

Cities, the FCC and Gigabit Networks

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Gigabit Summit
Kansas City, Missouri
June 26, 2018

It is pleasure to be with you today.

I open many speeches that way but here I really mean it.

The reason?

This summit symbolizes the enormous vision, and a great achievement, of cities.

When I first spoke here, at the first gigabit summit in 2013, it was shortly after over 1000 communities had expressed an interest in having gigabit broadband networks.

By contrast, only one carrier was interested in offering gigabit internet service—Google. All the other carriers dismissed gigabit networks as a PR stunt; something done for bragging rights but irrelevant to creating consumer value.

Now, five years later, hundreds of cities have gigabit offerings and all the carriers are upgrading their fixed and mobile networks to offer such speeds as fast as they can. Charter has even declared this season “Gigabit Summer.”

Further, the federal government is saying that getting gigabit speeds on our mobile networks is a national imperative and failure to do so threatens our economy and national security.

This is a big and welcome change. The federal government is recognizing what cities, and those of us here in 2013 already knew: that we our policies should ensure that bandwidth never constrains economic growth or social progress.

Unfortunately, one thing hasn't changed; the federal government's view of its own role in helping achieve that goal. It is:

1. Make cities do all the hard work, pay all the government costs and accept all the blame for whatever happens; and
2. Let the federal government pay none of the costs, do none of the hard work, and take all the credit.

The first speech by an FCC Chair about Gigabit networks was in 2013. He was concerned that Google Fiber and a project I was doing, Gig.U, were proceeding without his involvement so gave a speech to get the FCC in the game of gigs.

His policy prescription?

He challenged the audience to build a gigabit network in every state.

Wow.

He provided no analysis of why they don't exist, no insight into barriers that can be removed, and no policy to improve their prospects. He simply offered the moral equivalent of the 'hearts and prayers' kind of leadership that does nothing but make the speaker feel better.

I [called that](#) speech the “most amateurish speech ever given by an FCC Chair” that “bordered on the absurd.”

I can be very bi-partisan in my criticism.

But at least that speech did not set us backwards.

Unfortunately, the current FCC is on a path, to do exactly that.

As I detailed in a speech a few weeks ago in Austin—one I will summarize rather than repeat--the current Federal Communications Commission (FCC) has curiously interpreted its statutory mandate to dramatically reduce its regulatory powers over [broadcasters](#), [ISPs](#), [telephone companies](#), [cable companies](#), and [wireless companies](#), while simultaneously asserting new authority to regulate prices and micromanage over one set of enterprises: local governments.

A major tactic in the FCC's effort to regulate cities is through its Broadband Deployment Advisory Committee (BDAC) process. The [stated, and worthy, goals](#) of the BDAC are to accelerate and broaden deployment of next-generation broadband networks and reduce the digital divide.

However the BDAC suffers from significant failures of design and execution. The failures are three fold.

First, the BDAC did not have a balanced membership that could have lead to a real consensus between stakeholders.

The BDAC should have been designed to generate ideas that optimize outcomes for all stakeholders and build a political consensus that makes it more likely that those ideas will be adopted and implemented successfully.

Unfortunately, the FCC [overwhelmingly filled](#) the BDAC with industry representatives and therefore undercut its potential to build political capital for a balanced and optimal set of solutions.

Rather, the FCC has spent its political capital reinforcing a false narrative about how cities are the cause of delays in 5G deployments, while ignoring the real, market driven causes of delay.

Second, the BDAC started from the false assumption that industry does not have the leverage to negotiate the deals it needs to make investments in new networks.

The carriers themselves recognize they have the necessary leverage.

Google Fiber changed the traditional negotiating leverage by saying that it would build, but only in places where city government adjusted their policies to make it economically feasible.

And that framework applied to all carriers.

Consider what AT&T said about the impact of the Google Fiber process. Noting that municipalities had made it “easy’ for Google Fiber, AT&T, in a pleading to the Broadband Opportunity Council, wrote that Google has “also essentially established a template for lowering existing regulatory barriers in other jurisdictions. That template, in turn, has allowed other providers to accelerate and broaden their plans for deploying the infrastructure necessary to provide high speed Internet service. That has certainly been true for AT&T.”

Consider what Verizon’s CEO Lowell McAdam recently [noted](#), “Cities are embracing us to come in and provide this broadband service for the citizens... .” He further said Verizon would walk away from cities that want too many concessions, adding, “there’s no market that’s not on the table.”

The *piece de resistance* demonstrating the ability of carriers to work things out with cities without federal interference involves the carriers and San Jose. They were antagonists in the BDAC process, with the carriers supportive and the Mayor of San Jose, one of two big city representatives, [resigning](#) and blasting the process. He observed, “At the 11th hour, we saw industry rewrites that pushed aside everything that had been negotiated for an industry-friendly, cookie-cutter set of rules.”

But those parties were [able to negotiate terms](#) that all thought fair and allow the companies to begin 5G deployments. Notably, the deals [include](#) having the companies contributing to a digital inclusion initiative and helping the city pay for accelerated permitting.

Let’s engage in a thought experiment: What if the FCC in 2011 had said that fiber deployment was critical to the future security of the United States and therefore mandated that every city should give Google Fiber the same deal that Kansas City gave Google?

I am certain that there would have been a huge uproar with all saying that such a mandate is crazy, unnecessary, and a clear usurpation of local power to benefit a large private enterprise.

That is, however, what the BDAC/FCC process appears to be moving to—a single federal mandate for how cities should price their rights of way and manage local construction for the benefit of a select group of companies.

Third, BDAC did not understand the value of asymmetric value creation.

I am often a big fan of asymmetry. In 10 years of practicing corporate law, as well as in being involved with dozens of deals between cities and next-generation network providers during the heart of the [Gig.U effort](#), I saw how every successful deal involves asymmetric value creation.

That is, the two sides don't want the same thing. So, the trick is to find the things that cost side A little and create considerable value for side B, with side B doing the same for side A. Both, in this way, get more than they give. That value creation may be asymmetrical but the idea of both getting more than they give is hugely powerful.

The BDAC, however, ignored this kind of value creation. Instead, it focused exclusively on what cities could do to improve the profitability of the carriers. It did not ask—obviously it was not interested—in what it would cost the cities. It involved the kind of cost benefit analysis in which the costs to one side are ignored and only the benefits to the other side are considered.

Due to these three failures, I expect the BDAC and the FCC will adopt a framework in which industry gets all the benefits with no obligations, and municipalities will be forced to bear all the costs and receive no guaranteed benefits. This kind of process will result in a large transfer of wealth from public to private enterprises—and leave American cities and metropolitan areas no better positioned to tap into digital telecommunications to unlock innovation and shared economic prosperity.

So how should cities respond to a BDAC that ignored their voices, market realities and any principles of fairness and shared rights and obligations?

I think it would be wise for cities to establish their own working group to establish best practices, work collaboratively to find solutions to new problems, and generally lower the cost of deployment.

The carriers are the cities' policy opponents at the FCC, but they are not the cities' enemies, just as the cities are not theirs. The carriers have the potential to bring enormous benefits to local communities, but the path is not easy for either side. It would be better to start fresh and walk that path together.

What would that look like?

It would start with an honest acknowledgement of the hard truth that BDAC—only wanting to conform to its preconceived and dishonest political narrative—chose to ignore: that while the carriers need some level of standardization for the economics to work, cities all have unique geographic, demographic and political realities.

The hard work is to find a balance between those two competing needs.

It would also include an honest assessment from both sides that most cities are not well prepared to oversee a city-wide network upgrade as the last several decades have only required cities to oversee ad hoc fixes, but that technology that was not around when cable built out its network can significantly improve that oversight.

Again, understanding the process is hard work but it can be done.

If I were in a room with cities and carriers I would say, based on my experience with Gig.U and seeing how the market has evolved with examples like the San Jose 5G deals, I think it should look something like this.

The cities would agree that they should adopt a set of best practices. They would debate these but as a starting point I would suggest they include:

- **Neutral and Nondiscriminatory Treatment.** Benefits, terms and conditions provided to one carrier deploying next generation networks should be equivalent to those available to other providers, both current and in the future.
- **Preempt unnecessary intergovernmental conflict.** The economics of these networks require significant scale. Therefore, some builds only make sense in areas involving multiple communities. Cities should avoid jurisdictional disputes by forming new partnerships to standardize processes.
- **Efficient Coordination.** Cities should improve coordination between governments and within agencies by designating one person within the government to facilitate network deployment, help navigate government process, and expedite resolution of problems.
- **Facilitating the Infrastructure Build Out.** Adopt rules and processes that lower construction costs including:
 - Dig once, climb once rules;
 - Non-discriminatory access to municipal rights-of-way, infrastructure, poles, and other physical assets;
 - Expedient review of permit requests;
 - Transparency on the status of applications and permitting throughout the process;
 - Expedient inspection of construction sites;
 - Allow electronic transmittal and signatures for all documentation;
 - Eliminate or limit requirements for duplicative or specialized review;
 - Allow in appropriate circumstances blanket permits with municipalities to allow facilities entry and limited digs by network field personnel with 24 hours' notice; and
 - Allow network operators to utilize accepted industry standards for traffic control plans.
- **Pro-investment pricing policies.** While local governments may be tempted to set high fees to meet short-term budget needs, doing so is counterproductive in the long term. As an [Accenture study notes](#), "A city will benefit much more from the increased jobs and prosperity that 5G Smart City technology brings, than from the revenue the city generates from pole fees or permits."
- **Education and Targeting.** Local governments should participate with the carriers and anchor institutions in educational outreach to the public. They should also target applications that can energize local economies, such as applying Internet of Things technology to municipal services.
- **Access to Information.** Municipalities should maintain utility information in a municipal database, allowing online access with appropriate safeguards for proprietary and public safety concerns.

With the exception of the pricing policies, which I think may be the toughest item, these are largely the kinds of things cities typically do but may not be prepared to do in the context of a citywide project. Again, this is not surprising, as most cities have not had a citywide build since the cable build in the 70's or early 80's.

In addition to agreeing to these principles, cities should set up a data collaborative to monitor, study and improve how the deployments actually occur in the real world.

In addition, the cities should be clear about what they expect from the carriers. The cities should acknowledge the significance of the investment in the networks but also ask for, as San Jose did, support for the cities—financial or otherwise—for:

- Increased administrative costs resulting from the accelerating the permitting;
- Process improvements. In the case of San Jose and AT&T, for example, the deal included a \$1,000,000 payment from AT&T to the City for process improvements including enhanced design standards, pole remediation, education and training, among other things; and
- Support for efforts to reduce the digital divide.

Once cities have done that, the carriers should say two things. First, they do not need the heavy hand of the some unelected federal bureaucrats to preempt cities. Second, they will prioritize cities that agree in writing to abide by those principles.

Those steps will improve the path to 5G for both cities and carriers.

Let me close with this thought.

The most significant meta-theme about governance in the United States today is that the federal government is dysfunctional and disrespected, but that local governments are responsive, proactive, effective, and respected in building communities that improve the lives of their residents.

One sees this on the bookshelves, where books on the federal government have titles like ["It's Even Worse Than It Looks"](#) or ["It's Even Worse than You Think,"](#) while books on cities carry titles like ["Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier"](#) or ["The New Localism: How Cities can Thrive in the Age of Populism."](#)

It also shows up in the polling data. A [new book reports](#) "surveys typically find that only a quarter of Americans trust the national government to 'do the right thing,' but Gallup polls in 2014 and 2016 found that more than 70 percent trusted their local government to do so." The same [federal–local](#) splits apply to members of both political parties.

In this regard, the FCC's efforts are contrary to what most Americans experience and believe.

It is also contrary to conservative wisdom. As the conservative political analyst Yuval Levin wrote in his book [*Fractured Republic*](#), "The absence of easy answers is precisely a reason to empower a multiplicity of problem-solvers throughout our society, rather than hoping that one problem-solver in Washington gets it right."

This summit is today, has it has been for the last five years, an important forum for empowering that multiplicity of problem solvers.

So let's ignore the FCC, other than, of course, to sue them.

But let us not ignore the problems or the opportunities next generation networks create.

Thank you.