

Iowa Association of Municipal Utilities

Ankeny, IA

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**Legal Solutions For Successful
Communications Initiatives**

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Overview

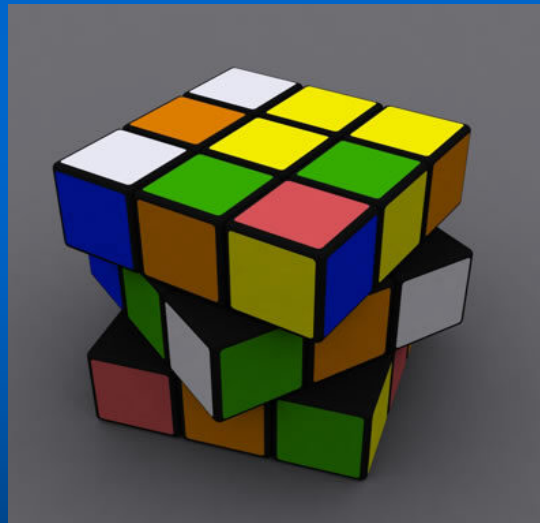
Part I. The Big Picture

Part II. Key Legal Issues – Federal Focus

Part III. Net Neutrality, Acceptable Use Policies, and Similar Issues

Part I

The Big Picture



The Legacy of Local Choice

- Electrification a century ago
 - Industry arguments identical to today's
 - 3200+ public power utilities
 - Major cities – e.g., Austin, Cleveland, Detroit, Jacksonville, KC, LA, Memphis, Nashville, Phoenix, San Antonio, Seattle, etc.
 - 1920s -- 1/3 declare success, sell to systems private sector
- Myth: electricity a natural monopoly, sold itself

Public Communications Pioneers

- Frankfort, KY – 1952; Shrewsbury, MA – 1983; Conway, AR – 1984; Easton, MD – 1984
- Glasgow, KY; Paragould, AR; Morganton and Philippi, WV – late 1980s - early 1990s
 - Legal challenges: authority, exclusivity, “public purpose,” First Amendment, Equal Protection, etc.
 - Anti-competitive practices: predatory prices, denial of programming, inside wiring, etc.

Cable Act Amendments of 1992

- Incumbents seen as rapacious monopolists
- Solution: regulate rates and promote entry
- Uniform rate requirement
- Ban on unfair competitive practices
- Access to video programming (via satellite)
 - Non-discriminatory terms and conditions
 - Ban on most exclusive contracts
- Must carry & retransmission consent

1992-1996

- Highly pro-municipal FCC cable rules
- Early entrants/explorers, including Anaheim, CA; Gainesville, FL; Marietta, Newnan, GA; Cedar Falls, Harlan, Hawarden, Muscatine, IA; Braintree, MA; Wadsworth, Lebanon, Bryan, OH; Austin, San Antonio, TX; others
- 1995 – Texas barrier to public entry

Telecom Act of 1996

- Sen. Trent Lott: “In short, [the Act] constructs a framework where everybody can compete everywhere in everything.”
- Focus: local $\Leftrightarrow$ long distance + equipment + cable
- Interconnection, Collocation, UNEs, Poles
- Cable: relax rules when “effective competition”
- No one fully anticipated Internet explosion
- Section 253(a): States can’t prohibit “any entity” from providing any telecom service

1996-2000

- Post-Telecom Act surge of interest in competitive systems across US
- Wall \$treet => Dot.coms, CLECs and Overbuilders
- Public power explorers and many others go forward
- 30+ Iowa referenda, huge majorities
- Incumbents push for state barriers to entry
- *Abilene*, *Hawarden*, *Missouri* “any entity” cases
- Incumbents “slow roll” potential competitors
- By end of decade, \$\$\$ dries up - “Dot.com Bust”

2001-Today

Regulatory Backdrop

- Federal Communications Commission guts Telecom Act
 - “High Speed” = 200 kbps in one direction
 - “Competition” = Bell and Cable “duopoly”
 - Rubber-stamps mergers of Bells, giant cablecos
 - Deregulatory rulings: cable modem and DSL orders, UNEs, FTTC = FTTH, “Effective Competition,” etc.
 - Many opportunities lost

2001-Today In the Marketplace

- Demise of CLECs, Overbuilders, IOU Electrics
- Consolidation of Bells and Cablecos
- Digitization, Convergence => Internet Protocol
- “Triple Play” – technology and marketing
- Bells and Cablecos together now control 98 percent of broadband lines in US
- **US broadband standing worldwide plunges**
 - 4th => 16th in world in *per capita* broadband lines
 - dropping in high-capacity bandwidth, cost, growth

US Broadband



Courtesy of Gary Bolles

2001-Today

Stock Rises for Public Broadband

- Surge of interest in public broadband across US, particularly wireless
 - Localities of all kinds, sizes, locations
 - Broad range of involvement models, including multi-city consortia (e.g., UTOPIA)
 - Even incumbents starting to make bids
- Much more and better information available
 - www.baller.com/comm_broadband.html
- Mainstream media support
- Legal, political, business implications

2001-Today

Pushback on Barriers to Public Entry

- Supreme Ct. ruling in *Missouri* “any entity” case
 - Not on merits; many positive statements
- 14 state barriers to public entry by end of 2004
- “No more Pennsylvanias”
- Coalition of national associations, consumer groups, high tech industry, higher education, etc.
- 2005 – 13/14 successes; 2006 – Indiana, rollbacks?
- Progress on Capitol Hill

2001-Today

Attractive Municipal Score Sheet

- Many successful projects
 - HFC: Cedar Falls, Muscatine, many others
 - Fiber: Kutztown, PA; Bristol, VA; Dalton, GA; WA PUDs; Reedsburg, WI; Jackson, TN
 - Wireless: Chaska, MN; Owensboro, KY; Scottsburg, IN; Carthage, MO; Lompoc, CA, etc.
 - BPL: Manassas, VA
- A small handful of systems “struggling” – if judged by private-sector criteria of “success”

Challenges Ahead

- State or federal barriers to entry
- Growing size and power of incumbents
- Wireline v. wireless
- Access to content, customers
- Anticompetitive actions
- Big city challenges – watch Seattle
- The coming “land rush” and “free lunch”



Questions?

Baller the Barbarian