

# Policy and Legal Implications of Municipal Broadband Networks

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## Context: Potential Services

- Broadband / Internet access
- IPTV / video
- VoIP
- Wholesale data transmission
- Specialized govt. applications
  - surveillance, public safety, AMR, ITS ...

# Context: Spectrum of Municipal Involvement

- Owner / steward of public right-of-way
- Owner of facilities (dark fiber, etc)
- Provider of data transmission capacity / service
- Provider of retail services to the public
- Government services

# Legal Review

- Authority issues
- Prohibitions and procedural hurdles
- Pole attachments, franchising
- Organization issues & establishment
- Other issues, once operational

# Authority Issues

- Public entities must have sufficient authority for each activity, at every step
- Mostly state law, wide variation
  - “Dillon’s Rule” vs. Home Rule
- Procedural perfection of authority
- Must consider state constitutions, charters, ordinances, finance laws and instruments, etc.

# Prohibitions, Procedural Hurdles

- 14 states have enacted some sort of barrier to public entry
  - AR, FL, MN, MO, NE, NV, PA, SC, TN, TX, UT, VA, WA, WI
- Outright prohibitions are rare, but restrictions can be equally effective:
  - business plan approval requiring short-term profitability
  - referendum requirements
  - cross-subsidy restrictions
  - wholesale only
  - “incumbent veto”
  - generalized “private use” and “commercial activity” restrictions

# Pole Attachments

“Praise the humble utility pole. It’s the linchpin and the albatross of so many metro-scale wireless plans.” - Glenn Fleishman

# Pole Attachments

- Wireless access points, overhead fiber
- Federal Pole Attachment Act
  - FCC rates/rules or state rules
- Utility foot-dragging
- Power supply for wireless APs
  - metered vs. unmetered
  - technical problems: “bank lighting,” timing issues, etc.
- Municipal ownership of poles is VERY helpful

# Franchising

- May need local franchise for deployments of facilities in public right-of-way (video or not)
- State and local laws vary widely
- Go the extra mile to ensure no discrimination in favor of government project

# Organizational Considerations

- Separate board, commission, authority, district, etc.
- Coops and condominium agreements
- Tax-exempt non-profit? 501(c)(3), 501(c)(12)
- Interlocal entities and agreements

# Other Issues

- Universal service contribution obligations
- Tariff filings, if necessary
- CALEA
  - SSI reports, sec. 103 compliance
- Privacy
  - special surveillance issues, public records laws, privacy policies
- Copyright
  - registered agent filing
- Service agreements, etc.