



NEWS

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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC GRANTS PETITIONS TO PREEMPT STATE LAWS RESTRICTING COMMUNITY BROADBAND IN NORTH CAROLINA, TENNESSEE

Washington, D.C. – The Federal Communications Commission today opened the door for two community broadband providers to expand service, preempting state laws in Tennessee and North Carolina that prevented these and similar broadband providers in the two states from meeting local demand for broadband service.

A Memorandum Opinion and Order adopted by the Commission finds that provisions of the laws in North Carolina and Tennessee are barriers to broadband deployment, investment and competition, and conflict with the FCC's mandate to promote these goals. The state laws had effectively prevented the cities from expanding broadband service outside their current footprints despite numerous requests from neighboring unserved and underserved communities.

The petitions were filed last July by the Electric Power Board (EPB), a community broadband provider in Chattanooga, Tennessee, and the City of Wilson, North Carolina. In addition to providing electric service, both operate broadband networks providing Gigabit-per-second broadband, voice, and video service. The networks in both areas have attracted major employers, including Amazon and Volkswagen in Chattanooga, and Exodus FX, Regency Interactive, and WHIG TV in Wilson. Wilson's system also provides free Wi-Fi downtown.

Tennessee law allows municipal electric systems like EPB to provide telecommunications services anywhere in the state, but limits provision of Internet and cable services to the electrical system footprint. In North Carolina, a 2011 law imposed numerous conditions that effectively precluded Wilson from expanding broadband into neighboring counties, even if requested. One condition, for example, restricted expansion into areas where the private sector delivers service at speeds as slow as 768 kbps in the faster direction – an archaic standard that fails to support modern needs and is a fraction of the FCC's 25/3 Mbps benchmark.

Comments filed regarding Wilson's petition suggest that the law was largely sponsored and lobbied for by incumbent providers and competitors to Wilson.

Under federal law, a federal agency may preempt state laws that conflict with its regulations or policies so long as it is acting within the scope of its authority. There is a clear conflict, the Order finds, between Section 706 of the Telecommunications Act of 1996, which directs the FCC to take action to remove barriers to broadband investment and competition, and provisions of the Tennessee and North Carolina

law that erect barriers to expansion of service into surrounding communities, including unserved and underserved areas.

The Order concludes that preemption will speed broadband investment, increase competition, and serve the public interest.

Action by the Commission February 26, 2015, by Memorandum Opinion and Order (FCC 15-25). Chairman Wheeler, Commissioners Clyburn and Rosenworcel with Commissioners Pai and O’Rielly dissenting. Chairman Wheeler, Commissioners Clyburn, Rosenworcel, Pai and O’Rielly issuing statements.