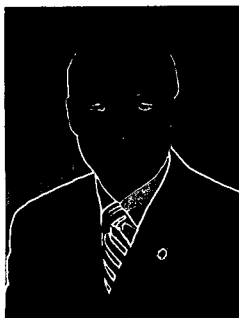


2009-2010

**HOUSE SELECT
COMMITTEE ON HIGH
SPEED INTERNET
ACCESS IN RURAL &
URBAN AREAS**

MINUTES

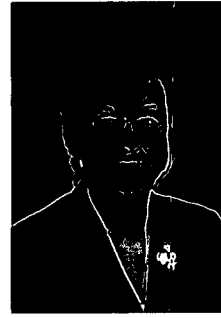
**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED
INTERNET ACCESS IN RURAL & URBAN AREAS
2009-2010**



**Rep. Bill Faison
Chairman**



Rep. Kelly Alexander



Rep. Marilyn Avila



Rep. Angela Bryant



Rep. Lorene Coates



Rep. Jim Gulley



Rep. Phillip Haire



Rep. Earl Jones



Rep. Thom Tillis



Rep. Joe Tolson



Rep. Roger West

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET IN RURAL AREAS ATTENDANCE

(Name of Committee)

DATES	28 October 2009	23 November 2009	14 December 2009	26 January 2010	23 February 2010	12 April 2010	11 May 2010	10 September 2010	13 October 2010	23 November 2010	14 December 2010				
Faison, Bill, Chairman	√	√	√	√	√	√	√	√	√	√	√				
Alexander, Kelly	√	√	X	X	√	√	√	√	√	X	√				
Avila, Marilyn	√	√	√	√	√	√	√	√	X	√	√				
Bryant, Angela	√	√	√	√	√	√	√	√	√	√	√				
Coates, Lorene	√	√	√	√	√	√	√	√	√	√	√				
Gulley, Jim	√	√	√	√	√	√	√	√	X	√	√				
Haire, Phillip	X	X	√	√	√	√	√	X	X	X	X				
Jones, Earl	√	√	√	√	√	√	√	√	√	√	√				
Tillis, Thom	√	√	√	√	X	√	X	√	X	√	X				
Tolson, Joe	X	√	√	√	√	√	X	√	√	X	X				
West, Roger	√	√	√	√	√	√	√	√	X	X	X				
STAFF:															
Carter, Brenda	√	√	√	√	√	√	√	X	X	X	X				
Riley, Barbara	√	√	√	√	√	√	√	X	X	X	X				
O'Shaughnessy, Karlynn	√	√	√	√	√	√	√	X	X	X	X				
Capriglione, Peter	√	√	√	√	√	√	√	X	X	X	X				
Patterson, Bill	√	√	√	√	√	√	√	X	X	X	X				
Pickett, Phyllis	√	√	√	√	√	√	√	X	X	X	X				

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED
INTERNET ACCESS IN RURAL & URBAN AREAS
2009 SESSION**

MEMBER	ASSISTANT	PHONE	OFFICE
Faison, Bill, Chairman	Lavada Vitalis, Committee Assistant	919-715-3019	537
Alexander, Kelly	Marjorie Conner	919-733-5778	632 LOB
Avila, Marilyn	Susan Lewis	919-733-5530	1017 LB
Bryant, Angela	Karon Hardy	919-733-5878	542
Coates, Lorene	IMelissa Lennon	919-733-5784	633 LOB
Gulley, Jim	Brian Lehrsfall	919-733-5800	1319
Haire, Phillip	Sara Jane Lennard	919-715-3005	639
Jones, Earl	Sherrie Burnette	919-733-5825	536 LOB
Tillis, Thom	Kristen Feneley	919-733-5828	1002
Tolson, Joe	Shirley Phillips	919-715-3024	307B2
West, Roger	Linda Johnson	919-733-5859	1004



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Wednesday, October 28, 2009

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Wednesday, October 28, 2009, in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Earl Jones, Thom Tillis and Roger West. Staff in attendance: Brenda Carter, Barbara Riley, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Marvin Lee, Fred Hines, and Frank Prevo. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 and 2*)

The Chairman called the meeting to order. Members, Staff, Visitors and Sergeant-at-Arms introduced themselves. Chairman Faison read to the committee the thirteen objectives of the study committee:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.
- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.

- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

Chairman Faison played for the committee a video provided by Rep. Alexander that described in a graphic way how broadband technology has evolved and how fast it is moving forward. Chairman Faison introduced our first presenter of the day, Jane Patterson from e-NC Authority. Mrs. Patterson spoke about high speed broadband internet service mapping in North Carolina and health information technology networks:

Jane Smith Patterson (Executive Director, e-NC Authority) was recognized to present to the committee. Mrs. Patterson's presentation is attached. (*Attachment 3*) Below are some key points of her presentation:

- American Recovery and Reinvestment Act of 2009–Broadband Initiatives
 - State Broadband Data and Development Program (under NTIA)
 - Broadband Technology Opportunities Program (BTOP) under NTIA
 - Broadband Infrastructure Program (BIP) under USDA-RUS
- The Governor's Office of Economic Recovery and Investment (OERI) oversees ARRA Broadband Initiatives in North Carolina. The e-NC Authority has been asked by OERI to do the following:
 - Under SBDDP - Submit a grant application on behalf of the state for broadband mapping to identify infrastructure needs and planning funds
 - Under BTOP - Provide guidance and assistance to local applicants to BTOP for last-mile infrastructure funds. Develop and submit to BTOP a comprehensive proposal addressing broadband adoption and public computer center initiatives. Provide administrative support to the OERI and the governor's office on the application review process allowed each state under the BTOP program. Provide compliance oversight of last-mile projects receiving ARRA funds, under the guidance of the OERI.
- On October 5, e-NC was one of the first four applicants in the nation to receive a mapping and planning grant (under the NTIA's SBDDP)
 - Project Name: NC BRIM (North Carolina Broadband Rigor in Mapping)
 - Mapping – award of \$1,589,077 over 2 years, with possible additional funding for 3 more years
 - Planning – award of \$434,799 over 5 years
 - The 20% match is being met primarily through e-NC staff time (as this work ties into e-NC's legislative mandate as the state broadband authority), and through match provided by university partners.
- The FCC awarded North Carolina funds to develop and deploy a telehealth network. E-NC is working with others to connect every health department, 78 free clinics in the State, Non profit hospitals and an estimated at 104 State Hospitals all funded by the federal government.

After Jane Patterson, Chairman Faison opened the floor for questions and answers. The theme of questions dealt with e-NC's mapping grant and if the prior years mapping efforts provided by Connected Nation would be used. The answer continued to be that the map provided by Connected Nation was not/is not viable. Chairman Faison introduces our next presenter, John McHugh from the

Office of The Stimulus Czar. Mr. Hugh spoke about the Governor's recommendations to the national Telecommunications and Technology Opportunities programs:

John McHugh (Policy Analyst, Stimulus Czar) was recognized to present to the committee. Gov. Perdue's letter to the Broadband Telecommunications and Information Administration's Ass. Sec. Larry Strickling is attached. (*Attachment 4*) Below are some key points of his presentation:

- The Governor put together a Broadband Technology Opportunities Program (BTOP) Review Committee to review all applications and make recommendations as to whom the committee felt met all federal requirements.
- Broadband Technology Opportunities Program (BTOP) was divided into three major categories.
 - Infrastructure (Highway-Driveway)
 - The Sustainable Broadband Adoption Program (Education & Training)
 - Public Computer Centers (Bringing hardware to the public)
- The recommendations are as followed in descending order of economic and programmatic impact to North Carolina:
 - Infrastructure – MCNC, ERC of Western Carolinas and French Broad Co-op.
 - The Sustainable Broadband Adoption Program – McDowell County Schools
 - Public Computer Centers – Mitchell County historic Courthouse Foundation, Olive Hill Community Economic Development Corporation, City of High Point and Housing Authority of the City of Wilson.

After John McHugh, Chairman Faison opened the floor for questions and answers and then introduced our last speaker of the day Herb Crenshaw.

Herb Crenshaw (Director, External Affairs, AT&T) was recognized to present to the committee. Below are some key points of his presentation:

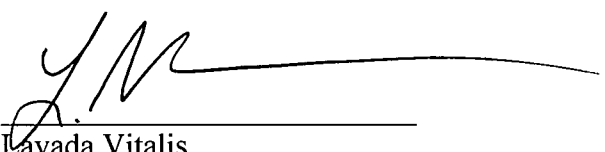
- There are lot of barriers to the adoption of broadband, one being people don't or have access to the types of speeds they would like or for one reason or another don't want it
- AT&T along with other companies have preformed many marketing and propensity to buy studies.
- AT&T will continue deployment through 3G and U-Verse which is deploying 18 gigs to the home. They have also teamed with One Economy and issued laptops and DSL service for a period of time.

Chairman Faison opened the floor for questions or comments.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Wednesday, October 28, 2009
10:00 AM
Room 415 LOB**

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Guest Speakers

- **E-NC Authority**
Jane Smith Patterson, Executive Director
 - High Speed Broadband Internet Service Mapping in North Carolina
 - Health Information Technology Network
- **Office of Economic Recovery & Investment**
John McHugh, Policy Analyst
 - Expanding Broadband Access – Governor's Recommendations to the National Telecommunications and Technology Opportunities Program

4. Adjourn

VISITOR REGISTRATION SHI

HOUSE SELECT COMM. ON HIGH
SPEED INTERNET ACCESS

10-28-09

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Kate DeMayo	NC Sustainable Food Systems Council
Michael Ramsey	NC Dept of Public Instruction
Allan Cooper	Rose and Wallace Attys, P.A.
Bo Heath	McGuire Woods
Thomas Mann	Fisher Hubel
Michelle Frazier	Manning Fulton
Chris Abllis	K&L Bates
Cornie Wilson	NC CTA
John Merritt	McGuire Woods
Pam Mott	Construm Link
Steno Brown	Construm Link

VISITOR REGISTRATION SHEET

HOUSE SELECT COMM. ON HIGH

SPEED INTERNET ACCESS

10-28-09

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Carole Woodward	NC Telecom Association, Sanford NC
Sammy Roberson	TWC
Mary Trate	Broadcom
Mark Sasser	AT&T
Bob We 1/3	N.C. Tele. Assoc.
JIM TARMAN	AT&T
Bill Haigh	antel
Stan Pace	Verizon
HERB CRENSHAW	AT&T
Britton Allen	Allen Law Offices, PLLC
Dwight Allen	Allen Law Offices, PLLC

VISITOR REGISTRATION SHEET

House Select Comm. on High Speed Internet Access 10-28-09
 Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Vanderbeck	Chatham Co BOE
Lori Ann Harris	LATA
Oppie Jordan	Chair - e-NC Authority
Angie Bailey	e-NC
Cathie	Petra Audits
Jane Patterson	e-NC Authority
Deborah Watts	e-NC Authority
John Matz	OFRI
Tina Harris	NC Commerce
Doug Paris	CJ if Schishy
ANTHONY ALLEN	NAAC



House Select Committee on
High Speed Internet Access in Rural and Urban Areas

October 28, 2009
Jane Smith Patterson
Executive Director
The e-NC Authority
www.e-nc.org

ARRA Broadband Initiatives

American Recovery and Reinvestment Act of 2009– Broadband Initiatives

Under the U.S. Dept. of Commerce's

National Telecommunications & Information Administration (NTIA)

- State Broadband Data and Development Program (SBDDP)
- Broadband Technology Opportunities Program (BTOP)

Under the U.S. Dept. of Agriculture's Rural Utilities Service (RUS)

- Broadband Initiatives Program (BIP)



ARRA Broadband Initiatives: SBDDP

State Broadband Data and Development Program (under NTIA)

Purpose:

Broadband Mapping and Planning at the state level
Data to contribute to development of a national broadband map

Criteria:

Each state can designate one entity as eligible applicant to SBDDP for the state
One funding round
20% match required
Notice of Funds Availability released July 2009
Proposals due August 14, 2009

Timeline:

Mapping: project lasts 5 years, but budget and award amount re-assessed after Year 2
Data must be updated every 6 months
Planning: project lasts 5 years



ARRA Broadband Initiatives: BTOP and BIP

Broadband Technology Opportunities Program (BTOP) under NTIA

Purpose & Criteria:

Grant funds for **Broadband Infrastructure** - last mile or middle mile service to unserved and underserved areas (up to \$1.2 B)

Grant funds for **Public Computer Centers** (up to \$50 M)

Grant funds for **Sustainable Broadband Adoption** (demand-building, education, training) (up to \$150 M)

20% match required

States were given an opportunity to prioritize applications submitted to serve their citizens

Broadband Infrastructure Program (BIP) under USDA-RUS

Purpose & Criteria:

Awards can include grants, loans or grant/load packages for **broadband infrastructure**

Modeled on long-running existing RUS broadband program

States *not* provided an opportunity to suggest recommendations regarding these awards

Joint Notice of Funds Availability released by NTIA and RUS on July 9, 2009

First round of proposals due August 14, 2009

2 additional rounds of funding initially planned; expectation now is for only 1 more round

Second round of proposals expected to be due in spring 2010



Oversight of ARRA Broadband Initiatives in North Carolina

The Governor's Office of Economic Recovery and Investment
(OERI) oversees ARRA Broadband Initiatives in North Carolina

The e-NC Authority has been asked by OERI to do the following:

Under SBDDP

- Submit a grant application on behalf of the state for broadband mapping to identify infrastructure needs and planning funds

Under BTOP

- Provide guidance and assistance to local applicants to BTOP for last-mile infrastructure funds
- Develop and submit to BTOP a comprehensive proposal addressing broadband adoption and public computer center initiatives
- Provide administrative support to the OERI and the governor's office on the application review process allowed each state under the BTOP program
- Provide compliance oversight of last-mile projects receiving ARRA funds, under the guidance of the OERI



www.e-NC.org

Explanation of e-NC Mapping and Planning Grant Award

On October 5, e-NC was one of the first four applicants in the nation to receive a mapping and planning grant (under the NTIA's SBDDP)

Project: **NC BRIM** (North Carolina Broadband Rigor in Mapping)

- Mapping – award of \$1,589,077 over 2 years, with possible additional funding for 3 more years
- Planning – award of \$434,799 over 5 years
- The 20% match is being met primarily through e-NC staff time (as this work ties into e-NC's legislative mandate as the state broadband authority), and through match provided by university partners.



www.e-NC.org

NC BRIM Project Elements

Data Collection Requirements from the NTIA

1. **BB Service Availability in Provider's Service Area**
 - a) Availability by Service Address (and Address Ranges)
 - b) Availability by Shapefile (wireless) (w/ max. downstream and upstream)
2. **Residential BB Service Pricing (and Speed)**
3. **BB Service Infrastructure in Provider's Service Area**
 - a) Last-Mile Connection Points (no longer required)
 - b) Middle-Mile and Backbone Interconnection Points
4. **Community Anchor Institutions**

Note – NTIA expects awardees to enter into Non-Disclosure Agreements upon the request of the Broadband Service Providers, in collection of this data.



NC BRIM Project Elements

Data Collection Methods (e-NC)

Mapping Components:

- Service Provider Data from Providers
- Service Provider Data from National Data Corporation
- Wireless Propagation/GIS Modeling
- Broadband Consumer Data – Local Level

Additional collection under Planning piece:

- National Survey Company to look at businesses
- Citizen Surveys (3 surveys over 5 years)

All data will be housed with e-NC, allowing the opportunity for verification and assessment by the state.

e-NC will use e-NC's existing online GIS-based map as the platform for these data updates.



NC BRIM Project Elements

Verification and Assessments (e-NC)

The results from the multiple data collection methods will be tested and cross-validated through comparison of these multiple methods. The e-NC Authority's staff will work with multiple experts in conducting this research and in the assessments.

Outside Researchers

- A statistics expert from ECU will serve as a research advisor for e-NC throughout the mapping grant, and will conduct the Citizen Surveys and advise on the Broadband Consumer Data process.
- A marketing expert from the UNC-CH Kenan Institute will oversee the BB Consumer Data Study
- A GIS expert from UNC-G will perform the Wireless Propagation/GIS Modeling work.

External Evaluators

3 external evaluators will work with e-NC in year 1 to assess the various data collection methodologies. The NC Center for Geographic Information and Analysis (CGIA) will also serve as a technical advisor and evaluator on the mapping.

Technical Advisory Committee and Data Confab

A Technical Advisory Committee will also work with e-NC to review and assess these methodologies. In March 2010, e-NC will hold a Data Confab, with these evaluators and the technical advisory committee to determine which data collection methods are most cost effective, for report back to NTIA.



www.e-NC.org

NC BRIM Project Elements

Data Collection Deadlines from NTIA

Initial Data

- **Nov 1, 2009** substantially complete set of *availability data* due by Nov. 1 (data accurate as of June 30, 2009)
- **Feb 1, 2010** *substantially complete set of all broadband mapping data* due on or before Feb 1 (June 30, 2009 data)
- **Mar 1, 2010** *all data collection* must be completed by Mar 1 (June 30, 2009 data)

Updates

Optimized data collection methodology will be employed to updating of data on at least a semi-annual basis continuing for at least 5 years after the date of the initial collection.

- **Sept 1, 2010** first update due (Dec 31, 2009 data and June 30, 2010)
- **Mar 1 of subsequent years** updates due (data current as of Dec 31 of previous yr)
- **Sept 1 of subsequent years** updates due (data current as of June 30 of that year)



www.e-NC.org

NC BRIM Project Elements - Planning

- Citizen Surveys (three over 5 years)
- Survey on Broadband/Businesses
- Public Computer Access Revisited
- Lifeline Online Program
- Last Mile RoundUp Broadband Project
- Virtual Forum for Vulnerable Populations
- Regional Business Online Forum
- N.C. Broadband Idea Group (NC BIG)



e-NC Items Moving Forward

Next Steps:

Mapping – e-NC is negotiating NDAs and initiating data collection from all sources in an effort to evaluate multi-method data collection efforts

Planning – focused on engaging many sectors and populations in the state in these efforts, especially on Lifeline Online and Last Mile RoundUp projects

BTOP Grants – focused on trying to ensure that these grants are impacting unserved rural areas, looking at how to better assist organizations with their proposal development for 2nd round of funding, continuing to provide NTIA-compliant maps for specific proposals

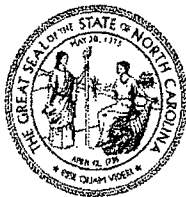




*Connecting
North Carolina
to a Better Future*

The e-NC Authority
4021 Carya Drive, Raleigh
1-800-NCRURAL
www.e-nc.org





STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

BEVERLY EAVES PERDUE
GOVERNOR

October 14, 2009

Assistant Secretary Larry Strickling
Broadband Telecommunications and Information
Administration
U.S. Department of Commerce
HCHB, Room 4812
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Assistant Secretary Strickling:

As Governor I would like to thank you for giving me the opportunity to make comments and provide my input on the NTIA's Broadband Technology Opportunities Program. North Carolina has a long and impressive history in fostering the development, early adoption and utilization of high speed internet for educational and economic development purposes. I feel the Broadband Technology Opportunities Program can provide high value to North Carolina both in immediate economic impact to the state and long-term development of our online economy.

Our overriding goal is to get North Carolina's economy moving through projects that will create jobs from the mountains to the coast. The MCNC application provides immediate economic benefit through job creation, and provides the state with a cost-effective, high quality network to train the workforce of the 21st century. In addition, it fosters a climate where underserved North Carolinians will have faster, cheaper access to high-speed internet. This program will ensure that North Carolina maintains its top-ranked research, technology and entrepreneurial climate as well as work aggressively to create jobs, train and retrain our workforce, and lay the foundation for a strong and sustainable economic future.

To assist my review, I appointed a committee inclusive of various public groups involved in rural broadband implementation across the state. The BTOP Review Committee reviewed all applications that had a self-identified North Carolina service area and provided me with feedback on those applications in advance of my comments to you. The BTOP Committee divided itself into two subcommittees; the Subcommittee on Infrastructure and the Subcommittee



on Sustainable Broadband Adoption and Public Computer Centers. The Subcommittees made the following recommendations, in descending order of economic and programmatic impact to North Carolina:

1. The Subcommittee on Infrastructure recommended:
 - a. MCNC (Middle Mile Application)
 - b. ERC of the Western Carolinas (Middle Mile/Last Mile Application)
 - c. French Broad Co-op (Last Mile Application)
2. The Subcommittee on SBA/PCC recommended:
 - a. For Public Computer Center applications:
 - i. Mitchell County Historic Courthouse Foundation
 - ii. Olive Hill Community Economic Development Corporation
 - iii. City of High Point
 - iv. Housing Authority of the City of Wilson
 - b. For Sustainable Broadband Adoption Programs: McDowell County Schools

Please find attached the full report from the BTOP Review Committee. The report includes information regarding the committee discussion of the recommended projects, and a number of 'honorable mention' projects that the Committee felt were interesting. The report reflects the priorities which I would recommend for your consideration.

I would like to highlight one of the above programs that has the highest value to North Carolina, MCNC's middle mile application. MCNC's application would extend NCREN (North Carolina Research and Educational Network) in rural North Carolina. The project is important for the immediate economic impact of jobs in high unemployment areas that it would create. MCNC estimates that the design, construction, and operation of the network will create over 230 engineering and construction jobs. There are twelve counties in MCNC's proposed project where the entire county is classified as underserved. Six are in southeast North Carolina: Beaufort, Bladen, Columbus, Edgecombe, Green and Harnett, and six are in western North Carolina: Davie, Jackson, McDowell, Polk, Rutherford and Transylvania. In addition there are at least twelve other counties that will be served that contain unserved census blocks: Carteret, Craven, Johnston, Onslow, Pender and Roberson in the southeast; and Buncombe, Catawba, Cleveland, Haywood, Iredell and Lincoln in the west. North Carolina is suffering from a historically high unemployment rate of 10.8%, higher than the national average. The additions to the NCREN network proposed by the MCNC BTOP proposal would be targeted to rural areas hit the hardest by the economic downturn.

The MCNC application will have a transformative, long-term economic impact as the high-speed, non-profit network would bring together educational, governmental, health care anchor institutions, public utilities, and private providers. MCNC's portion of the network will connect community anchor institutions (schools, community colleges, other institutions of higher education, and community support organizations) in rural North Carolina to the existing

Page Three

NCREN. MCNC's plan will also provide a portion of the network to be leased to private-sector groups, satisfying the Last Mile connectivity goals of BTOP. High-speed internet capacity and other middle-mile services will be offered to ILECs, CLECs, MSOs, wireless ISPs, energy cooperatives, and independent and cooperative telecom companies.

Finally, MCNC has effectively run NCREN for more than 25 years and is an experienced handler of private and federal grant awards. The application has the support of numerous North Carolina institutions, and was endorsed by myself and the entire North Carolina congressional delegation when it was submitted in August. It is my belief that the MCNC BTOP application best serves the needs of North Carolina.

Once again, I thank you for this opportunity to have input on this important program.

Sincerely,

A handwritten signature in black ink, appearing to read "Beverly Perdue". The signature is written in a cursive, flowing style.

Beverly Perdue

cc: Ian Martinez

Attachment

**OFFICE OF ECONOMIC RECOVERY AND INVESTMENT
REPORT:
THE GOVERNOR'S BROADBAND TECHNOLOGIES
OPPORTUNITY COMMITTEE**

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 - b. Process
 - c. Recommendations of Subcommittee
 - i. MCNC
 - ii. ERC
 - iii. French Broad Cooperative
 - iv. Honorable Mentions
4. SBA/PCC Subcommittee
 - a. Membership
 - b. Process
 - c. Recommendations of Subcommittee
 - i. For Public Computer Center applications:
 1. Mitchell County Historic Courthouse Foundation
 2. Olive Hill Community Economic Development Corporation
 3. City of High Point
 4. Housing Authority of the City of Wilson
 5. Honorable Mentions
 - ii. For Sustainable Broadband Adoption Programs: McDowell County Schools
5. Conclusion

APPENDICES

Document 1: Letter from NTIA

Document 2: List of Applications provided by NTIA

Documents 3-4: Maps of Unserved and Underserved Areas

Documents 5-6: Sub-committee Agendas

Documents 7-14: Executive Summaries of recommended applications

Document 15-19: Draft/Sample Scoring Sheets

Document 20-27: Copies of Ethics Forms

Report from the meetings of the Governor's Broadband Technology Opportunities Program
(BTOP) Review Committee

1. Program Background

The ARRA was signed by President Obama on February 18, 2009. Part of the bill directed \$7.2 billion into two interrelated programs: the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP), to be administered by the USDA Rural Utilities Service and the Department of Commerce National Telecommunications and Information Administration (NTIA). The statutory goal of these programs is to expand broadband access to unserved and underserved communities across the U.S., increase jobs, spur investments in technology and infrastructure, and provide long-term economic benefits. BIP will make loans and grants for broadband infrastructure projects in rural areas. BTOP will provide grants to fund broadband infrastructure, public computer centers and sustainable broadband adoption projects.

The BIP/BTOP programs were jointly administered by the two federal agencies, and a Notice of Funding Availability (NOFA) and application were released on July 1, 2009. The first of multiple rounds of funding closed on August 14th and represented more than half of all the funding under the program, with up to \$2.4 billion in BIP and \$1.6 billion in BTOP available.

The BTOP grant program is divided into three major funding areas which do not compete between categories for funding:

1. The **Broadband Infrastructure** category (up to \$1.2 billion) contains both Middle Mile and Last Mile projects that bring broadband service to unserved and underserved areas.
 - a. An "**Unserved Area**" is defined as an area, composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband speed.
 - b. An "**Underserved Area**" is defined as an area composed of one or more contiguous census blocks where at least one of the following is met:
 - i. no more than 50 percent of households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband speed;
 - ii. no fixed or mobile broadband service provider advertises broadband speeds of at least 3 Mbps downstream in the proposed funded service area; or
 - iii. the rate of broadband subscribership for the proposed service area is 40 percent of households or less.
2. **Public Computer Center** category (up to \$50 million) funds projects that expand computer center capacity, entities that permit the public to use these computer centers, such as community colleges and public libraries. This category of funding had by far the most North Carolina Service Area applicants.

3. **Sustainable Broadband Adoption** category (up to \$150 million) funds innovative projects that promote broadband demand, such as projects focused on broadband education, awareness, training, access, equipment or support, particularly among vulnerable populations.

The NOFA described a review process that allowed for input by Governors on BTOP, and Governor Perdue has received a list of the applications pertaining to North Carolina that are under consideration by NTIA (Appendix Document 2, N.C. BTOP Applications). This process was designed to give the NTIA feedback from the Chief Executive's perspective on which projects would have the highest benefits to a given state, including economic impact, and to provide information on the working relationship between applicants and a given state. Governor Perdue is permitted to provide a list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state. States have been strongly encouraged to provide mapping and planning data to support their recommendations. All states will have 20 calendar days from the date of notification to submit to NTIA their recommendations. Recommendations are due by October 14 at close of the business day.

2. Committee Purpose and Process

Governor Perdue established a blue ribbon committee to assist her in the review and comment of North Carolina service area BTOP applications. The North Carolina BTOP Review Committee was comprised of leaders from the public, private and nonprofit sectors who are familiar with the connectivity challenges that exist in North Carolina. This eight-member committee self-selected on the basis of expertise and interest into two sub-committees, one with responsibility for reviewing applications in the **Infrastructure** category and one with responsibility for applications in both the **Public Computing Center** and the **Sustainable Broadband Adoption** categories. Technical and Administrative Support was supplied by the e-NC Authority.

The e-NC Authority used the list of North Carolina Service Area applications provided by NTIA to create a list-serv of applicants. Requests for information were sent to every applicant on the list-serv for a copy of an applicant's full BTOP application, as that was not provided by NTIA. Special consideration was given to confidential or proprietary information contained in applications, and applicants were asked to mark which portions of applications would not fall under North Carolina's open records law. The e-NC Authority placed the applications into a password-protected database that could only be accessed by members of the applicable sub-committee. Members of the respective sub-committee then reviewed applications using scoring sheets based on NTIA's scoring sheets, developed through internal discussions of the subcommittee (see Appendix Document 16). The subcommittees met in open meetings on individual days to discuss and rank applications. The meetings were listed on the OERI website www.ncrecovery.gov, open to the public, and streamed online through a webinar/conference call system with an e-mail invitation sent to an e-NC's applicant listserv. It is important to note that each sub-committee only reviewed applications that were voluntarily submitted to the e-NC Authority by the list of applicants provided by NTIA. There were some applicants that may not have been on the North Carolina service area list provided by the NTIA, did not respond, or did not submit a full application and were not considered by the Committee (this includes three

North Carolina applicants who did not respond: Fayetteville State University, Surry county Community College and the City of Wilson).

3. Infrastructure Sub-committee

For the purposes of the NC BTOP Review Sub-Committee on Infrastructure, applications were grouped into three categories: (1) Multistate (proposals that were not restricted to North Carolina but included North Carolina as one of multiple states to be served); (2) Middle Mile proposals targeting North Carolina service area; or (3) Last Mile proposals targeting North Carolina service areas. Staff from the e-NC Authority provided administrative support to the Office of Economic Recovery and Investment (OERI) and, upon request, technical advice to the Infrastructure Review Committee.

a. Committee members

Members of the Infrastructure Applications Review Sub-Committee (and their professional affiliation) included the following:

- Michael Fenton – N.C. Information Technology Services
- Dennis Holton – Craven County Government
- James Lowery – Private Businessman, High Point NC
- John McHugh – Policy Analyst, N.C. Office of Economic Recovery and Investment, Office of the Governor

b. Process used for deliberations

The Sub-committee on Infrastructure followed the process outlined below in its efforts to develop the recommendations that are included in this report.

The Sub-committee on Infrastructure met via teleconference to plan the review process, finalize a scoring sheet, and obtain abstracts of each infrastructure proposal and supporting materials. Reviewers received individual access codes to a password-protected Web site that provided reviewers with copies of full proposals supplied by the applicants in response to a request from e-NC (working on behalf of the OERI). The Sub-committee was scheduled for Friday, October 2 from 9:30 a.m. - 3:00 p.m. at the N.C. Department of Transportation EIC Room, and was listed on the www.ncrecovery.gov Web site, as both an open meeting and an open webinar. Additionally, applicants were informed directly by email of this public meeting and of the opportunity afforded them by the public meeting to offer comments directly to the Infrastructure Review Committee before the Committee's deliberations began. The meeting was attended by interested members of the public in person and over the webinar. The purpose of the meeting was to discuss the merits of each application individually to rank and develop a prioritized list of applications recommended by the Committee for further consideration by Governor Perdue (Appendix Document 5, Infrastructure Committee Agenda).

A total of 19 Infrastructure applications were included on the list forwarded by NTIA to Governor Perdue, including nine submitted by North Carolina-based applicants proposing

broadband projects that targeted North Carolina counties and 10 multi-state applications that proposed to deliver service in North Carolina and other states. Of the North Carolina-based applications, two targeted last mile delivery and three targeted middle mile with a last mile component. The proposals were divided into sections for discussion by technology: satellite-based provider models, terrestrial-based wireless models and wireline models. Prior to discussion of these sections' proposals, an opportunity to hear a brief overview on the technology used in the proposals was presented and questions were posed by the committee on points of clarification they felt were needed. This was provided by the staff of the e-NC Authority.

An overview of each application was presented to the Infrastructure Review Committee by John McHugh of OERI. Discussion was held on each proposal. At the end of the proposal discussion, the committee focused on the priorities they felt were important for decision-making relating to this round of NTIA funding for greater broadband deployment in North Carolina:

1. If the application met local and statewide need for immediate deployment of broadband and demonstrated a strong commitment to outreach necessary to make their project successful for North Carolina citizens,
2. If the applicant had the capability to provide "shovel-ready" deployment of broadband and meet the NTIA timeline deadlines for project completion,
3. If the application has the potential to act as a base for future development to expand the reach of the broadband network to the local region and meet region's need for expansion of bandwidth
4. If the applicant has past experience with broadband projects in general and what, if any, of their experience has been in North Carolina,
5. If the application shows evidence of collaboration with other broadband providers (both middle and last mile providers) and its willingness to meet demands of important educational, health and public safety institutions, and
6. If the applicant has the capability to be compliant with reporting mandates by the federal stimulus oversight agencies as well as to report to the appropriate state oversight agencies.

c. Recommendations of the Sub-committee on Infrastructure

The following applications, in order of priority, are recommended to the Governor by the Infrastructure Sub-Committee of the Governor's BTOP Advisory Committee.

Applicant	MCNC Research Triangle Park, NC
Project title	Building a Sustainable Middle-Mile Network for Underserved Rural NC
Program	BIP/BTOP
Proposed Project Area	NC
Project type	Middle Mile
Grant request	\$ 28,225,520

Description MCNC will build a sustainable middle-mile broadband network connecting urban central NC with underserved rural southeastern and western NC. The project addresses statutory goals by improving affordability and access for education, health care, community institutions, and last-mile providers. Led by a proven team, the project is shovel-ready and is supported by an \$11.76M cash and in-kind match.

MCNC's application was the overall-highest scoring application of the Sub-committee.* The Sub-committee felt that the MCNC application was the strongest overall application and the project proposed has the greatest potential for economic impact, the highest likelihood for economic transformation, and the best platform to move North Carolina into position for future projects. The Sub-committee liked the interconnectedness of the project with anchor institutions and the outreach MCNC had already engaged in to bring in a strong Last Mile component to an already impressive Middle Mile application.

*Subcommittee member John McHugh recused himself from consideration of this application.

Applicant Education & Research Consortium of the Western Carolinas, Inc.
Asheville, NC

Project title WNC partnered multi-county fiber solution serving residential, public safety, and medical needs.

Program BIP/BTOP

Proposed Project Area NC

Project type Middle Mile

Grant request \$ 38,755,734

Description ERC Broadband will add 72 miles of sustainable middle mile fiber infrastructure in Graham and Buncombe counties supporting anchor institutions, public safety facilities, and government entities. A last mile fiber-to-the-home network to 97 percent of households and businesses in Yancey and Mitchell counties will be combined with a 43-mile middle mile fiber build through McDowell County for redundancy.

The Sub-committee unanimously chose the ERC proposal as the second application to highlight to the Governor. The Sub-committee was impressed by the focus on Western Underserved North Carolina as the focus of the application. This application was also attractive due to its public focus, its high interaction with existing anchor institutions and other public bodies (including MCNC, whose BTOP application the ERC project referenced).

Applicant French Broad Electric Membership Corporation
Marshall, NC

Project title French Broad Electric BPL Project

Program BIP/BTOP

Proposed Project NC

Area**Project type** Last Mile Remote Area**Grant request** \$ 1,470,991**Description** French Broad Electric will utilize the existing power lines and fiber optic cable already in place to provide high speed internet service to the rural areas of Madison County that do not currently have any high speed service. Residents will be able to have an affordable, reliable service from their electricity provider. This is not the Broadband over Power Line (BPL) technology but rather broadband over fiber deployed on existing poles carrying electrical distribution lines.

The French Broad Electric Membership Corporation was the final BTOP application the Sub-committee wanted to recommend to the Governor. The French Broad was the only Last Mile application recommended because of the focus on an unserved area in a high-poverty area. Also attractive in this application is the reliance on existing infrastructure and a solid business model and realistic goals for pricing and uptake. The application was submitted by a well-regarded public entity with long roots in the community, an experienced handler of federal funds.

Additionally, the Sub-committee wanted to highlight two additional applications they felt were strong and deserving of praise, if not rising to the level of a recommendation to the Governor. The Dale Media application, which was a Last Mile Remote Area application that the Sub-committee felt was a strong, focused application from a small husband-and-wife business in Snow Hill, North Carolina. The Sub-committee felt the application was interesting not only because it was a very small company making a very compelling application for federal funds, but also because the application showed a strong vision for growth in the community and a strong dedication to work with and provide service for existing institutions. The second application the Sub-committee wanted to highlight was NCTH Cleartalk. The Cleartalk application was the only non-North Carolina application singled out for additional comment by the Sub-committee. The Cleartalk plan envisioned bringing Last Mile wireless to Eastern North Carolina. The Sub-committee liked the focus on the rural area and the innovating nature of the proposal, but concerns over the overall economic impact in North Carolina, the viability of the technology and technical issues with the application itself kept the Sub-committee from recommending it to the Governor.

4. Sustainable Broadband Adoption and Public Computer Center programs

Introduction

The SBA/PCC Sub-committee reviewed projects in two funding categories due to the high rate of interconnectedness and, often, the combined nature of the applications. The projects in these two categories were extremely varied and included everything from regionally-focused renovation programs to national programs for varied purposes such as public safety software development programs. The Sub-committee's charge was to evaluate and rank the proposals on the basis of North Carolina impact, and the Sub-committee only considered national programs to the extent they would have an impact in this state. Staff of the e-NC Authority provided administrative support to the Office of Economic Recovery and Investment (OERI) and, upon request, technical advice to the Infrastructure Review Committee.

a. Membership

Members of the SBA/PCC Sub-committee and their professional affiliation included the following:

- Cynthia Marshall—President, AT&T North Carolina
- Dr. Lee Mandell—UNC-Chapel Hill School of Government and Former North Carolina League of Municipalities Research Director
- Terry Bledsoe—Chief Information Officer for Catawba County
- Sandy Babb—Private Business

b. Process

A total of 44 Sustainable Broadband Adoption (SBA) proposals were included in the list forwarded by NTIA to Governor Perdue. Three SBA proposals were submitted by North Carolina-based applicants whose proposed services to specific North Carolina counties included one-to-one outreach efforts, advanced broadband antenna design and enhanced broadband services for area preparedness and public safety. A total of 27 Public Computing Center (PCC) applications were included in the list forwarded by the NTIA to Governor Perdue, including 16 that originated in North Carolina and 11 applications that were submitted by organizations that proposed serving North Carolina as one of multiple states specified in their application. While all applications addressed the need for expanded and enhanced facilities offering public access to broadband, some were further distinguished by their additional attention to digital literacy, job-training and outreach to vulnerable populations.

Due to the high number of applications before the Sub-committee and given the limited time frame of the public meetings, each application could not be individually reviewed in the open

committee. Instead, the Sub-committee developed a process in which each Sub-committee member would nominate 10 applications from the combined categories of Sustainable Broadband Adoption and Public Computer Centers for further discussion by the entire Sub-committee. After each member had nominated his or her top 10 applications, the group conferred to establish a consensus pool of applications that were debated before the Sub-committee and, finally, nominated a group of applications from each category for recommendation to the Governor.

c. Recommendations of the Sub-committee on SBA/PCC

The following applications, in order of priority, are recommended to the Governor by the Sub-committee for SBA/PCC of the Governor's BTOP Advisory Committee for Public Computer Centers Program:

Applicant Mitchell County Historic Courthouse Foundation
Bakersville, NC

Project title Mitchell County Virtual Learning and Communications Center

Grant request \$ 239,194

Description In collaboration with Mitchell County Public Library and Mayland Community College, the Center will provide access to broadband programs and services that will address specific educational and communication needs of displaced workers, farmers, high school dropouts, residents wanting college courses, health care workers, EMS personnel, educators, government officials, and small business persons.

The Sub-committee liked that this program addressed specific educational needs in a tier I, high dropout area (the dropout rate for Mitchell County is 35%). The Sub-committee felt that this program's multi-disciplinary approach had a high degree of interconnectedness to the community and anchor institutions, with clear deliverables and benchmarks for success that marked it as the stand-out proposal for the PCC area. Finally, while this project's cost is relatively low, there is a high potential for a significant level of economic development from this application.

Applicant Olive Hill Community Economic Development Corporation
Morganton, NC

Project title Valdese Public Computer Center

Grant request \$ 448,805

Description This project establishes a public computer center in downtown Valdese, NC targeting assistance to disadvantaged businesses, the unemployed, and individuals seeking higher educational attainment. Clients and the public will receive training through collaborative services with the local community college, the small business center, Town of Valdese, and traditionally disadvantaged businesses.

The Sub-committee felt this program had a strong focus on the leveraging of existing facilities and institutions and that this program represented a "turn-key" operation with the potential for a

strong area impact. The application is targeted at a high unemployment (14.9%), high-poverty (10%) and high-drop-out (32.7%) population. The area had already invested resources in the project and developed clear training curricula that the Sub-committee felt would maximize the community impact of this program.

Applicant City of High Point
High Point, NC

Project title Public Computing Access and Training for Jobseekers

Grant request \$ 261,835

Description The Public Computing Access and Training for Jobseekers project is collaboration between the City of High Point, NC, the High Point Public Library, and the Guilford County workforce consortium to provide increased computer access and training for jobseekers. This project will create training labs in the library and at the High Point office of the Guilford County workforce consortium.

The Sub-committee felt this program deserved mention because of its focus on targeting vulnerable populations (a high unemployment area with a high percentage of disabled and a population of Native Americans). The Sub-committee also felt that the high degree of community support and interconnectedness from community groups and anchor institutions made this program likely to be sustainable. The focus of the application on a children's educational lab was also an important factor in the Sub-committee's recommendation.

Applicant Housing Authority of the City of Wilson
Wilson, NC

Project title Milo L. Gibbs, Jr. Resource Center

Grant request \$ 200,000

Description The Milo L. Gibbs, Jr. Resource Center will be set up as a computer center that will provide computer usage and training to our clients. The computer center will be designed to assist 200-300 low income clients within the Housing Authority jurisdiction.

The Sub-committee focused on this application because it served an area of extremely high unemployment (32%) in an area of the state that is in economic transition. This application highlighted outreach to community organizations and a reliance on existing infrastructure. There were some concerns over some budgetary aspects of the program, and the Sub-committee did feel that the application would be more attractive if it were modified to reflect the extensive amount of infrastructure the project has access to that is not referenced in the application.

The following application is recommended to the Governor by the Sub-committee for SBA/PCC of the Governor's BTOP Advisory Committee for Sustainable Broadband Adoption Program:

Applicant McDowell County Schools
Marion, NC

Project title One-to-One Outreach

Grant request \$ 3,006,872

Description McDowell County Schools application is for acquiring broadband and end-user related equipment for: a) networking capabilities; instrumentation, hardware, software, digital network technology; b) training, education, support, and awareness for school-wide and public outreach campaigns; c) innovative programs to provide public greater access to broadband service, devices, and equipment.

The McDowell County Schools One-to-One project is the only Sustainable Broadband Adoption project recommended by the Sub-committee to the Governor. The Sub-committee felt that this was a strong program because it's based on a proven type of project and that McDowell County had already invested in a year-long feasibility study of the program and conducted community outreach. The program is tied to a Tier I area with high unemployment (16%) in a rural, unserved community. The Sub-committee felt this program would serve several statutory goals of the BTOP program, including training, developing computer literacy, economic development, and building demand for high-speed broadband in the community.

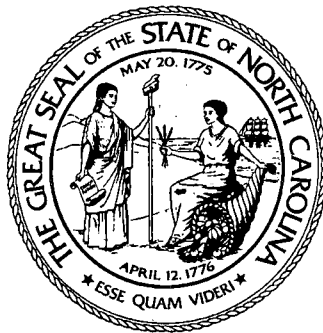
There were four applications in the Sub-committee that received multiple individual recommendations but were not recommended by the full committee. Those programs, all included in the Public Computer Centers Area were: The Durham County Public Computer Center Application, the City of Greensboro Public Computer Center application, the Town of Chapel Hill Public Computer Center application and WinstonNet, Inc.

5. Conclusion

The BTOP Review Committee would like to thank the Governor for the opportunity to provide review and comment for this important ARRA Recovery project. The Committee feels that high speed broadband development, particularly to unserved and underserved areas, is not only important for immediate economic and educational impact, but critical to move North Carolina's economy from an agricultural and manufacturing base to a robust 21st Century Economy.

If there was a central theme to the two Sub-committee Meetings it was that what was best for North Carolina was the development of programs and investments in North Carolina. The recommendations from both Sub-committees reflect a clear preference for the development of infrastructure and programs that provide a platform for future growth in broadband outreach and demand in North Carolina.

Please find attached material used by the Sub-committee in their deliberations, including maps of unserved and underserved areas, scoring sheets, the full list of North Carolina Service Area applications, and a sampling of scored applications. It is worth noting that while the BTOP review committee was an advisory group and not covered under the ethics law, every member of the group provided a signed, notarized document attesting that they would abide by all North Carolina statutory ethic and open meetings laws. Copies of these documents are also attached.



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Monday, November 23, 2009

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Monday, November 23, 2009, in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Earl Jones, Thom Tillis, Joe Tolson, and Roger West. Staff in attendance: Brenda Carter, Barbra Riley, Steve Rose, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Reggie Sills, Bob Rossi, and Toussaint Avent. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 and 2*)

The Chairman called the meeting to order and introduced the Sergeant of Arms. Chairman Faison explained that this meeting was about House Bill 1252 Level Playing Field/Cities/Service Providers. Underlining Question being, will municipalities be able to continue using their resources, unfettered, to provide High Speed Broadband access and other communication tools, to their citizens. (*Attachment 3*) The Chairman also explained the flow of the agenda.

Chairman Faison introduced our first Speaker, Marcus Trathan. Mr. Trathan spoke as an advocate for House Bill 1252 Level Playing Field/Cities/Service Providers:

Marcus Trathan (North Carolina Cable Association) was recognized to present to the committee. Mr. Trathan's comments are attached. (*Attachment 4*) Below are some key points:

- In 2005, the NC Court of Appeals issued a decision in a case called *BellSouth v. City of Laurinburg* saying that if cities can provide cable television service then they also should be permitted to provide telecommunications and broadband service. Basically the court said the legislature's use of the phrase "cable television system" was the same thing as a broadband or telephone system.
- Because of the Appeal several cities are now exploiting the court's decision.
- The City of Wilson, City of Salisbury and others are borrowing to construct a fiber system in direct competition with current providers.
- These are not situations where private business was failing to provide these cable TV, broadband and telephone services instead, in each case, private business was already present and offering service and the cities stepped in to compete against private business.

- Our concern is based on the numerous inherent and unfair advantages when competing against private business. Cities don't pay taxes that private businesses do, they don't pay fees that private businesses do, and cities have the ability to subsidize their retail communication services from other taxpayer supported monopoly sources.
- Cities are free to cross-subsidize their competitive activity with their non-competitive governmental services like electric service or gas service.
- Many other states have acted to prevent unfair competition. The following principles should apply with respect to a city's competitive activities:
 - Regulations that do not apply to government entities but which do apply to private industry should either be abandoned or enforced uniformly.
 - Local governments that supply services in competition with private industry should lose their tax exempt status and other privileges with respect to such activities.
 - Local governments should adopt accounting practices and management approaches that reveal more closely the true cost of the services provided.
 - Captive ratepayers should be protected from paying for projects they don't support.
 - Full disclosure should be made to the public before such projects are undertaken.

After Mr. Trathan's remarks, Chairman Faison introduced our next speaker Mr. Lyman Horne. Mr. Horne spoke as an advocate for House Bill 1252 Level Playing Field/Cities/Service Providers:

Lyman Horne (Executive VP and General Manager, Star Telephone Membership Corporation) was recognized to present to the committee. (*Attachment 5*) Below are some key points:

- The extensive investments made by the private sector in municipal areas should be considered in that any new rules should be fair and in the best interest of the citizens of the municipality.
- Before municipalities entered into competitive market place where the service already exists, there should be full disclosure to all citizens in the form of a public hearing and a referendum.
- If municipalities choose to enter into a competitive market place, shouldn't they be expected to play by the same rules as private enterprise?

After Mr. Horne's remarks, Chairman Faison introduced our next speaker Mrs. Kelli Kukura. Mrs. Horne spoke as an opponent for House Bill 1252 Level Playing Field/Cities/Service Providers:

Kelli Kukura (Director of Government Affairs, NCLM) was recognized to present to the committee. Mrs. Kukura's remarks are attached. (*Attachment 6*) Below are some key points:

- The real issue is —addressing the significant problem North Carolina faces in delivering broadband infrastructure fairly and without bias to North Carolina citizens. This is not about money. It is not about competition. It is about serving our citizens.
- Municipal broadband is about two things: the economic development future of North Carolina and the safety and service of our town residents. State-of-the-art communications improves our local government utility services, the safety and health of our citizens, our educational opportunities, and our business growth.
- Wilson and Salisbury—are making the decisions and investments now to ensure a future for their citizens and businesses. There are currently at least 35 cities and towns in this state that

are in the deployment or planning stages of community broadband infrastructure projects. And many, many more see it as critical to their infrastructure to meet future economic development needs.

- Cities and towns are building broadband infrastructure because it is a **necessity**, just as water, sewer and power are necessities to the core livelihood of a community. Fiber is the next generation infrastructure, offering by far faster speeds and greater capacities over any other technology.
- Both Wilson and Salisbury attempted to partner with private cable providers but were met with no interest. They weren't trying to compete with the private providers---they are trying to serve their citizens. When private entertainment cable providers are unable or unwilling to serve communities in North Carolina, these communities must have the ability to set their own course to ensure a safe, effective public communications network, one that can meet the needs of education, fire, police and utility services, serve citizens regardless of income, and serve businesses to support economic development. Put simply, broadband is the water, sewer, roads for these towns.
- The real question is how North Carolina can create laws that support broadband infrastructure in our towns, particularly in unserved and underserved areas across our state.

After Mrs. Kukura's remarks, Chairman Faison introduced our next speaker Mrs. Susan Kluts. Mrs. Kluts spoke as an opponent for House Bill 1252 Level Playing Field/Cities/Service Providers:

Susan Kluts (Mayor, Salisbury, North Carolina) was recognized to present to the committee. Mrs. Kluts' remarks are attached. (*Attachment 7*) Below are some key points:

- Salisbury began to look at the infrastructure needed to make them more competitive in the new global information economy. Fiber infrastructure as the future of Salisbury and driver of economic development.
- Pryor to development the incumbents where asked to provide this service but would not guarantee they would provide service
- We are doing this for several reasons:
 - Jobs: We have to stay competitive in recruiting jobs and industry. We are in a competitive region with Charlotte and Kannapolis. The fiber infrastructure will differentiate us as a community.
 - Fairness & Equality: Access to all citizens with an emphasis on providing service to low income areas because incumbents will not.
 - Education: The children in this new economy require this to be successful. A local private school has voluntarily annexed for the sole reason of receiving fiber infrastructure. Fiber infrastructure and service will be available to every school and student and lives within our city. Fiber will connect our local colleges and Rowan Regional Medical Center and V.A. Hospital who will benefit.
 - Public Safety: This infrastructure will improve the delivery of fire and police services. Currently our city has dead zones where public safety cannot access critical information in their vehicles or on location.
 - Access: Significant portions of our city have no access. Including areas such as our downtown and industrial areas. This has severely limited small business development.

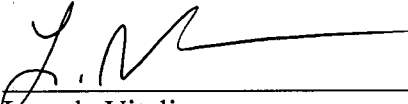
After Mrs. Kluts' remarks, Chairman Faison introduced our next speaker Mr. Grant Going. Mr. Going spoke as an opponent for House Bill 1252 Level Playing Field/Cities/Service Providers:

Chairman Faison opened the floor for questions or comments.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

Monday, November 23, 2009

10:00 AM

Room 415 LOB

1. Welcome

Representative Bill Faison, Chairman

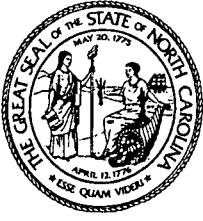
2. Topic of the Day

- House Bill 1252 Level Playing Field/Cities/Service Providers –
Underlining Question: Will municipalities be able to continue using their resources, unfettered, to provide High Speed Broadband access and other communication tools, to their citizens.

3. Guest Speakers

- Proponents of House Bill 1252 **(10:05)**
Opportunity to advocate for House Bill 1252
- Opponents of House Bill 1252 **(10:32)**
Opportunity to present opposition for House Bill 1252
- Proponents of House Bill 1252 **(11:00)**
Response to opponent's position and to further advocate for the bill.
- Opponents of House Bill 1252 **(11:30)**
Further response

4. Adjourn



HOUSE BILL 1252: Level Playing Field/Cities/Service Providers

2009-2010 General Assembly

Committee:	House Science and Technology, if favorable, Public Utilities, if favorable, Finance	Date:	April 14, 2009
Introduced by:	Reps. Harrell, Jones, Avila, Tillis	Prepared by:	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: *House Bill 1252 would amend Article 16 of Chapter 160A of the General Statutes concerning public enterprises, by adding a new section governing city owned or operated communications service, and would amend the definition of a public utility under the Public Utilities Act to include any city owning or operating equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where the service is offered to the public for compensation and the service would be subject to the provisions of this bill.*

[As introduced, this bill was identical to S1004, as introduced by Sen. Hoyle, which is currently in Senate Commerce.]

CURRENT LAW: Under Article 16 of Chapter 160A of the General Statutes, cities have the authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of public enterprises to furnish certain services to the city and its citizens. Public enterprises include:

- Electric power generation, transmission, and distribution systems.
- Water supply and distribution systems.
- Wastewater collection, treatment, and disposal systems
- Gas production, storage, transmission, and distribution systems.
- Public transportation systems.
- Solid waste collection and disposal systems and facilities.
- Cable television systems.
- Off-street parking facilities and systems.
- Airports.
- Stormwater management programs

BILL ANALYSIS: House Bill 1252 would amend Article 16 of Chapter 160A of the General Statutes concerning public enterprises, by adding a new section governing city owned or operated communications service that would include the provision of cable, telephone, broadband, or Internet access service over a wired or wireless network.

A city that operates a public enterprise that provides communications service to the public for a fee over a communications network that is owned or operated by the city or that provides a financial benefit to the city would be required to meet the following conditions:

- Comply with local, State, and federal laws and regulations that would apply to private service providers
- Establish a separate enterprise fund for communications service, and use the fund to separately account for revenues and expenses associated with the provision of communications services

House Bill 1252

Page 2

- Not subsidize the cost of providing communications service with funds from other noncommunications service or operations; and not provide communications service below the cost of providing the service***(See Note Below)*
- In calculating the cost incurred and the rates to be charged for communications service, must impute the cost of the capital component equivalent to the cost of capital available to private service providers, and an amount equal to taxes that would apply to private service providers***(See Note Below)*
- Pay annually to the city's general fund an amount equal to any taxes or fees that would be paid to the city by a private service provider offering the same communications service***(See Note Below)*
- Prepare and publish an independent annual audit reflecting the fully allocated cost of providing the communications service and any subsidies received by the city-owned communications service provider; any buildings, equipment, vehicles, or personnel used jointly with other city departments would be allocated to the city-owned communications service. The NC Utilities Commission would be authorized to adopt rules and regulations to ensure compliance with the audit requirement, and records demonstrating compliance would be filed with the Utilities Commission and made available for public inspection & copying***(See Note Below)*

*(** The noted provisions would not apply to communications service authorized by a city on or before March 1, 2009 and offered to the public on or before September 1, 2009)*

Exemptions -- The bill would not apply to:

- the operation of communications service for the city's internal governmental purpose
- a city that is not served by a private provider of high-speed Internet service or where high-speed Internet service is not available to at least 80% of the households
- the provision of communications service to the extent the service is limited to areas of the city that are not served by any private service provider

Section 2 of the bill amends the definition of a public utility under the Public Utilities Act to include any city owning or operating equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where the service is offered to the public for compensation and the service is subject to the requirements enacted in this bill.

Section 3 of the bill makes it clear that a city designated as a public utility if the bill becomes law would not be subject to provisions of the bill for operations authorized by the Public Utilities Act.

Section 4 of the bill provides for the severability of any provision of the bill that may be held invalid.

EFFECTIVE DATE: The bill would be effective when it becomes law.

H1252-SMRV-35(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

3

HOUSE BILL 1252*
Committee Substitute Reported Without Prejudice 4/23/09
Committee Substitute #2 Favorable 5/6/09

Short Title: Level Playing Field/Cities/Service Providers.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE JOINT SELECT COMMITTEE ON HIGH SPEED
INTERNET IN RURAL COMMUNITIES AND THE REVENUE LAWS STUDY
COMMITTEE TO STUDY LOCAL GOVERNMENT OWNED AND OPERATED
COMMUNICATION SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Select Committee on High Speed Internet and the Revenue
Laws Study Committee shall study local government owned and operated communication
services. The Committees may propose legislation, if appropriate, to regulate the operation of
local government owned and operated communication services. In making this study, the
Committees shall consider:

- (1) The private and public costs and the benefits of providing communication services through a private communication services provider compared to a local government owned communication services provider, including the effect on competition, infrastructure deployment and investment by private providers, the implementation of new technologies, existing and future jobs, actual economic development prospects, tax-based growth, education, and public health.
- (2) The regulatory structures applicable to the provision of communication services by local government owned communication services providers as compared to the regulatory structures applicable to the provision of communication services by private providers.
- (3) The effect of competition from local government owned and operated communication services on privately owned communication services.
- (4) The impact on State and local tax revenues from competition by local government owned communication services providers with private providers.
- (5) The extent of communication services currently offered by local governments and the manner in which the capital and operational costs of such services are funded.

SECTION 2. The Committees shall report their findings and recommendations, including any proposed legislation, to the 2010 Regular Session of the 2009 General Assembly.

SECTION 3. This act is effective when it becomes law.



* H 1 2 5 2 - V - 3 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

3

HOUSE BILL 1252*
Committee Substitute Reported Without Prejudice 4/23/09
Committee Substitute #2 Favorable 5/6/09

Short Title: Level Playing Field/Cities/Service Providers.

(Public)

Sponsors:

Referred to:

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SECTION 3. This act is effective when it becomes law.



* H 1 2 5 2 - V - 3 *

VISITOR REGISTRATION SHEET

HOUSE SELECT COMMITTEE HIGH SPEED INTERNET ACCESS 11-23-09
 Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Ramsey	Dept. of Public Instruction
Bob Wilke	North State Tele.
Tom W...	Future Use.
Mark Prax	BPMH
Joe J. Park	ACCESSIBLE Television
Cam Conroy	BPM LLC
Jay Cuthrell	Cuthrell Consulting, LLC
Fred Burchett	Kinley - Horn & Assoc
Mark Wells	Rockingham County Business + Technology Center P.O. Box 155 Wentworth, NC 27375
Lori Moye	NC League of Municipalities
Michael Crowell	City of Salisbury PO Box 479 Salisbury NC 28145

VISITOR REGISTRATION SHEET

11/23

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Allison Cooper	Rose and Wallace Attys, P.A.
Bill Haigh	autel
Pam Melton	CenturyLink
Steve Brewer	CenturyLink
Bill Wanching	CenturyLink
Michelle Frazier	MFS
Andrew Meehan	NCAEC
Angie Bailey	e-NC
Britton Allen	Allen Law Offices, PLLC
Stanley Victorin	City of Fayetteville Government
Wesley A. Meredith	City of Fayetteville Government

VISITOR REGISTRATION SHEET

11/23

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mayor Brandon	City of Wilson
Tim Cauley	City of Wilson
GRANT GOINGS	CITY OF WILSON
Kelli Kukuna	NCLM
Susan Klutte	Mayor, City of Salisbury
Doug PARAS	City of Salisbury
Dave Trone	"
Carole Woodward	NC Telecom
David Braswell	DaySpring Media Wilson NC

VISITOR REGISTRATION SHEET

House Select Committee HIGH SPEED TRAINING DEVICES 11/23
Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Seaman	AT&T
John Mathey	DERI
Chris Hollis	K&L Gates
Marvin Tate	Brooks Ruel
Sammy Roberson	TWC
Jack Stapley	TWC
Brad Phillips	TWC
Dwight Allen	Allenhardt & Sons, P.C.
Jack Cozart	Womble
R. A. PARNELL	CITY OF SALISBURY
Rory Collins	City of Salisbury

VISITOR REGISTRATION SHEET

11/23

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JAMES ROSE	CITY OF FAYETTEVILLE, PWC
Lynn Holmes	Rose Holmes Group, LLC
CHARLES PITTMAN	RAELGIR
Conno Wilson	CWC, Inc.
Brian Bowman	City of Wilson
Tom Vanderbeek	County of Chatham
Jane Patterson	e-nc Authority
Oppe Jordan	e-nc Authority
HERB CRENSHAW	AT&T NORTH CAROLINA
Daniel Auburn	Electr. Cities
Loretta Boniti	News 14
George Bryant	DaySpring media

VISITOR REGISTRATION SHEET

11/23

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bill Stice	Town of Cary 120 Wilkinson Ave. Cary, NC 27513
McGardner Culpepper	Personal Interest
AREK KEMPIWSKI	Town of Chapel Hill
Robert F. Depe	Action Audits, LLC,
Julie Wh	NLMML
Doana Maldovan	Pittsboro NC
Ruth Couch	Pittsboro NC
Ed Couch	Pittsboro, NC
Mimi Clayton Fletcher	Pittsboro, NC
Dawn h. Melton	Albemarle / Stanly County NC

**Statement of Marcus Trathen
as prepared for delivery to the
House Select Committee on High Speed Internet Access in Rural and Urban Areas
November 23, 2009**

I am Marcus Trathen of the Brooks Pierce law firm. I am speaking today in my capacity as counsel for the NC Cable Telecommunications Association.

I am pleased to accept Chairman Faison's invitation to talk with you today about the issue of local governments who are getting into the telecommunications business in competition with private providers.

Background

Let me first say a word about how we got to where we are now.

As you know, North Carolina has a law called the Umstead Act that generally prevents the State from competing against private business. The reason for this goes to the heart of our economic system – our shared belief that private business is better suited than the government to engage in business, as opposed to governmental, activity.

Cities and counties are exempted from the Umstead Act. The reason is not because local governments are deemed free to compete as they wish, but because cities and counties are creatures of the legislature. They are only permitted to engage in activities expressly authorized by the General Assembly. Therefore, the General Statutes have a section specifically listing the activities in which cities and counties can engage.

Nowhere on this list is telecommunications or, for that matter, broadband. Cities, however, are authorized to operate "cable television systems". This provision is consistent with federal law, which permits cities to operate cable systems where an incumbent provider is determined, after a formal process, not to be meeting the needs of the community. In 2005, the NC Court of Appeals issued a decision in a case called *BellSouth v. City of Laurinburg* saying

that if cities can provide cable television service then they also should be permitted to provide telecommunications and broadband service. Basically the court said the legislature's use of the phrase "cable television system" was the same thing as a broadband or telephone system. We and others believe this decision was wrong, but that's what the court said. The effect of this decision opened up to cities a whole new range of activities previously not authorized for cities – including provision of telephone and broadband service. My point is simply that the General Assembly did not intentionally create a structure under which cities would be permitted to compete against private companies in a whole range of communications services – rather this situation was created by virtue of a court decision.

Current State of Competition

Several cities are now exploiting the court's decision.

For example, the City of Wilson has borrowed some \$28 million to construct a fiber system and is providing video, telephone and broadband service in direct competition with Time Warner Cable, CenturyLink and other providers.

The City of Salisbury has borrowed some \$36 million and is in the process of building exactly the same network for the same purpose – to compete against Time Warner Cable, AT&T, and other private providers.

Davidson, Mooresville and Cornelius formed a joint municipal enterprise operated under the name MI Connection to purchase a cable television system formerly owned by Adelphia Cable out of bankruptcy. They borrowed some \$90 million to do this. They are now using the system to provide telephone, broadband and video service in competition with private industry.

The Town of Morganton has provided cable TV and Internet services for a number of years.

We believe many other cities across North Carolina are actively considering similar projects.

The Problem

Let me be clear – these are not situations where private business was failing to provide these cable TV, broadband and telephone services and the cities stepped in to fill the gap. Instead, in each case, private business was already present and offering service and the cities stepped in to compete against private business.

Our opponents try to paint this as an issue relating to the provision of broadband services to those that don't have it – an issue this Committee obviously is concerned with. We have never said that local government does not have a legitimate role to play in those situations where private industry is unable or unwilling to step forward and provide services. Our concern is not with unserved areas – rather it's with the government's direct competition with private business.

Our concern is based on the numerous inherent and unfair advantages when competing against private business.

- Cities don't pay taxes that private businesses do.
- They don't pay fees that private businesses do.
- Cities have the ability to subsidize their retail communication services from other taxpayer supported monopoly sources.

Each of these exemptions means local governments have fewer costs than private businesses, the net effect of which creates price disparity between government providers and private providers.

Additionally, the temptation to discriminate against private business when the government acts as both a regulator and a competitor is irresistible. For example, cable companies must attach their lines to power poles in order to provide services to customers. In

cases where a city owns those poles – and where the city competes with the cable company – the opportunity for abuse is clear and present by either denying access to the poles or increasing rates substantially for access to the poles. In such a case the cable company is subsidizing the city's competition.

The City of Wilson recently notified Time Warner Cable the 2009 pole attachment rate will be triple the rate of 2008. In other words, the City is asking Time Warner to fund the city's competition against it through excessive increases in pole attachment rates.

The same possibility for abuse existing with respect to the use of a city's public rights-of-way.

Ultimately, with local government competition, taxpayers are the ones at highest risk, whether they know it or not. Cities are free to cross-subsidize their competitive activity with their non-competitive governmental services like electric service or gas service. In effect, subscribers of private providers who take other city services are subsidizing the city's competitive forays. Even individuals who don't subscribe to service with either competitor will end up subsidizing the city's service through taxes, water-sewer rates and in the case of Wilson, electric and gas service. The person who has lost a job or who is scraping by on social security and doesn't subscribe to cable or broadband service is still subsidizing the city's competitive efforts through electric rates.

This is occurring today. According to its financial statements, Wilson has taken \$11,927,080 from its electric and gas funds – i.e., revenues it has received from its electric and gas customers – and plowed that into competing with Centurylink and TWC. (When you consider that Wilson has some of the highest electric rates in the state this seems manifestly inappropriate.)

Morganton has taken \$2,932,388 from its electric fund and transferred it to its cable operations. Why? Because its cable operations are not self-supporting, even though the city has been operating a cable system since 1993! Its latest financial statements show that the system is still losing money after 16 years in business.

Wilson is currently losing money. MI Connection is currently losing money (it lost over \$6 million this last year). If they keep losing money like Morganton, captive ratepayers and taxpayers will be on the hook.

This is not right for consumers, it's not right for taxpayers, but more importantly it's not right because it is bad public policy. If cities are permitted to unfairly compete against private business, private business will not make the investments required to generate jobs and stay current with technology. This is a reality of free enterprise. North Carolina is fortunate to have some of the most sophisticated and well-capitalized communications companies in the world investing here, creating jobs, and providing advanced services. These companies are required to make choices every day about where to deploy their capital. If North Carolina cities are permitted to unfairly compete against them, North Carolina risks being perceived as a hostile ground for the technology industry and potentially retarding the growth of a vibrant industry so necessary to our state's future economic good health. I hope you agree that this would be a very harmful result for our state.

* * * * *

The idea starts of innocently enough: Wouldn't it be great if the city provided a broadband alternative to its citizens – we can help bright prices down and spur economic activity. And we'll probably rake in the money by also offering video and telephone services.

The reality is much different: massive debt; propped up by cross-subsidizing the competitive activity from captive ratepayers and dependent on unfair competitive tactics; diminishment of the state and local tax base; and, in the end, the entry does not substantially affect pricing. Moreover it's simply unseemly for the government to compete against private business, it creates political problems, and it raises constitutional issues with respect to the government's delivery of content.

In the last election, largely due to dissatisfaction with the MI Connection project, the people in the Town of Mooresville voted out the incumbent Mayor and council member who were primarily responsible for the MI Connection project in the first place. But what recourse do the citizens have now? They own the cable system and they are obligated for \$90 million in debt. Obviously it would have been preferable for there to have been meaning citizen input on the front end, not after the project has been undertaken. You may be surprised to learn that cities can borrow \$90 million without anything more than a city council vote. In MI Connection's case, the deciding vote was cast by the now-former mayor of Mooresville after the council had deadlocked because the project was so controversial in the community.

The current system is horribly flawed. Public officials can make decisions with virtually no public input or state oversight. Private competitors have no recourse against unfair competition. Local taxpayers have no protection against being forced to subsidize proprietary as opposed to governmental activities.

There is precedent in North Carolina for regulating these activities.

Cross-subsidies

- **Electric co-operatives** are prohibited from cross-subsidizing competitive activities from electric ratepayers funds. They are subject to all taxes, specifically including federal and State income taxes, levied against business entities of the same structure and engaged in

the same activities. They must fully compensate the electric membership corporation for the use of personnel, services, equipment, or tangible and intangible property. The NC Utilities Commission regulates this activity by, among other things, requiring annual reports. [G.S. §§ 62-53 & 117-18.1].

- **Joint Municipal Power Agencies** are required to make payments in lieu of taxes to the appropriate governmental body. [G.S. 159B-27]

Annual Reports & Financial Recordkeeping

- Cities operating utilities are required to file annual reports with the NC Utilities Commission. [G.S. 62-47]
- Joint Municipal Power Agencies are required to file annual reports with the NC Utilities Commission. The report is to include “a complete operating and financial statement.” [G.S. 159B-30]

This is not a problem of your creation or ours --- this problem has been created by a court decision. The legislature has never directly addressed how and under what protections cities should be permitted to compete against private businesses in providing telecommunications and broadband services. Many other states have acted to prevent unfair competition, and we believe it essential for North Carolina do the same.

We believe that the following principles should apply with respect to a city’s competitive activities:

- Regulations that do not apply to government entities but which do apply to private industry should either be abandoned or enforced uniformly.
- Local governments that supply services in competition with private industry should lose their tax exempt status and other privileges with respect to such activities.
- Local governments should adopt accounting practices and management approaches that reveal more closely the true cost of the services provided.
- Captive ratepayers should be protected from paying for projects they don’t support.
- Full disclosure should be made to the public before such projects are undertaken.

* * * * *

As always, on behalf of our industry we are grateful for the opportunity to outline our concerns and look forward to working with you on these and other issues.

What competition with the government looks like

First they take \$5 million from electric ratepayers to begin competing against you

Note 18 - Telecommunications Capital Project Fund
The Telecommunications Capital Project Fund is an Electric Operating Reserve Fund capital project fund. It is consolidated with the Electric Operating Reserve Fund for economic resources management for all full accrual basis financial reporting. The fund had \$5,000,000 transferred to it for the 1999-2000 fiscal year from the Electric Operating Reserve Fund. The capital project fund has not had any budgeted revenues or expenditures for its operation, 2001 fiscal year. This is the first year the Employment Schedule of Revenues and Expenditures - Budget to Actual (Doc - OAAAF) has appeared in the financial statements for this project.

Source: City of Wilson Annual Financial Report, FY05-06, documenting \$5 million transfer from the City's Electric Fund to the fiber optic cable project.

Note: To date, Wilson has transferred nearly \$12 million from its electric and gas funds to subsidize its competitive activities.

Then they secure loans by promising to raise taxes if needed

although using some different methodologies. Should the fiber optic project not perform as expected, the debt service could be repaid through other sources. For example, an electric rate increase of approximately 1.4% would be needed; a tax rate increase of 3.6 cents would be needed; or, some combination of the two could be put in place. These rate increases are not considered by the city to be unreasonable if they become necessary.

Source: City of Wilson application to Local Government Commission dated 2/5/07 seeking authorization for initial \$18 million loan to compete.

Then they delay granting you permits to serve customers

- In July 2007, Wilson (temporarily) refused to process routine permit applications from Time Warner, citing Time Warner's legislative activity.

Then they violate their own ordinances



- Wilson ordinance prohibits use of commercial vehicles in residential neighborhoods for advertising purposes.
 - Ord. Sec. 22-118 (parking vehicle for primary purpose of advertising prohibited)
 - and Sec. 29-2 (sale of merchandise on streets, sidewalks and parking lots)
- Wilson routinely violates these ordinances with its Greenlight trailer.

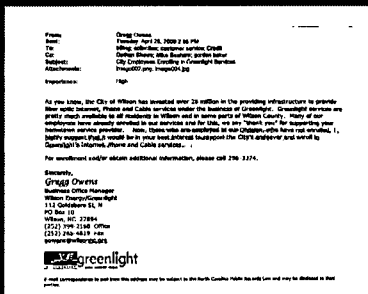
Then they raise the cost of your business

- Wilson has raised its rates for accessing its utility poles by 300%.
- Wilson has imposed a new \$0.48/linear foot fee for use of its rights-of-way.

Then they force you to advertise for them

- The City of Wilson put advertising of its competitive cable service on its PEG channel – effectively forcing TWC to advertise for its competitor.
 - Per G.S. 66-357, cable operators are required to carry city-generated programming (“PEG channels”).

Then they bully city employees to buy service from them



Then they ignore the laws you must follow

- Wilson has signed an exclusive agreement to provide service to new residential development outside the city limits.
- Wilson sought to exclude private companies from providing service in this development.
 - Private providers are prohibited by law from entering into exclusive access arrangements or excluding competitors for serving customers.

Then – watch as you have to pay taxes / fees that they don't

• Cities don't pay

- state corporate income taxes
- state corporate franchise taxes
- state sales tax on the equipment
- state motor fuels tax
- vehicle taxes
- local property taxes
- local rights-of-way fees
- fees for use of city-owned utility poles
- regulatory fee (NC Utilities Commission)
- state e911 fund
- Telecommunications Relay Service Fund (telephone services for hearing impaired)

Help ensure preservation of private sector jobs and the North Carolina tax base:

Support
Level Playing Field / Cities / Providers

Good Morning & Thank you for your time

My name is Lyman Horne. I am Executive Vice President & General Manager of Star Telephone Membership Corporation headquartered in Clinton, North Carolina and also the Chief Operating Officer of Tri-County Telephone Membership Corporation headquartered in Belhaven, North Carolina. I have nearly 30 years of experience in the telecommunications industry in rural southeastern North Carolina.

I am also the Chairman of the Board of Directors of the North Carolina Telecommunications Industry Association. The membership includes all of the traditional telephone companies in the state of North Carolina, from the smallest to the largest and the most rural to the most urban.

I understand that this morning we're here to discuss municipal entry into the business of providing communications services, particularly broadband. From my personal perspective I am unfamiliar with municipal entry. Star Telephone serves only one incorporated town in the state, Harrells, North Carolina, with a population of about 200. That town has had broadband available for over 5 full years now.

To put that in perspective, the town does have a municipal water system, but no sewer, no municipal trash collection, or natural gas service. But you can get broadband in Harrells, North Carolina.

Today, I am here primarily to speak on behalf of our member companies that provide services to customers who reside in municipalities.

From an industry perspective, it is not our intent to seek a total ban on municipal entry. However, we believe that the extensive investments made by the private sector in municipal

areas should be considered in that any new rules should be fair and in the best interest of the citizens of the municipality. To summarize the telecommunications industry sentiment, it has to be a 'level playing field'.

It is not our intent today to say what the new rules should be, however, at a very minimum we ask that prior to municipalities entering into the competitive market place where the service already exists, there should be full disclosure to all of its citizens in the form of public hearings and a referendum....as they do with a number of bond issues.

As noted previously, municipal entry is not just a broadband issue. It is, more importantly, a competition issue for all services. If a municipality makes a choice to enter into a competitive market place, shouldn't they be expected to play by the same rules as private enterprise? Without rules, the private company will be regulated by their competitor that has the ability to raise pole attachment rates, impose costly right-of-way and conduit fees, and subsidize communication services with tax dollars or revenue from other municipal provided services. Competition is a great thing for the consumer, however, to the extent possible, all need to play by the same rules in order to ensure that competition is fair.

In closing...we ask for the assistance of Chairman Faison and members of the House Select Committee on High Speed Internet Access in Rural and Urban Areas to facilitate a meeting between the communication service providers to work out rules that make competition fair for everyone and encourages investment in services needed by the citizens of NC.

Thank you for your time this morning.

**Kelli H. Kukura
Director of Government Affairs
North Carolina League of Municipalities**

Testimony to:

House Select Committee on High Speed Internet in Rural and Urban Areas

November 23, 2009

Mr. Chairman and Members of the Committee---

- Thank you very much for the opportunity to fairly and openly discuss the future of broadband infrastructure in North Carolina. I am Kelli Kukura, Director of Government Affairs for the North Carolina League of Municipalities. I represent the 547 cities and towns across the state that are home to almost 60% of our North Carolina citizens.
- After last session, it is refreshing to be able to focus not on a private provider bill aimed at harming North Carolina's broadband infrastructure, like former Rep. Harrell's bill would have done... but instead on the real issue at hand today—addressing the significant problem North Carolina faces in delivering broadband infrastructure fairly and without bias to North Carolina citizens.
- This is not about money. It is not about competition. It is about serving our citizens.
- As many learned during this past session, this is not a case of the little North Carolina town somehow outdoing a company like Time Warner. This has nothing to do with a town wanting to compete with a company like Time Warner. That is humorous. In fact, my favorite quote since the towns and citizen groups have been involved in this attack is from one of our Mayors, who said, "This isn't David versus Goliath. This is David versus Goliath and all of his cousins." While the size comparison may be accurate, we are not trying to throw any stones.
- You will see today that these towns are simply working hard to serve their communities by providing fiber technology. Unfortunately, they are not the first to face attacks from the private industry...there are many similar stories across the country. Luckily, most courts and states have understood the root of these attacks, and there are several very successful municipal broadband systems in place today---Bristol, Virginia; Jackson, TN, Lafayette, LA; Dalton GA—just to name a few close to us here in the south. Wilson and Salisbury have done their due diligence with these and other sister cities. Fiber is clearly a threat to the cable industry—and, with that in mind, the reaction we've seen is perhaps more understandable. But I think you'll agree our focus needs to be on what is best for our citizens. As you will see again today, municipal broadband is about two things: the economic development future of North Carolina and the safety and service of our town residents. State-of-the-art communications improves our local government utility services, the safety and health of our citizens, our educational opportunities, and our business growth. Our Support Broadband Infrastructure Coalition is supported by

many citizen groups and businesses across the state, including many companies such as Google, Intel and others.

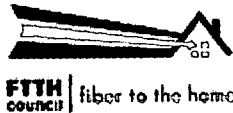
- This really is about serving our citizens and being prepared for our future. And that is why former Rep. Harrell's bill did not proceed last session.
- This is a time when North Carolina should be doing all it can to help our communities build strong futures. Thank you for the chance to tell the stories of just two towns – Wilson and Salisbury—that are making the decisions and investments now to ensure a future for their citizens and businesses. It is important for me to note that there are currently at least 35 cities and towns in this state that are in the deployment or planning stages of community broadband infrastructure projects. And many, many more see it as critical to their infrastructure to meet future economic development needs.
- As you can quickly see, setting in place municipal broadband infrastructure is a fundamentally different goal than that of the private entertainment cable providers. Private entertainment cable providers are in business to make a profit, and that is certainly fine.
- BUT, Cities and towns are building broadband infrastructure because it is a necessity, just as water, sewer and power are necessities to the core livelihood of a community. There is no difference. Infrastructure is infrastructure. There is no argument that fiber is the next generation infrastructure, offering by far faster speeds and greater capacities over any other technology.
- You will note in a moment that both Wilson and Salisbury attempted to partner with private cable providers but were met with no interest. They weren't trying to compete with the private providers---they are trying to serve their citizens. When private entertainment cable providers are unable or unwilling to serve communities in North Carolina, these communities must have the ability to set their own course to ensure a safe, effective public communications network, one that can meet the needs of education, fire, police and utility services, serve citizens regardless of income, and serve businesses to support economic development. Put simply, broadband **IS** the water, sewer, roads for these towns.
- In 2007, the US ranked 14th in the world in the percentage of households with broadband access. In terms of actual broadband subscriptions per capita, over the last five years the United States dropped from 8th in the world to 15th. In addition, only 4% of US broadband subscribers have a fiber connection, compared to over 40% in Japan and South Korea. Average prices for broadband in Japan and Korea are lower than the US. According to U.S. Census figures, NC dropped from 35th out of 50 states in broadband adoption in 2007, to 41st out of 50 states in 2008.

- I would submit that this committee has a huge task to ensure we build state-of-the-art broadband infrastructure in North Carolina. Our cities and towns would like to work in partnership with you to do that.
- The real question we should be addressing is how North Carolina can create laws that support broadband infrastructure in our towns, particularly in unserved and underserved areas across our state.
- Please keep that in mind as you hear from Susan Kluttz, Mayor of Salisbury, and Grant Goings, City Manager of Wilson. I think you will find they are part of the solution.

Building Fiber-to-the-Home Communities Together



TAP INTO THE MOST VALUABLE BROADBAND RESOURCE AVAILABLE



Municipal FTTH Systems

For More Information Contact:

David St. John, FTTH Council
315.849.3800 / media@ftthcouncil.com

Municipal Fiber to the Home Deployments: Next Generation Broadband as a Municipal Utility

Updated-October 2009

The market penetration of fiber to the home is increasing, with more than 5.25 million North American homes now connected directly into fiber optic networks. Fiber to the home (FTTH) is quickly becoming the broadband service of choice for consumers looking to keep pace with high-bandwidth Internet applications and home entertainment options such as high definition video on demand. What's more, this ongoing transformation to fiber-driven, next-generation networks is now a matter of strategic national importance, particularly as other countries in Asia and Europe proceed toward wiring up their communities with high-bandwidth fiber. Few people understand this better than civic leaders in many of America's outlying cities and towns, where access to the information highway can mean the difference between a future of robust economic development and one of community decline.

Accordingly, a growing number of municipal governments are taking it upon themselves to build FTTH networks – much in the way that they have previously built roads, sewers and/or electrical systems – as a means of ensuring that local residents

have access to necessary services, in this case, Internet connectivity for the 21st Century. These municipal deployments are usually undertaken after private service providers have declined to upgrade their networks or build such systems.

Deployments by municipalities were among the first FTTH systems operating in the United States. Though, in aggregate, they do not approach the number of FTTH subscribers of a Verizon – which currently accounts for nearly three quarters of all FTTH deployments in the U.S. – municipal systems do have a significant percentage of all non-RBOC subscribers. Further, they represent an important aspect of national FTTH deployment, namely, the option and opportunity for local elected officials and civic leaders to upgrade local connectivity - when private enterprise will not take on the job.

It is in the national interest that higher-speed networks proliferate quickly and to the greatest extent possible – and that special measures be taken to ensure that these networks can be accessed by people who live beyond the major metropolitan areas. Accordingly, it is the position of the FTTH



MUNICIPAL FTTH SYSTEMS

Council that anyone who has the means and the desire to build an FTTH network should be allowed and encouraged to do so – especially when it is an elected local government that is taking the decision to build when the private sector will not. Clearing the way for further municipal deployments of FTTH will help ensure that America is wired up for the global competition in technology and information.

Given all the above, what is the state of municipal FTTH deployments? How are these systems faring, and what is their future? To find out more, the FTTH Council

commissioned RVA LLC¹ – the leading market research firm specializing in FTTH – to survey municipal systems for the purpose of gathering first-hand status information from network operators. Its conclusions are summarized below.

1. Municipal FTTH systems are continuing to proliferate where allowed.

By definition, municipal FTTH systems are broadband communications systems run by public entities such as municipalities, counties, municipally-owned electric utilities or public utility districts, and which deliver services such as voice, television and Internet over direct fiber connections to residences. In addition, these systems typically offer reliable broadband connections to businesses, government locations and schools and libraries.

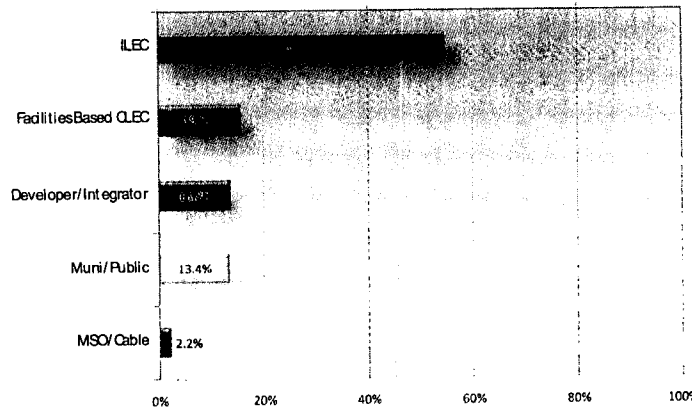
As of October, 2009, there are 57 public providers operating FTTH systems in North America. (These providers represent over 85 individual cities. A few

cities have banded together to form consortiums and others are part of larger public utility districts.) In addition, to this list there are at least another 15 municipalities offering just fiber to the business.

Altogether, they serve 3.4 percent of the FTTH subscribers in North America. More importantly, they represent 13.4 percent of the non-RBOC FTTH deployments, with most of the remainder being served by small and medium-size telephone companies. The chart on this page lists FTTH

subscribers by type of service provider.²

**North American Non-RBOC FTTH Subscribers
By Type Of Provider As Of October 2009**



Building Fiber-to-the-Home Communities Together



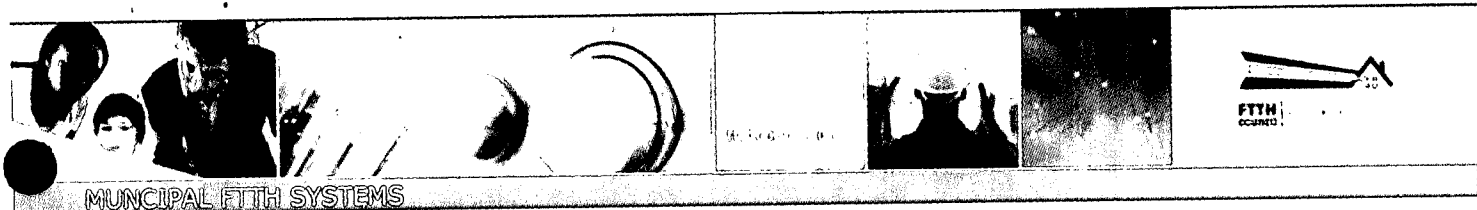
Systems operated by municipal and public electric utilities were among the first FTTH networks deployed in North America.

Systems like Bristol, VA, Dalton, GA, Chelan County, WA, Grant County, WA, Jackson, TN,

Kutztown, PA, and Reedsburg, WI all were started between 1999 and 2003. The average size of the first municipal FTTH systems was comparatively small – under 5,000 subscribers. Today, many new or expanded municipal FTTH systems are considerably larger, and the average size of municipal deployment continues to grow. Larger

² It should be noted that not all municipal communications systems delivering television or Internet to area premises are FTTH. Hybrid Fiber Coax (HFC) or fiber to the business only (FTTB) systems are sometimes mischaracterized as municipal FTTH systems. (Examples of municipal networks sometimes mistakenly called FTTH systems include those networks deployed in Tacoma, WA and Marietta, GA, While these systems are generally successful, the FTTH Council does not have in-depth information on their financial performance.

¹ www.RVALLC.com



cities – including Seattle, WA, San Francisco, CA, Portland, OR and St. Paul, MN – have been considering building municipal FTTH systems.

A list of all municipally-operated FTTH systems in North America currently serving customers is included at the conclusion of this report.

2. More, and larger, municipal FTTH systems are under development for 2010

The success of municipal FTTH deployments in improving local economies and attracting new business has led other local governments to pursue this option. Recent FTTH bond referendums have been highly successful. The number of municipal FTTH systems will likely grow in the next two years as there appears to be a resurgence of interest in deployment by municipalities and a number of applications for stimulus funds where incumbent telephone companies are reluctant to invest in upgrading their networks. Older FTTH systems, such as that operated by the Grant County Public Utility District in Washington State, are now expanding again to cover more of the citizens in their service areas. Additional muni systems are in various stages of study, funding and development.

3. The “success” of municipal FTTH systems is substantiated by high subscriber take rates.

Based on interviews with municipal system operators and managers conducted by RVA, municipal FTTH systems have generally been undertaken in areas where it was perceived that there was little chance that private providers would initiate a fiber to the residence program in a reasonable amount of time – and where local leaders felt that having next-generation broadband connectivity was essential to the welfare of the community. (If private parties are willing to participate, municipalities have often sought to partner with these companies to help speed the introduction of FTTH to the community. One example of such a partnership has been the City of Fort Wayne, Indiana, which launched such an effort in partnership with Verizon rather than build its own city-run system.)

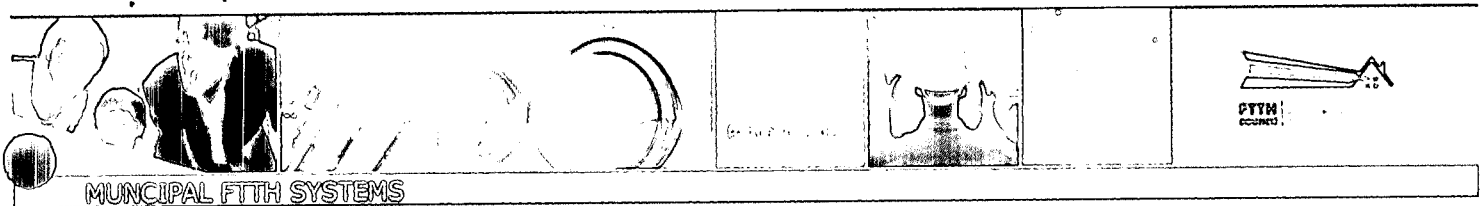
Municipal FTTH systems have generally been successful to date. In some cases, as expected, projects have had to deviate from their original business plans in order to respond to realities and ensure success in the field. A number of systems have far exceeded original expectations, while a few others are behind early expectations. One, Provo Utah was sold to a private company. This transaction allowed the city to retain its FTTH network, and the operator to sidestep the Utah restrictions on muni’s operating communications systems. However, not a single muni FTTH system has failed.

In the case of muni systems, which are not-for-profit enterprises, one measure of “success” is defined as the level of their “take rate” – that is, the percentage of potential subscribers who are offered the service that actually do subscribe. Nationwide, the take rates for retail municipal systems after one to four years of operation averages 54 percent. This is much higher than larger incumbent service provider take rates, and is also well above the typical FTTH business plan usually requiring a 30-40 percent take rate to “break even” with payback periods.

4. The effect of municipal FTTH systems on local economic development is significant

There is evidence that municipal FTTH systems positively impact local economic growth. Many FTTH cities attribute the success of efforts to retain and/or facilitate the expansion of businesses at least in part to the lure of their local FTTH communication infrastructure. Examples include information-intensive companies such as Google, MSN and Yahoo. Specific examples of large employers moving to communities in part because of the local FTTH system have been noted by many FTTH cities. The chart on the next page lists new business relocations that were attributed in part or in full to availability of FTTH as the community communication infrastructure.

According to community leaders interviewed, the attracted companies believe that local fiber to the premise systems allow them to do business more efficiently online with less cost. The availability of redundant fiber services from local providers is often



also mentioned as a plus, as is the prospect of being able to expand quickly to non-adjacent buildings while still being tied to together via a virtual private network. The ease of employees working from home is often mentioned by relocation decision makers as a positive factor. RVA consumer

**Municipalities Reporting Plants Locating
– in Part Because of FTTH**

Auburn IN	Cooper Tire Expansion
Bristol TN	Media General
Bristol VA	Northrup Grumman CGI
Chelan County WA	Yahoo
Douglas County WA	Sabey Corporation
Grant County WA	MSN (Microsoft) Ask Jeeves Intuit
Independence OR	Metal fabrication companies
Kutztown PA	Film production companies
LENOSIWSKO VA	Data Centers
Mason County WA	Louisville Slugger Sims Technology companies Online engineering firms
Morristown TN	Colgate Palmolive
Powell WY	Alpine Access Virtual Call Center
Windom MN	Trucking companies

research has shown that FTTH subscribers work from home significantly more often than those with DSL, wireless or cable modem connections, because of the speed and reliability of their connections. (There are even documented cases of important employees having dedicated fiber lines between home and office in municipal FTTH cities.) Finally, interviewees noted the importance of improved quality of life for employees thanks to the availability of high bandwidth video and Internet services to nearby homes and schools.

Many municipalities also report an increase in home-based businesses because of FTTH – with many of these businesses bringing in revenue from outside the region. Specifically mentioned were examples of businesses requiring very high bandwidths for tasks such as scientific consulting and video editing.

Several municipalities also noted increased efficiency in city government because of the municipal fiber system.

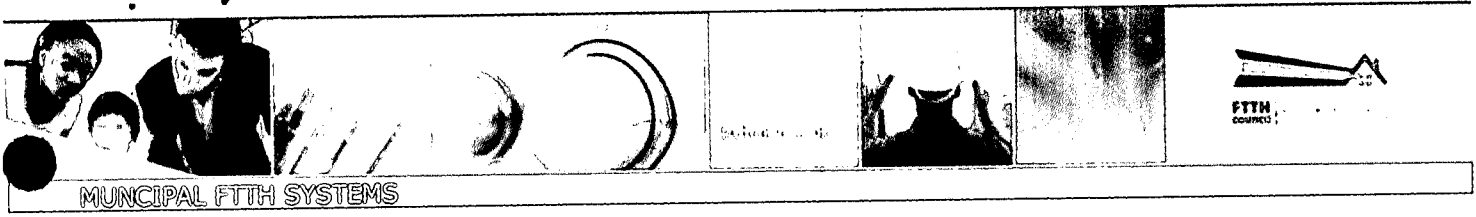
Examples of such productivity improvements have included: systems to monitor remote inventories more efficiently and systems to reduce physical transport costs such as having prisoners face judges via video conferencing from detention facilities (especially for “first appearances”). Productivity enhancement has also included automated meter reading and the ability to remotely turn on or off the utility for nonpayment such as the system currently being implemented by Clarksville, TN.

Though more difficult to quantify, the “green” advantages of reduced costs from more telework have also been cited by those interviewed, including the anticipation of less road and bridge maintenance, and lower automobile pollution for the community.

5. Municipal FTTH systems have a positive impact on overall FTTH and broadband use.

One important early result of municipal FTTH systems was to help prove and incubate the technology of direct fiber optic access. From 2000-2004, municipal providers represented some of the largest FTTH trials at the time, and some RVA has interviewed feel that FTTH could not have been implemented as quickly by private providers without this in-the-field experience.

Municipal FTTH systems may influence overall FTTH and broadband penetration. Though the difference does not rise to the level of statistical significance at 95 percent confidence, states that do not restrict public involvement in broadband and telecommunications services generally have higher



MUNICIPAL FTTH SYSTEMS

overall FTTH and broadband penetration than do states with prohibition of municipal broadband.

It should also be noted that restrictions on municipal broadband are correlated with lower take rates for these systems. As mentioned above, states that mandate open access systems currently have lower take rates for FTTH systems because of the mandated two-tier operation method.

6. CONCLUSION: Municipal FTTH Systems are an important element of national FTTH deployment and should be encouraged.

Municipal FTTH deployments are alive and well – and expanding on early pioneer success stories. Current deployments can point to local economy improvements as well as profitable operation and early pay-back of bonds.

States with regulatory barriers tend to trail in overall broadband penetration. Removal of legal and regulatory restrictions on municipal operation of communications networks will accelerate broadband investment, improve subscriber penetration rates and enable local governments in many outlying areas to ensure that their citizens can be part of the high-bandwidth future.

While municipal systems are beneficial and, in general are profitable, there still are restrictions in 14 states limiting or prohibiting such systems. Legislation has been introduced in both Houses of Congress to preempt state and local laws which currently ban the provision of broadband services by public entities. The Council encourages the passage of the Community Broadband Act or similar legislation, which would free municipalities in those 14 states to invest in next-generation networks.

North American Municipal Systems Currently Serving Customers with Fiber to the Home – October 2009

SYSTEMS SERVING LARGE PERCENTAGE OF SERVICE AREA (41)		SYSTEMS SERVING LIMITED FTTH AREAS, OR JUST STARTING (16)	
Auburn IN	Jackson TN	Radium Hot Springs BC	Abingdon, VA
Barnesville MN	Kutztown PA	Reedsburg WI	Ashland, OR
Bellevue, IA	Lafayette LA	Rochelle, IL	Baldwin, WI
Bristol TN	LENOWISCKO VA	Sallisaw OK	Cedar Falls IA
Bristol VA	Lenox IA	Shawano WI	Clallum PUD WA
Brookings, SD	Loma Linda CA	Spencer IA	CMON BC
Burlington VT	Marshall MO	Tullahoma TN	Crosslake MN
Chattanooga TN	Mason County PUD WA	UTOPIA UT	Danville VA
Chelan PUD WA	Mi-Conection NC	Wilson NC	Glasgow KY
Churchill County, NV	MINET OR	Windom MN	Holland MI
Clarksville TN	Morristown TN		Ketchikan AK
Crawfordsville IN	North Kansas City MO		Monticello MN
Dalton GA	Phillipi WV		Pend Oreille PUD WA
Douglas County PUD WA	Powell WY		Sylacauga AL
Gainesville FL	Pulaski TN		Taunton MA
Grant County PUD WA	Quincy FL		Tifton GA

Salisbury Post:

Fiber optics backers say expect some obstacles

By Mark Wineka

Published Saturday, February 14, 2009 2:00 AM

mwineka@salisburypost.com

Going into the fiber optic cable business is not for the faint of heart.

The city of Lafayette, La., began rolling out its cable utility last week after five years of planning, building and strong industry campaigns against it.

Terry Huval, director of utilities for Lafayette, told a Salisbury audience Friday that incumbent cable providers ran negative ads against the city and used "every means necessary" to derail Lafayette's fiber-to-the-home initiative.

Huval and Don Cope, president and chief executive officer of Dalton (Ga.) Utilities, visited Salisbury as guests of city officials who spent the last two days on their annual goal-setting retreat.

Dalton, Ga., has run a successful fiber optic cable utility for several years.

Salisbury issued bonds and embarked late last year on a plan to establish its own \$30 million fiber system, which probably won't begin operations until 2010.

Only about 40 cities in the country have taken the high-tech plunge with fiber optic cable, which boasts bandwidth that has much more capacity and speed.

Salisbury is only the second city — Wilson is the other — to try it in North Carolina. Wilson's Greenlight cable utility is in its first year of operation.

More than once Friday, Salisbury city officials heard they should expect some heat for their cable venture — especially from the incumbent providers such as Time Warner and AT&T — but realize they're on the right path.

"It's infrastructure for the future," Huval said Friday at a City Hall luncheon of Salisbury officials and invited guests.

He and Cope participated in a panel discussion along with James Salter, chief strategy officer for the Atlantic Engineering Group. Atlantic Engineering is the company designing and building the fiber optic network for Salisbury.

Huval said industry-sponsored ads warned Lafayette taxpayers they would be on the hook for \$100 million when the city's cable experiment went belly up. Industry ads also cited surveys claiming that 83 percent of Lafayette residents wanted to vote on whether to proceed with the project.

Huval detailed efforts by the private cable providers to have special state legislation passed against Lafayette's initiative and several costly lawsuits aimed at stopping the project.

"We spent \$3.5 million with nothing to show for it," Huval said of legal defenses.

But Lafayette officials figured they saved cable subscribers \$4 million in deferred rate hikes during the court fights, he said.

Lafayette, a city of about 120,000 people, is now starting a controlled rollout of its fiber optic system — controlled "because everyone wants it," Huval said.

"Once we announced it, people jumped on it right away," he said.

As Salisbury intends to do, Lafayette offers the triple play of services: telephone, television and Internet. But its worth to the community goes beyond the retail revenues, Huval said.

Broadband represents the newest highway of commerce for cities, the way rivers, railroads, electricity and interstate highways did in the past, Huval said.

Lafayette already has landed a Canadian call center, which employs 600, because the company was attracted by the fiber-to-the-home venture. Other companies are on the horizon, Huval said, waiting for more of the system to be installed.

He predicted the high-tech opportunities will bring more of Lafayette's college kids back home.

Dalton's population of about 38,000 is more the size of Salisbury. Cope said the cable utility is bringing in about \$1.5 million in revenues each month and has about a 70 percent penetration in residential markets.

"The community really wanted a change, and I think this is something you'll find out," Cope said. "... You can't install it as fast as people want it."

Cope had some kernels of advice for Salisbury:

- Seek expert advice.
- Refine operations as much as possible before the launch.
- Advertise in advance and do signups and installment in phases.
- Pay for the best equipment and personnel.
- Be the best provider in the market, not a "me, too."
- Don't approach it as a government service. It's a business, and it has to operate as one around the clock.

Cope said the last thing he wanted to do was be in the cable business, but the incumbents' customer service was terrible and it became apparent they would not offer fiber optic cable.

Cope said he learned the main cable company's customer service operation wasn't even located in Dalton. Repair crews had no sense of urgency to correct problems.

"We're here, we're part of the community and the revenue stays here," Cope said. "We don't shut down Saturday and Sunday."

Huval, Cope and Salter all said a fiber optic system is the telecom infrastructure of the future, even if wireless improves in capacity and becomes more reliable. The capacity, speed and dependability of wireless will never approach the fiber broadband, they said.

Salter predicted wireless will keep growing in use but not for the wholesale application of bandwidths.

Huval described wireless as "too finicky," and too often affected by weather. Making it subscriber-based would be a bad idea, he added.

"If you put it (wireless) out there, people expect it to work all of the time, not some of the time," Huval said.

Verizon is the only private telephone company that "has stepped up to the plate" so far and is going with fiber optic cable in certain areas of the country, Salter said.

Salter's company has been involved in 17 municipal fiber builds, including one that did not work in Provo, Utah.

Salisbury City Council members asked what went wrong. Huval said the incumbent cable providers in Utah were able to persuade the state legislature to prevent governments, such as the city of Provo, from direct delivery of retail services.

In effect, Provo was allowed only to build the infrastructure, but not sell service.

"There wasn't enough money to be made to split it up that way," Huval said. Provo ended up selling its cable system at a loss, but Salter said the city still has the system it wanted.

"The failure there was the model, not the execution of the model," Salter said.

In response to concerns that government might not have the expertise to run a cable utility, Huval said Lafayette is seeing private cable employees wanting to be part of a state-of-the-art operation.

"We've had a lot of their talent come to work for us," he said.

As for fiber cable's performance in bad weather, such as ice storms, Huval said Lafayette has had three major hurricanes in the past six years and never lost one of its fiber cables. (The city provided a basic wholesale fiber network first, starting in 2002.)

"Those fiber lines are very, very resilient," he said.



Greenlight Overview

Greenlight is the City of Wilson, North Carolina's all fiber optic broadband network. It is the first fiber to the premises (FTTP) system in the state, although there are many successful public systems across the country.

The network began in 2006 as a fiber optic connection between City facilities including offices, payment centers, recreation centers, police buildings, fire stations, and other locations. It was created after persistent reliability issues with the private sector provider. The fiber 'ring' connected City-owned facilities throughout town.

Even as the network was being built, local businesses and industries noticed that the City was installing fiber optic lines. Recognizing the technical superiority of fiber, the City heard from several companies that were interested in connecting to the fiber ring. City Council received numerous requests to make the fiber available to businesses and citizens whose needs were not being met with the copper lines and coaxial cables that have been serving Wilson for decades.

After market studies and a detailed business plan from two separate consultants, the City determined that there was pent-up demand in Wilson for better communication services, particularly greater bandwidth. Broadband, by its current definition, was already available in Wilson. The FCC defines broadband as 200 Kbps. That speed is woefully inadequate for most of today's online activity. While technically available from other providers, it simply wasn't enough.

The City spoke with our two incumbent providers (Time Warner Cable and Embarq) and asked if they would build a FTTP network in Wilson or partner with the City in doing so. Large fortune 500 companies are installing fiber in large metro areas, but it became clear that Wilson and Eastern North Carolina would likely be one of the last areas in our state, if not the country, to see FTTP investment by the private sector. Our location and demographics were not conducive to attracting such private sector investment. The City met with both the incumbent telephone and cable TV providers and asked them to build a FTTH system in Wilson or partner with the City in such an effort, but it became clear that if the City wanted such a system it would have to built it on its own.

In 2007, City Council decided to make the fiber optic network available to every business and home in the city limits. They believed, and still believe today, that good, dependable, advanced broadband access is critical infrastructure for our future, just as public water and sewer systems have been. They believe that better broadband access will give existing businesses and new businesses a reason to stay or move to Wilson. The City Council held hearings for public comments, and received strong support from many sources, including: Wilson County Schools, Barton College, Wilson Community College, Wilson Medical Center, the Wilson Chamber of

Commerce, the Economic Development Council, and numerous businesses and industries including some of our largest employers.

City Council voted unanimously to move forward with the project. Instead of paying for the project through a tax increase, the Council chose to sell high speed internet, cable TV, and phone service and let the subscriber revenue cover the cost of the network. While a large number of municipalities have taken on such projects across the country, Wilson was the first in North Carolina. Our financing was unanimously approved by the North Carolina Local Government Commission and our debt was well-received by the financial markets.

The City borrowed roughly \$28,000,000 from private investors and began expanding the network. Our first fiber customer was AT&T. The company uses Wilson's fiber lines to provide service to one of Wilson's largest businesses. Our second customer was BB&T, one of the nation's largest banks and one of Wilson's largest employers.

Construction was completed ahead of schedule. City staff created the name and logo for Greenlight and the network was officially born. Wilson signed up its first paying residential customers in June, 2008. To date, Greenlight is ahead of its business plan projections for customer count, and has an impressive customer retention rate of 97.7%.

By making the system available to all addresses in the city, regardless of income levels or other "qualifying criteria", the network may now be used as a public service delivery system. Current applications include public safety, with more public services to come in the areas of utilities cost containment for residents, health care applications, education applications, recreation and social networking applications.

Salisbury Background:



The City of Salisbury, North Carolina is currently building a city-wide fiber-optic utility. This will be the second fiber to the premises (FTTP) utility in the state, following the City of Wilson.

The city began investigating FTTP in 2005 after receiving citizen feedback that such a system would benefit public safety, public health, and economic development within the community. Salisbury was experiencing the closing of several textile plants which greatly impacted citizens within the community. Our neighbor, the City of Kannapolis, began to shift their community's vision from textiles to Biotechnology. Our community's vision shifted to becoming more competitive in the new global information economy. Deploying fiber-optic public infrastructure allows the City of Salisbury to provide the bandwidth and speeds (100 mbps) to make our city and our state competitive in this new global economy.

The City of Salisbury formally adopted FTTP as a goal in 2006 at the annual City Council goal setting retreat. A formal City Council Committee was appointed to lead the goal, which resulted in a feasibility and market study. The study found that citizens within Salisbury sought improved access, greater bandwidth, and that the project would be self-supporting.

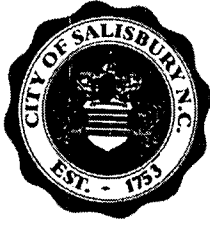
Over the next several years the City of Salisbury through surveys, focus groups, public meetings, and public comment periods received feedback that citizens desired to move forward with the utility. Further, citizen feedback revealed significant high-speed internet access problems within community, which were limiting quality of life and small-business development.

Before moving forward, the City of Salisbury spoke with both incumbent providers and determined there was no interest in partnering on a FTTP utility. It was clear that Salisbury would be one of the last communities to receive FTTP from the private sector, and that such improvements would most likely be built in larger markets.

In 2008, the City issued debt in the amount of \$30M to private investors in order to finance the FTTP utility. The debt issuance was approved by the City Council under the assurance that tax revenue would not be used to pay for the utility. The debt issuance was approved by the NC Local Government Commission (LGC), and was favorably received by the debt market during challenging times.

The City will provide FTTP access to every household, business, and person within the community. This will provide high-speed internet for the first time to many areas within Salisbury, including downtown and industrial areas that drive our city's economy.

The City of Salisbury plans to use this public infrastructure in order to greatly improve Fire, Police, and Ambulance service within the community. It will also allow the connection of several community anchors, including Rowan Regional Hospital, Salisbury-Rowan School System, Rowan Cabarrus Community College, Livingstone College, Catawba College, and Hood Theological Seminary. The City of Salisbury believes that local government participation in fiber-optic infrastructure is good for the citizens and consumers of North Carolina, and that public investment in fiber-optics should be incentivized by the State of North Carolina.



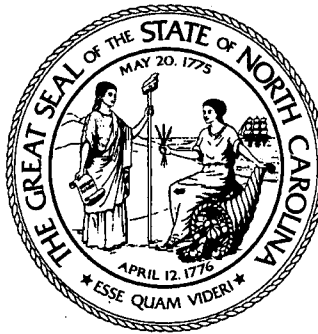
Office of the
Mayor

City of Salisbury North Carolina

Mayor Susan Kluttz - Talking Points:

- Background & History of Salisbury, 2001 exodus of textile plants, Pillowtex crisis, huge impact on our local economy (affected thousands of workers), continue to see long term employers close unemployment rate currently at 13%.
- Community began to ask what we are going to do as a city to stay competitive, what is our plan and vision? What are we going to do about jobs?
- Salisbury began to look at the infrastructure needed to make us more competitive in the new global information economy. Fiber infrastructure as the future of Salisbury and driver of economic development.
- Studied the issue extensively for several years. Held focus groups, public input meetings, public comment periods, community surveys, business plan & feasibility study. Investigated other communities.
- Appointed City Council Committee & Task Force to guide the process
- Based on the above decided to move forward and issue \$30M in debt to finance the project – approved by the Local Government Commission and received favorably by the debt markets.
- Before this asked incumbents to provide this service but would not guarantee they would provide service
- We are doing this for several reasons: Jobs, Fairness, Equity, Education, Public Safety, and Access
 - Jobs: We have to stay competitive in recruiting jobs and industry. We are in a competitive region with Charlotte and Kannapolis. The fiber infrastructure will differentiate us as a community.
 - Fairness & Equality: Access to all citizens with an emphasis on providing service to low income areas because incumbents will not. We have a current initiative through our Community Development Corporation that helps first time homeowners, providing a computer free of charge. It provides hope.
 - Education: our children in this new economy require this to be successful. A local private school has voluntarily annexed for the sole reason of receiving fiber infrastructure. Fiber infrastructure and service will be available to every school and student and lives within our city. Fiber will connect our local colleges: Livingstone College, Hood Theological Seminary, Catawba College, and Rowan Cabarrus Community College. Also home to Rowan Regional Medical Center and V.A. Hospital who will benefit.

- Public Safety: this infrastructure will improve the delivery of fire and police services. Currently our city has dead zones where public safety cannot access critical information in their vehicles or on location. This is a serious safety issue for our officers.
- Access: Significant portions of our city have no access. Including areas such as our downtown and industrial areas. This has severely limited small business development. Several small businesses were told it cost several thousand dollars to have service. When our citizens ask for access in these areas they are told it is not available or given a cost-prohibitive estimate for extending service. Everyone in our community should have access.
- The City Council is trying to solve our community's access problems and do what is right for our citizens and our community's vision.
- We desire to provide the very best for ALL of our citizens so they can be successful and flourish.
- Our citizens should not be penalized because they live in a small town in NC.
- All of our citizens deserve the best, our citizens deserve jobs, they deserve to be safe, they deserve the best educational opportunities, and they deserve hope.
- This type of community investment should be incentivized by our state.
- Metropolitan Mayor's Coalition Mayors are in agreement.



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Monday, December 14, 2009

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Monday, December 14, 2009, in Room 544 of the Legislative Office Building at 9:30 A.M. The following members were present: Chairman Bill Faison; Representatives Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Earl Jones, Thom Tillis, Joe Tolson and Roger West. Staff in attendance: Brenda Carter, Barbra Riley, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Martha Gadison, Fred Hines, and Martha Parrish. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 and 2*)

The Chairman called the meeting to order and introduced the Sergeant of Arms. Chairman Faison explained that this meeting was a continuation of our last meeting which was House Bill 1252 Level Playing Field/Cities/Service Providers. Underlining Question being, will municipalities be able to continue using their resources, unfettered, to provide High Speed Broadband access and other communication tools, to their citizens. The Chairman also explained the flow of the agenda which would be Proponent of the bill, Opponents of the bill, Proponents of the bill, Q&A, then the White Space speaker. (*Attachment 3&4*)

Chairman Faison introduced our first presenter of the day, Herb Crenshaw from AT&T. Mr. Crenshaw spoke about AT&T's stand on House Bill 1252 Level Playing Field/Cities/Service Providers:

Herb Crenshaw (Director, External Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw written remarks are attached. (*Attachment 5*) Below are some key points of his presentation:

- AT&T is not opposed to local governments providing telecommunications services to its constituents.
- In 2007 AT&T announced it was going to invest \$350 into its North Carolina infrastructure to provide advanced services such as u verse video service. After 2 years of investing \$17-18B in its network in 2009 and North Carolina will benefit due to its public policy climate and the needs of the State.
- Currently AT&T can offer U-Verse. High speed internet access up to 18 MBS down and 2 mbs up and recently it provides 24 mbs up and 3mbs up in three markets.

North Carolina League of Municipalities (NCLM) was recognized to present to the committee. The league divided its time into five parts: Wilson's Rebuttal of Previous Meeting Issues by Grant Goings, Wilson City Manager; Business Input from Public Service and Law Enforcement Officers; Predatory Pricing Impact on Broadband Development by Catharine Rice, VP of the Southeast Association of Telecommunication Officers and Advisors; General citizen testimony; and Municipalities' Proposed State Broadband Policies for Committee Consideration by Paul Meyer, Chief Legislative Council. Below are key points of its presentation:

- Grant Goings (Wilson City Manager) – Mr. Goings presentation consisted of statements made by Mark Prak and Marcus Trathen. Mr. Goings did not have the opportunity to rebut some of (what he felt) the untruthful statements made by the gentlemen in the last meeting. His presentation is attached. (*Attachment 6A*).
- Public Service and Law enforcement – Roy Collins, Deputy Chief of Police in Salisbury, spoke about dead spots where officers can not receive information on suspects that they encounter. Harry Tyson, Chief of Police in Wilson, spoke about license plate reader technology, wireless surveillance cameras, and technology that lets other officers know if a gun or a firecracker has gone off, it even can pinpoint whether it has gone off in the front or back yard. The technology helps officers know exactly where to go. Robert Parnell, Fire Chief of Salisbury spoke about Smart buildings that through technology can pinpoint a fires exact beginning point and even directional gravity. This helps on site firefighters head off or know exact point to service. (*Attachment 6B*)
- Catherine Rice (VP of Southeast Association of Telecommunication Officers and Advisors) spoke about Predatory pricing impact on broadband development. Mrs. Rice's presentation is attached. (*Attachment 6C*) Below are some key points of there presentation:
 - Time Warner Cable sent a letter out to its constituents including Wilson expressing adjustments being made in monthly prices to due investments in new technology. While others monthly prices have changed, Wilson's have not.
 - While Time Warner Cable's basic service tier, DVR and Digital Sports have increased 38-50% for other constituents it has not increased for Wilson.
 - For Road Runner, TWC charges \$49.95 for 7mbps down/328k up for Durham and \$46.95 for 10mbps down/768k up for Wilson.
 - TWC cross-subsidizes charging it own customers in the Triangle and State higher rates in order to undercut its competitor's rates to drive it out of the market into failure.
- **Citizen testimony: Summary of major points:**
 - JoAnn Kane (Chatham County) – Every student was issued a laptop, but home work is impossible without high speed internet to the home. Letters and petitions are attached. (*Attachment 6D*)
 - Donna Blake (Johnston County) - Surrounded by high speed internet within a 6 mile radius, but they have not service from Embarq or TWC.
 - Bea Lee (Chatham County) – Worked for a customer service company that will employ her from home, but because she does not have access to high speed internet her job has been outsourced.
 - Sarah Yackey (Avery County) – Spoke about AT&T not complying to an agreement made with Avery county to provide high speed internet. (*Attachment 6E*)
 - Bill Moldovan (Chatham County) – Tried satellite bought the products and then the satellite went down. Bought an air card, sometimes the service is up sometimes its

down. This is unacceptable for Mr. Moldovan that provides website maintenance for clients in the Chicago Area. (*Attachment 6F*)

- Comm. Tom Vanderbeck (Chatham County) – Focused on jobs being outsourced because of the lack of high speed internet. (*Attachment 6G*)
- Jay Ovittore (Guilford County) – Spoke about Time Warner cable buying stock in clearwire to run them out of Greensboro. They also have implicated pay as you use.
- Jay Cuthrell (Wake County) – Works with mutual and co-ops. He feels that when you're locally focused and have local goals on providing broadband it works better. He endorsed public private partnership.
- Octavia Rainey (Wake County) – She focused on everyone talking about “High Speed” internet when in her neighborhood she has not been provided the basic internet service. Her suggestion is to provide basic service to everyone to level the playing field and then progress to higher speeds of internet.
- Paul Meyer (Chief Legislative Council) asked that the committee focus on solutions to the problem of both underserved and unserved communities in North Carolina and develop State policy to provided fiber to the home including public and private sectors. Mr. Meyer's presented the Municipalities' Proposed State Broadband Policies for Committee Consideration. The policies are attached and the key points are below: (*Attachment 6H*)
 - Encourage the development of advanced, next generation fiber to the premise (FTTP) networks in order to fully serve the public, advance education, and further economic development in the State.
 - Incentive programs should encourage and support public and private broadband to create fiber-to-the-premise networks that connect directly to home and businesses.
 - Predatory pricing practices must be addressed because they limit the ability of new providers to enter the market and leave customers without choice.
 - Municipal government use of revenue bonds should be permitted to finance fiber network systems.
 - Public fiber system delivering television, broadband, and other related services should have greater privacy protections.

Marcus Trathan (North Carolina Cable Association) was recognized to present to the committee. Mr. Trathan's handouts are attached. (*Attachment 7*) Below are some key points of his presentation:

- Marcus has provided inventory of laws in other states on municipal competition 26 states have addressed the issue.
- Wilson has not brought broadband to one new person since its project began that didn't have broadband service.
- According to a Census Report in June, North Carolina is 41st in broadband subscribership. Yes, the take rate is an issue.
- Seven States in the southeast region have similar laws that are requested in House Bill 1252 Level Playing Field/Cities/Service Providers Alabama, Florida, Georgia, Louisiana, South Carolina, and Virginia.

John Goodman (North Carolina Chamber of Commerce) was recognized to present to the committee. Below are some key points of his presentation:

- The Chamber supports House Bill 1252 Level Playing Field/Cities/Service Providers.

- The Chamber would like the committee to address is there a public need for additional infrastructure that is currently not being satisfied by the private sector?
- If the committee does reach that conclusion and deems for the public sector to compete with private business, as a matter of public policy, then the committees should command a safe guard that insures such competition is fair and that local initiatives do not have an advantage over the private sectors.

After John Goodman's presentation Chairman Faison opened the floor for questions and comments by the Members and Visitors, then introduced our last speaker of the day John Merritt and and Dr. John Chaplin to speak on White Space.

John Merritt and Dr. John Chaplin were recognized to present to the committee. The Presentation is attached. (*Attachment 8*) Below are some key points of their presentation:

- Since the mandated switch from analog to digital television a significant amount of spectrum remains unused in the TV Band, the unused TV Band spectrum is called "white space".
- It is their thought that through white space they can deploy wireless which will then be received by more consumers.
- Wireless signals in the TV Band frequencies propagate much further than signals in other frequency bands. Signals in the TV Band travel longer distances, they also pass well through trees, buildings and structures.
- The test bed for this is located at the Screen Gems television and film complex in Wilmington, NC.

Chairman Faison opened the floor for questions or comments.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

Monday, December 14, 2009

9:30 AM

Room 544 LOB

1. Welcome

Representative Bill Faison, Chairman

2. Topic of the Day

- House Bill 1252 Level Playing Field/Cities/Service Providers –
Underlining Question: Will municipalities be able to continue using their resources, unfettered, to provide High Speed Broadband access and other communication tools, to their citizens.

3. Guest Speakers

- Herb Crenshaw (AT&T) (9:35)
- Opponents of House Bill 1252 (9:45)
- Constituents (10:30)
- Time Warner (10:50)
- Chamber of Commerce (11:00)
- Question and Answers (11:10)
- White Space (Former Antenna to bandwidth as a source for rural internet deployment) John Merritt and Dr. Jon Chapin (11:30)

4. Adjourn (12:00)

VISITOR REGISTRATION SI

**HOUSE SELECT COMMITTEE ON
HIGH SPEED INTERNET ACCESS**

12-14-09

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Nick Tosco

NC L M

Mary Buson

ATT-

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P.O. Box 1455, Newland, NC 28657

Sara Yackey

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CHARLES PITTMAN

e-NC AUTHORITY

Tom VANERBECK

Chatham County

Mayor Bruce Bos

City of Wilson

LEE QUEEN

CHARLOTTE

Jay Cuthrell

Cuthrell Consulting LLC

Mark Pratz

PPM/HZ

Jimmy Roberson

TWC

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FIRM OR AGENCY AND ADDRESS

Michael Ramsey	NC Dept of Public Inst.
BOB WEISS	INDEPENDENT TELCOS
Carole Woodward	NC TIA
Steve Brewer	CenturyLink
Dwight Allen	Allen Law Offices PLLC
Jay Quittore	Consumer 2911 Dellwood Dr. Greensboro, NC 27408
Chris	Arhan Audits.
Jim Canley	City of Wilson
CHRISTOPHER	CITY OF WILSON
Jack Wozart	Wilson
Allison Pipe Cooper	City of Wilson

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FIRM OR AGENCY AND ADDRESS

Susan Kluttz	Mayor of Salisbury, NC
Doug Paris	Sclish, INC
George Bryant	DaySpring medica
David Braswell	DaySpring Medical
BILL SEOBGIN	KLG
Chris Ables	KLG
Michelle Frazier	MFS
Jim Lowry	NC Utility Contractors Assn
Stanley Vickram	CIO, the City of Fayetteville Govt
Jones Rose	CAO, PWC COF
Octavia Rainey	

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FIRM OR AGENCY AND ADDRESS

Robert Sepa	Action Adits, LLC
Donna Blatze	Bentonsville / Johnston City
Janet B. Lee	Bentonsville / Johnston County
Philip Bowman	RCCHC, Ahoskie, NC
Bonnie Britton	RCCHC, Ahoskie NC
Pam Melton	CenturyLink
Cheryl	P.W. & City of Farmville EVE, WILMINGTON
JOHN CHARIN	TVBS LLC
William Seig	TVBS - BUBB Wilmington

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FIRM OR AGENCY AND ADDRESS

Michael Crowell	CITY OF SALISBURY Salisbury NC
Bob Avery	Town of Chapel Hill Chapel Hill NC
AREK KEMPINSKI	Town of Chapel Hill . Chapel Hill, NC.
Anja Daily	e-NC Authority
Harry Zagon	CITY OF WILSON, Wilson, NC
Andy Lucas	Stary County, NC
Scott Gannon	DUKE ENERGY
Jolie White	NC mnc

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FIRM OR AGENCY AND ADDRESS

Marcus Trott	Brooks Ave
Brad Phillips	TWC
Stan Vace	Verizon
Bill Knight	attel
Adam Campbell	Pittsboro Chatham County
Anna Moldovan	Pittsboro Chatham County
JoAnn Kane	Pittsboro, Chatham Co. resident
Bea Lee	Pittsboro, Chatham County
Daniel Auburn	Electricities & N.E., Inc
Andrew Meehan	NC Elec. Co-ops
Jason Parks	ACCESS16 Television



HOUSE BILL 1252: Level Playing Field/Cities/Service Providers

2009-2010 General Assembly

Committee:	House Science and Technology, if favorable, Public Utilities, if favorable, Finance	Date:	April 21, 2009
Introduced by:	Reps. Harrell, Jones, Avila, Tillis	Prepared by:	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H1252-CSR-20		

SUMMARY: *House Bill 1252 would amend Article 16 of Chapter 160A of the General Statutes concerning public enterprises, by adding a new section governing city owned or operated communications service, and would amend the definition of a public utility under the Public Utilities Act to include any city owning or operating equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where the service is offered to the public for compensation and the service would be subject to the provisions of this bill. This proposed committee substitute differs from the original bill in that it:*

- *excludes funds from state or federal grants and other governmental stimulus programs from the prohibition against cross-subsidizing communications services with other governmental funds, and*
- *removes the requirement that communications service authorized by a city on or before March 1, 2009 must be offered to the public on or before September 1, 2009 to be exempt from the provisions of the bill.*

[As introduced, this bill was identical to S1004, as introduced by Sen. Hoyle, which is currently in Senate Commerce.]

CURRENT LAW: Under Article 16 of Chapter 160A of the General Statutes, cities have the authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of public enterprises to furnish certain services to the city and its citizens. The Local Government Budget and Fiscal Control Act (Chapter 159 of the General Statutes) governs all agencies of local government. All moneys received or spent by local governmental agencies must be budgeted, disbursed, and accounted for in accordance with the Act. The Act requires that a separate fund be established for each enterprise owned or operated by a county or city. Enterprise revenues are not absolutely earmarked, and once all enterprise costs have been met, any remaining moneys may generally be transferred to another fund.

BILL ANALYSIS: House Bill 1252 would amend Article 16 of Chapter 160A of the General Statutes concerning public enterprises, by adding a new section governing city owned or operated communications service that would include the provision of cable, telephone, broadband, or Internet access service over a wired or wireless network.

A city that operates a public enterprise that provides communications service to the public for a fee over a communications network that is owned or operated by the city or that provides a financial benefit to the city would be required to meet the following conditions:

- Comply with local, State, and federal laws and regulations that would apply to private service providers

House Bill 1252

Page 2

- Establish a separate enterprise fund for communications service, and use the fund to separately account for revenues and expenses associated with the provision of communications services

The following provisions would apply to communications service not authorized by a city on or before March 1, 2009:

- The city could not subsidize the cost of providing communications service with funds from other noncommunications service or operations, with the exception of funds from state or federal grants and other governmental stimulus programs; and not provide communications service below the cost of providing the service. *** (See Note Below)*
- In calculating the cost incurred and the rates to be charged for communications service, the city must impute the cost of the capital component equivalent to the cost of capital available to private service providers, and an amount equal to taxes that would apply to private service providers *** (See Note Below)*
- Pay annually to the city's general fund an amount equal to any taxes or fees that would be paid to the city by a private service provider offering the same communications service *** (See Note Below)*
- Prepare and publish an independent annual audit reflecting the fully allocated cost of providing the communications service and any subsidies received by the city-owned communications service provider; any buildings, equipment, vehicles, or personnel used jointly with other city departments would be allocated to the city-owned communications service. The NC Utilities Commission would be authorized to adopt rules and regulations to ensure compliance with the audit requirement, and records demonstrating compliance would be filed with the Utilities Commission and made available for public inspection & copying *** (See Note Below)*

Exemptions -- The bill would not apply to:

- the operation of communications service for the city's internal governmental purpose
- a city that is not served by a private provider of high-speed Internet service or where high-speed Internet service is not available to at least 80% of the households
- the provision of communications service to the extent the service is limited to areas of the city that are not served by any private service provider

Section 2 of the bill amends the definition of a public utility under the Public Utilities Act to include any city owning or operating equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where the service is offered to the public for compensation and the service is subject to the requirements enacted in this bill.

Section 3 of the bill makes it clear that a city designated as a public utility if the bill becomes law would not be subject to provisions of the bill for operations authorized by the Public Utilities Act.

Section 4 of the bill provides for the severability of any provision of the bill that may be held invalid.

EFFECTIVE DATE: The bill would be effective when it becomes law.

H1252-SMRV-45(CSRV-20) v4

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HOUSE BILL 1252*
Committee Substitute Reported Without Prejudice 4/23/09

Short Title: Level Playing Field/Cities/Service Providers.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE COMPETITION BETWEEN LOCAL GOVERNMENT AND PRIVATE BUSINESS BY REQUIRING CITIES THAT PROVIDE COMMUNICATIONS SERVICE TO THE PUBLIC TO COMPLY WITH LAWS APPLICABLE TO PRIVATE PROVIDERS, TO ESTABLISH SEPARATE ENTERPRISE FUNDS, TO NOT CROSS-SUBSIDIZE COMMUNICATIONS SERVICE WITH OTHER GOVERNMENTAL FUNDS, TO IMPUTE THE COSTS THAT WOULD BE INCURRED BY PRIVATE PROVIDERS, TO ANNUALLY REMIT TO THE CITY'S GENERAL FUND THE COSTS THAT WOULD BE INCURRED BY PRIVATE PROVIDERS, AND TO PREPARE AN ANNUAL AUDIT OF COMPETITIVE ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"§ 160A-329. City owned or operated communications service.

(a) Definitions. – The following definitions apply in this section:

- (1) Communications network. – A wired or wireless network for the provision of communications service.
- (2) Communications service. – The provision of cable, telephone, broadband, or Internet access service to the public or any sector of the public, regardless of the technology used to deliver the service.
- (3) High-speed Internet. – Internet access with transmission speeds that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.

(b) Requirements. – A city that operates a public enterprise under G.S. 160A-311 that provides communications service to the public for a fee over a communications network that is directly or indirectly owned or operated by or provides a financial benefit to the city or another city shall meet the following conditions with respect to the provision of communications service:

- (1) Comply with all local, State, and federal laws, regulations, or other requirements that would apply to the communications service if provided by a private communications service provider.
- (2) Establish a separate enterprise fund for communications service and shall use this fund to separately account for revenues, expenses, property, and source of investment dollars associated with the provision of communications service.
- (3) Shall not subsidize the cost of providing communications service with funds from any other noncommunications service, operation, or other revenue

1 source, including any funds or revenue generated from electric, gas, water,
2 sewer, or garbage services, but excluding funds from State or federal grants
3 and other governmental stimulus programs. In complying with this
4 requirement, a city owned communications service provider shall not price
5 any communications service below the cost of providing the service.

6 (4) Shall, in calculating the cost incurred and in the rates to be charged for the
7 provision of communications service, impute: (i) the cost of the capital
8 component that is equivalent to the cost of capital available to private
9 communications service providers in the same locality; and (ii) an amount
10 equal to all taxes, including property taxes, licenses, fees, and other
11 assessments that would apply to a private communications service provider
12 including federal, State, and local taxes; rights-of-way, franchise, consent, or
13 administrative fees; and pole attachment fees.

14 (5) Shall annually remit to the general fund of the city an amount equivalent to
15 all taxes or fees a private communications service provider would be
16 required to pay the city or county in which the city is located, including any
17 applicable tax refunds received by the city owned communications service
18 provider because of its government status and a sum equal to the amount of
19 property tax that would have been due if the city owned communications
20 service provider were a private communications service provider.

21 (6) Shall prepare and publish an independent annual audit in accordance with
22 generally accepted accounting principles that reflect the fully allocated cost
23 of providing the communications service, including all direct and indirect
24 costs. The indirect costs shall include amounts for rights-of-way, franchise,
25 consent, or administrative fees, regulatory fees, occupation taxes, pole
26 attachment fees, and ad valorem taxes. The annual accounting shall reflect
27 any direct or indirect subsidies received by the city owned communications
28 service provider, and any buildings, equipment, vehicles, and personnel that
29 are jointly used with other city departments shall be fully allocated to the
30 city owned communications service. The North Carolina Utilities
31 Commission may adopt rules and regulations to ensure compliance with the
32 provisions of this subdivision, and all records demonstrating compliance
33 shall be filed with the North Carolina Utilities Commission and made
34 available for public inspection and copying.

35 (c) Exemptions. -

36 (1) The provisions of this section shall not apply to:

37 a. The purchase, lease, construction, or operation of facilities by a city
38 to provide communications service within the city's boundaries for
39 the city's internal governmental purposes.

40 b. Any city whose jurisdiction is not served by a private provider of
41 high-speed Internet service or whose jurisdiction does not have
42 access to high-speed Internet service. For purposes of this subsection,
43 a city shall be determined to have access to high-speed Internet
44 service if high-speed Internet service is available to at least eighty
45 percent (80%) of the households in the city.

46 c. The provision of communications service by a city to the extent the
47 service is limited to areas of the city that are not served by any
48 private communications service provider.

49 (2) The provisions of subdivisions (b)(3) through (b)(6) of this section shall not
50 apply to communications service duly authorized by a city on or before
51 March 1, 2009."

1 **SECTION 2.** G.S. 62-3(23) is amended by adding the following new
2 sub-subdivision to read:

3 "l. The term "public utility" shall include any city providing
4 service as defined in G.S. 62-3(23)a.6. and subject to
5 regulation under G.S. 160A-329."

6 **SECTION 3.** Any city that is designated as a public utility under Chapter 62 of the
7 General Statutes when this act becomes law shall not be subject to the provisions of this act
8 with respect to any of its operations that are authorized by that Chapter.

9 **SECTION 4.** If any provision of this act or the application thereof to any person or
10 circumstance is held invalid, the invalidity shall not affect other provisions or applications of
11 this act which can be given effect without the invalid provision or application, and to that end
12 the provisions of this act are declared to be severable.

13 **SECTION 5.** This act is effective when it becomes law and applies to the provision
14 of communications service by a city owned communications service provider after that date.

Thank you Mr. Chairman

Members of the Committee:

Thank you for the opportunity to speak a few minutes on AT&T's position regarding local governments providing telecommunications services and competing with existing providers of voice, video, and high speed internet services.

First of all, AT&T is not opposed to local governments providing telecommunications services to its constituents if that is what the citizens want to do. We think competition is healthy and we embrace competition. Consumers benefit when there is strong competition for their business.

Secondly, in July, 2007 Cynthia Marshall, President for AT&T North Carolina, announced that AT&T was going to invest \$350 Million dollars in its North Carolina infrastructure to provide advanced services such as the AT&T U-verse video service, higher speeds of Internet access, more and faster wireless service, etc to better compete in the wireline, wireless, video, and high speed Internet access space, and to provide our customers with world class services. We are now over two years into that program and have invested as we said even during this economic downturn. In fact AT&T is investing \$17-18B in its network in 2009 and North Carolina will get more than its fair share due to the public policy climate, the needs of our customers in a growing state, and the commitment to grow our network and invest in North Carolina.

Competition, Investment, Jobs, Advanced telecommunications. It's a great scenario and the people and consumers of North Carolina benefit.

Several years ago when the municipal officials of Salisbury were first considering entering into the telecommunications and cable business, we did meet with them to see if we had some common ground. It became clear that the town wanted to build a fiber to the home network to provide voice, video, and high speed internet services. BellSouth, and later AT&T, could not be a partner in that project since AT&T had embraced a different business plan and network architecture that it was deploying across the 22-state region. We have always worked well with the city of Salisbury, but this network architecture was not something we could do given the AT&T business and network plan. We also advised the town officials that we were getting ready to deploy our U-Verse video and high speed internet product and that Salisbury was in those plans.

So, what happened? We went ahead with our plans and Salisbury went ahead with theirs. And that's OK. Today, from an AT&T perspective, thousands of living units in Salisbury and Rowan County can buy AT&T's Uverse video product which has received the JD Powers Award for the best video service for the last two years. (We now have 2 million Uverse customers). They can have high speed Internet Access up to 18 MBS down and 2MBS up, and as of last week that has been increased in three markets to 24Mbs down and up to 3Mbs. And we are continuing to add access to more living units. And all this is done with a hybrid fiber/copper network. This is the AT&T network architecture and business plan.

We can discuss this more later if you like.

But, if local governments want to compete in this arena, we do think that competition should be fair and that the rules should not favor one competitor over another.

During the last session, legislators in the General Assembly introduced, debated, and passed a telecommunications bill, H 1180, which essentially recognized the competitive nature of the telecom industry and enacted statutes which changed the rules that govern competition in the telecom industry and made them more equitable. It was a bill that was debated by most all service providers in the cable and telecom industry, legislators, the Public Staff, consumer groups, and other interested parties. The result was a bill that all the various parties could live with.

We think something similar is in order for this issue. I could write what I think the rules ought to be. I am sure the League could write what they think the rules should be. And the same goes for almost anyone in this room who is engaged in this debate. But the best public policy will come from collective thinking, debate, and, yes, compromise. It's important for all of us to get this right.

I believe that each legislator in this room and in the General Assembly wants North Carolina to be an attractive state for investment and jobs—and that includes for our industry. You also want a world class infrastructure for the citizens. We all do. Our hope is that collectively we can develop rules that will continue to make our state and municipalities a good place for telecom companies to invest, where no competitor is advantaged, and foster more competition, more investment, and more jobs.

Thank you Mr. Chairman and members of the Committee.

WILSON

NORTH CAROLINA

(X)

“We have never said that a local government does not have a legitimate role to play in cases of market failure where private industry is either unwilling or unable to stand up and provide services.”

Marcus Trathen
Counsel for TWC/NCCTA

Nov. 23, 2009

“Should a city pay into the E911 fund to support emergency services? Should a city pay into the telecommunications relay service to support calling for the hearing impaired? None of those things are things that are done now. We do them on the private side. But the cities providing these services do not.”

Mark Prak

Counsel for TWC/NCCTA

Nov. 23, 2009



CITY OF WILSON
WILSON, NORTH CAROLINA 27893
INCORPORATED 1849
OPERATING FUND

FIRST CITIZENS BANK & TRUST CO.
WILSON, N.C.

NO. **168750**

PROVISION FOR PAYMENT OF THIS CHECK
OR DRAFT HAS BEEN MADE BY AN
APPROPRIATION DULY MADE PURSUANT
TO THE LOCAL GOVERNMENT BUDGET
AND FISCAL CONTROL ACT.

VOID AFTER 90 DAYS

VENDOR NUMBER	DATE	CHECK NUMBER	NET AMOUNT
38246	10/02/2009	168750	\$*****3,942.62

PAY THREE THOUSAND NINE HUNDRED FORTY TWO AND 62/100 DOLLARS

TO THE
ORDER
OF
UNIVERSAL SERVICE ADMINISTRATIVE CO
1259 PAYSAPHERE CIRCLE
CHICAGO IL 60674-0000

COPY-000
DIRECTOR OF FINANCE
****VOID****
CITY MANAGER



CITY OF WILSON
 WILSON, NORTH CAROLINA 27893
 INCORPORATED 1849
OPERATING FUND

FIRST CITIZENS BANK & TRUST CO.
 WILSON, N.C.

NO. **169022**

PROVISION FOR PAYMENT OF THIS CHECK
 OR DRAFT HAS BEEN MADE BY AN
 APPROPRIATION DULY MADE PURSUANT
 TO THE LOCAL GOVERNMENT BUDGET
 AND FISCAL CONTROL ACT.

VOID AFTER 90 DAYS

VENDOR NUMBER	DATE	CHECK NUMBER	NET AMOUNT
38222	10/09/2009	169022	\$*****2,313.93

PAY TWO THOUSAND THREE HUNDRED THIRTEEN AND 93/100 DOLLARS

TO THE
 ORDER
 OF

NC 911 BOARD
 ATTN: MARSHA TAPLER
 NC INFORMATION TECHNOLOGY SERVICES
 P O BOX 17209
 RALEIGH NC 27619-7209

COPY-0001
 DIRECTOR OF FINANCE
****VOID****
 IT MANAGER

“Wilson signed an exclusive agreement to provide service to a new residential development outside the city limits. Wilson sought to exclude private companies from providing service in this same development. Private providers are prohibited by law from entering into exclusive access arrangements or excluding competitors from serving customers.”

Mark Prak

Nov. 23, 2009



The Honorable Bill Faison
NC House of Representatives
300 N. Salisbury Street, Room 611
Raleigh, NC 27603-5925

Representative Faison,

I am writing to you in your capacity as Chair of the House Select Committee on High Speed Internet Access in Rural and Urban Areas (Committee). Please share this letter with the other members of the Committee.

It has come to my attention that during the Committee's hearing on November 23, 2009, that misrepresentations were made to the Committee regarding one of the subdivisions that I am currently developing in Wilson County. Specifically, I am referring to the statements made by Mark Prak, of the Brooks Pierce law firm, representing the North Carolina Telecommunications Association. It is my understanding that the following statement was made in a manner that indicated it was a statement of fact:

"Wilson signed an exclusive agreement to provide service to a new residential development outside the city limits. Wilson sought to exclude private companies from providing service in this same development. Private providers are prohibited by law from entering into exclusive access arrangements or excluding competitors from serving customers."

In response to the above, I offer the following:

1. No agreement of any kind, much less an exclusive agreement to provide service, was ever executed between the City of Wilson and myself, or any other responsible party with authority to make decisions about the subdivision in question, SouthPointe.

Post Office Box 515
3301 Nash Street NW, Suite B
Wilson, NC 27894-0515
Phone: (252) 243-7700
Toll Free: 1-800-OUR-TOWN
Fax: (252) 237-6400

**Mike Eatmon,
Our Town Properties, Inc.**

“No agreement of any kind, much less an exclusive agreement to provide service, was ever executed between the City of Wilson and myself, or any other responsible party with authority to make decisions about the subdivision in question, SouthPointe.”

**Mike Eatmon,
Our Town Properties, Inc.**

“The requested extension of services was based on my initiative, and NOT requested by the City of Wilson. Also, it was my desire to limit the number of providers in the subdivision, NOT the City of Wilson.”

**Mike Eatmon,
Our Town Properties, Inc.**

“I am aware of several studies and articles that have concluded that having a fiber to the home network, that provides *true* high speed internet service, increases property values.”

**Mike Eatmon,
Our Town Properties, Inc.**

“Unfortunately, despite my clearly stated preference to exercise my individual rights to develop my property in the manner that I thought was most beneficial to me and the future owners of homes within the subdivision, Time Warner Cable has bullied their way onto my property by threatening me personally with legal action.”

**“Then they secure loans by
promising to raise taxes if
needed.”**

Mark Prak

Nov. 23, 2009

DAVENPORT
& COMPANY LLC
EST. 1863 • MEMBER: NYSE • FINRA • SIPC

Davenport Public Finance
Phone: 804-697-2907
Toll Free: 800-546-6666
Fax: 804-549-4907
One James Center
901 East Cary Street
Richmond, Virginia 23219

Memorandum

Date: December 7, 2009

To: Mr. Grant W. Goings
City Manager
City of Wilson, North Carolina

From: Ted Cole
Senior Vice President
Davenport & Company LLC

CC: Robert M. High
Senior Vice President
Davenport & Company LLC

Re: Fiber Optic Debt Issues

As Financial Advisor to the City of Wilson (the "City"), Davenport & Company LLC ("Davenport"), has been asked to clarify a few items related to the City's fiber optic system. Specifically, we have been asked to clarify the City's intent as it relates to the planned source(s) of revenue to be used to service the debt issued to fund the construction of the system.

Davenport has served the City in a financial advisory capacity since the spring of 2006 and as such, we are quite familiar with the City's due diligence and related efforts that preceded the issuance of the debt to fund the development of the fiber optic system. We are aware that the City had engaged the services of two separate feasibility consultants who were tasked with the duty to measure the fiber optic system's financial feasibility. Both studies found that the City's planned fiber optic system could be financially self-supporting from system revenues. This was a key consideration for City Staff as they moved through the project review process and was a critical requirement of their recommendation to City Council to proceed with the project.

Once the system's ability to operate on a self-supporting basis had been established and vetted, the City initiated steps to implement the construction of the system including the issuance of debt to fund the improvements.

One of the first steps that was taken to begin the debt issuance process was a pre-application meeting with the Staff of the Local Government Commission (the "LGC")

**Ted Cole, Senior Vice President
Davenport & Company LLC**

“The City was asked to measure the proposed fiber optic debt service in terms of equivalent pennies on the City’s real estate tax rate and in terms of an equivalent rate increase on electric service. As requested, these financial benchmarks were provided as part of the City’s LGC application...”

**Ted Cole, Senior Vice President
Davenport & Company LLC**

“As a point of reference, it is worth noting that the LGC Staff routinely requests this sort of benchmark information if a government is planning to issue debt with a stated reliance on projected revenues for debt service payments that cannot be substantiated with sufficient actual historic data.”

“What right does a city’s customer have? Can a telephone customer complain to the Utilities Commission if they have a problem with the city’s telephone service provider? Is the city subject to the North Carolina Utilities Commission’s reporting requirements with respect to its telephone service?”

Mark Prak

Nov. 23, 2009

**“We already believe we are the best.
We’ve got excellent, excellent
service, excellent facilities.”**

Mark Prak

Nov. 23, 2009

41st

North Carolina

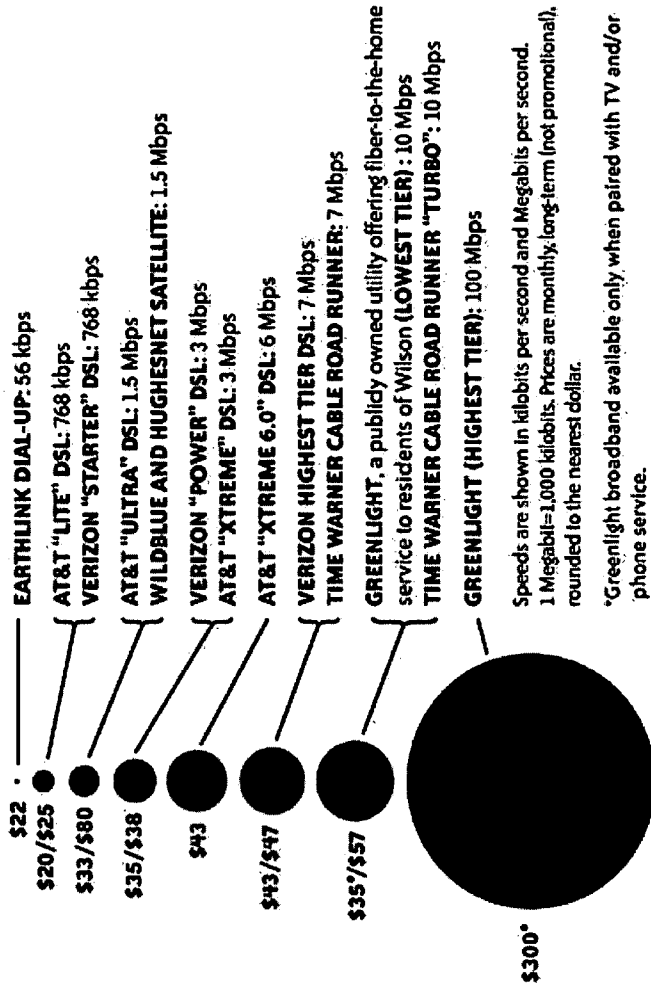
Can Do Better

Time Warner and Embarq can't compete with city-owned ISP, trying to outlaw it

by Nilay Patel, posted Apr 22nd 2009 at 7:03PM

WHAT YOU PAY, WHAT YOU GET

A comparison of Internet download speeds available to residential customers in the Triangle



Speeds are shown in kilobits per second and Megabits per second. 1 Megabit=1,000 kilobits. Prices are monthly, long-term (not promotional), rounded to the nearest dollar.

*Greenlight broadband available only when paired with TV and/or phone service.

Man, Time Warner Cable – you are some shady players. Hot on the heels of the ISP's decision to withdraw DOCSIS 3.0 trials from areas that have rejected its tiered billing plan, we're hearing that TWC's teamed up with Embarq to persuade the North Carolina state government into banning community-owned broadband services. Why? Well, turns out the 47,000 residents of Wilson, NC got tired of paying for slow broadband, so the city government launched its own fiber ISP called Greenlight that offers some pretty solid packages ranging from \$99 for 81 cable channels, unlimited phone service, and 10Mbps (down and up) internet to \$170 for every single channel including premiums and 20Mbps up/down internet. (There's even a "secret" 100Mbps up/down internet plan.) Of course, these prices blow TWC and Embarq out of the water – the comparable basic Time Warner plan has fewer channels and less bandwidth for an "introductory rate" of \$137 – and rather than compete, the two giants decided to lobby the North

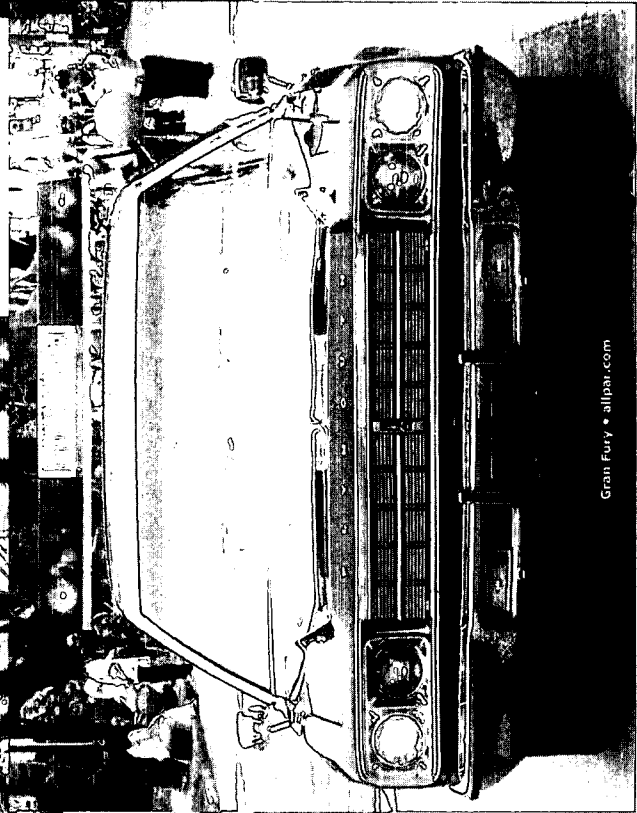
Pole attachments

Adjusted to \$15 in 2007

When were they last adjusted?



1975



Gran Fury • allpaar.com

Pole Attachments

- **1975 = \$5**
- **2007 = \$15**
- **\$5 in 1975 adjusted for inflation
over 32 years = \$20.09**

**“If every mayor of every town
wants to drive a Ferrari, I’m
sure they could.”**

Mark Prak

Nov. 23, 2009



41st

**North Carolina
Can Do Better**

High Speed Network

Attachment 6B

Fiber Optic Cable

"Fiber to the Home"

****The law enforcement community is always seeking ways to improve in terms of better protecting our officers and our community*

****And we see the possibilities made available to us (by this high speed network) as one of the best ways to do just that*

****The capabilities provided to us through this network are certainly a "Win-Win"..... It will help us to:*

- 1. Improve our ability to protect the public*
- 2. Have instant access to our officers.....even when they are in the field.....while monitoring and providing them with potentially life-saving data*

Law Enforcement is always seeking innovative ways to get important information to the community it serves.

- I am sure that you have all heard about the terms "Amber Alert" and "Silver Alert"
- These are used when we are seeking the help of the public to find a MISSING / ABDUCTED CHILD or a MISSING ELDERLY PERSON
- This is one very good reason for us to be excited about the possibilities provided to us through this high speed network.....
- We will be able to have total control over the timeliness of the and accuracy of information that we give to our community when seeking help in these types of situations!

As you know, the criminals we deal with pay no attention to jurisdictional boundaries that we do. For this reason, Law Enforcement agencies must stay in contact with one another to share intelligence about things like: Gang Movements; crime trends and other vital information

- The use of High Speed technology will provide us with the opportunity to conduct these meetings by way of video conferencing
- It will also allow us to show things like pictures of suspects.....
- This will save us the time and resources of actually having to drive to these other locations
- All without having to actually GO to a meeting

Though there are numerous other advantages.....the other that I would like to focus upon is that of SAFETY for our OFFICERS in the FIELD

In Salisbury, our patrol officers utilize computers inside of their patrol cars to retrieve vital information concerning suspects with whom they are dealing on the streets or in vehicle stops

- Though this technology is good.....THE TRUTH IS.....It is only good when it works!
- We continue to have area that we call "dead spots" throughout our city which means there are areas where the information will not transmit!
- ~~These dead spots mean that the service and ability to transmit data is not good and at times impossible~~
- This is a major concern for us because our officers never know the caliber of person they are encountering nor what they may have been involved in within a neighboring jurisdiction
- That type of information could help to save their life!! A person who just committed a serious crime is more likely to do whatever they can to get away from the officer.....
- Even if it means an act of violence upon the officer!!

- This is yet another reason why we are excited about the implementation of this high speed network
- The High Speed will never allow these dead spots to happen again!

Of course, it comes as no surprise that the work that our Officers are doing is quite dangerous

- Throughout my 20 year career, I have many times found myself in a situation where I was unable to reach my radio to tell my partners that I needed help and that I needed it NOW!
- This was because I already had my hands full dealing with a combative suspect who promised not to be taken back to jail
- Unfortunately, our officers are finding themselves dealing with this type of situation more and more frequently.....
- With the implementation of this high speed technology, we will have the ability to place cameras (actually on the patrol cars) that will allow the dispatchers to pan them around to monitor the officers and their status
- Not only will they be able to tell the other officers in the field that this officer needs help, they will also be able to tell them if he/she is on the left or the right side of the house.
- This technology is THAT CLEAR!
- It goes without saying that this could save the lives of our patrol officers!

With your permission, I would like to share some information that I have received that points to a great example of why the use of High Speed is so vital to our profession.....

- On (Halloween), October 31st of this year.....
 - 10 year Seattle Police veteran, Tim Brenton, was sitting stationary in his patrol car, along with a rookie officer
 - Officer Brenton, who was training the rookie, was reviewing the young officer's performance on a vehicle stop they had just completed
 - While sitting on the side of the street, a vehicle pulled up beside of their patrol car and an occupant opened fire on the officers.....striking and instantly killing Officer Brenton
 - Afterward, the driver backed up and turned onto a side street in order to avoid their license plate from being seen nor captured by the forward-facing digital video camera
 - With no good leads in the case, Detectives began reviewing video footage of recent vehicle stops within that same area
 - While doing so, they noticed that, in the background of their stops, the same vehicle (a Datsun 210) kept passing by as if watching the officer's in action
 - Through this video footage, detectives were able to locate the vehicle in question and encounter the suspect
 - After a gun battle, the suspect was shot and eventually arrested
 - He was further linked to other acts of violence upon officers in the Seattle area
 - Had it not been for some great investigative work and the available high speed capability....which provided them with excellent quality of the video footage in Officer Brenton's case.....his murder may still be unsolved
-

I hope that this will help you as you make a decision concerning High Speed Network in our community.

Thank you for your time this morning!

(3)

NC House Select Committee on High Speed Internet Access in Rural and Urban Areas

December 14, 2009

Room 544

9:30 a.m.

o Presentation by

Catharine Rice

Action Audits, LLC

ricecb@yahoo.com

(919) 439-9084

TWC letter to Chatham/Orange/Durham Counties

December 9, 2008

Dear Mr. Horne:

Time Warner Cable has added 20 channels in the past year including ESPNU HD, Discovery Channel HD, MGM HD, CNN HD, BIO HD, Speed HD, Planet Green HD, Food Network HD, and HGTV HD just to name a few. Plus, more channels will be added soon. If you're a Road Runner customer, you can take advantage of our increased download speeds and surf the internet faster than ever before. Also, with Digital Phone service, there are three different calling plans to choose from.

To enable us to continue adding programming and making investments in new technology, we will make adjustments to monthly prices beginning with the customer's next billing statement. As required whenever our prices are adjusted, we have ensured that our new prices for regulated levels of service are in compliance with Federal Communication Commission rules. A complete chart of prices is listed below. In addition, if the customer is currently receiving a promotional discount, that discounted price will remain in effect until the end of the promotional period.

Message-515, Co-58, Div-69, Franch# 715, 720, Franch Name- Orange Cnty, Durham Cnty

Cable Services	Current Price	New Price
Basic Cable Service (with no other service)	\$12.25	\$15.95
Basic Cable Service (when subscribing to another service)	\$12.25	\$12.50
Standard Cable Service (requires Basic Cable)	\$18.35	\$41.14

TWC Letter to Wilson

December 9, 2008

CITY MANAGER'S OFFICE

Dear Mr. Goings:

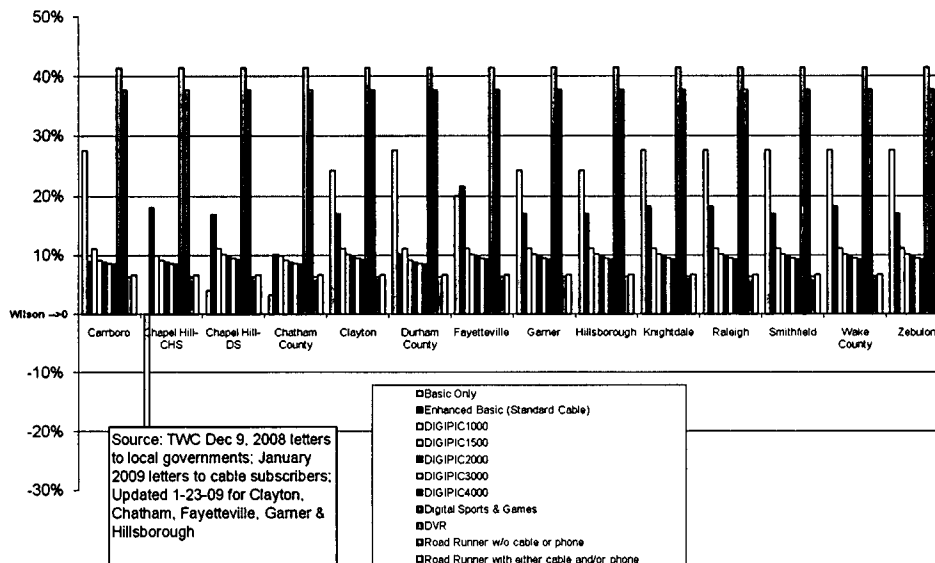
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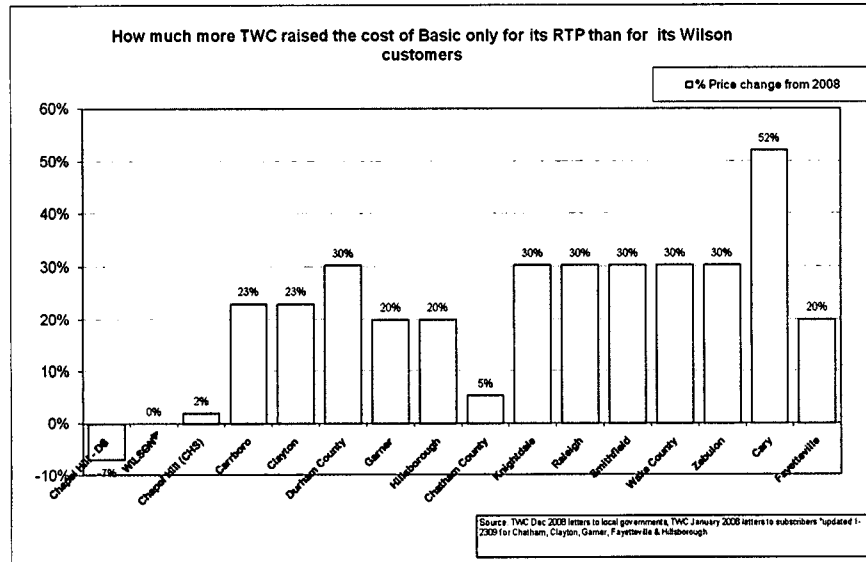
Message-524,Co-58,Div-89 Franch# 012, Franch Name- City of Wilson

Cable Services	Current Price	New Price
Basic Cable Service	\$12.80	No Change
Standard Cable Service (requires Basic Cable)	\$37.35	No Change

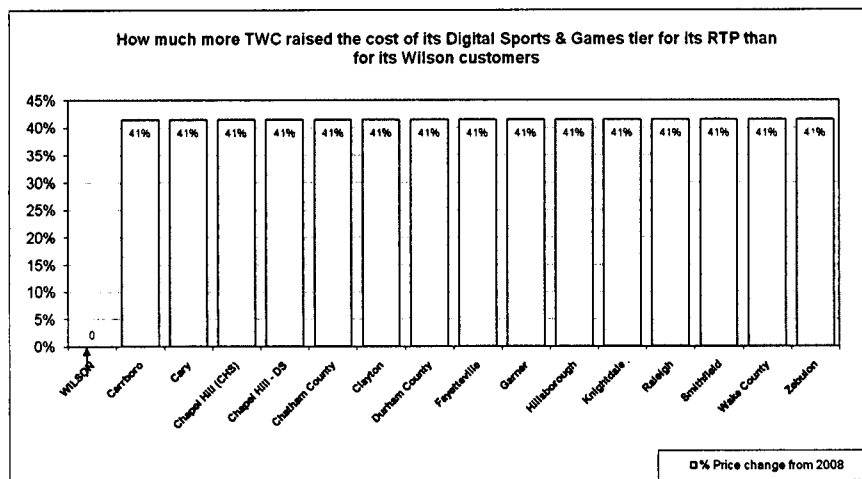
How Much More is TWC charging its RTP vs. its Wilson Cable Customers?



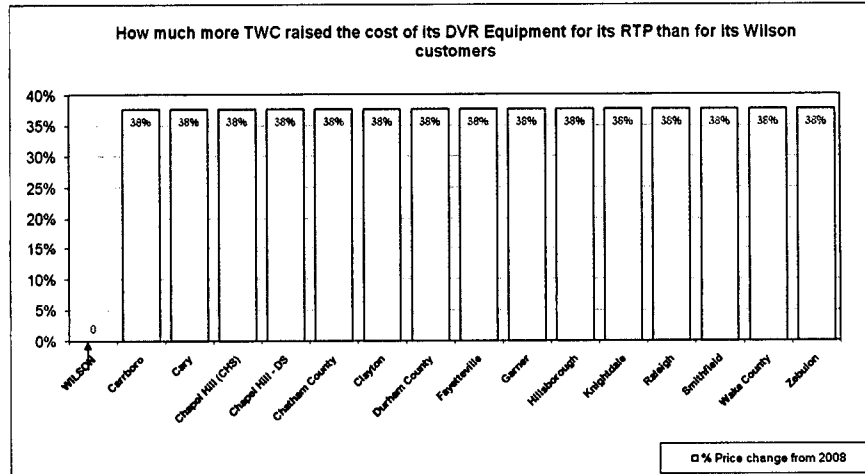
BASIC SERVICE TIER – Wilson 0%; TJCOG up to 50%↑



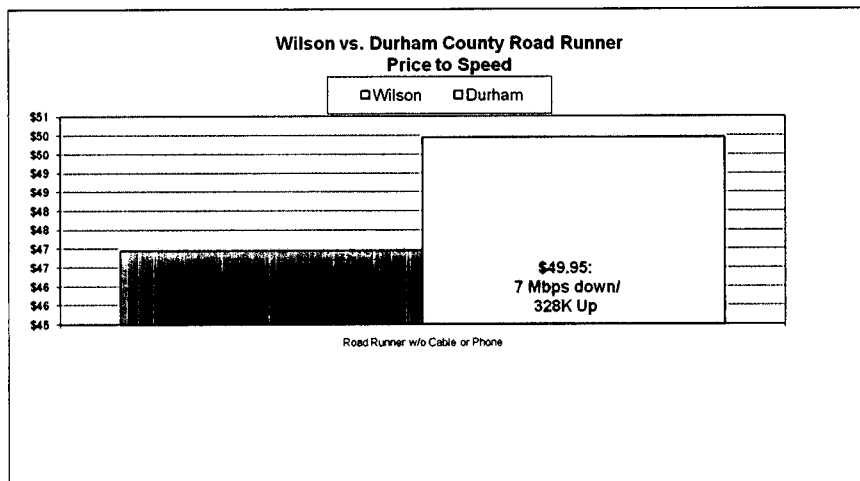
DIGITAL SPORTS – Wilson 0%; TJCOG 41%



DVR – Wilson 0%; TJCOG 38%

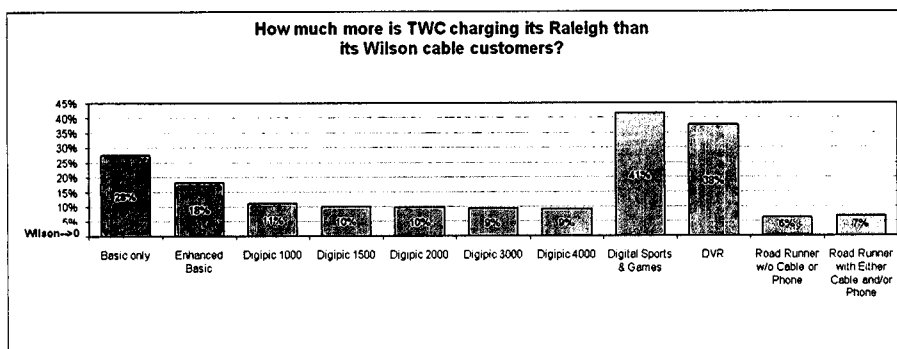


Higher Price/ Less Service



Easy to Conclude:

- TWC IS CROSS-SUBSIDIZING
- Is the Triangle (and the rest of North Carolina) paying for Time Warner Cable's lower rates in Wilson?



TWC: predatory prices?

Service	Greenlight	TWC Price from CSR
• Digital Plus/Voice/HD/DVR	\$136	\$63 plus 1 year Showtime/Movie Channel
• Digital Bronze/Data/Voice/HD/VCR	\$149*	\$99 plus 1 year Showtime/Movie Channel

*Cary - @\$180 w/o Showtime/MC

Conclusions:

- Video Service Competition Act did not create competition;
- Instead, cable industry raised its rates;
- Everywhere except in communities with municipally-owned systems – where real competition developed on its own out a need for better infrastructure;
- Cable industry's first priority is profit; (monopoly profits are best profits)
- (Cross-subsidizing) Charging its own customers in the Triangle (& state) higher rates in order to undercut its competitor's rates (Wilson's Greenlight) to drive it out of the market into failure (sets an example);
- Cable industry sponsoring H1252 to terminate real competition in NC represented by municipally-owned broadband systems.
- Once competition disappears, everyone's rates go up with no impetus for improving infrastructure or building-out communities with essential broadband. Profits from NC invested in TWC states characterized by higher incomes, higher household density.

TWC Fiber to the home in Hawaii



Aloha Residents of Hualalai Resort:

Oceanic Time Warner Cable would like to extend our warmest Mahalo and Aloha to you. We are confident that our Cable, Internet, and Home Phone service will more than satisfy your entertainment, information, and communication needs and we will continue to grow with you as these needs change.

We're, a Kama'aina firm with over thirty-five years of dedicated service to the community, is one of the nation's most advanced, most reliable communications and information systems. Through thousands of miles of fiber optic cable and coax cable, Oceanic Time Warner Cable provides high speed Internet access ("Road Runner").

We offer several options our Road Runner service to fit your needs with various bandwidth capabilities (Download/Upload):

- Road Runner 1.5 (Bandwidth of up-to 1.5Mbps/384Kbps)
- Road Runner Service (Bandwidth of up-to 5Mbps/1Mbps)
- Road Runner Turbo (Bandwidth of up-to 8Mbps/1Mbps)

COMING SOON TO THE BIG ISLAND IN 2008!

- Road Runner Turbo-Plus (Bandwidth of up-to 15Mbps/1Mbps)
- Fiber-to-the-Home (Bandwidths of up-to 100Mbps/100Mbps)

Currently work is being completed on connecting each home with Fiber access to the Internet and is projected to be completed by 4th quarter 2008.

For more information you can visit our website at www.oceanic.com. Call now and

Hualalai Resort,

KONA KOHALA COAST, BIG ISLAND, HAWAII Longing to live the Hawaiian life? Look no further than Hualalai Resort, a secluded haven that combines culture, community and environmental consciousness under one big beautiful blue sky. *It's living with the Hawaiian tradition of "Ohana Family" beachfront residences, Hawaiian-style homes and custom villas are grouped in intimate neighborhoods (prices range from \$4.3 to \$20 million). Between the two on-property golf courses, the Hualalai Sports Club and Spa and the Four Seasons Resort Hualalai, there's something for everyone.*

Mr. Faison,

We need your help.

Please allow us to have

high Speed internet access

Mel & Myung-ha Spencer

368 Say Shambley Rd.

Pittsboro, NC 27317

Attachment bD



490 WEST STREET * PITTSBORO, NC 27312

To Whom this may concern,

I am the owner of Chatham Homes Realty and Mid-South Builders Inc. We have built 24 homes in Shambley Meadows Subdivision in Chatham County. All of the homes were built with CAT #5 wiring. We were told this neighborhood would have high speed internet in the area almost four years ago. As of this date many of the homeowners have called, written and petitioned for high speed internet to come to the area to no avail.

The neighborhood is one mile off of HWY 64. There are several rural roads that surround the area that are currently receiving high speed internet access. For some reason they have bypassed this particular neighborhood. We have many homes and new neighborhoods currently being built. Many of the families work from home or have children who have school issued laptops that find it very inconvenient and or expensive to have dial-up, satellite or air cards.

We would appreciate any attention you can give to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kris Howard".

Kris Howard

Chatham Homes Realty/Mid-South Builders



490 WEST STREET * PITTSBORO, NC 27312

To Whom this may concern,

I am the owner H & A Properties Inc. We have developed Shambley Meadows Subdivision in Chatham County a community of 24 homes/lots. We currently have an additional 11 lots under review with Chatham County for an additional phase. All of the homes were built with CAT #5 wiring. We were told this neighborhood would have high speed internet in the area almost four years ago. As of this date many of the homeowners have called, written and petitioned for high speed internet to come to the area to no avail.

The neighborhood is one mile off of HWY 64. There are several rural roads that surround the area that are currently receiving high speed internet access. For some reason they have bypassed this particular neighborhood. We have many homes and new neighborhoods currently being built. Many of the families work from home or have children who have school issued laptops that find it very inconvenient and or expensive to have dial-up, satellite or air cards.

We would appreciate any attention you can give to this matter.

Sincerely,

A handwritten signature in black ink that appears to read "Harold Howard".

Harold Howard

H & A Properties Inc.

www.chathamhomesrealty.com

Northwood High School

310 Northwood High School Road
Pittsboro, North Carolina 27312
(919) 542-4181 FAX-(919) 542-4934
Chris D. Blice, Principal

Chaundra Clay, Asst. Principal

Jason "Brent" Cooper, Asst. Principal

November 20, 2009

Mr. Bill Faison, Chairman
Interim Committee for High Speed Internet in Rural Areas

To Whom It May Concern:

I am writing to express my strong concerns about the lack of available high speed internet for many of the students who live in the Northwood school district. To imagine that we live in a county less than one hour from our state capital and do not have this service available to our population is absolutely unacceptable!

Twenty-first century high school instructional strategies are becoming more and more computer/internet focused by the day. Chatham County Schools recently implemented a 1 to 1 laptop initiative that gives every high school student a laptop to use as their own for their entire high school career. High speed internet is provided here at school and many class and homework assignments require this same access at home to complete. We are working hard to prepare our students to meet the challenges that await them in post secondary education and the professional world. We would all agree that technology and especially computer use will be a big part of those situations.

As a career educator I am constantly appalled at the lack of concern many business people have for the well being of their customers. In education we are taught that we have the responsibility to provide a level playing field for all of our customers- our students. John F. Kennedy said it best with "All of us do not have equal talent, but all of us should have an equal opportunity to develop our talents." When we make decisions that negatively impact the educational future of young people based on the fiscal bottom line and dollar amounts we are truly ignoring the future of our nation and world. This would be an incredibly short-sighted direction to go.

I implore you to make high speed internet available now to every household in Chatham County. To do otherwise puts countless children in an unacceptable position. Help us to help them all and in turn to help give them a successful future. Delaying or obstructing means we will lose children along the way. William Butler Yeats wrote, "Education is not the filling of a pail but the lighting of a fire." Help us to light the fire for every child...now.

Sincerely,

Chris D. Blice
Principal, Northwood High School

Northwood High School...*"One of Newsweek Magazine's top American high schools"*...



F E A R R I N G T O N
RESTAURANT AND COUNTRY INN

November 22, 2009

Ms. JoAnn Kanen
179 Shambley Meadows Drive
Pittsboro, NC
27312

Dear Ms. Kanen,

Thank you so much for attending the meeting about high-speed internet in our area.

Please let it be known to everyone involved that I wholeheartedly agree that we need internet access in our area. We are a growing neighborhood of professionals who are very dependent on computers and need high-speed access.

It seems high time that we join the 21st century in our beautiful part of Chatham County!

Many thanks-

Gilda McDaniel
476 Singing Hills Drive
Pittsboro, NC 27312



November 21, 2009

To Whom It May Concern:

For many years I have canvassed my neighborhood, submitted petitions, written letters, and made phone calls to internet providers trying to obtain faster internet access. Dial-up is incompatible with our modern life. My in-laws, who live in rural Kenya, Africa, have a better internet connection than we do.

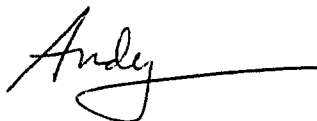
Some say this is what I should expect living out in the country. Thirty years ago this was out the country. There were two or three homes on our 2-mile road. Now there are over 50 homes here with more planned as farmland turns into housing developments. Many of our new neighbors expected to have access to high speed internet service and found out it was unavailable after they purchased their homes. A few people said they might not have purchased their homes had they known in advance about the lack of internet access.

High speed connections have become a necessity not a luxury. My first-grade twins already need internet access for some of their school work. My wife teaches at a nearby university and could save gas by working from home once a week. She often ends up driving 50 miles because she cannot send or receive large files with our slow connection. As a business owner, I cannot file my Employment Security reports on-line, as requested by the state on North Carolina. I cannot order airline tickets online without having the web page time-out and making reservations by phone means paying an additional service charge. It is difficult to promote and sell products from my nursery business and small farm with a 28-48 kbps connection speed.

My neighbors and I are not asking for a handout or any free perks. I am certain that the suppliers of these services will cover their expenses and make a profit, so why are we not offered this vital service? I recently installed a satellite dish to obtain a faster internet connection. The installation and 18 month contract agreement are expensive. Plus if it is raining or very cloudy, service is disrupted or non-existent. The recent rains kept us off-line for three days.

Please permit any interested ISP to offer high speed access to Chatham County's rural residents.

Thank you,



Andy Upshaw
752 Jay Shambley Road
Pittsboro, NC 27312
upshaw@dishmail.net

TO WHOM IT MAY CONCERN:

We are unhappy with the lack of high speed internet service here at Shambley Meadows.

At the time we signed up for telephone service we were promised DSL service.

All the current Centry Link advertising promises 'to connect you to the world 24 hours a day.'

The current Verizon Air Card that I use stops and starts whenever it chooses. So something that should take five minutes can take as long as thirty to forty-five minutes to complete or I have to reboot the computer to 'wake it up'.

I understand that high speed DSL is 'all around us'. So why can't the few connections be made to give this community the service we are asking for?

Ben and Susan Taylor
45 Blarney Stone Circle
Shambley Meadows
Pittsboro, NC

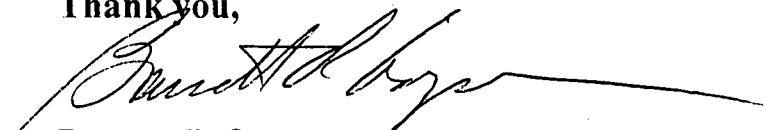
Sat. Nov. 21, 2009

To whom it may concern

I would like to add our family to the list of those who have a need high speed DSL. I have a small home business managing a Trust, and use verison wireless as best I can. There are times in the day that wireless service is too slow to use practically, and I often have download documents between 4 and 6 in the morning to be able to see them in a reasonable time.

Please put us on the list as desiring High Speed DSL

Thank you,



Barrett R Cooper
208 Singing Hills Drive
Pittsboro, NC 27312

November 22, 2009

To Whom It May Concern:

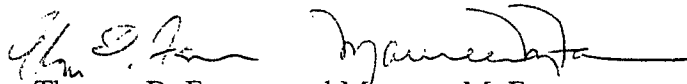
The topic of high speed internet connection (DSL) is of great concern to us as residents of Shambley Meadows located in Pittsboro, NC. Currently our only options include dial up or an air card. Both are insufficient when attempting to work at home.

Working at home is important for the following reasons:

- To be environmentally responsible it would be beneficial to work at home, therefore taking vehicles off the road. This would also assist in reducing traffic congestion in the Raleigh/Durham area.
- If a pandemic flu breaks out in the Raleigh area we will be forced to work at home. In the current economy we have to be productive at all times. We cannot take multiple days off and wait it out.

Thank you for your attention to our telecommunication dilemma in Shambley Meadows.

Sincerely,



Thomas D. Farmer and Maureen M. Farmer
101 Shambley Meadows Dr.
Pittsboro, NC 27312

919-545-9769

48 Shambley Meadows Drive
Pittsboro, NC 27312
919-542-2467
November 22, 2009

Mr. William Faison, Chairman
Intercommunications for Rural Highspeed
300 North Salisbury Street
Raleigh, NC 27603

Dear Mr. Faison:

I write this letter out of total frustration. I have lived on Shambley Meadows for 3 years come this February. Prior to living here, I lived in Houston, TX and had Time-Warner Cable and Internet.

Since living here in NC, I have repeatedly been told high-speed internet service was "right around the corner". We have watched homes being built and more people moving into the area all the time—but still no high-speed internet.

Using dial-up system is extremely time-consuming and almost not even worth it. It is extremely frustrating. I cannot think of one reason why high-speed internet is not already here. Any assistance or guidance you can give us with respect to accomplishing this feat would be greatly appreciated.

Thanking you in advance for your assistance in this matter, I am

Sincerely,

Colleen D. Reese

November 21, 2009

Bill Faison

Steven K Brewer

Century Link

Chatham County Government

To all interested and involved parties,

I moved to Chatham County this summer and work from my home. I am in the process of starting a "Green" Business and NPO related to residential environmental sustainability for both rural and urban dwellers. One the largest obstacles to moving forward with my plans, is the lack of broadband internet access in my immediate area of Chatham County.

While considering my purchase in Chatham County, I was told by Embarq (now CenturyLink) line personnel that the equipment had been ordered and would be installed no later than January 2010. The information was relayed with absolute certainty. I later called Embarq and spoke with a Customer Service Representative in June and was reassured that our broadband access was "underway". I know that all of the areas around the Jay Shambley Road corridor have high-speed access, so I believed the information to be accurate and decided to purchase the property.

This week I learned that our area is no longer scheduled by CenturyLink for broadband access nor had it been approved. Needless to say, I am disappointed and feel misled as I was making plans based on the information that was provided to me by Embarq, now CenturyLink employees.

I find it even more shocking that the Internet Service Provider Communication Carriers like CenturyLink via House Bill 1252 are lobbying to restrict local government and smaller private companies that aim to provide the necessary infrastructure to rural areas for broadband internet access. While these carriers consider areas like mine as low or no priority for high-speed access, they want to prevent us from finding an alternative solution. We will be left with no acceptable options if House Bill 1252 becomes law. I believe this to be unfair and cannot imagine that state government leaders would discriminate against us in this fashion. I would urge all parties involved to consider situations like mine and thoughtfully provide equal broadband access for all citizens and not restrict our options.

Sincerely,

M C Fletcher

165 Trout Lily Lane

Pittsboro, NC

(919) 368 3963

mimirtp@mac.com

My name is Bill Moldovan, and I'm a resident of Chatham County, located between Pittsboro and Siler City.

One of the deciding factors of our purchasing a home in Chatham County in Sept. 2006 was assurance from the builder that we would have hi-speed Internet within the year. This is what the builder was told by Embarq. While we waited, we decided that we would go with dial up for the short period of time. We started contacting Embarq shortly after we moved in, and each time we called we were told "6 months". It turned out to be a moving 6-month window, and three years later that window is still moving. After the frustration of dealing with dial up and promises by Embarq that never materialized, we spent hundreds of dollars to install what was supposed to be hi-speed Internet thru Hughes Satellite. This worked okay as long as the weather was fine and it was not cloudy. It was better than dial up, but it was unpredictable. After a year, the system went down, and the only means of technical support was out of India. They wanted me to buy hundreds of dollars worth of equipment that they said was defective. I knew from my past experience that they were wrong. It took another week to find a certified repair service in NC. The only problem was that they did not have a replacement for the defective radio. After five weeks of no replacement part, no guarantee of when it would be repaired and no satellite service that we still had to pay monthly charges for, Hughes did offer a solution to the problem – for a few hundred dollars more they would upgrade our system. We cancelled the contract and got rid of the satellite. This time we went with wireless. We found it to be faster than dial up. But, it's like a yoyo at times. On any given day it can be down any number of times anywhere from a minute to an hour or more, or the service is down to a crawl.

One of the services that I provide is WEB site maintenance for a client in the Chicago area. An unreliable and slow network makes this service extremely difficult to provide. I don't know anyone, retired or otherwise, who has all day to sit in front of the computer trying to deal with slow Internet service. The Internet is not a luxury – it is another tool to help our school children and businesses succeed and move forward. If you truly want to provide an environment for all the residents and businesses to achieve success, a reliable information network is something that is desperately needed.

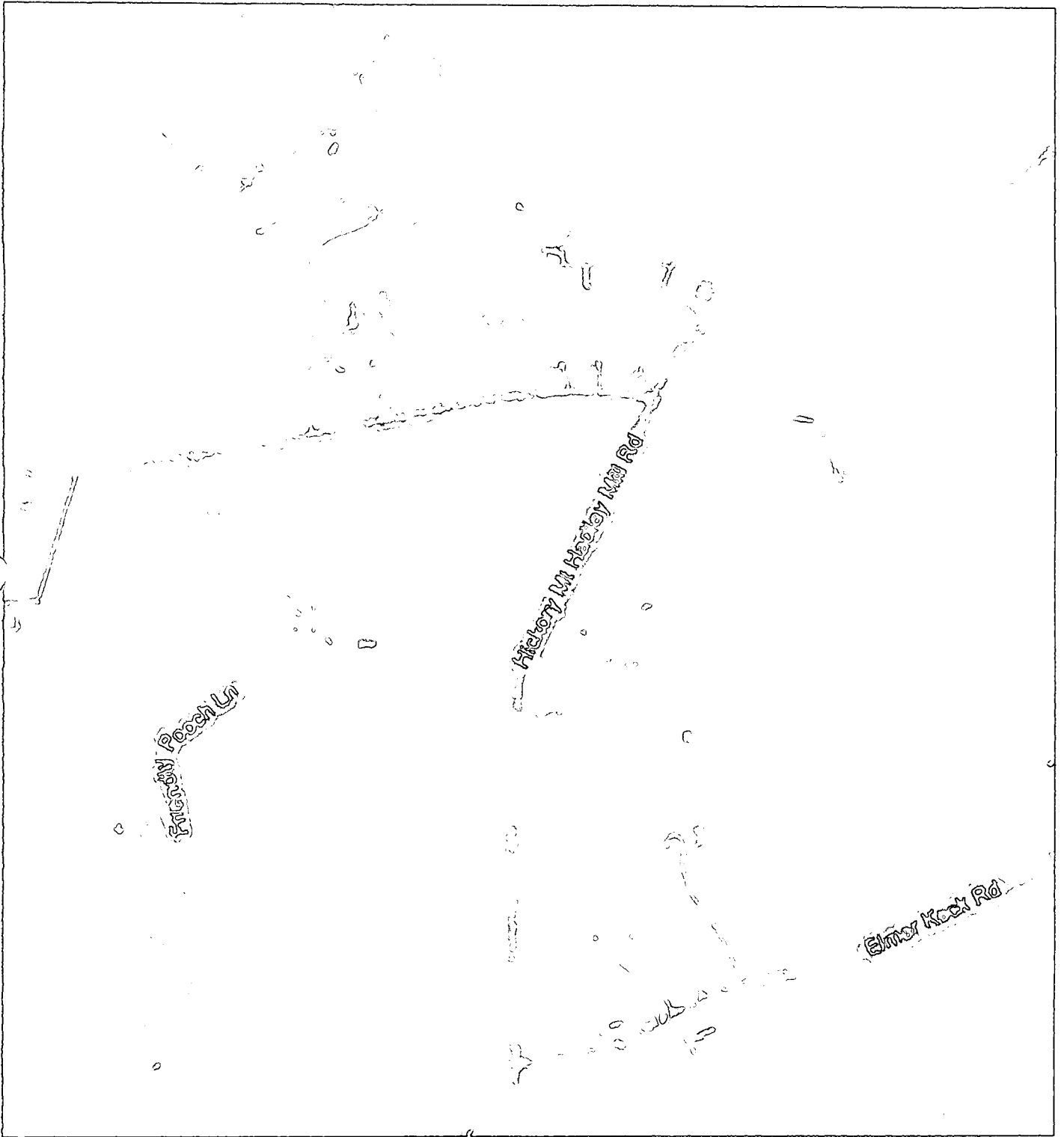
The past three years have truly been an exercise in frustration and expense in dealing with the only means of Internet that we have available to us while trying to conduct business.

For reference I have attached a map showing the availability of DSL in relationship to our sub-division.

Thank you for your time.

Donna and William Moldovan
42 Blarney Stone Circle
Pittsboro, NC 27312

December 14, 2009



Re: High Speed Internet

My husband, son and I moved to 141 Shambley Meadows Drive on October 13, 2006, hoping that high-speed Internet access was soon to follow. When I called to set up my home telephone service, the Embarq representative told me that high-speed Internet would be available in our area within six months. Since we are both professionals, he an Automotive Technician, and I a Registered Nurse, specializing in Oncology, we have numerous continuing education courses to complete each year to maintain our certifications, which are mostly online. If we had high-speed Internet service, these could be done in a timely manner, instead, something that should take 10 minutes to complete is taking greater than an hour.

Also, I am thinking of furthering my education and my son is ready for college. We could take some classes online, but at this point, dial-up Internet is discouraging us from doing so.

Michelle & Jerry Gifford
Ryan Watson
141 Shambley Meadows Drive
Pittsboro, NC 27312



Reference Ticket # 157090

Date: August 11, 2008

JOANN KANE
179 SHAMBLEY MEADOWS DR
PITTSBORO, NC 27312

Thank you for your recent request for cable service. Regretfully we are unable to serve the address provided to us at this time. This is due to the **reason checked** below:

- Your residence is in a planned new build area. Work in this area should be completed in the near future. A sales representative will contact you to explain the features of our products and services as soon as the construction work is completed.
- This address is located in an area being upgraded to provide additional services. Work in this area should be completed in the near future. Upon completion of the work in your area you will receive sales and product information via mail or sales person.
- Service is not available in your area at this time; the site survey has been submitted to engineering and management for further review. If the survey information meets the criteria for extension you will be contacted within forty-five days.
- The distance from our cable lines to your home does not meet the minimum number of homes to require an extension. We will continue to monitor this area for future growth.
- We have been unable to locate the address or contact you for detailed directions. Please contact us at your convenience (919) 573-7183.
- We're sorry but your building or community complex has a satellite system or non-Time Warner Cable system in place, and chooses not to offer Time Warner Cable to its residents.
- Unfortunately, your address is not within our franchised area. You will need to contact your local cable provider. (Possibly served by _____.)
- Other: _____

We truly regret that we cannot serve you at this time.

Sincerely,

Construction Department
Time Warner Cable, Raleigh Division

Voice | Data | Internet | Wireless | Entertainment



Embarq
Consumer Affairs
Tarboro, NC 27886
embarq.com

January 29, 2009

Joann Kane
P.O. Box 1805
Pittsboro, NC 27312

Dear Ms Kane,

We appreciate your interest in our High Speed Internet. Unfortunately, we are unable to provide this service to your home due to the special equipment requirements associated with high speed data and the network facilities that are needed to support the high speed service to your home.

Embarq apologizes for the inconvenience as we continue to research and evaluate alternative ways to deliver high speed internet to all of our customers. We will gladly notify you should high speed internet become available at your home. Again, thank you for your interest in Embarq's high speed internet service.

If you need further assistance please call me at 1-800-877-3345.

Sincerely,

Dora Sumrell
Embarq Executive & Regulatory Services

We the undersigned petition EMBARQ to provide DSL from the Landfill Substation to our location, Hadley Mill Rd./Jay Shambley Rd area.

Please write name and phone number

- 1 Wynne Jones 919-542-1453
- 2 Daniel Lee 919 542 1015
- 3 Bea Lee 919-542-1015
- 4 Cheryl Campbell 919-704-6965
- 5 Bill Bolk 919-542-6285
- 6 Wesley 919 542-2467
- 7 Collan Reese 919 542-2467
- 8 Jennifer M. Haughan 919-542-0267
- 9 John M. Haughan 919-542-0267
- 10 Theresa Morris 919-542-5394
- 11 Jerry Morris 919-542-5394
- 12 Louisa Maldovan 919-542-1070
- 13 William Maldovan 919-542-1070
- 14 Mark Kizer 919-545-0638
- 15 Mary Beth Kizer 919-545-0638
- 16 JEFF GIBBS 919-542-1455
- 17 Deb Gibbs 919-542-1455
- 18 John T. DMI 919-542-6779
- 19 Michelle Gifford 919-542-6779

We the undersigned petition EMBARQ to provide DSL from the Landfill Substation to our location, Hadley Mill Rd./Jay Shambley Rd area.

Please write name and phone number

- 20 Mark + Maureen McGinn (21) 919-542-2365
- 22 Maureen McGinn 919-542-2365
- 23 [Signature] 542-1453
- 24 [Signature] 919-699-0766
- 25 Vicki Lucas 919-430-7834
- 26 [Signature] 919-542-7322
- 27 [Signature] 919-542-4926
- 28 [Signature] (919) 545-9196
- 29 Harry + Pat Decatur (30) 919-542-2827
- 31 Harold + Louise Walker (32) 919-545-0486
- 33 Cathy Ursuli 919 663 4331
- 34 Cathy Peterson 919-542-7454
- 35 Don Peterson 919-542-7454

We the undersigned petition EMBARQ to provide DSL from the Landfill Substation to our location, Hadley Mill Rd./Jay Shambley Rd area.

Please write name and phone number

- 36 ANDY UPSHAW 919-663-3725
- 37 FARRELL MOOSE 919-428-3572
- 38 Emily Lancaster 919-428-1641
- 39 Vaughn Upshaw ~~919-663-2599~~
- 40 Dan Skelli + Brittany 41 919-742-2258
- 42 Donna Elizabeth Huff 919-663-3981
- 43 Beth Whitehead 919-542-7183
- 44 Mel & Myungha Spencer⁴⁵ 919-542-4256
- 46 Andrew Bodkin 919 444 1918
- 47 Donald M. Lutz~~48~~ 919-542-7454
- 48 Catty Peterson 919-244-0062
- 49 Staci Mitchell 919 548 0430

We the undersigned petition EMBARQ to provide DSL from the Landfill Substation to our location, Hadley Mill Rd./Jay Shambley Rd area.

Please write name and phone number

- 50 Ryan Watson 919 542 6779
- 51 David Farmer 919-545-9769
- 52 Maureen Farmer 919-545-9769.
- 53 Ruth C Couch 919-545-3834
- 54 Edwin Couch 919-545-3834
- 55 Thomas F Kane 919-542-3325
- 56 Jo Ann Kane 919-542-3325

On Friday 12/4, during the Leadership NC Class XVII Education Session, I

AT – North Carolina was the Leadership Profile Speaker. After her presentation, I introduced myself to her, stating that I felt it was important for her to know that I was the person from Avery County who had contacted her office, filed the complaints with the FCC and the NC Attorney General's Office; stating that AT&T was not meeting the "implied" service commitment to this rural area, as outlined in the December 2006 merger letter to the FCC.

I explained to Cynthia that it is imperative for Avery County to get increased **HIGH SPEED BROADBAND** as expeditiously as possible, as the school system is planning to implement a 1:1 laptop initiative for the high school students. This initiative is great, but the students will not be able to fully utilize the power of the program if the school is the only place the students have access to the Internet, either because the DSL technology is not available or the 'alternative technology methods' (Satellite) are either not available or are too expensive for most of the families in Avery County.

The following is the what and who I have contacted about getting high speed broadband in Avery County.

1. I did the simple test on the AT&T website to see if my home number is eligible for DSL, it is not, I am not sure how far from the closest "D-Slam" my home is, but the message said, DSL is not available for my area.
2. I lodged a complaint with the FCC regarding this and the lady from AT&T who called me in response, asked for my home phone number and address and said she would check with the engineers. I believe her name is Betsy West, she called me back and said that I was correct that the engineers had told her that there were not plans to bring DSL to this area by the end of 2009, nor could they tell her **'if' and 'when'** it would be brought to this area.
3. In the meantime I had called Cynthia AT&T NC President's office and explained my concern, I was told someone from her staff would be contacting me, which LaVoy Spooner did. He explained that although the Merger letter to the FCC did say that 100% of the service area for AT&T/Bellsouth would get DSL, that there were some rural areas where it would not be feasible to install it. Therefore, AT&T was working with WildBlue the satellite company to provide the service. He gave me the number to call, which I did, the lady who answered was very nice, when I told her I was calling to inquire about satellite service she asked for my zip-code - 28657, she said I'm sorry, satellite is not available in that zip-code. This is a **BIG problem** as the 28657 zip-code is the zip for most of the rural mail delivery in Avery County. Even if it would be available the level of service that most homes need for students to access homework etc, is **too** expensive for their family budgets. **This is not an answer or solution.**

As I told LaVoy Spooner previously, AT&T is the primary provider of telephone service in Avery County. Skyline/Skybest has the Banner Elk service area, the rest is AT&T. The cell phone providers in this area are Verizon and Carolina West. The television cable provider is Charter Communications, who is in bankruptcy, and has made it known that they have no plans to expand their service.

So where does this leave us.... Way behind in technology, our residents are not able to take advantage of the Governor's new e-learning initiative, as the technology we have to access the Internet is not substantial enough to accomplish the task. On a personal note, my son is taking an on-line community college class through the high school. The videos and other sites the professor assigns as classwork and homework are only able to be viewed while he is at the high school. When I try to access the website

from my office that has DSL Speed of 768, we cannot view the assignments, I understand the DSL is the fastest speed available in our area from AT&T. At home we have Hughes Net Satellite and even though we have the premium package of access, we cannot view the assignments. Now that websites are becoming more and more visually advanced and interactive, the more frustrating this becomes.

Due to the lack of competition in this area AT&T has the Avery County residents over a barrel. Please help us.

To further our endeavor of gaining the technology needed, a group of interested citizen's has formed the e-Avery advocacy group, of which I have been appointed Chair. The e-NC Authority is acting in an advisory capacity to help us understand what needs to be done and to determine the best method to move forward. We have been in discussions with the ERC out of Hendersonville to determine the feasibility of working with them. Due to the lack of financial resources in the county, there is a heightened level of fiscal responsibility and scrutiny of all non-budgeted funding requests resulting in a lack of funds to initiate a feasibility study. As AT&T is the primary provider and the merger letter stated High Speed DSL would be provided within 30 months of the date of the merger, the residents of the county have been patient while waiting for AT&T to fulfill the stated commitment.

All aspects of our lives **are negatively impacted** by this lack of service, Education, Healthcare, Government, Economic Development and Tourism.

I know there have been several residents, who have filed on-line complaints with the FCC, or at least they have attempted, I have had reports that due to the poor Internet service they have not been able to complete the complaint.

I understand this must be hard for you to fathom that we have such difficulties in accessing the Internet, as to most people this is a task which is second nature. Over the Thanksgiving holiday, I had family from all over the US visiting and they were aghast at the **poor level of Internet service** we had at our home. To clarify - when I say form all over the US - I mean this literally, Michigan, Pennsylvania, Alaska and Hawaii were represented, the only ones who said our Internet service was comparable to theirs were from Michigan. They all live in rural areas of each state. When Alaska, Hawaii and northwestern PA have faster and better quality Internet service than I have in NC there is a serious problem.

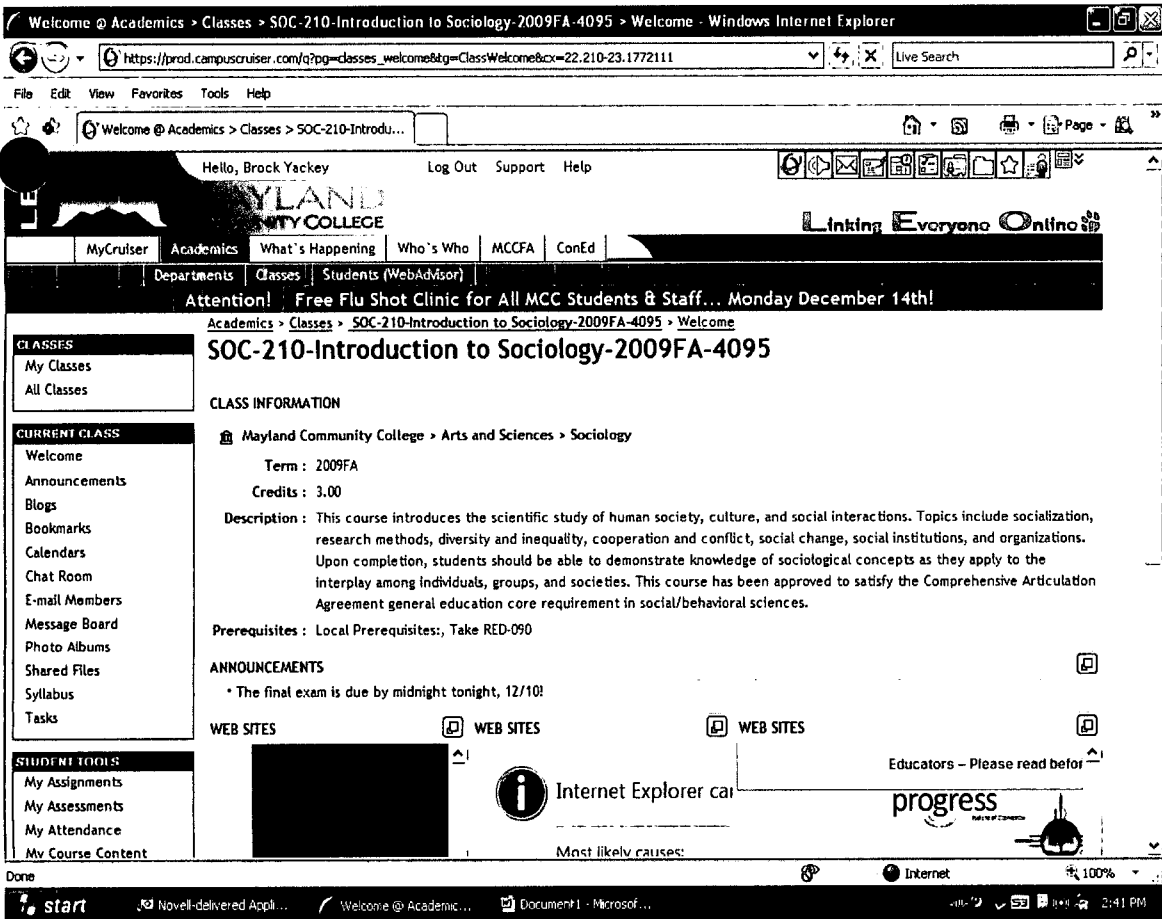
Please feel free to contact me if you desire further clarification on this issue. I also welcome any of you who would like to experience this for yourself to come visit Avery County and I will gladly take you on a tour of the county, show you the areas where there is service and where there is no service as well as provide the opportunity for you to experience the lack of speed and service from a variety of locations.

I look forward to hearing from you.

Regards,

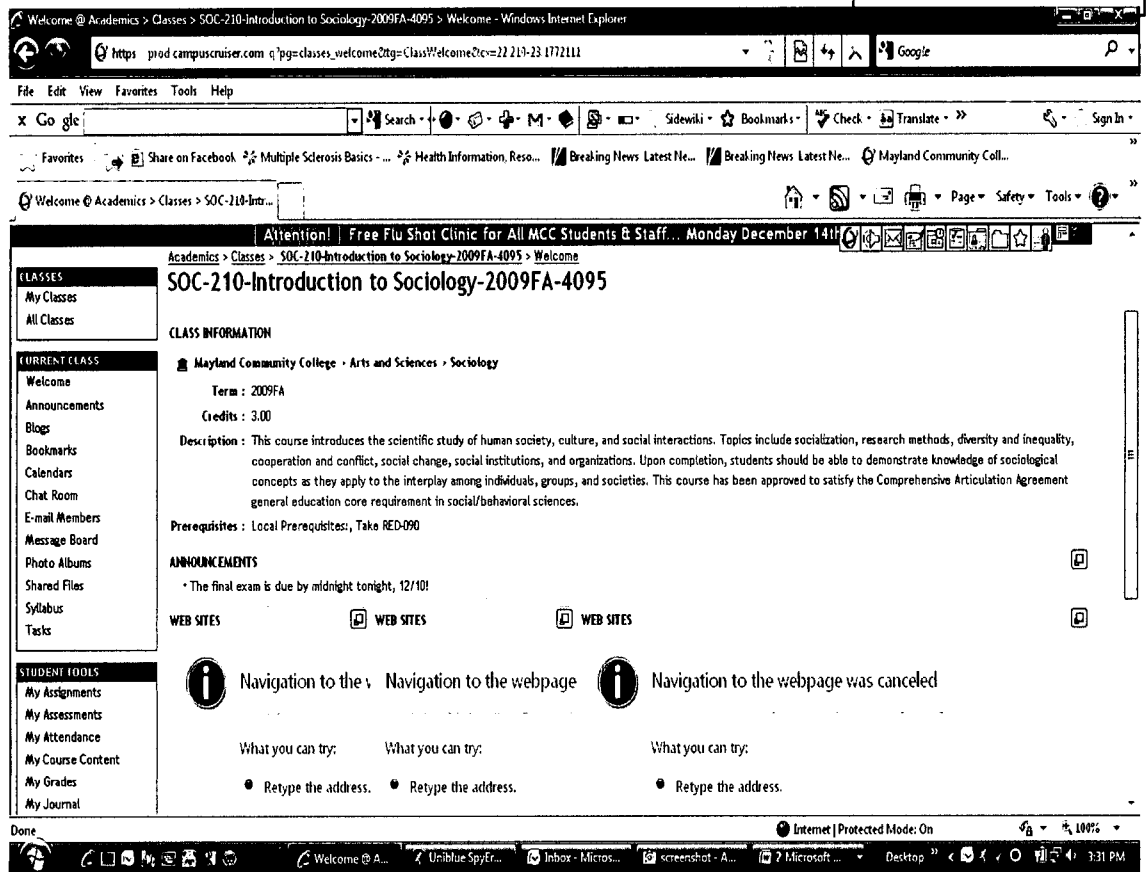
Sara B. Yackey
e-mail: msyackey@gmail.com
305 Michelle Lane
Newland, NC 28657
office - 828-733-2899
cell - 828-260-3128
home - 828-733-1570

When an Avery High School Student is logged on to the Mayland Community College student website while physically in a school system building the screen to the left is what is seen. Please note the accessibility of the websites assigned by professor is somewhat intermittent; depending on the 'burst' of Internet speed available at the time the student is accessing the site.



Internet Broadband issues in Avery County

When the same Avery High School Student is logged on to the Mayland Community College student website while at home or even in an office with AT&T High Speed DSL available in Avery County. The student's ability to work on the class material outside of a school building is IMPOSSIBLE with the current technology in Avery County.



My name is Bill Moldovan, and I'm a resident of Chatham County, Pittsboro and Siler City.

One of the deciding factors of our purchasing a home in Chatham County in Sept. 2006 was assurance from the builder that we would have hi-speed Internet within the year. This is what the builder was told by Embarq. While we waited, we decided that we would go with dial up for the short period of time. We started contacting Embarq shortly after we moved in, and each time we called we were told "6 months". It turned out to be a moving 6-month window, and three years later that window is still moving. After the frustration of dealing with dial up and promises by Embarq that never materialized, we spent hundreds of dollars to install what was supposed to be hi-speed Internet thru Hughes Satellite. This worked okay as long as the weather was fine and it was not cloudy. It was better than dial up, but it was unpredictable. After a year, the system went down, and the only means of technical support was out of India. They wanted me to buy hundreds of dollars worth of equipment that they said was defective. I knew from my past experience that they were wrong. It took another week to find a certified repair service in NC. The only problem was that they did not have a replacement for the defective radio. After five weeks of no replacement part, no guarantee of when it would be repaired and no satellite service that we still had to pay monthly charges for, Hughes did offer a solution to the problem – for a few hundred dollars more they would upgrade our system. We cancelled the contract and got rid of the satellite. This time we went with wireless. We found it to be faster than dial up. But, it's like a yoyo at times. On any given day it can be down any number of times anywhere from a minute to an hour or more, or the service is down to a crawl.

One of the services that I provide is WEB site maintenance for a client in the Chicago area. An unreliable and slow network makes this service extremely difficult to provide. I don't know anyone, retired or otherwise, who has all day to sit in front of the computer trying to deal with slow Internet service. The Internet is not a luxury – it is another tool to help our school children and businesses succeed and move forward. If you truly want to provide an environment for all the residents and businesses to achieve success, a reliable information network is something that is desperately needed.

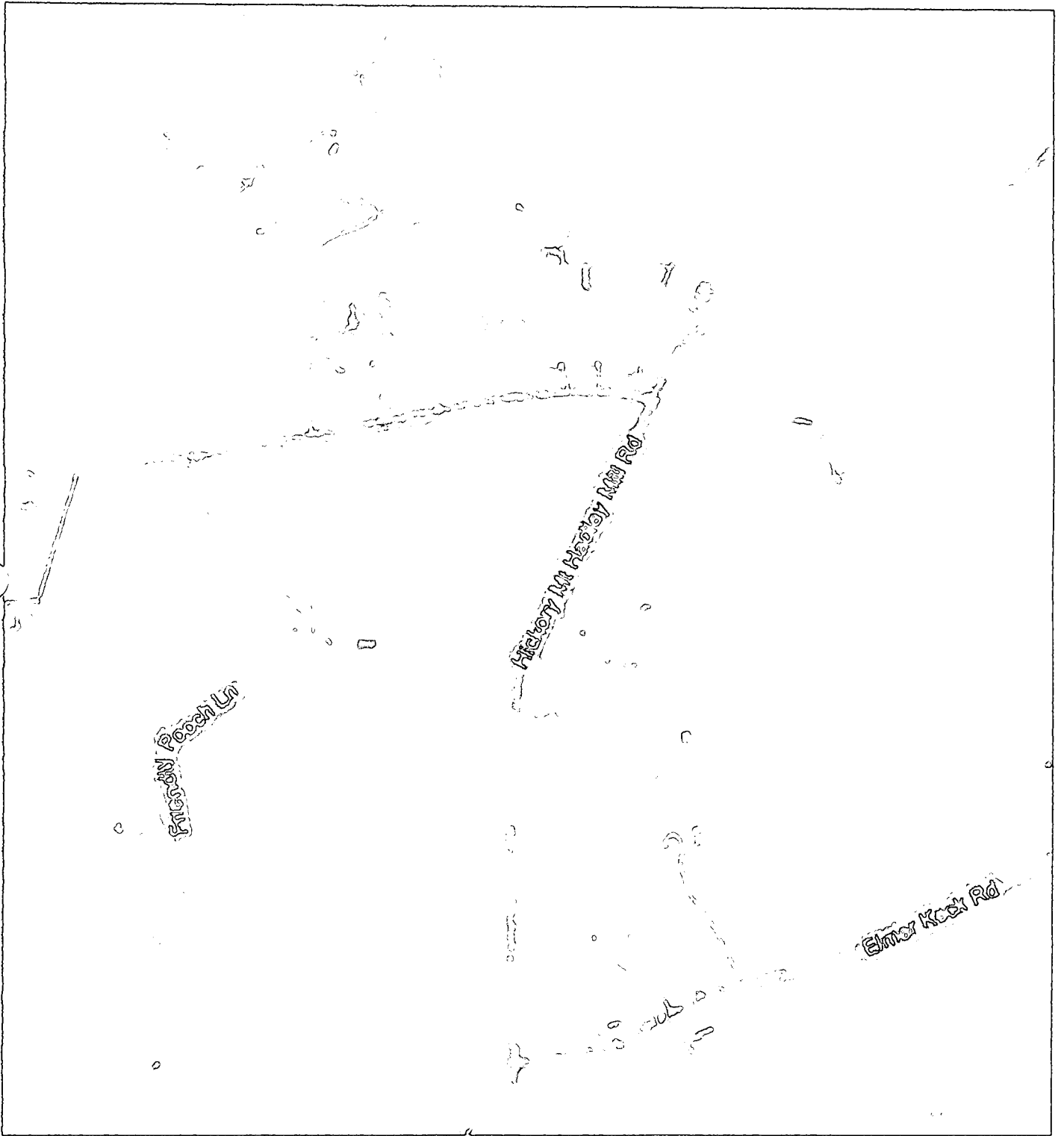
The past three years have truly been an exercise in frustration and expense in dealing with the only means of Internet that we have available to us while trying to conduct business.

For reference I have attached a map showing the availability of DSL in relationship to our sub-division.

Thank you for your time.

Donna and William Moldovan
42 Blarney Stone Circle
Pittsboro, NC 27312

December 14, 2009



My name is Tom Vanderbeck. I am a Chatham County Commissioner and recent appointee to the North Carolina e-NC Authority. I am speaking today from the perspective of both positions.

I want to speak out forcefully against any recommendation by this Study Commission to support a bill similar to the original double-speak named "Level Playing Field" House Bill 1252. It is my view that this bill was crafted to allow communications corporations to continue uncompetitive monopolistic practices of cherry picking the most profitable customers and leaving rural and low income urban residents without broadband service. As a consequence, local governments will not have the option of providing all its residents low cost public access to broadband.

Chatham is a rural county on the edge of the new economy epicenter of North Carolina – the Research Triangle, yet we have received very little economic benefit from our location.. 60 per cent of our workers commute out of the county and we have lost several thousand old manufacturing jobs in the last few years. We need jobs in Chatham, not just residents who commute to work in other counties. We recently approved an economic development strategic plan that calls for promoting such job clusters as biotechnology, architectural, engineering, information, basic health, technical and research services, pharmaceutical, higher education and renewable energy. As our economic development consultants from the UNC-Chapel Hill business school concluded: the expansion of broadband is a key infrastructure requirement to implementing this plan and is critical for bringing good paying jobs to Chatham. There are many entrepreneurs and small companies that would consider locating in Chatham's attractive rural communities but are prevented from considering this option due to a lack of broadband coverage. No communications corporation has an interest in serving the rural areas or small towns and communities of Chatham County.

Neither North Carolina nor the United States has been leading the way in the provision of broadband services through the efforts of these international communications companies. The United States ranks between 15th and 25th in broadband deployment per population. Despite being located in a region with top universities, a highly educated workforce and cutting-edge technology companies, North Carolina ranks 25th in broadband access.

The e-NC Authority was set up by the North Carolina General Assembly to expand broadband service to North Carolina's rural communities and underserved urban areas. If North Carolina is going to remain competitive economically and give all of its residents an opportunity to achieve the American Dream, all residents of the state will need broadband access. That was the finding of the General Assembly in establishing the e-NC Authority. The e-NC Authority has found that widespread broadband availability has positive impacts on rural business recruitment and retention. It provides educational opportunities for our poor, minority and rural youth, it provides better health care and reduces health care costs. It fosters environmental sustainability through promoting telecommuting and increasing worker productivity. Moreover, the Authority has joined both President Obama and his Republican challenger John McCain in encouraging local government to consider public broadband initiatives as an option. Of course, this could also include public/private partnership possibly involving these same communications corporations.

Thus, from my perspective as county commissioner from a rural county and soon-to-be member of an Authority set up to promote the broadband needs of rural and underserved urban communities, this Commission and the General Assembly should primarily be searching for innovative ways to provide additional resources and legislative authority to expand broadband to all residents of this state. The proposed legislation that is the subject of this Commission's study does exactly the opposite. It will prevent expanded access in underserved communities by eliminating competition for communications corporations. It will do that by essentially making it economically impossible for small rural communities to offer public broadband services.

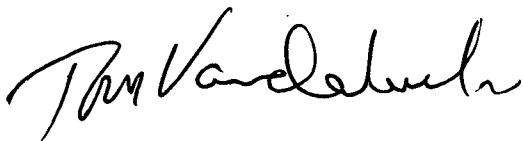
As you are well aware, North Carolina is a "Dillon's Rule" state that generally limits local governments from undertaking any initiative without the express authority from the General Assembly. This has often impeded local government initiative and creativity in solving problems at the gross level where those most affected can have the real input. We have seen the impact of this limiting rule recently in Chatham, in our attempts to develop an innovative residential energy efficiency revolving loan that has been championed by the Obama administration and Al Gore. Yet, the North Carolina Court of Appeals in the 2005 *Bellsouth v. City of Laurinburg* decision found that, despite Dillon's Rule, Laurinburg and

all other local government had the authority to provide public broadband services. Now, we are being asked to overturn that court's decision by greatly restricting the ability of local governments to provide this service at a competitive rate.

I do not agree with supporters of HB 1252 that proposed restrictions on local governments in this bill will promote competition. But, if true competition is what is sought, then leveling the playing field would require corporations providing broadband services to operate under those same restrictions, such as publishing an independent annual public audit, eliminating any subsidies of communication services with funds from any source outside or beyond local customer revenues, and imputing any federal, state or local tax breaks or incentives the company receives from provision of those services.

I am all for leveling the playing field, which is exactly what the North Carolina Court of Appeals did when it upheld local governments' authority to have the choice of providing public broadband services, as well the option of public/private partnerships. But I am totally against tilting the playing field to eliminate competition and reducing the likelihood that there will be an equitable expansion of broadband services to rural and underserved urban communities by enacting legislation similar to HD 1252

Respectively submitted December 14, 2009

A handwritten signature in black ink, appearing to read "Tom Vanderbeck". The signature is written in a cursive, flowing style.

Tom Vanderbeck
Chatham County Commissioner

Proposed Broadband Expansion Policies for North Carolina

Attachment 6 of

It must be the policy of the State of North Carolina to encourage the development of fiber-to-the-premise (FTTP) networks in order to fully serve the people and further economic development in this state.

Universal access to high capacity, fiber-to-the-premise, symmetrical broadband networks is essential not only for our state to compete economically and provide jobs in the knowledge-based, global economy, but also to provide our citizens access to advanced applications in medicine, public safety, energy management, and education essential to their quality of life. Unfortunately, over the last five years, the United States has dropped from 8th in the world to 15th in broadband subscriptions per capita. Further, North Carolina itself has dropped from 35th to 41st in the United States. To secure our state's educational and economic future, North Carolina must take steps now to reverse this trend by encouraging investment in the delivery of fiber-to-the-premise networks deployed by private and public service providers.

A state incentives program should encourage and support public and private broadband to create fiber-to-the-premise networks that connect directly to homes and businesses.

Less than four percent of broadband subscribers in the United States receive service through a fiber-to-the-premise connection, compared to over 40 percent in Japan and South Korea. North Carolina's economic future depends upon the development of an efficient system of data communication that will require such fiber connections. Because these networks are essential to North Carolina's economic future, the State should incentivize both public and private development of high capacity fiber connections directly to and from homes, businesses, hospitals and educational institutions in order to handle rapidly growing data needs.

Predatory pricing practices must be addressed because they limit the ability of new providers to enter the market and leave customers without choice.

Today, incumbent providers can push new providers out by using predatory pricing (i.e. cutting rates in that market below average cost and financing the loss through profits in other markets). When predatory pricing is used to attack municipal broadband infrastructure, the customer is left without choice--- which is simply unfair. Predatory pricing undermines the purpose of the Video Service Competition Act of 2006. A primary purpose of the Act was to promote consumer choice in video service providers through increased competition, resulting in improved service. The Act states that a customer who is dissatisfied with service by one cable service provider will have the option of choosing a different service provider.

Municipal government use of revenue bonds should be permitted to finance fiber network systems.

Currently municipalities that wish to finance the construction of fiber network systems through debt may use general obligation bonds or installment financing. When fiber networks are operated as a public utility, revenue bonds may be a more appropriate method of financing. By pledging the revenues of the public utility to pay back the bonds, the utility ensures that the users of the network pay for the cost of its construction. Revenue bonds are used to finance a significant amount of the debt issued by local public enterprises in North Carolina.

Public fiber systems delivering television, broadband, and other related services should have greater privacy protections.

State public records laws currently protect customer billing data and the trade secrets of contractors and content providers, but additional provisions are needed to protect a limited range of proprietary information, the privacy of which is essential to the financial soundness of the system, as well as for the protection of the sensitive public safety, financial, medical and energy networks integrated into these broadband systems.

GENERAL ASSEMBLY OF NORTH CARO
SESSION 2009

H

2

HOUSE BILL 1252*
Committee Substitute Reported Without Prejudice 4/23/09

Short Title: Level Playing Field/Cities/Service Providers. (Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE COMPETITION BETWEEN LOCAL GOVERNMENT AND
3 PRIVATE BUSINESS BY REQUIRING CITIES THAT PROVIDE
4 COMMUNICATIONS SERVICE TO THE PUBLIC TO COMPLY WITH LAWS
5 APPLICABLE TO PRIVATE PROVIDERS, TO ESTABLISH SEPARATE ENTERPRISE
6 FUNDS, TO NOT CROSS-SUBSIDIZE COMMUNICATIONS SERVICE WITH OTHER
7 GOVERNMENTAL FUNDS, TO IMPUTE THE COSTS THAT WOULD BE
8 INCURRED BY PRIVATE PROVIDERS, TO ANNUALLY REMIT TO THE CITY'S
9 GENERAL FUND THE COSTS THAT WOULD BE INCURRED BY PRIVATE
10 PROVIDERS, AND TO PREPARE AN ANNUAL AUDIT OF COMPETITIVE
11 ACTIVITIES.

12 The General Assembly of North Carolina enacts:

13 SECTION 1. Article 16 of Chapter 160A of the General Statutes is amended by
14 adding a new section to read as follows:

15 "§ 160A-329. City owned or operated communications service.

16 (a) Definitions. – The following definitions apply in this section:

- 17 (1) Communications network. – A wired or wireless network for the provision
18 of communications service.
- 19 (2) Communications service. – The provision of cable, telephone, broadband, or
20 Internet access service to the public or any sector of the public, regardless of
21 the technology used to deliver the service.
- 22 (3) High-speed Internet. – Internet access with transmission speeds that are
23 consistent with requirements for high-speed broadband Internet access as
24 defined by the Federal Communications Commission from time to time.

25 (b) Requirements. – A city that operates a public enterprise under G.S. 160A-311 that
26 provides communications service to the public for a fee over a communications network that is
27 directly or indirectly owned or operated by or provides a financial benefit to the city or another
28 city shall meet the following conditions with respect to the provision of communications
29 service:

- 30 (1) Comply with all local, State, and federal laws, regulations, or other
31 requirements that would apply to the communications service if provided by
32 a private communications service provider.
- 33 (2) Establish a separate enterprise fund for communications service and shall
34 use this fund to separately account for revenues, expenses, property, and
35 source of investment dollars associated with the provision of
36 communications service.



- 1 (3) Shall not subsidize the cost of providing communications service with funds
2 from any other noncommunications service, operation, or other revenue
3 source, including any funds or revenue generated from electric, gas, water,
4 sewer, or garbage services, but excluding funds from State or federal grants
5 and other governmental stimulus programs. In complying with this
6 requirement, a city owned communications service provider shall not price
7 any communications service below the cost of providing the service.
- 8 (4) Shall, in calculating the cost incurred and in the rates to be charged for the
9 provision of communications service, impute: (i) the cost of the capital
10 component that is equivalent to the cost of capital available to private
11 communications service providers in the same locality; and (ii) an amount
12 equal to all taxes, including property taxes, licenses, fees, and other
13 assessments that would apply to a private communications service provider
14 including federal, State, and local taxes; rights-of-way, franchise, consent, or
15 administrative fees; and pole attachment fees.
- 16 (5) Shall annually remit to the general fund of the city an amount equivalent to
17 all taxes or fees a private communications service provider would be
18 required to pay the city or county in which the city is located, including any
19 applicable tax refunds received by the city owned communications service
20 provider because of its government status and a sum equal to the amount of
21 property tax that would have been due if the city owned communications
22 service provider were a private communications service provider.
- 23 (6) Shall prepare and publish an independent annual audit in accordance with
24 generally accepted accounting principles that reflect the fully allocated cost
25 of providing the communications service, including all direct and indirect
26 costs. The indirect costs shall include amounts for rights-of-way, franchise,
27 consent, or administrative fees, regulatory fees, occupation taxes, pole
28 attachment fees, and ad valorem taxes. The annual accounting shall reflect
29 any direct or indirect subsidies received by the city owned communications
30 service provider, and any buildings, equipment, vehicles, and personnel that
31 are jointly used with other city departments shall be fully allocated to the
32 city owned communications service. The North Carolina Utilities
33 Commission may adopt rules and regulations to ensure compliance with the
34 provisions of this subdivision, and all records demonstrating compliance
35 shall be filed with the North Carolina Utilities Commission and made
36 available for public inspection and copying.
- 37 (c) Exemptions. –
- 38 (1) The provisions of this section shall not apply to:
- 39 a. The purchase, lease, construction, or operation of facilities by a city
40 to provide communications service within the city's boundaries for
41 the city's internal governmental purposes.
- 42 b. Any city whose jurisdiction is not served by a private provider of
43 high-speed Internet service or whose jurisdiction does not have
44 access to high-speed Internet service. For purposes of this subsection,
45 a city shall be determined to have access to high-speed Internet
46 service if high-speed Internet service is available to at least eighty
47 percent (80%) of the households in the city.
- 48 c. The provision of communications service by a city to the extent the
49 service is limited to areas of the city that are not served by any
50 private communications service provider.

1 (2) The provisions of subdivisions (b)(3) through (b)(6) of this section shall not
2 apply to communications service duly authorized by a city on or before
3 March 1, 2009."

4 **SECTION 2.** G.S. 62-3(23) is amended by adding the following new
5 sub-subdivision to read:

6 "1. The term "public utility" shall include any city providing
7 service as defined in G.S. 62-3(23)a.6. and subject to
8 regulation under G.S. 160A-329."

9 **SECTION 3.** Any city that is designated as a public utility under Chapter 62 of the
10 General Statutes when this act becomes law shall not be subject to the provisions of this act
11 with respect to any of its operations that are authorized by that Chapter.

12 **SECTION 4.** If any provision of this act or the application thereof to any person or
13 circumstance is held invalid, the invalidity shall not affect other provisions or applications of
14 this act which can be given effect without the invalid provision or application, and to that end
15 the provisions of this act are declared to be severable.

16 **SECTION 5.** This act is effective when it becomes law and applies to the provision
17 of communications service by a city owned communications service provider after that date.

Article 16.

Public Enterprise.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

As used in this Article, the term "public enterprise" includes:

- (1) Electric power generation, transmission, and distribution systems.
- (2) Water supply and distribution systems.
- (3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
- (4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.
- (5) Public transportation systems.
- (6) Solid waste collection and disposal systems and facilities.
- (7) Cable television systems.
- (8) Off-street parking facilities and systems.
- (9) Airports.
- (10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1971, c. 698, s. 1; 1975, c. 549, s. 2; c. 821, s. 3; 1977, c. 514, s. 2; 1979, c. 619, s. 2; 1989, c. 643, s. 5; 1991 (Reg. Sess., 1992), c. 944, s. 14; 2000-70, s. 3.)

§ 160A-312. Authority to operate public enterprises.

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise. (1971, c. 698, s. 1; 1973, c. 426, s. 51; 1975, c. 821, s. 5; 1979, 2nd Sess., c. 1247, s. 29; 1991 (Reg. Sess., 1992), c. 836, s. 1.)

H

Court of Appeals of North Carolina.
BELLSOUTH TELECOMMUNICATIONS, INC.,
 Plaintiff,
 v.
CITY OF LAURINBURG, a North Carolina Muni-
 cipal Corporation,
 and
 School Link, Inc., a North Carolina Corporation,
 Defendants.
 No. COA04-145.

Jan. 18, 2005.

Background: Telecommunications company sued city, seeking a permanent injunction and declaratory judgment that city was operating its fiber optic network, which provided internet services to non-city users in conjunction with an internet service provider (ISP), in excess of its authority. The Superior Court, Scotland County, B. Craig Ellis, J., entered summary judgment for city. Telecommunications company appealed.

Holding: The Court of Appeals, McCullough, J., held that providing internet services over its fiber optic network was within the city's statutory authority to operate a public enterprise.

Affirmed.

West Headnotes

[1] **Municipal Corporations 268** ⚡57

268 Municipal Corporations

268H Governmental Powers and Functions in General

268k57 k. Powers and Functions of Local Government in General. Most Cited Cases Municipalities, as creatures of statute, can exercise only that power which the legislature has conferred upon them.

[2] **Statutes 361** ⚡190

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k190 k. Existence of Ambiguity.

Most Cited Cases

Where the plain meaning of a statute is without ambiguity, it must be enforced as written.

[3] **Municipal Corporations 268** ⚡718

268 Municipal Corporations

268XI Use and Regulation of Public Places, Property, and Works

268XI(C) Public Buildings, Parks, and Other Public Places and Property

268k718 k. Means of Public Transportation and Communication. Most Cited Cases

City's fiber optic network was a "cable television network" that fell within statutory authorization for city-owned and operated public enterprises, and thus, provision of internet services over fiber optic network to non-city subscribers was activity within city's statutory authority; network provided for transmission of electronic signals capable of being converted to audio and video, and internet service was additional or supplementary service authorized to be provided over same network. West's N.C.G.S.A. §§ 160A-311(7), 160A-319(b).

****721** Appeal by plaintiff from judgment entered 11 July 2003 by Judge B. Craig Ellis in Scotland County Superior Court. Heard in the Court of Appeals 13 October 2004.

SYLLABUS BY THE COURT

***75 Cities and Towns-public enterprises-cable television system-fiber optic network-extent of municipal authority**

Summary judgment for defendants was affirmed in an action seeking a permanent injunction and de-

claratory judgment against defendants' operation of a fiber optics network, based on allegations that the network was beyond Laurinburg's statutory authority. North Carolina cities have the statutory authority to operate certain public enterprises, including cable television systems, and statutes are to be construed in favor of the municipality when there is an ambiguity.

****722** Hunton & Williams, L.L.P., by Edward S. Finley and Christopher J. Ayers, Raleigh, for plaintiff-appellant.

Tharrington Smith, L.L.P., by Michael Crowell, Raleigh, for defendant-appellee City of Laurinburg; and Gordon, Horne, Hicks & Floyd, P.A., by Charles L. Hicks, Jr., Laurinburg, for City of Laurinburg defendant-appellee.

Mitchell, Brewer, Richardson, Adams, Burge & Boughman, by Ronnie M. Mitchell and Coy E. Brewer, Fayetteville, for School Link, Inc., defendant-appellee.

McCULLOUGH, Judge.

***76** Plaintiff appellant, BellSouth Telecommunications, Inc. ("BellSouth" or "plaintiff") filed a verified complaint against the City of Laurinburg ("Laurinburg") and School Link, Inc. ("School Link") (collectively "defendants") on 25 July 2002. School Link filed a motion for summary judgment dated 22 May 2003, and BellSouth and Laurinburg filed separate motions for summary judgment dated 23 May 2003. The trial court granted summary judgment in favor of Laurinburg and School Link on 11 July 2003.

This appeal from the trial court's order arises from the following facts and circumstances: BellSouth is a Georgia corporation licensed to do business in North Carolina, and is a public utility subject to the North Carolina's Utilities Commission ("Utilities Commission"). Pursuant to Chapter 62 of North Carolina's General Statutes and its Certificate of Public Convenience and Necessity issued by the

Utilities Commission, BellSouth is authorized to "convey[] or transmit[] messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation." N.C. Gen.Stat. § 62-3(23)(a)(6) (2003). BellSouth provides Digital Subscriber Line (DSL) high speed Internet service, and is an Internet Service Provider (ISP) over these lines. Laurinburg is a city in Scotland County and is a North Carolina municipal corporation as defined under N.C. Gen.Stat. § 160A, *et seq.* (2003). School Link is a North Carolina Corporation which, as an ISP, provides Internet services in Scotland County.

Sometime in 1996, Laurinburg laid a twelve (12) strand fiber optic network consisting of multi-mode cable for the purposes of providing electronic communication services between its city hall and the Laurinburg public works building ("LPW"). In 1998, the multi-mode ***77** cable was replaced with single-mode fiber optic cable in what amounted to a nineteen (19) mile loop, with an increase in the number of fiber optic strands from twelve (12) to thirty-six (36). Laurinburg believed this would provide sufficient capacity for its known present needs as well as future required information capacity to meet needs not yet foreseeable in light of changing technology.

From approximately 1998 to 2000, the Electronic Community Resource Center (ECRC), a defense contractor, was connected to the network between its office in downtown Laurinburg and a training room leased by it at St. Andrews College ("St. Andrews"). Though ECRC went out of business in 2000, the fiber used for that connection was left in place.

In late spring or early summer of 2000, School Link became a party to the network as its ISP pursuant to a lease with Laurinburg. Because School Link needed a certain volume of business to make its link to Laurinburg financially feasible, the lease discussions included representatives from School Link, Laurinburg, the Scotland County government, the Scotland County schools, St. Andrews College,

and the Scotland Memorial Hospital ("Scotland Memorial"). The Laurinburg City Council approved a lease to School Link following a 21 August 2000 public hearing. School Link was to provide the network with internet services including Bandwidth, Mail, Domain Name System (DNS), and web-hosting.

Using the necessary hardware, Laurinburg serviced the rest of the city government, and additionally the non-city users, to the network by routing the network traffic onto the users' property by way of City utility poles. The first non-city users connected were Scotland County school buildings, two (2) of which were connected in October 2000, and the remaining seven (7) in March of 2001. In **723 early to mid-2001, three Scotland County government buildings were connected. St. Andrews was connected in September of 2001, and Scotland Memorial was connected in November or early December of 2001. Each of the users used two (2) strands of the fiber optic network.

The hardware components for running the network included the following: The city loop consists of one Cisco 3548 switch, one Cisco 7200 router, five Cisco 3524's (two used as backup), eight single-mode fiber converters, and eight two gigabit fiber connections. The Scotland County government loop consists of six single-mode fiber converters and one hub, three converters located in the LPW with a hub, and one fiber converter at the county administration building, *78 Emergency Medical Services (EMS), and the county library. The Scotland County school loop consists of 18 single-mode fiber converters and eight hubs located at six schools, the school administration building, and LPW. Scotland Memorial is fed by two single mode fiber converters, one at LPW and the other at the hospital. St. Andrews is fed by two single mode fiber converters, one at LPW and the other St. Andrews. School Link's connection is through an interface at LPW with the Laurinburg network, where School Link leases space on a rack holding their own router and equipment. This allows School Link

to connect its outside lines to the fiber optic network.

Laurinburg receives \$350 per connection per month from each connected user. Payments from the county schools and library differ in that these users pay their fees directly to School Link minus the fees subsidized through E-Rate funding (a federal program that provides grants to entities in rural areas, which funds the substantial majority of the connection fees for the library and the schools.) School Link then forwards to the city the total amount of the connection fees charged by the city for the schools, \$2,800, and the library, \$350. School Link pays an additional \$2,000 per month for the space of their router on the rack at LPW.

Currently, Laurinburg's fiber optics network is being used solely for the purpose of data transmission, and those internet services provided by School Link. Laurinburg has not yet sought to provide cable television programming, and despite the current large amount of excess capacity on the network (approximately 24 strands), it claims that it would have to purchase additional fiber to do so.

BellSouth owns and operates utility poles throughout Laurinburg to transmit telephone services. Since the 1930's, BellSouth has leased from Laurinburg access to its utility poles for such service. Laurinburg has likewise leased from BellSouth access to BellSouth's utility poles to transmit data services.

Before the Laurinburg network was in place and providing an ISP service with School Link, BellSouth provided internet service to Scotland County schools by running a T-1 line to the schools' central office which was the hub for the schools. Those schools, now serviced by Laurinburg and School Link, were at one time serviced by BellSouth over the Laurinburg network. All of those schools out of the reach of the Laurinburg network remain on lines connecting them to the schools' central office, and thus to School Link, on BellSouth's network. Before St. Andrews was a part of the Laurinburg

network and with School Link as its ISP, BellSouth provided internet service *79 over a T1 line that connected St. Andrews to the University of North Carolina at Pembroke. Before Scotland County's three buildings were connected to the Laurinburg network with School Link as its ISP, Carolina On-line was its ISP. With one exception, all Scotland County users were using a "dial-up" connection over regular telephone lines owned and maintained by BellSouth. The Scotland County Department of Social Services was connected through a T1 line provided by the North Carolina Cooperative Extension Office. After the county buildings had connected to the Laurinburg network, the county turned down BellSouth's offer to provide DSL service.

In their complaint, BellSouth sought a permanent injunction and declaratory judgment, alleging the following grounds for their relief: That Laurinburg fiber optics network was being operated as a "public enterprise" **724 beyond a municipality's authority to do so under N.C. Gen.Stat. § 160A-311 (2003); and that the contract made with School Link to service non-city users over the network was therefore *ultra vires*. In response to this complaint, and at differing stages of the litigation, Laurinburg and School Link offered a host of legal authority permitting the municipality's operation of their fiber optic network and their agreement with School Link. See N.C. Gen.Stat. § 160A-272 (2003) (lease of excess property); N.C. Gen.Stat. §§ 160A-460 through -464 (2003) ("interlocal" agreements); N.C. Gen.Stat. § 160A-311(7) (acting as a public enterprise "cable television systems"); and N.C. Gen.Stat. § 158-7.1 (2003) (allowing for "local development" appropriations).

In reaching our holding on the merits of the case at bar, our analysis addresses two significant issues. The first, which affects the second, is a question of which tools of legal construction are to be implemented in our reading of statutes authorizing municipal powers. And second, when applying the correct tools, do the actions taken by Laurinburg in establishing their fiber optics network fall within one

of its authorized powers as a municipality. Based on our analysis set out herein, we affirm the trial court's grant of summary judgment in favor of Laurinburg and School Link on the basis that the municipality is operating what is by North Carolina statutory definition, a "cable television system." See N.C. Gen.Stat. § 160A-319(2003). As such, Laurinburg has authority to engage in this "public enterprise" and contract with School Link for its ISP services. N.C. Gen.Stat. § 160A-311(7). We do not, and need not, address those alternative theories offered by Laurinburg as authority for their fiber optics network.

***80 I. Standard of Review/Legal Construction of Chapter 160A**

On appeal from an order granting summary judgment, we review the record in a light most favorable to the party against whom the order has been entered to determine whether there exists a genuine issue as to any material fact. *Oliver v. Roberts*, 49 N.C.App. 311, 314, 271 S.E.2d 399, 401 (1980), *cert. denied*, 276 S.E.2d 283 (1981). Where no such issue of fact exists and summary judgment is proper, we review the trial court's ruling on the motion for summary judgment *de novo* because its basis is found solely in law. *Coastal Plains Utils., Inc. v. New Hanover County*, 166 N.C.App. 333, ---, 601 S.E.2d 915, 920 (2004).

[1] The undisputed facts of this case implicate the municipal powers granted to a city authorized under Chapter 160A of the North Carolina General Statutes. "It is a well-established principle that municipalities, as creatures of statute, can exercise only that power which the legislature has conferred upon them." *Bowers v. City of High Point*, 339 N.C. 413, 417, 451 S.E.2d 284, 287 (1994); *Homebuilders Assn. of Charlotte v. City of Charlotte*, 336 N.C. 37, 41-42, 442 S.E.2d 45, 49 (1994). In setting out these exclusive and limited municipal powers, the legislature has mandated the following:

§ 160A-4. Broad construction

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

N.C. Gen.Stat. § 160A-4(2003)(emphasis added). N.C. Gen.Stat. § 160A-4 was a part of a 1971 revision of the North Carolina statutes governing municipalities. 1971 N.C. Sess. Laws ch. 698. In *Homebuilders*, the Supreme Court squarely addressed the issue of statutory construction under rule N.C. Gen.Stat. § 160A-4, stating:

This statute makes it clear that the provisions of chapter 160A and of city charters shall be broadly construed and that grants of power shall be construed to include any additional and *81 supplementary powers that **725 are reasonably necessary or expedient to carry them into execution and effect.

Homebuilders Assn. of Charlotte, 336 N.C. at 43-44, 442 S.E.2d at 49-50 (where the Court applied this statute to uphold the assessment of regulatory fees assessed by the city for its related and clearly authorized regulatory activities). In its reading of N.C. Gen.Stat. § 160A-4, the Court found that the narrow rule of construction established over some 100 years prior by common law, known as "Dillon's Rule," had been replaced by the legislature's 1971 enactment. *Id.*; see, e.g., *Smith v. Newbern*, 70 N.C. 14 (1874), modified, 73 N.C. 303 (1875). Dillon's Rule, set out in a treatise on municipal law by Judge John S. Dillon, stated:

[A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those ne-

cessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable.

Dillon, Commentaries on the Law of Municipal Corporations, § 237 (5th ed.1911). The Court in *Homebuilders* goes out of its way to distinguish two of its holdings applying Dillon's Rule after the enactment of N.C. Gen.Stat. § 160A-4. See *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 276 S.E.2d 443 (1981); *Greene v. City of Winston-Salem*, 287 N.C. 66, 213 S.E.2d 231 (1975). The Court stated:

In neither case was N.C.G.S. § 160A-4 discussed or cited by the Court and the issue of the interplay between Dillon's Rule of construction and N.C.G.S. § 160A-4 was, therefore, not addressed. Thus, we do not consider *Porsh* and *Greene* as determinative on the issue squarely presented in the instant case: the proper rule of construction of grants of powers to municipalities in light of N.C.G.S. § 160A-4.

Homebuilders Assn. of Charlotte, 336 N.C. at 45, 442 S.E.2d at 50.

In the same year the opinion in *Homebuilders* was rendered, the Supreme Court decided *Bowers v. City of High Point*, 339 N.C. 413, 451 S.E.2d 284 (1994). In *Bowers*, the Court allowed the city to void a contract as being *ultra vires*, stating that the city was correct in asserting that it did not have statutory authority to contract to pay a separation allowance to early-retired police officers based on anything beyond their "base rate of compensation" as set out in *82N.C. Gen.Stat. § 143-166.41(A) (1993). *Bowers*, 339 N.C. at 420, 451 S.E.2d at 289. The Court concluded the city lacked statutory power to interpret what the "base rate" included. *Id.* While the Court seemed to resuscitate "Dillon's Rule" by restating it at the beginning of its analysis, the holding of the Court hinged on the following plain meaning analysis:

Although we are unable to set forth any rule which easily and conclusively determines what forms of compensation are to be included in "base rate of compensation," we are satisfied that the plain meaning of "base rate of compensation" does not include overtime pay, longevity pay, or pay for unused accrued vacation. "Base pay" is defined as "wages, *exclusive of overtime, bonuses, etc.*"

Id. (quoting *Black's Law Dictionary* 157 (6th ed.1990)). Most recently, without citing either Dillon's Rule, N.C. Gen.Stat. § 160-4, *Homebuilders*, or *Bowers*, the Supreme Court utilized the plain meaning rule again to strike down the City of Durham's Storm Water Quality Management Program ("SWQMP") and fees assessed thereunder. *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 517 S.E.2d 874 (1999) (" *Smith Chapel* "). The Court in *Smith Chapel* found that under the plain meaning of N.C. Gen.Stat. § 160A-311(10) (1998) (authorizing a municipality to operate as a public enterprise "stormwater and drainage systems of all types") and N.C. Gen.Stat. § 160A-314(a), (a1) (1998), Durham had authority to run a stormwater management public enterprise for compensation, but "limited to those systems of physical infrastructure, structural or natural, for servicing stormwater." *Smith Chapel Baptist*, 350 N.C. at 812, 517 S.E.2d at 879. Therefore, because much of Durham's SWQMP and related fees were not related to the physical stormwater system (such as education programing), the program was found to function **726 as an unauthorized public enterprise and was struck down. In his dissent writing for three Justices, Justice Frye applied N.C. Gen.Stat. § 160A-4 and *Homebuilders* for the minority opinion's belief that there was some ambiguity in the language of " 'stormwater and drainage system ' " that should have been resolved in favor of enabling Durham to execute their authorized public enterprise. *Id.* at 821, 517 S.E.2d at 884.

[2] Though not without nuances and distinguishing factors, we find *Homebuilders*, *Bowers*, and *Smith*

Chapel to be consistent statements of the law and in accord with N.C. Gen.Stat. § 160A-4. The narrow Dillon's Rule of statutory construction used when interpreting municipal powers has been replaced by N.C. Gen.Stat. § 160A-4's *83 mandate that the language of Chapter 160A be construed in favor of extending powers to a municipality where there is an ambiguity in the authorizing language, or the powers clearly authorized reasonably necessitate " *additional and supplementary powers*" " *to carry them into execution and effect [.]*" N.C. Gen.Stat. § 160A-4 (emphasis added); see *Homebuilders Assn. of Charlotte*, 336 N.C. at 45, 442 S.E.2d at 50. However, where the plain meaning of the statute is without ambiguity, it "must be enforced as written." *Bowers*, 339 N.C. at 419-20, 451 S.E.2d at 289; see also, *Smith Chapel Baptist*, 350 N.C. at 812, 517 S.E.2d at 879.

II. "Cable Television System"/Fiber Optics Network

[3] Turning to the merits of the case. Among the legal rationales offered by Laurinburg for the operation of its fiber optics network is that it is a "[c]able television system[]" ("CTS") authorized to be owned and operated as a public enterprise. N.C. Gen.Stat. § 160A-311(7). We agree.

A. CTS Defined

In North Carolina, a city has authority to operate any or all of the ten "public enterprise[s]" set out in N.C. Gen.Stat. § 160A-311, one of which being a CTS. N.C. Gen.Stat. § 160A-311(7). Included in this authority is the following:

A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens.

N.C. Gen.Stat. § 160A-312 (2003).

Laurinburg claims the operation of its fiber optics network falls within its authority to operate a CTS, where a CTS is defined as follows:

(b) For the purposes of this section, "cable television system" means *any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation.*

N.C. Gen.Stat. § 160A-319(b) (emphasis added). BellSouth claims that this definition pertains only to N.C. Gen.Stat. § 160A-319, a *84 statute which authorizes and sets time limits for a municipality's authority to franchise utilities. Instead, BellSouth argues the applicable definition is that of a "cable system" as set out in the Cable Communications Policy Act of 1984:

(7) [A] facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include ... (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter [47 USCS §§ 201, et seq.], except that such facility shall be considered a cable system (other than for purposes of section 541(c)) of this title [47 USCS § 541(c)] to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services[.]

47 U.S.C. § 522(7) (2002).

We do not read the definition of CTS to be confined to N.C. Gen.Stat. § 160A-319, rather, we believe this clearly represents the **727 legislature's intended definition for CTS as used in N.C. Gen.Stat. § 160A-311(7). The first sentence of N.C.

Gen.Stat. § 160A-319(a) states that

[a] city shall have authority to grant upon reasonable terms franchises for the operation within the city of any of the enterprises listed in G.S. 160A-311 and for the operation of telephone systems.

N.C. Gen.Stat. § 160A-319(b) explicitly refers to the term CTS as used in the public enterprises statute to define the contours of what a municipality may franchise as a CTS. Additionally, N.C. Gen.Stat. § 160A-319, as first enacted under N.C. Gen.Stat. § 160-2 (effective 4 July 1967), was added to the General Statutes before there was any clear authority that a city could operate its own CTS as a "public enterprise." 1967 Session Laws ch. 100, § 2, ch. 1122, § 1. Had the legislature intended CTS to take on a different meaning when enacting N.C. Gen.Stat. § 160A-311 in 1971, and recodifying N.C. Gen.Stat. § 160-2 into N.C. Gen.Stat. § 160A-319 the same year, we believe they would have done so. See Session Laws 1971, Ch. 698. Lastly, without more, we can find no logical reason, nor has one been offered, why *85 the legislature would desire CTS be defined as something different when operated as a public enterprise by the City than that definition used when a City is granting a franchise of the same.

Therefore, for the purpose of defining CTS in N.C. Gen.Stat. § 160A-311(7), we look to N.C. Gen.Stat. § 160A-319(b) and not the federal code. We note that the federal definition of "cable system" is relevant to the issue of *how* the system will be regulated under the federal code, but offers little guidance as to whether municipalities in North Carolina have *statutory authority* to operate those as a system or network falling within its definition of CTS as a public enterprise.^{FN1}

FN1. There is a line of federal cases touching on the issue of what is and is not a "cable system" under the federal code and for purposes of Federal Communications Commission (FCC) regulations. These

cases vary in their conclusions, representing a clear ambiguity under federal law of what is a “cable system” in light of today’s bundled technology. See *AT&T v. City of Portland*, 216 F.3d 871, 876-880 (9th Cir.2000)(The court concluded transmission of internet service over cable broadband facilities is a telecommunication service for purposes of regulation: “Surfing cable channels is one thing; surfing the Internet over a cable broadband connection is quite another”); *MediaOne Group, Inc. v. County of Henrico*, 257 F.3d 356, 365 (4th Cir.2001) (“We do not have to reach the question of whether MediaOne’s bundled Road Runner service is a cable service, a telecommunications service, or an information service”); *Nat’l Cable & Telecom. v. Gulf Power*, 534 U.S. 327, 122 S.Ct. 782, 151 L.Ed.2d 794, (2002) (In interpreting the federal Pole Attachments Act, 47 U.S.C. § 224, Justice Kennedy writing for a majority applied the plain meaning rule in stating that, even if a cable television system is only a cable television system to the extent it provides cable television, an “attachment ... by a cable television system” is still (entirely) an attachment “by” a cable television system whether or not it does other things as well”); *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, 4802(2002)(Where the FCC concluded that a “cable modem service, as it is currently offered, is properly classified as an interstate information service, not as a cable service, and that there is no separate offering of telecommunications service”); and *Brand X Internet Servs. v. FCC*, 345 F.3d 1120, 1132 (9th Cir.2003) (The Court overruled the FCC’s declaratory ruling in

part, holding that cable broadband service was not a “cable service” but instead was part “telecommunications service” and part “information service.”).

B. Laurinburg’s Network is a CTS

We next consider whether services offered by Laurinburg over their fiber optic network fall within the plain meaning of N.C. Gen.Stat. § 160A-319(b). Restating that statute in part, a CTS is

any system or facility that, by means of ... wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation.

*86 *Id.* (emphasis added). The statute in no way limits CTS to a specified type of wire or cable, such as coaxial cable, copper T1 lines, or fiber optic lines. Nor does it limit the transmission or reception of electronic signals to any specific content. Thus, in reading this statute, we cannot say that its plain meaning clearly forecloses the statutory authority **728 of Laurinburg to operate its fiber optic network. See *Bowers*, 339 N.C. at 417, 451 S.E.2d at 287; *Smith Chapel Baptist*, 350 N.C. at 812, 517 S.E.2d at 879. Stated differently, the language of this statute is ambiguous as to whether the fiber optic network run by Laurinburg falls within its contours. Thus, we apply N.C. Gen.Stat. § 160A-4’s broad rule of construction.

Laurinburg’s network is run over fiber optic “wires or cable,” providing a “system” for “transmit[ing]” and “receiv[ing]” electronic signals capable of being converted to “audio” and/or “video” streams of information. See N.C. Gen.Stat. § 160A-319(b). We believe this fits within a broad construction of the definition of a CTS. Therefore, we hold that Laurinburg is acting within its municipal authority to run its network, and was not acting *ultra vires* in contracting with School Link to provide the network’s ISP service.^{FN2}

FN2. The record indicates that Laurinburg has offered BellSouth the opportunity to offer its ISP services over the fiber optics network.

We acknowledge that Laurinburg's fiber optics network was most likely not something the legislature envisioned in 1971 when they enacted the statute allowing a municipality to operate a CTS as a public enterprise. However, if Laurinburg were currently offering the kind of cable programming in place in 1971, and doing so over their fiber optic network, they clearly would be authorized to offer the current bundle of network services over these same lines as "additional and supplementary powers that are reasonably necessary or expedient." N.C. Gen.Stat. § 160A-4. Without authority to offer the bundled CTS services, no municipality could effectively operate in today's market.^{FN3}

Moreover, just as BellSouth is able to leverage its telephone infrastructure to provide low cost DSL broadband services in the market, so too should a municipality be able to leverage its CTS infrastructure. We believe it would elevate form over function, against the intent of our legislature's mandate for broad construction, to first demand 1971-type cable programming be in place before a 2004 CTS could be authorized as a public enterprise. Rather, the legislature's intent in 1971 was to enable the municipality's public enterprise to grow in reasonable stride with technological *87 advancements, as it is this advancement which marks the ever-approaching horizon of necessity.

FN3. Cable modem service provides high-speed access to the Internet ... [t]he service is available to approximately 73% of U.S. households. 17 FCC Rcd 4798, 4799-4800.

Based upon the record, appendices, exhibits, and briefs, we uphold the trial court's grant of summary judgment in favor of Laurinburg and School Link.

Affirmed.

Judges McGEE and ELMORE concur.

N.C.App.,2005.

BellSouth Telecommunications, Inc. v. City of Laurinburg
168 N.C.App. 75, 606 S.E.2d 721

END OF DOCUMENT

Level Playing Field – Statutory Analogs

Annual Reports & Financial Recordkeeping

- Cities operating utilities are required to file annual reports with the NC Utilities Commission.

“§ 62-47. Reports from municipalities operating own utilities.

Every municipality furnishing gas, electricity or telephone service shall make an annual report to the Commission, verified by the oath of the general manager or superintendent thereof, on the same forms as provided for reports of public utilities, giving the same information as required of public utilities. (1933, c. 307, s. 34; 1963, c. 1165, s. 1.)”

- Joint Municipal Power Agencies are required to file annual reports with the NC Utilities Commission. The report is to include “a complete operating and financial statement.” [G.S. 159B-30]

Cross-subsidies

- Electric co-operatives are prohibited from cross-subsidizing competitive activities from electric ratepayers funds. They are subject to all taxes, specifically including federal and State income taxes, levied against business entities of the same structure and engaged in the same activities. They must fully compensate the electric membership corporation for the use of personnel, services, equipment, or tangible and intangible property. The NC Utilities Commission regulates this activity by, among other things, requiring annual reports. [G.S. §§ 62-53 & 117-18.1].
- Joint Municipal Power Agencies are required to make payments in lieu of taxes to the appropriate governmental body. [G.S. 159B-27]

§ 62-53. Electric membership corporation subsidiaries.

In addition to any other authority granted to the Commission in this Chapter, the Commission shall have the authority to regulate electric membership corporations as provided in G.S. 117-18.1. (1999-180, s. 4.)

§ 117-18.1. Subsidiary business activities.

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

- (1) They are not financed with loans or grants from the Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) or the USDA or with similar financing from any successor agency. This limitation shall not apply to RUS or USDA loans or grants, or loans or grants from successor agencies, for water or wastewater collection and treatment projects.
- (2) They are subject to all taxes, specifically including federal and State income taxes, levied against business entities of the same structure and engaged in the same activities.
- (3) They fully compensate the electric membership corporation for the use of personnel, services, equipment, or tangible and intangible property, the greater of (i) a competitive price, which is a price comparable with prices generally being charged at the time in arms length transactions in the same market, or (ii) the electric membership corporation's fully distributed costs, which shall include all direct and indirect costs, including cost of capital incurred in providing the personnel, services, equipment, tangible property, or intangible property in question. The value of real property shall include the intangible value of not having to purchase the real property being used, and the value of the identification with the EMC that will exist because of the use of the particular real property. Should the Utilities Commission, upon complaint showing reasonable grounds for investigation, find after investigation, that the charges for those transactions between the electric membership corporation and the other business entity do not conform with the provisions of this subdivision, the Utilities Commission is empowered to direct the electric membership corporation to adjust those charges to comply with the provisions of this subdivision. If the electric membership corporation does not comply with the Utilities Commission's directive, then the Utilities Commission is empowered to direct the electric membership corporation to divest its interest in the other business entity. For purposes of enforcing this subdivision, members of the Utilities Commission, the Utilities Commission staff, and the Public Staff are authorized to inspect the books and records of such other business entities and the electric membership corporations. The Utilities Commission shall have the authority to adopt rules and reporting requirements to enforce this subdivision. The provisions of G.S. 62-310(a), 62-311, 62-312, 62-313, 62-314, 62-315, 62-316,

62-326, and 62-327 shall apply to electric membership corporations with respect to the application of this subdivision.

- (4) They are organized and operated pursuant to Chapter 55 or Chapter 57C of the General Statutes.
- (5) They do not receive from an electric membership corporation any investment, loan, guarantee, or pledge of assets in an amount that, in the aggregate, exceeds ten percent (10%) of the assets of that electric membership corporation.

(b) An electric membership corporation may not form or organize a separate business entity to engage in activities involving the distribution, storage, or sale of oil, as defined in G.S. 143-215.77(8), specifically including liquefied petroleum gases, but may acquire, hold, dispose of, and operate any interest in an existing business entity already engaged in these activities, subject to the other provisions of this section.

(c) No director, or spouse of a director, of an electric membership corporation may be employed or have any financial interest in any separate business entity formed, organized, acquired, held, or operated by an electric membership corporation pursuant to the provisions of this section. (1999-180, s. 2.)

§ 159B-27. Taxes; payments in lieu of taxes.

(a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Any administrative building and associated land shall be deemed a project for purposes of this paragraph.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to three and twenty-two hundredths percent (3.22%) of that percentage of all moneys expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) In lieu of an annual franchise or privilege tax, each joint agency shall pay to the State an amount equal to three and twenty-two hundredths percent (3.22%) of the gross receipts from sales of electric power or energy, less receipts from sales of electric power or energy to a vendee subject to tax under G.S. 105-116.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.

(e) The reporting, payment and collection procedures contained in G.S. 105-116 shall apply to the levy herein made.

(f) Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint agency, no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes. (1973, c. 476, s. 193; 1975, c. 186, s. 1; 1977, c. 385, s. 12; 1981, c. 487; 1983, c. 574, s. 10; 1983 (Reg. Sess., 1984), c. 1097, s. 11; 1995, c. 412, s. 17; 2002-120, s. 6.)

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TAB	STATE	STATUTE	CATEGORY	DESCRIPTION
1	Alabama	Ala. Code § 11-50B-1 <i>et seq.</i>	Regulated	Telecommunications services (voice, data, video, broadband) can be provided, but public hearing required in advance, and allocation of costs regulated.
2	Arkansas	Ark. Code Ann. §§ 23-17-408, 409	Regulated	Provision of basic local exchange service prohibited. Telecommunications capacity or facilities may be made available to the public after hearing.
3	Colorado	Col. Rev. Stat. § 29-27-101 <i>et seq.</i>	Regulated	Cable and telecommunications services (broadband, cable, voice, video) can only be offered after referendum and after refusal by incumbent provider.
4	Florida	Fla. Stat. §§ 166.047, 350.81, 125.421	Regulated	Communications service may be offered upon notice and public hearing subject to detailed business plan and specific findings re: sustainability of plan. May not price below cost. Must keep separate books and conduct annual review. If not profitable after 4 years, must consider winding up or partnership. Must pay ad valorem taxes. Telecommunications service can be provided with a proper certificate and if accounting and nondiscrimination requirements are met.
5	Georgia	Ga. Code Ann. § 36-90-1 <i>et seq.</i>	Regulated	Cable service can be provided after notice to incumbents, detailed business plan provided to public. No cross-subsidization of costs allowed.
6	Idaho	Idaho Const. Art. VIII, Section 3	Regulated	Municipalities can only take on long-term debt required for telecommunications infrastructure investment with approval of 2/3 of voters.
7	Illinois	Public Act 95-0684 (2007)	Regulated	Broadband can be provided if certification received by Illinois Commerce Commission.
8	Iowa	Iowa Code § 388.10	Regulated	Telecommunications (voice, broadband, cable) can be provided, but no cross-subsidization allowed and all records and accounting must be open.
9	Louisiana	La. Rev. Stat. Ann. § 45:844.41 <i>et seq.</i>	Regulated	Cable and telecommunications services (voice, data, video, broadband) can only be offered after public hearing and detailed study or referendum. No cross-subsidies.
10	Michigan	Mich. Comp. Laws Serv. §§ 484.2252, 3114	Regulated	Telecommunications services ("transmission of 2-way interactive communication") can only be provided after public hearing. Accounting and non-discrimination requirements also imposed.
11	Minnesota	Minn. Stat. § 237.19	Regulated	Telephone exchange can be provided but referendum required before entrance of incumbent provider exists.
12	Missouri	Mo. Rev. Stat. § 392.410	Prohibited	No telecommunications services can be provided, except "Internet-type services." Telecommunications services means "transmission of information by wire, radio, optical cable, electronic impulses, or other similar means," but not cable TV or VoIP.

13	Montana	Mont. Code Ann. § 2-17-601 <i>et seq.</i>	Prohibited	No internet service can be provided, except in unserved areas.
14	Nebraska	Nev. Rev. Stat. §§ 86-575 to 577, 593 to 594	Partial Prohibition	No public entity, except public power utilities, may offer telecommunications service (“transmission, between or among points specified by the subscriber, of information of the subscriber’s choosing”). Municipalities may offer dark fiber.
15	Nevada	Nev. Stat. §§ 268.086, 710.147	Partial Prohibition	Telecommunications service (“transmission, between or among points specified by the user, of information of the user’s choosing”) prohibited for cities smaller than 25,000 and counties smaller than 50,000.
16	New Hampshire	N.H. Rev. Stat. Ann. § 33:3-g	Regulated	Municipality can only issue bonds for broadband infrastructure if request for proposals goes unanswered.
17	New Jersey	N.J. Rev. Stat. Ann. § 40:9D-1 <i>et seq.</i>	Regulated	Broadband telecommunications (voice, data, video) can be provided but detailed plan must be made public in advance. No cross-subsidization allowed; state contracting, wage, and accounting regulations still apply.
18	Ohio	Ohio Rev. Code Ann. § 1332.01 <i>et seq.</i>	Regulated	Cable and video services can only be offered after public hearing and detailed study or referendum. Strict accounting requirements apply.
19	Pennsylvania	Pa. Cons. Stat. § 3014	Prohibited	No local exchange telecommunications may be provided unless request to local exchange company is refused.
20	South Carolina	S.C. Code Ann. §§ 58-9-10, 2600	Regulated	Telephone service can be provided but no cross-subsidies and cost accounting restrictions apply. Must pay taxes. The South Carolina Supreme Court has held that municipalities are <u>not</u> authorized to offer cable. <i>Sheppard v. City of Orangeburg</i> , 442 S.E.2d 601 (1994).
21	Tennessee	Tenn. Code Ann. §§ 7-52-601 <i>et seq.</i> & §§ 7-52-401 <i>et seq.</i>	Regulated	Cable, video, broadband service can be provided after public notice and hearing and 2/3 vote of governing body (or referendum). Business plan required, separate division must be established to operate. Must pay taxes.
22	Texas	Tex. Util. Code Ann. § 54.201 <i>et seq.</i>	Prohibited	Municipality cannot offer any service for which certificate is required.
23	Utah	Utah Code Ann. § 10-18-101 <i>et seq.</i>	Restricted	Cable and telecommunications service (two-way transmission of voice, video, data) can be provided after public hearing and detailed study. No cross-subsidies allowed.
24	Virginia	Va. Code Ann. § 15.2-2108 <i>et seq.</i> , §§ 56-265.4:4, 484.7:1	Regulated	Cable and telecommunications service (two-way transmission of voice, video, data) can be provided after public hearing and detailed study. No cross-subsidies allowed, no service beyond municipal boundaries.
25	Washington	Wash. Rev. Code § 54.16.330	Restricted	Telecommunications service (“transmission of information by wire, radio, optical cable, electromagnetic, or other similar means”) can only be provided at wholesale or for internal needs

26	Wisconsin	Wisc. Stat. §§ 66.0420 <i>et seq.</i>	Regulated	Cable, video, and telecommunications (“voice, data or other information”) services can only be provided after hearing and detailed financial report, or referendum, unless area is unserved.
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MUNICIPAL TELECOMMUNICATIONS COMPETITION SUMMARY OF STATUTORY APPROACHES

Category of Regulation	Type	Description	States
<u>Prohibition</u>	Partial or Complete	Various options: (1) No service other than by power distributors [NE]; (2) No municipal service except in unserved areas [MT, CO]; (3) No telecommunications service, but internet service allowed [MO]; (4) Prohibition based on size of city [NV]; (5) Municipal service only on a wholesale basis [WA]	MO, MT, NE, NV, TX, WA
<u>Prerequisites to Entry</u>	Request for Proposals from Incumbents	Municipality must first to take proposals for service from incumbents, and can only offer service if incumbents refuse	CO, MI, MN, MT, NH, PA, WI
	Public Hearings and/or Notice	Notice and public hearing required to consider municipal proposal	AL, AR, FL, GA, LA, MI, MT, NJ, OH, TN, UT, VA, WI
	Feasibility Studies	Detailed study required to consider revenue projections, cost-benefit analysis, capital requirements	FL, GA, LA, NJ, OH, TN, UT, VA, WI
	Referendum	Referendum required (or permitted upon majority vote of board or petition of citizens)	AL, CO, ID, LA, MN, OH, TN, VA, WI
<u>Operating Regulations</u>	Service Area Limitations	Service (or some percentage of customers) must be within municipal borders	OH, UT, VA
	Separate Operating Entity	Formation of either non-profit or separate government division	IL, TN
<u>Financial Regulations</u>	Segregated Fund	Enterprise fund must be established with separate operating and capital budgets	LA, OH, UT, VA
	No Cross-Subsidies	No subsidization of municipal entity with general funds or other operating funds	AL, GA, IA, LA, NJ, SC, TN, UT, VA
	Bond Restrictions	Bonds must be funded from revenues from new service	AL, ID, LA, NH, NJ, UT, VA

Rate Restrictions	Rates must include an amount equal to all taxes, fees, and assessments that a private entity would have to pay	GA, IA, LA, MO, TN, UT, VA, WA, WI
Bookkeeping Requirements	Financial books must be open, an annual outside audit is required, separating accounting required	AL, FL, GA, IA, LA, MI, NV, NJ, OH, SC, TN, UT, VA, WA

Non-Discrimination

No Municipal Advantage	No financial or other benefits to municipal entities that are not available to private entities	CO, FL, GA, IA, LA, MI, MO, NV, OH, UT, VA, WA
No Governmental Coercion	Government cannot use governmental authority (zoning, permitting) to require subscribers to use service	FL
Taxes	Municipal entity must pay (or allocate amount equal to) taxes	FL, OH, SC, TN
Pole Attachment	No pole attachment discrimination in favor of municipal entity	GA, OH, TN

Others

Eminent Domain	Not available (or limited) to benefit municipal entity	AL, GA, LA, UT, VA, WA
Public Records/Open Meetings	State records and open meetings laws are all applicable to municipal entity	GA

TV BAND SERVICE

TVBS



@

 EUE/SCREEN GEMS STUDIOS

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**White Space Wireless Data Communications
Status Report**

Contact:
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December 14, 2009

White Space Briefing

The FCC-mandated transition from analog to digital television (DTV) began in September 2008 in the North Carolina city of Wilmington. After the transition a significant amount of spectrum remains unused in the TV Band. The FCC licensed some of this open TV Band spectrum in Auction 73, the highest grossing auction in the history of the U.S. Treasury. The remaining unused TV Band spectrum is often called "white space". In November 2008 the FCC adopted rules allowing unlicensed wireless communication within TV Band white space (Appendix 1).

The importance of the FCC's approval of unlicensed use of the white space (WS) lies in simple physics. Wireless signals in the TV Band frequencies propagate much further than signals in other frequency bands where unlicensed operation is permitted. Not only do signals in the TV Band travel longer distances, they also pass well through trees, buildings and structures. The FCC order explicitly highlights the benefits of unlicensed operation in the TV Band compared to unlicensed operation in other bands, "i.e., 2.4 and 5 GHz bands," which are the frequencies used by Wireless Fidelity (WiFi).

The TV Band Service WS test bed is located at the EUE/Screen Gems television and film complex in Wilmington, NC. The test bed will provide important support and contributions towards evaluating and developing wireless communications in this newly available spectrum. TV Band Service will use the test bed in part to evaluate the capabilities of the new systems and radios/devices being developed for WS operation. The FCC refers to these radios/devices as TV Band Devices (TVBD).

WS advocate companies are waiting to see if and when the FCC ratifies the final rules for TVBD certification and operation. The WS rules made in November 2008 were challenged by the TV broadcasters, manufacturers and users of wireless microphones and others. These organizations challenged the FCC WS rules because their equipment operates in the TV Band and they believe that TVBDs and public unlicensed communication in WS will cause interference to their transmissions. As of this writing the FCC is still considering how to respond to those challenges.

In the meantime, TV Band Service and its partners are moving ahead despite the regulatory uncertainty due to the potentially large benefits for communities, citizens, and the organizations that meet their needs. We feel it is worth the effort and risk. WS can help bring broadband to underserved communities in rural areas. In suburban and certain urban areas, WS can help realize a range of municipal and commercial "Smart City" and other enterprise applications. In both contexts WS offers a fresh solution to the challenges of effective and cost efficient wireless coverage that can potentially be a valuable supplement to existing wireless communication systems.

TV Band Service Current Test and Development Projects

WS technology is still in the early stages of development. There has already been “proof of concept” of WS technology. TV Band Service intends to use its testbed to evaluate questions about real-world “proof of performance” in WS wireless data communications.

We have been granted an FCC Experimental License (call sign WF2XBJ) centered at the EUE/Screen Gems Studio complex (EUE) having a wireless footprint of 2 km. We refer to this license area as EL #1 (Map #1). TV Band Service has applied for a second FCC Experimental License referred to as EL #2. This license is centered at EUE with a wireless footprint of 20 miles (Map EL #2).

TV Band Service (TVBS) will run the following test applications in Wilmington, NC within EL #1:

- **SIGNAL PENETRATION**: TVBS will conduct a series of tests to evaluate and determine the structural penetration characteristics of signals in the TV Band for use within buildings, etc.
- **PARK & RECREATION SUPPORT**: TVBS will operate a wireless video camera at a chosen park location for public web monitoring and viewing purposes. TVBS will also provide a WiFi hotspot in the park for staff and public wireless internet service. In addition, TVBS will test remote control of park lighting.
- **TRAFFIC MONITORING**: TVBS is working with the NC DOT to operate a strategically located wireless camera for traffic monitoring and cost/benefit evaluations.
- **ENVIRONMENTAL MANAGEMENT**: TVBS will evaluate the use of WS technology for controlling certain sensing, monitoring and mitigation systems for water management.

TVBS intends to test and develop additional applications in its EL #1 and EL #2 areas as more strategic partners and alliances are added. Some general applications are obvious, such as educational and school support, “smart grid” and electrical conservation, health and medical telemetry, greater environmental management capabilities, heavy infrastructure maintenance and evaluation and other applications. Specific application ideas will come directly from those who can benefit from WS technology. TVBS is an open enterprise and will work in the spirit of the FCC WS rules to cooperatively participate in the development of new and innovative wireless services.

FCC WHITE SPACE EXCERPT

"In this Second Report and Order, we adopt rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed —"white spaces"). This action will open for use a significant amount of spectrum with very desirable propagation characteristics that has heretofore lain fallow. These new rules will allow the development of new and innovative types of unlicensed devices that provide broadband data and other services for businesses and consumers without disrupting the incumbent television and other authorized services that operate in the TV bands. In addition, because transmissions on frequencies in the TV bands are less subject to propagation losses than transmissions in the spectrum bands where existing low power broadband unlicensed operations are permitted, *i.e.*, the 2.4 GHz and 5 GHz bands, we anticipate that allowing unlicensed operation in the TV bands will benefit wireless internet service providers (WISPs) by extending the service range of their operations. This will allow wireless broadband providers that use unlicensed devices to reach new customers and to extend and improve their services in rural areas. We anticipate that allowing use of the TV white spaces by unlicensed devices will have significant benefits for both businesses and consumers and thereby promote more efficient and effective use of the TV spectrum. "

Federal Communications Commission

FCC 08-260

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Unlicensed Operations in the TV Broadcast Bands

ET Docket No. 04-186

Additional Spectrum for Unlicensed Devices
Below 900 MHz and in the 3 GHz Band

ET Docket No. 02-380

SECOND REPORT AND ORDER AND
MEMORANDUM OPINION AND ORDER

Adopted: November 4, 2008

Released: November 14, 2008

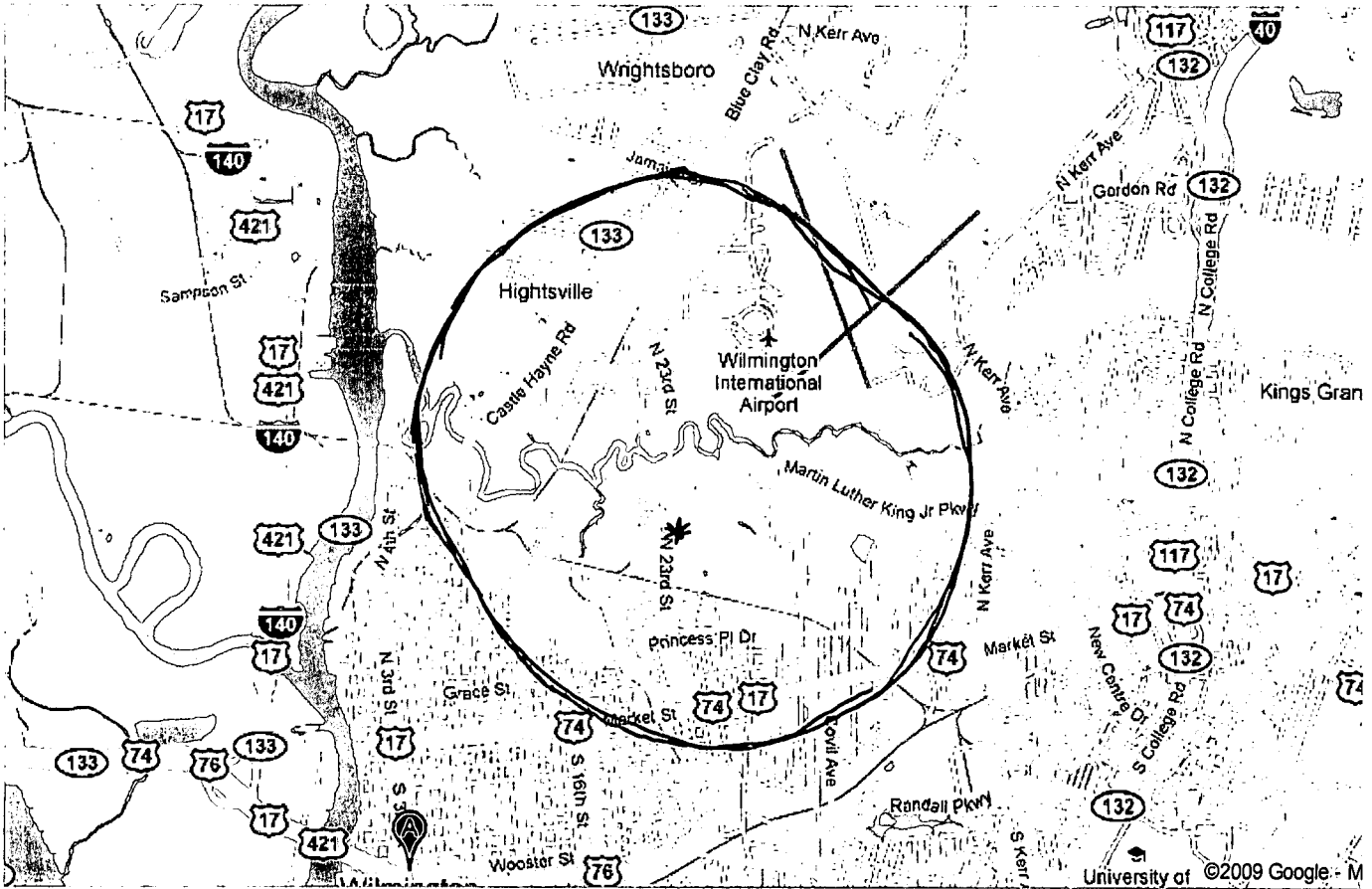


Spokesperson Profile

John Chapin is a visiting scientist in the Claude E. Shannon Communication and Network Group at the Research Laboratory of Electronics of MIT, and is Chief Technology Officer to TV Band Service LLC. He spent 9 years in technical leadership roles at Vanu, Inc., a provider of SDR based cellular radio access networks. His work there on SDR and cognitive radio earned multiple awards including IEEE DYSPAN best paper, SDR Forum best paper, and SDR Forum Industry Achievement Award. Prior to Vanu he was on the faculty of the EECS department of MIT, where his research earned the Presidential Early Career Award for Scientists and Engineers (PECASE). He served as chairman of the SDR Forum from 2007 to 2009. He earned his Ph.D. degree in Computer Science from Stanford University in 1997.

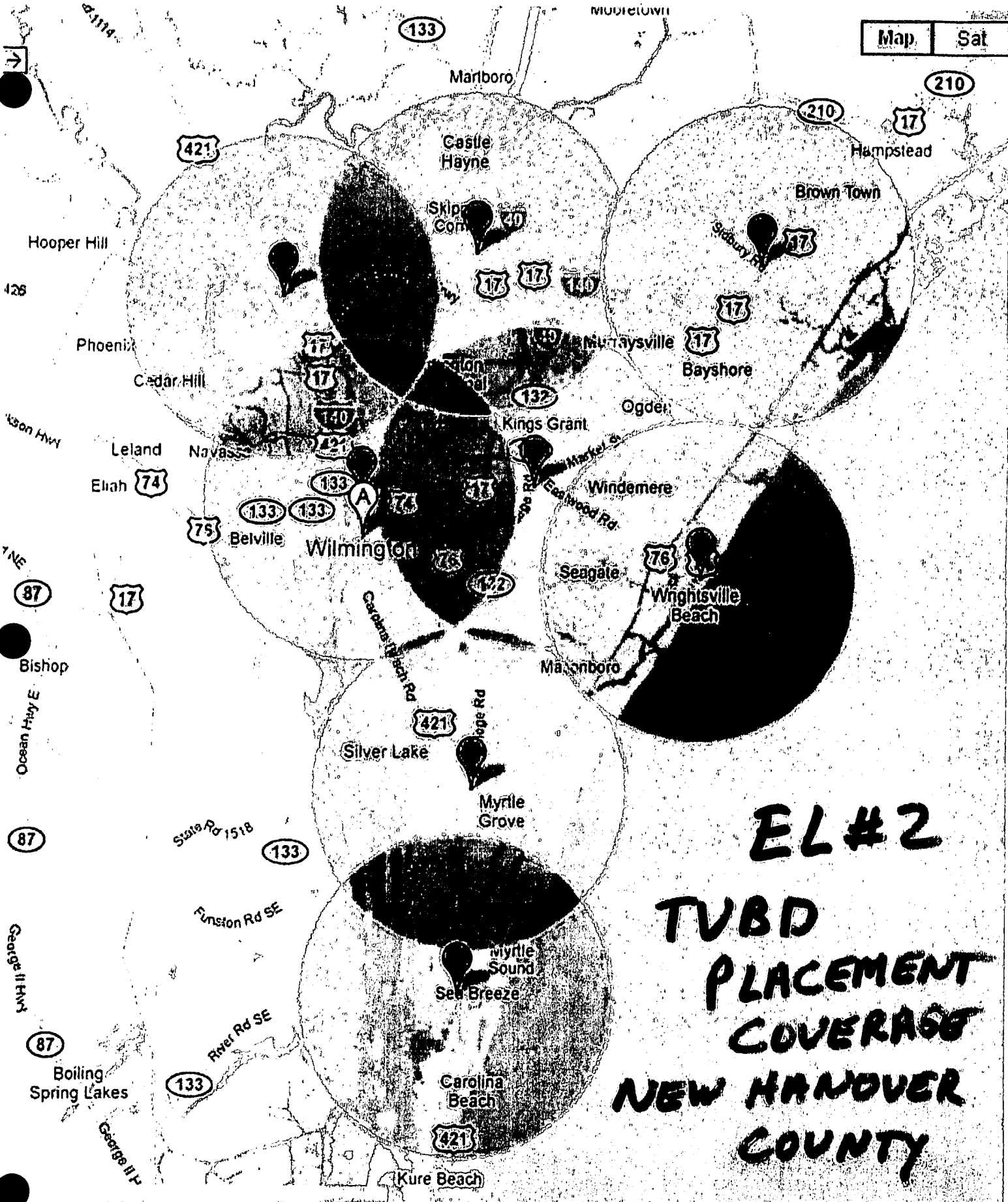


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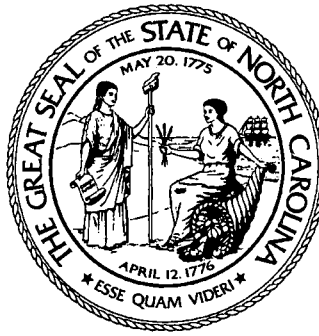


**APPROXIMATE EL #1
FOOTPRINT**

- * = EVE/SCREEN GEMS
- TVBD COVERAGE ON STUDIO #8



EL#2
TVBD
PLACEMENT
COVERAGE
NEW HANOVER
COUNTY



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Tuesday, January 26, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Tuesday, January 26, 2010, in Room 544 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Phillip Haire, Earl Jones, Thom Tillis, Joe Tolson, and Roger West. Staff in attendance: Brenda Carter, Barbara Riley, Steve Rose, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Tom Wilder, Frank Prevo, Earl Croker and Judy Turner. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 and 2*)

The Chairman called the meeting to order and introduced the Sergeant of Arms. Chairman Faison introduced our first presenter of the day, Joe Freddoso from MCNC. Mr. Freddoso spoke about the Vision of Broadband Recovery:

Joe Freddoso (President and CEO, MCNC) were recognized to present to the committee. Mr. Freddoso's presentation is attached. (*Attachment 3*) Below are some key points:

- MCNC operates the North Carolina research and education network (NCREN) the main objective is to provide broadband intranet and internet to k-12 thus creating the k-20 network. NCREN's objective it to connect all public education in North Carolina. Currently connected 24,000 k-12 school houses and all the university systems are subscribers to NCREN.
- North Carolina has been the national leader in private/public technology partnership over time for example creating the Information Technology System (ITS), NC Internet Highway (NCIH) and the Education Network (NCREN).
- A Broadband working group was created to determine comprehensive assessment of need and implement strategy. The Strategy is to: Increase uptake where infrastructure is in place; Expand Public Middle Mile options to rural areas; Service education where necessary; Encourage investment from private sector providers; and encourage Local and Regional Innovation to reach the last mile.
- North Carolina lacks in some areas both middle mile infrastructure and last mile infrastructure and the biggest deterrent for last mile pricing and adoption, so they thought to build out a middle mile. Middle Mile being the core part of there strategy.

- Middle Mile Process consisted of:
 - ITS and MCNC's backbone structure which is limited to serving Education, Government Agencies and Supporting Government Services
 - Build-out fiber in rural areas with private partners because providers have consistently said middle mile fiber is not available for lease in these areas.
 - The need to build middle mile to keep prices stable for education
 - MCNC and FRC –PalmettoNet provided matching and funds for public build out
- MCNC Update
 - Application filed 8/17 (due 8/20) for first round
 - Private partner put up an equal match to MCNC
 - Received 31 pages of Private Sector Objections, Over 80% of proposals like MCNC's got objections

1/20/10 MCNC Application on behalf of the State of North Carolina was awarded \$28.2M

After Joe Freddoso presentation Chairman Faison opened the floor for questions and then introduced our second speaker Jane Patterson. Mrs. Patterson spoke on e-NC updates.

Jane Smith Patterson (Executive Director, E-NC Authority) was recognized to present to the committee. (*Attachment 4*) Below are some key points of her presentation:

- State Broadband Data & Development Grant was awarded to e-NC: October 5, 2009. The Project NC BRIM (North Carolina Broadband Rigor in Mapping) was awarded \$1,589,077 over 2 years, with possible additional funding for 3 more years for mapping and \$434,799 over 5 years for planning.
- The method of data collection for NC BRIM comes from: Broadband Service Providers, Data Mining/Web-Crawling, Broadband Consumer Survey, and Wireless Propagation/GIS Modeling.
- NC BRIM's Status:
 - Contracts for research oversight (ECU) and four external evaluators are being finalized.
 - Technical Advisory Group will begin meeting in February 2010.
 - Data Confab is to be held at the end of March 2010.
 - The NTIA postponed the Mar 1, 2010 data collection deadline to Mar 31, 2010.
- NC Telehealth Network
 - Bandwidth and speed requirements for healthcare increasing rapidly.
 - NCTN assists 210 public health agencies and free clinics obtain broadband
 - Leverages \$6 Million for building and operating networks -FCC's Rural Health Care Pilot Program
 - In planning -additional phases to fully build out system to hospitals & providers
- Smart Meters & Broadband initiative to investigate connections between Smart Metering and Broadband among those involved.

After Jane Patterson's presentation Chairman Faison opened the floor for questions and then introduced John McHugh.

John McHugh (Policy Analyst, Office of Economic Recovery & Investment) was recognized to update the committee on what the Governors Broadband Mapping review committee is. Below are some key points:

- The Governors broadband mapping review committee was established as part of the management agreement between the state of North Carolina and e-NC when e-NC was established as NC mapping entity for the BTOP program.
- The charge of the committee is to review the needs assessment both the methodology and eventual results of the process.

Oppie Jordan (Vice President, Carolinas Gateway Partnership) was recognized to present to the committee. Below are some key points:

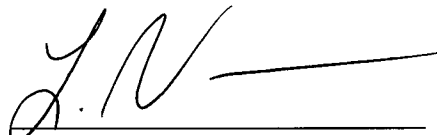
- Infrastructure is when an industry is looking to expand or for a new industry to come to town. The infrastructure us to be water and sewer. Telecommunications is crucial.
- When major companies are shopping for location they ask what the broadband capability is the area, and that is par of the process of elimination.
- Local towns do not have the means to go after Federal grants, so it behooves the County to partner with others.

After the presentations for the day Chairman Faison moved on to the discussion of potential committee legislation: **BILL DRAFT 2009-LR-124 [v.11]** - ACT to encourage the creation of cooperatives for the provision of high speed internet access FOR expanded broadband in North Carolina. (*Attachment 5*) Chairman Faison opened the floor for questions or comments the proposed legislation was not acted upon.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

Tuesday, January 26, 2009

10:00 AM

Room 544 LOB

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Guest Speakers

- **MCNC (20 Min)**
Joe Freddoso, President and CEO
 - MCNC and the partnership with the North Carolina School Connectivity Program - Update
 - BTOP status for MCNC – Update
- **E-NC Authority (20 Min)**
Jane Smith Patterson, Executive Director
- **Office of Economic Recovery & Investment (10 Min)**
John McHugh, Policy Analyst
 - Update on the Broadband mapping efforts.
- **Carolinas Gateway Partnership (20 Min)**
Oppie N. Jordan, Vice President
- **Discussion of Potential Committee Legislation (30 Min)**

4. Adjourn

VISITOR REGISTRATION SHEET

High Speed Committee on High Speed Internet Access 11/26/10
 Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Morris Trotter	Brooks Pierce
Octavia Rainey	
Chris Hollis	TSS
Michelle Frazier	Manning Fulton
Brad Phillips	TWC
Cynthia Shew	CWA.
Tom Colby	CWA
Annette Newkirk	Governor's Office
Connie Wilson	NTCA
Ed Schultz	Brooks Pierce
Dan Higgins	BWS, WAI, P... ..

VISITOR REGISTRATION SHEET

1/26/10

House Select Committee on High Speed Internet Access in Rural + Urban areas
 Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Dudley	Palmettonet/FRC - Charlotte
Allison Cuper	RRW Attorneys / City of Wilson
CHARLES PITTMAN	E-NC AUTHORITY
Dawn Meeton	Stanly County
Myra Best	Governor's office
Bo Heath	McGuire Wood
L. Andrews	NC FFB
Kelli Kukua	League of Municipalities
DONG PARIS	CITY OF SALISBURY
Lee Wosby	Catawba County
Dwight Allen	Atkinson, PLLC

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

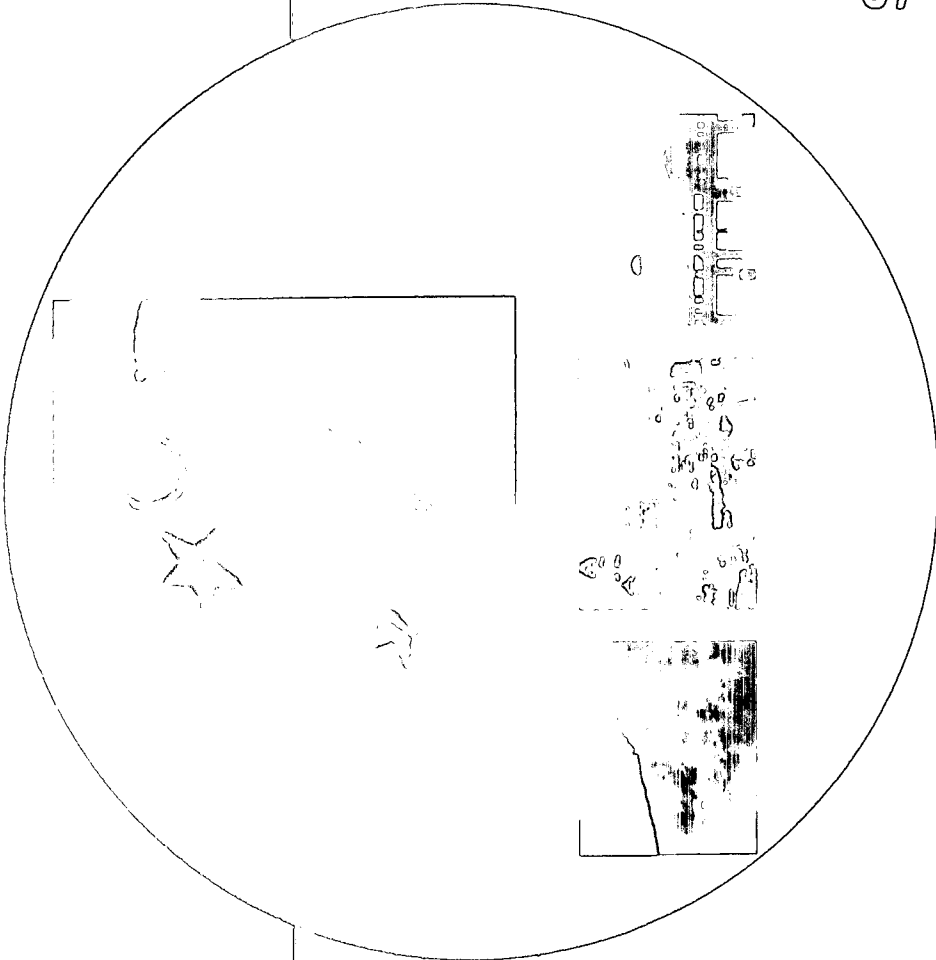
FIRM OR AGENCY AND ADDRESS

Britton - Allen	Allen Law Offices, PLLC
Stan Pace	Verizon
Tramell Alexander	Verizon
Bill Stice	Town of Cary
Jim Blackburn	NCACC
David Johnson	" "
Ken Melton	K.M.A.
David Jones	P.W.C of the City of Fayetteville
Wendy Kelly	NMRS
Lorrie Turner	T-Mobile

Vision for Broadband Recovery

January 26, 2010

House Select Committee On High
Speed Internet Access in Rural and
Urban Areas



Since we last talked

- Broadband Recovery Program
- MCNC asked to coordinate and fund middle mile application
- Public/Private partnership
- Invested Over \$300K of MCNC funds

Vision

- Broadband working group
- Individual meetings
- State Technology Entities
 - Office of Economic Recovery
 - NC Office of Information Technology Services
 - eNC Authority
 - MCNC
- Golden LEAF

Key Factors

- National leader in private/public technology partnership
 - ITS
 - NCIH
 - NCREN
 - eNC
- Economic Vitality and Social needs
 - North Carolina economy is fragile
 - Workforce preparation for digital age
 - Global competition/Off-shoring
 - Rural population
 - Citizen health
- Broadband
 - Foundational Infrastructure for transition to digital age
 - Accelerate progress with broadband stimulus

Strategy

- Comprehensive assessment of need
- Increase uptake where infrastructure is in place
- Expand Public Middle Mile options to rural areas
 - Service education
 - Investment from Private Sector Providers
- Local and Regional Innovation to reach the last mile

Benefits to local areas

- Mapping – Defines Need
- Increase uptake-More incentive to deploy
- Middle mile-
 - Less Costly Middle Mile=More competition in last mile
 - More robust connectivity for Community Anchor Institutions (Schools, Libraries, Government and Non-profit healthcare) at stable prices
- Last mile – More competition incumbents and CLECs

Assessment of Need

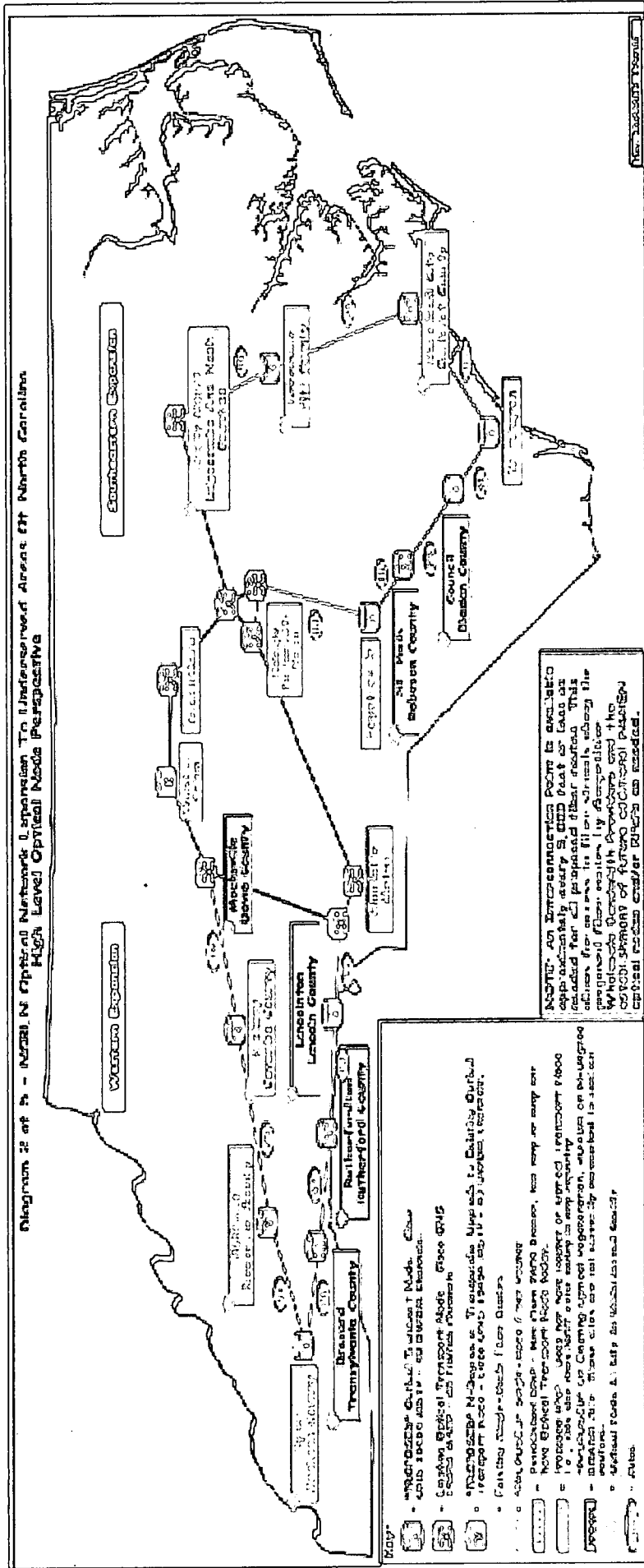
- Multi-Modal Mapping
- Web Analysis Tools
- Boots on the Ground
 - Block by Block Census of Households
 - Predictive GIS
- Connected Nation and eNC
- Effort led by eNC
- Received award of \$2.3M in October 2009
- MCNC can attest to need after stimulus application

Middle Mile Process

- ITS and MCNC Backbone
 - Limited to serving Education, Government Agencies and Supporting Government Services
- Build-out fiber in rural areas with private partners
 - Providers have consistently said middle mile fiber is not available for lease in these areas
 - Gave providers 90 days to partner with MCNC – FRC/PalmettoNet did
 - Need to build middle mile to keep prices stable for education
- Private portion used for consumer/commercial services
 - Other Stimulus Projects in Energy and Healthcare
- MCNC Provided Matching Funds for Public build

Middle Mile Span

Diagram 2 of 3 - North Carolina Network Expansion To Interconnect Areas of North Carolina
 HIGH LEVEL OPTICAL NEEDS PERSPECTIVE



Key:

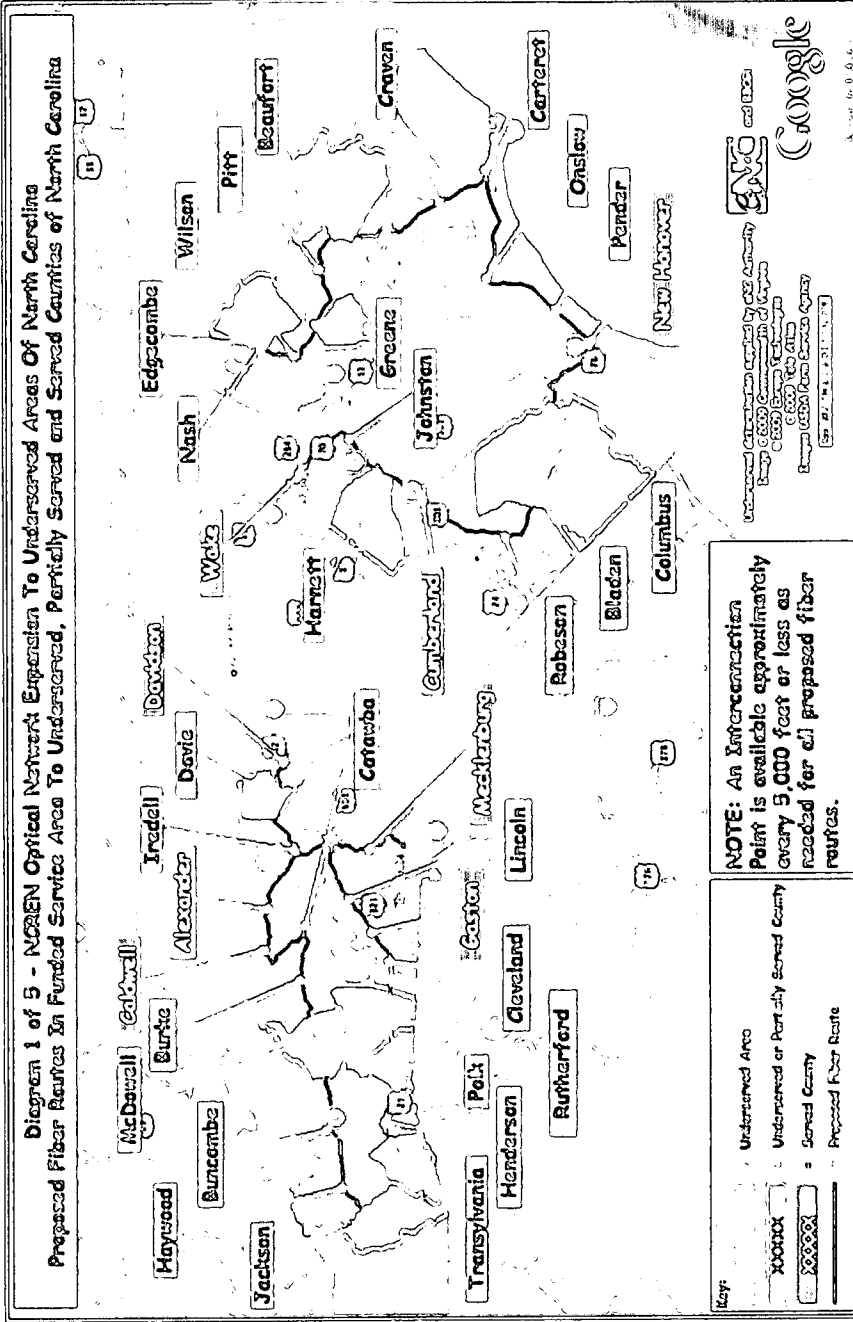
- Interconnect Point - An interconnection point is established at approximately every 5,000 feet or less as indicated for all proposed fiber routes. This allows for access to fiber services, where the proposed fiber routes are established by the provider.
- Optical Needs - Optical needs are indicated by the color-coded areas on the map.
- Fiber Routes - Fiber routes are indicated by the solid lines on the map.
- Interconnect Points - Interconnect points are indicated by the small circles on the map.
- Optical Needs - Optical needs are indicated by the shaded areas on the map.
- Fiber Routes - Fiber routes are indicated by the solid lines on the map.
- Interconnect Points - Interconnect points are indicated by the small circles on the map.
- Optical Needs - Optical needs are indicated by the shaded areas on the map.

NOTE: An interconnection point is established at approximately every 5,000 feet or less as indicated for all proposed fiber routes. This allows for access to fiber services, where the proposed fiber routes are established by the provider.

Middle Mile Build

Underserved
 Total:
 Beaufort
 Bladen
 Columbus
 Davie
 Edgecombe
 Greene
 Harnett
 Jackson
 McDowell
 Polk
 Rutherford
 Transylvania

Underserved
 Partial:
 Carteret
 Craven
 Johnston
 Onslow
 Pender
 Roberson
 Buncombe
 Catawba
 Cleveland
 Haywood
 Iredell
 Lincoln



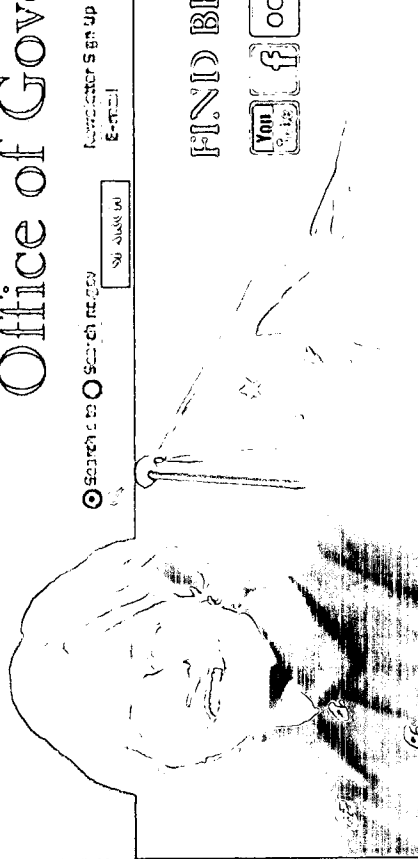
Update

- Application filed 8/17 (due 8/20) for first round
- Existing mapping data was not adequate
- Spent about \$50K of MCNC funds to get better data
- Ranked #1 by the state
- Congressional delegation issued strong support statement
- Private partner put up equal match to MCNC
- Opened the process to all Service Providers
- Kept them briefed throughout
- Received 31 pages of Private Sector Objections (11/11)
- Some just supply wireless 3G @ \$60 month
- MCNC application reduces middle mile costs
- NTIA leaders – “Service provider objections not a sole determining factor in awards”
- Over 80% of proposals like MCNC’s got objections

Update

○ 1/20/10 - MCNC APPLICATION ON BEHALF OF THE STATE OF NC Awarded \$28.2M

Office of Governor Bev Perdue STATE OF NORTH CAROLINA

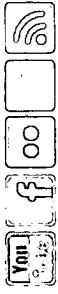


SEARCH BY SEARCH HISTORY SEARCH BY DATE SEARCH BY EMAIL

NO LINK BUDDY

- HOME
- FIRST FAMILY
- NEWS ROOM
- eTOWNHALL
- GOVERNOR'S OFFICE
- HISTORY AND CULTURE
- PUBLIC SERVICE

FIND BIVON



Press Release

1/20/2010
Raleigh

Contact:
Chrissy Pearson
(919) 733-5612

Gov. Perdue Announces North Carolina Receives \$28.2 Million in Broadband Recovery Funding

Now 480-mile fiber-optic network will create more than 230 jobs

Gov. Perdue today announced that MCNC has received \$28.2 million in broadband funding through the American Recovery and Reinvestment Act (ARRA) to build a 480-mile fiber-optic network for the North Carolina Research and Education Network (NCREN). The design, construction and operation of the network are estimated to create more than 230 engineering and construction jobs. In addition, the network has the potential to serve more than 1,500 school and community institutions, 180,000 businesses and more than 300,000 underserved families.

- Press Releases
- Photo Gallery
- Video/Audio
- Executive Orders
- Pledgements
- Executive Order Archive 2001-2003
- Calendar
- Social Media

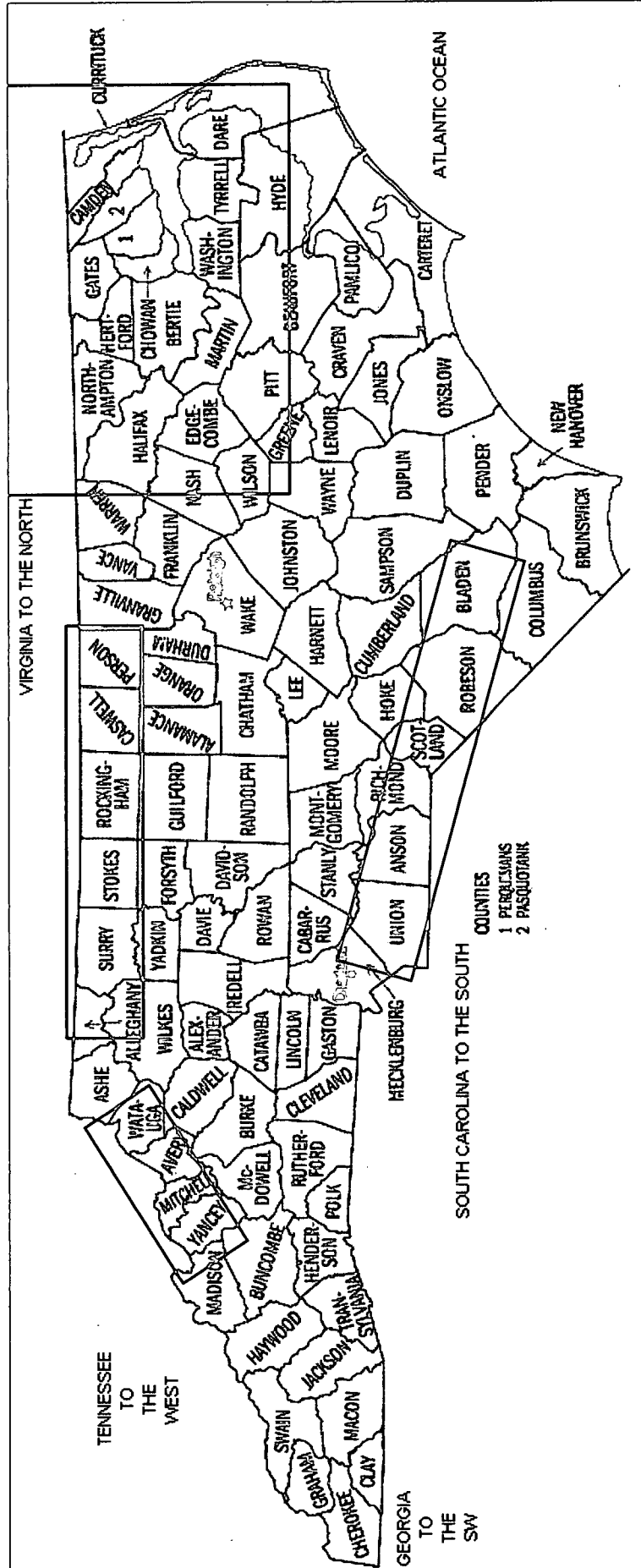
What they are saying:

- "MCNC is doing a great public service through their efforts to help bridge the digital divide among our communities," Rep. David Price said. "MCNC's project ensures that North Carolina's broadband infrastructure will remain a strong foundation for the state's 21st century economy by enhancing the state's capacity for collaborative research, development, education, and innovation. It also provides further evidence that the Recovery Act is meeting the needs of American families."
*North Carolina
Congressman David Price*
- "What an incredible victory this is for the citizens of North Carolina! I am grateful that our work over the last year will ensure that dedicated money is available for broadband expansion and improvement in this country. Now, North Carolinians are going to see their tax dollars come home to work for them. Broadband can be the great equalizer in business, education, and healthcare. I commend MCNC for putting forward such a strong application."
North Carolina Congressman Mike McIntyre
- "This grant will help keep our rural communities in North Carolina vibrant," said Hagan. "Small businesses, workers, students and families will all benefit from increased access to broadband technology. Today's grant is a perfect example of how the Recovery Act is investing in our communities to modernize infrastructure and create jobs. In particular, I am thrilled to see that this money will connect all of North Carolina's 58 community colleges, community health centers and public computer centers – giving them the 21st century tools they need to better educate our students and allow our communities to grow and thrive."
North Carolina Senator Kay R. Hagan
- "This is terrific. It will make a substantial difference in the economic future of NC."
Erskine B. Bowles, President, University of North Carolina System
- Congratulations on this fabulous news!
Jennifer Weiss, NC House 35

Recommendations

- Stop dealing from scarcity – Public/Private middle mile
- Use longer term subsidies
 - Bertie County
 - Life line link up
- Aggressive plan for round 2 stimulus
 - Market fibers at $\frac{1}{2}$ to $\frac{1}{4}$ the price of existing middle mile
 - Seed applications off the middle mile
 - Focus on areas of the state still underserved
 - Northeast
 - Charlotte to Wilmington
 - Northwest
 - North Central

Round 2





The e-NC Authority Update

**January 2010
Jane Smith Patterson
Executive Director
The e-NC Authority
www.e-nc.org**

UPDATE ON ACTIVITIES DEC-JAN

- BRIM ACTIVITIES: NC Speed Test
- NCTN NC TELEHEALTH NETWORK
- SMART METERS & BROADBAND DEPLOYMENT
– Senator Queen Committee
- COUNTY REQUESTS
- CITIZEN REQUESTS
- BTOP-2: MIDDLE MILE; PUBLIC COMPUTER CENTERS; LAST MILE AND LIFELINE ONLINE
- BTTS & SMART FARMERS TO MARKET

State Broadband Data & Development Grant

Awarded to e-NC: October 5, 2009

Project: **NC BRIM** (North Carolina Broadband Rigor in Mapping)

- Mapping – award of \$1,589,077 over 2 years, with possible additional funding for 3 more years
- Planning – award of \$434,799 over 5 years



NC BRIM Data Collection Elements

Data Collection Methods

- Service Provider Data from Broadband Service Providers
- Service Provider Data through Data Mining/Web-Crawling
- Broadband Consumer Survey – Local Level
- Plus, Wireless Propagation/GIS Modeling

Additional collection under the Planning piece:

- Citizen Surveys (3 surveys over 5 years)
- Survey analysis of broadband adoption and strategic gaps



Current Status of Project

Dec 1, 2009: e-NC Commission approved framework for contracted services related to project

Dec 09–Jan 10: Five Requests for Proposals released, submissions received and evaluated

Jan – Feb 10: Agreements for all contracted services finalized



Requests for Proposals Released and Received

- Web-Enabled Data Mining for Collection of Broadband Data for e-NC
- Collecting Broadband Data at the Consumer Level
- Database Development and Maintenance for e-NC
- GIS Mapping/Hosting for e-NC
- Survey Analysis of Broadband Adoption and Strategic Gaps (Planning)



Contracted Services for NC BRIM (Sub-Recipients for NTIA Award)

Data Collection

- Service Provider Data through Data Mining/Web-Crawling (successful bidder selected, contract being finalized)
- Broadband Consumer Survey – Research Methodology & Oversight (UNC-Chapel Hill, Kenan Institute)
- Broadband Consumer Survey – Local Level (2 successful bidders selected, contracts being finalized)
- Wireless Propagation/GIS Modeling (UNC-Greensboro)
- Database Development & Hosting (successful bidders selected, contracts being finalized)

Mapping

- GIS Mapping Company (successful bidder selected, contract being finalized)

Planning:

- Citizen Surveys (East Carolina University)
- Survey analysis of broadband adoption and strategic gaps (successful bidder selected, contract being finalized)



Status Update Continued

- Contracts for research oversight (ECU) and four external evaluators are being finalized.
- Technical Advisory Group will begin meeting in February 2010.
- Data Confab is to be held at the end of March 2010.
- The NTIA postponed the Mar 1, 2010 data collection deadline to Mar 31, 2010.



NC TELEHEALTH NETWORK

- Bandwidth and speed requirements for healthcare increasing rapidly.
- NCTN assists 210 public health agencies and free clinics obtain broadband
- Leverages \$6 Million for building and operating networks -FCC's Rural Health Care Pilot Program
- In planning - additional phases to fully buildout system to hospitals & providers be



SMART METERS & BROADBAND

INITIATIVE TO INVESTIGATE
CONNECTIONS BETWEEN SMART
METERING AND BROADBAND

AMONG THOSE INVOLVED

- ELECTRICAL COMPANIES
- ELECTRIC COOPERATIVES
- TELECOMMUNICATIONS COMPANIES



BTOP 2

Freddoso Presentation Middle Mile

Potential Other Apps

Public Computer Center Omnibus Request

Last Mile Statewide

Lifeline Online

Staff Support for OERI BTOP 2 Review



EVERYDAY REQUESTS

- CITIZEN REQUESTS
- LOCAL GOVERNMENT REQUESTS FOR AID (30)
- BUSINESS REQUESTS FOR ASSISTANCE
- BTOP APPLICANTS
- FEDERAL AGENCIES---FCC, NTIA, GAO, ETC.



BTTS – A GREAT SUCCESS

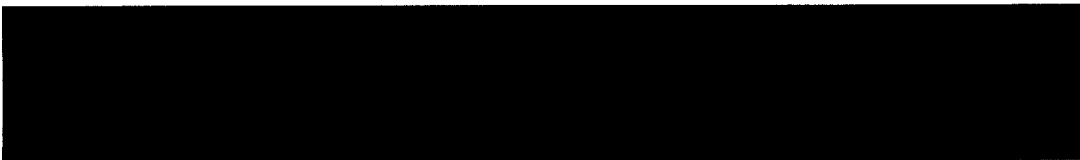
SMART FARMERS PROGRAM
NATIONAL BEST PRACTICE (9)
PURPOSE AWARD TIM WILL



STAFF RESOURCES STRESSED

- FIRST STATE AUTHORITY FOR BROADBAND-EST. BY LEGISLATURE
- OPERATIONS STARTED 1-2001
- STATE FUNDS FOR STAFF <\$495,000
- FEDERAL FUNDS FROM BTOP \$2.023.874
- MONEY RESERVE DOWN TO \$0 IN JULY
- 5 FULL TIME AND 3 PART-TIME STAFF
- 15 GREAT BOARD MEMBERS





*Connecting
North Carolina
to a Better Future*

The e-NC Authority
4021 Carya Drive, Raleigh
1-866-627-8725
www.e-nc.org



Resolution of the e-NC Authority Board

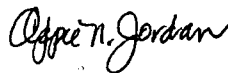
Meeting in Rocky Mount, North Carolina

January 13, 2010

Broadband access is a critical issue for the economic competitiveness and social well being of all North Carolina citizens. The e-NC Authority reaffirms its position taken in the January, 2009 document, ***Capturing the Promise: A 10-year Action Plan Using Broadband Internet to Increase North Carolina's Competitiveness and Sustainability in the Global Economy, page 6***

Commitment to Competitive Infrastructure: Currently deployed infrastructure will only suffice for a short term. The state of North Carolina must support high-capacity deployment while understanding the need to utilize what is currently available. The need for provisioning of competitive broadband service should be met by the private sector. However, local governments should have the right to offer broadband services when the service available does not meet the needs of the local community.

In further interpretation of this statement, the State of North Carolina should make no restriction to the provision of broadband by any nonprofit or local governments.



Oppie N. Jordan, Chair of the e-NC Authority

H

D

BILL DRAFT 2009-LR-124 [v.11] (01/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

1/20/2010 2:29:37 PM

Short Title: Expand Broadband Through Cooperatives. (Public)

Sponsors: Representative Faison.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE CREATION OF COOPERATIVES FOR THE
PROVISION OF HIGH SPEED INTERNET ACCESS FOR EXPANDED BROADBAND
IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 68 of the General Statutes is amended by adding a new Article to read:

"Article 45.

"High Speed Internet Access Cooperative Act.

"§ 66-390. Title.

This Article may be cited as the "High Speed Internet Access Cooperatives Act.

"§ 66-391. Definitions.

(a) The following definitions apply in this Article:

- (1) Agreement. – The bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.
- (2) Board. – The High Speed Internet Access Cooperative Board established by the Article.
- (3) Broadband. – As defined by G.S. 62-3(1).
- (4) Contract. -- The total legal obligation resulting from the parties' agreement as affected by this Article and other applicable law.
- (5) Governmental agency. -- An agency, department, board, commission, authority, institution, or instrumentality of North Carolina, the federal government, or of a state or of a county, municipality, or other political subdivision of government.
- (6) High speed internet expansion transaction. -- An action or set of actions occurring between two or more persons relating to the expansion of broadband in North Carolina.
- (7) Member. – A member of a high speed internet access cooperative.
- (8) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.
- (9) Public utility. – As defined by G.S. 62-3(23).



1 **(b)** The word "State" means the State of North Carolina; "state" means (i) any other
2 state, of the United States, the District of Columbia, Puerto Rico, the United States Virgin
3 Islands, or any territory or insular possession subject to the jurisdiction of the United States;
4 and (ii) an Indian tribe or band, or Alaskan native village, which is recognized by federal law or
5 formally acknowledged by North Carolina or any state.

6 **"§ 66-392. Purpose.**

7 The purpose of this Article is to encourage local businesses, communities, and
8 governmental agencies to work together toward the creation of member-owned and operated
9 cooperatives to enter into high speed internet expansion transactions and related activities to (i)
10 provide universal access to fiber optic networks across North Carolina, (ii) further economic
11 development, and (iii) contribute to improved health care, education and government services.

12 **"§ 66-393. High speed internet access cooperatives.**

13 **(a)** A high speed internet cooperative may be formed by agreement between two or
14 more persons or governmental agencies to enter into contracts for high speed internet
15 expansion transactions to advance expanded broadband in this State.

16 **(b)** A high speed internet cooperative is not a public utility.

17 **(c)** The members of a high speed internet access cooperative may include one or more
18 states or one or more political subdivisions of a state.

19 **"§ 66-394. High Speed Internet Access Cooperative Board.**

20 **(a)** There is established the High Speed Internet Access Cooperative Board. The Board
21 shall:

22 **(1)** Assist in the deployment of broadband communication infrastructure in the
23 State.

24 **(2)** Cooperate with public, private, and nonprofit entities to obtain, coordinate,
25 and disseminate resources for the establishment of broadband
26 communication services in the State.

27 **(3)** Review and approve the disbursement of funds available from State, federal,
28 and private financial resources that may be provided to the Board to assist
29 the establishment of broadband communication services in the State.

30 **(4)** Maintain a record of broadband deployments by high speed internet access
31 cooperatives in the State.

32 **(5)** Report annually to the Governor and to the General Assembly by June 30.

33 **(6)** Perform other functions that are consistent with the purposes of this Article.

34 **(b)** The Board shall consist of nine voting members, each to serve two-year terms and
35 to be appointed as follows:

36 **(1)** Three members appointed by the Governor.

37 **(2)** Three members appointed by the Speaker of the House of Representatives.

38 **(3)** Three members appointed by the President Pro Tempore of the Senate.

39 The Secretary of Commerce, the State Chief Information Officer, and the Chair of North
40 Carolina Utilities Commission shall serve as ex-officio, non-voting members.

41 **(c)** The Speaker of the House of Representatives and the President Pro Tempore of the
42 Senate shall each appoint a cochair for the Board. The appointing authority shall fill vacancies.
43 Board members shall serve without compensation but may receive travel and subsistence as
44 follows:

45 **(1)** Board members who are officials or employees of a State agency or unit of
46 local government, in accordance with G.S. 138-6.

47 **(2)** Board members who serve in the General Assembly, in accordance with
48 G.S. 120-3.1.

49 **(3)** All other board members at the rate established in G.S. 138-5.

50 **(d)** The Board shall be organized within the Department of Administration for
51 budgetary and administrative purposes. The Department of Commerce and the Office of

1 Information Technology Services shall provide technical support services to the Board, as
2 requested."

3 **SECTION 2.** This act is effective when it becomes law.

§ 62-3. Definitions.

As used in this Chapter, unless the context otherwise requires, the term:

- (1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision.
- (1a) "Broker," with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.
- (1b) "Bus company" means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.
- (2) "Certificate" means a certificate of public convenience and necessity issued by the Commission to a public utility or a certificate of authority issued by the Commission to a bus company.
- (3) "Certified mail" means such mail only when a return receipt is requested.
- (4) "Charter operations" with regard to bus companies means the transportation of a group of persons for sightseeing purposes, pleasure tours, and other types of special operations, or the transportation of a group of persons who, pursuant to a common purpose and under a single contract, and for a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.
- (5) "Commission" means the North Carolina Utilities Commission.
- (6) "Common carrier" means any person, other than a carrier by rail, which holds itself out to the general public to engage in transportation of persons or household goods for compensation, including transportation by bus, truck, boat or other conveyance, except as exempted in G.S. 62-260.

- (7) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or household goods or any class or classes thereof for compensation, whether over regular or irregular routes, or in charter operations, except as exempted in G.S. 62-260.
- (7a) "Competing local provider" means any person applying for a certificate to provide local exchange or exchange access services in competition with a local exchange company.
- (8), (9) Repealed by Session Laws 1995, c. 523, s. 1.
- (9a) "Fixed route" means the specific highway or highways over which a bus company is authorized to operate between fixed termini.
- (10) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.
- (11) "Franchise" means the grant of authority by the Commission to any person to engage in business as a public utility, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes certificates, and all other forms of licenses or orders and decisions granting such authority.
- (12) "Highway" means any road or street in this State used by the public or dedicated or appropriated to public use.
- (13) "Industrial plant" means any plant, mill, or factory engaged in the business of manufacturing.
- (14) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.
- (15) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.
- (16) "Intrastate operations" means the transportation of persons or household goods for compensation in intrastate commerce.
- (16a) "Local exchange company" means a person holding, on January 1, 1995, a certificate to provide local exchange services or exchange access services.
- (17) "Motor carrier" means a common carrier by motor vehicle.
- (18) "Motor vehicle" means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.

- (19) "Municipality" means any incorporated community, whether designated in its charter as a city, town, or village.
- (20) Repealed by Session Laws 1995, c. 523, s. 1.
- (21) "Person" means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.
- (22) "Private carrier" means any person, other than a carrier by rail, not included in the definitions of common carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of household goods for compensation.
- (23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:
 - 1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;
 - 2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such 15 or more building lots, without regard to the number of actual customers connected;

3. Transporting persons or household goods by street, suburban or interurban bus for the public for compensation;
 4. Transporting persons or household goods by motor vehicles or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, carriers by rail, and carriers by air;
 5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
 6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term "public utility" shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
 - c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
 - d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service

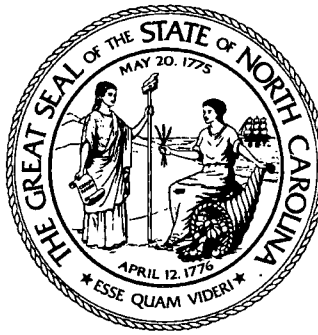
only to members or leaseholds of members is not subject to the provisions of this Chapter.

- e. The term "public utility" shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).
- f. The term "public utility" shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.
- g. The term "public utility" shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.
- h. The term "public utility" shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.
- i. The term "public utility" shall not include the State, the Office of Information Technology Services, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.
- j. The term "public utility" shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or

two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.

- k. The term "public utility" shall not include a regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes.
- (24) "Rate" means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.
- (25) "Route" means the course or way which is traveled; the road or highway over which motor vehicles operate.
- (26) "Securities" means stock, stock certificates, bonds, notes, debentures, or other evidences of ownership or of indebtedness, and any assumption or guaranty thereof.
- (27) "Service" means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service.
- (27a) "Small power producer" means a person or corporation owning or operating an electrical power production facility with a power production capacity which, together with any other facilities located at the same site, does not exceed 80 megawatts of electricity and which depends upon renewable resources for its primary source of energy. For the purposes of this section, renewable resources shall mean: hydroelectric power. A small power producer shall not include persons primarily engaged in the generation or sale of electricity from other than small power production facilities.
- (28) The word "State" means the State of North Carolina; "state" means any state.
- (29) "Town" means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated.
- (30) "Panel" means a panel of three commissioners, a division of the Utilities Commission authorized for the purpose of carrying out certain functions of the Commission. (1913, c. 127, s. 7; C.S., s. 1112(b); 1933, c. 134, ss. 3, 8; c. 307, s. 1; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1947, c. 1008, s. 3; 1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13; 1959, c. 639, ss. 12, 13; 1963, c. 1165, s. 1; 1967, c. 1094, ss. 1, 2; 1971, c. 553; c. 634, s. 1; cc. 894, 895; 1973, c. 372, s. 1; 1975, c. 243, s. 2; cc. 254, 415; 1979, c. 652, s. 1; 1979, 2nd Sess., c. 1219, s. 1; 1981 (Reg. Sess., 1982), c. 1186, s. 2; 1985, c. 676, s. 4; 1987, c. 445, s. 2; 1989, c. 110; 1993, c. 349, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 1(b); 1995, c. 27, ss. 2, 3; c. 509, s. 34; c. 523, s. 1;

1997-426, s. 8; 1997-437, s. 1; 1998-128, ss. 1-3; 2004-199, s. 1;
2004-203, s. 37(a); 2005-95, s. 2.)



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Monday, February 22, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Monday, February 22, 2010, in Room 544 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Phillip Haire, Earl Jones, Joe Tolson, and Roger West. Staff in attendance: Brenda Carter, Barbra Riley, Steve Rose, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Young Bae, Rob Finger, David Shearon, Tom Wilder and Toussant Avent. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 and 2*)

The Chairman called the meeting to order and introduced Sergeant of Arms. Chairman Faison introduced our first presenters of the day, Mr. Joe Freddoso from MCNC. Mr. Freddoso updated the Committee on BTOP and current high speed internet standings:

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso's presentation is attached. (*Attachment 3*) Below are some key points:

- Communities with new access to broadband experienced 6.4 percent higher employment growth -on average than before they had broadband.
- Broadband access is not a panacea but it is: Equity of Education across K20, Modern healthcare, Economic development, Civic participation, A flexible infrastructure that can be leveraged by citizens for the benefit of health, education, prosperity and civic engagement and its less expensive to deploy.
- The White House said it best when they described the need for Middle Mile Infrastructure; "Middle-mile infrastructure is essential for bringing broadband to communities that were previously isolated or had only rudimentary connections. By lowering the cost of last-mile connections, investments in the middle mile allow Internet service providers to enter the market and build connections to homes and business..."
- Today FCC defines broadband as 768K down and 250K up today that will not support most eLearning content reliably and will not support high def video.
- MCNC operates NCREN which applied and won the first round of BTOP a Federal funded Stimulus. MCNC applied because they wanted to build on an existing asset -not build from

scratch, leasing bandwidth in rural areas was no longer feasible, equity of education, no dark fiber made available, and underserved consumers.

- MCNC is now applying for BTOP round 2. Some challenges in round 2 are:
 - Commercial viability is lacking, fiber is not as valuable to private sector
 - Sustainability of public part of the network; MCNC existing customer base
 - ROI not as simple as round 1
 - Direct fiber to community anchor institutions
 - MCNC endowment tapped

After Mr. Freddoso's presentation he asked the Committee to endorse his efforts to submit and application towards round two of the Broadband Technology Opportunities Program (BTOP) Funds. Rep. Tolson moved the endorsement of the letter, seconded by the Committee. The letter is attached. (Attachment 4) On behalf of the committee Chairman Faison will sign the endorsement.

Chairman Faison opened the floor for questions and then introduced our next speaker Jane Patterson.

Jane Smith Patterson (Executive Director, E-NC Authority) was recognized to present to the committee. The presentation is attached. (*Attachment 5*) Below are some key points:

- North Carolina is 2ND in rural population after Texas in the United States. The Federal government awarded North Carolina \$ 2 million in mapping/planning to e-NC and \$ 28.2 million in middle mile funding to MCNC out of 92 + applications.
- Speculation of the National Broadband Plan which is due March 15th is that their goal is a 100 Squared Initiative, 100 Million Americans with 100 megabits Access, but there are 300+ million Americans, Unleash American ingenuity to ensure that businesses large and small, are created, Lead the world with ultra-high-speed broadband test-bed so American can host the boldest innovations imagined and increase access to spectrum for mobile access (The White Space).
- Although the Google Trails sound appealing only one or two communities in the United States will be awarded.
- ARRA Speeds reported 768 kbps download and uploading speed above 200 kbps, but the rest of our competitive world already are above 20 TO 50 megabytes \$29 for 50 megs France, Singapore, Korea, Japan, Partially China.
- Support is needed for the State Broadband authority to continue:
 - E-NC Authority sunset provision should be removed-
 - Funding from budget –Increased from 495,000 to 900,000 –increase of 495,000
Sunset provision causes problems with seeking funds from other sources—both federal, private foundations and corporate
- The US Bureau of Economic Analysis reports that for every dollar invested in broadband \$3 dollars returned to the economy (without multiplier effect)
- e-NC's push for Broadband Availability and adoption include (*Attachment 6*) :
 - Incentives – money for deployment
 - Lifeline online pilot for economically challenges households
 - Electric and relevant other utility easements e-NC--and Electric companies and Telecom companies (E&T co-ops also included)
 - Highway right of ways –access to buried fiber-study proposed with e-NC and DOT
 - Tower assessment—development of rules of access to state owned towers (State Forest Service, Weather and Highway Patrol, Public Safety towers)

- Public-Private Partnership-nonprofit partnerships body of law review and recommendations e-NC and Attorney General and industry (elec and tele) attorneys
- E-NC Authority sunset provision removed/funding from budget sources

After the presentations for the day Chairman Faison moved on to the discussion of potential committee legislation because of the depth of legislation suggested from e-NC Chairman Faison appointed Sub-Committees to report back to the Full Committee on its next meeting date:

- Removal of sunset provisions on e-NC Legislation - Rep. Jones
- Sub-Committee on Highway Right of Ways – Rep. Haire, Bryant & Gulley
- Sub-Committee on Assessment of Towers - Representative Alexander, Coates & West
- Sub-Committee on Public Private Partnerships - Representative Tolson, Jones & Avila

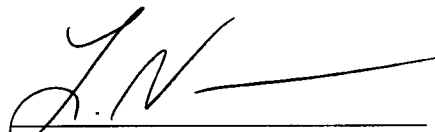
Chairman Faison moved on to the discussion of potential committee legislation from the last committee meeting which includes Phyllis Pickett's explanation of title change and new scope of the legislation once being; BILL DRAFT 2009-LR-124 [v.11] - ACT to encourage the creation of cooperatives for the provision of high speed internet access for expanded broadband in North Carolina to BILL DRAFT 2009-LR-124B [v.2] - an act creating the high speed internet access cooperative board and relating to the formation of high speed internet access cooperatives for last mile deployments. (*Attachment 7*) Chairman Faison opened the floor for questions or comments the proposed legislation was not acted upon.

Rep. Alexander's was recognized to explain his bill: Short titled: Broadband Access to All - An act to encourage expanded deployment encourage expanded deployment of communications systems throughout rural and urban communities and to provide access to all citizens. (*Attachment 8*) Chairman Faison opened the floor for questions or comments the proposed legislation was not acted upon.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Monday, February 22, 2010
10:00 AM
Room 544 L.O.B.**

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Guest Speakers

- **MCNC**
Joe Freddoso, President and CEO
 - Potential Legislation
- **E-NC Authority**
Jane Smith Patterson, Executive Director
 - Potential Legislation
- **Discussion of Potential Committee Legislation**

4. Adjourn

VISITOR REGISTRATION SHEET

House Select Comm on High Speed Internet Access.

2/22/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Oppie Jordan

e-NC Authority -

Angie Bailey

e-NC Authority

Jane Patterson

e-NC Authority

Thomas Moore

Fidelity Web

Scha Metzger

DCRI

BOB WELLS

NORTH STATE COMMUNICATION

John

NC CO-OPS

Kelli Kunkel

NCLM

Paul Meyer

NCLM

Lee Worley

Catawba County

John Dudley

Palmetto Net

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Michael Crowell	CITY OF SALISBURY
Jeff Gray	CITY OF WILSON
Barry Terrence	NCLM
Jim Carby	Rose Road Wallace
GRANT BOINGS	CITY OF WILSON
Michael Ramsey	NC DPI
Allison Cooper	RKW / City of Wilson
Dave Treme	city of Salisbury
DOUG PARIS	CITY OF SALISBURY
Susan Kluttz	Mayor of Salisbury

VISITOR REGISTRATION SHEET

High Speed Internet Service
Name of Committee

2/22/10
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bill Waiglo	antel
Stan Pace	Verizon
Dwight Allen	Allen Law Offices PLLC
Carole Woodward	NC Telecom Association
Lori Ann Harris	LATTA
Robert Sepe	Aerion Audits, LLC
Sammy Roberson	TWC
Brad Phillips	TWC
Marcus Kater	Brady Perce
Conne Wilson	CWC

VISITOR REGISTRATION SHEET

High Speed Internet Service
Name of Committee

2/22/10
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Hanchey	CenturyLink Wake Forest, NC
Steve Brewer	CenturyLink Raleigh
Kate DeMays	NC Sustainable Food Systems Coalition
Margot J. Christensen	NC League of Municipalities
Pam Melton	CenturyLink
David Johnson	NCACC
Michelle Frasier	MFS
es Hollis	TSS
Bob Heath	McGraw Hill



MCNC



**House Select Committee on Rural and Urban
High Speed Access
Round 2 BTOP**

**Joe Freddoso
President and CEO
MCNC**

February 22nd, 2010

Attachment 3

Framing the Broadband House

- One stated goal of the 1996 Telecommunications Act is to ensure that consumers “in rural, insular, and high-cost areas, should have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas” (U.S. Congress 1996, § 254 (b) (3)).
- Communities with new access to broadband experienced 6.4 percent higher employment growth - on average than before they had broadband.

Where Jobs Come From, The Role of Innovation, Investment, and Infrastructure in Economic and Job Growth. By Jessica Milano, February 2010.



MCNC

Connecting North Carolina's Future Today

Framing the Broadband House

Broadband access is not a panacea but it is:

- Equity of Education across K20
- Modern healthcare
- Economic development
- Civic participation
- A flexible infrastructure that can be leveraged by citizens for the benefit of health, education, prosperity and civic engagement
- Less expensive to deploy



Why the Middle Mile?

“Middle-mile infrastructure is essential for bringing broadband to communities that were previously isolated or had only rudimentary connections. By lowering the cost of last-mile connections, investments in the middle mile allow Internet service providers to enter the market and build connections to homes and business...”

White House National Economic Council, 12/2009

The Future

- Today FCC defines broadband as 768K down and 250K up today
 - Will not support most eLearning content reliably
 - Will not support high def video
 - Middle mile and last mile lacking

Bandwidth needs

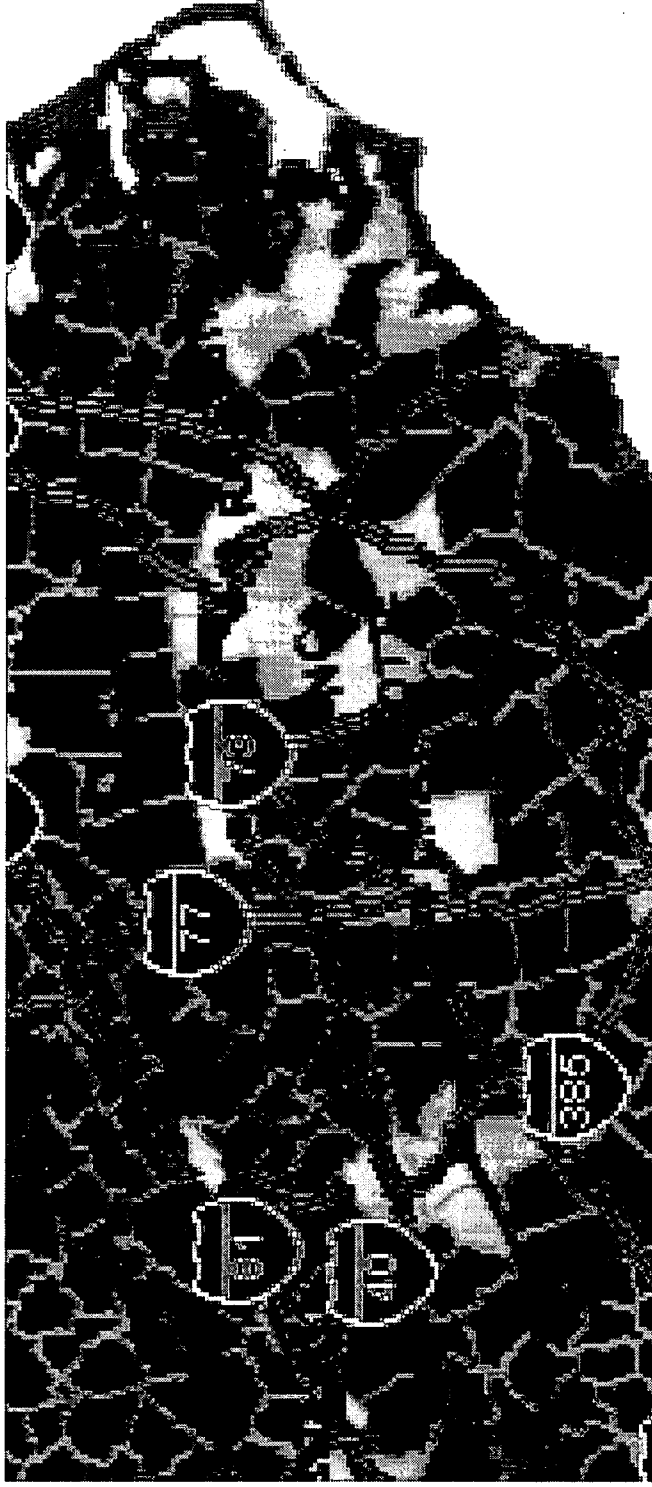
These happen simultaneously in most households

TABLE 1: BANDWIDTH REQUIREMENTS FOR BROADBAND APPLICATIONS

Application	Upstream Speed	Downstream Speed
Medium-Resolution Videoconferencing (640x480P)	384-1200 Kbps	384-1200 Kbps
Streaming Video (720P)		1.2 - 4Mbps
Standard-Definition Digital Television (720x480 Interlaced)		4 Mbps
Basic HD Videoconferencing (1280x720 resolution)	1.2 - 4 Mbps	1.2 - 4 Mbps
Telepresence: High-Resolution HD Videoconferencing (1920x1080 resolution)	5 Mbps	5 Mbps
Video Home Security Service	10 Mbps	
High-Definition (HD) Digital Television (1440x1080 Interlaced)		15 Mbps
Telepresence: Very High-Resolution HD Videoconferencing (5760x1080P)	15 Mbps	15 Mbps

The Need for Speed, Ezell, Atkinson, Castro and Ou - 2009

Situation



Red = Economically Distressed Areas (EDAs) are areas where:
-the unemployment is 1% or more above the national average
-the per capita income is 80% or less than the national average.

Federal Stimulus

- ARRA provides \$7.2B to enhance broadband access
 - \$4.5 B to Commerce BTOP
 - \$2.7 B to Agriculture RUS
- Why did MCNC apply?
 - Build on an existing asset – not build from scratch
 - Leasing bandwidth in rural areas no longer feasible
 - Equity of education
 - No dark fiber made available
 - Underserved consumers

Round 1 – MCNC Application

- \$28.2M request, \$11.7M match
 - \$7.7M From MCNC Endowment
 - \$4M From Private Partner
- 37 Rural Counties – 24 fully or partially underserved
 - Private partner reaches last mile consumers
- Round 1 Results: MCNC Won

Round 1 Financial Return

(THOUSANDS)

Projected Use	Available	Excess/Shortage	Remaining
	\$85,360	\$23,839 Not Available to MCNC	\$39,900 (Capital, O&M and refresh)

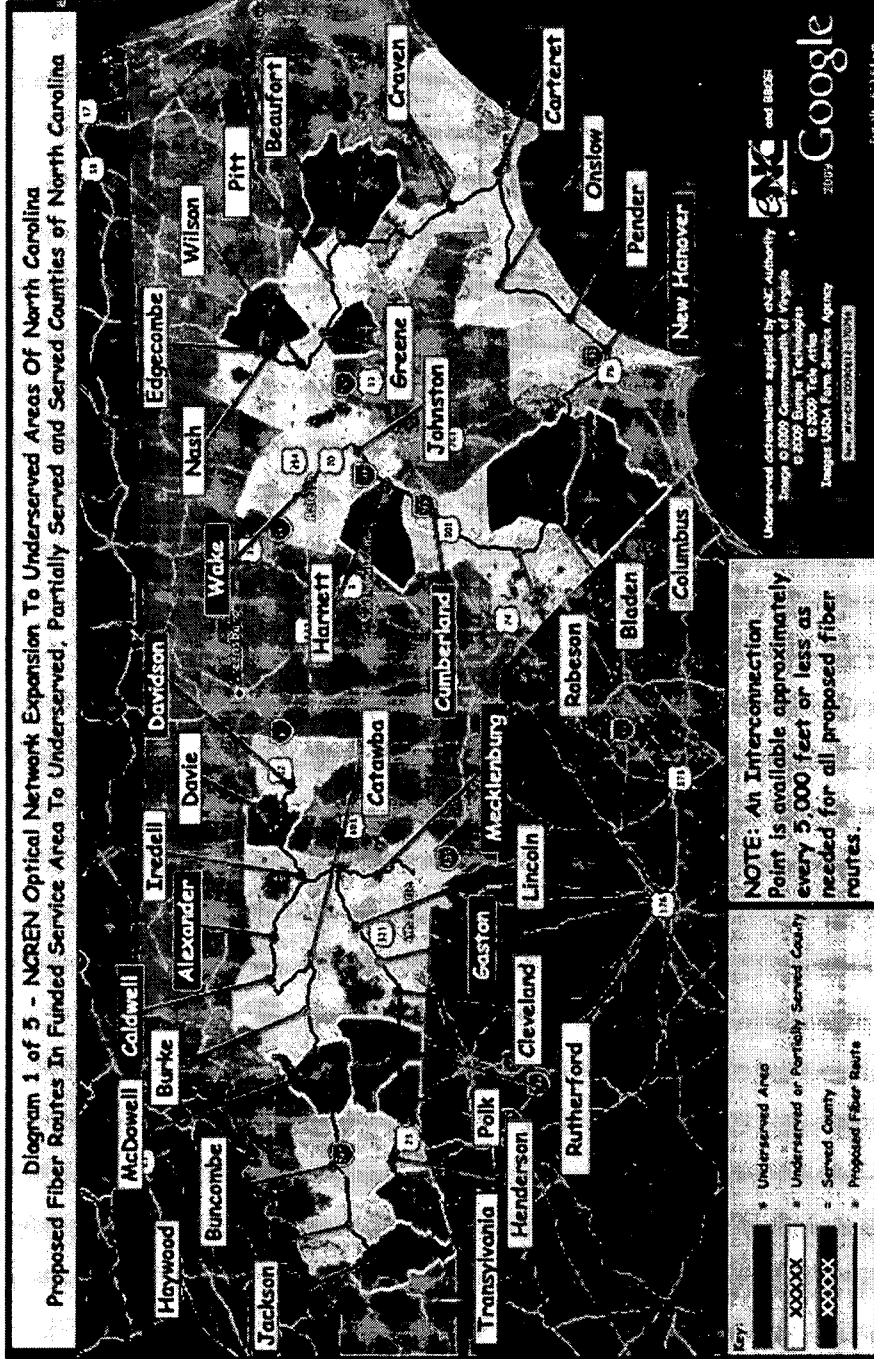
* Round 1 Award – Covered \$28.7M of the capital

Middle Mile Build

Underserved

Total:

Beaufort
Bladen
Columbus
Davie
Edgecombe
Greene
Harnett
Jackson
McDowell
Polk
Rutherford
Transylvania

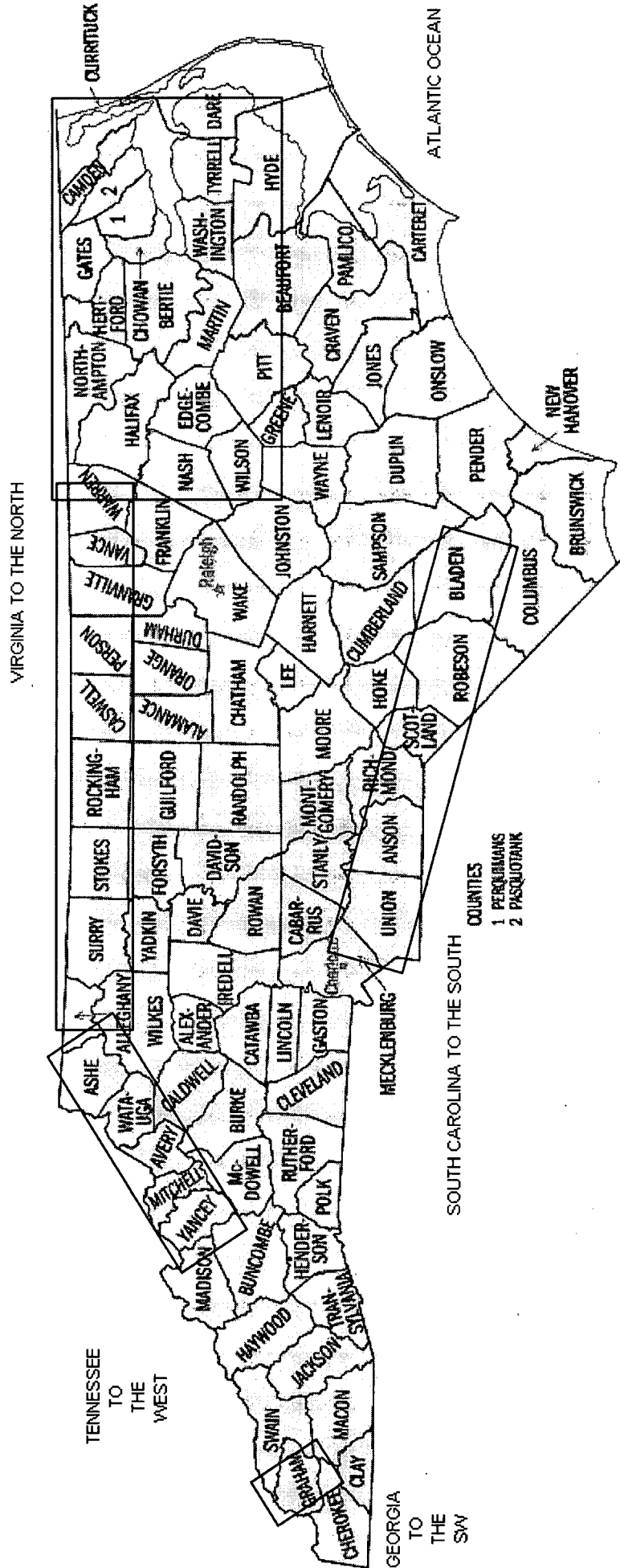


Underserved

Partial:

Carteret
Craven
Johnston
Onslow
Pender
Roberson
Buncombe
Catawba
Cleveland
Haywood
Iredell
Lincoln

BTOP Round 2-Potential Areas



Challenges Round 2

- Commercial viability lacking
 - Fiber is not as valuable to private sector
- Sustainability of public part of the network
 - MCNC existing customer base
- ROI not as simple as round 1
- Direct fiber to community anchor institutions
- MCNC endowment tapped

Round 2: Proposal

- \$93.3M for 1000+ Miles of fiber
 - \$28M to meet 30% match
- 4 Underserved areas remain
 - Northeast
 - North Central
 - Northwest
 - South Central
- Direct fiber to community anchor institutions
 - Community Colleges and Libraries
 - Covers existing contracts to sustain the network
- Half of counties already submitted letters of support

Round 2 Service providers

- Areas lack commercial viability
- Open discussions again on IRU
 - No firm commitments at this point
- Do not overbuild where we know its available
 - Including direct fiber to Community Anchors
- Does hesitancy to IRU mean lack of availability?
- Need to focus on demand creation in areas where there is verifiable deployment
 - Life line link up for broadband
 - Education funds

MCNC do no harm

- MCNC does not want to move outside mission
- Tried to benefit private sector with every move
 - Local circuits
 - IRU offers
- Unique opportunity to get generation's critical infrastructure deployed in a one time capital grant
- Want to partner desperately

February 22, 2010

Mr. Joseph A. Freddoso
President and CEO
MCNC, Inc.
3021 Cornwallis Road, Box 12889
RTP, NC 27709

Dear Joe,

Congratulations on MCNC's success in securing round one Broadband Technology Opportunities Program (BTOP) Funds. Your award is a tremendous boost for education and economic development in the rural southeastern and western part of North Carolina.

As you and I have discussed at length, four areas of the state remain significantly underserved in their access to broadband technologies. Community Anchor Institutions across education, government, healthcare and research in these areas find themselves offering a lower level of digital services to their constituents. Consumers and small businesses find it difficult to participate in the growing digital economy.

I am writing to offer the encouragement of the North Carolina House of Representatives Select Committee on Rural and Urban High Speed Access for MCNC's leadership in submitting a round two BTOP application that covers the counties in Northeastern North Carolina, North Central North Carolina, South Central North Carolina and far Northwestern North Carolina. These geographic regions contain almost one-half of the counties in the State. These counties are beset by high unemployment, low incomes and higher than average K12 drop out rates.

The build out of broadband access is necessary for equity of education, advances in healthcare and the spread of economic opportunity in these regions. It has been a personal mission of mine to address the lack of broadband infrastructure in underserved areas of the State.

As you proved in round 1 of BTOP, MCNC is well positioned, to lead an effort to bring broadband to these underserved areas.

Sincerely,

The Honorable Bill Faison, Esq.
Chairman
Select Committee on Rural and Urban High Speed Access
North Carolina House of Representatives

Legislative Fact Sheet
Information on MCNC Broadband Recovery Award
& Round 2 MCNC BTOP Application
February 19, 2010

MCNC Contact: Joe Freddoso – (919) 248-8400 (joe@mcnc.org)

MCNC: MCNC is a non-profit organization incubated by the State of North Carolina General Assembly in 1980. One of MCNC's main activities is to operate the North Carolina Research and Education Network (NCREN). NCREN provides broadband communications technology services and support to all 115 K-12 school districts, 20 of 58 North Carolina Community Colleges, all University of North Carolina system institutions, 24 of 36 of North Carolina's Private Colleges and Universities and public health facilities across the state.

BTOP Program: Through the American Recovery and Reinvestment Act (ARRA) \$7.2B in funding was allocated to the US Department of Commerce and the US Department of Agriculture to promote the deployment and use of broadband technologies to underserved and unserved populations in the United States. Commerce administers \$4.5B of this broadband recovery funding through the National Telecommunications and Information Administration's (NTIA) Broadband Technologies Opportunities Program (BTOP). The majority of this funding is for deploying last mile and middle mile broadband infrastructure to unserved and underserved consumers and to Community Anchor Institutions (Schools, Libraries, Health Care facilities, other facilities of public importance).

MCNC BTOP Award: On January 20, 2010, the NTIA announced that MCNC's had been awarded \$28.2M (BTOP infrastructure) in middle mile broadband recovery funds. MCNC's funded proposal includes the construction of 500 new miles of fiber in 37 counties in the rural southeastern and western part of the state. Counties traversed by the build include: in eastern N.C. Beaufort, Bladen, Carteret, Columbus, Craven, Cumberland, Edgecombe, Greene, Harnett, Johnston, Nash, New Hanover, Onslow, Pender, Pitt, Robeson, Wake, Wilson; in western N.C. – Alexander, Buncombe, Burke, Caldwell, Catawba, Cleveland, Davidson, Davie, Gaston, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Mecklenburg, Polk, Rutherford, and Transylvania. The main goal of this fiber build will be to offer virtually unlimited amounts of bandwidth to the public education institutions served by NCREN at stable costs for the next two decades. Stable costs even though demand for bandwidth among these institutions is growing at 30-40% annually.

Round 2 Applications:

For Round 2, several state leaders, including the Governor's Office, North Carolina's delegation to the United States Congress, the University of North Carolina System and the North Carolina Community College System have encouraged MCNC to apply for round 2 BTOP funds to build middle mile infrastructure in the Northeast, Northwest, North Central and South Central portions of the State. A list of counties included in the proposed build appears on page 3 of this summary.

MCNC has received immense planning support from the Golden LEAF Foundation, the Frank Hawkins Kenan Institute at UNC-Chapel Hill and the School of Government at UNC-Chapel Hill in order to compile the application.

Situation:

- Four areas of the State remain underserved from a middle mile broadband infrastructure perspective based on MCNC's work to determine if dark fiber leases are available to serve to

education institutions that subscribe to NCREN in these regions: Northeast, North Central, Northwest (including Graham County) and South Central.

- North Carolina has the nation's 8th highest unemployment rate at 11.2%. North Carolina's expansive rural geography and its economic base of agriculture and traditional manufacturing are particularly vulnerable to global competition and off-shoring.
- North Carolina has the 3rd highest rural population in the country. It is estimated that 600,000 rural families in North Carolina do not have access (whether or not they can afford it) to even the minimal standard of broadband defined by the latest Federal Communications Commission directive. MCNC's round 1 application, through its private partner FRC, will provide added wholesale options to last mile carriers who reach 180,000 of these families with new middle mile options. The proposed round 2 application would provide wholesale options to last mile providers who reach most of the remaining underserved families in the State.
- North Carolina has the 3rd largest community college system in the nation. In line with the NTIA guidelines, we have asked MCNC to include in the round 2 application to build direct fiber to North Carolina Community Colleges in the region of the proposed build.

Highlights of the Round 2 Application:

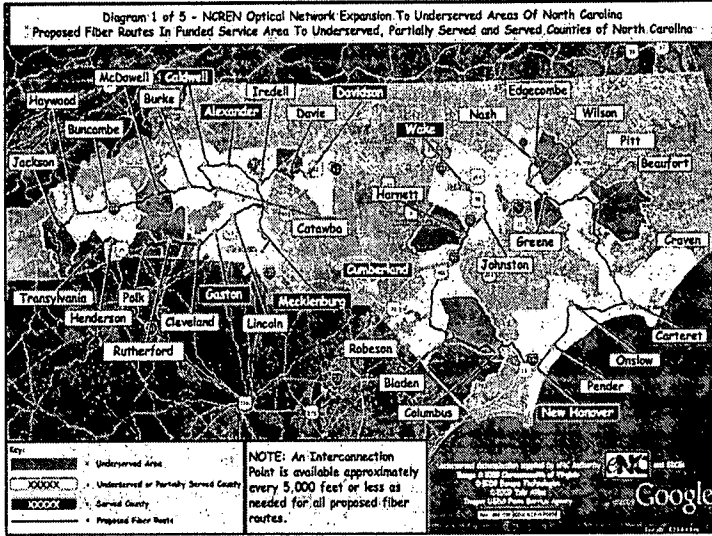
Highlights of the proposal:

- An approximately \$100M proposal (\$30M in match and \$70M in requested funds) that includes over 1000 miles of new middle mile fiber covering the Northeast, North Central, Northwest, South Central.
- MCNC and its partners (KI and SOG) are discussing partnerships with wholesale, incumbent and competitive service providers to increase options for consumer and small business broadband in these regions. These partnerships involve discussions of existing fiber assets of these providers so as not to overbuild.
- Direct fiber builds to a number of community college main campuses and public libraries along the route
- MCNC and partners are seeking combined investment of 30% cash and in-kind matching funds from several key entities (private foundations, private sector companies, public sector Network). All these investors view broadband as a key part of its mission to help North Carolina's rural counties.
- Substantial coordination with the North Carolina Public Libraries who will be submitting a proposal to upgrade public access computing centers in 30 of North Carolina Counties with the highest unemployment rate through a Round 2 BTOP public computing center application
 - The Bill and Melinda Gates Foundation and the Golden LEAF foundation will be providing \$400K in match for the State Libraries proposal.

Round 1 MCNC Map:

Underserved Areas:

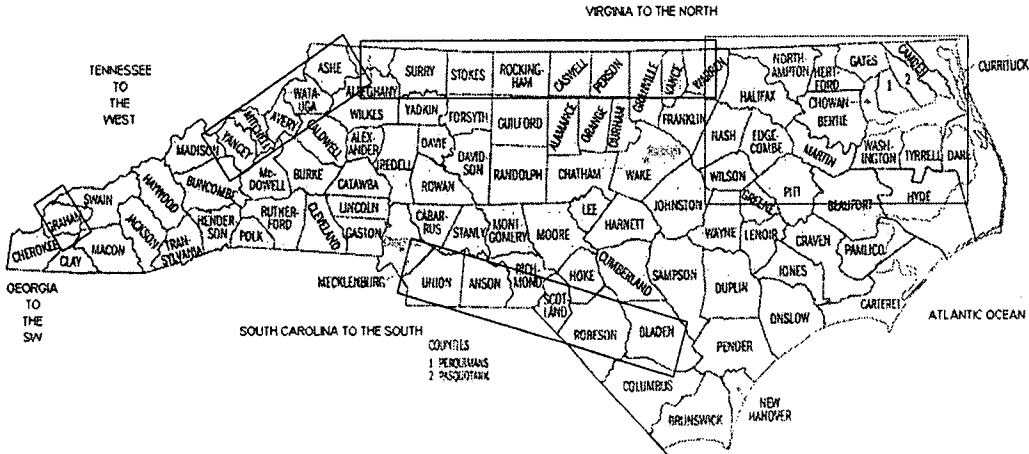
- Total:**
 Beaufort
 Bladen
 Columbus
 Davie
 Edgecombe
 Greene
 Harnett
 Jackson
 McDowell
 Polk
 Rutherford
 Transylvania



- Partial:**
 Carteret
 Craven
 Johnston
 Onslow
 Pender
 Roberson
 Buncombe
 Catawba
 Cleveland
 Haywood
 Iredell
 Lincoln

Round 2 MCNC Map:

BTOP Round 2-Potential Areas



Counties projected to be involved in MCNC Round 2 Build (As of 2/15/10)

Northeast Region

Currituck
Dare
Hyde
Beaufort
Pitt
Greene
Wilson
Nash
Edgecombe
Martin
Washington
Tyrrell
Camden
Perquimans
Pasquotank
Chowan
Bertie
Gates
Hertford
Northampton
Halifax

North Central

Wilkes
Yadkin
Alleghany
Surry
Stokes
Rockingham
Caswell
Person
Granville
Vance
Warren
Franklin
TBD

Northwestern Region

Madison
Yancey
Mitchell
Avery
Watauga
Ashe
Graham

Charlotte to Wilmington

Mecklenburg
Union
Anson
Richmond
Scotland
Robeson
Bladen
Columbus
Brunswick
New Hanover



House Select Committee on High Speed
Internet in Rural Area and Urban Areas
February 22, 2010
Jane Smith Patterson
Executive Director
The e-NC Authority
www.e-nc.org

STATE ENVIRONMENT FOR BROADBAND

- Why is it hard to get broadband to the last mile?
- NC IS RURAL -----2ND OF 50 STATES

NORTH CAROLINA -2ND IN RURAL POPULATION

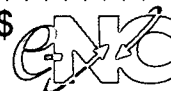
AFTER TEXAS

TEXAS - OVER 3000000

NORTH CAROLINA - OVER 3000000

\$

\$



Good Sign: Large number of providers

- 2010 STATISTICAL ABSTRACT
- 22 ILEC Incumbent Local Exchange CARRIERS
- 77 NON-ILEC Non Incumbent LEC

Source: FCC Form 477 Broadband Data Filers as of June 30, 2009



MONEY TO SUPPORT DEPLOYMENT

- FEDERAL STIMULUS AWARDED
 - \$ 2 MILLION MAPPING/PLANNING
 - ^{23.2} \$ ~~26~~ MILLION MIDDLE MILE
 - 92 + Applications
- PLANNING TO SUBMIT IN BTOP 2- DUE MARCH 15
\$80 TO \$100 Million MCNC 2nd Middle Mile
Counties---few have the match to go forward
RUS-Department of Agriculture-file for last mile BIP
NTIA File for Middle Mile, Public Computer Centers and
Sustainable Adoption



Google Trials

- Everyone wants to try for funds – ultra fast broadband based on fiber
- If you'd like a Google fiber optic trial in your community, complete this section of the request for information. RFI due March 26
<http://www.google.com/appserve/fiberrfi/public/options>
- Selection: one or two communities in the US



NATIONAL BROADBAND PLAN

- DUE MARCH 15 Draft being circulated internally to FCC
- Goal 100 Squared Initiative
- 100 Million Americans with 100 megabits Access – Aren't there 300+ million of us?
- Unleash American ingenuity to ensure that businesses large and small, are created
- Lead the world with ultra-high-speed broadband testbed so American can host the boldest innovations imagined
- Increase access to spectrum for mobile access



REDO: UNIVERSAL SERVICE FUND

- DRAFT PLAN GOALS:
- BROADBAND (LIFELINE ONLINE)
- E-RATE ALLOW GREATER USABILITY
- RATE OF ADOPTION SET AT 90% +
@>2MEGABITS/SEC
- IMPROVE ACCESS AND ADOPTION FOR
COMPETITIVESS WITH THE WORLD
- MOBILE ACCESS –GREAT ACCESS FOR LOWER
COST
- MODERNIZE RURAL HEALTH; CREATE
INTEROPERABLE PUBLIC SAFETY NETWORK



ARRA SPEEDS

- ARRA ACT SPEEDS 768 kbps or higher
- upload speed above 200 kbps
- SLOWDOWN IN FIXED INTERNET ACCESS TO
CONNECTIONS : Some expect to accelerate wireless
- 2008 10% increase TO 77 MILLION HOMES/
BUSINESSES
- 2007 17% increase
- REST OF OUR COMPETITIVE WORLD ALREADY
ABOVE 20 TO 50 MEGABYTES \$29 FOR 50 MEGS
FRANCE, SINGAPORE, KOREA, JAPAN, CHINA
PARTIAL



NTIA DATA

- NTIA 2010 64% OF HOUSEHOLDS ACCESS TO INTERNET
- 2007 51%

- 2009 Rural 54% households Urban 66 %

- 2007 Rural 39% households Urban 54%

- 30% of all consumers do not use Internet anywhere

• Source: Broadband Breakfast 2/16/2010

• NC Caswell, Cherokee, Duplin, Gates, Graham, Greene, Jones, Tyrrell, Warren

• NC 82% say they have access somewhere— to 70% average today (Meets national average)



SUPPORT FOR STATE BB AUTHORITY

E-NC Authority sunset provision should be removed-
Funding from budget – Increased from 495,000 to 900,000 –increase of 495,000
Sunset provision causes problems with seeking funds from other sources—both federal, private foundations and corporate



MONEY LEVERAGED

- BTTs: Since 2001 seven sites have created a total of 1845 jobs @ 30,000=55 Million IN 2009
- Work on broadband –
 - For every \$1 invested in broadband \$3 dollars returned to the economy (without multiplier effect)*
 - With multiplier effect some place a \$10.00 return to \$1.00 invested**
 - Need nonrecurring funds for assistance to private sector companies, nonprofit companies and local governments----- When applying for funds match counts....in decisions of grant making entities
 - Funds we received from state appropriations for incentives have taken counties from below 70% to almost 70% or higher-----
 - * Source: US Bureau of Economic Analysis **Source: US ARRA Documents

State Incentives Funding

- e-NC Connectivity Incentive Awards – 2008-2009
- From NCGA funding
- \$2.155m Awarded
- To deploy the 10 Least-Connected Counties:

County	% of Households with High-Speed Internet Available (prior to grant)	% of Households with High-Speed Internet Available (after the grant)
Caswell	56.76 %	63
Cherokee	51.29	71
Duplin	54.89	85
Gates	47.96	71
Graham	52.43	70
Greene	49.10	77
Jones	45.07	71
Pamlico	54.89	80
Tyrrell	55.84	83
Warren	46.89	86

REACH OUT FOR PUSHING BROADBAND: AVAILABILITY AND ADOPTION

- INCENTIVES - \$\$\$ MONEY FOR DEPLOYMENT
- LIFELINE ONLINE PILOT FOR ECONOMICALLY CHALLENGED HOUSEHOLDS
- ACTION STUDIES:
 - Electric and relevant other utility easements e-NC-- and Electric companies and Telecom companies (E&T co-ops also included)
 - Highway right of ways –access to buried fiber-study proposed with e-NC and DOT
 - Tower assessment—development of rules of access to state owned towers (State Forest Service, Weather AND Highway Patrol, Public Safety towers)
 - Public-Private Partnership-nonprofit partnerships body of law review and recommendations e-NC and Attorney General and industry (elec and tele) attorneys
 - E-NC Authority sunset provision removed/funding from budget sources



To Reach Us



*Connecting
North Carolina
to a Better Future*

**The e-NC Authority
4021 Cary Drive, Raleigh
1-866-NCRURAL
www.e-nc.org**



Memorandum

February 19, 2010

To: Rep. Bill Faison

From: Jane Smith Patterson

Re: Select Committee on Broadband **Meeting-Monday, February 22, 2010**

Both Oppie Jordan and I will be present on Monday at the meeting

At this point, Oppie Jordan will speak briefly to the bill introduced at the last meeting.

I will be presenting ideas for bills we would like you to consider relating to:

- a) Study of electric and other relevant utility easements to advance broadband deployment
 - b) Study of highway right of ways and easements relating to broadband deployment and access to buried facilities for last mile/middle mile. (develop a streamlined process for access)
 - c) Assessment of towers owned by the state agencies of the State of North Carolina and avenues for access and any restrictions to access by both nonprofit and private sector companies that will use such towers for last mile access.
 - d) A study of public-private sector-nonprofit partnerships for broadband and development of body of law that will enable such partnerships
 - e) Remove the sunset provision of the e-NC Authority (date is Dec. 31, 2011) and request for designation of additional funding of \$450,000 from the funds available in state budget.
- c. Oppie Jordan

Peter Caprigilone

H

BILL DRAFT 2009-LR-124B [v.2] (01/20)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

2/16/2010 3:06:24 PM

Short Title: Expand Broadband/Last Mile Cooperatives. (Public)

Sponsors: Representative Faison.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT CREATING THE HIGH SPEED INTERNET ACCESS COOPERATIVE BOARD
3 AND RELATING TO THE FORMATION OF HIGH SPEED INTERNET ACCESS
4 COOPERATIVES FOR LAST MILE DEPLOYMENTS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

7 "Article 45.

8 "High Speed Internet Access Cooperative Act.

9 "§ 66-390. Title.

10 This Article may be cited as the "High Speed Internet Access Cooperative Act.

11 "§ 66-391. Definitions.

12 (a) Unless the context indicates otherwise, the following definitions apply in this
13 Article:

- 14 (1) Agreement. – The bargain of the parties in fact, as found in their language or
15 inferred from other circumstances and from rules, regulations, and
16 procedures given the effect of agreements under laws otherwise applicable to
17 a particular transaction.
- 18 (2) Board. – The High Speed Internet Access Cooperative Board established by
19 the Article.
- 20 (3) Contract. – The total legal obligation resulting from the parties' agreement
21 as affected by this Article and other applicable law.
- 22 (4) Cooperative. – An arrangement or joint venture in which each participant is
23 a part owner of high speed internet infrastructure, a beneficiary of high
24 speed internet access services, or both, that is created for the purpose of
25 expanded last mile high speed internet deployment in this State.
- 26 (5) Governmental agency. – An agency, department, board, commission,
27 authority, institution, or instrumentality of North Carolina, the federal
28 government, or of a state or of a county, municipality, or other political
29 subdivision of government.
- 30 (6) High speed broadband internet access: – Internet access with transmission
31 speeds that are consistent with the requirements for high-speed broadband
32 internet access as defined by the Federal Communications Commission from
33 time to time.



1 (7) High speed internet expansion transaction. – An action or set of actions
2 occurring between two or more persons relating to the expansion of high
3 speed broadband internet access in North Carolina.

4 (8) Last mile. – The physical connection between the edge of any
5 telecommunications or high speed internet service provider's network and
6 the end user's premises.

7 (9) Person. – An individual, corporation, business trust, estate, trust, partnership,
8 limited liability company, association, joint venture, governmental agency,
9 public corporation, or any other legal or commercial entity.

10 (10) Public utility. – As defined by G.S. 62-3(23).

11 (b) The word "State" means the State of North Carolina; "state" means (i) any other
12 state of the United States, the District of Columbia, Puerto Rico, the United States Virgin
13 Islands, or any territory or insular possession subject to the jurisdiction of the United States;
14 and (ii) an Indian tribe or band, or Alaskan native village, which is recognized by federal law or
15 formally acknowledged by North Carolina or any state.

16 **"§ 66-392. Purpose.**

17 The purpose of this Article is to provide a framework for the coordination of local
18 businesses, communities, and governmental agencies engaged in the creation of
19 member-owned and operated cooperatives to enter into high speed internet expansion
20 transactions and related activities for last mile broadband connectivity to (i) provide universal
21 access to fiber optic networks across North Carolina, (ii) further economic development, and
22 (iii) contribute to improved health care, education and government services.

23 **"§ 66-393. High speed internet access cooperatives.**

24 (a) A high speed internet access cooperative may be formed by agreement between two
25 or more persons or governmental agencies to enter into contracts for high speed internet
26 expansion transactions to provide last mile broadband connectivity in this State.

27 (b) A high speed internet access cooperative is not a public utility.

28 (c) The members of a high speed internet access cooperative may include one or more
29 states or one or more political subdivisions of a state.

30 **"§ 66-394. High Speed Internet Access Cooperative Board.**

31 (a) There is established the High Speed Internet Access Cooperative Board. The Board
32 shall:

33 (1) Advance and facilitate the deployment of broadband communication
34 infrastructure for last mile connectivity in the State.

35 (2) Cooperate with public, private, and nonprofit entities to obtain, coordinate,
36 and disseminate resources for the expansion of broadband communication
37 services in the State.

38 (3) Review and approve the disbursement of funds available from State, federal,
39 and private financial resources that may be provided to the Board to assist
40 the expansion of last mile broadband connectivity in the State.

41 (4) Maintain a record of broadband deployments by high speed internet access
42 cooperatives in the State.

43 (5) Make a written report annually to the Governor and to the General Assembly
44 by June 30.

45 (6) Perform other functions that are consistent with the purposes of this Article.

46 (b) The Board shall consist of twelve voting members, each to serve two-year terms and
47 to be appointed as follows:

48 (1) Four members appointed by the Governor, including one person who
49 represents the internet service provider industry and one person from the
50 general public.

1 (2) Four members appointed by the Speaker of the House of Representatives,
2 including one person who represents local exchange carriers and one person
3 from the general public.

4 (3) Four members appointed by the President Pro Tempore of the Senate,
5 including one person who represents the voice over internet protocol
6 industry and one person from the general public.

7 (c) The Secretary of Commerce, the State Chief Information Officer, and the Chair of
8 North Carolina Utilities Commission shall serve as ex-officio, non-voting members of the
9 Board.

10 (d) The Speaker of the House of Representatives and the President Pro Tempore of the
11 Senate shall each appoint a cochair for the Board. The appointing authority shall fill vacancies.
12 Board members shall serve without compensation but may receive travel and subsistence as
13 follows:

14 (1) Board members who are officials or employees of a State agency or unit of
15 local government, in accordance with G.S. 138-6.

16 (2) Board members who serve in the General Assembly, in accordance with
17 G.S. 120-3.1.

18 (3) All other board members at the rate established in G.S. 138-5.

19 (e) The Board shall be organized within the Department of Administration for
20 budgetary and administrative support purposes.

21 (f) The Department of Commerce and the Office of Information Technology Services
22 shall provide technical support services to the Board, as requested."

23 **SECTION 2.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2010

HOUSE _____

Short Title: Broadband Access to All (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE EXPANDED DEPLOYMENT OF COMMUNICATIONS
3 SYSTEMS THROUGHOUT RURAL AND URBAN COMMUNITIES AND TO
4 PROVIDE ACCESS TO ALL CITIZENS

5 Whereas, the development of advanced telecommunications capabilities, cable,
6 interactive computer, internet facilities and broadband services should be encouraged to
7 better serve the public and further economic development in this State; and

8 Whereas, it is necessary for public health, safety, growth, job opportunities, and
9 sustained economic development to encourage investment and delivery of these
10 telecommunications capabilities and services by public providers; and

11 Whereas, several municipalities and public-private partnerships have undertaken
12 measures and invested resources to further advance telecommunications and broadband
13 deployment throughout their communities; and

14 Whereas, there remain several un-served and under-served urban and rural areas
15 in which high-speed internet, broadband access and advanced telecommunications
16 services are virtually unavailable; and

17 Whereas, our State courts have ruled that local governments may expand public
18 enterprise systems in reasonable strides with technological advancements; and

19 Whereas, the House Select Committee on High Speed Internet on Rural and
20 Urban Areas finds it imperative that the State continue to support the advanced
21 deployment of both public and private telecommunications and broadband
22 communications systems throughout North Carolina in order to maintain a competitive
23 advantage with other states; Now therefore,

24 The General Assembly of North Carolina enacts:

25 **SECTION 1.** G.S. 160A-311 reads as rewritten:

26 “§ 160A-311. Public enterprise defined.

27 As used in this Article, the term "public enterprise" includes:

28 ...

29 (7) Cable television systems, which may include any of the following:

30 a. Cable systems as defined in 47 U.S.C. § 522;

31 b. Fiber optics networks;

32 c. High speed broadband services; and

33 a.d. Advanced telecommunications services.

34 | **SECTION 2.** G.S. 160A-319(b) reads as rewritten:

35 | “(b) For the purposes of this section, "cable television system" means any
36 | system as defined by 47 U.S.C. § 522, or facility that, by means of a master antenna and
37 | wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or
38 | distributes any television, radio, or electronic signal, audio or video or both, to
39 | subscribing members of the public for compensation. "Cable television system" does not
40 | include providing master antenna services only to property owned or leased by the same
41 | person, firm, or corporation, nor communication services rendered to a cable television
42 | system by a public utility that is regulated by the North Carolina Utilities Commission or
43 | the Federal Communications Commission in providing those services.”

44 | **SECTION 3.** G.S. 66-356 is amended by adding the following new subdivision
45 | to read:

46 | “(a1) Uniformity of Pricing. A person who provides cable service over a cable
47 | system that is served by a common head end or by the same equipment, must offer
48 | services at a uniform level of pricing to all subscribers, regardless of geographic location,
49 | in absence of verifiable cost based differences in providing the service to subscribers.”

50 | **SECTION 4.** G.S.159-81(3) is amended by adding the following new
51 | subdivision to read:

52 | “(3) "Revenue bond project" means any undertaking for the acquisition, construction,
53 | reconstruction, improvement, enlargement, betterment, or extension of any one or
54 | combination of the revenue-producing utility or public service enterprise facilities or
55 | systems listed in this subdivision, to be financed through the issuance of revenue bonds,
56 | thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned
57 | or advanced by or on the behalf of either the State or a municipality to pay the costs of
58 | the undertaking.

59 |
60 | The following facilities or systems may be revenue bond projects under this
61 | subdivision:

62 |
63 | q. Systems or facilities for cable television, fiber optics, high speed broadband
64 | and advanced telecommunications.”

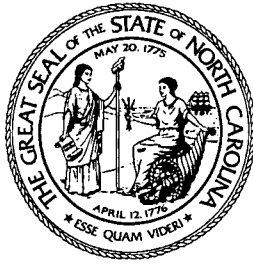
65 | **SECTION 5.** G.S. 153A-274 is amended by adding a new section to read as
66 | follows:

67 | “As used in this Article, "public enterprise" includes:

68 | ...

69 | (8) Cable television systems as defined in G.S. 160A-311.”

70 | **SECTION 6.** This Act is effective when it becomes law.



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Monday, April 12, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Monday, April 12, 2010, in Room 544 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Phillip Haire, Earl Jones, Thom Tillis, Joe Tolson, and Roger West. Staff in attendance: Brenda Carter, Barbra Riley, Steve Rose, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Fred Hines, Tom Wilder, and James Worth. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 and 2*)

Chairman Kelly Alexander called the meeting to order and welcomed staff, members and visitors. At our last committee meeting, Chairman Faison appointed Sub-Committees to report back to the Full Committee because of the depth of legislation suggested from e-NC. Today the results of those appointed Sub-Committees will report:

Chairman Alexander recognized Rep. Haire (Sub-Committee, Chairman) to report his findings:

Rep. Haire was recognized to report on the Sub-Committees finding on Highway Right of Ways. Below are some key points:

- GS 136-18 Power of the Department of Transportation – sets out the statutory requirements that the department of transportation has in regards to roads. (*Attachment 3*)
- The Right of way Branch of the NC Department of Transportation is responsible for the acquisition of all necessary land and right of ways used for all North Carolina roads and highways.
- SB 454 (DOT/Fiber- Optic Cable) did not pass the Senate and in those debates it was learned that you can not do anything that would impose on a private right of way, because to do so would constitute an unlawful taking unless it was with compensation and that would be a private issue the state would not be involved in.
- Committee findings:
 - Sub-committee's recommendation is nothing needs to be done at this present time.

After Rep. Haire's Report Chairman Alexander opened the floor for questions and comments. The committee still had questions. Attorney Pickett explained that the right of way issues are private

property issues and if the government wants to take the property they have to compensate for it. The issue seems to be the balance of common law property right vs. the needs of the community.

With the change of chairmanship, Chairman Faison recognized Rep. Alexander (Sub-Committee, Chairman) to report his findings:

Rep. Alexander was recognized to report on the Sub-Committees finding on Assessment of Towers. Rep. Alexander's report is attached. (*Attachment 4*) Below are some key points:

- North Carolina's towers are owned by many different entities, counties, municipalities, the Highway Patrol, the Department of Transportation, the Division of Emergency Management, the Division of Forest Resources, and the NC Forest Service also control towers.
- We can legally grant assess, but because of the variety and the fact that no one agency controls the towers it's not practical.
- Some issues that are beyond the committee's scope are the structures themselves and what they can support.
- Committee finds:
 - Sub-committee's recommendation is to grant promising for negotiations to take place, between the different entities that control the towers. Tower owners should be in the position to determine whether or not on a case by case basis, if access is practical.

After Rep. Alexander's Report Chairman Faison opened the floor for questions and comments.

Chairman Faison recognized Rep. Tolson (Sub-Committee, Chairman) to report his findings:

Rep. Tolson was recognized to report on the Sub-Committees finding on Public Private Partnerships. Rep. Tolson's report is attached. (*Attachment 5*) Below are some key points:

- There are no legal impediments to the formation of public-private partnerships for the delivery of high speed broadband service to unserved or underserved areas of the State.
- Industry representatives agreed that, absent economic incentives such as grants from e-NC, some of those deployments would not have been possible because these business decisions are made in the context of for-profit business.
- Rep. Tolson noted the importance of outlining realistic "parameters for workable public-private partnerships" with a clear understanding of expected outcomes.
- Committee finds:
 - Sub-committee's recommendation came in the form of legislation: BILL DRAFT 2009-LRz-131B [v.3] Short Title: Joint Broadband Access Task Force. Sponsor: Representative Tolson. An act creating the joint Broadband Access Task Force. (*Attachment 6*) Another meeting will be held.

After Rep. Haire's Report Chairman Alexander opened the floor for questions and comments. The committee still had some questions. In an effort to induce private provider to provide service to unserved areas Rep. Haire sent forth legislation. BILL DRAFT 2009-LR-125B [v.4] Short Title: Local Government Broadband/Tax Credit. - An act requiring local governments to provide notice to Broadband Service Providers before deploying high speed broadband internet service in unserved or

underserved areas and providing and income tax credit for last mile high speed broadband internet service deployments in unserved or underserved areas if the states. (*Attachment 7*)

Chairman Faison then moved on to the last recommendation by the e-NC Authority which was the removal of the e-NC sunset. Chairman Faison's BILL DRAFT 2009-LR-129 [v.4] Short Title: Remove Sunset/e-NC Authority - An act to repeal the sunset provision pertaining to the e-NC Authority. After the explanation of the bill, Rep. Bryant was recognized for favorable recommendation of this legislation in the short Session. The motion was passed. The Bill is attached. (*Attachment 8*)

John McHugh (Policy Analyst, Office of Economic Recovery & Investment) was recognized to update the committee on BTOP review committee meetings and dates:

- On April 21, 2010 Sub-Committee on Public Computer Centers and Sustainable Broadband Adoption Application will meet.
- On April 22, 2010 Sub-Committee on Comprehensive Community Infrastructure Applications will meet.
- Both committees will meet at the rural center office and produce potentially 50+ applications for review. Meetings are streamed through webcast and can be found on ncrecovery.gov.

All other proposed legislation will be dealt with on our next committee meeting. With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Monday, April 12, 2010
10:00 AM
Room 544 L.O.B.**

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Order of Business

- **Sub-Committee Reports**

- Sub-Committee on Highway Right of Ways - Rep. Haire
- Sub-Committee on Assessment of Towers – Rep. Alexander
- Sub-Committee on Public Private Partnerships – Rep. Tolson

- **Discussion of Potential Committee Legislation**

4. Adjourn

VISITOR REGISTRATION SHEET

HOUSE SELECT COM./HIGH SPEED INTERNET 4-12-10

Name of Committee

Date

ACCESS IN RURAL & URBAN AREAS

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McHugh	OGRI
DAW BERDACH	GLF
Jane Patterson	e-nc Authority
Angie Bailey	e-NC Authority
Thomas Moore	Edute - Wels
JASON PARKS	CITY OF SALISBURY
Michael Crowell	CITY OF SALISBURY
Cathie Rice	Advanced IT
Tom VANDERBECK	Chatham Co.
JACK COZART	Wilson
GRANT GOWES	Wilson
J Canby	Wilson

VISITOR REGISTRATION SHEET

HOUSE SELECT COM./HIGH SPEED INTERNET 4-12-10

Name of Committee

Date

ACCESS IN RURAL & URBAN AREAS

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Randy L Williams	NCACC
Kevin Leonard	NCACC
David Johnson	NCACC
DOUG PARIS	City of S.C.
Allison Cooper	RKW Attorneys
AGNES SPEIGHT	CITY OF WILSON
Pam Myers	NCLM
Kelli Kukura	NCLM
Pam Melton	CenturyLink
Bill Waigle	antel
Jay Brown	NCAEC

VISITOR REGISTRATION SHEET

HOUSE SELECT COM./HIGH SPEED INTERNET 4-12-10

Name of Committee

Date

ACCESS IN RURAL & URBAN AREAS

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
KENDALL ROSS	Alphanumeric Systems
Steve Brewer	Century Link
Michelle Frazier	MFS
Connie Wilson	NCCTA
Mary Jo Tratten	Brooks Rode
Brian Phillips	TWC
Sammy Robertson	TWC
Britton Allen	Allen Law Offices, PLLC
Dwight Allen	Allen Law Offices, PLLC
Bob Wells	North State Communications

VISITOR REGISTRATION SHEET

HOUSE SELECT COM./HIGH SPEED INTERNET 4-12-10

Name of Committee

Date

ACCESS IN RURAL & URBAN AREAS

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
LORI ANN HARRIS	LAAHA
HERB CRENSHAW	AT&T North Carolina
Stan Pace	Verizon
Nick Tosco	NCLM
Xolani Sithole	NCLM
Yandisa Muzoini	McDowell County, South Africa
Chuck Abernethy	McDowell County
Jim Blackburn	NC Association of County Commissioners

Use of Utility Easements & DOT Rights of Way for Broadband Deployment

Relevant Statute

136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

- ...
- (2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State transportation system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

NOTE: Senate Bill 454 (DOT/Fiber-Optic Cable) would add other providers of broadband communications.

NOTE: The Right of Way Branch of the North Carolina Department of Transportation is responsible for the acquisition of all necessary lands and rights of way used for construction and improvements of all roads and highways which are part of the State Highway System. This includes roads on both the primary (Interstate, US, and NC routes) and secondary (SR routes) systems. Right of way acquisition follows planning and design and is the last activity to occur in the highway development process prior to letting a construction contract for building or improving a roadway.



NORTH CAROLINA GEN
Legislative Service

Attachment 4

George R. Hall, Legislative Services Officer

Bill Drafting Division

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Gerry Cohen
Director

Phyllis B. Pickett
Principal Staff Attorney

MEMORANDUM

To: Subcommittee on State-Owned Utility Towers

From: Phyllis Pickett
Peter Capriglione
Bill Patterson
Karlynn O'Shaughnessy
Brenda Carter
Committee Staff

Date: April 11, 2010

Subject: State-Owned Utility Towers/Property

This subcommittee was empanelled to review issues related to the use of State-owned utility towers in the installation of facilities necessary to provide high speed broadband service in the State, particularly as to unserved and underserved areas. To facilitate subcommittee discussions, Rep. Kelly Alexander asked committee staff to obtain information on the number and kinds of towers and to review issues related to collocation.

I. Government-Owned Utility Towers

Staff's cursory efforts indicate North Carolina counties and municipalities own approximately 59 utility towers around the State.

The State of North Carolina owns about 54 wireless internet towers. The Highway Patrol owns the vast majority of those towers (39) as part of the Voice Interoperability Plan for Emergency Responders (VIPER). The Department of Transportation is next in the number of towers. The Division of Emergency Management, the Division of Forest Resources, and the NC Forest Service also control towers.

The VIPER towers were built and continue to be built using Department of Homeland Security grant funds since most of the VIPER funding has come from federal grants. Most of these towers are in the central and eastern part of the State, however the majority of the towers remaining to be constructed many of which relate to the budget request are in the western part of the State.

Issues to consider when determining if the towers would be suitable for broadband use include location of the towers, the types of equipment that would need to be placed on these towers or in the buildings for broadband, load capacity issues created by adding additional equipment on the towers and the potential impact on structural reliability, and the costs of maintenance and operations.

II. Collocation

Collocation has been defined as the placement of wireless facilities on existing structures in a manner that negates the need to construct a new, freestanding wireless support structure. In North Carolina, there is not a general or local law specifically providing for, or regulating, the use of government owned utility towers for the purpose of collocation.

III. State Property/Public Purpose Issues

Committee staff reviewed whether the State constitution restricts making State-owned utility towers or other state-owned property available to private entities for the purpose of installing equipment to promote the availability of high speed broadband internet service. The relevant provisions of law are those contained in the N.C. Constitution, Article V, Section 2, subsections (1) and (7), which provide as follows:

"(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away."

"(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only."

The threshold question is whether State-owned utility towers would be made available for use on terms that implicate either of these provisions. If the taxing power is not surrendered, suspended, or contracted away and if the arrangement does not give away State appropriation to a private entity, then the "public purpose" requirement of the North Carolina constitution would not apply.

The North Carolina Supreme Court has held that the issue of public purpose must be decided on a case by case basis, and no bright line test is to be used. The applicable test for expenditures is two-pronged: 1) the expenditure must involve a reasonable connection with the convenience and necessity of the particular public entity; and 2) the expenditure must benefit the public generally as opposed to special interest or persons. *Maready v. City of Winston-Salem*, 342 N.C. 708 (1996). "Moreover, an expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose." *Id.* at 724.

In *Maready*, the Court upheld economic incentives provided to a manufacturer to locate its plant in Forsyth County, finding economic development to be well-established as a proper governmental function, and finding that the local government's purpose to create a more stable local economy by providing displaced workers with continuing employment opportunities, attracting better paying and more highly skilled jobs, enlarging the tax base, and diversifying the economy resulted in a net public benefit that met the public purpose test. Although it is always possible that a constitutional challenge could be made to an arrangement under which public utility towers or other public property is made available to private entities for the purpose of expanding the availability of broadband internet service, it would appear that there is a strong counter argument that encouraging the extension of broadband service to presently unserved or underserved areas of the State involves a legitimate public purpose and therefore does not violate the North Carolina constitution.

Sub Committee on Public – Private Partners
March 29, 2010
Meeting Notes

The Subcommittee on Public Private Partnerships first resolved that there are no legal impediments to the formation of public-private partnerships for the delivery of high speed broadband service to unserved or underserved areas of the State.

Interested parties from the broadband industry cited examples of public-private partnerships that are underway around the State. (See attached attendance list.) The industry representatives agreed that, absent economic incentives such as grants from e-NC, some of those deployments would not have been possible because these business decisions are made in the context of for-profit business. There was discussion of supply versus demand and "take rates" in the competitive environment.

Rep. Tolson stressed the need to ascertain the "will" of providers to enter into public-private partnerships. Rep. Tolson noted the importance of outlining realistic "parameters for workable public-private partnerships" with an clear understanding of expected outcomes. Rep. Avila expressed the view that the unserved should be the priority and that the highest speeds are not necessary for the type of use most needed by families in unserved areas.

It was noted that representatives of the Golden Leaf Foundation and cities and towns were not in attendance today and that having those groups at the table and participating is very important.

Rep. Tolson stressed that the subcommittee is solution oriented and after thorough discussion of relevant issues, Rep. Tolson asked the interested parties to:

- (1) Submit to the subcommittee a brief written overview of any suggestions they wish to make concerning the development of public-private partnerships for deployment of high speed broadband services in unserved and underserved areas of the State.
- (2) Provide to the subcommittee information on successful public-private partnerships in which they are already participating so that an inventory of current efforts can be compiled.

Committee staff was directed to analyze the information submitted in advance of the next subcommittee meeting. The Golden Leaf Foundation, the NC Assn of County Commissioners and the NC League of Municipalities will be asked to submit suggestions and to participate in the subcommittee process.

Select Committee on High Speed Internet Access in Rural and Urban Areas

Summary of Submissions to
Subcommittee on Public/Private Partnerships

Benefits of Broadband Deployment	Service	Supply & Demand	Technology Neutral	Incentive Suggestions	Legislation
			Terrestrial (Hard wired DSL or Cable) and/or wide area reach		Clarify legislative authority for county government to provide broadband options in their communities, through public-private partnerships
Education	Competitive Pricing	No overbuilds of existing broadband services	Wireless (Wi-Max, 3G, 365, etc)	Subsidize new subscribers	
Economic Development	Increase Take-rate to support private sector business models	Increased customer demand		Tax credits for providers	Right of way issues
Competition	Increase speed			State/Local grants	Private industry - first right of refusal
	Improve Service			Private grants	Task force
	Reduced Costs				Life Line Link-up

Select Committee on High Speed Internet Access in Rural and Urban Areas
Outline of e-mails sent to the Subcommittee on Public/Private Partnership

- Deployment of broadband infrastructure to serve consumers in areas of North Carolina where there are no broadband service providers or only one option for broadband services. The goal should be in as many places as possible to have competition for the consumer.
 - Networks should be “technology neutral”
 - Terrestrial (Hard wired DSL or Cable) and/or wide area reach Wireless (Wi-Max, 3G, 365, etc)
- Incentives
 - Incent the private providers who have networks already in place
 - Combination of incentive dollars from County Govt/State Govt and Private providers
 - Tax credits to private sector
 - Bill pending in the Wisconsin legislature. Other states have adopted this type of approach
 - Public and private sector should work together to structure incentives for increased broadband uptake (increased consumer demand [take rate])
 - Creative incentives (life line link-up for broadband or Title One Education funds being used for broadband) to subsidize new subscribers and/or increased education and advertising of the benefits of broadband subscription
- Use of local funds
 - Use local funds to partner with private providers to deploy service
 - Local government to invest in the build-out by the private provider
 - Do not build redundant infrastructure in competition with private business
 - Put together a RFP that would be responded to by private providers
 - Public investments could be either or both of
 - Direct incentives to service providers to serve homes in a region (last – mile)
 - Pool of funds available to allow for the hiring of technical experts in counties
- Building out back haul infrastructure (middle mile) and co-location (repeater) sites that the private sector can access at inexpensive rates (defined as at least 30% below current market rate).
- Develop public policy, a strong and enforceable preference for build-out by private industry
 - Private industry must be offered the first opportunity to provide service in unserved / underserved areas.
 - Requests for service should be based on demonstrable community need.
 - Cities should be discouraged from building broadband infrastructure that is redundant with infrastructure currently in place. (NC law needs to be amended consistent with this principle.)
- Importance of broadband access
 - Drive economic development
 - Education
 - Life-line link-up

**Select Committee on High Speed Internet Access in Rural and Urban Areas
Outline of e-mails sent to the Subcommittee on Public/Private Partnership**

Inventory Successful Public-Private Partnerships That Have Been Employed To Date in NC

- e-NC has provided matching grants to private providers to deploy broadband services-Caswell, Cherokee, Duplin, Gates, Graham, Greene, Jones, Pamlico, Tyrrell, and Warren counties
 - Highlights from the most recent e-NC Grant Program
 - CenturyLink's Application was to equip 36 new locations across the 4 counties
 - CenturyLink's Matching Investment = \$964,000 Awarded \$693,000 for a total investment of \$1.65M
 - Provided HSI access to an additional 5K access lines that otherwise would not have access today.
 - Highlights from the 2007 e-NC Grant Program
 - A \$1.21M matching grant was awarded to CenturyLink to provide HSI service to four counties in North Carolina. (CenturyLink investment \$1.25M)
 - Project included 60 sites within Gates, Warren, Jones and Greene Counties
 - Availability in these very rural counties now range from 75% to 90% for access lines served by CenturyLink
 - Partnership with the Bertie County School System.
 - CenturyLink High-Speed Internet service available to more than 1,400 student households.
 - Residents and businesses will also benefit due to the high-speed Internet expansion.
 - Approximately 86 percent of CenturyLink's phone lines in Bertie County will have access to CenturyLink's High-Speed Internet by the end of 2010.
- Public-private partnerships where partners shared infrastructure
 - The e-NC Authority and Advantage West
 - Additional Partners: French Broad Electric Membership Corporation, Country Cable Vision, the Education and Research Consortium of Western Carolina, Mountain Area Information Network
- Public-private partnerships where private investment joined public investment and foundation investment in a broadband partnership
 - Primary partners: The e-NC Authority, the Golden Leaf Foundation, Albemarle Pamlico Economic Development Corporation, University Health Systems of East Carolina University and Sprint (now CenturyLink)
- Public-private partnerships where government is matching private investment with public dollars
 - Primary Partners: the e-NC Authority, Embarq (now CenturyLink) and Verizon Corporation

H

D

BILL DRAFT 2009-LRz-131A [v.3] (4/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

4/12/2010 9:45:41 AM

Short Title: Joint Broadband Access Task Force.

(Public)

Sponsors: Representative Tolson.

Referred to:

A BILL TO BE ENTITLED

AN ACT CREATING THE JOINT BROADBAND ACCESS TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created the Joint Broadband Task Force (Task Force). The purpose of the Task Force is to bring together public and private internet access providers, legislators, and others to:

- (1) Examine issues related to last mile broadband deployments in the State and to improving the rate at which the general public accesses high speed broadband.
- (2) Consider incentives and other funding mechanisms to advance last mile deployments.
- (3) Review the best and most cost effective ways to address the needs of communities and households that lack broadband access.
- (4) Consider any other matters relating to last mile broadband deployment in this State.

SECTION 1.(b) The Task Force shall consist of fifteen voting members appointed as follows:

- (1) Seven members appointed by the Speaker of the House of Representatives, including four members of the House, one person who represents local exchange carriers, a representative of the North Carolina League of Municipalities, and one person from the general public.
- (2) Seven members appointed by the President Pro Tempore of the Senate, including four members of the Senate, one person who represents the voice over internet protocol industry, a representative of the North Carolina Association of County Commissioners, and one person from the general public.
- (3) One member elected by a vote of the other fourteen members of the Task Force.

SECTION 1.(c) The State Chief Information Officer and a representative of the e-NC Authority shall serve as nonvoting ex-officio members of the Task Force.

SECTION 2 The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint a cochair for the Task Force. The Task Force may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the



1 Legislative Services Commission, the Legislative Services Officer shall assign professional and
2 clerical staff to assist in the work of the Task Force. Clerical staff shall be furnished through the
3 offices of the House of Representatives' and the Senate's Directors of Legislative Assistants.
4 The Task Force may meet in the Legislative Building or the Legislative Office Building upon
5 the approval of the Legislative Services Commission. The appointing authority shall fill
6 vacancies. The Task Force, while in the discharge of its official duties, may exercise all the
7 powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the
8 power to request all officers, agents, agencies, and departments of the State to provide any
9 information, data, or documents within their possession, ascertainable from their records, or
10 otherwise available to them and the power to subpoena witnesses. Members of the Task Force
11 shall receive per diem, subsistence, and travel allowances as follows:

- 12 (1) Members of the General Assembly, at the rate established in G.S. 120-3.1.
- 13 (2) Members who are officials or employees of the State or of local government
14 agencies, at the rate established in G.S. 138-6.
- 15 (3) All other members, at the rate established in G.S. 138-5.

16 **SECTION 3.** The Task Force shall report to the 2013 General Assembly and shall
17 terminate upon filing its final report.

18 **SECTION 4.** There is appropriated from the General Fund to the General
19 Assembly the sum of fifty thousand dollars (\$50,000) for the 2010-2011 fiscal year to fund the
20 work of the Task Force.

21 **SECTION 5.** This act becomes effective July 1, 2010.

H

BILL DRAFT 2009-LR-125B [v.4] (03/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/16/2010 12:16:52 PM

Short Title: Local Government Broadband/Tax Credit.

(Public)

Sponsors: Representative Haire.

Referred to:

A BILL TO BE ENTITLED

AN ACT REQUIRING LOCAL GOVERNMENTS TO PROVIDE NOTICE TO BROADBAND SERVICE PROVIDERS BEFORE DEPLOYING HIGH SPEED BROADBAND INTERNET SERVICE IN UNSERVED OR UNDERSERVED AREAS AND PROVIDING AN INCOME TAX CREDIT FOR LAST MILE HIGH SPEED BROADBAND INTERNET SERVICE DEPLOYMENTS IN UNSERVED OR UNDERSERVED AREAS OF THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 15 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-281. Broadband service to unserved or underserved areas.

(a) A county may acquire, lease as lessor or lessee, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises in order to furnish high speed broadband internet services to the county and its citizens.

(b) If a county intends to provide high speed internet service to an area within the county, the county shall do all of the following:

(1) Define an unserved or underserved geographical area within the county that the county intends to service.

(2) Define the type of service to be provided in the defined area.

(3) Give written notice to any broadband service provider doing business in the county of the county's intent to provide services under this Article. The notice shall be given by certified mail, return receipt requested.

(c) Within 90 days of receipt of the county's notice of intent to provide high speed broadband internet services, any broadband service provider doing business within the county may respond to the notice by stating its desire to provide services to the designated area. The broadband service provider must post a performance bond with the county in the amount of \$50,000, which shall be returned to the broadband service provider upon its completion of the high speed broadband deployment within 12 months of the date the provider's response to the county's notice of intent.

(d) The county may proceed with its high speed broadband deployment if:

(1) No broadband service provider responds to the county's notice of intent within the prescribed period; or



1 (2) A broadband service provider fails to complete the deployment within
2 twelve months.

3 **SECTION 1.(b)** Article 16 of Chapter 160A of the General Statutes is amended by
4 adding a new section to read:

5 **"§ 160A.329 Broadband service to unserved or underserved areas.**

6 (a) A city may acquire, lease as lessor or lessee, construct, establish, enlarge, improve,
7 extend, maintain, own, operate, and contract for the operation of public enterprises in order to
8 furnish high speed broadband internet services to the county and its citizens.

9 (b) If a city intends to provide high speed internet service to an area within the city, the
10 city shall do all of the following:

11 (1) Define an unserved or underserved geographical area within the city that the
12 city intends to service.

13 (2) Define the type of service to be provided in the defined area.

14 (3) Give written notice to any broadband service provider doing business in the
15 city of the city's intent to provide services under this Article. The notice shall
16 be given by certified mail, return receipt requested.

17 (c) Within 90 days of receipt of the city's notice of intent to provide high speed
18 broadband internet services, any broadband service provider doing business within the city may
19 respond to the notice by stating its desire to provide services to the designated area. The
20 broadband service provider must post a performance bond with the city in the amount of
21 \$50,000, which shall be returned to the broadband service provider upon its completion of the
22 high speed broadband deployment within 12 months of the date the provider's response to the
23 city's notice of intent.

24 (d) The city may proceed with its high speed broadband deployment if:

25 (1) No broadband service provider responds to the city's notice of intent within
26 the prescribed period; or

27 (2) A broadband service provider fails to complete the deployment within
28 twelve months."

29 **SECTION 2.** Part 1 of Article 4 of Chapter 105 of the General Statutes is amended
30 by adding a new section to read:

31 **"§ 105-130.49. Credit for last mile high speed broadband internet service deployments in**
32 **unserved areas.**

33 (a) Credit. – Any corporation that completes the deployment of last mile high speed
34 broadband internet access services in an unserved or underserved area of the State is allowed a
35 credit against the tax imposed by this Part equal to five percent (5%) of the cost of the
36 deployment paid during the taxable year.

37 (b) Limitation. – The credit allowed under this section may not exceed the amount of
38 tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except
39 tax payments made by or on behalf of the taxpayer. The basis in any equipment for which a
40 credit is allowed under this section shall be reduced by the amount of credit allowable.

41 (c) Carryforward. – If any unused portion of a credit allowed in this section exceeds the
42 tax imposed under this Part, the excess may be carried forward over the succeeding year, but
43 the total credit for both years may not exceed a total of ten percent (10%).

44 (d) Definitions. – The following definitions apply in this section:

45 (1) Deployment. – Completion of the last mile of high speed broadband internet
46 access allowing the end user to access high-quality voice, data, graphics,
47 video, and other services developed for use over high speed broadband
48 internet.

49 (2) High speed broadband internet services. – Broadband service having the
50 capacity to transmit data to enable an end user of the service to originate and

1 receive high-quality voice, data, graphics, video, and other services
2 developed for use over high speed broadband internet.

3 (3) Last mile. – The physical connection between the edge of any
4 telecommunications or high speed internet service provider's network and
5 the end user's premises that permits the end user to access high speed
6 broadband internet services.

7 (4) Unserved area. – Any urban or rural area of the State in which high speed
8 broadband internet service is unavailable to the general public due to the
9 absence of a last mile deployment.

10 (e) Documentation. – Upon request, to support the credit allowed by this section, the
11 taxpayer shall file with its income tax return, for the taxable year in which the credit is claimed,
12 proof that the deployment has been completed.

13 (f) Sunset. – This section is repealed effective for taxable years beginning on or after
14 January 1, 2013."

15 **SECTION 3.** Section 1 and Section 3 of this act are effective when it becomes law. Section
16 2 of this act is effective for taxable years beginning on or after January 1, 2011, and applies to
17 costs incurred for last mile high speed broadband internet service deployments on or after that
18 date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

Attachment 8

H

BILL DRAFT 2009-LR-129 [v.4] (03/30)

D

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

3/30/2010 3:48:45 PM

Short Title: Remove Sunset/e-NC Authority.

(Public)

Sponsors: Representative Faison.

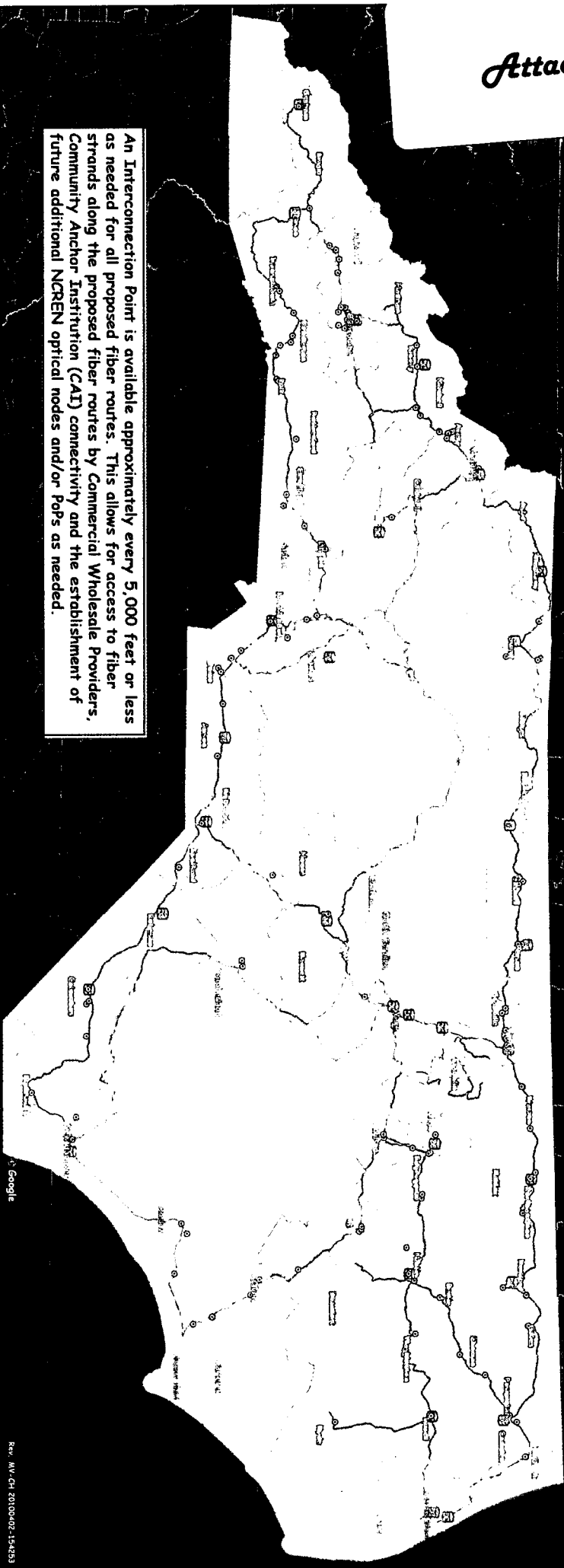
Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC
3 AUTHORITY.
4 The General Assembly of North Carolina enacts:
5 SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3.(a) of S.L.
6 2006-66, reads as rewritten:
7 "SECTION 4. Sections 1 and 2 of this act become effective December 31, 2003, with the
8 e-NC Authority hereby designated as the successor entity of the Rural Internet Access
9 Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The
10 remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is~~
11 ~~dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part~~
12 ~~2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by~~
13 ~~this act, are repealed effective December 31, 2011."~~
14 SECTION 2. This act is effective when it becomes law.



* 2 0 0 9 - L R - 1 2 9 - V - 4 *

Golden LEAF Rural Broadband Initiative - 1802.53 Miles In Proposed Funded Service Area
Community Anchor Institutions To Be Directly Connected To The North Carolina Research And Education Network (NCREN) across 69 counties (67 completely or partially underserved)



An Interconnection Point is available approximately every 5,000 feet or less as needed for all proposed fiber routes. This allows for access to fiber strands along the proposed fiber routes by Commercial Wholesale Providers, Community Anchor Institution (CAI) connectivity and the establishment of future additional NCREN optical nodes and/or Pops as needed.

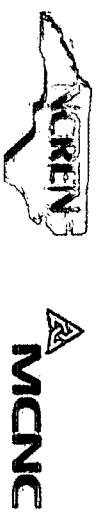
	= Proposed Fiber Route BTOP Round Two
	= Existing And BTOP Round One
	= Underserved Counties, Census Tracts in PFSA
	= Served Counties, Census Tracts in PFSA
	= Proposed Optical Transport Node - 40 Channels
	= Community Anchor Institutions To Be Directly Connected To NCREN

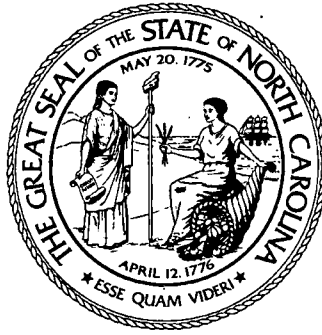


Underserved determination supplied by eNC Authority and BRCGI. Additional data and support provided by NCRBI (a program of the Kenan Institute).



MCNC is the independent, non-profit organization that operates the North Carolina Research And Education Network (NCREN).





MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Tuesday, May 11, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Tuesday, May 11, 2010, in Room 1228 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Phillip Haire, Earl Jones, Thom Tillis, and Roger West. Staff in attendance: Brenda Carter, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: John Brandon, Carlton Adams, Judy Turner and Young Bae. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 & 2*)

The Chairman called the meeting to order and welcomed staff, members and visitors. The purpose of the meeting was to adopt Findings and Recommendations and approve the Interim Report to the Speaker and members of the House of Representatives.

The Chairman and Members of the committee went through the draft Report line by line and either adopted as recommended or amended or proposed Findings and Recommendations. The members adopted the Finding and Recommendations unanimously. In addition to the drafted recommendations the committee also approved two other recommendations brought forth by John McHugh (Policy Analyst, Office of Economic Recovery & Investment) and Jane Smith Patterson (Executive Director, E-NC Authority).

1. The Committee recommends that the General Assembly support the Governor's recommendations as outlined in her letter to the National Telecommunications and Information Administration, May 4, 2010, seeking funds for North Carolina projects in Round 2 of NTIA's Broadband Technology Opportunities Program. These projects include:
 - The Subcommittee on Comprehensive Community Infrastructure Applications recommends:
 - MCNC's North Carolina Rural Broadband Initiatives (NCRBI) program
 - MAIN's CCI program
 - The Subcommittee on PCC/SBA recommends, for the Public Computer Center category:

- North Carolina Department of Cultural Resources, North Carolina State Library program
 - The PCC/SBA wishes to highlight, in the Public Computer Center category:
 - Winstonnet Inc.
 - ii. Renovation and repurposing projects
 - Olive Hill Community Economic Development Corporation
 - Greater Lansing Area Development
 - The Subcommittee on PCC/SBA recommends, for the Sustainable Broadband Adoption category:
 - MAIN's SBA Cloud Computer program
 - The PCC/SBA wishes to highlight, in the Sustainable Broadband Adoption category:
 - UNC-Pembroke's CIVC program
 - ii. Elauwit SBA program
2. The Committee recommends that the General Assembly support the e-NC Authority's proposal that North Carolina serve as a Lifeline Online pilot program in conjunction with the FCC, and recommends that the General Assembly direct the e-NC Authority to seek this partnership with the FCC and to develop the cooperative relationships necessary to see a Lifeline Online pilot program implemented across North Carolina.

The draft report and final draft report are attached. (*Attachment 3 & 4*) In addition Rep. Haire requested that certain documentation be added to the committee records which were made a part of the record. (*Attachment 5*)

Chairman Faison thanked the committee for all of the time and effort put into the committee's work and with no further business to come before the committee Chairman Faison announced the adjournment of the House Select Committee on High Speed Internet Access in Rural & Urban Areas. The meeting adjourned at 10:45 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Wednesday, May 11, 2010
10:00 AM
Room 1228 L.B.**

1. Welcome

Representative Bill Faison, Chairman

2. Committee Consideration of Interim Report:

- Proposed Findings
- Proposed Recommendations for Legislation

3. Adjournment

VISITOR REGISTRATION SHEET

Attachment 2

High Speed Internet

Name of Committee

5.11.2010

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
John McHugh	DERI
Jane Patterson	e-NC Authority
Angie Bailey	e-NC Authority
JACK COZART	NSS
DOUG DAVIS	City of Salisbury NC
Tom Coley	NCCWA
Chice	Ashon Avantis
Mike Crowell	City of Salisbury
Marian Tatten	Brooks Pierce
Conno Wilson	CWC, Inc
Spck Stanley	TWC

VISITOR REGISTRATION SHEET

High Speed Internet
Name of Committee

5.11.2010
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Brad Phillips	TWC
Jim Cauley	Wilson
Alison Cooper	KKW Atkins - Wilson
Mark Bojo	Wilson
Tom Carothers	City of Greensboro
James Dickens	City of Greensboro
HERB CRENSHAW	AT&T
Michelle Frazier	MFS
Kelli Kuka	NCLM
Blaine Jansen	PWC from City of Fayetteville

VISITOR REGISTRATION SHEET

High Speed Internet

5.11.2010

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

CS Hollis	TSS
Bob Wells	North State Community
Jay Rouse	Not w/ Time Warner Cable
Pam Melton	Contumlink
Steve Bonner	Contumlink
Dwight Azlow	Azlow Law Offices, PLLC
Carole Woodward	NC Telecom Association
AGNES SPERWITT	CITY OF WILSON
Bruce Rose	City of Wilson, Mayor
JOHN DUDLEY	PalmettoNet / Spirit Telecom
Bill Wright	autel

VISITOR REGISTRATION SHEET

High Speed Internet

5.11.2010

Name of Committee

Date

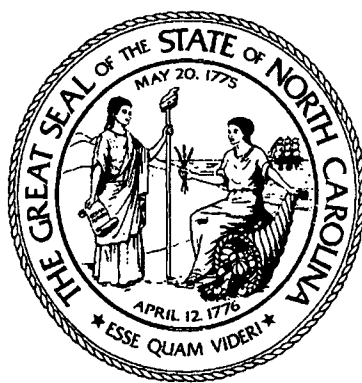
VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Michael Ramsey	NC DPI
Patricia Buff	NC AEC
Jim Blackburn	NC Association of County Commissioners
Joe Fraddoso	MCNC
Thomas Moore	Edule - Waters
Pam Meyer	NCLM
Wen Ly Kelly	Policy Group

**HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET
ACCESS IN RURAL AND URBAN AREAS**



REPORT TO THE
NORTH CAROLINA
HOUSE OF REPRESENTATIVES

May 2010

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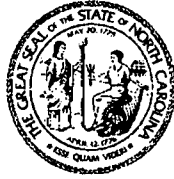
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**HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET
IN RURAL AREA AND URBAN AREAS**



May 11, 2010

**TO THE SPEAKER AND MEMBERS OF THE HOUSE OF
REPRESENTATIVES:**

Attached for your consideration is the report of the House Select Committee on High Speed Internet in Rural and Urban Areas established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,

Representative Bill Faison

Chair

House Select Committee on High Speed Internet in Rural Areas and Urban Areas

PREFACE

The House Select Committee on High Speed Internet in Rural and Urban Areas was authorized by the Speaker of the House of Representatives on October 27, 2009. The charge of the committee was to study the availability of high-speed Internet access in rural areas and in low-wealth, urban areas of the State having a population of 100,000 or more according to the most recent federal decennial census. The committee was also authorized to:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.
- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.
- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

The letter of authorization, which includes a listing of the full membership of the Committee, is included in Appendix A of this report.

Representative Bill Faison was appointed to chair the Committee. A committee notebook containing the committee minutes and all information presented to the committee will be placed on file in the Legislative Library.

COMMITTEE PROCEEDINGS

The House Select Committee on High Speed Internet in Rural Areas held seven meetings from October 2009 through May 2010. At each meeting the Committee provided interested parties an opportunity to be heard on the issues and received additional comments from the public. Among the parties presenting testimony were broadband services providers, representatives of the e-NC Authority, municipalities that provide service to their citizens, MCNC, and various education and business organizations, public officials, concerned citizens, and citizen advocacy groups. All the parties acknowledged the critical importance of high speed internet access. Service providers view high speed internet as an important part of their future business plan, while citizens see it as a necessity for educating their children, conducting their small businesses, and participating in the culture of the information age. Universally available high speed internet deployment is essential for North Carolina's economic growth and prosperity.

October 10, 2009 Meeting Summary

The Committee held its first meeting on October 10, 2009. The Chairman gave a brief overview of the Committee's charge to examine the availability of high speed internet in the State, and to consider the feasibility of legislation that would facilitate joint efforts to ensure that citizens in our State have access to high speed internet. The availability of high speed internet may become the new backbone of our economic and educational growth.

Jane Smith Patterson (Executive Director, e-NC Authority) was recognized to present to the committee. Ms. Patterson discussed the American Recovery and Reinvestment Act of 2009–Broadband Initiatives and told the committee that Governor's Office of Economic Recovery and Investment (OERI) oversees ARRA Broadband Initiatives in North Carolina. She also explained the role the e-NC Authority had been asked by OERI to play in this process.

John McHugh (Policy Analyst, Governor's Office) was recognized to present to the committee. Mr. McHugh told the committee that the Governor put together a Broadband Technology Opportunities Program (BTOP) Review Committee to review all applications and make recommendations as to whom the committee felt met all federal requirements.

Herb Crenshaw (Director, External Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw said there are barriers to the adoption of broadband that the general public's "take rate" for broadband service.

November 23, 2009 Meeting Summary

The Committee held its second meeting on November 23, 2009.

The Chairman also explained the agenda as it pertained to House Bill 1252 - Level Playing Field/Cities/Service Providers.

The focus of the meeting was on municipalities and their use of resources. Cities are free to cross-subsidize their competitive activity with their non-competitive governmental services like electric service or gas service to provide High Speed Broadband access and other communication tools, to their citizens.

Marcus Trathan (North Carolina Cable Association) was recognized to present to the committee. Mr. Trathan's discussed a case that was brought before the NC Court of Appeals in 2005, and the decision issued in a case called *BellSouth v. City of Laurinburg*.

Lyman Horne (Executive VP and General Manager, Star Telephone Membership Corporation) was recognized to present to the committee. Ms. Horne discussed how the private sector made extensive investments in municipal areas.

Kelli Kukura (Director of Government Affairs, NCLM) was recognized to present to the committee. Ms. Kukura indicated the real issue was that there are significant problems that North Carolina faces in delivering broadband infrastructure fairly and without bias to North Carolina citizens.

Susan Kluts (Mayor, Salisbury, North Carolina) was recognized to present to the committee. Ms. Kluts stated that Salisbury began to look at the infrastructure needed to make them more competitive in the new global information economy and that a fiber infrastructure was the future of Salisbury and driver of economic development.

Grant Goings (City Manager, Wilson, North Carolina) and Mark Prak (North Carolina Cable Telecommunications Association) were recognized to make additional comments to the committee.

December 14, 2009 Meeting Summary

The third meeting of the Committee was held on December 14, 2009. Chairman Faison explained that this meeting was a continuation of our last meeting which was House Bill 1252 Level Playing Field/Cities/Service Providers. The Question being considered was whether municipalities will be able to continue using their resources, unfettered, to provide High Speed Broadband access and other communication tools, to their citizens. The Chairman also explained of the agenda which would be Proponents of the bill, Opponents of the bill, Proponents of the bill, Q&A, then the "White Space" speaker.

Herb Crenshaw (Director, External Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw stated that AT&T was not opposed to local governments providing telecommunications services to its constituents.

North Carolina League of Municipalities (NCLM) was recognized to present to the committee. The league divided its time into five parts: Wilson's Rebuttal of Previous Meeting Issues by Grant Goings, Wilson City Manager; Business Input from Public Service and Law Enforcement Officers; Predatory Pricing Impact on Broadband Development by Catharine Rice, VP of the Southeast Association of Telecommunication Officers and Advisors; General citizen testimony; and Municipalities' Proposed State Broadband Policies for Committee Consideration by Paul Meyer, Chief Legislative Council. The presentations from Public Service and Law enforcement emphasized the importance of communication and how broadband high speed access is a critical part of the communication equation. Nine citizens presented their points of view on the subject. Paul Meyer, Chief Legislative Council, for NCLM asked that the committee focus on solutions to the problem of both underserved and unserved communities in North Carolina and develop state policy to provided fiber to the home including public and private sectors. Mr. Meyer's presented the Municipalities' Proposed State Broadband Policies for Committee Consideration.

Marcus Trathan (North Carolina Cable Association) was recognized to present to the committee. Mr. Trathan provided the committee with an inventory of laws in other states on municipal competition. Twenty six states have addressed the issue.

John Goodman (North Carolina Chamber of Commerce) was recognized to present to the committee. He stated the Chamber supported House Bill 1252 Level Playing Field/Cities/Service Providers and also that the Chamber would like the committee to address

“Whether there is a public need for additional infrastructure that is currently not being satisfied by the private sector?”

John Merritt and Dr. John Chaplin were recognized to present to the committee. They discussed that after the mandated switch from analog to digital television a significant amount of spectrum remains unused in the TV Band. They pointed out that the unused TV Band spectrum is called “white space” and that the “white space” opens up another means to provide broadband.

January 26, 2010 Meeting Summary

The fourth meeting of the Committee was held on January 26, 2010.

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso spoke about the Vision of Broadband Recovery.

Jane Smith Patterson (Executive Director, E-NC Authority) was recognized to present to the committee. Ms. Patterson informed the committee of the State Broadband Data & Development Grant in the amount of \$1,589,077 was awarded to e-NC for North Carolina broadband mapping

John McHugh (Policy Analyst, Office of Economic Recovery & Investment) was recognized to update the committee on what the Governors Broadband Mapping review committee is.

Oppie Jordan (Vice President, Carolinas Gateway Partnership) was recognized to present to the committee. Ms. Jordan expressed the importance of broadband for economic development throughout the state.

After the presentations for the day Chairman Faison moved on to the discussion of potential committee legislation: **BILL DRAFT 2009-LR-124 [v.11]** - ACT to encourage the creation of cooperatives for the provision of high speed internet access FOR expanded broadband in North Carolina. Chairman Faison opened the floor for questions or comments the proposed legislation was not acted upon.

February 22, 2010 Meeting Summary

The fifth meeting of the Committee was held on February 22, 2010.

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso discussed the benefits of broadband to communities. He reiterated the importance of broadband in the areas of: Equity of Education across K20, Modern healthcare, Economic development, Civic participation, and emphasized that the current FCC definition of broadband [speed], 768K down and 250K up today that will not support most eLearning content reliably and will not support high def video.

Jane Smith Patterson (Executive Director, E-NC Authority) was recognized to present to the committee. Her presentation focused on e-NC’s award for the mapping/planning project and she discussed the National Broadband plan.

After the presentations for the day Chairman Faison moved on to the discussion of potential committee legislation. Chairman Faison appointed Sub-Committees to report back to the Full Committee on its next meeting date. The subcommittees were to consider:

Removal of sunset provisions on e-NC Legislation - Rep. Jones

- Sub-Committee on Highway Right of Ways - Representative Haire, Bryant & Gulley
- Sub-Committee on Assessment of Towers - Representative Alexander, Coates & West
- Sub-Committee on Public Private Partnerships - Representative Tolson, Jones & Avila

- Sub-Committee on Internet Coops – Representative Faison and Coats.

April 4, 2010 Meeting Summary

The sixth meeting of the Committee was held on April 12, 2010.

Representative Kelly Alexander called the meeting to order and welcomed staff, members and visitors. At our last committee meeting, Chairman Faison appointed Sub-Committees to report back to the Full Committee because of the depth of legislation suggested from e-NC. Today the results of those appointed Sub-Committees will report:

Rep. Haire was recognized to report on the Sub-Committees finding on Highway Right of Ways. Those findings are outlined in this report.

Rep. Alexander was recognized to report on the Sub-Committees finding on Assessment of Towers. The findings are outlined in this report.

Rep. Tolson was recognized to report on the Sub-Committees finding on Public Private Partnerships. Those findings are outline in this report. Rep. Tolson noted the importance of outlining realistic "parameters for workable public-private partnerships" with a clear understanding of expected outcomes.

Dan Gerlock (President, Golden Leaf Foundation) was recognized to update the committee on BTOP review committee meetings and dates.

John McHugh (Policy Analyst, Office of Economic Recovery & Investment) was recognized to update the committee on BTOP review committee meetings and dates.

May 11, 2010 Meeting Summary

The House Select Committee on High Speed Internet in Rural Areas met on May 11, 2010 to adopt its findings and recommendations and approve its final report to the Speaker and members of the House of Representatives.

FINDINGS AND RECOMMENDATIONS

- ✓ 1. The Committee finds that there are many barriers to the adoption of broadband to meet the needs of unserved and underserved areas. Some of these barriers include; lack of access to speeds required for personal, educational, medical or business need, lack of interest or awareness of need/benefits and affordable pricing.
 - a. The Committee recommends that improvements in broadband speeds should continue to be the goal as new infrastructure is put in place. Efforts should be made to educate citizens and communities of the benefits of broadband and ^{to} make the technology more affordable.
- ✓ 2. The Committee finds that in unserved and underserved areas providers cannot justify the installation of the required middle and last-mile technology due to the high cost of the installation and the lack of customers required to meet their stated revenue goals.
- ✓ 3. The Committee finds that the infusion of funding from the Federal Government's American Recovery and Reinvestment Act of 2009—Broadband Initiatives, will result in middle mile improvements being made in unserved and underserved areas of North Carolina, increasing the possibilities for providers and others to enter those areas and provide last mile service.
 - a. The Committee recommends continued support for MCNC as they move forward in their grant requests as well as e-NC and their efforts to re-map the availability of broadband throughout North Carolina.
- ✓ 4. The Committee finds that the sunset provision in S.L. 2003-42, pertaining to e-NC Authority, places e-NC at a disadvantage when applying for grants or entering into long-term agreements.
 - a. The Committee recommends legislation that will remove the sunset provision currently applicable to enact (Legislative Proposal I)
- ✓ 5. The Committee finds that municipalities are currently providing or plan to provide broadband services to their citizens and that the privately-owned providers are generally opposed to municipalities providing broadband services to their citizen. Public-private partnerships are a viable way to promote the delivery of broadband service to unserved and underserved areas of North Carolina and that that there are no legal impediments to the formation of public-private partnerships for the delivery of high speed broadband service to unserved or underserved areas of the State.
- ✓ 6. The Committee finds that towers are owned by many different entities, including counties, municipalities, the Highway Patrol, the Department of Transportation, and the Division of Emergency Management, the Division of Forest Resources, and the NC Forest Service. The legislature can legally grant access to these towers, but because of the variety of towers [or of owners] and the fact that no one agency controls the towers, this is not practical. Certain issues, such as the size and weight of the equipment that the towers are capable of supporting, are beyond the scope of this committee's technical expertise.
- ✓ 7. The Committee finds that due to the many diverse locations in our state, legislative action to promote the deployment of broadband should be technology neutral so as to permit the utilization of all appropriate technologies to provide service to the unserved and underserved areas of North Carolina.

LEGISLATIVE PROPOSAL I

A BILL TO BE ENTITLED

AN ACT to repeal the sunset provision pertaining to the e-nc authority.
The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3.(a) of S.L. 2006-66, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011.~~"

SECTION 2. This act is effective when it becomes law.

DRAFT

Memorandum - Subcommittee on State-Owned Utility Towers

MEMORANDUM

To: Subcommittee on State-Owned Utility Towers

From: Phyllis Pickett
Peter Capriglione
Bill Patterson
Karlynn O'Shaughnessy
Brenda Carter
Committee Staff

Date: April 11, 2010

Subject: State-Owned Utility Towers/Property

This subcommittee was empanelled to review issues related to the use of State-owned utility towers in the installation of facilities necessary to provide high speed broadband service in the State, particularly as to unserved and underserved areas. To facilitate subcommittee discussions, Rep. Kelly Alexander asked committee staff to obtain information on the number and kinds of towers and to review issues related to collocation.

I. Government-Owned Utility Towers

Staff's cursory efforts indicate North Carolina counties and municipalities own approximately 59 utility towers around the State.

The State of North Carolina owns about 54 wireless internet towers. The Highway Patrol owns the vast majority of those towers (39) as part of the Voice Interoperability Plan for Emergency Responders (VIPER). The Department of Transportation is next in the number of towers. The Division of Emergency Management, the Division of Forest Resources, and the NC Forest Service also control towers.

The VIPER towers were built and continue to be built using Department of Homeland Security grant funds since most of the VIPER funding has come from federal grants. Most of these towers are in the central and eastern part of the State, however the majority of the towers remaining to be constructed many of which relate to the budget request are in the western part of the State.

Issues to consider when determining if the towers would be suitable for broadband use include location of the towers, the types of equipment that would need to be placed on these towers or in the buildings for broadband, load capacity issues created by adding additional equipment on the towers and the potential impact on structural reliability, and the costs of maintenance and operations.

II. Collocation

Collocation has been defined as the placement of wireless facilities on existing structures in a manner that negates the need to construct a new, freestanding wireless support structure.

In North Carolina, there is not a general or local law specifically providing for, or regulating, the use of government owned utility towers for the purpose of collocation.

III. State Property/Public Purpose Issues

Committee staff reviewed whether the State constitution restricts making State-owned utility towers or other state-owned property available to private entities for the purpose of installing equipment to promote the availability of high speed broadband internet service. The relevant provisions of law are those contained in the N.C. Constitution, Article V, Section 2, subsections (1) and (7), which provide as follows:

"(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away."

"(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only."

The threshold question is whether State-owned utility towers would be made available for use on terms that implicate either of these provisions. If the taxing power is not exercised, and if the arrangement does not appropriate State money to a private entity, then the "public purpose" requirement of the North Carolina constitution would not apply.

In situations where the "public purpose" requirement applies, the North Carolina Supreme Court has held that the issue of public purpose must be decided on a case by case basis, and no bright line test is to be used. The applicable test for expenditures is two-pronged: 1) the expenditure must involve a reasonable connection with the convenience and necessity of the particular public entity; and 2) the expenditure must benefit the public generally as opposed to special interest or persons. *Maready v. City of Winston-Salem*, 342 N.C. 708 (1996). "Moreover, an expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose." *Id.* at 724.

In *Maready*, the Court upheld economic incentives provided to a manufacturer to locate its plant in Forsyth County, finding economic development to be well-established as a proper governmental function, and finding that the local government's purpose to create a more stable local economy by providing displaced workers with continuing employment opportunities, attracting better paying and more highly skilled jobs, enlarging the tax base, and diversifying the economy resulted in a net public benefit that met the public purpose test. Although it is always possible that a constitutional challenge could be made to an arrangement under which public utility towers or other public property is made available to private entities for the purpose of expanding the availability of broadband internet service, it would appear that there is a strong counter argument that encouraging the extension of broadband service to presently unserved or underserved areas of the State involves a legitimate public purpose and therefore does not violate the North Carolina constitution.

APPENDIX A



Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET IN RURAL AREAS

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on High Speed Internet in Rural Areas (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 11 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time.

Representative Bill Faison - Chair
Representative Angela Bryant
Representative Jim Gulley
Representative Phillip Haire
Representative Kelly Alexander
Representative Thom Tillis
Representative Joe Tolson
Representative Roger West
Representative Earl Jones
Representative Marilyn Avila
Representative Lorene Coates

Section 3. The Committee may study the availability of high-speed Internet access in rural areas and in low-wealth, urban areas of the State having a population of 100,000 or more according to the most recent federal decennial census. In conducting its study, the Committee may:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.

- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.
- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

Section 4. The Committee shall meet upon the call of its Chair. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 27th day of October, 2009.



Joe Hackney
Speaker

Committee Staff

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Barbara Riley, Attorney
Bill Patterson, Attorney
Research Division
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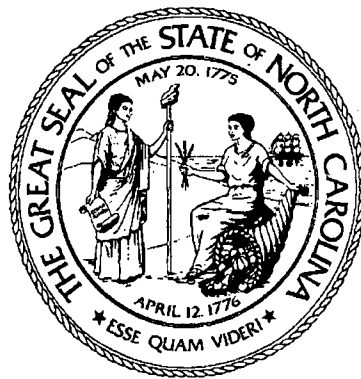
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**HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET
ACCESS IN RURAL AREAS**



**REPORT TO THE
NORTH CAROLINA
HOUSE OF REPRESENTATIVES**

May 2010

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**HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET
IN RURAL AREAS**



May 11, 2010

**TO THE SPEAKER AND MEMBERS OF THE HOUSE OF
REPRESENTATIVES:**

Attached for your consideration is the report of the House Select Committee on High Speed Internet in Rural Areas established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,

Representative Bill Faison

Chair

House Select Committee on High Speed Internet in Rural Areas

PREFACE

The House Select Committee on High Speed Internet in Rural Areas was authorized by the Speaker of the House of Representatives on October 27, 2009. The charge of the committee was to study the availability of high-speed Internet access in rural areas and in low-wealth, urban areas of the State having a population of 100,000 or more according to the most recent federal decennial census. The committee was also authorized to:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.
- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.
- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

The letter of authorization, which includes a listing of the full membership of the Committee, is included in Appendix A of this report.

Representative Bill Faison was appointed to chair the Committee. A committee notebook containing the committee minutes and all information presented to the committee will be placed on file in the Legislative Library.

COMMITTEE PROCEEDINGS

The House Select Committee on High Speed Internet in Rural Areas held seven meetings from October 2009 through May 2010. At each meeting the Committee provided interested parties an opportunity to be heard on the issues and received additional comments from the public. Among the parties presenting testimony were broadband services providers, representatives of the e-NC Authority, municipalities that provide service to their citizens, MCNC, and various education and business organizations, public officials, concerned citizens, and citizen advocacy groups. All the parties acknowledged the critical importance of high speed internet access. Service providers view high speed internet as an important part of their future business plan, while citizens see it as a necessity for educating their children, conducting their small businesses, and participating in the culture of the information age. Universally available high speed internet deployment is essential for North Carolina's economic growth and prosperity.

October 10, 2009 Meeting Summary

The Committee held its first meeting on October 10, 2009. The Chairman gave a brief overview of the Committee's charge to examine the availability of high speed internet in the State, and to consider the feasibility of legislation that would facilitate joint efforts to ensure that citizens in our State have access to high speed internet. The availability of high speed internet may become the new backbone of our economic and educational growth.

Jane Smith Patterson (Executive Director, e-NC Authority) was recognized to present to the committee. Ms. Patterson discussed the American Recovery and Reinvestment Act of 2009–Broadband Initiatives and told the committee that Governor's Office of Economic Recovery and Investment (OERI) oversees ARRA Broadband Initiatives in North Carolina. She also explained the role the e-NC Authority had been asked by OERI to play in this process.

John McHugh (Policy Analyst, Governor's Office) was recognized to present to the committee. Mr. McHugh told the committee that the Governor put together a Broadband Technology Opportunities Program (BTOP) Review Committee to review all applications and make recommendations as to whom the committee felt met all federal requirements.

Herb Crenshaw (Director, External Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw said there are barriers to the adoption of broadband that the general public's "take rate" for broadband service.

November 23, 2009 Meeting Summary

The Committee held its second meeting on November 23, 2009.

The Chairman also explained the agenda as it pertained to House Bill 1252 - Level Playing Field/Cities/Service Providers.

The focus of the meeting was on municipalities and their use of resources. Cities are free to cross-subsidize their competitive activity with their non-competitive governmental services like electric service or gas service to provide High Speed Broadband access and other communication tools, to their citizens.

Marcus Trathan (North Carolina Cable Association) was recognized to present to the committee. Mr. Trathan's discussed a case that was brought before the NC Court of Appeals in 2005, and the decision issued in a case called *BellSouth v. City of Laurinburg*.

Lyman Horne (Executive VP and General Manager, Star Telephone Membership Corporation) was recognized to present to the committee. Ms. Horne discussed how the private sector made extensive investments in municipal areas.

Kelli Kukura (Director of Government Affairs, NCLM) was recognized to present to the committee. Ms. Kukura indicated the real issue was that there are significant problems that North Carolina faces in delivering broadband infrastructure fairly and without bias to North Carolina citizens.

Susan Kluts (Mayor, Salisbury, North Carolina) was recognized to present to the committee. Ms. Kluts stated that Salisbury began to look at the infrastructure needed to make them more competitive in the new global information economy and that a fiber infrastructure was the future of Salisbury and driver of economic development.

Grant Goings (City Manager, Wilson, North Carolina) and Mark Prak (North Carolina Cable Telecommunications Association) were recognized to make additional comments to the committee.

December 14, 2009 Meeting Summary

The third meeting of the Committee was held on December 14, 2009.

Chairman Faison explained that this meeting was a continuation of our last meeting which was House Bill 1252 Level Playing Field/Cities/Service Providers. The Question being considered was whether municipalities will be able to continue using their resources, unfettered, to provide High Speed Broadband access and other communication tools, to their citizens. The Chairman also explained the agenda which would be Proponents of the bill, Opponents of the bill, Proponents of the bill, Q&A, then the "White Space" speaker.

Herb Crenshaw (Director, External Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw stated that AT&T was not opposed to local governments providing telecommunications services to its constituents.

North Carolina League of Municipalities (NCLM) was recognized to present to the committee. The league divided its time into five parts: Wilson's Rebuttal of Previous Meeting Issues by Grant Goings, Wilson City Manager; Business Input from Public Service and Law Enforcement Officers; Predatory Pricing Impact on Broadband Development by Catharine Rice, VP of the Southeast Association of Telecommunication Officers and Advisors; General citizen testimony; and Municipalities' Proposed State Broadband Policies for Committee Consideration by Paul Meyer, Chief Legislative Council. The presentations from Public Service and Law enforcement emphasized the importance of communication and how broadband high speed access is a critical part of the communication equation. Nine citizens presented their points of view on the subject. Paul Meyer, Chief Legislative Council, for NCLM asked that the committee focus on solutions to the problem of both underserved and unserved communities in North Carolina and develop state policy to provided fiber to the home including public and private sectors. Mr. Meyer's presented the Municipalities' Proposed State Broadband Policies for Committee Consideration.

Marcus Trathan (North Carolina Cable Association) was recognized to present to the committee. Mr. Trathan provided the committee with an inventory of laws in other states on municipal competition. Twenty six states have addressed the issue.

John Goodman (North Carolina Chamber of Commerce) was recognized to present to the committee. He stated the Chamber supported House Bill 1252 Level Playing Field/Cities/Service Providers and also that the Chamber would like the committee to address

“Whether there is a public need for additional infrastructure that is currently not being satisfied by the private sector?”

John Merritt and Dr. John Chaplin were recognized to present to the committee. They discussed that after the mandated switch from analog to digital television a significant amount of spectrum remains unused in the TV Band. They pointed out that the unused TV Band spectrum is called “white space” and that the “white space” opens up another means to provide broadband.

January 26, 2010 Meeting Summary

The fourth meeting of the Committee was held on January 26, 2010.

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso spoke about the Vision of Broadband Recovery.

Jane Smith Patterson (Executive Director, E-NC Authority) was recognized to present to the committee. Ms. Patterson informed the committee of the State Broadband Data & Development Grant in the amount of \$1,589,077 was awarded to e-NC for North Carolina broadband mapping

John McHugh (Policy Analyst, Office of Economic Recovery & Investment) was recognized to update the committee on what the Governors Broadband Mapping review committee is.

Oppie Jordan (Vice President, Carolinas Gateway Partnership) was recognized to present to the committee. Ms. Jordan expressed the importance of broadband for economic development throughout the state.

After the presentations for the day Chairman Faison moved on to the discussion of potential committee legislation: **BILL DRAFT 2009-LR-124 [v.11]** - ACT to encourage the creation of cooperatives for the provision of high speed internet access FOR expanded broadband in North Carolina. Chairman Faison opened the floor for questions or comments the proposed legislation was not acted upon.

February 22, 2010 Meeting Summary

The fifth meeting of the Committee was held on February 22, 2010.

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso discussed the benefits of broadband to communities. He reiterated the importance of broadband in the areas of: Equity of Education across K20, Modern healthcare, Economic development, Civic participation, and emphasized that the current FCC definition of broadband [speed], 768K down and 250K up today that will not support most eLearning content reliably and will not support high definition video.

Jane Smith Patterson (Executive Director, E-NC Authority) was recognized to present to the committee. Her presentation focused on e-NC’s award for the mapping/planning project and she discussed the National Broadband plan.

After the presentations for the day Chairman Faison moved on to the discussion of potential committee legislation. Chairman Faison appointed Sub-Committees to report back to the Full Committee on its next meeting date. The subcommittees were to consider:

- Removal of sunset provisions on e-NC Legislation - Rep. Jones
- Sub-Committee on Highway Right of Ways - Representative Haire, Bryant & Gulley
- Sub-Committee on Assessment of Towers - Representative Alexander, Coates & West

- Sub-Committee on Public Private Partnerships - Representative Tolson, Jones & Avila
- Sub-Committee on Internet Coops – Representative Faison and Coats.

April 4, 2010 Meeting Summary

The sixth meeting of the Committee was held on April 12, 2010.

Representative Kelly Alexander called the meeting to order and welcomed staff, members and visitors. At our last committee meeting, Chairman Faison appointed Sub-Committees to report back to the Full Committee because of the depth of legislation suggested from e-NC. Today the results of those appointed Sub-Committees will report:

Rep. Haire was recognized to report on the Sub-Committees finding on Highway Right of Ways.

Rep. Alexander was recognized to report on the Sub-Committees finding on Assessment of Towers. The findings are outlined in this report.

Rep. Tolson was recognized to report on the Sub-Committees finding on Public Private Partnerships. Rep. Tolson noted the importance of outlining realistic "parameters for workable public-private partnerships" with a clear understanding of expected outcomes.

Dan Gerlock (President, Golden Leaf Foundation) was recognized to update the committee on BTOP review committee meetings and dates.

John McHugh (Policy Analyst, Office of Economic Recovery & Investment) was recognized to update the committee on BTOP review committee meetings and dates.

May 11, 2010 Meeting Summary

The House Select Committee on High Speed Internet in Rural Areas met on May 11, 2010 to adopt its findings and recommendations and approve its final report to the Speaker and members of the House of Representatives.

FINDINGS AND RECOMMENDATIONS

1. The Committee finds that there are many barriers to the adoption of broadband to meet the needs of unserved and underserved areas. Some of these barriers include; lack of access to speeds required for personal, educational, medical or business need, lack of interest or awareness of need/benefits and affordable pricing.
 - a. The Committee recommends that improvements in broadband speeds should continue to be the goal as new infrastructure is put in place. Efforts should be made to educate citizens and communities of the benefits of broadband and to make the technology more affordable.
2. The Committee finds that in unserved and underserved areas providers cannot justify the installation of the required middle and last-mile technology due to the high cost of the installation and the lack of customers required to meet their stated revenue goals.
3. The Committee finds that the infusion of funding from the Federal Government's American Recovery and Reinvestment Act of 2009–Broadband Initiatives, will result in middle mile improvements being made in unserved and underserved areas of North Carolina, increasing the possibilities for providers and others to enter those areas and provide last mile service.
 - a. The Committee recommends support for MCNC as it moves forward in its requests for grant requests and for e-NC and its efforts to re-map the availability of broadband throughout North Carolina.
 - b. The Committee recommends that the General Assembly support the Governor's recommendations as outlined in her letter to the National Telecommunications and Information Administration, May 4, 2020, seeking funds for North Carolina projects in Round 2 of NTIA's Broadband Technology Opportunities Program. These projects include:
 - The Subcommittee on Comprehensive Community Infrastructure Applications recommends:
 - MCNC's North Carolina Rural Broadband Initiatives (NCRBI) program
 - MAIN's CCI program
 - The Subcommittee on PCC/SBA recommends, for the Public Computer Center category:
 - North Carolina Department of Cultural Resources, North Carolina State Library program
 - The PCC/SBA wishes to highlight, in the Public Computer Center category:
 - Winstonnet Inc.
 - ii. Renovation and repurposing projects
 - Olive Hill Community Economic Development Corporation
 - Greater Lansing Area Development
 - The Subcommittee on PCC/SBA recommends, for the Sustainable Broadband Adoption category:
 - MAIN's SBA Cloud Computer program
 - The PCC/SBA wishes to highlight, in the Sustainable Broadband Adoption category:
 - UNC-Pembroke's CIVC program

- ii. Elauwit SBA program

4. The Committee finds that the sunset provision in S.L. 2003-42, pertaining to e-NC Authority, places e-NC at a disadvantage when applying for grants or entering into long-term agreements.
 - a. The Committee recommends legislation that will remove the sunset provision currently applicable to enact (Legislative Proposal I)
5. The Committee finds that municipalities are currently providing or plan to provide broadband services to their citizens and that the privately-owned providers are generally opposed to municipalities providing broadband services to their citizens. Public-private partnerships are a viable way to promote the delivery of broadband service to unserved and underserved areas of North Carolina and there are no legal impediments to the formation of public-private partnerships for the delivery of high speed broadband service to unserved or underserved areas of the State.
6. The Committee finds that towers are owned by many different entities, including counties, municipalities, the Highway Patrol, the Department of Transportation, and the Division of Emergency Management, the Division of Forest Resources, and the NC Forest Service. The legislature can legally grant access to these towers, but because of the variety of towers [or of owners] and the fact that no one agency controls the towers, this is not practical. Certain issues, such as the size and weight of the equipment that the towers are capable of supporting, are beyond the scope of this committee's technical expertise.
7. The Committee finds that due to the many diverse locations in our state, legislative action to promote the deployment of broadband should be technology neutral so as to permit the utilization of all appropriate technologies to provide service to the unserved and underserved areas of North Carolina.
8. The Committee recommends that the General Assembly support the e-NC Authority's proposal that North Carolina serve as a Lifeline Online pilot program in conjunction with the FCC, and recommends that the General Assembly direct the e-NC Authority to seek this partnership with the FCC and to develop the cooperative relationships necessary to see a Lifeline Online pilot program implemented across North Carolina.

LEGISLATIVE PROPOSAL I

A BILL TO BE ENTITLED

AN ACT to repeal the sunset provision pertaining to the e-nc authority.
The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3.(a) of S.L. 2006-66, reads as rewritten:

"SECTION 4. Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011.~~"

SECTION 2. This act is effective when it becomes law.

Memorandum - Subcommittee on State-Owned Utility Towers

MEMORANDUM

To: Subcommittee on State-Owned Utility Towers

From: Phyllis Pickett
Peter Capriglione
Bill Patterson
Karlynn O'Shaughnessy
Brenda Carter
Committee Staff

Date: April 11, 2010

Subject: State-Owned Utility Towers/Property

This subcommittee was empanelled to review issues related to the use of State-owned utility towers in the installation of facilities necessary to provide high speed broadband service in the State, particularly as to unserved and underserved areas. To facilitate subcommittee discussions, Rep. Kelly Alexander asked committee staff to obtain information on the number and kinds of towers and to review issues related to collocation.

I. Government-Owned Utility Towers

Staff's cursory efforts indicate North Carolina counties and municipalities own approximately 59 utility towers around the State.

The State of North Carolina owns about 54 wireless internet towers. The Highway Patrol owns the vast majority of those towers (39) as part of the Voice Interoperability Plan for Emergency Responders (VIPER). The Department of Transportation is next in the number of towers. The Division of Emergency Management, the Division of Forest Resources, and the NC Forest Service also control towers.

The VIPER towers were built and continue to be built using Department of Homeland Security grant funds since most of the VIPER funding has come from federal grants. Most of these towers are in the central and eastern part of the State, however the majority of the towers remaining to be constructed many of which relate to the budget request are in the western part of the State.

Issues to consider when determining if the towers would be suitable for broadband use include location of the towers, the types of equipment that would need to be placed on these towers or in the buildings for broadband, load capacity issues created by adding additional equipment on the towers and the potential impact on structural reliability, and the costs of maintenance and operations.

II. Collocation

Collocation has been defined as the placement of wireless facilities on existing structures in a manner that negates the need to construct a new, freestanding wireless support structure.

In North Carolina, there is not a general or local law specifically providing for, or regulating, the use of government owned utility towers for the purpose of collocation.

III. State Property/Public Purpose Issues

Committee staff reviewed whether the State constitution restricts making State-owned utility towers or other state-owned property available to private entities for the purpose of installing equipment to promote the availability of high speed broadband internet service. The relevant provisions of law are those contained in the N.C. Constitution, Article V, Section 2, subsections (1) and (7), which provide as follows:

"(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away."

"(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only."

The threshold question is whether State-owned utility towers would be made available for use on terms that implicate either of these provisions. If the taxing power is not exercised, and if the arrangement does not appropriate State money to a private entity, then the "public purpose" requirement of the North Carolina constitution would not apply.

In situations where the "public purpose" requirement applies, the North Carolina Supreme Court has held that the issue of public purpose must be decided on a case by case basis, and no bright line test is to be used. The applicable test for expenditures is two-pronged: 1) the expenditure must involve a reasonable connection with the convenience and necessity of the particular public entity; and 2) the expenditure must benefit the public generally as opposed to special interest or persons. *Maready v. City of Winston-Salem*, 342 N.C. 708 (1996). "Moreover, an expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose." *Id.* at 724.

In *Maready*, the Court upheld economic incentives provided to a manufacturer to locate its plant in Forsyth County, finding economic development to be well-established as a proper governmental function, and finding that the local government's purpose to create a more stable local economy by providing displaced workers with continuing employment opportunities, attracting better paying and more highly skilled jobs, enlarging the tax base, and diversifying the economy resulted in a net public benefit that met the public purpose test. Although it is always possible that a constitutional challenge could be made to an arrangement under which public utility towers or other public property is made available to private entities for the purpose of expanding the availability of broadband internet service, it would appear that there is a strong counter argument that encouraging the extension of broadband service to presently unserved or underserved areas of the State involves a legitimate public purpose and therefore does not violate the North Carolina constitution.

APPENDIX A



Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET IN RURAL AREAS

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on High Speed Internet in Rural Areas (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 11 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time.

Representative Bill Faison - Chair
Representative Angela Bryant
Representative Jim Gulley
Representative Phillip Haire
Representative Kelly Alexander
Representative Thom Tillis
Representative Joe Tolson
Representative Roger West
Representative Earl Jones
Representative Marilyn Avila
Representative Lorene Coates

Section 3. The Committee may study the availability of high-speed Internet access in rural areas and in low-wealth, urban areas of the State having a population of 100,000 or more according to the most recent federal decennial census. In conducting its study, the Committee may:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.

- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.
- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

Section 4. The Committee shall meet upon the call of its Chair. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 27th day of October, 2009.



Joe Hackney
Speaker

Committee Staff

Brenda Carter, Attorney
Barbara Riley, Attorney
Bill Patterson, Attorney
Research Division
919-733-2578

Phyllis Pickett, Attorney
Bill Drafting Division
919-733-6660

Karlynn O'Shaughnessy, Fiscal Analyst
Fiscal Research Division
919-733-4910

Peter Capriglione, Legislative Analyst
Information Systems Division
919-715-7840

Clerk

Lavada Vitalis
919-715-3019



Attachment 5

OFFICE OF THE MAYOR

April 21, 2010

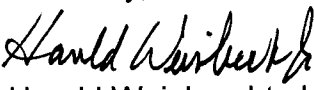
The Honorable Phillip Haire
NC House of Representatives
300 N. Salisbury Street, Room 639
Raleigh, NC 27603-5925

Dear Representative Haire:

Enclosed is the Broadband resolution adopted by the Cary Town Council on April 15, 2010.

If you have any questions, feel free to contact me at 919-469-4011 or Harold.weinbrecht@townofcary.org

Sincerely,


Harold Weinbrecht, Jr.
Mayor

TOWN of CARY

316 N. Academy Street • Cary, NC 27513 • PO Box 8005 • Cary, NC 27512-8005
tel 919-469-4011 • fax 919-460-4910 • www.townofcary.org

Resolution

URGING THE STATE TO RECOGNIZE THE ROLE OF MUNICIPALITIES IN THE DEPLOYMENT OF TECHNOLOGY SERVICES FOR THE ECONOMIC DEVELOPMENT OF NORTH CAROLINA AND TO EXPRESS CONCERN ABOUT POTENTIAL LEGISLATION TO LIMIT LOCAL GOVERNMENT PROVISION OF BROADBAND SERVICE

WHEREAS, access to high capacity, high-speed, state-of-the-art broadband networks is essential for our state to compete in the global economy and to provide access to advanced applications in medicine, public safety, energy management and education; and

WHEREAS, the United States is rapidly losing ground to other countries in broadband subscriptions per capita, and North Carolina is similarly losing ground to other states; and

WHEREAS, the development of advanced high-speed broadband networks are needed to fully serve the public, advance education and further economic development across the state; and

WHEREAS, Senate Bill 1004 and House Bill 1252, companion bills entitled *Level Playing Field/Cities/Service Providers*, were introduced in the 2009 Regular Session of the North Carolina General Assembly; and

WHEREAS, if enacted the proposed legislation would not have leveled the playing field but instead would have hindered local governments from providing needed communications services, especially advanced high-speed broadband, in underserved areas where private providers were not willing or able to provide service, and imposed burdensome obligations on local governments that private broadband providers would not have to meet; and


WHEREAS, if enacted, the proposed legislation would have denied local governments the availability of federal grants under the American Recovery and Reinvestment Act to assist in providing affordable access to high capacity broadband service in unserved and underserved areas; and

WHEREAS, private providers have not been willing or able to provide high-speed broadband services to all, and local governments have stepped in to serve the public and promote economic development in their respective areas.

NOW THEREFORE BE IT RESOLVED by the Cary Town Council that:

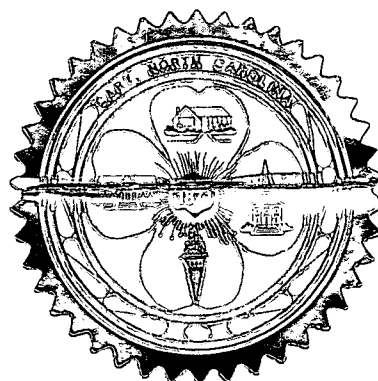
1. The State of North Carolina adopt policies to encourage the development of high-speed broadband, including advanced, next-generation fiber-to-the-premise networks, in order to fully serve the citizens and advance education and economic development throughout the state.
2. The General Assembly provide incentives for both public and private development of high capacity connections in order to handle rapidly growing data needs.
3. The General Assembly promote competition by curtailing predatory pricing practices that are used to push new providers and public broadband services out of the market.
4. The General Assembly reject any legislation similar to the Level Playing Field bills that would have a chilling effect on local economies and would impede or remove local governments' ability to provide broadband services to enhance economic development and improve the quality of life for their citizens.

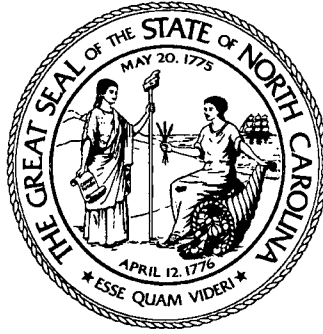
ADOPTED the 15th day of April, 2010.


Harold Weinbrecht, Jr., Mayor

Attested by:


Sue Rowland, Town Clerk





MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Friday, September 10, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Friday, September 10, 2010, in Room 544 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Phillip Haire, Earl Jones, Thom Tillis, Joe Tolson, and Roger West. Staff in attendance: Brenda Carter, Barbra Riley, Steve Rose, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Fred Hines, John Brandon, Reggie Sills and Judy Turner. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 & 2*)

The Chairman called the meeting to order and introduced staff, members and visitors. Chairman Faison introduced our first presenter of the day, Angie Bailey. Mrs. Bailey gave an update on Federal Funding to e-NC:

Angie Bailey (Assistant Director, E-NC) was recognized to present to the committee. Mrs. Bailey's presentation is attached. (*Attachment 3*) Below are some key points:

- Purpose of the State Broadband Data & Development Grant is to collect accurate state-level broadband data, develop state-level broadband maps and aid in the development of a national broadband map.
- The e-NC Authority was Awarded: Mapping: award of \$1,589,077 (2Years) and Planning: award of \$434,799 (for survey work) in October 5, 2009
- Project Name is NC BRIM (North Carolina Broadband-Rigor in Mapping)
- Some Methods of data collection included:
 - Reaching out to over 110 identified broadband providers
 - Broadband Consumer Survey – Research Methodology & Oversight
 - Broadband Consumer Survey – Local Level
 - Service Provider Data through Data Mining/Web-Crawling
 - Wireless Propagation/GIS Modeling
- The GIS Mapping is being worked on with Michael Baker, Inc. to develop details of e-NC's online Geographic Information System to show broadband availability

in NC using the NTIA data collection process; map under development with launch in late October 2010.

- Some key data and mapping elements are:
 - Map will show availability of broadband service by census block as well as showing providers in that area.
 - Broadband provider data is submitted: by census block or for census blocks of > 2 square miles – then by street segments (range of addresses) or address level.
 - There are over 233,000 census blocks in the state.
 - Map will aggregate the street segment and address points into polygons, more granular than the census blocks.
 - Map will be searchable by address. Accuracy/level of detail will depend on whether underlying data is submitted by census block, street segment or address level.
- The e-NC Authority requested and applied for SBDD Supplemental Funding totals: \$4,587,122 (federal) and \$1,196,580 (match, including \$400,000 from Golden LEAF) with would give an extension of the current grant, Oct 2010-Oct 2014. Below are the following programs e-NC requested funds for and the extension it could provide:
 - \$1,645,950 Data collection, validation and display would add 3-5 yrs on current project.
 - \$ 798,036 State Broadband Capacity Building would add 2-5 yrs on current project.
 - \$1,432,894 Technical Assistance Program would add 2-5 yrs on current project.
 - \$324,168 Program to Improve Computer Ownership and Internet Usage would add 2-3 yrs on current project.
 - \$386,074 Address File Improvements would add 2-4 yrs on current project.
- Successful implementation of grant will require the removal of e-NC's current sunset of Dec. 31, 2011 and continued recurring operating funds for e-NC (currently \$442,035).

After Mrs. Bailey's remarks, Chairman Faison brought fourth legislation to repeal the e-NC sunset. Rep. Tolson moved to adopt the legislation and with no opposition from the Members the legislation was adopted. (Attachment 4) Chairman Faison introduced our next speaker Mr. Joe Freddoso. Mr. Freddoso spoke about MCNC's update on federal funding:

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso's presentation is attached. (Attachment 3) Below are some key points:

- MCNC applied for federal stimulus funds to:
 - Ensure NCREN's capacity to provide efficient service and maintain low cost to our public schools, Universities and Community Colleges
 - Assist state with implementation of Healthcare Information Exchange with ITS.

- Bring middle mile closer to underserved consumers and small businesses – Help still needed to reach last mile in some areas.
- MCNC has won and is well into the implementation of Round 1 – Funding. MCNC is reaching out to companies with a strong North Carolina foundation.
- Middle Mile Build will affect the underserved areas of Beaufort, Bladen, Columbus, Davie, Edgecombe, Greene, Harnett, Jackson, McDowell, Polk, Rutherford, Transylvania and Underserved Partial: Carteret, Craven, Johnston, Onslow, Pender, Robeson, Buncombe, Catawba, Cleveland, Haywood, Iredell and Lincoln.
- Round 2: Funding would yield \$106M for 1800+ Miles of fiber. Giving way to an approximate 1200 jobs and providing service to the 4 underserved areas remaining (Northeast, North Central, Northwest, South Central).
- Some advantages of the NCREN connectors are
 - Stable costs through owned “dark fiber”
 - 170 Community Anchor Institutions – Direct Fiber
 - Non profit model reducing costs
 - Intranet performance for latency sensitive applications and research
 - Need to build public/private partnerships to reach areas like Avery/Tyrrell/Hyde/Washington
 - MCNC will have the fiber assets to help but we need to be part of a plan, not the entire solutions

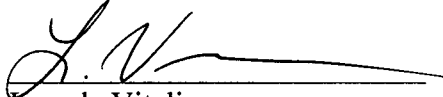
After Mr. Freddoso’s remarks, Chairman Faison brought forth a recurring issue for some counties (Orange, Caswell, Nash and Chatham) are having. These counties would like to extend the broadband authority to include counties, which currently only includes municipalities. Do to the need of extensive talks/communication between the providers and counties the Chairman appointed a sub committee to handle the issue. Rep. Alexander will chair with Bryant, Avila and Jones on the committee.

Chairman Coates opened the floor for questions or comments.

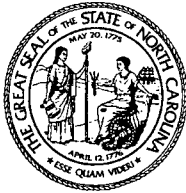
With no further business to come before the committee Chairman Coates announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Friday, September 10, 2010
10:00 AM
Room 544 L.O.B.**

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Guest Speakers

- **E-NC Authority**
Angie Bailey, Assistant Director
 - Update on Federal Funds
- **MCNC**
Joe Freddoso, President and CEO
 - Update on Federal Funds

4. Proposed Legislation discussion

5. Adjourn

VISITOR REGISTRATION SHEET

Attachment 2

NC House Sel Comm. High Speed Internet. 7/10/10
 Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
April Connelly	MCNC
PAUL TINE	E-NC Authority
Noel Preston	CFI
Kf Depp	Action Audits, LLC
Fred Baggett	Smith Moore Leatherwood
Robert Wells	North State Tel.
Lair Leonard	WCAAC
Zoe Alley	VMRS
Britton Allen	Allen Law Offices, PLLC
HERB CRENSHAW	AT&T North Carolina
Ed Furlong	Brooks Pierce

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Pam Matton	ContinuumLink
Blad Phillips	TWC
Stan Pace	Frontier Comm.
Mary Todd	Brook Bend
Jimmy Berson	TWC
Patrick Buff	NCAGC
Carole Woodward	NC TIA
Lori Ann Harris	LATA
CS Hollis	TSS
Oppie Jordan	e-NC Authority, chairperson
John Metzger	OERZ



**The e-NC Authority
Update on Broadband Mapping and
NC Broadband Recovery Funding
September 2010**

Angie Bailey
Assistant Director
The e-NC Authority
www.e-nc.org

State Broadband Data & Development Grant

SBDD Program, Recovery Funding under the Natl. Telecommunications and Information Administration (US Dept of Commerce)

Purpose: to collect accurate state-level broadband data, develop state-level broadband maps and aid in the development of a national broadband map

Awarded to The e-NC Authority: October 5, 2009

- Mapping: award of **\$1,589,077**
 - for broadband mapping over 2 years
- Planning: award of **\$434,799** (for survey work)

Project: **NC BRIM**(North Carolina Broadband-Rigor in Mapping)



NC BRIM Data Collection Elements

Data Collection Methods

- Collecting data directly from Broadband Service Providers
- Collecting broadband consumer data at the local level
- Collecting provider data through a national data corporation that uses data mining/Web-crawling techniques
- Conducting radio wave propagation prediction modeling (using GIS) to determine wireless coverage in North Carolina

Planning Component Surveys

- Conducting a survey of citizens to help verify broadband availability in North Carolina and look at use of broadband by citizens (spring 2010 and winter 2011)
- Conducting a survey to assess broadband use among businesses and industries in NC (spring-summer 2010)



NC BRIM Current Status of Project Pieces

Data Collection efforts:

- e-NC has reached out to **over 110 identified broadband providers** to encourage them to participate in the data collection process, offered Non-Disclosure Agreements with the providers and one-on-one technical assistance on how to submit the data requested by NTIA. *Data was submitted to NTIA in April/May 2010, with the next round to be submitted to NTIA October 1, 2010.*
- **Broadband Consumer Survey – Research Methodology & Oversight** (conducted by UNC-Chapel Hill, Kenan Institute; survey completed and results compiled, final report under development to be released in September/October 2010)
- **Broadband Consumer Survey – Local Level** (conducted by Foothills Connect and Rockingham County Business & Technology Telecenter; survey completed February-March 2010; results compiled by Kenan Institute)
- **Service Provider Data through Data Mining/Web-Crawling** (conducted by private corporation for one data pull in November 2009; level of detail available through web-crawling being assessed; future data mining methods under discussion)
- **Wireless Propagation/GIS Modeling** (conducted by UNC-Greensboro; project underway; modeling to be displayed as part of the online broadband map being developed by e-NC)



NC BRIM Current Status of Project Pieces

Planning:

- Citizen Surveys (2010 Citizen Survey conducted by East Carolina University in spring; results analyzed and final report underway for Oct. 2010 release)
- Survey to assess broadband use among businesses and industries in NC (conducted by Strategic Networks Group; survey released April 27; final report to be released in Oct. 2010)

Research Oversight: The NC BRIM project receives research support from East Carolina University, through the life of the project. In addition three external evaluators (from UNC-Charlotte, NC A&T and Univ. of Illinois-Champaign) are providing input on the evaluation of data collection methodologies. The NC Center for Geographic Information and Analysis is providing technical assistance on the GIS portion of the BRIM project.

Database Development & Hosting: broadband database developed and built in winter-spring 2010 by Topsail Technologies; geo-database developed in spring-summer 2010 to comply with new NTIA requirements; secure hosting of broadband database provided by MCNC

GIS Mapping: working with Michael Baker, Inc. to develop details of e-NC's online Geographic Information System to show broadband availability in NC using the NTIA data collection process; map under development with launch in late October 2010



Data and Map of State Broadband Availability

Data Submission to NTIA – every 6 months
(generally Sept. and March)

Spring/Fall 2010 – submitting *provider* data to NTIA,
with other data used for verification purposes

Spring 2010 Data Submission to NTIA:

- 95 broadband providers identified
- 47 providers submitted data to e-NC
- The total spring data submission included broadband data covering 98.1% of the households and 98.2% of the population of the state, and representing 92.5% of the total land area of the state.

Fall 2010 Data Submission to NTIA:

- 110 broadband providers identified
- 40 providers have submitted data to e-NC to date



Data and Map of State Broadband Availability

- Online Map of Broadband Availability in NC to be launched in late October
- Map will show availability of broadband service by census block as well as showing providers in that area
- Broadband provider data is submitted:
 - by census block
 - or for census blocks of > 2 square miles – then by street segments (range of addresses) or address level
- Data from providers should reflect who they serve and who they *could* serve
- Note: over 233,000 census blocks in the state
- Map will aggregate the street segment and address points into polygons, more granular than the census blocks
- Map will be searchable by address. Accuracy/level of detail will depend on whether underlying data is submitted by census block, street segment or address level



www.e-NC.org

Supplemental Funding to e-NC under SBDD

In May 2010, current state mapping entities were invited to apply for supplemental funding for the SBDD program

Proposals due to NTIA on July 1, 2010

The e-NC Authority request for SBDD Supplemental Funding totals:

- \$4,587,122 (federal)
- \$1,196,580 (match, including \$400,000 from Golden LEAF)
- Extension of current grant, Oct 2010-Oct 2014



www.e-NC.org

Supplemental Funding to e-NC under SBDD

The e-NC Authority request for SBDD Supplemental Funding includes the following programs:
Grant Period: Oct. 2009-Oct. 2014

\$1,645,950 Data collection, validation and display (years 3-5, already funded for years 1-2)

\$ 798,036 State Broadband Capacity Building (years 2-5)

- Bridge support for programmatic, outreach, research and advocacy activities of the NC Authority
- Focus on underserved communities of the state
- Years 3 and 4 State Broadband Summits focused on statewide initiatives-highlighting local broadband deployment pilots, adoption and use best practices and sustainability options for local level programs

\$1,432,894 Technical Assistance Program (for years 2-5)

- Will support extension of on-the-ground technical assistance and research
- Update on-line training, information and tool-kits/applications, including for small and home-based businesses
- Will initiate a rigorous expert examination of best practices for measuring the impact of broadband deployment and capacity building on community and economic development



www.e-NC.org

Supplemental Funding to e-NC under SBDD

SBDD Supplemental Funding programs continued:

Grant Period: Oct. 2009-Oct. 2014

\$324,168 Program to Improve Computer Ownership and Internet Usage (years 2-3)

- Develop a pilot Lifeline Online program that will offer qualifying citizens in 3 economically distressed counties a comprehensive program of engagement, digital literacy training, technical support, subsidized equipment and broadband access

\$386,074 Address File Improvements (years 2-4)

- Partner with NC Center for Geographic Information and Analysis (CGIA) to identify then apply new best practices and automation tools in a statewide Address File Update



www.e-NC.org

Supplemental Funding to e-NC under SBDD

SBDD Supplemental Funding:

Awards expected to be made in September 2010

Award would result in \$4,587,122 in federal funding coming into the state, in addition to the original mapping/planning funds

- \$4,587,122 (federal)
- \$1,196,580 (match)
 - \$400,000 from Golden LEAF
 - \$ 61,311 from CGIA
 - Approx. \$125,000 from e-NC
 - Plus e-NC personnel time

Successful implementation of grant will require:

- Removal of e-NC's current sunset of Dec. 31, 2011
- Continued recurring operating funds for e-NC (currently \$442,035)



Other Broadband Recovery Funding to North Carolina

Two Federal Agencies:

- U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA)
 - Infrastructure/Comprehensive Community Infrastructure (middle mile)
 - Public Computer Centers
 - Sustainable Broadband Adoption
- U.S. Department of Agriculture's Rural Utilities Service (RUS)
 - Broadband Initiatives Program (BIP) (last mile)

Two rounds of funding – proposals submitted August 2009, spring 2010

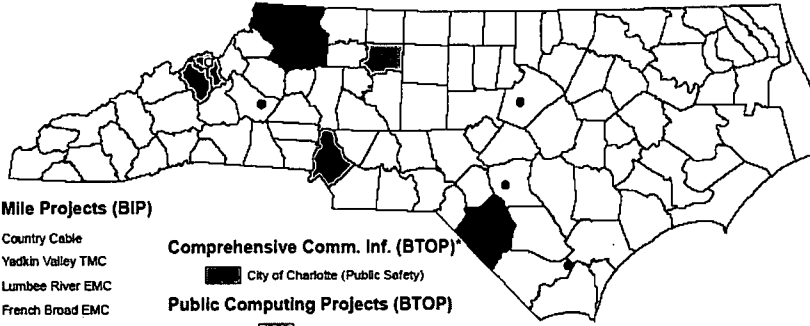
Oversight/tracking from the NC Office of Economic Recovery and Investment (OERI)

To date, over \$260 million awarded to North Carolina in ARRA Broadband Project Funding, including

- \$28.2 million to MCNC (round 1)
- \$75.8 million to MCNC (round 2)



North Carolina Broadband Recovery Projects



Last Mile Projects (BIP)

- Country Cable
- Yadkin Valley TMC
- Lumbee River EMC
- French Broad EMC
- Atlantic TMC
- Wilkes Telecommunications
- Skyline TMC
- Utopian Wireless Corporation

Comprehensive Comm. Inf. (BTOP)*

- City of Charlotte (Public Safety)

Public Computing Projects (BTOP)

- WinstonNet
- Fayetteville State University
- Mitchell County Historic Courthouse
- Olive Hill Community Economic Development Corporation

Sustainable Broadband Adoption (BTOP)

- One Economy Corporation



*MCNC (Middle Mile) not reflected on this map
 **Large multi-state awards not reflected on this map



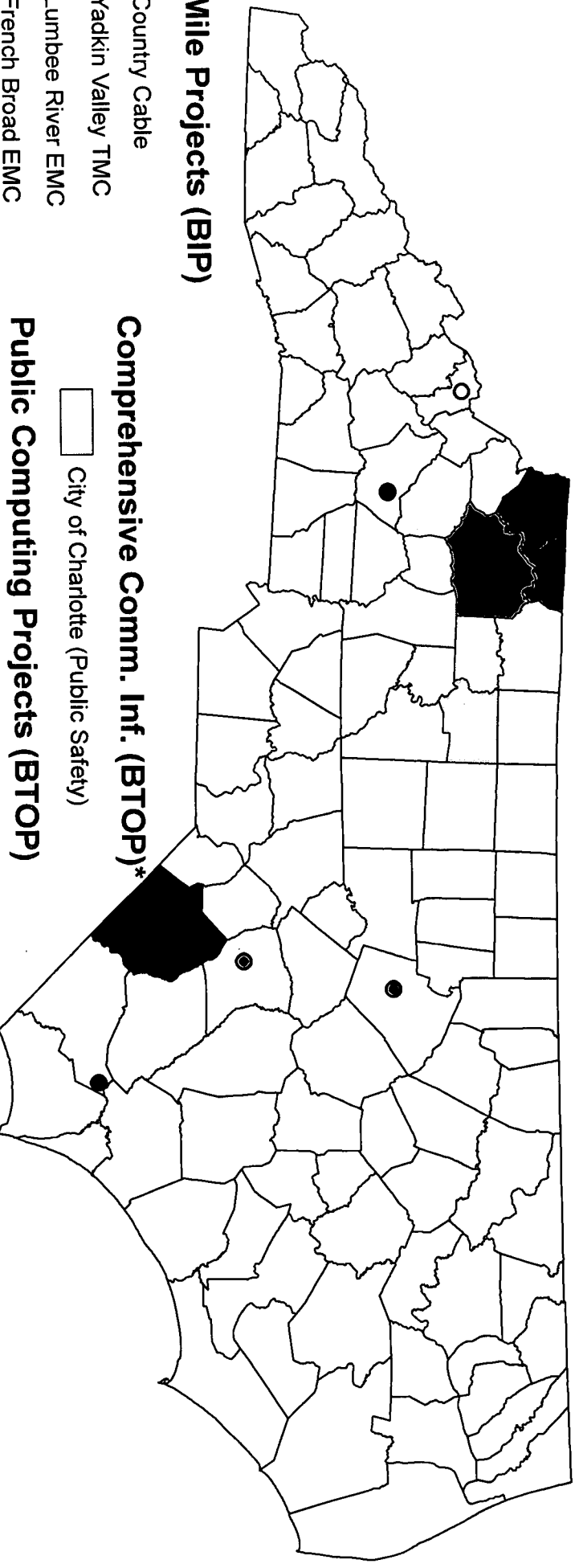
*Connecting
 North Carolina
 to a Better Future*

The e-NC Authority
4021 Carya Drive, Raleigh
1-866-627-8725
www.e-nc.org



www.e-NC.org

North Carolina Broadband Recovery Projects



Last Mile Projects (BIP)

- Country Cable
- Yadkin Valley TMC
- Lumbee River EMC
- French Broad EMC
- Atlantic TMC
- Wilkes Telecommunications
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Comprehensive Comm. Inf. (BTOP)*

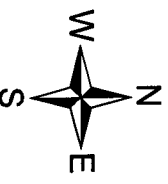
City of Charlotte (Public Safety)

Public Computing Projects (BTOP)

- WinstonNet
- Fayetteville State University
- Mitchell County Historic Courthouse
- Olive Hill Community Economic Development Corporation

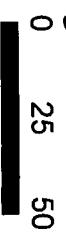
Sustainable Broadband Adoption (BTOP)

- One Economy Corporation



*MCNC (Middle Mile) not reflected on this map

**Large multi-state awards not reflected on this map



The e-NC Authority

Broadband Recovery Funding in North Carolina

Grantee Award Abstracts

Fall 2010

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City of Charlotte

Dennis Baucom

BTOP

\$16,702,490

CharMeck Connect is a public-private partnership to deploy middle mile broadband infrastructure. Funds will provide broadband access to municipal anchor institutions and public safety entities.

CharMeck Connect is a collaborative effort to deploy critical, middle mile infrastructure that will serve as the footprint for a regional public safety wireless broadband network throughout the Charlotte Urban Area Security Initiative (UASI) region. The strategy developed by the Charlotte UASI is to build on the current CharMeck communications system which has established the framework for regional interoperability within the urban area.

Phase 1 of the Charlotte Urban Area Regional Broadband Network.

A. Utilizing 700 MHz spectrum, CharMeck Connect will deploy a state of the art middle mile broadband interoperable network based on 4G Long Term Evolution (LTE) technology that will provide the public safety community with the tools they need for the 21st century (wireless broadband, multimedia applications, enhanced voice and data interoperability) and provide for true interoperability in emergencies requiring a multi-jurisdictional and multi-disciplinary response. The standards based system will allow CharMeck to be interoperable with other public safety agencies on LTE networks and also for the planned National Public Safety Broadband Network.

B. CharMeck Connect service area includes 16 public safety entities, 4 medical providers, and 75 other government facilities. CharMeck network will have the ability to provide a limitless number of virtual private networks, which will allow CharMeck to work with any governmental agencies including transportation, public works as well as community anchor institutions that have the need for a robust wireless platform. If the FCC modifies its position to allow for participation by non-public safety agencies, CharMeck will deploy a Public Access Subsystem to provide for these entities.

C. LTE technology to be deployed will provide the public safety community with applications currently not available and will significantly improve the public safety response to incidents through:

1. Mobile data and high speed internet connection in every police and fire vehicle.
2. Live Incident Video - the ability to stream on-scene video to responding units, communication centers and supervisors.
3. Broadband Data Dispatch - ability to transmit broadband data to field units.
4. Automatic Vehicle Location - allow dispatch to monitor the exact whereabouts of each vehicle through a sophisticated AVL tracking device.
5. Transmission of suspect/vehicle photographs.

6. Broadcast of blueprints and building plans.
7. Allow medical personnel to examine a patient in detail.
8. Enhance surveillance and monitoring activities immeasurably

The ultimate core benefit of deploying the infrastructure for this network is to improve public safety and emergency services response for the health and welfare of the citizens facing an emergency and our public safety officers. As the FCC has stated, broadband will allow more expeditious response of the correct resources to benefit of the citizen facing an emergency and responding officers.

D. CharMeck is committed to the development of an open access and vendor neutral network. CharMeck network is designed for multiple operators and to allow public safety, residential and commercial customers, government, education and medical facilities to acquire broadband services from a wide variety of service providers. It is specifically designed to seamlessly interface with all major communication carriers in North America and worldwide. Existing deployments of the proposed network carry critical medical records, backhaul cellular carriers, provide wholesale long distance connections as well as direct connections to the peering points.

E. The CharMeck Connect Project is requesting \$16,702,490 in broadband stimulus funds and will provide a match of \$4,389,953 for a total project cost of \$21,092,443.

F. Overall expected subscriber projections for the project is 11,420.

WinstonNet

Susan Brittain
BTOP
\$926,537

Public computer centers in Forsyth County, North Carolina, are struggling to meet increased demand and enable residents to access current online applications with outdated equipment. WinstonNet's Enhanced Community Computer Centers project proposes to upgrade computers and provide new equipment for 38 public computer centers with the greatest need.

The project plans to offer health information, community outreach services, and training to youth, unemployed minority populations, senior citizens, people with disabilities, and Native Americans. The computer centers plan to engage the area's Spanish-speaking population by providing instruction in Spanish, including computer training and advanced English as a Second Language learning programs.

WinstonNet Enhanced Community Computer Centers for Forsyth County also proposes to:

- Establish four new public computer centers and upgrade approximately 34 more libraries, schools, and community anchor institutions in the Forsyth County, North Carolina region, deploying approximately 44 new workstations and upgrading an additional 245.
- Enable access for as many as 2,500 additional users per week at public centers.
- Expand public computer center capabilities for the local disabled community.
- Train as many as 3,500 residents with approximately 10,500 hours of teacher-led training. Training will focus on computer skills, ESL language courses (particularly targeting the area's growing Hispanic population), and jobs training.

Mitchell County Historic Courthouse

Daniel Barron

BTOP

\$239,194

The Mitchell County Virtual Learning and Communications Center project plans to double the number of public computer workstations available to residents of Mitchell County, NC, provide job training and educational courses through the local community college and extension service, and expand broadband Internet access by creating a Wi-Fi hotspot in the newly-renovated historic courthouse that will reach the adjacent library and parts of downtown Bakersville, NC.

The project expects to provide 28 laptops that can be checked out from the courthouse, and serve over 300 users per week with broadband access and training. Mayland Community College and the North Carolina Cooperative Extension Service plan to use two new videoconferencing systems provided with grant funds to provide much-needed Courses and workshops for a broad audience.

The Mitchell County Historic Courthouse Foundation's Virtual Learning and Communications Center project also proposes to:

- Provide educational offerings such as General Equivalency Diploma courses to address the needs of displaced workers, high school dropouts, educators, and government officials.
- Offer continuing education courses to firefighters, emergency medical services personnel and other human services providers.
- Offer courses to train more than 100 farmers on production and marketing of new crops, filling a critical need for this farming region.

Yadkin Valley Rural FTTH

Mitzie Branon

RUS

\$21.7 million (50% grant; 50% loan)

Yadkin Valley Telephone Membership Corporation (YVTMC) is a member-owned, nonprofit cooperative. It was founded in 1950 in the Piedmont area of western North Carolina serving the rural counties of Davie, Yadkin and portions of Iredell, Rowan, Wilkes, and Alexander. YVTMC is seeking support for its proposed Yadkin Valley Rural FTTH project in order to deploy 465 route miles of high-capacity, diverse, last mile Fiber-To-The-Home (FTTH) services to 5,412 premises in YVTMC's service area.

The proposed project will cost \$21,668,232 of which YVTMC is requesting a 50 percent grant in the amount of \$10,834,116 and a 50 percent loan in the amount of \$10,834,116. In addition, YVTMC's Board of Directors is committed to contributing \$5,450,000 in working capital, which represents 25 percent of the project.

YVTMC began as a nonprofit telephone cooperative sixty years ago in a grass roots effort to provide telephone service in rural areas deemed unprofitable by commercial telephone companies and has the distinction of being the first telephone company borrower approved in North Carolina to receive REA loan funds. YVTMC is still 100 percent rural and still for the most part un-served by the large commercial companies. Besides basic telephone service YVTMC strives to provide comprehensive affordable telecommunications services comparable to those available in more affluent urban areas such as high speed Internet and IP video services.

As a cooperative owned by its membership, over the past fifteen years \$24 million in capital credits has been refunded to its members. Earned profits are distributed in the form of these capital credits annually. The capital credits are calculated based upon all services thereby reducing the overall annual cost members must pay.

Annually, an outside independent accounting firm appointed by the Board of Directors conducts an audit of the cooperative's internal controls, adherence to Generally Accepted Accounting Principles (GAAP), evidence supporting the amounts and disclosures in the consolidated financial statements, and adherence to RUS Part 32 accounting guidelines. Audit reports indicate a financially stable company with positive cash flow. These reports are presented to its members yearly at the Annual Meeting of the Membership.

YVTMC has ample experience to complete the proposed project. Four years ago, YVTMC embarked upon an ambitious 15 year plan to deploy FTTH to all premises in its service area. To date, YVTMC has installed high speed fiber access to 10,741 premises in its service area. The knowledge and experience YVTMC has gained from this deployment gives it the skills to complete and manage the proposed Yadkin Valley Rural FTTH project efficiently, correctly, on time, and within budget. This deployment has also provided YVTMC with the capability to accurately identify and project costs and anticipate problems inherent in any project of this size and nature.

YVTMC has been a certified member of Fiber-to-the-Home (FTTH) Council since July 2008. The FTTH Council is a nonprofit association consisting of companies and organizations that deliver video, Internet and/or voice services over high-bandwidth, next-generation, direct fiber optic connections. The Council works to create a cohesive group to share knowledge and build industry consensus on key issues surrounding fiber to the home. Some of its' goals are to educate the public and government officials about FTTH solutions and to promote and accelerate deployment of fiber to the home and the resulting quality of life enhancements such networks make possible.

The YVTMC Management Team has 182 years of combined experience in telecommunications and project management to include several major projects in which at least three members of the Management Team worked together on each project. The core management team has worked together for up to twenty years with some members of this group having over thirty years of tenure in the industry. Individually, the entire management team has an average of twenty years industry experience. In addition to the projects listed in the management summary, the telecommunications projects completed in the capital budget, when considered on an annual expenditure basis, are equal to or greater than the Yadkin Valley Rural FTTH project when also considered on an annual expenditure basis. The YVTMC's management staff is eminently experienced and capable of successfully completing the proposed project in this application. The staff possesses a long and successful history of managing similar telecommunications projects of equal or larger size. In addition, YVTMC will be partnering again with Byers Engineering. Byers Engineering is an engineering consultant firm with over 1,000 employees. It has deployed over 5,000 miles of long haul fiber for most of the major carriers in the Southeast.

Because of its previous FTTH experience, the proposed Yadkin Valley Rural FTTH project is "Shovel Ready." YVTMC has relationships with and has identified the contractors that provide the most professional service in this area. Its staff is knowledgeable and all business processes are in place to support the construction effort including required resources to cutover customers to the new FTTH service. With this grant, the original fifteen year timeline to provide high speed access to its customers will be greatly reduced. Anchor institutions, public safety agencies, Critical Community Facilities (CCF), community support organizations, and the economic development authority in the area, most of who are existing customers of the Cooperative and have a need for higher reliability and bandwidth capacity at a lower cost will begin receiving these services much sooner.

The six PFSA's in the Yadkin Valley Rural FTTH Project are 100 percent rural and are all located within the Cooperative's service territory. The PFSA's are composed of small, sparsely populated communities without High Speed Access who are in critical need of sustained economic development and support for anchor institutions and public safety. PFSA 1 Iredell and Yadkin, the largest PFSA, encompasses parts of Iredell, Yadkin, Alexander, Davie, and Wilkes counties and involves 1,949,150 feet of plowed fiber-optic cable to serve 3,662 households, 244 business, and 38 anchor institutions. PFSA 3 Swaims Church located in Yadkin County will receive 88,900 feet of fiber optic cable to serve 134 households, 6 businesses, and 4 strategic institutions. PFSA 4 Wyo Road, located in Yadkin and Davie counties, consists of 246

households, 5 businesses, 1 anchor institution, and 147,650 feet of plowed fiber cable. PFSA 5 Smith Grove is located in Davie County and consists of 113 households, 5 businesses, and 1 anchor institution. PFSA 6 Davie Academy in Davie County consists of 106,100 feet of fiber for 235 households, 9 businesses, and 1 anchor institution. PFSA 7 Fork in Davie County has 373 households, 316 businesses, and 7 anchor institutions requiring 117,800 cable feet of fiber optic cable.

The total project will pass 56 anchor institutions. Most of these anchor institutions already utilize some of YVTMC's service offerings. Many of them, such as schools, police departments, and fire departments have provided Letters of Support. YVTMC is very proud to also include Letters of Support from elected officials such as Governor Beverly Perdue and Representative Virginia Foxx. YVTMC is also supporting anchor institutions by offering a 25 percent discount to all public safety entities, and economically and Socially Disadvantaged Businesses (SDBs).

In addition to this grant, YVT will further serve the community by partnering with MCNC, a Round 1 Middle Mile BTOP Recovery Act award recipient of \$28,000,000. MCNC is using its Round 1 BTOP award and Round 2 CCI proposal to build on the foundation of the North Carolina Research Education and Network (NCREN) that MCNC has operated for over a quarter of a century. NCREN is a network that serves education and public health community anchor institutions throughout the state, including counties in YVTMC's service area. A Round 2 award will create an NCREN fiber backbone in much of rural North Carolina. YVTMC's RUS BIP application has a high degree of synergy with the MCNC network. Enhanced access to broadband service has been proven in several studies to increase economic prosperity, educational attainment, and enhanced health care options across the globe.

Yadkin Valley Telephone Membership Corporation will offer a variety of voice, data, and video services over the RUS BIP funded fiber optic cable. YVTMC's FTTH technology of choice is Gigabit Passive Optic Network (GPON). Its standard FTTH GPON customer offering will provide 65 Mbps of bandwidth per premise with the capability of providing up to 1 Gigabit of Ethernet service upon request. This project will allow YVTMC to deploy VoIP service at ISDN-BRI bandwidth levels and higher, if requested, significantly boosting clarity. Video offerings will include community television channels primarily for local governmental and school programming, Video On Demand (VOD) and video conferencing. In addition, YVTMC will offer IPTV, HD television and DVR services to all customers. Data connectivity speeds will increase dramatically from 5 Mbps to 100 Mbps and up to 1 Gigabit Ethernet for businesses who have a need for high speed Telemedicine or videoconferencing. The nearest fully staffed hospital for some residents is an hour away. Higher data speeds will promote YVTMC's Back-up and recovery data services, thus increasing data security and integrity. Higher communication speeds are essential for tele-working and distance e-learning, an application sorely needed in this economically troubled area. YVTMC has been working for years with local community colleges to develop technical curriculum and promote distance learning as a viable alternative for higher education in a rural area.

YVTMC will comply with the Nondiscrimination and Interconnection Obligations set forth in Section IV. C. 4. of the USDA-RUS Broadband Initiatives Program Notice of Funding Availability

dated January 22, 2010, subject to the needs of law enforcement and reasonable network management.

YVTMC utilizes industry standard practices to allocate bandwidth and provide acceptable service levels to all customers across its network and manages illegal or harmful content. YVTMC does not differentiate among applications, providers, or sources, and does not limit usage.

YVTMC will satisfy Interconnection requirements by negotiating in good faith with all parties making a bona fide request. YVTMC will negotiate terms such as business arrangements, capacity limits, financial terms and technical conditions for interconnection with requesting parties, and will seek to resolve any differences through negotiation. YVTMC will post its interconnection policies in a prominent place on its Webpage and notify customers of any changes to these policies.

Consistent with previous FTTH deployment and consumer acceptance experience, YVTMC plans to perform 2,820 video cutovers and 1,952 data connectivity cutovers for 4,337 service subscribers.

YVTMC will leverage its over sixty years of investment in telecommunications infrastructure, its experienced and highly qualified management and staff, and its extensive operational capabilities to deploy and operate the proposed system at the lowest possible cost. No organization other than YVTMC is better suited to serve the PFSAs economically with high quality services. YVTMC's entire focus and experience for over half a century has necessarily been serving rural areas economically and sustainably.

Dedicated capacity higher than 3 Mbps is unavailable in much of the area and does not meet the needs of intensive users such as educational institutions and hospitals. Newer, more bandwidth intensive programs and online services, and critical applications, such as medical imaging demand reliable high-speed service, especially video-based services. The school systems in this area could significantly lower replacement costs for personal computers, software and support by deploying a public/private cloud computing system, channeling savings into academic resources. Affordable access to a high capacity network is a requirement.

The Yadkin Valley Rural FTTH project is critical for economic development in this area. The local and regional economy is suffering from the demise of the furniture, tobacco, and textile industries. Other light manufacturing, poultry production, processing industries, as well as traditional agriculture products have been adversely affected by the economic recession and overseas competition. Unemployment is as high 14.8 percent in our serving area. Economic diversity is a key requirement for this area. With affordable, reliable, high-capacity connectivity afforded by this project, economic developers would have a new tool to recruit businesses who can leverage the capacity and geographic network diversity the proposed project would bring to the area. Businesses in the medical records processing industry, which are expected to see tremendous growth, could immediately leverage the benefits of affordable, high-capacity access and low cost of doing business in the area, creating many needed jobs. The Proposed

Funded Service Areas (PFSAs) are located to the west of four major hospital systems; two in Winston Salem and two in Chapel Hill and Durham. The area has the potential to become a medical records processing hub for these centers, if and only if a reliable, affordable, high-capacity communications infrastructure exists. Even for small and mid-size businesses the lack of advanced communications capacity is a nonstarter in site selection. The Yadkin Valley Rural FTTH project will bring advanced communications capacity which is a critical cross-cutting need in the area.

More residents are commuting out of the area to urban communities; Charlotte, Winston-Salem, and Greensboro for employment because those employers have access to affordable, reliable high-capacity telecommunications services and therefore can compete more effectively in a national and global market. Spikes in gasoline prices in recent years and intense domestic and international competitive pressure for all manufacturing areas have created a sense of urgency to create and retain jobs within the local area.

Small businesses and entrepreneurs are of great importance to the local economy. High Speed Internet Access will allow these small businesses to expand to new markets, as well as connect with sources of expertise, and suppliers, therefore substituting high-speed connectivity for geographic proximity to trading centers. Providing businesses with high speed broadband will make locating new businesses to our communities more attractive which will create jobs. Adding to the importance to economic development and job creation, The Yadkin Valley Rural FTTH project will create or sustain 54 jobs in the community.

In summary, Yadkin Valley Telephone Membership Corporation has deep roots in the communities it serves. Sixty years ago, it was established to serve rural areas which the larger companies did not see as attractive investments. With the support of the Broadband Initiatives Program, Yadkin Valley Telephone can connect more rural residents and businesses and help our rural communities thrive.

Lumbee River Electric Membership Corporation

Randall Jones and Perry Cummings

RUS

\$19.9 million (75% grant; 25% loan)

The Proposed Funded Service Area (PFSA) that has been designated by Lumbee River Electric Cooperative is a rural area that lacks sufficient high speed broadband service to facilitate rural economic development as required by the American Recovery and Reinvestment Act of 2009. Our Fiber-To-The-Home Project (FTTH) will address the lack of high speed broadband service in our Proposed Funded Service Area by providing 100 Mbps broadband speeds to rural residential and commercial customers, which is in accordance with the FCC's mandate for rural America, and the project will assist the most impacted by the recession.

Lumbee River Electric Cooperative (LREMC) (the Applicant) and a Service Provider, are partnering together to provide high speed broadband services to bring economic development

to Southern North Carolina a rural area of the state. Lumbee River EMC will own and operate the fiber network and the Service Provider / ISP will provide all of the customer service functions associated with providing high speed broadband services. The partnership with the Service Provider will be in accordance with Electric Membership Corporation Reporting Requirements per General, G.S. 117-18.1 of the Laws of state of North Carolina.

Lumbee River Electric Cooperative has over fifty years of extensive history of building plant facilities and providing high quality services to over 42,000 rural customers both residential and commercial in Robeson, Scotland, Hoke and Cumberland counties in North Carolina. Lumbee River is qualified to design, engineer, construct, operate and maintain the FTTH network that is being proposed in this application.

Our rural area last mile project will provide broadband access to over 11,380 households for a total cost of \$19,947,738. Lumbee River will provide voice, video and data services to the customers via an active GPON network, utilizing fiber optical cable and passive & active components provided by AFL Telecommunications, one of the largest telecommunication equipment and service manufacturer in the United States. The network is constructed to provide high speed broadband internet connections at 100 Mbps or higher to our customers. Lumbee River EMC will adhere to the principles contained in the FCC's Internet Policy Statement, as well as any subsequent rulings.

The Lumbee River EMC and Service Provider, partnership allows each firm to concentrate on its core competencies in providing high speed broadband services to its rural residential and commercial customers. Lumbee River EMC will receive a percent of the customer revenues to operate and maintain the fiber network and the Service Provider will receive a percent of the customer revenues to provide customer services, customer content and cover service fees, such as back haul cost.

Our justification for the FTTH network is that it has virtually unlimited capacity and will be capable of providing transmission speeds in excess of 100 Mbps to the end users, at minimum additional cost, for over 20 years.

Statistical Summary for Proposed Funded Service Area

Number of Households Passed	11,384
Number of Businesses Passed	1,634
Number of Community Anchor Institutions	87
Number of Public Service Entities	8
Number of Stimulus Awardees involved with Project	2
Project Cost	\$19,947,738
Overall Expected Subscribers Projections for Project	4,196
Number of Jobs Created or Saved as a Result of this Project	51

In accordance to the RUS / BIP priorities our FTTH Last Mile Project is in a rural area that lacks sufficient access to high speed broadband services to facilitate rural economic development.

The Project will give end users a choice of providers and serve the highest proportion of rural residents that lack access to high speed broadband service. Lumbee River EMC is a current RUS borrower and is prepared to start the project once funding is received.

Country Cablevision

Bryan Hyder

RUS

\$25.3 million (75% grant; 25% loan)

Can effective economic competition exist in the 21st Century without sufficient technology and communications support? The answer for our service area, Yancey and Mitchell Counties of Western North Carolina is a resounding “evidently not”. During the last two decades, these counties have lost at least six major industries as well as falling into economic instability in many other ways. Country Cablevision is proud to have an opportunity to be a part of the solution instead of becoming just another unfortunate statistic.

Currently our system, built in the early 90’s, passes over approximately 9000 homes in our service area. The homes served by us receive cable, phone, and internet service with speeds up to 8 mbps. The three major cultural centers in this area are unserved by us or any consistent internet provider. This also creates a major limitation for community agencies such as hospitals, schools, and law enforcement agencies which need sufficient internet service to enlist current technology. The remaining businesses as well suffer from lack of broadband support.

To address this debilitating problem, Country Cablevision’s proposal is a FTTH for the unserved and underserved areas of the two counties. When completed, 97% of Yancey and Mitchell Counties will have access to 20 mbps of service, and when needed, 100 mbps. This will be accomplished by upgrading our system with current equipment, including the installation of fiber-optic cable to most areas of the counties. Due to the mountainous terrain, this will be quite a monumental challenge. However, Country Cablevision eagerly accepts this challenge and is quite prepared to see it through. Our Chairman, Mr. Ray V. Miller, worked on the second cable system ever built in the United States in the late 50’s. He built his own system in the 60’s and has been involved with cable construction ever since. Since that beginning, our group has owned, operated, and built over 50 franchised cable systems in six states.

Specifically, we are addressing this economic crisis by providing the area adequate and sufficient tools with which to compete on a 21st Century scale. While we understand that a simple internet connection will not in itself induce progress, we also know and recognize the many agencies, businesses, and citizens who are ready and willing to move forward if given the opportunity. Broadband connectivity is a central and basic issue to communication in a modern time, and a necessary one to compete economically, as well as socially and culturally-all factors of economic stability.

This project, when completed, will be a win-win situation for both Country Cablevision, and the citizens of Yancey and Mitchell Counties as well as North Carolina and the rest of the country.

We have been awarded \$25.3 million in a 75/25% grant/loan to effect these changes in the lives of the people of Western North Carolina. Through this project, we expect significant progress and economic growth in the counties involved, and in effect in Western North Carolina as a whole. Economic recovery does not come from one single variable, but from the participation of all. These Counties have the citizenry and determination, and now will have a very important tool to help stimulate and encourage recovery. It's an exciting process and I'm proud for Country Cablevision to be able to offer such a huge opportunity to its community.

Atlantic Telephone Membership Corporation

Roger Cox

RUS

\$16 million (70% grant; 30% loan)

Atlantic Telephone Membership Corporation (ATMC) is a rural nonprofit telephone cooperative owned by its members. ATMC was formed in the early 1950s by a group of local people in Brunswick County, North Carolina who worked together to build their own telephone company because the large telephone companies of the day considered the area too rural to serve. In 1955 ATMC was chartered by local people going door to door.

Today ATMC offers local telephone service and advanced communications services, including high speed Internet, Cable TV, Wireless, Business Communications and Security, Metro-E and Business Class services. From those early days to today, ATMC's top priority has always been to provide customers with communications services at an excellent value and outstanding customer service.

ATMC has deep roots and a strong commitment to the communities it serves. ATMC serves rural Brunswick County with high-quality advanced communications services comparable to or better than urban areas in the State, at affordable rates and with responsive, local customer support.

Columbus County ACCESS will leverage ATMC's existing network, experience and operations to serve sparsely populated unserved and underserved rural communities of neighboring Columbus County, North Carolina -- an area that large telephone and cable companies of today consider uneconomic to serve.

Columbus County is designated as a Persistent Poverty County by the Economic Research Service of USDA. It is also designated as a Tier 1 Economically Distressed County by the State of North Carolina. People living at or below the poverty level represented 22.9% of the population of Columbus County in 2009, with 34.8% of children living in poverty. Columbus County was recently ranked lowest of all 100 counties in North Carolina for Health Outcomes, measuring how long people live and how healthy they feel while alive. The public safety community recently notified County government that it was no longer economic to maintain the 9-1-1 communications system. Economic recession and unemployment now gripping the United States are having a serious, adverse effect on this rural County already in persistent poverty.

The proposed funded service area (PFSA) is located over 25 miles away from the nearest population center. High Speed Access to the Internet is a powerful, affordable tool for transformative change, but the communities in the PFSA are isolated by distance, poverty and lack of affordable, reliable High Speed Access.

Affordable, reliable, high quality High Speed Access is a critical, cross-cutting need at almost every turn in the PFSA, including for education and job training, economic development and employment, community health, public safety and security, and support for low-income vulnerable residents and elderly or disabled residents with mobility challenges.

Columbus County ACCESS will address the critical need for affordable, reliable, high-capacity connectivity at parity with more affluent areas of the State and the Country. The project will deploy Fiber to the Home to all households, businesses, critical community facilities and public safety entities in the PFSA and offer affordable, high quality advanced services, including voice, video, Internet access and high-capacity transport services.

From a private-sector investment perspective dictated by short-term returns, annual earnings and share values, deployment of FTTH and advanced services into the proposed service area is an unacceptable investment risk. Over its 50-year history of serving rural, sparsely populated communities, ATMC has had a different perspective and a different nonprofit, cooperative business model. ATMC's lower internal rate of return and margin requirements allow it to deploy into unserved and underserved areas and operate sustainably at lower cost. With funding support from the Rural Utilities Service Broadband Initiatives Program, ATMC can leverage its existing network and operation and operate the network sustainably at affordable consumer pricing.

An additional benefit of the Columbus County ACCESS project is the high degree of synergy with another Recovery Act Award. The National Telecommunications & Information Administration Broadband Technology Opportunities Program granted a \$28 million Recovery Act award to MCNC in February, 2010 to build a Middle Mile network connecting community anchor institutions in North Carolina, including Brunswick and Columbus Counties. MCNC is a North Carolina nonprofit organization that has operated the North Carolina Research and Education Network (NCREN) for over a quarter of a century. NCREN is a network that serves education and public health community anchor institutions throughout the State.

The proposed Columbus County ACCESS fiber to the premise network would allow NCREN to serve education and community anchor institutions in the proposed funded service area, producing economies for MCNC and allowing NCREN to serve its mission more effectively. Of equal importance, local schools and community anchor institutions would have connectivity to public universities, university research hospitals, public health organizations and libraries served by NCREN across the state. There is no community college, library, or medical facility in the proposed funded service area, which is located over 26 miles from the closest town. Taken together, the Columbus County ACCESS Last Mile fiber to the premise network and the MCNC NCREN Middle network would provide significant benefits to residents and anchor institutions in the proposed funded service area, which is isolated by poverty, by distance, and by lack of

High Speed Access. In addition, MCNC's Middle Mile network would be accessible by Columbus County ACCESS for affordable, high-capacity upstream transport.

MCNC has also submitted a BTOP Middle Mile Comprehensive Community Infrastructure application in the current funding round (Easy Grants ID #4218) to connect more rural counties across the state on a statewide NCREN backbone. ATMC supports MCNC's important work to provide affordable, high-capacity Middle Mile infrastructure through all rural counties of North Carolina.

General description of the PFSA:

The Columbus County ACCESS PFSA is an Other Area of Columbus County consisting of 185 square miles near the eastern boundary between Columbus County and Brunswick County in southeastern North Carolina. The area is 100% rural, located 26.8 miles from the closest non-rural area. Small unincorporated farming communities such as Guideway, Nakina, Old Dock, Bug Hill and Williams are located within the PFSA.

Number of households and businesses passed:

Columbus County ACCESS will pass 3,641 households, 274 small businesses, and 35 community anchor institutions and public safety entities. 2,220 households are Unserved with Broadband at 768-kbps downstream and 200-kbps upstream, including mobile broadband. 3,950 premises are without High Speed Access at 5-mbps upstream plus downstream bandwidth combined.

Number of Critical Community Facilities and Public Safety Entities passed and/or involved with project and significant assistance provided to such facilities:

Columbus County ACCESS will pass 3 public schools, 2 government facilities, 1 public housing facility, 7 public safety sites, and 22 community support organizations, including community centers, a senior center, and faith-based organizations. There are no institutions of higher education, health care facilities, or library located within the PFSA, heightening the need for advanced connectivity and High Speed Access for the service area. Discounts ranging from 25%-40% for high quality advanced services delivered over fiber will be offered to community anchor institutions for at least 36 months.

Proposed services and applications to be provided to users:

High Speed Access at 5-Mbps downstream and upstream combined are unavailable to 80% of the proposed fund service area today, and 61% of the service area is Unserved with broadband at 768-kbps downstream/200-kbps upstream terrestrial service, even including mobile broadband. Services above 5-Mbps downstream/768-kbps upstream are not available in the PFSA. Where services are available, pricing is unaffordable for many residents in the persistent poverty area.

Columbus County ACCESS will provide high-capacity, high-quality Voice, Video, and High Speed Access to the Internet, delivered on fiber to premises in the proposed funded service area, at low, affordable rates.

Broadband and High Speed Access services are offered at speed tiers from 1.5-mbps downstream/512-kbps upstream to 15-mbps downstream/5-mbps upstream. Services are priced at materially less than the prevailing market rate for lower speed service tiers. 1.5-mbps downstream/512-Kbps upstream service is priced at 1/3 less than the prevailing market rate for service at the same downstream speed but a slower upload speed of only 384-kbps. This service is offered at a low rate to increase adoption and usage by low-income vulnerable populations and disabled or elderly residents with lower discretionary incomes.

Business Class and Metro-E services are offered at speeds from 5-mbps downstream/1-mbps upstream to 10-mbps symmetrical service. Higher speed service may easily be provided.

Video service delivered to the premise on fiber is offered in 6 channel tiers, from 22 channels offered at a very low monthly rate, to the highest tier service with 200 channels.

Voice service is offered in two packages: Unlimited Local Long Distance covering North and South Carolina with Caller ID and calling features, and Unlimited Nationwide Long Distance with Caller ID and calling features.

Discounts from 25%-40% are offered to community anchor institutions, public safety entities, and Small Disadvantaged Businesses in the PFSA for at least 36 months.

Type of broadband system that will be deployed:

Columbus County ACCESS will leverage ATMC's existing 10-GigE core backbone, backhaul, and IP connections through interconnection to a Gig-E fiber ring to be deployed in the PFSA.

A fiber to the premise (FTTP) network will be constructed to pass the premises within the PFSA, and Gigabit Passive Optical Network gear (GPON) will be deployed. The ability to provide video broadcast with an existing RF analog head end is of particular benefit for ATMC, allowing it to leverage its existing head end and migrate to Internet Protocol Video (IPTV) in the future. GPON technology offers ATMC the option to provide either video format in addition to voice and data services to subscribers. This inherent technological adaptability ensures that investment in the broadband access architecture will be serviceable as video broadcast continues to evolve. The system is scalable to an Active Optical Network by deploying active optical equipment in the field in lieu of 1x32 splitters.

The combined upstream and downstream port rate is 116.5 Mbps per subscriber based on 32 subscribers per OLT port, providing high-capacity connectivity for residents, businesses and community facilities within the proposed service area, and scalability for the future.

Approach to addressing the non-discrimination and interconnection obligations:

ATMC will comply with the Nondiscrimination and Interconnection Obligations set forth in Section IV. C. 4. of the USDA-RUS Broadband Initiatives Program Notice of Funding Availability dated January 22, 2010, subject to the needs of law enforcement and reasonable network management.

ATMC utilizes industry standard practices to allocate bandwidth and provide acceptable service levels to all customers across its network and manage illegal or harmful content. ATMC does not differentiate among applications, providers, or sources, and does not limit usage.

ATMC will satisfy Interconnection requirements by negotiating in good faith with all parties making a bona fide request. The Company will negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection with requesting parties, and will seek to resolve any differences through negotiation. The Company will post its interconnection policies in a prominent place on its web page and notify customers of any changes to these policies

Qualifications of the applicant demonstrating the ability to construct and operate broadband infrastructure, and/or to be a sustainable broadband services provider

Atlantic Membership Telephone Corporation has continuously operated as a rural telephone membership cooperative since it was chartered in 1955. ATMC currently offers and/or provides broadband, video and voice services to over 30,000 customers and expects to harness both this experience and established efficiencies in order to serve the customers in the PFSA.

ATMC currently serves 1,800 subscribers of Fiber to the Home Voice, Video and Internet services in its Brunswick County serving area. The deployment and operational management and staff of ATMC is experienced and well qualified to build and operate the proposed system in Columbus County.

Through its 55 years of serving rural, underserved, sparsely populated areas, ATMC understands the challenges inherent in operating sustainably in such an environment, while at the same time providing a high quality customer experience and responsive local support. ATMC's management and staff of over 208 people are experienced, well qualified and local. ATMC's senior management collectively have over 147 years of industry experience. ATMC's Chief Executive Officer, Mr. Allen Russ, is an industry veteran of 43 years.

Overall infrastructure cost of the broadband system: \$16,003,418

Overall expected subscriber projections for the project: 2,368 service subscribers

Number of jobs estimated to be created or saved as a result of this project:

87 direct jobs associated with project deployment will be created or saved.

Description of how the project promotes rural economic development, supports persistent poverty counties, serves chronically underserved areas, demonstrates cost effectiveness, offers low-cost service options, and/or provides for geographic diversity

Columbus County ACCESS will connect a chronically underserved, sparsely populated area of a rural, Persistent Poverty County to a reliable, high-capacity, geographically diverse 1-GigE ring network, scalable to 10-GigE and above, interconnected to ATMC's diverse 10-GigE core backbone and to the Internet backbone over ATMC's multi-homed, multi-sourced and diverse

1-GigE connections. Columbus County ACCESS is the foundation for economic redevelopment and diversification in the service area, as well as for modernization and expansion for existing businesses to connect to new markets, sources of expertise and support.

In addition, through access to the MCNC NCREN Middle Mile network funded by a \$28 million Recovery Act BTOP award, the area will be connected to the North Carolina university system, university research hospitals, community colleges, and public health.

This type of connectivity would be an economic development boon for any area, but it is critically important to a chronically underserved area struggling to emerge from persistent poverty.

Columbus County ACCESS leverages 55 years of investment by ATMC through interconnection to its system, as well as to its decades of experience in the industry, and its highly experienced, qualified and dedicated management and staff. This leverage allows ATMC to deploy and operate the Columbus County ACCESS network and offer advanced services, delivered to the premise on fiber, at only \$4,051.50 per premise passed, and ensure sustainable operation in the future. An investment of Recovery Act funds through a Broadband Initiatives Grant and Loan is a low-risk investment that will yield tremendous benefits for this rural, persistent poverty area.

The proposed Fiber to the Premise network would bring direct fiber connectivity to homes, businesses and anchor institutions, allowing for over 100-mbps of connectivity per subscriber, at inception, to support advanced services including voice, video and Internet, but also distance learning and telemedicine from institutions served by NCREN.

Columbus County ACCESS will allow the residents, businesses, community anchor institutions, and public safety workers to connect to one another and work together in broad-based community efforts to raise educational levels, improve community health, strengthen public safety and security, and diversify the economy and create jobs.

Columbus County ACCESS offers low-cost access to services at 1/3 less than the lowest cost option available today - but at twice the bandwidth for very high quality services delivered over fiber. In this way, low-income vulnerable populations, including unemployed families with children and disabled or elderly citizens who may also have mobility challenges, can afford to be connected to one another and to the Internet to increase opportunities for civic and social engagement, education, healthcare, employment, and to enjoy a world of learning, ideas, and entertainment.

Olive Hill Community Economic Development Corporation

Beverly Carlton

BTOP

\$448,742

This project establishes a public computer center in downtown Valdese, NC targeting assistance to disadvantaged businesses, the unemployed, and individuals seeking higher educational attainment. Clients and the public will receive training through collaborative services with the local community college, the small business center, Town of Valdese, and traditionally disadvantaged businesses.

This project will provide comprehensive broadband access, academic classes, and training for job-skills development, educational attainment, and business creation to underserved and vulnerable populations in eastern Burke County, an area experiencing high unemployment (over 14 percent), low educational attainment (32.4 percent of adults have not graduated from high school),

Olive Hill Community Economic Development Corporation (CEDC) is a core member of a public-private partnership to redevelop the former Waldensian Mills textile plant in downtown Valdese, North Carolina. In addition to the public computer center, this 70,000-square-foot facility will house a business incubator, a teleconference center, a theater, educational programs, and low- and moderate-income apartments. The public computer center, with 45 workstations and SMART Board technology, will be a key component of the facility and will be a center of worker retraining, business development, educational certification, job seeking, and access to basic services, including tax preparation and bill paying. The center will be conveniently located within walking distance of many distressed neighborhoods and will allow educational programs from the area community college to be offered in a welcoming environment that is viewed as part of the fabric of the local community.

The Waldensian Mills plant closed eight years ago and was a major employer for the region. The mill complex is in very good structural condition with an excellent roof, solid walls, and floors supported by steel I-beams. A \$400,000 grant to the Town of Valdese from the N.C. Rural Economic Development Center is being used to provide essential facility upgrades, including ADA access ramps, an elevator, bathrooms, and electrical refurbishments.

Partners include the applicant, the Town of Valdese, Western Piedmont Community College, and the local Employment Security Commission. The facility is being redeveloped by Airlie LLC, a civic-minded developer focusing on adaptive reuse of factories and small-town revitalization. State support and technical assistance is provided by the North Carolina Rural Economic Development Center, JobLink, and the area Workforce Development Board.

The target geographical area is eastern Burke County, with a year 2000 population of 38,500 over eight census tracts. For the county as a whole, median household income in 2000 was \$35,629, with per capita income of \$17,397 and a poverty rate of 10.7 percent. The

unemployment rate in June 2009 stood at 14.9 percent, and 32.4 percent of the population had not earned a high school diploma.

The public computer center expects to serve 7,500 visits per year from 2,000 individuals from over 800 households.

Utopian Wireless

Noah Campbell

RUS

\$460,993 (75% grant; 25% loan)

This project will bring WiMAX infrastructure to rural communities in and around Riegelwood, NC. Utopian will provide 4G portable/mobile broadband access over licensed 2.5 GHz spectrum to underserved households and businesses and provide discounted services to community anchor institutions. The project prioritizes job creation and economic development through improved access to broadband.

Skyline Telephone Membership Corporation

Jimmy Blevins

RUS

\$28,985,294 (70% grant; 30% loan)

SkyLine Telephone and SkyBest Communications (its wholly-owned subsidiary) will substantially expand the provision of advanced fiber-to-the-home (FTTH) services via a fiber optic network with combined speeds exceeding 20 mbps to more than 7,000 households, local businesses and anchor institutions in Alleghany and Ashe counties in rural, northwestern North Carolina.

SkyLine Membership Corporation ("Skyline TMC") is a local, member-owned cooperative, established in 1951 to bring telephone service to rural residents of Alleghany, Ashe and Watauga counties. Today, SkyLine TMC is the second-largest of eight telephone cooperatives in North Carolina. Through its 12-exchange network, SkyLine serves over 33,000 access lines across a five-county, 840-square-mile area in northwest North Carolina and east Tennessee and is democratically governed by a nine-member board of directors representing the membership. SkyLine employs a staff of over 130 and operates customer service centers in Seven Devils, Sparta and West Jefferson North Carolina.

Today, Skyline TMC can offer broadband to over 97% of our customers. However, due to a number of factors including long loop lengths, aging copper plant, and a DSLAM and transport network that is still largely ATM, in many instances Skyline TMC cannot offer High-Speed Access at speeds of 5 Mbps upstream and downstream combined.

High-Speed Access to these rural PFSA's will greatly enhance economic development in the region and can lead to new and better-paying jobs in the area. High-Speed Access to these PFSA's will also provide the ability for telecommuting, provide access to better healthcare, provide access to more educational resources, improve public safety, provide access to local and regional government resources, and also allow for entertainment and recreational activities accessed via the Internet. The local communities within the PFSA's support Skyline TMC's goal of moving toward a total fiber-to-the home ("FTTH") network.

The project is made up of five (5) proposed funded service areas ("PFSA's") in the Appalachian Mountains of northwestern North Carolina in Alleghany and Ashe counties and in northeastern Tennessee in Johnson County. These areas are very rural and the geography is comprised of a mountainous terrain. The five (5) PFSA's combined are 287 square miles.

Number of households and businesses passed in the PFSA -

Households – 6,763

Businesses – 585

There are ninety-four (94) Critical Community Facilities located within the PFSA. Skyline will offer a 25% discount on broadband services to these Critical Community Facilities and Public Safety Entities.

Proposed services and applications to be provided to users -

Today, SkyLine TMC provides a wide variety of telecommunications services - from basic dial tone services to enhanced calling features like Caller ID and Voice Mail to long-distance, broadband Internet services, business systems, network solutions, security systems and digital TV. Skyline TMC is continuing efforts to extend fiber-to-the-premise (FTTP) technology to their customers, including advanced broadband, high-definition digital TV services and other next-step services of the future.

The proposed project infrastructure will allow Skyline TMC to provide what is commonly referred to as the Triple Play (voice, video and broadband services) to a portion of its existing customer base that is today without access to the bandwidth needed for these services. Skyline TMC's voice offering includes traditional POTS service and features such as caller ID, call waiting, voice mail, and call forwarding for residential customers. For business customers, Skyline TMC also offers PRI, ground start and loop start trunk interfaces for businesses having Key and PBX systems.

Skyline TMC's high-speed broadband offering via FTTH is where having fiber connectivity really begins to pay dividends. Skyline TMC firmly believes that FTTH is the "endgame" when it comes to broadband deployment in rural America. With a complete FTTH network, the rate versus reach limitations of a traditional copper network are largely thrown to the wayside and the limitations then become building service packages and bundles that are attractive and beneficial to consumers, businesses and critical community facilities. Skyline TMC's standard FTTH connection to date has provided 100 Mbps total bandwidth to each premises via an Active Ethernet deployment. In some cases, Skyline TMC has actually established links to customers at 1 Gbps. With high-speed broadband at these large bandwidths, Skyline TMC truly believes that

the sky is the limit. Skyline TMC will offer several broadband service tiers ranging from entry level 1.5 Mbps downstream and 512 Kbps upstream to its premium tier of 20 Mbps downstream and 1 Mbps upstream.

Finally, with the proposed FTTH infrastructure in the PFSAs, Skyline TMC will offer high-quality affordable video services to customers. Skyline TMC's video product is highly comparable, if not superior to, competitors such as cable and satellite providers. Skyline offers almost 290 channels with 55 of those in high definition ("HD") something that consumers demand in today's competitive video market.

The network architecture will be fiber-to-the-home ("FTTH"). When Skyline began FTTH deployment in 2005 to other areas of its network, the design called for three 10Gbps IP Transport Rings "P-Rings" (or Primary Rings) to be established with each ring terminating at a separate terminal in the central office where the Internet Protocol ("IP") signal (for both Internet & video) is accessed. The P1 ring serves the four central offices ("CO's") in Ashe County while the P2 ring serves the three CO's in Alleghany County and the P3 ring serves the CO's in Watauga & Avery Counties. The terminals for each site on the primary rings are co-located at the DMS-10 locations in the CO's. This helps to ensure POT's availability by terminating the SIP sessions locally as opposed to transporting them back to a single soft switch location.

In each exchange, Skyline TMC floods video and Internet traffic and combines them with the local POT's traffic within that exchange for delivery to the "S-rings" (S indicating Subscriber). Each CO also has a mated pair of layer 3 IGMP / PIM routers serving as the boundary between our P-Rings and our S-Rings. The P-Rings have IGMP disabled while the S-Ring nodes all run IGMP in an effort to minimize the bandwidth requirements on the S-Rings and to improve the customer experience with extremely quick channel change intervals. Our thought process in having IGMP disabled on the P-Rings is to have all of our video content registered in each CO's routers so as to facilitate quick channel change times and to limit the affects of any hardware failures, etc. to one exchange. Each CO will typically have an S-Ring aggregator which serves as the master node in each respective EPSR domain and an L-Ring aggregator serving as the master node for any L-Nodes installed at the CO. An L node is a "Local" node and it is intended to serve FTTH customers fed directly from a CO. These nodes also utilize IGMP and EPSR in the exact same manner as do the S-Ring nodes. EPSR (Ethernet Protected Switched Ring) is a methodology for providing ring protection to the nodes comprising the network in the event of a fiber cut. This technology affords sub 50 millisecond failover in the event of a cut which is comparable to the failover timeframe of a traditional SONET network. All S-Rings and L-Rings currently operate at 1 Gbps.

Skyline TMC's strategy has been to deploy Active Ethernet as opposed to PON. Skyline TMC believes that the benefits of an Active Ethernet deployment justify the additional capital expenditures when compared to a PON deployment and that an Active Ethernet deployment more closely resembles the traditional Telco network which helps facilitate accurate plant / customer records. However, Skyline TMC does deploy some PON where applicable within the network. PON has been deployed in new Greenfield developments and areas where fiber in the local loop is near exhaustion.

As is the case with most FTTH deployments, the primary CPE is the ONT or Fiber NID. Skyline uses Allied Telesis Active Ethernet nodes (iMAP 9700's) and also Allied Telesis ONT's and the model used most often is the iMG 646 which has 4 traditional POT's ports and 6 Ethernet ports. Skyline typically dedicates the first 5 Ethernet ports for video (STB's – Set Top Boxes) and port 6 for Internet connectivity. In addition, each customer converted to FTTH will have a 100Mbps Active E connection from the ONT at their home to our network. If their bandwidth requirements exceed 80% of this 100Mbps connection, a 1Gbps connection will be established.

As detailed in the Description of Network Openness section of the application, Skyline TMC, if awarded BIP funding, will adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005) or any subsequent ruling or statement. Skyline TMC will encourage broadband deployment and maintain network openness and interconnection with respect to the public Internet. Skyline TMC recognizes that all consumers are entitled to access the lawful Internet content of their choice without unfair or discriminatory bandwidth restrictions. Accordingly, Skyline TMC offers all broadband subscribers open access to the Internet. Skyline TMC has no traffic shaping equipment in place and does not discriminate against nor preclude any legal use of services. Skyline TMC will ensure that all projects funded through BIP will provide open access to the public Internet. Any parties requesting access through BIP funded projects will be offered interconnection, when technically feasible, to both the public Internet and between customer locations via the centralized concentration location. This will be accomplished pursuant to Skyline TMC's interstate access tariff and will be non-discriminatory since Skyline TMC's ISP affiliate (SkyBest) purchases broadband interconnection out of Skyline TMC's interstate access tariff.

All interconnection, non-discrimination, network management and openness practices and policies already in place meet or exceed FCC guidelines, as well as the directives set forth in this NOFA as conditions for receiving BIP funding.

The same management team operates both SkyLine TMC and SkyBest Communications, Inc. (ISP Affiliate) Our management team has over 130 years of combined business experience, and 85 years of employment at SkyLine. The management team has an average of 12 years of management experience. Six of our seven present members have served together on this management team for at least six years. In addition to broadband, SkyLine and SkyBest offer local and long distance voice service, special access service, broadband internet and IPTV over a combination of copper and fiber networks to a total of over thirty two thousand subscribers. SkyLine began deploying DSL broadband technology in 1998. SkyLine made the strategic decision in 2005 to begin the slow and costly migration from the existing copper network to a FTTP network in order to serve the expanding needs of our subscribers in rural Appalachia.

Our present networks are capable of delivering broadband to over 97% of our existing access lines. Our networks are located in five mountainous, rural counties where the management team resides. This management team understands the importance of a state of the art telecommunications network to provide and maintain employment and services in the region. High speed broadband networks will afford our subscribers with the same opportunities and benefits available in urban areas.

Overall infrastructure cost of the proposed broadband system -
\$28,985,294

Overall expected subscriber projections for the project -

Broadband – 3,878

Voice – 6,362

Video – 1,628

It is anticipated that this project shall create and save a number of jobs, including jobs required for outside plant construction and the installation of network electronics. It is estimated that ninety-five (95) full-time equivalent jobs will be saved or created by the project providing significant positive impact to the economy in the communities in the PFSA.

Skyline TMC expects that deployment of high-speed broadband availability through this BIP infrastructure project combined with increased broadband adoption will greatly promote rural economic development in the communities of the five PFSA's in northwestern North Carolina and northeastern Tennessee. Without this project, consumers, business and critical community facilities will not have access to high-speed broadband.

Citizens in these communities are lower income and with some living in persistent poverty. According to the US Census, Johnson County Tennessee's median household income is \$23,067 per year which is considerably less than the \$41,994 per year in the United States. Almost 19% citizens in Johnson County live below the poverty level compared to 9% in the United States. Ashe County North Carolina's median household income is \$28,842 per year which is considerably less than the \$41,994 per year in the United States. Over 10 % citizens in Ashe County live below the poverty level compared to 9% in the United States. Alleghany County North Carolina's median household income is \$29,244 per year which is considerably less than the \$41,994 per year in the United States. Over 11 % citizens in Alleghany County live below the poverty level compared to 9% in the United States.

These areas also have much lower educational levels especially in moving on to higher-education. Broadband can assist these areas by helping to provide jobs so that the communities can retain their younger and more educated which have traditionally left the area to seek employment.

Access to high-speed broadband can also attract new employers to the area and can improve the level of personal wealth, as well as quality of life through education, workforce development, organizational leadership, better healthcare, and better access to local and regional government.

Finally, if the BIP grant/loan combination is awarded to Skyline TMC, this proposed project becomes cost effective where it otherwise would be very difficult to justify the expenses necessary to quickly provide High-Speed Access as expressly stated as a desire in the National Broadband Plan. The grant/loan combination will also allow Skyline TMC to offer high-quality,

low-cost and affordable broadband services to consumers, businesses, and critical community facilities in the PFSAs.

Wilkes Telephone Membership Corporation, Inc.

Eric Cramer

RUS

\$21.6 million (70% grant; 30% loan)

Wilkes Telephone Membership Corporation, Inc., (WTMC), a non-profit, member-owned cooperative telecommunications company headquartered in Wilkesboro, North Carolina, dba Wilkes Telecommunications, Inc., seeks funding to provide last mile, fiber optic, high speed Internet, video, and voice services to underserved rural areas in Wilkes County, North Carolina. The company has been incorporated with the state of North Carolina since 1952 and is a non-taxable entity of the state. The Wilkes County area is known for being the birthplace of NASCAR racing, moonshine, along with local hero, Junior Johnson, Lowe's Companies, Holly Farms now known as Tyson Foods, as well as Merlefest, the largest bluegrass festival in the world, held every year in April.

WTMC provides local phone and toll access services to customers in the rural areas in Wilkes County surrounding the towns of Wilkesboro, North Wilkesboro, and Ronda, which are served by another provider. WTMC also serves a small portion of Alleghany County, North Carolina. The WTMC service area consists of 630 square miles with an average subscriber per route mile of seven in all four exchanges. WTMC as a whole serves approximately 9,500 customers with 10,026 access lines to 8,871 residential and 1,155 business customers.

WTMC is an existing RUS borrower and a regulated Title II company; it also operates a wholly owned, non-regulated subsidiary called Wilkes Communications, Inc. (WCI). WCI is also facilities based a CLEC, which provides local phone, long distance, dial-up and high speed Internet access, digital TV (with high definition and DVR services), directory listing and advertising, business IP phone systems, payphone, equipment sales and service, inside wire maintenance, and home security and health monitoring systems. The WCI CLEC is an all fiber optic network competing in the non-WTMC areas; it serves 447 business lines and 68 residential lines. The company as a whole has 7,976 long distance customers; 4,472 high speed Internet customers; and 959 digital TV subscribers.

WTMC is in the process of overbuilding its legacy copper infrastructure with Fiber to the Home (FTTH) to every customer and is currently almost 12 percent complete. The company has already upgraded its core network with fiber to each of its remote equipment sites. WTMC has the capability to provide 1.5Mb Internet speeds to approximately 99 percent of its subscribers.

The goal of WTMC is to be the best and preferred provider of high quality, affordable communications and entertainment services to the residents of Wilkes County. The company is investing in the infrastructure to help enable, enhance, and promote education and economic

development through access to high speed Internet via fiber optic service to each resident and business in the county.

WTMC has been in business for over 59 years and is a trusted service provider and steward in the community. The company partners with and contributes to numerous public school and charitable entities and takes an active part in improving the economic, professional, and social environment in the third largest county in North Carolina. Access to funding for a non-profit entity serving a needs-based county helps to provide jobs and to enable enhanced education and economic development in an area that would not otherwise realize the opportunities this funding would provide. Since WTMC is an established provider, these loans and grant funds would be put to the best use and, most importantly, to the intended use of the funds, which is to upgrade to a fiber optic network to provide affordable, high-speed Internet access to all customers. The project has strong community support and will provide sustainable services to promote rural economic development in the area.

a) *Opportunity the proposed system seeks to address.*

Rural residents in Wilkes County, North Carolina, seek high quality and more affordable Internet services. The proposed fiber optics will offer higher speeds to many residents, businesses, and critical community facilities as well as voice and video. By coordinating with the North Carolina Recovery Act on the statewide network, WTMC hopes to be able to receive a lower cost for its Internet connection so that it can pass the savings on to the customers.

b) *General description of proposed funded service areas (location, number of communities).*

WTMC plans to provide last mile, high speed Internet offerings to the rural portions of Wilkes County in ten different service areas as defined on the on-line map, but none of these areas has any communities identified by the on-line mapping system. All of the ten proposed service areas as defined by the on-line map are within the existing four exchanges of Boomer, Champion, Clingman, and Lomax and are identified as follows: Boomer Central, East, and West; Champion North and West; Clingman East, South, and West; and Lomax East and West. Most of these areas lie on the outer edges of the county; and, on the north and west sides, they lie against the Appalachian Mountains. WTMC's funded and non-funded service areas surround the towns of Wilkesboro, North Wilkesboro, and Ronda, which are served by another provider.

c) Number of households and businesses passed.

WTMC proposes to serve 4,430 service locations with fiber connections in the proposed funded service areas. Due to being the only wireline carrier in the majority of the proposed funded service areas, the company is proposing to provide service to over 95% or more of the homes passed. The number of service locations will consist of 4,101 residential customers and 329 business customers of which 46 are critical community types. Six of these community centers do not have any type of service at this point. The reality of this area is that some customers will take only voice and choose not to have high speed Internet because they do not even own a computer. We are assuming only 80% of our fiber customers will actually take Internet service. The online mapping shows 3,680 households in all ten service areas, but our customer records show that to be 4101. The online mapping also shows 3,358 businesses; but we also know from our existing records that we have only 329 businesses in the same ten proposed funded service areas. This has caused the per location cost in the application also to be in error, but WMTC has decided to use its own customer record numbers to determine the per customer cost.

d) Number of community anchor institutions, public safety entities, and critical community organizations passed.

The Wilkes stimulus project proposes to provide reduced-cost broadband facilities to five schools, one library, three medical and health centers, eighteen public safety locations, fourteen community support group locations, and five governmental locations for a total of forty-six locations. Most of the locations have existing voice service with WTMC, but in many cases they cannot afford high speed Internet. WTMC is committed to working with these community anchor institutions to obtain the broadband that they may require.

e) Proposed services and applications to be provided to users.

WTMC will provide multiple high speed Internet options from 1Mbps to 1Gbps for both residential and business customers as well as to the critical community facilities. With the planned fiber optic facilities, each home location will be capable of up to 100Mbps; and the business and critical community facilities will be capable of up to 1Gbps or greater speed if required. Each proposed service tier is shown in the subscriber projection sheets.

WTMC will provide multiple video packages over the fiber facilities utilizing IPTV methods of delivery for a basic package of 149 channels and a premium package of 258 channels. Each of the tiers of service is shown in the subscriber projection sheets.

f) Type of broadband system that will be deployed (network type and technology standard).

WTMC proposes to build a fiber to the home (FTTH) active project that will utilize standard, single mode, fiber optic ribbon cables that will be buried for most all construction. Transport fiber optic loose tube cable will be parallel on all routes that are required to tie the different wire centers together with a 10 Gbps ring. Due to the ice and snow in this part of the country, a buried design improves the reliability as well as the aesthetics. All of the designs call for 97% penetration or higher since we are the only carrier that serves this part of Wilkes County except for some minor areas. A four fiber drop is being built to every service location in all ten new service areas and each ONT can handle up to four voice services and four 100Mbps ethernet ports for both broadband and video services. The Active electronic optical light terminal (OLT), all transport equipment, and all electronic equipment will be located in permanent buildings and have redundant rings where possible. The plan is to provide the critical community facilities with speeds up to 1Gbps if they have the need. All fiber will be sized to handle a minimum of customers for up to twenty years based on the determined penetration rates. At business and critical community facilities, ONTs that can have unlimited voice lines and ethernet connections as well as other traditional connections, such as T-1s, DS-3s, OC-3s, etc., will be provided.

All voice services will be fed from the existing Siemens EWSD switch in the Champion Host Office initially but will be phased over to a new MetaSwitch softswitch shortly in the same location. Existing remotes of all types will be phased out and replaced with Allied Telesis Active fiber terminals (OLTs) located only in permanent buildings that will be fed with 10Gbps ethernet rings that will allow for highly reliable service. All three main outlying exchanges are tied to the host office with a Brocades 10Gbps redundant ring that rings the entire county.

The high speed Internet services will be provided over the same Brocades 10Gbps ethernet redundant ring and terminated in the existing core routers in Champion. The subscription rate will be at a maximum of 8 to 1 until bandwidth costs are obtained at a lower price. WTMC would prefer to attach to the NCMC statewide network being funded by NTIA and to obtain bandwidth at a more economical price but at present has no direct location to which to connect.

Video services are being provided from the existing cooperative headend that is located in Piedmont TMC and is fed the signal via a 10G Allied Telesis equip ring. It has the ability to provide up to 121 channels of both SD and HD IPTV content that will be able to transition to mainly HD as required. The IPTV middleware being used is Minerva and has many saleable features and capabilities, such as caller ID and home network.

g) Approach to addressing the non-discrimination and interconnection obligations.

WTMC adopts the following nondiscrimination and interconnection policies: i) it commits to adhere to the principles contained in the FCC's Internet Policy Statement; ii) it will not favor any lawful Internet applications and content over others; iii) it will display any network management policies in a prominent location on the service provider's web page and provide notice to customers of changes; WTMC may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation, as well as measure to address spam, denial of service attacks, illegal content and harmful activities; iv) connect to the public Internet directly or indirectly—the network will not be a private closed network; and v) will offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. All requirements shall be subject to the needs of law enforcement and reasonable network management.

h) Qualifications of applicant that demonstrate the ability to implement and operate a broadband infrastructure, and/or be a sustainable broadband services provider.

WTMC is well qualified to implement the project with its long-term, experienced employees. It has provided quality telephone services to residents and businesses in Wilkes County since 1952. It currently is deploying an ambitious fiber to the home (FTTH) project in its more dense portions of Wilkes County's non-funded service areas that are funded by an RUS loan. WTMC also is working with extremely well-qualified and experienced engineers, financial consultants, and legal/regulatory experts, as demonstrated in the Management Resumes, who have practical and detailed experience in installing and operating fiber optics and have worked with several other major telecommunications carriers.

i) The operational relationship between applicant and any co-applicants.

WTMC is not applying with any co-applicants, but it does plan to collaborate with the North Carolina Recovery Act projects, a BTOP middle mile project of the State of North Carolina's MCNC network to provide low-cost, middle mile facilities to remote parts of the state.

j) Overall infrastructure cost of the broadband system.

WTMC proposes to request a 70/30 Grant to Loan combination to allow it to afford to cover these less dense areas; otherwise, it would be years before this could be completed. WTMC is requesting \$15,127,700 in grant and \$6,483,300 in loan for this project. It will spend \$361,000 in the last two years of the five-year project of its own funds in the proposed funded service areas.

k) Overall expected subscriber projections for the project (as shown in Attachment 13).

The information for this item is similar to what we provide in item c) above since this project is in an area where the majority of subscribers have one Wireline provider, which is WTMC. The number of fiber service locations versus the number of voice customers, versus the number of access lines versus the number of broadband customers will be reflected in the subscribers projection as indicated.

l) Number of jobs estimated to be created or saved as a result of this offering.

This project is estimated to create at least 160 man-year jobs in the implementation phase, and all WTMC's full-time employees will remain in the operational phase with possible additional assistance from outside consultants and experts. These jobs will help in this area to put people who have been laid off for over two years back to work.

m) How the project promotes rural economic development, supports persistent poverty counties, serves chronically underserved areas, demonstrates cost effectiveness, offers low-cost service options and/or provides for geographic diversity.

Wilkes County has seen the disappearing of many of its long-time job producers, such as the furniture and textile industries. Also, Lowe's Companies Corporate headquarter was relocated in the last few years; and the only remaining industry of any size is Tyson Foods. Tyson has one of the largest poultry plants on the east coast in Wilkesboro. These jobs are mostly low skill and have attracted a large group of migrant workers, who account for most of the growth in the area.

This broadband project will allow many people to work from home in this area; this capability has not been available to them in the past. With the award of this broadband project, Wilkes County will have the opportunity to increase the availability of new jobs to compensate for those that have been lost when many of the furniture and textile employers moved off shore. With the widespread availability of high speed Internet, WTMC hopes to attract many new employers who will provide new jobs that will allow this area to recover to what it once was.

One Economy Corporation

Wake County (part of multi-state award)

BTOP

\$1,496,838

One Economy, the Broadband Opportunity Coalition and a diverse team of partners propose to increase adoption rates among the unserved and underserved through a comprehensive and integrated program that includes digital literacy, online content, affordable connectivity and public education that will overcome barriers to adoption and will maximize the opportunities inherent in the technology itself.

Fayetteville State University

Arasu Ganesan

BTOP

\$1,012,401

The purpose of this activity is to educate vulnerable populations about broadband, provide training access and equipment, and support FMHA and FSU in providing these services. Services provided will address economic growth and job creation in Fayetteville, North Carolina.

French Broad Electric Membership Corporation

Jeff Loven

RUS

\$ 1,775,692 (65% grant; 35% loan)

French Broad Electric Membership Corp.; French Broad Electric BPL Project: \$621,492 loan \$1,154,200 grant and \$216,615 in private investment. This project provides broadband internet access to Spring Creek, Laurel, Beech Glenn and areas of Marshall and Mars Hill, North Carolina. The technologies used include fiber optics as the middle mile backhaul, and broadband-over-power lines as the last mile medium to provide service to the subscriber. This technology combination utilizes existing infrastructure, and minimizes project cost.

Broadband Recovery Funding in NC

Titles I and II of part A of the American Recovery and Reinvestment Act establish the two major broadband implementation and expansion programs: the Rural Utilities Service (RUS) Broadband Initiatives Program (BIP) and the National Telecommunications and Information Administration's (NTIA) Broadband Technology Opportunities Program (BTOP). More than \$7 billion was available between the two programs for projects to improve terrestrial and satellite broadband infrastructure, public outreach for broadband, public safety networks, and public access computer centers.

While the BIP and BTOP have until September 30, 2010 to announce awardees, to date North Carolina has received notice of more than \$250 million in BIP and BTOP projects. 81 North Carolina counties will receive funding or be traversed by a BIP or BTOP program.

ARRA Broadband Awards in North Carolina: BTOP Round I

Awardee Name	County and Project Type	Award Amount	Project Description
MCNC	Beaufort, Bladen, Columbus, Edgecombe, Greene, Harnett, Davie, Jackson, McDowell, Polk, Rutherford, Transylvania, Carteret, Craven, Johnston, Onslow, Pender, Robeson, Buncombe, Catawba, Cleveland, Haywood, Iredell and Lincoln Counties Infrastructure (middle mile)	\$28,225,520	MCNC will build a sustainable middle-mile broadband network connecting urban central NC with underserved rural southeastern and western NC. The project addresses statutory goals by improving affordability and access for education, health care, community institutions, and last-mile providers. Led by a proven team, the project is shovel ready and is supported by an \$11.76M cash and in-kind match.
Mitchell County Historic Courthouse Foundation	Mitchell County Public Computer Center	\$ 239,194	In collaboration with Mitchell County Public Library and Mayland Community College, the Center will provide access to broadband programs and services that will address specific educational and communication needs of displaced workers, farmers, high school dropouts, residents wanting college courses, health care workers, EMS personnel, educators, government officials, and small business persons.
One Economy Corporation	Wake County <i>(part of larger multi-state award)</i> Sustainable Broadband Adoption	\$ 1,496,838	One Economy, the Broadband Opportunity Coalition and a diverse team of partners propose to increase adoption rates among the unserved and underserved through a comprehensive and integrated program that includes digital literacy, online content, affordable connectivity and public education that will overcome barriers to adoption and will maximize the opportunities inherent in the technology itself.
Fayetteville State University	Cumberland County Public Computer Center	\$ 1,012,401	The purpose of this activity is to educate vulnerable populations about broadband, provide training access and equipment, and support FMHA and FSU in providing these services. Services provided will address economic growth and job creation in Fayetteville, North Carolina.
Total BTOP Round I		\$30,973,953	

BTOP Round 2

Awardee Name	County and Project Type	Award Amount	Project Description
City of Charlotte	Mecklenburg County Comprehensive Community Infrastructure (public safety)	\$16,702,490	This approximately \$16.7 million award will allow public safety entities in the city to deploy an interoperable wireless public safety broadband network in the Charlotte/Mecklenburg County area. The project plans to construct 24 new wireless towers to complement six existing towers on the network, and bring over 11,000 public safety end users onto the system. As many as 890,000 people stand to benefit from this project.
MCNC	Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Brunswick, Buncombe, Cabarrus, Caldwell, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Franklin, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Mitchell, Moore, Nash, New Hanover, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilson, and Yancey Comprehensive Community Infrastructure (middle mile)	\$75,757,289	MCNC's round 2 program is entitled the Golden LEAF Rural Broadband Initiative (GLRBI). The GLRBI bridges the prosperity gap by delivering broadband infrastructure to rural NC. It addresses the gap by building both middle mile infrastructure and direct connections to Community Anchor Institutions (CAIs) in the rural northeast, north central, northwest and south central portions of NC. In these 69 counties there are 5.9M residents, and 67 of the 69 counties fully qualify as underserved per the NTIA definition or have smaller underserved pockets within them. There are a total of 4,066 CAIs, including 1,718 K12 schools, 61 community college main/satellite campuses and 33 baccalaureate degree granting 4 year colleges and universities. In addition there are 254 public libraries, and 1,887 municipal, county and state public safety facilities. A comprehensive set of economic, education and public health statistics are included in the upload section. The GLRBI application included over 120 support letters from elected officials, education leaders, members of the governor's cabinet and counties along the build.
Olive Hill Comm. Economic Dev. Corp.	Burke County Public Computer Center	\$ 448,742	This project will provide comprehensive broadband access, academic classes, and training for job-skills development, educational attainment, and business creation to underserved and vulnerable populations in eastern Burke County, an area experiencing high unemployment (over 14 percent), low educational attainment (32.4 percent of adults have not graduated from high school), and poor social service infrastructure. The program funds a public-private partnership to redevelop the former Waldensian Mills textile plant in downtown Valdese, North Carolina.
WinstonNet	Forsyth County Public Computer Center	\$ 926,537	This approximately \$926,000 award, with \$696,000 in matching contributions, will allow WinstonNet to improve broadband access for communities with the greatest need in Forsyth County, NC. The project plans to upgrade public computers workstations and provide new equipment for 38 public computer centers.
	Total BTOP Round 2	\$93,835,058	

BIP Round I – No NC Awards

BIP Round 2

Awardee Name	County and Project Type	Award Amount	Project Description
Skyline Membership Corporation	Alleghany and Ashe Counties Last Mile	\$28,985,294 <i>70% grant; 30% loan</i> (NC/Tenn project approx 93% in NC)	Skyline Telephone Membership Corporation; High Country Fiber: \$8,695,588 loan and \$20,289,706 grant. This funding will substantially expand the provision of advanced fiber-to-the-home services via a fiber optic network with combined speeds exceeding 20 mbps to households, local businesses and anchor institutions in Alleghany and Ashe counties in rural, northwestern North Carolina.
French Broad Electric Membership Corp.	Madison County Last Mile	\$ 1,775,692 <i>65% grant; 35% loan</i>	French Broad Electric Membership Corp.; French Broad Electric BPL Project: \$621,492 loan \$1,154,200 grant and \$216,615 in private investment. This project provides broadband internet access to Spring Creek, Laurel, Beech Glenn and areas of Marshall and Mars Hill, North Carolina. The technologies used include fiber optics as the middle mile backhaul, and broadband-over-power lines as the last mile medium to provide service to the subscriber. This technology combination utilizes existing infrastructure, and minimizes project cost.
Utopian Wireless Corp.	Columbus County Last Mile	\$ 460,993 <i>75% grant; 25% loan</i>	This \$460,000 award to Utopian Wireless Corporation will bring WiMax infrastructure to rural communities in and around Riegelwood, NC and will provide broadband access to underserved household and businesses. The Utopian Wireless Corporation's project stands to benefit approximately 3,000 people, 450 businesses, and 30 other community institutions. In addition to the jobs this project will create upfront, it will help drive economic development.
Country Cablevision Inc.	Mitchell and Yancey Counties Last Mile	\$25,297,000 <i>75% grant; 25% loan</i>	The YMRB project, using this award of \$25.3 million, will promote social and economic development in a rural, economically distressed area of North Carolina by delivering critical digital services (TV, data and Voice Over Internet Protocol). More than 33,000 people, approximately 1,900 local businesses and 120 community institutions stand to benefit from this improved service. Not only will this project create jobs upfront, it will help drive economic development.
Atlantic Telephone Membership Corp.	Columbus County Last Mile	\$16,003,418 <i>70% grant; 30% loan</i>	Through this award of \$16 million, Columbus County ACCESS will provide an all Fiber-to-the-Premises (FTTP) network for high-capacity data, voice, and video services to critical community facilities and public safety entities. More than 8,700 people, approximately 270 local businesses and 35 community institutions stand to benefit from this improved service. Not only will this project create jobs upfront, it will help drive economic development in the community that creates jobs for years to come.

Wilkes Telecom, Inc.	Wilkes County Last Mile	\$21,611,000 <i>70% grant; 30% loan</i>	This \$21.6 million award to Wilkes Telecom, Inc. will provide last mile fiber optic high speed broadband, video, and voice services to underserved rural areas in Wilkes County, North Carolina. Wilkes Telecom's project stands to benefit approximately 8,500 people, 3,300 businesses, and 45 other community institutions. Wilkes Telecommunications estimates that this project will directly create at least 160 jobs upfront and help drive economic development.
Lumbee River Electric Membership Corp.	Robeson County Last Mile	\$19,947,739 <i>75% grant; 25% loan</i>	This \$19.9 million award to Lumbee River Electric Membership Corporation will provide an advance Fiber-to-the-Home (FTTH) broadband services via a high speed fiber optic network designed for speed up to 100 megabytes per second to end users in our rural proposed funded service area. Lumbee River Electric's project stands to benefit approximately 27,000 people, 1,600 businesses, and 100 other community institutions. In addition to the jobs this project will create upfront, it will help drive economic development and create jobs for decades to come.
Yadkin Valley Telephone Membership Corp.	Yadkin, Davie counties, and portions of Iredell, and Alexander Last Mile	\$21,668,232 <i>50% grant; 50% loan</i>	This approximately \$21 million award, will allow Yadkin Valley Telephone Membership Corporation to offer a diverse Fiber-To-The-Home (FTTH) network to areas of six counties in the Piedmont area of western North Carolina. Approximately 12,803 people stand to benefit, as do roughly 606 businesses and 56 community institutions. In addition to the jobs this project will support upfront, it will provide a foundation for economic growth and job creation for decades to come.

\$135,749,368
(Approx – grants and loans)

Totals to Date	BTOP Round 1 & 2*: \$124,809,011	BIP Rounds: \$135,749,368	*Total ARRA Broadband Project funding: \$260,558,379
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*Total does not including funding to the e-NC Authority for the State Broadband Data and Development Program.

Note: NC listing above does not include the following large multi-state BTOP awards which could have a NC component.:

University Corp. for Advanced Internet Development	Nationally - \$62,540,162	Internet2 and NLR, both non-profit organizations, propose the creation of the United States Unified Community Anchor Network (U.S. UCAN). This national-scale network will construct the middle mile essential to connect all community anchor projects funded by BTOP with each other, and with more than 66,000 other anchors, to ensure a seamless national fabric of high-performance, open networks.
Communication Service for the Deaf, Inc.	Nationally - \$14,988,657	Project Endeavor goals: promote broadband adoption and educate 200,000 deaf/hard hearing consumers about benefits of having broadband through an awareness and outreach campaign; sign up 16,000 broadband users, offer discounted mini-notebooks and broadband connections to income-eligible consumers; employ 60 tiered support staff in specialized CSD contact center.

GENERAL ASSEMBLY OF NORTH CAR
SESSION 2011

Attachment 4

H

D

BILL DRAFT 2011-LR-1 [v.1] (09/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

9/3/2010 11:24:16 AM

Short Title: Repeal e-NC Sunset. (Public)

Sponsors: Representative Faison,

Tolson, West, Tillis

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC
AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3(a) of S.L.
2006-66, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the
e-NC Authority hereby designated as the successor entity of the Rural Internet Access
Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The
remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is
dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part
2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by
this act, are repealed effective December 31, 2011.~~"

SECTION 2. This act is effective when it becomes law.

DRAFT
FOR REVIEW ONLY



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Golden LEAF Rural Broadband Initiative

Joe Freddoso

Federal Stimulus

- ARRA provides \$7.2B to enhance broadband access
 - \$4.5 B to Commerce BTOP
 - \$2.7 B to Agriculture RUS
 - **All Capital Funds – No Operating Funds**

- Why did MCNC apply?
 - Ensure NCREN's capacity to provide efficient service and maintain low cost to our public schools, Universities and Community Colleges
 - Assist state with implementation of Healthcare Information Exchange with ITS.
 - Bring middle mile closer to underserved consumers and small businesses – Help still needed to reach last mile in some areas.

Round 1 – Funding

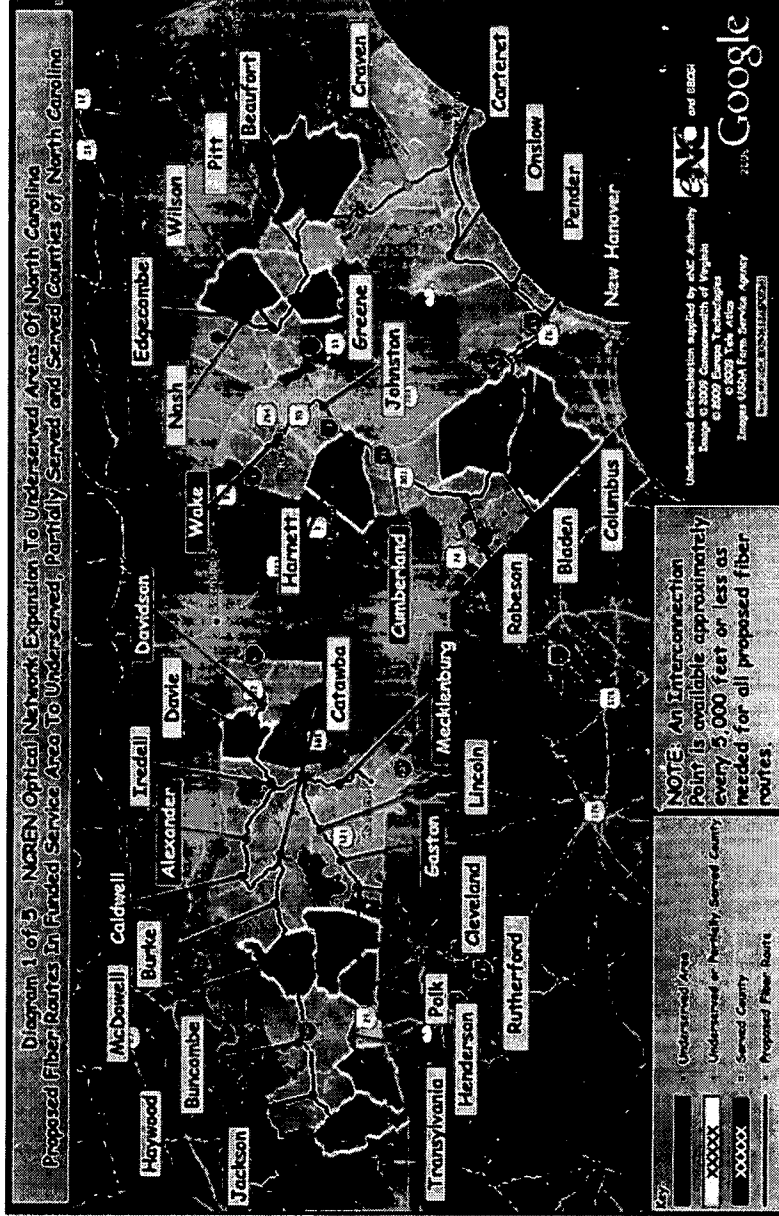
- \$28.2M request, \$11.7M match
 - Uses no State Funds
 - \$7.7M From MCNC Endowment
 - \$4M From Bandwidth Wholesaler PalmettoNet
- 37 Rural Counties – 24 fully or partially underserved
 - Private partner reaches last mile consumers
- 250 Jobs

Round 1 Cost Avoidance

	Lease	Ownership IRU	Permanent
Projected Use	\$85,360,000	\$23,839,000 Providers would not allow	\$39,900,000 (Capital, O&M and refresh)

* Round 1 Award – Covered \$28.7M of the capital

Middle Mile Build



Underserved Total:	Underserved Partial:
Beaufort	Carteret
Bladen	Craven
Columbus	Johnston
Davie	Onslow
Edgecombe	Pender
Greene	Robeson
Harnett	Buncombe
Jackson	Catawba
McDowell	Cleveland
Polk	Haywood
Rutherford	Iredell
Transylvania	Lincoln

Round 2: Funding

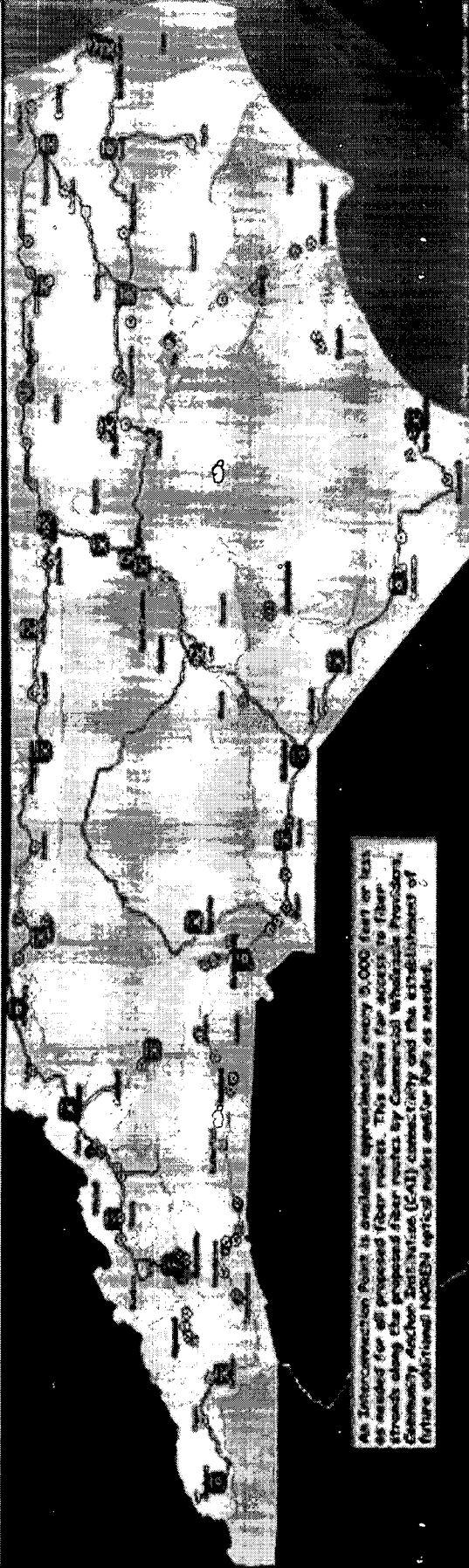
- **\$106M for 1800+ Miles of fiber**
 - Frank Hawkins Kenan Institute and MCNC led the application
 - \$30M Match
 - \$24M from Golden LEAF Foundation
 - 1200 jobs
- **4 Underserved areas remain**
 - Northeast, North Central, Northwest, South Central
- **Direct fiber to 179 community anchor institutions**
 - Community Colleges and Libraries
 - Covers existing contracts to sustain the network
 - \$2M to sustain (O&M and Refresh)

Round 2 Map

Golden LEAF Rural Broadband Initiative

Golden LEAF Rural Broadband Initiative - 1694.53 Miles In Proposed Funded Service Area (PFSA)

179 Community Anchor Institutions To Be Directly Connected To The Directly Connected To MCNEN



All Interconnection Points are available approximately every 5,000 feet or less as needed for all proposed fiber routes. This allows for access to fiber strands along the proposed fiber routes by Commercial Wholesale Providers, Community Anchor Institutions (CAI) connectivity and the establishment of future additional MCNEN optical nodes and/or RFPs as needed.

- Proposed Fiber Route (PFSA) Round Two
- Proposed Fiber Route (PFSA) Round One
- Existing North Carolina Research and Education Network (NCREN) Counties, Capital Projects in PFSA
- Served Counties - Current Projects in PFSA
- Proposed Optical Transport Node - CD Channel
- Community Anchor Institutions To Be Directly Connected To MCNEN

Underwritten construction supported by the Authority and BACT. Additional data and reports provided by MCNEN (in program of the State Statute).



State of the subcontinent, non-profit organization that connects the North Carolina Research and Education Network (NCREN).



Counties in round 2

Encompass 32,597 square miles or 67% of NC's total square miles

Geographic Area(s) Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Brunswick, Buncombe, Cabarrus, Caldwell, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Franklin, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Mitchell, Moore, Nash, New Hanover, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilson, and Yancey counties.



Advantages to NCREN Connectors

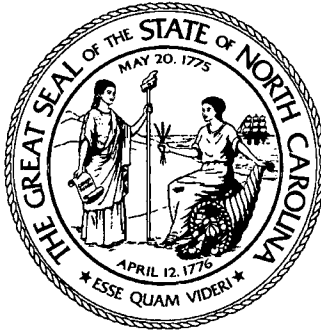
- Stable costs through owned “dark fiber”
- 170 Community Anchor Institutions – Direct Fiber
- Non profit model reduces costs
- Intranet performance for latency sensitive applications and research

Critical Success Factors

- Stable operating funds from NCREN Connectors
- Last mile public/private partnerships
- Statewide help from all levels of government and all agencies to facilitate build

For Rural Broadband

- This is middle mile-not last mile
- Need to build public/private partnerships to reach areas like Avery/Tyrrell/Hyde/Washington
- MCNC will have the fiber assets to help but we need to be part of a plan, not the entire solutions



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Wednesday, October 13, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Wednesday, October 10, 2010, in Room 514 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Angela Bryant, Lorene Coates, Earl Jones and Joe Tolson. Staff in attendance: Brenda Carter, Barbra Riley, Steve Rose, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Dusty Rhodes, Don McLennan, Mark Martin and Reggie Sills. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 & 2*)

The Chairman called the meeting to order and introduced staff, members and visitors. Chairman Faison appointed a sub committee on expanding broadband authority from just municipalities to including Counties. Rep. Alexander was the chairman of that committee and brings fourth his recommendations from his first meeting:

Rep. Kelly Alexander (Chairman, Sub-committee on expanding broadband Authority) was recognized to present to the committee. Rep. Alexander's minutes are attached. (*Attachment 3*) Below are some key points:

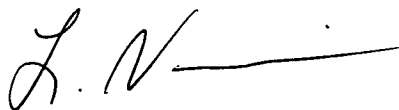
- Counties should have the same authority as the municipalities which would focus on the under and unserved areas.
- The subcommittee feels we should recognize what has already taken place and regularize that while maintaining open talks as we move forward.
- Rep. Earl Jones recommended that counties be given the authority and also recommend to look at private sectors of infrastructure. Counties have the same authority as cities if they want to change.
- Rep. Angela Bryant should explore in depth that counties have the same authority as cities if they want to negotiate. Rep. Bryant recommended that counties have full authority, right now, to serve under-served and enter into debate and discussion on this issue for under-serve areas. Carve out the narrow area of the under-served. Rep. Bryant also suggests that a commitment be given to out process.

After Rep. Alexander's report Rep. Faison opened the floor up for discussions. One point made by Rep. Tolson was the urgency of the appointments for the Public Private Partnership byline that was put and passed in the budget. Another point made was to not wait for an appointment, but work within our committee guidelines to get as much work done in the event that the appointments are not made.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Wednesday, October 13, 2010
10:00 AM
Room 544 L.O.B.**

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Subcommittee Report

- **Extending Broadband Authority**
Rep. Kelly Alexander, Chair

4. Proposed Legislation discussion

5. Adjourn

VISITOR REGISTRATION SHEET

HIGH SPEED INTERNET

10/13/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Britta Allen	Allen Law Offices, PLLC
Dwight Allen	Allen Law Offices, PLLC
Steve Brewer	CenturyLink
Chris Spencer	CSco
PHIL CALZADILLA	"
Bill Waiglo	autel
Don Kaylan	Kaylan Firm
Thomas Means	Fedute Well - Moon
CS 46125	TSS
Robert Wells	NORTH STATE COMMERCIAL
Marcus Tatter	NCCTA

VISITOR REGISTRATION SHEET

HIGH SPEED INTERNET

10/13/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Karl Krapp	NCLM
Todd McGee	NCACC
Patsy McGhee	Nash Co.
Cathie	African Audit
Jay Ovithe	Communities United for Broadband
R. Sepe	Action Audits
L. Andrews	NCFB
D. PARIS	SALISBURY
Pam Melton	CenturyLink
Carole Woodward	NC Telecommunications Assoc.
Michelle Frazier	MFS

VISITOR REGISTRATION SHEET

HIGH SPEED INTERNET

10/13/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

NAME	FIRM OR AGENCY AND ADDRESS
Jack Cozort	North State Strategies

Broadband Sub-Committee Meeting Minutes
Rep. Kelly Alexander, Jr. Presiding
October 5, 2010
10:00 AM
Lob 421

The meeting was opened at 10:15 AM by Rep. Kelly Alexander, Jr. at which time he welcomed everyone and called the meeting to order. Members in attendance were Rep. Earl Jones and Rep. Angela Bryant. There were a large number of visitors. Rep. Alexander thanked the Sgt.-of Arms. Rep. Alexander stated that we are here to discuss counties be granted the same position on broadband as some of the municipalities.

Remarks

Patsy McGee (Nash County) came forward and discussed that her County should have services as all other counties when it comes to broadband. Counties have suffered set backs due to not having access to broadband. Services, counties are at a crossroads. 11 municipalities. Two studies conducted. Needs authority to move forward.

Cynthia Poles (Chatham County) wants same way for counties to enter broadband business; low density unincorporated areas; incentives for private sector; competition needed giving authority to municipalities just like counties; wants broadband infrastructure; subsidies for education and libraries improved; 30 to 40% do not have access to broadband. Counties should have the authority to go into the business of broadband.

Tom Vanderbeck (Chatham County Commissioner) Basic infrastructure nation is falling behind in the global issue; young people are not returning to the county because of internet access; can't work from home; small businesses impacted by access; school children have laptops but some have access issues; 85% lives outside of municipalities areas; implementing economic development plan.

Kevin Leonard (NC County Commissioner Association) believes in foreign function of government; county should be free of Government services, leave to private entities; flexibility of form; counties not even in discussion, hands tied; blocked by statutory authority; needs granted statutory authority; rural areas don't have coverage; use of public partnership.

Jack Cozort (Catawba County) County highest unemployment; interest be given to the county for broadband business through legislation; trying to recruit new jobs; must have internet for businesses to come.

Masher Traher (NC Cable Association) A very complicated issue; private industry wants to step up where there is a need; taxpayers have a say; don't need a

change in law; county should be free of government services; clients are property making agencies.

Discussion

Rep. Alexander stated that what we do today, is limited...a technology advancement...He also stated that the decision revolves around counties, whether it should have the authority. Don't lose sight on this. Authority unbounded or bounded, needs definition of under-served and affordability.

Rep. Jones what is the statutory explanation, it would give us some guidelines.

Rep. Bryant asked staff to provide an analogy (what is the impediment) on the current local authority to a public private partnership for served or under-served

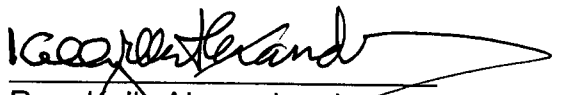
Recommendations

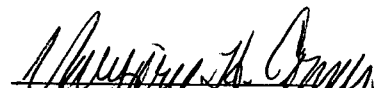
Rep. Earl Jones recommended that counties be given the authority and also recommend to look at private sectors of infrastructure. Counties have the same authority as cities if they want to change.

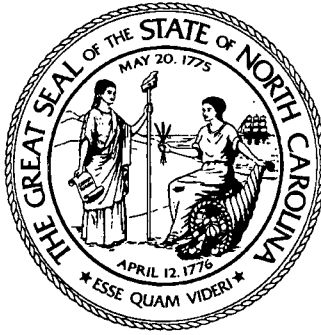
Rep. Angela Bryant should explore in depth that counties have the same authority as cities if they want to negotiate. Rep. Bryant recommended that counties have full authority, right now, to serve under-served and enter into debate and discussion on this issue for under-serve areas. Carve out the narrow area of the under-served. Rep. Bryant also suggests that a commitment be given to out process. Needs to bring before full committee some guidelines to a more comprehensive legislative process. A process on this sub-committee to work with Rep. Tolson's committee.

Rep. Alexander recommended a definition of under-served and a commitment to a process. Rep Alexander thanked everyone for coming and adjourned the meeting at 11:30 AM.

Respectfully submitted,


Rep. Kelly Alexander, Jr.
Presiding Chair


Marjorie H. Conner
Committee Assistant



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Tuesday, November 23, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Tuesday, November 23, 2010, in Room 544 of the Legislative Office Building at 10:00 A.M. The following members were present: Chairman Bill Faison; Representatives Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gully, Earl Jones and Thom Tillis. Staff in attendance: Brenda Carter, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Marvin Lee, Fred Hines, Frank Prevo and Young Bae. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 & 2*)

The Chairman called the meeting to order and introduced staff, members and visitors. Chairman Faison introduced our first presenter of the day, Herb Crenshaw. Mr. Crenshaw gave an update on AT&T:

Herb Crenshaw (Vice-President Government Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw's comments are attached. (*Attachment 4*) Below are some key points:

- AT&T is not opposed to local government providing telecommunications services to its constituents if that is what the citizens want to do. Whatever local government wants to do in this arena should be in the public interest and the rules should be fair- not necessarily level.
- AT&T's main focus is on broadband availability, broadband adoption, and broadband affordability through public private partnerships. AT&T had been:
 - Partnering with the city of Raleigh, One Economy, and others in Chavis Heights 300 households.
 - Partnering with Winston-Sale, One Economy and others in La Deara Crest 245 households.
 - Sponsored Alliance for Digital Economy Summit in October to discuss ideas.
 - Worked with communities in Saxapahaw and others across the state to extend DSL or U-verse

- Talking with e-NC about a trial of Life Line for broadband.

After Mr. Crenshaw's remarks, Chairman Faison introduced our next speaker Mr. Todd Edwards. Mr. Edwards spoke about the use of satellite technology for broadband:

Todd Edwards (President, Network East) was recognized to present to the committee. Below are some key points:

- Purpose is to provide service to people that are not or can not receive service from Cable, DSL and other providers.
- Networks East represents Hues Net, Wild Blue, and Star Band services, although it is slower than cable or dsl, it is better than dial up.
- Provides the last mile of High-speed Internet Service.

After Mr. Edwards' remarks, Chairman Faison introduced our next speaker Mr. Jack Cozort. Mr. Cozort gave an update on Winston/Salisbury broadband:

Jack Cozort (President, Cozort Government Relations) was recognized to present to the committee. Mr. Cozort's updated the committee on the status of broadband deployments by the cities of Wilson and Salisbury.

After Mr. Cozort's remarks, Chairman Faison introduced our next speakers Mrs. Jane Patterson and Stephanie Edwards. They spoke about the new North Carolina Broadband Mapping system:

Jane Patterson (Executive Director, e-NC) and Stephanie Jane Edwards (Data Administrator/GIS Specialist, e-NC) were recognized to present to the committee. Ms. Edwards' presentation is attached. (*Attachment 7*) Below are some key points:

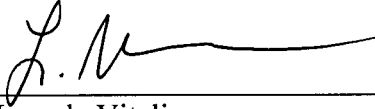
- **Some Basic Elements of Data Collection**
 - Data provided by participating broadband providers
 - Broadband data is collected and submitted to NTIA and FCC mapping team for incorporation into a National Broadband Map – every 6 months (April 1 and October 1)
 - Types of data collected is based on NTIA specifications
 - Current map is based on Fall 2010 Data Submission to NTIA (with data current as of June 2010): 113 broadband providers identified and 56 participating providers for Fall data.
- **Some Things You Can Do With the Online Map**
 - View broadband availability by technology type or any combination thereof
 - Identify unserved areas at a glance
 - Query information on available providers, technology types, and maximum advertised up and download speeds at any given location.
 - Search and zoom to address, for viewing availability at a given home, business, or other location (green thumbtack)

Chairman Coates opened the floor for questions or comments.

With no further business to come before the committee Chairman Coates announced the adjournment of the meeting. The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Tuesday, November 23, 2010
10:00 AM
Room 544 L.O.B.**

1. Welcome

Representative Bill Faison, Chairman

2. Introductions

3. Guest Speakers

- **AT&T**
Herb Crenshaw, Executive Director-Legislative Affairs
- **Cozort Government Relations**
Jack Cozort
 - Wilson/Salisbury Broadband Update
- **Network East**
Todd Edwards, President
 - Use of Satellite Technology for Broadband
- **The e-NC Authority**
Jane Smith Patterson, Executive Director
Stephanie Jane Edwards, Data Administrator/GIS Specialist
 - North Carolina Broadband Map

4. Adjourn

VISITOR REGISTRATION SHEET

Attachment 2

House Select Comm. on High Speed Int. Access

11/25/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

HERB CRENSHAW	ATT NORTH CAROLINA
Dwight Allen	Allen Law Offices, PLLC
Bridton Allen	Allen Law Offices, PLLC
Pam McHoon	ContumLink
Carole Woodward	NCTIA
Lori Ann Harris	LATA
Patrick Bufflin	NCAEC
J. Sepe	Action Audits
Oppie Jordan	Chair e-NC Authority
Jane Patterson	e-NC Authority Exec Director
Angie Bailey	e-NC Authority

VISITOR REGISTRATION SHEET

House Select Comm. on High Speed Internet Access
 Name of Committee

11-23-10
 Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stephanie Jane EDWARDS	The e-NC Authority 4021 CARYA DR. RALEIGH, NC 27610
Shaheen Syal	The e-NC Authority 4021 Carya Dr. Raleigh, NC 27610
Donna A. Sullivan	The e-NC Authority 4021 Carya Dr. Raleigh, NC 27610
David W. Mitchell	The e-NC Authority 4021 Carya Dr. Raleigh, N.C 27610
John Metzger	OERI
John McMullan	MF&S
Whitney Timmer	NCAAC
Cam Cover	BPMHL
DANIEL BAUM	TROOTMAN SANDERS
CHRIS NIDA	NCLM
Patsy McGhee	Nash Co. 120 W. Washington St., Suite 3040 Nashville NC 27856

VISITOR REGISTRATION SHEET

House Select Comm on High Speed Int Access

11/22/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

BRUCE T. HARPER	NASH COUNTY GOV. 120 W. WASHINGTON ST., NASHVILLE, NC
JACK COZART	NSS
JOHN MERRITT	MW Consulting
Bill Rowe	NC Justice Center
Bill Knight	attol
Marvin Tettey	Brooks Pierce
Blair	TWC
Jimmy Roberson	TWC
Bob Wells	North Star Telco
Joe Friddosa	MCNC
Rita Harris	NC Commerce Dept.

Rep Faison and Committee Members:

When I appeared before this committee on December 14, 2010, I stated that "AT&T is not opposed to local governments providing telecommunications services to its constituents if that is what the citizens want to do. We think competition is healthy and we embrace competition. Consumers benefit when there is strong competition for their business."

On April 21, I appeared before the Joint Revenue Laws Committee and said the same thing. In both presentations I also stated, "if local governments want to compete in this arena, we do think that the competition should be fair and that the rules should not favor one competitor over another."

The AT&T position has not changed.

Before going into markets or providing services, AT&T has had to demonstrate many times that what we were proposing was in the public interest. We think that whatever local governments want to do in this arena should be in the public interest and that the rules should be "fair"—not necessarily "level", but "fair".

This is not a priority issue for AT&T. We did not initiate it and we do not plan to initiate it. As I said in April, it is a distraction from what we are trying to do and from I think this committee wants to do. And that is to focus on Broadband Availability, Broadband Adoption, and Broadband Affordability through public, private partnerships.

Let me tell you what we have been doing:

1.2 billion in 2007-2009; 200 million in 2010

Partnering with the city of Raleigh, One Economy, and others in Chavis Heights 300 households

Partnering with Winston-Salem, One Economy and others in La Deara Crest 245 households

Sponsored Alliance for Digital Economy Summit in October to discuss ideas. Rep. Alexander participated on that panel.

Worked with communities in Saxapahaw and others across the state to extend DSL or U-verse.

Talking with e-NC about a trial of Life Line for broadband

So we will support legislation we think will move that agenda forward. We need everyone engaged—leave no one out. We would not support any legislation whose purpose is to keep players out.

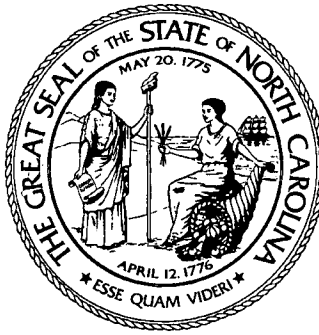
The e-NC Authority: Newly-launched Broadband map, beta version

Date: November 23, 2010

Reminders: Basic Elements of Data Collection and North Carolina Broadband Map

- Map interface designed and hosted by contractor Michael Baker Jr., Inc.
- Data provided by participating broadband providers
- Data collection and mapping work conducted by e-NC under the requirements of the National Telecommunications & Information Administration (NTIA), US Department of Commerce
- The data collection and mapping work is part of the State Broadband Data and Development Grant Program of the NTIA, awarded to the e-NC Authority as a five-year grant. Matching funds are provided by e-NC through its state operating funding from the NCGA, from Golden LEAF, the NC Center for Geographic Information & Analysis (CGIA), and from several participating NC universities (UNC-G, UNC-Chapel Hill, ECU and UNC-Charlotte).
- Broadband data is collected and submitted to NTIA (National Telecommunications & Information Administration) and FCC mapping team for incorporation into a National Broadband Map – every 6 months (April 1 and October 1)
- Mapping project runs from Oct 2009 - Oct 2014
- Types of data collected is based on NTIA specifications
 - Provider name, Doing Business As Name (DBA), and FCC Registration Numbers (FRN)
 - Wireline: Broadband availability and speed information by census block, street segment, and/or address based on census block size.
 - Wireless: Broadband availability and speed information by map layer polygon
 - Subscriber-weighted nominal speeds by county
 - Last Mile Connection Point information
 - Middle Mile Connection Point information
- Map will be updated every 6 months
- Current map is based on Fall 2010 Data Submission to NTIA (with data current as of June 2010):
 - 113 broadband providers identified
 - 56 participating providers for Fall data
 - DATA (not broadband) covers an estimated 98% of statewide land area and population
- **Some Information About the North Carolina Broadband Map**
 - Current map is of *provider data* only with other data used for verification purposes
 - Broadband availability data from providers should reflect who they serve and who they *could* serve if requested by a potential customer

- Broadband provider data is submitted:
 - by census block for census blocks of 2 square miles or less
 - for census blocks of > 2 square miles – then by street segments (range of addresses) or by address level (specific addresses)
 - Note: there are over 233,000 census blocks in the state
 - For data submitted as address points, map aggregates the address points into street segments. Specific address features cannot be mapped due to NDAs with providers.
 - Map information is searchable by address. Accuracy/level of detail depends on whether underlying data is submitted by census block, street segment or address level
- **Link directly to the online map: www.e-ncbroadband.org**
 - **Some things you can do with the new online map:**
 - View broadband availability by technology type or any combination thereof
 - Identify unserved areas at a glance
 - Query information on available providers, technology types, and maximum advertized up and download speeds at any given location.
 - Search and zoom to address, for viewing availability at a given home, business, or other location (green thumbtack)
 - Search and zoom to specific boundaries including: county, municipality, zipcode, congressional district, house district, or senatorial district. (yellow thumbtack)
 - View Anchor Institutions by category (Libraries and Schools, more to be added)
 - Search Anchor Institutions by category or area boundary including: county, municipality, or zipcode
 - Print map views to PDF using “PDF Report” buttons
 - Give feedback to e-NC on the map
 - Connect via hyperlink to e-NC’s new broadband speed test
 - Draw “redlining” graphics on map and save to file
 - **Additions and enhancements the e-NC Authority is working on:**
 - Collaborating with other states and NTIA for ways to quantify summaries of data
 - Outreach to citizens and stakeholder groups to offer map as resource, receive feedback, and apply data to projects supporting broadband
 - Streamlining of interface for optimal usability
 - Adding Critical Anchor Institutions from all identified categories
 - Development of an Advanced page with more in-depth layers, functions
 - Development of a Provider log-in for exclusive viewing of service areas
 - Production of non-confidential map layers available for download by request
 - Preparation for Spring 2011 data collection
 - Continued work on data submission assistance to make the process as seamless as possible for participating providers



MINUTES

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN RURAL & URBAN AREAS

Tuesday, December 14, 2010

The House Select Committee on High Speed Internet Access in Rural & Urban Areas met on Tuesday, December 14, 2010, in Room 415 of the Legislative Office Building at 8:30 A.M. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, Marilyn Avila, Angela Bryant, Lorene Coates, Jim Gulley and Earl Jones. Staff in attendance: Brenda Carter, Bill Patterson, Phyllis Pickett, Karlynn O'Shaughnessy and Peter Capriglione. House Sergeant-at-Arms assisting: Bob Rossi, Martha Gadison and Fred Hines. The Agenda and Visitor Registration Sheet are attached. (*Attachment 1 & 2*)

The Chairman called the meeting to order and welcomed staff, members and visitors. The purpose of the meeting was to adopt Findings and Recommendations and approve the Final Interim Report to the Speaker and members of the House of Representatives and to hear final recommendations and report from Rep. Kelly Alexander chairman of the sub committee on expanding broadband Authority.

Rep. Kelly Alexander (Chairman, Sub-committee on expanding broadband Authority) was recognized to present to the committee. Rep. Alexander's minutes and legislation are attached. (*Attachment 3 & 4*) Below are some key points:

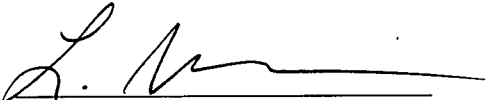
- Rep. Alexander presented a draft piece of legislation that under item 8 would grant counties the same power as cities for internet systems.
- Providers at the meeting disapproved of the legislation opting to not recommend it to the full committee.

The Chairman and Members of the committee went through the draft Report line by line either adopted as recommended or amended or proposed Findings and Recommendations. The members adopted the Finding and Recommendations unanimously. The final draft report is attached. (*Attachment 5*)

Chairman Faison thanked the committee for all of the time and effort put into the committee's work and with no further business to come before the committee Chairman Faison announced the adjournment of the House Select Committee on High Speed Internet Access in Rural & Urban Areas. The meeting adjourned at 9:45 p.m.

Respectfully submitted,

Representative Bill Faison
Chair



Lavada Vitalis
Committee Assistant



**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET ACCESS IN
RURAL & URBAN AREAS**

AGENDA

**Tuesday, December 14, 2010
8:30 AM
Room 415 LOB**

1. Welcome

Representative Bill Faison, Chairman

2. Committee Consideration of Final Report:

- Proposed Findings
- Proposed Recommendations for Legislation

3. Adjournment

VISITOR REGISTRATION SHEET

Attachment 2

High Speed Internet Access

10/17/10

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Louis Weaver	NCWA Political Council
Angie Bailey	e-NC Authority
Kevin Leonard	NCACC
Dam Milton	CenturyLink
Bob Wells	North Star Communications
Steve Brewer	CenturyLink
Britton Allen	Allco Law Offices, PLLC
Bob Depe	Action Audits, LLC
HERB RENSHAW	AT&T NC
Kelli Kukyra	NCLM
BRAD PHILIPS	TWC

Broadband Sub-Committee Meeting Minutes

Rep. Kelly Alexander, Jr. Presiding

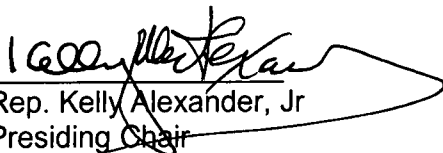
December 1, 2010

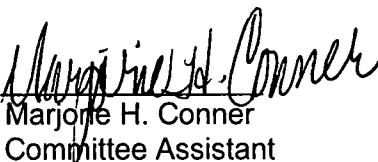
1:00 PM

Lob 421

The meeting was opened at 1:10 PM by Rep. Kelly Alexander, Jr. Rep. Alexander presented a draft piece of legislation that under item 8 would grant counties the same power as cities for internet systems, which is exactly what the committee has been discussing. He also stated to vote as a recommendation up which would go before full committee meeting to be debated on December 14th, he asked if anyone wanted to speak pro or con in reference to this. Rep. Bryant Thought the committee should want to hear pro or con in reference to this matter. Brad Phillips from Time Warner suggested that the draft not be approve, it doesn't deal with the core of the problem. Steve Brewer from Century Link also stated not to approve. Rep. Avila doesn't want to move in draft area. Dwight Allen, NC Alliance didn't approve of draft, too broad. Rep. Alexander stated if this was to be adopted it does not preclude the development of the rules or public private partnership. Rep. Bryant asked if there were any piggy back from the counties. NC Telephone cooperative stated that this is the broadest proposal he has seen. Rep. Bryant recommended that counties need to do what they should do needs to work out details. Rep. Avila made a motion for unfavorable report counties have authority for further discussion at full committee. A motion by Rep. Bryant recommended that counties have some authority as cities to provide broadband services and should be considered on an equal par with cities in any efforts to iron out issues related to local governments providing broadband services. Motion passed favor 2, meeting adjourned at 1:23 PM.

Respectfully Submitted,


Rep. Kelly Alexander, Jr
Presiding Chair


Marjorie H. Conner
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

Attachment 4

H

D

BILL DRAFT 2011-LR-6 [v.5] (12/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

12/3/2010 11:29:15 AM

Short Title: Broadband Parity for Counties & Cities.

(Public)

Sponsors: Representatives K. Alexander and Bryant (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT COUNTIES HAVE THE SAME AUTHORITY AS CITIES TO
3 ENGAGE IN PUBLIC ENTERPRISES RELATED TO CABLE TELEVISION
4 SYSTEMS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 15 of Chapter 153A of the General Statutes is amended by
7 adding a new section to read:

8 "§ 153A-274.1. Cable television systems.

9 (a) The term 'city' as used in Article 16 of Chapter 160A of the General Statutes shall
10 be deemed to include a county, to the end that counties may exercise the same powers as cities
11 with respect to the acquisition, construction, establishment, enlargement, improvement,
12 maintenance, ownership, operation and contracting for the operation of cable television systems
13 as authorized by G.S. 160A-311(7).

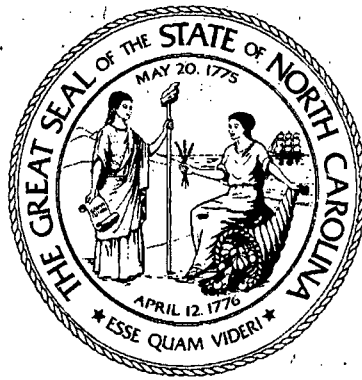
14 (b) References to a 'city' or 'municipality' in G.S. 40A-3, G.S. 40A-42, G.S. 132-1.1,
15 G.S. 160A-199, G.S. 160A-209, and G.S. 160A-319 that relate to cable television systems are
16 deemed also to refer to a county."

17 SECTION 2. This act becomes effective July 1, 2010.



* 2 0 1 1 - L R - 6 - V - 5 *

**HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET
ACCESS IN RURAL AND URBAN AREAS**



REPORT TO THE
NORTH CAROLINA
HOUSE OF REPRESENTATIVES

December 2010

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**HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET
IN RURAL AREA AND URBAN AREAS**



December 14, 2010

**TO THE SPEAKER AND MEMBERS OF THE HOUSE OF
REPRESENTATIVES:**

Attached for your consideration is the report of the House Select Committee on High Speed Internet in Rural and Urban Areas established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Respectfully submitted,

Representative Bill Faison

Chair

House Select Committee on High Speed Internet in Rural and Urban Areas

PREFACE

The House Select Committee on High Speed Internet in Rural and Urban Areas was authorized by the Speaker of the House of Representatives on October 27, 2009. The charge of the committee was to study the availability of high-speed Internet access in rural areas and in low-wealth, urban areas of the State having a population of 100,000 or more according to the most recent federal decennial census. In addition, the committee was authorized to:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.
- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.

- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

The letter of authorization, which includes a listing of the full membership of the Committee, is included in Appendix A of this report.

Representative Bill Faison was appointed to chair the Committee. A committee notebook containing the committee minutes and all information presented to the committee will be placed on file in the Legislative Library.

COMMITTEE PROCEEDINGS

The House Select Committee on High Speed Internet in Rural and Urban Areas held four meetings from September 2010 through December 2010. At each meeting, the Committee provided interested parties an opportunity to be heard on the issues and received additional comments from the public. Among the parties presenting testimony were broadband services providers, representatives of the e-NC Authority, municipalities that provide service to their citizens, MCNC, and various education and business organizations, public officials, concerned citizens, and citizen advocacy groups. All the parties acknowledged the critical importance of high speed internet access. Service providers view high speed internet as an important part of their future business plans, while citizens see it as a necessity for educating their children, conducting their small businesses, and participating in the culture of the information age. Universally available high speed internet deployment is essential for North Carolina's economic growth and prosperity.

September 10, 2010 Meeting Summary

The Committee held its first meeting on September 10, 2010. The Chairman gave a brief overview of the Committee's charge to examine the availability of high speed internet in the State, and to consider the feasibility of legislation to facilitate joint efforts to ensure that North Carolina citizens have access to high speed internet. The Chair noted that the availability of high speed internet may become the new backbone of our economic and educational growth.

Angie Bailey (Assistant Director, E-NC) was recognized to present an overview of the State Broadband Data & Development (SBDD) Grant that was awarded to the e-NC Authority. Additionally, Ms. Bailey informed the committee that the e-NC Authority requested and applied for SBDD Supplemental Funding totals: \$4,587,122 (federal) and \$1,196,580 (match, including \$400,000 from Golden LEAF) which would give an extension of the current grant, Oct 2010-Oct 2014. She noted that successful implementation of the grant would require the removal of e-NC's current sunset of Dec. 31, 2011 and continued recurring operating funds for e-NC (currently \$442,035).] After Mrs. Bailey's remarks, Chairman Faison brought forth legislation to repeal the e-NC sunset. Rep. Tolson moved to adopt the legislation, and with no opposition from the Members, the legislative proposal was adopted unanimously.

Joe Freddoso (President and CEO, MCNC) was recognized next to present to the committee. Mr. Freddoso gave an overview of the federal stimulus grants that MCNC had applied for and discussed the use of the grants. Mr. Freddoso explained that MCNC was reaching out to companies with a strong North Carolina foundation. The focus of the grant is to build the middle mile infrastructure to twelve underserved counties and partially to additional counties. Mr. Freddoso discussed the advantages of this project and how it would benefit the counties and the State in efforts to expand broadband for the entire State.

After Mr. Freddoso's remarks, Chairman Faison opened a discussion concerning counties and broadband. The counties of Orange, Caswell, Nash and Chatham wanted to extend the broadband authority now provided to cities to also include counties. Due to the need for extensive communication between the providers and counties, Chairman Faison appointed a subcommittee to address this issue. Representative Kelly Alexander was named subcommittee chair, with Representatives Angela Bryant, Marilyn Avila and Earl Jones serving also.

October 13, 2010 Meeting Summary

The Committee held its next meeting on October 13, 2010. The Chairman called the meeting to order and introduced staff, members and visitors. As the first order of business, Rep. Alexander was recognized to present recommendations from the subcommittee on expanding broadband authority to include counties. The following are highlights of the subcommittee members' deliberations:

- Counties should have the same authority as the municipalities which would focus on the underserved and unserved areas.
- The subcommittee found that the full Committee should recognize what has already taken place and regularize those accomplishments while maintaining open talks in order to move forward.
- Rep. Earl Jones recommended that counties be given broadband authority and also recommended looking to private sectors for key infrastructure.
- Rep. Angela Bryant recommended that counties have the same authority as cities to negotiate with private provider as well as full statutory authority to serve the county's under-served areas.

November 23, 2010 Meeting Summary

The third meeting of the Committee was held on November 23, 2010.

Herb Crenshaw (Vice-President Government Affairs, AT&T) was recognized to present to the committee. Mr. Crenshaw's informed the committee that AT&T was not opposed to a local government providing telecommunications services to its residents if that is what the citizens desire to do. Mr. Crenshaw stated AT&T does not support legislation that would limit how municipalities may use funds available to them to provided broadband services to its citizens. However, whatever local government desires to do in this arena should be in the public interest and the rules should be fair to all - not necessarily level. Mr. Crenshaw gave a number of examples where AT&T partnered with local entities to provide broadband service.

Todd Edwards (President, Network East) was recognized to present to the committee. Mr. Edwards told the committee how his company represented satellite companies and provided its customers with satellite service for broadband. He discussed satellite broadband service is the last-mile option for those without the option of a wired line. In addition, he told the committee about the data upload and download speeds of broadband technology. Mr. Edwards noted that, as companies improved their technology, the upload and download speeds to the users would improve.

Jack Cozort (President, Cozort Government Relations) was recognized to present to the committee. Mr. Cozort updated the committee on the status of broadband deployments by the cities of Wilson and Salisbury.

Jane Smith Patterson (Executive Director, e-NC) and Stephanie Jane Edwards (Data Administrator/GIS Specialist, e-NC) were recognized to present to the committee. Ms. Edwards discussed the data collection process for the deployment of broadband mapping as well as the process of keeping the map updated in the coming years. Ms. Edwards demonstrated the map and how users have the ability to view broadband availability by technology type, or any combination thereof, and how users can query information on available providers, technology types, and maximum advertised upload and download speeds at any given location. Map users would also have the ability to search and zoom to an address in order to view availability at a given home, business, or other locations.

December 14, 2010 Meeting Summary

The House Select Committee on High Speed Internet in Rural and Urban Areas met on December 14, 2010 to adopt its findings and recommendations and approve its final report to the Speaker and members of the House of Representatives.

FINDINGS AND RECOMMENDATIONS

The House Select Committee on High Speed Internet in Rural and Urban Areas Committee makes the following findings and recommendations:

- The sunset provision in S.L. 2003-42, pertaining to e-NC Authority, places e-NC at a disadvantage when applying for grants or entering into long-term agreements.
- The Committee recommends legislation repealing the sunset provision currently applicable to e-NC. (See Appendix B)

- There are barriers to the deployment of broadband for counties that want to provide broadband service to the unserved and underserved areas within their boundaries. Privately-owned providers are generally opposed to counties providing broadband services to their citizens.
- The Committee recommends legislation that will allow counties to have the same rights as municipalities to deploy broadband [to the unserved and underserved areas within their boundaries]. (See Appendix B)

- There is progress being made in the deployment of “middle mile” service, however, “last mile” deployment to unserved and underserved areas remains insufficient. Providers are reluctant to install the required last-mile technology in some areas due to the high cost of installation and the lack of an adequate number of customers required to meet their stated revenue goals.

- Satellite technology is a viable alternative when wire-line service is not available, but that in most instances it is still cost-prohibited for many citizens.

- The mapping of broadband availability in North Carolina has improved and that updating maps can play an important role in the deployment of broadband within North Carolina.

- North Carolina has received over \$250 million to fund various projects to implement and improve broadband throughout the state. (see Appendix C)

APPENDIX A



Office of the Speaker
North Carolina House of Representatives
Raleigh, North Carolina 27601-1096

HOUSE SELECT COMMITTEE ON HIGH SPEED INTERNET IN RURAL AREAS

TO THE HONORABLE MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES

Section 1. The House Select Committee on High Speed Internet in Rural Areas (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1) and Rule 26(a) of the Rules of the House of Representatives of the 2009 General Assembly.

Section 2. The Committee consists of the 11 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House of Representatives. The Speaker of the House of Representatives may dissolve the Committee at any time.

Representative Bill Faison - Chair
Representative Angela Bryant
Representative Jim Gulley
Representative Phillip Haire
Representative Kelly Alexander
Representative Thom Tillis
Representative Joe Tolson
Representative Roger West
Representative Earl Jones
Representative Marilyn Avila
Representative Lorene Coates

Section 3. The Committee may study the availability of high-speed Internet access in rural areas and in low-wealth, urban areas of the State having a population of 100,000 or more according to the most recent federal decennial census. In conducting its study, the Committee may:

- (1) Consider whether rural and underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high speed Internet in these areas.

- (2) Examine the impact of high-speed Internet access on education, small businesses, agriculture, and medical services.
- (3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.
- (4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
- (5) Identify the potential costs to Internet providers.
- (6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
- (7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
- (8) Study administrative actions that can result in immediate promotion of broadband access and usage within the State.
- (9) Make specific recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.
- (10) Study broadband account usage limits and tiered pricing based, in part or in whole, on data consumption, and penalties and fees for exceeding those limitations.
- (11) Study local government owned and operated communication services.
- (12) Study the use of 911 Funds by Public Safety Answering Points (PSAPS).
- (13) Study any other issue the Committee deems relevant.

Section 4. The Committee shall meet upon the call of its Chair. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1.

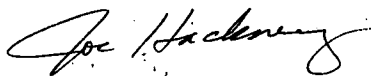
Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of the Chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

Section 10. The Committee may submit an interim report on the results of the study, including any proposed legislation, on or before May 1, 2010, by filing a copy of the report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives on or before February 1, 2011, by filing the final report with the Office of the Speaker of the House of Representatives, the House Principal Clerk, and the Legislative Library. The Committee terminates on February 1, 2011, or upon the filing of its final report, whichever occurs first.

Effective this the 27th day of October, 2009.



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Speaker

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APPENDIX B

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

D

BILL DRAFT 2011-LR-1 [v.1] (09/03)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
9/3/2010 11:24:16 AM

Short Title: Repeal e-NC Sunset (Public)

Sponsors: Representative Faison

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC
AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3(a) of S.L.
2006-66, reads as rewritten:

"SECTION 4. Sections 1 and 2 of this act become effective December 31, 2003, with the
e-NC Authority hereby designated as the successor entity of the Rural Internet Access
Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The
remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is
dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part
2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by
this act, are repealed effective December 31, 2011."~~

SECTION 2. This act is effective when it becomes law.



APPENDIX C

Overview

The following information is provided by The e-NC authority and OERI and be found from the following Link - http://e-nc.org/public/nc_recovery_projects

Rural Utilities Service (RUS) Broadband Initiatives Program (BIP) and the National Telecommunications and Information Administration's (NTIA) Broadband Technology Opportunities Program (BTOP), both created under the American Recovery and Reinvestment Act, awarded more than \$7 billion to projects across the country to improve broadband infrastructure, public outreach for broadband (including broadband adoption), public safety networks and public access computer centers.

From that, 81 North Carolina counties received more than \$250 million to fund **various projects** across the state. Below is an outline of tasks associated with e-NC's federal grant (through the State Broadband Data and Development Program) followed by a complete list of North Carolina BTOP and BIP grant awardees.

The e-NC Authority

\$8,313,545 (Federal grant + match funds)

Counties: Statewide

Summary: This award of more than \$8.3 million will be used to support e-NC's continued efforts around broadband planning, mapping and capacity building. Specifically to:

- Continue accurate collection, validation and display of state-level data to North Carolina Broadband map that will also be used toward the development of a National Broadband Map.
- Partner with the NC Center for Geographic Information and Analysis (CGIA) to identify and apply best practices for updating statewide address files.
- Build capacity, particularly in underserved communities, through programmatic, outreach, research and advocacy activities.
- Hold Statewide Broadband Summits to showcase local broadband deployment pilots, broadband adoption techniques, best practices and sustainability options.
- Roll out a Technical Assistance Program to support extension of on-the-ground technical assistance and research.
- Update on-line training, information and tool-kits/applications for small and home-based businesses.
- Initiate a careful examination of best practices for measuring the impact of broadband deployment and capacity building on community and economic development.
- Improve computer ownership and Internet usage.
- Develop a comprehensive pilot program that will offer qualifying citizens in three economically distressed counties a comprehensive program of engagement, digital literacy training, technical support, subsidized equipment and broadband access.

BTOP Round I

MCNC

Comprehensive Community Infrastructure (Middle Mile)

\$28,225,520

Counties: Beaufort, Bladen, Columbus, Edgecombe, Greene, Harnett, Davie, Jackson, McDowell, Polk, Rutherford, Transylvania, Carteret, Craven, Johnston, Onslow, Pender, Robeson, Buncombe, Catawba, Cleveland, Haywood, Iredell and Lincoln

Summary: MCNC will build a sustainable middle-mile broadband network connecting urban central N.C. with underserved rural southeastern and western NC. The project addresses statutory goals by improving affordability and access for education, health care, community institutions and last-mile providers. Led by a proven team, the project is shovel ready and is supported by an \$11.76M cash and in-kind match.

**Mitchell County Historic Courthouse Foundation
Public Computing Project
239,194**

Counties: Mitchell

Summary: In collaboration with Mitchell County Public Library and Mayland Community College, the Center will provide access to broadband programs and services that will address specific educational and communication needs of displaced workers, farmers, high school dropouts, residents wanting college courses, health care workers, EMS personnel, educators, government officials and small business owners.

**One Economy Corporation
Sustainable Broadband Adoption
\$1,496,838**

Counties: Wake

Summary: One Economy, the Broadband Opportunity Coalition and a diverse team of partners, propose to increase adoption rates among the unserved and underserved through a comprehensive and integrated program that includes digital literacy, online content, affordable connectivity and public education. The goal is to overcome barriers to adoption and maximize the opportunities inherent in the technology itself.

**Fayetteville State University
Public Computing Project
\$1,012,401**

Counties: Cumberland

Summary: The purpose of this activity is to educate vulnerable populations about broadband, provide training access and equipment and support FMHA and FSU in providing these services. Services provided will address economic growth and job creation in Fayetteville, North Carolina.

BTOP Round 2

**City of Charlotte
Comprehensive Community Infrastructure (Public Safety)
\$16,702,490**

Counties: Mecklenburg

Summary: This approximately \$16.7 million award will allow public safety entities in the city to deploy an interoperable wireless public safety broadband network in the Charlotte/Mecklenburg County area. The project plans to construct 24 new wireless towers to complement six existing towers on the network, and bring over 11,000 public safety end users onto the system. As many as 890,000 people stand to benefit from this project.

**MCNC
Comprehensive Community Infrastructure (Middle Mile)
\$75,757,289**

Counties: Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Brunswick, Buncombe, Cabarrus, Caldwell, Camden, Carteret, Caswell, Chatham, Chowan, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Franklin, Gaston, Gates, Graham, Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, McDowell, Mecklenburg, Mitchell, Moore, Nash, New Hanover, Northampton, Onslow, Pasquotank, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rutherford, Scotland, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilson, and Yancey

Summary: MCNC's round two program is entitled the Golden LEAF Rural Broadband Initiative (GLRBI). The GLRBI bridges the prosperity gap by delivering broadband infrastructure to rural NC. It addresses the gap by building both middle mile infrastructure and direct connections to Community Anchor Institutions (CAIs) in the rural northeast, north central, northwest and south central portions of NC. In these 69 counties there are 5.9M residents, and 67 of the 69 counties fully qualify as underserved per the NTIA definition or have smaller underserved pockets within them. There are a total of 4,066 CAIs, including 1,718 K12 schools, 61 community college main/satellite campuses and 33 baccalaureate degree granting 4 year colleges and universities. In addition there are 254 public libraries, and 1,887 municipal, county and state public safety facilities. A comprehensive set of economic, education and public health statistics are included in the upload section. The GLRBI application included over 120 support letters from elected officials, education leaders, members of the governor's cabinet and counties along the build.

Olive Hill Community Economic Dev. Corp.

Public Computing Project

\$448,742

Counties: Burke

Summary: This project will provide comprehensive broadband access, academic classes, and training for job-skills development, educational attainment, and business creation to underserved and vulnerable populations in eastern Burke County, an area experiencing high unemployment (over 14 percent), low educational attainment (32.4 percent of adults have not graduated from high school), and poor social service infrastructure. The program funds a public-private partnership to redevelop the former Waldensian Mills textile plant in downtown Valdese, North Carolina.

WinstonNet

Public Computing Project

\$926,537

Counties: Forsyth

Summary: This approximately \$926,000 award, with \$696,000 in matching contributions, will allow WinstonNet to improve broadband access for communities with the greatest need in Forsyth County, NC. The project plans to upgrade public computers workstations and provide new equipment for 38 public computer centers.

NC Central School of Law

Public Access Computer Center

\$2,000,000

Counties: Statewide (N.C. Historical Black Colleges)

Summary: North Carolina Central University's School of Law will receive a nearly \$2 million grant to upgrade broadband service while expanding access to its legal education programs. The project will use videoconferencing to bring low-income residents greater access to legal services and extend classes to four partner Historically Black Colleges and Universities and 22 legal assistance sites. The project also plans to hold legal writing seminars for undergraduates to better prepare them for law school and increase minority representation in the legal profession, as well as to provide legal classes geared towards middle and high school students.

BIP Round 1

Skyline Membership Corporation

Last Mile Project

\$28,985,294 (70% grant, 30% loan) – NC/Tennessee project w approx 93% in NC

Counties: Alleghany, Ashe

Summary: Skyline Telephone Membership Corporation; High Country Fiber: \$8,695,588 loan and \$20,289,706 grant. This funding will substantially expand the provision of advanced fiber-to-the-home services via a fiber optic network with combined speeds exceeding 20 mbps to households, local businesses and anchor institutions in Alleghany and Ashe counties in rural, northwestern North Carolina.

French Broad Electric Membership Corp.

Last Mile Project

\$1,775,692 (65% grant, 35% loan)

Counties: Madison

Summary: French Broad Electric Membership Corp.; French Broad Electric BPL Project: \$621,492 loan \$1,154,200 grant and \$216,615 in private investment. This project provides broadband internet access to Spring Creek, Laurel, Beech Glenn and areas of Marshall and Mars Hill, North Carolina. The technologies used include fiber optics as the middle mile backhaul, and broadband-over-power lines as the last mile medium to provide service to the subscriber. This technology combination utilizes existing infrastructure, and minimizes project cost.

Utopian Wireless Corporation

Last Mile Project

\$460,993 (75% grant, 25% loan)

Counties: Columbus

Summary: This \$460,000 award to Utopian Wireless Corporation will bring WiMax infrastructure to rural communities in and around Riegelwood, NC and will provide broadband access to underserved household and businesses. The Utopian Wireless Corporation's project stands to benefit approximately 3,000 people, 450 businesses, and 30 other community institutions. In addition to the jobs this project will create upfront, it will help drive economic development.

Country Cablevision Inc.

Last Mile Project

\$25,297,000 (75% grant, 25% loan)

Counties: Mitchell, Yancey

Summary: The YMRB project, using this award of \$25.3 million, will promote social and economic development in a rural, economically distressed area of North Carolina by delivering critical digital services (TV, data and Voice Over Internet Protocol). More than 33,000 people, approximately 1,900 local businesses and 120 community institutions stand to benefit from this improved service. Not only will this project create jobs upfront, it will help drive economic development.

Atlantic Telephone Membership Corp.

Last Mile Project

\$16,003,418 (70% grant, 30% loan)

Counties: Columbus

Summary: Through this award of \$16 million, Columbus County ACCESS will provide an all Fiber-to-the-Premises (FTTP) network for high-capacity data, voice, and video services to critical community facilities and public safety entities. More than 8,700 people, approximately 270 local businesses and 35 community institutions stand to benefit from this improved service. Not only will this project create jobs upfront, it will help drive economic development in the community that creates jobs for years to come.

Wilkes Telecom, Inc.

Last Mile Project

\$21,611,000 (70% grant, 30% loan)

Counties: Wilkes

Summary: This \$21.6 million award to Wilkes Telecom, Inc. will provide last mile fiber optic high speed broadband, video, and voice services to underserved rural areas in Wilkes County, North Carolina. Wilkes Telecom's project stands to benefit approximately 8,500 people, 3,300 businesses, and 45 other community institutions. Wilkes Telecommunications estimates that this project will directly create at least 160 jobs upfront and help drive economic development.

Lumbee River Electric Membership Corporation

Last Mile Project

\$19,947,739 (75% grant, 25% loan)

Counties: Robeson

Summary: This \$19.9 million award to Lumbee River Electric Membership Corporation will provide an advance Fiber-to-the-Home (FTTH) broadband services via a high speed fiber optic network designed for speed up to 100 megabytes per second to end users in our rural proposed funded service area. Lumbee River Electric's project stands to benefit approximately 27,000 people, 1,600 businesses, and 100 other community institutions. In addition to the jobs this project will create upfront, it will help drive economic development and create jobs for decades to come.

Yadkin Valley Telephone Membership Corporation

Last Mile Project

\$21,668,232 (50% grant, 50% loan)

Counties: Yadkin, Davie, and portions of Iredell and Alexander

Summary: This approximately \$21 million award, will allow Yadkin Valley Telephone Membership Corporation to offer a diverse Fiber-To-The-Home (FTTH) network to areas of six counties in the Piedmont area of western North Carolina. Approximately 12,803 people stand to benefit, as do roughly 606 businesses and 56 community institutions. In addition to the jobs this project will support upfront, it will provide a foundation for economic growth and job creation for decades to come.

Tri-County Telephone Membership Corporation

Last Mile Project

\$14,147,215 (\$10,610,410 grant, \$3,536,805 loan, \$2,000,000 match)

Counties: Beaufort, Hyde, Washington

Summary: This approximately \$14.1 million award, matched by more than \$2 million in private contribution, will allow Tri-County Telephone to offer broadband service using FTTP technology in northeast Beaufort County and parts of Hyde and Washington Counties. This project will deploy an advanced fiber optic network with inherent capability to deliver broadband service speeds of 80 Mbps. Approximately 10,780 people stand to benefit, as do roughly 889 businesses and 32 community institutions. In addition to the more than 27 jobs the company estimates this project will create upfront, it will provide a foundation for economic growth and job creation for decades to come. The following are multi-state broadband recovery projects that could have an impact on North Carolina:

University Corp. for Advanced Internet Development
\$62,540,162

Summary: Internet2 and NLR – both non-profit organizations – propose the creation of the United States Unified Community Anchor Network (U.S. UCAN). This national-scale network will construct the middle mile essential to connect all community anchor projects funded by BTOP with one another and with more than 66,000 other anchors, to ensure a seamless national fabric of high-performance, open networks.

Communication Service for the Deaf, Inc.
\$14,988,657

Summary: Project Endeavor seeks to promote broadband adoption and educate 200,000 deaf/hard hearing consumers about the benefits of having broadband through an awareness and outreach campaign. The goal is to sign up 16,000 broadband users, offer discounted mini-notebooks and broadband connections to income-eligible consumers and employ 60 tiered support staff in a specialized CSD contact center.

Site Map
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The authority is housed with the **N.C. Rural Economic Development Center**