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STATE & LOCAL POLICYMAKERS' BROADBAND PLANNING TOOL KIT

Guiding Principles for Setting Broadband Policy

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KEY TAKEAWAYS

- Before engaging in the nuts-and-bolts of broadband planning, state and local policymakers should study the array of guiding principles evident from successful and unsuccessful broadband projects pursued in the U.S. over the last few decades. These principles revolve around notions of transparency, accountability, and collaboration, and highlight the importance of state and local governments not going it alone when seeking to address broadband challenges.
- The risks of going it alone are evident in the poor track-record of government-owned broadband networks (GONs) (aka municipal or community broadband) in the United States and in the wasteful spending typically associated with duplicative infrastructure deployments that are underwritten with public funds (aka “overbuilding”).
- Consequently, broadband connectivity issues tend to be most effectively addressed via public-private partnerships (PPPs).

What Principles Should Guide Broadband Policymaking & Initiatives

The following principles are evident from studying an array of successful and unsuccessful broadband connectivity initiatives at the state and local levels:

- **Leverage Accurate Data to the Maximum Extent Possible.** Too often, broadband projects are pursued based on outdated or incomplete data. Fortunately, a torrent of more precise data is available via the FCC DATA map. This data, which will be further refined via state-level BEAD Challenge Processes over the course of 2024, will assist states and localities in more accurately identifying where broadband is and is not available, or where it will soon be available due to an enforceable deployment obligation.
- **Use Data to Identify Real Needs.** When properly collected and analyzed, broadband data can tell an insightful story about connectivity in an area. Policymakers can then respond as appropriate. Going beyond the scope of the real needs laid bare by the data could dilute scarce resources and hinder, rather than encourage, continued connectivity gains.
- **Do Not Go It Alone.** It might be tempting for some states or localities to attempt to solve every problem themselves by, for example, building a municipal broadband system or a large-scale middle-mile network. In reality, these projects are fraught with risk. More productive approaches on the supply-side typically revolve around partnerships with expert ISPs.
- **Assure Accountability.** Regardless of the approach taken by a state or locality, it is essential that policymakers assure adequate accountability when any project is undertaken using public funds. This includes accountability on behalf of states and localities themselves to ensure that funds are spent wisely.

- **Continue to Revisit, Revise, and Reform Policies.** As noted, state and local policymakers can greatly impact broadband connectivity beyond steering funding to deployment projects. To unlock additional private investment in networks, which will be needed to sustain and expand networks over the long-term, policymakers at the state and local levels should consistently revisit and revise, where appropriate, laws and regulations that no longer reflect modern market dynamics.
- **Bottom Line: Decisions Matter.** Every action by a policymaker has an impact. This is especially true in the context of allocating grant funding for broadband deployment. It is essential that decision-makers do everything in their power to ensure that the once-in-a-lifetime allotment of federal funding is spent wisely and not gambled on inexperienced or unknown firms. It is also critical to properly situate planning processes against the backdrop of a market's ongoing evolution and educating stakeholders about the iterative nature of broadband connectivity.
- **Determine Where Broadband Is Headed.** What are the buildout plans of ISPs? Which areas will benefit from subsidized buildout in the near-term (e.g., projects in areas supported by funds from RDOF or BEAD)? Is a locality working with a new ISP to facilitate entry? Planning processes that fail to include ISPs risk developing recommendations that could result in inefficient overbuilding or related interventions that might be unnecessary and costly. As such, working closely with ISPs from the start can help to ensure that all local stakeholders, including policymakers, are apprised of those entities' plans for investing in, expanding, and upgrading their networks and offerings.
- **Gather and Analyze as Much Data as Possible.** There are numerous ways in which state and local policymakers can gather ample, meaningful data regarding broadband availability and adoption. Policymakers and other stakeholders should avail themselves of these and all other relevant data to inform planning processes. Such data-driven planning will allow for greater precision in identifying where connectivity challenges exist and developing approaches to address those issues.
- **Engage Independent, Non-Vested Experts Whenever Possible.** Robust data-driven broadband planning involves a host of complex undertakings. These include gathering and analyzing significant amounts of data; using those data points to create detailed maps; and parsing data to understand the unique nuances of broadband adoption decisions in a given market. Accordingly, states and localities that lack the expertise to do these analyses should seek to engage outside experts whenever possible. These experts should be thoroughly vetted to ensure that they are truly independent, objective, not vested in any specific outcome, and capable of delivering high-quality work-product.
- **Revisit and Update Broadband Plans as Appropriate.** Effective broadband planning is not a one-time initiative. Rather, broadband planning should be an ongoing project for a state or locality. This ensures that plans and recommended interventions change in response to new developments. Ongoing planning also creates a vehicle for the consistent collection and analysis of useful data, which should be consulted when developing updated policy recommendations.

How is it “Going Alone” Risky for States and Localities?

In general, actions by policymakers that result in unnecessary government intervention into a broadband market tend to have the most negative impacts. Municipal broadband is the most illustrative example of this dynamic.

Government-owned broadband networks are rarely deployed in unserved areas, where broadband is most needed. To the contrary, municipal broadband has typically been pursued in localities already served by one or more private ISPs.¹ Overbuilding is wasteful and ultimately pits government against the private sector in competition for customers, something that almost never happens in the provision of other goods and services (the harms of overbuilding are discussed more fully below).

Generally speaking, government is poorly equipped to compete with the private sector. The history of government-owned broadband projects in the U.S. is replete with examples of projects that failed or struggled because a locality could not out-compete private ISPs. Private ISPs can adjust prices, enhance offerings, lock-in customers, and otherwise act much more nimbly than government can ever manage.

Other reasons government-owned broadband projects tend to falter or fail include:

Unrealistic Business Plans

Most municipal broadband projects are based on business plans developed by consultants who are hired to help cities evaluate the financial feasibility of such projects. Unfortunately, most consultants produce outcome-oriented plans that almost always recommend a GON regardless of what the local data might say. Moreover, these plans tend to include unrealistic take-rate projections, figures that form the basis for determining long-term financial feasibility.

Proceeding with unfounded assumptions about real consumer demand often proves fatal to a GON, as in cities like Groton, CT, and Mooresville & Davidson, NC. Even a healthy subscribership can sink a GON whose long-term financial success is tied to an unrealistically high projected take-rate or if operating expenses prove to be higher than projected by a consultant in a financial pro forma.

Tepid Uptake by Customers

Even if a business plan passes muster among local policymakers, there is no guarantee that what appears to be a viable project on paper will translate into real-world success. In practice, convincing enough customers to subscribe is difficult, especially when many people trust their private provider, and not their local government, to deliver reliable broadband service.² Accordingly, the history of GONs in the United States is littered with systems that failed to appeal to enough customers.

This dynamic has played out in cities like Provo, UT, and Salisbury, NC. In both cases, the public networks failed to attract enough customers to keep the GON afloat. Provo eventually

sold its failed network to Google for \$1; Salisbury leased its GON to a private company in the hopes of reviving its business.³

Costs of Running a GON Become Burdensome

GONs can encounter financial trouble in several ways. For example, revenues generated from customer subscriptions might be lower than expected due to tepid demand for the GON's broadband offerings. This leads to subpar revenues, which might be insufficient for a GON owner to pay for the system's operating expenses. If that happens, then a GON will operate with negative net income and require some other source of revenue (e.g., a loan or transfer from the city) to keep the system afloat.

Ultimately, the ability of a GON to weather these kinds of financial difficulties is limited vis-à-vis private ISPs, leaving many cities to leverage public funds to prop up a struggling system. In short, a government-run broadband system has much less flexibility than a private ISP to absorb subpar financial outcomes. As such, when too few customers sign up, or when a GON costs more to build and/or operate than initially projected, a city has few choices for adjusting on the fly. The default is to dip into general funds and subsidize the network so that its financial performance can match what was projected in the business plan.

The availability of significant federal funding for broadband will do little to reduce the financial risks of building a municipal broadband network. These funds can only be used to build a network in unserved areas; they cannot be used to operate the network (*i.e.*, pay for its operating expenses). Even if a GON can be built without any debt, it must still generate enough revenue to pay its operating expenses and reinvest in the network over the long-term. These recurring costs are substantial and will not abate over time. As such, state and local policymakers interested in pursuing a GON should look beyond the first five or ten years of a network's projected performance and evaluate whether the GON is well positioned to self-sustain over multiple decades.

Mismanagement and Corruption

Building, maintaining, operating, and upgrading a broadband network is a complex business. This can prove overwhelming for a city. Mismanagement can reveal itself when a GON struggles or fails because of cost overruns. This happened in Lake County, MN, for example, where a large-scale fiber network was built almost exclusively using government loans. Despite these public funds, the system struggled to finance last-mile buildout, thereby impeding its ability to pay off its loans in a timely manner. Eventually, the system was sold at a \$40 million loss.⁴

Bad actors can leverage mismanagement to engage in corruption. This happened in Bristol, VA, where executives of the GON's parent utility were found guilty of kickbacks, bid-rigging, and a range of other corrupt practices that drained money from the system. Eventually, the system was sold at a steep loss.⁵

What is Broadband “Overbuilding” and Why Should it be Avoided?

Overbuilding refers to the use of government resources to support broadband deployment in areas where broadband infrastructure already exists. The term is used in the context of broadband deployments by private ISPs and public entities and applies to duplicative buildout of middle-mile and last-mile networks.

Overbuilding should be avoided because it shifts funds and focus away from unserved areas and other priorities (e.g., broadband adoption). For decades, there has been broad bipartisan consensus that government resources made available for broadband should prioritize unserved areas. Unfortunately, there have been many instances when government has steered funding to projects that resulted in the deployment of redundant infrastructure (e.g., a second fiber-optic middle-mile network). The result is government subsidization of a new entrant in an already served area. Such projects, as discussed above, rarely succeed.

Looking Ahead, What is the Best Way for State and Local Policymakers to Bolster Broadband Availability?

Broadband connectivity challenges – on both the supply-side and demand-side – can be effectively addressed via partnerships with expert entities.

In the context of bolstering broadband availability, PPPs can leverage the core competencies of each partner – public partners bring funding to the table and the ability to streamline deployment (e.g., by updating ROW rules), while private partners bring experience in building, running, securing, and upgrading networks.

¹ See, e.g., Community Networks, Map, <https://muninetworks.org/communitymap>.

² See, e.g., Sam Sabin, *About Half the Public Thinks Local Governments Should Be Able to Pursue Their Own Broadband Network Build-Outs*, April 26, 2021, Morning Consult, <https://morningconsult.com/2021/04/26/municipal-broadband-private-isps-poll/>.

³ See, e.g., *Understanding the Debate Over Government-Owned Broadband Networks: Context, Lessons Learned, and a Way Forward for Policymakers*, ACLP at New York Law School (2014), <http://comms.nyls.edu/ACLP/ACLP-Government-Owned-Broadband-Networks-FINAL-June-2014.pdf>; David Brooks, *Private Company Taking Over Salisbury's Money-Losing Internet Network*, June 1, 2018, WFAE, <https://www.wfae.org/local-news/2018-06-01/private-company-taking-over-salisburys-money-losing-internet-network>.

⁴ See, e.g., Kitty Mayo, *Lake County Broadband Sold*, June 26, 2019, Business North, https://www.businessnorth.com/daily_briefing/lake-county-broadband-sold/article_2dc74eb2-9836-11e9-914a-1f2fc2a242e3.html.

⁵ *Bristol Case Study (Updated)*, ACLP at New York Law School (2016), <http://comms.nyls.edu/ACLP/ACLP-Bristol-Case-Study-Update-December-2016.pdf>.