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## **JIM BALLER'S INITIAL REACTION TO SENATOR ENSIGN'S MUNICIPAL NETWORKS PROVISION**

In the floor statement accompanying his bill, Senator Ensign said that the bill's municipal networks provision is not extreme and is intended to encourage public investment in communities in which "the private sector does not show up and offer to build." Unfortunately, the provision itself undermines Senator Ensign's goals.

The provision rests on numerous false assumptions, including at least five fundamental ones – (1) that local governments have significant, unfair advantages over the private sector that must be nullified, without consideration of vast advantages of incumbency that established providers enjoy, (2) that it is appropriate to transfer any such public advantages to the established providers, without also subjecting them to the corresponding duties and accountability in serving the public interest that apply to local governments; (3) that the lack of access to the advantages that local governments supposedly have, rather than their own short-term profit objectives, are responsible for the failure of the established providers to make the investments that a growing number of communities want; (4) that the transfer of public "advantages" that the bill contemplates can occur without significant amendments to other federal, state and local laws, particularly tax laws; and (5) that a community that won a bid could realistically obtain financing in the face of the serious threats that the bill would pose to their ability to meet their bond obligations in the future.

Furthermore, the procedures set forth in the bill are unnecessary, unworkable and counterproductive. At best, they would result in time-consuming, expensive, burdensome, and contentious delays and possibly years of litigation. Such procedures have no place in a bill that is intended to speed up America's recovery of its leadership in the emerging broadband-based global economy.

The municipal networks provision of the Ensign bill would also create a host of disincentives and unintended consequences. For many communities, it would retard economic development, educational opportunity, homeland security, public safety, cultural enrichment, and the many other benefits that access to affordable advanced telecommunications capability and services would foster. It would disserve America's private sector, particularly our high technology industry, which has been a willing partner in municipal networks nationwide and would be a major beneficiary of a rapid increase in broadband deployment across the United States. It would also stand in the way of America's rapid recovery from its precipitous decline in standing among the leading nations in the world in broadband penetration, access to high-bandwidth capacity, and cost per unit of bandwidth.

In short, the provision falls far short of the fair and balanced approach that Senators Lautenberg and McCain have proposed in S. 1294.