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FCC spends Taxpayer Funds to Promote Government Owned Networks over Private Networks

For more than a decade, various advocacy groups and municipalities have expressed an interest in building and operating government-owned broadband networks.

Because these ventures often fail and pose significant risks to taxpayers, **19 states have prohibited or otherwise restricted their municipalities from constructing or expanding these networks.**

- **Federal preemption of state law is prohibited absent direct federal-state conflict or a "clear statement" of preemptive effect by Congress in statute.** U.S. Const., Art. 6, Sec. 2. *See also Wisconsin Public Intervenor v. Mortier,* 501 U.S. 597, 605 (1991) ("[W]hen considering pre-emption, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.").

- **Notwithstanding the law and the absence of explicit preemption authority, the FCC has issued an order preempting state laws concerning municipal ownership and construction of broadband networks**. *In the Matter of the City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340 et seq., The Electric Power Board of Chattanooga, Tennessee Petition for Preemption of a Portion of Tennessee Code Annotated Section 7-52-601*, WC Docket No. 14-115, WC Docket No. 14-116, Memorandum Opinion and Order, released March 12, 2015.

- The **state Attorneys General for both NC and TN have appealed the FCC's order, asserting (among other things) that the FCC order is an unacceptable intrusion into state sovereignty**[1]. The appeal is pending in the 6th Circuit Court of Appeals. The Department of Justice filed to say that it will take no position on the case, leaving the FCC general counsel's office to defend the order.

- The FCC's campaign to promote GONs is even blind to its own Connect America Fund. The FCC just awarded millions of dollars in CAF II support to the areas covered by the TN and NC preemptions. Here and likely elsewhere the carriers deploying CAF supported networks could face stiff competition from FCC-supported GONS.

- **While the FCC's preemption decision is pending appeal, the FCC is spending taxpayer money and aggressively deploying FCC employees to state and local governments to advocate the construction and operation of government-owned broadband networks**. (*See e.g.*, *FCC's Gigi Sohn To American Cities: Stop Waiting – Build Your Own Public Broadband Networks*, http://stopthecap.com/2015/09/15/fccs-gigi-sohn-to-american-cities-stop-waiting-build-your-own-public-broadband-networks/)

1. https://www.documentcloud.org/documents/2428241-tennessee-states-rights.html
http://www.scribd.com/doc/265740458/nc-vs-fcc

- The FCC recently reversed long-standing E-rate precedent and now provides USF support directly to public school districts to build and own broadband networks. Districts can receive this funding even if multiple broadband services are already available.

The following are examples (from published research[2]) of the serious financial consequences experienced by municipalities across the country as a result of decisions to commit significant public resources (e.g., taxpayer dollars, debt obligation) to fund and deploy a GON:

GROTON, CT

- Groton built its cable and Internet system in the mid-2000s, but was forced to sell it in early 2013, because it was failing and mired in debt:
- It was losing over $2M a year
- Ultimately, the financials of the system caused the city's credit rating to be downgraded
- It was sold for $550,000 – representing a loss of over $30M
- The city remains with a nearly $28M debt and will have to pay $2.5M/year for 14 years to pay it off.

PROVO, UT

- This $60M GON failed due to tepid demand. City officials propped it up several times with loans and other support.
- In 2013, the city sold the failing system to Google for $1. Provo will incur additional costs on items related to the transfer to Google.
- Meanwhile, city taxpayers remain on the hook for $40M in outstanding debt.

LAFAYETTE, LA

- Costs of building and maintaining the GON have exceeded the initial $125M bond authorized by referendum. The total principal of Lafayette Utility System Fiber's debt is in excess of $150M, exclusive of startup costs and fees.
- The GON has not yet become financially self-sustaining, and has attracted only 14,000 subscribers (out of 48,800 potential subscribers).

UTOPIA (UT)

- 16 cities in Utah joined together to build a GON in 2002. From the start, it was financially challenged, spurred forward by unrealistic expectations and overly optimistic revenue projections.
- Throughout its long history, it has consistently under-performed. By 2014, it still had yet to turn a profit.
- Instead, the municipal system has a negative net value of $120M and owes $500M in interest payments through 2040.

[2] Charles M. Davidson and Michael J. Santorelli, Understanding the Debate over Government-Owned Broadband Networks: Context, Lessons Learned, and a Way Forward for Policy Makers (June 2014) available at http://www.nyls.edu/advanced-communications-law-and-policy-institute/resource-library/. Information on Monticello also found in: http://townhall.com/watchdog/minnesota/2015/10/07/city-audit-chronic-problems-muni-broadband-network-n8426

- A proposed plan to save the GON hinged on having residents, regardless of whether they subscribed, pay a monthly utility fee of $18-$20 to support build-out. About half the member cities rejected this proposal.

BURLINGTON, VT

- This system remains $17M in debt 8 years after launch.
- At one point, city officials took the questionable action of allocating money from a cash pool to support this failing GON.
- As a result, the city has seen its credit rating downgraded on several occasions.

MONTICELLO, MN

- This system has been a financial burden for the city, forcing it on numerous occasions to support it with loans from its General Fund.
- A 2014 consultant report said network would be profitable by 2015, but it is not even close to breaking even: $135,000 operating deficit through August 2015, a 3.6 percent decline in total subscribers, and revelations of state gift law violations.
- Still runs a $15,000 monthly deficit–not counting $500,000 bond payments starting in 2016.