

We Want Wi-Fi: The FCC's Intervention in Municipal Broadband Networks

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Chattanooga, Tennessee and Wilson, North Carolina were faced with a problem: many of their residents lacked access to high-speed broadband Internet access.¹ Private cable companies were hesitant to invest in these areas fearing that the investment would not yield high profits.² To remedy this problem, the municipal governments of Chattanooga and Wilson decided to build and operate their own telecommunications systems. Run through the local utility companies, Chattanooga and Wilson were able to create their own municipal broadband networks.³

Greenlight, Wilson's service, and the Electric Power Board of Chattanooga ("EPB"), Chattanooga's service, provided fast and reliable broadband access to their residents. The speeds offered by these municipal services surpassed the speeds offered by private broadband companies.⁴ With the success of these networks, the municipal service

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1. Broadband Internet is defined as "high-speed Internet access that is always on and faster than the traditional dial-up access. Broadband includes several high-speed transmission technologies such as: Digital Subscriber Line (DSL)[,] Cable Modem[,], Fiber[,], Wireless[,], Satellite[,], Broadband over Powerlines (BPL)." *Types of Broadband Connections*, FEDERAL COMMUNICATIONS COMMISSION, <https://www.fcc.gov/general/types-broadband-connections> (last visited Dec. 21, 2017). See Ellie Smith, *Cities, States Battle Over Municipal Broadband*, CABLE TV RULES AND SERVICE REPORT (Oct. 1, 2016), <https://www.bloomberglaw.com/document/X3UOBLQO000000>; See Jen Fifield, *Despite State Barriers, Cities Push to Expand High-Speed Internet*, PEW CHARITABLE TRUSTS (Sept. 22, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/09/22/despite-state-barriers-cities-push-to-expand-high-speed-internet>; See Reid Wilson, *City, State and Federal Governments are Fighting Over Chattanooga's Effort to Bring Broadband to Rural Consumers*, WASH. POST: GOVBEAT, (Aug. 12, 2014), https://www.washingtonpost.com/blogs/govbeat/wp/2014/08/12/city-state-and-federal-governments-are-fighting-over-chattanoogas-effort-to-bring-broadband-to-rural-consumers/?utm_term=.ec155264afa4; see also *Fast, Affordable, Modern Broadband: Critical for Rural North Carolina*, RURAL NC DESERVES MODERN BROADBAND 1, https://ilsr.org/wp-content/uploads/2016/02/2016_CL_IC-NC_Rural_Internet.pdf (last visited Feb. 8, 2016).

2. *Fast, Affordable, Modern Broadband*, *supra* note 1.

3. Municipal networks are defined as "those that are built out and run by and within the bounds of a city or region. This includes the deployment of Wi-Fi or fiber technologies that are managed in a number of different ways, but always with some involvement from municipal government." Nicole DuPuis, *What Is a Muni Network? Here Are the Basics*, CITIESPEAK (Oct. 27, 2014), <https://cityspeak.org/2014/10/27/what-is-a-muni-network-here-are-the-basics/>.

4. Moskowitz, *infra* note 34. See John Murawski, *Wilson Asks FCC to Override NC Law It Says Shields Time Warner, Comcast*, NEWS & OBSERVER (Aug. 27, 2014, 9:14 PM), <http://www.news>

providers looked to expand into the surrounding areas to bring Internet access to more people.⁵

However, Greenlight and EPB both encountered barriers to their desired expansions. State laws in both North Carolina and Tennessee prohibited the expansion of municipal utility service providers outside the municipal boundaries. This meant that Wilson and Chattanooga would be unable to expand their networks.⁶

In order to get around these state laws barring expansion, Chattanooga and Wilson implored the Federal Communications Commission (“FCC”) to intervene on their behalves. The FCC issued an order claiming that it had statutory power to preempt the state laws in order to further telecommunications access and support competition in the market.⁷

Following this order, North Carolina and Tennessee sued the FCC claiming that the FCC order violated state sovereignty and that preemption power was not granted to the FCC in the case of municipal broadband networks. The United States Court of Appeals for the Sixth Circuit ruled in favor of the states and overturned the FCC order, denying broadband access to many people in the areas surrounding Chattanooga and Wilson.⁸

While the Sixth Circuit’s decision protects state sovereignty, it greatly interferes with the mission of the FCC to spread telecommunications access, and it robs people of access to broadband Internet. The remedy to the problem is to implement a partnership between the state governments, municipalities, and private broadband companies. Working together, these public-private partnerships could bring high-speed broadband access to residents, especially those residents residing just outside municipal boundaries, at lower costs. This partnership would also allow private companies to retain their rights to profits while ensuring broadband access for residents outside traditional broadband coverage areas.

observer.com/news/technology/article10042214.html.

5. Smith, *supra* note 1.

6. Smith, *supra* note 1.

7. The order claimed that the FCC had the power to “preempt certain challenged provisions of Tennessee and North Carolina law restricting municipal provision of broadband service pursuant to section 706 of the Telecommunications Act of 1962 because . . . [the state laws] are barriers to broadband infrastructure investment and thwart competition.” In the Matter of City of Wilson, N. Carolina Petition for Preemption of N. Carolina Gen. Statute Sections 160a-340, 30 F.C.C. Rcd. 2409-10 (2015).

8. *Tennessee v. FCC*, 832 F.3d 597, 598 (6th Cir. 2016).

Part I of this Note examines the history of the FCC and its purposes. Part I will also explore the interplay between the FCC and municipal broadband network expansion. Part II of this Note will discuss the harmful effects of the Sixth Circuit's restriction on FCC power to intervene with state laws prohibiting the expansion of high-speed broadband access. Part III of this Note proposes a solution to remedy the restriction of municipal broadband network expansion. This Note proposes using a middle ground approach to form a public-private partnership between the state and municipalities and the private telecommunications providers.

I. HISTORY

The regulation of communication airways in the United States began with the Radio Act of 1912, long before the invention of television or the Internet.⁹ With the advent of television, and the growth of radio, a new regulation scheme was needed to address the challenges that came with these growing mediums.¹⁰ In order to address this problem, the FCC was created.¹¹

The FCC is an independent government agency created by Congress with the passage of the 1934 Communications Act.¹² The

9. The regulation of the communication airways in the United States began with the Radio Act of 1912. At this point in time, radio was a major form of communication. The military, emergency responders, police, and entertainment companies primarily used the radio to communicate and wanted to ensure that their communications would be able to reach their target audiences. The Radio Act of 1912 created a commission that designated airways for public and commercial use. *History of the Federal Communications Commission (FCC)*, SHORETEL, <https://www.shoretel.com/history-federal-communications-commission-fcc> (last visited Feb. 8, 2017). As radio communications continued to grow, the Radio Act of 1912 proved insufficient to handle the volume of radio airways and their accompanying problems. Licenses could not be denied to people or organizations seeking airways. There was no one regulating the content of the airways. In order to remedy these problems, Congress passed the Radio Act of 1927. With this came the creation of the Federal Radio Commission. This Commission had the power to grant or deny broadcasting licenses, assign frequencies, and ensure that the content broadcasted was within the public's interest. Jennifer Davis, *Anniversary of the Radio Act of 1927, The Beginning of Broadcast Regulation*, LIBR. OF CONG.: IN CUSTODIA LEGIS (Feb. 23, 2016), <https://blogs.loc.gov/law/2016/02/anniversary-of-the-radio-act-of-1927-the-beginning-of-broadcast-regulation/>.

10. Josh Levy, *Why the FCC Matters*, FREEPRESS (Nov. 7, 2013), <https://www.freepress.net/blog/2013/11/07/why-fcc-matters>.

11. SHORETEL, *supra* note 9.

12. Davis, *supra* note 9. The Federal Communications Act replaced the Federal Radio

Communications Act of 1934 (“the Act”) placed the regulation of telephone, television, and radio communication under federal control via the FCC.¹³ The Act gave the federal government the power to regulate “the assignment of frequencies, rates and fees, standards, competition, terms of subscriber access, commercials, broadcasting in the public interest, and government use of communications systems.”¹⁴

The Act replaced the Federal Radio Commission with the FCC and provided “more detailed regulation and oversight” over telephone, television, and radio communications in the United States.¹⁵ Specifically, the FCC was tasked with

regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication.¹⁶

Today, the FCC, serves as the “United States’ primary authority for communications laws, regulation, and technological innovation.”¹⁷ Additionally, the Communications Act enacted the FCC “to help break up some of the communications monopolies that had developed” by the end of the 1930s.¹⁸ Most notably, the FCC forced the divestiture of the Blue

Commission with the Federal Communications Commission. The Act also put telephone communications under the FCC’s purview. *Id.*

13. 47 U.S.C. §§ 151-154 (1934).

14. *The Communications Act of 1934*, JUST. INFO. SHARING, <https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1288>, (last updated Nov. 27, 2013).

15. *Id.*

16. 47 U.S.C. § 151.

17. *About the FCC*, FEDERAL COMMUNICATIONS COMMITTEE, <https://www.fcc.gov/about/overview>, (last visited Feb. 8, 2017).

18. SHORETEL, *supra* note 9.

2017]

We Want Wi-Fi

201

Network from the National Broadcasting Company (“NBC”) and ended anti-competitive practices at Columbia Broadcasting System (“CBS”).¹⁹ NBC’s Blue Network eventually became the American Broadcasting Corporation (“ABC”).²⁰ Even at its inception, the FCC worked to combat monopolies and discourage anti-competitive practices in the radio broadcasting business.

In February 1996, President Bill Clinton signed the Telecommunications Act of 1996 (“1996 Act”) into law.²¹ This was the first major revision of the United States’ telecommunications law since the Communications Act of 1934, nearly sixty-two years earlier.²² The goal of the law was “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”²³ The law responded to the rapidly changing technologies developed in the 1980s and 1990s, and it promoted a major restructuring of the telecommunications market.²⁴ The Internet, cable television, and satellite television were all technologies that had entered the telecommunications market since the Communications Act of

19. *NBC Board Studies Separation Plan*, FADED SIGNALS, <http://fadedsignals.com/post/37722082543/youll-see-many-references-in-the-early-days-of>, (last visited Feb. 8, 2017); see also *Nat’l Broad. Co. v. United States*, 319 U.S. 190 (1943). In 1938, the FCC opened an investigation to determine whether radio companies were engaging in chain broadcasting. *Nat’l Broad. Co.* 319 U.S. at 193-94. The Communications Act of 1934 defines chain broadcasting as “simultaneous broadcasting of an identical program by two or more connected stations.” *Id.* at 194. After conducting the investigation, the FCC determined that NBC owned about one third of the commercial broadcasting stations in the country and that NBC and CBS together controlled eighty-five percent of the nighttime wattage used for radio broadcasts. *Id.* at 197. The FCC also uncovered that NBC, CBS, and Mutual Broadcasting Systems, Inc. conducted almost half of the United States’ broadcasting business. *Id.* at 198. The FCC issued a series of regulations, which became known as the Chain Broadcasting Regulations. *Id.* at 193-94. These regulations combatted the networks’ practices that the FCC deemed contrary to the public interest and helped prevent one network from controlling the airways. *Id.* In this case, the Supreme Court upheld the FCC’s power to issue these regulations. *Id.* at 227.

20. *NBC Board Studies Separation*, *supra* note 19.

21. Pub. L. No. 104-104, 110 Stat. 56; Nicholas Economides, *The Telecommunications Act of 1996 and Its Impact* 3 (N.Y.U. Cent. for L. and Bus., Working Paper #CLB-99-003), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=81289.

22. *Telecommunications Act of 1996*, FEDERAL COMMUNICATIONS COMMISSION, <http://www.fcc.gov/general/telecommunications-act-1996>, (last updated Jun. 20, 2013).

23. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

24. Economides, *supra* note 21, at 2-3.

1934. The 1996 Act was enacted to include these and other changing technologies and to use regulations to promote competition.²⁵ Another goal of the 1996 Act was to achieve universal service.²⁶ The 1996 Act showed a renewed government interest in ensuring that all United States citizens had access to current telecommunications services at affordable prices.²⁷ The 1996 Act allowed telecommunications companies to compete with each other in a diverse, robust marketplace, while the consumer was granted access to advanced technologies at affordable prices.²⁸

Inspired by its history, the FCC today abides by five goals. These goals embody the mission of the FCC. The first goal is to “[p]romot[e] competition, innovation and investment in broadband services and facilities.” The second goal is to “[s]upport the nation's economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution.” The third goal is to “[e]ncourag[e] the highest and best use of spectrum domestically and internationally.” The fourth goal is to “[r]evis[e] media regulations so that new technologies flourish alongside diversity and localism.” The fifth goal is to “[p]rovid[e] leadership in strengthening the defense of the nation's communications infrastructure.”²⁹

A. Chattanooga

Chattanooga, Tennessee is Tennessee's fourth largest city with a population of about 175,000 people. However, until recently, many residents in Chattanooga and the surrounding areas lacked high-speed Internet access.³⁰

Families living in the rural areas of Chattanooga did not have access to

25. Economides, *supra* note 21, at 1-2.

26. Economides, *supra* note 21, at 35. Universal service is defined as the “the provision of basic local service to the widest possible number of customers.” Economides, *supra* note 21, at 3.

27. Joseph L. Gattuso, *The United States Telecommunications Act of 1996*, in GLOBAL COMM. INTERACTIVE (1998), <https://www.ntia.doc.gov/legacy/opadhome/overview.htm>.

28. *Id.*

29. *What We Do*, FEDERAL COMMUNICATIONS COMMISSION, <https://www.fcc.gov/about-fcc/what-we-do>, (last visited Feb. 8, 2017).

30. Smith, *supra* note 1, at 1.

2017]

We Want Wi-Fi

203

the infrastructure that provided high-speed broadband.³¹ Lower income families were offered reduced prices by privately-owned service providers, but they only had access to speeds much slower than what the municipally-owned provider would soon offer.³²

Faced with this problem, the city of Chattanooga decided to take matters into its own hands. In 2007, the city's municipal power company, Electric Power Board ("EPB"), set out to modernize the city's power grid by installing smart meters³³ in each Chattanooga home and business and connecting these smart meters to each other via a fiber optic network.³⁴ During this time, EPB proposed the idea of simultaneously using this fiber optic network to bring broadband Internet access to the residents of Chattanooga. The city along with EPB decided to build a high-speed municipal broadband network. Between 2009 and 2010, Chattanooga and EPB built a fiber optic network through the city.³⁵

In 2010, Chattanooga launched high-speed wireless access to 150,000 homes, businesses, buildings, and schools in the Chattanooga area. Following this launch, the entire Chattanooga area had access to the high-speed fiber optic network.³⁶ The Internet reached speeds of 150 megabits

31. "According to the Federal Communications Commission, '[t]he term broadband commonly refers to high-speed Internet access that is always on and faster than the traditional dial-up access. Broadband includes several high-speed transmission technologies such as Digital Subscriber Line (DSL), Cable Modem, Fiber, Wireless, Satellite, Broadband over Powerlines (BPL).'" Gabrielle Chevalier, *Broadband Access Needed for Rural Residents, State Rep. Mike Carter Says*, TIMES FREE PRESS (Apr. 6, 2016), <http://www.timesfreepress.com/news/community/story/2016/apr/06/broadband-access-needed-rural-residents-state/358653/>.

32. Dave Flessner, *EPB Rolling Out Cheap High-Speed Internet for Low Income Families*, TIMES FREE PRESS (Apr. 27, 2015), <http://www.timesfreepress.com/news/local/story/2015/apr/27/epb-rolling-out-cheap-high-speed-internet-low-income-families/301104/>.

33. These improvements by EPB were done in order to build a "smart grid" through the city. A smart grid would use technology to provide improved electric service and reliability. Smith, *supra* note 1, at 2.

34. "High-speed fiberoptic networks— which work by sending data as instant pulses of light rather than signals over a metal cable—are generally thought of as a telecom product." Brian Fung, *How Chattanooga Beat Google Fiber by Half a Decade*, WASH. POST (Sept. 17, 2013), <https://www.washingtonpost.com/news/the-switch/wp/2013/09/17/how-chattanooga-beat-google-fiber-by-half-a-decade/>; see Peter Moskowitz, *Chattanooga Was a Typical Postindustrial City. Then It Began Offering Municipal Broadband*, THE NATION (Jun. 3, 2016), <https://www.thenation.com/article/chattanooga-was-a-typical-post-industrial-city-then-it-began-offering-municipal-broadband/>.

35. Smith, *supra* note 1, at 2.

36. *Your Gig Is Here*, CHATTANOOGA GIG, <http://chattanoogagig.com/>, (last visited Feb. 8, 2017).

per second, and it cost much less than private competitors.³⁷

As of February 2018, Chattanooga offers some of the fastest broadband Internet in the country at speeds of one gigabit per second,³⁸ and provides higher broadband speeds at lower prices compared to competitors. By offering gigabit connections at \$70 a month and providing discounts for lower income families, EPB has been able to bring high-speed broadband to approximately 82,000 people in the Chattanooga area.³⁹

The success of Chattanooga's municipal wireless broadband attracted the attention of surrounding counties and cities. They began contacting Chattanooga to inquire about tapping into its broadband network.⁴⁰ In 2014, Chattanooga proposed expanding its broadband network into the surrounding counties, so other Tennessee residents could have access to fast, cheap Internet.⁴¹ However, a Tennessee state law passed in 1999 blocked the expansion.⁴² This law provided that a municipality may only provide Internet service to the area serviced by its power plant.⁴³ In this

37. Smith, *supra* note 1, at 2; *see also* Moskowitz, *supra* note 34.

38. *Your Gig Is Here*, *supra* note 36, at 1.

39. Moskowitz, *supra* note 34. The smart grid system also allows EPB to use the technology to more efficiently and cheaply monitor and deliver electricity:

The network also allows EPB to distribute its electricity more cheaply by monitoring and shutting off areas that are causing problems during storms, finding where repairs need to be made, and routing power more efficiently. And that means EPB can afford to offer the Internet to low-income families at significantly reduced prices, providing any family with children who receive free or discounted lunches at school 100 megabit service (which is several times faster than standard cable-company plans) for \$26.99. So far, about 1,800 families are taking advantage of the program.

Moskowitz, *supra* note 34. This 82,000 figure shows that approximately half of Chattanooga's residents are relying on the municipal broadband service to access the Internet. Moskowitz, *supra* note 34.

40. Wilson, *supra* note 1.

41. Wilson, *supra* note 1; Allan Holmes & Amirah Al Idrus, *Chattanooga Asks FCC for Help in Spreading Broadband*, CTR. FOR PUB. INTEGRITY (Jul. 24, 2014), <https://www.publicintegrity.org/2014/07/24/15148/chattanooga-asks-fcc-help-spreading-broadband>.

42. Tenn. Code Ann. § 7-52-601 (2017).

43. *Id.* The relevant portion of the statute provides,

(a) Each municipality operating an electric plant described in § 7-52-401 has the power and is authorized within its service area, under this part and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, sometimes referred to as "governing board" in this part, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video

2017]

We Want Wi-Fi

205

case, state law would prevent Chattanooga from expanding its municipal broadband service beyond the area serviced by EPB.⁴⁴

B. Wilson

Wilson, North Carolina is located forty miles east of Raleigh and has a population of about 50,000 people. Wilson is surrounded by rural areas.⁴⁵ In 2006, Wilson implemented a municipal broadband network that increased broadband access for the community and helped increase economic development.

Before the implementation of the municipal broadband network, Wilson residents were dealing with unreliability and other problems associated with private sector broadband providers. In order to remedy this problem, the city constructed a “fiber ring,” which was a network of fiber optic cables connecting city-owned facilities throughout the town.⁴⁶ As the fiber ring was installed, many local businesses began to notice the installation of fiber optic cables in the community. Recognizing the speed and reliability associated with a fiber optic network, business owners and companies reached out to the City of Wilson and expressed an interest in tapping into the network. Local businesses expressed dissatisfaction with the coaxial cables and copper lines that had been providing Wilson with broadband access for decades and felt they were not meeting their current

transmission, video programming, Internet services, or any other like system, plant, or equipment within or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality. A municipality may only provide cable service, two-way video transmission, video programming, Internet services or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant, and equipment used to provide such services, except upon compliance with the procedures set forth in § 7-52-132.

Id. at § 7-52-601(a).

44. Smith, *supra* note 1.

45. *Wilson, North Carolina*, CITY TOWN INFO, <http://www.citytowninfo.com/places/north-carolina/wilson> (last visited Feb. 8, 2017).

46. *Municipal Broadband in Wilson an Overview*, GREENLIGHT (May 10, 2010), <https://www.nclm.org/SiteCollectionDocuments/Legislative/Municipal%20broadband%20in%20Wilson%20an%20overview.pdf>. This fiber optic network connected city-owned facilities such as offices, payment centers, police buildings, recreation centers, and fire stations. *Id.*

broadband needs.⁴⁷

After conducting market studies and seeking review from two independent consulting companies, the city determined there was a significant demand for improved communication services, especially an increase in bandwidth.⁴⁸ The City of Wilson representatives met with the private broadband providers to see if they would consider building a fiber optic network in the city or partnering with the city to build one. However, the private sector expressed no interest in helping Wilson to construct a fiber optic network.⁴⁹ In 2007, the City Council of Wilson voted unanimously to offer the city's fiber optic network to every home and business in the city limits. The city named the service "Greenlight" and funded its construction through revenue earned from subscriber revenue rather than tax increases.⁵⁰

Greenlight was made available to the public in June 2008. Currently Greenlight offers speeds up to one gigabit per second.⁵¹ The services offered by Greenlight are available to all addresses within the city, and no consumer is turned away based on income level. With the Greenlight broadband service, the city is able to offer free Wi-Fi in the downtown area. Additionally, Greenlight has collaborated with two nonprofit after-school programs to provide Internet access to low-income children.⁵²

While the community was satisfied with the offering of the fiber optic network through Greenlight, the cable companies were not as enthusiastic. Companies lobbied North Carolina legislators, and in 2011, the North

47. *Id.* at 1.

48. *Id.* When the studies were conducted, Wilson already had broadband services, according to the FCC definition of the term. The FCC considers Internet access to be broadband with connections starting at 200 kbps. The providers servicing Wilson offered this speed of broadband, but it was "woefully inadequate." The city of Wilson claimed that these speeds were inadequate for essential online activities and that increased bandwidth was needed. *Id.*

49. *Id.* The City of Wilson reached out to two private sector telecommunications companies that serviced Wilson: Time Warner and Embarq. Wilson's population demographics and geography, however, made the city a very undesirable place for these companies to invest and build a fiber network, and Time Warner and Embarq expressed no desire in helping to fund a fiber optic network in Wilson. *Id.*

50. *Id.* at 2.

51. Cecilia Kang, *Broadband Law Could Force Rural Residents Off Information Superhighway*, N.Y. TIMES (Aug. 28, 2016), <https://www.nytimes.com/2016/08/29/technology/broadband-law-could-force-rural-residents-off-information-superhighway.html?mcubz=0>.

52. Moskowitz, *supra* note 34.

2017]

We Want Wi-Fi

207

Carolina General Assembly passed “[a]n Act to Protect Jobs and Investments by Regulating Local Government Competition with Private Business.”⁵³ This Act imposed restrictions on city-owned communication services, such as Greenlight.⁵⁴

The statute specifies that a city-owned communications service provider shall “limit the provision of communications service to within the corporate limits of the city providing the communications service.”⁵⁵ Thus, city-owned communication service providers, like Greenlight, are prohibited from expanding beyond the municipal boundaries.

Additionally, the statute provides a grandfather clause that exempts communication services implemented before January 1, 2011 from complying with a list of restrictions and obligations required of other communications service providers.⁵⁶ Greenlight was expressly granted a grandfather clause under section (c), which states that the communications service provider must be “[f]or the city of Wilson, the service area is the county limits of Wilson County, including the incorporated areas within the County.”⁵⁷ Since Greenlight fell within the grandfathered exception, it was exempt from complying with the obligations required under North Carolina law, which would prove costly and time-consuming to implement.

Greenlight services were initially offered to residents and businesses in the Wilson area. However, as Greenlight grew and offered faster broadband speeds, residents outside the Wilson area requested the

53. *Tennessee v. FCC*, 832 F.3d 597, 601 (6th Cir. 2016). This act was passed as a session law and is codified in N.C. Gen. Stat. § 160A-340.1 (LEXIS, Lexis Advance through Session Laws 2016-3, 2016 2nd Extra Session).

54. Lance, *Time Warner Cable: Buying Legislators and Selling Legislation*, BLUE NC (Oct. 31, 2011, 9:18 AM), <http://www.bluenc.com/content/time-warner-cable-buying-legislators-and-selling-legislation>.

55. N.C. Gen. Stat. § 160A-340.1 (through 2016 Reg. Sess.).

56. See N.C. Gen. Stat. § 160A-340.2. “The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following.” *Id.* The restrictions laid out in the statute include financial and procedural obligations that a communications service provider must comply. Requirements also entail holding a public hearing before a municipality decides to operate a communication service and soliciting bids from private companies in order to form a private-public partnership before the municipality begins construction on a network. *Tennessee v. FCC*, 832 F.3d at 601.

57. N.C. Gen. Stat. § 160A-340.2(c)3c.

expansion of Greenlight to their areas. The City of Wilson was prohibited from expanding Greenlight's services into the counties surrounding Wilson due to the North Carolina statute.⁵⁸ If Greenlight chose to expand, it would lose its grandfathered exemption status under § 160A-340.2. Losing this exemption status would force Greenlight to comply with time-consuming and costly obligations to remain in business. If Greenlight did not expand, it would not be subject to the obligations required by the statute.⁵⁹

C. FCC Order

On July 24, 2014, Chattanooga's EPB filed a petition with the FCC requesting the preemption of the Tennessee law prohibiting the expansion of the municipal broadband network.⁶⁰ The same day, Wilson also filed a petition with the FCC advocating for preemption of the current North Carolina laws preventing Greenlight's expansion.⁶¹

These petitions called upon the FCC to use their powers as laid out in Section 706 of the 1996 Act to preempt the state laws preventing these services from expanding.⁶² Section 706 of the 1996 Act provides that the FCC shall

encourage the deployment . . . of advanced telecommunications

58. N.C. Gen. Stat. § 160A-340.1.

59. See N.C. Gen. Stat. § 160A-340.

60. Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by EPB, Chattanooga, Tennessee, WC Docket No. 14-116 (filed July 24, 2014).

61. Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by City of Wilson, North Carolina, WC Docket No. 14-115 (filed July 24, 2014).

62. Petition Pursuant to Section 706 of the Telecommunications Act of 1996 for Removal of State Barriers to Broadband Investment and Competition, filed by EPB, Chattanooga, Tennessee, WC Docket No. 14-116 (filed July 24, 2014).

Pursuant to Section 706 of the Telecommunication Act of 1996, 47 U.S.C. § 1302, the Electric Power Board of Chattanooga ("EPB"), an independent board of the City of Chattanooga, Tennessee, brings this petition for removal of the barrier to deployment of advanced telecommunications capability posed by the territorial restriction contained in Tenn. Code Ann. § 7-52-601 ("Section 601"), which prevents EPB from offering in Tennessee Internet and video programming services outside of EPB's electric service territory.

Id. at 3.

capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.⁶³

The provision also tasks the FCC with conducting an annual inquiry into the availability of advanced telecommunications to the American public and to pinpoint underserved areas.⁶⁴

On February 26, 2015, the FCC officially adopted an order preempting the North Carolina and Tennessee laws prohibiting the expansion of municipal broadband service providers.⁶⁵ The FCC posited that their power to preempt the state laws stemmed from Section 706 of the 1996 Act.⁶⁶ The FCC argued that the North Carolina and Tennessee laws acted as “barriers to broadband infrastructures and thwarted competition,” and Section 706 charges the FCC with removing those barriers to communications.⁶⁷ Therefore, the FCC claimed that Section 706

63. Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56 (1996).

64. 47 U.S.C. § 1302(a) (2016). “Advanced telecommunications” are defined as “transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” 47 U.S.C. § 1302(d)(1) (2016).

65. MO&O Preempting Provisions of TN & NC Provision of Broadband Serv., 30 FCC Rcd 2408, 2015 FCC LEXIS 742, 61 Comm. Reg. (P & F) 1755, 2015 FCC LEXIS 742, 61 Comm. Reg. (P & F) 1755 (F.C.C. 2015).

66. *Id.* at 4.

We find that the Commission has authority under section 706 of the Telecommunications Act of 1996 to preempt the laws at issue in these petitions... Article I, section 8 of the Constitution gives Congress the power to regulate interstate commerce. Internet access unquestionably involves interstate communications, and thus interstate commerce... Congress has given the Federal Communications Commission the authority to regulate interstate communications... The Commission has previously exercised its authority to preempt state laws that conflict with federal regulation of interstate commerce... Finally, section 706 of the 1996 Act directs the Commission to take action to remove barriers to broadband investment, deployment and competition. There is no question that provisions of the state laws in question do limit broadband deployment — they expressly prohibit Wilson and Chattanooga from providing broadband services to more people in more places, even places where there is no broadband currently available.

Id.

67. *Id.* at 3.

supported the preemption of the state laws, as it was within the power of the FCC to remove legal barriers that prevented the American people from accessing broadband communications.⁶⁸

After the issuance of the FCC order, North Carolina and Tennessee both filed suit in the Sixth Circuit in attempts to block the FCC from preempting their state laws.⁶⁹ The Sixth Circuit consolidated these cases because they essentially dealt with the same issues.⁷⁰ The Sixth Circuit held that the FCC did not have power to preempt the state statutes prohibiting the expansion of municipal broadband service providers beyond the municipal boundaries.⁷¹

II. ANALYSIS AND PROPOSAL

The Sixth Circuit reversed the FCC's order preempting the state laws, which disallowed the expansion of Wilson's and Chattanooga's municipal broadband networks. The court's logic rested on the fact that Section 706 did not contain a clear statement to grant preemption power to the FCC.⁷² The clear statement rule applies when preemption enacted by the federal government results in "interposing federal authority between a State and its municipal subdivisions, which our precedents teach, are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion."⁷³

Essentially, the clear statement rule dictates that when the federal government attempts to intervene in a state and municipality relationship, there must be a clear directive from Congress that allows the interjection of the federal government.⁷⁴ Here, the Sixth Circuit held that Section 706

68. *Id.*

69. See Petition for Review, *Tennessee v. FCC*, No. 15-03291 (6th Cir. Mar. 20, 2015) and Petition for Review, *North Carolina v. FCC*, No. 15-03555 (6th Cir. May 11, 2015).

70. *State of Tennessee v. FCC et al.*, Docket No. 15-03291 (6th Cir. Mar 20, 2015). The FCC filed an additional brief with the court requesting oral argument. In this brief, the FCC reaffirmed their preemption power pursuant to Section 706 of the Telecommunications Act of 1996. *Id.* at vii, 4.

71. *Id.* at 600.

72. *Id.* at 613.

73. *Tennessee v. FCC*, 832 F.3d at 610.

74. *Id.* The clear statement rule originated from *Nixon v. Missouri Municipal League*, 541 U.S. 125 (2004). In this case, a Missouri statute prohibited political subdivisions from selling telecommunications services. The municipalities argued that this state law was preempted by 47 U.S.C § 253, which authorized the preemption of state laws prohibiting the ability of any entity to

2017]

We Want Wi-Fi

211

lacked such a clear statement granting preemption power to the FCC.⁷⁵ The court reasoned that when the clear statement rule was applied to a federal statute, the statute should be interpreted in a way that preserves states' rights. The Sixth Circuit noted that Section 706(a), which instructs the FCC to utilize measures to promote competition in the telecommunications market, does not indicate that preemption is a mechanism to promote competition.⁷⁶ Furthermore, the court noted that "infrastructure" as used in subsection (b) was ambiguous and did not necessarily refer to the public sphere, which is open to preemption.⁷⁷ The court held that "because Section 706 cannot be read to limit a state's ability to trump a municipality's exercise of discretion otherwise permitted by FCC regulations, Section 706 cannot be read to authorize such preemption."⁷⁸

The Sixth Circuit's decision is a win for proponents of federalism and states' rights. The court's decision clearly keeps power in the hands of the states and prevents federal intervention in state matters concerning Internet access. The Tenth Amendment of the United States Constitution states: "[P]owers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁷⁹ This amendment is the basis for state sovereignty and prevents unnecessary government intervention in state decision making.

The decision to overturn the FCC order prevents a federal government agency from infringing on state sovereignty. With its order preempting state laws regulating municipal broadband networks, the FCC exceeded its lawful bound and usurped power that rightfully belonged to the states.⁸⁰ If

enter into the telecommunications market. The FCC refused to recognize the preemption power in this case, and the Supreme Court agreed with the FCC. The Supreme Court held that under the statute, the State's own subdivisions were not included by the term "any entity." The Court reasoned that Congress had used "any entity" to refer to private entities wishing to enter the market and not to governmental entities. Based on this usage, the Supreme Court decided that preemption was not applicable in the case at hand. *Nixon v. Mo. Mun. League*, 541 U.S. 125, 128 (2004).

75. *Tennessee v. FCC*, 832 F.3d at 610. Is there a way to remove this space??

76. "Furthermore, nowhere in the general charge to 'promote competition in the telecommunications market' is a directive to do so by preempting a state's allocation of powers between itself and its subdivisions." *Id.* at 613.

77. *Id.*

78. *Id.*

79. U.S. CONST. amend. X.

80. "Among many candidates, the FCC's order ranks as one of the most far-reaching and far-

the order had been upheld, the federal government would have violated the sovereignty of North Carolina and Tennessee. Additionally, the FCC would have had serious consequences in other states who also had laws restricting municipalities' ownership and operation of municipal broadband networks.⁸¹ The Sixth Circuit prevented unnecessary government intervention and protected state sovereignty.

This ruling, however, negatively affects the mission of the FCC. The mission of the FCC is to "make [forms of communication] available . . . to all the people of the United States."⁸² Additionally, Section 706 gives the FCC power to regulate broadband networks and promote competition among providers.⁸³ The Sixth Circuit ruling impedes the FCC's charge to carry out these goals. The FCC order would have made more broadband options available to consumers, since the municipal broadband service providers like Greenlight and EPB provided consumers with another choice for Internet and cable services; an alternative to the private cable and satellite companies.

One of the issues plaguing Internet users in the United States is the lack of options when it comes to choosing a broadband provider. Major cities usually only have a few options of service providers. In rural areas, if a telecommunications company is even present, consumers are usually limited to one service provider. Large cable and satellite companies are hesitant to invest in rural areas where there is a low population density.⁸⁴

fetches attempted power grabs in the agency's history. Thankfully, in *Tennessee v. FCC*, the Sixth Circuit refused the agency's bold attempt to exceed its lawful bounds." Randolph J. May et al., *Sixth Circuit Ruling Stops FCC's Unlawful Municipal Broadband Preemption*, FEDERALIST SOCIETY BLOG (Aug. 12, 2016), <http://www.fed-soc.org/blog/detail/sixth-circuit-ruling-stops-fccs-unlawful-municipal-broad-band-preemption>.

81. *Id.*

Had the agency's order been upheld, the FCC surely would have preempted several other state laws restricting municipalities' ownership and operation of broadband networks. Several state governments would have been locked into an unwise policy of favoring municipal broadband business ventures with a track record of legal and proprietary conflicts of interest, expensive financial failures, and burdensome debts for local taxpayers.

Id.

82. 47 U.S.C. § 151 (2012).

83. Petition, *supra* note 60.

84. "Private companies do not invest in low density areas because profits are slim or nonexistent due to the high cost of building a network." *Competition*, COMMUNITY NETWORKS, <https://muninetworks.org/content/competition>, (last visited Feb. 8, 2017).

2017]

We Want Wi-Fi

213

In order to maximize profit and prevent competition, telecommunication companies usually operate on their own networks and infrastructure, refusing to share infrastructure with other companies.⁸⁵ This leads to the creation of monopolies, which creates higher profits for the companies' shareholders.⁸⁶ Because of these monopolies, communities are left with very few options when it comes to selecting a broadband provider. These communities are subject to high prices and low bandwidth rates set by the cable and satellite giants.⁸⁷

The FCC is charged with encouraging competition among telecommunications providers and bringing telecommunications to as many people as possible.⁸⁸ The order issued by the FCC preempting state laws would further these goals. If EPB and Greenlight were able to expand beyond their municipal boundaries, broadband access would increase for people residing in rural communities. These residents would have access to fiber optic broadband speeds. This is in contrast to some rural areas that are not even serviced by a single cable or broadband provider.⁸⁹ Additionally, municipal broadband networks provide affordable access to low-income families and provide educational access to many schoolchildren.⁹⁰ Broadband access for people would increase, especially among those who would not otherwise have access to the Internet without the FCC order. Chairman Wheeler of the FCC has even stated that the FCC will consider all available options to deliver broadband to the American people. It is clear that the preemption of state laws in this case would further the FCC's mission.⁹¹ Even though this preemption

85. *Id.*

86. *Id.*

87. See Sean Buckley, *Comcast AT&T Thwart Municipal Broadband Expansion Effort in Tennessee*, FIERCETELECOM (Mar. 16, 2016, 12:19 PM), <http://www.fiercetelecom.com/telecom/comcast-at-t-thwart-municipal-broadband-expansion-effort-tennessee>; and Flessner, *supra* note 32.

88. 47 U.S.C. § 151.

89. Chevalier, *supra* note 31.

90. Kang, *supra* note 51.

91. The FCC "shall encourage deployment of communications networks through various means to remove barriers to competition." 47 U.S.C. § 151; see generally TELECOMMUNICATIONS ACT OF 1996, 1996 Enacted S. 652, 104 Enacted S. 652, 110 Stat. 56, 104 P.L. 104, 1996 Enacted S. 652, 104 Enacted S. 652. See also Jon Brodtkin, *States win the right to limit municipal broadband, beating FCC in court*, ARSTECHNICA (Aug. 10, 2016, 12:36 PM), <http://arstechnica.com/tech-policy/2016/08/in-blow-to-muni-broadband-fcc-loses-bid-to-overturn-state-laws/>. "The FCC's mandate is to make sure that Americans have access to the best possible broadband," Wheeler said in a

would fulfill the FCC's mission, it would be doing so at the expense of state sovereignty. Where states like North Carolina and Tennessee have passed laws placing restrictions on municipal broadband networks, a federal agency should not be able to violate state sovereignty by invalidating such state laws, even if such an order would further the agency's mission. If a state is dissatisfied with a law, it is the state's decision to change the law, not a federal agency's duty to preempt and violate state's rights.

As discussed earlier, there is not much competition in the current broadband landscape. A few large private companies dominate the market. By injecting municipal broadband networks into the market, competition is created.⁹² More competition can result in decreased prices for consumers, which makes high-speed broadband more affordable. Competition can also drive private companies to increase their broadband speeds. Municipal broadband networks operating on fiber optic cables offer some of the fastest speeds available.⁹³ Private cable and satellite companies cannot yet compete with these speeds, as it is costly to build the necessary infrastructure. By creating competition in the market, private companies will be forced to upgrade their infrastructure and speeds in order to remain competitive with the municipal networks.⁹⁴ This competition results in faster, more affordable options for the consumer.

However, the Sixth Circuit's decision overturning the FCC order took these options away from consumers. The decision has placed a burden on the FCC's ability to carry out its mission and bring telecommunications services to the greatest number of people.⁹⁵ Even the court recognized the

statement today. "We will consider all our legal and policy options to remove barriers to broadband deployment wherever they exist so that all Americans can have access to 21st Century communications." *Id.*

92. Telephone Interview with Christopher Mitchell, Institute for Local Self-Reliance (Nov. 11, 2016).

93. Moskowitz, *supra* note 34.

94. *Id.*

95. Murawski, *supra* note 4.

Greenlight plans to expand to about 7,600 households in Wilson County that currently don't have access to the service, but it would also like to expand outside its service area to reach about 1,000 potential customers in neighboring counties, said Greenlight General Manager Will Aycock. "Without the arbitrary barriers posed by state law and at the appropriate market time," Aycock said, "it would be a natural extension of the city's next generation broadband

2017]

We Want Wi-Fi

215

advantages to allowing municipal broadband networks to expand to surrounding areas.⁹⁶ By failing to uphold the order, the Sixth Circuit has prevented consumer access to fast, reliable telecommunications networks.⁹⁷

Not only does the Sixth Circuit's decision shut consumers out from broadband access, but it also impacts the economic development of communities hoping to benefit from the expansion of municipal broadband networks.⁹⁸ Benefits of public Internet access include economic growth for communities through education, tourism, and town promotion.⁹⁹ Without the expansion of the municipal broadband networks, some communities are unable to take advantage of the benefits that come with high-speed broadband access.

The Sixth Circuit's decision is flawed because it burdens the FCC and limits consumer choice. An alternative to federal agency overreach would involve a middle-ground approach, which is the best solution to remedy the issue of municipal broadband services. This approach would involve private companies, municipalities, and states working together in a public and private partnership to build broadband networks, which will bring Internet provider options to consumers.

One aspect of this middle ground approach is utilizing "dig once"

infrastructure to provide service to areas already served by our electric service, particularly given that the city already has some of the necessary infrastructure in place."

Id.

96. "Our holding today is a limited one. We do not question the public benefits that the FCC identifies in permitting municipalities to expand Gigabit Internet coverage." *Tennessee v. FCC*, 832 F.3d at 613.

97. Even former President Obama has recognized the importance of broadband access calling high-speed broadband access a necessity and not just a luxury. According to a report from the White House Council of Economic Advisors, less than half of the poorest households in the United States have Internet access. This disparity continues to exist. Kate Knibbs, *Obama Has a Plan to End America's Internet Access Inequality Problem*, GIZMODO (Jul. 15, 2015, 11:45 AM), <http://gizmodo.com/obama-has-a-plan-to-end-americas-internet-access-inequa-1717965333>.

98. FCC Chairman Wheeler explained this further when he "said that the judges' ruling 'appears to halt the promise of jobs, investment and opportunity that community broadband has provided in Tennessee and North Carolina.' Communities that want better broadband, he said, 'should not be thwarted by the political power of those who, by protecting their monopoly, have failed to deliver acceptable service at an acceptable price.'" Brodtkin, *supra* note 91.

99. *The Benefits of Public Internet Access*, VERMONT COUNCIL ON RURAL DEVELOPMENT, <http://vtrural.org/programs/digital-economy/updates/benefits-of-public-internet-access>, (last visited Feb. 8, 2017).

policies.¹⁰⁰ Dig once policies involve coupling infrastructure projects like highway or road building with broadband projects. During these capital projects, fiber optic cables are laid while roads or highways are being built.¹⁰¹ Because the telecommunication services would be partnering with the city to build the infrastructure, there would be a reduced cost to the company for building the improved infrastructure. Dig once policies result in lower infrastructure costs, making it easier and more economical to create faster, more reliable Internet service. The public-private partnership would help “decrease the cost of broadband while increasing the speed of deployment.”¹⁰²

Another aspect of the public-private partnership is the “one touch make ready” policy. The “one touch make ready” policy makes it easier for new companies to attach their telecommunications equipment to existing utility poles.¹⁰³ On a typical utility pole, there are usually multiple attachments on the pole, delivering different services like telecommunications and cable television. When a new service provider wants to attach its equipment to the utility pole, multiple crews are needed to rearrange the existing equipment in order to make room from the new company’s equipment. This rearrangement results in service disruptions, delays, and added costs to the new service provider that are passed on to the consumer.¹⁰⁴ On a one touch make ready pole, the company that owns the

100. “One Touch” Make-Ready Policies: the “Dig Once” of Pole Attachments, NEXT CENTURY CITIES BLOG (Jan. 6, 2016), <http://nextcenturycities.org/2016/01/06/one-touch-make-ready-policies-the-dig-once-of-pole-attachments/>.

101. *Id.*

Dig once policies, which mandate laying conduit and/or fiber optic cables when undertaking capital projects such as road construction, have been hailed as no-brainer actions that could decrease the cost of broadband while increasing the speed of deployment. This idea has strong bipartisan support in Congress and at the White House and has been praised by the American Cable Association and the Fiber To The Home (FTTH) Council. Next Century Cities cited dig once as one of our policy recommendations for local governments in our 2015 Policy Agenda.

Id.

102. *Id.*

103. Eleanor Kennedy, *FCC: One Touch Make Ready Laws Consistent with Goals of Federal Policy*, NASHVILLE BUS. J. (Oct. 31, 2016, 2:55 PM), <http://www.bizjournals.com/nashville/news/2016/10/31/fcc-one-touch-make-ready-laws-consistent-with.html>.

104. “One Touch” Make-Ready Policies, *supra* note 100. “Often times, there are multiple attachments on the pole already (e.g., telecommunications, cable etc.), and, currently each is moved sequentially—which can create delays and multiple disruptions in a neighborhood.” “One Touch”

2017]

We Want Wi-Fi

217

utility pole agrees on a common contractor to service the pole and rearrange the attachments when a new service provider wishes to attach to the pole.¹⁰⁵ This type of pole cuts down on the costs of sending multiple crews out to rearrange equipment when a new provider wishes to attach to the utility pole.¹⁰⁶

A public-private partnership is the best remedy to the municipal broadband expansion problem because it preserves state sovereignty while simultaneously allowing the expansion of broadband access. “Dig once” and “one touch make ready” pole policies enable the state and municipalities to work together with private companies to carry out the mission of the FCC and bring broadband access to as many people as possible. These aspects of a public-private partnership also create more choices for consumers by introducing competition into the market. Most importantly, a public-private partnership does not involve a government agency preempting state law. It allows states to keep their laws intact and decide what is best for their residents and prevents unnecessary government intervention in state matters.

This public-private partnership policy is far superior to allowing the FCC to preempt state laws regarding municipal broadband expansion, and it avoids the thorny constitutional issues of state sovereignty entirely. If the Sixth Circuit allowed the FCC to preempt these laws, it would set a dangerous precedent for future FCC preemption cases. The court would have sanctioned such FCC overreach, and the agency could use the decision to further interfere in future state affairs violating traditional notions of state sovereignty. While the FCC does important work, it should not have the ability to violate the basic principles of federalism fundamental to the United States Constitution.

III. CONCLUSION

An approach that combines municipalities working with private broadband providers is the best solution to ensure the expansion of

Make-Ready Policies, *supra* note 100.

105. “One Touch” *Make-Ready Policies*, *supra* note 100.

106. “One Touch” *Make-Ready Policies*, *supra* note 100.

municipal broadband networks. A partnership between cities like Chattanooga and Wilson and the private broadband providers will result in more options and faster broadband speeds for the consumers, while still enabling private companies to profit. This solution is in line with the FCC's mission to bring telecommunications services to the masses and to promote competition in the market.

In addition to helping the FCC further its mission, a public-private partnership prevents unnecessary federal government intervention in state affairs. States are free to continue making their own decisions without federal government meddling.

Most importantly, a public-private partnership allows access to high-speed broadband Internet access for a greater number of people. Internet access should be available to everyone as it is crucial for the economic and social wellbeing of American cities and their residents.¹⁰⁷ The Sixth Circuit's decision prevents people from accessing this vital resource. With a public-private partnership, Internet can be accessible to all.

107. The United Nations has likened Internet access to a vital human right. "[Internet] facilitates vast opportunities for affordable and inclusive education globally, or provides other resources for education, especially across the digital divide." David Kravetes, *U.N. Report Declares Internet Access a Human Right*, WIRED (Jun. 3, 2011, 2:47 PM), <https://www.wired.com/2011/06/internet-a-human-right/>.