Public Broadband: The Struggle for Local Choice

NECA/NARUC

National Summit on Broadband Deployment II:
Accelerating the Transition

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“The widespread deployment of broadband infrastructure has become the central communications policy objective of the day.”

FCC, Wireline Internet NPRM, ¶ 2

Interest in Public Broadband Has Surged

- Economic development
- Educational and occupational opportunity
- Regional and global competitiveness
- Reduced traffic congestion
- Reduced burdens on ROW and the environment
- Urban core revitalization
- Affordable up-to-date health care -- telemedicine
- Quality of life

Why Interest Has Surged (continued)

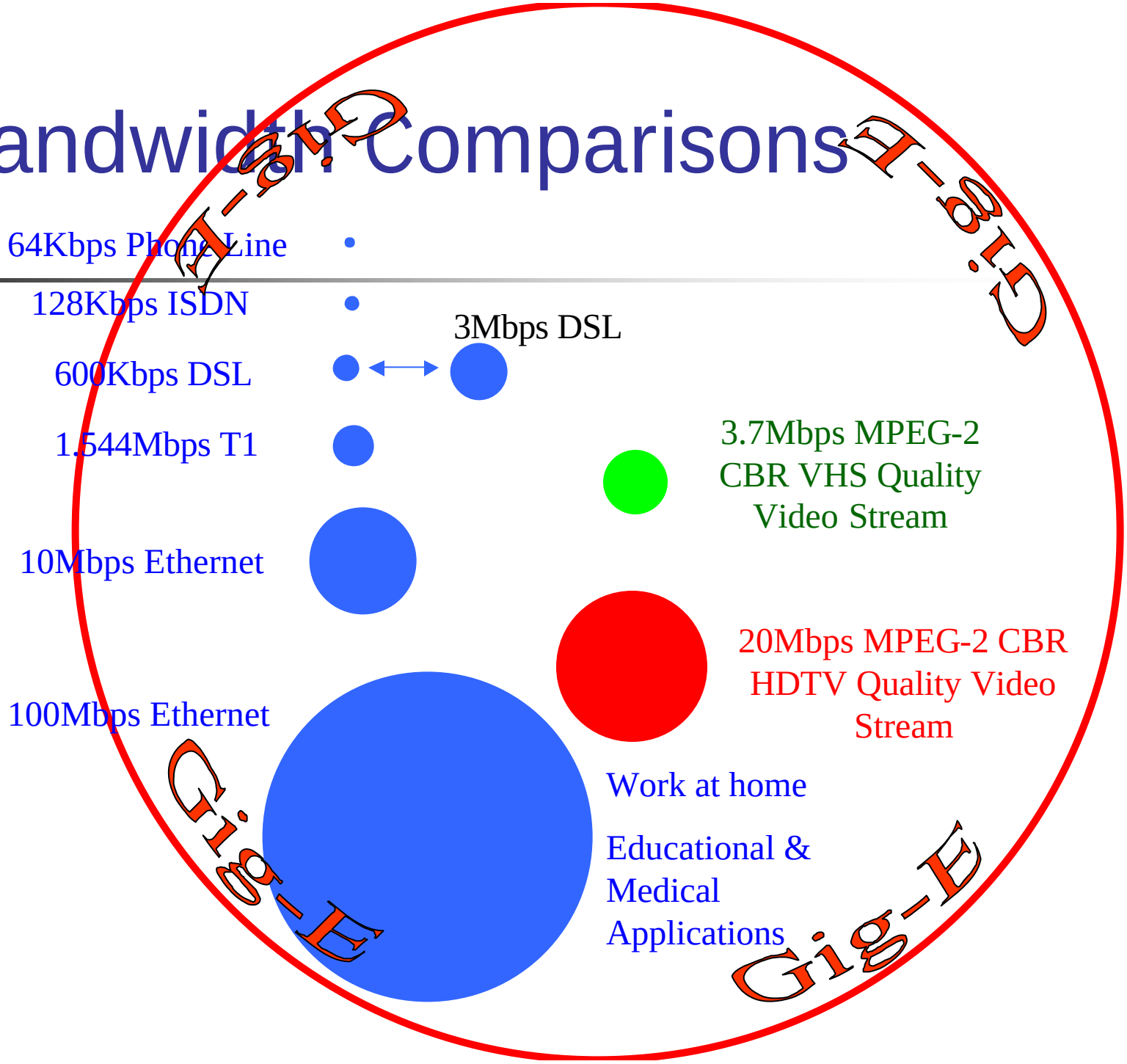
- Meltdown of private sector CLECs and Overbuilders
- Slow rollout of DSL – economics + RBOC politics
- Unending cable rate increases and service problems
- Incumbents increasingly arrogant and insensitive
- Many more models of success
- Technical advances in FTTH and wireless
- Recent successes in litigation
- DSL and cable modems insufficient for future ...

Cable Modems and DSL – No Big Deal!

"It is important to note here that the current generation of broadband technologies (cable and DSL) may prove woefully insufficient to carry many of the advanced applications driving future demand. Today's broadband will be tomorrow's traffic jam, and the need for speed will persist as new applications and services gobble up existing bandwidth."

Office of Technology Policy, U.S. Department of Commerce, *Understanding Broadband Demand: A Review of Critical Issues,* at 6 (Sept. 2002)

Bandwidth Comparisons



Public Power Broadband (APPA 12/02)

- Total Broadband (Internal or External) - 511
  - Fiber leasing - 144
  - Internet service provider - 130
  - Cable television - 105
  - Cable modem service - 71
  - Long distance telephone - 33
  - Broadband resale - 114
  - Local telephone - 37
  - Municipal data network - 197

State Barriers to Public Entry Are Illegal

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Telecom Act -- Section 253(a)

State Barriers to Entry

- Most states expressly authorize public entry or allow Home Rule choice
- Explicit barriers – AR, NV, NE, TX
- Implicit barriers – FL, MN, MO, SC, UT, VA, WA
- Current battles – IA, OH, OR, WA, WI
- Dillon's Rule

Leading Cases

- Phase I – Glasgow, Paragould, Niceville, Morganton, Tacoma, Schulkyll Haven
- Phase II – "Any entity" ? any public entity
  - Abilene, MEAG, Hawarden
- Phase III – "Any entity" = public entity
  - Bristol, Missouri, Lincoln Electric
- Phase IV – Gainesville, Spencer, Bristol II, Pacific PUD, Portland IRNE

Century-Old Objections and Answers

- Localities shouldn't compete with the private sector
  - Localities usually fill gaps and don't compete unless the public demands it
- Localities shouldn't compete with entities they regulate
  - Localities don't regulate telecom providers or ISPs
  - Have limited discretion in ROW and cable matters
- Localities don't pay taxes
  - Make payments in lieu of taxes (often higher)
  - No income taxes because no profits
  - Private sector gets billions annually in tax breaks

Objections and Answers (2)

- Localities have access to tax-favored financing
  - Tax-favored financing often unavailable or overrated
  - Large cable and telcos have access to preferred rates
- Localities are inefficient and incompetent
  - Performance of public power far exceeds IOUs
- Localities may cross-subsidize
  - Localities are increasingly careful to avoid this
  - Private sector freely cross-subsidizes
- Public communications projects often fail
  - Untrue – see www.tricitybroadband.com
  - Many more industry failures

[T]he very fact that a community can, by vote of the electorate, create a utility of its own, will, in most cases, guarantee good service and low rates to its population. I might call the right of the people to own and operate their own utility a birch rod in the cupboard, to be taken out and used only when the child gets beyond the point where more scolding does any good.

F.D.R., Portland, OR (1932)

Many thanks ...