

TOP TEN MYTHS AND REALITIES ABOUT MUNICIPAL BROADBAND PROJECTS

Background: *Texas has an opportunity to take advantage of vast new broadband-driven digital transformations that promise to unleash a wave of innovations that can transform the way we learn, work, and live as well as bridge the digital divide. Cities across the state are hoping to accelerate this opportunity and are stepping forward with creative solutions for extending the benefits of ubiquitous broadband access to city residents. Like their counterparts in other States, the municipalities of Texas also want to do their part to help America shed its embarrassingly low – 13th in the world -- global ranking for broadband Internet access. This isn't the time to be erecting new barriers to broadband when we have communities throughout the state that are ready, willing and able to extend the reach of the Internet through advanced broadband networks. Rather than embracing this future, some opponents of municipal broadband projects are hiding behind a set of unfounded myths in order to pass legislation that would stall, stifle or stop these innovative community-based efforts.*

Myth #1: Municipalities have no business competing with the private sector.

Municipalities do not invest in infrastructure to compete with private providers. They invest only when the public demands it, to fill gaps left by the private sector, or to provide better service or lower rates than the private sector is willing or able to provide.

- ***They Have Different Goals:***

- Private entities must meet shareholder demands for maximum profits from subscribers and therefore drive toward high profits over a short time. As a result, they concentrate on the most lucrative densely populated areas and spread the limited bandwidth capacities of their existing infrastructure over the largest possible number of subscribers. Thus, private providers often leave behind remote rural or poor urban areas that are less profitable and fail to invest their limited resources in advanced technologies that will not pay off within their short profit windows.
- Municipalities, by contrast, have different goals in providing broadband. They seek to promote economic development, educational opportunity, ensure access to modern health care, revitalize urban zones, bridge the "Digital Divide," ensure the swift movement of traffic, enhance homeland security, and they want to make themselves centers of digital opportunity and homes for digital workers.

- ***Municipalities Compete With Other Municipalities.*** Rather than competing with businesses, municipalities compete with other communities and regions worldwide as better places to live, and better places to locate businesses. Because municipalities need not earn short-term profits, they can make long-term investments – investments that benefit all segments of the community, including the private sector. For example, municipalities in several states are building high capacity fiber-to-the-home networks that enable the communities to compete effectively with the most advanced communities in the world. Where artificial state barriers to entry do not exist, municipalities and the private sector are working together in partnership to achieve the goals of all concerned. They can and should be allowed to do the same in Texas.

- ***Government Intervention to Block Municipalities Squelches Free Market Choice.*** To enable these communities to make the leap into the digital age, the private sector is working and investing in direct partnership with municipalities throughout the state, side-by-side, to extend the reach of high-speed broadband. But preventing these private sector companies from their willing and voluntary partnerships with municipalities amounts to government interference with free market choice. Squashing this free market investment choice won't

unleash a broadband future. To the contrary, holding Texas and America back in broadband will retard our country's global competitiveness for decades to come – we've already fallen to 13th in the world and the bottom may not be in sight.

Myth #2: Regulators should not compete with the private entities that they regulate.

- ***Municipalities don't have the ability as regulators to favor their own projects.*** The premise that municipalities have the ability as regulators to favor their own projects -- is simply false.
 - Municipalities do not regulate either telecommunications providers or Internet access providers. Such regulation – which is rapidly disappearing – occurs at the federal and state levels and is done by the Federal Communications Commission and the Public Utility Commission of Texas.
 - Municipalities do issue franchises to cable operators, but they typically subject themselves to the same franchise requirements as private cable operators.
 - With regard to access to public rights of way and other public facilities, both federal and Texas law require municipalities to do so in a non-discriminatory and competitively-neutral manner.

Myth #3: Municipalities have access to less expensive financing than the private sector.

- ***In reality, municipalities can often be at a disadvantage in financing large projects.*** While municipalities theoretically have the ability to obtain tax-free or tax-advantaged financing, in reality in the current market these advantages are often illusory. In fact, many municipalities have found that the few basis points advantage of such financing is more than outweighed by the strings attached. As a result, many municipalities now use taxable financing, just like the private sector, to fund public communications projects. But municipalities often don't have access to the same capital that multi-billion dollar telecom companies have. The large national telecommunications and cable companies, which can back investments in particular communities with the assets and revenues of the company as a whole, have a huge advantage in obtaining favorable financing.

Myth #4: Municipalities don't have to pay taxes.

- ***Municipalities make higher "payments in lieu of taxes" and don't get tax breaks.*** Some opponents of municipal broadband have argued that municipal utilities have an advantage over private sector providers when offering broadband because municipalities don't have to pay taxes. The truth is, municipal utilities make "payments in lieu of taxes" to local governments that are usually much higher than the local taxes that private entities pay. Municipal entities do not pay income taxes, but that is because they are non-profit organizations that do not make profits. At the same time, municipalities are not eligible for the billions of dollars of investment tax credits, accelerated depreciation, and other tax write-offs that often bring the effective income tax rates of private entities down to zero or less.

Myth #5 Municipalities can use public funds to cross-subsidize communications services.

- ***America should be making every investment possible in our broadband future.*** Over the last four years, the United States has sunk to 13th in the world in per capita broadband deployment, and it is also falling rapidly behind in access to high-capacity broadband and cost per unit of bandwidth capacity. Given the tremendous importance of broadband to America's local, regional and global competitiveness, America should be doing everything possible to ENCOURAGE

municipalities to accelerate the rapid deployment of advanced communications systems, as municipalities in the leading countries are doing. In practice, however, America's municipalities generally do not subsidize their communications activities, either because they are prohibited from doing so by federal or state requirements or because they are reluctant to subject themselves to criticism by the private sector.

- ***Commercial Providers Already Force Consumers to Cross-Subsidize Their Broadband Investments.*** The major telephone and cable companies routinely engage in cross-subsidization themselves. Particularly in the early years of broadband projects, when costs exceed revenues, phone companies use income from local and long distance telephone users to cross-subsidize broadband services, and cable companies use income from video subscribers to cross-subsidize broadband services. For example, when the Bells insist that they cannot upgrade their facilities to provide high speed Internet access without getting relief from their telephone-related obligations (e.g., UNEs), they are really saying that they need more income from telephone subscribers to cross-subsidize broadband services.

Myth #6: Municipal communications projects are likely to fail.

- ***This Claim is Completely Baseless, Unproven, And Untrue.*** Telecommunications and cable companies often claim that many municipal communications ventures have failed and that any new project is similarly likely to fail. These baseless claims are simply untrue. Not only have nearly all municipal communications projects been successful when judged under the standards appropriate to such projects, but the vast majority of projects have even met the standards that apply to private sector communications projects. SBC's recent testimony regarding supposed municipal "failures" shows how unfair and inaccurate the communications industry has been in criticizing municipal communications projects (see attachment). Moreover, to borrow SBC's words, it is the private sector that has "littered the landscape" with failed telecom companies, not the public sector.
- ***The Real Failure Is In America's Ability To Maintain Our Competitive Edge In The Global Economy.*** In fact, as a nation, America has slipped to 13th place among the leading countries in the world in broadband penetration, and it is also falling increasingly far behind in access to high-bandwidth capabilities and cost per unit of bandwidth. Millions of Texans don't have any access to high-speed Internet. This isn't the time to be erecting new barriers to broadband when we have communities throughout the state that are ready, willing and able to extend the reach of the Internet through advanced broadband networks. Technology investment is a proven engine for economic growth and raising standards of living. We fail our fellow Americans, when we fail to fulfill this broadband future.

Myth #7: Municipalities drive investment capital out of the market.

Public projects can attract untapped capital, and increase private investment.

- First, municipalities generally do not invest in communications projects unless the private sector has failed to do so. Thus, public project attracts capital that would not otherwise have come into the community.
- Second, from the standpoint of the financial community, it makes no difference whether a project is public or private – the financial community benefits either way. If anything, the financial community benefits more from a public project, because it is likely to be far less risky than private communications projects have been.

- Third, Professor George S. Ford has recently shown through empirical evidence and careful analysis that municipal investments increase rather than decrease private investments in a community. Ford, *Does Municipal Supply of Communications Crowd-Out Private Communications Investment? An Empirical Study*, Applied Economic Studies Manuscript (2005).

Myth #8: Municipal communications projects raise First Amendment concerns.

- ***Municipal Options Can Increase Voices and Broadband Choices.*** Municipal communications projects do not decrease the number of speakers or limit what they have to say. To the contrary, such projects *increase* the number of speakers who can reach the public. The availability of a municipal option will become increasingly important in the future if the giant telecommunications and cable incumbents succeed in their efforts to deny Internet Service Providers and others “open access” to their systems and, at the same time, continue to rely on copper and hybrid fiber coaxial technologies that are likely to have insufficient bandwidth capacity to meet America’s projected bandwidth needs.

Myth #9: Municipalities have unfair access to poles, ducts, conduits, rights of way, and other public facilities.

- ***Texas law requires municipalities to make these facilities available on a non-discriminatory basis and in a competitively-neutral manner.*** True, all municipalities manage public rights of way and other public assets, and some operate utilities that own poles, ducts and conduits. As indicated above, however, both federal and Texas law requires municipalities to make these facilities available on a non-discriminatory basis and in a competitively-neutral manner. Besides, having ready access to these facilities is not unfair as long as municipalities allocate their costs appropriately among the functions to which they are assigned.

Myth #10. Municipalities should not invest in risky projects when the private sector is ready, willing and able to serve the community’s needs.

- ***In many cases, the private sector just isn’t ready or willing or able.*** Millions of Texans are without broadband access. Rural Texans are especially left behind. Not all of these markets are profitable for private providers – especially in areas where, as they say, there is a lot of dirt between light bulbs.
- ***Municipalities Are Inherently Risk-Averse, And They Greatly Value Their Business Community.*** Municipalities will rarely go forward with risky ventures, particularly when the private sector is providing satisfactory service at fair and reasonable prices. True, a municipality may not know much about what it might be getting into when it decides to study of its options. But as long as the municipality employs open processes in which all concerned have an opportunity to present their views, including affected communications providers, one can rest assured that, by the time that the municipality is ready to make a final decision, it will be well aware of the risks and benefits involved. If the municipality still decides to go forward, it will have compelling reasons for doing so.
- ***Municipalities Have A Proven Record of Managing Technically Complex and Sophisticated Projects.*** Municipal projects are considerably less risky than opponents of municipal broadband suggest. While the communications industry is complex, so are many other activities in which municipalities engage. Municipalities have successfully operated highly sophisticated utilities for more than a century. In

fact, many municipal fiber systems today are far more advanced than anything that major phone or cable companies are doing today or intend to do in the future. Every day, municipal utilities work with industrial, commercial, institutional and residential customers of all kinds. As a sign of success, their services, rates, billing, technical support, and customer service rating are always high. In contrast, the cable industry ranks at the bottom of customer satisfaction indices – even lower than the IRS – and the telecommunications industry does not rank much higher. http://www.theacsi.org/scores_commentaries/commentaries/Q1_04_comm.htm