



Testimony of Theodore R. Bolema

Senior Fellow, The Free State Foundation

before the

Communications and Technology Committee

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Madam Chairman, Ranking Member Phelps, and Members of the Committee, thank you for the opportunity to testify. I am a Senior Fellow of The Free State Foundation, a non-profit, nonpartisan research and educational foundation located in Rockville, Maryland. The Free State Foundation is a think tank that, among other things, focuses its research in communications law and policy. I am an economist and an attorney, specializing in regulatory law, economics, and policy. I have served on the faculties of Central Michigan University and the George Mason University School of Law, and also in positions in the U.S. Department of Justice and the U.S. Department of Energy.

I. Removing Local Regulatory Barriers to Broadband

Removing local regulatory barriers to broadband deployment should be a priority for policymakers who want to see more people have access to broadband. At the federal level, the Federal Communications Commission by unanimous vote in April of this year adopted a Notice of Proposed Rulemaking with a stated purpose to “accelerate wireline broadband deployment by removing barriers to infrastructure investment.”¹ The FCC has also adopted a Notice of Inquiry seeking comments on specific areas where the Commission could use its authority to prevent the enforcement of state and local laws that inhibit broadband deployment.²

¹ Accelerating Wireline Broadband Deployment by Removing Barrier to Infrastructure Investment, WC Docket No. 17-84 (April 20, 2017), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-37A1.pdf.

² Id.

So it is a welcome development to see the Michigan legislature considering HB 5096, HB 5097 and HB 5098 to remove unnecessary impediments to broadband deployment. An important reason why broadband deployment has been delayed is because local governments have been slow to issue permits and licenses, made it difficult for private providers to obtain rights-of-way, and charged fees that far exceed the costs to the local government.³ Often the municipal governments that complain about the lack of broadband access for their residents are the same local governments that make it unnecessarily difficult for private providers to come into their jurisdictions.

II. Municipal Broadband is Rarely the Answer

Some local governments have considered starting their own government-owned broadband utilities. This approach often has led to serious financial problems for the municipality that owns the broadband utility, and may leave local broadband customers with fewer choices than they would have had if the municipality had not pursued the government-run broadband project.

States have to good reason to be concerned about municipal broadband projects.⁴ A recent study by Professor Christopher Yoo of the University of Pennsylvania, a member of FSF's Board of Academic Advisers, and Timothy Pfenninger of the University of Pennsylvania, showed that the financial performance of government-run broadband utilities is very poor, with only two of 20 municipal broadband projects for which transparent financial information was available expected to recover their costs

³ See, e.g., Randolph J. May and Seth L. Cooper, Comments of the Free State Foundation, Petition Seeking Preemption of Certain State Restriction on Municipal Broadband Networks (August 29, 2014), available at: http://www.freestatefoundation.org/images/Muni_Broadband_Comments_082814.pdf.

⁴ See, e.g., Theodore R. Bolema and Michael J. Horney, "The Problem with Municipal Broadband and Solutions for Promoting Private Investment," Free State Foundation (June 21, 2017), available at: http://www.freestatefoundation.org/images/The_Problem_with_Municipal_Broadband_and_Solutions_for_Promoting_Private_Investment_062017.pdf.

within 40 years.⁵ Some have been sold off at a loss,⁶ which often results in costs being shifted to taxpayers elsewhere in the state who receive no benefits from the local broadband project.⁷ The Yoo study concludes, “A closer examination of specific projects reveals that the risks and consequences are quite real. Many cities managing these projects have faced defaults, reductions in bond ratings, and ongoing liability.”⁸ Currently more than 20 states have laws that either prohibit municipal governments from offering broadband or require that they show a sufficient lack of private alternatives.⁹

Having a municipal broadband provider also necessarily leads to other problems.¹⁰ The local government is both the regulator and the provider, so it has both

⁵Christopher Yoo and Timothy Pfenninger, “Municipal Fiber in the United States: An Empirical Assessment of Financial Performance,” University of Pennsylvania Law School’s Center for Technology, Innovation and Competition (May 2017), available at: <https://www.law.upenn.edu/live/files/6611-report-municipal-fiber-in-the-united-states-an>.

⁶ A 2016, the Taxpayers Protection Alliance published a study profiling twelve failed municipal broadband projects. These projects include the municipal fiber-optic network in Provo, Utah, which cost \$39.5 million to build, but failed to keep up with consumer demand and technological innovation and ultimately was sold to Google for \$1. Similarly, the municipal network in Tacoma, Washington, currently loses about \$9 million a year and is projected to run a deficit of \$37.4 million over the next five years. Another questionable project is KentuckyWired, a statewide fiber optic cable network that is costing taxpayers \$350 million, even though more than 150 broadband providers are offering service throughout the state of Kentucky. “The Dirty Dozen: Examining the Failure of America’s Biggest & Most Infamous Taxpayer-Funded Broadband Networks,” Taxpayers Protection Alliance (July 2016), available at: <https://www.protectingtaxpayers.org/assets/files/TPA-Dirty-Dozen-Report-July2016.pdf>.

⁷ Proponents of municipal broadband often point to the Chattanooga, Tennessee, network as the “gold standard” for government-run networks. That network cost \$323 million to build, but had the advantage of receiving a \$50 million subsidy from the municipal electric power operations. It also received \$111 million in federal stimulus funds, a subsidy that seems unlikely to be available for future municipal broadband projects. The study by Yoo and Pfenninger considers only the \$173 million in funding that was not covered by subsidies and shows that even though the Chattanooga network is cash-flow positive, its rate of return is so small that it will take 412 years to break even. Yoo and Pfenninger, at 19-20.

⁸Yoo and Pfenninger, at 23.

⁹ Richard Chang, “Laws Prohibit or Restrict Municipal Broadband Networks in 20-Plus States,” Campus Technology (September 8, 2016), available at: <https://campustechnology.com/articles/2016/09/08/laws-prohibit-or-restrict-local-governments-from-building-broadband-networks.aspx>. At one time, a previous FCC attempted to preempt state laws in North Carolina and Tennessee that restricted the implementation of municipal broadband networks. See Federal Communications Commission, FCC-15-24, In Re Protecting and Promoting the Open Internet (March 12, 2015), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf. Ultimately, in August 2016, the FCC’s order was overturned by the Court of Appeals for the Sixth Circuit in *State of Tennessee, et.al. v. FCC, et.al.*, 832 F.3d 597 (6th Cir. 2016).

¹⁰ For a more complete analysis, see Theodore R. Bolema and Michael J. Horney, “The Problem with Municipal Broadband and Solutions for Promoting Private Investment,” Free State Foundation (June 21,

the incentive and the ability to favor the government-run service over private competitors. Any private firms considering investing in a market with a municipal broadband utility must be concerned that a future local government may try to help a failing broadband utility by favoring it over private providers.¹¹

Alternative forms of broadband delivery, particularly wireless¹² and satellite¹³ broadband services, are becoming practical alternatives to wireline Internet. This is great news for giving broadband customers more choices, but also a threat to the financial viability of government-run Internet utilities. Even if only some potential municipal broadband subscribers switch to satellite or wireless broadband because those services meet their needs and are cost effective, that could threaten the already questionably financial viability of municipal utilities.

2017), available at:

http://www.freestatefoundation.org/images/The_Problem_with_Municipal_Broadband_and_Solutions_for_Promoting_Private_Investment_062017.pdf.

¹¹ These actions by local governments have been shown to drive off private broadband investment, because private firms know that even if they can operate more efficiently than the municipal provider, the local government will have an incentive to make sure the private firms never get that chance. *See, e.g.*, Jerry Ellig, “A Dynamic Perspective on Government Broadband Initiatives,” Reason Foundation (November 2006), available at: <http://reason.org/files/cf0c4a2d38f923ab20a190e88b7e877e.pdf>.

¹² Similar to the wireline NPRM, the FCC adopted a wireless NPRM with the purpose of identifying regulatory barriers and examining how the Commission could act to remove or reduce those barriers. Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79, (April 20, 2017), available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-38A1.pdf.

¹³ Although speeds for satellite broadband are adequate for many consumers who currently have no Internet connection, many satellite connections do not fit the FCC’s definition of “broadband” at 25 Mbps downstream and 3 Mbps upstream. But this is quickly starting to change. For example, in March 2016, Hughes Network Systems unveiled a residential broadband plan called HughesNet Gen5, connecting consumers to 25 Mbps down and 3 Mbps up for \$49.99 a month. Alex Knapp, “Hughes Network Systems Is Launching High-Speed Satellite Internet For North America,” *Forbes*, (March 13, 2017), available at: <https://www.forbes.com/sites/alexknapp/2017/03/13/hughes-network-systems-is-launching-high-speed-satellite-internet-for-north-america/#23b607735ace>. In May of 2017, the FCC adopted an NPRM to streamline satellite broadband deployment. Amendment of Parts 2 and 25 of the Commission’s Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service, IB Docket No. 17-95 (May 18, 2017), available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0522/FCC-17-56A1.pdf.

Conclusion

For Americans with few or no current Internet choices, the prospect of municipal broadband can seem appealing. But government-run broadband networks, at best, are usually only short-term solutions that lead to future economic problems. In most markets, encouraging more private investment, whether by lowering regulatory barriers or by other means such as providing carefully targeted government support to private firms, offers the most sustainable solution to the problem of unserved markets for broadband.

Thank you for giving me the opportunity to testify today. I will be pleased to answer any questions.