

# MUNICIPAL BROADBAND: THE KEY TO ECONOMIC GROWTH

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## **Abstract:**

Municipal broadband networks play a critical role in promoting both technologic innovation and economic vitality. Nevertheless, the telecommunications industry has successfully lobbied some state governments to pass legislation forbidding cities under their jurisdiction from establishing such public broadband services. The Community Broadband Act, introduced by New Jersey Senator Frank Lautenberg in both the 110<sup>th</sup> and 109<sup>th</sup> Congresses<sup>1</sup> but failing to pass out of the Senate's Commerce, Science, and Transportation committee, would amend the Telecommunications Act of 1996 to overturn these state bans, and thus preserve and protect the ability of local governments to provide broadband capability and services.

This Essay will advocate for passage of the Community Broadband Act. Part I will provide an overview of the benefits of broadband Internet access, summarizing why broadband proliferation is necessary to promote economic growth. Part II will explain why the United States should not foreclose municipal broadband or any other broadband proliferation option. Part III will discuss the benefits of experimentation in the broadband service context, arguing that giving municipal governments the choice between creating their own broadband services or entering into private-public partnerships with private broadband providers would result in a substantial amount of empirical evidence that would allow other governments to make more informed decisions.

## **The Benefits of Broadband Proliferation**

Fast and inexpensive Internet services “promise[] to accelerate economic growth, create new jobs and industries, advance education and lifelong learning, improve health care decision-making, and raise living standards.”<sup>2</sup> While affordable broadband will benefit many sectors of society, local economies have the most to gain from these services. High-speed broadband service has become “an essential element for a thriving local economy,” for small businesses now require cheap, high-speed Internet access in order to effectively compete in an increasingly global economy.<sup>3</sup> Analysts have estimated that the proliferation of cheap broadband

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<sup>1</sup> See Community Broadband Act of 2007, S. 1853, 110th Cong.; Community Broadband Act of 2005, S. 1294, 109th Cong.

<sup>2</sup> Hannibal Travis, *Wi-Fi Everywhere: Universal Broadband Access as Antitrust and Telecommunications Policy*, 55 AM. U.L. REV. 1697, 1697 (2006).

<sup>3</sup> NATIONAL LEAGUE OF CITIES, 2006 ADVOCACY PRIORITY 3 (2006).

services can create more than \$1 trillion in economic value in the next decade alone.<sup>4</sup>

Unfortunately, the United States has fallen significantly behind its peer countries in taking advantage of the broadband revolution. Current broadband offerings do not meet the nation's current needs—due to high prices, only 30 percent of U.S. households can afford to subscribe to broadband services, putting the United States behind nations such as South Korea.<sup>5</sup> Today, Japan which as late as 2001 lagged behind the United States in broadband penetration, has not only provided broadband access to virtually its entire population, but granted broadband access that is on average 16 times faster than in the United States—and at a lower price.<sup>6</sup> In fact, the United States is ranked only 16<sup>th</sup> in the world in broadband penetration, and has a significant amount of ground to make up if it plans to compete with leading broadband nations.<sup>7</sup>

How have nations such as South Korea and Japan leapfrogged the United States in this very important area of technological development that has significant economic consequences? Unlike the United States, governments in these nations have taken very proactive roles in developing broadband infrastructure and providing broadband services to their populations. For instance, the South Korea government directly constructed its nation's broadband infrastructure, investing more than \$9.2 billion into broadband development between 1999 and 2003, with the government spending another \$11 billion to deliver broadband to more than 90 percents of South Korean households.<sup>8</sup> Other leading broadband nations, such as Canada, have achieved their broadband connectivity goals by “successfully combin[ing] municipal systems with privately deployed networks to wire their countries.”<sup>9</sup>

### **The United States Should Not Foreclose Any Broadband Proliferation Option**

Although cheap and accessible broadband service is a prerequisite for future economic growth, the private sector has failed to further this goal in the United States. The private sector, by placing profits over other goals, has “le[ft] behind most of the poor, vast numbers of racial and ethnic minorities, and many residents of rural and inner-city communities.”<sup>10</sup>

Private companies, by charging significantly more money for broadband than dial-up access, have made broadband service too expensive for many working class and poor communities. One survey found that 63 percent of dial-up households “would not upgrade to broadband because it's too expensive.”<sup>11</sup> Furthermore, many private companies have not provided broadband in rural areas at all, believing that it is too expensive.<sup>12</sup>

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<sup>4</sup> CHARLES H. FERGUSON, *THE BROADBAND PROBLEM: ANATOMY OF A MARKET FAILURE AND A POLICY DILEMMA* 5 (2004)

<sup>5</sup> NATIONAL LEAGUE OF CITIES, *supra* note 3.

<sup>6</sup> Thomas Bleha, *Down to the Wire*, FOREIGN AFF., May-June 2005, <http://www.foreignaffairs.org/20050501faessay84311/thomas-bleha/down-to-the-wire.html?mode=print>.

<sup>7</sup> NATIONAL LEAGUE OF CITIES, *supra* note 3.

<sup>8</sup> Irene K. Kunii & Moon Ihlwan, *Where Broadband is Really Booming*, BUS. WEEK, May 5, 2003 at 88.

<sup>9</sup> Robert MacMillan, *Congress Tunes in to WiFi*, WASH. POST, June 27, 2005,

<http://www.washingtonpost.com/wp-dyn/content/article/2005/06/27/AR2005062700482.html>.

<sup>10</sup> Travis, *supra* note 2, at 1702.

<sup>11</sup> Jim Hu, *Study: Price Matters For Broadband*, CNET NEWS, Oct. 13, 2003,

<http://news.com.com/2100-1034-5090434.html?part=dht&tag=ntop>.

<sup>12</sup> U.S. DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, *A NATION ONLINE: ENTERING THE BROADBAND AGE*, (Sept. 2004), <http://www.ntia.doc.gov/reports/anol2004/NationOnlineBroadband04.htm>.

Several United States municipalities, such as Philadelphia and San Francisco, have realized that broadband proliferation holds the key to future economic vitality and, inspired by the Japanese, Canadian, and Korean experiences, have “increasingly endorsed the idea of providing universal broadband access to their citizens.”<sup>13</sup> Many private broadband providers have resisted this idea. Unlike the market for dial-up Internet, where robust competition exists, many broadband providers possess monopolies over broadband service in their region.<sup>14</sup> These private providers, realizing that municipal broadband poses a significant threat to their regional monopolies, have successfully lobbied many state governments to limit or outright ban a municipality’s ability to provide broadband service to its citizens.<sup>15</sup>

Given the critical importance of broadband to this nation’s future economic growth, and given that the United States has fallen behind the rest of the industrialized world in developing its broadband infrastructure, the United States government must not allow *any* broadband proliferation option to be completely foreclosed. Senator John McCain correctly observed that, although the United States “has a long and successful history of private investment in communications infrastructure... when the industry does not answer the call, other options should be available.”<sup>16</sup> This is clearly a case where private industry has failed to answer the call—despite having a complete monopoly over broadband development for many years, the private sector has failed to provide broadband service to even more than a third of this nation’s population, let alone the more than 90 percent that would be needed to put this nation on par with South Korea. Given these facts, it is simply not possible to increase broadband speed and affordability at the same pace as the rest of the industrialized world while also maintaining the status quo. State legislatures, by prohibiting municipalities from providing broadband services, have foreclosed a broadband proliferation option that is known to work, and thus federal legislation such as the Community Broadband Act is needed to ensure that municipal broadband remains an option nationwide.

### **The United States Must Allow for Municipal Broadband Experimentation**

Justice Brandeis, in his famous dissent in *New State Ice Co. v. Liebmann*,<sup>17</sup> observed that each individual state should “serve as a laboratory” and “try novel social and economic experiments without risk to the rest of the country.”<sup>18</sup> The cities contemplating municipal broadband services provide the perfect support for Justice Brandeis’s observation. Not all municipal broadband service proposals are identical—in fact, municipal broadband plans are highly heterogeneous, with different cities using very different strategies and tactics to meet the same goal of increased broadband proliferation. While Philadelphia has partnered with Earthlink to provide city-wide wireless broadband access at a charge of \$10 to \$20 a month, San Francisco has partnered with Google to provide city-wide wireless broadband that, rather than

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<sup>13</sup> Travis, *supra* note 8, at 1699.

<sup>14</sup> *See id.* at 1722 (stating that “[m]any consumers have only one broadband choice to make” and that “[f]or every 100,000 users of dial-up Internet, there were fewer than two broadband providers as of 2002, compared to about fifteen dial-up ISPs.”).

<sup>15</sup> *Id.*

<sup>16</sup> MacMillan, *supra* note 9.

<sup>17</sup> 285 U.S. 262 (1932).

<sup>18</sup> *Id.* at 311.

depending on user fees, will rely on advertiser support.<sup>19</sup> New Orleans, in contrast, has not partnered with any private organization, choosing instead to provide free city-wide wireless broadband using a network that is both owned and run by the city.<sup>20</sup>

However, cities cannot serve as effective laboratories when the federal or state governments pass legislation that significantly limit—or even worse, completely eliminate—certain types of experimentation. At this point, it is unknown whether the best method of implementing municipal broadband is the Philadelphia model, the San Francisco model, the New Orleans model, or another model that has not yet been adopted anywhere. Without additional data, it is not yet possible to determine which plan, if any, is ideal, and under what circumstances.

Unfortunately, private Internet providers have sought to prevent certain types of municipal broadband systems from being created. In addition to the several state bans that have been enacted, lobbying from private providers resulted in an earlier version of the Community Broadband Act containing provisions that essentially gave private providers veto power over municipal broadband plans based on the New Orleans model.<sup>21</sup> Though those provisions have not become law, maintaining the status quo is not sufficient—the federal government must take proactive action to provide cities with the freedom to experiment with whatever municipal broadband plans they desire. Such unrestrained experimentation will provide a substantial amount of empirical evidence about the advantages and disadvantages of various municipal broadband plans, which allow municipalities that have not yet implemented municipal broadband to make more informed decisions as to the type of municipal broadband plan that will bring about the best possible results in their area.

## **Concluding Remarks**

Based on the foregoing reasons, Congress should approve the current version of the Community Broadband Act. High-speed and inexpensive broadband will play a critical role in the economic future of the United States, and this nation cannot achieve the high level of broadband proliferation of Japan, South Korea, and other countries through private enterprise alone. Neither the federal nor state governments should completely foreclose the possibility of municipal broadband through legislation prohibiting it, particularly when the Japanese, Korean, and Canadian experiences demonstrate that municipal broadband is a highly successful method of making broadband services faster and more accessible. Similarly, given the diversity of municipal broadband systems and uncertainty as to which, if any, system is the most effective one, governments should not place constraints or limits on the types of broadband systems municipalities may create, but rather encourage cities to experiment with different types of municipal broadband systems so that enough empirical evidence exists for other municipalities to make more informed decisions in the future. Passing the Community Broadband Act of 2006 in its current form will eliminate such unnecessary constraints and allow the United States to do what must be done in order to ensure the future economic growth necessary for a prosperous future.

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<sup>19</sup> Travis, *supra* note 2, at 1701.

<sup>20</sup> *Big Easy Launches Free Wireless System*, BREIT BART, Nov. 29, 2005, <http://www.breitbart.com/news/2005/11/29/D8E69QMO0.html>.

<sup>21</sup> Posting of Harold Feld to <http://www.wetmachine.com/item/498> (May 2, 2006, 23:13 EST).