

Broadband Access and Public Health: Legal and Policy Opportunities for Achieving Equitable Access

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Ideas. Experience. Practical Answers.

Broadband Access and Health Equity

September 3, 2020



What is Broadband and Why is it Important?

Today, broadband is essential to participate in society. Disconnected consumers, which are disproportionately low-income consumers, are at an increasing disadvantage as institutions and schools, and even government agencies, require Internet access for full participation in key facets of society.

[S]tudent access to the internet has become a necessity, not a luxury."

. . .

30 FCC Rcd 7818, ¶¶ 4–5 (2015)

» Super-determinant of Health, impacting all social determinants of health

- ✓ Education
- ✓ Economic Stability
- ✓ Neighborhood and Built Environment
- ✓ Health and Healthcare
- ✓ Social and Community Context



"Every American should have affordable access to robust broadband service and the means and skills to subscribe if they so choose."

FCC's 2010 Connecting America: The National Broadband Plan.

» Digital Divide:

- Barriers: Access and Adoption
- Measuring the Divide:
 - Need for more accurate data,
 - 2020 FCC Adoption Rates: 70% urban, 60% rural, 44% Tribal lands
 - Disparities Are Significant:
 - Adoption rates in Black neighborhoods (67%) lower than white Neighborhoods (84%)
 - 16.9 million children lack home broadband, including over 30% of Black, Latino and Native American households with school-aged children. *Alliance for Excellent Education, 2020.*
 - Pre-pandemic 21% of Black students relied on public Wi-Fi to complete homework

» COVID- 19 Pandemic:

- Increased need for telehealth and educational access
- Fewer opportunities to utilize broadband at libraries and school buildings
- Economic consequences threaten household ability to continue to pay for service.

» Drastic expansion of inequities related to the social determinants of health



Federal COVID-19 Relief Efforts

» Keep America Connected Pledge

- Voluntary commitments to waive late fees, not terminate service, open Wi-Fi hotspots
- Expired on June 30, 2020
- Chairman Pai has urged Congressional action

» CARES Act

- \$13 billion for education agencies to purchase technology, including connectivity to support remote learning
- \$3 billion in emergency education relief for states to improve remote learning
- \$200 million to expand telehealth access
- \$50 million to the Institute for Museum and Library Service to expand digital network access

» Universal Service Fund Programs

- E-rate: waived gift rules and urged providers to provide mobile hotspots and broadband enabled devices
 - * FCC has not authorized the use of E-rate funds to provide broadband service directly to students that lack broadband at home
- Lifeline: eased application requirements for newly eligible households
- Connected Care Pilot Program



Broadband Access and Public Health: Legal and Policy Opportunities for Achieving Equitable Access



Native Broadcast Network



59 Radio Stations

3 Television Stations

19 States



KUYI Hopi Radio

High Quality Data Matters



average

7-day

15





Technological Advancements Matter



Internet Speed Matters



Broadband for Public Health is Critical



Spectrum for Indian Country



<image>

To help prevent the spread of COVID-19, wear a mask in public. Cover your mouth and nose with a tissue when you cough or sneeze. Throw used tissue into a lined trash can and wash your hands often. To learn more, visit CDC.gov.

This message is brought to you by Native Public Media and this station.



Moving the Dial

Help the least connected acquire affordable high-speed broadband.

Don't discriminate against communities because of geography or rural nature of homelands.

Restore Net Neutrality.

Acknowledge that a one-size-fits all business model is not the right approach for Indian Country.

Dedicated funding & spectrum for Broadband across Indian Country.

Broadband must be universal and ubiquitous to close the digital divide (n)) Indian Country.



Asquali Thank you





AMERIND Critical Infrastructure: Tribes Connecting Tribes

Edyael Casaperalta Project Manager, ACI

Broadband in the Community



Broadband Access in Indian Country

• 2020 Broadband Deployment Report, FCC (April 2020)

Overall: 94.4% of population had access to 25/3 by end of 2018
Rural: 22.3% of ppl in rural areas do not have access to 25/3
Tribal: 27.7% of ppl in tribal lands do not have access to 25/3
Urban: 1.5% of ppl in urban areas do not have access to 25/3

• Tribal Technology Assessment, American Indian Policy Institute, ASU (2019)

 \odot Device used to access the internet

- 38% use smartphone
- \odot 22% use desktop or laptop
- \odot 12% use tablet
- o 27% use all 3
- \odot Phone connectivity at home
 - \odot 69% all the time
 - \odot 22% some of the time
 - \odot 9% none

- \odot Top 3 locations to access the internet
 - 31% wherever they get cellreception
 - 27% public WiFi while patronizing a business
 - 15% while at a friend or relative's house

Federal Communications Commission

The Universal Service Fund – Annual Budgets



Rural Health Care Program

- Established in 1997
- Funding for telecommunications and broadband services to eligible, nonprofit or public, rural, health care providers:
 - 1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
 - 2) community health centers or health centers providing health care to migrants;
 - 3) local health departments or agencies;
 - 4) community mental health centers;
 - 5) not-for-profit hospitals;
 - 6) rural health clinics;
 - 7) skilled nursing facilities (as defined in section 395i–3(a) of title 42; and
 - 8) consortium of health care providers consisting of one or more entities falling into the first seven categories
- Capped at \$571 Million annually

COVID-19 Telehealth Program

- Response to the pandemic, CARES Act
- \$200 Million
- To help eligible health care providers provide telehealth services to patients at their homes or mobile locations in response to the COVID-19 pandemic
- Nonprofit and public health care providers only
- Same eligible entities as Rural Health Care Program, but nonrural entities eligible
- Opened April 13, stopped receiving applications on June 25

2.5 GHz Tribal Priority Window

- Once-in-a-generation opportunity for Tribes to obtain spectrum licenses
- Available to federally recognized Tribes, Alaska Native Villages, and Hawaiian Home Lands in rural areas
- 2.5 GHz spectrum is capable of providing high-speed wireless broadband service
- Puts Tribes in control of the provision of service
- Provides Tribes with a valuable economic asset
- Open February 3, 2020 August 3, 2020
- Tribal advocates requested an extension ranging from 6 months to a year because tribal governments and entities closed their offices to respond to the COVID-19 pandemic. FCC granted only a 30-day extension. Closed September 2, 2020.

Rural Digital Opportunity Fund

- \$20.4 Billion for broadband deployment
- Reverse auction model
- Participants able to bid only in eligible areas "census blocks where no provider is offering, or has committed to offer...service of at least 25/3 Mbps, based on Form 477 data."
- Eligible Telecommunications Carriers (ETC) or entities able to become an ETC after receiving a funding award
- Phase I bidding (\$16 Billion) October 29, 2020
- Phase II, TBD

Questions?

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Municipal Broadband: Local Efforts to Support a Super Determinant of Health

Mathew Swinburne, J.D.

Associate Director

The Network for Public Health Law-Eastern Region

9/3/2020



Telecommunications Act of 1996



FCC Chairman Ajit Pai

Federal Communications Commission

"Determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion"

And if it is not "take immediate action to accelerate deployment of such capacity by removing barriers to infrastructure investment and by promoting competition...."



FCC's 2020 Broadband Deployment Report

Broadband Access—there is a high-speed internet provider in the community (infrastructure)

94.4% of Americans have access to Fixed Terrestrial Broadband (25/3 Mbps)

- □ 98.5% in Urban Areas
- □ 77.7% in Rural Areas
- □ 72.3% Tribal Lands
- □ 52.9% in Rural Tribal Lands

Broadband Adoption—actual subscription to the highspeed internet services (affordability) 65.1% of Americans have Adopted Fixed Terrestrial Broadband (25/3 Mbps)

- □ 69.2% in Urban Areas
- □ 59.9% in non-Urban Areas
- □ 44.0% in Tribal Lands
- □ 38.7% in non-urban Tribal lands



Broadband Access: Undercounted

Federal Communications Commission Report

- 18.3 million Americans lack access to fixed terrestrial broadband.
- Form 477: If an ISP offers service to at least one household in a <u>census block</u>, then the FCC counts the entire census block as covered by that provider.
- Broadband Now estimates that <u>42 million Americans</u> lacked access
 Broadband DATA Act 2020
- gather more granular data,
- create a process for public to challenge the data,
- create a process for crowd sourcing of data,
- create coverage maps with the new data to inform the awarding of broadband funding, . . .



Why are There Disparities in Access



The cost of installing the infrastructure for broadband services is often not profitable in isolated or low-income communities. The private companies fear they cannot recoup their investment when a community has a small customer base due to population or economic means.



Municipal Broadband

- Public entities entering commercial telecommunications marketplace and providing highspeed internet services.
- 331 municipal broadband networks in the United States
- □ 3 Basic Models
- Public Ownership-principal entity for building, financing and operating the broadband network
- Public Private Partnerships-many forms
- <u>Cooperative Model</u>-rural electric and telephone cooperatives transition over to provision of broadband service







Arguments For Municipal Broadband

Provides broadband <u>access in areas that are underserved or</u> <u>unserved</u> by private sector providers.

□ Can provide <u>comparable or better speeds at potentially lower</u> <u>costs</u>.

Provides competition in markets where there is only one provider or limited number of providers. (45% single provider-2016)

□ Increases investment in local communities and boosts regional and local economies.

□ Follows the <u>tradition of municipal-based utilities</u>, which provide basic utilities such as water, natural gas and electricity to customers.



Arguments Against Municipal Broadband

□ **<u>Unfair Competition-</u>** government has inherent advantages, like rights of way and public financing, which significantly reduce the costs associated with entry into broadband markets.

□ <u>**Taxpayer Risk-</u>**-high-risk endeavor, and if the network fails, taxpayers could be on hook for financial liability.</u>

□ Limited Funds and Competing Interests-Public funds used for broadband are taken away from other priorities, including roads, electric grid updates, and water systems.

Discourages private sector investment.



<u>19 States Restrict the Deployment of Municipal</u> <u>Broadband Services</u>





Missouri- A Complete Ban



- Bars municipalities and municipal electric utilities from providing retail or wholesale telecommunication services.
- Have an exception that allows for the provision of internal government service.



Michigan & Pennsylvania-Request Private Bids

<u>Michigan</u>

□ Requires a public entity to request bids for services.

□ If receive less than three bids, they can provide municipal broadband but only within its boundaries.

Must subject themselves to the same terms and conditions as the RFP.

Pennsylvania

Municipalities cannot provide broadband unless the service is not provided by local telephone provider and this provider refuses to provide services within 14 months of a request for service.

Data speed is the only element considered when determining if service is provided. Cannot consider cost, quality of service, coverage,...







Florida- Taxes and Profitability Requirements

Imposes "<u>ad valorem" taxes</u> on municipal broadband networks that are not required of other public utilities or services sold to the public.

❑ Require municipalities to hold at least two public hearings, during which local officials must offer a roadmap to profitability within four years

□ If a municipality-owned broadband utility is not profitable after four years, it must hold a public hearing on whether to continue services.





Alabama-Limitations on Funding Sources

Cannot use tax revenue to cover capital costs and expenditures for the operating expenses associated with providing broadband.

 Also prohibited from using appropriations of state, county, or municipal government.





Virginia: Imputed Costs and Price Fixing

□Virginia allows municipal electric utilities to provide broadband.

□ Requires them to impute private sector costs into their rates (Phantom Costs).

Prohibits them from charging rates lower than the incumbent service providers.





Tennessee: Procedural and Service Area Restrictions

□ File a <u>detailed business plan</u> with the office of the comptroller of the treasury

❑ After <u>public hearing</u> on plan to provide service, the municipal legislature must approve with <u>2/3 vote or a public</u> <u>referendum</u>.

□ Municipalities that operate their own electric utilities can provide broadband services within their electric service areas.

Municipalities tha<u>t do no operate an</u> <u>electric utility</u> can only provide broadband service in "<u>historically underserved areas</u>" and are required to partner with a private sector provider.





Federal Preemption of State Laws

- Wilson Count, NC and Chattanooga, TN developed successful broadband networks and surrounding communities asked for their services.
- TN and NC had laws that prevent municipal broadband from expanding their service areas.
- House of Representatives passed a measure to freeze the FCC's funding if it overturned the state prohibitions.
- FCC issues an order blocking states from enforcing these laws (2015).
- Federal Preemption-where the federal government has authority it can supersede state law.







State of TN, et al. v. FCC (6th Cir.)(2016)

- The Commission ... shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans... by utilizing, ..., measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.
 - Telecommunications Act of 1996, § 706 (47 USC § 1302)
- Did this grant the FCC the authority to preempt the municipal broadband restrictions?



Court Decision-FCC Loses

□ State have the right to set the boundaries of telecommunications policy for their municipalities, unless Congress has provided a clear statement to the contrary.

Court held that Telecommunications Act did not provide that clear statement of authority.

Nixon vs Missouri Municipal League (2004)

- Municipalities were challenging MO complete ban of municipal broadband and wanted FCC to preempt this complete ban.
- FCC did not want to preempt and stated that they lacked a clear statement from congress to do so.





Ideas. Experience. Practical Answers.

Thank you for your time.

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