



**The Free State Foundation's
POLICY SEMINAR**

"Municipal Broadband, Net Neutrality, and the First Amendment"

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* This transcript has been edited for purposes of correcting obvious syntax, grammar, and punctuation errors, and eliminating redundancy in order to make it more easily readable. None of the meaning was changed in doing so.

P R O C E E D I N G S

MR. BOLEMA: Thanks, Randy. Great to be here. Especially appreciate having Enrique and Chris here with us today, and I'm looking forward to their comments. As Randy said, most of what I'm going to say is going to be based on the paper that Mike Horney and I wrote. You've got the summary of it with you and also the chart included in the paper that I'll be referring to a little later on.

I think the reason I'm up here instead of Mike is because Mike is much better on Twitter than I am. So if you can help him out by tweeting, he is carrying the burden so far today. Until recently, the main justification for government-run broadband systems has been that there weren't enough private providers in the area. So one example I've been following lately is in Linden Township, Michigan, right near Ann Arbor where I went to school at the University of Michigan. It's a rural area, but there are a lot of commuters coming in to Ann Arbor from there, so it's actually a rather high-income area. And, currently, it doesn't have any wireline providers that are providing broadband speeds.

There are a couple of private providers that are

providing slower than broadband speeds. Of course, you get pretty good wireless connections down there and satellite's available. So there are some alternatives. But, I can see why, in a place like Linden Township, a municipal system would be rather attractive.

But, lately, now we're seeing something new. Local governments in big cities are considering going into competition with the multiple broadband providers that are already there. And in those markets, the main arguments they are giving are not that the city has too few broadband providers. You might hear that argument and -- but when you read the policy documents, and Mike and I cited from a few of them, the real focus of it is not so much that they don't have municipal providers but, rather, they are the wrong kind of providers.

Put another way, local officials and advocacy in these markets aren't so much advocating for policies that will attract more private investment to address the problem of not having enough private providers but, instead, seem to be more focused on pushing for the municipal provider and, perhaps, clearing the way for it, perhaps at the expense of private providers.

So Mike and I have written, as have a lot of other people, on the problems with municipal broadband in the markets that already have it. And, in short, what we've pointed out is that they tend to scare off private investment. You can find plenty of examples of local governments that are favoring the government system in terms of giving right of ways and, in other ways, favoring them over the private providers.

And, probably most important of all, they tend to have not very good financial track records. There are quite a few examples of them failing. And Enrique has focused more on the First Amendment issues related to them, and Mike and I talk about them in the paper, but I'll mostly leave that for Enrique today.

So what's new about the recent proposals? Well, for the most part, they seem to be motivated not so much by a concern that there aren't enough private providers in the market but rather that the private providers that are there won't follow the net neutrality principles from the *Open Internet Order* or that private providers won't be sufficiently sensitive to privacy concerns or allow speech over the networks.

So if private providers aren't necessarily going to follow those policies, so the argument goes, then the government needs to step in and offer its residents an alternative that will. What's wrong with that?

Well, for one thing, this is kind of uncharted territory. There is a world of difference between a place like Linden Township, Michigan, looking at having a municipal broadband provider and a place like Baltimore, Seattle, or San Francisco, which are the three cities we focused on in the paper. For that matter, there is a pretty big difference between the local areas that currently have municipal broadband systems and the cities considering them.

The chart you have on the screen that we included in our paper shows the two markets we identified as the two largest that currently have a municipal system, Chattanooga and Lafayette, Louisiana.

And if you compare them to the three cities we focused on, there is a rather large difference in terms of the size of the cities and, particularly in the case of Seattle and San Francisco, a pretty large difference in terms of the average income in the market. So you'd think

that San Francisco and Seattle would be very attractive markets for private providers to be entering.

Finally, we argue that there is a good reason to be even more skeptical about municipal systems in big cities as compared to cities and municipalities -where we can make an argument that they really are underserved or unserved by private providers.

And it also raises some concerns about the cities being both competitors in the market and also the regulators, whether they might put the thumb on the scale, when it comes to regulatory issues where they might have an incentive to favor the municipal provider where they have a financial stake.

Now, some may argue that municipal broadband is cheaper. And Mike Horney and I addressed that in a separate paper earlier this year where we pointed out how the evidence is really pretty thin about that. It mostly relies on the study from Harvard's Berkman Klein Center. And we also pointed out that that sort of argument tends to focus more on price rather than cost of service, which is important because a lot of these systems are subsidized by local governments from their other government

operations.

And then there is the issue of new modes of broadband delivery that are becoming more competitive as 5G and satellite become more viable as really good alternatives to people who are in more remote areas or even in cities and that's a good thing for the people who live in those markets. But there also is a threat to the viability of future municipal broadband systems when more alternatives are going to be there in the future. So, in conclusion, I have real concerns about big city municipal broadband being financially viable when you consider that the cities that are considering them also, like almost every big city in the country, have some real financial viability problems and challenges facing them already. There are better alternatives to cities if they are considering a municipal broadband system.

MR. MAY: Okay. Thank you, Ted. Enrique, do you want to stand up?

MR. ARMIJO: Well, I'm going to stand so I can see my slides here. Thanks to Randy and Ted for putting this panel together. Unlike most Duke basketball players, both Randy and Chris are going to stay for the entire

program. So please feel free to engage them on any issue that you might like.

As you see here, the title of my presentation is "Terms of Service as Speech Rules" because I do think that's a really helpful way of thinking about that issue. It's a very interesting time for the discussion of municipal broadband in the United States, as everybody knows.

Back in 2015, this was an important part of the Obama Administration and how it decided to use stimulus funds, as Ted talks about in his paper. In 2015, President Obama gives a speech in Cedar Falls, Iowa, advocating for large federal investments in high-speed Internet access to be run by those cities and by the utility companies, in many cases, in those cities. Senator Booker proposed the Community Broadband Act, which would preempt any state statute that interfered with the development of municipal broadband. And then, of course, there was the municipal broadband preemption proceeding before the FCC, which I'll talk about in a second.

And as Ted and Mike talk about in their paper, this really very much started out as a last-mile argument.

So Chattanooga and Wilson, which I will talk about, wanted to expand to smaller communities around who wanted similar levels of Internet service. That was kind of the narrative around municipal broadband at that time.

There is also a digital divide aspect to this conversation. Mayor Bloomberg, one of his really signature programs was free public Wi-Fi throughout the neighborhood of Harlem, providing 800,000 residents free Internet access, very much a community development, education, economic development issue, as well as a last-mile argument, and as well as, again, Ted talked about a way for these communities to develop from a technological perspective to the point where nearly 200 cities, at this point, have some form of what could be called municipal broadband. But that's just a small part, a small piece of the pie.

You have noticed this if you walk around and look for a network to connect. You will see that cities of all sizes are considering not just citywide networks but smaller coverage areas within that city. So this is very much an emerging issue with respect to how we receive our Internet access.

And this is, again, much more prominent, given the FCC's recent decision on net neutrality. So, as Ted said, the idea here is that the municipal broadband provider is the alternative to a private ISP that is no longer subject or will no longer be subject to net neutrality-like regulation. So these municipal public utility networks are considered to provide users in those cities the kind of net neutrality that they will no longer get from their ISPs. And as you'll see in a minute, there is a certain irony of this approach, given that many of these networks are the opposite of neutral, at least so far as the First Amendment goes.

There is a vigorous debate as to whether or not this is a good economic decision for cities. Ted talks about this a lot. As he said, there is a Berkman paper. There are several *Perspective* papers from FSF. Reason has done a study. Chris, you appended a study. The folks in Chattanooga would say that this has transformed their city with respect to the opportunities for citizens there and for companies to come in.

All of that is beyond the scope of my research. I personally am probably of the view that if cities want

to issue debt and roll out these networks, that's for the people in those cities to decide. If Chattanooga wants to wait 400 years for a return on its investment for its network, that's for Chattanooga to decide.

The people in Chattanooga, of course, would say it's more about just the network paying back for itself. It creates other opportunities in that city. I am focused on the next question, which is next here on the slide, when government transmits speech, what does the First Amendment require?

So, in order to try to answer this question, I first asked the question of what these cities are requiring as a condition of connection to their networks. So I did lots of state-level and city-level FOIA requests for calls of proposals, terms of service. As I said, I literally walked around and clicked on a term of service before agreeing to it on my phone. I did this before I got on the Metro last night. And the record here is very mixed, based on what I've found. So Chattanooga -- Gig City. This is what you have to do or, more precisely, what you can't do in exchange for the right to use this government-provided network in Chattanooga. These are

terms of services that the municipality imposes upon its users. This is what you have to agree to before you can connect.

In Chattanooga, you can't transmit material that is obscene, threatening, abusive, or hateful. This is a clear facial violation of the First Amendment. These are content-based restrictions that would be inconceivable in any other context. But because we rush towards the technology that we think is going to save us from whatever we think it's going to save us from, we lose sight of these first principles.

You can also be disconnected by a utility operator in Chattanooga if you violate any of these terms. And this is clearly contrary to the First Amendment law of prior restraint. So prior restraint is based on the idea that a government decision maker has to let you speak and then punish you for that speech if it is illegal.

And this is even worse than a prior restraint because a disconnection can occur without you even knowing about it. The second restriction is about posting messages on third-party blogs so you can't harass anybody in comments to a blog post, even if there is nothing in

that blog post that says you can't.

So, again, these are all conditions of service, conditions of interconnection, that would clearly violate the First Amendment in any other context. But because it's in the context of Internet access, we seem more prepared to accept it.

The next one is Wilson, [North Carolina] which is Project Greenlight, also my home state, a city of about 50,000 people, once known as Tobacco City. Wilson is known for its beautiful tobacco barns. That's why there is a tobacco leaf in their logo. Once again, a content-based prescription, that it's on speech that's constitutionally protected or traditionally punished by the state after the speaker has spoken. Here, the punishment of disconnection is occurring before the speech reaches its intended audience.

This next one implicates anonymous speech. The Supreme Court has said again and again that you have a constitutional right to protect your identity. The government, except in certain narrow disclosure-based circumstances, can't force you to tell people who you are. You could imagine what this would cause to anonymous

speech in this community if it were enforced. And then, again, the state is reserving the authority to not deliver your content to its intended recipient if the utility, in its sole discretion, believes that your content violates the terms of service.

So I obviously focused on Chattanooga and Wilson because they were the cities that were seeking preemptive relief from the FCC. I said this to the FCC. I said, look, here's what's really happening. I'm not saying whether or not you have authority to preempt. But if you do, you should take this into account. Don't pre-empt a network that is using these facially unconstitutional terms.

And so they responded -- that's the good news. They responded on page 70, footnote 455, of the order. I guess that's better than no response at all. I'll take that. But here is what they said. They said that, basically, we are not in the First Amendment business. We take no position as to what these municipalities can or can't require as part of their conditions of service.

I'm trying not to get my ego caught up in this. I don't want to see page 70, note 455, and be bothered by

that aspect of it. But the FCC, in general, and this FCC, in particular, the prior FCC, was very adamant about the fact that the First Amendment was an integral part of our information policy in the United States.

It said this in its Open Internet proceeding. It said it in its multiple ownership rules, so several decades' worth of agency actions. FCCs on both sides of the aisle, have consistently declared that the primary goal of the FCC is to preserve and promote the First Amendment in the United States. Despite that, this was the response.

And I would just ask, in closing, to sound a note of caution with respect to the unique and particular obligations that the First Amendment imposes on governments when governments get in the business of transmitting speech. Thanks.

MR. MAY: Thank you, Enrique.

So, Chris, do you prefer to sit there or --

MR. LEWIS: I'll stay right here.

MR. MAY: -- stand up. One thing I should have added about --

MR. LEWIS: I don't want to intimidate Enrique with my 6'8" basketball frame.

MR. MAY: Well, speaking of intimidation, though, I neglected to mention, we had all this back and forth about Duke and Carolina. And then, you know, Chris has a degree from Harvard. So he was probably thinking what are these guys talking about there? But with that, go ahead, Chris.

MR. LEWIS: No, I enjoyed it. Randy knows my connection to Duke, I did not go there. My father was a basketball coach there in the '70s, -- but as any good basketball player, I appreciate good trash talk. It makes you rise to the occasion. And so I will do my best to rise to the occasion on this panel. Well done, Enrique. And, also, I guess I'll start with congratulations, Ted, on the paper. And I enjoyed reading it. And I did try to find where there is agreement so that we can focus on where there is not agreement.

After reading it, I have some quick reactions to some things we can agree on. One, the importance of economic analysis, especially at the local level, and two, deploying broadband is expensive. And if we can all agree

on that, we are off to a good start. I don't think anyone disputes how expensive it is to deploy broadband.

It's a strong contributing factor as to why so many communities don't have many choices for broadband and why so many Americans have one choice for high-speed broadband. So high cost is real. And the harms that can come with a monopoly, which is discussed in your paper, are real, including Open Internet and net neutrality concerns. And then, third, I hope we can agree that net neutrality, when protected -- when an Open Internet is protected, it protects the free market. The Internet, having grown up with this idea of permissionless innovation, was critically important to having a low -- as opposed to broadband access networks, a low barrier to innovate and bring things to market online. And net neutrality helps protect that.

And if we can agree on those things, I think we're off to a really good start. My first reaction in a critical side to your paper was that I was reminded of the meme that we got from the Brits about "Keep Calm and Carry On." I'm going to make you one of those T-shirts where you can alter the bottom. It says, "Keep Calm and Save

Net Neutrality," because I didn't have such a strong reaction to some of the evidence that you gave of what municipalities are doing.

To show my bias, I live in a city, the city of Alexandria, right across the river in Virginia, that is engaged in a municipal project, trying to deploy a fiber backbone to our anchor institutions. And I publicly support it as a member of their IT Commission. And we're a smaller city, of course. And you make a great distinction between small and large where we only have one provider for high-speed broadband in our city, similar or akin to probably the smaller medium-sized towns that you highlight.

However, I don't want us to overreact. And this is why I think about keeping calm. To local jurisdictions, making a choice, as Enrique noted -- making a choice to study and make decisions on how they invest their local tax dollars, I think that's a good thing.

And that's the importance of economic analysis at the local level -- important because there have been projects that have not been successful. But there are many that have been. And I think when localities engage

in municipal broadband carefully and invest wisely, it can be done well. I think Chattanooga is a prime example and we can come back to that.

So feasibility studies -- you noted Baltimore, San Francisco, Seattle. Large cities that already have multiple providers. One might question it. I don't mind questioning, okay, if you have three fixed broadband providers, do you need a municipal product?

And there might be arguments that you don't. But, to engage in a feasibility study, as these cities have done, I don't think is harmful. I think it's actually prudent so that they have all the facts in front of them so that they can make a decision wisely. And so we should keep calm and we should look at the results of the studies and then let the local communities make the choice, as it is their tax dollars or their debt that they are incurring.

We should also keep calm and note that the reaction, the change that's noted in the paper, from early municipal broadband projects in small- and medium-sized cities being justified because there is a need for access, is changing with these large cities to be about net

neutrality as a reaction to federal policy. The efforts to roll back net neutrality protections and the backlash to that repeal has manifested itself in a number of ways.

We've seen it manifested in executive orders at the state level. We've seen it manifest in state legislation. And I would argue, a locality's reaction is to then say, well, we need our own network because we can't trust that these other network providers will protect an Open Internet, I think, is a reaction to that rollback -- or at least the threat of not having net neutrality protections at the federal level.

And so, if we keep calm and we protect net neutrality at the federal level for all, then perhaps that will not be a concern, and folks can make their decisions on a local level based on whether they need access, whether they have few options, the things we've more traditionally seen at the local decision level. There are so many things I could talk about. I don't want to use -- I probably won't get to everything in the six minutes that Randy gave me.

MR. MAY: Go ahead. Really. Take a couple more minutes.

MR. LEWIS: Okay.

MR. MAY: That's fine. Go ahead.

MR. LEWIS: And I'm sure we'll keep going and we'll dive deeper. The one thing I wanted to talk about when it comes to freedom of speech -- and Enrique, is probably more studied on this than I. So my thoughts came more out of the First Amendment concerns that were raised in the paper.

But there were similar terms of service in Chattanooga to ones that were cited in the paper in Concord. And so if you check out the paper, it talks about how Concord assumes no obligation for certain levels of privacy, and had the same restrictions on harmful and offensive and unlawful content. And so I think this is a good discussion to have.

It's important and we've always, at Public Knowledge, tried to make a distinction between obligations on network providers. And consumers know the difference between the company that gives them access to the Internet and the platforms and services that they use. Given that it comes out of traditional communications to allow this built-on-the-phone network, the concepts and many of the

expectations that consumers have, we think, extend to broadband networks.

And so I think it's reasonable to say that, yes, should unlawful content be blocked or stopped, well, yes - - and that's been a hallmark of net neutrality. But when you get past the unlawful and some of the other things on the list, whether it's offensive content -- I think "intimidating" was one of the words -- and there was a long list of harmful adjectives.

I think it's fair to question whether, on broadband networks, that's an overstep of the First Amendment so that folks are free to speak. But then the platforms that ride over that network, there is a long debate that's really heating up now around content management and if there is a responsibility for those platforms. And to draw that distinction, I think, is fine. But if we're going to have municipal networks and municipal projects that are taking up the same responsibility as private broadband providers, perhaps they should have the same level of respect and divide between unlawful content and offensive content and allow speech, good speech to take care of bad speech, so to speak.

And so, I think there is a balance there. I certainly understand why a municipality might -- given the long proliferation of nondiscrimination laws and rules, both at the federal and local level, want to prevent people from discriminatory and offensive, harmful hate speech. But when they undertake in providing this sort of service that is essential, in my mind, to all Americans, you can't cut off that speech. And, instead, it should be regulated through content management at the platform level. There is a lot more I can go into, yeah.

MR. MAY: Thank you so much, Chris. And, again, I'm very glad you're here to provide that perspective. And essentially, though, I think, towards the end, there is a point at which you and Enrique both appreciate this free speech aspect. Before I go further, I want you in the audience -- if you have questions, I'm going to turn to you and get a couple questions in. So please think of those.

I do want to say, one reason why we did this, we've written a lot about municipal broadband over the years and the economic considerations and whether these networks made sense in terms of something that the

government should properly be doing -- the muni governments -- and how it affects the private sector. All of those things, we've done a lot on that.

But I really also have thought for quite a while that this issue that we're talking about now here in the First Amendment Room, to me, it's important, and honestly, it's been, I think, underreported, if I can say that without offending my friends over there at the press table, by them and others because they haven't -- people don't focus on it. So, if nothing else, I think, today, we are focusing on it. And so, to the point, what you have here are governments that have these terms of service that, as Enrique said, really have serious First Amendment implications.

I'm going to let him pick up and maybe offer some comments now after Chris. But I'll just say this. I don't think I'm speaking out of school but he'll correct me. I believe that Enrique is, in general, a supporter of net neutrality or at least not offended by it. And, you know, without going into whether it's Title II or whatever but he's a supporter, in general, of net neutrality but has thought it important to raise this fundamental First

Amendment issue.

You know, honestly, it's been pretty rare at a Free State Foundation event where we have two supporters of net neutrality up here and one that doesn't. But I'm happy to do that. So, with that, Enrique, do you want to say anything in response to Chris or Ted, and then I'll ask Ted and Chris whether they want to carry it on, and then we'll turn to the audience.

MR. ARMIJO: Yes, as some evidence of that final proposition, on Chris's first reaction to the paper, I think I'm probably a little bit closer to Chris than Ted in the sense that I don't think you can think about these state-run networks as competitors to the private ISPs in the narrow sense of competition.

I mean, if Google Fiber could not realize that it could not compete with private -- with Comcast and Time Warner, then it's folly to think that the public utilities board of Chattanooga can. I think, these cities would say, as I said, that their goals are much broader than just simple return on investment, paying for rollout.

But I also take Ted's point that -- and Chris said this too, that these cities should really go into

these projects with their eyes open because the amount of debt that they can incur in a very short period of time can be material, even with respect to projects that never even connect anyone. I mean, some of the other papers, and certainly the Reason paper and the Chris Yoo paper, talk about these million dollars of investment, initial investment and network development for projects that basically never even got off the ground. And, yas you know, the debt remains.

I also appreciate Chris's point about the distinction between obligations on the state versus obligations on platforms. I think a year from now or maybe two years from now, we'll be in this room talking about Section 230 reform, and FSF will state its position on that.

And my position will be very close to that position where, here we're talking about the speaker here being, as Chris said, the actual platform where the First Amendment would come into play in a very different way than when we're talking about obligations on the state when it runs its own networks.

MR. MAY: Ted, do you want to offer any reactions?

MR. BOLEMA: Just briefly. And I think Chris just demonstrated why we do appreciate having him here, that, even though we do have some fundamental disagreements on some major issues, I think it is very healthy that we are identifying -- and Chris is identifying some areas of common ground. So we do appreciate that contribution today.

I do agree, kind of feasibility studies, things like that, if cities are looking at that, you know, that's great. Mike found a quote from Seattle that we included where the mayor was very concerned about the cost after doing that. So I think that's a very healthy process for cities to go through. I guess, where I kind of come out on this whole thing, though, is, you and I do disagree on net neutrality, as defined in the *Open Internet Order*. And I think Commissioner O'Rielly and his colleagues did the right thing in the *Restoring Internet Freedom Order*. So, we can disagree on that. But even if the focus is on the net neutrality principles, do municipal systems protect net neutrality, as defined that way, better than private providers? And, when I look at their terms of service, I don't have a lot of confidence that they do

when they are talking about threatening to block based on rather broad sets of conduct by -- basically, speech by its users and you had some concerns about that too.

But, you know, the municipal systems are the ones that are doing that or at least threatening to. And then, in addition, you see some rather broad language on privacy protections that I find rather troubling. So often you see language that Enrique has talked about before and which I identified in a blog post earlier this year on Concord, Massachusetts, where they have some language in there that they will cooperate with all government requests for user information, without giving notice to their users.

Well, first of all, the municipal system is a government making that statement. So that's kind of troubling. And they may be housed in the same building as where the police department is. So when I see language like that, that's pretty broad. I don't think you support that either. But, that also makes me rather concerned about how seriously they really are taking the net neutrality principles that you support.

MR. MAY: Okay. Well, let's see whether Chris

wants to offer a reaction. And then I'm going to ask the audience whether they have questions. Chris, go ahead.

MR. LEWIS: So great points by Ted. Imagine if we had federal FCC-enforced net neutrality protections, which we don't right now. Imagine if, with them, we also had FCC privacy rules for broadband providers, which we don't right now. That was possible a couple years ago. And if we did, then we could hold all broadband network providers to that standard, whether they are private providers or municipal networks. And I don't think I would have a problem with that.

So the concerns that you raised in there, I think it's right to be concerned if privacy is violated by a provider, whether they are a municipal provider or a private provider. We know there is incentive, strong incentive, for private providers to violate privacy and to violate Open Internet as well.

And, when I looked at the privacy terms of service that you cited from Concord, some struck me as bad, such as giving away -- the one you cited, giving away to government information. But then also some struck me as wholly consistent with the type of broadband privacy

rules we were trying to enact at the FCC a couple years ago, very similar to the traditional concepts out of CPNI that deal with what is, quote, necessary for proper operation of the network.

So there is a balance that can be struck here and it can be put into the rules that everyone has to follow. So, I think, if we are not afraid of a few simple rules, then we could protect folks on all types of networks.

And, honestly, Enrique brought up -- I don't want to give off the wrong impression. I wasn't trying to say that I think the speaker is the platform. I'm talking about how do we provide actual individual speech. And there are certainly rights of platforms to determine how they're going to manage content on the platform that they own. But when it comes to the network, I think there is an obligation to let all speech go through because it is an essential communications network.

And then, the challenge of content management is going to be a bit different. And I think we are still trying to figure out where that line is. And that's why you see so much debate right now around Facebook posts being censored and whether it's done fairly or not. And

that's something we need to come to terms with.

MR. MAY: Okay. I know these gentlemen could go on, but I want to turn to the audience. We're going to do a couple questions, and then I want to make sure we get to Alden Abbott's maiden address here.

One thing I would want to say, really, is, just listening to this discussion, it really strikes me that, if nothing else -- and this pleases me that we're having a discussion about an area that hasn't been discussed that much. All of you here, if you follow this community broadband thing, you've read a lot of the things. But, I don't think I've missed it. I think we're having a discussion about some issues that really haven't been covered. And I'm grateful for that.

Okay. Do we have any questions? You have to wait to be recognized here. Wait for the mic.

MR. MAY: Identify yourself, please.

MR. SAUNDRY: Sure. Joe Saundry. I'm CEO of Thought Delivery Systems. Two things: one, an observation. In many respects, it would be encouraged to do some forensic accounting about the vast

non-differences between a lot of the historic large providers and government -- with guaranteed rates of return, guaranteed access to rights of way, cheap access or free access to spectrum that they historically built their capital basis on.

That's just a thought. Going to the question, is there a best practices template or guideline terms of services out there, and who has endorsed it, and does it not only talk about the issues we talked about here but maybe, even more broadly, the historic access to spectrum and other assets that networks have today? And when they originally got that, they had a requirement to operate in the public interest. And that meant accurate news.

MR. MAY: Joe, go ahead and wrap it up.

MR. SAUNDRY: Things like that. So I'm just curious if you guys are thinking about those issues.

MR. ARMIJO: So I'll say the best request for proposal terms of service that I saw in my research is if you've been to New York City recently, you see these "LinkNYC" kind of obelisks. New York City is taking all of its now obsolete telephone booths and turning them into hotspots.

And the terms of service, they are perfectly clear. They say people can look at whatever they want and transmit whatever they want, and the City of New York has no role to play in this. Well, you can imagine what happened. I mean, they used to have an Internet browser on it, but then homeless people would watch pornography on it so they had to shut off the Internet browser.

But, that's the price you pay if the government wants to get in the business of providing Internet access. But these are, what I have seen, extreme examples. But there are examples in which the government doesn't place any content-based restrictions on access.

MR. BOLEMA: I'll describe, briefly, the first part. I think a lot of the evidence out there as to what's actually happening, it does tend to be rather anecdotal, so I think you're identifying a problem and an important potential research area for the future.

We tend to hear about these incidents when there is a city considering a municipal broadband system, and maybe a competitor comes forward or a potential entrant comes forward and says, "Well, we wanted to come in, but they made it too hard for us." So that's usually where we

get the evidence of it. But how, systematically, it's been studied, you know, I'm not really aware of it.

MR. LEWIS: Yeah, I'd agree a study would certainly help. But if we all agreed just how expensive it is and the different things that contribute to the expense, whether it's the rights of way access or the actual cost of rolling out a truck, it's noteworthy that when competition is even talked about or when someone talks about serving high-speed broadband to a community that may not have it, we see the reaction in the marketplace, that the big incumbents then tend to reconsider their choice either not to serve there or not to upgrade their network there.

So we've seen it in municipal discussions. We've certainly seen it when Google throws out a lot of cities. "Oh, we're going to go to these 20 cities."

Well, Google is not in 20 cities. But the impact of that discussion has forced other providers to say they need to step up their game. And that's a good thing. It shows the impact of competition. And it shows that, while it's expensive to deploy, it can be done. Can it be done everywhere? I think that's why we are supportive of muni

broadband as one of the many options, because it is expensive to deploy. And subsidies coming from -- you know, if the subsidies aren't making it from the federal government to bring high speed broadband and a local community taking its own action to protect its own economic development future, I think it is something that should be supported. And it's important that they do it in the right way. You know, Chattanooga is a success story.

Chattanooga -- when you talk about rate of return, they might not be as concerned about profits and rate of return in the long run. And so there is a lower barrier for them on how much they need to make back. They did it in partnership with the local power company.

And the power company has seen savings of 7 percent on electric rates. And so there is a benefit to both, and given to that partnership, they have already paid off the debt, I believe. I don't think I'm the expert on this. There is a great website that's been critical of Mr. Yoo's study, Community Networks (muninetworks.org), built by Chris Mitchell, that really studies every one of these projects, and has a great map

that folks can see, and touts the success of Chattanooga as the right way to do a muni project.

MR. ARMIJO: Can I just say one quick thing on the net neutrality issue? My skepticism as a speech person with respect to net neutrality regulation has always been that I never really could figure out the business case for viewpoint discrimination. So, in other words, why on earth would a private ISP take any action with respect to network management that would offend some large portion of its users? Well, the distinction is that the government has an enormous case for viewpoint discrimination.

I mean, the current President, when he was a candidate, said, "We're going to have to talk to Bill Gates about shutting down the Internet." And I'm sorry to inform you if you don't know this, but he can do that, 47 U.S. C. 606. The war powers of the President include the right to shut down a network in the case of national emergency. So I think this is an important distinction to preserve. And a lot of the positions in these debates with respect to private ISPs and public ISPs, they are not -- as Randy said, not at all reconcilable.

MR. MAY: Okay. Well, I don't know whether Enrique has just provoked a tweet -- a tweet from down the street but, be that as it may, we're going to take one more question, but it's got to be fairly succinct. And I'll turn to you back there.

MR. KANE: I'm Joe Kane with the R Street Institute. I wanted to ask about when you have a municipal network, do you sort of create this condition in which you have a regulator regulating its competitors and any legal or incentive issues that might create?

MR. MAY: Well, I know at the Free State Foundation, we feel that that's a good question and there are good answers. So I'm going to ask Ted, quickly, to respond to that. We addressed that a lot in our work too. So we are going to do this fairly quickly. Ted, why don't you speak to it, and then we'll maybe have one comment on it and wrap it up.

MR. BOLEMA: Yes, I agree that is a legitimate concern. And you can find examples out there. -- Traverse City, Michigan, I know, is one that the Mackinac Center for Public Policy has written about. When they were looking at that one, they found that the city was making

it rather difficult for an entrant to get access to right of ways, while talking about their own proposal, how they could expedite it for their own network. Well, why not expedite it for everybody if you really want more firms in the market? So I think that is a legitimate concern.

And then I guess there is a financial incentive going forward, too, that if a municipal system ever gets in trouble -- I don't have any examples of this. But would the city feel like it's obligated to try to help out its municipal provider because of the potential burden for the taxpayers. So it would look at that rather differently than it would look at financial problems from a private provider.

Mr. May: Would you join me in thanking this panel. (Applause) It was really good.

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