

Stateline, In North Carolina a reversal on municipal broadband, (8.24.11)

In North Carolina, a reversal on municipal broadband

By Melissa Maynard, Stateline Staff Writer

Several years ago, the city of Wilson, North Carolina, decided to take its digital destiny into its own hands. The city built its own broadband network and began offering service directly to businesses and citizens. The first paying customer signed up in 2008.

Wilson didn't go this route because its 50,000 citizens lacked access to basic broadband — some other options were available. But city leaders were convinced that the Internet access that private-sector operators offered was not fast enough or affordable enough for local businesses to have a real shot at competing in the global economy. And they suspected that they wouldn't be first on the list when the incumbent cable providers got around to making the costly infrastructure upgrades that would soon be necessary.

“We wanted to make sure that we had the infrastructure in place to make us competitive in the future,” says Brian Bowman, public affairs director for the City of Wilson. “The fact is that if profits are your only motivation for upgrading, then you're going to go to the places that have the most demand. We worried that we would end up in a ‘have-nots’ area when upgrades were made.”

Three other small cities in North Carolina came to the same conclusion Wilson did, making the state a hotbed of the municipal broadband movement. This year, however, the state legislature passed a law that will make it difficult if not impossible for more cities to own and operate their own broadband networks. The law, which follows restrictions in 19 other states, represented the culmination of many years of lobbying by large cable and telecom companies, who complained that cities like Wilson enjoyed unfair advantages in the race for customers.

That argument found a welcome audience with the Republicans who took control of the legislature in last November's elections. The new law grandfathers Wilson's broadband operation in a way that won't put it out of business anytime soon. But Wilson won't be able to expand as easily, and it's now less likely that other cities will follow in Wilson's footsteps. State Representative Marilyn Avila, the bill's sponsor and the chair of a key technology subcommittee, says broadband simply isn't a business that the public sector should be in. “Anything the private sector can do effectively,” Avila says, “government shouldn't be doing.”

This legislature also dismantled the state's broadband authority, which has earned a national reputation for its statewide broadband planning and technical assistance efforts.

Reluctant competitors

Local leaders in Wilson say their experience shows that municipal broadband offers a strong

alternative when the private sector is unwilling to meet demands for better service. Wilson had made overtures to the incumbent broadband providers to see if they could be persuaded to build a more advanced network more quickly through some sort of public-private partnership, but was turned down. That's why the city proceeded on its own.

The city had to borrow \$32 million to get its network up and running. The operation lost money at first — in 2010, it spent \$1.37 million more than it took in. But customer subscriptions have kept pace with the city's business plan and the network became "cash flow-positive" for the first time a few months ago.

Making money on the deal was never the purpose. What Wilson wanted was faster service than private operators were offering, and lower prices. That's what it delivered. Wilson's top-tier package for small businesses offers ultra-fast download and upload speeds of 100 megabits per second (Mbps). That package costs \$150 per month. Time Warner Cable's closest offering is for a 50 Mbps download speed and 5 Mbps upload speed. While that costs only \$100 per month, Wilson's second-tier offering at the same price point offers speeds that are faster than the best Time Warner has to offer.

Melissa Buscher, vice president of communications for Time Warner, argues that this is because Wilson enjoys unfair advantages as a public-sector competitor. "They're competing for our customers at the same time that they're regulating things that we can and can't do," Buscher says. Not only do cities have access to taxpayers' money and no obligation to pay taxes themselves, Buscher says, but they're also in control of everything from "pole attachments" to the permitting process for access to public rights-of-way.

Time Warner was one of the companies lobbying for the new North Carolina law. Supporters said a level playing field was needed between the public and private sectors, casting Time Warner and other incumbent providers as an unlikely David to the City of Wilson's Goliath.

What some Republicans in the legislature objected to most about the local broadband efforts was the borrowing they required. Against the backdrop of the federal debt debate, borrowing for almost any purpose has become politically thorny. What's more, Wilson and the other municipalities had circumvented North Carolina's usual requirement for voters to approve bond offerings by using an alternative vehicle called "certificates of participation" to borrow almost \$150 million among the four cities. "Citizens were being asked to pay for things they had no say in," Avila says.

Far reaching restrictions

Some members of the legislature were more sympathetic to municipal broadband. State Representative Deborah Ross, a Democrat who opposed the legislation, says that if incumbents aren't willing to make adequate infrastructure investments in far-flung areas of the state, they shouldn't object when others try to do so. "The irony of it is that in places where the market hasn't come because it's not economical, the new law inhibits municipalities from providing services that are necessary to promote economic development," she says.

Governor Beverly Perdue, a Democrat, neither signed nor vetoed the legislation, allowing it to become law automatically. “There is a need to establish rules to prevent cities and towns from having an unfair advantage over providers in the private sector,” Perdue said in a statement. “My concern with House Bill 129 is that the restrictions the General Assembly has imposed on cities and towns who want to offer broadband services may have the effect of decreasing the number of choices available to their citizens.”

The legislation does not expressly prohibit municipal broadband. Now, however, any city that wants to build its own network will have to abide by a complex series of rules. Those include remitting to the state the same amount that a private provider would have to pay in corporate income, sales and use and franchise taxes (about \$19 per customer) and using only revenues generated by the service to finance it, rather than other city funds. Municipalities will be required to charge customers the full amount that it costs them to operate the network and must limit coverage to the jurisdictional boundaries of the city.

Wilson’s Bowman believes that the law amounts to a de-facto ban on municipal broadband in the state. “You could build the network but you could never operate it,” he says. “I don’t know of a business in America that can make money the first day.”

Planning agency dies

North Carolina’s approach to broadband is taking another unexpected detour at the state level. The highly regarded e-NC Authority has played an aggressive leadership role in statewide broadband planning and mapping since it was created by the legislature in 2000. The authority, which functions as the state’s broadband agency, provides technical assistance to and cultivates partnerships among local governments, nonprofits and private sector providers to encourage broadband access, adoption and “technology-based economic growth.”

But this year, without explanation, the e-NC Authority was abruptly de-funded and allowed to sunset. The Department of Commerce will take over the state’s broadband mapping and planning responsibilities through the federal stimulus program. “No matter what we tried, we couldn’t get them to reverse it,” says Jane Smith Patterson, the authority’s executive director.

Patterson argued against the restrictions on municipal broadband in the legislature and acknowledges that she’s deeply disheartened by the shifts in strategy.

“You cannot deploy broadband in this country to the extent that we need it without everyone being involved: the private sector, nonprofits, state and local governments, the federal government, you name it,” she says. “This is understood a lot better in other countries than it is here. Or maybe we have better lobbyists.”

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