

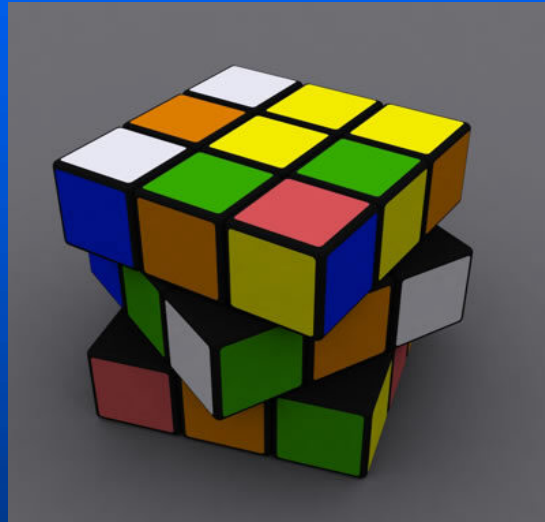
Community/Muni Broadband Solutions Summit

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The Business And Political Environment

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The Big Picture



Lay of the Land

- Telecommunications Act 1996
 - Over 10 years in the making
 - Lets make a deal
 - Bells out from MFJ
 - AT&T into local
 - Cable into local
 - Internet only referenced in passing

NAME OF THE GAME: LETS MAKE A DEAL

- Mergers rather than competition
 - 7Bells and GTE = 4 now (soon 3)
 - AT&T/TCI/MediaOne = Comcast
 - AT&T/SBC; MCI/Verizon
- Competition around the margins in the gray areas

Key Classifications Under Current Law

Communications Act “Silos” in Face of Convergence

- Title II – Telecom Common Carriers
- Title III – Wireless (radio, cellular, PCS, etc.)
- Title VI – Cable Services
- Unregulated – “Information Services”
- “IP-Enabled Services” (e.g., VoIP, IPTV, etc.) ?

Implications – “Telecom Service”

Telecom Act allocated benefits and burdens via definition of “telecommunications service”

- **Burdens:** common carrier rules (e.g., registration, reporting, customer service, complaints, etc.), interconnection, handicapped persons, universal service contributions, pole attachments, privacy, ...
- **Benefits:** Interconnection, collocation, wholesale unbundled network elements, pole attachments, universal service subsidies, ...

Implications – “Cable Service”

Title VI of Communications Act and Copyright Act

- **Burdens:** (e.g., cable franchise, federal registration, reporting, customer service standards, technical standards (e.g., signal leakage); reporting and compliance with Copyright Act
- **Benefits:** No common carrier requirements; no universal service payments, and some subsidies available; access to pole attachments at preferred rates

Wild Card: Information Service

“The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...”

- “Information services,” are not “cable services” and are not “telecommunications services”
- Generally not regulated
- Internet is an information service
- What is Cable Internet access – Brand X
- What are IP enabled services?

Implications – “Information Service”

- Very few applicable federal or state rules
 - **Burdens:** Some CALEA (*ACE v. FCC*);
Universal Service? Taxes?
 - **Benefits:** Few traditional benefits, but many federal or state grants, loans, other benefits encourage broadband deployment
 - **Challenges:** Pole attachments

How Much Bandwidth Is Enough?

Jupiter Research: By 2009, average homes will need 57-72 Mb/s and “tech savvy” homes will need nearly 100 Mb/s.

Technology Futures, Inc.: By 2006, bandwidth requirements will push into range of 24-100 Mb/s.
(Bells funded and supported this study)

Surging Interest in Municipal Broadband

- Number of wireline and wireless projects increasing rapidly (APPA, Render, Muniwireless statistics)
- Public involvement models running the gamut
 - Facilities => wholesale => wholesale/retail => retail
 - Alone or “partnerships” with public or private entities
 - Division => Board => New Entity => Coop, etc.
- Growing private sector support: e.g., TechNet: “[T]akes no position on which business models, technologies, and local policy priorities are appropriate for each unique local market, but encourages all communities to establish a comprehensive and viable broadband strategy.”

Why Municipal Broadband?

- Economic development
- Educational and occupational opportunity
- “Insourcing” and improved government services
- Digital equity
- Access to affordable modern health care
- Local/regional/global competitiveness
- Homeland security and public safety
- Reduced environmental burdens
- Control own destiny ...
- Quality of life

Authority Issues

Barriers v. Authority

Federal law encourages, but does not authorize

Public entities must have state/local authority

- State laws, interpretations, procedures differ widely
- Dillion's Rule v. Home Rule
- Service-by-service (cuts both ways)

Charters, ordinances, finance laws and instruments, pole agreements, franchises, contracts, tax issues, etc.

State Barriers To Public Entry

Nixon v. Missouri Municipal League (2004)

- “any entity” in Telecom Act § 253(a) not clear enough to preempt state barriers, but
 - Not a ruling on the merits of public entry
 - Municipalities have “respectable position”
 - FCC “minced no words” in “denouncing” MO law
 - Ten *amici curiae* supported public entry
- State barriers by end of 2004
 - AR, FL, MN, MO, NE, NV, PA, SC, TN, TX, UT, VA, WA, WI

The Philadelphia Story

Late 2004 Pennsylvania passed law preventing municipal broadband projects if incumbent willing to provide service

- Law passed at behest Verizon
- Law looked only at speed, not price, service or competition.
- Philadelphia, largest City planning City-wide WiFi network.
- Governor of Pennsylvania is the former Mayor of Philadelphia.
- Most state legislative session end in late Spring, Pennsylvania runs until November so it became press focus at end of 2004.
- Easy to understand story that mainstream press: USA Today; Wall Street Journal; New York Times, London Times followed
- Philadelphia's WiFi system allowed under compromise.
- Pennsylvania law becomes rallying point for municipal entry.

State Barriers To Public Entry Con.'t

State battles in 2005

- CO, FL, IA, IL, IN, LA, MI, OH, OR, NE, TN, TX, VA, WV

State battles in 2006

- IN, TN, LA

Pro-Municipal bills:

- LA, PA, NH, others

Go to www.baller.com community broadband page

Typical Cases 2005-06

Bristol, VA

Lafayette, LA

Lebanon, OH

Portland, OR

North Kansas City, MO

Reedsburg, WI

Truckee-Donner PUD, CA

UTOPIA, UT

Federal Legislation

House

Sessions → X
(5-26-05)

Barton (COPE)
(6-8-06)

Senate

Lautenberg
-McCain
(6-23-05)

Ensign
(7-27-05)

Stevens
(6-22-06)

?



Net Neutrality

How did we get here?

- Larry Lessing, Michael Wu, CBUI, et al.
- Michael Powell's VON speech "Four Freedoms"
- FCC's *Madison* decision real life VOIP blocking
- *Brand X* case / DSL Order (incl. policy statement)
- AT&T's Ed Whitacre put the issue on map

What exactly is "net neutrality"?

Users v. Providers

Congress?

Public Involvement Models

Local “hats”: User, facilitator, aggregator, lessor, seller

Services: Voice, video, data, security, safety, etc.

Roles: Infrastructure (e.g., poles, dark fiber, towers); self-provisioning; wholesale; retail; mixed ...

Organizational Structures:

- Branch of local government
- Board, authority or commission (~independence?)
- “Partnerships” -- public/public or public/private
- Non-profits (§ 501(c)(3)) or co-ops (§ 501(c)(12))
- Other models

Infrastructure Issues

What does the locality bring to the table, and how?

- Pole attachments
 - Who owns or controls poles, light standards?
 - Who has attachment rights? What are they?
 - Applicable law? Agreements? Franchises?
 - Dozens of technical issues
- Towers, buildings, other public facilities
- Public Rights of Way
- Fiber/other communications assets
 - Must comply with all applicable federal, state and local non-discrimination, procedural, and procurement rules

Ten Common Myths vs. Realities

Localities shouldn't compete with the private sector

- Local governments are generally conservative
- Respect for private sector, including incumbents
- Step forward only if public demands it, after thorough open debate in which incumbents participate
- Usually fill service gaps or offer much better services/rates
- Economic/community development goals

Myths vs. Realities (2)

Regulators shouldn't compete with the regulated

- Localities don't regulate telecom providers
- Localities don't regulate Internet service providers
- Localities do franchise cable operators, but
 - discretion limited by Cable Act and master ordinances
 - generally impose similar requirements on own systems
- Localities do manage ROW, but fed and state laws require non-discrimination and competitive neutrality

Bottom Line: Even if they wanted to, localities couldn't successfully discriminate in favor of their own systems.

Myths vs. Realities (3)

Localities don't pay taxes

- Community utilities make payments in lieu of taxes that are often higher than private taxes (APPA and FMEA studies confirm this)
- No income taxes because no profits
- Private sector gets billions annually in tax breaks, universal service subsidies, and other publicly-funded incentives (see APPA and FMEA studies)

Myths vs. Realities (4)

Localities can use tax-advantaged financing

- **We should encourage more of this**
 - America's sinking global standing
 - AES study – muni projects **increase** investment
- Tax-advantaged financing often unavailable or comes with stiff conditions (e.g., “private use”)
- Result: Public projects often use taxable funds
- At same time, private projects often use public financing (e.g., RUS, EDA grants/loans)
- Major incumbents get best rates

Myths vs. Realities (5)

Localities can cross-subsidize communications

- Reality: for legal or political reasons, localities steer clear of cross-subsidization
- Interest-bearing loans are not cross subsidies
- Private entities routinely cross-subsidize across products, geographic markets (e.g., Bells claim increased profits from lifting phone-related UNE rules will support new broadband services)

Myths vs. Realities (6)

Public entry raises First Amendment concerns

- Shrinking number of speakers a serious concern (media ownership controversy)
- Major incumbents simultaneously building inadequate capacity and closing off access
- Public systems create opportunities for more speakers, more diversity
- Cable Act requires separation of franchising authority and entity that chooses programming

Myths vs. Realities (7)

Public projects often fail

- Flatly untrue – see www.tricitybroadband.com
- Industry “studies” are seriously flawed
- Success means different things to public and private sectors -- i.e., public projects need not earn short-term profits to be successful
- Economic development, educational opportunity, etc., have value beyond subscriber revenues
 - Consider monetary value to community of gaining or losing businesses and jobs (taxes, property values, spending in community, etc.)

Myths vs. Realities (8)

Local officials are lazy, incompetent, clueless

- Municipal utilities have a century-old record of better performance than private sector
- Much experience with complex technology
- Municipal utilities are already operating highly sophisticated communications systems
- Partners or technical assistance readily available
- Vastly more private-sector than public-sector failures

Myths vs. Realities (9)

Local governments have unfair access to poles, ducts, conduits and rights of way

- Not true of most localities
- Where true, these are FAIR advantages (with appropriate cost allocation)
- Federal and state laws prohibit discrimination
- Argument disingenuous, as incumbents are already on poles and in ducts, conduits and ROW and try to exclude or delay entrants

Myths vs. Realities (10)

Localities should not enter into risky ventures, especially where the private sector is already providing, or will soon provide, adequate services

- True, localities should not take high risks, but the public, not incumbents, should decide this
- Risks low for openly-debated public projects
- The private sector acting alone cannot, or will not, deploy truly high-bandwidth broadband or low-cost wireless in most communities on a ubiquitous basis anytime soon