

WiNOG  
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**Legal Considerations for  
Prospective Municipal Wireless Networks**

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# Overview

- Why Municipal Wireless?
- Models of Municipal Wireless
- Structural Options
- Authority Issues
- Regulatory Issues
- Political Issues
- State Barriers to Entry
- Federal Legislation

# Why Municipal Wireless?

- Economic development, educational opportunity, digital divide, homeland security ...quality of life
- Municipality owns the right of way
- Municipality is a major customer: anchor tenant
- Municipality can effectively coordinate multiple participants/customers (.gov, .edu, .org, etc.)
- Funding – tax-advantaged financing, grants, loans
- Frequently NOT “taxpayer funded”

# Many Models of “Municipal Wireless”

- Own/lease facilities + retail ISP
  - Chaska, MN; Scottsburg, IN; Owensboro, KY
- Own/lease facilities + wholesale capacity
  - Philadelphia (?); AllCoNet2 (MD); Houston County, GA
- Own/lease facilities + restricted use
  - Oklahoma City; Las Vegas; New Orleans
- Lease ROW + muni service + retail offering
  - Shenandoah, VA; Muskegon/Marquette, MI

It's *always* a public-private partnership...

# Structural Options

- Lots of room for creativity, but options may be restricted by local/state law
- Parts of municipal government: special boards, authorities, commissions
- Separate non-profit
- Coops and condos
- Multi-government interlocal projects

# Authority Issues

- Federal does not authorize, but does not prohibit
- Dillon's Rule v. Home Rule
- Must have both state and local authority
- Substantive *and* procedural
- Explicit or implicit grants or denials: is implicit sufficient?
- May affect the deployment model

# Regulatory Issues

- Classification/regulation of services
  - Internet Access? VoIP? Video? “info. service,” “telecom.service,” “cable service”
  - *Brand X*; FCC IP-Enabled Svcs, Wireline NPRM; Sununu, Boucher-Stearns, Pickering VoIP bills, etc. etc.
- E911, CALEA, Universal Service, privacy
- Towers, poles, ROW, easements, etc.
- Customer service standards, taxation

# Political Issues

- Potential – probable? – opposition from deep-pocket incumbents; expect push polls and dirty tactics (Lafayette, Tri-Cities)
- The bigger the project, the more likely the opposition
- Not a matter of public vs. private sector
- Lots of allies (private sector) and recent successes

# State Barriers to Public Entry

- Current barriers – but read them carefully!
  - AR, FL, MN, MO, NE, NV, PA, SC, TN, TX, UT, VA, WA, WI
- Legislative battles this year in:
  - CO, FL, IA, IL, IN, OH, OR, NE, TN, TX, VA
  - Most efforts to enact barriers failed
  - More awareness, more anger with incumbents
- See [http://www.baller.com/comm\\_broadband.html](http://www.baller.com/comm_broadband.html)

# Federal Legislation

- Rep. Sessions: “Preserving Innovation in Telecom Act” (H.R. 2726)
  - state and local governments would be prohibited from offering telecommunications, telecommunications services, information services or cable service in any geographic area in which a private entity is already offering a substantially similar service.
  - “Offering” = 1 person
  - Essentially a private-sector / incumbent veto

# Federal Legislation

- Ensign / McCain:
  - Comprehensive telecom reform bill
  - Allows municipal wireless / wired broadband, BUT:
    - Requires RFP conducted by “neutral third party”
    - Non-govt. entities to be given preference
    - If govt. wins RFP, private sector still has “ability” to place facilities in same conduit

# Federal Legislation

- Lautenberg / McCain: S.1294
  - Prevents state governments from outlawing municipal broadband projects

# Resources

- <http://muniwireless.com> – excellent compilation of U.S. and international muni wireless projects, including business models, vendors, etc.
- Baller Herbst List
  - daily email of items of interest relating to:  
Broadband, Wireless, VoIP, Video, Telecom, etc.
- <http://www.baller.com>

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