

Statewide Regulatory Environment for Municipal Broadband

State regulations dot the landscape, but the demand for municipal broadband networks is stronger than ever

Introduction

In recent years, many municipalities in the U.S. have considered building, or have built, high-speed broadband networks. Most have undertaken such important projects in order to provide services to residents and businesses that would otherwise be unable to bridge the digital divide. Municipalities may also build new networks to enhance their own communications infrastructure and provide quality broadband connectivity to local schools.

Most states don't subject municipal broadband providers to any statewide regulations, limitations, or restrictions. Legislators in these states tend to see municipal broadband efforts as a boon to their state's economy and as solutions that are delivering important bandwidth to unserved or underserved communities. Many states also offer grants and loan programs to encourage and increase the number of projects.

There are a number of states that do have restrictions. Depending on how restrictions are defined and interpreted, the number of states with restrictions ranges from 19 to 21. For example, some observers include California as a restrictive state thanks to restrictions imposed on "community service districts." Other observers say that restriction does not qualify as a true barrier to municipal broadband and don't include it.

These restrictions generally regulate what municipalities can and cannot do when it comes to building high-speed broadband networks and offering telecommunications and data services. Such rules and regulations concerning municipalities providing communications services or internet connectivity go back to the mid-1990s and they are still being introduced, amended, and reinterpreted today.

Municipal broadband regulations that states have put in place run the gamut – everything from getting approval from a large majority of voters in advance, to compliance with more than a handful of guidelines, benchmarks, funding limitations, and other requirements, to outright bans for operating broadband networks. In these states with restrictions, legislators often voice concerns about risk to taxpayers should a broadband venture fail. Others frown on the idea of governments building networks and competing in an industry that already is served by private companies.

As of October 2015, more than 450 community networks have been built and are providing high-speed connectivity or making publicly owned dark fiber available to third parties¹. In addition, 163 municipalities across the U.S. have joined Next Century Cities (NCC), a group that was created to support community leaders that want to make fast, affordable, and reliable internet available to everyone in their cities and towns². NCC and its partners "assist each other in overcoming obstacles to success" by sharing their experiences and by working with regulators. In 2015, NCC created a Policy Agenda for Broadband Stakeholders that addresses local, state, and federal governments and others that can either help or hinder its members' efforts to build broadband networks and offer services to their constituents³.

State Broadband Regulations and Restrictions

Several sources were used to compile a list of states where these regulations and restrictions exist. These sources include the Institute for Local Self Reliance (ILSR)⁴, Broadband Now⁵, the Education Commission of the States⁶, and the Community Broadband Snapshot Report (published by Craig Settles)⁷.

Regulations and restrictions of municipal broadband can be categorized in several ways:

Administrative & Bureaucratic Hurdles – a series of rules or laws that place significant bureaucratic burdens on municipalities interested in operating broadband networks. In Florida’s case, this includes a very high tax burden. For Nevada, it is a population cap.

Voter Referendums/Citizen Participation – requires voter referendums and/or approvals to operate municipal networks.

Business Relationship Restrictions/Bans – Bans municipals from selling broadband services to end customers, effectively banning the practice of municipal broadband operation.

The following table classifies the various states, based on the category of municipal broadband restriction⁸.

Category	States
Administrative & Bureaucratic Hurdles	Florida, Michigan, Nevada, North Carolina, South Carolina, Tennessee, Virginia, Utah, and Wisconsin
Voter Referendums/Citizen Participation	Alabama, Colorado, Louisiana, and Minnesota
Business Relationship Restrictions/Bans	Arkansas, Missouri, Nebraska, Pennsylvania, Texas, and Washington

Table 1: Current Municipal Broadband Restrictions by State

There are combinations and hybrids of the above as well. There are currently 25 laws on the books addressing these restrictions, with some states having multiple laws.

An example of the impact that hybrid ban laws can put on municipalities occurred in 2015. The Electric Power Board of Chattanooga, Tennessee, and the city of Wilson, North Carolina, petitioned the Federal Communications Commission to let them extend their fiber networks beyond their footprints to serve neighboring communities. Then FCC Chairman Tom Wheeler’s Commission approved the request. Approximately a year later, that ruling was struck down by the U.S. Court of Appeals for the Sixth Circuit. The court agreed with then Commissioners Michael O’Reilly and Ajit Pai, who is now FCC Chairman, that the FCC did not have the authority to preempt state regulations.

The Current Climate

On the federal level, there appears to be little appetite for instituting new regulations on this matter, leaving the issue to individual states. Chairman Pai, who recently ended probes into AT&T, Verizon, and T-Mobile’s ‘zero-rated’ mobile data plans, which Wheeler launched to examine their potential threat to net neutrality, said the move exemplified his priorities as chairman.

Pai voiced his support for free data and expressed his desire to concentrate on “expanding broadband deployment and encouraging innovative service offerings⁹.” He also said he would like to see the Commission eliminate current regulations, propose fewer new regulations, and seek guidance from Congress before taking any actions¹⁰.

At the state level, a recent high-profile municipal broadband debate occurred in Virginia. A Virginia state lawmaker who noted her concern for “taxpayers’ money,” introduced a bill, the Virginia Broadband Deployment Act¹¹, which would have severely restricted municipal broadband networks in the state. There was considerable mobilization to defeat this bill, including from the likes of Google and Netflix. Virginia Democratic Governor Terry McAuliffe threatened to veto it. The opposition mobilization worked, and a revised ‘watered-down’ version of the bill was reintroduced¹², without the restrictions.

Conclusion

Current actions at both the federal and state level, as outlined above, demonstrate that the regulatory climate for municipal broadband is quite fluid and worthy of ongoing examination. Beyond the regulatory implications though, the need for broadband in unserved and underserved localities across the country has never been stronger or more important. As a result, there is plenty of positive pressure and pent-up demand for municipal broadband networks to continue.

¹ Community Networks, Community Network Map <https://muninetworks.org/communitymap>

² Next Century Cities, website, <http://nextcenturycities.org/>

³ Next Century Cities, Connecting 21st Century Communities: A Policy Agenda for Broadband Stakeholders, <http://nextcenturycities.org/connecting-21st-century-communities-a-policy-agenda-for-broadband-stakeholders/>

⁴ ILSR’s Community Networks - <https://muninetworks.org/communitymap>

⁵ Municipal Broadband Roadblocks - <http://broadbandnow.com/report/municipal-broadband-roadblocks-by-state/>

⁶ Inhibiting Connection: State policy impacting expansion of municipal broadband networks - http://www.ecs.org/ec-content/uploads/Inhibiting-Connection_State-policy-impacting-expansion-of-municipal-broadband-networks.pdf

⁷ Community Broadband Snapshot Report - <http://cjspeaks.com/wp/wp-content/uploads/2015/01/Snapshot-1-15.pdf>

⁸ This paper classifies 19 states as offering these restrictions, rather than the higher number cited by other resources

⁹ The Hill, FCC suspends probes of telecommunications firms, <http://thehill.com/policy/technology/317854-fcc-suspends-probes-of-telecommunications-firms>

¹⁰ Reuters, Under Trump, Republican FCC Commissioners will seek to reverse rulings on net neutrality and privacy, <http://venturebeat.com/2016/12/07/under-trump-republican-fcc-commissioners-will-seek-to-reverse-rulings-on-net-neutrality-and-privacy/>

¹¹ <http://www.vml.org/sites/default/files/The%20Virginia%20Broadband%20Deployment%20Act%20II.pdf>

¹² The Roanoke Times, Virginia House passes pared back broadband bill - http://www.roanoke.com/news/politics/general_assembly/virginia-house-passes-pared-back-broadband-bill/article_a2e918d2-74c2-50c6-9574-822087d30cff.html

Notes:

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