

Community Wireless Summit

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**State Legal Trends
Affecting Community Wireless
Networks**

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Overview

- Status of state barrier-to-entry battles
- Have we turned a corner?
- What's next?

State Barriers to Entry – Existing Barriers

- **Arkansas** – muni LEC service prohibited
- **Colorado** – requires vote before municipality may provide retail telecom, cable, or “advanced services” (144Kb/s)
- **Florida** – ad valorem taxes increase price of public services
- **Louisiana** – various procedural hurdles, muni wireless emergency exception, limit to 128Kb/s
- **Missouri** – bars munis from providing telecom services or facilities except under certain conditions
- **Minnesota** – requires 65% supermajority before muni telecom services
- **Nebraska** – prohibits muni wholesale or retail broadband, telecom or cable service
- **Nevada** – prohibits larger munis from providing retail “telecommunications service”

State Barriers to Entry – Existing Barriers

- **Pennsylvania** – prohibits political subdivisions from providing advanced telecom and broadband services for a fee to the public unless (1) services not provided by LEC, and (2) LEC refused to provide such services within 14 months
- **South Carolina** – significant restrictions and burdensome procedural requirements on municipal providers of communications services
- **Tennessee** – allows muni provision of cable, Internet and “like” services only upon satisfying public disclosure and other requirements

State Barriers to Entry – Existing Barriers

- **Texas** – bars munis from offering telecom services to the public either directly or indirectly through a private provider
- **Utah** – burdensome procedural and accounting requirements, limits authority of munis to provide retail services
- **Virginia** – permits munis to offer all services, provided they satisfy various anti-competitive requirements.
- **Washington** – utility districts may only provide wholesale telecommunications services
- **Wisconsin** – requires municipal providers to conduct feasibility study and hold public hearing, prohibits “subsidization”

Proposed State Barriers to Public Entry: 2005-06

2005:

Colorado – SB 05-152 signed into law 6/3/05

Florida – SB1322 signed into law 6/2/05

Illinois – SB 499 Amendment 1 (died in committee)

Indiana – HB1148 would have prohibited any muni from providing *any* communications service if a single private-sector entity was already doing so, or *claimed that it intended to do so* within nine months. (died in committee)

Iowa – HF 861 (died in committee)

Louisiana – SB 126 signed into law 7/11/05

Proposed State Barriers to Public Entry: 2005-06

2005, cont.:

Michigan – HB 5237 restricted muni provision of communication svcs (broadly defined); public entities may proceed if they do not receive 3 qualifying bids

Nebraska – LB 645 enacted 6/3/05, prohibits any agency from providing wholesale or retail broadband, Internet, telecom or cable SVC

Ohio – HB 591, HB188 (not re-introduced, still under discussion)

Oregon – HB 2445 (died in committee)

Tennessee – HB 1403 temporary moratorium signed into law
6/7/05

Proposed State Barriers to Public Entry: 2005-06

2005, cont.:

Texas – HB 789 originally included municipal wireless provisions, (died in committee)

Virginia – HB 2395, adding muni obligations in addition to Virginia Wireless Service Authorities Act (died in committee)

West Virginia – SB 740, originally pro-municipal broadband, hijacked by Verizon (died in committee)

Proposed State Barriers to Public Entry: 2005-06

2006:

Indiana – SB 245 telecom reform legislation: Ch. 35 would have broadly prohibited municipalities from providing “communications service” after June 30, 2006; successor bill (HB1279) did not contain municipal network provisions and was enacted March 7, 2006.

Have we turned a corner?

- Trend away from blanket prohibition in state laws
- Model evolving toward public-private partnership
- Favorable legislation at the federal level (COPE Act, Lautenberg-McCain)
- Greater awareness, lots of favorable press in the past year (thanks BellSouth!)
- Going on the offensive in some places

Have we turned a corner?

BUT:

- No shortage of ways to squelch community wireless, esp. if/when it becomes a competitive threat
- Even if federal legislation (COPE, etc.) prohibits states from barring muni networks...
- Clear yes-no prohibitions could shift to highly technical and insidious hurdles
- State legislation still percolating (Conn., Minn.)
- Federal legislation restricting municipal networks is still very much alive (Ensign, etc.)

Other issues – what's next?

- ROW / pole attachments
 - Entity that owns the poles has enormous power; wireless attachment rates not regulated as telecom/cable attachments under federal law
- Electricity / power issues
 - Tariffed metering vs bulk rate. May need to involve PSC
- Privacy and location-based applications
- Network neutrality?
- Others? What can be changed to make it easier?

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