Key Strategy Considerations for Building a Broadband Public–Private Partnership

1. **Determine your priorities**
    a. Competition?
    b. Enhanced service?
    c. Equity and service to all?
    d. Public control over infrastructure?
    e. Risk avoidance?
2. **Consider Model 1: private investment, public facilitation**
    a. Make available public assets like fiber and conduit
    b. Share geographic information systems (GIS) data
    c. Streamline permitting and inspection processes
    d. Offer economic development incentives to attract private broadband investment
3. **Consider Model 2: private execution, public funding**
    a. Identify revenue streams that can be directed to a private partner
    b. Issue RFP for private turnkey execution
4. **Consider Model 3: shared investment and risk**
    a. Evaluate using assets to attract private investment
    b. Evaluate funding new assets to attract private investment
    c. Evaluate building new fiber assets to government facilities, anchor institutions (schools, libraries), businesses and/or homes for leasing to private ISPs

Key Legal Considerations for Localities Looking to Build a Broadband Public–Private Partnership

1. **Review authority issues**

   a. Are localities authorized by state law to enter into public–private partnerships?

   b. Are there any state restrictions on the ability of localities to provide or partner for the provision of communications services of any kind?

   c. Are there procedural requirements (e.g., hearings, referenda, etc.) with which the locality must comply?

   d. In the absence of clear state laws, how much discretion do localities have to determine their own authority?

   e. Do local charters, ordinances, franchises, or other agreements limit the activities a locality can undertake?

2. **Understand the legal tools and instruments that could shape the partnership**

   a. Financing – What types of financing are available and what are the tax, political, and other consequences of using them?

   b. Access issues – Projects will usually benefit from streamlined access to the public rights-of-way and facilities, but non-discrimination requirements may introduce complications. What will be the overall net impact of the locality's choices concerning access to infrastructure?

   c. Regulatory considerations – Different business models may be regulated in significantly different ways. To what extent will regulatory considerations affect the locality's choice of a business model?

   d. Organizational issues – In order to achieve its business, governance, tax, and other goals to the maximum extent possible, what kind of legal structure should the locality select for its entity that will participate in the public–private partnership?

3. **Negotiate the agreement**

   a. Understand your tolerance for risk and the responsibilities you are willing to undertake

   b. Rank the risks, rewards, and responsibilities – which are negotiable vs. non-negotiable?

   c. Negotiate for the best possible outcome

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Source: The Emerging World of Broadband Public–Private Partnerships: A Business Strategy and Legal Guide