

Public Power Enables Broadband Issue Brief

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SUMMARY

In more ways than one, electric utilities enable broadband deployment throughout the U.S. Most commonly, utilities allow communications service providers to use their infrastructure—utility poles—to deliver telephone, cable, and broadband to consumers across the country.

More and more often, many publicly and consumer-owned electric utilities are bridging the digital divide by bringing broadband services into unserved and underserved areas. Because the large telecommunications companies have decided not to bring their services to these mostly rural areas, public power and cooperative utilities have expanded their obligation to serve their communities by providing broadband as well.

In early 2019, for example, Arkansas passed a new law allowing municipalities to provide broadband service on their own, or in partnership with third parties. Prior to that, in November 2017, Fort Collins, Colo., residents approved a measure allowing the city to build a broadband network. High-speed broadband service is the key to economic success in the digital economy, and public power utilities can play a major role in bringing these services to their communities.

UTC POSITION

The Utilities Technology Council (UTC) supports the ability of public power utilities to offer broadband and opposes state laws that restrict them from doing so. These laws hold communities back from having access to the driver of the digital economy—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 laws in Tennessee, North Carolina, and elsewhere stand as barriers to the reasonable and timely deployment of broadband.

SITUATIONAL AWARENESS

The developments in Arkansas and Colorado may be the start of an encouraging new phase in municipal broadband development. Over the last several years, efforts by public power utilities to expand broadband deployment have been successfully opposed by the large telecommunications providers. These companies have sponsored legislation and regulations across the country prohibiting public power utilities across the country from providing robust and affordable commercial communications services, including broadband.

As past members of the Federal Communications Commission (FCC) have noted, these state laws have been written and passed at the behest of large incumbent phone and cable companies. In two high-profile cases, Tennessee and North Carolina recently passed laws restricting public power utilities from providing broadband services to communities outside of their cities' jurisdiction. UTC believes the ability of public power utilities to offer broadband services is an economic boon.

We urge state legislatures to repeal such laws or for Congress to provide guidance enabling

public power utilities to bring broadband services to their consumers.

BACKGROUND

As many as twenty states have enacted barriers that either prohibit or limit the ability of public power utilities to offer broadband services. Enactment of these restrictive laws is widely attributed to intense lobbying efforts by large telecommunications carriers and big cable companies who 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. UTC urges states to eliminate these restrictions.

Like most electric utilities, public-power utilities can promote broadband access. Indeed, in July 2014, the Electric Power Board of Chattanooga, TN, and the City of Wilson, N.C, petitioned the FCC to remove state barriers to broadband investment and competition. The municipalities argued that the state laws pose a barrier to the deployment of broadband services, contrary to the federal Telecommunications Act, which authorizes the FCC to preempt such barriers to the “reasonable and timely” deployment of broad band services. The FCC did preempt the laws in Tennessee and North Carolina. But after a federal court determined it would review the case, the agency chose not to challenge the court’s decision, effectively leaving the bans in place.

Following these actions, a group of bipartisan lawmakers in Congress on multiple occasions have introduced the Community Broadband Act which would amend the Telecommunications Act of 1996 to “preserve and protect the ability of local governments to provide broadband capability and services.”

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.

States should encourage utilities to provide broadband into unserved areas. Already, hundreds of communities across the country have invested in wired networks to bring broadband to their citizens, businesses, schools, libraries and hospitals into unserved areas, and to do so, particularly where private entities have chosen not to provide services to these locations. The elimination of state restrictions on municipal broadband is consistent with national policy objectives to promote broadband deployment on a reasonable and timely basis.

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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