital divide. GONs are not the answer to these problems; education and targeted subsidies, for example, through expanded Lifeline and Link-up programs, would be far more effective.

A policy agenda that encourages private sector investment, while using targeted subsidies to spur broadband deployment and increase broadband adoption not only makes great sense but also comports with an overarching goal of the 1996 Act: to spur "*private sector deployment* of advanced telecommunications and information technologies to all Americans."[7] In focusing on

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[5] *See* Christopher S. Yoo, *U.S. v. European Broadband Deployment: What Do The Data Say?* (June 2014) ("Yoo European Study"), *available at* https://www.law.upenn.edu/live/files/3352-us-vs-european-broadband-deployment.

[6] AT&T, *2013 Annual Report* at 4 ("Over the past six years, AT&T has invested more capital into the U.S. economy than any other public company — and more than $140 billion when you combine capital and spectrum-driven acquisitions.").

[7] Connect America Fund, et al., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 24 (2011)(Universal Service Transformation Order), petitions for rev. denied sub nom, In re FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), petitions for rehearing en banc on other grounds denied (Aug. 27, 2014).

private sector deployment of advanced networks, Congress correctly recognized that the private sector is much better suited than governmental entities to fund, build, and operate broadband networks, particularly insofar as broadband networks must be upgraded and reinvented on an ongoing basis to keep pace with technological and marketplace changes. The evidence bears that out, as manifested both by the breakneck pace of private sector investment in broadband infrastructure and the spotty track record of municipal broadband ventures to date. [8] Thus GONs should be used, if at all, only in areas where advanced telecommunications infrastructure has not been, and is not likely to be, deployed on a reasonable and timely basis.

Deployment of GONs outside of those areas will provide less benefit, poses greater risk of stranded investment of taxpayer funds, and potentially harm consumers by discouraging private sector investment. Certainly, any commercial entity will be concerned about further investment in an area in which it would be forced to operate at a competitive disadvantage, including with regard to access to and rates for rights of way, and the use of taxpayer funds to subsidize a competing service.

Thus, at a minimum, if a governmental entity seeks to deploy or operate a GON in a market that is served or reasonably can be served by a private firm, appropriate safeguards should be put in place to ensure a "level playing field." These safeguards include:

- Commercial service providers should have a "right of first refusal" to develop a solution to address the government's broadband deployment requirements in order to minimize the need for government expenditures to meet those needs. In particular, the government should establish a formal process for identifying what those needs are, soliciting private sector solutions (which might include government action to

[8] For these and other reasons, states may well conclude that their political subdivisions should not risk squandering taxpayer revenue attempting to build and operate a municipal broadband service. Although AT&T believes there are serious legal questions as to whether the Commission has the authority to preempt any such decision, AT&T does not address those issues in this filing. Instead, we focus at a high level on some of the policy implications of government-owned broadband networks.

facilitate those solutions), and determining which solution will best meet the government's requirements — with a strong preference for a commercial solution.

- GONs must be subject to the same laws, rules and regulations as their private sector competitors to prevent market distortions to the extent possible.

- GONs should not receive any preferential tax treatment. Indeed, any tax incentives or exemptions should be provided, if at all, to private sector firms to induce them to expand broadband deployment to unserved areas.

- GONs should not have preferential access to rights-of-way or preferential rates for such access.

- GONs should not be allowed to enter or enforce exclusive arrangements that prohibit commercial competitors from offering services.

Without these protections, there is a real risk that the deployment of GONs will harm competition and consumers by deterring private sector investment that otherwise would occur. Such protections thus are necessary to ensure that taxpayer support for GONs does not discourage private sector investment in broadband, contrary to the goals of section 706.

Respectfully submitted,

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