



*Perspectives from FSF Scholars*  
*January 27, 2020*  
*Vol. 15, No. 5*

**Self-Evident Self-Dealing: A Municipal Broadband Bill Speaks**

by

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For over a decade now, I – along with other Free State Foundation scholars – have cast a wary eye on proposals for municipalities to own and operate their own telecommunications networks. For my part, I have never taken the position that *all* entry by municipalities should be prohibited, but rather that such entry should be limited to instances in which private sector providers are not already serving the relevant market and have shown no inclination to enter. Even then, entry by municipalities should be carefully circumscribed in order to avoid, to the extent possible, the perverse effect of deterring entry by private firms that might otherwise consider entry.

The reasons for my concerns are well-known and well-documented. They relate primarily, but not exclusively, to fears that municipal systems (really, any government-operated communications network at any level of government) will endeavor to ensure it receives favored treatment vis-à-vis private systems. Such favored treatment will disadvantage private operators – all to the detriment of competition and consumer welfare. (There is also a concern, from a First Amendment free speech perspective, with a government-controlled network controlling communications facilities.)

Favored treatment, or self-dealing, if you will, most often takes the following forms: engaging in cross-subsidization so that municipal telecom services are supported by revenues from other

government-provided services; receiving favored tax treatment; receiving preferential access to poles and conduits; and failing to impute any of these special benefits to the cost of providing the municipal telecom services.

We should not be surprised that municipalities – and municipal officials – engage in self-dealing. Indeed, because "they're only human," we should be surprised if they didn't. In October 2019, in [Municipal Broadband's Tilted Playing Field](#), Theodore Bolema, a member of the Free State Foundation's Board of Academic Advisors, chronicled the acknowledgment by a Michigan municipal official of the city's favored treatment. At the end of this *Perspectives*, please see links to this and two other (of the many) Free State Foundation papers addressing concerns relating to government-owned networks.

But on the theory that a "picture is worth a thousand words," I will just paste in immediately below relevant portions of [House Bill No. 1052](#), filed in the Virginia House of Delegates on January 8, 2020. See for yourself. What the bill does, as indicated by the stricken language, is to remove current restrictions now in effect that are designed – note I say "designed" – to prevent the very types of self-dealing and preferential treatment identified above.

*~~"3. The Commission shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; and (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 5.~~*

*5. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services; and (ii) shall have the same duties and obligations as other certificated providers of telecommunications services; ~~(iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers.~~*

~~Each certificated county, city, or town that provides telecommunications services regulated by the Commission shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) have been met. The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.~~

~~6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for profit provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right of way charges that would be incurred in each fiscal year if the locality were a for profit provider of telecommunications services, (iv)....~~

~~8. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in areas where no offers exist from for profit providers of such telecommunications services, or (ii) as permitted by the provisions of subdivision 5.... "~~

House Bill No. 1052 at this point is only a proposal, not enacted law. I offer it here only as one more piece of evidence of the various incentives created to favor government-operated telecom systems vis-à-vis private sector competitors. The ultimate losers are not the private sector firms – although they are losers – but the consumers who may be deprived of the benefits of market competition.

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Here are other Free State Foundation *Perspectives* on the subject:

Theodore R. Bolema and Michael J. Horney, ["The Problem with Municipal Broadband and Solutions for Promoting Private Investment,"](#) *Perspectives from FSF Scholars*, Volume 12, No. 21, June 21, 2017.

Theodore R. Bolema and Michael J. Horney, ["Big City Municipal Broadband: Repackaging Net Neutrality Arguments Won't Fly,"](#) *Perspectives from FSF Scholars*, Volume 13, No. 25, June 25, 2018.

Theodore R. Bolema, ["Municipal Broadband's Tilted Playing Field,"](#) *Perspectives from FSF Scholars*, Volume 14, No. 30, October 10, 2019.

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