



Municipal Broadband Issue Brief

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SUMMARY

Publicly owned utilities (often affiliated with municipalities, but not always) across the United States are subject to state laws that restrict or prohibit them from providing robust and affordable commercial communications services, including broadband. The Chairman of the Federal Communications Commission (FCC or Commission) has observed that these state laws have been written and passed at the behest of large incumbent telecommunications and cable companies. For example, state laws have been passed in Tennessee and North Carolina, which restrict municipal utilities from providing broadband services to communities outside of their cities' jurisdictional limits. The cities of Wilson, North Carolina and Chattanooga, Tennessee, which both have publicly owned, municipal electric utilities petitioned the FCC to preempt these state laws, and the FCC granted their petitions under Section 706 of the Telecommunications Act of 1996. However, the FCC's decision was appealed and the U.S. Court of Appeals for the Sixth Circuit granted the petitions for review by North Carolina and Tennessee. As the FCC decided not to challenge the court's decision, these laws remain in effect and municipalities are still restricted from offering broadband outside of their city jurisdictional limits in Tennessee and North Carolina. There are also other states that either prohibit or limit the abilities of municipal, public power utilities from offering broadband services.

The Utilities Technology Council (UTC) supports the ability of municipal utilities to offer broadband services and urge state legislatures to repeal such laws or for Congress to preempt the states in order to enable broadband deployment in the U.S.

BACKGROUND

There are 19 states that have enacted barriers to municipal broadband deployment. Still, hundreds of communities across the country have invested in wired networks to bring broadband to their citizens, businesses, schools, libraries and hospitals. Enactment of these laws is widely attributed to intense lobbying efforts of large telecommunications carriers and big cable companies that often do not deploy robust and affordable advanced telecommunications capabilities to these communities. In some cases, telecommunications providers have refused to provide service at all.⁽¹⁾

In July 2014, The Electric Power Board of Chattanooga, TN, and the City of Wilson, NC, petitioned the FCC to remove state barriers to broadband investment and competition. In their petitions, the municipalities argued that the state laws pose a barrier to the deployment of municipal broadband services, contrary to the provisions of Section 706 of the Telecommunications Act, which authorizes the FCC to preempt such barriers to the "reasonable and timely" deployment of broadband services. In March 2015, the FCC issued its decision to preempt the laws in Tennessee and North Carolina. However, on August 10, 2016, the U.S. Court of Appeals for the Sixth Circuit granted the petitions for review by Tennessee and North Carolina of the FCC's 2015 Order. While the FCC relied on Section 706 of the Telecommunications Act to invoke its preemption authority, the court held that "Section 706 does not contain a clear statement authorizing preemption of Tennessee's and North Carolina's statutes that govern the decisions of their municipal subdivisions." The

FCC decided not to challenge the decision. In September 2016, Representative Anna Eshoo (D-CA) introduced the [Community Broadband Act of 2016](#) which would amend the Telecommunications Act of 1996 to “preserve and protect the ability of local governments to provide broadband capability and services.” This bill is modeled after the [Community Broadband Act of 2015](#) introduced by Senators Cory Booker (D-NJ), Ed Markey (D-MA) and Claire McCaskill (D-MO). The bill provides that “no State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or private entity, advanced telecommunications capability.” UTC supports such legislation and urges Congress to pass it, particularly in the context of congressional review of the Telecommunications Act of 1996 in the coming year.

1. See e.g. Statement of Tom Wheeler, Chairman, Federal Communications Commission, before the Subcommittee on Communications and Technology Committee on Energy and Commerce, U.S. House of Representatives Hearing on “Oversight of the Federal Communications Commission,” May 20, 2014 (stating that municipal governments want to provide broadband, they shouldn’t be inhibited by state laws that were written at the behest of incumbent providers looking to inhibit competition.)

UTC POSITION

UTC supports the ability of municipal utilities to offer broadband free from state laws that restrict them from doing so. These laws hold communities back from having access to broadband. Even the U.S. Court of Appeals for the Sixth Circuit recognized that there are clear public interest benefits from having access to broadband and that the state laws in Tennessee and North Carolina and other states stand as barriers to the reasonable and timely deployment of broadband.

UTC urges states to eliminate these restrictions, even if the FCC lacks authority to preempt them. Municipal utilities can promote broadband access

into unserved areas, and states should encourage them to do so, particularly where private entities have failed to do so. States should not pass laws that reward the failure of incumbent carriers and cable companies to provide broadband and protect them from competition. They should allow and encourage municipal utilities to promote broadband access, rather than restricting them from doing so.

The elimination of state restrictions on municipal broadband is consistent with national policy objectives to promote broadband deployment on a reasonable and timely basis. If the states do not eliminate these restrictions, Congress should intervene and pass laws, such as the Community Broadband Act, which would preserve and protect the ability of local governments to provide broadband capability and services.

ABOUT UTC

The Utilities Technology Council (UTC) is a global trade association dedicated to serving critical infrastructure providers. Through advocacy, education and collaboration, UTC creates a favorable business, regulatory and technological environment for companies that own, manage or provide critical telecommunications systems in support of their core business.

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