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SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION
HEARING ON STATE AND LOCAL ISSUES AND MUNICIPAL NETWORKS
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Chairman Stevens, Ranking Member Inouye, and Members of the Committee, I am Joseph P. Savage, President of the Fiber-to-the-Home (FTTH) Council, and I want to thank you for the opportunity to offer testimony regarding the important role municipalities play in deploying FTTH (next-generation) networks. Our association believes provision of such networks is crucial for our country's economic growth and municipalities can accelerate their deployment. It is for that reason that we urge you to pass the Community Broadband Act (S. 1294) introduced by Senators Lautenberg and McCain, which would prohibit states from enacting laws preventing municipalities from providing advanced telecommunications capabilities and services.

The Fiber-to-the-Home Council

The FTTH Council is a non-profit organization established in 2001. Its mission is to educate, promote, and accelerate FTTH and the resulting quality of life enhancements. The Council's members represent all areas of broadband industries, including telecommunications, computing, networking, system integration, engineering, content-provider companies, as well as traditional telecommunications service providers, utilities, and municipalities. As of today, the Council has over 120 companies as members.

The Importance of FTTH Networks

FTTH networks provide the most advanced next-generation network capability because: (1) the inherent, virtually unlimited capacity of optical fiber makes the network relatively "future-proof;" (2) all-optical networks are the most secure access network alternative; and (3) the operation costs of all-optical networks are most favorable. It is this tremendous capability that permits FTTH networks to transmit simultaneously voice, enormous data files, and multiple streams of video. Applications such as distance-learning, health care monitoring, and unlimited video-on-demand, which were once far out of reach, are easily accessible with FTTH. As such, these networks will be of fundamental importance for our economic growth. This conclusion is supported by a recent study by researchers at the Massachusetts Institute of Technology and Carnegie Mellon University, "Measuring Broadband's Economic Impact," (September, 2005) which found that communities with mass-market broadband deployment experienced more rapid growth in employment and business generation.

The U.S. and FTTH Deployment

FTTH deployment also is critical to America's global competitiveness. The U.S. economy has often been called an "information economy." More and more at our homes and in our businesses, we are accessing huge amounts of electronic information. Whole new industries have developed around ensuring people can access and then manipulate this information. Just look at Google, Yahoo, e-Bay and Amazon. More importantly, there is a vast array of new concepts and businesses on drawing boards in the leading nations around the world, premised on the existence of next-generation networks. Unfortunately, the United States, the birthplace of the Internet, may lose the race to deploy these new drivers of growth and international

competitiveness unless we get moving quickly in developing our own advanced communications networks.

In the last few years, the U.S. has seen greater deployment of FTTH networks. As of last September, 652 communities in 46 states had FTTH installations, representing year-to-year growth of 200%. Moreover, with Verizon's commitment to deploying FTTH networks, the pace has increased. But, there is no question that even with this increase, the United States continues to lag other countries in both general broadband penetration and FTTH deployment. It has been widely reported that, as of late last year, we had fallen to 19th in the world in terms of penetration. Even more important, when it comes to next-generation technology – FTTH – we have fallen far behind such countries as Japan, Sweden, Denmark, Canada, and the Netherlands. France Telecom has committed to deploying FTTH throughout France. And, we continue to see large European cities like Vienna, Amsterdam, and Paris embark on comprehensive FTTH overbuilds. It is clear we have a problem, one that will resound to the detriment of consumers and the economy. With FTTH infrastructure in place, other countries will have the capability for their software developers, engineers, and scientists to develop applications that will be out of reach to their U.S. counterparts.

The FTTH Council believes there is no single answer to this problem, but there is a single overriding concept that should drive our policies: remove the barriers that stand in the way of new entry by any and all FTTH providers. Among those barriers are state laws that prohibit or otherwise restrict the deployment of next-generation networks by municipalities. In today's environment, these laws can only be seen as counterproductive to our nation's public interest.

The Benefits of Municipal Deployment of FTTH

For over 100 years, municipal entities have built and operated communications infrastructure. Today, over 600 public power systems offer broadband services, and, of the 652 communities with FTTH, it is noteworthy that 42, including many of the largest systems in the United States, were constructed by municipal entities. These entities complement private sector offerings. They enter when there is a larger community benefit that the private sector believes it cannot capture. They enter to ensure their citizens are not left behind in obtaining state-of-the-art services. They enter when private-sector entities simply do not show up. Let me give some examples.

In Bristol, Virginia, the municipal utility, Bristol Virginia Utilities (BVU), first deployed a fiber-optic network in 1999 to commercial and public sector entities (such as schools and libraries) to help fuel the town's economic development and provision of services to its citizens. The decision to invest in an advanced all fiber-optic network – rather than a traditional hybrid fiber coaxial (HFC) network – proved prescient. While the first-installed costs of this network were 15% higher than an HFC network would have been, this network could deliver the full suite of broadband applications with much greater robustness and flexibility. As a result, citizens of Bristol in 2001, envisioning the tremendous benefits of the services provided over the fiber-optic deployment to businesses and government, made it clear to BVU that they wanted a FTTH network throughout Washington County. BVU began offering the "triple-play" package over the new FTTH network in July, 2003, and, by the middle of 2004, it had a penetration rate exceeding 40%. Today, the Bristol, Virginia, network is struggling to build out quickly enough to meet burgeoning demand, and it is viewed as a magnet for new businesses, a boon to schools permitting distance learning and other services, and a basic resource for all citizens. Impressed

by the positive impact that BVU's network has had on its community, its cross-border sister city, Bristol, Tennessee, has followed suit with its own FTTH deployment in 2006, making the combined systems one of the most dynamic areas in America. At the request of other nearby communities, which want the economic benefits of FTTH, BVU is extending its network to other counties in southwest Virginia.

In Jackson, Tennessee, business and consumer leaders believed that private sector telecommunications and cable entities were not acting swiftly enough to offer advanced services and that this was causing Jackson to lose business opportunities to other communities. The Jackson Energy Authority (JEA), a hybrid municipal and public utility, had reached a similar conclusion , and it determined that a FTTH network could be a fundamental driver for the local economy and ensure consumers would have access to advanced data and video services. It began construction in early 2004 and had its first customers by May. The network is open to competitive providers of telecommunications and data services. Customers can receive from two competitive local exchange carriers up to four VOIP telephone lines and Internet access service at speeds ranging from 512 kbps to 10 Mbps (with the potential for 40 Mbps). From JEA, they can receive 270 all-digital channels of cable television. The JEA has since greatly expanded its network, and it now has over 11,500 customers. By next year, the network will pass more than 30,000 homes and businesses in greater Jackson. Currently, Jackson has the largest in-service FTTH network in the U.S., and the citizens of Jackson have a major attraction for new businesses as well as real competitive choices for telecommunications and cable services.

Reedsburg is a small town (population of about 8,000) in Wisconsin. Several years ago, Reedsburg Utility Commission (a municipal utility for over 100 years) determined that deployment of a FTTH network – the first in Wisconsin -- offering voice, high-speed internet

access, and video services would be, in the words of its Superintendent Dave Mikonowicz, "an excellent investment in our community's economic development and quality of life." The Utility initiated construction of a state-of-the-art FTTH network in 2002, began acquiring its first customers in 2003, and had over 1,000 customers by late 2004 (about a 25% penetration rate). Today, construction is largely complete, and the subscriber base continues to grow – approaching 2,000 customers. Again, in the words of Superintendent Mikonowicz, "Being a technologically advanced community is a key attraction to both residential and business prospects. Not only is the technology enhancing and enriching the quality of life of current residents and businesses, but it will continue to support our needs well into the future."

One of the most unique municipal FTTH deployments in the country is the Utah Telecommunications Open Infrastructure Agency ("UTOPIA"), a consortium of 14 Utah cities. They have banded together to create an all-fiber network that will deliver cutting-edge services to their citizens and businesses, boosting their economies and enhancing their quality of life. The network will serve about 170,000 homes and businesses when completed. (The first phase of construction will soon be completed.) Even during construction, UTOPIA has begun to provide wholesale services and has signed a variety of retail providers to sell voice, internet access, and video services.

In a very real sense, UTOPIA operates similar to a public airport. Municipalities own and operate airports, but airlines are the service providers. When passengers buy airline tickets, a portion of each fare is returned to the municipality, which is then used to pay operational costs and retire revenue bonds. In other words, only those who use the service pay for it.

So, the evidence points to the fact that municipalities are part of the solution to deploying next-generation FTTH broadband networks. Unfortunately, not all policymakers share this view,

and in many states, laws have been enacted that impose barriers on the ability of municipalities to deploy these advanced networks. Often these laws amount to a de facto prohibition on municipal deployment, and in any case can only be seen as counterproductive to our efforts to build next-generation networks to benefit consumers and drive our economy.

State Barriers to Municipal Deployment and the Need for a Congressional Response

In enacting the Telecommunications Act of 1996, the Congress sought to advance its pro-competition policy by ensuring that "any entity" could enter to provide telecommunications services. Section 253 of the Act implements this policy by prohibiting a state or locality from enacting a law or regulation that would have the effect of barring such entry, and it gives the Federal Communications Commission (FCC) the ability to preempt such actions. Unfortunately, in 2004, in the case of Nixon V. Missouri Municipal League, the United States Supreme Court found that Congress had not spoken emphatically enough in Section 253 to meet the high standard that the Court employs in construing federal statutes that are said to preempt traditional state powers.

Significantly, the Court went on to say that it was not deciding the merits of municipal entry and that the municipalities had "at the very least a respectable position, that fencing governmental entities out of the telecommunications business flouts the public interest." The Court also noted that the FCC had "denounced the policy behind the Missouri statute;" that two of the commissioners had "minced no words in saying that participation of municipal entities in the telecommunications business would 'further the goal of the 1996 Act to bring the benefits of competition to all Americans, particularly those who live in small and rural communities in which municipally-owned electric utilities have great competitive potential;'" and that a third

commissioner had underscored that "barring municipalities from providing telecommunications substantially disserved the policy behind the Telecommunications Act."

Today, in the absence of federal preemption, 14 states that have passed laws either prohibit or limit municipalities from deploying communications services. These laws take various forms. For example, Minnesota requires municipalities to get a 65 percent supermajority vote before proceeding. Texas prohibits municipalities and municipal electric utilities from providing certificated telecommunications services either directly or indirectly through public-private partnerships. Nevada flatly prohibits municipalities and counties of certain sizes from providing telecommunications services. Several other states require municipalities to impute phantom costs into their rates for the sole purpose of driving their prices up to uncompetitive levels.

In addition to these laws, fourteen states considered new barriers last year, and several more states may do so this year. Even if these bills fail – as thirteen of the fourteen introduced last year did because of the outcry from municipalities, citizens groups, the educational community, the high technology industry, and many others – they have a chilling effect on municipal deployments. Municipalities and the financial community will be reluctant to make significant investments in advanced communications networks if they are concerned that state laws may undercut these investments. It is clear that the Congress needs to step in and provide the certainty that the Supreme Court found lacking in Nixon.

Fortunately, two Members of this Committee, Senators Lautenberg and McCain have introduced legislation, the Community Broadband Act of 2005 (S. 1294), that specifically provides that the FCC shall preempt state laws that prohibit or effectively prohibit municipal entities from providing telecommunications services. The FTTH Council supports this

legislation, as does the Community Broadband Coalition, a large and diverse coalition representing municipal and consumers groups and private sector telecommunications service and equipment providers.

Conclusion

Today's hearing is intended to provide the Members of the Committee with background on the status of efforts by municipalities to deploy telecommunications facilities. As we have demonstrated, municipal entities have been critical to the advancement of FTTH networks. Their entry complements private sector efforts and will help to restore America's position as a world leader in providing much needed access to services that can only be provided over next-generation networks. The FTTH Council urges the Committee to act promptly on the narrowly-targeted and much-needed legislation introduced by Senators Lautenberg and McCain and to take whatever additional steps that may prove necessary to protect the ability of local governments to provide next-generation broadband services for their citizens. Thank you.