

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Comments)	
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NBP Public Notice # 7)	GN Docket Nos. 09-47, 09-51, 09-137
)	
Contribution of Federal, State, Tribal, and)	
Local Government to Broadband)	

COMMENTS OF THE CITY OF NEW YORK

I. INTRODUCTION

The City of New York (“City”) hereby submits the following comments in response to the Notice released on September 25, 2009, by the Federal Communications Commission (“Commission”) regarding the development of a national broadband plan as directed by Congress.¹ The Commission asks in its notice about government use of broadband to enhance service delivery, and government initiatives to promote broadband deployment and adoption. In addition, the Commission seeks comment on the extent to which existing government mechanisms have either promoted or delayed broadband deployment.

The City has committed extensive resources both to incorporate the use of broadband in its day-to-day operations and to promote broadband deployment and adoption in New York City. The City has long understood the transformative role of broadband technology, and has pursued its broadband initiatives with an eye towards ensuring that New York City’s broadband infrastructure and usage is not only

¹ Comment Sought on the Contribution of Federal, State, Tribal, and Local Government to Broadband, NBP Public Notice #7, GN Docket No. 09-47, 09-51, 09-137 (rel. Sept. 25, 2009) (“Notice”).

comparable to other large U.S. cities, but also competitive with major metropolitan areas worldwide. These comments will focus on the City's experiences, highlighting how local involvement in broadband matters has already furthered many of the goals currently being pursued by federal authorities.

II. E-GOVERNMENT AND CIVIC ENGAGEMENT

The Commission's Notice asks for specific examples of elements of government or community life that governmental broadband initiatives have attempted to address (*e.g.*, employment, literacy, public safety, open government, physical plant, health, education).² The City has invested heavily in broadband-based applications that further a number of the goals cited by the Commission. Below, is an example of the types of programs the City has implemented.

- The New York City Department of Health and Mental Health's Primary Care Information Project, or "PCIP," utilizes prevention-oriented electronic health records to improve health in disadvantaged communities. By 2010, approximately 2,500 primary care providers will be using this prevention-oriented EHRs system. Among PCIP's other objectives for 2010 are providing a million patients with self-management tools including patient portals, and providing participating practices with clinical quality scorecards for evidence-based best practices. Increased broadband adoption is needed to extend the reach of the system to serve additional underserved patients who might not otherwise have the ability to be served by PCIP.
- The New York City Department of Education's Achievement Reporting and Innovation System, or "ARIS," provides educators with a consolidated view of student learning data and tools to collaborate and share knowledge about how to improve student learning. Significantly, it will also serve as the basis for online linkages between school and home learning environments. In particular, ARIS Parent Link will enable online monitoring by parents of students' academic progress. In addition, online learning tools will be accessible by students from home to enable constant learning.
- The City's award-winning official website, NYC.gov, is home to the sites of 90 City agencies, offices, boards, and authorities, with more than 500 on-line forms and services available to the public. It is the largest municipal portal in the United States and, as the single on-line destination for accessing City information, it provides

² Notice at 1.a.

instant access to nearly 70,000 New Yorkers and visitors daily. To make it more user-friendly, the City is currently restructuring the content on NYC.gov from the customer's perspective by realigning around major citywide themes (public safety, human services, education, etc.) instead of traditional agency alignments.

- ACCESS NYC is a web-based application on New York City's web site, NYC.gov, which promotes self-sufficiency among City residents by providing a single point of entry to City, State, and Federal human service benefit programs. By entering household information, residents can receive a list of programs for which they are potentially eligible, print partially completed application forms, search for office locations, and create an account to access their information.
- BUSINESS EXPRESS is also an application on NYC.gov, which streamlines the process of starting a business in New York. It provides necessary information, and walks users through steps businesses must take to, for example, meet the requirements of obtaining licenses and permits. All information is available in a single place.
- To manage record call volumes at the City's 311 Customer Service Center, we continue to aggressively employ new technology measures to efficiently serve customers. To this end, the City recently launched the 311Online portal, which leverages online services developed and offered by City, State, and Federal agencies, offering customers multiple ways to find nearly 4,000 New York City services by keyword, locate and download specific information about programs and initiatives, and create service requests directly online.
- Public safety is a critical concern for the City. To meet a critical City need for a high-speed network to provide advanced, interoperable data communications among and across key agencies, beginning in September 2006, the City partnered Northrop Grumman Corporation to build the New York City Wireless Network, or NYCWiN. The most aggressive commitment by any municipality in the country to provide a next-generation public safety network, NYCWiN gives first responders high-speed data access to support large file transfers, including federal and state anti-crime and anti-terrorism databases, fingerprints, mug shots, city maps, automatic vehicle location, and full-motion streaming video. A fully interoperable, IP-based network, NYCWiN enhances coordination by linking first responder personnel, on-scene with incident managers at remote sites through real-time data and video feeds.
- In addition, a number of public service agencies will use NYCWiN to more efficiently conduct inspections and various maintenance activities in the field. The City has acquired advanced Automatic Meter Reading technology to improve its water metering system. The Advanced Metering Infrastructure ("AMI") project has enabled the Department of Environmental Protection ("DEP") to automate its meter reading capabilities and to improve customer services for more than eight million New Yorkers. Before the Automated Meter Reading (AMR) technology was available, Con Edison manually recorded meter readings across the City, and customers received paper bills every three months – only 85% of which were based

on actual readings. A more precise bill now provides customers with information on how to more efficiently utilize water resources, leading to reductions in water consumption and their subsequent water bills. The new system improves the speed and accuracy in which meter readings are provided to DEP and provides alerts when meters are not working properly. When complete (approximately 100,000 customers now have meters read by this technology) AMR will make New York City the largest city in the world to use wireless water metering. It is projected to save over \$3.5 million in meter reading costs per year when fully implemented, while providing daily consumption data to DEP and its customers.

To maximize the power of broadband, a National Broadband Plan should encourage government at all levels to leverage technology in a manner that improves service delivery. In this way, as the ability to access government services is perceived as an additional benefit of broadband access, government can serve as a demand driver for broadband services.

III. GOVERNMENT BROADBAND INITIATIVES

The Commission's Notice asks about government efforts to increase broadband deployment.³ The City's initiatives with regard to deployment in residential areas are described in Section IV below. The City's internal broadband network, which has been of tremendous value to the City, consists largely of its I-Net. The City's I-Net was established through the use of funds, fiber, and accessories provided by the City's cable and other franchises. (It is relatively easy for companies to set aside excess capacity, or provide links between buildings, when they themselves are deploying new facilities). The City has used its I-Net in many innovative ways that have brought expanded services to residents. For example, the City uses the I-Net for employee training, including first responder training, and for ensuring there are redundant communications capabilities for police, fire, and first responder needs. When the tragic events of September 11, 2001

³ Notice at 2.a.-e.

unfolded, the City government's networking infrastructure was hit severely. The City's highly resilient I-Net, however, was able to function in many important capacities, even though one of the I-Net's core locations was knocked out by a fiber cut and power outages. The resiliency offered by this type of network is critical in times of emergency

IV. USE OF GOVERNMENT ASSETS AND POLICIES TO SUPPORT BROADBAND DEPLOYMENT

The Commission in its Notice asks about how governmental processes for obtaining access to government assets have both supported and hindered broadband deployment. It is the City's experience that, local franchising, by assuring that local conditions and local needs are taken into account when public rights-of-way of land use matters are involved, have *enhanced* and will continue to *enhance* the deployment and effectiveness of broadband services across the United States.

Between 2.5% and 3% of all the residential households in the United States are located within the five boroughs of New York City.⁴ It is precisely due to local cable franchising that virtually *every* household in the City has physical access to wired, broadband service provided by cable television companies using a hybrid fiber-coax architecture in local rights of way. And it is precisely due to local cable franchising that *every* household in New York City is now contractually guaranteed, pursuant to a 2008 franchise contract with Verizon, to have physical access to a second, competing, wired, broadband service – this service using highly advanced fiber-to-the-home architecture, known as FiOS. It is imperative to emphasize that this result would almost certainly not have been achieved absent concentrated and determined efforts by City officials, utilizing

⁴ As of the 2000 census, about 3 million of the nation's 100 million or so households are located within the City of New York. <http://quickfacts.census.gov/qfd/states/36/3651000.html>; <http://quickfacts.census.gov/qfd/states/00000.html> (last accessed 7/20/2009).

the cable franchising authority available to them under common law and state law, and further protected and assured under federal cable television law.

There are households within the boundaries of the City of New York that because of neighborhood demographics and/or location and infrastructure issues, would not, as a purely market-based matter, be served by broadband facilities of the quality and capacity offered by Time Warner, Cablevision and Verizon's FiOS. That is, some locations in the City would not be expected, by a corporate provider acting solely in response to market forces, to generate a sufficient return on investment to justify installation of such broadband facilities. It is only because City policymakers held and exercised franchise authority to assure that *all* households in the City would be served, and that a franchisee's investment decision would reflect not a household-by-household economic evaluation but a broader evaluation of the profit potential of investment across its franchise area as a whole (including a commitment to build to *all* homes in the franchise area), that universal access to multiple competing wired broadband services could be achieved.

Franchise negotiations on ubiquitous access have historically been contentious, and potential franchisees are often reluctant to surrender discretion to leave unserved those locations where profit margins may be lower than others. By remaining steady in the commitment to demanding franchise obligations for universal buildout, the City has utilized its franchise authority to establish an environment for ubiquitous competitive current and future wired broadband infrastructure that is unsurpassed.

Local franchising is (especially compared with, say, notions that have been debated regarding "federal franchising") particularly well-tailored to achieve the positive outcomes for broadband infrastructure the City has successfully pursued. Physical and economic conditions vary widely from community to community, and the effort to attract

private broadband investment to serve as fully as possible all sectors of a community, without being so demanding as to drive such investment away from the community entirely, is a nuanced process that frequently requires intimate knowledge of local conditions, needs and potential. Under the “national franchise” proposals that were heavily promoted by some private broadband providers in Congress only a couple of years ago, the City would certainly not have the contractual commitment that has been achieved, to the benefit of both the City and the nation, for the construction of ubiquitous, universal access to fiber-to-the-home infrastructure across the entire City.

Some private providers raise anecdotal evidence of one or another municipality ostensibly “abusing” its franchise authority to make excessive demands that supposedly fail to serve the public interest.⁵ Arguments have been made in the past that such examples show that local franchising is an impediment to broadband deployment and service, and, thus, that local franchising should be eliminated or heavily restricted. But argument by (often apocryphal) anecdote is harmful in this context. There are also examples one could gather of abuse of discretion by private broadband providers, but such anecdotes do not mean that the private sector’s role in the achievement of national broadband policy should be eliminated or fundamentally restricted; the same is true of local franchising. It is not in a local government’s interest to impede or delay the provision of broadband services in its community.

To suggest, as some have in the past, that the federal government understands the value of broadband availability in a way local officials do not, such that the federal government needs to strip away the local “impediment” of cable franchising, is to

⁵ See, e.g., Comments of The National Cable & Telecommunications Association, GN Docket No. 09-51, at 45 (filed June 8, 2009).

mistake the relationship between local officials and their constituents. Local officials must carefully balance the varied needs of their communities, including encouraging investment in technology infrastructure while also assuring that such investment is broadly disbursed. To limit or divest the ability of local officials to engage in such balancing would be to eliminate a critical tool in the ongoing achievement of any national broadband plan.

Over the past year, the Commission has received comments from some in the wireless services industry arguing that their industry needs new protections from the supposedly wayward or incompetent influence of local governments bent on slowing the buildout of wireless broadband services.⁶ Such claims that local land use management and/or local control of street poles and other locally-owned or managed facilities in public rights of way are supposedly fundamental impediments to wireless broadband buildout fail to reflect the real world necessity of balancing land use and streetscape issues with the strong desire, as important at the local level as at the state and national level, with assuring that wireless infrastructure is in place to serve expanding community needs.

It would be simple in this respect for national policymakers to repeat the kind of mistake made in the past with respect to environmental issues that have led to widespread concerns about climate change and ecological degradation. In the past, policymakers and businesses treated air, water and other natural resources as essentially unlimited, free assets to be used and abused without respect to the costs that society pays with the loss of such resources ultimately recognized as scarce and exhaustible. Wireless service and

⁶ See *e.g.*, Comments of CTIA–The Wireless Association, GN Docket No. 09-51, at 15-19 (filed June 8, 2009); Comments of Verizon, GN Docket No. 09-51, at 63 (filed June 8, 2009).

equipment providers today would like the federal government to mandate that the demands that their facilities place on the visual and esthetic value of landscapes and streetscapes be treated without due consideration, and that those charged with the difficult task of balancing such values against the widely recognized importance of expanding the availability of broadband wireless services represent impediments to technological innovation that must be rushed out of the way. Such an approach reflects a fundamental error in assessing what local governments do. New York City's experience with requests for access to its street light and traffic light poles may serve as an illustration of the real issues at stake in these matters.

After being approached by several companies interested in placing wireless antenna equipment on City-owned and managed street light poles, the City developed a franchise system that provides for a small base compensation rate paid by all who choose to participate, and for a fair selection process that offers all participants an opportunity to select pole locations around the City in a manner intended to accommodate multiple potential competitors and networks, while also assuring that space remains available for future development. To gain higher priority in this selection process, participants are invited to submit bids as to how much they are willing to pay per pole in return for an opportunity to select some pole locations ahead of others bidding less.

The City has been sued by one provider claiming this methodology is inconsistent with federal law and an impediment to the efficient development of wireless systems. The provider has argued that the City should instead be obligated to hand over its street light poles to whatever company asks for them first, and that the City may not seek compensation for the use of such City-owned poles beyond the "costs" that the City incurs in allowing the use of its poles.

In the first instance, such argument ignores the fact that were the very same antennas placed on nearby private property, private property owners would of course be able to charge a market rent for the use of their property for such purpose. If the City were barred from doing the same it would merely encourage providers to “game the system,” and shift antenna facilities from private property to public street property where their visual impact on the public may be greater. But in the larger sense, the demand the City faced that street pole locations simply be handed over on a first-come first-served basis fails to recognize that such street pole locations are taxpayer funded scarce commodities for which a market-based allocation system, such as the bidding process the City has established, best assures the most efficient uses.

Were the City required to hand out antenna locations on a first-come basis as has been proposed, there is no assurance whatsoever that such first-come provider will offer service that effectively serves public demands. And precisely because the most advantageous street pole locations are a scarce, not an unlimited resource, allocating such facilities on a first-come or by other some other essentially random basis would potentially freeze out the providers that would be most successful in the marketplace. On the other hand, a bidding system such as the one the City has implemented, in which the scarce resource of specific pole locations are allocated to the highest bidder, uses classic market incentives to allocate scarce resources to providers who offer the most desirable and efficient service to the public, as evidenced by their ability to offer the highest bids for priority sites. In a world where antenna sites are scarce resources, the City’s approach – in which a market mechanism is established to allocate priority to the most desirable sites, while also preserving some site availability for all interested providers (so as to assure that no provider can claim to be prohibited or effectively prohibited from

providing service) and for future innovation – reflects a balance well-designed to assure efficient deployment of wireless broadband services that the public will want.

The federal government itself has recognized that efficient allocation of scarce resources is better achieved with such market pricing techniques. For many years, the prevailing federal methodology for distribution of wireless spectrum to private, profit-making entities was essentially to give such spectrum away. But Congress and the Commission have recognized in recent years that an important tool in maximizing efficient allocation of scarce spectrum resources is through market pricing mechanisms (such as auctions), which are intended to advantage those providers most likely to provide services that will be desirable and successful in the public marketplace. Fundamental economic principles suggest that those companies most likely to have an efficient and market-desired product will be able to bid the highest for scarce spectrum. It is those very same market-based principles that the City has embraced in its approach to allocating street poles in its franchises covering the use of such assets (such City franchises are currently held by no less than *seven* different competitors).

To summarize the City's observations, local (and, to some extent, state) governments are best positioned to deal with a range of issues that implicate uniquely local, community-based matters, such as (among other things) maximizing dispersion of service availability throughout the community, assuring the efficient use of scarce local resources, and protecting local landscape and streetscape esthetic values. Constraining the authority of local officials best positioned to deal with such issues will not in the long run enhance the deployment and use of broadband services across the country. To the contrary, protecting such local authority will better assure that nationwide broadband

service deployment and adoption is swift, efficient and effective. New York City’s experience with these matters is strong evidence of that conclusion.

Finally, customer service represents another crucial area that arises in the context of local right-of-way franchising that, while not touched on directly in the Commission’s Notice, is necessary to ensure that users have a positive broadband experience. The City and other municipalities frequently find themselves the first “port of call” for frustrated or confused customers, and often the “last great hope” after these same customers have made a round of calls to state and federal agencies. An explicit statement from the Commission about local governments’ ability to establish and enforce broadband customer service requirements will help to address a number of customer service issues in the broadband area.

While increased competition should over time address a number of customer service matters, it is also the case that certain issues require more oversight. For example, a growing number of consumers feel they do not receive adequate notice about what they perceive as “hidden” restrictions and rate increases in their service plans. In a truly competitive market, customers would make informed decisions based on perfect knowledge about the services they are purchasing.

Local governments are often best positioned to identify the trends in customer service problems, and should be able to use their full local franchising authority to address such matters. With regard to cable operators, the Communications Act specifically delegates this authority to local governments. Section 552 of the Communications Act states that “[a] franchising authority may establish and enforce – (1) customer service requirements of the cable operator...”⁷ The provision is not limited to

⁷ 47 U.S.C. § 552(a)(1).

customer service requirements pertaining to cable *service*, but rather applies to *all* services provided by the cable operator. With respect generally to providers of information services, Congress has nowhere in federal statute preempted, or authorized the Commission to preempt, local franchising authority with respect to information services franchises. An explicit recognition by the Commission in this proceeding of local governments' franchise authority in the area of broadband customer service will enable local governments to better address legitimate customer service problems.

V. TREATMENT OF SECTION 253 DISPUTES

The City has already elaborated its position on the Commission's proper role in the context of Section 253(c) disputes.⁸

VI. USE OF GOVERNMENT PROGRAMS AND POLICIES TO SUPPORT BROADBAND ADOPTION

The City has at some length already commented on the essential need, in providing funding for broadband efforts, for the federal government to commit at least as much in resources to assuring *affordable* access to broadband services as it does to mere construction of broadband facilities to unserved locations.⁹ It is unnecessary for the City to repeat itself here. The City simply emphasizes that a real national broadband infrastructure must be truly accessible to all, both physically and economically. Physical access alone, especially where such access is dependent on private infrastructure owners whose goals may not always be in accord with those of the public, is not sufficient.

⁸ See Comments of the City of New York, WC Docket No. 09-153 (filed Oct. 15, 2009).

⁹ Comments of The City Of New York, *American Recovery and Reinvestment Act of 2009 Broadband Initiatives*, NTIA Docket No. 090309298-9299-01, at 4-10 (filed on April 13, 2009); Comments of The City Of New York, GN Docket No. 09-40 (filed on April 13, 2009).

VII. CONCLUSION

In these comments, the City has described its use of broadband and how local right-of-way authority has served to *support*, not deter, national broadband goals and how such authority can continue to play an important supportive role going forward. The City looks forward to continuing to work with the Commission, the Congress, relevant industries and other jurisdictions in the on-going development of a national broadband plan.

Respectfully submitted,

/s/

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