

Barriers To Municipal Networks

Eighteen states have enacted some form of barrier to municipal networks, and more stringent restrictions are pending in several state governments.

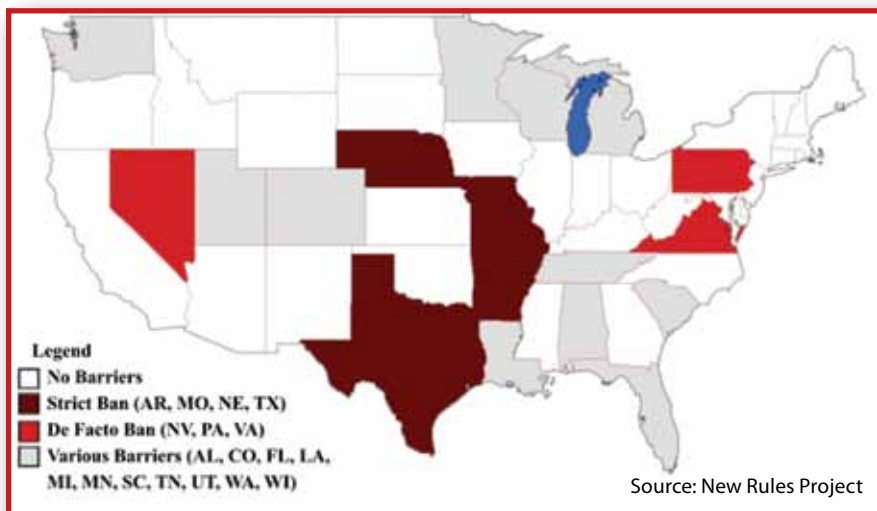
By Christopher Mitchell ■ *New Rules Project, Institute for Local Self-Reliance*

Each community that now owns its own broadband network has a story to tell about the struggles it had to undergo to succeed. Challenging big, corporate incumbents is never easy. And as municipal initiatives have succeeded, the telecommunications giants have thrown their political clout behind efforts to persuade state legislatures to change the rules to bar or significantly inhibit local efforts.

Nineteen U.S. states have enacted barriers that make building publicly owned networks difficult or impossible for communities. The map at the right shows states with outright bans, de facto bans or various other barriers, based on analysis by the New Rules Project.

These bans are in addition to laws in several states that revoke local authority over cable franchises in favor of reduced regulation and state oversight. The predictable result has been higher bills, poorer customer service and – unsurprisingly – no change in the level of competition for most communities. Some states have even reversed the long tradition of requiring universal coverage in franchise agreements, allowing providers to determine who gets service.

Some states with barriers to community networks – Tennessee and Washington, for instance – actually have large numbers of networks, while some states without barriers have no community networks. There are a variety of explanations for this, just as there are a variety of motivations for building community networks.



“Strict ban” states ban local governments from providing “telecommunications services” or, in some cases, “exchange” services. These prohibitions make building triple-play municipal networks impossible. “De Facto Ban” states effectively outlaw community networks but leave some communities with the potential authority to build municipal networks, however unlikely that is. “Various Barriers” range from strong barriers to relatively weak ones. New Rules Project did not classify a requirement for a simple-majority referendum as a barrier for the purposes of this map. Visit the interactive map at <http://bit.ly/bb-map>.

[Editor’s note: North Carolina enacted a de facto ban after this map was prepared.]

Washington and Tennessee have public utilities that gained the trust of citizens over their long histories. Other states created their barriers to community networks only after one or more community networks were built and incumbents began to lobby for a “level playing field.” (Public-sector providers have argued that

the playing field is already tilted against them because of open-meetings laws, higher prices for content and gear compared with volume discounts for major corporations, and the general difficulty of challenging an established incumbent that can freely cross-subsidize from non-competitive territories.)

About the Author

Christopher Mitchell, researcher for the Institute for Local Self-Reliance, writes regularly at www.muninetworks.org and can be reached at christopher@newrules.org or christopher@communitynets. “Publicly Owned Broadband Networks,” the report from which this article is excerpted, is available at <http://www.muninetworks.org/reports/publicly-owned-broadband-networks-averting-looming-broadband-monopoly>.

Municipal Broadband

NEW LEGISLATION

For years, Time Warner Cable supported legislation in North Carolina that would either kill community networks outright or restrict them sufficiently to make creating or maintaining one all but impossible. This legislation failed every year until, in 2011, the state legislature passed (and the governor declined to veto) what the city of Wilson, N.C., described as “a bill drafted and supported by the cable industry that will essentially ensure no municipal broadband systems will be built in North Carolina in the future.” Other states are also dealing with cable and phone companies that want more regulation for competitors while fighting to be deregulated themselves.

Until recently, incumbents challenged only publicly owned last-mile networks that offered retail services. However, after the broadband stimulus programs began awarding funding to projects in 2009, major private providers began challenging projects that merely

Incumbent opposition to public networks now includes public-private partnerships, middle-mile projects and institutional networks.

have a public partner. These include not only last-mile projects but also middle-mile projects that offer data transport to third parties on an equal basis.

For example, in Maine, a stimulus-funded project to build a middle-mile, open-access fiber network that would encourage the building of privately owned access networks throughout the state was challenged in the legislature by incumbent telco FairPoint. FairPoint said the project was unfair competition because it included a single public-sector partner, the University of Maine System.

Lawmakers in Wisconsin have even challenged communities’ right to use stimulus funds to build fiber optic net-

works that would serve only government institutions and schools because these would supplant high-priced services offered by AT&T. Similarly, legislation pending in South Carolina would derail a large middle-mile project by Oconee County that would serve public facilities, including schools, libraries, health care facilities and emergency shelters.

However, communities continue to succeed despite the many disadvantages they have when they overbuild incumbent operators. In recent years, communities have created some of the best and most reliable fiber optic networks available in the United States, often in the face of powerful incumbents and debilitating state laws. ❖

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