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## **Municipal Broadband: Should Cities Have a Voice?**

### ***I. Introduction***

Good afternoon and thank you for that kind introduction. Let me start with the usual disclaimer that this speech does not necessarily reflect the views of the Commission or of any other Commissioner.

It is a great pleasure to be here at NATOA's 25th Annual Conference. NATOA plays a vital role representing the telecommunications needs of consumers through their local government officials. You serve a crucial function – whether at the local or state level, before the Congress or the FCC, in the courts or in the court of public opinion – offering your views on important issues affecting all Americans – such as the availability of broadband, cable competition, and Voice over IP.

Acting through many of you here today, local government has stepped up in numerous communities across America to meet the information and technology needs of its residents by providing high-speed wireless Internet access, or broadband. Unfortunately, to the detriment of consumers, many of these efforts are being stymied by the efforts of those who don't want you to compete with them.

To put this in context, imagine if Borders and Barnes & Noble, claiming it was killing their book sales, asked lawmakers to ban cities from building libraries. The legislators would laugh them out of the State House. Yet the same thing is happening right now with respect to Wi-Fi and other municipal broadband plans, and it is being taken all too seriously. In fact, although it is almost universally acknowledged that broadband access is essential to economic growth and education, phone and cable companies are lobbying furiously to prohibit municipalities from providing free or discounted broadband to their residents. So far about a half dozen states have some sort of restrictions on their books, and similar measures are being considered in many others. More troubling still, is one proposed federal law that would preempt all municipal efforts to provide Internet access.

These initiatives are a bad idea. The losers will be consumers, particularly those who may not be able to afford Internet access on their own.

I'd like to focus today on municipal broadband and discuss why it is right for consumers, why the arguments advanced by its opponents fail and, why, upon closer examination, these arguments are internally inconsistent. Finally, I'll talk a bit about the Commission's role in opposing legislation that threatens competition – we've done this, for example, in real estate, legal services, and contact lenses – and offer my thoughts on whether municipal broadband is an area that the Commission should weigh in on.

## ***II. The Benefits of Municipal Broadband***

The first question policy makers need to ask is this: why is broadband good for consumers? There are many reasons, but the most compelling is that broadband is increasingly vital to our everyday functions and to our economy. It's not just about having the ability to download a movie in almost the blink of an eye, it's about the ability for everyone – business and consumers alike – to be able to access information that is fundamental to survive, grow, and thrive into the 21st Century.

In this day and age, Internet access is even more vital than some traditional government services because the Internet is both a repository of information, like a library, and a shared public space, like a park, to which everyone should have access. However delivered, inexpensive or free high speed Internet access is essential to bridge the digital divide and boost technological literacy. High speed access, particularly wireless access, benefits students, parents, small businesses, emergency workers and anyone else who values the enhanced portability, flexibility and speed that comes from not having to be tethered to a modem. And as the *New York Times* noted just this weekend, a Wi-Fi mesh could be the most promising and reliable emergency communications technology in the wake of a disaster like Hurricane Katrina. Finally, the economic benefits of more broadband are potentially enormous: computer, hardware, software and e-commerce businesses would grow exponentially if we could increase penetration by, say, 50 percent. On these basic points – whether you're conservative or liberal, in business or in government, meat-eater or vegan – all seem to agree.

That leads to the next question: why should local governments consider offering it? The answer is simple: the private sector won't always do so. Municipal development of broadband may be the best option in some cities where many residents cannot afford the high prices of private Internet providers, or where Internet providers simply did not see enough economic incentive to provide universal coverage. It may be the only option in rural areas where phone and cable companies have not extended any service – often contending that it would be prohibitively expensive. Indeed, even the mere threat of local government entering the broadband market may entice phone and cable companies to compete in these low-income and low-density areas. Let me walk through a few brief case studies – there are many, many more out there – that illustrate why cities should have the option of offering broadband to their residents.

The most celebrated example of local government seeking to provide broadband service to its residents took place in Philadelphia where, beginning last year, the city undertook plans to

offer wireless Internet access, or Wi-Fi. The city's rationale was straightforward: many of its residents simply did not have access to broadband, and Wi-Fi service would spur economic development, attract tourists and benefit city agencies at lower cost than the current telecom infrastructure.<sup>1</sup> Philadelphia's chief information officer also stressed the importance of providing broadband for education – noting that while schools have heavily invested in their computer systems, only 58 percent of Philadelphia's students have Internet access at home.<sup>2</sup>

These plans, of course, were almost terminated at their inception by lobbying efforts at the state level. But fortunately, after a public outcry, reason won out (to some extent) and Philadelphia was carved out of broader state restrictions on municipal Wi-Fi in future years. Today the city is moving forward, and last month Philadelphia announced that EarthLink and Hewlett-Packard are the finalists for construction of its Wi-Fi network.<sup>3</sup> Without getting ahead of myself, it is interesting to note that Philadelphia is turning to two highly capable private-sector companies to potentially provide this service – undermining the position of some that cities cannot provide broadband competently and the position of others that this issue breaks down as a fight between the private sector and local government. Hopefully the residents of Philadelphia – and in other major cities, like San Francisco, that are working on similar proposals – will soon have affordable access as a result of their government's efforts.

Moving from urban areas to rural communities, numerous small towns have taken steps to offer Wi-Fi service and other forms of broadband. While in some major cities there is a digital divide, in many small towns there is no divide at all: there is simply no service. Take, for example, Scottsburg, Indiana – a town of about 6,000 people – where phone and cable companies contended offering broadband service would be too costly. In Scottsburg, not only was wireless access important to residents, but it also was critical to the city's business retention efforts: several threatened to leave Scottsburg unless they could get broadband access. The city's electric utility stepped up and is now providing wireless service throughout the town. Thanks to this new telecommunications infrastructure, both business and individuals in Scottsburg have broadband access, employees have held onto their jobs, students have the same educational opportunities as their peers in the big cities, and the town is poised for additional development.

One final success story. In Lafayette, Louisiana – a small city with a population of slightly more than 100,000 – local officials sought to build an advanced network offering voice, data and video. Again, the purpose was to provide broadband services not being delivered to businesses and residents by the current provider. Not surprisingly, the incumbent phone

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<sup>1</sup> Peter Loftus, *Philadelphia Waits for Wi-Fi*, THE WALL STREET JOURNAL, March 3, 2005.

<sup>2</sup> David Haskin, *Philly CIO: Public Wi-Fi Needed to Close Digital Divide*, MOBILEPIPELINE, January 25, 2005, available at [www.mobilepipeline.com/57703505](http://www.mobilepipeline.com/57703505).

<sup>3</sup> Sarmad Ali, *Philadelphia Sets H-P, EarthLink as Wi-Fi Finalists*, THE WALL STREET JOURNAL, August 29, 2005.

company raised obstacles to the plan – and more may be coming before the plan is ultimately implemented. But fortunately, in this case state law was on the side of the city, affirmatively allowing it to build out. When the phone company demanded a referendum, the public responded by clearly voicing its support for broadband: two months ago it approved authority for the city to sell bonds to finance this project by an overwhelming 62-38 percent margin.<sup>4</sup>

Now I am obviously a supporter of municipal broadband. And I clearly oppose attempts by telephone companies to derail it – especially by doing so in the proverbial “smoke-filled room.” But the Lafayette fight does point us toward a more appropriate way to oppose these projects: if you don’t like what a city is doing, you can always try to “throw the bums out.” It is a time tested formula for citizens to ensure that their elected leaders don’t disagree with them too often. My guess, however, is that as long as residents are educated about what the local governments are trying to do, that usually won’t happen.

Many additional cities – small, medium, and large – are considering or implementing broadband networks. (We estimate perhaps 300 municipal broadband projects at present.) They are responding to a basic lack of service, they are seeking to promote business and they are using such networks to ensure public safety, improve educational opportunities and enhance consumer welfare.

And while I don’t think a comparison to other countries is needed to justify municipal broadband, such comparisons are worth noting. According to the OECD, the United States has dropped to 12th place worldwide in the percentage of people with broadband connections. But whether or not we are losing or gaining ground, in a world that is increasingly “flat” – borrowing Tom Friedman’s term<sup>5</sup> – you cannot stress enough the importance of expanding broadband access across America. This is not only fundamental for education, but also for overall productivity and competitiveness. In any event, adding another competitor to what is now largely a phone and cable broadband duopoly can’t help but move us forward and inject the market with more competition.

### ***III. Arguments to Thwart Municipalities from Providing Broadband***

There’s certainly nothing novel in witnessing incumbent providers attempting to keep new entrants out – whether it was railroads fighting off airlines, Ma Bell fighting off long distance providers or, more recently, efforts by travel agents to fend off Internet-based rivals. For many years I worked for a Senator from Wisconsin, Herb Kohl. One of the Senators he revered growing up, Phil La Follette – the son of Wisconsin’s great Progressive “Fighting Bob” and a

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<sup>4</sup> Lesley Cauley, *Towns Battle Big Companies to Expand Broadband*, USA TODAY, July 10, 2005, available at [www.usatoday.com/money/industries/telecom/2005-07-10-bellsouth-usat\\_x.htm](http://www.usatoday.com/money/industries/telecom/2005-07-10-bellsouth-usat_x.htm).

<sup>5</sup> Thomas Friedman, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY* (2004).

Progressive in his own right – once introduced legislation at the behest of the state’s dairy industry to prohibit oleomargarine from being transported in interstate commerce if it was colored anything but its natural and hideous gray. So we should not be shocked to see the telephone and cable companies’ arguing against municipal broadband. The arguments they make, however, are neither illuminating nor persuasive nor consistent.

First, the cable and telephone providers maintain that supplying access to the Internet is not a proper function for local government. But municipalities already provide their residents with many services that compete with private sector counterparts, such as libraries, schools, recreational centers, police, parking, subways and buses and, in some places, electricity. Indeed, with more resources, including books, available online (sometimes exclusively), you could even make the argument that cities with limited funds would make a greater impact on education by investing in free broadband rather than by building a new library. If a city like Philadelphia or a rural community like Scottsburg wants to provide Wi-Fi to help out their low-income residents, hold onto their small businesses, or build for their children’s futures, it is properly within their purview to do so.

Second, the phone and cable companies contend that this would amount to “unfair competition” because municipalities have certain advantages over private providers, for example, lower fixed costs and no need to pay for rights of way. However, if cities do have these so-called advantages and want to pass them on to their own residents, shouldn’t they be allowed to do so? After all, that is exactly what a municipal government does when it provides public education, or hires a police force, or stocks its libraries with books that are free to borrow.

Third, phone and cable companies argue that cities would be incompetent suppliers of broadband. This is mere sophistry. If the companies truly believed this, they wouldn’t be spending tens of millions of dollars lobbying to prevent government-sponsored competition.

Should cities fail to provide satisfactory service, most consumers will stick with the private providers, and the phone and cable companies won’t lose any business. But in many rural or poor urban areas, municipal service will be the only viable option and, for them, that is clearly better than no service at all. Should cities turn out to be competent Wi-Fi providers, of course, all consumers will benefit.

Underlying the incumbents’ position is the view that regulation – in this case, in the form of state prohibitions or restrictions on municipal broadband – is necessary to protect the market. It is a somewhat surprising argument coming from the phone and cable companies. Usually with both hands on the throttle they straightforwardly argue for deregulation – and usually I support them. But here they are using sleight-of-hand: seeking deregulation for themselves yet asking states to raise barriers to competition for others.

We should stick with their general position that it’s better to compete than regulate. And we should apply that principle here.

#### IV. *The Commission's Role*

So what role can the FTC play? Put differently, why do you care what the FTC thinks? When the Commission was established in 1914, its founders – including President Woodrow Wilson – did not intend for it to serve solely as a law enforcement agency, but vested it with additional statutory authority to conduct industry-wide studies, enabling us to enhance our understanding of how markets operate for the benefit of consumers. In the words of one of the original Commissioners our “duty is quite as much to bring to light what is sound and serviceable in business as what is sinister.”<sup>6</sup> We have used such authority quite effectively – particularly in recent years – through in-depth studies, hearings and workshops on a variety of topics including health care, intellectual property, and gas prices.

Consistent with the obligation to bring business practices to light, the Commission also has an advocacy function – commenting on proposed state rules and legislation that could affect competition and consumers. In recent years, the Commission has offered its views on a wide range of proposals, including attempts to restrict non-lawyers from handling real estate closings, efforts to prevent discount real estate brokers from providing lower cost services, and laws to prohibit sales of gasoline below cost.<sup>7</sup> Sometimes the states don't listen to us, but often they do. In fact, earlier this year Governor Schwarzenegger cited the FTC's concerns in vetoing a drug pricing measure.

My own sense is that municipal broadband does fit within the Commission's advocacy ambit. It is all about competition. It is timely (as you know better than anyone else). There has been a tremendous amount of recent legislative activity relating to cities' efforts to provide broadband, with prohibitions on the books or under consideration in many states.

Having said that, the Commission does have limited resources, and it must judiciously decide where to invest them. We cannot dive into every issue or respond to every request for advice on the competitive effects of proposed legislation. While the Commission is not in the business of saying what model or technology may work for a particular city, or even whether broadband is right for every community, at a minimum we could provide guidance concerning

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<sup>6</sup> William J. Harris, Commissioner, Federal Trade Commission, *The Work of the Federal Trade Commission*, remarks before the American Cotton Manufacturers Association, Atlanta, GA, at 6, available from FTC library. See also Jon Leibowitz, Commissioner, Federal Trade Commission, *Health Care and the FTC: The Agency as Prosecutor and Policy Wonk*, remarks before the ABA/American Health Lawyers Association “Antitrust in HealthCare” Conference, Washington, D.C. (May 12, 2005), at 2-4, available at [www.ftc.gov/speeches/leibowitz/050512healthcare.pdf](http://www.ftc.gov/speeches/leibowitz/050512healthcare.pdf).

<sup>7</sup> See generally Deborah Platt Majoras, Chairman, Federal Trade Commission, *A Dose of Our Own Medicine: Applying a Cost/Benefit Analysis to the FTC's Advocacy Program*, remarks before the Charles River Associates “Current Topics in Antitrust Economics and Competition Policy” Conference, Washington, D.C. (February 8, 2005), available at [www.ftc.gov/speeches/majoras/050208currebtopics.pdf](http://www.ftc.gov/speeches/majoras/050208currebtopics.pdf).

the competition and consumer protection issues that state and federal legislatures may want to consider before enacting legislation in this area. But speaking solely for myself as one of four Commissioners – we are eagerly awaiting confirmation of the fifth – the interests of consumers and competition seem squarely aligned with your efforts to provide broadband.

Within the Commission, I have asked our Office of Policy Planning to think about these issues, in particular to take a look at whether we should be on record opposing attempts to restrict municipal broadband. But the Commission is a consensus driven body – so we’ll see what our policy staff and my colleagues on the Commission think collectively.

At least as important as where we come out, however, are the McCain-Lautenberg bill and the soon-to-be-introduced Barton-Dingell legislation. They would both serve the interests of consumers by barring states from prohibiting municipalities from offering broadband. I don’t know whether these bills will ultimately be enacted, but my sense is that they do confirm that the tide is turning your way and against those who would thwart competition.

To be fair, the telephone and cable industries have brought many consumers substantial benefits and choices over their years: cable companies alone have wired up nearly 25 million people to high speed Internet access. Their lobbying efforts on municipal broadband have been very effective, and they haven’t done anything to run afoul of the antitrust laws enforced by the Commission. Indeed, lobbying in general is protected by the First Amendment; cable and telephone companies do it extremely well; we all benefit from these First Amendment freedoms.

But local governments have long been laboratories of experimentation. If they want to give their residents affordable Internet access, they should be allowed to try without being foreclosed by federal or state laws – or by cable and telephone interests. Hopefully, in the end, reason will triumph and states will reject efforts to choke off these truly vital broadband initiatives. As a matter of public policy, it is just plain wrong to stifle competition in this manner.

Thank you.