

Mont Belvieu Lights the Way for Texas

Texas law discouraged municipalities from providing broadband – until last year, when the city of Mont Belvieu obtained a court ruling that clarified its authority to finance, build and operate fiber networks and provide internet service.

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

In Texas, publicly owned networks aren't common. State law limits the types of services municipalities can offer, which has discouraged local communities from investing in fiber infrastructure. Mont Belvieu, located about 30 miles east of Houston, believed it had the local authority to offer FTTH to the community, as it did for electricity and water. To establish its right to offer internet access, this small town of around 8,000 people took the bull by the horns and went to court. Its decision to take the matter to the bench may have opened the door for other underserved Texas towns.

Mont Belvieu has always dealt with a patchwork of providers that don't compete with one another. With fewer subscribers than in urban areas and no competitive pressure, there was no reason for incumbents to upgrade services. Residents have complained about slow DSL download speeds of 1.5 Mbps and cable internet download speeds topping out at 5 Mbps. Some premises could not obtain any internet access from incumbent ISPs, which told residents that their networks were saturated and they were not willing to make the necessary investments to serve more subscribers.

Mont Belvieu, a center of the oil and natural gas industry, has grown quickly in recent years. Community leaders wanted to encourage that growth; they knew, however,

that poor connectivity could jeopardize the town's upward mobility. Developers had plans for new subdivisions, but ISPs didn't want to deploy infrastructure to the new areas, which left residents dependent on mobile hotspots. So community leaders began to investigate the possibility of a municipal FTTH network.

A NEED FOR SPEED

A 2016 feasibility study survey indicated that 60 percent of residents and 79 percent of businesses weren't getting the internet access they needed. Ninety percent of residents and 100 percent of business respondents stated that they believed high-speed internet access was as essential as electricity and water. Clearly, the public appetite for better connectivity was intense.

Community leaders decided the best course of action was to invest in publicly owned infrastructure and create a publicly owned FTTH network operator to serve the entire community. Mont Belvieu would offer gigabit internet access directly to the community.

To fund the deployment of the fiber infrastructure, Mont Belvieu decided to issue certificates of obligation (COs). Under Texas law, COs backed by property taxes or other local revenue allow local governments to borrow to fund public projects without voter approval. They can be issued for up to 40-year terms. Even though no referendum is required, city officials



must publish notification about issuance in local news media and must follow specific guidelines in announcing the nature of the project and the manner of financing. If 5 percent or more of voters petition for an election on the CO issuance, the city must hold a referendum to allow voters to pass or fail the proposal.

By the end of 2016, the city council was ready to publish notification about the project and the CO issuance. As required by law, it published a notice in the local paper announcing the project and the intent to issue COs not to exceed \$14 million. There were no challenges, which allowed the city council to adopt an ordinance issuing the COs the following January.

Rather than proceed with securing funding, hiring contractors and beginning construction only to be challenged by the state or an incumbent, community leaders decided to take a preemptive strike and first establish their legal position. The city

filed a petition in district court for an expedited declaratory judgment to determine whether it could legally issue COs to fund deployment of the planned broadband infrastructure.

The court agreed with the city's arguments, stating in its order that the city had the authority to offer broadband to the public and fund the deployment with certificates of obligation. As no appeals were filed, the decision creates a precedent for other Texas communities interested in developing publicly owned fiber optic networks and using COs to fund them.

Unsettled interpretation of the law discouraged Texas communities from taking risks and investing in similar projects; now they have at least one court ruling on their side. (Later in 2017, the Texas cities of Celina and Hudson Oaks started community broadband projects.)

THE COURT'S DECISION

The legal authority for the project was determined by how Texas law defined

the technology, but the community's authority to invest rested on how the law defines communities. In Texas, municipalities are categorized as either general law cities or home rule cities; Mont Belvieu is organized as a home rule city.

General law cities, typically smaller communities, have powers limited to those specifically defined by state statute. They don't have the authority to engage in an activity unless that authority is specifically granted or implied in state law.

Cities with populations of more than 5,000 can elect to adopt home rule charters. Home rule communities are almost a mirror image of general law cities in that the state constitution and state statutes limit their authority rather than defining it. Unless the state expressly prohibits or preempts the authority they wish to exercise, home rule communities have the authority to act. Voters must approve a home rule charter and any changes to it.

Mont Belvieu's argument convinced the court that a fiber optic network can be considered utility infrastructure.

Mont Belvieu is a home rule city and has the authority to issue COs for public works projects, including municipal utilities; the city wanted approval from the court that a fiber optic network could be defined as a utility system or public works project in compliance with the Texas Government Code. The code establishes the rules under which municipalities can issue public securities.

To prove to the court that a fiber optic network is a utility system, the city used established Texas case law. It offered examples of how previous courts have viewed the meanings of "public

works" and "utilities." The court agreed with the city's interpretation that a fiber optic network is a public improvement and that past case law applied. Even though electric light plants were not listed specifically in statutes, historically, courts considered them municipal utilities, and this court followed suit with a fiber optic system. Mont Belvieu also presented the state legislature's intent, codified in statute, that connecting all residents is a goal in Texas.

After the court confirmed the city's authority to deploy fiber, offer

services and fund its project, Mont Belvieu created its network, MB Link. MB Link provides internet access but no voice or video services, in keeping with state restrictions. The city is still connecting residents to the network and plans to begin connecting businesses in 2019. Residents can sign up for symmetrical gigabit internet access for \$75 per month and a one-time installation fee and deposit, totaling \$150.

Now that the question of deploying and funding fiber optic networks in home rule authority Texas cities has been addressed in Mont Belvieu, more communities can consider publicly owned networks to address poor local connectivity. ❖

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