



EDUCATION TRENDS



TUNE IN.
Explore emerging education developments.

Inhibiting Connection: State policy impacting expansion of municipal broadband networks

LAUREN SISNEROS AND BRIAN A. SPONSLER

States and students are increasingly turning to online education programs to provide access to postsecondary

AS A GROWING NUMBER OF STUDENTS EXPERIENCE A POSTSECONDARY EDUCATION ONLINE, THE NECESSITY FOR STATE LEADERSHIP TO ENSURE THAT CITIZENS HAVE ADEQUATE AND AFFORDABLE ACCESS TO BROADBAND SERVICE INCREASES.

education and support credential completion. Recent data indicate that more than 25 percent of postsecondary students take some portion of their coursework online,

with 13 percent of students doing so exclusively.¹ Additionally, an Instructional Technology Council survey reported a 4.7 percent increase in student enrollment in online programs from fall 2013 to fall 2014.² The survey targeted predominantly two-year institutions.

As Education Commission of the States has highlighted in [previous work](#), access and use of broadband is restricted by the geography of broadband service and the low adoption of service subscriptions.³ This may be problematic to efforts to expand state attainment, particularly for adults, low-income populations, racial/ethnic minorities and geographically isolated student groups.

Municipalities are making efforts to expand broadband. Municipal broadband networks can provide affordable high-speed broadband access to communities that otherwise might not have access.

Laws in more than 20 states restrict or prohibit local governments from building their own broadband networks. State education policymakers may be well served to consider their states' policy addressing municipal broadband networks.



Municipalities are making efforts to expand access to affordable and quality broadband. Municipal broadband networks - or deployments of broadband services provided either fully or partially by local governments - provide affordable high-speed broadband access to communities that otherwise would not have access.⁴ A **report** from the Executive Office of the President provides a full list of municipal networks around the country.

As state education policymakers explore options to support postsecondary access and success, they may be well served to consider their states' policy addressing municipal broadband networks.

This Education Trends report:

- Reviews the arguments for and against municipal broadband networks.
- Presents elements of state laws that prevent or restrict municipal broadband efforts.
- Reviews recent policy activity concerning municipal broadband.
- Provides considerations and resources for state-level policy leadership.

Arguments for and Against Municipal Broadband

The debate surrounding municipal broadband has become an issue of competing views between private broadband service providers and local governments. The role of government in private markets is often deliberated and the private sector tends to question the legitimacy of government-led efforts to provide broadband.

Arguments in Support of Municipal Broadband

Proponents of municipal broadband offer the following arguments:

- Municipal broadband provides access to broadband in areas that are underserved or unserved by private sector providers.
- Municipal broadband provides adequate speeds to customers at costs potentially lower than those found in many broadband markets.
- Municipal networks provide competition and choice in markets where there is only one provider or limited number of providers.
- Municipal networks increase investments in local communities and boost the vitality of regional and local economies.
- Municipal broadband follows the tradition of municipal-based utilities, which provide basic utilities such as water, natural gas and electricity to customers.⁵

Arguments in Opposition to Municipal Broadband

Opponents of municipal broadband offer the following arguments:

- It is inappropriate for government broadband networks to compete with private providers because they have inherent advantages, like rights of ways and public financing, which significantly reduce the costs associated with entry into broadband markets.
- Providing broadband can be a high-risk endeavor, and if the network fails, taxpayers face significant potential financial liability.
- Public funds used for broadband are taken away from higher priority systems, including roads, electric grid upgrades and water systems.
- Municipal broadband discourages private sector investment.⁶

State Laws Restricting or Preventing Municipal Broadband Efforts

Laws in more than 20 states prohibit or restrict local governments from building their own broadband networks. Table 1 provides a summary of state laws that restrict municipal government broadband. Table 2 provides a summary of state laws that prohibit municipal government broadband. States not included in the tables do not have specific state statutes restricting or prohibiting municipal broadband. Key takeaways include:

- In six states – **Alabama, Colorado, Louisiana, Minnesota, North Carolina** and **Utah** – a referendum is required by localities seeking to offer broadband service.
- In three states – **Alabama, North Carolina** and **Tennessee** – public providers are only permitted to provide services within their service limits or territory. In addition, some states like **Florida, Louisiana** and **Utah** require a feasibility study or proof of profitability.
- In five states – **Missouri, Nebraska, Nevada, Texas** and **Washington** – statutory language prohibits municipal broadband. For example, in Nevada, cities with more than 25,000 residents and counties with more than 55,000 residents are prohibited from selling telecommunication services.



TABLE 1: STATE LAWS RESTRICTING MUNICIPAL BROADBAND

State	Statute	Summary
Alabama	Alabama Code 11-50B et.seq.	Public providers wanting to offer telecommunications services must conduct a public hearing and hold an election. Service can only be provided within the utilities territory. Local taxes or other funds may not be used to pay for expenses.
Arkansas	Ark. Code 23-17-409, 23-18-804	Governmental entities owning an electric utility system may provide broadband services after reasonable notice to the public and a public hearing. Electric utilities are required to determine which broadband internet service providers may have access to broadband capacity on the broadband system.
California	California Government Code 61100(af)	Community service districts may provide broadband service if a private person or entity is unable or unwilling to deploy broadband service. The district must first make a reasonable effort to identify a private person or entity willing to deploy service and then the district may construct, own, improve, maintain and operate broadband facilities and provide broadband services. If a private person or entity is willing and able to offer broadband service, the district must either: transfer its ownership and control of broadband facilities at a fair market value to that private person or entity or lease the operation of those broadband facilities at a fair market value.
Colorado	Co. Rev. Stat 29-27-201 and 202 (Senate Bill 05-152)	Before a local government may engage in providing telecommunications services, an election must be held on whether or not the local government may provide telecommunications services. A local government must determine that no private provider is providing service within the boundaries of the local government. The local government must submit a written request to any incumbent provider.
Iowa	Iowa Code Ann. 388.10	A city that owns or operates a municipal utility providing telecommunications services, including internet access, is prohibited from using general funds for the ongoing support of the system. In addition, the city is prohibited from using funds or revenue generated from electric, gas, water, sewage or garbage services for ongoing support.
Florida	FL. Stat. 350-81, FL. Stat. 166.047	Municipalities must hold public hearings where providers may comment on served or unserved areas. Municipal broadband networks must become profitable within four years or shut down, merge with a private company or seek approval from the municipal council or authority to continue to provide service.
Louisiana	LO. Rev. Stat. Ann. 45:844.49, LO. Rev. Stat. Ann. 45:844.50	Local governing authorities must hold a preliminary public hearing, complete a feasibility study and hold an election in order to offer telecommunications services.
Michigan	MI Laws Ann. 484.2252	A public entity may provide telecommunications services within its boundaries if the following requirements are met: a request for competitive bids to provide telecommunication services is issued, less than three bids are received, and 60 days pass from the date the request for bids was issued.
Minnesota	MN Stat. Ann. 237.19	A majority of voters must approve, at a general election or a special election, municipalities constructing or purchasing a telephone exchange. A referendum of 65 percent of votes is required for municipalities proposing to construct a new telephone exchange where an exchange already exists.
Montana	Mont. Code Ann. 2-17-601, et.seq.	Municipalities are permitted to act as an internet service provider if no private internet service provider is available within the jurisdiction serviced by the agency or political subdivision. Private providers may provide service once a municipal service is provided. The private provider is required to inform the public provider in writing at least 30 days before entering the marketplace.
North Carolina	NC Chapter 160A, Article 16A	City-owned communications service providers may provide communications services, including broadband, only in unserved areas determined by the utilities commission. A city must not incur debt for the purposes of constructing a communications system without first holding a special election. Service is permitted only within municipal limits. The pricing of communications services below the cost of providing service is restricted.



Pennsylvania	66 PA. Cons. Stat. Ann 3014 (h)	A political subdivision can only offer advanced broadband service if a written request is submitted to the local exchange telecommunications company serving the area and they do not agree to provide the data speeds requested.
South Carolina	S.C. Code Ann. 58-9-2600 et. seq.	Government-owned communications service providers are permitted to provide communications services, including broadband service, in unserved areas. These providers must petition the state utility commission to designate areas as unserved. Private providers must be notified and allowed to contest the determination. Municipal broadband providers must comply with the same legal requirements as private providers and must offer services at rates similar to those of private companies.
Tennessee	Tenn. Code Annotated 7-52-401 et. seq.	Municipalities may provide telecommunications services only within the municipalities' limits. The municipalities are subject to regulation by the Tennessee Regulatory Authority.
Utah	Utah Code Ann. 10-18-201, 202, 203, 204	Local governments are required to hold a public hearing and submit and approve a feasibility study that determines whether a public telecommunications service is able to be profitable within five years. A municipality may call an election on whether a municipality should provide a public telecommunications service.
Virginia	VA Code 15.2-2160, 56-265.4:4, 56-484.7:1	Localities that operate an electric distribution system are allowed to provide telecommunication services if a certificate is granted from the State Corporation Commission. Municipalities that provided services prior to 2002 may provide services within 75 miles of the existing system.
Washington	Washington Rev. Code Ann. 54.16.330	Public utility districts are not authorized to provide telecommunications services to end users. Public utility districts may deploy broadband infrastructure in order to provide wholesale service to other carriers.
Wisconsin	Wisconsin Stat. Ann. 66.0422	Local governments must hold a public hearing and submit all records reporting estimated costs of constructing, owning and operating the broadband service for at least three years. Local governments are required to contact current broadband providers to notify them of the community's attempt to offer broadband service.
Wyoming	Wyo. Stat. Ann. 37-15-413	Political subdivisions may offer telecommunications services, but must first hold a public hearing and determine that no private provider is currently providing the same or similar service anywhere within the boundaries of the political subdivision. A written request to all providers to provide services must be refused within 90 days.



TABLE 2: STATE LAWS PROHIBITING MUNICIPAL BROADBAND

State	Statute	Summary
Missouri	Mo. Rev. Stat 392.410, Mo. Rev. Stat 392.420	Political subdivisions are prohibited from providing or offering for sale, either to the public or to a telecommunications provider, a telecommunications service or telecommunications facility used to provide a telecommunications service for which a certificate of service authority is required. Political subdivisions are not restricted from providing telecommunication services or facilities for internal, educational, emergency, medical and internet-type services.
Nebraska	Neb. Rev. Stat 86-575, Neb. Rev. Stat 86-594	An agency or political subdivision of the state that is not a public power supplier may not provide, on a retail or wholesale basis, any broadband services, internet services, telecommunications services or video services. A public power supplier may not provide, on a retail basis any broadband services, internet services, telecommunications services or video services.
Nevada	NRS 268.086, NRS 710.147	Cities with greater than 25,000 residents and counties with more than 55,000 residents are prohibited from selling telecommunication services.
Texas	Tex. Utilities Code 54.201 and 202	Municipalities or municipal electric systems are prohibited from offering, for sale to the public, a service in which a certificate of convenience and necessity, a certificate of operating authority or a service provider certificate of operating authority is required.
Washington	Washington Rev. Code Ann. 54.16.330	Public utility districts are not authorized to provide telecommunications services to end users. Public utility districts may deploy broadband infrastructure in order to provide wholesale service to other carriers.

Recent Policy Activity

Recent state legislative efforts, both to expand and limit municipalities’ broadband authority have gained attention in legislatures across the country. The following bills – drawn from the 2015 and 2016 legislative sessions– provide examples of considered and adopted policies that address the authority of municipalities to provide broadband service:

- **Alabama**, 2015 – **S.B. 438** and **S.B. 56** - expands municipal utilities beyond current coverage areas. The bills died and did not receive hearings.
- **Colorado**, 2016 – **S.B. 136** - modifies the local government process for an exemption from the requirement for voter approval to provide its own advanced service in an unserved area. The bill requires coordination between state agencies to ensure non-duplication of funding for broadband deployment in rural areas. The bill was postponed indefinitely in Senate Committee on State, Veterans and Military Affairs.
- **Missouri**, 2016 – **H.B. 2078** and **S.B. 946** - created additional barriers for municipal broadband, allowed a municipality to offer competitive services as defined by the bill only if less than 50 percent of addresses in town are not being offered services by any combination of service provider. The bill established that in order for a municipality to offer services by taking advantage of the exception, they must both double the speeds offered by incumbents and serve half the residences. The bill died.
- **Missouri**, 2015 – **H.B. 437** – Similar to the 2016 bills mentioned above. The bill was left in a house committee and died.



- **New Hampshire**, 2015 – **H.B. 486** - authorizes towns and cities to establish special assessment districts and establish one or more special assessment districts to provide public facilities and services for which special assessment and charges may be levied and collected to pay for those public services. Adds communication infrastructure to the types of public facilities for which special assessment districts can be formed. The bill was signed into law.
- **Tennessee**, 2016 – **H.B. 1839** (companion bill **S.B. 1990**) - allows a municipal electric system to provide internet broadband services to customers outside its service area if certain conditions are satisfied. The bills died.
- **Utah**, 2016 – **S.B. 114** - clarified that a municipality can create public communications service facilities and allows a municipality to call an election on proposed public communication service facilities. The bill was signed into law.

Other state legislative efforts addressing broadband and the need for service in unserved areas have been attempted through resolutions. Below are examples of resolutions – drawn from the 2016 legislative session – addressing broadband expansion:

- **Alabama**, 2016 – **S.J.R. 116** - indicates “support for the expansion of broadband internet particularly by municipalities into other service areas,” specified that Alabama’s current state law regulating direct service provisions by local government does not favor broadband expansion that is imperative for Alabamians to actively participate in economic and civic life beyond their geographic region. The resolution was adopted by the Senate and referred to the House Committee on Rules, where it was left and died.
- **Tennessee**, 2016 – **H.J.R. 0482** - urges internet service providers to expand broadband access to rural communities. The resolution was heard by House Business and Utilities Committee, referred to Calendar and Rules committee, but was not heard and died.
- **Tennessee**, 2016 – **S.J.R. 0510** - supports increasing access to high-speed internet connections in rural areas. The resolution was adopted by the Senate, referred to the House and taken off the calendar.

A Note on the Impact of Federal Policy

At the federal level, the need to expand infrastructure for broadband remains a priority of the Obama Administration. In 2015, the Federal Communications Commission (FCC) took **action**, with public support from President Barack Obama, in response to petitions filed with the FCC to overturn anti-municipal broadband laws in North Carolina and Tennessee. The FCC’s decision preempts elements of these states’ laws that restrict municipal providers from providing broadband service outside of their current serving areas and meeting local demand for broadband services. Tennessee and North Carolina filed appeals with the Sixth Circuit Court of Appeals disagreeing with the FCC’s decision. An oral argument regarding the FCC’s ability to preempt state laws was heard on March 17, 2016. The Sixth Circuit Court of Appeals decided and filed a **ruling** in favor of the states on Aug. 10, 2016.



Issue Resources

Policymakers and other state leaders should be aware of resources available to assist decision-making when considering policy development in the area of municipal broadband service provision. The following resources provide a variety of information and data points to support policy development and implementation:

- **Community Broadband Networks** provides resources, such as case studies, factsheets and videos to help leaders make decisions about community owned networks. In addition, the **Community Network Map** tracks a variety of ways in which local governments have invested in wired telecommunications networks. The **Community Connectivity Toolkit** is designed to help communities ask the right questions to implement a connectivity improvement initiative.
- **The Coalition for Local Internet Choice** (CLIC) is a coalition of business, trade groups, cities, individuals and other entities that believe that the decision of how local communities gain access to modern broadband networks is best made at the local level. CLIC provides webinars, whitepapers and information about **public private partnership models** as an option for communities to deploy networks or act as their own internet service providers.
- **Fiber to the Home Council Americas** (FTTH) works to create cohesive groups to share knowledge and build consensus on key issues surrounding fiber to home. FTTH offers a **Community Toolkit** for communities that are considering a municipal broadband system.
- **The Association for College and University Technology Advancement**, an international non-profit education association serving colleges and universities, provides information on **telecommunication legislative and regulatory activities** affecting higher education.

Final Thoughts

As a growing number of students are obtaining a postsecondary education via an online platform, the necessity for state leadership to ensure that citizens have adequate and affordable access to broadband service increases. Where well-served private, competitive markets exist, it may not be necessary for state or local leadership to consider deployment of municipal broadband service.

However, where private markets have underserved or failed to serve communities, municipal broadband networks have the potential to increase access to internet service. Expanding broadband to these communities is a critical component of holistic efforts to provide the infrastructure necessary to support higher education access and success for non-traditional and geographically isolated student populations - populations that have a significant impact on achievement of state educational attainment goals. Given, it is vital that state and local leadership understand the myriad of ways that state laws may impact the provision of municipal broadband.

Endnotes

1. “Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2012 and fall 2013,” National Center for Education Statistics, https://nces.ed.gov/programs/digest/d14/tables/dt14_311.15.asp (accessed March 7, 2016).
2. “2015 Distance Education Survey Results Trends in eLearning: Tracking the Impact of eLearning at Community Colleges,” Instructional Technology Council, <http://www.itcnetwork.org/attachments/article/1439/ITC%20Survey%20Final%20small.pdf> (accessed August 8, 2016).
3. Lauren Sisneros and Brian Sponsler, “Broadband access and implications for efforts to address equity gaps in postsecondary attainment,” Education Commission of the States, March 2016, <http://www.ecs.org/ec-content/uploads/Broadband-access.pdf>
4. “Community-Based Broadband Solutions: The Benefits of Competition and Choice for Community Development and Highspeed Internet Access,” The Executive Office of the President, January 2015, https://www.whitehouse.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf (accessed July 26, 2016).
5. Lennard Kruger and Angele Gilroy, “Municipal Broadband: Background and Policy Debate,” Congressional Research Service, April 6, 2016, <https://www.acuta.org/acuta/legreg/041216b.pdf> (accessed July 25, 2016).
6. Ibid, Kruger and Gilroy.

AUTHOR

Lauren Sisneros is a policy analyst in the Postsecondary and Workforce Development institute at Education Commission of the States. She holds a bachelor's degree in business administration and a master's degree in education, both from Colorado State University. In her spare time, Lauren enjoys spending time with her husband and two children exploring the great outdoors of Colorado. Contact Lauren at lsisneros@ecs.org or 303.299.3629.

Brian A. Sponsler, Ed.D. is vice president of policy, and director of Postsecondary and Workforce Development at Education Commission of the States. He oversees the strategic direction of the institute's work, leads the team's policy research portfolio, and cultivates and maintains relationships with funding partners, higher education policy researchers, policymakers and postsecondary administrators. He lives in Denver with his family and is a native of the great state of Oregon. Contact Brian at bsponsler@ecs.org or 303.299.3615.

© 2016 by the Education Commission of the States. All rights reserved. Education Commission of the States encourages its readers to share our information with others. To request permission to reprint or excerpt some of our material, please contact us at (303) 299.3609 or email askinner@ecs.org.

Education Commission of the States | 700 Broadway Suite 810 Denver, CO 80203

