

From: [Roberts of DT, Brian \(TIS\)](#)
To: [BOCrfc2015](#)
Subject: Broadband Opportunity Council
Date: Wednesday, June 10, 2015 6:57:29 PM
Attachments: [San Francisco Broadband Opportunity Council Comments June 10 2015.pdf](#)
[San Francisco Broadband Opportunity Council Comments June 10 2015.docx](#)

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June 10, 2015

Via Email (BOCrfc2015@ntia.doc.gov)

National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4626
Washington DC 020230

Attn: Broadband Opportunity Council

Re: Broadband Opportunity Council Notice and Request for Comment

Dear Members of the Broadband Opportunity Council:

The City and County of San Francisco ("San Francisco" or the "City") submits these comments in response to the Broadband Opportunity Council ("Council") Notice and Request for Comment ("Notice") that was published in the Federal Register on April 29 2,015. In the Notice, the Council is seeking responses to a host of questions related to enhancing the opportunity for broadband deployment in the United States.

INTRODUCTION

As a technology leader, San Francisco is interested in partnering with federal and state governments and private enterprises to increase broadband opportunities for its residents, business owners, and visitors. San Francisco has been at the forefront of the movement to develop municipal broadband facilities.

San Francisco's vision is to provide free Wi-Fi throughout the City, with particular attention to its underserved populations. That vision is starting to become a reality. In late 2013, San Francisco launched a free Wi-Fi service down Market Street, which is the City's busiest and most economically diverse corridor. It is visited by nearly a quarter of a million people every day. Some ten months later, San Francisco starting providing free Wi-Fi service at 32 parks, plazas, and open spaces throughout the City. This initiative, which was partially funded by a grant from Google, helps San Francisco to bridge the digital divide by ensuring that diverse communities have access to broadband service.

San Francisco also supports efforts by telecommunications providers to enhance their wired and wireless broadband networks in the City. While many telecommunications carriers like to paint a picture of local governments as impediments to broadband deployment, San Francisco continues to work with these providers to foster broadband deployment.

Still, San Francisco is widely recognized to be one of the world's most beautiful cities. Scenic vistas and views throughout San Francisco of both natural settings and human-made structures contribute to its great beauty. The City's economy, as well as the health and well-being of all who visit, work or live in the City, depends in part on maintaining the City's beauty.

For these reasons, the City has an obligation to ensure that its public right-of-ways are not overloaded with unsightly utility facilities and that its zoning laws are followed. While these two competing needs can sometimes clash, there is no federal role in what is an inherently a local issue. Local governments and telecommunications carriers simply need to work together to make sure that broadband deployment is done in a way that is consistent with local land use requirements.

SAN FRANCISCO'S RESPONSES TO THE COUNCIL'S QUESTIONS

Question 10: Are there federal policies or regulations within the Executive Branch that creates barriers for communities or entities that share federally-funded broadband assets or networks with other non-federally funded networks?

Yes. The City is a sub grantee of a Homeland Security Grant to the Bay Area Urban Areas Security Initiative. The City used those funds to install robust, high capacity fiber-optic lines connecting new public safety radio sites. In the process of connecting the radio sites, the City installed fiber-optic cables with capacity beyond what the City needs for its emergency communications. For that reason, much of that City fiber is unused. The grant, like many federal grants, expressly limited the City's use of that asset in the following manner: "§ 13.32 Equipment. . . (3) Notwithstanding the encouragement in § 13.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute."

This grant provision is a barrier to broadband deployment in San Francisco. While the language is ambiguous, it could be construed to restrict the City's ability to grant access to its fiber to individual customers or to providers that could use the fiber to serve individual customers. In light of the President's objectives in establishing the Council, such a restriction makes no sense. The Council should consider whether the Department of Homeland Security, and other federal departments that might have funded the deployment of broadband related facilities, could relax or clarify these types of restrictions so that subgrantees like San Francisco could make these assets readily available to other users.

Question 18. What barriers exist at the state, local, and/or tribal level to broadband deployment and adoption? How can the federal government work with and incentivize state, local, and tribal governments to remove these barriers?

The City anticipates that some commenters might use this question as a springboard to argue that local governments slow broadband deployment by imposing unreasonable demands on that deployment. San Francisco would disagree with those comments.

Under California law, the City cannot bar telecommunications carriers or state video providers from installing telephone lines in the public right-of-way. All the City can do is make sure those facilities do not “incommode” the use of the public right-of-way. In connection therewith, the City has established permitting requirements for wireless facilities and utility boxes in the public right-of-way. (See San Francisco Public Works Code, article 25, 27.) The City’s permitting requirements are not intended to hinder deployment of telecommunications facilities. They are instead intended to ensure that deployment is consistent with other uses of the public right-of-way and with the City’s streetscape plan and other aesthetic concerns. The City has issued hundreds of permits for wireless facilities since it started issuing these permits in 2009, while denying only a handful of permit applications. While some carriers have argued to the contrary, a trial court judge recently found that the City’s permitting requirements for wireless facilities are consistent with state law.

The City has also worked effectively with wireless carriers to allow installation of their facilities on private property. In the last two years, the City has issued approved permits for over 35 macro wireless sites on private property. The City also coordinated the transfer of decommissioned Nextel sites to other carriers and local wireless Internet service providers that provide backhaul broadband for small businesses. During that same period, the City has not denied a single application for a permit to install a macro wireless site on private property.

At the same time, the City is making its own assets available for broadband deployment. Just last year, two City departments—the San Francisco Public Utilities Commission and San Francisco Municipal Transportation Agency—offered to make thousands of utility poles that they own in the public right-of-way. These assets cover large portions of San Francisco and are now available for use by telecommunications carriers to install wireless facilities. Use of these City-owned assets should enable wireless carriers to enhance their coverages in many parts of San Francisco. The City expects to issue licenses for hundreds of poles in the next few years.

Question 22. How can specific regulatory policies within the Executive Branch agencies be altered to remove or reduce barriers that prevent vulnerable populations from accessing and using broadband technologies? Vulnerable populations might include, but are not limited to, veterans, seniors, minorities, people with disabilities, at-risk youth, low-income individuals and families, and the unemployed.

Executive Branch agencies can clarify that federal funding streams and programs can be used for broadband access and adoption efforts. For example, the Department of Housing and Urban Development (“HUD”) regulations identify “eligible activities” for Community Development Block Grant (CDBG) funds HUD including a non-exhaustive list of “public services”. (CFR Title 24, Section 570.201(e).) By explicitly referring to broadband access and adoption services, HUD would encourage grant applicants to use HUD funds to address broadband needs of the vulnerable populations they serve.

The City and County of San Francisco appreciates the opportunity to provide these comments to the Broadband Opportunity Council.

Regards,

acting CIO

for **Miguel A. Gamiño Jr., CPA**

City CIO | Office of Mayor Edwin M. Lee
Executive Director | Department of Technology
City and County of San Francisco



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