

States Make the Right Moves

California, Washington and Indiana recently enacted legislation to help facilitate community broadband networks.

By Lisa Gonzalez / *Institute for Local Self-Reliance*

CALIFORNIA

Gov. Jerry Brown signed a bill that clears the way for rural California communities to develop, fund and operate broadband networks. In September 2018, Gov. Brown approved AB 1999, which eliminated state restrictions on publicly owned options for rural internet access. The state-imposed limitations had been in place for years, discouraging rural communities from deploying broadband infrastructure even where population density is not high enough for profitability.

AB 1999, introduced by Assemblymember Ed Chau, expanded the authority of community service districts (CSDs) to bring high-quality connectivity to residents, businesses and institutions. CSDs in California are independent local governments usually formed by residents of unincorporated areas. They're created to provide services people living in more populated areas often take for granted, such as water and wastewater management, trash collection and fire protection.

CSDs can create enhanced infrastructure financing districts (EIFDs) to raise funds for the services they provide. These EIFDs can fund the development of internet access infrastructure, as they would other projects, but prior to the adoption of AB 1999, additional restrictions applied. When building a broadband network, a CSD would first have to determine that no other person or entity was willing to provide internet access. Once the broadband infrastructure was constructed, if a private company conveyed a willingness to offer services in the region via the infrastructure, the CSD had to either sell or lease the infrastructure to that company rather than operate it directly.

AB 1999 eliminates these discouraging requirements. Now, CSDs can move forward without delay, don't need to wait for the response of the private sector and no longer face the risk of having to relinquish their physical infrastructure investment.

WASHINGTON

In spring 2018, lawmakers in the Evergreen State passed HB 2664, and Gov. Jay Inslee signed it. Enabling legislation that allows the formation of port districts and election of their commissioners has been in place for more than 100 years. Port districts operate to boost regional economic development; broadband deployment is a natural fit.

Before the governor signed HB 2664, state law allowed ports to develop and use fiber optic infrastructure for their own purposes within

TEXT OF RECENT STATE LAWS ON COMMUNITY BROADBAND

California AB 1999: <https://tinyurl.com/y7jbffg8>

Washington HB 2664: <https://tinyurl.com/yc4s5zh7>

Indiana SB 478 (FIBRE Act): <https://tinyurl.com/y7h6spzm>

and beyond their geographic borders. If they wanted to serve other entities, they were limited to providing wholesale services within their borders. HB 2664 removed the geographic restriction for wholesale services, allowing ports to work with private-sector partners to bring better connectivity to surrounding regions.

Another sticking point that HB 2664 eliminated was the requirement that only rural ports could use their fiber to offer services. This prevented communities with higher population densities from using existing fiber assets to attract competition. The bill simply struck the requirement that ports be rural to offer services.

The Port of Ridgefield, one of the entities that worked hard to get the bill passed, is already planning to take advantage of the change in the law. It intends to build out its existing fiber resources into a 42-mile dark fiber loop as part of larger economic development plans for the area. The Port of Chehalis in Lewis County is considering a similar project, and ports along the I-5 corridor stretching from Portland, Oregon, to Seattle have discussed a regional project. In Bellingham, citizens who pressed the city to explore a municipal broadband network applauded the chance to someday receive connectivity from their port authority.

INDIANA

A growing number of electric cooperatives are listening to members who want high-quality internet access. Co-op boards see the need and the opportunity to use their fiber infrastructure to offer FTTH internet access while enhancing delivery of electric services for members. In some areas, cooperatives offer FTTH to nonmembers along the edges of their service areas. In 2017, Indiana state lawmakers eased the way for electric cooperatives interested in bringing better connectivity to rural areas.

Gov. Eric Holcomb signed SB 478, known as the Facilitating Internet Broadband Rural Expansion (FIBRE) Act. The new law facilitates fiber optic

deployment by reducing the need to obtain separate easements for fiber lines if cooperatives already possess easements for electric lines.

The FIBRE Act applies only to existing easements between electric suppliers and property owners. New electric easements, easements on railroad property, and the installation of new poles, conduit or other structures aren't under the purview of the new law. Other exceptions also apply to limit the new easement applications to existing infrastructure.

If a property owner opposes an easement for fiber optic installation, the FIBRE Act offers a course of action to try to prevent the easement. There are strict guidelines regarding the information the electric cooperative must provide to the property owner, including the co-op's plan for deployment and services it will deliver. If a property owner feels deployment

will negatively impact property value, she or he can pursue legal action as spelled out in the FIBRE Act. If an electric cooperative is able to proceed with deployment, it must follow certain procedural requirements, including creating a separate entity for telecom service and maintaining a separate accounting system.

The bill had strong bipartisan support in both state legislative bodies, passing 49-1 in the senate and 96-2 in the house. Electric cooperatives in rural Indiana capitalized on the legislative assist during 2018: Orange County REMC, Jackson County REMC and South Central REMC are all working on FTTH projects to better serve their rural members. ♦

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