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**Municipal Broadband's Tilted Playing Field:
Advantages Created by City Self-Dealing**

by

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I. Introduction and Summary

One argument we often hear from proponents of municipal broadband systems is that local governments can step in and provide Internet services when private companies aren't willing to serve their communities. In this regard, a new municipal broadband project was recently launched in Marshall, Michigan, after the city claimed that it failed to attract bids from private companies, and also that its cost-benefit study showed that a government-run system would be financially viable. How can a city operate a broadband network that is financially viable when no private companies, with far more experience operating such systems, are able to do so? In the case of Marshall, city officials have been unusually frank in explaining its advantage over private companies: Marshall has touted its self-dealing and self-exemption from regulations that apply to private companies but which don't apply to it.

This Marshall case study reveals that the alleged unwillingness of private companies to serve the city and the city utility's ability to provide a financially viable service is not an "apples-to-apples" comparison. As one city official acknowledged, "The city had an advantage because we are a municipal electric utility," and "It was pretty straightforward to get the fiber attached to the poles, because sometimes that could be a pretty convoluted process."

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In other words, Marshall gave itself a major advantage over private companies by virtue of its self-dealing and exempting itself from other burdensome regulatory requirements that go with acquiring rights-of-way and obtaining bureaucratic approvals. This is not a real economic advantage, but rather an advantage created by the city tilting the playing field to favor its utility over any private companies that may be considering providing service to city residents.

It is unclear whether Marshall residents received broadband faster with the municipal utility, as compared to having private providers enter with the same advantages as the municipal utility received. Proponents of the Marshall municipal broadband system claim that some city residents did not have adequate access to the Internet, but some major private providers, including AT&T, Spectrum, and Xfinity, were offering service in parts of the city and in nearby areas. Thus, private companies were well positioned to enter any unserved and underserved parts of the city, and they may well have done so if all of the advantages given to the city-owned utility had been extended to them. What is clear is that these private providers are now less likely to enter or expand in Marshall if they have to compete with a broadband system run by the same government that makes the rules for everyone else.

For many residents of cities who have limited or no access to broadband Internet service, the prospect of government-run broadband can seem appealing. But in most cases, including for Marshall, local governments often have potentially better options available to them that they do not explore. In the case of Marshall, the city requested proposals from private companies without extending to them the same right-of-way and regulatory advantages it gave its city-owned utility. And then, presumably with a knowing wink, it complained that no private companies were willing to play on the unlevel field.

If Marshall had offered private companies the same benefits the city gave to its city-owned utility, and no one wanted to enter, then perhaps Marshall would have had a good case for the government providing Internet service. But the city did not do that, and instead chose to proceed with a government project that received a government-created advantage.

It seems likely that out of the several private providers already offering service in parts of Marshall and areas near Marshall, one or more would have been interested in providing service to the entire city if the advantages given to the city-owned utility had been extended to them. In that case, Marshall residents could have ended up with a choice in their broadband provider, and the benefits of innovation and new investment that come with competition, rather than a monopoly service offered by their local government.

II. How Marshall Launched its Municipal Broadband System

The City of Marshall is located in south-central Michigan, near the intersection of interstate highways I-94 and I-69. The city has a 2018 population of just over 7,000.¹ It is located in Calhoun County, which has a population of over 134,000, and the largest city in Calhoun County is Battle Creek.² Several major Internet service providers serve parts of Marshall, Michigan,

¹ "Marshall City, Michigan," United States Census Bureau, visited September 16, 2019, available at: <https://www.census.gov/quickfacts/marshallcitymichigan>.

² "Calhoun County, Michigan," United States Census Bureau, visited September 16, 2019, available at: <https://www.census.gov/quickfacts/calhouncountymichigan>.

including AT&T, Spectrum, and Xfinity, although none cover the entire zip code in which Marshall is located.³

An article in the *Battle Creek Enquirer* newspaper provided an uncritical perspective on how the municipal broadband network was launched in 2018 in Marshall:

The discussion of the city owning its broadband network began in 2015. "We were looking at how to grow the city and how to make it more vibrant," Marshall Director of Electric Utilities Ed Rice said. "Really, Marshall is under served for high-speed internet."

City council members suggested the city take a look at what could be done to increase internet speeds. "That's what kicked it off," Rice said. "It was really geared more towards economic development . . ."

In Michigan, the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act required that Marshall first put out a request for proposal to any company that would want to provide fiber-to-the-home service in Marshall. No one responded.

Additionally, the city had to do a cost-benefit analysis to make sure the venture would be cost neutral. Marshall isn't in this business to make a profit. "We are in it to provide good service to our residents and our business and commercial customers," Rice said.

The cost-benefit analysis showed the city would spend \$2.5 million constructing the fiber-optic network and that it would cost \$1 million a year to run. With the city's population at more than 7,060, the total customer base available for Marshall FiberNet is about 4,200 premises, which includes residences and businesses. About 38% are expected to hook-up to the service. In March of 2017, city council approved the go-ahead for engineering, designing and constructing of the network.⁴

Notably, Mr. Rice gave a revealing explanation for how Marshall could launch a municipal broadband network while other providers were not serving the entire city:

"The city had an advantage because we are a municipal electric utility," Rice said. "It was pretty straightforward to get the fiber attached to the poles, because sometimes that could be a pretty convoluted process."⁵

The launch of the municipal broadband system in Marshall raises some important issues about municipal broadband systems being built in a market where private providers allegedly have been unwilling to provide service. First, its Director of Electric Utilities pointed out an important advantage the city had over private providers, but did not explain why the city, in light of its concern about getting broadband access to its residents, was unwilling to share that advantage with private companies. Second, the city, by introducing municipal broadband in this way, is

³ "Residential Internet Providers in Marshall," Broadband Now, visited September 16, 2019, available at: <https://www.census.gov/quickfacts/marshallcitymichigan>.

⁴ Kalea Hall, "Internet Service in Marshall Was Slow, So the City Built Its Own Fiber-Optic Network," *Battle Creek Enquirer*, November 18, 2018, available at: <https://www.battlecreekenquirer.com/story/news/2018/11/15/marshall-municipal-fiber-optic-network/1948988002/>.

⁵ Kalea Hall, "Internet Service in Marshall Was Slow, So the City Built Its Own Fiber-Optic Network."

likely depriving its residents of future competition and choice in their broadband provider. Third, to the extent Marshall is counting on its municipal broadband system spurring economic development, the city is likely to be disappointed.

III. Marshall's Municipal Broadband System Was Given Major Advantages Not Extended to Private Companies

One argument we often hear from proponents of municipal broadband systems is that local governments can step in and provide Internet service when private companies aren't willing to serve their communities.⁶ Indeed, Michigan's Metropolitan Extension Telecommunications Rights-of-Way Oversight Act is based on this premise, because it requires that cities seek bids from private companies and also perform a cost-benefit study to show that the benefits from the city building a broadband system outweigh the costs.

According to the newspaper account, no private providers bid on the Marshall project, despite several major providers already offering service in the area, so the city went forward with its own project, taking advantage of its established rights-of-way. According to Ed Rice, its Director of Electric Utilities, that gave the city an "advantage" because obtaining such rights "could be a pretty convoluted process."⁷

In other words, Mr. Rice is pointing out that Marshall has an advantage over private companies by virtue of its self-dealing. This is not a real economic advantage, but rather an advantage created by the city extending its rights-of-way to its utility, but not to private companies, and exempting itself from regulatory requirements and approvals that apply to private companies seeking to enter or expand in Marshall.

Mr. Rice is also right about how convoluted the process can be. Local regulatory policies often favor municipal broadband providers by granting them special privileges, such as favored rights-of-way treatment and excusing municipal broadband networks from running the bureaucratic gantlet of permitting and licensing processes that slows the progress of private providers.⁸

⁶ See, e.g., David A. Talbot, Kira Hope Hessekiel, and Danielle Leah, "Community-Owned Fiber Networks: Value Leaders in America," Berkman Klein Center for Internet & Society (January 2018), available at: <https://dash.harvard.edu/handle/1/34623859>; and Jay Stanley, "The Public Internet Option: How Local Governments Can Provide Network Neutrality, Privacy, and Access for All," American Civil Liberties Union (March 29, 2018), available at: https://www.aclu.org/sites/default/files/field_document/aclu_municipal_broadband_report.pdf. For a critical review of each of these studies, see Theodore R. Bolema and Michael J. Horney, "A Critical Assessment of the 'Community-Owned Fiber Networks: Value Leaders in America' Study," *Perspectives from Free State Foundation Scholars* Vol. 13, No. 4 (January 30, 2018), available at: <https://freestatefoundation.org/wp-content/uploads/2019/05/A-Critical-Assessment-of-Harvards-%E2%80%9CCommunity-Owned-Fiber-Networks-Value-Leaders-in-America%E2%80%9D-Study-013118.pdf>; and Theodore R. Bolema, "A Critique of the ACLU's 'Public Internet Option' Study," *Perspectives from Free State Foundation Scholars* Vol. 13, No. 11 (April 9, 2018), available at: <http://fsfwebsite.wpengine.com/wp-content/uploads/2019/05/A-Critique-of-the-ACLU%E2%80%99s-%E2%80%9CPublic-Internet-Option%E2%80%9D-Study-040918.pdf>.

⁷ Kalea Hall, "Internet Service in Marshall Was Slow, So the City Built Its Own Fiber-Optic Network."

⁸ See, e.g., Theodore R. Bolema and Michael J. Horney, "The Problem with Municipal Broadband and Solutions for Promoting Private Investment," *Perspectives from FSF Scholars*, Vol. 12, No. 21 (June 21, 2017), available at: <https://freestatefoundation.org/wp-content/uploads/2019/05/The-Problem-with-Municipal-Broadband-and-Solutions-for-Promoting-Private-Investment-062017.pdf>; Michael J. Horney, "Local Governments Should Focus on 5G Smart Cities, Not Municipal Broadband," *FSF Blog*, (February 20, 2018), available at: <http://freestatefoundation.blogspot.com/2018/02/local-governments-should-promote-5g.html>.

Moreover, municipal providers often are excused from paying the fees that typically accompany the permits and license, which may be another advantage given to the Marshall utility but not to private companies.⁹

Complying with these convoluted local regulations is costly, and has driven off private companies in cities considering government-owned networks. For example, as Traverse City, Michigan, made plans to build a city-owned broadband network, Lightspeed, a private company serving other nearby communities,¹⁰ complained that it was forced to abandon plans to enter the Traverse City market when the city added so many restrictions and requirements that the investment no longer made sense.¹¹ Similarly, when San Francisco was considering building a municipal broadband system, a financial analysis conducted for its proposal recognized that certain regulations depressed additional broadband deployment in San Francisco.¹²

Getting right-of-way access is one of the most expensive and time-consuming tasks for any broadband service, and Marshall is letting its municipal Internet service have that access for free. Presumably the city could make it just as easy for any private company to come into Marshall. But the city did not do that, and instead chose to proceed with a government project that received a government-created advantage.

IV. Marshall Is Likely to End Up With Fewer Broadband Providers Over Time

Once a municipal broadband provider begins operations, the incentives for other providers to enter the market are reduced. If other providers were considering entering the market, in most cases they will be less likely to enter, or they may delay their entry in favor of investments in other markets where they do not have to compete with a self-dealing government provider.

Once a decision has been made to approve a municipal provider, even before the municipal system is constructed and operated, the local government managers may have a vested interest in advantaging the government provider.¹³ Even assuming the current local government has no intention of driving off private broadband providers, private firms have no way of assessing whether future local government officials will be so seemingly benevolent. This uncertainty can discourage private investment even if government managers are not currently running the municipal government in a way that deliberately places private firms at a disadvantage.

If, as is likely, a municipal provider displaces one or more private providers that would otherwise build in the market, the net effect will be the same number or fewer broadband providers in the market. Therefore, if the problem in the local market is a lack of private broadband investment,

⁹ 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), pp. 1-3, available at: <https://freestatefoundation.org/wp-content/uploads/2019/10/Muni-Broadband-Comments-082814-1.pdf>.

¹⁰ "LightSpeed," Inmyarea.com, visited September 17, 2019, available at: <https://www.inmyarea.com/provider/lightspeed-communications>.

¹¹ Michael Van Beek and Jarrett Skorup, "Utility Pushes Risky Taxpayer-Funded Initiative," *Traverse City Record-Eagle* (Jun 25, 2017), available at: http://www.record-eagle.com/opinion/op-ed-utility-pushes-risky-taxpayer-funded-initiative/article_87bdf088-5ff6-5a7a-abe6-c0c11bbdf518.html

¹² "Financial Analysis of Options for a Municipal Fiber Optic Network for Citywide Internet Access," March 15, 2016, available at: <https://sfbos.org/sites/default/files/FileCenter/Documents/55357-FAC1.pdf>.

¹³ Jerry Ellig, "A Dynamic Perspective on Government Broadband Initiatives," *Reason Foundation* (November 2006), available at: <http://reason.org/files/cf0c4a2d38f923ab20a190e88b7e877e.pdf>.

having a municipal broadband system can drive off future private investment, and often will lead to the market having fewer providers in the long run than if private firms were encouraged to enter by virtue of sound government policy.¹⁴

When consumers have more choices for broadband providers and technologies, their ability to switch providers encourages all providers to be innovative and improve their quality of service. Because municipal networks discourage local competition, the best way to create more broadband choices for consumers is to reduce regulatory barriers that stifle private investment and deployment. In order to combat potential actions of consumer harm, local governments should promote and encourage the deployment of private broadband networks to create additional competition in the local broadband markets so that residents have more choice and more ability to reject any broadband providers due to poor service.

It is unclear whether Marshall residents received broadband faster with the municipal utility, as compared to having private providers enter with the same advantages as the municipal utility received. Despite these regulatory disadvantages, private companies were entering parts of Marshall and areas near Marshall, so it seems likely that several private companies would have been interested in providing service in Marshall if the advantages given to the city-owned utility had been extended to them. What is clear is that these private providers are now less likely to enter or expand in Marshall if they have to compete with a government-run system that grants itself favorable regulatory treatment.

V. Economic Development Benefits From Municipal Broadband Are Unlikely

Local government officials, like Mr. Rice in Marshall, often tout municipal broadband projects as providing the residents more jobs and economic growth. The evidence, however, of municipal broadband promoting economic activity and opportunities for entrepreneurs is weak and mostly anecdotal. In fact, the opposite may be true. A 2014 paper by Brian Deignan at the Mercatus Center found that municipal broadband networks increase business establishments by 3%, but have a negative effect on worker incomes and have no effect on private employment. Deignan also found that local government employment increases by 6%. Deignan concludes that any evidence of private sector growth due to municipal broadband deployment is "not large enough to ignore the growth in local government and the financial stress that publicly supported broadband puts on a community."¹⁵

Similarly, a current working paper by Sarah Oh of the Technology Policy Institute performs a statistical analysis of the impact of municipal broadband systems on three important economic development indicators. This study finds no evidence that municipal broadband yields benefits in household broadband subscriptions, unemployment rates, or labor force participation rates.¹⁶

¹⁴ Theodore R. Bolema and Michael J. Horney, "The Problem with Municipal Broadband and Solutions for Promoting Private Investment."

¹⁵ Brian Deignan, "Community Broadband, Community Benefits? An Economic Analysis of Local Government Broadband Initiatives," *Mercatus Graduate Policy Essay*, No. 17 (Summer 2014), available at: https://asp.mercatus.org/system/files/MGPE_Deignan_0.pdf.

¹⁶ Sarah Oh, "What Are the Economic Effects of Municipal Broadband?" Technology Policy Institute, Working paper posted July 30, 2019, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3426247.

Of course, these studies are not saying that access to broadband does not have important economic advantages for communities. But those advantages in most markets are achieved by private companies providing the service. The point of these studies is that the evidence of benefits to communities from trying to accelerate the introduction of broadband through a municipal provider is mixed at best. Indeed, the lack of evidence of such benefits is consistent with economic analysis and experience from other markets that government-provided Internet service will rarely be the best option for addressing the perceived problem.

VI. Government-Run Broadband Is Rarely the Best Solution to the Perceived Problem

Most goods and services in the United States, including in the communications sector, are provided by private businesses. As a general rule, companies that are privately owned tend to perform more efficiently than government-run entities because they usually are more responsive to price signals and changing market conditions. That is not to say that private ownership always leads to better economic outcomes than government ownership, but any proposals to create a government-run broadband provider should not disregard these important efficiency advantages associated with private ownership.

Services provided by governments are most common in two situations. The first is for "public goods," or goods that are non-rivalrous in consumption and for which the operator cannot exclude anyone who does not pay for the service. Police protection, courts, public parks, and local roads all generally (but not invariably) fit the criteria for public goods, because they can be used by many residents at the same time without limiting the use by others and also because no one is excluded for not paying for the public goods. The second is a so-called "natural monopoly" service, or a service for which the fixed costs are so high that having a monopoly provider may be more efficient than having competing firms that all must charge high enough rates to cover the fixed costs. Some municipalities offer electricity, natural gas, trash collection, or sewage utilities, while in other markets these services are provided by private businesses.¹⁷

Broadband Internet service is neither a public good nor a natural monopoly. It is not a public good because the provider does not have to provide the service to customers who do not pay for it. It is not a natural monopoly because many markets can be found today with multiple broadband providers competing for the business of local customers.

Instead of the traditional public good or natural monopoly justifications, the usual economic argument for municipal broadband is that too few private providers are making broadband available, which is choking off business opportunities for entrepreneurs and individuals who depend on reliable broadband access.¹⁸ This is a positive externality argument, and appears to be the argument being made by the Marshall city officials. The contention is that suppliers are producing less than is socially optimal because they are not considering the spillover effects their decisions have on other parties. In this case, the spillover is the economic benefits that may arise

¹⁷ Notably, trash collection, which is less like a natural monopoly than the other services, has been privatized in recent years to the point where over 75% of trash collection is now operated by private business. Many areas now have several competing trash collectors. Harris Kenny, "Annual Privatization Report: Solid Waste Update," *Reason Foundation* (May 6, 2013) available at <http://reason.org/news/show/apr-2013-solid-waste>.

¹⁸ See, e.g., "Municipal Networks and Economic Development," *Community Networks* (visited June 6, 2017), available at <https://muninetworks.org/content/municipal-networks-and-economic-development>.

from businesses, entrepreneurs, schools, and other parties being able to use Internet access to grow their businesses, hire more employees, and pay more taxes.

Positive externalities are observed in many markets. Economists normally recommend that if governments respond, they do so by encouraging private parties to increase their output. Economists generally find encouraging more private output is preferable to the government itself offering the product or service that has positive spillover effects.¹⁹

Local governments often make a similar positive externality argument when trying to attract employers to their community. In those cases, we rarely see municipalities propose that the local government own and operate major new businesses themselves. Instead the usual response by municipalities to positive externalities is to focus on what they can do to encourage private investment in the market that is underserved due to the externality. In such cases, local governments argue that the new employer will bring new jobs and expand the tax base, which will be multiplied when the new employees spend their money at other local businesses. Therefore, in order to attract the new employer, or encourage an existing employer to expand, the municipality may offer property tax breaks, direct subsidies, or help with regulatory requirements, like favorable zoning changes. The municipality may also offer to improve roads or make other municipal improvements as part of a package to get the employer to commit to moving to the community.

In the case of cities considering new municipal broadband projects, the experience of Marshall points to a solution to its positive externality problem that does not require government ownership. Before resorting to a government-run utility and all of the inefficiencies that come with it, cities like Marshall should first try to make the playing field level by extending the favorable regulatory treatment they give city-run utilities to private companies.

Conclusion

The problems described above are not the only concerns raised by Marshall's municipal broadband system.²⁰ Besides the problem with Marshall touting benefits from its municipal broadband system that may be due to nothing more than self-dealing and unequal regulatory treatment, municipal broadband systems around the country have raised other significant concerns. The systems have consistently failed to live up to revenue and costs expectations, and

¹⁹ An example found in many economics textbooks is the positive externality created by beekeepers. Beekeepers sell the honey to customers, but neither may be considering the positive externality from the bees cross-pollinating surrounding fields, which is a benefit for nearby farmers. In response to this externality, the U.S. Department of Agriculture, several state governments, and private organizations offer subsidies to promote more beekeeping. See, e.g., Carl Evangelista, "Beekeeping Grants Support an Important Industry," *Grants Guys* (October 21, 2014), available at <http://grantsguys.com/beekeeping-grants-support-an-important-industry/>.

²⁰ For example, a recent article, from a more skeptical perspective, pointed out that the City of Marshall borrowed the funds from its electricity operations, and that it is already falling behind on paying back the borrowed funds: Madeline Peltzer, "Municipal Broadband Boosters Like City of Marshall's Chances," *Michigan Capitol Confidential*, August 14, 2019, available at: <https://www.michiganconfidential.com/municipal-broadband-boosters-like-city-of-marshalls-chances> ("According to the Enquirer, the city of Marshall decided to construct a \$2.5 million broadband network using loans from other city accounts, including the electric department. The city, Rice told the newspaper, had not yet begun to pay off the loans, though it expected to begin doing so in 2019. Last month, the city told Michigan Capitol Confidential that it still hasn't repaid any of the borrowed money but now plans to start making payments in 2020.").

have often become financial burdens on their cities.²¹ They also lock cities into a technology that may look good today, but may be far different from the prevailing technology a few years from now.²² And since they are run by governments, municipal broadband systems raise First Amendment and privacy concerns as a government agency has access to the most sensitive data and communications from its residents.²³

For Americans who live in underserved areas, the prospect of government-run broadband can seem appealing. But in most cases, including Marshall, local governments often have potentially better options available to them that they do not explore. In the case of Marshall, the city requested proposals from private companies without extending to them the same right-of-way and regulatory advantages it gave its city-owned utility, and then complained that no private companies were willing to enter. If Marshall had offered private companies the same deal the city gave to its city-owned utility, and no one wanted to enter, then perhaps Marshall would have had a good case for the government providing Internet service. But that is not what happened.

If Marshall's concern was about getting broadband access for its residents as fast as possible, then presumably the city could make it just as easy for any private company to come into Marshall. Despite these regulatory disadvantages, private companies were entering parts of Marshall and areas near Marshall, so it seems likely that some of these private companies would have been interested in providing service in the city if all of the advantages given to the city-owned utility had been extended to them. In that case, Marshall residents likely would have ended up with a choice among several broadband providers, and the benefits of innovation and a variety of plans that come with competition, rather than a monopoly service offered by their local government.

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²¹ See, e.g., Christopher 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>; "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>.

²² See, e.g., Michael J. Horney, "Reaching Rural America: Free Market Solutions for Promoting Broadband Deployment," *Perspectives from FSF Scholars*, Vol. 13, No. 10 (March 19, 2018), available at: <https://freestatefoundation.org/wp-content/uploads/2019/05/Reaching-Rural-America-%E2%80%93-Free-Market-Solutions-for-Promoting-Broadband-Deployment-031918.pdf>.

²³ Enrique Armijo, "Municipal Broadband Networks Present Serious First Amendment Problems," *Perspectives from FSF Scholars* Vol. 10, No. 11 (February 23, 2015), p. 2, available at: <https://freestatefoundation.org/wp-content/uploads/2019/06/Municipal-Broadband-Networks-Present-Serious-First-Amendment-Problems-022015.pdf>; Enrique Armijo, "A Case of Hypocrisy: Government Network Censors Support Net Neutrality for Private ISPs," *Perspectives from FSF Scholars* Vol. 13, No. 1 (January 3, 2018), p. 2, available at: <https://freestatefoundation.org/wp-content/uploads/2019/05/A-Case-of-Hypocrisy-Government-Network-Censors-Support-Net-Neutrality-for-Private-ISPs-010318.pdf>; Theodore R. Bolema, "A Critique of the ACLU's 'Public Interest Option' Study."