

MARSHA BLACKBURN
7TH DISTRICT, TENNESSEE
DEPUTY WHIP

COMMITTEE ON
ENERGY AND COMMERCE
VICE-CHAIRMAN

COMMITTEE ON
THE BUDGET

Congress of the United States
House of Representatives
Washington, DC 20515-4207

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June 12, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Dear Chairman Wheeler:

We write to express our deep concern with your comments before the House Energy and Commerce Committee on May 20, 2014, regarding the federal government's involvement over municipal broadband. You stated, "I understand that the experience with community broadband is mixed, that there have been both successes and failures. But if municipal governments want to pursue it, they shouldn't be inhibited by state laws that have been adopted at the behest of incumbent providers looking to limit competition. I believe the FCC has the power— and I intend to ask the Commission to exercise that power— to preempt state laws that ban competition from community broadband."

Without any doubt, state governments across the country understand and are more attentive to the needs of the American people than unelected federal bureaucrats in Washington, D.C. That's why it is so disconcerting that the Federal Communications Commission would seek to bring local municipalities into direct competition with the private sector against the wishes of the states. Inserting the Commission into the states' economic and fiscal affairs as you have suggested sets a dangerous precedent and violates state sovereignty in a manner that warrants deeper examination.

Taxpayers expect all branches of the federal government to respect the rights of the states and the decisions of their elected officials. Unfortunately, it appears the Commission has determined it will move forward without Congress' approval and despite the states' determination to protect their taxpayers. Given our deep concern with any action the Commission might take that would preempt state laws as has been suggested, we request your response to the following questions:

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?
2. Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety, and sewers?
4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?
5. Has the FCC conducted a cost-benefit analysis looking at the "crowding out" effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?
6. How does the FCC believe Section 706 authority trumps the states' rights in the Constitution?
7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?
8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

We look forward to your response by June 30, 2014. Also, we respectfully request that you reevaluate the Commission's future role in influencing government owned networks and how important the role our state elected officials have in this process. Thank you for your prompt attention to this important matter.

Sincerely,




Marsha Blackburn
Member of Congress



Bill Johnson
Member of Congress



Mike Pompeo
Member of Congress




Steve Scalise
Member of Congress


Cynthia Lummis
Member of Congress


Blake Farenthold
Member of Congress


Rob Bishop
Member of Congress

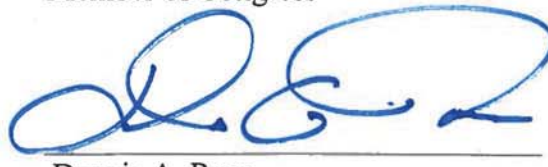

Scott Perry
Member of Congress


Tim Huelskamp
Member of Congress


Michael McCaul
Member of Congress


Scott Tipton
Member of Congress


Tom Rooney
Member of Congress


Dennis A. Ross
Member of Congress


Todd Rokita
Member of Congress


Pete Olson
Member of Congress


Thomas Massie
Member of Congress


Mike Rogers (AL)
Member of Congress


Phil Roe
Member of Congress


Tom Cotton
Member of Congress


John Fleming
Member of Congress



Renee Ellmers
Member of Congress



Ron DeSantis
Member of Congress




Tom McClintock
Member of Congress



Phil Gingrey
Member of Congress



Keith Rothfus
Member of Congress



Paul Gosar
Member of Congress



Randy Weber
Member of Congress



Vicky Hartzler
Member of Congress



Lynn Jenkins
Member of Congress



Kenny Marchant
Member of Congress



Markwayne Mullin
Member of Congress



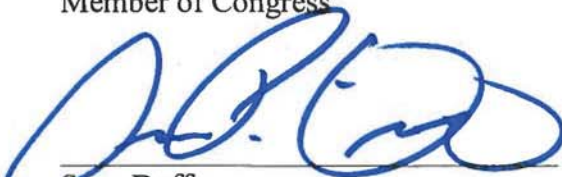
Stephen Fincher
Member of Congress



Steve Womack
Member of Congress



Mick Mulvaney
Member of Congress



Sean Duffy
Member of Congress



Mo Brooks
Member of Congress



Tim Griffin
Member of Congress



Sam Graves
Member of Congress



Reid Ribble
Member of Congress



Mark Meadows
Member of Congress



Diane Black
Member of Congress



Rick Crawford
Member of Congress



Marlin Stutzman
Member of Congress



Howard Coble
Member of Congress



John Duncan
Member of Congress



Adrian Smith
Member of Congress



Louie Gohmert
Member of Congress



Spencer Bachus
Member of Congress



Lee Terry
Member of Congress



Dana Rohrabacher
Member of Congress




Gus Bilirakis
Member of Congress

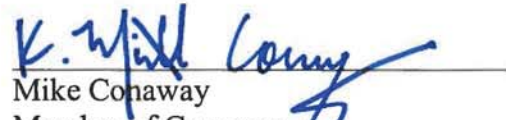


Darrell Issa
Member of Congress


Matt Salmon
Member of Congress

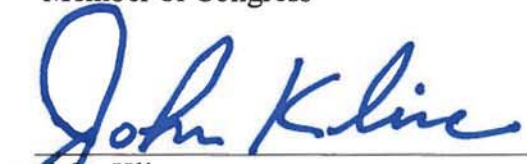

Steve Chabot
Member of Congress


David Jolly
Member of Congress


Mike Conaway
Member of Congress


Robert Latta
Member of Congress


Jason Chaffetz
Member of Congress


John Kline
Member of Congress


Tim Murphy
Member of Congress



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 22, 2014

The Honorable Marsha Blackburn
U.S. House of Representatives
217 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Blackburn:

Thank you for your letter concerning the critical issue of broadband deployment. The deployment of broadband is, as you know, a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety, and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act charges the Federal Communications Commission with ensuring that broadband is being deployed to all Americans in a reasonable and timely fashion. I believe that competition is a strong means to that critical goal.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC’s ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2. Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” If the Commission determines that such services are not “being deployed to all Americans in a reasonable and timely fashion[.]” Section 706 provides that the Commission “shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” In *Verizon v. FCC*, all three judges agreed with the Commission’s conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC 11-161*. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a “paradigmatic” example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the “crowding out” effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential “crowding out” of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states’ rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 22, 2014

The Honorable Spencer Bachus
U.S. House of Representatives
2246 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bachus:

Thank you for your letter concerning the critical issue of broadband deployment. The deployment of broadband is, as you know, a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety, and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act charges the Federal Communications Commission with ensuring that broadband is being deployed to all Americans in a reasonable and timely fashion. I believe that competition is a strong means to that critical goal.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2. Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

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As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the “crowding out” effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential “crowding out” of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states’ rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their municipal broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 22, 2014

The Honorable Gus Bilirakis
U.S. House of Representatives
2313 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bilirakis:

Thank you for your letter concerning the critical issue of broadband deployment. The deployment of broadband is, as you know, a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety, and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act charges the Federal Communications Commission with ensuring that broadband is being deployed to all Americans in a reasonable and timely fashion. I believe that competition is a strong means to that critical goal.

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I now turn to your specific questions.

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Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2. Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

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As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

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Sincerely,



Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 22, 2014

The Honorable Rob Bishop
U.S. House of Representatives
123 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Bishop:

Thank you for your letter concerning the critical issue of broadband deployment. The deployment of broadband is, as you know, a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety, and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

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Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

4. What level of deference should the FCC give to states who have affirmatively passed laws regarding municipal broadband?

Response: As discussed above, possible federal preemption of state law is a serious matter that warrants careful consideration of all relevant issues. In any proceeding that addresses the issue of community broadband restrictions, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

5. Has the FCC conducted a cost-benefit analysis looking at the “crowding out” effect on private investment in broadband deployment and maintenance should private entities be forced to further compete with government owned networks?

Response: As noted above, there is no current proceeding before the Commission raising issues with state laws restricting municipal broadband. In any proceeding to address such issues, the Commission will give careful consideration to all record evidence, including evidence related to potential “crowding out” of private investment by community broadband.

6. How does the FCC believe Section 706 authority trumps the states’ rights in the Constitution?

Response: As explained above, Section 706 establishes a strong federal policy of ensuring that broadband is available to all Americans in a reasonable and timely fashion. When state laws come into direct conflict with critically important federal law and policy, it is a long-standing principle of Constitutional law that state laws can be subject to federal preemption in appropriate cases. I do not view federal preemption as a matter to be undertaken lightly. Such action must be premised on careful consideration of all relevant issues. As noted above, in any proceeding involving these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

7. Did you ever ask Congress for authority to override states' rights with respect to municipal broadband?

Response: As discussed above, Section 706 addresses broadband deployment. In any proceeding that addresses these issues, the Commission will consider all relevant factual, policy, and legal issues presented to determine the appropriate course of action.

8. Will the FCC or the federal government bailout states or municipalities if their muni broadband projects fail? How much does the FCC estimate such bailouts would cost taxpayers?

Response: Some community broadband initiatives have been less successful than hoped, while others have been very successful. I expect that communities will decide for themselves the appropriate type and level of financial risk to take on in light of their needs in the normal course of local self-governance.

I appreciate your interest in this matter. Your views are very important and will be included as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,



Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

July 22, 2014

The Honorable Diane Black
U.S. House of Representatives
1531 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Black:

Thank you for your letter concerning the critical issue of broadband deployment. The deployment of broadband is, as you know, a powerful platform that encourages economic growth and facilitates improvements in education, health care, public safety, and other key policy areas. This is particularly true for small and rural communities, where the availability of high quality broadband can be the difference between economic decline and a vibrant future.

Private sector incumbent telephone and cable companies have invested billions of dollars in broadband deployment in the past decade. That investment has been of great benefit to our Nation in many ways. However, that investment has not necessarily reached every corner of America. Around the country, communities have focused on the importance of ensuring that their citizens receive the benefits of broadband, and some have concluded that investing in their own broadband efforts – or authorizing others to invest in their behalf – will provide more competition and the economic and social benefits that accompany competition for their residents and businesses. Section 706 of the Communications Act charges the Federal Communications Commission with ensuring that broadband is being deployed to all Americans in a reasonable and timely fashion. I believe that competition is a strong means to that critical goal.

At the same time, many states have enacted laws that place a range of restrictions on communities' ability to make their own decisions about their own future. There is reason to believe that these laws have the effect of limiting competition in those areas, contrary to almost two decades of bipartisan federal communications policy that is focused on encouraging competition. I respect the important role of state governments in our federal system, but I also know that state laws which directly conflict with critical federal laws and policy may be subject to preemption in appropriate circumstances. I recognize that federal preemption is not a step to be taken lightly and must be done only after careful consideration of all relevant legal and policy issues.

Any Commission decision on community broadband issues will be made only after a full opportunity for comment by all interested parties in an open proceeding and a careful analysis of the specific factual, policy, and legal issues involved. I assure you that the final decision on these issues will be based on a careful analysis of the full record in any agency proceeding.

I now turn to your specific questions.

1. If the courts struck down the FCC's ploy to override state laws restricting municipal broadband do you believe that such a decision would weaken the credibility of the FCC?

Response: The Commission gives careful consideration to all relevant factual, policy, and legal issues before making decisions and will, of course, do so in any proceeding to address these issues. That would include careful consideration of record evidence concerning the issues that your letter raises. As you know, final Commission decisions are typically subject to judicial review, but I do not believe that is a reason to shy away from making important decisions.

2. Why does the FCC believe state governors and state legislators should not have a say over how to govern the political subdivisions of their state even though that is what they are elected to do by voters?

Response: As stated above, I respect the role of state government in our federal system, but when state laws come into direct conflict with important federal laws and policy, they may be subject to preemption. This is not, however, an action that can be taken lightly without careful consideration of all relevant factual, policy, and legal issues.

My starting point is always the language of the statute that Congress has enacted. Here, Section 706 of the Telecommunications Act of 1996 directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” If the Commission determines that such services are not “being deployed to all Americans in a reasonable and timely fashion[.]” Section 706 provides that the Commission “shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” In *Verizon v. FCC*, all three judges agreed with the Commission’s conclusion that Section 706 conveys substantive authority to the Commission, as did the Tenth Circuit in *In re: FCC 11-161*. In the *Verizon* case, Judge Silberman, expressing his individual views in a separate opinion, specifically characterized preemption of state laws restricting municipal broadband as a “paradigmatic” example of the authority given by Congress to the FCC under Section 706.

As with all the issues before us, however, I want to assure you that the Commission will consider all relevant factual, policy, and legal issues presented in the record to determine the appropriate course of action in any proceeding to address issues related to community broadband.

3. Does the FCC have any evidence to suggest that facilitating municipal broadband would not impact public debt and would not result in less borrowing for other important state and local projects including pensions, roads, water mains, public safety and sewers?

Response: At present, there is no proceeding before the Commission raising issues with state laws restricting municipal broadband. Of course, I have stated my basic philosophy concerning the critical importance of high quality broadband for all communities and the importance of broadband competition, but I assure you that any Commission decision addressing community broadband issues will be made only after a careful review of all relevant factual, policy, and legal issues presented.

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