



Before the Missouri House of Representatives
Interim Broadband Development Committee

Testimony of James Baller
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September 16, 2021

Dear Chairman Riggs and Members of the Interim Broadband Development Committee:

I am Jim Baller, the president of the Coalition for Local Internet Choice (CLIC). CLIC is an alliance of more than 630 public and private organizations and individuals that works to preserve, protect, and, if necessary, restore local decision-making authority in critical broadband infrastructure matters. I have been invited to address two questions: (1) What are other states doing about barriers to municipal, cooperative, and public-private broadband initiatives? and (2) What is the federal government doing to accelerate the deployment, adoption, and use of advanced communications networks and capabilities? I will begin with a brief introduction and then attempt to answer those questions.

Introduction

If the United States is to remain a great nation and compete successfully for world leadership in the decades ahead, we must act energetically to meet two core broadband challenges. One is to ensure that all Americans have affordable access to the Internet at levels sufficient to enable them to participate well in modern life. The other is to ensure that communities across America have access to the advanced communications capabilities they will need to survive and thrive in the increasingly competitive global economy.

The COVID-19 pandemic has made clear that broadband connectivity is essential at the individual and household level, particularly in the face of severe disruptions of the kind that we have been experiencing in the last year-and-a-half. Individuals with fast connections to the Internet have been able to continue to work, educate themselves, obtain medical care, and maintain social contacts from their homes. Unserved or underserved individuals have not been able to do these things and have been increasingly isolated and frustrated.

At the community level, advanced communications networks, like electric utilities in the last century, have increasingly become platforms, drivers, and enablers of simultaneous progress in just about everything that matters to communities. This includes economic and workforce development, all levels of education, public safety, modern health care, smart transportation, energy efficiency and reliability, environmental protection, government service, and much more.

Communities without affordable access to advanced communications capabilities will inevitably fall behind in all of these areas.

That’s why so many communities across America today, facing a wide range of local conditions, are vigorously seeking broadband solutions that will work for them. Some are engaging with willing incumbents. Others are partnering with new entrants. Some are building their own municipal or cooperative networks. Still others are developing creative new ways to meet their needs. CLIC strongly believes that local communities are in the best position to understand their own needs and to make the critical broadband choices that will affect their economic well-being and quality of life in the years and decades ahead.

With billions of federal, state, local, and private dollars becoming available to help accelerate broadband deployment, adoption, and use, we should have a good chance of meeting our nation’s two core broadband challenges. But doing this successfully will depend on our using these funds wisely and striking the right balance between meeting community-level needs and ensuring that we leave no individual or household behind.

What Other States Are Doing About Barriers to Local Broadband Initiatives and Public Private Partnerships

In recent years, many States have greatly expanded their support for broadband initiatives.¹ This includes establishing State broadband offices, developing strategic plans, providing information and guidance to local communities, and, increasingly, providing state funds to support broadband projects.² The role of the States will expand even more as billions of federal dollars are channeled through them, as discussed in greater detail in the next section.³

¹ See, e.g., Pew Charitable Trusts, Fact Sheet: “How Nine States Are Expanding Broadband,” (Feb. 2020), https://broadbandcouncil.ca.gov/wp-content/uploads/sites/68/2020/03/Pew-State-Broadband_FactSheet-2020.pdf

² See, e.g., Ry Marcattilio-McCracken, “Kansas Announces New Ten-Year, \$85-million Broadband Grant Program,” *Community Networks* (Dec. 1, 2020), <https://muninetworks.org/content/kansas-announces-new-ten-year-85-million-broadband-grant-program>; S. Johnson, “California moves to adopt historic broadband plan,” *EdSource* (July 16, 2001), <https://edsources.org/2021/california-moves-to-adopt-historic-6-billion-broadband-plan/658121>

³ D. Goovaerts, “States play a key role as federal broadband funding pours in,” *Fierce Telecom* (Aug. 16, 2021), <https://www.fiercetelecom.com/regulatory/states-play-a-key-role-as-federal-broadband-funding-pours>

In addition, some states have recently repealed or rejected barriers to entry by local government entities, cooperatives, and public-private partnerships.⁴

Of particular note, in February 2021, the conservative Arkansas legislature found that “without access to voice, data, broadband, video, and wireless telecommunications services, citizens of Arkansas also lack access to healthcare services, education services, and other essential services; and that this act is immediately necessary to allow government entities to provide high quality voice, data, broadband, video, and wireless telecommunications services to their citizens.” In response, the Arkansas Senate voted 35-0, and the House voted 94-0, to give government agencies substantial new broadband powers, and Governor Hutchinson duly signed the bill. Briefly summarized, Arkansas now:

- Allows government entities that own electric systems or cable television systems to provide communications services or facilities, now or in the future, directly or indirectly, with the exception of basic local exchange service;
- Allows government entities to provide telecommunications services or facilities to support a wide range of emergency management, law enforcement, education, and healthcare activities;
- Allows government entities and their private partners to apply for and use grants or loans from programs that focus on extending services to unserved areas;
- Allows government entities to “acquire, construct, furnish, equip, own, operate, sell, convey, lease, rent, let, assign, dispose of, contract for, or otherwise deal in facilities and apparatus” used to provide any or all of the following services: voice, data, broadband, video, or wireless telecommunications services;
- Allows government entities to issue general obligation bonds or impose special taxes to acquire or construct communications facilities, provided that the government entities
 - “partner, contract, or otherwise affiliate with” an entity that is experienced in such matters;
 - conduct due diligence in accordance with industry standards for such projects and in compliance with legal requirements for the kind of funding involved,
 - hold a public hearing, after giving at least 10 days prior public notice; and
 - afterward the hearing, “cause an election to be held as required by law.”

These requirements do not apply to government entities that qualify as owners of electric or cable TV systems; as providers of services relating to energy management,

⁴ CLIC’s list of states that had barrier to public broadband initiatives and public-private partnerships as of July 1, 2021, is available at <http://www.localnetchoice.org/wp-content/uploads/2021/08/CLIC-List-State-Barriers-7-1-21.pdf>

law enforcement, education, or health care.; or as providers of services pursuant to grants or loans under programs focusing on unserved areas.⁵

Similarly, until this year, the State of Washington had allowed only large home-rule cities to provide telecommunications services (broadly defined) to customers of all kinds, and it had allowed Public Utility Districts (PUDs) to provide telecommunications services only at the wholesale level, and not directly to end-users at the retail level. Through HB 1336, the Washington State Legislature gave smaller municipalities, PUDs, and port authorities unrestricted powers to provide telecommunications to customers of all kinds.⁶

In the meanwhile, the legislature of Ohio rejected amendments to a budget bill that would have banned all existing and future municipal broadband projects and public-private partnerships in that state.⁷

Several states have also removed restrictions on entry by cooperatives.⁸ As a result, cooperatives are increasingly stepping up to the challenge of providing broadband to their communities.⁹ In fact, the history of electrification appears to be repeating itself in the communications area.¹⁰

⁵ Arkansas State Legislature, Act No. 67, (Feb. 4, 2021, <https://www.arkleg.state.ar.us/Bills/Detail?tbType=&id=sb74&ddBienniumSession=2021%2F2021R>; J. Baller, “Arkansas Legislature Significantly Expands Local Broadband Options,” *CLIC* (Feb. 9, 2021), <http://www.localnetchoice.org/connections/arkansas-state-legislature-significantly-expands-local-broadband-options/>

⁶ Washington State Legislature, HB 1336, (Adopted and Engrossed Apr. 11, 2021), <https://app.leg.wa.gov/billsummary?BillNumber=1336&Year=2021&Initiative=false>,

⁷ J. Brodtkin, “Ohio GOP ends attempt to ban municipal broadband after protest from residents,” *Ars Technica* (June 29, 2021), <https://tech.slashdot.org/story/21/06/30/0042239/ohio-gop-ends-attempt-to-ban-municipal-broadband-after-protest-from-residents>

⁸ K. Kienbaum, “New State Laws Ease the Way for Electric Co-op Broadband,” *Community Networks* (July 18, 2021), <https://muninetworks.org/content/new-state-laws-ease-way-electric-co-op-broadband>

⁹ ILSR, “Cooperatives Build Community Networks,” *Community Networks* (undated), <https://muninetworks.org/content/rural-cooperatives-page>.

¹⁰ As early as the 1880s, municipalities began to fill gaps in electrification left by the private power industry. By the early 1920s, more than 3000 communities were operating their own electric utilities. In the 1930s, spurred by the Rural Electrification Act of 1936, cooperative electric utilities began to provide electric power in sparsely populated areas that even municipalities could not serve economically. J. Baller, “Essential Role of Consumer-Owned Electric Utilities in Developing the National Information
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State barriers to municipal, cooperative, or public-private broadband initiatives are not only bad for the communities involved, but they also hurt the private sector in multiple ways. They prevent private companies from making timely sales of equipment and services to municipal or cooperative networks. They impede companies from using advanced public or cooperative networks to offer businesses and residential customers an endless array of modern products and services. They thwart economic and educational opportunities that can contribute to a skilled workforce that would benefit existing and new businesses across the state. They also deny the community the economic and social benefits from which everyone in the community can benefit, including the private sector.¹¹

In these challenging times, with the stakes so high, we cannot afford to cut off any potentially viable option for bringing advanced communications capabilities to all American communities as rapidly as possible. The Missouri Legislature should follow the lead of Arkansas and Washington State and repeal the restrictions in R.S.Mo. § 392.410, once and for all. It should also reject any proposed new restrictions on municipal, cooperative, or public-private broadband projects.

What the Federal Government is Doing to Accelerate Broadband Deployment, Adoption, and Use

According to the National Telecommunications and Information Administration (NTIA), there are now “more than 80 federal programs across 14 federal agencies whose funding can be used for broadband-related purposes.”¹² NTIA’s guide to these programs includes the \$350 billion in federal dollars that the American Recovery Plan Act (ARPA) enables state and local governments to use for broadband projects. The guide does not address the additional \$42.45 billion that the bipartisan Senate bill, the Infrastructure Investment and Jobs Act (IIJA), would also make available for broadband projects through its Broadband Equity, Access and Deployment Program (BEADP).¹³ In the absence of current or future state barriers, a substantial percentage of these

Infrastructure,” (Nov. 2, 1994), <https://www.baller.com/1994/11/the-essential-role-of-consumer-owned-electric-utilities-in-developing-the-national-information-infrastructure/>

¹¹ For example, the municipal fiber network operated by the Electric Power Board of Chattanooga, TN, has in its first decade generated approximately \$2.69 Billion in economic and social benefits, many of which inured to the private sector. S. Gonsalves, “Study Finds Chattanooga Fiber Network 10-Year ROI: \$2.69 Billion,” Community Networks (February 1, 2021), <https://muninetworks.org/content/study-finds-chattanooga-fiber-network-10-year-roi-269-billion>

¹² NTIA, “NTIA Launches Updated Federal Broadband Funding Guide,” <https://broadbandusa.ntia.doc.gov/news/latest-news/ntia-launches-updated-federal-broadband-funding-guide>. The guide itself is available at <https://broadbandusa.ntia.doc.gov/news/latest-news/ntia-launches-updated-federal-broadband-funding-guide>.

¹³ https://www.epw.senate.gov/public/_cache/files/e/a/ea1eb2e4-56bd-45f1-a260-9d6ee951bc96/F8A7C77D69BE09151F210EB4DFE872CD.edw21a09.pdf

funds could be available to Missouri’s municipal, cooperative, and public-private projects. In the remainder of this section, we outline some of the key features of these programs.

ARPA was signed into law on March 11, 2021. It provided for \$362 billion that state and local governments can use for broadband, including \$350 billion from the Coronavirus State and Local Fiscal Recovery Funds and \$10 billion Capital Projects Fund. On May 10, 2021, the US Treasury Department issued an Interim Final Rule (IFR) governing the distribution and use of these funds.¹⁴ The Department subsequently issued two rounds of cumulative Frequently Asked Questions (FAQs) to shed further light on these requirements.¹⁵ As interpreted by the IFR and the Department’s FAQs, the following are some of most important features of the ARPA funding scheme:

- The definition of areas with unserved and underserved households or businesses includes areas with “one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.” IFR, 86 Fed. Reg. at 26821
- “The Interim Final Rule requires eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.” FAQ 6.5
- Not every house or business in the service area must be unserved or underserved. That is, at least some overbuilding is permitted. “It suffices that an objective of the project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the only households or businesses in the service area receiving funds.” FAQ 6.9
- Treasury “encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives— providers with less pressure to turn profits and with a commitment to serving entire communities.” IFR, 83 Fed. Reg. at 26806

¹⁴ US Treasury Department, “Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule,” 86 Fed. Reg. 26786 (May 17, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

¹⁵ US Treasury Department, “Coronavirus State and Local Fiscal Recovery Funds, Frequently Asked Questions, As of July 19, 2021,” <https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf>

- Funding recipients have substantial discretion in determining whether an existing provider is “reliably” offering 25/3 Mbps and need not rely on its advertised speeds. “When making these assessments, recipients may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, recipients may take into account a variety of factors, including whether users actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).” FAQ 6.11

The following are the key features of the bipartisan Infrastructure bill, as passed by the Senate:

- The BEADP requires NTIA to administer a \$42.45 billion grant program for which the term “eligible entity” is defined as “a State.” NTIA must issue a Notice of Funding Opportunity within 180 days after the bill is enacted, establishing a process for States to submit a letter of intent, a single initial proposal, and a single final proposal for funding.
- A State may use grant funds “to competitively award subgrants” for:
 - Unserved service projects and underserved service projects.
 - An “unserved location” lacks access to reliable broadband service offered with speed of not less than 25Mbps/3Mbps. “Unserved service projects” are projects serving areas in which not less than 80% of locations are unserved.
 - An “underserved location” lacks access to reliable broadband service offered with speed of not less than 100Mbps/20Mbps. “Underserved service projects” serve areas in which not less than 80% of locations are underserved.
 - Connecting eligible community anchor institutions. An “eligible” community anchor institution (e.g., a school, library, health care facility, etc.) that lacks access to gigabit service.
- Subgrant awards are to be funded in accordance with the following prioritization:
 - Unserved service projects;
 - Underserved service projects (after the State certifies that it will ensure universal coverage of all unserved locations); and
 - Eligible community anchor institutions (after prioritizing underserved service projects).

- In awarding subgrants, States “may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for such grant funds.”
- A subgrantee for the deployment of a broadband network must provide broadband service at a speed of not less than 100Mbps/20Mbps, with sufficiently low latency “to allow reasonably foreseeable, real-time, interactive applications.”
- The network must be deployed and service commenced no later than four years after the date of the subgrant.
- A State must provide, or must require a subgrantee to provide, a matching contribution equivalent to at least 25 percent of project costs. NTIA may waive the matching contribution requirement and the match requirement does not apply in high-cost areas.

In sum, under both ARPA and the Senate’s bipartisan Infrastructure bill, Missouri’s municipalities, cooperatives, and public-private partnerships stand to receive tens or even hundreds of millions of federal dollars to help accelerate broadband deployment, adoption, and use. It would be highly unfortunate if current or future state barriers precluded them from taking advantage of these much-needed funds.

Respectfully submitted,



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