



THE EMPIRE LOBBIES BACK:

How National Cable and DSL Companies Banned The Competition in North Carolina

Todd O'Boyle

toboyle@commoncause.org

CommonCause.org

[@ttoboyle](#)

Christopher Mitchell

christopher@newrules.org

MuniNetworks.org

[@communitynets](#)



Institute for Local Self-Reliance



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Biographies

Todd O'Boyle, Common Cause - Todd is the Program Director for the Media and Democracy Reform Initiative at Common Cause. He grew up just outside Wilson, North Carolina, and has experience in legislative and policy work on the local, state, and national level. Todd graduated in May 2012 from the School of Public Policy and Administration at the University of Delaware with a Ph.D. in Urban Affairs and Public Policy. CommonCause.org

Christopher Mitchell, Institute for Local Self-Reliance - Christopher is the Director of the Telecommunications as Commons Initiative at the Institute for Local Self-Reliance. He has authored numerous reports and case studies exploring how and why communities have built their own networks. MuniNetworks.org

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Table of Contents

Executive Summary	iv
Introduction	1
Public v. Private Context	2
Unfounded Charges	4
The Local Government Fair Competition Act of 2007	6
The Level Playing Field Act of 2009	7
The No Nonvoted Local Debt for Competing System Act of 2010	8
2011 Was Different	9
The Consequences of HB 129	13
Conclusion	14
References	15

Executive Summary

In late 2006, Wilson, North Carolina, a city of 49,000 an hour east of the bustling Triangle Research Triangle Park region, voted to build a Fiber-to-the-Home network. Wilson's decision came after attempts to work with Time Warner Cable and EMBARQ (now CenturyLink) to improve local connectivity failed.

Wilson's decision and resulting network was examined in a case study by Todd O'Boyle and Christopher Mitchell called [Carolina's Connected Community: Wilson Gives Greenlight to Fast Internet](#). This report picks up with Wilson's legacy: an intense multiyear lobbying campaign by Time Warner Cable, AT&T, CenturyLink, and others to bar communities from building their own networks.

A diverse group of businesses, local governments, and activists joined year after year to argue that any decision about whether to build a community owned network should be made by communities themselves, not by Raleigh or Washington, DC. Defenders of local authority defeated legislation in 2007, 2009, and 2010 that would have banned or enacted barriers to community owned networks. But in 2011, the national telecommunications providers succeeded, making North Carolina the 19th state in the nation to create barriers to municipal broadband.

The protracted fight to limit who can deploy next-generation networks was a curious one for the state listed last by the Federal Communications Commission in percentage of households subscribing to a "basic broadband" connection. North Carolina residents and businesses are largely dependent on Time Warner Cable, AT&T, and CenturyLink for access to the Internet but none of these companies is making large investments in modern last-mile networks.

However, Time Warner Cable, AT&T, and CenturyLink have invested in lobbyists and campaign contributions. The more than \$1 million they donated during the course of the competition-limiting campaign is far less

than they would have lost in monopoly profits had even one additional mid-size town opted to build its own network like Wilson.

While advancing bills with barriers that only applied to local governments, they saturated legislators with talking points about "fair competition" and a "level playing field." But in the words of *Business Week*, the goal was less a level playing field than to "keep new teams on the sidelines."

Since the law was enacted, no new entity has made significant investments in connecting businesses and residents with next-generation networks. AT&T has turned its investment to higher-profit wireless endeavors. Faced with little prospect of competition, the existing providers have little incentive to invest and less of a reason to make prices reasonable.

If community owned networks did not result in jobs, increased competition, and community savings, local governments would not consider building them. It is only because they so regularly succeed that Time Warner Cable, AT&T, and others want to ban them. If they actually had the poor track record claimed by large cable and telephone companies, this legislation would have been unnecessary.

These companies can and do try year after year to create barriers to community-owned networks. They only have to succeed once; because of their lobbying power, they have near limitless power to stop future bills that would restore local authority.

It certainly makes sense for these companies to want to limit local authority to build next-generation networks. What remains puzzling is why any state legislature would want to limit the ability of a community to build a network that will improve educational outcomes, create jobs, and give both residents and businesses more choices for an essential service. This decision should be made by those that have to feel the consequences—for better and for worse.

Introduction

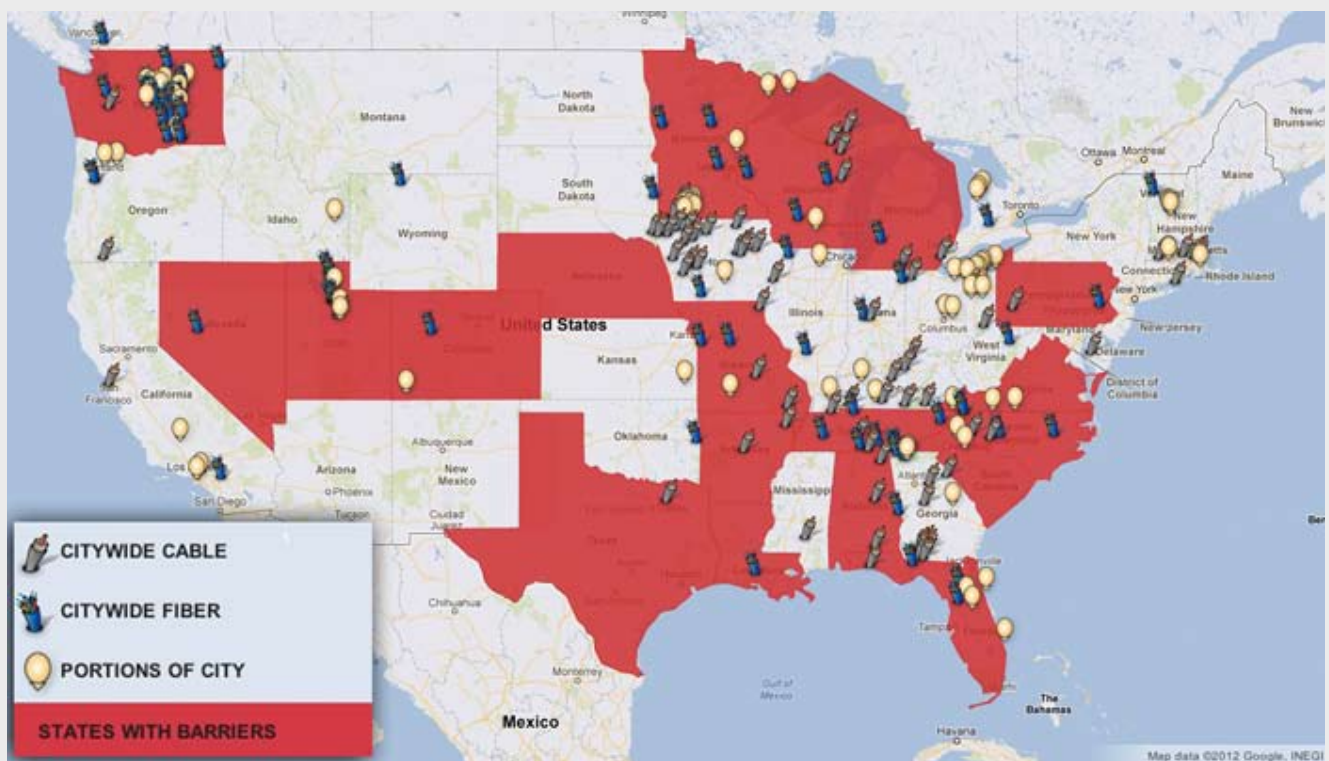
After Wilson, a town of 49,000 in eastern North Carolina, decided to build its own Fiber-to-the-Home network, Time Warner Cable initiated a multi-year campaign in the General Assembly to revoke the authority of local governments to make such investments. Wilson's story is told in [*Carolina's Connected Community: Wilson Gives Greenlight to Fast Internet*](#), a case study by the authors of this report. Here we examine the campaign to ban municipal broadband in North Carolina.

In 2011, North Carolina became the nineteenth state to create barriers limiting the ability of local governments to build telecommunications networks. These barriers vary in severity but North Carolina's is one of the strongest in the nation, resulting in a de facto ban. Many of the nineteen states passed similar laws between 2004 and 2006 under pressure from

national cable companies, telephone companies, and the American Legislative Exchange Council (ALEC). But while other states stopped discussing preemption bills after a series of stalemates in 2006, Time Warner Cable, CenturyLink, and AT&T kept the issue alive in North Carolina, lobbying for a bill nearly every year.

Time Warner Cable (TWC) is the largest provider of telecommunications in the state and the second largest cable operator in the nation, claiming over 15 million customers.¹ The North Carolina Cable Television Association (NCCTA) spearheads lobbying for TWC and other cable companies in the state. AT&T vies with Verizon to be the largest telephone company in the nation (both wireless and fixed lines). CenturyLink is a distant competitor to Verizon and AT&T due to its lack of wireless services but is nonetheless the third largest telecommunications company in the nation. Together, TWC, CenturyLink, and AT&T spent over \$1 million over a period of five

Community Owned Networks and Barriers



Nineteen states have created barriers to publicly owned networks, most recently North Carolina in 2011. Visit MuniNetworks.org/communitymap for an interactive map explaining each barrier.

Table 1: 2006-11 North Carolina Legislative Campaign Donations by Telecommunications Interests.

Provider	2006-2011 Legislative Campaign Donations
AT&T	\$520,438
TWC	\$313,398
CenturyLink (previously EMBARQ)	\$302,744
NCCTA	\$23,350
Total	\$1,159,930

Adapted from the 2012 [Dialing up the Dollars](#) report by the National Institute of Money in State Politics.

years to push through a bill that makes it all but impossible for communities to create their own municipal networks (see Table 1). Another North Carolina city, Salisbury, also built a FTTH network prior to passage of the bill; both Salisbury's Fibrant and Wilson's Greenlight were limited by the bill but are allowed to continue operations.

While North Carolina's General Assembly debated legislation year after year to restrict who could invest in broadband networks, the state quietly slid to the very bottom of Federal Communications Commission rankings of states based on the percentage of the population that subscribed to a "basic broadband" connection.² Though North Carolina had plenty of people who subscribed to cable and DSL networks, the connections were too slow to qualify as "basic broadband" as defined by the FCC.

North Carolina will likely improve in this particular ranking as soon as Time Warner Cable modestly upgrades its cable network, but any statistical improvement will mask the real threat facing the digital future of North Carolina's communities. Though many states on eastern seaboard have Verizon's next-generation FiOS Fiber-to-the-Home network, most of North Carolina is served by national companies that are unable or unwilling to invest in next-generation networks.

AT&T's U-Verse comes closest, but its DSL/fiber optic hybrid cannot compete even with cable networks, which themselves are far inferior to full fiber optic networks in reliability and capacity. Netflix, with 30 million users regularly streaming video, has released a ranking of national providers based on network performance.³ Time Warner Cable clocked in at 7th, behind most of the national cable companies. AT&T's U-Verse was 11th, behind all of the cable companies, and CenturyLink fell below U-Verse. In short, though many national cable and telephone companies have been criticized for failing to invest sufficiently in network upgrades, North Carolina is mostly served by those toward the back of the pack.

Public v. Private Context

The debate over whether the public should compete with the private sector providers in provisioning essential infrastructure has a long history. For instance, the debate over public power 100 years ago featured the same talking points. Jim Baller, an attorney for many municipal networks, sometimes shows off a 1906 copy

ALEC Explained

Some of the nation's largest companies, including Koch Industries, Time Warner Cable, and AT&T, have joined forces to invest millions of dollars each year lobbying state legislators to secure passage of legislation that advances their narrow corporate interests. The American Legislative Exchange Council, also known as ALEC, counts among its members some 2,000 state legislators and corporate executives. They sit side-by-side and collaborate to draft "model" bills that reach into areas of American life ranging from voting rights to environmental protection. Its telecommunications task force has drafted model bills which have stripped consumer protections and public interest provisions across the country. AT&T was one of its largest funders in 2010. For more information visit [Common Cause](#) or [ALEC Exposed](#).

of *Moody's Magazine* and *American Investments* with articles such as "Municipal Ownership a Delusion and "Municipal Ownership Always a Failure." There are over 2,000 public power utilities in the U.S. and studies suggest they provide lower cost and more reliable power on average than investor-owned utilities.⁴ Most of the cities that have built their own citywide telecommunications networks already operated a municipal electric utility, including Wilson.

The 1996 Telecommunications Act preempted states from creating barriers to competition among telecommunications providers but the Supreme Court later ruled that the language protecting the right of "any entity" to enter the telecommunications market did not include local governments or municipal utilities. In 2004, the Court found that Congress had not been sufficiently clear that it intended to preempt state authority over local governments despite a rich legislative history demonstrating Congress's intent to do just that. With that decision, national cable and telephone companies mounted a state-by-state campaign with ALEC to create barriers to community-owned networks. They were very successful at first, but a coalition developed to protect community-owned networks.

Consumer groups, pro-local authority groups, and a variety of technology companies responded with both a state-by-state effort to preserve local authority and a federal bill to ensure communities could decide for themselves if such an investment were good policy. By 2006, the national and state fights were largely over, with neither side able to make legislative progress (though the Community Broadband Act came incredibly close to passing Congress in 2006).

More recently, the Federal Communication Commission's National Broadband Plan included recommendation 8.19: **"Congress should make clear that state, regional, and local governments can build broadband networks."**⁵

The debate over community networks has had an interesting conservative/liberal dynamic. The majority of communities that have built their own networks vote consistently Republican. However, ALEC and the

Municipal Broadband Authority in North Carolina

When Wilson's City Council voted to create its Fiber-to-the-Home network, only one other municipal network offered television services operated in North Carolina. Morganton, a small city in the foothills of the Appalachian Mountains, had been operating CoMPAS (the "City of Morganton Public Antenna System") since a state court decision in 1989 established that communities had the authority to build their own networks. The cable company TCI engaged in a protracted, but ultimately unsuccessful, legal battle before and after that decision to stop the network.

In 2001, the local government in Laurinburg, a small city southwest of Fayetteville, started leasing fiber optic capacity to network operator School Link, Inc, which in turn provided Internet service to the city, the county, the Scotland County public school system, and a few other community anchor institutions. BellSouth, which had sold service to the schools at higher prices before the School Link arrangement, argued that state law did not permit municipalities to operate networks. However, the Court ruled in favor of the city, citing the longstanding authority cities in North Carolina had to operate cable television networks.

In 2005, the state legislature passed the Video Service Competition Act of 2005 (VSCA). The Act removed the last vestige of power that cities had to regulate cable by moving all authority to approve video service franchises to the North Carolina Secretary of State's office. Moreover, the new Act obligated the state to approve any completed franchise application, leaving no public authority in the state the ability to promote the public interest in video service. Once a franchise is approved, the company can offer services anywhere in North Carolina.

Despite promises from the industry that the VSCA would result in lower cable rates and new competition, available data show that rates have continued to increase at previous rates and communities remain overwhelmingly reliant on only one cable company and one telephone company.

national cable / telephone companies have primarily worked with Republicans at the state and federal level to revoke local authority over this decision. Democrats have generally been more receptive to the idea of communities making these decisions for themselves, but there are exceptions.

Unfounded Charges

Though states have enacted different barriers, the campaign to restrict local authority has inevitably followed similar contours, typically featuring hyperbolic or even false claims regarding how networks are funded.

Shortly after Wilson City Council’s vote to a municipal network, city officials reported that residents were asking whether tax dollars were funding Greenlight and whether it would be a mandatory service. The City Manager attributed such questions to a willful disinformation campaign by Greenlight’s opponents.⁶ For example, at a January City Council meeting, Reid Hartzoge from TWC criticized “the decision to appropriate public taxpayer dollars” to build out a network to compete with the private sector.⁷ In fact, the city was issuing Certificates of Participation (CoPs), a common tool used to generate the revenue needed for capital projects. The certificates commit future telecommunications revenue to pay off the debt. As such, Greenlight subscribers who chose to pay for the service would fund it, not “taxpayers.”

Some have accused Wilson of cross-subsidizing from its other utility functions, though they offered no proof—the closest they have come is to cite Wilson’s electricity rates compared to Progress Energy and Duke Energy (both of which have lower rates), suggesting that alone is evidence of cross-subsidization. But like all municipal utilities, Wilson submits to audits that are publicly available and they show no evidence of cross-subsidization. As for its electrical rates, Wilson is part of an organization called ElectriCities that has incurred a high debt load due to its participation in the Shearon Harris nuclear power facility that went significantly over budget.⁸ This has

Who Has the Advantage?

In 2005, the Florida Municipal Electric Association rebutted many of the common charges levied against publicly owned networks in a report entitled *The Case for Municipal Broadband in Florida*. The following charts are from that document and show whether each provision applies to public or private entities.

Taxes and revenues	Public	Private
Gross Receipts Taxes	Yes	Yes
Sales Tax	Yes	Yes
Communications Services Tax	Yes	Yes
Documentary Stamps	Yes	Yes
Intangibles Tax	Yes	Yes
Property Tax	Yes*	Yes
Payment in lieu of taxes	Yes	No
Corporate Income Tax	No	Yes

* Under dispute at the Florida Supreme Court

Regulatory Requirements	Public	Private
Public purpose requirement	Yes	No
Public records law	Yes	No
Open meeting law	Yes	No
Competitive bidding	Yes	No
Civil Service	Yes	No
Public hearings on budget/financing	Yes	No
Public election or recall of CEO (Mayor)	Yes	No
Conflict of interest standards	Yes	No
Intra-fund transfer restrictions	Yes	No
Investment restrictions	Yes	No
Local regulation via referendum and initiative	Yes	No

pushed up Wilson’s rates, but according to Fiona Morgan, one of the few reporters to provide context, Wilson’s rates are the second lowest among those burdened by the debt.⁹

Allegations such as these are hardly a surprise—the municipal network in Bristol, Virginia spent years disputing similar allegations from its incumbent telephone provider before the matter was finally resolved in favor of Bristol’s cost allocation model. Historically, these tactics seem to have been more about smearing and harassing a community network rather than making defensible claims.

Though Wilson had not increased its pole attachment charge since 1975 (for poles owned by the utility), it calibrated that fee to industry norms in 2007. The increase from \$5 to \$15 is actually a decrease in real dollars – that \$5 in 1975 was worth \$20 in 2012.¹⁰ Time Warner Cable has insinuated that the fee increase would be used to help Greenlight, but Greenlight also has to pay the same fees to the City. As for increases in such fees, Time Warner Cable itself had doubled the rates it charges others for access to its poles over the previous ten years.¹¹

Though Time Warner Cable spared few accusations against Greenlight, much of the talk in the General Assembly during the legislative battles focused on a network called MI-Connection. MI-Connection was formed after the Adelphia cable bankruptcy when two towns north of Charlotte, Davidson and Mooresville, purchased the cable network to rehabilitate it and gain some control over the services and rates paid by subscribers. Almost immediately, the towns realized the cost of fixing and upgrading the network would be higher than anticipated because of the run-down condition of Adelphia network. Rather than spending \$11 million to fix it up, they had to spend \$16 million.

In subsequent years, MI-Connection contended with cost overruns due to the extra capital requirements of rehabilitating the network, something that would have been true regardless of who operated the network. Its market penetration or “take-rate” was below forecasts, a disappointment officials at MI-Connection attributed to the recession that began as the system was launching. Each year that the system did not meet its yearly financial targets, it required an operating subsidy from the towns that co-own it. The subsidy in 2010-11 was \$6.5 million, and as of March

2011 the projected 2011-12 fiscal year subsidy was \$5.9 million.

Industry lobbyists regularly armed friendly legislators with talking points that decried the “failure” of municipal ownership in MI-Connection, without bothering to note that the towns were fixing a network that the private sector ran into the ground. And there are now signs that the network is on a positive path. Network revenues are growing and expenses decreasing from operational savings. MI-Connection has just given its subscribers a substantial improvement in speeds – the slowest tier is 10 Mbps downstream and 5 Mbps upstream, comparable to TWC for downstream and much faster in upstream. Time Warner Cable is building its own network to compete with MI-Connection, an interesting choice as it has long refused to engage in similar competition with other national providers such as Cox or Comcast. Nonetheless, TWC subscribers are seeing lower prices in the MI-Connection territory than Charlotte-based subscribers, resulting in additional benefits for the towns of Mooresville and Davidson.

The focus on MI-Connection is a common tactic used by the national cable and telephone companies to justify revoking local authority. They argue that because some communities appear to be doing poorly, no community should have the authority to build a network.

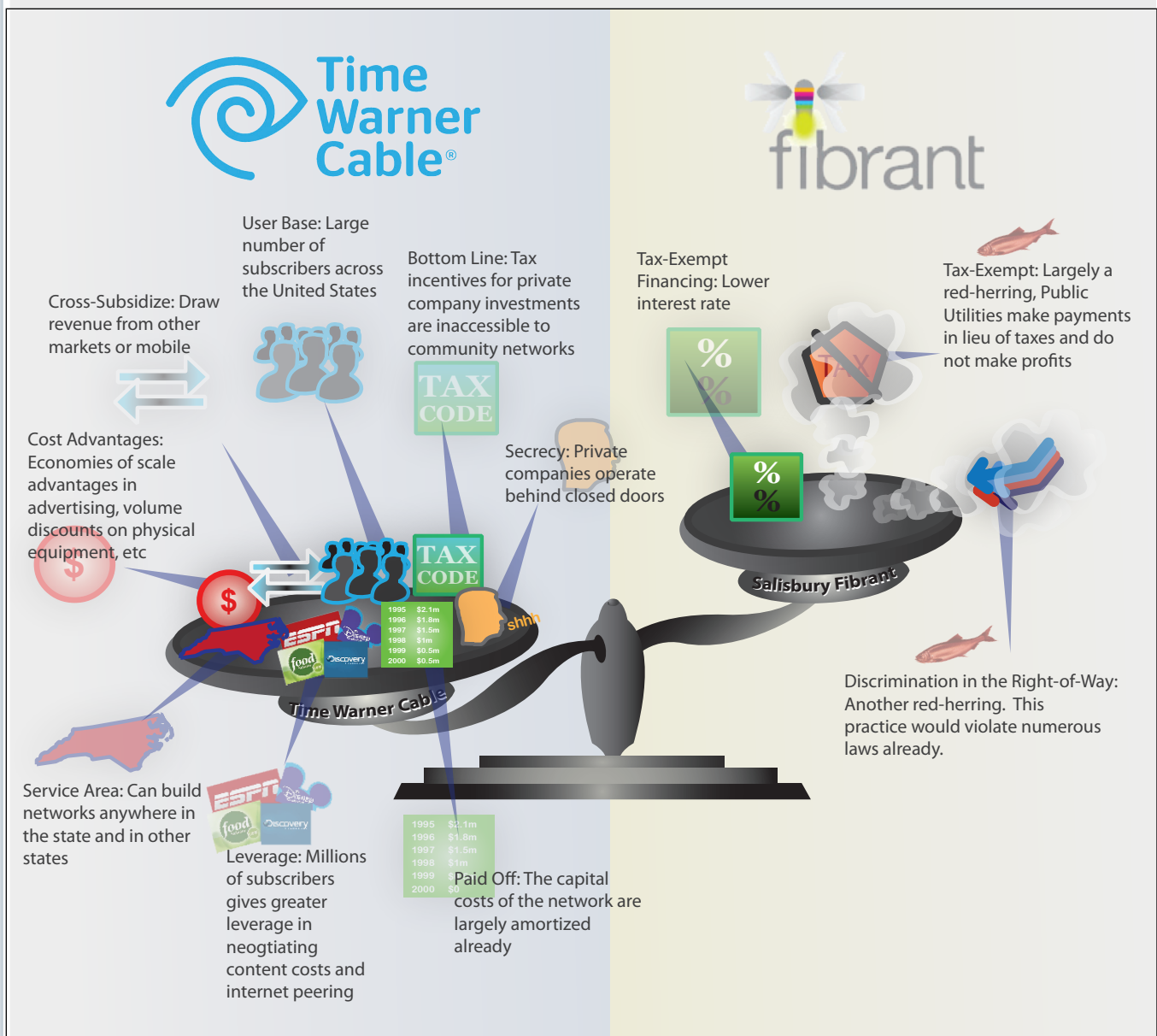
Other arguments prey on the technological illiteracy of many legislators. Perhaps the most comical attack on municipal fiber networks came from the John Locke Foundation, a “think tank” which has repeatedly warned that wireless technologies, such as WiMAX, will make fiber optic cables obsolete.¹² In reality, wireless systems use antennas that are themselves connected by wires, usually fiber optic, to the Internet. This claim is akin to suggesting that airplanes will make runways obsolete. Wireless and wired connections are complements, not substitutes. As an example, the city of Stockholm has the most wireless 4G competition, precisely because the City invested heavily in fiber optics.¹³ The claim would have been more comical if it were not taken so seriously by so many elected officials.

The Local Government Fair Competition Act of 2007

Wilson's consultants had warned that the incumbents would seek legislative limits on public provision of broadband service and were proved correct in early 2007. Large cable and telephone corporations led by TWC began lobbying for prohibition on municipal

providers. House Bill 1587, "The Local Government Fair Competition Act" included a host of specific regulations that would apply only to publicly owned networks, not to privately owned providers. Some of the provisions appealed to the public's desire for transparency and democracy by requiring the local government hold specially prescribed meetings presenting detailed business plans. Though local governments already hold public meetings to discuss these plans, no private provider would consider

Time Warner Cable Advantages Over Local Government



As the nation's second largest cable company, Time Warner Cable already had significant advantages over local governments, like Salisbury's Fibrant. Many of the supposed advantages of local governments do not hold up to scrutiny.

publicizing its business plan, which would tip its hand to competitors.

A common theme throughout anti-community broadband bills is a requirement for local governments to “impute” the costs that a private sector competitor would pay for capital. Such a calculation is all but impossible and subject to extensive legal challenge because private sector providers vary greatly from small mom-and-pop operations to global enterprises. Each has different costs of capital. This provision benefits the big cable and telephone companies because they can use it to challenge the local government in court, which increases the costs of building a network and undermines the ability of local governments to secure financing for projects.

Further, the bill would require local governments to pay all the same taxes that “would be” paid by private companies. However, municipal utilities regularly make “Payments in Lieu of Taxes” (PILOT) that often exceed what private sector companies pay. This provision would subject not-for-profit local governments to even higher tax obligations than private providers.

The end result is to saddle local governments with all the disadvantages of both public and private, while denying any advantage of either. No “Fair Competition” bill has demanded that private companies forego their tax depreciation advantages, ability to make decisions in secret, volume discounts from scale, or the benefits of spreading advertising costs across much larger footprints.

Opponents of the bill included technology companies, the Southeast Association of Telecommunications Officers and Advisors (SEATOA); the North Carolina League of Municipalities; ElectriCities, a public power group; individual local municipalities; and individual activists worried about the future of the Internet in their state.

On May 24, 2007, the Wilson City Council adopted a resolution opposing the legislation. Council minutes in a later meeting record City Manager Grant Goings as joking that TWC had always maintained that they

“welcomed competition,” before saying, “Apparently, part of the way to welcome competition was to get a bill to eliminate competition.”¹⁴

Wilson Mayor Rose charged that the legislation was transparently funded by the telecommunications industry and depicted the contest in Biblical terms: “This isn't just David versus Goliath; this is David versus Goliath and all of his cousins.”¹⁵ By local accounts, the legislative tide turned in June after Google told the House leadership that the bill would hurt both the public and private sectors, erecting unwarranted barriers to entry for high-tech growth in the state. Committee leadership then determined the bill needed more careful review and HB 1587 was turned into a “study” bill, a condition in legislative parlance that means the bill is effectively dead.

The Level Playing Field Act of 2009

Time Warner Cable and allies continued their efforts to limit local authority in 2009 after failing to succeed in 2007. Rep. Ty Harrell, a Democrat whose district included a large number of TWC employees, sponsored HB 1252, the “Level Playing Field Act,” in the statehouse. Again, TWC led the lobbying effort.

A newspaper article chronicling the legislative battle sums up the local government position on the bill:

“The reality is we've got these enormous cable monopolies that want to protect their monopolies,” said Kevin Foy, chair of the state mayors coalition and the mayor of Chapel Hill. “The threat is that Wilson is successful and provides a real model (showing) that you can protect your economy and provide an excellent service to your citizens at a lower cost.”¹⁶

While the bill was being debated, the pro-industry group “Americans for Prosperity” funded robo-calls to residents of Salisbury, which was also building a municipal fiber network.¹⁷ Wilson residents received

similar calls, urging people to call their representatives to support the legislation and oppose municipal broadband networks.¹⁸

The same coalition as in 2007 again formed to defend local authority, this time joined by a coalition of nine private sector and trade associations in the high-tech industry, including Alcatel-Lucent, Google, Intel, and the Fiber to the Home Council.¹⁹ This time, the bill was killed in the House Finance Committee, having made it through the committee chaired by the bill's sponsor.

As for Ty Harrell, he ended up resigning in disgrace after his finances were shown to have irregularities. Though his resignation involved many possible campaign finance improprieties, the website Stop the Cap, which regularly does its own watchdog journalism, wrote:

Harrell accepted \$2750 in campaign contributions from telecommunications companies, a sizable amount for a state legislator not running a committee.²⁰

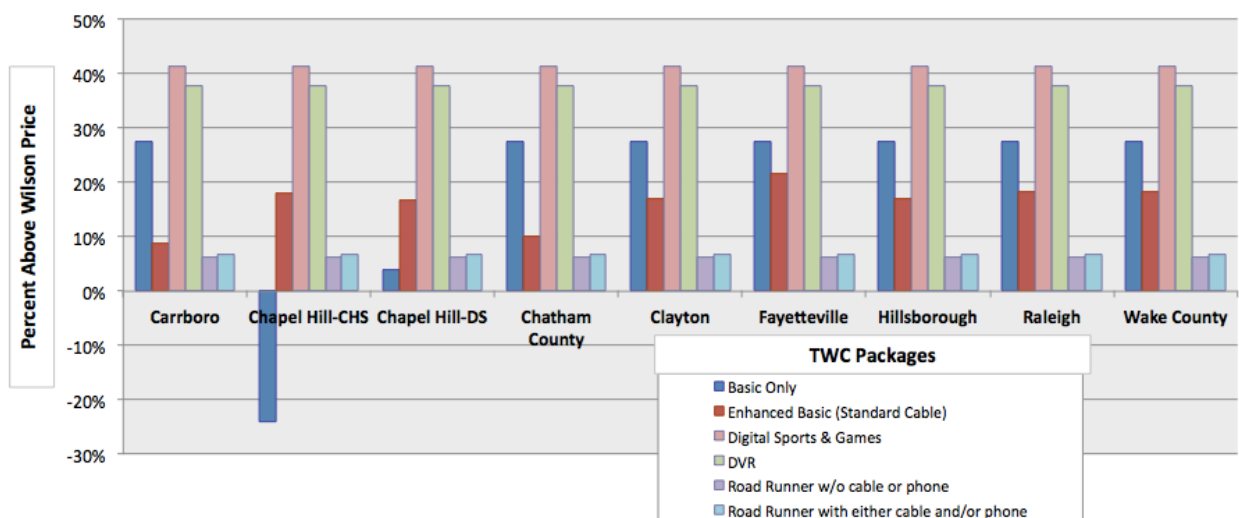
The No Nonvoted Local Debt for Competing System Act of 2010

In 2010, TWC and its allies were back, this time with S 1209 and a slightly different strategy from the same playbook: “The No Nonvoted Local Debt for Competing System Act of 2010.” This bill started in the Senate but included nearly identical provisions to those introduced in previous years. The sponsor was Democrat David Hoyle, in his 18th year of service. He claimed that fiber was “obsolete” and later admitted that Time Warner Cable wrote the bill for him.²¹

Hoyle had raised over \$11,000 from AT&T, Time Warner Cable, CenturyLink, and NCCTA in the previous election, a substantial amount for a state seat.²²

Yet again the same opponents to the bill joined in opposition. Industry opponents of the bill sent two different letters to House and Senate leadership and relevant committees, again including well recognized high-tech companies including Alcatel-Lucent,

Time Warner Cable Rate Increases, 2007-2009



Time Warner Cable raised rates in non-competitive areas around Wilson while holding Wilson's rates steady over 2007-2009 according to an analysis presented in committee at the General Assembly. Such activity suggests that Time Warner Cable was cross-subsidizing from non-competitive areas into competitive areas, an advantage that no municipal government could match.

Google, and Intel underscoring the harm this bill would impose on the very private sector it allegedly was aimed to protect.²³

As its failure appeared more likely, pro-industry forces used a variety of legislative mechanisms to salvage the bill—including an attempt to attach a municipal broadband moratorium to a kidney health awareness measure. The House, however, stripped out the moratorium. As in 2007 and 2009, proponents of preserving local decision-making power prevailed, turning the proposed legislation into a study bill on the last day of the legislative session around four in the morning.²⁴

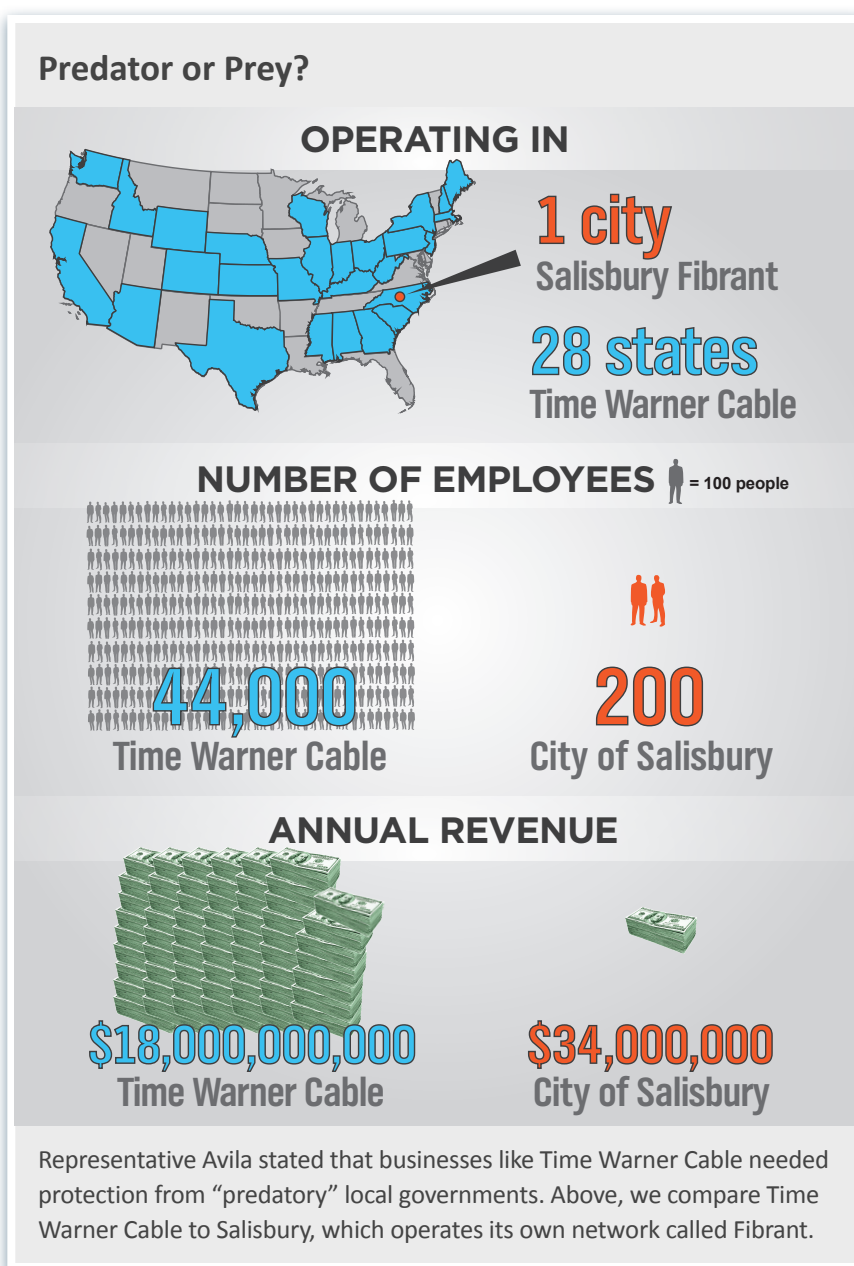
2011 Was Different

The Republican Party made strong gains in the 2010 election, winning majority control of the North Carolina General Assembly for the first time since Reconstruction and lacked a veto-proof House majority by only four votes. However, as documented in Jane Mayer's article "State for Sale," many of these particular North Carolina Republicans had stronger loyalties to the distant corporations that funded their campaigns than to the districts they represented.²⁵ The legislative fight in 2011 over community-owned networks was far more partisan than in previous years, though the battle lines were not entirely along party lines.

There was no question that the industry would seek another bill, only uncertainty over how strict its provisions would be. Time Warner Cable and CenturyLink led the effort, with AT&T claiming it would remain neutral—even as it was pushing a similar bill in South Carolina at that time.

Early in the legislative session,

Republican Representative Marilyn Avila introduced HB 129, the "Level Playing Field/Local Government Competition" Act, which contained more stringent provisions than in previous years. Her self-described motivation was to protect some of the most powerful corporations in the nation against "predatory" local governments.²⁶ Representative Avila is a member of ALEC, the American Legislative Exchange Council, as were others who strongly supported the bill. *Business Week* documented ALEC's role in state-by-state efforts to revoke local authority to build networks in an article titled "Psst ... Wanna Buy a Law?" Of a similar bill, *Business Week* authors noted, "The bill was not



designed to level the playing field. It was designed to keep new teams on the sidelines.”²⁷

Representative Avila attempted to push the bill through quickly and quietly; Catharine Rice, President of SEATO, noted that the first version of the bill municipalities saw was released one day before it was slated for a House committee vote. It was a Senate version characterized on the document as the 17th draft.

The secretive process led to a public outcry that demanded at least the appearance of a compromise attempt. In response, Rep. Avila called a negotiation session including both industry and municipal representatives. But according to Rice, she promptly turned control of the negotiating meeting over to one of the chief lobbyists for Time Warner Cable. He was an outside attorney for the firm and housed the NC Cable and Telecommunications Association in his office. Avila explained that he was more a communications expert than she. Rice, among

others, already suspected him of being responsible for the bill.

One last time, the familiar coalition came together to fight the bill, though several members were struggling with other pressing matters simultaneously. For instance, the League of Municipalities had its hands full with several other bills threatening the authority of local governments. Lobbyists and others supporting local authority reported feeling belittled by the leadership of the majority party. Debates in committee were cut off midway through, preventing some committee members from registering their opposition.²⁸ House committee public discussions, when allowed, were limited to two minute presentations.

Despite the strict time limit, many still drove hours to spend 120 seconds explaining why this decision should be a local one. The President of the Board for North Hills Christian Schools explained that the school had sought voluntary annexation to Salisbury, for the sole

Excerpts From Dialing Up the Dollars

The National Institute on Money in State Politics released [*Dialing Up the Dollars: Telecommunication Interests Donated Heavily to NC Lawmakers*](#) on March 10, 2012.

The four primary sponsors of the bill received a total of \$37,750, for an average of \$9,438, which is more than double the \$3,658 received on average by those who did not sponsor the bill. (Refer to Appendix A to see how much each of the primary sponsors, as well as 28 co-sponsors, received from telecommunication donors).

Thom Tillis, who became speaker of the house in 2011, received \$37,000 in 2010–2011 (despite running unopposed in 2010), which is more than any other lawmaker and significantly more than the \$4,250 he received 2006–2008 combined. ... Tillis voted for the bill, and was in a key position to ensure it moved along the legislative pipeline.

Senate Majority Leader Harry Brown received \$9,000 [2010–2011], significantly more than the \$2,750 he received in 2006 and 2008 combined. Brown voted in favor of the bill.

Democratic Leader Martin Nesbitt, who voted for the bill, received \$8,250 [2010–2011] from telecommunication donors; Nesbitt had received no contributions from telecommunication donors in earlier elections.



reason of being connected to Fibrant. Without that connection, they could not take advantage of modern education technology because it was cost prohibitive from the private providers.²⁹

A small business owner offered a horror story of how Time Warner Cable failed to deliver on its promises for service for weeks leading up to its grand opening. Salisbury's Fibrant connected him on short notice and with no connection fee—TWC quoted him \$350—after he spent weeks failing to get a response from Time Warner Cable as to why they had not yet connected him.³⁰

The State Treasurer's Office testified against the bill, as did BB&T Bank, which said it was an issue of economic development.³¹

Democratic Representative Diane Parfitt from Fayetteville explained how Time Warner Cable served only one side of a main street running through the city and had refused to serve the other for many years. She noted that the city would lose the ability to make sure the other side was served if the bill passed.³²

Many local governments passed resolutions against the bill and even sent local officials to Raleigh to discuss the importance of leaving this decision as a local matter based on local circumstances. Another

joint industry letter generated by ten high tech companies and associations was sent to House and Senate Leadership and all relevant Committee Chairs, again highlighting the long-term significant damage HB 129 would impose on North Carolina's private sector and high tech future.

Still, the bill passed the House with veto-proof margins just four weeks after being introduced. It took five weeks in the Senate, with numerous passionate attempts by Democrats and Republicans alike to amend the bill to spare existing projects.

Greenlight and other municipal networks did receive limited exemptions. Greenlight may grow to the county limits, but no farther. Such limits are a hardship because telecommunications has strong economies of scale and Greenlight's head end could serve far more customers than even the whole population of its county. Under the Video Service Competition Act of 2005, video franchising was statewide; the city of Wilson had been entitled to serve any customer in the state it wanted. Contrary to claims of a "level playing field," HB 129 preserved the freedom of private cable and telephone companies to serve anywhere in the state while tightly constraining existing municipal networks and preventing the establishment of new ones.

FCC Commissioners on H 129

Commissioner Clyburn - I recently learned that several state legislatures are considering bills that are contrary to the deployment objectives of the Broadband Plan. For example, in North Carolina, the state legislature is currently evaluating legislation entitled 'Level Playing Field/Local Government Competition.' ... This piece of legislation certainly sounds goal-worthy, an innocuous proposition, but do not let the title fool you. This measure, if enacted, will not only fail to level the playing field; it will discourage municipal governments from addressing deployment in communities where the private sector has failed to meet broadband service needs. In other words, it will be a significant barrier to broadband deployment and may impede local efforts to promote economic development.

Commissioner Capps - When incumbent providers cannot serve the broadband needs of some localities, local governments should be allowed--no, encouraged--to step up to the plate and ensure that their citizens are not left on the wrong side of the great divide. So it is regrettable that some states are considering, and even passing, legislation that could hinder local solutions to bring the benefits of broadband to their communities. It's exactly the wrong way to go.

North Carolina law grants the governor 10 days to veto a bill or it becomes law without a signature. Activists sent a barrage of emails and phone calls to Governor Perdue, urging her to veto the measure as a matter of principle. Organizations like the Institute for Local Self-Reliance, Free Press, Stop the Cap, and individuals including Craig Settles and Karl Bode brought national attention to the impending law. Larry Lessig's campaign to limit campaign finance corruption highlighted it through the Rootstrickers organization.

Michael Tiemann, an executive at the international technology firm Red Hat with headquarters in Raleigh, submitted an open letter at Rootstrickers that told the story of his own company's extended wrangling with TWC (see Red Hat Encourages Veto box). Undeterred, Gov. Perdue allowed the bill to become law without her signature, issuing a milquetoast statement that concluded by encouraging the legislature to revisit the question:

I call on the General Assembly to revisit this issue and adopt rules that not only promote fairness but also allow for the greatest number of high quality and affordable broadband options for consumers. ⁵¹

Despite the conduct of Democrats Harrell, Hoyle, and Governor Perdue, and others, it is incorrect to assume that the revocation of local authority to build networks in North Carolina was a bi-partisan decision. When Democrats controlled the legislature, all sides were provided substantial time for thoughtful discussion. Under Republican control, public discussion was non-existent at first and then and routinely cut short. Negotiations were described by municipal participants as "controlled by the industry." Though some Republicans tried to weaken the bill, not a single House Republican and only one Senate Republican ultimately opposed it.³³

Red Hat Encourages Veto

Michael Tiemann, a Vice President at Red Hat, wrote this letter to Governor Bev Perdue, urging her to veto H129.

Dear Governor Perdue,

We are strong supporters of your leadership and your campaign, and we would like to be heard on the important issue of community broadband. I know you are not afraid to use your veto pen, and so I ask you to veto H129, a bill that will take the future away from North Carolina and put it into the pockets of cable company monopolists.

On Sunday May 15th you may have read about our latest investment in North Carolina, Manifold Recording. This was the feature story in the Arts & Living section, and the top right-hand text box on the front page. One of the most difficult and expensive line-items in this multi-million dollar project was securing a broadband link to the site in rural Chatham County. I spent more than two years begging Time Warner to sell me a service that costs 50x more than it should, and that's after I agreed to pay 100% of the installation costs for more than a mile of fiber. As part of a revised Conditional Use Permit (approved last night), I presented to the Commissioners and the Planning Board of Chatham County data on the economic investment I made, and the fact that according to the statistics from the Rural Broadband Coalition, that such an investment was worth about \$300,000 to the 100+ neighbors who live along the new fiber link that I paid for.

Such heroics should not be necessary, nor should they be so costly.

I spent 10 years in Silicon Valley, and I know how quick they are to adopt new technologies that help people start and grow businesses. Manifold Recording would have remained a pipe-dream without broadband. But not everybody can afford to pay \$1000/month for the slowest class of fiber broadband. Community broadband initiatives reach more people faster, at lower costs, leading to better economic development. Take it from me: had I been able to spend the time and money on community broadband that I spent in my commercial negotiations, there would be more jobs in Chatham County today.

The Consequences of HB 129

HB 129 effectively banned municipalities from building and operating telecommunications networks while pretending to promote fair competition. It includes numerous regulations and restrictions that apply solely to publicly owned networks.³⁴ One example is that municipalities are restricted from pricing services below the cost of provisioning them, for any period of time. The big cable and DSL companies assert this preserves a “level playing field” even as they regularly offer large promotional discounts at prices below cost to attract customers.³⁵

The bill requires municipal providers to keep separate books to prevent an “unfair cross subsidy” between different public funds. Yet, TWC has lowered its promotional rates in Wilson while raising rates on nearby customers who have no other cable or fiber choice. As all of these customers are served by the same TWC headend, subscribers in non-competitive areas are subsidizing lower prices in competitive areas.

The bill requires a public referendum, another measure that offers deep-pocketed opponents of community owned networks an advantage. Nearly ten years ago, the tri-cities of Batavia, Geneva, and St. Charles, Illinois found themselves inundated by misleading cable and telephone company talking points that scared voters on a referendum to build a municipal network. SBC and Comcast overwhelmingly outspent consumer advocates by \$300,000 to \$4,000.³⁶

Local governments are legally prohibited from taking a position on referenda and community activist groups cannot raise the kind of money needed to respond to such campaigns. When Longmont, Colorado, held a referendum on whether it should build a community network in 2009, Comcast spent over \$200,000 opposing it, setting a record for campaign spending locally.³⁷ Because of its one-sided nature, a referendum is a poor measure of community support for a project.

Lawmakers claimed to have exempted unserved areas from the restrictions of this bill, but the supposed exemption is crafted in such a way as to make it meaningless. In order to demonstrate an area is unserved, local government has to gather data at the census block level, an expensive and time-consuming proposition that these rural areas cannot afford. As Catharine Rice summed up,

“HB 129 has effectively prohibited communities from operating community-owned broadband systems. The law's hurdles have been microscopically crafted, such that even if a community could cull together the scattered thousands of census block that met the test of “unserved,” and met the burden of proof with the NC Public Utility Commission, and won the referendum, it would never find financing with the lawsuit exposure HB 129 creates.”

Far from providing a “level playing field,” the Act has stifled public investment in community broadband networks and no one anticipates a local government building a network as long as it remains in effect. This reality should trouble all in North Carolina, as it cannot be globally, or even regionally, competitive simply by relying on last-generation connections from Time Warner Cable, CenturyLink, or AT&T.

Cities near the border of North Carolina, including Danville, Virginia; Chattanooga, Tennessee; and Bristol in both Tennessee and Virginia all offer gigabit services via municipal utilities. Chattanooga’s minimum network speed of 50 Mbps both downstream and upstream dwarfs what is available from DSL or cable networks. Many east coast communities outside of the Carolinas have access to Verizon’s fiber optic FiOS, which also dramatically outperforms cable and DSL services. Services from AT&T, Time Warner Cable, and CenturyLink cannot compare to the services offered on modern networks.

Conclusion

After several unsuccessful attempts, Time Warner Cable, CenturyLink, and AT&T finally succeeded in their quest to stifle municipal broadband. The restrictions in HB 129 make new public deployments virtually impossible in North Carolina. Both Fayetteville and Chapel Hill were poised to expand their investments in fiber optic networks and both now have fiber strands that are effectively stranded—the community cannot directly use that investment to attract new businesses. Although Wilson, Salisbury, and a few others have some measure of certainty and globally competitive networks, the rest of the state has to rely on distant private corporations that have little incentive to invest in better networks.

In the wake of the bill's passage, CenturyLink thanked the legislators that supported it, saying

Thanks to the passage of House Bill 129, CenturyLink has gained added confidence to invest in North Carolina and grow our business in the state.³⁸

To date, there is no evidence that CenturyLink, Time Warner Cable, or AT&T have increased their investments in North Carolina. If anything, they are less likely to invest, because investment decisions are driven by the threat of competition. Without that, customers are effectively captives of the one cable and one telephone company serving the town.

If community owned networks actually had the poor track record claimed by large cable and telephone companies, this legislation would not be necessary. If they did not result in jobs, increased competition, and community savings, local governments would not consider building them. It is only because they so regularly succeed that Time Warner Cable, AT&T, and others want to ban them. These companies recognize that the private sector alone is ill-equipped to create competition for their monopolies and are therefore targeting the only real threat of competition they face: community owned networks.

And unfortunately, these companies can and do try year after year to pass this legislation. They only have to succeed once; because of their lobbying power, they have near limitless power to stop future bills that would restore local authority. Frankly, it is a smart investment for them. Time Warner Cable alone posted profits greater than \$1 billion in 2011. To stifle competition in North Carolina, it had to hire a few lobbyists (six full time by some counts) and donate \$300,000 to state legislators over five years. Chicken feed.

Compare the cost of pushing this legislation to the revenue Time Warner Cable lost due to lower prices in Wilson because Greenlight created competition. If just a quarter of Wilson's 17,000 households saves \$10/month on their TWC bill, the company loses \$1 million every two years. Factoring in the over 6,000 subscribers that Greenlight already has, it is fair to say that Time Warner Cable could have spent far more to push this legislation and still come out ahead if it stopped just one other community from building its own network.

It certainly makes sense for these big companies to want to limit local authority to build next-generation networks. What remains puzzling is why any state legislature would want to limit the ability of a community to build a network to improve educational outcomes, create new jobs, and give both residents and businesses more choices for an essential service. This decision should be made by those that have to feel the consequences—for better and for worse.

For More Information...

MuniNetworks.org chronicled most of the 2011 battle as it happened. To learn more, read resolutions, or listen to the testimony and floor speeches, sift through the posts (in chronological order) [marked with the North Carolina keyword](#).

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- 23 See copy of letter here: <http://www.baller.com/pdfs/JointOpposition5-21-10.pdf>
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- 32 Listen to this and other speeches from the House Floor: <http://www.muninetworks.org/content/assorted-speeches-north-carolina-house-representatives-anti-community-broadband-legislation>
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