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To:	BOCrfc2015
Cc:	Karen Hanson; Jim Baller; Joanne Hovis
Subject:	CLIC Comments for Broadband Opportunities Council
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To Whom It May Concern,

The Coalition for Local Internet Choice (CLIC) has attached the following comments in response to RUS and NTIA's Request for Comments. The file is attached as a PDF. Thank you for the opportunity to make comments on this important issue.

Regards,

Ashley Stelfox

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Comments of the Coalition for Local Internet Choice

Submitted to the Broadband Opportunities Council
June 2015

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Introduction

The Coalition for Local Internet Choice submits these comments to the Broadband Opportunities Council with appreciation for the Council's interest in seeking input and experience regarding how the Federal government can enable and facilitate broadband. The Coalition for Local Internet Choice (CLIC) represents a wide range of public and private interests that support the authority of local communities to make the broadband Internet choices that are essential for economic competitiveness, democratic discourse, and quality of life in the 21st century. CLIC does not advocate for any particular approach, municipal network, partnership, or other involvement model; rather, it is focused on ensuring that local governments and their stakeholders have the authority to make these decisions. To that end, CLIC works to promote the right and authority of local interests to engage in broadband projects as they see fit and to access federal broadband opportunities and other benefits on the same terms as other entities.

I. Federal Policy Should Enable and Promote a Wide Range of Entities to Work on Broadband Opportunities

Federal policies should promote and facilitate broadband deployment by a full range of potential entities including localities and their private partners. Our nation's requirements for high-capacity, ubiquitous broadband will require extensive collaboration among, and investment from, all parties: local communities, regions, state governments, national government, the private sector, interest groups, and others. Local governments are central players in ensuring that that last mile fiber connection to homes and businesses is achieved. Local elected officials are also well positioned to evaluate the infrastructure and economic development tools needed to sustain viability, encourage

growth, and ensure that the unique needs and specific interests of local communities are addressed. CLIC urges the Council to recognize in its forthcoming report that local governments are key partners to the private sector, the states, and the federal government in broadband development.

Broadband opportunity is created by a range of entities in a variety of ways—none of which should be precluded or restricted by law. In many cases, private telecommunications carriers are best positioned to deploy broadband to a given community. In other cases, a partnership of public and private entities will represent the best solution to meet challenging broadband economics. In many other cases, entities such as local, state, or tribal governments, regional authorities, or non-profit organizations, may be best suited to improve broadband availability in an area.

There are also a variety of options that must be considered in order to cover deployment costs and spur investment in broadband networks. Different methods may be preferable in different communities and may vary depending on the provider. For example, networks may be financed by private investment, by government investment, by public-private partnerships, by tax incentives, or by other means. None of these approaches should be prohibited by law or burdened by special restrictions (such as laws that forbid cross-subsidy by governments but allow it for private entities).

The United States requires significant new investment in next generation fiber networks, and the truth of the matter is that the private sector cannot do it alone. These networks are expensive and many communities are unable to make themselves financially attractive to the private sector. But the nation cannot wait for the economics of broadband to miraculously change. We must welcome competition from all quarters

including from local governments, local communities institutions, and community non-profits. We must encourage and develop public-private partnerships. We must develop policies that encourage both private and public networks. All of which will ensure that no options are taken off the table at a time when the development and deployment of next generation networks is critical.

II. Federal Policy Should Recognize that State Barriers to Local Broadband Choice Reduce Broadband Opportunity

Approximately twenty states currently restrict and in some cases prohibit local governments' involvement in the deployment of broadband networks. The Council should recommend that states remove barriers that preclude or inhibit any entity from deploying and operating broadband networks or partnering with other entities to do the same.

Local governments do not undertake broadband projects lightly or for purposes of profit. Rather, local governments are generally conservative and risk-averse; they undertake these projects out of economic necessity to bring the benefits of broadband to their communities. Before embarking on a community broadband initiative, local officials typically ask the established carriers to meet local requirements or at least to work with the local government to do so together. Not only does this make practical sense, but political realities dictate that local governments give the carriers such an opportunity. Unfortunately, the carriers almost always decline, particularly in rural and high-cost areas where they cannot economically meet local requirements.

Today, hundreds of local governments are convinced that affordable access to advanced communications services and capabilities is essential to ensure success in the

emerging knowledge-based global economy. Many have already developed their own communications utilities, and numerous others are eager to do so. Unfortunately, incumbent providers have often responded with a variety of efforts with the purpose and effect of halting or delaying public broadband initiatives.

First, some incumbents have sought to push local decision makers and the public into abandoning such initiatives. Where such efforts at the local level have failed to discourage community broadband initiatives, some incumbents have lobbied state legislatures to prohibit or effectively prohibit local government public communications initiatives. In recent years, such efforts have had only sporadic success. Unfortunately, new barriers sometimes do make it through to enactment, and existing measures have been difficult or impossible to remove at the state level.

While the barriers differ from state to state, they all have a single purpose and effect – to block or significantly delay public entities in deploying advanced communications networks. The barriers do so either by prohibiting specified activities outright or by imposing "level playing field" requirements that actually make it practically impossible for local governments to undertake the ventures. As the FCC recently recognized in its February 26, 2015 order, rather than create competitive equality, the barriers subject local government to prohibitively time-consuming and expensive procedural and substantive burdens that private entities need not meet -- and cannot meet. Unless and until these barriers are removed by federal or state action, countless communities in the states in question will be deprived of the advantages that communities in other states enjoy. If America's communities are to achieve their full

potential, public broadband initiatives must be protected from these unnecessary and prohibitive barriers.

III. Federal Broadband Funding Should be Available to All Entities

CLIC suggests that the federal government should promote this simple policy: broadband deployment, from whatever source, should be promoted; and wherever the federal government creates a mechanism for broadband deployment, eligibility should not be limited but should always include all potential participations including without limitation public and cooperative utilities; local, state, and tribal governments; competitive carriers; and non-profit private entities.

We again urge the institution of federal policies that promote broadband deployment regardless of the source. To this end, wherever the federal government creates an opportunity or funding stream for broadband or broadband-enabled activities, the opportunity or funding stream should be open to all entities to have the opportunity to compete. Specifically, we note the success of, and urge the model of, the Broadband Technology Opportunity Program (BTOP) and the Broadband Initiatives Program (BIP) overseen by the National Telecommunications and Information Administration (NTIA) and the Rural Utility Services (RUS) respectively.

The BTOP and BIP programs were established by Congress in the American Recovery and Reinvestment Act (ARRA). In the BTOP and BIP programs, Congress saw the potential for economic growth that could be spurred by broadband deployment. The programs, administered by NTIA and RUS, correctly realized that the

entity deploying the broadband, whether a private for-profit carrier or a public entity, is irrelevant to the need for expanding broadband availability.

Numerous local, regional, state, and tribal entities applied for funding under BTOP and BIP to build and interconnect high-bandwidth broadband networks. The funded projects increased broadband availability at schools, libraries, community colleges, job training centers, hospitals, government buildings, emergency and public safety facilities, and other key community anchor institutions. They deliver service to numerous unserved and underserved Americans in rural areas, as well as in areas of urban and suburban poverty and need.

BTOP and BIP's open eligibility criteria should be considered a great success even with respect to those public and non-profit projects *that were not funded* – the open eligibility resulted in extensive, innovative planning and creativity and the creation of new, innovative partnerships among public and private entities; among state, local, and tribal governments; and among for-profit and non-profit organizations. Many of the projects that were not funded have nonetheless been built, albeit over a longer time period than if they had received ARRA funding. In any event, the open eligibility criteria of BTOP and BIP have left the nation far better off, with respect to both funded and un-funded projects, than would be true had eligibility been limited to traditional telecommunications carriers.

Indeed, in areas where private sector return on investment (ROI) is least likely or lowest, public or non-profit entities may be the only or best choice for bringing broadband to the community. Such low-ROI areas may include rural areas with very low population – or may include more densely populated areas where average incomes (and

disposable income for broadband adoption) are at their lowest. In such areas, even the prospect of a federal subsidy may not be sufficient to entice a for-profit carrier to invest; rather, the for-profit sector is likely to target the most potentially-lucrative of the unserved areas, seeking to maximize ROI. It is local, state, and tribal government, as well as non-profits, that are most likely to specifically target the neediest areas that are least served – not despite the lack of financial ROI but precisely because of that lack—because communities step into the gap that the for-profit market fails to fill.

IV. Federal Broadband and Other Funding Should be Coordinated Across all Federal Agencies so as to Incorporate Broadband in Other Funding Programs and Reduce Silos

The nation's broadband future requires coordination, commitment, and consistency on the part of the government entities charged with broadband facilitation and funding. This task is not insignificant: in the past, broadband planning has not involved interagency coordination within the federal government, and between the federal government, state and local government, the industry, and the public at large. CLIC urges the Council to recognize the extent of this task – and its significance – in the forthcoming report, and urge the Council to recognize the need for inter- and intra-government cooperation and coordination.

CLIC further urges the Council to aggressively catalogue all broadband-related and infrastructure funding and support mechanisms that exist at the federal level – and to build a program for coordination of those mechanisms, such that they eliminate silos, enable efficiencies, and offer better outcomes. Within the Department of Commerce, for example, funding programs that include broadband elements exist within multiple administrations, including NTIA and EDA. USDA funds electrical and water/sewer

infrastructure that could enable broadband. Related development programs are administered by the Appalachian Regional Commission and Delta Regional Commission. DOT funds massive infrastructure programs that include or could include fiber deployment. HUD, which also funds large infrastructure programs, allows some broadband funding through its programs. FEMA rebuilds massive amounts of key infrastructure in disaster areas. And, of course, the FCC administers the full range of Universal Service programs. All these represent just a sampling of the various federal funding mechanisms that do (or should) support broadband efforts, yet many of them are not coordinated or, to our knowledge, collecting and sharing consistent data. An effort to coordinate such that the programs can support and amplify each other would result not only in funding efficiencies but also in better broadband outcomes.

Based on the unique expertise at the level of local deployment, operations, and broadband adoption, we urge one significant approach for creating the requisite level of coordination with regard to the variety of programs that are available and may become available through different agencies. The Council should recommend tribal, local, and state government as advisory agents in design and execution of policies and programs, so as to benefit from on-the-ground, experience-based expertise and to ensure that information about federal efforts and opportunities flows down to the local level.

V. Federal Policies Should Enable Coordination Between All Levels of Government to Promote Use of Federal and Federally-Funded Broadband Assets

Federal agencies can help accelerate broadband deployment by public entities in multiple ways. For example, whenever a federal agency plans to excavate in federal rights of way to lay fiber of its own, it can provide local governments, educational

institutions, libraries, and other public entities notice and an opportunity to install their own fiber and related facilities at the same time, without charge. Some federal agencies have also adopted rules and policies that encourage their state counterparts to make federally-funded, state-managed facilities available to local governments and others at no charge or minimal charge. More detailed guidance on how such facilities can be utilized in various circumstances (i.e. for commercial uses, for public use, etc.) would open new broadband deployment opportunities for state and local governments and minimize confusion from state to state.

A. Reducing the Costs of Excavation and Construction

There is enormous potential to coordinate projects at the federal, state, and local levels. As President Obama recognized in his Executive Order entitled "Accelerating Broadband Infrastructure Development" (June 14, 2012), federal coordination of access to federal rights of way and "dig once" policies can provide substantial excavation cost savings that, in turn, can greatly accelerate broadband deployment. The Broadband Opportunities Council should encourage federal agencies to take full advantage of this opportunity, but giving local governments and other public entities notice of when federal projects will require excavation or construction in the federal ROW. The notice should provide enough lead time for recipients to decide whether to install facilities of their own and for the federal agency in question to coordinate the project so as to meet the needs of all concerned. This process will be most effective and successful if local governments and other public entities are allowed to place their own facilities in the federal ROW without charge.

B. Using Federal Programs to Accelerate Broadband Deployment

Federal agencies should make federal facilities available to local governments and other public entities to accelerate broadband deployment and should also encourage state governments to do so with federally-funded, state-managed facilities. In the latter case, federal agencies should make clear, through regulations, policy statements, and other guidance documents, that it encourages state agencies to use federally-funded facilities this way.

For example, the US Department of Transportation and the Federal Highway Administration have invested billions of federal dollars on state-managed fiber optic cables and related facilities that support state and local transportation systems. In many cases, unused capacity exists that could local governments could employ for a variety of useful non-transportation purposes. The Department of Transportation's regulations, 23 CFR § 710.403(d)(1), authorize state transportation department to make such unused capacity available, with FHWA permission, without charge when used "in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use…." The same regulation also allows unused capacity to be used for commercial purposes, provided that the user pays fair compensation for such use. Unfortunately, some state transportation departments, uncertain about how to apply these rules, have been slow to take advantage of them, More detailed guidance could be very help in unlocking the gates to these valuable assets.

Another example involving federally-funded transportation systems illustrates a related point. As indicated above, CLIC recommends that federal agencies adopt "one dig" programs that encourage local governments and other public entities to place their

own fiber and related facilities in federal rights of way when federal projects require excavation. For federal projects involving aerial cables and facilities, federal and state agencies that administer federally-funded transportation programs can help accelerate broadband deployment by local governments and other public entities by allowing them to overlash the federal or state cables. As the Federal Communications Commission has observed,

> Cable companies have, through overlashing, been able for decades to replace deteriorated cables or expand the capacity of existing communications facilities, by tying communication conductors to existing, supportive strands of cable on poles. The 1996 Act was designed to accelerate rapid deployment of telecommunications and other services, and to increase competition among providers of these services. Overlashing existing cable reduces construction disruption and associated expense. Accordingly, in the *Telecom Order*, we declared our continued approval of, and support for, third party overlashing, subject to the same safety, reliability, and engineering constraints that apply to overlashing one's own pole attachment.
> …
>
> Some *Telecom Order* petitioners continue to urge that we impose additional regulation on third party overlashing. We decline to impose additional regulation and clarify several aspects of our position regarding third party overlashing. Allowing third party overlashing reduces construction disruption and associated expenses which would otherwise be incurred by third parties installing new poles and separate attachments. We clarify that third party overlashing is subject to the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment. We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.[1]

In either case – whether underground or aerial – federal and state agencies can significantly accelerate broadband deployment. To facilitate such deployment, the

[1] *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, *Consolidated Order on Reconsideration*, in CS Docket No. 97-151, May 25, 2001, at ¶ 73 and 75 (emphasis added).

relevant federal or state agency should make clear that (1) a local government or other public entity must comply with the agency's technical engineering and safety requirements, and (2) if the local government or other public entity has paid for their fiber themselves, they will have the right to use them without charge, for any lawful purpose

Conclusion

Today, the United States is at a critical juncture. Economic and social development increasingly depends on advanced communications infrastructure. The future of broadband is about more than viewing television, surfing the Web, and making phone calls. It is about new forms of communication and mass collaboration through the virtually unlimited potential for sharing information, storage capacity, processing power and software made possible through high-capacity bandwidth connections. This collaboration will generate new ideas, accelerate economic development, and lead to opportunities for wealth creation, social development, and personal expression. Local governments have always played an essential role in ensuring that the benefits of communications infrastructure would be available in communities across the United States. Localities and their private partners will, by necessity and by choice, be part of the solution to our national broadband deficit. Federal policy should reflect the importance and need for local Internet choice and local decision making – and this policy should be built into the full range of federal programs and funding mechanisms.

Respectfully submitted,

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Coalition for Local Internet Choice

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