

December 12 2019 4:15 PM

KEVIN STOCK  
COUNTY CLERK  
**NO: 19-2-11506-3**

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9 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
10 **IN AND FOR THE COUNTY OF PIERCE**

11  
12  
13 BOWMAN

Plaintiff,

14  
15 V

16 City of Tacoma,

Defendant.

17  
18 MITCHELL SHOOK,

Plaintiff,

19  
20 v.

21 CITY OF TACOMA,

Defendant.

**NO. 19-2-11506-3**

**DECLARATION OF  
MITCHELL SHOOK**

22  
23  
24 I, Mitchell Shook, declare as follows: I am a resident of Tacoma, ratepayer of Tacoma Public  
25 Utilities, taxpayer to City of Tacoma, and customer of Click!, the municipal broadband  
26 telecommunications system operated by Tacoma Public Utilities. I am an expert in matters related  
to Click! Network and the ISP industry, having over 20 years of experience working with Click!

1 and other open access systems, in my role as Founder and CEO of Advanced Stream, an Internet  
2 Service Provider that operates on Click! Network. I am over the age of eighteen, competent to  
3 testify in this matter, and make this declaration on my own personal knowledge.  
4

5 1 It is my experience that municipalities, when disposing of property acquired for utility  
6 purposes, to avoid the mandatory “vote” requirement under RCW 35.94.040 follow a process in  
7 Washington state that involves a bidding stage, which follows a surplus declaration and public  
8 hearing. In my experience, such surplus resolutions generally involves things that are no longer  
9 useful, like old trucks, computers, desks, file cabinets, weed-whackers, copy machines etc.

10 For example, the City of Duvall recently disposed of “Property originally purchased for  
11 utility purposes.” The notice of public hearing cites RCW 35.94.040.

12 Notice is hereby given that the City Council of the City of Duvall, Washington  
13 will hold Public Hearing at the Riverview Educational Service Center, 15510  
14 1st Ave NE, Duvall, WA. at 7:00 p.m. or as soon as possible thereafter on  
15 October 1, 2019 regarding:

16 Property originally purchased for utility purposes that is either no longer  
17 needed for that use and / or past its useful life and the city desires to sell the  
18 property, pursuant to RCW35.94.040.

19 It is proposed that all items be disposed of to the general public by means of  
20 direct sales, sealed bid, trade-in, or auction, as determined to be in the best  
21 interests of the City by the Public Works Director and to the highest,  
22 responsible bidder.

23 I participated in that bidding process and found Duvall’s staff to be professional and courteous.  
24 Their actions represented the best practices for disposal of surplus utility property. I was successful  
25 with my winning bid for the hay rake! See my previous declaration in this case, under Shook Decl.  
26 10/29/19 Ex. 19.

1.

2. Attached hereto as **Exhibit 30** and incorporated herein by this reference is a true and  
correct copy of the City’s April 14, 1997 Memorandum in the case approving establishment Click!.

3. Attached hereto as **Exhibit 31** and incorporated herein by this reference is a true and  
correct copies of Click fiber plant slides, showing fiber, and tubes from City slide presentation. And

1 plant totals Total Mileage, PLANT TOTALS from July 2014, as provided to me by the City.

2 4. Attached hereto as **Exhibit 32** and incorporated herein by this reference is a true and  
3 correct copy of a City of Tacoma Resolution confirming knowledge of Charter 4.6 requirements for  
4 a vote of the people, under “Whereas.”

5 5. Attached hereto as **Exhibit 33** and incorporated herein by this reference is a true and  
6 correct copy of letters and legislative for RCW 35.94.040, with the 1972 legislative bill files for SB  
7 2835, including letters from City of Tacoma in support, as provided to me by the Washington State  
8 Archives.

9 6. Attached hereto as **Exhibit 34** and incorporated herein by this reference is a true and  
10 correct copy of the Resolution establishing the Net Neutrality Policy of Tacoma City Council and  
11 the status report for the Open Internet Act, which has passed the House of Congress.

12 7. Attached hereto as **Exhibit 35** and incorporated herein by this reference is a true and  
13 correct copy of Pages from USDA Broadband Opportunity Council 2015 Report.

14 8. Attached hereto as **Exhibit 36** and incorporated herein by this reference is a true and  
15 correct copy of pages from WA Session Laws of 1911, establishing the Public Service Commission.

16 9. Attached hereto as **Exhibit 37** and incorporated herein by this reference is a true and  
17 correct copy of Pierce County Broadband Connectivity and Access Evaluation.

18 10. Attached hereto as **Exhibit 38** and incorporated herein by this reference is a true and  
19 correct copy screen shot of Mason County PUD3, Chelan PUD, Grant County PUD, NoaNet,  
20 WAPUDA, pages from Chattanooga Power Board Annual Report.

21 11. Attached hereto as **Exhibit 39** and incorporated herein by this reference is a true and  
22 correct copy of Resolution 40467 and 40468 CITY COUNCIL DECLARAION OF Surplus as  
downloaded from the City’s website, which I witnessed City Council pass.

23 12. Attached hereto as **Exhibit 40** and incorporated herein by this reference is a true and  
24 correct copy of Prof. Brown’s on Definition of Public Utilities, from his book Business Essentials.

25 13. Attached hereto as **Exhibit 41** and incorporated herein by this reference is a true and  
26 correct copy of Broadband defined as Utility and Telecommunications by WUTC Website

1 14. Attached hereto as **Exhibit 42** and incorporated herein by this reference is a true and  
2 correct copy of screen shots I took from the Click! website, displaying broadband Internet services  
3 offerings. Also, a photo I took of the lobby at TPU headquarters in Tacoma about Sept. 2019.

4 15. Attached hereto as **Exhibit 43** and incorporated herein by this reference is a true and  
5 correct copy of City's Resolution U-10879, describing Smart City benefits # 16, #17 Uncertain  
6 Future benefit, Economic Development Benefits #20 of Click!; also pages from the Nation  
7 Broadband Report. Also, the Key Elements of the Sept 9, 2016 "All In" Business Plan.

8 16. Attached hereto as **Exhibit 44** and incorporated herein by this reference is a true and  
9 correct copy of FCC's Consumer Guide To VoIP Telephone Services. FCC's Lifeline Program  
10 Information. Broadband And Phone Equivalent

11 17. Attached hereto as **Exhibit 45** and incorporated herein by this reference is a true and  
12 correct copy of Diane Lachelle, Government and Community Relations Manager Click! Network,'s  
13 Letter related to the organized effort to discredit Click!

14 18. Attached hereto as **Exhibit 46** and incorporated herein by this reference is a true and  
15 correct copy of Casting a Wider Net -How and Why State Laws Restricting Municipal Broadband  
16 Networks Must Be Modified -Jeff Stricker, Washington Law Review.

17 19. Attached hereto as **Exhibit 47** and incorporated herein by this reference is a true and  
18 correct copy of News Tribune Editorial describing Rainier Connect's opposition to creation of  
19 Click!. Also, evidence of campaign contributions by Rainier to support Tacoma's current Mayor in  
20 her last campaign. And, evidence of the corporate structure of Rainier, showing control of Tacoma's  
21 Best Internet, as downloaded from the Washington UTC website.

22 20. Attached hereto as **Exhibit 48** and incorporated herein by this reference is a true and  
23 correct copy of Tacoma Series 2017 Electric System Revenue Bond Offering -Annual Budget and  
24 Description Of Click. 2017 -18 and 2019-2020 and City budget report showing funding for click !

25 21. Attached hereto as **Exhibit 49** and incorporated herein by this reference is a true and  
26 correct copy of a Brief History of American Telecommunications Regulation, by Tim Wu.

22. Attached hereto as **Exhibit 50** and incorporated herein by this reference is a true and

1 correct copy of Purpose and Conclusion of the 1996 City Broadband Study.

2 23. Attached hereto as **Exhibit 51** and incorporated herein by this reference is a true and  
3 correct copy of pages from Travis, Hannibal. “WI-FI Everywhere: Universal Broadband Access as  
4 Antitrust and Telecommunications Policy.” American University Law Review 55, no.6 (August  
5 2006): 1697-1880. WI-FI Everywhere: Universal Broadband Access as Anti-Trust. Hannibal  
6 Travis.

7 24. Attached hereto as **Exhibit 52** and incorporated herein by this reference is a true and  
8 correct copy of Harvard Study on Broadband Prices, 2018-01-10. Pricing Study. Talbot, David,  
9 Hessekiel, Kira, Kehl, Danielle. Community-Owned Fiber Networks: Value Leaders in America (January  
10 2018).

11 25. Attached hereto as **Exhibit 53** and incorporated herein by this reference is a true and  
12 correct copy of pages from National Telecommunications & Information Administration report.

13 26. Attached hereto as **Exhibit 54** and incorporated herein by this reference is a true and  
14 correct copy of Pierce County Resolution R2019-74 Declaring Broadband to Be Essential.

15 27. Attached hereto as **Exhibit 55** and incorporated herein by this reference is a true and  
16 correct copy of a City of Tacoma’s Resolution 39577 containing: WHEREAS the concerns raised  
17 about the current cost allocation methodology are significant and must be resolved and transcript of  
18 council meeting where City Attorney Bill Fosbre answers Council Member Blockers’ question  
19 about the Coates lawsuit.

20 28. Attached hereto as **Exhibit 56** and incorporated herein by this reference is a true and  
21 correct copy of Utility Tax Pages from City of Tacoma's Website, also the City’s Purchasing Policy.

22 29. Attached hereto as **Exhibit 57** and incorporated herein by this reference is a true and  
23 correct copy of a page describing Click!. FTTH services. I can testify that Click! provides “Voice  
24 Packages” to the ISP partners. These packages offering prioritization of data packets that enable  
25 telephone services to operate over Click! (ISP Agreement is Confidential and Available On Court  
26 Order).

30. Attached hereto as **Exhibit 58** and incorporated herein by this reference is a true and

1 correct copy of information related to Anacortes, WA broadband program, along with the U.S.  
2 Census Bureau report for 1907 on Telephones Farmer Lines, Coops And Mutual Phone Companies.

3 31. Attached hereto as **Exhibit 59** and incorporated herein by this reference is a true and  
4 correct copy of, Affidavit and Resume of Terry Dillon Confirming Telecommunication System.

5 32. Attached hereto as **Exhibit 60** and incorporated herein by this reference is a true and  
6 correct copy of About NBN Australia, from NBN website.

7 33. Attached hereto as **Exhibit 61** and incorporated herein by this reference is a true and  
8 correct copy of pages Striking Telegraph and Telephone and replacing those terms with  
9 Telecommunications, from Laws of 1985. Ch. 450, Sec. 13, Pgs. 1978 -1995..

10 34. Attached hereto as **Exhibit 62** and incorporated herein by this reference is a true and  
11 correct copy of MSA Agreement with Century Link and Integra as provided to me by TPU.

12 35. Attached hereto as **Exhibit 63** Nov. 20, 2019 City Council Action Memorandum, for  
13 Cable TV Franchise Agreement with Rainier Connect.

14 36. Attached hereto as **Exhibit 64** and incorporated herein by this reference is a true and  
15 correct copy of pages from Click! contract with City of Tacoma Public Library system, with recent  
16 Service Order information. As provided to me in a public record request by Defendant in 2019.

17 37. Attached hereto as **Exhibit 65** and incorporated herein by this reference is a true and  
18 correct copy of pages I downloaded from the American Registry for Internet Numbers (ARIN)  
19 website. I can personally testify to the shortage. I recently sought a small allotment of IP address  
20 from ARIN and the waiting list process, described in this Exhibit 65, took over a year for me to  
21 complete. I diligently pursued my application, for a /22 assignment, which is the equivalent of just  
22 1024 IPv4 addresses. My Initial Request, was submitted on 3/30/2018, and my IP addresses were  
23 finally issued on 9/4/2019.

24 38. Attached hereto as **Exhibit 66** and incorporated herein by this reference is a true and  
25 correct copy of pages from Click! Telecommunication Franchise with Pierce County and Puyallup.

26 39. Attached hereto, as **Exhibit 67** and incorporated herein by this reference are true and  
correct copies of historical Public Service Magazine pages, related to the power struggles at the time

1 RCW 35.94 was written. These are examples of the Private Power Trusts' Propaganda efforts to  
2 oppose public power and the BONE BILL. I have downloaded these from the Internet. Also  
3 included is historical information on efforts by public power to promote benefits of public power,  
4 including a letter by Honorable Homer T. Bone, obtained from the Library of University of Puget  
5 Sound.

6 I declare under the penalty of perjury under the laws of the State of Washington that the  
7 foregoing is true and correct.

8 DATED this 12<sup>st</sup> day of December 2019, at Tacoma, Washington.

9  
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11  
12 \_\_\_\_\_  
13 Mitchell Shook  
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AFFIDAVIT OF SERVICE

1 I declare under penalty of perjury of the laws of the State of Washington that on Dec. 12, 2019,

2 I served true and correct copies of:

3 1). PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGEMENT GRANTING  
4 DECLARATORY RELIEF

5 2). MITCHELL SHOOK’S DECLARATION IN SUPPORT OF MOTION FOR PARTIAL  
6 SUMMARY JUDGEMENT. Part One and Part Two.

7 This document was delivered via the Court’s e-serve system and additionally thru Email to the  
8 Attorneys for the Defendant: Joseph Sloan, at joseph.sloan@cityoftacoma.org and Tom Morrill,  
9 at TMorrill@ci.tacoma.wa.us and Chris Bacha at CBacha@ci.tacoma.wa.us.

10 Dated December 12, 2019

11 

12 Mitchell Shook, Plaintiff



# EXHIBIT 30

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SUPERIOR COURT  
ADMINISTRATION

Honorable Grant L. Anderson

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IN COUNTY CLERK'S OFFICE

A.M. APR 14 1997 P.M.

PIERCE COUNTY, WASHINGTON  
TED RUTT, COUNTY CLERK

BY \_\_\_\_\_ DEPUTY

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APR 14 1997

THOMPSON, KRILICH, LAPORTE  
TACOMA, WASH. WEST INC., P.S.

IN THE SUPERIOR COURT OF WASHINGTON

FOR PIERCE COUNTY

CITY OF TACOMA, a municipal corporation, )

Plaintiff, )

v. )

THE TAXPAYERS AND THE RATEPAYERS )  
OF THE CITY OF TACOMA, )

Defendants. )

No. 96 2 09938 0

MEMORANDUM IN SUPPORT OF CITY  
OF TACOMA'S MOTION FOR  
SUMMARY JUDGMENT

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~~APR 14 1997~~

~~THOMPSON, KRILICH, LAPORTE  
TACOMA, WASH. WEST INC., P.S.~~

## I. INTRODUCTION

The City of Tacoma (the "City") brought this declaratory judgment class action under RCW 7.24 and 7.25 and CR 23(B)(2) to confirm its authority to issue bonds for the purposes of constructing and operating a telecommunications system consisting of a hybrid fiber coaxial network (the "Telecommunications System").

On December 13, 1996, this Court ruled on four of the City's five requested declarations. The Court held that (1) the Court has jurisdiction over the subject matter and parties in this action; (2) Tacoma Ordinance No. 25930 (the "Bond Ordinance"), which provides for the issuance and sale of Electric System revenue bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first phase of constructing and operating the Telecommunications System, was properly enacted; (3) the City has authority under the laws of the State of Washington and the United

MEMORANDUM IN SUPPORT OF CITY OF TACOMA'S  
MOTION FOR SUMMARY JUDGMENT - 1

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COPY  
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PRESTON GATES & ELLIS LLP  
5000 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104-7078  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 States to provide cable television service in the service area of the Light Division of the City's  
2 Department of Public Utilities (the "Light Division"); and (4) the City has authority under the laws of  
3 the State of Washington and the United States to lease telecommunications facilities and capacity to  
4 telecommunications providers. See Order Granting City of Tacoma's Motion for Summary Judgment  
5 dated December 13, 1996 (the "Order").

6 Only one issue remains: Whether the City has authority to issue revenue bonds to finance the  
7 first phase of construction and operation of the Telecommunications System. The City is entitled to  
8 summary judgment on this final issue. Issuing the bonds is a legislative act subject to review only for  
9 such deficiencies as fraud, bad faith, or ultra vires actions. Through the Order, the Court has already  
10 determined that construction and operation of the Telecommunications System is not ultra vires. No  
11 facts relation to fraud, bad faith, etc. have bee alleged.

## 12 II. RELIEF REQUESTED

13 The City requests that the Court enter judgment declaring that:

- 14 1. The City has authority under the laws of the State of Washington to issue revenue  
15 bonds for the purposes of financing a telecommunications system to provide cable  
16 television service in the Light Division Service area and lease telecommunications  
17 facilities and capacity to telecommunications providers.

## 18 III. STATEMENT OF ISSUE

- 19 1. Whether the City may issue revenue bonds under the properly enacted Bond  
20 Ordinance for the purposes of providing cable television service and leasing telecommunications  
21 facilities and capacity pursuant to the authority confirmed by this Court's previous Order.

## 22 IV. EVIDENCE RELIED UPON

23 The City believes that the following facts are undisputed in every material respect. These  
24 facts are contained in the Declaration of Jon Athow in Support of Motion for Summary Judgment,  
25  
26

1 dated November 5, 1996 ("First Athow Decl.") and the Second Declaration of Jon Athow in Support  
2 of Motion for Summary Judgment dated April 11, 1997 ("Second Athow Decl.").

3 Plaintiff, the City of Tacoma, is a municipal corporation and a city of the first class of the  
4 State of Washington. The Defendants are taxpayers of the City and ratepayers of its electrical utility,  
5 the Light Division. Harold E. Nielsen, Jr., the taxpayer and ratepayer representative, is a resident and  
6 taxpayer of the City and a customer of the Light Division. The City currently owns and operates,  
7 through its Light Division, an electric utility (the "Electric System") for the purpose of providing  
8 electricity and other energy services throughout the City and other portions of Pierce County.

9 On July 23, 1996, the Tacoma City Council adopted Ordinance No. 25930 (the "Bond  
10 Ordinance"). The Bond Ordinance provides for the issuance and sale of Electric System revenue  
11 bonds in the aggregate principal amount of \$1,000,000 (the "Bonds") in order to finance the first  
12 phase of constructing and operating the Telecommunications System. The Telecommunications  
13 System will be used to improve the speed and capability of the existing real-time communications  
14 among certain Electric System substations, and to extend such real-time communications to the  
15 remaining substations. In addition, the Telecommunications System may be used to enhance such  
16 existing energy services as demand management, identification of outages, meter reading, billing and  
17 payment, and resource dispatch. The Telecommunications System may be used to perform similar  
18 functions for the City's provision of water service.

19 The City may also utilize a portion of the Telecommunications System to provide cable  
20 television service to customers within the Light Division service area, and to lease facilities or  
21 capacity to providers of video-on-demand, data transport, telephony, and other telecommunications  
22 services. This Court's previous Order determined that the City has the authority to engage in these  
23 activities, and that the Bond Ordinance was properly enacted.

24 The Light Division, with the assistance of numerous experts, has prepared a comprehensive  
25 Telecommunications Study. The City has recently adopted resolutions approving this Study and  
26

1 authorizing the Light Division to proceed with implementation. See Exhibits A, B, and C to Second  
2 Athow Decl. (Public Utility Board Resolution No. Substitute U-9258; City Council Substitute  
3 Resolution No. 33668; and Public Utility Board Amended Substitute Resolution No. U-9258.) The  
4 City Council acted unanimously after substantial public participation.

5 The Telecommunications Study incorporates a comprehensive business plan outlining the  
6 proposed services, operations, organizational structure and finances of the Telecommunications  
7 System. See Exhibit D to Second Athow Decl. (Telecommunications Study notebook), eleventh  
8 through sixteenth tabs. The chief concern raised by defendants' opposition on the previous summary  
9 judgment motion was the absence of such a plan. That objection has now been fully met.

## 10 V. ARGUMENT

### 11 A. Summary Judgment Standard

12 Summary judgment is appropriate to resolve actions or parts thereof when no genuine issues  
13 of material fact exist or when only a question of law exists. CR 56(c). "The burden is on the moving  
14 party to demonstrate that there is no issue as to a material fact." *Scott v. Pacific West Mountain*  
15 *Resort*, 119 Wn. 2d 484, 502-03 (1992). If the party seeking summary judgment successfully carries  
16 its initial burden, the burden shifts to the non-moving party to establish the existence of the facts on  
17 which it has the burden of proof at trial. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn. 2d 216, 225  
18 (1989). The non-moving party must respond with specific facts and cannot rely on bare allegations.  
19 *Baldwin v. Sisters of Providence*, 112 Wn. 2d 127, 132 (1989). Conclusory statements or  
20 argumentative assertions are insufficient to raise an issue of fact. *Grimwood v. University of Puget*  
21 *Sound, Inc.*, 110 Wn. 2d 355, 359-60 (1988).

1 In the instant case, there are no issues of material fact relating to the City's authority to issue  
2 bonds. The City's authority to provide cable television service and to lease telecommunications  
3 facilities and capacity to telecommunications providers has already been confirmed. Only questions of  
4 law remain. The case should therefore be resolved on summary judgment.

5 **B. The City's Plans for the Telecommunications System Are Not Subject to Judicial**  
6 **Review in the Absence of Bad Faith, Fraud or Ultra Vires Actions.**

7 Judicial review of the legislative actions of Washington municipalities is extremely limited.  
8 The leading case on the question of judicial review of municipal legislative actions is *Blade v. La*  
9 *Conner*, 167 Wn. 403 (1932). In *Blade*, as in the instant case, a taxpayer sought to enjoin a town  
10 from issuing bonds for purposes of a utility project. *Blade* involved the acquisition of a water plant.  
11 In considering whether the town had authority to issue the bonds. The court declined to consider  
12 whether the plant could supply an adequate amount of water. As the court explained, "It is well  
13 settled that a court of equity will not review the action of the legislative authority of a municipality as  
14 to such matters as rest within its discretion unless fraud or bad faith are shown, or unless the action  
15 taken is clearly ultra vires." *Id.* at 407.

16  
17 In *City of Bremerton v. Kitsap County Sewer District*, 71 Wn. 2d 689 (1967), the court  
18 refused to consider claims remarkably similar to the defendant's suggestion here that proposed utility  
19 facilities may not be needed. *Bremerton* involved a sewer district's claim that installation of municipal  
20 water mains was illegal because there was no need for such mains. *Id.* at 704. Citing *Blade*, the  
21 court stated that its role was to determine only whether the city had authority to regulate and control  
22  
23  
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26

1 the use, distribution and price of its water service. *Id.*<sup>1</sup> Because this Court has already confirmed  
2 Tacoma's authority to develop the Telecommunications System no further inquiry is warranted.

3 The sole question on this motion for summary judgment is whether the City has authority to  
4 issue bonds to finance an activity that is indisputably within its municipal powers: construction and  
5 operation of the Telecommunications System. Thus, no claim of ultra vires action can be sustained.  
6 Moreover, there has been no showing of bad faith or fraud. The City's actions are entitled to a  
7 presumption of good faith a defendants have the burden of proving otherwise. *Blade*, 167 Wash. At  
8 408. Therefore the Court must defer to the City's judgment on the desirability of constructing and  
9 operating the Telecommunications System and the means of doing so.  
10

11 **C. The City Has Authority Under Washington Statute To Issue Bonds for the**  
12 **Telecommunications System.**

13 Washington first-class cities may issue bonds for *any* lawful corporate purpose, RCW  
14 35.22.280(4). This Court has already determined that construction and operation of the  
15 Telecommunications System is a lawful corporate purpose of the City. *See Order*. Thus, the City  
16 may issue the Bonds to finance construction and operation of the Telecommunications System.  
17 Accordingly, this Court must find that the City has the authority to issue the Bonds for the purpose of  
18 financing construction and operation of the Telecommunications System.

19 **VI. CONCLUSION**

20 As this Court has determined, the City has authority to provide cable television service in the  
21 Light Division service area; and to lease telecommunications facilities and capacity to  
22


23 <sup>1</sup> *Accord Rowan v. Convention Center*, 78 Wn. App. 322, 329 (1995) (if municipal corporation's  
24 actions come within purpose and object of enabling statute and no express limitations apply, court  
25 leaves choice of means used in operating corporation to discretion of municipal authorities, and  
26 judicial review is limited to whether action is arbitrary, capricious or unreasonable); *Public Util. Dist.  
No. 1 v. City of Newport*, 38 Wn. 2d 221, 226 (1951) (desirability of city's operation of electrical  
distribution system that duplicated system of public utility district was "a problem for the  
legislature—not the courts.").

1 telecommunications providers. Thus development of the Telecommunications System is a lawful  
2 corporate purpose of the municipality. The only remaining issue is whether the City may issue  
3 revenue bonds to construct the Telecommunications System. Because the City may issue bonds for  
4 any lawful municipal purpose, it may issue bonds to finance the Telecommunications System. The  
5 Defendants have not alleged bad faith or fraud on the part of the City. The City is entitled to  
6 judgment as a matter of law that it has authority to issue bonds for the purpose of financing  
7 construction and operation of the Telecommunications System.

8 DATED this 11th day of April, 1997.

9  
10 Respectfully submitted,

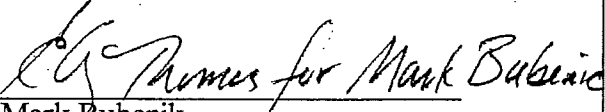
11 PRESTON GATES & ELLIS

12  
13 By 

14 Elizabeth Thomas, WSBA # 11544

Laura A. Rosenwald, WSBA # 25722

15 CITY OF TACOMA

16  
17 By 

18 Mark Bubenik, WSBA #3093

Chief Assistant City Attorney

Attorneys for Plaintiff City of Tacoma



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The Honorable Grant L. Anderson

SUPERIOR COURT  
ADMINISTRATION

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APR 14 1997

THOMPSON, KRILICH, LAPORTE  
ATTORNEYS AT LAW

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A.M. APR 14 1997 P.M.

PIERCE COUNTY, WASHINGTON  
TED RUTT, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

CITY OF TACOMA, a municipal corporation,

Plaintiff,

v.

THE TAXPAYERS AND THE RATEPAYERS  
OF THE CITY OF TACOMA,

Defendants.

No. 96-2-09938-0

SECOND DECLARATION OF JON  
ATHOW IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT

~~RECEIVED~~

~~APR 14 1997~~

~~THOMPSON, KRILICH, LAPORTE  
ATTORNEYS AT LAW~~

1. My name is Jon Athow. I am over the age of eighteen, competent to testify in this matter, and make this declaration based upon my own personal knowledge. I am employed by the Light Division of the City of Tacoma. My title is Telecommunications Project Manager. My responsibilities include planning for the creation and operation of a telecommunications system for the Light Division. I have been employed by the Light Division for three years.

2. The City of Tacoma, through its Light Division, is considering constructing and operating telecommunications facilities and services to enhance the Light Division's ability to provide highly reliable, cost-effective and convenient electric service to its customers. Such a system would also be capable of carrying other telecommunications services, including cable television service.

SECOND DECLARATION OF JON ATHOW IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT - 1

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PRESTON GATES & ELLIS LLP  
5000 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104-7078  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1           3.     The Light Division produced a Business Plan for the telecommunications system as a  
2 key element of its Telecommunications Study.

3           4.     The Telecommunications Study was unanimously approved by the Tacoma Public  
4 Utility Board on March 26, 1997. A copy of the Board's Substitute Resolution No. U-9258  
5 approving the Business Plan is attached as Exhibit A.

6           5.     On April 8, 1997 the Tacoma City Council held a public hearing on the proposed  
7 development of the telecommunications system and on the Business Plan. Public testimony was taken  
8 and the Council debated the matter for over two hours. Earlier the same day, the Council had  
9 conducted a three-hour workshop.

10          6.     The Telecommunications Study was unanimously approved by the Tacoma City  
11 Council on April 8, 1997. A copy of City Council Substitute Resolution No. 33668 approving the  
12 Telecommunications Study and authorizing implementation is attached as Exhibit B.

13          7.     On April 9, 1997 the Public Utility Board adopted Amended Substitute Resolution No  
14 U-9258 to conform the language of its resolution to City Council Substitute Resolution No. 33668.  
15 A copy of this Board Resolution is attached as Exhibit C.

16          8.     The Telecommunications Study is attached as Exhibit D. The Business Plan is  
17 comprised of all material contained behind the eleventh through sixteenth tabs.

18           I swear under the penalty of perjury of the laws of the State of Washington that the foregoing  
19 is true and correct.

20           Dated: April 11, 1997 at Tacoma, Washington.

21  
22   
23 \_\_\_\_\_  
24 Jon Athow  
25  
26



# RESOLUTION NO.

SUBSTITUTE  
U-9258

1  
2  
3 WHEREAS the City of Tacoma, Department of Public Utilities,  
4 Light Division desires to: (1) develop a state-of-the-art fiber optic  
5 technology to support enhanced electric system control, reliability and  
6 efficiency; (2) develop capability to meet the expanding  
7 telecommunications requirements in an evolving competitive electric  
8 market, the most critical of which is real-time, two-way interactive  
9 communications with individual energy consumers, (3) create greater  
10 revenue diversification through new business lines (i.e. internet transport,  
11 cable TV, etc.), (4) enhance traditional products and service, and (5)  
12 maximize return on Light Division assets, and

13 WHEREAS these desired capabilities can be provided with a broad  
14 band telecommunications system for all of the Light Division's service area,  
15 and

16 WHEREAS a broad band telecommunications system will have  
17 available capacity for future Light Division needs and will also have the  
18 capacity to provide Telecommunications services for data transport, high  
19 speed internet access, full cable television service, and other uses, and

20 WHEREAS the Light Division has retained consultants to review  
21 and analyze the feasibility of a broad band telecommunications systems for  
22 the Light Division's service area, and a business plan has been prepared  
23 for this purpose (copies are on file with the Clerk), and

24 WHEREAS the cost of constructing, installing and commencing to  
25 operate a broad band telecommunications system will be approximately  
26 \$65 million dollars, but the benefits to the Light Division, the City and the  
27 Light Division customers are projected to exceed and justify the initial cost,  
28 and  
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WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts, and debt financing approvals, quarterly reviews on the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the Public Utility Board hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve as a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Board hereby approves the Light Division's proposal including the Business Plan for a broad band telecommunications system, and the Board recommends that the City Council approve a resolution to authorize the Light Division to proceed to implement said proposal for a broad band telecommunications system, and the Board recommends that the City Council continue to be involved in the major policy decisions including construction contracts, debt financings, the public rights-of-way use agreements for telecommunications and quarterly reviews.

Approved as to form & legality:

Ross Singleton  
Acting Chairman

Mark Bubenik  
Chief Assistant City Attorney

W. J. Barker  
Acting Secretary

Lydia Stevenson  
Clerk

Adopted 3/26/97



SUBSTITUTE

**RESOLUTION NO. 33668**

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WHEREAS the City of Tacoma, Department of Public Utilities, Light Division desires to: (1) develop a state-of-the art fiber optic system to support enhanced electric system control, reliability and efficiency; (2) develop capability to meet the expanding telecommunications requirements in an evolving competitive electric market, the most critical of which is real-time, two-way interactive communications with individual energy consumers, (3) create greater revenue diversification through new business lines (i.e. internet transport, cable TV, etc.), (4) enhance traditional products and services, and (5) maximize return on Light Division assets, and

WHEREAS these desired capabilities can be provided with a broad band telecommunications system for all of the Light Division's service area, and

WHEREAS a broad band telecommunications system will have available capacity for future City Light Division needs and will also have the capacity to provide telecommunications services for data transport, high speed internet access, full cable television service, and other uses, and

WHEREAS the Light Division has retained consultants to review and analyze the feasibility of a broad band telecommunications system for the Light Division's service area, and a business plan has been prepared for this purpose (copies are on file with the Clerk), and

WHEREAS the cost of constructing, installing and commencing to operate a broad band telecommunications system will be approximately \$65 million dollars, but the benefits to the Light Division, the City and the Light Division customers are projected to exceed and justify the initial cost, and

**EXHIBIT B**



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WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts and debt financing approvals, quarterly reviews on-the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law or City Council) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the City Council hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve a public purpose, and should be approved and implemented; Now, therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

That the Council hereby finds and determines that the City Light Division's broad band telecommunications proposal is in the best interests of the City, will serve a public purpose and that the said Business Plan is sufficient and adequate, therefore, the Council hereby approves the Light Division's proposal including the Business Plan and the Department of Public Utilities, Light Division is hereby authorized to proceed to implement said proposal for a broad band telecommunications system, and

That the proposed broad band telecommunications system shall be owned, operated and controlled by the City of Tacoma Department of Public Utilities Light Division with the Public Utility Board providing oversight and approval of business and third party agreements, as appropriate under the City Charter, Tacoma Municipal Code and other applicable laws, and the City Council shall continue to be involved in the major policy decisions including



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construction contracts, rate setting policies, debt financings, the public rights-of-way use for telecommunications agreements and quarterly reviews.

Adopted \_\_\_\_\_

Mayor

Attest: City Clerk

Approved as to form & legality:

\_\_\_\_\_  
Chief Assistant City Attorney

Requested by Public Utility  
Board Resolution No. U-9258

599c



AMENDED  
SUBSTITUTE  
U-9258

## RESOLUTION NO.

1  
2 WHEREAS the City of Tacoma, Department of Public Utilities,  
3 Light Division desires to: (1) develop a state-of-the-art fiber optic system  
4 to support enhanced electric system control, reliability and efficiency;  
5 (2) develop capability to meet the expanding telecommunications  
6 requirements in an evolving competitive electric market, the most critical of  
7 which is real-time, two-way interactive communications with individual  
8 energy consumers, (3) create greater revenue diversification through new  
9 business lines (i.e. internet transport, cable TV, etc.), (4) enhance  
10 traditional products and service, and (5) maximize return on Light Division  
11 assets, and

12 WHEREAS these desired capabilities can be provided with a broad  
13 band telecommunications system for all of the Light Division's service area,  
14 and

15 WHEREAS a broad band telecommunications system will have  
16 available capacity for future Light Division needs and will also have the  
17 capacity to provide Telecommunications services for data transport, high  
18 speed internet access, full cable television service, and other uses, and

19 WHEREAS the Light Division has retained consultants to review  
20 and analyze the feasibility of a broad band telecommunications systems for  
21 the Light Division's service area, and a business plan has been prepared  
22 for this purpose (copies are on file with the Clerk), and

23 WHEREAS the cost of constructing, installing and commencing to  
24 operate a broad band telecommunications system will be approximately  
25 \$65 million dollars, but the benefits to the Light Division, the City and the  
26 Light Division customers are projected to exceed and justify the initial cost,  
27 and

28 EXHIBIT C





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WHEREAS the City Council and Public Utility Board will continue to be involved in the future decision-making on this proposal including construction contracts, and debt financing approvals, quarterly reviews on the project direction during the startup period, approval of agreements for use of City rights-of-way for telecommunications purposes which agreements will (to the extent required by law or City Council) treat the Light Division substantially similar to other franchises that the City grants for similar businesses, and

WHEREAS the Public Utility Board hereby finds and determines that the Light Division's proposal for a broad band telecommunications system is in the best interests of the City, will serve as a public purpose, and should be approved and implemented; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Board hereby approves the Light Division's proposal including the Business Plan for a broad band telecommunications system, and the Board recommends that the City Council approve a resolution to authorize the Light Division to proceed to implement said proposal for a broad band telecommunications system, and the Board recommends that the City Council continue to be involved in the major policy decisions including construction contracts, rate setting policies, debt financings, the public rights-of-way use agreements for telecommunications and quarterly reviews.

Approved as to form & legality:  
  
G. S. Karavitis  
Assistant City Attorney

Daryl Hedman  
Chairman  
Bil Moss  
Secretary

Lydia Stevenson  
Clerk

Adopted April 9, 1997

500d(a)

# EXHIBIT 31

PLANT TOTALS																			
Fiber Rings					Coax & Homes														
Ring	Footage	Mileage	Count		Nodes	List of Nodes													
			Used	Unused		Franchise	Homes	Footage	Mileage	Hrms/Mi	Sq Miles								
					Jul-14														
Backbone	218,592	41.4	180	55															
NW Ring 1	49,014	9.3	96	28	11	6,7,8,13S1,13S2,14,15S1,15S2,10,5,43				Tacoma	91,344	4,634,584	877.76	104.1	62.34				
NW Ring 2	48,658	9.2	96	34	12	2S1,12S2,16S1,16S2,17,18S1,18S2,44,11S1,11S2,3				University Place	13,098	803,336	152.15	86.1	8.56				
NW Ring 3	73,151	13.9	108	42	9	23S1,23S2,22,19,20,37,36,24,21				Fircrest	2,739	182,817	34.62	79.1	1.57				
NW Ring 4	83,705	15.9	144	36	16	31S1,31S2,34S1,34S2,38,45,39,46,42,40,41,35,33,32,30,29				Lakewood	8,428	530,971	100.56	83.8	34.74				
NW Ring 5	47,999	9.1	96	22	8	2,28,27,26,25,1S1,1S2,4				Fife	2,983	283,498	58.48	51.0	5.83				
5		98.7			56					P.C.N.	15,075	1,516,617	174.43	86.4	34.66				
NE Ring 1	110,627	21.0	132	58	10	9,5,4,1,2,3,6,7,8,13				Plant Ext. 2009	2,602	89,865	17.02						
NE Ring 2	46,384	8.8	72	48	0	would be 12				Plant Ext. 2010	361	39,547	7.49						
NE Ring 3	54,000	10.2	72	24	2	11,10				Plant Ext. 11-12	634	28,512	5.40						
NEF Ring 4	62,865	11.9	132	84	7	14,15,16,17,18,19,20				Plant Ext. 13-14	1,198	26,030	4.93						
4		51.9			19					Plant Ext. 15-16									
SE Ring 1	45,842	8.7	96	44	8	17,14,4,2,13,12,15,16				Plant Ext. 17-18									
SE Ring 2	66,140	12.5	108	44	8	18,25,20,24,23,22,9,19				Plant Ext. 19-20									
SE Ring 3	65,390	12.4	96	44	8	11,8,7,6,1,5,3,10													
SEC Ring 4	131,300	24.9	132	92	7	37,36,44,40,45,41,42				<b>Total Ext.</b>	<b>138,462</b>	<b>8,135,777</b>	<b>1432.85</b>						
SEC Ring 5	83,700	15.9	96	60	7	32,31,35,39,34,33				Plant Rtrmt 11-12		15,559	2.95						
SEC Ring 6	109,902	20.8	96	58	7	29,26,27,46,28,30,38				Plant Rtrmt 13-14		22,811	4.32						
Loveland Ring	71,332	13.5		48						Plant Rtrmt 15-16									
7		108.6			45					Plant Rtrmt 17-18									
SW Ring 1	68,546	13.0	132	64	12	6,5,4,3,2,1,7,9,8,11,10,43S1,43S2,SW Annex2				Plant Rtrmt 19-20									
SWU Ring 2	122,000	23.1	132	76	17	23,26,22,21,24,25,19,20,17,18,13,14,16,15,27,28,29				<b>Total Rtrmt</b>	<b>-</b>	<b>38,370</b>	<b>7.27</b>						
SWL Ring 3	103,600	19.6	132	98	10														
Military Loop																			
SCADA Ring	84,055	15.9	36	24															
4		71.6			39														
Downtown Network	108,240	20.5	144	Not Counted															
Business Ring DTN	61,248	11.6	36	Not Counted															
Business Ring DTS	34,320	6.5	36	Not Counted															
3		38.6																	
23			2400	1083		Unused fiber as of June 2012													
				0.496		Percentage not used minus uncounted DTWN													
<b>Total</b>	<b>1,950,610</b>	<b>369.4</b>			<b>159</b>	<b>152 w/out split nodes</b>					<b>138,462</b>	<b>8,097,407</b>	<b>1,426</b>						



# Surplus Property Hearing

Tacoma City Council Meeting

Public Hearing  
October 29, 2019



## PURPOSE



**Purpose:** This hearing is required pursuant to RCW 35.94.040. The purpose of this hearing is to take public testimony regarding a proposal to surplus property of Tacoma Power acquired for public utility purposes.

**Why is the property surplus:** In 1998, Tacoma Power built excess capacity in its HFC network for future anticipated utility needs. The Tacoma Public Utility Board has determined that this excess capacity together with certain property used by Click! Network are no longer needed by Tacoma Power for utility purposes and are surplus to Tacoma Power.

# Surplused Assets



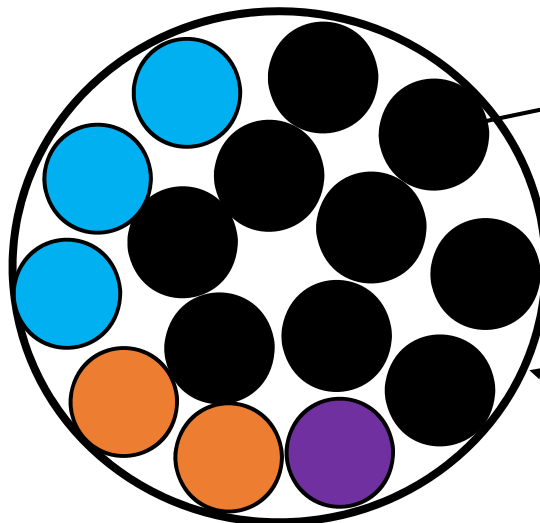
## What Property will be Included in the Surplus Declaration?

- Inventory, equipment and vehicles used by Click! Network that may be conveyed to Rainier Connect and which are described in the Click! Business Transaction Agreement and Indefeasible Right of Use Agreement
- Excess Capacity of the Tacoma Power HFC Network which includes the Click! Network and Dark Fiber as described in the Indefeasible Right of Use Agreement

## TACOMA POWER HFC NETWORK FIBER



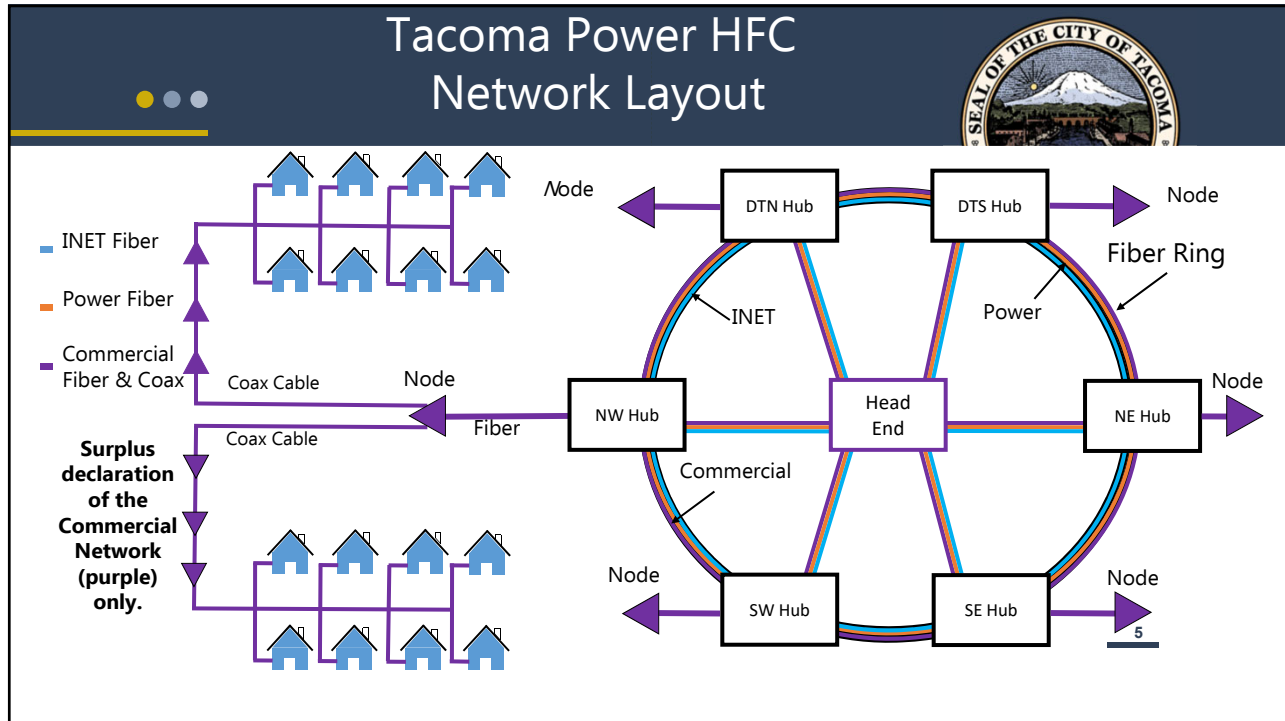
- 1 Commercial
- 9 Dark
- 3 INET
- 2 Power



12 Fibers

Surplus declaration of the Commercial Network (purple and black) only.

15 Tubes



## TIMING

**When will the Board and City Council take action?**

- **BOARD.** The Tacoma Public Utility Board has scheduled a special meeting for Wednesday October 30<sup>th</sup> to consider a resolution recommending that the City Council declare the property surplus and approving the Click! Business Transaction Agreement.
- **CITY COUNCIL.** The City Council will at its November 5<sup>th</sup> regular City Council Meeting consider approval of a resolution declaring the property surplus and approving the Click! Business Transaction Agreement.

6

# One Company Connecting The World™

## POWERFUL PRESENCE · PRODUCTS PERFORMANCE · PEOPLE

General Cable has been a wire and cable innovator for over 170 years, always dedicated to connecting and powering people's lives. Today, with approximately 14,000 employees and approaching \$6 billion in revenues, we are one of the largest wire and cable manufacturers in the world.

Our company serves customers through a network of 38 manufacturing facilities in our core markets and has worldwide sales representation and distribution. We are dedicated to the production of high-quality aluminum, copper and fiber optic wire and cable and systems solutions for the energy, construction, industrial, specialty and communications sectors. With a vast portfolio of products to meet thousands of diverse application requirements, we continue to invest in research and development in order to maintain and extend our technology leadership by developing new materials, designing new products, and creating new solutions to meet tomorrow's market challenges.

In addition to our strong brand recognition and strengths in technology and manufacturing, General Cable is also competitive in such areas as distribution and logistics, marketing, sales and customer service. This combination enables us to better serve our customers globally and as they expand into new geographic markets.

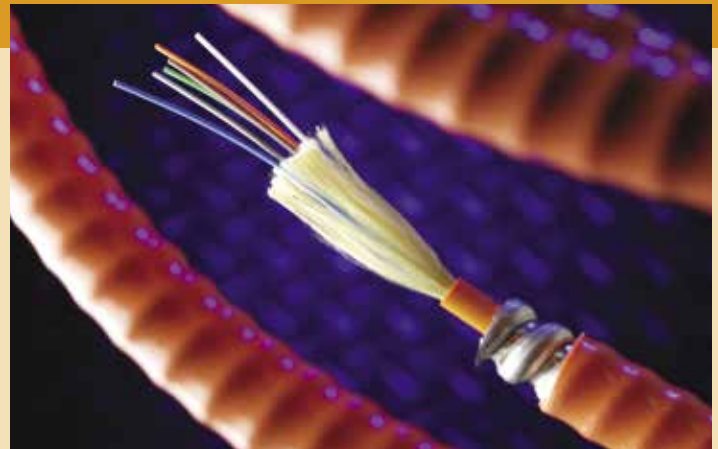
**General Cable offers our customers all the strengths and value of a large company, but our people give us the agility and responsiveness of a small one. We service you globally and locally.**



Visit our Website at  
[www.generalcable.com](http://www.generalcable.com)

## Optical Fiber

General Cable, Corning® Optical Fiber. Names that are synonymous with cable and fiber combine to create the ultimate in fiber optics. General Cable partners with Corning Optical Fiber to deliver the world's most reliable and technologically advanced optical fiber cables.



### Singlemode

#### Standard

General Cable utilizes Corning® SMF-28e+™ fiber as its standard singlemode offering. This is a full-spectrum fiber that is fully backward-compatible with legacy singlemode fiber. It enables increased optical launch power of legacy singlemode fiber, improved macrobend specifications from 0.05 dB to 0.03 dB, and tighter zero dispersion wavelength ( $\lambda_0$ ) tolerance from a range of  $\pm 10$  nm to  $\pm 7$  nm. This fiber supports all broadband applications and complies with the most stringent industry standards, such as:

- ITU-T G.652 (Tables A, B, C and D)
- IEC 60793-2-50 Type B1.3
- ISO 11801 052
- TIA/EIA 492-CAAB
- Telecordia GR-20-CORE

#### Long-Haul

For long-haul applications, rely on General Cable's long history of cable experience and the technology of Corning® LEAF® fiber. This is the most widely deployed non-zero dispersion shifted (NZ-DSF) fiber in the world and the first low water peak NZ-DSF fiber. Its large effective area and industry-leading polarization mode dispersion (PMD) specifications enable 10 Gb/s and 40 Gb/s network systems of the future.

#### ClearCurve® ZBL

General Cable, utilizing Corning® ClearCurve® ZBL Optical Fiber, delivers the best macrobending performance in the industry while maintaining compatibility with current optical fibers, equipment, practices and procedures. This full-spectrum singlemode optical fiber, when subjected to smaller radii bends, experiences virtually no signal loss. ClearCurve fiber exceeds the most stringent bend performance requirements of ITU-T Recommendations G.657.B3 while remaining fully compliant with ITU-T Recommendation G.652.D and the installed base of Corning SMF-28e® and SMF-28e+® fiber.

### Multimode

#### ClearCurve® Multimode Fiber

Corning® ClearCurve® ultra-bendable laser-optimized™ multimode optical fiber delivers the best macrobending performance in the industry while maintaining compatibility with current optical fibers, equipment, practices and procedures. ClearCurve OM3/OM4 multimode fiber is designed to withstand tight bends and challenging cable routes with substantially less signal loss than conventional multimode fiber.

These fibers have superior measurement technology and manufacturing control, and industry-leading CPC® coatings for superior microbend and environmental performance. ClearCurve fiber performance is ensured by minEMBc, the industry's leading standards-approved bandwidth measurement for OM3 fibers. ClearCurve fibers are the only ones to use this measurement to ensure 10 Gb/s performance.

#### 50 micron

These fibers support data rates of 10 Gb/s at 850 nm. They also comply with the most stringent industry standards, such as:

- ISO/IEC 11801, type OM2, OM3 and OM4\* fibers
- IEC 60793-2-10, type A1a.1, A1a.2 and A1a.3\* fibers
- TIA/EIA, 492AAAB, 492AAAC-A and 492AAAD

\* Assumes IEC draft standard is harmonized with 492AAAD, which was approved by TIA

#### 62.5 micron

These fibers support data rates of 1 Gb/s in both the 850 nm and 1300 nm windows. They comply with the most stringent industry standards, such as:

- ISO/IEC 11801, type OM1 fiber
- IEC 60793-2-10, type A1b fiber
- TIA/EIA, 492AAAA-A



# Color Coding Charts

## Color coding in compliance with TIA/EIA 598 C.3

### LOOSE TUBE BUFFER COLOR CODING

POSITION NUMBER	BASE COLOR AND TRACER	ABBREVIATION
1	Blue	BL
2	Orange	OR
3	Green	GR
4	Brown	BR
5	Slate	SL
6	White	WH
7	Red	RD
8	Black	BK
9	Yellow	YL
10	Violet	VI
11	Rose	RS
12	Aqua	AQ
13	Blue with Black Tracer	D/BL <sup>1</sup>
14	Orange with Black Tracer	D/OR
15	Green with Black Tracer	D/GR
16	Brown with Black Tracer	D/BR
17	Slate with Black Tracer	D/SL
18	White with Black Tracer	D/WH
19	Red with Black Tracer	D/RD
20	Black with Yellow Tracer	D/BK
21	Yellow with Black Tracer	D/YL
22	Violet with Black Tracer	D/VI
23	Rose with Black Tracer	D/RS
24	Aqua with Black Tracer	D/AQ

1) "D/" denotes a dashed mark or tracer. That is, D/BL is Dash-Blue, meaning blue with a tracer.

### TIGHT BUFFER COLOR CODING

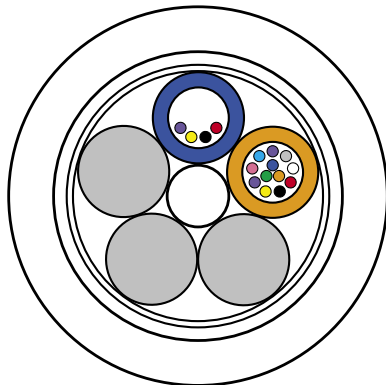
POSITION NUMBER	BASE COLOR AND TRACER	ABBREVIATION
1	Blue	BL
2	Orange	OR
3	Green	GR
4	Brown	BR
5	Slate	SL
6	White	WH
7	Red	RD
8	Black	BK
9	Yellow	YL
10	Violet	VI
11	Pink	PK
12	Aqua	AQ
13	Blue with Black Tracer	D/BL <sup>1</sup>
14	Orange with Black Tracer	D/OR
15	Green with Black Tracer	D/GR
16	Brown with Black Tracer	D/BR
17	Slate with Black Tracer	D/SL
18	White with Black Tracer	D/WH
19	Red with Black Tracer	D/RD
20*	Black with Black Tracer	D/BK
21	Yellow with Black Tracer	D/YL
22	Violet with Black Tracer	D/VI
23	Rose with Black Tracer	D/RS
24	Aqua with Black Tracer	D/AQ

1) "D/" denotes a dashed mark or tracer. That is, D/BL is Dash-Blue, meaning blue with a tracer.

\* Black tracer is visible on black buffer tube.

### JACKET COLOR CODING

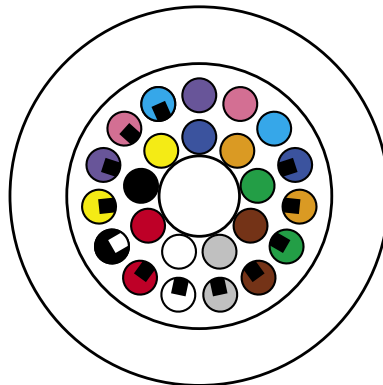
CONSTRUCTION	FIBER TYPE	JACKET COLOR
TIGHT BUFFER	Multimode	Orange
	10 G Multimode	Aqua
	Singlemode	Yellow
	Hybrid	Black
LOOSE TUBE	Multimode	Black
	10 G Multimode	
	Singlemode	
	Hybrid	



For loose tube hybrid cable constructions, cables containing both singlemode (SM) and multimode (MM), the first tubes in the TIA/EIA 598 color-coded tubes will contain singlemode, and the remaining tubes will contain multimode.

#### Ordering Part Number Example

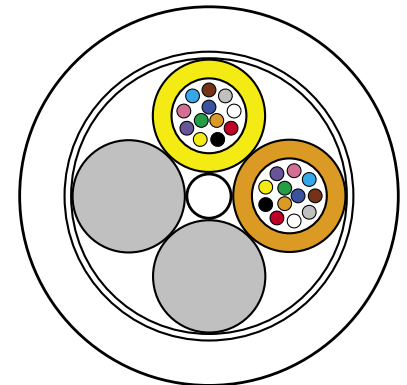
AQ012/BE0124M1A-DWB



For tight buffered single pass hybrid cable constructions ( $\leq 24$  fibers), cables containing both singlemode and multimode, the first buffers in the TIA/EIA 598 color-coded tubes will contain singlemode, and the remaining buffers will contain multimode.

#### Ordering Part Number Example

AP012/BE0121PNU



For tight buffered subunit hybrid cable constructions ( $\geq 24$  fibers), cables containing both singlemode and multimode, the singlemode subunit tubes will be yellow and numerically marked, 62.5  $\mu$  multimode subunit tubes will be orange and numerically marked, and 50  $\mu$  multimode subunit tubes will be aqua and numerically marked.

#### Ordering Part Number Example

AP012/BE0121P1R

# Data Age 2025:

The Evolution of Data to Life-Critical

Don't Focus on Big Data; Focus on the Data That's Big

## EXECUTIVE SUMMARY

We are fast approaching a new era of the Data Age. From autonomous cars to humanoid robots and from intelligent personal assistants to smart home devices, the world around us is undergoing a fundamental change, transforming the way we live, work, and play.

Imagine being awoken and tended to by a virtual personal assistant that advises you on what clothing from your wardrobe is best suited to the weather report and your schedule for the day or being transported by your self-driving car. Or perhaps you won't need to commute to an office at all as technology will allow you to conjure workspaces out of thin air using interactive surfaces, and holographic teleconferencing becomes the norm for communicating virtually with colleagues. Weekends may involve browsing new furniture through an augmented reality app and seeing how a sofa looks in your living room before placing an order. As you relax on the new sofa, Saturday night's takeout will be a pizza made by a robot and delivered in record time by a drone.

Data has become critical to all aspects of human life over the course of the past 30 years; it's changed how we're educated and entertained, and it informs the way we experience people, business, and the wider world around us. It is the lifeblood of our rapidly growing digital existence. This digital existence, as defined by the sum of all data created, captured, and replicated on our planet in any given year is growing rapidly, and we call it the "*global datasphere*". In just the past 10 years society has witnessed the transition of analog to digital. What the next decade will bring using the power of data is virtually limitless.

While we as consumers will enjoy the benefits of a digital existence, enterprises around the globe will be embracing new and unique business opportunities, powered by this wealth of data and the insight it provides. Extracting and delivering simplicity and convenience from the complexity of many billions of bytes – be it through

robotics, 3D printing, or some other yet-to-come technological innovation – will be the order of the day. The opportunities already seem limitless, as does the sheer volume of data these connected devices and services will create.

From power grids and water systems to hospitals, public transportation, and road networks, the growth of real-time data is remarkable for its volume and criticality. Where once data primarily drove successful business operations, today it is a vital element in the smooth operation of all aspects of daily life for consumers, governments, and businesses alike.

In this white paper, sponsored by Seagate, IDC looks at the trends driving growth in the global datasphere from now to 2025. We look at their implications for people and businesses as they manage, store, and secure their most critical data.

IDC forecasts that by 2025 the global datasphere will grow to 163 zettabytes (that is a trillion gigabytes). That's ten times the 16.1ZB of data generated in 2016. All this data will unlock unique user experiences and a new world of business opportunities.

Data Age 2025 describes five key trends that will intensify the role of data in changing our world:

- **The evolution of data from business background to life-critical.** Once siloed, remote, inaccessible, and mostly underutilized, data has become essential to our society and our individual lives. In fact, IDC estimates that by 2025, nearly 20% of the data in the global datasphere will be critical to our daily lives and nearly 10% of that will be hypercritical.
- **Embedded systems and the Internet of Things (IoT).** As standalone analog devices give way to connected digital devices, the latter will generate vast amounts of data that will, in turn, allow us the chance to refine and improve our systems and processes in previously unimagined ways. Big Data and metadata (data about data) will eventually touch nearly every aspect of our lives — with profound consequences. By 2025, an average connected person anywhere in the world will interact with connected devices nearly 4,800 times per day — basically one interaction every 18 seconds.

## Conclusion

There is a massive opportunity for data to affect positive change on all of human society. Not only is data making business more effective, but it is in the process of transforming every aspect of the individual's life. Not only do new-paradigm services like those from Uber and Netflix depend on data, but the same is true for our cities, hospitals, stores, businesses of all type, and soon every single aspect of human society. We are finding ways for data to make our lives better that we didn't imagine even a few years ago.

The way society uses data is going through a fundamental shift:

- From entertainment to productivity
- From business focused to hyperpersonal
- From structured to unstructured
- From selective to ubiquitous
- From retrospective to here and now
- From life-enhancing to life-critical

As computing power becomes increasingly distributed, moving to the cloud and into the everyday IoT devices and infrastructure that surround us, data will continue to drive fundamental improvements to businesses, industries, our processes, and our everyday lives. These trends are causing the total amount of all data on the planet, the global datasphere, to grow exponentially. With three-quarters of the world's population soon to be connected, digital data will affect the life of nearly every human being, essentially becoming the lifeblood of our increasing digital existence.

The use and integration of data in businesses and our lives are quickly moving to real time. As such, data is delivered to not only inform but also determine actions — sometimes autonomously. While entertainment remains an important driver of data creation and consumption, it is ceding share to productivity data that will bring more efficiency and automation to not only business workflows but also the everyday stream of life. Therefore, the stakes are rising and, with them, the critical importance of our data's veracity and timeliness.

The lessons embodied in the forecast and analysis of our data-driven world include the following:

- As data becomes more life critical, business critical, real time, and mobile, the entities that manage and store it will need to develop measured approaches to increasing reliability, lowering latency, and increasing security. This process may start with audits but will need to be backed up with investment, coherent strategies, and top-notch IT talent.
- The migration of analytics from a post-activity event to a real-time and predictive enterprise will demand a step-function increase in the use of analytics for evidence-based decision making. This means not just digital transformation of an organization's processes but also the culture and organizational structure of the organization. Analytics will become a competitive advantage.
- The security and privacy challenges cannot be underplayed. Data breaches can put companies out of business, targeted attacks can halt operations, and hacking can compromise trade secrets. The business, IT, and security professionals in an organization must continually emphasize throughout the organization that security is not simply an IT technical problem with a purely technical solution. Rather, it is an organizational need requiring the participation of employees at all levels.
- The IoT will drive — or force — merged operations between the business leaders and IT departments accustomed to supporting back-office and financial functions and those that run operational systems — labs, operating rooms, factory floors, electrical grids, cable headends, and so forth — as all digital activity migrates to IP networks. Since IoT is one of the fundamental technology pillars of business improvement in the decades to come, optimized use of associated data is one of the key drivers of business success starting today. Leadership and technical integration will be critical to making the best use of IoT technology or at least avoiding chaos.
- The aggregate effect of the trends driving the global datasphere to new zettabyte levels is to make digital transformation an all-hands-on-deck effort for organizations to navigate the next decade successfully. It will also drive increasing reliance on third parties, from cloud providers and software firms to the baseline technology suppliers. Thus vendor selection will better be seen as a leadership function and partnering function rather than a procurement function. The organization will depend on it.

The 163ZB global datasphere projected in Data Age 2025 is only the beginning as we anticipate the increasingly connected and data-driven world. A decade in technology years can, and likely will, bring about unforeseen advancements, use cases, businesses, and life-changing services that rely on the digital lifeblood called data. The storage industry and all its participants will find no lack of customers looking to store their precious bits, which will help drive even the most intimate parts of our businesses and lives across the globe and make up part of our global datasphere.

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## About IDC

International Data Corporation (IDC) is the premier global provider of market intelligence, advisory services, and events for the information technology, telecommunications and consumer technology markets. IDC helps IT professionals, business executives, and the investment community make fact-based decisions on technology purchases and business strategy. More than 1,100 IDC analysts provide global, regional, and local expertise on technology and industry opportunities and trends in over 110 countries worldwide. For 50 years, IDC has provided strategic insights to help our clients achieve their key business objectives. IDC is a subsidiary of IDG, the world's leading technology media, research, and events company.

## Executive Summary

# Mankind is on a quest to digitize the world

The focus of this digitization is anything and everything that intersects our business workflows and personal streams of life.

This process of digitization is often referred to as digital transformation, and it is profoundly changing the shape of business today, impacting companies in every industry and consumers around the world. Digital transformation is not about the evolution of devices (though they will evolve), it is about the integration of intelligent data into everything that we do.

The data-driven world will be always on, always tracking, always monitoring, always listening, and always watching – because it will be always learning. What we perceive to be randomness will be bounded into patterns of normality by sophisticated artificial intelligence algorithms that will deliver the future in new and personalized ways. Artificial intelligence

will drive even more automation into businesses and feed processes and engagements that will deliver new levels of efficiency and products that are tailored to business outcomes and individual customer preferences.

Traditional paradigms will be redefined (like vehicle or white goods ownership) and ethical, moral and societal norms will be challenged as genomics and advanced DNA profiling influence healthcare directives, insurance premiums, and spousal choices. Entertainment will literally be transformed before our eyes as virtual reality technologies transport us into new digital realities and augmented reality will dramatically change the service industry as we know it today.

The data-driven world will be **always on, always tracking, always monitoring, always listening** and **always watching – because it will be always learning.**

Data is at the heart of digital transformation, the lifeblood of this digitization process. Today, companies are leveraging data to improve customer experiences, open new markets, make employees and processes more productive, and create new sources of competitive advantage – working toward the future of tomorrow.

### Global Datasphere expansion is never-ending

IDC has defined three primary locations where digitization is happening and where digital content is created: the core (traditional and cloud datacenters), the edge (enterprise-hardened infrastructure like cell towers and branch offices), and the endpoints (PCs, smart phones, and IoT devices). The summation of all this data, whether it is created, captured, or replicated, is called the Global Datasphere, and it is experiencing tremendous growth. IDC predicts that the Global Datasphere will grow from 33 Zettabytes (ZB) in 2018 to 175 ZB by 2025.

To keep up with the storage demands stemming from all this data creation, IDC forecasts that over 22 ZB of storage capacity must ship across all media types from 2018 to 2025, with nearly 59% of that capacity supplied from the HDD industry.

### An enterprise renaissance is on the horizon

The enterprise is fast becoming the world's data steward...again. In the recent past,

consumers were responsible for much of their own data, but their reliance on and trust of today's cloud services, especially from connectivity, performance, and convenience perspectives, continues to increase while the need to store and manage data locally continues to decrease. Moreover, businesses are looking to centralize data management and delivery (e.g., online video streaming, data analytics, data security, and privacy) as well as to leverage data to control their businesses and the user experience (e.g., machine-to-machine communication, IoT, persistent personalization profiling). The responsibility to maintain and manage all this consumer and business data supports the growth in cloud provider datacenters. As a result, the enterprise's role as a data steward continues to grow, and consumers are not just allowing this, but expecting it. Beginning in 2019, more data will be stored in the enterprise core than in all the world's existing endpoints.

IDC predicts that the Global Datasphere will grow from **33 Zettabytes** in 2018 to **175 Zettabytes** by 2025



## Cloud is the new core

One of the key drivers of growth in the core is the shift to the cloud from traditional datacenters. As companies continue to pursue the cloud (both public and private) for data processing needs, cloud datacenters are becoming the new enterprise data repository. In essence, the cloud is becoming the new core. In 2025 IDC predicts that 49% of the world's stored data will reside in public cloud environments.

## Introducing the world's first data readiness condition (DATCON) index

Not all industries are prepared for their digitally transformed future. So, to help companies understand their level of data readiness, IDC developed a DATCON (DATA readiness CONdition) index, designed to analyze various industries regarding their own Datasphere, level of data management, usage, leadership, and monetization capabilities. IDC examined four industries as part of its DATCON analysis: financial services, manufacturing, healthcare, and media and entertainment. Manufacturing's Datasphere is by far the largest given its maturity, investment in IoT, and 24x7 operations, and we found that

manufacturing and financial services are the leading industries in terms of maturity, with media and entertainment most in need of a jump start.

## China's Datasphere on pace to becoming the largest in the world

Every geographic region has its own Datasphere size and trajectories that are impacted by population, digital transformation progress, IT spend and maturity, and many other metrics. For example, China's Datasphere is expected to grow 30% on average over the next 7 years and will be the largest Datasphere of all regions by 2025 (compared to EMEA, APJxC, U.S., and Rest of World) as its connected population grows and its video surveillance infrastructure proliferates. (APJxC includes Asia-Pacific countries, including Japan, but not China.)

## Consumers are addicted to data, and more of it in real-time

As companies increase the digitization of their business and drive consistent and better customer experiences, consumers are embracing these personalized real-time

In 2025  
IDC predicts  
that

**49%**

of the world's stored  
data will reside in public  
cloud environments

engagements and resetting their expectations for data delivery. As their digital world overlaps with their physical realities, they expect to access products and services wherever they are, over whatever connection they have, and on any device. They want data in the moment, on the go, and personalized. This places greater demand on both the edge and the core to be able to produce the precise data consumers require, often in real-time. IDC predicts that due to the infusion of data into our business workflows and personal streams of life, that nearly 30% of the Global Datasphere will be real-time by 2025. Enterprises looking to provide superior customer experience and grow share must

have data infrastructures that can meet this growth in real-time data.

Today, more than 5 billion consumers interact with data every day – by 2025, that number will be 6 billion, or 75% of the world's population. In 2025, each connected person will have at least one data interaction every 18 seconds. Many of these interactions are because of the billions of IoT devices connected across the globe, which are expected to create over 90ZB of data in 2025.

## About this study

This study is based on IDC's ongoing Global DataSphere research and market sizing models. Industry and specific geographic DataSphere research was conducted in September 2018 by IDC. In addition, 2,400 enterprise decision makers were surveyed, and in-depth interviews were conducted with senior IT executives at a variety of industries to inform this study. The survey was with decision makers who had responsibility for or knowledge of their organization's use, management, and storage of data leveraging advanced technologies including Internet of Things, real-time analytics, and AI/machine learning. The survey spanned several countries and regions including the United States, China, EMEA, APJxC, and others.



# Global Datasphere Expansion is Never-ending

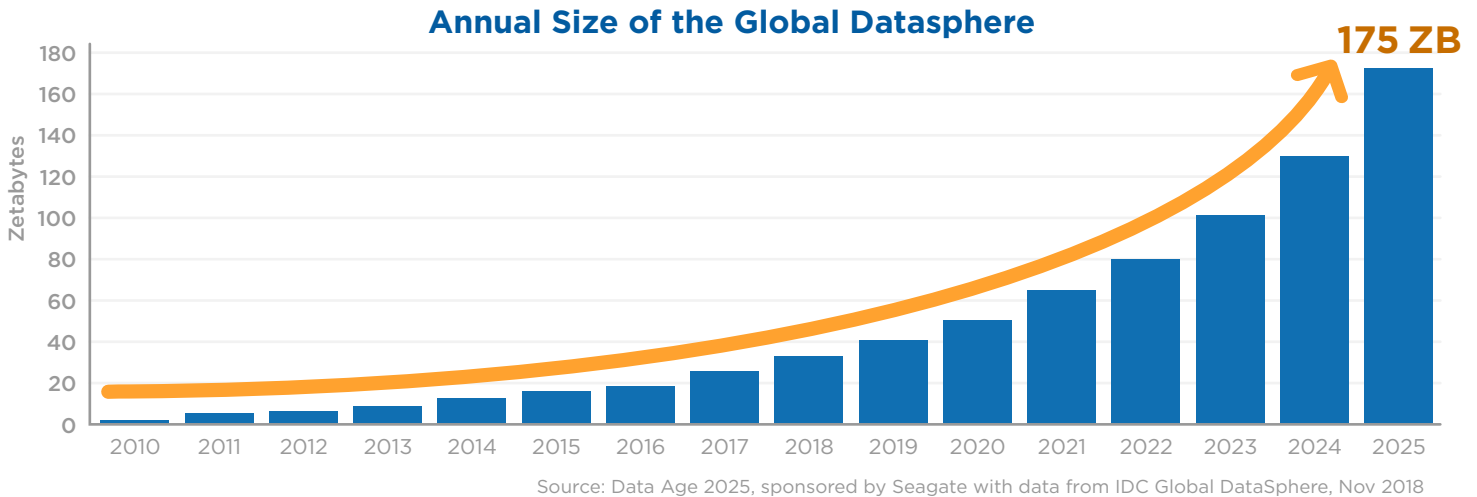
The use of data today is transforming the way we live, work, and play. Businesses in industries around the world are using data to transform themselves to become more agile, improve customer experience, introduce new business models, and develop new sources of competitive advantage. Consumers are living in an increasingly digital world, depending on online and mobile channels to connect with friends and family, access goods and services, and run nearly every aspect of their lives, even while asleep.

Much of today's economy relies on data, and this reliance will only increase in the future as

companies capture, catalog, and cash in on data in every step of their supply chain; enterprises collect vast sums of customer data to provide greater levels of personalization; and consumers integrate social media, entertainment, cloud storage, and real-time personalized services into their streams of life.

The consequence of this increasing reliance on data will be a never-ending expansion in the size of the Global Datasphere. Estimated to be 33 ZB in 2018, IDC forecasts the Global Datasphere to grow to 175 ZB by 2025. (Figure 1). See Appendix for methodology and data/device categories.

Figure 1 - Annual Size of the Global Datasphere



MRI image creation is driving storage requirements significantly. The trend is more images with thinner slices and 3D capability. We've gone from 2,000 images to over 20,000 for an MRI of a human head, and stronger magnets and higher resolution pictures means more data stored.

- Senior Director in IT, Major Healthcare Provider

# EXHIBIT 32



## AMENDED RESOLUTION NO. U-10828

1 A RESOLUTION relating to Click! Network; authorizing Click! to prepare a  
2 business plan to provide, in addition to retail cable television, retail  
3 internet services including voice over data internet ("VoIP") protocol,  
commercial broadband and Gigabit service ("Retail Services").

4 WHEREAS the City Council of Tacoma authorized the Department of  
5 Public Utilities ("TPU"), Light Division (dba "Tacoma Power"), to implement and  
6 manage a broadband telecommunication system ("Click! Network" or "Click!" as  
7 authorized through City Council Substitute Resolution No. 33668, approved  
8 April 8, 1997, and Public Utility Board Amended Substitute Resolution U-9258  
9 approved April 9, 1997), and

10  
11 WHEREAS Tacoma Power provided retail cable TV services to  
12 customers, wholesale internet to independent Internet Service Providers  
13 ("ISPs") who served retail customers and wholesale broadband service to  
14 business customers, and

15  
16 WHEREAS the broadband telecommunication system is critical  
17 infrastructure for Tacoma Power, including the connection of substations,  
18 support of approximately 18,000 Gateway smart meters, as well as providing  
19 support for the City's I-net system, and

20  
21 WHEREAS the City Charter Section 4.6 requires a vote of the people  
22 before the City may sell, lease, or dispose of any utility system, or parts thereof  
23 essential to continued effective utility service, and

24  
25 WHEREAS the presence of Click! Cable TV in the marketplace provided  
26 savings for all cable TV customers, regardless of provider, in the Click! Market



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territory as compared to other Puget Sound market areas to an estimated average savings of \$10 million dollars a year, between 2004 and 2008, and

WHEREAS Click! services currently reaches 26.2% of the customers in the service territory with one or more of its services (Cable TV only, Internet only or Cable TV and Internet) according to Click! customer counts, and

WHEREAS 61% of those polled in May of 2015 said that it would be a good idea for Click! to provide internet service directly to customers, and

WHEREAS Click! infrastructure could provide Gigabit internet speeds to customers in the entire service territory with capital investment, and

WHEREAS customers' use of internet is increasing and use of Cable TV is decreasing, just as the cost for Cable TV is increasing significantly for the Click! network, and

WHEREAS Click!'s current business model creates future potential financial losses that may require the use of Tacoma Power ratepayer funds, and

WHEREAS the Public Utility Board has determined that the most reasonable path to meeting community objectives and financial sustainability is to pursue a business model where Click! offers additional retail products directly to its customers, including retail cable TV, Internet, voice over Internet (VoIP), and commercial broadband services ("All-In Retail model"); Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Sec. 1. Definitions.



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scheduled basis established by the Committee and Click!. The Public Utility Board and the City Council may consider delegating specific authority in the governance of Click! to the Click! Engagement Committee in the future as the Business Plan is further developed and implemented.

Sec. 4. Prior to implementing the Business Plan contemplated in this resolution, TPU and the City's Legal Department, shall seek a legal opinion or declaratory judgment in Pierce County Superior Court, to confirm that Tacoma Power may operate the City of Tacoma's telecommunications system in accordance with the business plan. The City's Legal Department shall include in its request for a legal opinion or declaratory judgment, those specific components of the business plan necessary to provide the Utility Board and the City Council comfort that they may fully implement the business plan reasonably without threat of disruption by legal challenge. TPU and the City's Legal Department are authorized to utilize the services of third-party legal advisors in connection with this activity.

Sec. 5. Click! shall review and resubmit rate adjustments budgeted and proposed by Click! and approved by the Public Utility Board (previously approved by Board Resolution U-10773 on April 22, 2015), that support the Business Plan and the City Council is requested to approve an ordinance amending Tacoma Municipal Code Chapter 12.13, to authorize said rate adjustments.

Sec. 6. A fiscal note is attached to and incorporated in this Resolution U-10828. The fiscal note estimates the Capital and O&M budget requirements and impacts in addition to the financial gains and losses anticipated over the next five (5) years, in connection with the Click! business plan contemplated herein.

Approved as to form and legality:

William C. Foster  
Chief Deputy City Attorney

Charmaine Jacobs  
Clerk

[Signature]  
Chair  
Monique Juedowski  
Secretary

Adopted 12-3-15

# EXHIBIT 33



CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 2639**

Chapter 198, Laws of 2008

60th Legislature  
2008 Regular Session

RENEWABLE RESOURCES--PROCUREMENT--PUBLIC AGENCIES

EFFECTIVE DATE: 06/12/08

Passed by the House March 8, 2008  
Yeas 93 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 6, 2008  
Yeas 46 Nays 2

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 27, 2008, 4:08 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2639** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 28, 2008

**Secretary of State  
State of Washington**

1 professional service and whose certificate of formation sets forth that  
2 it is a professional limited liability company subject to RCW  
3 25.15.045.

4 (11) "Professional service" means the same as defined under RCW  
5 18.100.030.

6 (12) "State" means the District of Columbia or the Commonwealth of  
7 Puerto Rico or any state, territory, possession, or other jurisdiction  
8 of the United States other than the state of Washington.

9 **Sec. 5.** RCW 54.16.180 and 1999 c 69 s 1 are each amended to read  
10 as follows:

11 (1) A district may sell and convey, lease, or otherwise dispose of  
12 all or any part of its works, plants, systems, utilities and  
13 properties, after proceedings and approval by the voters of the  
14 district, as provided for the lease or disposition of like properties  
15 and facilities owned by cities and towns(~~(:—PROVIDED, That)~~). The  
16 affirmative vote of three-fifths of the voters voting at an election on  
17 the question of approval of a proposed sale, shall be necessary to  
18 authorize such a sale(~~(:—PROVIDED FURTHER, That)~~).

19 (2) A district may, without the approval of the voters, sell,  
20 convey, lease, or otherwise dispose of all or any part of the property  
21 owned by it(~~(7)~~) that is located:

22 (a) Outside its boundaries, to another public utility district,  
23 city, town or other municipal corporation (~~(without the approval of the~~  
24 ~~voters)~~); or (~~(may sell, convey, lease, or otherwise dispose of to any~~  
25 ~~person or public body, any part, either)~~)

26 (b) Within or without its boundaries, which has become  
27 unserviceable, inadequate, obsolete, worn out or unfit to be used in  
28 the operations of the system and which is no longer necessary, material  
29 to, and useful in such operations, (~~(without the approval of the~~  
30 ~~voters:—PROVIDED FURTHER, That)~~) to any person or public body.

31 (3) A district may sell, convey, lease or otherwise dispose of  
32 items of equipment or materials to any other district, to any  
33 cooperative, mutual, consumer-owned or investor-owned utility, to any  
34 federal, state, or local government agency, to any contractor employed  
35 by the district or any other district, utility, or agency, or any  
36 customer of the district or of any other district or utility, from the  
37 district's stores without voter approval or resolution of the

## CHAPTER 390.

[ S. B. 367. ]

## PUBLIC UTILITY DISTRICTS.

AN ACT relating to powers of public utility districts and amending section 1, chapter 143, Laws of 1945, as last amended by sections 1 and 2, chapter 209, Laws of 1951 and RCW 54.16.010 through 54.16.190.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Section 1, chapter 143, Laws of 1945, as last amended by sections 1 and 2, chapter 209, Laws of 1951 (heretofore codified as RCW 54.16.010 through 54.16.190) is divided and amended as set forth in sections 2 through 20 of this act.

Division and amendment.

SEC. 2. (RCW 54.16.010) A district may make a survey of hydroelectric power, irrigation, and domestic water supply resources within or without the district, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole.

Enacted without amendment.

Survey authorized.

SEC. 3. (RCW 54.16.020) A district may construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop, and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights of way, franchises, plants, plant facilities, and systems for generating electric energy by water power, steam, or other methods; plants, plant facilities, and systems for developing, conserving, and distributing water for domestic use and irrigation; buildings, structures, poles and pole lines, and cables and conduits and any and all other facilities; and may exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and

Enacted without amendment.

Powers of district.

the property of the appellant. In the same manner as provided with reference to cities of the first class an appeal shall lie to the supreme court from the judgment of the superior court, as in other cases, if taken within fifteen days after the date of the entry of the judgment in the superior court. Engineering, office, and other expenses necessary or incident to the improvement shall be borne by the public utility district: *Provided*, That when a municipal corporation included in the public utility district already owns or operates a utility of a character like that for which the assessments are levied hereunder, all such engineering and other expenses shall be borne by the local assessment district.

Right of appeal to supreme court.

Expenses.

Enacted without amendment.

Limitation on cost burden.

SEC. 18. (RCW 54.16.170) When an improvement is ordered hereunder, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire public utility district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority of the electors of the district consent to or ratify the making of such expenditure.

Enacted without amendment.

Sale, lease, conveyance of property authorized; vote on proposed sale.

SEC. 19. (RCW 54.16.180) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns: *Provided*, That the affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such sale: *Provided further*, That a district may sell, convey, lease, or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to an-

other public utility district, city, town, or other municipal corporation without the approval of the voters; or may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, without the approval of the voters. Public utility districts are municipal corporations for the purpose of this section and the commission shall be held to be the legislative body and the president and secretary shall have the same powers and perform the same duties as the mayor and city clerk and the resolutions of the districts shall be held to be ordinances within the meaning of the statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns.

Public utility districts—municipal corporations.

SEC. 20. (RCW 54.16.190) The commission of a district may adopt general resolutions to carry out the purposes, objects, and provisions of this title.

Enacted without amendment. General resolutions.

Passed the Senate March 9, 1955.

Passed the House March 8, 1955.

Approved by the Governor March 22, 1955.

## CHAPTER 143.

[ H. B. 342. ]

## PUBLIC UTILITY DISTRICTS.

AN ACT relating to public utility districts; providing for the sale of certain properties by said districts to other public utility districts, municipal corporations and public agencies in the state without an election; relating to the covenants of resolutions authorizing the issue of revenue bonds or warrants; amending section 6, chapter 1, Laws of 1931 (section 11610, Remington's Revised Statutes, also Pierce's Perpetual Code 833-11); and section 3, chapter 182, Laws of 1941 (section 11611-3, Remington's Revised Statutes, also Pierce's Perpetual Code 833-29).

*Be it enacted by the Legislature of the State of Washington:*

Amenu-  
ments.

SECTION 1. Section 6, chapter 1, Laws of 1931 (section 11610, Remington's Revised Statutes, also Pierce's Perpetual Code 833-11), is amended to read as follows:

Section 6. All public utility districts organized under the provisions of this act shall have power:

Powers of  
public utility  
districts.

(a) To make a survey of hydro-electric power, irrigation and domestic water supply resources within or without the district, and to compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and co-ordinated to make a complete and systematic whole.

(b) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights of way, franchises, plants, plant facilities and systems for generating electric energy by water power, steam or other methods, plant, plant facilities and systems for developing, conserving and distribut-

expenses necessary or incident to said improvement shall be borne by the public utility district: *Provided*, That where any municipal corporation included within such public utility district already owns or operates a utility of like character for which such assessments are levied hereunder, then all such engineering and other expenses mentioned above shall be borne by the local assessment district.

Whenever any improvement shall be ordered hereunder, payment for which shall be made in part from assessments against property specially benefited, not more than fifty per cent (50%) of the cost thereof shall ever be borne by the entire public utility district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority of the electors of such district shall consent to or ratify the making of such expenditure.

Powers of  
public utility  
districts.

(m) It is, and shall be lawful for any public utility district organized hereunder to sell and convey, lease or otherwise dispose of all or any part of the works, plants, systems, utilities and properties authorized by this act and owned by it after proceedings and approval by the voters of the district as provided for in chapter 137, Laws of 1917, (sections 9512, 9513 and 9514 of Remington's Revised Statutes of Washington): *Provided*, That the affirmative vote of three-fifths ( $\frac{3}{5}$ ) of the voters voting at an election on the question of approval of such proposed sale, shall be necessary to authorize such sale: *Provided further*, That any public utility district may sell, convey, lease or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to any other public utility district, city, town or other municipal corporation without the approval of the voters; or may sell, convey, lease or otherwise dispose of, to any person, firm, corporation or public body, any part either

upon such delinquent assessments prior to the making of such an application for the cancellation as herein provided, shall be; for the purpose of this act, considered as belonging to the city within which such local improvement district is located, whether the taxes be cancelled by the city or town or by the county.

Passed the Senate March 1, 1917.

Passed the House March 6, 1917.

Approved by the Governor March 15, 1917.

---

## CHAPTER 137.

[H. B. 337.]

### SALE OR LEASE OF PUBLIC UTILITIES OWNED BY CITIES OR TOWNS.

AN ACT authorizing cities and towns to lease or sell any municipally-owned water works, gas works, electric light and power plants, steam plants, street railway plants and lines, telegraph and telephone lines and plants and any other municipally-owned public utility, or public utility system similar or dissimilar in character.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. It is and shall be lawful for any city or town in this state now or hereafter owning any water works, gas works, electric light and power plant, steam plant, street railway line, street railway plant, telephone or telegraph plant and lines, or any system embracing all or any one or more of such works or plants or any similar or dissimilar utility or system, to lease for any term of years or to sell and convey the same or any part thereof, with the equipment and appurtenances, in the manner hereinafter prescribed.

Authority granted.

SEC. 2. The legislative authority of such city or town, if it deems it advisable to lease or sell such works, plant or system or any part of the same, or any similar or dissimilar utility or system, shall adopt a resolution stating whether it desires to lease or sell the same. If it

Resolutions proposing sale or lease.



Notice  
calling for  
bids.

Bids.

Acceptance  
by legislative  
authority.

Referendum  
of ordinance  
to popular  
vote.

desires to lease, the resolution shall state the general terms and conditions of such lease, but not the rent. If it desires to sell, the general terms of sale shall be stated, but not the price. The resolution shall direct the city or town clerk, or other proper official, to publish such resolution not less than once a week for four weeks in the official newspaper of the city or town if there be such an official newspaper, or if there be none then in any newspaper published in such city or town, or if there be none then in any newspaper published in the county in which such city or town is located, together with a notice calling for sealed bids to be filed with such clerk or other proper official not later than a certain time, accompanied by a certified check payable to the order of such city or town, for such amount as the resolution shall require, or a deposit of a like sum in money. Each bid shall state that the bidder agrees that if his bid be accepted and he fails to comply therewith within the time hereinafter specified, such check or deposit shall be forfeited to the city or town. If bids for a lease be called for bidders shall bid the amount to be paid as the rent for each year of the term of the lease. If bids for a sale and conveyance be called for the bids shall state the price offered. The legislative authority of the city or town shall have the right to reject any or all bids and to accept any bid which it deems best. At the first meeting of the legislative authority of the city or town held after the expiration of the time fixed for receiving bids, or at some later meeting if such legislative authority so decides, the bids shall be considered. In order for such legislative authority to declare it advisable to accept any bid it shall be necessary for two-thirds of all the members elected to such legislative authority to vote in favor of a resolution making such declaration. If such resolution be so adopted it shall be necessary, in order that such bid be accepted, to enact an ordinance accepting such bid and directing the execution of a lease or conveyance by the mayor and city clerk or other proper official. Such ordinance shall not take effect until it shall have been submitted to the voters

of such city or town for their approval or rejection at the next general election or at a special election called for that purpose, and a majority of the voters voting thereon shall have approved such ordinance. If approved it shall take effect as soon as the result of such vote be proclaimed by the mayor. If it be so submitted and fail to receive the approval of a majority of the voters voting thereon, it shall be rejected and annulled. It shall be the duty of the mayor to proclaim such vote as soon as it shall be properly certified.

SEC. 3. Upon the taking effect of any such ordinance the mayor and city clerk or other proper official shall execute, in the name and on behalf of the city or town, the lease or conveyance directed by such ordinance. The lessee or grantee shall accept and execute the same within ten days after notice of its execution by the city or town or forfeit to the city or town the amount of the check or special deposit accompanying the bid of such lessee or grantee: *Provided*, That if litigation in good faith be instituted within such ten days to determine the rights of the parties, no forfeiture shall take place unless such lessee or grantee fail for five days after the termination of such litigation in favor of the city or town to accept and execute such lease or conveyance.

Execution of  
lease or  
conveyance.

Acceptance  
of lessee  
or grantee.

Passed the House March 3, 1917.

Passed the Senate March 6, 1917.

Approved by the Governor March 15, 1917.

REPORT OF STANDING COMMITTEE

March 22, 1973.

SENATE BILL NO. 2835, authorizing an additional method for the  
disposition of certain property owned by municipal utilities.

(reported by Committee on Local Government):

\_\_\_\_\_ recommendation: **DO PASS AS AMENDED**

Senate Committee Amendments to Senate Bill No. 2835  
By Committee on Local Government

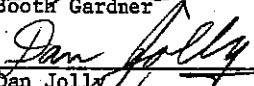
In section 1, line 7, after "any" and before  
"lands" strike "unimproved"

In section 1, line 7 after "lands," and before  
"property" strike "unusable"

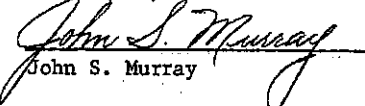
In section 1, line 11, after "resolution"  
and before "may" insert "and after a public  
hearing"

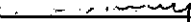
Walgren  
Whetzel

Booth Gardner

  
Dan Jolly

  
R. H. (Bob) Lewis

  
John S. Murray

  
Don L. Talley

  
Gordon L. Walgren

  
Jonathan Whetzel

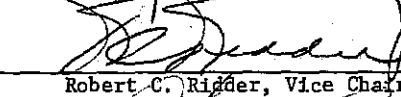
Passed to Committee on Rules for second reading.


DO NOT WRITE IN THESE SPACES

(If ALL members of committee sign,  
leave above line blank.)

Signed by: Senators
Fleming, Chairman;
Ridder, V. Chairman
Connor
Gardner
Jolly
Lewis, R. H.
Murray
Sellar
Talley
Walgren
Whetzel


  
George Fleming, Chairman

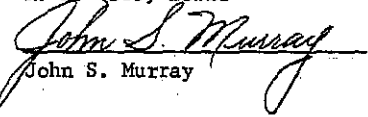
  
Robert C. Ridder, Vice Chairman


  
Frank T. Connor

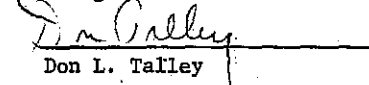
  
Booth Gardner

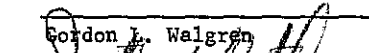
  
Dan Jolly

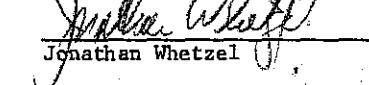
  
R. H. (Bob) Lewis

  
John S. Murray

  
George L. Sellar

  
Don L. Talley

  
Gordon L. Walgren

  
Jonathan Whetzel

Passed to Committee on Rules for second reading.

Senate Committee Amendments to Senate Bill No. 2835  
By Committee on Local Government

1. In section 1, line 7, after "any" strike "unimproved"  
and after "lands," strike "unusable"

---

2. In section 1, line 11, after "resolution" and before  
"may" insert "and after a public hearing"

1. *Strikes two words that are indefinable and superfluous language — they were inadvertently included in drafting the bill.*
2. *Assures a public hearing in conjunction with the disposition of property no longer required for providing continued public utility service.*

SENATE BILL NO. 2835

State of Washington  
43rd Legislature  
1st Extraordinary Session

By Senators Rasmussen, Gardner  
and Peterson (Ted)

Read first time March 14, 1973, and referred to Committee on LOCAL GOVERNMENT.

1 AN ACT Relating to the sale or lease of municipal utilities; and  
2 adding a new section to chapter 35.94 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Section 1. There is added to chapter 35.94 RCW  
5 a new section to read as follows:

6 Whenever a city shall determine, by resolution of its  
7 legislative authority, that any unimproved lands, unusable property,  
8 or equipment originally acquired for public utility purposes is  
9 surplus to the city's needs and is not required for providing  
10 continued public utility service, then such legislative authority by  
11 resolution may cause such lands, property, or equipment to be leased,  
12 sold, or conveyed. Such resolution shall state the fair market value  
13 or the rent or consideration to be paid and such other terms and  
14 conditions for such disposition as the legislative authority deems to  
15 be in the best public interest.

16 The provisions of RCW 35.94.020 and 35.94.030 shall not apply  
17 to dispositions authorized by this section.

## DIVISIONS

Light  
Water  
Belt Line

Please address reply to:  
City of Tacoma  
Department of Public Utilities  
P. O. Box 11007  
Tacoma, Washington 98411

Attention:



# City of Tacoma

WASHINGTON

DEPARTMENT OF PUBLIC UTILITIES

A. J. Benedetti, Director

March 20, 1973

Washington State Legislature  
The Senate  
Committee on Local Government  
Chairman and Committee Members

Re: Senate Bill 2835

Dear Sirs:

This letter is in reference to the subject bill recently introduced and referred to your committee and which should be promptly enacted in the best public interest. The background of the need for this amendatory legislation has been previously discussed with and furnished to the sponsors, Senators Rasmussen, Gardner and Peterson (Ted), and is restated herein for your full consideration.

During the routine course of ownership of a municipally owned public utility, various types of plant and properties are acquired for additions and betterments to the utility system. Some of these properties in turn become surplus to the utility needs and nonessential to continued effective utility service. The orderly procedure for the disposition of such properties under the general powers of cities of the first class (RCW 35.22.280(3)) has been clouded by the authority and procedure regarding the lease and/or sale of public utility works set forth in Chapter 35.94 RCW. Sections 35.94.020 and .030 require a formalized procedure with a confirming approval of the voters on a ballot proposition. Such procedure is, of course, desirable where in fact all or an integral part of an operating utility is to be so disposed of. However, the procedure is completely impractical for example in the disposition of property and equipment, lands, substations, and other parts and segments of facilities no longer required for utility service. Where surplus lands are to be leased or sold the purchaser may require substantial title insurance and/or require warranty of title and the right to convey protecting secondary financing for his projected improvements. Chapter 35.94 RCW as now enacted unfortunately prevents this. Thus, more flexibility of procedure is desirable and in the best public interest.

The proposed amendment would accomplish greater procedural flexibility in such transactions without repealing

Washington State  
Legislature

-2-

March 20, 1973


the formalized procedures in the proper situations. The proposed amendment merely adds a new section providing that upon finding and determination, expressed in a resolution adopted by the Legislative authority of the City, that the property is surplus and nonessential to continued effective utility service, it can be leased or sold in such manner and on such terms as are in the best public interest for the orderly disposition of the same.

The flexibility sought is reasonably consistent with that long enjoyed by Public Utility Districts under RCW 54.16.180, and investor-owned utilities. In many situations the local taxing entity will receive additional revenues when the surplus properties are returned to taxable status.

In summary then, for all these reasons, this is legally sound, desirable, necessary and helpful legislation and should be promptly enacted in the best public interest.

Thank you for your assistance.

Very truly yours,

  
A. J. Benedetti  
Director of Utilities



DIVISIONS  
Light  
Water  
Belt Line

Please address reply to:  
City of Tacoma  
Department of Public Utilities  
P. O. Box 11007  
Tacoma, Washington 98411

Attention:



# City of Tacoma

WASHINGTON

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A. J. Benedetti, Director

March 20, 1973

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The Senate  
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Washington State  
Legislature

-2-

March 20, 1973


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In summary then, for all these reasons, this is legally sound, desirable, necessary and helpful legislation and should be promptly enacted in the best public interest.

Thank you for your assistance.

Very truly yours,

  
A. J. Benedetti  
Director of Utilities

COMMITTEE: LOCAL GOVT

DATE: 3/22/73

LOCATION: 433 P.L.

BILL NO. 2830

SHORT TITLE: Municipal utilities property disposal

Name	Address	Tel.	Representing	Pro-Con.	Would Like to Testify	Submit Material	Receive Material
PAUL J. MOLAN	TACOMA 5628 SO. 35	RV 3 2471	TACOMA DEPT of PUBLIC UTILITIES	PRO	—	✓	

Amendment to Senate Bill 2835  
By Senator Guess

On page 1, add a new section following section 1 as follows:

"NEW SECTION. Section 2. In the event that the property contained in section one of this act is real property (including lands, improvements thereon, and any interests or estates) and such real property is to be sold, the following additional procedures shall be followed: A written notice particularly describing the property to be sold and the time and place of the sale shall be posted in three public places in the city where the sale is to take place, for a period of not less than four weeks prior to the date of the proposed sale. Further, there shall be notice of the proposed sale published in a display advertisement of no less than two column by two inch or one column by four inch size in any daily or weekly legal newspaper of general circulation published in the county in which the real property to be sold is situated. This advertisement shall appear in the legal notices section and the real estate classified section. This publication shall appear for a period of not less than four weeks prior to the proposed sale and the notice shall particularly describe the property to be sold and the time and place of the proposed sale: PROVIDED, That if there is no legal newspaper published in this county, then such notice shall be published in the legal newspaper published in this state nearest to the place of sale."

PROPOSED AMENDMENT TO S.B. 2835

On line 7 after "any" delete  
the word "unimproved" and  
after "lands", delete the  
word "unusable".

Chairman Joe D. Haussler called the meeting to order at 8:15 a.m. Saturday, April 7 in House Office Building 431. He thanked the members of the committee and the subcommittee chairmen for their concern and attention during the past session of the Legislature in Local Government committee measures. Rep. Amen expressed the appreciation of the committee for Chairman Haussler's fair and able chairmanship.

HEARING: Chairman Haussler turned the first portion of the agenda over to Subcommittee Chairman Jeff Douthwaite, and requested that those speaking limit their testimony to one pro and one con on each issue.

SB 2388 Annexation resolutions, final action. Provides that a petition or resolution to call an annexation election that is filed with the legislative authority shall be valid for 1 year, and if final action is not taken by the expiration of that time, the resolution shall be considered null and void.

Chairman Douthwaite called on Jim Guenther to explain the bill, and he stated that there had previously been no time requirement on it. Questions from the committee expressed concern over the possibility of the same group re-signing again at the end of the year, and whether an amendment should be added to preclude that possibility. Jim Guenther spoke of the lateness of time and the remote possibility of this happening.

Rep. North inquired if another group could file a petition within the year, and the reply was negative.

EXECUTIVE:

Rep. Zimmermen offered an amendment to add the word "petition" in two places: on line 24, page 1, and line 14, page 2 to make it consistent with the previous language. The amendment was adopted.

Representative Kalich moved SB 2388 out DO PASS AS AMENDED. The motion was seconded and carried.

HEARING:

ESB 2835 Municipal utilities property, disposition

Chairman Douthwaite asked Mr. Al Brenninger, Tacoma Public Utilities, to explain the bill. He stated that it was an amendatory legislation to formal procedures for the disposition of public utility properties, that it had the approval of the Association of Washington Cities, and is basically similar to HB 939, previously passed out of the committee. He proposed an amendment which would delete all of section 2, and which had been distributed to the committee members.

Mr. Brenninger stated that this deletes the requirement that notice of sale be posted and published in a certain manner. He also pointed out that utility property presently must be disposed of the same as other property, with the final approval by the voters, and that this bill pertained only to the disposition of utility property.

EXECUTIVE:

Rep. Adams moved the adoption of an amendment to delete Section 2 from Engrossed SB 2835.

After discussion, the amendment was adopted.

Rep. Zimmerman moved ESB 2835 out DO PASS AS AMENDED. The motion was seconded by Rep. Adams and carried.

HEARING: Subcommittee Chairman Hugh Kalich, presiding

ESB 2584 Diking dist. commissioners, compensation. Provides that diking district commissioners may receive \$8 compensation per day for meeting attendance, and shall receive the same compensation as similar labor does for all other necessary work or services performed in connection with their duties. Provides that such compensation shall not exceed \$1,000 per year, except during emergencies.

Representative Haussler explained that this was a district set up by the people themselves, and they tax themselves in order to operate; previously there had been some state matching money, but it was principally paid for by the people.

In answer to a question from the committee, Mr. Jim Guenther explained that there were three commissioners on a diking district commission, and that there were 97 diking and irrigation districts in the state.

EXECUTIVE:

Representative noted the misspelled word in the Engrossed bill, and moved the adoption of an amendment to correct it to read "declare" instead of "delare". The amendment was adopted (although spelled correctly in the Senate amendment).

Rep. Adams moved out ESB 2584 DO PASS AS AMENDED. The motion was seconded and carried.

HEARING:

Chairman Haussler presided over the last item on the agenda:

SSB 2554 Humane societies, county authority. This bill authorizes a county legislative authority to grant to one or more qualified corporations the authority to enforce the chapter on prevention of cruelty to animals. This authority is for a period of up to three years.

Rep. Frances North, sponsor of a similar House Bill (750) spoke briefly explaining that this bill now allows other humane societies to organize under the RCW.

Virginia Knouse, of PAWS, spoke for the bill, bringing out the fact that many of these first-incorporated humane societies no longer function properly to accomplish the desired goal of preventing cruelty to animals. The law says that they shall have the authority regardless of their effectiveness. Allowing more than one such organization would insure that the job got done. She felt it was a start in the right direction, as it was an expensive and large problem.

Mr. Charles H. McConnell, Washington State Dog Owners Assn. Inc., spoke against

REPORT TO SPEAKER'S OFFICE  
(Confidential - Please Deliver in Envelope)

BILL NO. E.S.B. 2835 BY Senators Rasmussen, Gardner, and T. Peterson

BRIEF TITLE Authorizing an additional method for the disposition of certain property owned by municipal utilities

REPORTED BY: Committee on Local Government (20)

COMMITTEE RECOMMENDATION: Do Pass as Amended (15)  
(Indicate number signing report)

- A. EXISTING LAW: Utility property presently must be disposed of the same as other property, that is with final approval by the voters.
- B. PURPOSE OF BILL AND EFFECT ON EXISTING LAW:  
Authorizes city legislative authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service. Provides for a public hearing.  
Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.  
Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such disposition.  
Provides for the posting and publishing of notices when the sale of real property is involved. Provides that real property offered for sale under the provisions of this section, but not sold, may be sold by negotiation after advertisement.
- C. EFFECT OF AMENDMENT(S): Strikes the second section of the bill (the Senate floor amendment). Deletes requirements that notice of sale be posted and published in a certain manner.

FISCAL IMPACT:  
none

BILL SUBSTANTIALLY SIMILAR: (if any)  
No. ---

Rep. Joe D. Haussler  
Chairman



DRAFTER: Code Reviser: \_\_\_\_\_

Other: \_\_\_\_\_

PRINCIPAL PROPONENTS: (Individuals and Organizations)

Al Brenninger, City of Tacoma, Department of Public Utilities

\_\_\_\_\_

\_\_\_\_\_

PRINCIPAL OPPONENTS: (Individuals and Organizations)

None

\_\_\_\_\_

\_\_\_\_\_

PRINCIPAL ARGUMENTS:

FOR: This is the same as HB 939 which was passed out of this committee on March 16. This bill offers cities a simpler way of disposing of property no longer needed for public utility purposes. The public interest is protected by the hearing process provided for.

AGAINST: none

Report of Standing Committee

HOUSE OF REPRESENTATIVES

Olympia, Washington

4/7/73  
(date)

Engrossed Senate Bill

No. 2835

(Type in House or Senate Bill, Resolution, or Memorial)

Authorizing an additional method for the disposition of certain property owned by  
(Type in brief title) municipal utilities

reported by Committee on Local Government (20)

Majority recommendation: Do pass with the following amendment:

House Committee Amendment to Engrossed Senate Bill No. 2835  
by Committee on Local Government

On page 1, beginning on line 18 of the engrossed bill, strike  
all of section 2, added by the amendment by Senator Guass as  
amended by Senator Rasmussen

Signed by  
Representatives

- 1. *John Haussler*  
Haussler Chairman
- 2. *Jeff Northen*  
Northen Subcommittee Chairman
- 3. *John Johnson*  
Johnson Subcommittee Chairman
- 4. *Kalich*  
Kalich Subcommittee Chairman
- 5. *Atams*  
Atams
- 6. *Otto Amen*  
Amen
- 7. *Scott Blair 4/7/73*  
Blair
- 8. *Laughlin*  
Laughlin
- 9. *Laughlin*  
Laughlin
- 10. *Laughlin*  
Laughlin

- 11. *McGee*  
McGee
- 12. *Paul Nelson*  
Nelson
- 13. *North, P.*  
North, P.
- 14. *North, L.*  
North, L.
- 15. *Paris*  
Paris
- 16. *W. Patterson*  
Patterson
- 17. *Patterson*  
Patterson
- 18. *Sommers*  
Sommers
- 19. *Sommers*  
Sommers
- 20. *Zinserman*  
Zinserman

Memo re. ESB 2835

ESB 2835 is substantially similar to HB 939, which we passed out of committee on March 16. Section 1 of ESB 2835 includes our two amendments-- namely striking out "unimproved" before "lands" on page 1, line 7; and striking out "unusable" before "property" on page 1, line 7. The Senate also added an amendment calling for public hearings before the property may be sold.

ESB 2835 also adds a section 2, which requires both published and posted notices of sales for real property. The final paragraph of this section is not precisely written. It is not clear whether real property, after the posting and publishing of notices has occurred, which has not been sold, must be re-advertised before it may be sold by negotiation, or may just be sold by negotiation without re-advertising.

Steve Lundin  
Legal Aide

STATE OF WASHINGTON  
LEGISLATIVE COUNCIL  
LEGISLATIVE BUILDING  
OLYMPIA

MEMORANDUM

TO: Representative Joe D. Haussler, Chairman  
Local Government Committee

DATE: April 6, 1973

FROM: James W. Guenther  
Executive Secretary

SUBJECT: Senate Bill 2835 - Docks, certain family residences

Authorizes the city, by resolution, to dispose of land, property, or equipment which was originally acquired for public utility purposes when it is deemed to be a surplus by the city. It is required that such resolution shall state the fair market value and the conditions for such disposition of the equipment.

Under the existing law, there is a long, detailed requirement for the calling of bids, passing of resolutions and all this appears to be rather cumbersome for the purpose of disposing of surplus properties. This act, however, was amended in the Senate so as to set forth some detail as to where the notices should be posted and the requirements of publications, so as to assure adequate notice to the public of the availability of such lands or equipment which is to be disposed of.

JWG:pf

Attention:



# City of Tacoma

WASHINGTON

DEPARTMENT OF PUBLIC UTILITIES  
 A. J. Benedetti, Director

March 20, 1973

Washington State Legislature  
 The Senate  
 Committee on Local Government  
 Chairman and Committee Members

Re: Senate Bill 2835

Dear Sirs:

This letter is in reference to the subject bill recently introduced and referred to your committee and which should be promptly enacted in the best public interest. The background of the need for this amendatory legislation has been previously discussed with and furnished to the sponsors, Senators Rasmussen, Gardner and Peterson (Ted), and is restated herein for your full consideration.

✓ During the routine course of ownership of a municipally owned public utility, various types of plant and properties are acquired for additions and betterments to the utility system. Some of these properties in turn become surplus to the utility needs and nonessential to continued effective utility service. The orderly procedure for the disposition of such properties under the general powers of cities of the first class (RCW 35.22.280(3)) has been clouded by the authority and procedure regarding the lease and/or sale of public utility works set forth in Chapter 35.94 RCW. Sections 35.94.020 and .030 require a formalized procedure with a confirming approval of the voters on a ballot proposition. Such procedure is, of course, desirable where in fact all or an integral part of an operating utility is to be so disposed of. However, the procedure is completely impractical for example in the disposition of property and equipment, lands, substations, and other parts and segments of facilities no longer required for utility service. Where surplus lands are to be leased or sold the purchaser may require substantial title insurance and/or require warranty of title and the right to convey protecting secondary financing for his projected improvements. Chapter 35.94 RCW as now enacted unfortunately prevents this. Thus, more flexibility of procedure is desirable and in the best public interest.

✓ The proposed amendment would accomplish greater procedural flexibility in such transactions without repealing

Washington State  
Legislature

-2-

March 20, 1973

the formalized procedures in the proper situations. The proposed amendment merely adds a new section providing that upon finding and determination, expressed in a resolution adopted by the Legislative authority of the City, that the property is surplus and nonessential to continued effective utility service, it can be leased or sold in such manner and on such terms as are in the best public interest for the orderly disposition of the same.

✓ The flexibility sought is reasonably consistent with that long enjoyed by Public Utility Districts under RCW 54.16.180, and investor-owned utilities. In many situations the local taxing entity will receive additional revenues when the surplus properties are returned to taxable status.

In summary then, for all these reasons, this is legally sound, desirable, necessary and helpful legislation and should be promptly enacted in the best public interest.

Thank you for your assistance.

Very truly yours,



A. J. Benedetti  
Director of Utilities

INFORMATION RE: SENATE BILL NO. 2835

Municipal utilities property, disposition

SENATE BILL 2835 is amendatory legislation to formal procedures for the disposition of Public Utility properties contained in RCW Ch. 35.94. It ~~authorizes~~ <sup>authorizes</sup> the sale or lease of lands, property or equipment of a city-owned Public Utility found by resolution of its legislative authority to be surplus to the city's needs, and not required for providing continued effective public utility service, at the fair market value, rent or consideration stated in the resolution and subject to such other terms and conditions as the local legislative authority deems to be in the best public interest.

This is with the approval of the AWC and at the request of cities owning and operating Public Utilities to provide greater flexibility for disposition of such surplus properties; <sup>Needed</sup> to properly clear all title and warranty clouds; to return the properties to taxable status; and to provide authority similar to that authorized for public utility districts and inherent in privately-owned companies.

This ~~proposed amendment~~ <sup>bill</sup> will accomplish procedural flexibility in such transactions without repealing the formalized procedures required in the situations involving utility operating plant and properties. (RCW Ch. 35.94)

*Senate committee amendment assures public hearing in conjunction with the disposition of such properties.*

SENATE BILL NO. 2835

State of Washington  
43rd Legislature  
1st Extraordinary Session

By Senators Rasmussen, Gardner  
and Peterson (Ted)

Read first time March 14, 1973, and referred to Committee on LOCAL  
GOVERNMENT.

1 AN ACT Relating to the sale or lease of municipal utilities; and  
2 adding a new section to chapter 35.94 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Section 1. There is added to chapter 35.94 RCW  
5 a new section to read as follows:

6 Whenever a city shall determine, by resolution of its  
7 legislative authority, that any unimproved lands, unusable property,  
8 or equipment originally acquired for public utility purposes is  
9 surplus to the city's needs and is not required for providing  
10 continued public utility service, then such legislative authority by  
11 resolution may cause such lands, property, or equipment to be leased,  
12 sold, or conveyed. Such resolution shall state the fair market value  
13 or the rent or consideration to be paid and such other terms and  
14 conditions for such disposition as the legislative authority deems to  
15 be in the best public interest.

16 The provisions of RCW 35.94.020 and 35.94.030 shall not apply  
17 to dispositions authorized by this section.



IN THE LEGISLATURE  
of the  
STATE OF WASHINGTON



CERTIFICATION OF ENROLLED ENACTMENT

SENATE BILL NO. 2835

CHAPTER NO. \_\_\_\_\_

Passed the Senate April 3, 19 73

Yeas 44 Nays 2

Passed the House April 13, 19 73


as Amended  
Yeas 94 Nays 0

The Senate concurred in the House amendment and passed the bill as amended April 13, 1973.

Yeas 47 Nays 0

CERTIFICATE

I, Sidney R. Snyder, Secretary of the Senate of the State of Washington do hereby certify that the attached is enrolled Senate Bill No. 2835 as passed by the Senate and the House of Representatives on the dates hereon set forth.

  
Secretary of the Senate

2835  
Enrolled 4/13/73 rcc

ENGROSSED SENATE BILL NO. 2835

State of Washington  
43rd Legislature  
1st Extraordinary Session

By Senators Rasmussen, Gardner  
and Peterson (Ted)

Read first time March 14, 1973, and referred to Committee on LOCAL  
GOVERNMENT.

1 AN ACT Relating to the sale or lease of municipal utilities; and  
2 adding a new section to chapter 35.94 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Section 1. There is added to chapter 35.94 RCW  
5 a new section to read as follows:

6 Whenever a city shall determine, by resolution of its  
7 legislative authority, that any lands, property, or equipment  
8 originally acquired for public utility purposes is surplus to the  
9 city's needs and is not required for providing continued public  
10 utility service, then such legislative authority by resolution and  
11 after a public hearing may cause such lands, property, or equipment  
12 to be leased, sold, or conveyed. Such resolution shall state the  
13 fair market value or the rent or consideration to be paid and such  
14 other terms and conditions for such disposition as the legislative  
15 authority deems to be in the best public interest.

16 The provisions of RCW 35.94.020 and 35.94.030 shall not apply  
17 to dispositions authorized by this section.

Passed the Senate April 13, 1973.

*John A. Chaberski*  
President of the Senate.

Passed the House April 13, 1973.

*Samuel H. Hays*  
Speaker of the House.

ENGROSSED  
SENATE BILL NO. 2835

BY

SENATORS Rasmussen, Gardner  
and Peterson (Ted)

BRIEF TITLE

Authorizing an additional  
method for the disposition  
of certain property owned by  
municipal utilities.

SENATE RECORD

Filed with the Secretary of the Senate

3/14/73 for introduction

3/14/73 Read first time

ordered printed and referred to Committee

ON LOCAL GOVERNMENT

Reported back by

Committee with recommendation

DO PASS AS AMENDED (10)

Passed to Second Reading

4/3/1973 Read second time and

AMENDED

ORDERED ENGROSSED

Advanced to third Reading  
Under Suspension of Rules

4/3/1973 Read third time and

PASSED Yeas 44, Nays 2

4/3/73 Title agreed to

4/3/73 Sent to House

s/s SIDNEY R. SNYDER  
Secretary of Senate

HOUSE RECORD

APR 4 1973 Received from Senate

Read first time and referred to Committee  
ON LOCAL GOVERNMENT

APR 8 73 Reported back by

Committee with the recommendation

DO Pass AMENDED (15)

Passed to Committee on

RULES

For Second Reading

APR 13 73 Read second time and

Amended

Advanced to third reading  
under suspension of rules

APR 13 73 Read third time and

PASSED AS AMENDED Yeas 94, Nays 0

APR 13 73 Title agreed to

APR 13 73 Returned to Senate

Joan R. Foster  
Secretary of Senate

APR 13 1973

The Senate concurred in the House  
Amendments and PASSED AS  
AMENDED Yeas 47 Nays 0

Patricia A. Boyle  
Secretary

Enrolled  
Received from the House

Signed by the President of the Senate

Signed by the Speaker of the House

By the Governor

ENGROSSED SENATE BILL NO. 2835

State of Washington  
43rd Legislature  
1st Extraordinary Session

By Senators Rasmussen, Gardner  
and Peterson (Ted)

Read first time March 14, 1973, and referred to Committee on LOCAL GOVERNMENT.

1 AN ACT Relating to the sale or lease of municipal utilities; and SB -C  
2 adding a new section to chapter 35.94 RCW. 2835;  
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: 002  
4 NEW SECTION. Section 1. There is added to chapter 35.94 RCW PARTA  
5 a new section to read as follows: ;001  
6 Whenever a city shall determine, by resolution of its 7  
7 legislative authority, that any lands, property, or equipment 8  
8 originally acquired for public utility purposes is surplus to the 9  
9 city's needs and is not required for providing continued public 9  
10 utility service, then such legislative authority by resolution and 10  
11 after a public hearing may cause such lands, property, or equipment 11  
12 to be leased, sold, or conveyed. Such resolution shall state the 12  
13 fair market value or the rent or consideration to be paid and such 13  
14 other terms and conditions for such disposition as the legislative 14  
15 authority deems to be in the best public interest. 14  
16 The provisions of RCW 35.94.020 and 35.94.030 shall not apply 15  
17 to dispositions authorized by this section. 16  
18 NEW SECTION. Section 2. In the event that the property 17  
19 contained in section one of this act is real property (including 18  
20 lands, improvements thereon, and any interests or estates) and such 19  
21 real property is to be sold, the following additional procedures 19  
22 shall be followed: A written notice particularly describing the 20  
23 property to be sold and the time and place of the sale shall be 21  
24 posted in three public places in the city where the sale is to take 22  
25 place, for a period of not less than four weeks prior to the date of 22  
26 the proposed sale. Further, there shall be notice of the proposed 23  
27 sale published in a display advertisement of no less than two column 24

1 by two inch or one column by four inch size in any daily or weekly 24  
2 legal newspaper of general circulation published in the county in 25  
3 which the real property to be sold is situated. This advertisement 26  
4 shall appear in the legal notices section and the real estate 27  
5 classified section. This publication shall appear once a week for 27  
6 four consecutive weeks prior to the proposed sale and the notice 28  
7 shall particularly describe the property to be sold and the time and 29  
8 place of the proposed sale: PROVIDED, That if there is no legal 29  
9 newspaper published in this county, then such notice shall be 30  
10 published in the legal newspaper published in this state nearest to 31  
11 the place of sale. 31  
12 Real property offered for sale but not sold, under the 32  
13 provisions of this section may be sold after advertisement, by 33  
14 negotiations. 33

Brief Title: Authorizing an additional method for the disposition of certain property owned by municipal utilities.

Reported By: Committee on Local Government (20)

Committee Recommendation: Do Pass as Amended (15)

(Indicate number signing report)

Authorizes city legislative authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service. Provides for a public hearing.

Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.

Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such disposition.

Provides for the posting and publishing of notices when the sale of real property is involved. Provides that real property offered for sale under the provisions of this section, but not sold, may be sold by negotiation after advertisement.

**COMMITTEE AMENDMENT:** Strikes the second section of the bill (the Senate floor amendment). Deletes requirements that notice of sale be posted and published in a certain manner.

Digester S. Lundin

Approved Rep. Joe D. Haussler  
Committee Chairman

Date April 7, 1973

(Distribution: House Majority Caucus - 6 copies)

House Committee Amendment to Engrossed Senate Bill No. 2835  
By Committee on Local Government

LR

On page 1, beginning on line 18 of the engrossed bill, strike all of section 2, thus striking the amendment by Senator Guess as amended by Senator Rasmussen.



# Report of Standing Committee

## HOUSE OF REPRESENTATIVES

Olympia, Washington

3/16/73  
(date)

House Bill

No. 939

(Type in House or Senate Bill, Resolution, or Memorial)

Authorizing an additional method for the disposition of certain property owned by  
(Type in brief title)

municipal utilities.

reported by Committee on Local Government (20)

Majority recommendation: Do pass with the following amendment:

House Committee Amendment to House Bill No. 939  
by Committee on Local Government

In section 1, line 7, after "any" strike "unimproved" and  
after "lands," strike "unusable"

ob  
LR

Signed by

Representatives

- |   |   |
|---|---|
| 1. <u>Joel Haussler</u><br>Haussler Chairman              | 11. <u>Gerardine McCormick</u><br>McCormick |
| 2. <u>Jeff Douthett</u><br>Douthett Subcommittee Chairman | 12. <u>Guy Peterson</u><br>Peterson         |
| 3. <u>John Johnson</u><br>Johnson Subcommittee Chairman   | 13. <u>Frank North</u><br>North, F.         |
| 4. <u>Walter Kalich</u><br>Kalich Subcommittee Chairman   | 14. <u>North, L.</u><br>North, L.           |
| 5. <u>Adams</u><br>Adams                                  | 15. <u>O'Brien</u><br>O'Brien               |
| 6. <u>Otto Amen</u><br>Amen                               | 16. <u>Paris</u><br>Paris                   |
| 7. <u>Scott Blair</u> 3/16/73<br>Blair                    | 17. <u>Pat Patterson</u><br>Patterson       |
| 8. <u>Kuehne</u><br>Kuehne                                | 18. <u>Snyder</u><br>Snyder                 |
| 9. <u>Ray Laughlin</u><br>Laughlin                        | 19. <u>Womack</u><br>Womack                 |
| 10. <u>John Martini</u><br>Martini                        | 20. <u>Zimmerman</u><br>Zimmerman           |
- 3/16/73

SENATE BILL NO. 2835

State of Washington  
43rd Legislature  
1st Extraordinary Session

By Senators Rasmussen, Gardner  
and Peterson (Ted)

Read first time March 14, 1973, and referred to Committee on LOCAL  
GOVERNMENT.

1 AN ACT Relating to the sale or lease of municipal utilities; and  
2 adding a new section to chapter 35.94 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Section 1. There is added to chapter 35.94 RCW  
5 a new section to read as follows:

6 Whenever a city shall determine, by resolution of its  
7 legislative authority, that any unimproved lands, unusable property,  
8 or equipment originally acquired for public utility purposes is  
9 surplus to the city's needs and is not required for providing  
10 continued public utility service, then such legislative authority by  
11 resolution may cause such lands, property, or equipment to be leased,  
12 sold, or conveyed. Such resolution shall state the fair market value  
13 or the rent or consideration to be paid and such other terms and  
14 conditions for such disposition as the legislative authority deems to  
15 be in the best public interest.

16 The provisions of RCW 35.94.020 and 35.94.030 shall not apply  
17 to dispositions authorized by this section.

REPORT TO SPEAKER'S OFFICE  
(Confidential - Please Deliver in Envelope)

BILL NO. H. B. 939 BY Representative Kelley

BRIEF TITLE Authorizing an additional method for the disposition of certain property owned by municipal utilities

REPORTED BY: Committee on Local Government (20)

COMMITTEE RECOMMENDATION: Do Pass as Amended (16)

(Indicate number signing report)

A. EXISTING LAW: See RCW 35.94.

B. PURPOSE OF BILL AND EFFECT ON EXISTING LAW:

Authorizes city legislative authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service.

Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.

Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such dispositions.

C. EFFECT OF AMENDMENT(S):

Refines language with regard to what property may be disposed of in this manner; deletes unnecessary adjectives.

FISCAL IMPACT:

none

BILL SUBSTANTIALLY SIMILAR: (if any)

No. ---

Rep. Joe D. Haussler

Chairman

(Distribution: 1 copy, with copy of Bill Digest and amendments attached, to Speaker's Office)

DRAFTER: Code Reviser: Jim Kaeding

Other: \_\_\_\_\_

PRINCIPAL PROPONENTS: (Individuals and Organizations)

Bob Bartel, Assn of Wash Cities

Paul J. Nolan, Tacoma Public Utilities

PRINCIPAL OPPONENTS: (Individuals and Organizations)

none

PRINCIPAL ARGUMENTS:

FOR: SEE ATTACHMENT.

AGAINST: None

DIVISIONS

Light  
Water  
Belt Line



*City of Tacoma*  
WASHINGTON

DEPARTMENT OF PUBLIC UTILITIES

A. J. Benedetti, Director

March 5, 1973

Please address reply to:  
City of Tacoma  
Department of Public Utilities  
P. O. Box 11007  
Tacoma, Washington 98411

Attention:

Washington State Legislature  
House of Representatives  
Committee on Local Government  
Chairman and Committee Members

Re: House Bill 939

Dear Sirs:

This letter is in reference to the subject bill recently introduced and referred to your committee and which should be promptly enacted in the best public interest. The background of the need for this amendatory legislation has been previously discussed with and furnished to the sponsor, Representative Kelly, and is restated herein for your full consideration.

During the routine course of ownership of a municipally owned public utility, various types of plant and properties are acquired for additions and betterments to the utility system. Some of these properties in turn become surplus to the utility needs and nonessential to continued effective utility service. The orderly procedure for the disposition of such properties under the general powers of cities of the first class (RCW 35.22.280(3)) has been clouded by the authority and procedure regarding the lease and/or sale of public utility works set forth in Chapter 35.94 RCW. Sections 35.94.020 and .030 require a formalized procedure with a confirming approval of the voters on a ballot proposition. Such procedure is, of course, desirable where in fact all or an integral part of an operating utility is to be so disposed of. However, the procedure is completely impractical for example in the disposition of property and equipment, unimproved lands, substations, and other parts and segments of facilities no longer usable. Where unimproved surplus lands are to be leased or sold the purchaser may require substantial title insurance and/or require warranty of title and the right to convey protecting secondary financing for his projected improvements. Chapter 35.94 RCW as now enacted unfortunately prevents this. Thus, more flexibility of procedure is desirable and in the best public interest.

The proposed amendment would accomplish greater procedural flexibility in such transactions without repealing the formalized procedures in the proper situations.

Washington State  
Legislature

-2-

March 5, 1973

The proposed amendment merely adds a new section providing that upon a finding and determination, expressed in a resolution adopted by the Legislative authority of the city, that the property is surplus and nonessential to continued effective utility service, it can be leased or sold in such manner and on such terms as are in the best public interest for the orderly disposition of the same.

The flexibility sought is reasonably consistent with that long enjoyed by Public Utility Districts under RCW 54.16.180, and investor-owned utilities. In many situations the local taxing entity will receive additional revenues when the surplus properties are returned to taxable status.

In summary then, for all these reasons, this is legally sound, desirable, necessary and helpful legislation and should be promptly enacted in the best public interest.

Thank you for your assistance.

Very truly yours,



A. J. Benedetti  
Director of Utilities

Chairman Haussier called the meeting to order and called the committee's attention to two bills which had had previous hearings: HB 564 and HB 685.

EXECUTIVE SESSION:

HB 564 - Annexation elections, petitioning - Rep. Patterson moved that we reconsider HB 564 for the purpose of the adoption of the amendment. Motion carried.

The chairman called on Mr. Bob Bartel of the Association of Washington Cities who wished to restore some of the original language in the law, which involved deleting a portion of the amendment previously proposed. The changes in the amendment were placed in the members' books.

Rep. Nelson moved that the committee adopt the three amendments which had been distributed. Rep. Blair moved an amendment to the amendment to strike the reference to county commissioners and substitute the wording "legislative authority". The motions carried and the amendments adopted.

Rep. Patterson moved the bill out DO PASS AS AMENDED. Motion carried.

HB 685 Fire protection, adjacent state lands - Rep. Patterson moved that we reconsider HB 685 for the purpose of the adoption of an amendment. Motion was seconded and carried.

Rep. Kuehnle moved the amendment. He explained the wording. Rep. Douthwaite raised a question with regard to the language, referring to the University of Washington, and his concern, as noted at the previous hearing. Rep. Kuehnle explained this measure would have no bearing on agencies inside the city.

Chairman Haussler asked Mr. Ernie Swanson, Washington Fire Commissioner's Assoc., to speak to this point. He explained that they do not have any jurisdiction within any incorporated area whatsoever. He further stated that small institutions within a town might contract with a town, but this would be an exception.

Rep. Frances North asked about fiscal impact. Mr. Swanson stated the reason for not having it was because they were not asking for any particular amount of money. He stated this was so they could negotiate first hand.

Rep. Zimmerman asked if the rules could be suspended so they could go back for one further amendment. Rep. Kuehnle moved an amendment to the amendment, placing an effective date of July 1, 1974. The motion carried.

Rep. Kalich moved HB 685 out DO PASS AS AMENDED. The motion was seconded and carried.

Subcommittee Chairman Jeff Douthwaite chaired the next item on the agenda:

HB 939 Municipal utilities, property disposition - Authorizes city legislative

authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service.

Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.

Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such dispositions.

The committee amendment refines language with regard to what property may be disposed of in this manner; deletes unnecessary adjectives.

Chairman Douthwaite called on Mr. Paul J. Nolan, Deputy City Attorney for the Tacoma Public Utilities, who had distributed a letter to the members of the committee setting forth his favorable position on the proposed legislation. He stated it was an amendatory bill and outlined the existing law. He stated this would place property back on the tax rolls, and provided a modern and conservative way to dispose of the property. He stated he had talked with the city attorney of Seattle who agrees with him in the need for this bill, which is an amendatory bill which allows the municipal utility districts the same privileges in this instance as other public and private utility districts.

#### EXECUTIVE SESSION:

Bob Bartel of the Ass'n of Washington Cities, supported the bill. Rep. Kuehnle suggested a word change on Page 1, Sec. 1, Line 7. Rep. Adams moved the adoption of this amendment. It was seconded and carried. Rep. Kuehnle moved HB 939 and DO PASS AS AMENDED.

HB 812 Cities, six year street program - Rep. Kraabel, prime sponsor, explained that this removes the requirement that cities with urban areas must have a six year program for arterial street construction, as well as the requirement that each county having an urban area must have a six year program for arterial road construction. It repeals certain sections, as well as the requirement for urban arterial board to report to the highway commission and the joint committee on highways about the development of these six year programs.

Rep. Kraabel passed out material and suggested an amendment to the bill which would reinstate certain material deleted in the measure. He referred to Page 2, lines 18, 22, and 23, and felt they should no longer be stricken. A great deal of discussion followed regarding the possibility of removing this bill from the Local Government Committee and placing it in the Transportation Committee. Chairman Haussler suggested hearing the people who had planned to testify. A motion on removal of the bill from the committee was withdrawn by Rep. Laughlin.

Opposing the bill was Mr. Roger Polzin of the Urban Arterial Board, who spoke at length on the need for reinstating the deleted lines, and feared lawsuits from those areas who anticipated the continuance of the program. The balance of the funds in the program was announced as approximately eleven million dollars out of the original allotment of two hundred million dollars.



House Committee Amendment to House Bill No. 939  
by Committee on Local Government

ok  
LR

In section 1, line 7, after "any" strike "unimproved" and  
after "lands," strike "unusable"

BILL DIGEST FORM

By Representative Kelley

Bill No. H. B. 939

Brief Title: Authorizing an additional method for the disposition of certain property  
owned by municipal utilities

Reported By: Committee on Local Government (20)

Committee Recommendation: Do Pass as Amended (16)

(Indicate number signing report)

Authorizes city legislative authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service.

Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.

Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such dispositions.

COMMITTEE AMENDMENT: Refines language with regard to what property may be disposed of in this manner; deletes unnecessary adjectives.

Digester S. Lundin

Approved Rep. Joe D. Haussler  
Committee Chairman

Date March 16, 1973

(Distribution: House Majority Caucus - 6 copies)  
(Include or attach any amendments)

By Representative Kelley

Bill No. H. B. 939

Brief Title: Authorizing an additional method for the disposition of certain property owned by municipal utilities

Reported By: Committee on Local Government (20)

Committee Recommendation:

(Indicate number signing report)

Authorizes city legislative authorities to sell, lease, or convey property originally acquired for public utility purposes which it determines is surplus to the city's needs and not required for public utility service.

Requires the authorizing resolution to state the fair market value or consideration to be paid and other terms in the best public interest.

Provides that present statutory requirements for closed bid procedures, and approval by the legislative authority and the voters shall not apply to such dispositions.

Digester S. Lundin

Approved \_\_\_\_\_  
Committee Chairman

Date \_\_\_\_\_

(Distribution: House Majority Caucus - 6 copies)  
(Include or attach any amendments)

new section to chapter 9.45 RCW; and prescribing penalties.  
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. There is added to chapter 9.45 RCW a new section to read as follows:

Any person who intentionally and knowingly obtains broadcast signals from a cable antenna television system by making any connection by wire to the cable, excepting from the wall outlet to the set, and who makes the connection without the consent of the operator of the system and in order to avoid payment to the operator shall be guilty of a misdemeanor.

Passed the Senate April 3, 1973.

Passed the House April 14, 1973.

Approved by the Governor April 20, 1973.

Filed in Office of Secretary of State April 23, 1973.

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CHAPTER 95

[Engrossed Senate Bill No. 2835]

MUNICIPAL UTILITIES--SURPLUS

PROPERTY DISPOSAL AUTHORITY

AN ACT Relating to the sale or lease of municipal utilities; and adding a new section to chapter 35.94 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. There is added to chapter 35.94 RCW a new section to read as follows:

Whenever a city shall determine, by resolution of its legislative authority, that any lands, property, or equipment originally acquired for public utility purposes is surplus to the city's needs and is not required for providing continued public utility service, then such legislative authority by resolution and after a public hearing may cause such lands, property, or equipment to be leased, sold, or conveyed. Such resolution shall state the fair market value or the rent or consideration to be paid and such other terms and conditions for such disposition as the legislative authority deems to be in the best public interest.

The provisions of RCW 35.94.020 and 35.94.030 shall not apply to dispositions authorized by this section.

Passed the Senate April 13, 1973.

Passed the House April 13, 1973.

Approved by the Governor April 20, 1973.

Filed in Office of Secretary of State April 23, 1973.

# EXHIBIT 34



## RESOLUTION NO. 39902

1 BY REQUEST OF MAYOR STRICKLAND AND COUNCIL MEMBERS CAMPBELL,  
2 IBSEN, AND MELLO

3 A RESOLUTION related to Click! Network; urgently requesting the Tacoma  
4 Public Utility Board to contractually require all internet service providers  
5 using Click! Network to abide by the Click! Network Open Internet Policy  
6 supporting net neutrality.

7 WHEREAS the City of Tacoma, Department of Public Utilities, Light  
8 Division (d.b.a. "Tacoma Power") owns a hybrid fiber-coaxial ("HFC")  
9 communications network that delivers cable television, broadband internet, and  
10 other services within Tacoma Power's service area through its  
11 Telecommunications Section, Click! Network (d.b.a. "Click! Network"), and

12 WHEREAS, as a result of prior policy decisions, Tacoma Power provides  
13 wholesale broadband internet service to local Internet Service Provider ("ISP")  
14 companies, which, in turn, retail the broadband internet service to end-use  
15 customers, and

16 WHEREAS Click! Network has adopted an Open Internet Policy  
17 supporting the principles of net neutrality; specifically, Click! Network does not:  
18

- 19 • Discriminate among specific uses, or class of uses, on its network
- 20 • Impair, degrade, or delay VoIP applications or services that compete  
21 with its video services or services of its affiliates
- 22 • Impair, degrade, delay or otherwise inhibit access by customers to  
23 lawful content, applications, services, or non-harmful devices
- 24 • Impair free expression by slowing traffic from certain websites
- 25 • Demand pay-for-priority or similar arrangements that directly or  
26 indirectly favor certain traffic over other traffic



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- Prioritize its own applications, services, or devices or those of its affiliates
- Block lawful content, applications, services, or non-harmful devices, subject to reasonable network management as defined below and in its Acceptable Use Policy, and

WHEREAS the United States Federal Communications Commission (“FCC”) has repealed existing federal regulations requiring ISPs to abide by net neutrality principles, and

WHEREAS the City Council fully supports the Click! Network Open Internet Policy and wants to ensure that ISPs using Click! Network are contractually bound to abide by the Click! Network Open Internet Policy to ensure that users of Click! Network are not adversely impacted by the actions taken by the FCC; Now, Therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

Section 1. That the City Council hereby urgently requests that the Tacoma Public Utility Board require Click! Network to include in all contracts with current and future ISPs, as a condition to use Click! Network, that the ISPs abide by the Click! Network Open Internet Policy.



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Section 2. That the proper officers of the City are hereby authorized to enter into contracts with ISPs to implement the intent of this resolution.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney



# CONGRESS.GOV

## All Information (Except Text) for H.R.1644 - Save the Internet Act of 2019

116th Congress (2019-2020) | [Get alerts](#)

[« Back to this bill](#)

**Sponsor:** [Rep. Doyle, Michael F. \[D-PA-18\]](#) (Introduced 03/08/2019)

**Committees:** House - Energy and Commerce

**Committee Reports:** [H. Rept. 116-34](#)

**Latest Action:** Senate - 04/29/2019 Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 74. ([All Actions](#))

**Roll Call Votes:** There have been [5 roll call votes](#)

**Tracker:** Introduced **Passed House** Passed Senate To President Became Law

There are 4 versions of this bill. [View text »](#)

Click the check-box to add or remove the section, click the text link to scroll to that section.

[Titles](#)  [Actions Overview](#)  [All Actions](#)  [Cosponsors](#)  [Committees](#)  [Related Bills](#)  [Subjects](#)  [Latest Summary](#)  All Summaries

### Titles (4)

#### Short Titles

Short Titles - House of Representatives

#### Short Titles as Passed House

Save the Internet Act of 2019

#### Short Titles as Reported to House

Save the Internet Act of 2019

#### Short Titles as Introduced

Save the Internet Act of 2019

#### Official Titles

Official Titles - House of Representatives

#### Official Title as Introduced

To restore the open internet order of the Federal Communications Commission.

### Actions Overview (3)

#### Date

04/10/2019 Passed/agreed to in House: On passage Passed by the Yeas and Nays: 232 - 190 ([Roll no. 167](#)).

04/05/2019 Reported (Amended) by the Committee on Energy and Commerce. [H. Rept. 116-34](#).

03/08/2019 Introduced in House

### All Actions (71)

Date	Chamber	
04/29/2019	Senate	Read the second time. Placed on Senate Legislative Calendar under General Orders. Calendar No. 74.
04/11/2019	Senate	Received in the Senate. Read the first time. Placed on Senate Legislative Calendar under Read the First Time.

# EXHIBIT 35



# **Broadband Opportunity Council Report and Recommendations**

**Pursuant to the Presidential Memorandum on  
Expanding Broadband Deployment and Adoption by  
Addressing Regulatory Barriers and Encouraging  
Investment and Training**

**August 20, 2015**

**Co-Chairs:**

**Secretary Penny Pritzker, U.S. Department of Commerce  
Secretary Tom Vilsack, U.S. Department of Agriculture**

# Broadband Opportunity Council

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## Executive Summary

*“Access to high-speed broadband is no longer a luxury; it is a necessity for American families, businesses, and consumers. Affordable, reliable access to high-speed broadband is critical to U.S. economic growth and competitiveness. High-speed broadband enables Americans to use the Internet in new ways, expands access to health services and education, increases the productivity of businesses, and drives innovation throughout the digital ecosystem.” – President Barack Obama*

The United States continues to experience unprecedented growth and innovation in broadband and in the advanced applications and services it enables. While the benefits of increased broadband access and adoption are widespread, barriers like income and geography keep many Americans from taking advantage of the economic, educational and social benefits of broadband access. To make sure that the Federal government does everything within its power to support broadband deployment and adoption, on March 23, 2015, President Obama signed a Presidential Memorandum (Memorandum) “Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training.”<sup>1</sup> The Memorandum created the Broadband Opportunity Council (Council) and tasked it to produce specific recommendations to increase broadband deployment, competition and adoption through executive actions within the scope of existing Agency programs, missions and budgets. This Report responds to that directive.

The Council presents four overarching recommendations:

1. Modernize Federal programs to expand program support for broadband investments.
2. Empower communities with tools and resources to attract broadband investment and promote meaningful use.
3. Promote increased broadband deployment and competition through expanded access to Federal assets.
4. Improve data collection, analysis and research on broadband.

To pursue these objectives, Federal Agencies will take dozens of actions over the next 18 months. These include commitments to:

- Modernize Federal programs valued at approximately \$10 billion to include broadband as an eligible program expenditure, such as the Department of Agriculture’s (USDA) Community Facilities (CF) program, which will help communities around the country bring broadband to health clinics and recreation centers;
- Create an online inventory of data on Federal assets, such as Department of the Interior (DOI) telecommunications towers, that can help support faster and more economical broadband deployments to remote areas of the country;
- Streamline the applications for programs and broadband permitting processes to support broadband deployment and foster competition; and
- Create a portal for information on Federal broadband funding and loan programs to help communities easily identify resources as they seek to expand access to broadband.

The Council proposes continuing actions in support of its mission, including monitoring agencies’ progress in implementing the action items in the Report and exploring additional steps to further the goals set forth in the Presidential Memorandum.

# Broadband Opportunity Council

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## 1. Introduction

### Progress to Date

Day by day, access to broadband, and the advanced applications it facilitates, becomes more integral to the daily lives of Americans and to the mission and work of the Federal government and its Agencies. Broadband drives the provision of services across nearly all government functions and across many of the activities that are key to advancement and opportunity for all Americans.

- Broadband enables greater civic participation, provides tools for open government and streamlines government processes.
- Broadband enables changes in how we access educational resources, collaborate in the educational process, conduct research and continue to learn anytime, anyplace and at any pace.
- Broadband enables improved healthcare access, treatments and information.
- Broadband enables new business models, creates business efficiencies, drives job creation, and connects manufacturers and store-fronts to clients and partners worldwide.
- Broadband can also help bring communities together and improve public safety, create a greener planet, and make our transportation systems more resilient and efficient.

Additionally, broadband provides a foundation for many of the advancements we will see across industry sectors in the coming years.<sup>2</sup>

That's why the Obama Administration has focused over the past six years on expanding broadband access for all Americans. Under the Obama Administration's leadership, the United States has experienced unprecedented growth and innovation in broadband networks and services. Since 2009, nearly 45 million more Americans have adopted broadband.<sup>3</sup> Today, 84 percent of Americans are "Internet users," up from 76 percent 5 years ago.<sup>4</sup> Tens of millions of households have seen their home broadband speeds more than double without paying significantly more for monthly service. Communities around the country are beginning to reap the benefits of gigabit speed fiber networks. And while other countries are just beginning to deploy fourth-generation wireless networks to scale, over 98 percent of Americans now have access to 4G mobile broadband.<sup>5</sup>

A combination of robust private investment and targeted Federal policy has driven these remarkable strides in broadband access and adoption. Through the American Recovery and Reinvestment Act (Recovery Act), USDA and the Department of Commerce (DOC) invested nearly \$7.5 billion in broadband networks to help connect under-served areas around the country:

- The Commerce Department's National Telecommunications and Information Administration (NTIA) awarded approximately \$4 billion in grants under the Broadband Technology Opportunities Program (BTOP) and approximately \$293 million in grants under the State Broadband Initiative (SBI) program. Grantees deployed more than 114,500 miles of new or upgraded network miles; connected more than 25,500 community anchor institutions; installed or upgraded more than 47,100 personal computers in public access centers; and prompted more than 670,000 people to subscribe to broadband services. SBI grantees mapped broadband availability in all 50 states and 6 territories and supported well over 200 local broadband planning teams across the country.
- USDA's Rural Utilities Service (RUS) expanded its existing telecommunications programs with an additional \$3.5 billion in loans and grants as part of the Broadband Infrastructure Program (BIP). The awards went to 285 last mile providers, 12 middle mile providers, and 4

## 4. Recommendations and Agency Actions

The Council was charged with making recommendations for actions that can be implemented within the scope of existing Agency programs, missions and budgets. The Council makes recommendations in four areas where Federal actions can strengthen broadband deployment, foster competition and promote broadband adoption:

1. Modernize Federal programs to expand program support for broadband investments.
2. Empower communities with tools and resources to attract broadband investment and promote meaningful use.
3. Promote increased broadband deployment and competition through expanded access to Federal assets.
4. Improve data collection, analysis and research on broadband.

Milestones reflect the Federal fiscal year calendar which begins October 1. Please see Appendix A for a list of Agencies and acronyms. Recommended next steps for the Broadband Opportunity Council are summarized in Section 5.

### 4.1 Modernize Federal programs to expand program support for broadband investments

Broadband has steadily shifted from an optional amenity to a core utility for households, businesses and community institutions. Today, broadband is taking its place alongside water, sewer and electricity as essential infrastructure for communities.

However, not all Federal programs fully reflect the changing social, economic and technological conditions that redefined the need for and benefits of broadband. In some cases, programs that can support broadband deployment and adoption lack specific guidelines to promote its use. Other programs have not integrated funding for broadband commensurate with its importance and role in program execution and mission.

**RECOMMENDATION: All relevant Federal programs, especially those supporting economic development, infrastructure and housing programs, will use rulemakings or guidance to open financing resources for broadband investments.**

To implement this recommendation, Council members will take the following initial 13 actions. Cumulatively, these actions will open up or clarify the potential uses for \$10 billion in Federal grants and loans for broadband-related activities.

- USDA: Update guidance for the Rural Development Community Facility Program: Rural Housing Service - Community Facilities (CF), which represents an estimated \$2.3 billion in FY16 funding, will develop and promote new funding guidance making broadband projects eligible.
  - Key Milestones:

# EXHIBIT 36

# SESSION LAWS

OF THE

# STATE OF WASHINGTON

TWELFTH SESSION

Convened January 9; Adjourned March 9

1911

COMPILED IN CHAPTERS WITH MARGINAL NOTES

—BY—

I. M. HOWELL  
SECRETARY OF STATE

PUBLISHED BY AUTHORITY

OLYMPIA, WASH.  
E. L. BOARDMAN, PUBLIC PRINTER  
1911.



CHAPTER 117.

[S. S. B. 102.]

PUBLIC SERVICE COMMISSION LAW.

[This act specifically repeals §§8627 to 8661, inclusive, and §§8691 to 8716, inc., Rem.-Bal. See §109 infra for repeal. By implication, §§8682, 8684, 8688, 8689, 8690, 9305, 9306, Rem.-Bal. are repealed.]

AN ACT relating to public service properties and utilities, providing for the regulation of the same, fixing penalties for the violation thereof, making an appropriation and repealing certain acts.

*Be it enacted by the Legislature of the State of Washington:*

ARTICLE I.

PUBLIC SERVICE COMMISSION—GENERAL PROVISIONS.

SECTION 1. *Short Title.*

This act shall be known as the "Public Service Commission law," and shall apply to the public services herein described and the commission hereby created.

SEC. 2. *Public Service Commission: Appointment; Term; Removal.*

There shall be and there is hereby created, a public service commission consisting of three persons, one of whom shall be elected as chairman, to be appointed by the governor, by and with the advice and consent of the senate. The terms of the commissioners first appointed under the provisions of this act shall be, one for the term of six years, one for the term of four years, and one for the term of two years; and thereafter the term of each commissioner shall be six years from and after the expiration of the term of his predecessor. Each commissioner shall hold office until his successor shall have been appointed and qualified.

The governor may remove any commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him, and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than ten days' notice. If such commissioner shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner, and his

Name.

Commission of three persons.

Removal.

Electrical  
company.

The term "electrical company," when used in this act, includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state.

Transportation of  
property.

The term "transportation of property," when used in this act, includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property transported, and the transmission of credit.

Transportation of  
persons.

The term "transportation of persons," when used in this act, includes any service in connection with the receiving, carriage and delivery of the person transported and his baggage and all facilities used, or necessary to be used in connection with the safety, comfort and convenience of the person transported.

Service.

The term "service," is used in this act in its broadest and most inclusive sense.

Telephone  
company.

The term "telephone company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any telephone line or part of telephone line used in the conduct of the business of affording telephonic communication for hire within this state.

Telephone  
line.

The term "telephone line," when used in this act, includes conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telephone company to facilitate the business of affording telephonic communication.

Telegraph.

The term "telegraph company," when used in this act, includes every corporation, company, association, joint

stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any telegraph line or part of telegraph line used in the conduct of the business of affording for hire communication by telegraph within this state.

The term "telegraph line," when used in this act, includes conduits, poles, wire, cables, cross-arms, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated or owned by any telegraph company to facilitate the business of affording communication by telegraph.

Telegraph  
line.

The term "water system," when used in this act, includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

Water  
system.

The term "water company," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating or managing any water system for hire within this state.

Water  
company.

The term "vessel," when used in this act, includes every species of water craft, by whatsoever power operated, for the public use in the conveyance of persons or property for hire over and upon the waters within this state (excepting row boats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five gross tons propelled by gas, fluid, naphtha or electric motors).

Vessel.

The term "steamboat company," when used in this act, includes every corporation, company, association, joint

Steamboat  
company.

stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, controlling, leasing, operating or managing any vessel over and upon the waters of this state.

Dock,  
wharf.

The term "dock" or "wharf," when used in this act, includes any and all structures at which any steamboat, vessel or other water craft lands for the purpose of receiving or discharging freight from or for the public, together with any building or warehouse used for storing such freight for the public for hire.

Warehouse.

The term "warehouse," when used in this act, includes any building or structure in which freight is received for storage from the public for hire, intended for shipment or discharged by any water craft.

Wharfinger.

The term "wharfinger" or "warehouseman," when used in this act, includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, operating or managing any dock, wharf or structure where steamboats, vessels or other water craft land for the purpose of discharging freight for the public, and where such freight is received on such dock, wharf or structure for the public for hire within this state.

Public  
service  
company.

The term "public service company," when used in this act, includes every common carrier, gas company, electrical company, water company, telephone company, telegraph company, wharfinger and warehouseman as such terms are defined in this section.

## ARTICLE II.

### PROVISIONS RELATING TO COMMON CARRIERS.

#### SEC. 9. *Charges; Duties of Common Carriers.*

Charges.

All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier, or by any two or more common carriers, shall be just, fair, reasonable and sufficient.

Every common carrier shall construct, furnish, maintain and provide safe, adequate and sufficient service fa-

tract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

No telephone company or telegraph company subject to the provisions of this act shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by either telephone or telegraph between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys-at-law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other telephone companies, telegraph companies, railroad companies and street railroad companies.

Franks and passes.

SEC. 41. *Unjust Discrimination.*

No telegraph or telephone company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telegraph or telephone or in connection therewith, except as authorized in this act than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telegraph or telephone under the same or substantially the same circumstances and conditions.

Uniform compensation.

SEC. 42. *Unreasonable Preference.*

No telegraph company or telephone company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Unreasonable preference.

[See § 9306, Rem.-Bal.]

# EXHIBIT 37



# 1. Executive Summary

## 1.1 The Digital Imperative

The future of regional success is one of resiliency, diversity, sustainability, and connectedness built on an infrastructure that anticipates the current and future needs of populations. In our increasingly digital age, local governments are recognizing the need to mitigate the risks posed by the “digital divide”<sup>1</sup> by taking the opportunity to plan for initiatives that aim to improve quality of life, expand economic development, and equip governments with improved technologies.

*Pierce County is well-positioned to realize substantial economic gains from targeted investments in broadband infrastructure.* By linking its cities, natural assets, and rural areas with broadband, the County can attract investment, create economic opportunities, and operate more efficiently and effectively. Broadband and other digital technology directly enable transformation in business, education, health, transportation and other areas that make for great places, happy people, and vital enterprises. County government can be a catalyst for such transformation by making targeted investments in public infrastructure to reduce internal costs and improve operations. Such investment must align with and promote private investment, too. The keys to success are clear vision, committed leadership, and a solid plan.

## 1.2 Background

*Broadband is essential*, much like education, electricity, and water or sewer. It has become a primary enabler of economic mobility and prosperity, a “fourth utility” that is relied on by residents, businesses, and governments alike. Early in the digital revolution of the 1990s, communities realized they could not depend solely on private enterprise for internet access and began thinking forward about how to expand access to this new utility. Local governments like Pierce County now consider broadband a critical enabler of success in communities, playing a role in such issues as:

- **Attracting and retaining highly skilled talent**, particularly those in well-paid industries who can live most anywhere, with great quality of life that includes connectivity
- **Automating local government operations**, sharing applications among municipalities to reduce costs and increase impact
- **Monitoring and managing natural resources** while sustainably utilizing them for agriculture, industry, recreation, and utilities
- **Expanding value creation among existing businesses and developing new private enterprises**, especially those that fit the distinct character and resource base of the area, and create high-paying jobs
- **Improving skill development and housing mobility** as well as economic opportunities for residents

<sup>1</sup> “Digital Divide” refers to the gap between populations with access to internet and those whose occupational, educational, and social opportunities are negatively affected by lack of access to the internet. The term is often associated with rural or lower income communities.

# EXHIBIT 38





## Video: Expanding Broadband Services in Kitsap County



### BROADBAND SERVICES

PUDs were formed in 1930 to provide equitable access to modern utilities for Washington's communities. Today, this includes broadband telecommunications. Watch our video to see how Kitsap PUD is continuing the mission and working to bring this essential utility to all of Kitsap's communities.

[WATCH & READ MORE >>](#)

### HYDRO DATA

HYDROLOGY is the study of the movement, distribution, and quality of water, including the hydrologic cycle, water resources and environmental watershed sustainability. The PUD gathers and compiles extensive hydrological data in order to accurately monitor water resources.

[READ MORE >>](#)

### KITSAP WATER 101

What do the Olympic Mountains have to do with your drinking water? How does your septic system potentially help salmon? How might your lawn be harming our aquifers? Take a five minute tour of this "story map" and learn these and other interesting things about Kitsap's water resources.

[READ MORE >>](#)

## Pick a Service Provider

Here are links to our local authorized service providers to help you determine which provider best meets your needs, for your home/business. To make a Fiber Connection Request, please select a Service Provider before proceeding.



### To make a Fiber Connection Request please select a Service Provider:

Service Provider	Website	Phone	Services Provided
<input type="radio"/> Noel Communications	<a href="http://www.noelcomm.com">www.noelcomm.com</a>	509-575-4780	
<input type="radio"/> Level 3 Communications	<a href="http://www.level3.com">www.level3.com</a>	720-888-1000	
<input type="radio"/> NCI DataCom	<a href="http://www.ncidata.com">www.ncidata.com</a>	509-826-0300	
<input type="radio"/> LocalTel & NWinternet	<a href="http://www.localtel.net">www.localtel.net</a>	509-888-8888	
<input type="radio"/> GCI	<a href="http://www.connectmd.com">www.connectmd.com</a>	866-221-4841	
<input type="radio"/> Native Network	<a href="http://www.nativenetwork.com">www.nativenetwork.com</a>	877-857-2288	
<input type="radio"/> iFiber Communications	<a href="http://www.ifiber.tv">www.ifiber.tv</a>	509-663-2600	
<input type="radio"/> Skyline Network	<a href="http://www.skylin3.net">www.skylin3.net</a>	509-293-7257	
<input type="radio"/> Zayo Bandwidth	<a href="http://www.zayo.com">www.zayo.com</a>	509-661-2000	



# PUD 3 Fiber Optic Retailers

Home > Services > PUD 3 Fiber Optic Network > PUD 3 Fiber Optic Retailers

PUD 3 Fiber Optic Retailers

Fiberhoods  
GIG SPEEDS

**PUD 3 Fiber Optic Retailers**

Vibratory Plow

Background of PUD 3's Fiber Network

Hosting & Colocation

Bringing Fiber to Your Home

Quartered Fiber Services

## PUD 3 Fiber Optic Retailers

WE PROVIDE THE PIPE, THEY PROVIDE THE SERVICES.

PUD 3 has retail service providers that are committed to bridging the digital divide in our community. Contact one of the retailers listed to learn more about their services.

### RETAIL PROVIDER



[mason.advancedstream.com](http://mason.advancedstream.com)

### SERVICES



### PHONE

360.871.8100

## Retailers

Fiberhoods

GIG SPEEDS

**PUD 3 Fiber Optic Retailers**

Vibratory Plow

Background of PUD 3's Fiber Network

Hosting & Colocation

Bringing Fiber to Your Home

Overhead Fiber Service

Underground Fiber Service

Underground Fiber Distribution Construction



























**Outdoor Lighting**



**Saving Tips & Tools**

WE PROVIDE THE PIPE, THEY PROVIDE THE SERVICES.

PUD 3 has retail service providers that are committed to bridging the digital divide in our community. Contact one of the retailers listed to learn more about their services.

RETAIL PROVIDER	SERVICES	PHONE
 <a href="http://mason.advancedstream.com">mason.advancedstream.com</a>	   	360.871.8100
 <a href="http://www.hcc.net/internet/pud3">www.hcc.net/internet/pud3</a>	    	360.898.2481
 <a href="http://www.ifiber.tv/internet/mason-county">www.ifiber.tv/internet/mason-county</a>	    	360.427.4000
 <a href="http://www.noanet.net">www.noanet.net</a>		866.662.6380
 <a href="http://www.silverstartelecom.com">www.silverstartelecom.com</a>	   	360.868.6070

# SERVICE PROVIDERS

CONNECT TO GRANT COUNTY PUD'S HIGH SPEED NETWORK

## 1 click Network

27 Basin St. SW, Ephrata, WA 98823  
[oneclicknetwork.com](http://oneclicknetwork.com)



*Se Habla Español*  
509-398-8900

## NCI Datacom

626 Okoma Drive, Omak WA 98841  
[ncidata.com](http://ncidata.com)



888-317-7624

## Aspeedynet

2623-A Euclid, Wenatchee, WA 98801  
[aspeedynet.net](http://aspeedynet.net)



*Se Habla Español*  
509-667-2413

## Nighthawk Networking

PO Box 2393, Mattawa, WA 99349  
[nighthawknet.net](http://nighthawknet.net)



*Se Habla Español*  
866-424-4144

## Basin Networking

9 Basin St SW Ste 103B, Ephrata, WA 98823  
[basin-networking.net](http://basin-networking.net)



509-750-0672

## Noel Communications Inc.

901 E. Pitcher St, Yakima, WA 98901  
[noelcomm.com](http://noelcomm.com)



800-800-5347

## Coulee Internet Services

223 Main St, Grand Coulee WA 99133  
[couleeinternet.com](http://couleeinternet.com)



509-720-7627

## Northland Fiber Direct

254 Fig St N, Moses Lake WA 98837  
[northlandfiberdirect.com](http://northlandfiberdirect.com)



509-765-6151

## CU Online

402 N Columbia, Coulee Dam WA 99116  
[cdfcu.com/services/additional-services/internet-service-provider/](http://cdfcu.com/services/additional-services/internet-service-provider/)



800-572-5678

## Odessa Office Equipment

PO Box 489, Odessa WA 99159  
[accima.com](http://accima.com)



509-982-2898

## Donobi

7109 Timberlake Rd Ste 201  
Lynchburg VA 24502  
[donobi.com](http://donobi.com)



888-271-9672

## Saddle Mountain Wireless

PO Box 2087, Mattawa WA 99349  
[smwireless.net](http://smwireless.net)



*Se Habla Español*  
509-932-5088

## Grant County Powernet

236 S Ash, Moses Lake WA 98837  
[gcpower.net](http://gcpower.net)



509-766-1345

## Spectrum Online Services

500 Lasco Lane, Ste 211  
Moses Lake WA 98837  
[sosml.net](http://sosml.net)



*Se Habla Español*  
509-766-2767

## iFiber Communications

135 Basin St SW, Ephrata, WA 98823  
[ifiber.tv](http://ifiber.tv)



*Se Habla Español*  
509-754-2600

## Startouch Broadband

1354 Pacific Pl, Ste 102, Ferndale WA 98248  
[startouch.com](http://startouch.com)



888-733-0203

## LocalTel

223 E. Broadway, Moses Lake, WA 98837  
[localtel.net](http://localtel.net)



*Se Habla Español*  
509-707-7777



High Speed Internet



Telephone

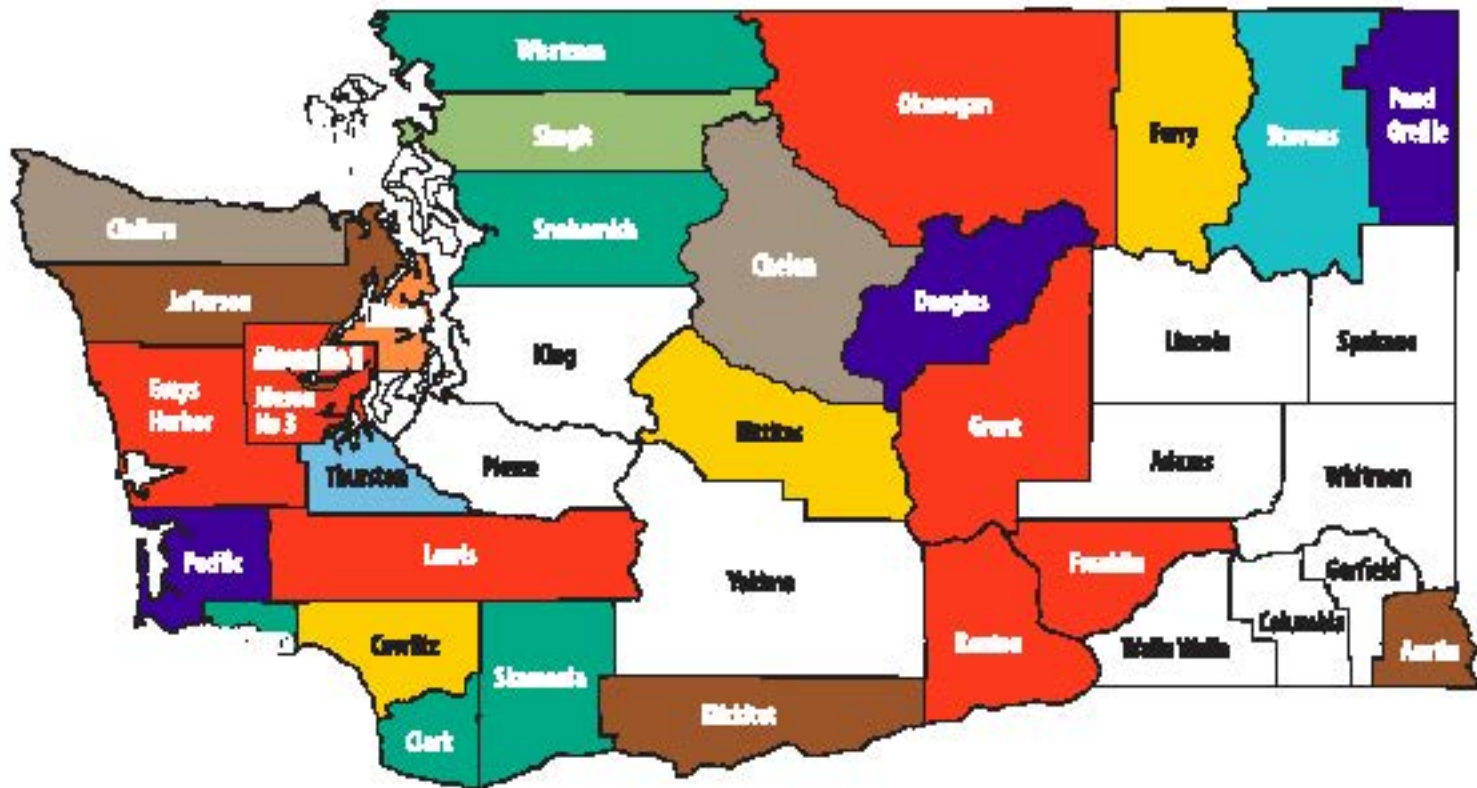


Wireless Internet



Television

# Counties Served by Public Utility Districts



- Electricity PUDs
- Water PUDs
- Electricity and Water PUDs
- Electricity and Telecommunications PUDs
- Electricity, Water and Sewer PUDs
- Electricity, Water and Telecommunications PUDs
- Electricity, Water, Sewer and Telecommunications PUDs
- Water and Sewer PUDs
- Water and Telecommunications
- Water, Sewer and Telecommunications PUDs
- Not served by a PUD

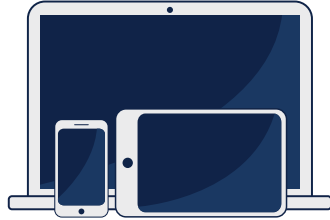
# EPB FIBER OPTICS

## 4K ULTRA HD TV

EPB BECAME ONE OF THE FIRST IN THE U.S. TO OFFER 4K ULTRA HD CHANNELS

### MORE THAN 100 EPB2GO NETWORKS

EPB customers can access more than 100 networks anywhere they go on any mobile device.



GREW TOTAL FIBER OPTICS CUSTOMERS TO 91,411



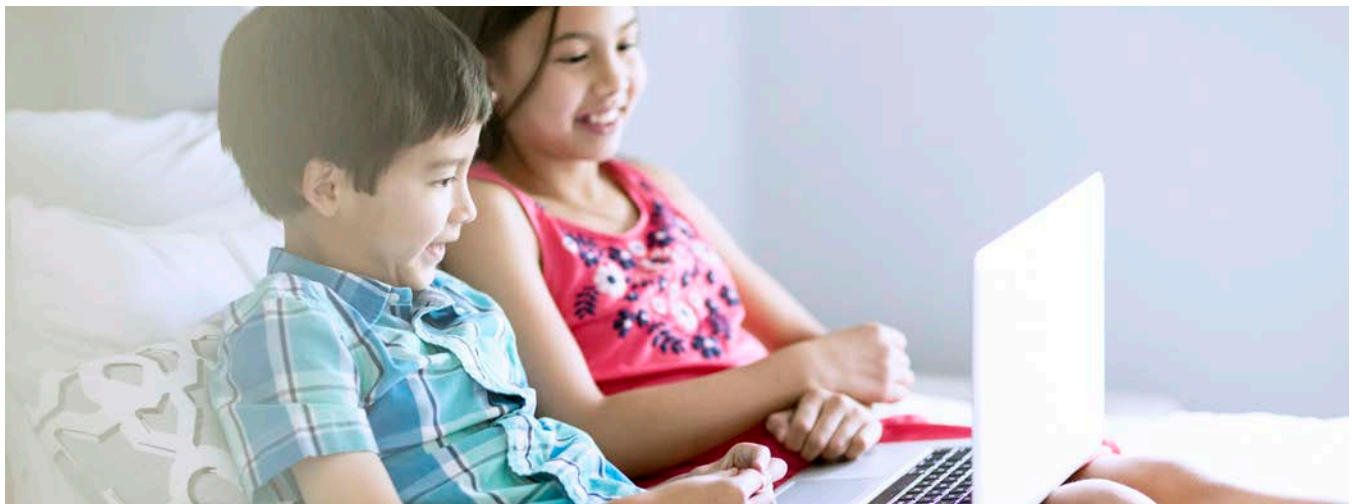
**7,155**

COMMERCIAL CUSTOMERS



**84,256**

RESIDENTIAL CUSTOMERS



More than 9,800 of our EPB Fiber Optics customers had subscribed to 1-gigabit and higher Internet and data services, as of the end of fiscal year 2016-2017.

# THE POWER OF YOUR HOME'S ENERGY USE IN THE PALM OF YOUR HAND.



These days, you can access just about everything you do right from your mobile device. And now, that includes monitoring your home’s electric service. Last year, EPB developed myEPB, a mobile app that gives customers real-time access to their energy use data by the hour, day or month – anytime, anywhere. In addition to monitoring their power use, customers can report power outages and receive push notifications on outages and restorations in their area. And, future plans include convenient access to both electric and fiber optics account summaries, mobile bill pay and more. The myEPB App is compatible with iOS and Android devices and is available for download free at the App Store.



# TV WITH GREATER FLEXIBILITY.



Today's consumers want products that can be tailored to meet their unique needs and lifestyle. In July of 2016, EPB Fiber Optics unveiled Fi TV Select, offering customers better choices and options for customizing their TV viewing experience.

**WITH FI TV SELECT, CUSTOMERS CHOOSE THE CHANNELS PACKAGE AND FEATURES PACKAGE THEY LIKE BEST. EVERYONE GETS HD AND VIDEO ON DEMAND TITLES. AND NOW THERE'S THE OPTION OF ADDING PREMIUM CHANNELS OR ADDITIONAL CHANNELS TO ANY PLAN.**

We also enhanced the viewing experience with new available features like the ability to rewind/replay live TV, a DVR that can record up to six HD channels at one time and an even sharper high definition picture with 4K Ultra HD quality. Thanks to the launch of Fi TV Select, EPB was one of the few television distributors in the nation to offer customers the opportunity to watch the Summer Olympics in 4K.

Combined with anytime mobile streaming on EPB2Go, Fi TV Select represents one more way EPB is responding to the ever changing landscape of entertainment options. In fact, Fi TV Select now accounts for nearly 13,000 of our more than 59,000 total television customers – including more than 6,300 legacy customers who've converted to the new platform.

# HOSTED PHONE SOLUTIONS: INSTALLED 25,000<sup>TH</sup> OUTSIDE LINE.



EPB Fiber Optics commercial sales team achieved a significant Hosted Phone Solution milestone in 2017. With 1,600 Hosted Phone customers choosing EPB as their provider, we installed our 25,000<sup>th</sup> Hosted Phone line this year. This achievement makes EPB the 15<sup>th</sup> largest customer in the world for our third-party vendor, MetaSwitch. One secret to our success? Unlike other local providers, EPB is the area’s only “one-stop shop” for everything it takes to set up and maintain a commercial phone system – plus the training and ongoing support to help customers do business, even better.

# PIONEERING THE SMART GRID OF THE FUTURE.

EPB'S SMART GRID DEVELOPMENT TEAM HAS PARTNERED WITH OAK RIDGE NATIONAL LABORATORY SCIENTISTS SINCE OCTOBER 2014 TO PIONEER THE ELECTRIC SYSTEM OF THE FUTURE.



Our living laboratory is Chattanooga's smart grid, a 9,000 mile fiber optic network connecting thousands of automated switches, sensors and smart devices that generate trillions of data points annually. This partnership enables us to participate in the Grid Modernization Lab Consortium, a U.S. Department of Energy initiative that leverages the resources from all of the national laboratories to develop and enhance the nation's electric system.

Our team is conducting research in a number of areas. First, we're working with state-of-the-art batteries to develop ways of reducing the community's peak energy demand while enhancing power quality and reliability. We have also developed a software algorithm that stabilizes voltage to customers. Additionally, EPB is testing a variety of low cost sensors that we have deployed in some of EPB's substations. The goal is to identify the best devices and practices to help ensure our electric system is operating at peak reliability and efficiency. These sensors also give EPB the ability to identify potential equipment failures and security issues in real time.

# STRONG FINANCIAL RESULTS.



Both of EPB's divisions delivered strong financial results during the 2016-2017 Fiscal Year. EPB Electric Power performed better than budget and the prior year with a positive net change in position of \$7.4 million, which was \$1.9 million better than budget. The division's capital investment to build electrical infrastructure in support of new housing and business construction exceeded budget by \$3.7 million; however, since these capital expenditures are driven by strong, local economic growth, they will translate into higher revenues in future years.

EPB Fiber Optics continued to outperform budget driven by continuing net increases in new subscribers for fiber optic services. In fact, the total number of EPB Fiber Optics customers grew to 91,411 households and businesses, a 9% increase over last fiscal year. As a result, EPB Fiber Optics revenues grew by more than 11% to \$150.1 million, driving a change in net position of \$27.9 million for the fiscal year.

# HIGHLIGHTS OF FINANCIAL PERFORMANCE:



**STRONG DEBT MANAGEMENT:** EPB Fiber Optics is now debt-free. In addition, for the use of the fiber-to-the-home network, EPB Fiber Optics pays EPB Electric Power access fees and allocations that more than cover the cost of the electric system's capital debt service on an annual basis.

**LOWER POWER RATES:** Because EPB Fiber Optics pays such substantial allocations and access fees to EPB Electric Power, the electric system has been able to avoid a significant electric rate increase. As a result, all electric customers are enjoying lower electric rates regardless of whether they are EPB Fiber Optics customers or not.

**LARGEST LOCAL TAX PAYER:** EPB paid a combined total of \$19.4 million to local governments, making EPB the largest contributor to local tax coffers.

# EXHIBIT 39



## RESOLUTION NO. 40467

1 A RESOLUTION relating to surplus utility property; declaring surplus pursuant to  
2 RCW 35.94.040 certain utility-owned property, including certain inventory,  
3 equipment, and vehicles allocated to the Click! Network together with the  
4 Excess Capacity of the Tacoma Power HFC Network, part of which is the  
5 Click! Commercial Network.

6 WHEREAS, in the mid-1990s, the City of Tacoma, Department of Public  
7 Utilities, Light Division (d.b.a. "Tacoma Power") determined that the best option to  
8 address the shifting advance in telecommunications in the electric utility industry  
9 landscape was to construct a hybrid fiber coaxial ("HFC") telecommunications  
10 network ("HFC Network"), and

11 WHEREAS, on July 23, 1996, the City Council passed Ordinance No. 25930,  
12 approving Tacoma Power's proposal to establish and create the HFC Network as  
13 part of Tacoma Power's electric utility infrastructure, allowing Tacoma Power to,  
14 among other things, connect its generation, distribution, and transmission assets  
15 and support the eventual adoption of smart meters, and further, to use the excess  
16 capacity of the HFC Network to: (1) sell retail cable television service to Tacoma  
17 Power's electric customers, and (2) sell data transport and wholesale internet  
18 access services to Internet Service Providers ("ISPs") and others, and

19 WHEREAS the Public Utility Board ("PUB") adopted Amended Substitute  
20 Resolution No. U-9258, approving Tacoma Power's proposed business plan to  
21 develop a state-of-the-art HFC Network to support enhanced control, reliability, and  
22 efficiency for its electric system and to generate additional revenue through new  
23 business lines (i.e., wholesale internet, cable TV, etc.), and  
24  
25  
26



1 WHEREAS, pursuant to Substitute Resolution No. 33668, the City Council  
2 authorized Tacoma Power to construct, control, and operate the HFC Network, and  
3 approved the PUB business plan to develop a state-of-the-art HFC Network to,  
4 among other things, create revenue diversification to maximize the return on  
5 Tacoma Power's investment in the HFC Network by offering new business lines  
6 providing cable television and internet transport using the available (excess)  
7 capacity of the HFC Network, and

8 WHEREAS the City Council determined that the new business line of  
9 Tacoma Power would be subject to substantially the same franchise agreements as  
10 the City grants for other similar businesses, and that the City Council would remain  
11 involved in major policy decisions, and

12 WHEREAS, since its construction in the late 1990s, the HFC Network has  
13 connected Tacoma Power's distribution and transmission assets and enabled  
14 automated meter reading and billing, distribution automation, and remote turn  
15 on/turn off for electric customers, and

16 WHEREAS, in 2004, Tacoma Power also established a pilot project  
17 deploying as many as 18,000 Gateway Meters (Tacoma Power's name for its initial  
18 smart meters) that relay information from its electric customers to Tacoma Power  
19 headquarters via the HFC Network over coaxial cable connected to the customer  
20 premises which interconnects with the fiber network, and

21 WHEREAS, within four years following deployment of the Gateway Meters,  
22 Tacoma Power began experiencing substandard performance of the Gateway  
23 Meters, including meter failures wherein Tacoma Power was unable to  
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communicate with the meter through the network, read failures wherein the controller in the meter was not able to read the meter, and remote disconnect failures, all resulting in communications errors, failures to measure electrical consumption, a failure rate of up to 100 meters per month, and increased costs to replace defective meters, perform repairs, troubleshoot errors, and collect meter data, and

WHEREAS, by the mid-to-late 2000s, the electric utility industry began to recognize that wireless technology would take the place of wired telecommunications systems with respect to smart meter applications, and

WHEREAS, in 2019, as a result of the advances in the reliability and efficiency of interconnecting meters wirelessly with the HFC Network and the substandard and unreliable performance of the Gateway Meters, Tacoma Power terminated the Gateway Meter Program and ended service over the HFC Network for all Gateway Meters, and

WHEREAS the PUB has authorized agreements providing for the installation and operation of licensed spectrum advance meters that will interconnect wirelessly to that portion of the HFC Network allocated to Tacoma Power, known and referred to as the Power Control & Operations Network (“PCON”), and

WHEREAS the “Excess Capacity of the HFC Network” is generally comprised of: (i) coaxial cable, conduit housing only coaxial cable, conduit installed for service drops (whether or not currently housing coaxial cable), and coaxial cable service drops installed in the Click! Network service area; (ii) specific strands of fiber in the Tacoma Power fiber network that are not reserved for current and future



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use by Tacoma Power for utility purposes, conduit housing such fiber along routes that do not include reserved utility fiber, and excess space in conduit housing such fiber and reserved utility fiber; and (iii) electronic equipment and related hardware installed in the HUB sites and in rights-of-way, all of which is described in more detail, and defined as the “Tacoma Power Commercial System”, in the draft proposed Click! Business Transaction Agreement, attached hereto as Exhibit “B,” and

WHEREAS certain inventory, equipment, and vehicles allocated to Click! Network are described in Exhibit “A.1-3,” attached hereto, all of which are collectively referred to as the “Click! Assets,” and

WHEREAS, in 1998, Click! Network, a trade name used by Tacoma Power, began operating as a cable service provider over excess capacity of the HFC Network providing primarily cable television and wholesale cable modem (internet access) services, and

WHEREAS, since that time, technology and consumer demands have changed with consumers shifting from predominantly consuming cable programming services to predominantly consuming internet access services, and

WHEREAS operational costs for the Click! Network have significantly increased since 1998 while the Click! Network business model has become outdated and unable to respond quickly or efficiently to changes in the market place or provide the capacity to make capital investments necessary to upgrade the network and compete with the private sector, and



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WHEREAS, in response to these challenges, the PUB began to study alternative Click! Network business models and, after many years of study, the PUB, in collaboration with the City Council, retained the services of CTC Technology & Energy (“CTC”) to assist in this analysis, and

WHEREAS, at the January 23, 2018, Joint Study Session of the PUB and City Council, CTC presented its report examining which of the following five alternative business models would best meet 12 Click! Network policy goals later adopted by the PUB and City Council:

- Continue finding ways to reduce costs and streamline operations;
- Become a retail internet service provider (“ISP”) and potentially eliminate cable TV operations;
- Upgrade the Click! Network to fiber-to-the-premises in an effort to better compete with incumbents in the market;
- Cease internet and cable operations and abandon the related parts of the network;
- Seek a partner willing to take on operating and other obligations and costs while agreeing to conditions that would preserve Click!’s significant policy achievements, and

WHEREAS CTC reported that the 12 policy goals could best be met through a business model in which the City retained ownership of the entire HFC Network, including the Click! Network, with a third party providing Cable TV and/or internet access services and covering the capital and operating costs associated with providing those services, and

WHEREAS, under this model, Tacoma Power would no longer provide cable television or wholesale internet access services, and the third party would provide cable television, video, and internet access services directly to the public, and



1 WHEREAS the PUB, pursuant to its prior Resolution No. U-10988,  
2 expressed its determination that while the 1997 business plan achieved many of the  
3 functions envisioned for the HFC Network, the Excess Capacity of the HFC  
4 Network and the inventory, equipment, and vehicles allocated to Click! Network are  
5 not needed now or in the future by Tacoma Power for utility purposes, and thus, will  
6 not be updated or improved or utilized for utility purposes, and are excess to the  
7 needs of Tacoma Power, and that the current Click! Network business plan and the  
8 proposed all-in retail service business model will not generate sufficient revenues to  
9 fully fund operational expenses and the costs of capital improvements needed to  
10 maintain the Excess Capacity of the HFC Network as a state-of-the art Network,  
11 and  
12

13 WHEREAS, through PUB Resolution No. U-10988 and City Council  
14 Resolution No. 39930, the PUB and City Council rescinded their approval of the  
15 all-in retail service business model; adopted 12 policy goals to be maximized  
16 through the use and preservation of the Excess Capacity of the HFC Network; and  
17 directed the Public Utilities Director and City Manager to work collaboratively to  
18 develop a plan to seek information, proposals, or qualifications from interested  
19 parties to determine whether the 12 policy goals could be achieved through a  
20 collaboration and/or restructuring of Click! Network, and  
21  
22

23 WHEREAS, at the August 21, 2018, Joint Study Session of the PUB and  
24 City Council, CTC recommended that the PUB and City Council authorize  
25 negotiation of term sheets with Rainier Connect and Wave Broadband, and  
26



1 WHEREAS the City Council and PUB, after a presentation by CTC and  
2 review of proposals from third parties at the March 5, 2019, Joint Study Session of  
3 the PUB and City Council, directed the Public Utilities Director to execute a letter  
4 agreement with Rainier Connect to enter into good faith negotiation of agreements  
5 through which: (1) the City, through Tacoma Power, would retain ownership of all  
6 of the existing HFC Network; (2) the capital and operating costs of the Excess  
7 Capacity of the HFC Network would be borne by a third party; (3) Tacoma Power  
8 would no longer provide cable television or wholesale internet access or data  
9 transport services; and (4) Rainier Connect would use the Excess Capacity of the  
10 HFC Network to provide cable, video, and internet access services consistent with  
11 the 12 policy goals adopted by the City Council and PUB, and  
12

13 WHEREAS negotiations with Rainier Connect commenced in April 2019, and  
14 the Click! Business Transaction Agreement is now complete, and  
15

16 WHEREAS, on October 23, 2019, the PUB held a public hearing and took  
17 public testimony regarding the proposed surplus of the Click! Assets and the  
18 Excess Capacity of the HFC Network, and  
19

20 WHEREAS, on October 29, 2019, the City Council held a public hearing and  
21 took public testimony regarding the proposed surplus of the Click! Assets and the  
22 Excess Capacity of the HFC Network, and  
23

24 WHEREAS, on October 30, 2019, the PUB adopted Resolution  
25 No. U-11116, declaring the Click! Assets and the Excess Capacity of the HFC  
26 Network surplus to the needs of Tacoma Power and Tacoma Public Utilities and not  
required for continued public utility services, recommending that the City Council



1 declare the above-referenced property surplus to the needs of the City, and  
2 approving the Click! Business Transaction Agreement conditioned upon approval  
3 by the City Council, and

4 WHEREAS the consideration proposed to be paid by Rainier Connect for  
5 conveyance of the inventory, equipment, and vehicles described in Exhibit A.1 is  
6 \$294,742.98, as set forth in Exhibit A.1; the consideration to be paid by Rainier  
7 Connect for the inventory and equipment described in Exhibits A.2 and A.3 are the  
8 contractual obligations of Rainier Connect as set forth in substantially the form of  
9 Exhibit "B" (Click! Business Transaction Agreement), and the use of the Excess  
10 Capacity in the HFC Network is proposed to be granted to Rainer Connect in  
11 consideration for the obligations of Rainier Connect as set forth in Exhibit "B,"  
12 including, but not limited to, annual payments of \$2,500,000 for year one,  
13 \$2,625,000 for year two, \$2,750,000 for year three, \$2,875,000 for year four, and  
14 \$3,000,000 for year five, and for each year after year five, the annual payment will  
15 increase to reflect the Consumer Price Index Increase as described in Exhibit "B,"  
16 and  
17 and

18  
19 WHEREAS, although a declaration that an asset is surplus often proceeds a  
20 decision to sell an asset, there is no requirement that a surplus asset be sold,  
21 and the City does not intend to recommend or approve for sale the Excess Capacity  
22 in the HFC Network, but rather the City, through Tacoma Power, will retain  
23 ownership of the entire HFC Network inclusive of the Excess Capacity in the HFC  
24 Network to ensure that it has control over how the HFC Network is used through the  
25 proposed agreements and to ensure that the entire HFC Network meets all security  
26



requirements and can continue to meet the needs of Tacoma Power, Tacoma  
1 Water, and Tacoma Rail, and

2 WHEREAS, on October 30, 2019, the PUB considered and adopted PUB  
3 Resolution No. U-11116, declaring that the Click! Assets and the Excess Capacity  
4 of the HFC Network, as described therein, are surplus to the needs of Tacoma  
5 Power and Tacoma Public Utilities, and  
6

7 WHEREAS the City Council, having considered the foregoing, the public  
8 comments received during the public hearing of October 29, 2019, and prior public  
9 meetings of the City Council and PUB, and the City records and files related to the  
10 construction, installation, and operation of the Click! Network, and having been in all  
11 matters fully advised, finds that it is in the best interest of the public to declare  
12 surplus to the needs of Tacoma Power and the City the Click! Assets and Excess  
13 Capacity of the HFC Network; Now, Therefore,  
14

15 BE IT RESOLVED BY COUNCIL OF THE CITY OF TACOMA:  
16

17 Section 1. That the City Council does hereby find and concur with the  
18 Tacoma Public Utility Board's determination and declaration pursuant to PUB  
19 Resolution No. U-11116, that the Click! Assets and the Excess Capacity of the HFC  
20 Network, as described therein, are surplus to the needs of Tacoma Power and  
21 Tacoma Public Utilities.  
22

23 Section 2. That, consistent with RCW 35.94.040 and Section 4.6 of the City  
24 Charter, the City Council does hereby find and determine that the Click! Assets and  
25 Excess Capacity in the HFC Network, as described in the recitals above, are not  
26 required for, and are not essential to, continued public utility service or continued



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effective utility service and, pursuant to applicable law, are properly declared surplus property and excess to the needs of Tacoma Power, Tacoma Public Utilities, and the City.

Section 3. That the procedural requirements of the Tacoma Municipal Code and the Purchasing Policy Manual for declaring the Click! Assets and the Excess Capacity in the HFC Network surplus to the needs of Tacoma Power and the City are hereby waived to the extent of non-compliance therewith.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Chief Deputy City Attorney





**EXHIBIT "A.1"**

(Click! Asset Purchase List)

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**APA Exhibit A, Schedule 2.2.a(i), Equipment, Inventory, Vehicles**

Item Description	suggested price	quantity	actual price	totals
<b>Set-Top Boxes</b>				
Set-Top Boxes	\$ 12,361.71	bulk	\$ 12,361.71	
			<b>sub-total:</b>	<b>\$ 12,361.71</b>
<b>Test Equipment</b>				
MPEG Test System	\$ 1,000.00	1	\$ 1,000.00	
MPEG Transport Stream Monitor (QAM)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (GigE/ASI)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (QAM)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (8VSB)	\$ 100.00	1	\$ 100.00	
MPEG Transport Stream Monitor (GigE)	\$ 100.00	1	\$ 100.00	
DSAM	\$ 250.00	9	\$ 2,250.00	
CATV Meter	\$ 2,500.00	4	\$ 10,000.00	
Ethernet Link Assistant (Metroscope)	\$ 100.00	1	\$ 100.00	
Ethernet Link Assistant (Etherscope)	\$ 100.00	1	\$ 100.00	
Bandwidth Analysis	\$ 100.00	1	\$ 100.00	
CATV Sweep Meter Setup	\$ 2,810.50	16	\$ 44,968.00	
			<b>sub-total:</b>	<b>\$ 59,018.00</b>
<b>Portable Generator</b>				
Honda EU2001i	\$ 500.00	5	\$ 2,500.00	
			<b>sub-total:</b>	<b>\$ 2,500.00</b>
<b>Vehicles</b>				
CHEV EXPRESS CARGO VAN	\$ 12,236.00	5	\$ 61,180.00	
FORD E350 VAN ARL 29 FT VERSALIFT	\$ 17,368.00	1	\$ 17,368.00	
FORD TRANSIT VAN VERSALIFT 29' ARL	\$ 28,170.00	1	\$ 28,170.00	
CHEV COLORADO XC 4X4 PU	\$ 6,088.00	1	\$ 6,088.00	
FORD E350 VAN ARL TEREX HI-RANGER	\$ 12,966.00	3	\$ 38,898.00	
FORD ELDORADO 13-PASS SHUTTLE VAN	\$ 2,000.00	1	\$ 2,000.00	
			<b>sub-total:</b>	<b>\$ 153,704.00</b>
<b>Warehouse Inventory</b>				
Click Warehouse Inventory 110	\$ 32,471.16	1	\$ 32,471.16	
Click Warehouse Inventory 120	\$ 697.59	1	\$ 697.59	
Click Warehouse Inventory 121	\$ 19,349.24	1	\$ 19,349.24	
Click Warehouse Inventory 122	\$ 4,641.29	1	\$ 4,641.29	
Dead Stock 2014	\$ -	1	\$ -	
			<b>sub-total:</b>	<b>\$ 57,159.27</b>
<b>Software (for test equipment)</b>				
Effigis (CPAT Leakage detection system)	\$83.33	12	\$ 1,000.00	
Path track	\$0.00	1	\$ -	
Sunrise	\$0.00	1	\$ -	
Trilithic	\$0.00	1	\$ -	
Cable Plant Monitoring	\$9,000.00	1	\$ 9,000.00	
			<b>sub-total:</b>	<b>\$ 10,000.00</b>
<b>Grand Total:</b>				<b>\$ 294,742.98</b>



**Exhibit "A.2"**

(Head End Equipment)

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TWC SD Intellistar Receiver	F9999999	EG001136 - Receiver	Chaparral
Commercial Integrated Sat Rcvr	F9999999	EG001136 - Receiver	Motorola
Satellite Receiver Video Cipher	F9999999	EG001136 - Receiver	Cisco
Satellite Receiver Multiplex/Decrypter	F9999999	EG001136 - Receiver	Motorola
Sat Integrated Receiver/Transcoder	F9999999	EG001136 - Receiver	Scientific Atlanta
Advanced Receiver/Transcoder - QVC HD	F9999999	EG001136 - Receiver	Motorola
Advanced Recv/Transcoder - Outside TV	F9999999	EG001136 - Receiver	Motorola
Advanced Receiver/Transcoder - A&E HD	F9999999	EG001136 - Receiver	Arris
Advanced Receiver/Transcoder - A&E SD	F9999999	EG001136 - Receiver	Cisco
Pro Satellite Receiver - ESPN HD	F9999999	EG001136 - Receiver	Cisco
Adv Receiver Transcoder - Root HD	F9999999	EG001136 - Receiver	Cisco
Adv Receiver Transcoder - Pac 12 NAT	F9999999	EG001136 - Receiver	Cisco
Pro Satellite Rcvr - Starz HD	F9999999	EG001136 - Receiver	Motorola
Satellite Demodulator	F9999999	EG000740 - Modulator	Scientific Atlanta
Pro Satellite Receiver - Starz HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - MLB HD	F9999999	EG001136 - Receiver	Motorola
Satellite Receiver - Dest America HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - Fox Deportes HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - Fox Sports2 HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - Nat Geo SD/HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - ENC Action HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - IndieFlex HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - Cinemax HD	F9999999	EG001136 - Receiver	Motorola
Advanced Recvr Transcoder - Fusion HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - ESPN Deportes SD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - MoviePlex HD	F9999999	EG001136 - Receiver	Motorola
Satellite Demodulator	F9999999	EG000740 - Modulator	Scientific Atlanta
OneNet SE EAS Receiver	F9999999	EG001136 - Receiver	Monroe Electronics
Emergency Alert System Server	F9999999	EG001315 - Aud/Video Server	IBM
Adv Receiver Transcoder - Reelz Channel	F9999999	EG001136 - Receiver	Cisco
Acterna - Stealth Sweep Transceiver	F9999999	EZ000140 - Test Equip	Acterna
Program Receiver - KCMS FM	F9999999	EG001136 - Receiver	Scientific Atlanta
Digital Tuner - 948 KING FM	F9999999	EG001136 - Receiver	Bogen
Universal Encoder - Audio Encoder	F9999999	EG001361 - Sequencer	Scopus
Digital Tuner - 951 KWJZ	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - 957 KIRO	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - 956 KXXD	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - 953 KKWF	F9999999	EG001136 - Receiver	Bogen
Universal Encoder - Audio Encoder	F9999999	EG001361 - Sequencer	Scopus
AM/FM Stereo Tuner - 958 KRWM	F9999999	EG001136 - Receiver	Toa Electronics
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
Universal Encoder - Audio Encoder	F9999999	EG001361 - Sequencer	Scopus

Digital Tuner - 949 KPLU	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - 950 KUOW	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - 960 KUTI	F9999999	EG001136 - Receiver	Bogen
Digital Aud/Vid Encoder/Decoder	F9999999	EG001361 - Sequencer	Radiant
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
Digital Tuner - Spare	F9999999	EG001136 - Receiver	Bogen
XMS Ad Splicer - Server 1	F9999999	EG000110 - Network Server	Arris
XMS Ad Splicer - Server 2	F9999999	EG000110 - Network Server	Arris
EGT Encoder 1 - TVC/QVC	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 2 - Reelz/NASA/KIRO	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 3 - FXX/Big Ten	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 4 - TVW/TV Tacoma	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 5 - KCTS/KING	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 6 - KCPQ/PCTV	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 7 - KOMO/KSTW	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 8 - KUNS/Disney	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 9 - Test/Classic Arts	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 10 - Spare	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 11 - Spare	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 12 - Spare	F9999999	EG001361 - Sequencer	EGT
EGT Encoder 13 - Spare	F9999999	EG001361 - Sequencer	EGT
Network Performance Tool Server	F9999999	EG001315 - Server Aud/Vid	Dell
Satellite Receiver - KLS 2	KLS 2	EG001136 - Receiver	General Instruments
Satellite Receiver - KLS 1	KLS 1	EG001136 - Receiver	General Instruments
Network Controller - 1	F9999999	EN000010 - Controller	Motorola
Network Controller - 2	F9999999	EN000010 - Controller	Motorola
Digital Addressable Controller (DAC)	F9999999	EN000040 - Master Controller	Motorola
CASMR - Conditional Access System	F9999999	EN000040 - Master Controller	HP
Avocent Autoview 3008	F9999999	EN000010 - Controller	Avocent
Modular Receiver/Decoder	F9999999	EG001136 - Receiver	Sencore
Satellite Receiver - KCPQ Ch. 13	F9999999	EG001136 - Receiver	Tandberg
Pro Receiver/Decoder - KOMO	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - KIRO	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - KING	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - KSTW	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - KONG	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - KZJO	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - Spare	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - NASA	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - KUNS	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - KUNS2/Mundo	F9999999	EG001136 - Receiver	KTECH
Pro Receiver /Decoder - KWPX	F9999999	EG001136 - Receiver	KTECH
ASI Splitter	F9999999	EG000217 - Combiner	MegaHertz
Smartstream Device Manager	F9999999	EG001315 - Server	Arris
Remote Addressable DANIS/DLS (RADD)	F9999999	EG001315 - Server	CSS/RADD
KLS 3000/CPMS	F9999999	EG001315 - Server	KLS 3000
Pro Receiver/Decoder - TV Tacoma	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - PCTV	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - Spare	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - Spare	F9999999	EG001136 - Receiver	KTECH
Satellite Receiver - KCPQ Ch. 13	F9999999	EG001136 - Receiver	Tandberg
Pro Receiver/Decoder - Spare	F9999999	EG001136 - Receiver	KTECH
Pro Receiver/Decoder - Spare	F9999999	EG001136 - Receiver	KTECH
APEX Edge QAM - 1	F9999999	EG000100 - Switch	Motorola
APEX Edge QAM - 2	F9999999	EG000100 - Switch	Motorola
APEX Edge QAM - 3	F9999999	EG000100 - Switch	Motorola
APEX Edge QAM - 4	F9999999	EG000100 - Switch	Motorola
MPEG Transport Stream Monitor	F9999999	EG000760 - Multiplexer	Tetronix
Vecima - IP to Analog Edge Decoder 1	F9999999	EG000740 - Modulator	Vecima - 1
Vecima - IP to Analog Edge Decoder 2	F9999999	EG000740 - Modulator	Vecima - 2
Vecima - IP to Analog Edge Decoder 3	F9999999	EG000740 - Modulator	Vecima - 3
HE Redundant Amplifier System - UP	F9999999	EG000120 - Amplifier	QRF - 1
HE Redundant Amplifier System - UP Pr	F9999999	EG000120 - Amplifier	QRF - 2
He Redundant Amp System - UP Bkup	F9999999	EG000120 - Amplifier	QRF - 3
CPAT - Dual Band Signal Generator	F9999999	EG001575 - Test Generator	Effigis
TelVue HyperCaster B-100 IPTV	F9999999	EG000120 - Amplifier	TelVue
Pro Satellite Receiver - SHO/SHO2	F9999999	EG001136 - Receiver	Motorola
TelVue HyperCaster B-100 IPTV	F9999999	EG000120 - Amplifier	TelVue
Remote Service Analyzer RSAM	F9999999	EZ000140 - Test Equip	JDSU
MPEG Video Probe Analyzer	F9999999	EZ000140 - Test Equip	JDSU
Advanced Rcvr Transcoder - Oxygen SD	F9999999	EG001136 - Receiver	Cisco
Advanced Rcvr Transcoder - Sprout SD	F9999999	EG001136 - Receiver	Cisco
Advanced Rcvr Transcoder - Bravo SD	F9999999	EG001136 - Receiver	Cisco
Advanced Rcvr Transcoder - CNBC HD	F9999999	EG001136 - Receiver	Cisco
Advanced Rcvr Transcoder - SyFy HD	F9999999	EG001136 - Receiver	Cisco

Advanced Rcvr Transcoder - USA HD	F9999999	EG001136 - Receiver	Cisco
Advanced Rcvr Transcoder - NFL Redzone HD	F9999999	EG001136 - Receiver	Cisco
Advanced Rcvr Transcoder - NFL HD	F9999999	EG001136 - Receiver	Cisco
Adv Program Receiver - MBC Korea SD	F9999999	EG001136 - Receiver	Motorola
Advanced Rcvr Transcoder - NBC Univisal	F9999999	EG001136 - Receiver	Cisco
MPEG Transport Stream Monitor	F9999999	EG000760 - Multiplexer	Tektronix
Sunrise Telecom Spectrum Analyzer	F9999999	EZ000140 - Test Equip	Sunrise Telecom
Sunrise Telecom Spectrum Analyzer	F9999999	EZ000140 - Test Equip	Sunrise Telecom
Multicom Optical Transmitter	F9999999	EG000850 - Optical Transmitter	Multicom
Pro Satellite Receiver - SHORTS HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - HSN SD	F9999999	EG001136 - Receiver	Scientific Atlanta
Adv Rcvr Transcoder - YouTooAmerica	F9999999	EG001136 - Receiver	Cisco
Adv Rcvr Transcoder - FYI HD	F9999999	EG001136 - Receiver	Cisco
Adv Rcvr Transcoder - MTV/Spike HD	F9999999	EG001136 - Receiver	Cisco
Adv Rcvr Transcoder - CMT HD	F9999999	EG001136 - Receiver	Cisco
Adv Rcvr Transcoder - VH1/Comedy HD	F9999999	EG001136 - Receiver	Cisco
Adv Rcvr Transcoder - NICK HD	F9999999	EG001136 - Receiver	Cisco
Satellite Receiver - HITS 14	F9999999	EG001136 - Receiver	General Instruments
RF L-Band Splitter (Active)	F9999999	EG000217 - Combiner	Quintech
RF L-Band Splitter (Passive)	F9999999	EG000217 - Combiner	Quintech
RF L-Band Splitter (Passive)	F9999999	EG000217 - Combiner	Quintech
Splitter/Combiner Directional Coupler	F9999999	EG000217 - Combiner	ADC Telecommunications
Splitter/Combiner Directional Coupler	F9999999	EG000217 - Combiner	ADC Telecommunications
Splitter/Combiner Directional Coupler	F9999999	EG000217 - Combiner	ADC Telecommunications
LNB Power Supply	F9999999	ED000250 - UPS	Quintech
Satellite Receiver - MoviePlex SD/Starz	F9999999	EG001136 - Receiver	Arris
Pro Satellite Rcvr - ESPN Classics	F9999999	EG001136 - Receiver	Motorola
Combiner - IP to ASI Convertor	F9999999	EG000217 - Combiner	Advanced Digital Inc
Adv Rcvr Trnsocoder - Life/Mil HD	F9999999	EG001136 - Receiver	Cisco
Program Receiver - The Word HD	F9999999	EG001136 - Receiver	Scientific Atlanta
Satellite Receiver - Destination America	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - OWN HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - Disney Jr HD	F9999999	EG001136 - Receiver	Motorola
Satellite Receiver - Food Net/HGTV HD	F9999999	EG001136 - Receiver	General Instruments
Satellite Receiver - Playboy HD	F9999999	EG001136 - Receiver	Motorola
Integrated Receiver/Decoder - Music Choice	F9999999	EG001136 - Receiver	Harmonic
LADI - Music Choice Inserter	F9999999	EG001315 - Server Aud/Vid	EAS System
Program Receiver - Jewelry SD	25806144	EG001136 - Receiver	Scientific Atlanta
Digital Media Receiver	F9999999	EG001136 - Receiver	Wegener
Program Receiver - Jewelry Spare Recvr	F9999999	EG001136 - Receiver	Scientific Atlanta
CherryPicker Application Platform #6	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Application Platform #1	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Application Platform #8	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Applications Platform #9	F9999999	EG00760 - Multiplexer	Motorola
Cherry Picker Applications Platform #10	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Applications Platform Spare	F9999999	EG00760 - Multiplexer	Motorola
Multiple Decryption Recvr - TNT/Toons SD	F9999999	EG001136 - Receiver	Scientific Atlanta
Advanced Rcvr Transcoder - TV Japan	F9999999	EG001136 - Receiver	Cisco
MPEG/IRD Satellite Receiver - HD Net HD	F9999999	EG001136 - Receiver	Wegener
Pro Satellite Receiver - HRTV HD	F9999999	EG001136 - Receiver	Motorola
Pro Satellite Receiver - CSPAN2 HD	F9999999	EG001136 - Receiver	Motorola
Broadband Multimedia Service Router #2	F9999999	EG001230 - Router (Net App)	BigBand
CherryPicker Applications Platform #2	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Applications Platform #3	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Applications Platform #7	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Applications Platform #4	F9999999	EG00760 - Multiplexer	Motorola
CherryPicker Applications Platform #5	F9999999	EG00760 - Multiplexer	Motorola
QAM Edge Encryptor Modulator #7	F9999999	EG00740 - Modulator	Motorola
QAM Edge Encryptor Modulator #1	F9999999	EG00740 - Modulator	Motorola
QAM Edge Encryptor Modulator #2	F9999999	EG00740 - Modulator	Motorola
QAM Edge Encryptor Modulator #3	F9999999	EG00740 - Modulator	Motorola
QAM Edge Encryptor Modulator #4	F9999999	EG00740 - Modulator	Motorola
SMU Control Server - Primary	F9999999	EG001315 - Server	Arris
SMU Control Server - Backup	F9999999	EG001315 - Server	IBM
Broadband Multimedia Service Router #1	F9999999	EG001230 - Router (Net App)	BigBand

Demodulator Convertor #1	2722035	EG000280 - Demodulator	Wel IAV
Demodulator Convertor #2	2722063	EG000280 - Demodulator	Wel IAV
Demodulator Convertor #3	2722069	EG000280 - Demodulator	Wel IAV
Dish 1 serial 1005910	4.5 meter dishes	Brand Scientific Atlanta model 8345	
Dish 2 serial 1007240	4.5 meter dishes	Brand Scientific Atlanta model 8346	
Dish 3 serial 1006545	4.5 meter dishes	Brand Scientific Atlanta model 8347	
Dish 4 serial 1005880	4.5 meter dishes	Brand Scientific Atlanta model 8348	
Dish 5 serial 100655? The last digit is un-readable	4.5 meter dishes	Brand Scientific Atlanta model 8349	

The dishes on the roof are a mix of 3.7 meter Loral Skynet or DH, and 3.8 meter Patriot. Plus the steerable dish which I think is a 3.7 meter Chaparral but again no markings.

3813522	Patriot 3.8 had a decal with a Part number of PRT-380
3814298	Patriot 3.8 had a decal with a Part number of PRT-380
24'x13'6" Aircscreen AeroPro Pro system including:	
inflatable outdoor movie screen	
inflatable frame, lower panel	
front projection surface	
screen bungee ties	
high pressure blower	
black nylon high tension tethers	
heavy duty carry bag	
four steel stakes	
deluxe repair kit	
manual	
Aeropro Pro HD console & sound system	
heavy duty ATA rated road case	
triple screen LCD monitor	
BlueRay and progresive scan DVD players	
HD video switcher	
pro quality rack mounted audio mixer with iPod dock	
power conditioner and surge protector with two lamps	
microphone	
audio and video cables	
PRO speaker system	

Projector w/case and stand





**Exhibit "A.3"**  
(Set-Top Boxes)

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Exhibit A7

Set Top Boxes	
Model	quantity (in home)
DCX3200	7281
DCX3510	1094
MG1	722
Mini	871
MG2	485



## RESOLUTION NO. 40468

1 A RESOLUTION relating to Click! Network; authorizing execution of the Click!  
2 Business Transaction Agreement by and between Tacoma Power and  
3 Mashell, Inc., d/b/a Rainier Connect and Rainier Connect North LLC.

4 WHEREAS, in 1998, Click! Network, a trade name used by Tacoma Power,  
5 began operating as a cable service provider over excess capacity of the  
6 HFC Network, providing primarily cable television and wholesale cable modem  
7 (internet access) services, and

8 WHEREAS, since that time, technology and consumer demands have  
9 changed, with consumers shifting from predominantly consuming cable  
10 programming services to predominantly consuming internet access services, and  
11

12 WHEREAS operational costs for the Click! Network have significantly  
13 increased since 1998 while the Click! Network business model has become  
14 outdated and unable to respond quickly or efficiently to changes in the market  
15 place or provide the capacity to make capital investments necessary to upgrade  
16 the network and compete with the private sector, and  
17

18 WHEREAS, in response to these challenges, the Public Utility  
19 Board ("PUB") began to study alternative Click! Network business models and,  
20 after many years of study, the PUB, in collaboration with the City Council, retained  
21 the services of CTC Technology & Energy ("CTC") to assist in this analysis, and  
22

23 WHEREAS, at the January 23, 2018, Joint Study Session of the PUB and  
24 City Council, CTC presented its report examining which of the following five  
25 alternative business models would best meet 12 Click! Network policy goals later  
26 adopted by the PUB and City Council:



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- Continue finding ways to reduce costs and streamline operations;
- Become a retail internet service provider (“ISP”) and potentially eliminate cable TV operations;
- Upgrade the Click! Network to fiber-to-the-premises in an effort to better compete with incumbents in the market;
- Cease internet and cable operations and abandon the related parts of the network;
- Seek a partner willing to take on operating and other obligations and costs while agreeing to conditions that would preserve Click!’s significant policy achievements, and

WHEREAS CTC reported that the 12 policy goals could best be met through a business model in which the City retained ownership of the entire HFC Network, including the Click! Network, with a third party providing Cable TV and/or internet access services and covering the capital and operating costs associated with providing those services, and

WHEREAS, under this model, Tacoma Power would no longer provide cable television or wholesale internet access services, and the third party would provide cable television, video, and internet access services directly to the public, and

WHEREAS the PUB, pursuant to its prior Resolution No. U-10988, expressed its determination that while the 1997 business plan achieved many of the functions envisioned for the HFC Network, the Excess Capacity of the HFC Network and the inventory, equipment, and vehicles allocated to Click! Network are not needed now or in the future by Tacoma Power for utility purposes, and thus, will not be updated or improved or utilized for utility purposes, and are excess to the needs of Tacoma Power, and that the current Click! Network business plan and



1 the proposed all-in retail service business model will not generate sufficient  
2 revenues to fully fund operational expenses and the costs of capital improvements  
3 needed to maintain the Excess Capacity of the HFC Network as a state-of-the art  
4 Network, and

5 WHEREAS, through PUB Resolution No. U-10988 and City Council  
6 Resolution No. 39930, the PUB and the City Council rescinded their approval of  
7 the all-in retail service business model; adopted 12 policy goals to be maximized  
8 through the use and preservation of the Excess Capacity of the HFC Network; and  
9 directed the Public Utilities Director and City Manager to work collaboratively to  
10 develop a plan to seek information, proposals, or qualifications from interested  
11 parties to determine whether the 12 policy goals could be achieved through a  
12 collaboration and/or restructuring of Click! Network, and

14 WHEREAS, at the August 21, 2018, Joint Study Session of the PUB and  
15 City Council, CTC recommended that the PUB and City Council authorize  
16 negotiation of term sheets with Rainier Connect and Wave Broadband, and

18 WHEREAS the City Council and PUB, after a presentation by CTC and  
19 review of proposals from third parties at the March 5, 2019, Joint Study Session of  
20 the PUB and City Council, directed the Public Utilities Director to execute a letter  
21 agreement with Rainier Connect to enter into good faith negotiation of agreements  
22 through which: (1) the City, through Tacoma Power, would retain ownership of all  
23 of the existing HFC Network; (2) the capital and operating costs of the Excess  
24 Capacity of the HFC Network would be borne by a third party; (3) Tacoma Power  
25 would no longer provide cable television or wholesale internet access or data  
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transport services; and (4) Rainier Connect would use the Excess Capacity of the HFC Network to provide cable, video, and internet access services consistent with the 12 policy goals adopted by the City Council and PUB, and

WHEREAS negotiations with Rainier Connect commenced in April 2019, and the Click! Business Transaction Agreement is now complete, and

WHEREAS, on October 30, 2019, the PUB adopted Resolution No. U-11116, declaring the Click! Assets and the Excess Capacity of the HFC Network surplus to the needs of Tacoma Power and Tacoma Public Utilities and not required for continued public utility services, recommending that the City Council declare the above-referenced property surplus to the needs of the City, and approving the Click! Business Transaction Agreement conditioned upon approval by the City Council and

WHEREAS the City Council, pursuant to Resolution No. 40467, declared the Excess Capacity of the HFC Network and the Click Assets, as those terms are defined therein, surplus to the needs of Tacoma Power, Tacoma Public Utilities, and the City, and no longer required for continued public utility service, and

WHEREAS, pursuant to TMC 1.06.273, the Tacoma Public Utilities Director has recommended that the City Council find that disposal of the Click! Assets and the Excess Capacity in the HFC Network as defined Resolution No. 40467 be conveyed and leased through a negotiated process with Rainier Connect pursuant to agreements in substantially the form of the Click! Business Transaction Agreement on file with the City Clerk, and



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WHEREAS approval of the Click! Business Transaction Agreement will allow use of the excess capacity of the HFC Network and ownership of related inventory, equipment, and vehicles to be transferred to Rainier Connect and will, among other things, continue use of the Click! Network to provide cable, video, and broadband internet access to families and businesses in Tacoma; maintain ownership of the Click! Network; require private capital to be used to operate, maintain, and upgrade the network to one gigabit speeds in competition with other providers; ensure that such services are provided in an equitable manner with like services and prices throughout the City; and, provide for reduced-cost internet access under the federal lifeline subsidy and to households eligible for TPU's electric service low-income program, and

WHEREAS the Click! Business Transaction Agreement further provides that Rainier Connect will make annual payments to Tacoma Power of \$2,500,000 for year one, \$2,625,000 for year two, \$2,750,000 for year three, \$2,875,000 for year four, and \$3,000,000 for year five, and for each year after year five, the annual payment will increase to reflect the Consumer Price Index Increase, and further provides that Rainier Connect will invest a minimum of \$1.5 million annually in the network, adjusted annually to reflect the Consumer Price Index Increase, and

WHEREAS the City Council, having considered the foregoing, the public comments received during the public hearing of October 29, 2019, and prior public meetings of the City Council and PUB, and the City records and files related to the construction, installation, and operation of the Click! Network, and having been in



all matters fully advised, finds that it is in the best interest of the public to approve  
1 the Click! Business Transaction Agreement; Now, Therefore,

2 BE IT RESOLVED BY COUNCIL OF THE CITY OF TACOMA:

3 Section 1. That the City Council does hereby find and concur with the  
4 Tacoma Public Utility Board's determination and recommendation that the  
5 conveyance of the Click! Assets and the grant of an indefeasible right of use of the  
6 Excess Capacity of the HFC Network to Rainier Connect through a negotiated  
7 disposition pursuant to the terms and conditions of the Click! Business Transaction  
8 Agreement, in substantially the form on file on the office of the City Clerk, is in the  
9 best interests of Tacoma Power, Tacoma Public Utilities, and the City, and all  
10 applicable competitive bidding and selection requirements are hereby waived.  
11  
12

13 Section 2. That the appropriate City officials are authorized to execute the  
14 Click! Business Transaction Agreement, in substantially the form on file in the  
15 office of the City Clerk, and that upon a joint determination by the City Manager  
16 and Public Utilities Director that the conditions precedent to transfer of operational  
17 control of the Tacoma Power Commercial Network to Rainier Connect have been  
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met, or waived, the Mayor of the City of Tacoma, together with all other appropriate City officials, are authorized to execute the Indefeasible Right of Use Agreement, in substantially the form on file in the office of the City Clerk.

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
\_\_\_\_\_  
Chief Deputy City Attorney

# EXHIBIT 40

## AUTHOR

**Richard E. Brown** is the Senior Vice President of Operations and co-founder of Quanta Technology, a firm specializing in technical and management consulting for utilities and utility-related industries. Dr. Brown has been on the leadership team of three successful startup organizations, and has provided consulting services to most major utilities in the United States and many around the world. He is a frequent instructor, has taught courses in eleven countries, and is an adjunct professor at North Carolina State University.

Dr. Brown has published more than 90 technical papers related to asset management and performance management, and is also author of the book *Electric Power Distribution Reliability*. In 2007, he was elected to the grade of Fellow by the Institute of Electrical and Electronics Engineers (IEEE), which is conferred by the IEEE Board of Directors for an extraordinary record of industry accomplishments.

Dr. Brown earned his BSEE, MSEE, and PhD degrees from the University of Washington in Seattle, and his MBA degree from the University of North Carolina at Chapel Hill. He is a registered professional engineer.

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## PREFACE

This is a book for utility engineers. Typical readers will have studied engineering in college, received an engineering degree, and somehow ended up pursuing a career within a utility or taken a job associated with utilities. Academic credentials for most of these readers will include advanced mathematics, probability, statistics, chemistry, physics, and materials science. Most will have further specialized in a specific area such as electrical engineering, mechanical engineering, or civil engineering. These types of readers are well-educated and intelligent, an assumption made by the author when presenting material, sometimes difficult material, throughout the book.

Utilities have many challenging engineering problems to be solved. New customers must be served. Old equipment must be maintained. New technologies must be assessed and adopted. To solve these challenges, engineers find themselves responsible for planning, engineering, system analysis, system design, equipment specification, maintenance management, operations, and a host of other functions.

Whatever their role, utility engineers make many decisions. Some of these decisions result from extensive and careful analyses. Others are made quickly during everyday activities. In virtually all cases, decisions have cost

# 1

## UTILITIES

*Public utilities* provide essential services to society. Because of their importance, legal precedent has upheld the need for specialized government oversight of these businesses to ensure that safe and reliable utility services are widely available for rates that are reasonable and non-discriminatory.

The types of public utilities considered in this book require large investments in fixed infrastructure, typically extending to the premises of end-use customers. Examples of these *infrastructure utilities* include electric utilities, gas utilities, telephone utilities, water utilities, and wastewater utilities. Sometimes public transportation facilities are also considered public utilities (e.g., railroads, buses, subways), called *transportation utilities*. Much of this book is relevant to both infrastructure utilities and transportation utilities, but there are certain aspects of infrastructure utilities that require special consideration. Most people use the terms public utility and utility interchangeably. Therefore, unless otherwise stated, the remainder of this book uses the term *utility* to refer to a public utility that relies heavily on fixed infrastructure to provide an essential utility service.

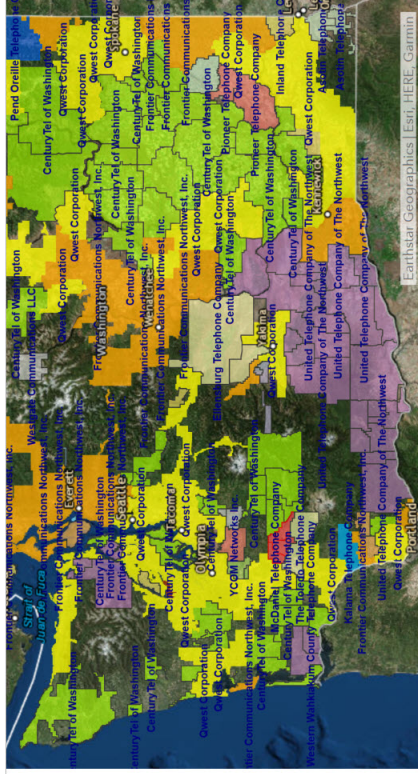
Many of the business topics in this book apply to all industries. However,

# EXHIBIT 41



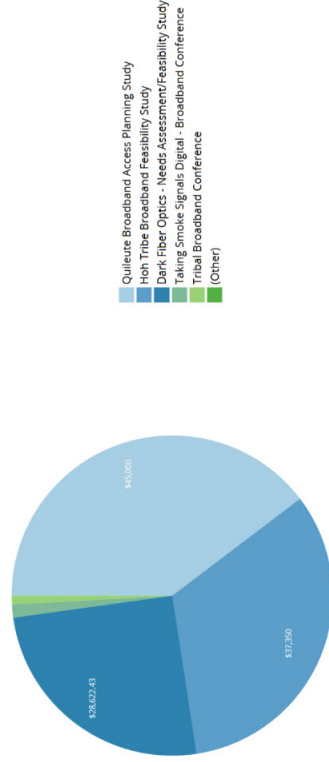
# UTC

## Washington Utilities and Transportation Commission



## State investment

With the exception of CERB projects, the state of Washington's direct investments in broadband in the past five years have been confined to one-off projects using re-purposed funds, feasibility studies and services, as illustrated by this chart from the Department of Commerce.



## Local public utilities

Many of Washington's communities have established local customer-owned Public Utility Districts (PUD's) that offer a variety of utility services, sometimes including wholesale broadband infrastructure.

As of 2017, 14 PUD's were offering telecommunications services, with an aggregate infrastructure investment of \$509 million.



[Benton](#) | [Chelan](#) | [Clallam](#) | [Douglas](#) | [Franklin](#) | [Grant](#)  
[Grays Harbor](#) | [Kitsap](#) | [Lewis](#) | [Mason #3](#)  
[Okanogan](#) | [Pacific](#) | [Pend Oreille](#) | [Skagit](#)

source: *Washington PUD Association*

**Washington State  
Community Economic  
Revitalization Board**



# Rural Broadband Program

## **2018 LEGISLATIVE REPORT**

2017-19 Biennium





## Table of Contents

Message from the Chair .....	3
Introduction to CERB .....	4
Program Opportunities.....	5
Program Outreach .....	7
Community and Economic Development.....	10
Awarded Projects .....	12
Project Highlights: Port of Skagit County.....	14
Project Life Cycle .....	15
Feedback from Communities .....	16
ATNI Resolution .....	18
CERB Members.....	Back Cover

Rural Broadband Proviso Language: ESSB 6095 H-5170.3 Section 1008  
CERB Enabling Legislation: RCW 43.160

### **Washington State Department of Commerce**

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Olympia, WA 98504

**Brian Bonlender**  
**Director**

**Mark Barkley**  
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Community Economic Revitalization Board  
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INVESTING IN WASHINGTON'S ECONOMIC FUTURE

## Community Economic Revitalization Board

1011 Plum Street SE • PO Box 42525 • Olympia, WA 98504-2525 • (360) 725-3151

I am pleased to introduce the 2018 Rural Broadband Legislative Report for the Washington State Community Economic Revitalization Board (CERB). This report highlights activities and outcomes from the 2018 calendar year.

In March 2018, the supplemental capital budget passed (ESSB 6095 H-5170.3). Section 1008 included the CERB Administered Rural Broadband Program. The proviso language included a \$10 million appropriation for fiscal year 2019.

The Rural Broadband Program has changed the conversation for many of our rural communities and Tribes. This program allows communities and Tribes to build and own the broadband infrastructure, and to collaborate with Independent Service Providers (ISPs) to provide retail service, which will allow more options for the end-user at a lower cost.

Since this program has changed the conversation, CERB has seen many communities come forward for planning projects for broadband. These planning projects are building a pipeline for future construction projects. Even more exciting, these conversations are bringing everyone to the table for collaboration: counties, cities, ports, PUDs, special purpose districts, Tribes, and ISPs.

Because this is a new program, the CERB Policy Committee and staff worked diligently designing policies, procedures, program materials, and conducting stakeholder outreach. The supplemental capital budget was passed on March 9, and CERB approved the program's policies, procedures, and materials on May 17. The accelerated timeline allowed staff to be out in the communities conducting workshops, attending speaking engagements, giving technical assistance, and educating communities and Tribes about the new Rural Broadband Program. Between May and June, staff spoke at 20 individual workshops and speaking engagements, reaching over 700 community members.

The first round of projects were awarded in September 2018 with far reaching impact:

- 3 Projects were awarded - \$2,816,649 CERB Investment
- The projects reached into 13 Communities
- 2,427 Connections are planned from the projects
- Cost per connection: \$1,161
- 100% Increase in Internet Speed
- Estimated increase from 6 to 17 ISPs

The Rural Broadband Program aligns with CERB's application and meeting date cycle. Applications are accepted on a first-come, first-served basis, and the Board meets every two months to review projects.

CERB members are committed Washington citizens and professionals with a passion for economic development. The investments that CERB has made, and the return on these investments, are a testament to this dedication. On behalf of CERB, I thank you for your continued support of this essential resource for growing Washington's economy.

Randy Hayden

Community Economic Revitalization Board Chair

# Introduction to CERB

## COMMUNITY ECONOMIC REVITALIZATION BOARD

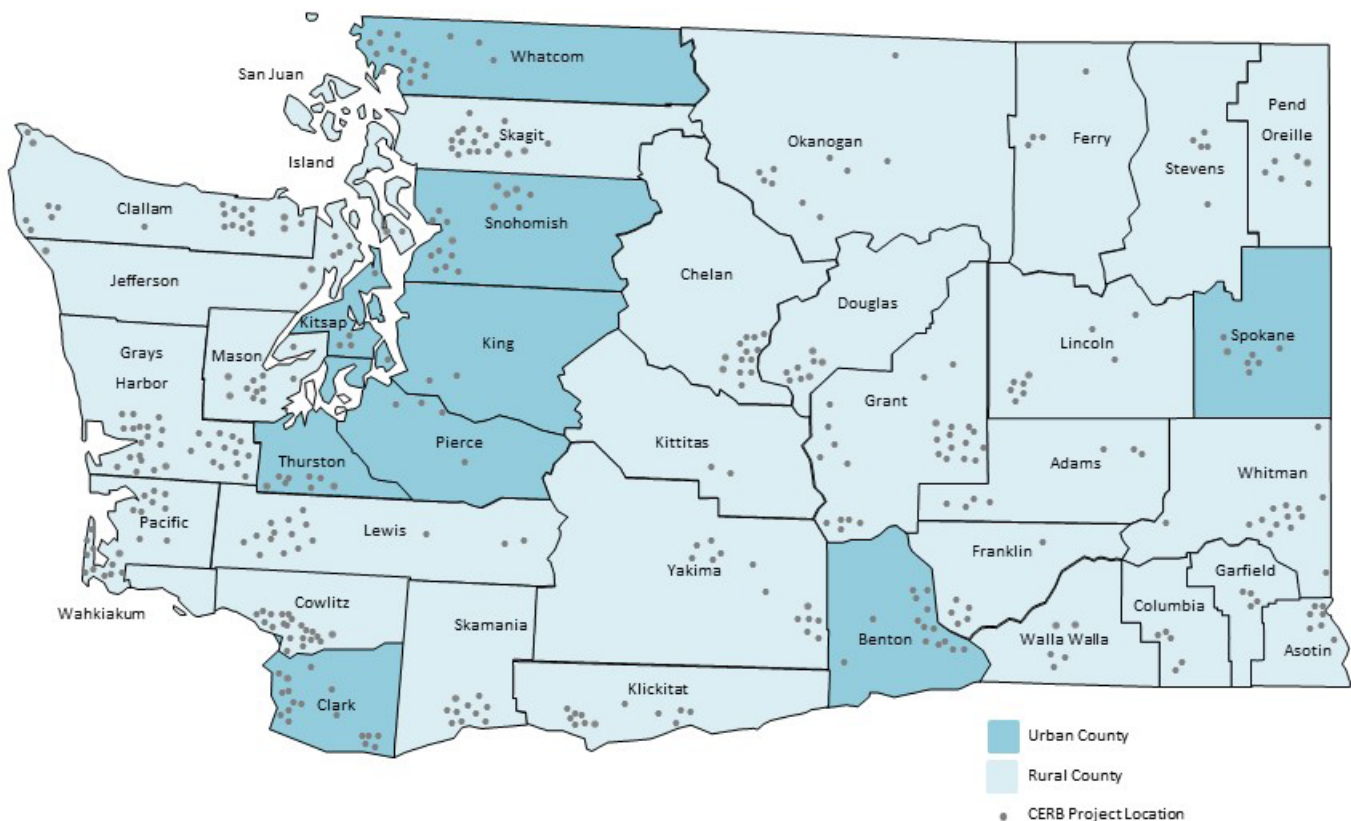
The Community Economic Revitalization Board (CERB) is a unique statewide economic development resource. CERB assistance is valued because it helps communities:

- Respond rapidly to immediate business siting and expansion needs
- Build feasible industrial sites for future business development
- Target expansions in manufacturing, food processing, assembly, warehousing, industrial distribution, advanced technology, and other key sectors
- Spur creation and retention of higher wage jobs

Since 1982, CERB has encouraged new development and expansion in areas where growth is desired. The Legislature created CERB to provide low-interest loans (and in unique circumstances, grants) to help finance the local public economic development infrastructure necessary to develop or retain stable business and industrial activity. These improvements include industrial water, general-purpose industrial buildings and port facilities, sanitary and storm sewers, industrial wastewater treatment facilities, railroad spurs, telecommunications, electricity, natural gas, roads, and bridges. CERB investments have been made in 37 counties since the program began.

The 20-member Board represents private and public sectors from across the state, as designated in statute. The Board sets policy and selects projects to receive CERB financing assistance. Administrative support to CERB is provided within the Local Government Division of the Department of Commerce. CERB's statutory authority is codified in Chapter 43.160 RCW.

### CERB Funded Projects in Washington State, 1982-2018



# Program Opportunities

## CERB Investment and Returns

CERB will track the following outcomes:

- Number of connections: households, businesses, and anchor institutions.
- Number of ISPs available for consumers.
- Internet speed being offered to consumers.

## Staff Assistance

CERB staff delivers program management, contract management, Board support, community and economic development for local projects, and works with applicants to develop and present projects for CERB review.

**Technical assistance**—Staff help each applicant identify project barriers, evaluate project feasibility, and develop funding and implementation strategies when the project is ready to proceed. Many times this involves convening a tech team with the applicant and other funders, to develop a project action plan.

**Project advocacy**—Staff prepare a comprehensive analysis of each project with recommendations to CERB. This analysis identifies the relative community and economic benefits of the project to the local community, the project dynamics, and areas of merit and/or controversy. The analysis of the project’s community and economic development goals and outcomes includes specific projections of the number of connections (households, businesses, and anchor institutions), speed service to the

end users, and number of ISPs available to the end user.

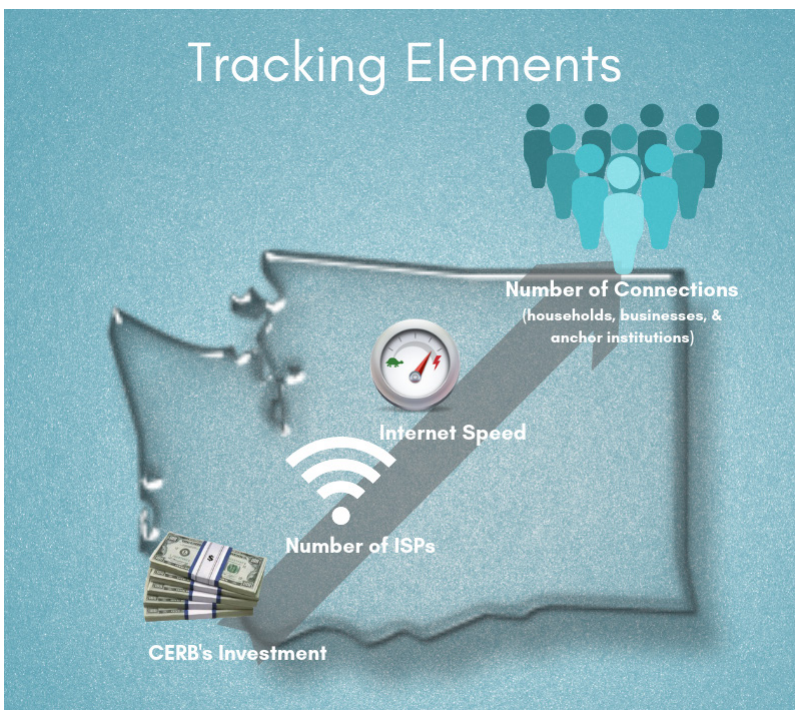
**Project monitoring**—Staff help local governments work out emergent problems during contract development and project implementation. Following construction of the public infrastructure project, project outcomes are tracked by CERB staff for five years. These outcomes include number of connections (households, businesses, and anchor institutions), speed service to the end users, and number of ISPs available to the end user. This tracking process links CERB investment to actual community and economic development outcomes.

## Key Successes

In March 2018, the Supplemental Capital Budget passed, which included the CERB Administered Rural Broadband Program. This proviso language included a \$10 million appropriation for FY 2019.

Timeline:

- **March - April:** CERB policy committee designed program policies, procedures, and program materials.
- **March - April:** Staff conducted Stakeholder Outreach Meetings (21 Entities)
- **May:** CERB approved the Rural Broadband Program policies, procedures, and program materials.
- **May 21:** 1st Rural Broadband application cycle opened.
- **May - June:** CERB staff held six rural broadband workshops across the state, and also took part in many speaking events to educate about the Rural Broadband Program.
- **July 16:** 1st due date for Rural Broadband applications.
- **September 20:** CERB approved three Rural Broadband construction projects - \$2.8 million.

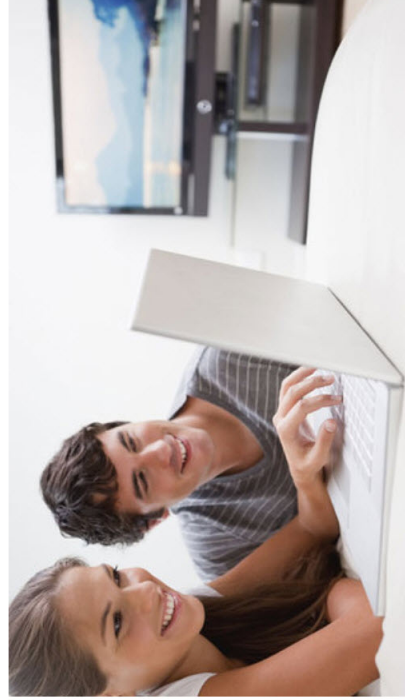


# EXHIBIT 42

# High Speed Internet, Powered By Click!

Click!'s Internet Service Provider partners provide fast and reliable internet throughout Tacoma and Pierce County. Connect all your devices in even the most remote areas. We have the speeds you need.

SELECT INTERNET PLAN

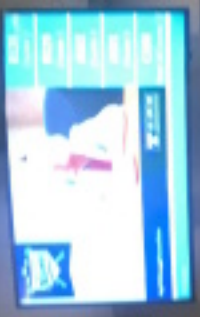


## The Choice is Yours

Click! partners with two local Internet Service Providers to connect your internet needs. **Advanced Stream** and **Rainier Connect** offer a variety of speed and pricing options to fit your internet needs and the flexibility to select the right plan for you.

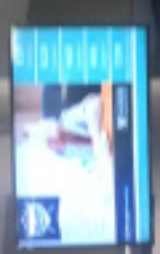
SELECT A PROVIDER

CLICKI



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CLICKI!

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CLICKI!  
CABLETV  
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# Plans and Pricing

Cable TV & Internet | Cable TV | Internet

Available residential plans and special offers based on your address [Change Address](#)

PACKAGE	SPEED	BEST FOR	PRICE
<p><b>SPECIAL OFFER</b></p> <p><b>Extreme</b></p>	<p><b>75/8</b> Mbps Speed Range</p>	<ul style="list-style-type: none"> <li>Video surveillance or "smart" home technology</li> <li>Stream movies and use online applications at the same time</li> <li>Supports household of 3 - 4 people</li> </ul>	<p>Starting at: <b>\$59.99/mo</b> Pricing Details</p> <p><b>CHOOSE PLAN</b></p>
<p><b>SPECIAL OFFER</b></p> <p><b>Turbo</b></p>	<p><b>50/5</b> Mbps Speed Range</p>	<ul style="list-style-type: none"> <li>Stream high-definition video on multiple devices</li> <li>Online gaming and videos at the same time on multiple devices</li> <li>Supports household of 3 - 4 people</li> </ul>	<p>Starting at: <b>\$49.99/mo</b> Pricing Details</p> <p><b>CHOOSE PLAN</b></p>
<p><b>SPECIAL OFFER</b></p> <p><b>Fast</b></p>	<p><b>25/2</b> Mbps Speed Range</p>	<ul style="list-style-type: none"> <li>High definition video calls</li> <li>Online gaming with multiple devices</li> <li>Supports household of 2 - 3 people</li> </ul>	<p>Starting at: <b>\$44.95/mo</b> Pricing Details</p> <p><b>CHOOSE PLAN</b></p>
<p><b>SPECIAL OFFER</b></p> <p><b>Starter</b></p>	<p><b>10/1</b> Mbps Speed Range</p>	<ul style="list-style-type: none"> <li>Basic web browsing &amp; email</li> <li>Stream music &amp; videos</li> <li>Supports household of 1 - 2 people</li> </ul>	<p>Starting at: <b>\$34.95/mo</b> Pricing Details</p> <p><b>CHOOSE PLAN</b></p>



Cable TV & Internet      Cable TV      Internet

Available residential plans and special offers based on your address [Change Address](#)

PACKAGE      CHANNELS      INTERNET      EXTRAS      PRICE

**SPECIAL OFFER**

**Standard TV + Free HD + 25 Mbps**

[Learn More](#) +

**244**

[View Channels](#)

**25/2**

**Mbps**  
Speed Range

- Free HD receiver
- TV Everywhere
- Video On Demand
- Stream movies on multiple devices
- High definition video calls

Starting at:

**\$110.82/mo**

[Pricing Details](#)

**CHOOSE PLAN**

**SPECIAL OFFER**

**Broadcast TV + Free HD + 100 Mbps**

[Learn More](#) +

**123**

[View Channels](#)

**100/10**

**Mbps**  
Speed Range

- TV Everywhere
- Video On Demand
- Free HD receiver
- Internet supports multiple devices
- Remote supercomputing

Starting at:

**\$111.57/mo**

[Pricing Details](#)

**CHOOSE PLAN**

**SPECIAL OFFER**

**Broadcast TV + Free HD + 10 Mbps**

[Learn More](#) +

**123**

[View Channels](#)

**10/1**

**Mbps**  
Speed Range

- Primetime TV
- TV Everywhere
- Video On Demand
- Basic web browsing
- Stream music & videos

Starting at:

**\$56.57/mo**

[Pricing Details](#)

**CHOOSE PLAN**

# Plans and Pricing



Click! provides transport services to two Internet Service Providers (ISPs) allowing them to offer customers a number of different products and packages. Each ISP determines their own retail pricing, depending on package level. Price does not include taxes, fees, installation or additional equipment fees and are subject to change. The ISP you select will bill you directly each month for Internet service. Special offer is for new Advanced Stream customers only and is good for one year. Expires 12/31/19.

SPECIAL OFFER

**50/5**  
Mbps  
Speed Range

- Stream high-definition video on multiple devices
- Online gaming and videos at the same time on multiple devices
- Supports household of 3 - 4 people

Starting at:  
**\$49.99/mo**  
Pricing Details

CHOOSE PLAN

**Turbo**

SPECIAL OFFER

**25/2**  
Mbps  
Speed Range

- High definition video calls
- Online gaming with multiple devices
- Supports household of 2 - 3

Starting at:  
**\$44.95/mo**  
Pricing Details

CHOOSE PLAN

**Fast**

# EXHIBIT 43



## RESOLUTION NO. U-10879

1 A RESOLUTION relating to Click! Network; approval of an All-In business and  
2 Tacoma Power funding plan to provide retail telecommunication  
3 services.

4 #1. WHEREAS the City Council of Tacoma delegated authority to the  
5 Public Utility Board and the Department of Public Utilities ("TPU"), Light Division  
6 (dba "Tacoma Power"), to implement and manage a broadband  
7 telecommunications system ("Click! Network" or "Click!", as authorized through  
8 City Council Substitute Resolution No. 33668, approved April 8, 1997, and  
9 Public Utility Board Amended Substitute Resolution U-9258, approved April 9,  
10 1997), and

11 #2. WHEREAS the 1997 business plan contemplated that the revenues  
12 associated with telecommunications services related to city government  
13 communications, cabletelevision ("CATV") service, transport of signals to  
14 service providers offering telecommunications services, and internet access  
15 services would pay for the costs of such services and would provide an  
16 additional revenue stream to Tacoma Power to help offset the construction and  
17 operations costs associated with the telecommunications system, and

18 #3. WHEREAS many of the functions of the telecommunications system  
19 envisioned in the 1997 business plan have been achieved in their entirety since  
20 the infrastructure improvements were completed in 1999 including: conventional  
21 substation communication functions, distribution automation, city government  
22 communications functions, CATV service, and transport of signals for service  
23 providers offering telecommunications services (the last three functions are  
24 "Click!") and internet access services (through third-party providers), and  
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#4. WHEREAS other contemplated functions have been partially achieved for certain electric customers through the Gateway meter program, which include: remote turn on/off for electric customers, automated meter reading (electric), and provision of information to customers that is relevant to their energy purchasing decisions, and

#5. WHEREAS the customers of the fully implemented uses of the telecommunications system (city government communications functions ("I-Net"), CATV service, and transport of signals for service providers offering telecommunications services) have shared in part of the capital costs of constructing the telecommunications system as well as the operation and maintenance of the infrastructure to the benefit of electric customers who would have paid 100% of these costs, and

#6. WHEREAS the telecommunications system continues to provide interconnectivity, advanced control, and power management between electrical substations, which provide safe, reliable, and efficient use of electrical resources for the benefit of all Tacoma Power customers, and

#7. WHEREAS the existing business plan and current cost allocations for Click! functions do not generate sufficient revenues to fund current expenses and capital improvement costs related to these functions, and

#8. WHEREAS, on an ongoing basis, Tacoma Power will continue to use portions of the telecommunications system for conventional substation and other communications, distribution automation, etc., and



1           #9. WHEREAS, for a period of time, portions of the telecommunications  
2 system will continue to be utilized by Tacoma Power to support the Gateway  
3 meter program, which serves over 15,000 Tacoma Power customers, and

4           #10. WHEREAS future advanced meter infrastructure may use portions  
5 of the fiber network facilities of the telecommunications system and may, in  
6 part, rely on the hybrid fiber-coaxial ("HFC") infrastructure to fully implement the  
7 remaining functions described in the 1997 business plan, and that if and when  
8 such future uses occur, Tacoma Power should pay a share of the costs of the  
9 telecommunications system related to such uses, and

10           #11. WHEREAS, following a nine-month review by the Click!  
11 Engagement Committee (a committee comprised of representatives of the City,  
12 TPU, and citizens appointed by the City), the Engagement Committee  
13 described the community benefits of an enhanced Click! telecommunications  
14 system and an outline of the features of such a system, and

15           #12. WHEREAS Tacoma Power has determined, in part as a result of  
16 the Click! Engagement Committee work, that to increase revenues, Click!'s  
17 retail products must be enhanced to include retail internet services and voice-  
18 over internet phone services that can be bundled with the current CATV  
19 services (Click! would continue offering wholesale data transport services and  
20 city governmental communications functions), and

21           #13. WHEREAS the studies by the Click! Engagement Committee and  
22 Tacoma Power's financial analysis demonstrate that continuing to provide  
23 CATV services in support of retail internet services makes the sale of such  
24  
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26



1 services a more competitive overall product and improves the financial  
2 sustainability of Click!, with estimations that Click! customers cover over 90% of  
3 the cost of service, and

4  
5 #14. WHEREAS the studies of the Click! Engagement Committee,  
6 Tacoma Power's financial analysis, and industry experts conclude that high-  
7 speed internet access of 1 gigabit will be the standard for the next generation.  
8 Click! needs to make capital improvements to the current telecommunications  
9 system infrastructure to achieve these or greater speeds and to keep the  
10 competitiveness of Click! internet services in the community, and

11  
12 #15. WHEREAS all financial models studied by the Click! Engagement  
13 Committee and Tacoma Power nonetheless show that the market price that can  
14 be charged for these enhanced Click! services and the market penetration that  
15 can be achieved will be insufficient to cover all of the costs associated with the  
16 operations and maintenance of the telecommunications system and the capital  
17 improvements necessary to update the HFC to allow for 1 gigabit service, and

18  
19 #16. WHEREAS the internet-related uses of the current Click!  
20 telecommunications system and an enhanced Click! telecommunications  
21 system would provide Tacoma Power customers benefits by giving them  
22 access to advanced customer services options such as: power use monitoring,  
23 outage reporting, scheduling of services, bill paying, and electrical appliance  
24 control, and

25  
26 #17. WHEREAS, in planning for an uncertain and unknown future, there  
may be other potential functions related to the supplying of electricity to



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customers not considered in the existing business plan that might also make use of the telecommunications system infrastructure including: cyber security, electric car charger locations and metering, and enhanced customer information products (power usage by time of day, behavior-based saving programs, outage communications, energy audits, and participation in Evergreen Options), and

#18. WHEREAS the Board has a duty to ensure that Tacoma Power ratepayers pay in their power rates only those costs that are directly and reasonably related to the provision of electric service, and

#19. WHEREAS the Board has a duty to ensure that Tacoma Power and Click! are in compliance with legal and statutory requirements, and

#20. WHEREAS Tacoma Power has excess power generation capacity within its service territory. In the past, Tacoma Power has benefited greatly by selling this excess capacity in the wholesale power markets to the benefit of all retail electric customers. Over the past few years, wholesale power prices and sales have dropped substantially. In support of Tacoma Power's strategic business plan, Tacoma Power wants to make up this lost revenue by looking at ways to increase its retail power sales through economic growth in the community. Communities across the nation have benefited economically from competitive access to internet services in their communities. Tacoma Power's continued operation and maintenance of the telecommunications system for internet access purposes assists in making the internet services competitive in





1 Tacoma Power's service area, which increases economic growth that leads to  
2 greater retail power sales, and

3 #21. WHEREAS, in order to preserve the functionality and value of the  
4 telecommunications system for the benefit of Power customers, the Board has  
5 determined there should be a supplemental level of funding from Power to the  
6 telecommunications system based on direct services reasonably related to the  
7 provision of electric services as enumerated herein, and

9 #22. WHEREAS the Board nonetheless finds it wasteful and  
10 unproductive to abandon or leave unutilized the HFC components, which are  
11 currently used to provide Click! functions (including CATV and internet access  
12 services) and, in order to preserve the functionality and value of the Click!  
13 telecommunications system, the Board determines it prudent to provide a  
14 supplemental level of funding from Tacoma Power to the telecommunications  
15 system for a limited period of time until a stable source of funding from an  
16 alternate source can be secured, and

18 #23. WHEREAS the Board has determined that along with enhanced  
19 product offerings, the new business plan should also grant Click! management  
20 flexibility to change product offerings, prices, and marketing strategies,  
21 excluding the leasing of the entire network, without prior Board or Council  
22 approval so as to effectively compete with private companies offering similar  
23 products and services, and  
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#24. WHEREAS the Board finds it to be in the best interests of its electric customers and the citizens of Tacoma that a new business plan be approved for Click! functions; Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

Sec. 1. Click!'s proposed high-level "All-In" business plan (the "Business Plan"), attached as Exhibit A to this resolution, is approved.

Sec. 2. The Clerk of the Board is directed to forward this Resolution and the Business Plan to the City Council for immediate consideration. The Board requests, due to budget timing constraints, that the City Council make its decision in a timely manner. Upon approval of the Business Plan, funding, and other provisions of this resolution by Council, TPU staff is directed to complete the more detailed aspects of the Business Plan and then implement that plan.

Sec. 3. TPU's request that Click! management be delegated authority to make changes to products and service offerings, prices (within the limitations set forth in the Click! rates/charges ordinance approved by the Board and Council), and marketing strategies contained within the Business Plan without further approval by the Board and City Council is approved, and the Council is requested to concur in such approval. All significant material changes to the Business Plan that would remove TPU as the primary operator of Click! including, but not limited to, the sale or lease of telecommunications system equipment or capacity, outsourcing of work, permanent discontinuance of products or services, etc. shall be brought to the Board and City Council for approval. Such delegation would allow private third-parties to lease, rent, or buy unused portions of the network to supply services to customers and maximize revenue generation to Click!. Click! shall continue to bring contracts for the purchase of goods, services, and materials in excess of \$200,000 to the Board for approval.

Sec. 4. Tacoma Power's request to transfer an annual amount to the Click! fund from Tacoma Power electric revenues, to appropriately compensate Power's past, current and future beneficial uses of the telecommunications system infrastructure, which shall be used to pay Click! operating, maintenance, taxes, capital costs and debt, is approved. Tacoma Power's transfer from electric revenues under this Section 4 shall be a minimum of \$6 Million annually, and in the event Click!'s costs exceed \$6 Million for the year, Tacoma Power is approved to transfer additional funds not to exceed \$10 Million per year. Click! may use these transferred funds to make capital improvements and purchase equipment as necessary to meet the objectives of the All-In Business plan.



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Sec. 5. Staff will present, not less than annually, to the Board and Council on Click!'s status relative to its business plan objectives and any changes made to the business plan and business outlook for Click!. In 2020 and 2025, staff will prepare a report to the Board and Council detailing business plan objective achievements and financial status of Click! to determine any adjustments in future funding. Staff reports will describe the past, current, and future expected use of the telecommunications network by Tacoma Power.

Sec. 6. The Board directs staff to identify business efficiencies and savings that can be made through staff reorganization, looking at both represented and non-represented positions. Staff will negotiate with appropriate union representatives to collaboratively identify opportunities for efficiencies and savings.

Approved as to form and legality:

*William Foster*  
Chief Deputy City Attorney

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_

# Click! All-In Compete Business Plan

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## Key Business Plan Elements:

- Click! is expected to provide retail cable modem internet, voice over internet protocol, commercial broadband services, and other advanced telecommunications services in addition to retail cable television service to residential and commercial customers.
- Click! is expected to provide bundled service of cable television, internet and phone services.
- The Click! network is expected to continue operating as an Open Access Network.
- Click! is expected to maintain its existing wholesale relationships with the Internet Service Providers (ISP), including Rainier Connect, Net-Venture and Advanced Stream. No buy out of the ISPs' businesses is assumed. Wholesale internet pricing offered to ISPs will need to be addressed.
- Click! is expected to maintain its existing wholesale relationships with the Master Service Agreement (MSA) holders, including Rainier Connect, Optic Fusion, twtelecom, Integra, CenturyLink, Spectrum Networks and Noel Communications. No buyout of the MSAs' businesses is assumed. Wholesale broadband pricing offered to ISPs will need to be addressed.
- Click! is expected to remain a unit of Tacoma Power within Tacoma Public Utilities and be governed by the Tacoma Public Utilities Board. More independent and flexible governance is a key element of the plan.
- Tacoma Power is expected to pay 6% of the total O&M costs as its proportionate share for utilizing the telecommunications network. Tacoma Power's proportionate share of O&M costs may change over time as its use of the telecommunications network changes.
- Click! is expected to upgrade its hybrid fiber coaxial (HFC) network to 1 Gigahertz, deploy DOCSIS 3.1 technology, and, over time, build new plant extension with fiber-to-the-home (FTTH) technology.
- Click! is expected to offer Gigabit and multi-Gigabit service to residential customers.
- Click! is expected to continue offering Gigabit and multi-Gigabit Metro Ethernet services to commercial customers.
- Click! is expected to continue maintaining and supporting the City's Institutional Network (I-Net).
- Click! is expected to offer discounted residential Cable TV and Phone services to payment challenged customers based on existing Federal poverty guidelines (up to 100% of the income threshold) that have been adopted by Tacoma Public Utilities.
- Click! is expected to offer a \$14.95 internet service for qualified low income customers, of which \$9.25 of the charge is expected to be covered by the new Federal Lifeline program leaving a customer out-of-pocket cost of \$5.70 per month.
- Click! is expected to achieve labor cost and operating savings by negotiating work rule changes, providing employee training and contracting out new and certain existing functions.
- Click! is expected to conduct door-to-door Sales Burst campaigns during the first and third years of the new business plan period, which are expected to generate between 4,000 and 6,000 new customers.

# EXHIBIT 44

## Voice over Internet Protocol (VoIP)

Voice over Internet Protocol (VoIP) is a technology for communicating using "Internet protocol" instead of traditional analog systems. Some VoIP services need only a regular phone connection, while others allow you to make telephone calls using an Internet connection instead. Some VoIP services may allow you only to call other people using the same service, but others may allow you to call any telephone number - including local, long distance, wireless and international numbers.

### How VoIP works

VoIP converts the voice signal from your telephone into a digital signal that can travel over the Internet. If you are calling a regular telephone number, the signal is then converted back at the other end. VoIP calls can be made from a computer, a special VoIP phone, a traditional phone with or without an adapter, or using a wireless phone, depending on the type of VoIP service you subscribe to.

Here is one example of how VoIP service works:



### What equipment do I need?

Depending on the VoIP service you purchase, you may need a computer, a special VoIP telephone or a regular telephone with an adapter. If you are calling a regular telephone number, the person you are calling does not need any special equipment: just a telephone.

### Are there special considerations for using VoIP?

If you're considering replacing your traditional telephone service with VoIP, be aware that:

- Some VoIP service providers may have limitations to their 911 service. For more information on VoIP and 911 services, see the FCC's guide at [www.fcc.gov/guides/voip-and-911-service](http://www.fcc.gov/guides/voip-and-911-service).
- Some VoIP services don't work during power outages and the service provider may not offer backup power.
- VoIP providers may or may not offer directory assistance/white page listings.

Always check with potential VoIP service providers to confirm any limitations to their service, including 911 service.

## With VoIP, is there a difference between making a local and a long distance call?

Some VoIP providers do not charge for calls to other subscribers to the service. Some VoIP providers charge for a long distance call to a number outside your calling area. Other VoIP providers permit you to call anywhere at a flat rate for a fixed number of minutes. Your VoIP provider may permit you to select an area code for your VoIP service that is different from the area code in which you live.

## How does the FCC regulate VoIP?

- **911 Services:** Providers of "interconnected" VoIP services – which allow users generally to make calls to and receive calls from the regular telephone network – do have 911 service obligations; however, 911 calls using VoIP are handled differently than 911 calls using your regular telephone service.
- **Portability:** The FCC requires interconnected VoIP providers and telephone companies to comply with Local Number Portability (LNP) rules. (See our guide on Portability [www.fcc.gov/consumers/guides/porting-keeping-your-phone-number-when-you-change-providers](http://www.fcc.gov/consumers/guides/porting-keeping-your-phone-number-when-you-change-providers)).
- **Calling Records:** The FCC limits interconnected VoIP providers' use of customer proprietary network information such as your telephone calling records, and requires interconnected VoIP providers to protect it from disclosure.
- **Universal Service:** The FCC requires interconnected VoIP providers to contribute to the Universal Service Fund, which supports communications services in high-cost areas and for income-eligible telephone subscribers.
- **Accessibility:** Interconnected VoIP providers must contribute to the Telecommunications Relay Services Fund used to support the provision of telecommunications services to persons with speech or hearing disabilities and offer 711 abbreviated dialing for access to relay services. Providers and equipment manufacturers also must ensure their services are available to and usable by individuals with disabilities, if such access is achievable. (See our guide about TRS [www.fcc.gov/consumers/guides/telecommunications-relay-service-trs](http://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs).)

## Filing a complaint

If you have concerns about an interconnected VoIP provider's handling of your 911 calls or telephone calling records, making services available to and usable by individuals with disabilities, or porting your telephone number, first try to resolve the matter with your service provider. If you can't resolve the matter directly, you have multiple options for filing a complaint with the FCC:

- File a complaint online at <https://consumercomplaints.fcc.gov>
- By phone: 1-888-CALL-FCC (1-888-225-5322); TTY: 1-888-TELL-FCC (1-888-835-5322) ; ASL: 1-844-432-2275
- By mail (please include your name, address, contact information and as much detail about your complaint as possible):

Federal Communications Commission  
Consumer and Governmental Affairs Bureau  
Consumer Inquiries and Complaints Division  
445 12th Street, S.W.  
Washington, DC 20554

## Alternate formats

To request this article in an accessible format - braille, large print, Word or text document or audio - write or call us at the address or phone number above, or send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov).

Last Reviewed: 1/27/17





## Lifeline Support for Affordable Communications

Lifeline is the FCC's program to help make communications services more affordable for low-income consumers. Lifeline provides subscribers a discount on monthly telephone service, broadband Internet access service, or voice-broadband bundled service purchased from participating providers.

### How Lifeline Works

Lifeline typically provides up to a \$9.25 monthly discount on service for eligible low-income subscribers. Subscribers may receive a Lifeline discount on either a wireline or a wireless service, but they may not receive a discount on both services at the same time. Lifeline also supports broadband Internet access service and broadband-voice bundles. FCC rules prohibit more than one Lifeline service per household.

Lifeline is available to eligible low-income consumers in every state, commonwealth, territory, and on Tribal lands. The Lifeline program is administered by the Universal Service Administrative Company (USAC). USAC is responsible for data collection and maintenance, support calculation, disbursements, and assisting consumers with Lifeline eligibility and enrollment for the program. USAC's website (<https://www.usac.org/lifeline/>) provides additional information regarding the program, including program requirements.

To participate in the Lifeline program, consumers must either have an income that is at or below 135% of the Federal Poverty Guidelines (<https://aspe.hhs.gov/poverty-guidelines>) or participate in certain federal assistance programs, such as the Supplemental Nutrition Assistance Program or Medicaid. You can see if you are eligible by reviewing the information available at [lifelinesupport.org](http://lifelinesupport.org) (see "Do I Qualify?").

### National Verifier for Lifeline Eligibility

To apply for Lifeline, a consumer must use the National Verifier application system at: <https://www.checklifeline.org/lifeline>. The National Verifier is a centralized system established by the FCC and operated by USAC that verifies Lifeline applicants' eligibility and recertifies subscriber eligibility annually.

There are some states that may not use the National Verifier yet. You can check whether your state is already active here: <https://www.usac.org/lifeline/eligibility/national-verifier/>. If you are in a state that does not use the National Verifier or if you would like a service provider to assist you when you apply, you can use the "Companies Near Me" tool at <https://data.usac.org/publicreports/CompaniesNearMe/Download/Report> to locate a Lifeline program service provider near you.

### Program Rules

Key rules include the following:

- Lifeline is available only to subscribers whose eligibility can be verified by checking a program eligibility database or by submitting documentation demonstrating their eligibility.
- Only one Lifeline benefit is permitted per household. Federal rules prohibit subscribers from receiving more than one Lifeline service. If a subscriber or his or her household currently has more than one Lifeline-discounted service, they must de-enroll from other Lifeline services immediately or be subject to penalties.
- Only low-income subscribers who have been found to be eligible are qualified to enroll.
- Subscribers must recertify their eligibility every year and should respond to any requests from the National Verifier's or state Lifeline administrator to recertify eligibility. Subscribers who fail to recertify their eligibility will be de-enrolled from the Lifeline program.



## Enhanced Lifeline Benefits for Tribal lands

Because telephone subscribership levels on Tribal lands are the lowest in the country, enhanced Lifeline benefits are available to low-income residents of Tribal lands. You can find out more about which areas are eligible Tribal lands by visiting this site: <https://www.lifelinesupport.org/additional-support-for-tribal-lands/>.

Link Up, another federal benefit program, reduces the initial installation or activation fees of certain Lifeline providers offering telephone service on Tribal lands.

### What benefits are available through the Lifeline program's support for Tribal lands?

For low-income consumers living on Tribal lands, Lifeline provides a monthly discount of up to \$34.25 off the cost of telephone service, broadband Internet access service, or bundled services (either wireline or wireless). This discount consists of up to \$9.25 (which is available to all eligible low-income subscribers across the United States) plus up to an additional \$25 in enhanced support (which is available only to eligible low-income subscribers living on Tribal lands). This discount may also vary from state to state, depending on whether the state has its own Lifeline program.

Tribal Lands Link Up provides qualified subscribers living on Tribal lands with a one-time discount of up to \$100 on the initial installation or activation of telephone service at their primary residence. Tribal Lands Link Up also enables subscribers to pay the remaining amount that they owe on a deferred schedule, interest-free. Qualifying subscribers may be eligible for Link Up again only after moving to a new primary residence. Tribal Link Up support is only offered to carriers who are building out infrastructure on Tribal lands, so not all carriers may be discounting their activation fee.

### What limitations are there on Lifeline and Link Up?

Federal rules prohibit qualifying low-income consumers from receiving more than one Lifeline service at the same time. For instance, low-income subscribers who qualify may receive a Lifeline discount on either a home telephone or a wireless telephone service, but they may not receive a Lifeline discount on both services at the same time.

Additionally, only one Lifeline service may be obtained per household. "Household" is defined as any individual or group of individuals who live together at the same address as one economic unit. An "economic unit" is defined as "all adult individuals contributing to and sharing in the income and expenses of a household."

Lifeline support is available to eligible low-income subscribers living in group living facilities. Lifeline applicants may demonstrate when initially enrolling in the program that any other Lifeline recipients residing at their residential address are part of a separate household. Similarly, federal rules prohibit qualifying low-income consumers from receiving more than one Tribal Link Up discount at a primary residence.

## Frequently Asked Questions

### What is the current benefit under the Lifeline program?

The Lifeline discount for eligible subscribers is up to \$9.25 per month for monthly telephone service - wireline or wireless - or broadband or bundled service.

### What is the enhanced benefit amount for Tribal Lands?

Up to \$25 in enhanced support, in addition to up to \$9.25 for traditional Lifeline service, is available to eligible low-income subscribers living on Tribal lands.



Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Bridging the Digital Divide for Low-Income ) WC Docket No. 17-287
Consumers )
)
Lifeline and Link Up Reform and Modernization ) WC Docket No. 11-42
)
Telecommunications Carriers Eligible for Universal ) WC Docket No. 09-197
Service Support )

FIFTH REPORT AND ORDER, MEMORANDUM OPINION AND ORDER AND ORDER ON
RECONSIDERATION, AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 30, 2019

Released: November 14, 2019

Comment Date: (30 days after publication in the Federal Register)

Reply Comment Date: (60 days after publication in the Federal Register)

By the Commission: Chairman Pai issuing a statement; Commissioners Rosenworcel and Starks
concurring in part, dissenting in part, and issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 3
III. FIFTH REPORT AND ORDER ..... 26
A. Respecting the States’ Role in Program Administration ..... 27
1. Restoring States’ Traditional and Lawful Role in ETC Designations..... 28
2. Increased Transparency with States to Improve Program Oversight ..... 64
B. Improving Program Integrity in Program Enrollment and Recertification ..... 67
1. Preventing Waste, Fraud, and Abuse by Enrollment Representatives ..... 68
2. Enrollment Process Improvements..... 87
3. Recertification ..... 95
C. Risk-Based Auditing..... 100
IV. MEMORANDUM OPINION AND ORDER AND ORDER ON RECONSIDERATION ..... 103
A. ETC Service Obligations ..... 104
B. Backup Power ..... 109
C. Rolling Recertification..... 111
D. Reimbursement Under the Usage Requirement..... 115
E. State Efforts to Eradicate Duplicate Claims ..... 125
V. FURTHER NOTICE OF PROPOSED RULEMAKING..... 134
A. Program Goals and Metrics ..... 135
B. Additional Program Integrity Recommendations ..... 143
1. Internal Customer Account Numbers ..... 144
2. Eligibility Proof Number and Type..... 145

3. Demonstrating Compliance with Usage Requirements..... 146

4. De-enrollment Process ..... 149

5. Distribution of Free Handsets..... 151

C. Certifying Privacy Protection Efforts ..... 159

VI. SEVERABILITY ..... 165

VII. PROCEDURAL MATTERS..... 166

VIII. ORDERING CLAUSES ..... 175

APPENDIX A – Final Rules

APPENDIX B – Proposed Rules

APPENDIX C – Final Regulatory Flexibility Analysis

APPENDIX D – Initial Regulatory Flexibility Analysis

**I. INTRODUCTION**

1. The Commission’s Lifeline program plays a critical role in closing the digital divide for low-income Americans. Abuse of the program, however, continues to be a significant concern and undermines the Lifeline program’s integrity and effectiveness. Strengthening the accountability of the program is therefore essential to ensuring that it effectively and efficiently helps qualifying low-income Americans obtain the communications services they need to participate in the digital economy.

2. For years, the Commission has been taking steps to address waste, fraud, and abuse in the program, including through the establishment of a National Lifeline Eligibility Verifier. Today, we continue that work to strengthen the Lifeline program’s enrollment, recertification, and reimbursement processes so that limited Universal Service Fund (USF or Fund) dollars are directed only toward qualifying low-income consumers. Specifically, we restore the states’ proper role in designating eligible telecommunications carriers (ETCs) to participate in the Lifeline program, clarify the obligations of participating carriers, and take targeted steps to improve compliance by Lifeline ETCs and reduce waste, fraud, and abuse in the program. We also clarify several of the program’s rules in response to petitions for reconsideration and requests for clarification. Further, we seek comment on appropriate program goals and metrics for a modernized Lifeline program and additional improvements to program integrity.

**II. BACKGROUND**

3. The Lifeline program was originally established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service.<sup>1</sup> Today, the Lifeline program provides qualifying low-income consumers discounts on voice or broadband Internet access service, as well as on bundled service, to ensure that all Americans can take advantage of the benefits that voice and broadband Internet access service bring, including being able to connect to jobs, family, education, health care providers, and emergency services.<sup>2</sup> Currently, qualifying low-income consumers receive a standard \$9.25 monthly discount on Lifeline-supported voice or broadband Internet access service or bundled service that satisfies the Commission’s minimum service standards, and those who reside on Tribal lands can receive up to a \$34.25 monthly discount on Lifeline service that satisfies the minimum service standards. Consumers can qualify for the Lifeline program by participating in a qualifying assistance program (i.e., Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit) or by having an income at or below 135% of the Federal Poverty Guidelines. Residents of Tribal lands<sup>3</sup> can also qualify for the Lifeline program by meeting the aforementioned criteria or by participating in a qualifying Tribal-specific

<sup>1</sup> See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission’s Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985).

<sup>2</sup> See 47 CFR § 54.400(n) (“Voice Telephony services and broadband Internet access services are supported services for the Lifeline program.”).

<sup>3</sup> See 47 CFR § 54.400(e) (defining Tribal lands for purposes of the Lifeline program).

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS  
CONCURRING IN PART AND DISSENTING IN PART**

Re: *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197.

A few short months ago, I stepped through the doors of Miriam’s Kitchen, a social services organization working to end chronic homelessness here in Washington, D.C. This organization is located just blocks away from pricey restaurants, a private university and elite law firms. The people who visit this organization’s facility look to gain access to warmth in the winter, food to nourish their bodies, and some genuine interaction from smiling employees looking to lend a helping hand.

I sat down at a folding table alongside six people experiencing homelessness as they shared with me that the only way they can access the internet or make a call through a device that they themselves own is through the Lifeline program. It was there that I heard what it actually means for them to have a phone: one person uses it to speak directly with her doctor and arranges appointments over the phone; another needed it for job applications; and virtually all of them spoke of the isolation of homelessness, and how a phone is essential to connecting with family and friends.

For those who were Lifeline subscribers, they were grateful that the government steps in to ensure people who are in unforeseen and unfortunate circumstances have access to communications services. That gratitude was even expressed while they identified significant flaws with our program such as their wait time to obtain a Lifeline phone, their troubles with customer service representatives, or even difficulties figuring out how best to ration their precious and limited data.

\*\*\*

The crux of our decision today is this: do we aim to strengthen the underutilized Lifeline program and build up some of our most marginalized citizens; or do we aim to deflate the program and further burden its recipients? I know which side I’m on.

If we truly seek to increase broadband adoption, then I do not believe the elimination of the Lifeline Broadband Provider designation would assist in this process. The *2016 Lifeline Order* asserted the Commission’s authority to designate ETCs for the purpose of offering broadband internet service providers in the Lifeline program as a method to “unlock the Lifeline program to new innovative service providers and robust broadband offerings for the benefit of low-income consumers.”<sup>1</sup> Commenters pointed out in that *Order* that the streamlining of the process and the cutting of red tape lessens the burden on both small and large carriers, thus causing increased service provider participation.<sup>2</sup> There are approximately 40 companies with pending LBP designations, many of which have applied to provide service in several states with high rates of poverty. With our actions today, we will never find out how much carrier participation would increase, and how many people could have easier access to life-changing health services, jobs, and connections.

Additionally, I am deeply troubled by many toxic questions asked by the *FNPRM*. It seeks comments on whether the Commission should “ask Lifeline applicants whether they would be able to afford their Lifeline-supported service without the Lifeline discount,” and asserts that some consumers

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42, 09-197, and 10-97, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4044 para. 231 (2016) (*2016 Lifeline Order*).

<sup>2</sup> See *2016 Lifeline Order*, 31 FCC Rcd at 4047, para. 236 (citing comments by Cox Communications, the Benton Foundation, and the Telecommunications Board of Puerto Rico supporting a streamlined, national ETC designation process).

may be willing to “purchase some level of broadband service even in the absence of a Lifeline benefit” because they “may value broadband access so highly.” It goes on to ask questions about a fee in exchange for receiving a handset or device in-person at enrollment, and about program integrity recommendations as it relates to usage requirements.

To the best of my research, I don’t believe we’ve ever probed elderly Medicare recipients on how much they actually value their medical services; nor should we probe vulnerable, Lifeline recipients on how much they value their connectivity. These are government programs and services designed and targeted for the benefit of particular citizens, and frankly our chief concern should be exploring how to make sure that they are fully utilized. With regard to a fee, I heard firsthand from subscribers at the Larkin Street Youth Services center in San Francisco, California that they see the device alongside the voice and broadband service as inextricably linked. We shouldn’t even articulate the possibility of placing yet another barrier to participation in front of these communities. Regarding USAC check-ins and data use records, I stand opposed. These amount to unnecessary additional burdens on recipients, and in the case of data use records, a real risk of oversurveillance of low-income communities and communities of color.

Finally, I do believe that there are some common-sense measures in this item that prevent waste, fraud, and abuse and that is why I concur in part. As a former enforcement bureau official, I do believe that we have to preserve the integrity of this program such as triple checking that there are no ETC’s claiming and seeking reimbursement for deceased subscribers.

However, despite the efforts I agree with to save the integrity of this program, I find that it is packaged in a way that continues to create uncertainty in the lives of low-income people who are working to put clothing on their back and food on the table. Ultimately, I fear that much of today’s item will negatively impact the people I met at Miriam’s Kitchen and the Larkin Street Youth Services center.

# EXHIBIT 45

From: Lachel, Diane  
Sent: Thursday, August 12, 2004 4:46 PM  
To: 'Annie Collins'  
Subject: Click!'s response to SBC's report

Annie,

Feel free to use any of this information on your web site.

As you know, there has been an organized effort by private industry to discredit municipal telecommunication networks. The information about Click! Network in SBC's report ("Failed Municipal Fiber Networks") is the same old, tired, out-of-context story from previous industry sponsored reports. Here's the real story:

1. Tacoma Power constructed a telecommunications network for their own needs (to connect 65 substations to a centrally located Energy Control Center for the purpose of monitoring the electric system, managing energy load, automatically reading meters, automatically connecting and disconnecting meters, etc.) because the incumbent telephone company and incumbent cable TV company could not provide the capacity the utility required. During the design phase of the network, Tacoma Power decided to add other capacity (for cable TV, data transport and Internet services) on the advice of Stanford Research Institute when their conclusive research showed the Tacoma area was underserved.
2. Arthur Anderson and the Washington Institute Foundation (both cited in the SBC report) based their analysis on an initial planning document (revised after telecom experts were hired) which was one of many elements the policy makers used to authorize the utility to move forward with building Click! Network. The \$40 million cited in the SBC report was never adopted as the budget. Instead, \$92 million was approved by the Utility Board and City Council over a two biennium period to fund the network. SBC continues to perpetuate inaccuracies from two flawed reports.
3. According to the Public Utility Board, the Tacoma City Council, the Tacoma Pierce County Chamber of Commerce, the Economic Development Board, The News Tribune and thousands of residential and business customers – Click! Network is a huge success.
4. SBC's link between Tacoma Power's rate increase and Click! Network has no basis in fact. Public utilities follow a very detailed rate case process, complete with public input. SBC's report shows a lack of understanding of the industry they attempt to discredit. The rate increase (the first in 5 years) was related solely to the energy crisis of 2000-01. Today, Tacoma Power customers pay some of the lowest rates for electricity in the country.
5. In the cities where Click! Network services are available (Tacoma, University Place and Fircrest) prices for cable TV and high-speed Internet are 20 – 25% lower than areas where competition does not exist.

6. Since Click! began providing services, both the incumbent telephone provider and the incumbent cable TV provider have rebuilt their networks, something that hadn't been done in the previous 25 years.

7. Since Click! began providing services, the timeframe for making business fiber connections decreased from 18 months (quoted by US West in 1997) to 30 days (quoted by Click!).

I hope SBC didn't invest too much on the report. It appears they didn't get their money's worth, if accuracy was a goal.

Diane R. Lachel  
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# EXHIBIT 46

## NOTE

### Casting a Wider 'Net: How and Why State Laws Restricting Municipal Broadband Networks Must Be Modified

*Jeff Stricker\**

#### ABSTRACT

*One of Congress's purposes in passing the Telecommunications Act of 1996 was to encourage the widespread deployment of broadband Internet. As municipalities began constructing their own broadband networks, private sector Internet service providers, alarmed at the prospect of competing with these public networks, pushed back with lobbying campaigns encouraging states to enact laws prohibiting these municipal networks. This, in turn, slowed broadband deployment, particularly in areas that private providers believed to be unprofitable (and thus left unserved). Municipalities challenged these laws under the Telecommunications Act, arguing that the Act preempted the state laws, but the Supreme Court in *Nixon v. Missouri Municipal League*, 541 U.S. 125 (2004), upheld the state prohibitions, clearing the way for even more states to adopt such prohibitions. Today, twenty-one states have statutes restricting municipal networks, leaving many Americans without affordable broadband Internet access.*

*This Note argues that Congress should amend the Telecommunications Act to overcome *Missouri Municipal League* and preempt state laws restricting municipal broadband network deployment. Through preemption, state legislatures will be forced to revise or repeal overly restrictive statutes, paving the way for more reasonable restrictions that balance the importance of af-*

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\* J.D., expected May 2013, The George Washington University Law School; B.A., Political Science, 2008, The George Washington University. My thanks to Professor Mandy Hitchcock and Jason Madden for their guidance and encouragement in crafting this Note.

*fordable broadband with the need to protect private companies from direct competition with publicly funded entities. This Note next analyzes selected provisions of current state laws and proposes either to eliminate them as overly restrictive, modify them to be less restrictive, or retain them. The result is a framework of a balanced state law that protects private sector interests while also encouraging broadband deployment.*

## TABLE OF CONTENTS

INTRODUCTION .....	591
I. THE LEXICON, LIMITS, AND LAW OF THE DEBATE .....	594
A. <i>Terminology and Availability of Broadband</i> .....	594
B. <i>The Need to Stay Wired</i> .....	595
C. <i>The Expense of Expansion</i> .....	596
D. <i>The New Hope of Municipal Broadband</i> .....	597
E. <i>The Private Sector Strikes Back to Curb         Municipal Broadband</i> .....	598
F. <i>Missouri Municipal League and § 253(a)         Preemption</i> .....	599
II. THE TWO-PRONGED SOLUTION .....	602
A. <i>The Federal Prong: Amending § 253 per Missouri         Municipal League</i> .....	603
1. <i>The Proposed Amendment to § 253(a)</i> .....	603
2. <i>The Need for an Amendment to § 253(a)</i> .....	604
3. <i>Responding to Preemption Concerns Persisting         Despite an Amendment to § 253(a)</i> .....	605
B. <i>The State Prong</i> .....	608
1. <i>Provisions to Eliminate</i> .....	608
a. <i>Outright Bans</i> .....	608
b. <i>Wholesale Service Restrictions</i> .....	609
2. <i>Provisions to Modify</i> .....	610
a. <i>Raising Municipal Entry Costs</i> .....	611
b. <i>Restrictions on Public Financing</i> .....	612
c. <i>Mandatory Referenda</i> .....	614
d. <i>Pricing and Cross-Subsidy Restrictions</i> .....	615
e. <i>Other Operating Restrictions</i> .....	616
3. <i>Provisions to Retain</i> .....	617
a. <i>Mandatory Feasibility Studies</i> .....	617
b. <i>Mandatory Private Sector Appeals</i> .....	618
c. <i>The Unserved Area Exemption</i> .....	620
III. JUSTIFICATIONS FOR THE STATE-LEVEL PRONG .....	620
IV. COUNTERARGUMENTS TO THE STATE-LEVEL PRONG ...	622
CONCLUSION .....	625

## INTRODUCTION

A few years ago, Michael and Amy Tiemann decided to build and operate a cutting-edge recording studio in Pittsboro, North Carolina,<sup>1</sup> a rural town of 3,555 people.<sup>2</sup> In addition to the high startup costs of the studio, such as sophisticated equipment, Mr. Tiemann discovered that establishing a broadband Internet connection to the studio was one of the greatest challenges of the project because the area around the studio lacked broadband infrastructure.<sup>3</sup> “I spent more than two years begging Time Warner [Cable] to sell me a service that costs 50 times more than it should,” he explained, “and that’s after I agreed to pay 100 percent of the installation costs for more than a mile of fiber [optic cable].”<sup>4</sup> Mr. Tiemann was fortunate enough that his career path as a pioneer in computer software development provided him with the capital necessary to afford such installation.<sup>5</sup> But most Pittsboro residents do not have the same financial resources as Mr. Tiemann, given that the median family annual income is merely \$63,411.<sup>6</sup>

Mr. Tiemann and others like him faced immense difficulty in obtaining broadband in part because North Carolina passed House Bill 129, titled “Level Playing Field/Local Government Competition,” in May 2011.<sup>7</sup> Without that law, Mr. Tiemann and other businesses and residents of Pittsboro might have worked together with their local government to find a solution to their lack of broadband access, possibly by way of a municipal broadband network that could provide service at an affordable rate.

The North Carolina statute “essentially barr[ed] [municipal broadband networks] from the consumer market,” leaving Mr. Tiemann and others similarly situated across North Carolina with no al-

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<sup>1</sup> Monica Chen, *Chapel Hill’s High Hopes for Broadband Quashed by Law*, TRIANGLE BUS. J. (June 17, 2011), <http://www.bizjournals.com/triangle/print-edition/2011/06/17/chapel-hills-high-hopes-for-broadband.html?page=all>.

<sup>2</sup> U.S. CENSUS BUREAU, *2006-2010 American Community Survey 5-Year Estimates: Demographic and Housing Estimates*, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_5YR\\_DP05](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP05) (last visited July 25, 2012).

<sup>3</sup> Chen, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *About Us*, MANIFOLD RECORDING, <http://www.manifoldrecording.com/people.php#michael> (last visited Jan. 11, 2013). While Mr. Tiemann’s finances are not discussed, based on his impressive career it is safe to assume that Mr. Tiemann possessed sufficient resources to accomplish his goals.

<sup>6</sup> U.S. CENSUS BUREAU, *2006-2010 American Community Survey 5-Year Estimates: Selected Economic Characteristics*, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_10\\_5YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_DP03) (last visited July 31, 2012).

<sup>7</sup> H.B. 129, Gen. Assemb., 2011 Sess. (N.C. 2011), 2011 N.C. Sess. Laws 84 (codified at N.C. GEN. STAT. § 160A-340 (2012)).

ternative but to continue to beg Time Warner and other Internet service providers (“ISPs”) for service, usually at great cost to the consumer.<sup>8</sup> Where, as in Mr. Tiemann’s case, the local telecommunications provider is clearly reluctant to enter a small unserved market at a reasonable price for consumers, a public network might be able to provide broadband Internet at an affordable rate.

Mr. Tiemann’s problem is not unique to North Carolina. In fact, when North Carolina’s bill passed in May 2011,<sup>9</sup> nineteen states already had enacted legislation restricting or banning municipal broadband networks to the detriment of underserved communities.<sup>10</sup> Such legislation has been a point of contention between private telecommunications companies and residents and businesses in underserved communities with, or seeking to build, municipal broadband networks. In North Carolina, Governor Bev Perdue declined to take a concrete position on the bill when she refused to sign or veto it (resulting in its enactment).<sup>11</sup> Governor Perdue explained, “My concern with House Bill 129 is that the restrictions the General Assembly has imposed on cities and towns who want to offer broadband services may have the effect of decreasing the number of choices available to their citizens,” and she urged the legislature to reconsider the law.<sup>12</sup>

State restrictions similar to North Carolina’s leave underserved municipalities caught in a bind: the private sector is unwilling or unable to provide sufficient broadband access at an affordable price, but the municipality is effectively prohibited from building its own network to compensate for the private sector’s refusal to enter the market. Consequently, residents and businesses in the vast majority of these municipalities are denied broadband Internet access, severely limiting their ability to conduct business and enjoy the many benefits broadband Internet offers.<sup>13</sup>

This Note argues that many current state laws which prohibit or effectively prohibit municipal broadband networks will continue delaying high-speed Internet access to individuals and businesses in un-

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<sup>8</sup> Chen, *supra* note 1.

<sup>9</sup> 2011 N.C. Sess. Laws 84.

<sup>10</sup> John Blevins, *Death of the Revolution: The Legal War on Competitive Broadband Technologies*, 12 YALE J.L. & TECH. 85, 110 (2009).

<sup>11</sup> Rob Christensen, *Perdue Urges Rethinking of New Broadband Law*, NEWS & OBSERVER (Raleigh, NC), May 21, 2011, at 3B.

<sup>12</sup> Press Release, Office of Governor Bev Perdue, Governor Perdue’s Statement on House Bill 129 (May 20, 2011), <http://www.governor.state.nc.us/NewsItems/PressReleaseDetail.aspx?newsItemID=1861>.

<sup>13</sup> See *infra* Part I.B.

derserved communities, causing negative social and economic impacts.<sup>14</sup> To reduce delays in broadband deployment, state regulations should reasonably protect the private sector from government-funded competitors when such competition is likely to take place, but should also granting municipalities leeway to construct broadband networks when the private sector is unable or unwilling to provide service at reasonable rates.

This Note proposes specific provisions that states choosing to regulate municipal broadband networks should include in their regulations to protect private industry. This Note also highlights some existing state law provisions that should be stricken because they are overly protective of the private sector to the detriment of consumers.

To effect timely modification of overly restrictive state laws, this Note further proposes that the federal government take action. The most effective means of changing existing state rules is to use § 253(a) of the Telecommunications Act of 1996<sup>15</sup> to preempt state laws which prohibit or effectively prohibit municipalities from operating broadband networks. In order to overcome preemption, states with overly burdensome regulations would be forced to revise their laws to be less restrictive. However, the Supreme Court has interpreted § 253(a) in such a way that preemption is impossible at present.<sup>16</sup> Thus, this Note proposes that Congress amend § 253(a) with language making clear its application to laws targeting municipal entities (and not just private entities).

Part I of this Note sets the stage for the discussion by defining key technical terms, laying out the parameters of the substantive debate, and explaining the present state of affairs at both the federal and state levels. Part II presents this Note's two-pronged solution: Section A addresses how federal preemption can compel states to repeal or revise overly restrictive laws, and Section B evaluates existing state laws, highlighting some that should be modified or repealed. Part III contains additional justifications for this Note's proposed solutions beyond those presented in Part II, including the economic and social benefits of municipal broadband and how municipally-sponsored broadband deployment mirrors other successful municipal infrastructure deployments in this nation's history. Finally, Part IV identifies and rebuts potential counterarguments to the proposed solution.

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<sup>14</sup> See *infra* Part I.B.

<sup>15</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 101, 110 Stat. 56, 70 (codified at 47 U.S.C. § 253(a) (2006)).

<sup>16</sup> See *infra* Part I.F.

## I. THE LEXICON, LIMITS, AND LAW OF THE DEBATE

### A. Terminology and Availability of Broadband

Before exploring the substantive issues, some fundamental terminology must be defined and parameters must be established. “Broadband” is a relatively vague term without a generally accepted definition. Commonly thought of as Internet connections faster than dial-up, broadband is often understood in terms of speed. In 1999, the Federal Communications Commission (“FCC”) defined broadband as an Internet connection capable of minimum speeds of 200 kilobits per second for both download (from the Internet to the user’s computer) and upload (from the user’s computer to the Internet).<sup>17</sup> Eleven years later, the FCC decided the prior definition was outdated and adopted a new definition requiring download speeds of at least four megabits per second and upload speeds of at least one megabit per second.<sup>18</sup> The FCC considers these speed benchmarks to be the “minimum speed required to stream a high-quality . . . video while leaving sufficient bandwidth for basic web browsing and email,” or, put another way, the FCC now considers this standard Internet usage.<sup>19</sup>

Under such a definition, the FCC estimates that out of 3230 counties in the United States, 1024 of them completely lack broadband service, resulting in about 24 million Americans without broadband access.<sup>20</sup> Moreover, these unserved areas, often rural, are typically far less densely populated than the national average population density.<sup>21</sup> The FCC concluded that “broadband is not being deployed to all Americans in a reasonable and timely fashion,” and, most critically, that “market forces alone are unlikely to ensure that the unserved minority of Americans will be able to obtain the benefits of broadband anytime in the near future.”<sup>22</sup>

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<sup>17</sup> Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, 25 FCC Rcd. 9556, 9558 (July 20, 2010).

<sup>18</sup> *Id.* at 9559. Using the International System of Units, one megabit is the equivalent of 1,000 kilobits, i.e., one megabit per second is the equivalent of 1,000 kilobits per second. See *The NIST Reference on Constants, Units, and Uncertainty*, NAT’L INST. OF STANDARDS & TECH., <http://physics.nist.gov/cuu/Units/prefixes.html> (last visited Jan. 12, 2013).

<sup>19</sup> 25 FCC Rcd. at 9559.

<sup>20</sup> *Id.* at 9570.

<sup>21</sup> *Id.* at 9571–72 (explaining that the average household density of the unserved counties is 46.8 households per square mile as compared to the average U.S. county, which has a household density of 108.2 households per square mile).

<sup>22</sup> *Id.* at 9574.

### B. *The Need to Stay Wired*

While wireless networks are one option in broadband deployment, this Note only considers wire-based networks for three reasons. First, wired networks tend to offer faster speeds and more reliable connections than wireless systems because the shortage of wireless spectrum prevents wireless systems from offering connections with comparable speed and reliability.<sup>23</sup> Second, wireless broadband networks are subject to greater FCC regulation than wired networks, making them more difficult to build and operate.<sup>24</sup> Third, municipal wireless broadband can serve as both a primary and secondary source of broadband access and in many cases has taken on the latter character.<sup>25</sup> Such secondary source public networks are immaterial to this Note because they exist as a feature of convenience for residents in areas that already have broadband access.<sup>26</sup> For these reasons and others, wired systems are preferable even considering the greater cost in bringing them to unserved communities.<sup>27</sup>

The benefits of high-speed Internet to both ordinary citizens and businesses are numerous and linked directly to broadband's greater speeds. For individuals, broadband performs critical functions such as assisting people in finding employment and facilitating communication and education in addition to offering great convenience and entertainment value.<sup>28</sup> Broadband also gives businesses the ability to expand their operations globally, find more and better customers and

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<sup>23</sup> See Alex Goldman, *The FCC Decision and the Use of White Spaces*, WIRELESS INTERNET SERV. PROVIDERS ASS'N (Oct. 12, 2010, 8:30 AM), <http://web.archive.org/web/20110718180958/http://www.wispa.org/?p=3146> (accessed by searching for <http://wispa.org/?p=3146> in the Internet Archive index) (explaining that lack of radio spectrum availability and interference from nearby spectrum pose great challenges for companies seeking to offer wireless broadband); see also *WiMAX Offers Less Bang Than Fiber, Panelists Say*, COMM'NS DAILY, Mar. 31, 2009, available at 2009 WLNR 6205749 [hereinafter *WiMAX Offers Less Bang*] (explaining that wireless broadband cannot support a large number of users without losing speed and reliability).

<sup>24</sup> See Goldman, *supra* note 23 (discussing impact of FCC's power usage restrictions and "height above average terrain" antenna restrictions on wireless Internet services providers).

<sup>25</sup> Catherine A. Middleton, *A Framework for Investigating the Value of Public Wireless Networks* 10 (Aug. 15, 2007) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2118153](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2118153).

<sup>26</sup> See *id.* at 16–17. Because wireless broadband is technologically inferior to wired Internet options, those who are willing to pay for Internet connectivity are "highly unlikely to subscribe to public Wi-Fi as their primary source of Internet connectivity if other options are available." *Id.* See generally Sharon E. Gillett, *Municipal Wireless Broadband: Hype or Harbinger?*, 79 S. CAL. L. REV. 561 (2006) (discussing municipal wireless broadband networks).

<sup>27</sup> See *WiMAX Offers Less Bang*, *supra* note 23.

<sup>28</sup> *The Benefits of Broadband*, OFFICIAL ST. OF MICH. WEBSITE, [http://www.michigan.gov/broadband/0,1607,7-250-48184\\_48185--,00.html](http://www.michigan.gov/broadband/0,1607,7-250-48184_48185--,00.html) (last visited Aug. 26, 2012).



suppliers, streamline operations, advertise more efficiently, and recruit employees.<sup>29</sup> The result is a substantial net benefit to the community, as communities with high-quality broadband networks are more likely to attract and retain businesses, offer greater educational opportunities, provide government services more efficiently, and attract tourists.<sup>30</sup> Speed is key, as slower, non-broadband Internet connections render most of these benefits unobtainable either because of the time required to access the benefits or because the Internet products and services cannot be transmitted to users lacking broadband access.<sup>31</sup>

### C. *The Expense of Expansion*

Although broadband is critical to individuals and businesses nationwide, Internet Service Providers (“ISPs”) are reluctant to enter more remote or less populated markets.<sup>32</sup> Put simply, it is quite expensive to build out a wired broadband network.<sup>33</sup> The nature of wired broadband deployment requires large up-front costs of construction, essentially capital expenditures,<sup>34</sup> as broadband connections require running wires to customers’ homes or businesses.<sup>35</sup> However, once these up-front deployment costs are paid, the network is relatively cheap to operate.<sup>36</sup> Thus private ISPs price their service above transmission costs so as to recoup their capital outlay.

From a business standpoint, this sort of capital expenditure is more easily justified in densely populated areas, as the more densely populated an area is, the more customers there are within range of the network and available to pay for it.<sup>37</sup> Consequently, major metropolitan areas tend to have multiple private ISPs offering broadband ser-

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Getting Broadband*, FED. COMM’N. COMM., <http://www.fcc.gov/guides/getting-broadband> (last visited Nov. 8, 2012).

<sup>32</sup> Richard Bennett & Robert D. Atkinson, *ITIF Analysis of FCC Broadband Deployment Report*, INFO. TECH. & INNOVATION FOUND. (July 21, 2010), <http://www.itif.org/publications/itif-analysis-fcc-broadband-deployment-report>.

<sup>33</sup> *Id.* (discussing “the high cost of bringing wireline broadband to remote areas,” and explaining “[i]t’s very difficult to justify a ten mile trench or hundreds of new telephone poles just to reach a single cattle ranch”).

<sup>34</sup> See David Clark, *A Simple Cost Model for Broadband Access: What Will Video Cost? 2* (Aug. 27, 2008) (unpublished manuscript), <http://cfp.mit.edu/publications/docs/DDC.Cost.analysis.TPRC.R1.pdf>.

<sup>35</sup> See *id.* at 6 (estimating the costs of connecting the ISP to the user’s premises).

<sup>36</sup> See *id.* at 7 (estimating that data transmission costs, exclusive of network connection, might fall somewhere in the ten to twenty cents per gigabyte range).

<sup>37</sup> See Bennett & Atkinson, *supra* note 32.

vice, because ISPs can more quickly recover their fixed costs of construction from the larger customer base.<sup>38</sup>

However, in less densely populated areas, the fixed costs will either take longer to offset<sup>39</sup> or require that a higher price be charged to customers.<sup>40</sup> Using these principles, private ISPs can calculate the likely profitability of expanding to unserved markets and determine whether it is worth expanding to serve the market.<sup>41</sup> Unfortunately, the more isolated and less densely populated the area, the less likely it is that the fixed costs of construction will ever be recouped, and thus such areas remain unserved.<sup>42</sup>

#### D. *The New Hope of Municipal Broadband*

Faced with these unforgiving economic realities, municipalities with large unserved areas began developing plans to create broadband networks, embracing their potential to “help bridge the digital divide” where private ISPs refused to offer service.<sup>43</sup>

One particularly successful municipal broadband project is in Cedar Falls, Iowa, where the local public utility, Cedar Falls Utilities (“CFU”), began selling fiber-optic broadband service in 1996.<sup>44</sup> While the project took eight years to become relatively cash-flow neutral,<sup>45</sup> in both 2008 and 2009, CFU’s communications network had operating income of approximately \$2.37 million, a figure which climbed to nearly \$3 million in 2010.<sup>46</sup>

While one city’s example is no guarantee that all municipal networks will enjoy financial success, successful projects like CFU indicate that the municipal broadband idea is at least economically feasible. The benefits of affordable broadband access are so important to a community that making a profit should not be the overarch-

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<sup>38</sup> *See id.*

<sup>39</sup> This assumes a smaller customer base paying the same price as a large customer base.

<sup>40</sup> *See Bennett & Atkinson, supra note 32.*

<sup>41</sup> *See id.*

<sup>42</sup> *See id.*

<sup>43</sup> *See Blevins, supra note 10, at 105 (internal quotation marks omitted).*

<sup>44</sup> MICHAEL J. BALHOFF & ROBERT C. ROWE, BALHOFF & ROWE, LLC, MUNICIPAL BROADBAND: DIGGING BENEATH THE SURFACE 35–36 (Sept. 2005), <http://www.balhoffrowe.com/pdf/Municipal%20Broadband—Digging%20Beneath%20the%20Surface.pdf>.

<sup>45</sup> *Id.* at 36.

<sup>46</sup> Balance Sheet, Mun. Commc’ns Util. of the City of Cedar Falls, Iowa 1 (2011), <http://auditor.iowa.gov/reports/1123-0046-C000.pdf>. CFU provided both cable television and broadband Internet services over its network. *Id.*

ing goal.<sup>47</sup> The main purpose of municipal broadband should be to provide an increasingly necessary public service, not turn a profit.

*E. The Private Sector Strikes Back to Curb Municipal Broadband*

Fearing encroachment upon their traditional territorial domination, their ability to expand at their own pace, and their ability to choose which customers they will serve, private ISPs were quick to begin an aggressive campaign against municipal networks.<sup>48</sup> The campaign included lobbying for state laws restricting or banning such municipal networks as well as lawsuits to stifle their development.<sup>49</sup>

While all of the private ISPs' efforts are too extensive to list here, two are worth noting. First, the Wisconsin legislature approved a state-sponsored broadband network planned primarily for educational purposes.<sup>50</sup> The University of Wisconsin was supposed to manage the network and sell service to other schools throughout the state.<sup>51</sup> However, before the build-out of the network got very far, a group of thirty independent incumbent Wisconsin private ISPs (the same ISPs that declined to serve many potential customers for the state-sponsored project) filed multiple lawsuits and petitioned the Governor to delay and prevent the network's construction.<sup>52</sup> Delayed for over a year now, the project remains trapped in administrative and judicial limbo.<sup>53</sup>

The second example comes from Pennsylvania where private ISPs staged a massive lobbying campaign that amassed nearly \$5.3 million in fees for registered lobbyists between 2003 and 2004.<sup>54</sup> Of that sum, over \$3.1 million came from Verizon Communications, Inc. alone.<sup>55</sup> The lobbying effort paid off for the private ISPs: in late 2004 the state legislature passed a law prohibiting new municipal broadband projects<sup>56</sup> subject only to certain highly restrictive exceptions.<sup>57</sup>

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<sup>47</sup> See *infra* Part II.B.

<sup>48</sup> See Blevins, *supra* note 10, at 107–08.

<sup>49</sup> See *id.* at 107 (“Simply put, incumbent broadband providers used law to stifle municipal broadband in its infancy.”).

<sup>50</sup> See *Wisconsin Local Operators Seek to Block Stimulus Funded Broadband Project*, COMM’NS DAILY, Aug. 31, 2011, available at 2011 WLNR 17510498.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> D. Stan O’Loughlin, *Preemption or Bust: Fear and Loathing in the Battle over Broadband*, 28 CARDOZO L. REV. 479, 491 (2006).

<sup>55</sup> *Id.* Verizon had previously spent less than \$500,000 politicking during the prior three state election cycles. *Id.*

<sup>56</sup> 66 PA. CONS. STAT. § 3014(h) (2012).

In addition to Pennsylvania and Wisconsin, private ISPs were successful in persuading a number of other states to pass laws preventing municipalities from constructing broadband networks.<sup>58</sup> The watershed battle in the fight to legislate municipal broadband out of existence took place in Missouri.

F. Missouri Municipal League *and* § 253(a) Preemption

In 1997, Missouri passed a law which effectively<sup>59</sup> prohibited a “political subdivision” of the state from selling telecommunications services or facilities to public or private ISPs.<sup>60</sup> In response, a group of Missouri municipalities, municipally-owned utilities, and municipal organizations petitioned the FCC for a declaration that the statute was preempted by § 253 of the Telecommunications Act of 1996.<sup>61</sup>

Specifically, the petitioners asked the FCC to find that the Missouri statute violated § 253(a) of the Telecommunications Act, which states, “No State or local statute . . . may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”<sup>62</sup> Under § 253(d), the FCC is empowered to “preempt the enforcement of such statute . . . to the extent necessary to correct such violation or inconsistency” with § 253(a).<sup>63</sup>

The FCC determined that the Telecommunications Act did not preempt the Missouri statute because the term “any entity,” as used in the statute, was not intended to include Missouri’s own political subdivisions.<sup>64</sup> Although the FCC found in favor of the state, the FCC made it clear that its decision was only following binding legal precedent.<sup>65</sup> Perhaps more importantly, the FCC’s opinion stated that the policy behind the Missouri statute was in conflict with the goal of the

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<sup>57</sup> See *infra* Part II.B.3.

<sup>58</sup> See Blevins, *supra* note 10, at 109–10.

<sup>59</sup> One of the exceptions is that a municipality may sell telecommunications service only to private ISPs on a “nondiscriminatory, competitively neutral basis, and at a price which covers cost” as though the municipal network were acting as a private, for-profit entity. MO. REV. STAT. § 392.410(7) (2012). However, due to the narrowness of the exceptions and the fact that the law effectively foreclosed municipalities from building broadband networks, the Supreme Court deemed these exceptions “not pertinent” in preemption analysis. *Nixon v. Mo. Mun. League*, 541 U.S. 125, 129 n.1 (2004).

<sup>60</sup> MO. REV. STAT. § 392.410(7) (2012).

<sup>61</sup> *Mo. Mun. League*, 541 U.S. at 129.

<sup>62</sup> 47 U.S.C. § 253(a) (2006).

<sup>63</sup> *Id.* § 253(d).

<sup>64</sup> *Mo. Mun. League*, 16 FCC Rcd. 1157, 1158 (2001), *vacated*, 299 F.3d 949, 952 (8th Cir. 2002), *rev’d*, 541 U.S. 125 (2004).

<sup>65</sup> *Id.* at 1162.

Telecommunications Act to promote broadband deployment, especially in rural areas.<sup>66</sup>

The municipalities scored a victory, though, when their appeal to the Eighth Circuit resulted in a unanimous reversal of the FCC's decision.<sup>67</sup> The appellate court held that the plain meaning of the words "any entity" included municipalities, despite the heightened standards imposed when federal law preempts a state's regulation of its own political subdivisions.<sup>68</sup>

But the victory was short lived: less than two years later, the Supreme Court overturned the Eighth Circuit and upheld the Missouri statute's validity for four reasons.<sup>69</sup> First, a state law regulating municipalities cannot be preempted because the municipality is not a separate entity from the state under the meaning of "entity" in § 253.<sup>70</sup> Second, even if the Missouri statute were preempted, municipalities would not inherently have the authority to build telecommunications networks absent a grant of such authority from the state.<sup>71</sup> The first and second reasons lead to the third: even if the statute was preempted and authority to build the network existed, the state could simply cut off funding for the network's construction or maintenance via budgeting decisions.<sup>72</sup>

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<sup>66</sup> *Id.* ("[T]he legal authorities that we must look to in this case compel us to deny the Missouri Municipals' petition . . . . The Commission has found that municipally-owned utilities and other utilities have the potential to become major competitors in the telecommunications industry. In particular, we believe that the entry of municipally-owned utilities can further the goal of the 1996 Act to bring the benefits of competition to all Americans, particularly those who live in small or rural communities." (footnotes omitted)).

<sup>67</sup> The procedure of preempting a statute under § 253(a) begins with a party petitioning the FCC for preemption. The FCC then renders a decision on preemption which is reviewable by the applicable United States Circuit Court of Appeals for the jurisdiction in which the state law was challenged. In this case, that Circuit Court was the Eighth Circuit. *See Mo. Mun. League*, 299 F.3d 949, 951–52.

<sup>68</sup> *Id.* at 952–53.

<sup>69</sup> *See Mo. Mun. League*, 541 U.S. at 128–29.

<sup>70</sup> *Id.* at 134 ("[W]hen a government regulates itself (or the subdivision through which it acts) there is no clear distinction between the regulator and the entity regulated. Legal limits on what may be done by the government itself (including its subdivisions) will often be indistinguishable from choices that express what the government wishes to do with the authority and resources it can command.").

<sup>71</sup> *Id.* at 135 ("But what if the FCC did preempt the restriction? The municipality would be free of the statute, but freedom is not authority, and in the absence of some further, authorizing legislation the municipality would still be powerless to enter the telecommunications business.").

<sup>72</sup> *Id.* at 136 ("Surely there is no contention that the Telecommunications Act of 1996 by its own force entails a state agency's entitlement to unappropriated funds from the state treasury, or to the exercise of state bonding authority.").

Finally, the Court expressed concern that preemption would create a “national crazy quilt” of states where such networks were legal in some states and illegal in others.<sup>73</sup> States that had previously granted municipalities the authority to build such networks would be preempted if they tried to revoke that authority by legislation, but states that had never granted such authority in the first place could validly ban municipal networks.<sup>74</sup> The “crazy quilt” would not only be confusing, but would also be the product of federal law as opposed to “free political choices” at the state level.<sup>75</sup>

In the aftermath of *Missouri Municipal League*, the private sector intensified its efforts to eliminate municipal broadband networks. ISPs initiated enforcement actions in states with existing legislation regulating municipal broadband networks and increased lobbying efforts to have regulations passed in states without them.<sup>76</sup> Private ISPs also launched a publicity campaign, using media outlets to portray municipal networks as anticompetitive.<sup>77</sup> More importantly, the timing of these efforts (and the new legislation which resulted) was significant for the private ISPs, as many municipalities were in the process of planning and financing broadband projects nationwide.<sup>78</sup>

Thanks in large part to the substantial lobbying effort discussed above, at least twenty-one states have some sort of legislative barrier to municipal broadband networks.<sup>79</sup> Of these twenty-one, Arkansas,<sup>80</sup> Missouri,<sup>81</sup> Nebraska,<sup>82</sup> and Texas<sup>83</sup> have total prohibitions on new municipal networks. And while all of the states’ restrictions vary in their comprehensiveness, they all limit the availability of reliable

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 137 (“A State or municipality could give the power, but it could not take it away later[.] . . . for the law expressing the government’s decision to get out [of the telecommunications business] would be preempted.”).

<sup>75</sup> *Id.* at 136.

<sup>76</sup> Anthony E. Varona, *Toward a Broadband Public Interest Standard*, 61 ADMIN. L. REV. 1, 98 (2009).

<sup>77</sup> See O’Loughlin, *supra* note 54, at 490.

<sup>78</sup> See Blevins, *supra* note 10, at 109.

<sup>79</sup> See *id.* at 110 (noting that at least nineteen state legislatures have created barriers to entry on municipal broadband). Since Blevins wrote in 2009, two other states have enacted restrictions on municipal broadband. See 2011 N.C. Sess. Laws 84; 2012 S.C. Acts 284.

<sup>80</sup> ARK. CODE ANN. § 23-17-409(b) (2012). This statute provides a small exception for pre-existing city-owned electric utilities or “television signal distributors” to operate data networks. *Id.* § 23-17-409(b)(2).

<sup>81</sup> MO. REV. STAT. § 392.410(7) (2012).

<sup>82</sup> NEB. REV. STAT. § 86-594 (2012).

<sup>83</sup> TEX. UTIL. CODE ANN. § 54.201 (West 2011).

broadband Internet access to citizens in their respective underserved communities.<sup>84</sup>

## II. THE TWO-PRONGED SOLUTION

Though this Note does not dispute that the free market should govern when ISPs are willing to compete, ISPs should not be able to suppress competition in markets they have no intention of entering even if that competition comes from a public entity. But the line between cases where the ISPs are legitimately nervous about their ability to compete with municipal networks or where they simply want to suppress any and all forms of competition is often difficult to discern. In the municipal broadband context, there has been a strong lobby led by the private ISPs against municipal networks expressing a legitimate fear that the private sector will be unable to compete effectively with publicly subsidized or funded broadband networks.<sup>85</sup> But there has been a relatively strong outcry against state laws prohibiting municipal networks from both ordinary citizens<sup>86</sup> and the federal government.<sup>87</sup> For example, in May 2011 FCC Commissioner Michael Copps spoke at a telecommunications conference in North Carolina, imploring all states to stop and reverse the trend of prohibiting municipal broadband networks.<sup>88</sup>

Despite no clear consensus regarding the value of direct competition between the private sector and municipalities in the consumer broadband market, there is a workable compromise that will quickly get underserved communities municipal broadband Internet access while protecting private ISPs' economic interests. This Note highlights new and amended statutory provisions that would further two critical purposes of municipal broadband networks: (1) to incentivize private ISPs to expand their networks more rapidly, alleviating the need for municipal networks, and (2) to fill the remaining gaps in service that the private ISPs are unwilling to enter even when faced with the prospect of losing potential customers to municipal networks. To achieve this goal, legislation should make municipal networks permissible when circumstances are such that the private sector is unwilling to provide broadband service at reasonable rates.

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<sup>84</sup> See *infra* Part II.B.

<sup>85</sup> See *supra* Part I.E.

<sup>86</sup> See, e.g., Chen, *supra* note 1.

<sup>87</sup> Ted Gotsch, *Copps Calls on States to Allow Municipalities to Offer Broadband*, TR DAILY, May 10, 2011, available at 2011 WLNR 9347480.

<sup>88</sup> *Id.*

This Note proposes a two-pronged solution. At the federal level, Congress should amend § 253 so that it applies expressly to public entities, thus overruling *Missouri Municipal League* by granting the FCC the power to declare overly restrictive state laws preempted. Such federal action would force state legislatures either to reconsider their laws or simply stand by as the overly burdensome state laws are preempted. At the state level, this Note identifies provisions of current state laws which have particularly important effects on municipalities' ability to construct and operate broadband networks and discusses how those provisions should be modified or eliminated.

A. *The Federal Prong: Amending § 253 per Missouri Municipal League*

Because the industry lobby has proven so strong even in the face of public opposition,<sup>89</sup> it is unlikely that states will suddenly begin resisting lobbying efforts and reverse their restrictive laws. Thus, proposals for modifying state laws alone are insufficient to exact any meaningful change. Accordingly, the best way to compel states to reconsider their statutes is to have federal law preempt those state laws which effectively prohibit public entities from providing telecommunications services. However, in light of *Missouri Municipal League*, federal action is now necessary for preemption to occur.

There are two viable options to overcoming *Missouri Municipal League*: the Supreme Court could overturn its own precedent or Congress could amend § 253 to meet the requirements set out by *Missouri Municipal League* and reach the state statutes in question. Although either remedy would suffice, this Note focuses on the congressional solution.<sup>90</sup>

1. *The Proposed Amendment to § 253(a)*

Congress should amend § 253(a) so that it expressly applies to states and their own political subdivisions. To illustrate this point, consider the following (the bold text is added to the current language

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<sup>89</sup> North Carolina is a prime example, as the issue was so contentious that the Governor refused to sign or veto the bill. *See supra* Introduction.

<sup>90</sup> The fact is that eight Justices felt the language of § 253 is not clear enough to hold that preemption applied to statutes affecting public entities, so it is unlikely the Court would change its tune and side with Justice Stevens if the matter arose again. Given the relative ease with which Congress could remedy the statute's flaw to the Court's satisfaction, a congressional solution is best. Moreover, a discussion arguing the merits of overturning the Court's majority opinion would require delving into an entirely separate area of law, state sovereignty, which would detract from the primary focus of this Note.



of § 253(a)): “No State or local statute . . . may prohibit or have the effect of prohibiting the ability of any entity, INCLUDING PUBLIC ENTITIES, to provide any interstate or intrastate telecommunications service.”<sup>91</sup> Including some form of the term “public entities” in the statute, a phrase borrowed from *Missouri Municipal League*,<sup>92</sup> would overcome the Court’s conclusion that “Congress used ‘any entity’ with a limited reference to any private entity,” and thus expressly include the state laws discussed in this Note under the “preemption net” of § 253.<sup>93</sup>

## 2. *The Need for an Amendment to § 253(a)*

Amending § 253 in this way would likely sway the votes of at least two members of the majority still on the Court today, Justices Scalia and Thomas, who concurred in the judgment because § 253(a) “simply does not provide the clear statement which would be required . . . for a statute to limit the power of States to restrict the delivery of telecommunications services by their political subdivisions.”<sup>94</sup> The two even agreed with the majority’s conclusion that preemption “would have several unhappy consequences” but did not feel “that the avoidance of unhappy consequences is adequate basis for interpreting a text.”<sup>95</sup>

The majority opinion also put heavy emphasis on this state sovereignty issue and the statutory language necessary to overcome it.<sup>96</sup> Though it also relied on policy justifications, the majority opinion concluded “that § 253(a) is hardly forthright enough” due to “[t]he want of any ‘unmistakably clear’ statement” in § 253(a) that it applies to public entities.<sup>97</sup>

In his dissenting opinion, Justice Stevens argued that such an amendment is unnecessary, as he found the majority’s conclusion that “any entity” includes all entities except for “*municipally owned* entities” incorrect.<sup>98</sup> Justice Stevens argued that the majority’s interpreta-

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<sup>91</sup> 47 U.S.C. § 253(a) (2006). The bold text is not part of the statute and was added merely for illustrative purposes. It is not intended to be any sort of formal or concrete proposal for how exactly to amend the language of § 253(a).

<sup>92</sup> *Nixon v. Mo. Mun. League*, 541 U.S. 125, 132–33 (2004).

<sup>93</sup> *See id.* (stating in part that “public and private” is often used “when both are meant to be covered”).

<sup>94</sup> *Id.* at 141 (Scalia, J., concurring).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 140–41.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 143 (Stevens, J., dissenting).

tion had to be based on one of the assumptions that either Congress did not know public utilities existed or that it purposefully disregarded public utilities in drafting § 253, and that both assumptions are “manifestly implausible” based on the great number of public utilities in the country.<sup>99</sup>

Justice Stevens pointed out another flaw in the majority’s reasoning, highlighting another section of the Telecommunications Act of 1996 that contains a more narrowly tailored definition of “utility.”<sup>100</sup> The Pole Attachments Act<sup>101</sup> specifically excludes entities “owned by the Federal Government or any State” from its definition of “utility,”<sup>102</sup> and the term “State” includes “any political subdivision, agency, or instrumentality,” of the state.<sup>103</sup> It is thus unlikely that Congress intended to restrict § 253 not to apply to public entities because elsewhere in the Telecommunications Act Congress specifically addressed public entities when it wished to treat them differently.<sup>104</sup>

While Justice Stevens’s argument is compelling, it is of little help as a practical matter given that the other eight Justices felt differently.<sup>105</sup> Thus, an amendment to § 253 is necessary if there is to be a significant chance for state-level reform via preemption. However, even if § 253 is amended, it is possible that the Supreme Court might invalidate the amended version on policy grounds, as the six-Justice majority opinion also expressed a number of concerns with the potential efficacy of such an amendment in practice<sup>106</sup>—concerns now ripe for discussion.

### 3. Responding to Further Preemption Concerns

An amendment to § 253 might still face difficulties in the Supreme Court, as the six-Justice majority opinion went beyond the textual issue, reasoning that there would be minimal positive effects from preemption because states would remain free to restrict municipal networks by denying municipalities the authority to construct them.<sup>107</sup>

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 143–44.

<sup>101</sup> 47 U.S.C. § 224 (2006).

<sup>102</sup> *Id.* § 224(a)(1).

<sup>103</sup> *Id.* § 224(a)(3).

<sup>104</sup> *Mo. Mun. League*, 541 U.S. at 143–44 (Stevens, J., dissenting).

<sup>105</sup> *See generally id.* at 128–41 (majority opinion).

<sup>106</sup> *See id.* at 133–40 (discussing hypothetical scenarios and criticizing the dissent’s positions).

<sup>107</sup> *See id.* at 134 (“[P]reempting a ban on government utilities would not accomplish much if the government could not point to some law authorizing it to run a utility in the first place.”).

Even without a law banning such networks, municipalities would still need the power to build them, as “freedom is not authority, and in the absence of some further, authorizing legislation the municipality would still be powerless to enter the telecommunications business.”<sup>108</sup>

However, this argument is insufficient as a basis for refusing to allow preemption for two reasons. First, as Justice Stevens pointed out in his dissenting opinion, § 253(a) preempts laws that impinge on the “ability” of an entity to enter the telecommunications business, and the state laws at issue here most certainly inhibit the ability of municipalities to enter the market even in the absence of authority to enter (because even should that authority be granted, the law would prohibit entry).<sup>109</sup> Justice Stevens then extended this argument to say that § 253 prevents states from revoking authority already granted to municipalities, as such revocation would be equally prohibitive of an entity’s ability to enter the market as would a law banning municipal networks.<sup>110</sup> But those states which had not yet granted municipalities the authority to construct or operate broadband networks would be under no obligation to do so as a result of § 253, even in its hypothetically amended version.<sup>111</sup>

This leads to one of the majority’s primary policy arguments: that the result of preemption would be a “national crazy quilt” of states, some of which would permit municipal networks and others that did not grant municipalities authority to operate such networks.<sup>112</sup> Justice Stevens countered this argument with the simple yet astute observation that failure to preempt statutes prohibiting municipal networks has the same effect, as a “national crazy quilt” of states with and without such inhibitive statutes would be allowed to exist.<sup>113</sup> As Justice Stevens put it, “That the ‘crazy quilt’ . . . is the product of political choices made by Congress rather than state legislatures renders it no more absurd than the ‘crazy quilt’ that will result from leaving the matter of municipal entry entirely to individual States’ discretion.”<sup>114</sup> Indeed Justice Stevens’s prediction has proven quite accurate, as the

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<sup>108</sup> *Id.* at 135.

<sup>109</sup> *See id.* at 145 (Stevens, J., dissenting).

<sup>110</sup> *Id.*

<sup>111</sup> *See id.*

<sup>112</sup> *Id.* at 136 (majority opinion).

<sup>113</sup> *Id.* at 145–46 (Stevens, J., dissenting).

<sup>114</sup> *Id.* at 146 (citation omitted).

twenty-one states that have passed such legislation vary greatly in their levels of prohibition.<sup>115</sup>

Moreover, the majority's practical assessment of the situation is contrary to that of the FCC, as even the majority recognized that the FCC "denounced the policy behind the Missouri statute" because it "substantially disserved the policy behind the Telecommunications Act."<sup>116</sup> The majority opinion intentionally "put[s] aside" the position of the FCC in this regard, though, as "it does not follow that preempting state or local barriers to governmental entry into the market would be an effective way to draw municipalities into the business," and the value of municipal broadband is not relevant to the resolution of the issues presented in the case.<sup>117</sup>

The policy arguments the majority opinion advances are difficult to embrace due to the opinion's conscious disregard for the benefits of municipal broadband. Furthermore, even the majority's legal policy arguments (e.g., the national crazy quilt) are unavailing. Justice Stevens recognized the majority's mistake in this regard when he noted that preemption under § 253 is not automatic but rather hinges on a case-by-case determination to be made by the FCC.<sup>118</sup> The FCC's role in preemption determinations would avoid the majority's "hypothetical absurd results"<sup>119</sup> because the FCC can consider all the issues of each case (including both the general and legal policy issues) before making a determination. Justice Stevens argued, "Rather than assume that the FCC will apply . . . [§ 253] improperly," the better solution is to allow preemption of state laws applying to public entities and permit the FCC to make its determinations.<sup>120</sup>

With preemption as a possible available remedy, the next Section addresses the second prong of the proposed solution: the substantive analysis of existing state law provisions and how to modify them to achieve the purposes of municipal broadband networks.

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<sup>115</sup> See *supra* text accompanying notes 79–84. See generally *infra* Part II.B (discussing various approaches and laws which restrict municipal broadband networks).

<sup>116</sup> See *Mo. Mun. League*, 541 U.S. at 130–31. The position of the FCC was that municipal broadband networks would "further the goal of the 1996 Act to bring the benefits of competition to all Americans, particularly those who live in small or rural communities in which municipally-owned utilities have great competitive potential." *Id.* at 131.

<sup>117</sup> *Id.* at 131–32.

<sup>118</sup> See *id.* at 147 (Stevens, J., dissenting).

<sup>119</sup> *Id.*

<sup>120</sup> See *id.* at 147–48.

## B. *The State Prong*

With many state laws restricting municipal broadband networks in different ways and to different degrees, a comprehensive, one-size-fits-all solution to meet any one state's particular circumstances is a pipedream. Instead, this Note focuses on a number of specific provisions contained in some states' laws, explaining how those provisions can be improved or why they should be done away with entirely. To clarify how each provision discussed should be treated, this Section is subdivided into three subparts: (1) provisions to eliminate, (2) provisions to modify, and (3) provisions to retain.

The provisions to eliminate include outright bans and wholesale service restrictions. The provisions to modify include those raising municipal entry costs, those restricting public financing, those mandating referenda, those restricting pricing and cross subsidies, and those imposing a number of other operating restrictions. Those provisions which should be retained in essentially their current form include those mandating feasibility studies before construction, those mandating appeals to the private sector to provide broadband service before construction, and those exempting unserved areas from many of the restrictions.

### 1. *Provisions to Eliminate*

There are two major restrictions present in state laws that should be phased out entirely from any legislation regulating municipal broadband: outright bans on municipal networks and restrictions limiting municipal networks to only wholesale service sales. These restrictions are overly prohibitive of municipal entry to the broadband consumer market and thus should not be included in legislation.

#### a. *Outright Bans*

Arkansas, Missouri, Nebraska, and Texas all have total bans on municipal networks.<sup>121</sup> Such total bans are patently repugnant to the spread of broadband service, as they remove municipalities from the list of potential entrants to the market. Or, in § 253's framework, total bans are the most prohibitive of an entity's ability to enter the market.<sup>122</sup> Therefore, such total bans should be entirely eliminated.

The impact of a total ban is twofold. First, the ban prevents municipalities from providing the critical broadband service their citizens

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<sup>121</sup> See *supra* notes 80–83.

<sup>122</sup> 47 U.S.C. § 253 (2006).

demand and may even require. Second, the ban may delay the expansion of private ISP broadband networks to unserved areas by removing municipalities as potential entrants to the broadband market.<sup>123</sup> Laws preventing the entire class of public entities from entering the broadband market discourage private ISPs from expanding more aggressively, if they choose to expand at all, because there is no threat that a municipal provider will be first to reach an untapped market.<sup>124</sup> Thus, such total bans should be scrapped in their entirety.

*b. Wholesale Service Restrictions*

Another troubling type of restriction that should be eliminated is found in Washington and Nevada, where public utilities are only allowed to sell telecommunications service wholesale, not to end users.<sup>125</sup> Although the law in Nevada prohibits cities with populations exceeding 25,000 from selling telecommunication service to the “general public,” municipalities below 25,000 are apparently free to construct their own networks.<sup>126</sup> In theory, even those cities governed by the statute can construct and maintain certain telecommunication facilities so long as the services those facilities provide are not sold to the general public.<sup>127</sup> The theory behind this type of restriction is that the municipality invests in the infrastructure and maintains it but must then contract out the retail sale of such service to private parties.<sup>128</sup> The goal is to keep the private sector involved and allow for some competition between retailers to help keep prices reasonable for consumers.<sup>129</sup>

However, such restrictions have proven contrary to the quest for broadband expansion. While the municipal infrastructure can be helpful, the additional steps between investment and service provision

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<sup>123</sup> Mo Xiao & Peter F. Orazem, *Entry Threat and Entry Deterrence: The Timing of Broadband Rollout* 25 (NET Institute, Working Paper No. 07-09, 2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1025121](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1025121) (“[T]he mere threat of entry may alleviate market power associated with oligopolistic market structure . . .”).

<sup>124</sup> *See id.* (“In industries such as telecommunications services, our results imply that policies encouraging entry will play an important role in determining the timing of the provision of new services to local markets.”).

<sup>125</sup> WASH. REV. CODE § 54.16.330 (2012); NEV. REV. STAT. § 268.086 (2012).

<sup>126</sup> NEV. REV. STAT. § 268.086.

<sup>127</sup> *See* William Lehr et al., *Broadband Open Access: Lessons from Municipal Network Case Studies 10–13* (Sept. 2004) (unpublished manuscript), [http://people.csail.mit.edu/wlehr/Lehr-Papers\\_files/Lehr%20Sirbu%20Gillett%20Broadband%20Open%20Access.pdf](http://people.csail.mit.edu/wlehr/Lehr-Papers_files/Lehr%20Sirbu%20Gillett%20Broadband%20Open%20Access.pdf) (explaining the options available to a municipality in wholesale-only jurisdictions and their implications for competition).

<sup>128</sup> *See id.*

<sup>129</sup> *See id.*

add uncertainty and expense to the mix, which can make the project less appealing to municipalities.<sup>130</sup> In fact, Washington's legislature is currently considering proposed legislation to permit public entities to sell telecommunications services directly to consumers.<sup>131</sup> The bill explains that unserved and underserved areas have persisted under the roughly seven years of the wholesale-only restriction and that the aim in removing the restriction is to speed the deployment of broadband service to those areas.<sup>132</sup> The bill grants municipalities the ability to operate networks with a great deal of autonomy and limited restraints and is currently under active consideration with hearings held as recently as mid-January 2012.<sup>133</sup>

While such wholesale-only restraints have apparently failed in Washington, there may be valid reasons for a municipality to impose such a restraint on itself in building a network in some cases. Just as there should not be a requirement that municipalities only sell broadband service wholesale, there also should be no requirement that they only sell broadband service at retail. Instead, each municipality should remain free to weigh its options in light of its unique circumstances, as in some cases a municipality's self-imposed restraint of wholesale-only sales may be appropriate. Such a self-imposed restraint may be useful in enticing private ISPs' cooperation in the project, rather than having the private ISPs view the project as a threat and seek to block it. Using such a self-imposed restraint as an incentive for cooperation with the private sector could avoid much of the fighting that tends to derail or increase the cost of municipal broadband projects. Despite this provision's potential utility in some municipal contexts, a statewide requirement that all municipal networks sell service only wholesale is overly broad and restrictive. Consequently, these bans should be removed leaving the choice to municipalities.

## 2. *Provisions to Modify*

This Section presents five categories of restrictions that certain states have enacted that, with some modifications, are not unduly re-

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<sup>130</sup> See *id.* at 27 ("Open access can only work if private companies find it in their interest to act as 3rd-party service providers . . .").

<sup>131</sup> See *Bill Information: HB 1711*, WASH. ST. LEGISLATURE, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1711&year=2011> (last visited Jan. 16, 2013).

<sup>132</sup> H.B. 1711, 62d Leg., 1st Spec. Sess. (Wash. 2011) ("In an effort to reach those areas of the state that are unserved or underserved, it is the intent of the legislature to grant public utility districts the authority to provide retail telecommunications services, including broadband . . .").

<sup>133</sup> See *Bill Information: HB 1711*, *supra* note 131.

restrictive of municipal networks: (1) restrictions which raise municipal entry costs into the broadband market, (2) restrictions on the use of public financing, (3) mandatory referenda, (4) restrictions on pricing and cross-subsidies, and (5) operating restrictions.

*a. Raising Municipal Entry Costs*

One legislative tactic to impede municipal networks is to add procedural requirements to the approval process that require time and expense to complete, thus raising the costs for a municipality attempting to construct a network. For example, Pennsylvania only allows municipalities to build their own networks if they obtain permission to do so from local incumbent telecommunications service providers.<sup>134</sup> If the incumbent declines to provide the requested service, the municipality may then construct its network.<sup>135</sup> Based on the terms of the statute, though, a local incumbent could theoretically delay the project by as much as fourteen months without successfully providing comparable service.<sup>136</sup>

The danger here is the potential for delay. At a minimum, a private incumbent not interested in providing service can simply run the clock for two months before the municipality can advance its planning and construction. Such delays can erode popular support for the public network or allow the incumbent additional time to exert political pressure at varying levels to derail the project. Worse still, the lack of penalties for incumbents who fail to provide the promised service leaves the door open for incumbents to act in bad faith. With the potential for delays and interference so great, the power over potential municipal networks in Pennsylvania has shifted almost fully to the incumbent private companies (even those not currently providing broadband service).

The likelihood of delays and hardships in dealing with the incumbents in this all-or-nothing way significantly raises entry costs for municipalities. Asking an incumbent for permission seems counterproductive, as it essentially asks the incumbent to give up some of its potential customers in the future, an unlikely outcome. Thus, the re-

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<sup>134</sup> 66 PA. CONS. STAT. § 3014(h) (2012).

<sup>135</sup> *See id.* § 3014(h)(2).

<sup>136</sup> *See id.* After a municipality submits a written request to the local incumbent, the incumbent has two months to opt to provide the data speeds requested to the area. Should the incumbent opt to provide the service requested, it has fourteen months from the date the request was made in which to build out the network. The statute makes no mention of penalties or other repercussions for incumbents who choose to provide the service and fail to do so within the fourteen months.



quirement of permission from a local incumbent should be done away with and replaced with something more like North Carolina's mandatory appeal to the private sector.<sup>137</sup>

Florida's law raises entry costs for municipalities by requiring that each municipality develop a detailed business plan to "ensure that revenues exceed operating expenses and payment of principal and interest on debt within 4 years."<sup>138</sup> But four years is a relatively short period in which to turn cash-flow positive given the great expense of investing in infrastructure and the relatively long life such telecommunications systems are expected to serve.<sup>139</sup>

Moreover, the goal of municipal networks is to provide a critical service that the private sector has failed to provide, and thus, like other critical public services, the focus should be on delivering the service quickly, even if this means it takes longer to become cash-flow positive. How a municipality chooses to prioritize recoupment of its investment (i.e., the length of time, if ever, over which it expects to become cash-flow positive) should be determined by the municipality based on the exigencies of its particular situation.

However, the requirement of a business plan is not a provision that should be eliminated altogether. This requirement forces a municipality to look critically and objectively at the economic realities its network will impose upon the municipality, and requires the city to come up with a plan that will provide the service at a bearable cost. Thus, while the four-year restriction is overly burdensome, mandating that municipalities present some sort of a business plan (such as the feasibility studies Utah requires<sup>140</sup>) is a provision worth maintaining.

#### *b. Restrictions on Public Financing*

Restrictions on public financing for municipal networks are another tool used to impede the spread of municipal networks. For example, one of Florida's restraints requires special votes by elected representatives to approve the issuance of debt if the debt is to mature after fifteen years.<sup>141</sup> A more onerous example exists in North Carolina, where at least two public hearings must be held on the project before the municipality may apply to the state for permission to use

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<sup>137</sup> See *infra* Part II.B.3.b.

<sup>138</sup> FLA. STAT. § 350.81(2)(c)(4) (2012).

<sup>139</sup> Cf. *supra* Part I.D (explaining the Cedar Falls, Iowa case and its eight-year path to cash-flow neutrality).

<sup>140</sup> See *infra* Part II.B.3.a.

<sup>141</sup> FLA. STAT. § 350.81(2)(e)(2).

public financing.<sup>142</sup> The state then conducts an independent review of the application before deciding whether to approve it.<sup>143</sup> As part of the review process, the public entity bears the burden of persuasion on all relevant issues, and the state will consider the “probable net revenues” of the project and issue a written report on the “reasonableness of the [public entity’s] revenue projections.”<sup>144</sup> These requirements in North Carolina are in addition to the municipality prevailing in a special election on whether the city should build the network in the first place.<sup>145</sup>

While there is certainly good reason for states to hold municipalities accountable for the debt they plan to incur, requirements that are as procedurally complex and difficult to navigate as North Carolina’s serve largely to defeat the ability of municipalities to build networks. Florida’s fifteen-year restriction, while somewhat arbitrary, is at least reasonable in that it simply requires an elected board to approve long-term debt without unduly restricting shorter-term debt. North Carolina, though, puts numerous hurdles between a municipality and its ability to build a network, including multiple public hearings, a referendum, and an application to the state. As discussed earlier,<sup>146</sup> even if successful on all the substantive matters, the delays a municipality faces in navigating the approval processes can be fatal to a network plan.

Consequently, states must walk a fine line when crafting legislation. While at face value North Carolina’s restrictions seem harmless and well-intentioned in calling for public involvement and multiple levels of review, such redundancy and excessive scrutiny has tremendous efficiency costs and makes building municipal networks far less feasible. And while a bright line is difficult to draw, the Florida restraint is certainly preferable to North Carolina’s in furthering the purposes of municipal broadband. Ideally states would go no further than a requirement that debt plans be included in some sort of overall business plan or feasibility study that must be presented prior to the municipality’s governing body voting on whether to go forward with construction.<sup>147</sup>

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<sup>142</sup> N.C. GEN. STAT. § 159-175.10 (2012).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* § 160A-340.4. See *infra* Part II.B.2.c for further discussion of these referenda.

<sup>146</sup> See *supra* Part II.B.2.a.

<sup>147</sup> Compare *supra* Part II.B.2.a, with *infra* Part II.B.3.a.

c. *Mandatory Referenda*

Some states have forced municipalities to prove that their citizens are on board with the network project before the project can proceed via mandatory local referenda. In addition to North Carolina,<sup>148</sup> Louisiana<sup>149</sup> and Colorado<sup>150</sup> are two such jurisdictions. Louisiana requires that, absent local rules to the contrary, a petition calling for a vote—signed either by fifteen percent of or ten thousand qualified electors, whichever is less—must be submitted within 180 days of submission of the project’s feasibility study.<sup>151</sup> Alternatively, Colorado requires only that the ballot describe the “nature of the proposed service, the role that the local government will have in provision of the service, and the intended subscribers of such service.”<sup>152</sup>

Here, again, arises the problem of excessive procedural hurdles. The only unique feature of telecommunications service provision by a government entity as compared to other government-provided services (such as electricity, water, sewers, and roads) is that the telecommunications industry is today predominantly administered by the private sector.<sup>153</sup> Therefore, where municipal governments see their entry as beneficial to the public interest in the telecommunications realm, the municipalities should not be subject to additional burdensome proofs of public approval above those the municipality would face in undertaking a project in any of the other aforementioned areas.

If local government is competent to make decisions in those other fields without state-level interference, there appears to be no good reason for a state to require a referendum in the telecommunications field.<sup>154</sup> These referenda serve only to further delay and potentially derail a project, as they present a prime opportunity for the private sector lobby to court voters. Special rules mandating referenda that

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<sup>148</sup> See *supra* text accompanying notes 142–44.

<sup>149</sup> LA. REV. STAT. ANN. § 45:844.50 (2012).

<sup>150</sup> COLO. REV. STAT. § 29-27-201 (2012).

<sup>151</sup> LA. REV. STAT. ANN. § 45:884.50(G)(1).

<sup>152</sup> COLO. REV. STAT. § 29-27-201(2).

<sup>153</sup> O’Loughlin, *supra* note 54, at 484. One could argue that Internet service is a service best provided by local government, just as these other services already are. See *id.* at 487–88 (“According to proponents of ‘municipal broadband,’ these community-owned networks are a natural outgrowth of traditional municipal functions such as the building and maintaining of infrastructure and the providing of public services.”).

<sup>154</sup> In fact, the North Carolina statute considers the local government competent enough to determine when the public network should be sold or shut down, as the public entity “shall not be required to obtain voter approval . . . prior to the sale or discontinuance of the city’s communications network.” N.C. GEN. STAT. § 160A-340.1(b) (2012).

apply only to municipal broadband are thus inappropriate, but if a state has legislation that requires a referendum for any major municipal infrastructure project the referendum would not necessarily be unfair. In deciding whether to require a referendum, laws should treat municipal broadband projects the same as any other municipal infrastructure project.

*d. Pricing and Cross-Subsidy Restrictions*

State regulations can also include two key financial constraints on municipal networks, namely that service must be priced at or above cost and that the municipality may not cross-subsidize the public network via other city revenue sources. Both Florida<sup>155</sup> and North Carolina<sup>156</sup> have adopted such restrictions. The price restraints are designed to keep prices in line with what a private entity would charge so that municipalities cannot price out private competitors.<sup>157</sup> The cross-subsidy prohibition furthers the goal of preserving fair competition by preventing cost reductions (which could translate into price cuts) with revenues not associated with the service.<sup>158</sup>

While both of these restraints serve a critical function in preserving private ISPs' ability to compete effectively, they also impede public network construction by making the public network less financially viable.<sup>159</sup> Assuming private ISPs refuse to enter the market because they do not believe they can provide service at a profit, or even at a break-even point, no municipality would be able to enter an unserved market given these restraints. The entire reason for municipal networks in unserved markets is to overcome the private sector's unwillingness to enter the market. These restraints preventing cross-subsidies force cities to make the networks at least cash-flow neutral within a certain time, as otherwise the funding for the network's operation would run dry. Similarly, forcing prices up to the levels of cash-flow neutrality would price out many potential customers, thus depriving them of the benefit the municipality seeks to provide.

Instead of imposing such requirements up front and indefinitely, the more prudent course of action is to impose these restraints only when private competition is reasonably certain to enter the market.

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<sup>155</sup> FLA. STAT. § 350.81(2)(f) (2012).

<sup>156</sup> N.C. GEN. STAT. § 160A-340.1(a)(7).

<sup>157</sup> See O'Loughlin, *supra* note 54, at 488–89.

<sup>158</sup> See *id.*

<sup>159</sup> See Hannibal Travis, *Wi-Fi Everywhere: Universal Broadband Access as Antitrust and Telecommunications Policy*, 55 AM. U. L. REV. 1697, 1771 (2006).

One solution is thus to amend these provisions to apply only upon a private ISP notifying the municipality that it plans to provide service in the relevant market along with proof of such intent and a plan with an estimate of when entry is expected. The municipality would then face a deadline to bring its prices in line with costs and to eliminate cross-subsidies so that once a private ISP enters the picture, the competition between the two is fair. Such a solution allows for maximum broadband distribution yet also preserves the private sector's ability to penetrate markets served by public entities.

*e. Other Operating Restrictions*

An additional two key operating restraints face municipal networks in some states: advertising restrictions and tax collection requirements. North Carolina imposes both.<sup>160</sup> First, North Carolina municipalities cannot advertise public network service on “a public, educational, or governmental access channel if the city requires another communications service provider to carry the channel,” nor can they use resources not accounted for in the public network's books to promote the services.<sup>161</sup> Second, North Carolina's public networks must collect all applicable taxes and fees that a private ISP would collect and pay them to the relevant authorities, including the city's own general fund.<sup>162</sup>

As with price and cross-subsidy restrictions,<sup>163</sup> imposing advertising and tax restrictions is best reserved until competition appears reasonably certain. While the advertising restriction alone is relatively minor, it is still an impediment to efficient distribution of service, as it needlessly adds costs in unserved markets. The local government should be able to take advantage of its unique resources, such as public-access channels, to distribute the service more cost-effectively because it more efficiently furthers the goal of the public network to provide an otherwise unavailable yet critically important service in high-speed Internet.

That same logic translates to tax collection. While the municipality should reasonably expect to collect and pass along taxes and fees to other authorities (such as the state and federal governments), there seems to be little purpose served in requiring the city to pay taxes to itself other than to benefit private ISPs by raising municipal networks'

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<sup>160</sup> See N.C. GEN. STAT. § 160A-340.1(a).

<sup>161</sup> *Id.* § 160A-340.1(a)(6).

<sup>162</sup> *Id.* § 160A-340.1(a)(9).

<sup>163</sup> See *supra* Part II.B.2.d.

costs. Instead of collecting this revenue to pay to itself, it makes more sense to permit the city to pass along those tax savings to customers as a price reduction to encourage adoption (if the city so chooses). However, should a private ISP announce its intent and ability to enter the market, fairness dictates that the city begin collecting the relevant taxes in the interest of fair competition.

### 3. *Provisions to Retain*

The following three types of provisions are worth keeping mostly unchanged because they offer the private sector a fair level of protection from public competition without unfairly delaying or otherwise inhibiting municipal networks. The first restriction, which requires municipalities to conduct feasibility studies before beginning construction, forces cities to think critically and obtain an objective analysis of the various impacts, both positive and negative, that the project will likely have. The second seeks to avoid battles between the private sector and municipalities by requiring municipalities to solicit broadband service from the private sector before building its own network. The third provision is unique from those previously discussed in that it creates a safe harbor from the restrictions imposed for municipalities that qualify as unserved.

#### a. *Mandatory Feasibility Studies*

One rather beneficial procedural obstacle that Utah has adopted is the mandatory feasibility study.<sup>164</sup> Utah's law requires that an outside consultant be retained to conduct a feasibility study, which plays a central role in the city's decision-making process.<sup>165</sup> The feasibility study must meet certain requirements, such as explanations of the impact the city's provision of telecommunications service will have on competition in the market,<sup>166</sup> whether a private party would provide the service if the city failed to do so,<sup>167</sup> the costs of construction,<sup>168</sup> projected demand growth for the service,<sup>169</sup> and projected revenues and expenses for the next five years.<sup>170</sup>

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<sup>164</sup> UTAH CODE ANN. § 10-18-202(2) (LexisNexis 2012).

<sup>165</sup> *Id.* § 10-18-203.

<sup>166</sup> *Id.* § 10-18-203(2)(a)(ii).

<sup>167</sup> *Id.* § 10-18-203(2)(b)(ii).

<sup>168</sup> *Id.* § 10-18-203(2)(c)(i)–(ii).

<sup>169</sup> *Id.* § 10-18-203(2)(d)(ii).

<sup>170</sup> *Id.* § 10-18-203(2)(e)–(f).

Contrasted with requirements for cash-flow positivity, as exemplified by Florida's law,<sup>171</sup> Utah's feasibility study seems greatly preferable because its mission is to educate the municipality's decision-makers about the potentially harsh realities the city will face in its endeavor, rather than to impose onerous requirements on the project that may serve to undermine the project's prospects for success. Insofar as Utah's requirement meets this educational goal, it should be retained.

The key difference between the Florida approach and the Utah approach is the impact each has on the prospects for the municipal network's success in providing service. The Florida approach sets a high bar for the project to meet in order to avoid some form of termination, whereas the Utah approach lays out specific factors that the study must examine so that a better-informed decision can be made in the first place. This leaves the ultimate decision in the city's hands, as Utah only requires that the feasibility study result in a finding that the project can generate sufficient revenues to operate cash-flow neutral in the mid- to long-run.<sup>172</sup> While Utah's requirement of cash-flow neutrality may not be ideal, its imposition of a feasibility study remains a worthwhile one. Designed as an instrument to facilitate rational decision-making, the feasibility study is a highly valuable tool that states should require municipalities to invest in prior to deciding to construct a network.

*b. Mandatory Private Sector Appeals*

An innovative approach to resolving the public-private debate over municipal broadband is found in North Carolina's requirement that municipalities issue a request for proposals to private ISPs as part of the approval process.<sup>173</sup> Specifically, the city must make clear the nature and scope of broadband service it wants provided and explain what actions the municipality is prepared to take in facilitating service provision (e.g., subsidies, rights-of-way, tax incentives, etc.).<sup>174</sup> The municipality must then review the proposals it receives, considering "any relevant factors" including, but not limited to, technical matters, the proposer's experience in the market, and costs.<sup>175</sup>

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<sup>171</sup> See *supra* Part II.B.2.a.

<sup>172</sup> UTAH CODE ANN. § 10-18-202(3) (LexisNexis 2012).

<sup>173</sup> N.C. GEN. STAT. § 160A-340.6(a) (2012).

<sup>174</sup> *Id.* § 160A-340.6(b).

<sup>175</sup> *Id.* § 160A-340.6(d).

A defining characteristic of North Carolina's system is that the municipality is then entitled to negotiate contracts with "any responsible proposer," bargaining over the relevant factors in order to ascertain which proposal will best suit the city's demands.<sup>176</sup> Once the city concludes its negotiations with all proposers and selects the most favorable proposal, a sixty-day window opens during which the city and that private company must finalize a contract, after which the city may open negotiations with the next-best proposer.<sup>177</sup> Should the municipality fail to reach an agreement with the next-best proposer, it may build its own network.<sup>178</sup>

On the one hand, this system suffers from the all-too-common flaw of adding procedural hurdles to the project, giving private ISPs the opportunity to needlessly delay the project simply by interacting for the sake of wasting time.<sup>179</sup> However, the negotiations permitted during this time make this system far superior to the requests for permission to build, as in Pennsylvania.<sup>180</sup> Such negotiations go to the heart of what the private ISPs want—the ability to provide service for profit—while allowing the municipality a chance to bring in the broadband Internet service at an affordable rate, perhaps via various forms of public subsidies. If successful, such negotiations will end in a compromise in which both sides get what they want, eliminating the need for protracted legal or public opinion battles. In the end, if the city still opts to build its own network, its actions will be out of necessity as the private sector will have opted not to enter the market on acceptable terms.

While this provision is quite reasonable as a middle ground, it in no way alleviates the need to reform other provisions in state laws, including North Carolina's. Other burdensome provisions weigh heavily against a municipality in its negotiations with private ISPs. In the context of this particular provision, the more difficult it is for a city to build a network, the less flexible private ISPs are likely to be in negotiations as they can be confident that even if negotiations fail the public network may still never materialize.

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.* § 160A-340.6(f).

<sup>178</sup> *Id.*

<sup>179</sup> *See supra* Part II.B.2.a–d.

<sup>180</sup> *See supra* Part II.B.2.a (describing Pennsylvania's requirement that incumbent ISPs have time to consider entering the market).



*c. The Unserved Area Exemption*

Recognizing the hardships faced by citizens in rural areas, some states have adopted the unserved area exemption, which protects municipalities deemed “unserved” by the private sector from the requirements of the statute. For example, North Carolina’s version defines an unserved area as “a census block . . . in which at least fifty percent (50%) of households either have no access to high-speed Internet service or have access to high-speed Internet service only from a satellite provider.”<sup>181</sup> Municipalities seeking this exemption must petition the North Carolina Utilities Commission for a determination that the area is unserved, at which time private ISPs may also object to the petition on any grounds that argue against the city’s eligibility to be deemed unserved.<sup>182</sup>

This form of exemption is absolutely critical to broadband deployment, especially in light of the FCC’s findings that deployment is proceeding more slowly than desired.<sup>183</sup> Unserved communities like those specified in North Carolina’s statute are exactly the sort of municipalities likely to crave a public network to fill the lack of broadband service. Those same communities are also likely to be viewed by the private sector as unprofitable and thus private ISPs are unlikely to enter the market. Consequently, municipal networks are the only real hope of broadband access for citizens in those areas, and imposing the restraints discussed in this Note would likely obliterate the prospects of a public network coming to fruition. The modified provisions discussed in Part II.B.2 are designed to protect ISPs’ interests in expanding into new markets. However, these procedural hurdles are not necessary in small rural communities because ISPs are unlikely to expend the resources necessary to serve these remote and sparsely populated areas.

### III. JUSTIFICATIONS FOR THE STATE-LEVEL PRONG

The primary justification for the state-level prong is that it facilitates broadband penetration in both unserved and underserved areas. The FCC expressed this view in its analysis of the circumstances of *Missouri Municipal League*.<sup>184</sup> Simply put, municipalities are entities

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<sup>181</sup> N.C. GEN. STAT. § 160A-340.2(b).

<sup>182</sup> *Id.*

<sup>183</sup> See *supra* Part I.A and I.C for discussions of the FCC’s position on broadband deployment rates.

<sup>184</sup> See *Nixon v. Mo. Mun. League*, 541 U.S. 125, 142 (2004) (Stevens, J. dissenting) (“[M]embers of the Federal Communications Commission . . . have taken the view that municipi-

that can provide broadband Internet service and, in some cases, may be the only entity willing to take on the expense of providing such service. Thus, restrictions on municipalities' ability to provide that service, whether procedural hurdles or cost-raising measures, inhibit the national availability of broadband service.

Broadband deployment is analogous to the deployment of electricity in the United States in the early twentieth century. In the 1880s, most electricity in the United States was supplied by large, private companies that did not view extending service to less densely populated areas as profitable or feasible and thus chose to ignore them in favor of urban markets.<sup>185</sup> In 1889, Detroit was the first municipality to create its own power company, which was successful in cutting costs to customers.<sup>186</sup> Over the next few decades, following Detroit's example, over 3,000 municipalities formed their own power companies.<sup>187</sup> One commentator identified three major impacts of these developments: (1) Congress passed the Rural Electrification Act of 1936, which provided federal assistance for electricity service deployment to rural areas; (2) public companies put added pressure on private companies to operate more efficiently, lowering costs and igniting innovation; and (3) unserved municipalities were able to remain economically viable by taking matters into their own hands and building their own power systems.<sup>188</sup>

The similarities between the electricity and Internet markets in this context are striking. FCC Commissioner Copps pointed directly to rural electricity expansion in his praise for municipal broadband projects.<sup>189</sup> A scholar notes that private ISPs are acting the same way that private power companies did in lobbying strongly in opposition to public entities entering the market.<sup>190</sup> Thus, there is reason to believe that, with widespread municipal broadband, the result would be similar in that broadband service would become far more widely available and arguably at higher quality. Such a similarly positive result is not certain, as broadband technology continues to evolve relatively quickly as compared to plumbing or paving, but history indicates that

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pal entry 'would further the goal of the [Telecommunications Act of 1996] to bring the benefits of competition to all Americans, particularly those who live in small or rural communities in which municipally-owned utilities have great competitive potential.').

<sup>185</sup> O'Loughlin, *supra* note 54, at 483.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Gotsch, *supra* note 87.

<sup>190</sup> O'Loughlin, *supra* note 54, at 490.

municipalities stand a good chance of satisfactorily filling the role of service provider. Moreover, this Note is more concerned with unserved communities, as most areas populated enough to have private ISP broadband service available have no need—and thus little, if any, desire—to construct a municipal network that would compete directly with the private sector.

Another justification for municipal broadband is that municipal networks combat the private sector's tendency toward monopolistic or oligopolistic behavior, keeping prices reasonable and quality of service high.<sup>191</sup> Similarly, consolidation in the telecommunications industry is concentrating control over the Internet in the hands of a few private companies.<sup>192</sup> Municipalities serve as competitive threats to the established private ISPs, forcing them to keep prices down and quality high. Laws that restrict municipal entry into the market degrade the efficacy of this deterrent effect and thus should be minimized.

#### IV. COUNTERARGUMENTS TO THE STATE-LEVEL PRONG

The most prominent argument against municipal networks is that they are likely to fail under their own expenses and debt burdens. However, this counterargument has been addressed throughout the proposed solution, as debt management is an integral part of the proposed solution via feasibility studies.<sup>193</sup>

A novel counterargument to this Note's proposed solution is that some state laws may not actually apply to broadband networks at all, as broadband is technically classified as an "information service."<sup>194</sup> But this counterargument is speculative at best, as it is largely semantic and lacks any verifiable evidence that such an interpretation has ever been applied.<sup>195</sup> Moreover, the author advancing this argument, John Blevins, focused his research on the signaling and chilling effects of municipal broadband regulation, agreeing that the restrictions "have played a key role in stifling municipal services," and thus in

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<sup>191</sup> See *id.* at 483.

<sup>192</sup> See Craig Dingwall, *Municipal Broadband: Challenges and Perspectives*, 59 *FED. COMM. L.J.* 67, 76–77 (2006).

<sup>193</sup> See *supra* Part II.B.3.a.

<sup>194</sup> Blevins, *supra* note 10, at 110–11 ("Indeed, several of the state laws never applied to broadband, or stopped applying after the FCC reclassified broadband access as an 'information service,' which . . . arguably limits the scope of some states' restrictions on municipal broadband," as some laws restrict "telecommunications services.").

<sup>195</sup> *Id.* at 111.

stifling broadband deployment.<sup>196</sup> Therefore, Blevins's argument does not obviate the need for this Note's proposed solution.

Another counterargument addresses the problem of broadband deployment by instead using federal funds to subsidize private construction of broadband networks in rural areas. For example, in October 2011, the FCC approved a plan to expand the purpose of the \$4.5 billion Universal Service Fund ("USF") from helping deploy only telephone service to rural areas to deploying broadband to rural areas.<sup>197</sup> In July 2012, the FCC announced \$115 million in public funding would be disbursed from the Connect America Fund (created via the USF's modernization) to deliver broadband service to about 400,000 customers in rural areas within three years.<sup>198</sup>

However, this sort of solution is insufficient given the still-significant lack of broadband deployment, especially in rural areas.<sup>199</sup> The USF and similar public funds are not enough to fill the gaps quickly and municipalities, which are vastly more responsive to their own economic needs and limits than public funds, are in a far better position to assess their respective situations. While subsidies of this sort are helpful, they do not go far enough, as unserved communities remain at the mercy of a large entity for help in obtaining broadband service (albeit a federal one rather than a private ISP) rather than having the power to take matters into their own hands and fix the problem quickly.

Another argument made against municipal networks is that they are anticompetitive to the point of creating antitrust liability for their owners. While the state action doctrine shielding state-sanctioned enterprises from federal antitrust law likely does not apply to municipalities,<sup>200</sup> this argument still fails because the proposed solution includes

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<sup>196</sup> *Id.*

<sup>197</sup> Whitney Burdette, *FCC Approves Plan to Reform Universal Service Fund*, ST. J. (Dec. 12, 2011), <http://www.statejournal.com/story/15915426/fcc-approves-plan-to-reform-universal-service-fund>.

<sup>198</sup> News Release, FCC, FCC Kicks-Off 'Connect America Fund' with Major Announcement: Nearly 400,000 Unserved Americans in Rural Communities in 37 States Will Gain Access to High-Speed Internet Within Three Years (July 25, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0725/DOC-315413A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0725/DOC-315413A1.pdf).

<sup>199</sup> See News Release, FCC, FCC Broadband Report Finds Significant Progress in Broadband Deployment, but Important Gaps Remain (Aug. 21, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0821/DOC-315866A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0821/DOC-315866A1.pdf) (finding that 19 million Americans still lack access to fixed broadband service, 14.5 million of whom live in rural areas).

<sup>200</sup> See *Parker v. Brown*, 317 U.S. 341, 350–51 (1943) ("We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature."). The state action doctrine may not apply to municipal broadband, though, because *Parker v. Brown* requires the state to affirma-

safeguards to prevent the municipal network from using its public resources to anticompetitive ends.<sup>201</sup>

Furthermore, as a matter of economic policy, the ISP with the greatest advantage in just about any market will be the incumbent (i.e., the first entrant to the market). Professor Hannibal Travis observed that “[t]he market for local access to broadband tends to be a ‘natural monopoly,’ at least in its stages of ‘growth,’” as “large economies of scale . . . favor monopolists over new entrants” regardless of whether the entity that first served the market is owned privately or publicly.<sup>202</sup> Considering the safeguards included in this Note’s proposed solution and the nature of the broadband market, any monopolistic advantage a municipal network enjoys would be the product of natural market forces. Any private ISP would enjoy the same advantages if it were to take advantage of this Note’s proposal to require a private sector appeal before constructing a municipal broadband network.<sup>203</sup>

A counterargument from the extreme end of the pro-municipal network spectrum is that this Note’s proposed solution does not go far enough and that municipalities should seize control of the “last mile”<sup>204</sup> of broadband infrastructure, leaving private ISPs to handle the “backhaul.”<sup>205</sup> The argument is efficiency-based, as it asserts that separating the backhaul from the last mile will encourage the separate entities to innovate and improve in their specific fields while cutting the excess costs associated with each ISP having to build its own lines in both the last mile and the backhaul.<sup>206</sup>

However, even the author of this argument admits that it might be an “unworkable” solution designed to educate regulators by aiding their understanding of “core issues with the current regulatory struc-

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tively sanction the action, in this case the construction of municipal broadband networks. For further discussion of the state action doctrine in the municipal context, see generally Donald Gene Kalfen, *Municipal Antitrust: An Overview*, 60 CHI.-KENT L. REV. 349 (1984).

<sup>201</sup> See *supra* Part II.B.2.d–e (providing, among other things, that some advantages municipalities enjoy in constructing and operating broadband networks which private ISPs lack cannot be used by the municipality once private ISPs declare their intent to enter the market).

<sup>202</sup> See Travis, *supra* note 159, at 1715–16.

<sup>203</sup> See *supra* Part II.B.3.b.

<sup>204</sup> The “last mile” includes the wires run from the utility pole to the home. Myles Roberts, Note, *Opening the Last Mile to Competition*, 4 VA. SPORTS & ENT. L.J. 309, 310–11 (2005).

<sup>205</sup> “Backhaul” includes the more centralized data processing and delivery equipment into which the “last mile” is connected. See Rural Broadband Report, 24 FCC Rcd. 12,791, 12,828 (Oct. 19, 2009).

<sup>206</sup> See Roberts, *supra* note 204, at 331–33, 336–37.

ture” in hopes of facilitating a “major regulatory overhaul.”<sup>207</sup> While the proposal is bold and well-articulated, it is impractical in its scope and ambition as well as dangerous in creating a monopolist in every market that would lack incentive to innovate over the last mile. In contrast, this Note’s proposed solution is far more practical in that its suggestions are more politically palatable and less jarring to the status quo.

Another potential response to this Note’s proposed solution is to encourage municipalities to subsidize advanced wireless Internet service (e.g., individual wireless Internet computer plug-in devices from Verizon Wireless) wholesale from private ISPs for the benefit of residents and businesses. While this would save the municipality a great deal of money and time, it is ultimately an insufficient response to the core problems this Note seeks to resolve. Aside from wireless broadband’s present inferiority to wired networks in both speed and reliability,<sup>208</sup> this solution still relies on private ISPs to provide service to isolated and unserved rural areas, a prospect of questionable profitability for the private ISPs. The subsidization plan also commits the municipality to dedicating its resources to a budget expense indefinitely, without the prospect of recovering the costs in the long run through the operation of a profitable ISP business or via sale of the municipal network to a private entity in the future.

#### CONCLUSION

State legislatures are in the unenviable position of having to balance the sometimes competing interests of their various constituencies, and that is the case in the municipal broadband context. Many states have put too much emphasis on the private ISPs’ concerns by effectively prohibiting municipal broadband networks. While the private ISPs’ concerns about direct competition with public entities for customers are legitimate, states should not take the drastic step of prohibiting public entities from entering the broadband market entirely. Instead, states should carefully construct laws that are designed to facilitate municipal broadband in underserved communities because of the great benefits these communities derive from broadband. These laws, though, should also reasonably protect the private sector’s interests in expanding its networks to these same areas.

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<sup>207</sup> *Id.* at 310.

<sup>208</sup> *See supra* Part I.B.

In light of the tremendous industry pressure the private sector exerts on state legislatures, the federal government must force states to relax their laws impeding municipal broadband. The most effective way for the federal government to do so is by amending section 253(a) of the Telecommunications Act of 1996 to expressly apply to public entities. Amending the law would grant the FCC authority to examine the impact of state laws on a case-by-case basis, declaring those statutes which effectively prohibit municipal broadband to be preempted.

Above all, policymakers at both the state and federal levels need to look past the economics of this debate and see the real impact the lack of broadband access has on people's everyday lives. The prospect of a home lacking electricity or telephone service today is unthinkable to most Americans, but this was not always the case. Federal, state, and local governments all played integral and often direct roles in ensuring that Americans in all areas of this expansive nation would have access to these critical services at affordable prices. As the Internet's role in daily American life continues to grow, the need for reliable and affordable high-speed Internet access will only become more pressing. Federal and state legislators should follow in their electricity-focused predecessors' footsteps by embracing municipal broadband as a means to illuminate the information technology darkness in which those without affordable broadband are forced to live.

# EXHIBIT 47



# From critic of Click! to business partner

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*April 21, 2008 Publication: News Tribune, The (Tacoma, WA) Page: B05 Word Count: 399*

Editor's note: This originally appeared on the Inside the Editorial Page blog: [blogs.thenewstribune.com/oped](http://blogs.thenewstribune.com/oped)

Times do change. Pierce County telecom entrepreneur Brian "Skip" Haynes once hated the very idea of Tacoma Power's Click!Network.

Now his rapidly growing company, Rainier Connect, is using the utility's fiber-optic network to expand its business and is building a new headquarters in Tacoma's Brewery District.

The irony is not lost on the folks at Tacoma Power, although there was no trace of it in the announcement by Click! last week. The news: Rainier Connect, the 98-year-old, family-owned firm formerly known as Mashell Telecom, has signed to become the fourth private company, or ISP, providing broadband Internet services via cable modem to Click! customers.

Rainier Connect has been using the city's fiber-optic network since 2001 to provide phone and data service.

No small irony here. Back in 1996, when the City Council debated whether to allow Tacoma Power to build the network and provide a cable-TV alternative to widely detested cable monopoly Viacom (later TCI, now Comcast), Haynes objected loudly.

Haynes authored an oped piece for The News Tribune arguing that government had no business competing with private telecom companies. But Viacom's reputation for lousy service was so bad that the public clamored for any reasonable alternative to the cable monopoly, even if it was Tacoma Power. The council vote was unanimous.

There's no disgrace in Rainier Connect's new hookup with Click! Network. The company, based in Eatonville for most of its history, has prospered serving the rural market and built a reputation for responsive service. It was one of the first small, independent firms to take advantage of telecom deregulation to offer "bundled" products.

Now Haynes and Rainier Connect are ready to compete with Comcast and the three ISPs that operate over the Click! Network. And the winners are the Click! customers who have far more telecom alternatives to choose from than most U.S. consumers.

We haven't talked to Haynes lately. But he probably would admit that he never foresaw the competitive opportunities that Click! ultimately opened up for his own business.

Times do change.

Read more here: <http://blog.thenewstribune.com/opinion/2008/04/17/if-you-cant-beat-em/#storylink=cpy>

## **EDITORIAL: From critic of Click! to business partner**

(News Tribune, The (Tacoma, WA) (KRT) Via Thomson Dialog NewsEdge) Apr. 21--Times do change. Pierce County telecom entrepreneur Brian "Skip" Haynes once hated the very idea of Tacoma Power's Click!Network.

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*(Correction: TCI, not Viacom, was the unpopular cable giant serving Tacoma at the time. As the commenter notes, -TCI CEO Leo Hindery, a Bellarmine grad, showed up to lobby strenuously against the Tacoma Power proposal.)*

Haynes authored an oped piece for The News Tribune arguing that government had no business competing with private telecom companies. But Viacom's reputation for lousy service was so bad that the public clamored for any reasonable alternative to the cable monopoly, even if it was Tacoma Power. The council vote was unanimous.

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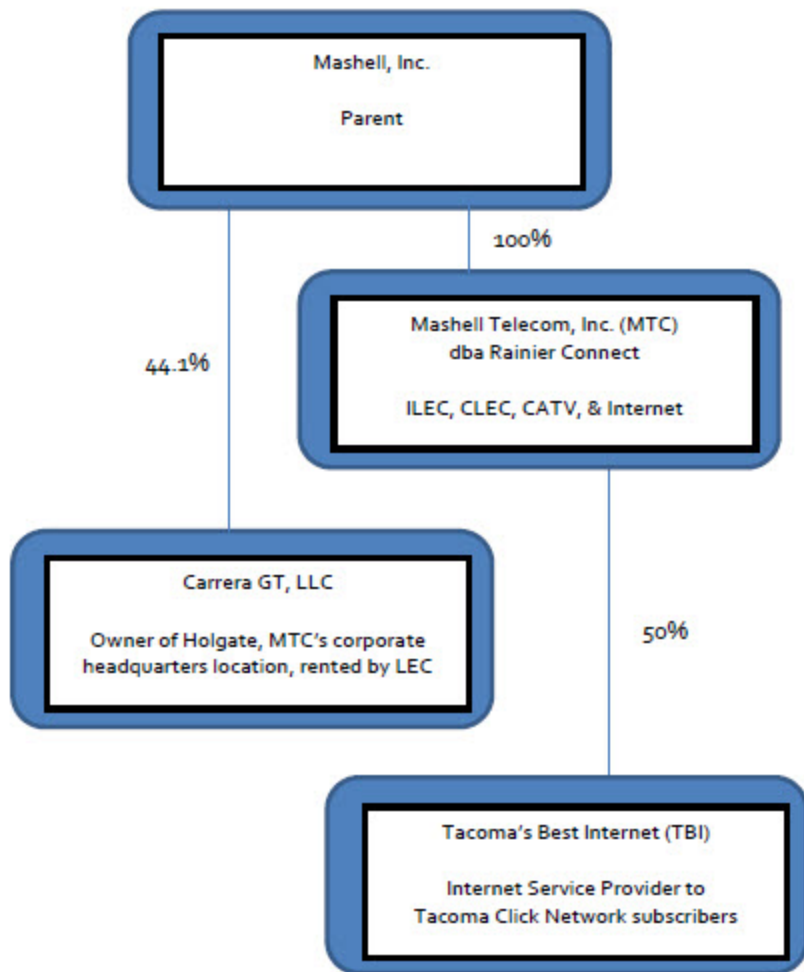
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# ALLIANCE FOR TACOMAS BRIGHTER FUTURE, 2017

[Overview](#)[Contributions](#)[Expenditures](#)[Loans](#)[Pledges](#)[Debt](#)[Reports](#)

**Cash contributions:** \$56,500.00

## Top 45 contributors to this campaign

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE	CASH/IN-KIND	AMOUNT
TOTE MARITIME ALASKA INC.	TACOMA	WA	Cash	\$15,000.00
US OIL AND REFINING CO.	TACOMA	WA	Cash	\$15,000.00
COHEN LOREN	RUSTON	WA	Cash	\$10,000.00
RAINIER CONNECT	TACOMA	WA	Cash	\$3,750.00
TACOMA'S BEST INTERNET	TACOMA	WA	Cash	\$3,750.00
URBAN ACCESSORIES INC.	TACOMA	WA	Cash	\$2,500.00
THOMPSON CONSULTING GROUP INC.	TACOMA	WA	Cash	\$2,500.00
WASHINGTON BEVERAGE ASSN PAC	OLYMPIA	WA	Cash	\$2,000.00
SIMON HERB	TACOMA	WA	Cash	\$1,000.00
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES PAC	EVERETT	WA	Cash	\$1,000.00

# ALLIANCE FOR TACOMAS BRIGHTER FUTURE, 2017

All expenditures made by this campaign or committee.

RECIPIENT NAME	DATE	DESCRIPTION	AMOUNT	REPORT
COLUMBIA COMMUNICATIONS LLC	10/10/2017	CONSULTING	\$10,000.00	C4
COLUMBIA COMMUNICATIONS LLC	10/23/2017	MAIL OPP MERRITT TACOMA MAYOR SUBVENDORS JOHSON COX, TEKS SVS, L2 DATA, MILLENNIUM DESIGN	\$16,497.67	C4
COLUMBIA COMMUNICATIONS LLC	10/30/2017	MAIL SUP. WOODARDS TACOMA MAYOR VENDORS JOHSON COX, TEKS SVS, L2 DATA, MILLENNIUM DESIGN	\$10,993.59	C4
COLUMBIA COMMUNICATIONS LLC	11/14/2017	CONSULTING	\$4,000.00	C4
COLUMBIA COMMUNICATIONS LLC	10/31/2017	MAILING OPPOSING MERRITT TACOMA MAYOR- SUBVENDOR JOHNSON COX PRINTING, USPS	\$11,332.48	C4
EXPENSES OF \$50 OR LESS	09/01/2017		\$30.00	C4
EXPENSES OF \$50 OR LESS	10/17/2017		\$30.00	C4
EXPENSES OF \$50 OR LESS	10/31/2017		\$30.00	C4
SEATTLE CFO LLC	11/30/2017	ACCOUNTING/COMPLIANCE	\$1,586.26	C4
SEATTLE CFO LLC	11/14/2017	ACCOUNTING/COMPLIANCE	\$2,000.00	C4

## EXHIBIT 2

### AFFILIATED TRANSACTIONS

Mashell Telecom, Inc. rents office space, utilized as corporate headquarters and network operations center, from its affiliate, Carrera GT, LLC. This leased property facilitates both the ILEC and CLEC operations of the business and is appropriately allocated between regulated and nonregulated operations using Part 64 factors and recorded in account 6121-3, Land & Building Expense-Rents.

During 2015, the Company along with another Click Preferred ISP, NetVenture, transferred all Click Network Subscribers to an affiliate Tacoma's Best Internet, LLC. This transfer provided the Company with a 50% membership equity in TBI. The Company entered into a management agreement with TBI to provide support to TBI's entire subscriber base. This agreement applies only to CLEC operations and all associated expenses and revenue are properly allocated to nonregulated operations.

Certain shareholders holding five percent or more of the stock, directly or indirectly, of the Company are also employees of the Company and receive from the Company employment compensation together with employment-associated benefits in accordance with benefit plans that are in place.



# EXHIBIT 48

### **Construction and Maintenance**

Tacoma Power has a number of established preventive and predictive maintenance programs and continues to develop more. For example, the substation predictive maintenance program can identify substation equipment requiring corrective action before a failure occurs through utilization of infrared, oil sample testing, and dissolved gas analysis. Tacoma Power owns and maintains approximately 49,000 power poles. The Pole Replacement program strategy is to test and treat 9% of the poles annually maintaining an 11-year cycle. Tacoma Power also performs tree trimming around its distribution and transmission lines, maintaining two and four year trimming cycles along with programs to replace dangerous trees with utility friendly trees.

### **Telecommunications Infrastructure**

Approximately 1,500 miles of fiber and coaxial cable have been constructed by Tacoma Power in the cities of Tacoma, University Place, Fircrest, Lakewood and Fife, and portions of unincorporated Pierce County, providing Tacoma Power with a state-of-the-art telecommunication system with which supports transmission and distribution operations, advanced metering, and retail and wholesale commercial services. The network currently covers approximately 66% of the households in Tacoma Power's service territory.

The network consists of a hybrid fiber-optic coaxial ("HFC") system, which delivers two-way signals for cable TV, cable modem Internet services, and advanced metering. In addition, SONET ("Synchronous Optical Network") and Gigabit Ethernet technologies are used to support communications across Tacoma Power's transmission and distribution system and to carry out data transport services for commercial customers. The network was designed and constructed to meet high telecommunications standards, containing a redundant backbone and redundant service loops, which seek to ensure uninterrupted signal transport in the event of a network break. A network surveillance system allows Tacoma Power to monitor the system at all times.

**Commercial Telecommunication Services.** Launched in 1998 under the brand name Click! Network, Tacoma Power provides three commercial telecommunication services to customers of Tacoma Power: retail cable television, wholesale broadband transport and wholesale high-speed Internet over cable modem. Click! Network is one of several providers of telecommunications services in the Tacoma area.

Click! Network is accounted for as part of the Electric System. In 2016 Click! Network's annual revenues were approximately \$26.6 million, and annual operating expenses plus gross earnings taxes were approximately \$29.7 million.

Cable television is Click! Network's primary retail business. Click! currently has approximately a 15% share of a very competitive local cable television market. Cable TV products available to both residential and business customers include broadcast television, digital and high-definition channels, digital video recording capability, TiVo with access to over-the-top ("OTT") content such as Netflix, Hulu, YouTube and Pandora, TVEverywhere, and a wide variety of video-on-demand services. Video-on-demand services include local programming tied to schools, colleges, local governments and community organizations strengthening Click! Network's brand identity in the communities served.

Under wholesale Master Service Agreements, seven telecommunications carriers provide high capacity last mile data transport circuits to their customers utilizing Click! Network's telecommunications infrastructure. The seven telecommunications carriers provide SONET data services ranging from DS-1 lines to OC-48 lines and customized Metro Ethernet circuits to meet data transport and web access needs of large and small businesses in the Tacoma area.

Also under wholesale Master Service Agreements, two qualified locally based Internet Service Providers ("ISPs") provide high-speed Internet services via cable modems to their customers utilizing Click! Network's telecommunications infrastructure. The ISPs provide a variety of speed packages to meet the needs of the residential

and business consumers in the Tacoma area. As part of the contract, the two ISPs also provide customer service, cable modem installation, customer premise equipment and technical support services to their Internet customers.

Click! ended 2016 with 17,468 cable TV customers, 23,344 wholesale high-speed Internet service customers, and 173 wholesale broadband transport circuits.

Click! also continues to provide the City of Tacoma I-Net services to approximately 190 sites to keep the cost of telecommunications low for many governmental entities.

Click! Network implemented a 12.9% cable TV service rate increase effective March 1, 2017. An additional cable TV rate increase is planned for March 1, 2018. These cable TV rate increases are expected to generate approximately \$7.7 million in additional revenue. A major portion of additional revenue will be used to cover increases in programming costs.

### **CAPITAL IMPROVEMENT PROGRAM**

Tacoma Power has funded its past capital improvement programs from contributions in aid of construction, proceeds of Parity Bonds and subordinate lien revenue bonds, and Revenues of the Electric System. The actual amounts spent during the past five years, together with the sources of funds used, are displayed in the table below.

#### **Historical Sources of Capital Improvement Funds (\$000)**

Source of Funds	2012	2013	2014	2015	2016
Parity and Subordinate Lien Bond Proceeds	\$ 51,730	\$ 35,723	\$ 58,834	\$ 58,003	\$ 50,995
Contributions in Aid of Construction <sup>(1)</sup>	4,716	3,735	3,029	4,777	3,293
Cash Reserves	16,643	23,656	21,160	19,301	30,536
<b>Total</b>	<b>\$73,089</b>	<b>\$63,114</b>	<b>\$83,023</b>	<b>\$82,081</b>	<b>\$84,824</b>

(1) Customer contributions to fund capital projects.  
Source: Tacoma Power

Tacoma Power has a long-term goal to finance an average of 50% of its normal capital requirements from net operating revenues with the balance from contributions in aid of construction received from customers and borrowed funds. However, due to varying water conditions, the amount of the capital improvement program, and periodic cash defeasance of outstanding Parity Bonds, the amount actually financed from net operating revenues varies from year to year. From 2012 to 2016, Tacoma Power financed an average of 66% of its capital improvements from borrowed funds. Tacoma Power's policy is to fund major projects with borrowed funds.

the City Council. The Department's budget is presented to the Board for review and approval and then forwarded to the City Council for approval and inclusion in the City's budget. The Board meets twice monthly.

The Department consists of the Light Division ("Tacoma Power"), Water Division ("Tacoma Water"), and Belt Line Railroad Division ("Tacoma Rail"). The Board has supervision and control over most Department business. In the case of budgets, rates, bond issues, and additions and betterments to a utility system and system expansions, actions approved by the Board must also be approved by the City Council.

The Board appoints the Director of Utilities who is the chief executive officer of the Department. The Board must evaluate the performance of the Director annually and reappoint the Director every two years subject to reconfirmation by the City Council with the next reconfirmation scheduled for 2017. The reappointment of the Director has been approved by the Board and is currently pending before the City Council. William A. Gaines will retire from the position, effective December 2, 2017. The Director, with the concurrence of the Board, has the power to appoint division superintendents.

Utility rates and charges are initiated by the Board and adopted by the City Council, and are not subject to review or approval by any other governmental agency. See "ELECTRIC SYSTEM CUSTOMERS, ENERGY SALES, REVENUES AND RATES—Electric Rates."

The City Charter provides that the revenues of utilities owned and operated by the City shall never be used for any purposes other than the necessary operating expenses thereof, including a reasonable gross earnings tax imposed by the City Council for the benefit of the general fund of the City, interest on and redemption of the outstanding debt thereof, the making of additions and betterments thereto and extensions thereof, and the reduction of rates and charges for supplying utility service to consumers. The funds of any utility may not be used to make loans to or purchase the bonds of any other utility, department, or agency of the City. See "FINANCIAL INFORMATION—Taxes Imposed on Tacoma Power."

### **Tacoma Power - General**

Tacoma Power is organized into six business units:

- **Generation** operates and maintains Tacoma Power's four hydroelectric generating projects (Cowlitz, Cushman, Nisqually and Wynoochee) and the associated recreational facilities, fish hatcheries and other project lands.
- **Power Management** manages, schedules and directs the power supply portfolio which includes Tacoma Power-owned generation and power supply contracts. Power Management markets bulk and ancillary power supply services, performs power trading activities, plans for and acquires conservation resources, and is responsible for compliance with various state, regional and federal regulatory mandates.
- **Transmission and Distribution** plans, constructs, operates and maintains the transmission and distribution systems including substations, the underground network system, revenue metering facilities and all overhead transmission and distribution systems.
- **Rates, Planning and Analysis** plans for and manages the retail rate process, financial planning activities, operations and capital budget development and monitoring, strategic asset management, construction project management, strategy management, and energy risk management analysis and modeling.
- **Click! Network** plans, constructs, operates and maintains a hybrid fiber coaxial ("HFC") telecommunications network that supports the operation of Tacoma Power's electrical transmission and distribution system, provides retail cable TV, and wholesale high-speed Internet and data transport services to resellers.
- **Utility Technology Services** ("UTS") addresses existing and emerging technology requirements essential to managing Tacoma Power's computing systems. This includes supporting and enhancing utility system operations, communications, metering, cyber security, relevant smart grid applications, and the information technology strategic planning. UTS unifies the planning, design, deployment and maintenance of operational

## **2016 SUPERINTENDENT'S REPORT TACOMA POWER**

### **CLICK!**

#### Financial Status

Click! Network commercial revenues declined from \$27.3 million in 2015 to \$26.7 million in 2016. The retail cable TV customer base dropped 4.6 percent ending the year with 17,468 active customers, and the Internet cable modem customers served by the three wholesale Internet Service Providers (ISPs) - Advanced Stream, Net-Venture, Inc., and Rainier Connect, grew by .4 percent ending the year with 23,344 active customers. Click! provided 173 broadband transport circuits to Click!'s wholesale service providers allowing them to provide an array of telecommunication services to many businesses in the service area. Additionally, Click! continued to provide the City of Tacoma I-Net services to approximately 190 sites, keeping the cost of telecommunications low for many government entities, and also provided support for just over 15,000 gateway power meter connections.

#### Cable TV Rate Adjustments

Because a final policymaker decision regarding Click! Network's long term business plan remained outstanding in 2016, no cable television rate increases were implemented. Although Cable television prices continue to remain under market, the postponement of rate adjustments contributed to the decline in revenues.

#### Channel Additions

During 2016, Click! Network migrated 10 networks from optional service levels to its Broadcast package and migrated Big Ten Network and Sprout from its Sports & Family package to its Click! ON Digital package. Three networks discontinued operations in 2016, Pivot, UWTV, and MundoMax, but TV Tacoma HD was added, bringing the total to 376 video and 65 audio channels. Click! also added a variety of national and local video on demand content for a total offering of over 12,000 hours of content to make the product more competitive. Additionally, Click! added new networks to its Watch TV Everywhere service. Click!'s cable TV customers can now enjoy watching Click! video content from 84 networks on any of their mobile devices with an internet connection.

#### Website Improvements

Click! Network launched a new website in June 2016. Improvements included streamlined navigation, responsiveness to mobile device screen sizes, enhanced TV listings, and an online shopping cart. Click! cable television products, along with ISP internet packages, are now prominently displayed, enabling the potential customer to select services and submit a self-service order online.

### Customer Satisfaction Survey

Customer Satisfaction survey cards were mailed to all new cable TV customers and to all customers who had a service related issue. Click! customer service and technicians representatives received ratings averaging 3.7 and 3.8 respectively on a scale of 1 – 4. In addition, a Customer Satisfaction Survey conducted on Click! Network's behalf by Washington State University's Social & Economic Sciences Research Center (SESRC) showed a mean average overall customer satisfaction score of 8.08 on a 1-10 scale. The results revealed that customers are very satisfied with the services provided by Click! and in particular, recognized the quality of service provided by our Sales and Service Representatives and Service Technicians.

### New Tools

Click! purchased the CPAT Flex Digital Leakage Monitoring System to address concerns about interference from cable leakage in the aeronautical and LTE bands. The CPAT Flex Digital Leakage Monitoring System automates the signal leakage detection process freeing up technicians for other tasks. Since the tool is continuously monitoring the network, signal leakage is quickly detected and repaired.

Click! also purchased the CheetahXD software to replace the former Cheetah Lite version. The CheetahXD software helps Click! network technicians manage the HFC network by providing end-to-end visibility across the HFC operations environment, and enables NOC personnel to proactively isolate network problems, trace root causes, assess potential impacts, and prioritize truck rolls by pinpointing fault and performance issues in real-time. With CheetahXD software, HFC network assurance is simplified, operational costs are reduced, and network performance is improved resulting in enhanced customer satisfaction.

### Spectrum Reclamation

In 2015, Click! fully converted its system from analog to digital and freed up nineteen (19) 6 MHz channel slots. Since then, 6 of those freed up channels have been added to the bank of downstream Internet channels to meet the growth in customers and Internet usage. Therefore leaving 13 channels available for use.

### Network Bandwidth

During 2016, Click! added NETFLIX cache servers to the local network. The addition of these cache servers has reduced bandwidth utilization by as much as 30%. Click! added an additional 10 Gig connection at Downtown South and Downtown North for a total of 30 Gig potential capacity at each location. The Core routers are being upgraded from the Cisco 7600 platform to the Cisco ASR 9912 platform. This will provide the necessary 10 gig ports and throughput to support current and future network growth. The Cable Modem Termination Systems (CMTS) are also being upgraded. The existing Cisco uBR 10000 series CMTSs are going to be replaced with new Cisco cBR-8 CMTSs. The first set of Cisco cBR-8 CMTSs were purchased during 2016. These will support DOCSIS 3.1 Gigabit services and provide higher port and bandwidth capacity for meeting bandwidth demands and subscriber growth.

### Asset Management Program

During 2016, Click! continued to build its asset list and has developed its registries for the Router, HFC Distribution, and Headend Equipment asset classes, and is prepared to participate in the Tacoma Power's Strategic Asset Management program. Click! also developed a Network Maturity Model, to more effectively manage its asset lifecycles and plan future capital expenditures.

### Safety and Work Practices

In 2016, Click! continued to make improvements to its safety management practices. Improvements included: (i) Focusing on reviewing past performance; (ii) improvements in the oversight of injured worker claims; and (iii) increased review of leading indicators such as near misses and non-medical injury reports. Additional training was provided on Home Safety and how the employees and their families can be impacted by the activities we engage in outside of our work life. Safety posters and bulletin board messages were utilized to promote safety awareness. Each business unit held monthly safety meetings and the Click! Safety Committee met quarterly to improve safety related communications.

## **GENERATION**

### Hydroelectric Projects

Tacoma Power's hydro plants were available 99.83 percent of the time in 2016 except for scheduled maintenance outages.

### Cowlitz

Construction is wrapping up on the Cowlitz Falls North Shore Collector for collection of downstream migrating smolts from the upper Cowlitz River. The collector, located at Lewis County Public Utility District Cowlitz Falls Dam, will improve natural fish runs in the Cowlitz River and help Tacoma Power meet its Federal Energy Regulatory Commission (FERC) license obligations. The \$35 million construction project is scheduled for final commissioning and operation in April, 2017. The 70 ton head gate for unit 51 was removed for the first time in 48 years and rehabilitated.

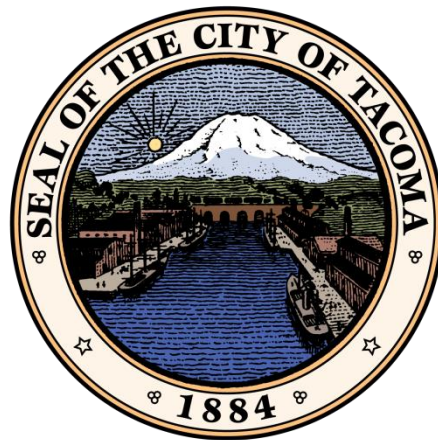
### Cushman

Construction on both of the new Cushman fish hatcheries were completed and began operation in 2016. One Cushman unit was modified to allow for synchronous condensing operation which will allow Power Management to supply and sell capacity without consuming water. The 20-year-old exciters for all three generators at Cushman 2 were replaced. Construction of recreation improvements in the Staircase area were completed and opened to the public during 2016.

### Nisqually

The 20-year-old exciters were replaced on four units at LaGrande and one governor was upgraded.

City of Tacoma, WA  
2017-2018 Adopted Biennial  
**Operating & Capital  
Budget**



**CITY MANAGER**

T.C. Broadnax

**PREPARED BY**

Office of Management & Budget

Tadd Wille, Budget Director

Tyler Aitken

Ellie Austin

Sam Bencoter

Christina Watts Curran

Jared Eyer

Teresa Green

Katie Johnston

Edin Susic

Benjamin Thurgood



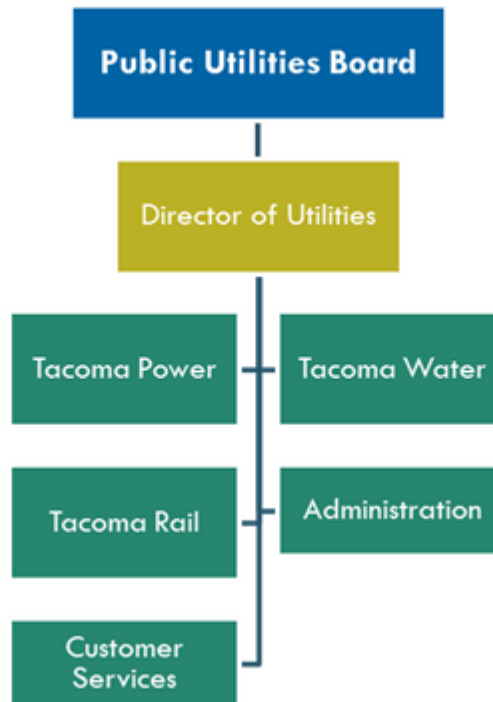
# Tacoma Public Utilities

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## Mission

Tacoma Public Utilities (TPU) provides services that are vital to our quality of life.

## Key Function Organization Chart



## Department Services

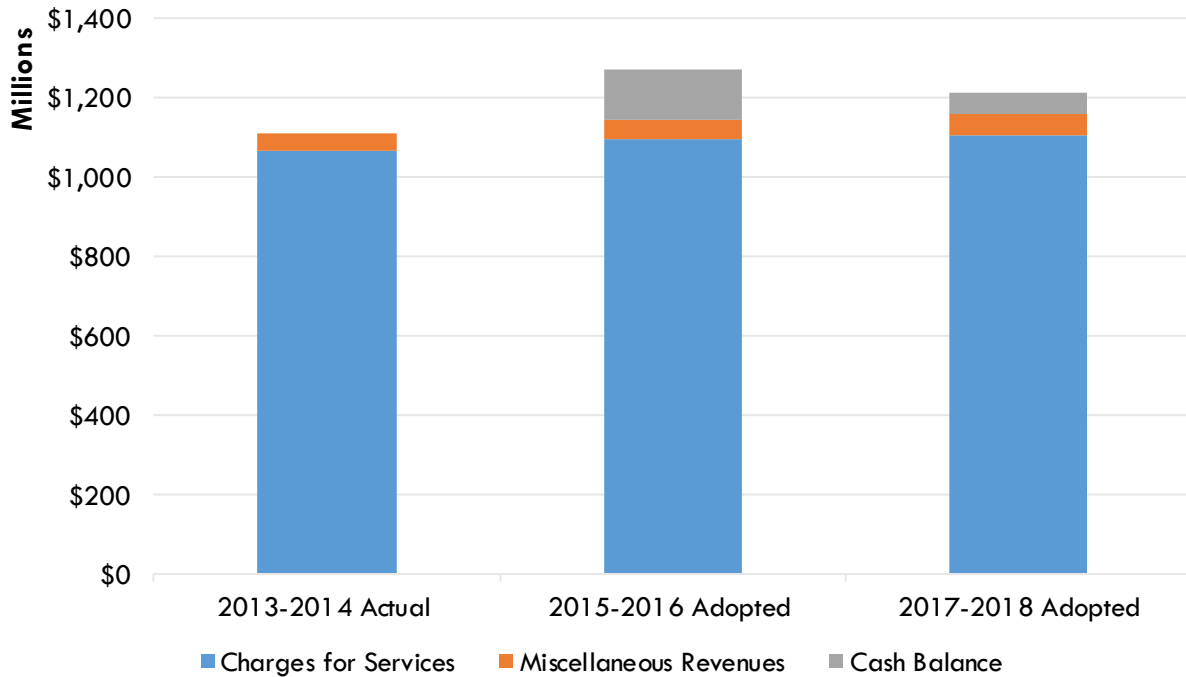
TPU is comprised of all the services of Tacoma Power (including Click! Network), Tacoma Water, and Tacoma Rail. Customer Services and Administration are internal service providers assisting the utilities in fulfilling their mission.

### Tacoma Power

Tacoma Power is a citizen-owned electric utility that generates, transmits, and distributes electricity and provides energy and telecommunications services in an increasingly competitive marketplace. Tacoma Power is committed to providing high-value, competitively-provided products and services to its customers through the quality of its employees and the responsiveness that results from local ownership.

Tacoma Power serves more than 170,000 customers over a 180-square mile area, both inside and outside the city of Tacoma. A first-class environmental steward, almost 100% of power supplied to Tacoma Power customers is from carbon-free and renewable hydroelectric resources. Tacoma Power is also a leader in conservation and maintains some of the lowest power rates in the region.

## Tacoma Public Utilities Funding by Category



	2013-2014 Actuals	2015-2016 Adopted	2017-2018 Adopted
Charges for Services	1,064,888,850	1,093,146,470	1,103,608,079
Miscellaneous Revenues	45,623,135	49,534,563	57,119,803
Cash Balance		128,230,160	51,383,527
<b>Grand Total</b>	<b>\$1,110,511,985</b>	<b>\$1,270,911,193</b>	<b>\$1,212,111,409</b>

## Funding Summary

TPU is comprised of enterprises, including Tacoma Power, Tacoma Water, and Tacoma Rail, which are primarily funded through customer charges for services provided. Services include the provision of electricity, telecommunications, Click! Network, and water to homes and businesses, as well as short-line rail services. Cash in the 2015-2016 biennium was higher than typical due to Tacoma Power paying off long-term debt using cash reserves.

## 2017-2018 Utilities Capital Spending Plan

Project Title	New 2017-2018	Previously Appropriated	Total Funding
<b>Tacoma Power</b>	<b>178,384,000</b>	<b>182,660,440</b>	<b>361,044,440</b>
<b>CLICK! Network</b>	<b>6,139,000</b>	<b>5,224,000</b>	<b>11,363,000</b>
CLICK! provides data-transfer to improve the reliability of the Tacoma Power electric system, fiber-optic cable access, and high-speed telecommunication. Sample projects include system capacity enhancements and internet bandwidth infrastructure growth.			
<b>General Plant</b>	<b>11,928,000</b>	<b>7,020,440</b>	<b>18,948,440</b>
General Plant projects include additions, replacements and modifications to general facilities and equipment including office buildings, warehouses, parking areas and the SAP system.			
<b>Power Generation</b>	<b>47,124,000</b>	<b>66,071,000</b>	<b>113,195,000</b>
Power Generation projects include work at Tacoma Power's four hydroelectric generating projects (Cowlitz, Cushman, Nisqually, and Wynoochee Projects) and the associated recreational facilities, fish hatcheries and other project lands.			
<b>Power Management</b>	<b>28,850,000</b>	<b>22,538,000</b>	<b>51,388,000</b>
Power Management manages Tacoma Power's long and short term power supply portfolio to meet customer needs. Energy conservation is the primary project. This is an ongoing program.			
<b>T&amp;D Projects</b>	<b>52,391,000</b>	<b>59,180,000</b>	<b>111,571,000</b>
Transmission & Distribution Projects include those associated with electrical transmission lines, distribution lines and related substations. Some sample projects include 230 kV System reliability improvements and downtown infrastructure development.			
<b>Utility Technology Services</b>	<b>31,952,000</b>	<b>22,627,000</b>	<b>54,579,000</b>
Smart Grid projects include those associated with networks, communications, operational systems and other utility business systems. Sample projects include enhancements of communication systems and equipment such as telecommunications and digital radio.			
<b>Tacoma Rail</b>	<b>5,660,000</b>	<b>10,538,000</b>	<b>16,198,000</b>
<b>Communications</b>	<b>235,000</b>	<b>500,000</b>	<b>735,000</b>
Upgrading Tacoma Rail's radio system with a radio repeater system and installing more remote health and location monitoring systems on locomotives.			
<b>Facility Upgrades</b>	<b>1,025,000</b>	<b>1,100,000</b>	<b>2,125,000</b>
Replacing Tacoma Rail's West end track pans and storm water treatment and filtration and upgrading the secondary fueling facility and Tacoma Rail's portion of the Tideflats Intelligent Transportation System.			
<b>Rail Equipment/Vehicles</b>	<b>1,000,000</b>	<b>2,665,000</b>	<b>3,665,000</b>
Locomotive repowers to continue to modernize Tacoma Rail's locomotive fleet.			
<b>Track Improvements</b>	<b>3,400,000</b>	<b>6,273,000</b>	<b>9,673,000</b>
Multiple track relays, switch replacements, and rail rehabilitation projects.			

## 2017-2018 Capital Budget Funding Detail Report

Funding Source	New 2017-2018 Funding	Total Confirmed Funding	Total Requested Funding
<b>Grant-State</b>	<b>2,500,000</b>	<b>14,903,330</b>	<b>14,903,330</b>
Prairie Line Trail Historic Interpretation Project		400,000	400,000
Prairie Line Trail Phase I		53,330	53,330
Puyallup Bridge F16A & F16B Replacement		11,950,000	11,950,000
Taylor Way Rehabilitation	2,500,000	2,500,000	2,500,000
<b>Other-Local Contribution</b>	<b>1,500,000</b>	<b>3,062,320</b>	<b>3,847,320</b>
Central Park Phase II		115,000	900,000
E 29th Street Roundabout & Extension	1,500,000	1,500,000	1,500,000
NCS Teen Home		250,000	250,000
NCS Youth Drop In Overnight Center		250,000	250,000
Prairie Line Trail Phase I		360,000	360,000
Puyallup Bridge F16A & F16B Replacement		500,000	500,000
Waterway Park		87,320	87,320
<b>Other-Property Owner Contribution</b>	<b>56,750</b>	<b>893,943</b>	<b>893,943</b>
2014 Sidewalk Reconstruction Project		136,150	136,150
LID 8660- Alley Paving	43,006	198,157	198,157
LID 8662R - Bennett Street	13,744	196,636	196,636
Sidewalk Abatement Program		363,000	363,000
<b>Utility_Funds-Rail</b>	<b>5,660,000</b>	<b>16,198,000</b>	<b>31,198,000</b>
Communications	235,000	735,000	1,735,000
Facility Upgrades	1,025,000	2,125,000	4,125,000
Raily Equipment/Vehicles	1,000,000	3,665,000	11,665,000
Track Improvements	3,400,000	9,673,000	13,673,000
<b>Utility_Funds-Solid Waste</b>	<b>3,920,500</b>	<b>10,857,500</b>	<b>19,585,000</b>
Solid Waste Management Facilities Upgrades and Maintenance	3,920,500	10,857,500	19,585,000
<b>Utility_Funds-Surface Water</b>	<b>24,866,441</b>	<b>48,992,741</b>	<b>93,551,223</b>
Facilities Projects	113,816	6,113,816	10,666,179
Prairie Line Trail Phase I		300,000	300,000
Schuster Parkway Promenade		206,300	256,300
Surface Water Collection System Projects	17,030,678	30,080,678	65,096,789
Treatment and Low Impact Projects	7,721,947	12,291,947	17,231,955
<b>Utility_Funds-Tacoma Power</b>	<b>178,384,000</b>	<b>361,044,440</b>	<b>690,079,440</b>
CLICK! Network	6,139,000	11,363,000	21,433,000
General Plant	11,928,000	18,948,440	55,956,440
Power Generation	47,124,000	113,195,000	178,750,000
Power Management	28,850,000	51,388,000	92,688,000
T&D Projects	52,391,000	111,571,000	246,449,000
Utility Technology Services	31,952,000	54,579,000	94,803,000

# EXHIBIT 49

## **A Brief History of American Telecommunications Regulation**

Tim Wu

While the history of governmental regulation of communication is at least as long as the history of censorship, the modern regulation of long-distance, or “tele,” communications is relatively short and can be dated to the rise of the telegraph in the mid-19<sup>th</sup> century. The United States left the telegraph in private hands, unlike countries and as opposed to the U.S. postal system, and has done the same with most of the significant telecommunications facilities that have been developed since. The decision to allow private ownership of telecommunications infrastructure has led to a rather particularized regulation of these private owners of public infrastructure -- similar to other laws governing “regulated industries,” yet also influenced by the U.S. First Amendment and antitrust law.

### *Prototypes for Regulation*

Broadly speaking, the regulations have been of three main types: 1) common carriage requirements; 2) interconnection requirements; and 3) scarcity management. Each of these types of regulation can be illustrated through the examples of the three main telecommunications industries of the Nineteenth and early Twentieth century: the telegraph, the telephone and broadcast radio.

The first commercial telegraph was constructed in 1839 in Great Britain. In the United States, by the 1850s the industry was intensely competitive, with multiple carriers frequently serving identical routes. The lack of integration between systems and the low profits for providers prompted a process of consolidation that culminated in Western Union’s gaining a monopoly on long-distance telegraph service by 1866. At the time, no federal antitrust law was available as a tool for regulation, so Congress responded to criticisms of Western Union by

passing the United States' first telecommunication regulatory statute, the Telegraph Act of 1866. The Telegraph Act was intended to foster competition by allowing any company to erect telegraph lines along post roads, and it also included a provision whereby the United States could buy out telegraph companies if it so chose. In practice, the Telegraph Act had little practical effect, as it failed to create effective competition for Western Union, and Congress never exercised its option to buy out the company and nationalize the industry. As a result, through the latter half of the Nineteenth century, Western Union was able to charge monopoly prices, support a newswire monopoly (the Associated Press) and discriminate against disfavored customers through its pricing. The firm was also able to use its monopoly to exert substantial political influence by, among other things, refusing to give certain news organizations access to its system to transmit their reporting. For example, in the contested Presidential Election of 1876, Western Union's backing of Presidential candidate Rutherford Hayes gave the candidate important advantages both in reaching newspaper and detecting the plans of his rival.

In the Mann-Elkins Act of 1910, Congress declared both telegraph and telephone companies (including AT&T, which at the time not only owned Western Union but also had its own monopoly in long-distance telephone lines) to be common carriers. The act placed communications, for the first time, under the jurisdiction a federal agency: the Interstate Commerce Commission (ICC). Being a common carrier meant that telephone and telegraph companies had to offer their services without discrimination to all willing customers who were able to pay, and that they had to charge reasonable rates set by the ICC. In return, the telegraph and telephone companies received certain benefits, such as immunity from liability for the content they carried. The "common carriage" concept, originally a product of English common law remains the basis for the regulation of telephone carriers today.

Shortly after the Mann-Elkins Act, the United States addressed a different but related aspect of AT&T's business practices. In addition to its long-distance monopoly, AT&T provided local phone service, where it faced competition in local markets. In an attempt to eliminate this competition, AT&T routinely refused to allow non-affiliated local carriers to use its long-distance lines, thereby limiting the value of the services they could provide. In response to pressure from the Justice Department, in 1913 AT&T entered into what became known as the "Kingsbury Commitment," which required it to allow competing local providers to interconnect with AT&T's long-distance services.

While important, the Kingsbury Commitment was not a full anti-discrimination remedy. It did not require that AT&T, for instance, connect its local service to that of its competitors, nor did it require AT&T to interconnect its long distance or local networks with competing long-distance carriers, should they arise in the future. The Kingsbury Commitment did not hinder AT&T from creating the phone service monopoly that it enjoyed for most of the Twentieth century, and in the view of many, it represented the U.S. acceptance of an AT&T monopoly.

Scarcity management, the third major form of communications regulation in the United States, became an issue with the rise of broadcast radio in the 1920s. The first commercial station in the country, KDKA in Pittsburgh, Pennsylvania, began broadcasting in 1920. By 1924, the United States had over 1,000 radio stations broadcasting in a state of anarchy under the *ad hoc* supervision of Herbert Hoover, the then-Secretary of Commerce. Throughout the mid-1920's, Hoover managed the station's mutual interference by making case-by-case decisions to have broadcasters either shift their frequencies or share them by operating only limited hours in a day. Ultimately, the courts held that Hoover lacked the legal authority to



impose even this minimal level of order, and the ensuing broadcast free-for-all prompted Congress to pass the Radio Act of 1927.

Because the broadcast spectrum is a physically scarce commodity, the Radio Act made plain that the spectrum would be publicly owned, that the government would regulate entry into the business of broadcasting, and that it would grant broadcasting licenses only “if public convenience, interest or necessity will be served thereby.” To this end, the Radio Act established a commission charged with dividing the spectrum into different classes of stations and issuing licenses to broadcast at particular frequencies, times, locations and power levels. The law also barred the government from censoring broadcasts and required any broadcaster who gave time to a political candidate to “afford equal opportunities to all other such candidates for that office.” The newly created Federal Radio Commission would also declare the first version of what would be called the “Fairness Doctrine”-- requiring that broadcasters give notice and time for advocates on both sides of an issue to be heard.

The provisions of the Radio Act of 1927 were folded into the Communications Act of 1934, which established the Federal Communications Commission and gave the Commission authority to regulate not only radio but interstate and international telegraph and telephone services as well. Its authority eventually extended to broadcast and cable television, as well as internet services. The Communications Act continues to this day to form the foundation for the regulation of these industries.

At the time of the Communications Act, and indeed as early as the Kingsbury Commitment, regulators generally believed that telephone services were a natural monopoly. That is, they thought that even if there were competition in the market, the nature of the underlying technology and business were such that it was highly likely that a dominant firm

would emerge to control the industry and, moreover, that this was the most efficient result. Rather than insist on what was viewed as detrimental competition in the industry, then, until the 1970s regulators supervised the Bell monopoly and regulated matters such as the rates it could charge, the quality of services it provided, and its areas of service coverage.

### *The Era of Deregulation*

For most of the 20th century the main telecommunications carriers were classic regulated industries. Monopoly was tolerated, and even encouraged, by government limits on market entry and exit. In exchange government set prices at reasonable rates of return, and imposed various public interest duties (such as the fairness doctrine discussed above). However, beginning in the late 1960s and continuing through the 2000s, a deregulatory movement transformed telecommunications policy.

By the 1920s the AT&T telephone monopoly was complete enough that the company was able to control vertically integrated markets. For instance, AT&T in the 1930s promulgated a tariff that precluded consumers from attaching any device to their phone lines that was not specifically approved by the company. This “foreign attachments” rule effectively extended AT&T’s phone service monopoly into the market for phones themselves, with the result that customers could only obtain equipment from AT&T. While this vertical integration may have represented a high watermark for AT&T’s monopoly, it became the site of the first cracks in the company’s monopoly.

In the word of Richard Vietor, “deregulation began more or less with a rubber cup.” In the 1950s a company called Hush-a-Phone contested AT&T’s foreign attachments rule, seeking permission to market what a special cup that attached to a phone and made conversations more private. The FCC, at the behest of AT&T, precluded the sale of the attachment, but the

Court of Appeals for the District of Columbia reversed the decision and set forth, for the first time, the rule that a consumer had a “right reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental.” In 1968, in the *Carterphone* decision, the FCC adopted this principle, and over time promulgated the Part 68 Rules, which allowed users to connect whatever they wanted to the system as long as it did not harm either the network or other users. While it would take until 1981 for the FCC to create a full consumer right to attach devices to the network, the *Carterfone* and *Hush-a-Phone* decisions represented the first introduction of competition against AT&T, and the first limiting of its extended monopoly. Eventually, the *Carterfone* decision was extended into a general quarantine on AT&T’s involvement in consumer equipment. It also, importantly, led to rules that forced AT&T to allow others to provide “information services” over its phone lines (which would later mean “internet services”) and to support the rise of the internet service provider industry.

At the same time, several other deregulatory initiatives were underway. In the 1970s, the firm Microwave Communications Inc. (MCI) took advantage of regulatory loopholes and non-enforcement to begin offering limited long-distance services between St. Louis and Chicago, offering AT&T the first long-distance competition it had faced in decades. AT&T took various measures to try to destroy and block its rival, leading to MCI filing an important private antitrust suit. On November 20, 1974, the Justice Department began its own antitrust action against AT&T, alleging that it monopolized the markets for a broad range of telecommunications services and equipment. While the Justice Department had brought antitrust actions against AT&T previously, this suit for the first time sought as a remedy the actual break-up of the company, and in particular the divestiture of the Regional Bell Operating Companies (RBOCs) from AT&T.

On January 8, 1982, AT&T and William Baxter of the U.S. Justice Department reached an agreement that forced AT&T to divest the RBOCs by January 1, 1984. Thus as of that date the twenty-two RBOCs were formed into seven regional holding companies (Bell Atlantic, NYNEX, BellSouth, Ameritech, U.S. West, Pacific Telsis, and Southwestern Bell). These divested companies were not allowed to provide long-distance services in their territories or manufacture telecommunication equipment, both of which were businesses that remained with AT&T. Likewise, AT&T was precluded from providing local telephone service in competition with the RBOCs and from acquiring stock in any of the RBOCs.

The history of cable television has the same pattern of regulation and reregulation. The early cable systems were known as “Community Antennas,” and were constructed in the late 1940s to capture broadcast television signals and transmit them to consumers in remote towns where the broadcasts would not have reached otherwise. By the late 1950s, cable systems had grown into a potential competitor to broadcast televisions, and the broadcasters launched an effort to protect their markets against cable using state and federal lawsuits. After the lawsuits failed, the broadcasters turned to the FCC and convinced it to assert jurisdiction over cable in 1962. The broadcasters argued that cable systems would fragment the audience for broadcast television, destroy the economic viability of free television, and also, by importing distant signals, threaten the values of “localism.” Agreeing with the broadcasters, the FCC placed effective limits on cable’s growth in the late 1960s by requiring that cable operators receive special permission to enter urban markets, effectively blocking the further development of cable television. The hostile approach to cable changed during the deregulatory period of the 1970s, many of the most onerous restrictions on cable were gradually relaxed, in part due to an exchange for new copyright royalties payable to broadcasters.

Another chapter in the deregulatory movement of the 1970s and 1980s was the FCC's controversial repeal of the fairness doctrine, described above. First set forth by the FRC in 1928, and codified in 1949, the fairness doctrine had been upheld against a First Amendment challenge by the Supreme Court in the *Red Lion v. FCC*. However, in the mid-1980s the FCC stopped enforcing the fairness doctrine and eventually repealed most of it. The FCC argued that, *Red Lion* notwithstanding, the fairness doctrine was a violation of the First Amendment, and also claimed it failed to promote speech in the public's interest. Since that time Congress and numerous groups have attempted to have the Fairness Doctrine reinstated, but have not succeeded.

In the 1990s, the FCC also took its first steps away from the traditional model of spectrum management it had employed since the 1930s. Whereas previously the FCC allocated licenses either by lottery or to whomever it believed would "best serve the public interest," in 1994 it conducted the first spectrum auctions, granting the licenses to the highest bidder. While not free from controversy, the auctions have generally been thought to have been a success, as they led both to the market entry of new cellular phone firms, such as long-distance provider Sprint, and proved to be a more streamlined way of awarding licenses, which has encouraged the timely building of networks. The FCC has conducted several other spectrum auctions since 1994, frequently at Congress's direct command.

#### *The Contemporary Regulatory Framework*

The Telecommunications Act of 1996, the first major revision of the country's telecommunications laws since the Communications Act of 1934, altered some features of the basic telecommunications system just described. One of the foremost goals of the 1996 Act was to promote competition in local telephone service. AT&T was allowed to return to the local

service market, while local Bell phone companies were allowed to enter the long-distance market and to merge with each other. In addition, the 1996 law created a “line sharing” scheme whereby market entrants would purchase the rights to use the “local loop” facilities owned by the local Bell companies and sell competitive local services. The 1996 Act also preempted all state and local barriers to entering the local phone service market, and since the passage of the 1996 Act the FCC has forborne from enforcing any restrictions on building or acquiring long-distance lines. Despite these substantial changes to the law, most believe the 1996 Act’s effort to create local service competition was a failure. Whether due to the economics of local competition, or foot-dragging on the part of the local Bell company, few viable local phone service companies have emerged since the passage of the Act.

The 1996 Act also failed to address the challenge of internet and broadband internet services. Pursuant to existing rules, telephone companies have long been regulated as common carriers, as discussed above. That meant that providers of DSL service – which runs over phone lines – were common carriers, while the status of cable operators who sell broadband services remained unclear. In 2002 FCC deemed cable broadband an unregulated “information service” not subject to common carriage rules, and it later classified DSL broadband similarly. In 2005, in the case of *FCC v. Brand X*, the United States Supreme Court upheld the FCC’s right to categorize cable broadband providers as “information services.” The practical import of these technical classifications has been to release broadband services from most anti-discrimination, common carriage or line-sharing obligations.

The arrival of broadband in the 2000s led to the rise of the issue of “network neutrality” on the internet, and the more general topic of internet regulation. The Internet’s technologies were born mainly out of government-funded research in the 1960s and 1970s.

While no specific regime governed the internet, in the 1980s and 1990s, new “internet service providers” took advantage of quarantines placed on the Bells to offer dial-up internet services independent of the Bell system. In the early 2000s, as cable and DSL broadband providers replaced dialup ISPs, the issue of Bell and cable control over the vertical internet markets again arose. In the mid-2000s, the center of the network neutrality debate is a debate over the merits or problems with discriminatory carriage -- favoring some content or applications over others. Ironically, today’s debates over network neutrality and discriminatory carriage echo the same concerns that first prompted calls to regulate telegraph companies in the 19th century.

# EXHIBIT 50



## ECONOMIC DEVELOPMENT IN THE GREATER TACOMA/PIERCE COUNTY AREA

### PURPOSE

Tacoma, like other communities, has evolved in response to changing economic, social, political, and technical dynamics at work not only in the local area, but in the region, the country, and even the world. Understanding this change process for a given community is critical due to the reciprocal relationship between these dynamics and the community's economic base.

Over time, existing businesses contract, expand, or change focus in response to these dynamics — for example, the depletion of an area's natural resources, the building of a rail line, or the encroachment of competitors can each lead to change in the community's economic base. In other cases, certain conditions may lead new businesses or whole new industries to relocate in an area — for example, aluminum smelters' need for cheap power. The entrance of these new industries and fundamental changes in existing ones, in turn, contribute to and alter the original dynamics. As a result, reciprocal effects of the choices these businesses make are felt in a community's job mix, education system, infrastructure investments, and more. Based on this evolution, an area's economic base is built with tracks laid for its economic engine to take one route rather than another.

These periods of steady evolution, however, are occasionally punctuated by intervals of rapid revolution, where societies undergo more fundamental changes. We are in one such period now as we move from the industrial age to the information age. Being at such a juncture offers communities an opportunity to step back and ask questions such as: What direction is our economic engine heading? What direction do we want it to head? Are we building a base so tracks can be laid in that direction? Based on the answers to those questions, communities like Tacoma can make changes to influence the direction their economic engine heads.

One of the most significant ways a community and its economic base are intertwined is through an area's infrastructure. As a result, the evolution of a community's economy often depends upon the investments it makes in its transportation system, power system, and—given the shift to the information age—its telecommunication system. This study was therefore commissioned to investigate Tacoma's potential economic futures and the inter-relationship between its economic development and potential telecommunication system investments.

## Conclusions

The study team set out to answer a number of questions at the outset of this project:

- What is happening on the technological front?
- Who are the major telecommunications players, what have they done in the past, and what are they doing now?
- What is happening in the regulatory environment?
- What have other communities done with regard to telecommunications?
- What has happened historically in our community?
- What do the existing telecommunications options look like?
- What kind of market demand for telecommunications exists in our community?
- What are the economic development implications for our community if an advanced telecommunications system is built or fails to be built?
- And finally, could Tacoma City Light build and operate such a system and how would it look?

This study of telecommunications has answered those questions. But there is a final question that must be asked. Should Tacoma City Light create a modern telecommunications infrastructure to serve the local community? The answers to the previous questions are critical to understanding and answering this question.

This study has reviewed telecommunications both nationally and locally. In reviewing the local situation it is clear that the local market has a growing need for better telecommunications access. Despite growing local demand, the incumbent wire line service providers have stated that their investments in the local infrastructure will either slow without significant rate increases or be halted all together. One could hope that other companies would step forward and create a modern telecommunications system through out our community but the prospects for that occurring appear dim. While Competitive Access Providers will eventually enter the local market, their focus is almost exclusively on large business users. Other potential systems are either of low capacity or not scheduled to be fully deployed until the next century.

Tacoma City Light could create an advanced telecommunications system to meet the telecommunications needs of the communities it serves in addition to its own internal communication needs. If Tacoma City Light were to create such a system and operate it in a business like manner, the system would generate sufficient revenues to make the system self sustaining. By offering products and services that either meet customer needs directly and providing a pathway through which the private sector can meet additional needs, pricing those products and services competitively, and delivering them over a modern, high-speed, high-reliability telecommunications system, a

# EXHIBIT 51

2006

## WI-FI Everywhere: Universal Broadband Access as Antitrust and Telecommunications Policy

Hannibal Travis

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# WI-FI EVERYWHERE: UNIVERSAL BROADBAND ACCESS AS ANTITRUST AND TELECOMMUNICATIONS POLICY

HANNIBAL TRAVIS\*

## TABLE OF CONTENTS

Introduction.....	1698
I. The Development and Market Structure of the Broadband Industry .....	1705
A. Broadband Access in its Historical Context.....	1705
B. From Dial-Up to Broadband Internet Access.....	1711
C. Natural Monopoly and Network Industry Characteristics of Broadband.....	1715
D. The Lack of Effective Competition in Many Broadband Markets .....	1720
II. Broadband Deregulation and the Supreme Court's Telecommunications Trilogy of 2004-2005 .....	1726
A. Historical Context of the Telecommunications Trilogy.....	1726
B. State Law Restraints on Municipal Broadband: <i>Nixon     v. Missouri Municipal League (2004)</i> .....	1728
C. Monopolization of Telecommunications Markets: <i>Verizon Communications LLC v. Law Offices of Curtis V.     Trinko (2004)</i> .....	1736
D. The End of Open Access?: <i>National Cable and     Telecommunications Association v. Brand X Internet     Services (2005)</i> .....	1751
III. All Legal Prohibitions on Municipal Broadband Should Be Lifted.....	1762

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\* Assistant Professor of Law, *Florida International University College of Law*. The Southeastern Association of Law Schools selected this Article to be presented to the New Scholars Workshop during its annual meeting in July 2006. The author thanks his parents for providing him with abundant opportunities for seeing and reading about the world. He also thanks Associate Dean Ediberto Román and Professor Mark Seidenfeld for very helpful comments and suggestions, and Senior Articles Editor Phil Schreiber and Editor-in-Chief Melissa A. Troiano of the *American University Law Review* for their excellent work during the editing process.

connections, but failed.<sup>92</sup> Only after the debut of cable modem service in their territories, starting in the mid-1990s, did the Baby Bells make DSL service available in communities where cable modem access had been offered, and at comparable prices.<sup>93</sup>

The Baby Bells, cable companies, and a variety of commentators have argued that the adoption of residential broadband since 1996 has been rapid, reflecting faster dissemination of a new communications technology than occurred with broadcast or cable television.<sup>94</sup> Such comparisons, however, are often rigged to ignore the long period between the invention of broadband in the 1970s or 1980s and its commercialization, which only picked up in the late 1990s.<sup>95</sup> The undue lag between the technological feasibility of residential broadband and its commercial availability may have artificially inflated the adoption rate for the technology during the late 1990s and early 2000s.<sup>96</sup> Moreover, the relatively low adoption rates for analog technologies such as television or VCRs may be an inappropriate comparison; a better yardstick may be the high adoption rates for digital technologies, such as dial-up Internet access, the World Wide Web, e-mail, and Wi-Fi, all of which spread faster than broadband.<sup>97</sup>

### C. *Natural Monopoly and Network Industry Characteristics of Broadband*

The market for local access to broadband tends to be a “natural monopoly,” at least in its stages of “growth,” as compared to more

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92. See Shelanski, *supra* note 90, at 111. One sign of this failure is that there were only a few hundred thousand DSL subscribers in the entire United States in 1999. LATHEN, *supra* note 91, at App.B, ch.2 (Oct. 1999).

93. See LATHEN, *supra* note 91, at 27 (noting that the Baby Bells only began offering DSL service once faced with losing potential customers to cable). Time Warner Cable began cable modem trials in California in 1996. Katie Hafner, *Living the Broadband Life*, N.Y. TIMES, July 15, 2004, at G1.

94. This claim buttresses the Baby Bells’ deregulatory arguments that forcing the sharing of their networks with competitors, or allowing subsidies for municipal broadband, are unnecessary and probably harmful disruptions of a dynamic industry characterized by rapid growth and popularization. See, e.g., *Industrial Competition and Consolidation: The Telecom Marketplace Nine Years After the Telecom Act: Oversight Hearing Before the H. Comm. on the Judiciary*, 109th Cong. 32 (2005) (statement of Michael Kellogg on behalf of U.S. Telecom Association) (arguing that U.S. broadband “penetration has increased at record rates” since FCC embraced deregulatory approach and abandoned broadband “unbundling” (or open access) policies).

95. See FERGUSON, *supra* note 5, at 141 (suggesting, instead, a comparison of adoption rates from the time of invention to the time of commercialization).

96. See *id.* (“[R]apid diffusion may be a response to pent-up demand and excessive delays in commercialization.”).

97. See *id.* (explaining that because analog technologies improve at a slower rate than digital, a comparison of the two is inappropriate).

“matur[e]” markets.<sup>98</sup> In a natural monopoly, a single provider may satisfy consumer demand at lower average cost than two or more providers.<sup>99</sup> In a more mature market, a city or neighborhood may support two or more methods of accessing the Internet over broadband, such as DSL, cable, fiber optic lines, satellite, Wi-Fi, or broadband over power lines.<sup>100</sup> Nevertheless, large economies of scale in connecting the “last mile” of wires to subscribers favor monopolists over new entrants, who must incur exorbitant fixed costs in order to challenge incumbent providers.<sup>101</sup> Thus, the marginal and average total costs of delivering broadband to the millionth user of an existing broadband network will tend to be much lower than to the tenth user to a newly constructed network.<sup>102</sup>

Broadband is also an industry characterized by network effects, and is therefore frequently described as a “network industry.”<sup>103</sup> Network effects characterize the broadband industry because the value of a broadband Internet connection increases dramatically as more Internet users have broadband, and as content providers make high-

98. Gerald Faulhaber & Christiaan Hogendorn, *The Market Structure of Broadband Telecommunications*, 48 J. OF INDUS. ECON. 305, 323 (2000).

99. Richard Posner, *Natural Monopoly and Its Regulation*, 21 STAN. L. REV. 548, 548 (1969); Neil Hamilton & Anne Caulfield, *The Defense of Natural Monopoly in Sherman Act Monopolization Cases*, 33 DEPAUL L. REV. 465, 465 (1984); Lemley & McGowan, *supra* note 41, at 484. Industries characterized by natural monopoly are often subject to economies of scale that are proportional or at least tied to the extent of consumer demand. See Joskow & Noll, *supra* note 58, at 1251 (providing examples of natural monopoly industries whose economies reflect consumer demand, such as local distribution networks in electricity, telephone and gas service).

100. See HIGH-SPEED ACCESS INQUIRY 1999, *supra* note 76, at 2423-24; Kathleen Q. Abernathy, *Extending Broadband to all Americans* (Jan. 13, 2005), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-256079A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-256079A1.pdf) (encouraging the deregulation and development of cable wireline networks, wireless networks and satellite broadband providers).

101. See Lemley & McGowan, *supra* note 41, at 546-49 (finding that the telephone industry’s natural monopoly characteristics prevented new networks from competing, and regulation did little to ameliorate the situation); Aronowitz, *supra* note 30, at 890-91 (explaining that the costs associated with developing a telecommunications network render the creation of several competing networks inefficient).

102. See Dennis Carlton & J. Mark Klammer, *The Need for Coordination Among Firms, With Special Reference to Network Industries*, 50 U. CHI. L. REV. 446, 451 (1983) (explaining that creating a new network involves large initial costs, whereas using an existing network continuously decreases marginal costs); Lemley & McGowan, *supra* note 41, at 484 (finding that in a natural monopoly, the marginal and average costs of production decline as the demand increases in a given market).

103. See, e.g., Robert Crandall, *Broadband Communications*, 2 THE HANDBOOK OF TELECOMMUNICATIONS ECONOMICS (Martin Cave et al. eds., 2003); CPB NETHERLANDS BUREAU FOR ECONOMIC POLICY ANALYSIS, DO MARKET FAILURES HAMPER THE PERSPECTIVES OF BROADBAND? (Dec. 2005), available at <http://www.cpb.nl/nl/pub/cpbreeksen/document/102/doc102.pdf>. (finding that broadband shares characteristics typical of networks, including “network infrastructure, essential facility and economies of scale”).

bandwidth multimedia files and applications available.<sup>104</sup> For broadband, as for other “markets with network effects, the incumbent’s large installed base makes it difficult for new entrants to dislodge the incumbent.”<sup>105</sup>

Networks regulated solely by private property rights tend towards monopoly exploitation due to the “network effects” inherent in selling access to telecommunications facilities.<sup>106</sup> Access to the network is valuable in proportion to the number of devices hooked up to it, such as telephones or Internet-ready computers, so a new network with few subscribers may struggle to attract the “critical mass” it needs to compete.<sup>107</sup> Small upstart networks, as a consequence of “network externalities,” or benefits accruing to existing or potential subscribers from the connecting of a new subscriber to a network, may not always be able to challenge dominant networks effectively.<sup>108</sup> Dominant firms in network

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104. Cf. William Kolasky, *Network Effects: A Contrarian View*, 7 GEO. MASON L. REV. 577, 579 (1999) (“As defined in the economics literature, network effects exist . . . when a product becomes more valuable as greater numbers of customers use it. The most obvious examples are communications networks, where the value to each customer increases exponentially the more ‘friends and family’ are on the same network.”); A. Douglas Melamed, *Network Industries and Antitrust*, 23 HARV. J.L. & PUB. POL’Y 147, 148 (1999) (“the defining characteristic . . . of network industries is that they involve products that are more valuable to purchasers or consumers to the extent that those products are widely used. This phenomenon is known as a ‘network effect’ or ‘demand-side economy of scale’”); Lemley & McGowan, *supra* note 41, at 484 (“network effects are demand-side rather than supply-side effects: the shape of the demand curve is affected by existing demand”).

105. Barbara van Schewick, *Towards an Economic Framework for Network Neutrality Regulation* (Sept. 20, 2005), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=812991](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=812991) (follow Social Science Research Network “New York, USA” hyperlink to download document).

106. See Aronowitz, *supra* note 30, at 890-91 (“Creating multiple physical last mile connections for DSL or cable modem service would be . . . inefficient . . . . Thus, the first company to install the last mile enjoys a natural monopoly over the connection that makes the open access question particularly pressing.”); see also Carl Shapiro, *Antitrust In Network Industries* (Jan. 25, 1996), <http://www.usdoj.gov/atr/public/speeches/0593.htm> (“[O]nce achieved, the network effects that helped create dominance may make it more difficult for new entrants to dislodge the market leader than in other industries lacking network characteristics.”); Kolasky, *supra* note 104, at 579, 583 (warning that enforcement agencies in both the United States and Europe have become increasingly vigilant in monitoring network effects).

107. Carl Shapiro, *Exclusivity in Network Industries*, 7 GEO. MASON L. REV. 673, 675 (1999); see Aronowitz, *supra* note 30, at 890-91 (explaining that the costs associated with wiring the “last mile” discourage competing networks from entering the market); Lemley & McGowan, *supra* note 41, at 546 (noting that a network monopoly may be more efficient than competition due to cost advantages of dense networks, and bandwagon effects of compatibility and interconnection).

108. See Michael Kende, *The Digital Handshake: Connecting Internet Backbones* 3, 22-23 (Sept. 2000), [http://www.fcc.gov/Bureaus/OPP/working\\_papers/oppwp32.pdf](http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp32.pdf) (suggesting also that dominant networks may refuse to connect their subscribers with those of the smaller networks, “squeeze” prices or engage in non-price



industries also deploy a host of predatory tactics to suppress new entry, such as mergers and acquisitions, refusals to provide access, exclusive dealing, monopoly leveraging, contrived incompatibility, preemptive announcements of new services or pricing, lawsuits based on invalid patents or trademarks, multi-product bundling, and below-cost pricing to win standards wars.<sup>109</sup>

Both the cable and the telephone networks are characterized by local monopolies, which carry over into broadband.<sup>110</sup> The local telephone and residential cable networks are natural monopolies in the sense that competing with the dominant firms typically requires building additional wiring and infrastructure, which would be wasteful and duplicative in many, if not most, local markets.<sup>111</sup> Fixed

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discrimination by, for example, degrading interconnections with those other networks).

109. See Shapiro 1996, *supra* note 107 (stating that, although some of these tactics may be legitimate for firms with small shares in the market, use of same tactics by incumbent firms may be anticompetitive, by closing networks to upstart firms); Daniel Rubinfeld, *Competition, Innovation, and Antitrust Enforcement In Dynamic Network Industries* 4, 12 (Mar. 24, 1998), available at <http://www.usdoj.gov/atr/public/speeches/1611.htm>.

For example, the U.S. government has charged Verizon, the nation's dominant Baby Bell prior to the merger of SBC and AT&T in 2006, with a variety of anticompetitive tactics, including merging with Bell Atlantic, GTE, and now MCI in order to reduce competition in local telephone and Internet service markets. Private parties have complained of Verizon's refusals to deal, contrived incompatibility with competing service providers, and bundling of DSL service with telephone service. See, e.g., *United States v. Verizon Commc'ns, Inc.*, No. 1:05CV02103 (D.D.C. complaint filed Oct. 27, 2005) (examining Verizon's acquisition of MCI); *Law Offices of Curtis V. Trinko, L.L.P. v. Bell Atl. Corp.*, 305 F.3d 89, 107-08 (2d Cir. 2002), *rev'd sub nom. Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, L.L.P.*, 540 U.S. 398 (2004) (examining refusals to deal with competing telephone service provider and monopoly leveraging); *Twombly v. Bell Atl.*, 425 F.3d 99, 104 (2d Cir. 2005) (examining refusals to deal with competing Internet service providers); *Greco v. Verizon Commc'ns, Inc.*, 2005 U.S. Dist. LEXIS 4434, at \*3-6 (S.D.N.Y. Mar. 17, 2005) (examining bundling). Plaintiffs have also charged Bell Atlantic, another large Baby Bell, with refusals to deal, contrived incompatibility, predatory pricing and price "squeezing," falsely pre-announcing DSL service availability, and bringing bad faith patent litigation. See *Covad Commc'ns Co. v. Bell Atl. Corp.*, 407 F.3d 1220, 1222 (D.C. Cir. 2005) (examining refusal to deal, price squeezing and patent litigation).

110. See FERGUSON, *supra* note 5, at 146, 59 (noting that the telephone and cable markets compete only in providing certain services, such as low-speed residential broadband and asymmetric services, and that the two industries are quite similar in certain aspects, including their inability to provide effective competition).

111. See, e.g., *Verizon Commc'ns, Inc. v. Fed. Commc'ns Comm'n*, 535 U.S. 467, 475-76 (2002) (noting that "persistently monopolistic local [telephone] markets" have long been regarded as "the root of natural monopoly in the telecommunications industry"); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 412-16 (1999) (Breyer, J., concurring in part and dissenting in part) (explaining that the Telecommunications Act of 1996 "recognizes that actual local [telephone] competition might not prove practical" because such competition could result in "wasteful duplication of resources"); *United States v. W. Elec. Co.*, 673 F. Supp. 525, 537-38 (D.D.C. 1987), *aff'd in part, rev'd in part*, 900 F.2d 283 (D.C. Cir. 1990) (finding that the "natural monopoly" characteristics of local telephone networks

costs associated with network development and installation are relatively high, while the marginal and average total costs reflecting the burden of adding more users are relatively low.<sup>112</sup> High barriers to entry in the cable and telephone industries prevent potential competitors from undercutting high prices in many instances.<sup>113</sup> The cable and telephone companies have built large networks under the protection of exclusive government franchises, “and therefore have first-mover advantages and scope economies not available to other new entrants . . . .”<sup>114</sup> Other barriers to entry in the telephone market, which most likely affect the cable market as well, include

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mean that duplication of them “would require an enormous and prohibitive capital investment”); *Omega Satellite Prods. Co. v. City of Indianapolis*, 694 F.2d 119, 126 (7th Cir. 1982) (Posner, J.) (finding that cable television may be a natural monopoly because “[t]he cost of the cable grid appears to be . . . largely invariant to the number of subscribers the system has,” so that “the average cost of cable television would be minimized by having a single company in any given geographical area”); James Speta, *Deregulating Telecommunications in Internet Time*, 61 WASH. & LEE L. REV. 1063, 1089 (2004) (“Cable television service, like local telephony, has long been considered a natural monopoly service. Fixed costs are high; multiple wires to the home risks stranded investment; economies of both scale and density apply.”); Aditya Bamzai, Comment, *The Wasteful Duplication Thesis in Natural Monopoly Regulation*, 71 U. CHI. L. REV. 1525, 1530-32 (2004) (stating that a “natural” monopoly may exist where two providers serving same local area would require duplicative wiring, instruments, and billing) (citing 2 ALFRED KAHN, *THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS* 123 (1971)).

112. See, e.g., *Omega Satellite Prods.*, 694 F.2d at 126 (noting that the cost of installing cable grid is greater than the cost of adding more users); Bamzai, *supra* note 111, at 1528-29 (arguing that in the telecommunications industry, “large fixed expenses” result in “declining average costs” as number of users increases).

113. See, e.g., *United States Telecom Ass’n v. Fed. Commc’ns Comm’n*, 359 F.3d 554, 572 (D.C. Cir. 2004) (discussing substantial barriers to entry into local telephone service identified by FCC, such as sunk costs and ILEC absolute cost advantages); FED. COMM’NS COMM’N, ANNUAL ASSESSMENT OF THE STATUS OF COMPETITION IN MARKETS FOR THE DELIVERY OF VIDEO PROGRAMMING, FOURTH ANNUAL REPORT, 13 F.C.C.R. 1034, 1043 (1998) (“Local markets for the delivery of . . . [cable television] programming generally remain highly concentrated and . . . characterized by some barriers to entry . . .”).

114. FED. COMM’NS COMM’N, REPORT AND ORDER ON REMAND AND FURTHER NOTICE OF PROPOSED RULEMAKING, REVIEW OF THE SECTION 251 UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS, 18 F.C.C.R. 16978, 17046 (2003) [hereinafter SECTION 251 ORDER] (referring to cable industry); see *id.* at 17028-41 (making similar findings regarding barriers to entry into local telephone industry); *Turner Broad. Sys. v. Fed. Commc’ns Comm’n*, 512 U.S. 622, 634 (1994) (The U.S. “cable industry is characterized by horizontal concentration, with many cable operators sharing common ownership,” which has “resulted in greater ‘barriers to entry for new programmers’”) (quoting Cable Television Consumer Protection and Competition Act of 1992, § 2(a)(4), Pub. L. No. 102-385, 106 Stat. 1460); U.S. Telecom Ass’n, 359 F.3d at 572 (listing barriers to entry into local telephone industry, including “sunk costs,” incumbent telephone company “cost advantages,” “first-mover advantages,” and “operational barriers to entry” controlled by incumbent telephone companies); FMEA, *supra* note 3, at 11 (explaining that state and local governments created monopolies in telephone and cable television industry by granting “exclusive franchises . . . to serve a particular geographic area,” which protected private companies like BellSouth or Comcast from competition while they built “large networks with economies of scale and scope”).

“bottlenecks, entrenched customer preferences, the regulatory process, large capital requirements, access to technical information, and disparities in risk.”<sup>115</sup>

*D. The Lack of Effective Competition in Many Broadband Markets*

Consumers' options in selecting high-speed Internet service have been very limited until recently. Some commentators describe the broadband market as a “cable-phone duopoly.”<sup>116</sup> By 2004, the FCC reported that close to forty percent of all U.S. zip codes either had monopoly or duopoly broadband access, or none at all.<sup>117</sup> “Thus, nearly half of all consumers lack meaningful choice in broadband providers.”<sup>118</sup> For the rest, a single DSL provider is typically the only effective competition to the dominant local cable provider in the market for residential broadband access.<sup>119</sup> These estimates actually overstate the extent of competition, because the FCC requires only that an entity has one subscriber in an entire zip code to be counted as a provider throughout that area.<sup>120</sup> In fact, when consumers were polled in 2004 regarding the availability of broadband in their area, nearly a tenth reported that it was not available in their area at all,

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115. *United States v. AT&T*, 524 F. Supp. 1336, 1348 (D.D.C. 1981).

116. Rob Pegoraro, *Broadband Is Too Important to Be Left to Cable-Phone Duopoly*, WASH. POST, Aug. 14, 2005, at F07; see also Mike Langberg, *S.F. Wifi Proposal Out on a Tech Limb*, SAN JOSE MERCURY NEWS, Aug. 19, 2005, at 1D, available at [http://www.siliconvalley.com/mld/siliconvalley/business/columnists/mike\\_langberg/12425371.htm](http://www.siliconvalley.com/mld/siliconvalley/business/columnists/mike_langberg/12425371.htm) (discussing the “broadband duopoly” and various cities' plans to award bidding companies the sole or shared right to build such a citywide network, providing Internet access to homes).

117. FED. COMM'NS COMM'N, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, WIRELESS COMPETITION BUREAU, FEDERAL COMMUNICATIONS COMMISSION RELEASES DATA ON HIGH-SPEED SERVICES FOR INTERNET ACCESS, tbl.12 (June 2004), [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/hsp\\_d0604.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hsp_d0604.pdf) (finding that in 2003 14.9% of zip codes had one provider, 17.1% had two providers and 6.8% had none at all).

118. Network Neutrality: Hearings Before the U.S. Senate Committee on Commerce, Science, and Transportation, 109th Cong., 2d Sess. (2006), 2006 WL 282062 (statement of Vint Cerf, Vice President and Chief Internet Evangelist, Google Inc.), <http://commerce.senate.gov/pdf/cerf-020706.pdf>.

119. See FERGUSON, *supra* note 5, at 132, 136 (asserting that the residential broadband market is a duopoly between local telephone and cable monopolies); see also Bruce Fein, *Choking Broadband Competition*, BROAD. & CABLE, Mar. 28, 2005, at 74 (explaining that in many places, where cable and DSL are the only options, broadband access is costly and of a low quality due to the incumbents' stronghold on the market).

120. See Michael J. Copps, Commissioner, Fed. Comm'ns Comm'n, RE: Aug. 6, 2003 Wireline Competition Bureau Report on the Growth of Subscribership to High-Speed Service During the Last Three Years (Aug. 6, 2003), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-237388A3.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-237388A3.pdf) (“Finding one high-speed subscriber in a zip code and counting it as service available throughout is not a credible way to proceed.”).

and one in six said that only one monopoly broadband provider served their area.<sup>121</sup>

The market for local broadband service is extraordinarily concentrated by economic measures,<sup>122</sup> and is in need of substantial reform to become fully competitive.<sup>123</sup> In 2005, the top six providers claimed ninety percent of cable broadband subscribers, while the top four DSL providers claimed nearly ninety percent of DSL subscribers.<sup>124</sup> Using the economic methodology employed by the U.S. Department of Justice (i.e., the Herfindahl-Hirschman Index or “HHI”),<sup>125</sup> the local broadband sector is “highly concentrated.”<sup>126</sup> In fact, the typical local broadband market has an HHI concentration level of 5,000,<sup>127</sup> three times what the Department of Justice considers to be highly concentrated.<sup>128</sup> Judged by its HHI, local broadband was five times as concentrated in 2001 as the print media, radio and television broadcasting, or film production and distribution,<sup>129</sup> and

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121. PEW INTERNET PROJECT, BROADBAND PENETRATION ON THE UPSWING: 55% OF ADULT INTERNET USERS HAVE BROADBAND AT HOME OR WORK 6 (Apr. 19, 2004), [http://www.pewInternet.org/PPF/r/121/report\\_display.asp](http://www.pewInternet.org/PPF/r/121/report_display.asp) (follow “View PDF of Report” hyperlink).

122. See FED. COMM’NS COMM’N, PROVISION OF FIXED AND MOBILE BROADBAND ACCESS, EDUCATIONAL AND OTHER ADVANCED SERVICES IN THE 2150-2162 AND 2500-2690 MHZ BANDS ET AL., 18 F.C.C.R. 6722, 6775 (2003) (asserting that, with a HHI of between approximately 5000 and 5400, the “typical broadband Internet market is very highly concentrated”).

123. See Pegoraro, *supra* note 116, at F07 (suggesting that the FCC encourage true competition by creating more meaningful regulations, better enforcing its current regulations and easing the way for progress in other forms of broadband).

124. Leichtmann Research Group, *Over 40 Million Subscribe to Broadband Internet in the U.S.* (Nov. 14, 2005), [http://www.leichtmanresearch.com/press/111405\\_release.html](http://www.leichtmanresearch.com/press/111405_release.html) (reporting that Comcast, Time Warner, Cox, Charter, Adelphia, and Cablevision claim twenty-one out of twenty-three million cable broadband subscribers, while SBC, Verizon, Bell South, and Qwest claim fifteen out of seventeen million DSL broadband subscribers).

125. An industry’s HHI is derived by adding up the squares of each nontrivial industry participant’s market share. U.S. Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines § 1.5 (Apr. 2, 1992), [http://www.usdoj.gov/atr/public/guidelines/horiz\\_book/15.html](http://www.usdoj.gov/atr/public/guidelines/horiz_book/15.html).

126. The Department of Justice considers an industry with an HHI in excess of 1,800 to be “highly concentrated.” *Id.*; see also Application of Echostar Communications Corp., 17 F.C.C.R. 20559, 20614 (2002) (asserting that where a post-merger HHI exceeds 1800 and the HHI increases by more than 100 points, the merger will likely enhance the firm’s market power).

127. See Harvey Reiter, *The Contrasting Policies of the FCC and FERC Regarding the Importance of Open Transmission Networks in Downstream Competitive Markets*, 57 FED. COMM. L.J. 243, 291-92 (2005) (basing this analysis on a residential and small business market consisting of the ILEC provider, one non-ILEC provider, and one cable provider, the HHI is 5200).

128. *Id.* at 292.

129. Eli Noam, *The Internet: Still Wide Open and Competitive?*, at 3-6 (Sept. 2003), [http://tprc.org/papers/2003/200/noam\\_TPRC2003.pdf](http://tprc.org/papers/2003/200/noam_TPRC2003.pdf).

more than twice as concentrated as new media, such as home video and cable television, or the Internet industry.<sup>130</sup>

Broadband is much less competitive than the non-broadband Internet sector, which many small start-up ISPs entered with relative ease.<sup>131</sup> For every 100,000 users of the dial-up Internet, there were fewer than two broadband providers as of 2002, compared to about fifteen dial-up ISPs.<sup>132</sup> Many consumers have only one broadband choice to make: between a single DSL and a single cable broadband provider.<sup>133</sup> Cable providers accounted for two-thirds of broadband households in 2001, a lead that narrowed to fifty-six percent of households in 2003.<sup>134</sup>

130. *Id.* at 6. The Internet industry is here defined to include the Internet backbone, Internet service providers, Web browsers and media players, and Internet search engines and Web portals. *See id.* at 2 (listing the “infrastructure components underlying the Internet’s basic functioning”).

131. *See id.* at 9 (demonstrating that the top ten companies’ revenue made up about sixty-five percent of the Internet industry’s total revenue in 2001/2002). Over ninety-two percent of Americans “had access by a short local phone call to seven or more ISPs by 1998.” Shane Greenstein, *Commercialization of the Internet*, in 1 INNOVATION, POLICY AND THE ECONOMY 165 (Adam Jaffe et al. eds., 2001). Even rural Internet users could select from among at least four to seven ISPs on average by the late 1990s, while urban users could select from among literally hundreds of providers. *See* Karen Charman, *Recasting the Web: Information Commons to Cash Cow*, EXTRA!, Aug. 26, 2002, at 22, 24, available at <http://www.alternet.org/story/13929> (quoting CEO of Earthlink) (stating that Internet users in small towns and rural areas can select from at least four ISPs, whereas users in cities can choose from hundreds); *Broadband: Competition and Consumer Choice in High Speed Internet Services and Technologies: Hearing Before the Sen. Comm. on the Judiciary*, 106th Cong. 31-38 (July 14, 1999) (statement of Bill Schrader, Chairman & Chief Executive Officer, PSINet Inc.) (“[A]pproximately [ninety-six] percent of Americans today have a choice of at least four ISP’s within their local calling area.”).

132. CONSUMER FEDERATION OF AMERICA, THE IMPORTANCE OF ISPs IN THE GROWTH OF THE COMMERCIAL INTERNET 28 (2002), <http://www.consumerfed.org/pdfs/ispstudy070102.pdf>.

133. S. DEREK TURNER, BROADBAND REALITY CHECK: THE FCC IGNORES AMERICA’S DIGITAL DIVIDE 15 (Aug. 2005), available at [http://www.hearusunow.org/fileadmin/sitecontent/broadband\\_report\\_optimized.pdf](http://www.hearusunow.org/fileadmin/sitecontent/broadband_report_optimized.pdf).

134. A NATION ONLINE, *supra* note 18, at Executive Summary; *see* U.S. Telecom Ass’n v. Fed. Commc’ns Comm’n, 359 F.3d 554, 585 (finding, in 2004, that cable companies provided nearly sixty percent of all high-speed lines). Cable has heretofore enjoyed several advantages over DSL in the United States, including coaxial cable’s superior bandwidth capacity and greater range than DSL, which is tied to central telephone switching office. *See* Dibadj, *supra* note 91, at 272-74 (explaining the technological constraints of DSL); Tongue, *supra* note 31, at 1104 (noting that the performance of DSL transmissions decreases as the customer’s distance from the central office grows and that DSL quality varies with the condition of the copper wires and the quality of the other equipment). In addition, between 1996 and 2004, the cable industry spent about \$95 billion, or \$1,300 per customer, in rebuilding its infrastructure to provide digital channels, telephone, broadband, and on-demand services. The amount spent specifically on broadband, however, is usually not broken out, precluding a focused examination of returns on broadband investments to date. *See* NAT’L CABLE & TELECOMMS. ASS’N, THE VIDEO MARKET IS FULLY COMPETITIVE: ALMOST 26 MILLION CONSUMERS NOW SUBSCRIBE TO CABLE’S COMPETITORS 5 (July 2004), <http://www.heartland.org/pdf/16369.pdf>; U.S. GEN.

Unlike other Internet and broadband providers such as AOL or Covad, which generally compete with one another by offering broadband on a national basis, the Baby Bells and the cable companies generally compete only in their specific local service areas.<sup>135</sup> The Baby Bells typically offer broadband Internet service “only within their geographical monopoly telephone service areas.”<sup>136</sup> Cable providers resemble the Baby Bells in exercising “geographical monopoly control over a local distribution bottleneck,” and in making slow progress in offering high-speed Internet access on a nationwide basis or at prices most consumers can afford.<sup>137</sup> The cable companies have resisted matching reduced introductory prices (i.e. about \$15 per month) for slower broadband service offered by Baby Bells such as Verizon and SBC Communications (now AT&T again<sup>138</sup>), even though broadband is bundled with cable television and/or telephone service, as Verizon and SBC/AT&T have bundled broadband with local and long-distance telephone service.<sup>139</sup> Now it appears that these same Baby Bells may recoup their foregone subscriber fees by charging Internet service providers such as Google for the privilege of being accessible to DSL subscribers, prompting fears of pervasive censorship and a pay-to-play Internet.<sup>140</sup>

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ACCOUNTING OFFICE, ISSUES RELATED TO COMPETITION AND SUBSCRIBER RATES IN THE CABLE TELEVISION INDUSTRY 4, 25 (Oct. 2003), <http://www.gao.gov/new.items/d048.pdf> (noting that programming and upgrading costs incurred by cable companies have increased on average by thirty-four percent, with the cable industry having spent over \$75 billion between 1996 and 2002).

135. The only national residential broadband network is owned by Covad, which is neither a Baby Bell nor a cable company. See Covad, *Covad Public Policy* (2005), <http://www.covad.com/companyinfo/publicpolicy/index.shtml>.

136. FERGUSON, *supra* note 5, at 108 (emphasis omitted).

137. *Id.* at 146.

138. See *SBC-AT&T Merger Costs Trigger \$866M Charge*, SAN FRANCISCO BUSINESS TIMES, Jan. 26, 2006, available at <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2006/01/23/daily51.html> (reporting the SBC-AT&T merger).

139. Jessica Marmor, *Telecom*, WALL STREET JOURNAL ONLINE (Feb. 28, 2006), <http://online.wsj.com/article/SB114107868866084626-search.html?KEYWORDS=broadband&COLLECTION=wsjie/6month>; Marguerite Reardon, *Bells Slash Prices to Lure Broadband Customers*, CNET NEWS.COM, Aug. 23, 2005, [http://news.com.com/Bells+slash+prices+to+lure+broadband+customers/2100-1034\\_3-5842279.html](http://news.com.com/Bells+slash+prices+to+lure+broadband+customers/2100-1034_3-5842279.html) (reasoning that cable companies have resisted lowering their prices, instead focusing on providing better speeds, usability, and reliability).

140. See Glenn Fleishmann, *Advocates of Wi-Fi in Cities Learn Art of Politics*, N.Y. TIMES, Jan. 19, 2006, at C1 (explaining that in response to a suggested “pay-to-play” plan, advocates and community groups complained to state politicians); Associated Press, *Intel Joins Group In Favor of Internet Legislation*, SAN JOSE MERCURY NEWS, Apr. 26, 2006, available at [http://www.mercurynews.com/mld/mercurynews/news/local/states/california/northern\\_california/14435374.htm](http://www.mercurynews.com/mld/mercurynews/news/local/states/california/northern_california/14435374.htm) (describing Intel’s appeal to Congress to pass legislation that ensures that the Internet will remain “open and neutral”).

Lack of competition in the price of high-speed Internet service has been a significant problem. Monthly fees averaged \$50 in many areas on a consistent basis from 1998 to 2003 for service at one to two Mbps downstream and much less than that upstream.<sup>141</sup> This price stability presented a stark contrast to the much more rapidly increasing quality and plummeting prices of computers and other digital technologies during the same period.<sup>142</sup> With cable in control of nearly seventy percent of the broadband industry, there was “no real competition” in most local markets during that period, according to a spokesperson for a large Baby Bell, SBC.<sup>143</sup> The bursting of the telecommunications bubble starting in 2000 further entrenched many dominant broadband providers by destroying many telecommunications companies, wiping out \$2 trillion of stock market value,<sup>144</sup> and enabling the Baby Bells to slash investment in infrastructure in favor of exploiting their existing networks as long as possible.<sup>145</sup>

The divergence in the pace of price cuts and new innovations between broadband and other digital technologies may be due to mixed incentives facing diversified broadband providers. Robust

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141. See FERGUSON, *supra* note 5, at 67-68, 141 (stating that in 1998, ADSL prices decreased to a range from thirty dollars per month in some regions to fifty dollars in the majority of areas, where they remained until 2003). *But cf.* Scott J. Savage & Donald M. Waldman, *United States Demand for Internet Access*, 3 REV. OF NETWORK ECON. 228, 229, 236 (2004) (reporting that a nationwide survey of residences conducted during 2003 found mean prices for cable and DSL broadband to be \$37.70 and \$43.92, respectively). As of 2005, the price of cable and DSL broadband continued to hover near \$50 per month once the costs of subscribing to tied services such as cable television or wireline telephone service were included. Gene Kimmelman, *Statement on Behalf of Consumers Union and the Consumer Federation of America on SBC-AT&T and Verizon-MCI Mergers Remaking the Telecommunications Industry*, 13 COMMLAW CONSPECTUS 1, 2 & n.4 (2005) (explaining that although cable broadband costs about \$ 45 per month, and DSL broadband about \$30 per month, most providers also require consumers to “buy extra services—DSL tied to local phone service, or cable modem service tied to a cable video package. In order to get the benefits of this ‘bundle-only’ competition, the average household must double or triple its spending.”).

142. See FERGUSON, *supra* note 5, at 141 (comparing the pace of DSL deployment to the pace of deployment of other digital technologies, such as dial-up access, the Web, and Wi-Fi).

143. Tom Mainelli, *DSL Service Falters as Providers Crumble*, PC WORLD, Aug. 15, 2001, available at <http://pcworld.about.com/news/Aug152001id58344.htm> (claiming that DSL providers are allies against cable).

144. See Michael Powell, Speech at the Goldman Sachs Communicopia XI Conference (Oct. 2, 2002), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-226929A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226929A1.pdf) (explaining that the telecommunications industry is suffering from not only financial loss but also nearly 500,000 lost jobs, corporate scandals and, in some markets, hyper-competition).

145. See FMEA, *supra* note 3, at 8, 10 (citing BellSouth and Verizon, who both reduced their investment spending by thirty-nine percent, or \$9.5 billion, from 2000 to 2003); see also FERGUSON, *supra* note 5, at 58-59 (stating that Baby Bells “reduced network capital investment sharply between 2001 and 2003”).

competition from the Internet threatens to destroy the cable and telephone companies' revenue base as Internet telephony captures the voice communication market, and as webcasting and digital delivery of entertainment content render cable television less necessary.<sup>146</sup> Conscious of this threat, most Baby Bells have heretofore refused to sell DSL to customers who do not also purchase local telephone service, giving rise to allegations of anticompetitive product tying, in violation of antitrust law.<sup>147</sup> Verizon's wireless broadband service is only available to a third of Americans, at \$60 per month for a two-year commitment plus a "qualifying voice plan."<sup>148</sup> Moreover, Baby Bells such as SBC/AT&T have indicated that they may refuse to connect DSL subscribers to their choice of Internet telephony services.<sup>149</sup> For their part, cable broadband providers have sought to shield their multichannel video businesses from Internet competition by prohibiting their subscribers from downloading excessive multimedia content or utilizing interactive video game servers, among other high-bandwidth activities.<sup>150</sup>

146. See FERGUSON, *supra* note 5, at 27 (predicting that a competitive broadband industry would advance the merging of cellular, broadcasting, and data delivery services with Internet services).

147. See *Greco v. Verizon Commc'ns, Inc.*, 2005 U.S. Dist. LEXIS 4434, at \*12-15 (S.D.N.Y. Mar 22, 2005) (explaining that Verizon admitted refusing to sell "stand-alone DSL service" in most markets, offering it only as part of a limited technical trial in some states for a period of only eight months); *Z-TEL Commc'ns, Inc. v. SBC Commc'ns, Inc.*, 331 F. Supp. 2d 513, 543-48 (E.D. Tex. 2004) (denying motion to dismiss claim that SBC Communications unlawfully tied DSL service to local telephone service); *Levine v. Bellsouth Corp.*, 302 F. Supp. 2d 1358, 1371 (S.D. Fla. 2004) (noting that Bellsouth "has never offered" DSL "on a standalone basis"); *BellSouth Telecommunications, Inc. v. Cinergy Commc'ns Co.*, 297 F. Supp. 2d 946, 954 (E.D. Ky. 2003) (finding "substantial evidence" to support the Kentucky Public Service Commission's conclusion that BellSouth had a "practice of tying its DSL service to its own voice service to increase its already considerable market power in the voice market has a chilling effect on competition and limits the prerogative of Kentucky customers to choose their own telecommunications carriers"); *Covad Commc'ns Co. v. Pac. Bell*, No. C 98-1887 SI, 2000 U.S. Dist. LEXIS 21267, \*12-\*15 (N.D. Cal. May 8, 2000) (reaffirming dismissal of antitrust challenge to Pacific Bell's alleged practice of tying DSL data service to voice line service); Alex Salkever, *Will Naked DSL Chill the Cable Guys?*, BUS. WK. ONLINE, Feb. 27, 2004, [http://www.businessweek.com/technology/content/feb2004/tc20040227\\_8296\\_tc047.htm](http://www.businessweek.com/technology/content/feb2004/tc20040227_8296_tc047.htm) (describing how Baby Bells have insulated their businesses from profit volatility by declining to offer customers DSL without bundled local telephone service).

148. Verizon Wireless BroadbandAccess Service Overview, <http://www.verizonwireless.com/b2c/mobileoptions/broadband/serviceoverview.jsp> (last visited May 26, 2006).

149. See Anush Yegyzarian, *A Gated Internet*, THE WASH. POST Online, Feb. 3, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/02/AR2006020200160.html> (describing how these service providers promote selected content by prioritizing service to preferred sites).

150. See, e.g., FERGUSON, *supra* note 5, at 145-46 (reviewing content providers' incentives to avoid providing easy access to Internet services that would compete with



# EXHIBIT 52

# Community-Owned Fiber Networks: Value Leaders in America

## Pricing Review Shows They Provide Least-Expensive Local "Broadband"

Our examination of advertised prices shows that community-owned fiber-to-the-home (FTTH) networks in the United States generally charge less for entry-level broadband service than do competing private providers, and don't use initial low "teaser" rates that sharply rise months later. We also found that Comcast varies its pricing by region. Our study was constrained by the lack of standardization in Internet service offerings and a shortage of available data on broadband pricing in the United States. The U.S. Federal Communications Commission doesn't comprehensively collect or make available data from internet service providers on prices advertised or charged, service availability by address, or consumer adoption by address.

David Talbot  
Kira Hessekiel  
Danielle Kehl

January 2018

Community fiber networks in Sandy, Oregon (bottom left); Opelika, Alabama (top right); and Lafayette, Louisiana are among those offering the lowest local prices for service meeting the FCC's "broadband" threshold (25 Mbps download, 3 Mbps upload).



## ABSTRACT

We collected advertised prices for residential data plans offered by 40 community-owned (typically municipally owned) Internet service providers (ISPs) that offer fiber-to-the-home (FTTH) service. We then identified the least-expensive service that meets the federal definition of broadband—at least 25 Mbps download and 3 Mbps upload—and compared advertised prices to those of private competitors in the same markets. We found that most community-owned FTTH networks charged less and offered prices that were clear and unchanging, whereas private ISPs typically charged initial low promotional or “teaser” rates that later sharply rose, usually after 12 months. We were able to make comparisons in 27 communities. We found that in 23 cases, the community-owned FTTH providers’ pricing was lower when averaged over four years. (Using a three year-average changed this fraction to 22 out of 27.) In the other 13 communities, comparisons were not possible, either because the private providers’ website terms of service deterred or prohibited data collection or because no competitor offered service that qualified as broadband. We also made the incidental finding that Comcast offered different prices and terms for the same service in different regions.

## KEY FINDINGS

- When considering entry-level broadband service—the least-expensive plan that provides at least 25/3 Mbps service—23 out of 27 community-owned FTTH providers we studied charged the lowest prices in their community when considering the annual average cost of service over a four-year period, taking into account installation and equipment costs and averaging any initial teaser rates with later, higher, rates. This is based on data collected in late 2015 and 2016.
- In these 23 communities, prices for the lowest-cost program that met the current definition of broadband were between 2.9 percent and 50 percent less than the lowest-cost such service offered by a private provider (or providers) in that market. In the other four cases, a private provider's service cost between 6.9 percent and 30.5 percent less.
- While community-owned FTTH providers' pricing is generally clear and unchanging, private providers almost always offer initial "teaser" prices and then raise the monthly price sharply. This price hike in the communities we studied ranged between \$10 (20 percent) and \$30 (42.8 percent) after 12 months, both imposed by Comcast, but in different communities. Only one community-owned FTTH provider employed this marketing practice for a data-only plan. This exception was a student discount offered by the MINET network in Oregon.
- Language in the website "terms of service" (TOS) of some private ISPs strongly inhibits research on pricing. The TOS for AT&T, Verizon, and Time Warner Cable (now owned by Charter), were particularly strong in deterring such efforts; as a result, we did not record data from these three companies.
- While the United States has 40 community networks offering broadband FTTH service (many of them serving more than one municipality), we did not make comparisons with private competitors in 13 cases, either because the TOS prohibited data collection or because no competing broadband service existed in the community network's home community.
- We noted that Comcast varied its teaser rates and other pricing details from region to region. Our sample size was small; just seven of the communities we studied were served by Comcast. Understanding Comcast's pricing practices and their consumer impacts across the United States would require much deeper study.
- In general we found that making comprehensive pricing comparisons among U.S. Internet service plans is extraordinarily difficult. The U.S. Federal Communications Commission (FCC) does not disseminate pricing data or track broadband availability by address. Additionally, service offerings follow no standard speed tiers or definitions (such as the specifics of video or phone service bundles). We focused on comparing entry-level broadband plans in part because of these complexities.

Suggested Citation: Talbot, David, Hessekiel, Kira, Kehl, Danielle. Community-Owned Fiber Networks: Value Leaders in America (January 2018). Responsive Communities. Available at: [cyber.harvard.edu/publications/2018/01/communityfiber](https://cyber.harvard.edu/publications/2018/01/communityfiber).

## MAIN FINDING

### COMMUNITY FIBER NETWORKS OFFER BETTER ENTRY-LEVEL BROADBAND VALUES AND CLEARER, TEASER-FREE PRICING

Our major finding is that in 23 out of 27 communities where comparisons were possible, entry-level broadband service from a community-owned FTTH network—meaning the lowest-cost service that met the FCC's definition of broadband (at least 25 Mbps download, 3 Mbps upload)—was less expensive, when considering the average annual cost of service over four years,<sup>8</sup> than such service offered by a private competitor.

The benefits ranged from a savings of 2.9 percent, or \$19, annually in Tullahoma, Tennessee, to more than 50 percent, or \$600, annually in Lafayette, Louisiana. Twelve of the community-owned FTTH providers beat their private competitors' prices by 20 percent or more for entry-level broadband service. In four communities, a private provider beat the community-owned FTTH network. In in such cases, the benefits ranged from a 6.9 percent, or \$50, saving for users of Charter Spectrum in Jackson, Tennessee, to about a 30.5 percent, or \$298, saving, also for users of Charter Spectrum, in Churchill, Nevada.

The lowest-speed tier that met the broadband minimum varied from provider to provider. In 13 cases, the private provider's lowest-cost plan that met the broadband threshold offered higher speeds than did the lowest-cost broadband service of community-owned FTTH networks. In six cases, the reverse was true; in five cases, the speeds were the same.

Our secondary finding was that community-owned providers furnish consumers with dramatically clearer pricing. Of the 35 private Internet access plans we encountered in our data collection, 25 offered low-cost initial promo-

tional (or "teaser") rates and then increased the rate substantially at the conclusion of the initial period (typically 12 months). By contrast, we encountered only three examples of promotional pricing among the community-owned ISPs we studied. And MINET, in the towns of Monmouth and Independence, Oregon, was the only one to offer such a deal on a plan offering Internet access only, in the form of a special promotion for students.<sup>9</sup> The private providers' price increases at the expiration of the promotional period ranged from 20 percent, or \$10 monthly (Comcast Xfinity in Longmont, Colorado), to 42.8 percent, or \$30.04 monthly (Comcast Xfinity in Concord, Massachusetts).

We do not know what fraction of broadband subscribers take data-only plans as opposed to bundles. However, surveys of U.S. consumers by the Pew Research Center indicate a trend toward "cord cutting" (the practice of canceling a cable TV subscription and merely taking a data plan). In late 2015 Pew reported that about 15 percent of Americans were cord cutters and that another nine percent had never taken a TV subscription.<sup>10</sup> Younger people appear more likely to do without bundles. Pew's most recent survey, in September of 2017, found that 60 percent of people aged 18–29 said they mainly watched TV by using services such as Netflix.<sup>11</sup>

Our study, though limited in scope, contains a clear finding: community-owned FTTH networks tend to provide lower prices for their entry-level broadband service than do private telecommunications companies, and are clearer about and more consistent in what they charge. They may help close the "digital divide" by providing broadband at prices more Americans can afford.

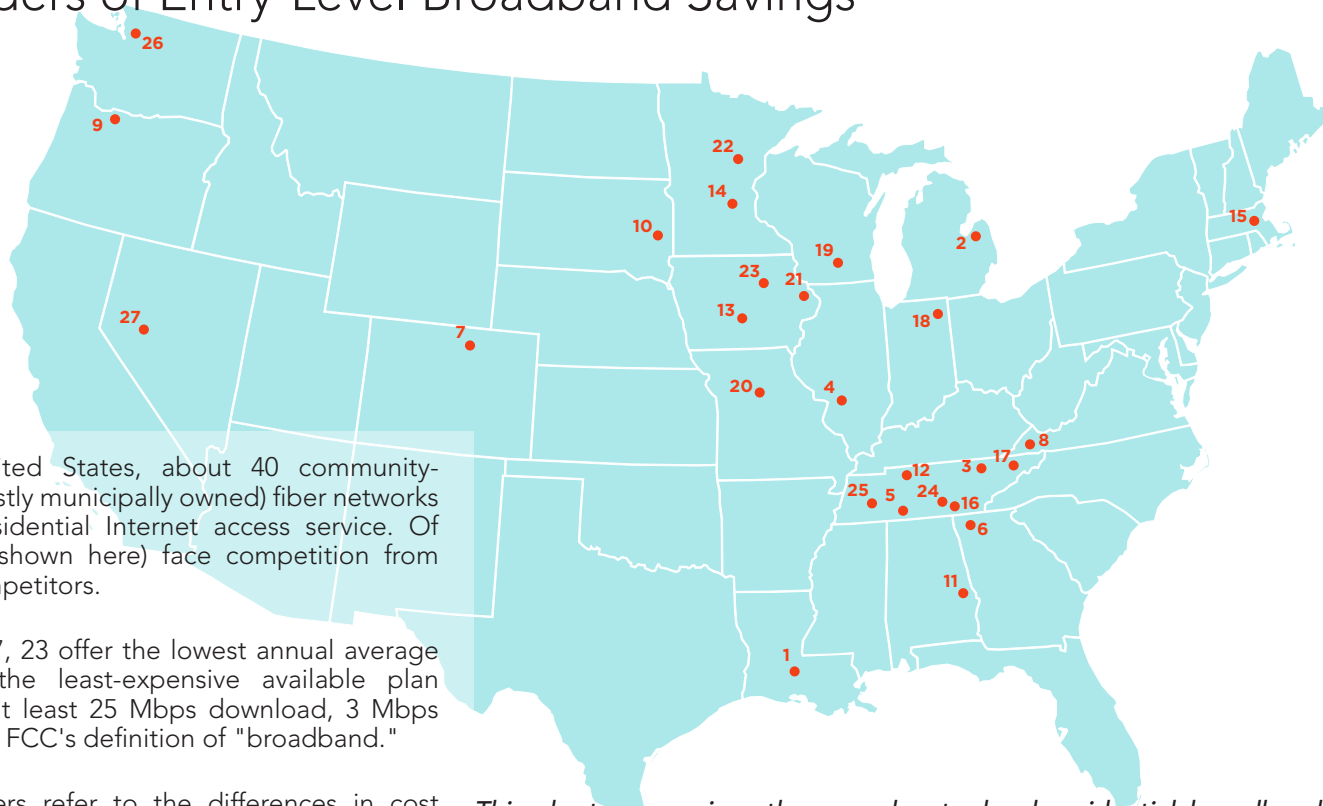
8 As part of our analysis we also ran the numbers for a three-year average, a method that would make private providers appear less expensive, given that they tend to use low initial "teaser" rates, typically for 12 months. Only one of the community-owned FTTH networks that were less expensive over four years became more expensive when a three-year term was considered: Cedar Falls, Iowa. See methods section for more details.

9 MINET's promotional pricing option is only available to area students and offers them a six-month discounted price. Because MINET did not have any competitors offering broadband-minimum speeds, we did not include this or their other plan offerings in our analyses. Additionally, community-owned FTTH networks in Lafayette, Louisiana, and Bristol, Virginia, offered bundled services (as opposed to the entry-level broadband plans we studied) having an initial promotional rate of one year.

10 Maeve Duggan & John B. Horrigan, One-in-Seven Americans Are Television "Cord Cutters," Pew Research Center (Dec. 21, 2015), <http://www.pewinternet.org/2015/12/21/4-one-in-seven-americans-are-television-cord-cutters/>.

11 Lee Rainie, About 6 in 10 Young Adults in U.S. Primarily Use Online Streaming to Watch TV, Pew Research Center (Sept. 13, 2017), <http://www.pewresearch.org/fact-tank/2017/09/13/about-6-in-10-young-adults-in-u-s-primarily-use-online-streaming-to-watch-tv/>.

# Community Fiber Networks: Providers of Entry-Level Broadband Savings



In the United States, about 40 community-owned (mostly municipally owned) fiber networks provide residential Internet access service. Of these, 27 (shown here) face competition from private competitors.

Of these 27, 23 offer the lowest annual average price for the least-expensive available plan providing at least 25 Mbps download, 3 Mbps upload, the FCC's definition of "broadband."

The numbers refer to the differences in cost per year, averaged over a four-year period, as advertised on the providers' websites during our review in late 2015 and 2016. The full dataset we generated is available at this address:

<http://dx.doi.org/10.7910/DVN/HHTTF1>

Some providers' entry-level broadband services offer higher speeds than others; the industry doesn't follow any standard speed tiers. We focused on the plan that minimally met the FCC definition, regardless of exact advertised speed.

Our analysis is limited in scope. A deeper study would require comprehensive data to be made available on advertised prices, actual prices charged, and service availability and adoption by address.

*This chart summarizes the annual entry-level residential broadband price savings (or premium) offered by community FTTH networks relative to private competitors. See the next two pages for full details.*

	Community network	Annual cost savings (or premium) relative to private competitor(s)	Community network	Annual cost savings (or premium) relative to private competitor(s)	
1	Lafayette, LA	\$600.00	14	Monticello, MN	\$122.74
		\$311.36			\$38.34
2	Sebewaing, MI	\$352.15	15	Concord, MA	\$115.12
3	Morristown, TN	\$324.12	16	Chattanooga, TN	\$107.25
		\$259.23	17	Bristol, TN	\$79.22
4	Highland, IL	\$295.23	18	Auburn, IN	\$92.76
5	Pulaski, TN	\$237.24	19	Reedsburg, WI	\$62.97
6	Dalton, GA	\$216.98	20	Marshall, MO	\$25.90
7	Longmont, CO	\$172.74	21	Bellevue, IA	\$35.52
		\$301.45	22	Crosslake, MN	\$37.25
8	Bristol, VA	\$199.23	23	Cedar Falls, IA	\$24.88
		\$126.74	24	Tullahoma, TN	\$19.22
9	Sandy, OR	\$170.00	25	Jackson, TN	(\$50.13)
10	Brookings, SD	\$163.13	26	Issaquah Highland, WA	(\$100.48)
		\$148.60			(\$108.10)
11	Opelika, AL	\$139.23	27	Churchill, NV	(\$298.28)
12	Clarksville, TN	\$138.75			
13	Indianola, IA	\$130.39			

# Cheapest Tiers Meeting Broadband Definition

## Community Fiber Networks Tend to Beat Private Competitors

This table reviews advertised broadband prices in 27 communities served by community-owned FTTH networks and one or two private providers. The dollar figures present average cost per year over four years and takes into account all fees and recurring costs.

Rank	Community	Entry-level broadband offering from community FTTH network Provider Download/upload speed (mbps) Avg. service cost per year for first 4 years	Entry-level broadband offering from private competitor Provider Download/upload speed (mbps) Avg. service cost per year for first 4 years	Annual savings or (premium)	Percentage savings or (premium)	Key (see next page)
1	Lafayette, LA	Lafayette Utilities Systems 60/60, \$599.40	KTC Pace 50/5, \$1,199.40	\$600.00	50.0%	1, 6
			Cox Communications 50/5, \$910.76	\$311.36	34.2%	1, 6
2	Sebewaing, MI	Sebewaing Light & Water 30/30, \$451.25	Comcast Xfinity 25/5, \$803.41	\$352.15	43.8%	1
3	Morristown, TN	FiberNET 30/30, \$419.40	Comcast Xfinity 75/5-10, \$743.52	\$324.12	43.6%	1, 4
			Charter Spectrum 60/4, \$678.63	\$259.23	38.2%	1, 4
4	Longmont, CO	NextLight 25/25, \$479.40	Comcast Xfinity 25/5, \$625.14	\$172.74	23.3%	
			Centurylink 40/5, \$780.85	\$301.45	38.6%	5, 6
5	Highland, IL	Highland Communication Services 40/40, \$383.30	Charter Spectrum 60/4, \$678.63	\$295.23	43.5%	4
6	Pulaski, TN	PES Energize 25/6.5, \$441.39	Charter Spectrum 60/4, \$678.63	\$237.24	35.0%	4
7	Dalton, GA	Optilink 25/10, \$461.65	Charter Spectrum 60/4, \$678.63	\$216.98	32.0%	4
8	Bristol, VA	Bristol Virginia Utility Optinet 30/5, \$479.40	Charter Spectrum 60/4, \$678.63	\$199.23	29.4%	
			Comcast Xfinity 25/5, \$606.14	\$126.74	20.9%	
9	Sandy, OR	SandyNet 100/100, \$504.40	Wave 55/5, \$674.40	\$170.00	25.2%	
10	Brookings, SD	Swiftel 30/5, \$616.28	Interstate Telecommunications Cooperative 30/5, \$779.40	\$163.13	20.9%	3, 4, 6
			Mediacom Cable 50/5, \$764.88	\$148.60	19.4%	3, 4, 6
11	Opelika, AL	Opelika Power Services 30/15, \$539.40	Charter Spectrum 60/4, \$678.63	\$139.23	20.5%	4
12	Clarksville, TN	Clarksville CDE Lightband 50/50, \$539.88	Charter Spectrum 60/4, \$678.63	\$138.75	20.4%	1
13	Indianola, IA	Indianola Municipal Utilities 25/10, \$634.49	Mediacom Cable 50/5, \$764.88	\$130.39	17.0%	
14	Monticello, MN	Monticello Fiber Network 50/50, \$640.29	TDS Telecom 25/10, \$763.03	\$122.74	16.1%	6
			Charter Spectrum 60/4, \$678.63	\$38.34	5.6%	6
15	Concord, MA	ConcordNet 25/25, \$649.40	Comcast Xfinity 25/5, \$764.52	\$115.12	15.1%	2
16	Chattanooga, TN	EPB Fiber Optics 100/100, \$695.88	Comcast Xfinity 25/5, \$803.40	\$107.25	13.4%	1
17	Bristol, TN	Bristol TN Essential Services 30/5, \$599.40	Charter Spectrum 60/4, \$678.63	\$79.23	11.7%	4

18	Auburn, IN	Auburn Essential Services 25/6, \$731.64	Mediacom Cable 50/5, \$824.40	\$92.76	11.3%	1, 4
19	Reedsburg, WI	Reedsburg Utility Commission 50/5, \$615.65	Charter Spectrum 60/4, \$678.63	\$62.97	9.3%	
20	Marshall, MO	Marshall Municipal Utilities 40/20, \$552.50	Zito Media 100/10, \$578.40	\$25.90	4.5%	1, 4
21	Bellevue, IA	Bellevue iVue Internet Services 25/25, \$863.88	Bernard Telephone & Communications Inc. 30/30, \$899.40	\$35.52	3.9%	
22	Crosslake, MN	Crosslake Communications 30/20, \$1,030.40	Emily Cooperative Telephone Company 30/30, \$1,067.65	\$37.25	3.5%	7
23	Cedar Falls, IA	Cedar Falls Utilities FiberNet 50/25, \$740.00	Mediacom Cable 50/5, \$764.88	\$24.88	3.3%	
24	Tullahoma, TN	Tullahoma Utilities Board 30/5, \$659.40	Charter Spectrum 60/4, \$678.63	\$19.22	2.8%	1, 4
25	Jackson, TN	Jackson Energy Authority 60/10, \$728.75	Charter Spectrum 60/4, \$678.63	-\$50.13	-6.9%	1
26	Issaquah Highland, WA	Highland Fiber Network 100/100, \$782.59	Comcast Xfinity 25/5, \$682.02	-\$100.48	-12.8%	6, 8
			Wave 55/5, \$674.40	-\$108.10	-13.8%	6
27	Churchill, NV	CC Communications 35/5, \$976.90	Charter Spectrum 60/4, \$678.63	-\$298.28	-30.5%	3

NOTE: The websites of some private providers did not display upload speeds to prospective customers. Upload speeds were added to this table after the fact for two providers, Charter Spectrum and Comcast Xfinity, by consulting with customer service representatives and independent reports.

## KEY

- 1: This community may also be served by AT&T. We did not collect data from AT&T because of prohibitions contained in the terms of service posted on AT&T's website.
- 2: This community may also be served by Verizon DSL service. We did not collect data from Verizon because of prohibitions contained in the terms of service posted on Verizon's website.
- 3: Because this community ISP offered only bundled phone/data, we used the phone/data price in place of a data-only price and did not attempt to subtract the value of the phone service.
- 4: This community provider also offered a higher speed that was closer to the entry-level speed of the private provider. However, we only compared the cheapest possible plans that met broadband definitions. We also did not attempt to verify actual delivered speeds for any ISP.
- 5: Longmont, CO, has a DSL provider whose website does not prohibit data collection and that offers broadband speeds. In this one case, we collected the pricing information in March of 2017.
- 6: Seven of the 27 communities were served by two private ISPs providing at least 25/3 Mbps service, resulting in the split row containing two sets of prices.
- 7: In August of 2016, Crosslake Communications was bought by Tri-Co Technologies, a partnership of three private companies. We collected our data before this occurred.
- 8: The Highland Fiber Network serves a community called Issaquah Highlands, a neighborhood within Issaquah, WA. It does not serve the larger municipality of Issaquah.



## CONCLUSION

Studying the pricing practices of U.S. Internet service providers is challenging. Many ISPs deter data collection, service plans and pricing strategies aren't standardized, and regulators don't collect and release enough relevant data. Against this backdrop, we did our best over more than 18 months to manually gather and harmonize data to explore whether community-owned FTTH networks or private providers offered the best values in providing a service that minimally met the FCC's definition of broadband.

We found that in 23 out of 27 communities where comparisons were possible, entry-level broadband service from a community-owned FTTH network was indeed less expensive than comparable service offered by a private competitor when considering the annual cost of service averaged over four years. What's more, the community providers were generally far clearer in how they presented pricing—steering clear of initial teaser rates that later rise sharply.

But the unavailability of comprehensive data leaves many fundamental questions unanswered. These include: What does broadband service actually cost consumers in the United States? To what extent do carriers actually charge the rates set forth in price lists? How many consumers attempt to renegotiate after teaser rates expire, and how many pay higher prices for many more years? Exactly how sensitive are consumers to price when choosing to adopt broadband service? Are publicly owned FTTH networks a better value overall than private ones? Do companies frequently vary pricing of the same service in different regions, and does this have a disparate impact on different demographic groups? Do municipally or other community-owned sys-

tems put downward price pressure on private company offerings?

Existing efforts at regulatory data collection fall far short of what would be needed to answer such questions. While the FCC collects data about advertised speed tiers and other service offerings through a telecom industry reporting document called Form 477, it does not comprehensively collect data on pricing. (It does collect some pricing data in specific circumstances, such as from schools and libraries that participate in the E-rate program, which subsidizes Internet access to those institutions.<sup>22</sup>)

The FCC also only collects data by census block, not address. The FCC recently sought comment on proposals to expand the scope of data collection under Form 477 and specifically asked whether collecting data at the street-address level would be beneficial.<sup>23</sup> Having gone through this data-collection exercise, we can report that the answer is yes. Street-address-level data, if available for study, would speak most clearly about the state of broadband service, price, and competition in the United States.

Some existing resources aren't useful in practice. The National Telecommunications and Information Administration (NTIA) in 2009 created a National Broadband Map, but among other problems with this resource, it provides no information about pricing, and data collection for the map ceased in June of 2014. The Commerce Department collects and publishes aggregate data about the state of broadband competition in the United States, but it does so only at the level of census blocks. In general, data is not collected in a coordinated manner, is often incomplete, and omits critical information like price.<sup>24, 25</sup> Other independent organizations have attempted to fill

22 Report and Order and Further Notice of Proposed Rulemaking in the Matter of Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184 (Jul. 23, 2014). See also Danielle Kehl, What's Inside the FCC's E-rate Order?, New America's Open Technology Institute (Aug. 4, 2014), <https://www.newamerica.org/oti/blog/whats-inside-the-fccs-e-rate-order-2/>.

23 Federal Communications Commission, WC Docket No. 11-10, Modernizing the FCC Form 477 Data Program (Aug. 4, 2017), <https://ecfsapi.fcc.gov/file/08041199205324/FCC-17-103A1.pdf>.

24 The National Broadband Map is missing a lot of data on smaller ISPs, including municipally owned networks. At the same time, it over-represents the state of competition in many areas because it includes ISPs that only offer commercial or enterprise service. In essence, according to the map it appears that someone who lives on a block that is in reality only served by one residential provider actually has other competitors to choose from.

25 The FCC, for example, has previously declined to collect pricing information from any broadband providers through the annual Form 477 reporting requirements it imposes on Internet access providers, and has itself conceded that it does not have the "reliable data as to the actual prices consumers pay for these services" that it would need to conduct substantial analysis on the impact of price. See, e.g., Patrick Lucey, FCC Prioritizes Incumbent Protection in Data Collection Order, Community Broadband Networks (Jul. 17, 2013), <http://muninetworks.org/content/fcc-prioritizes-incumbent-protection-data-collection-order>; 2016 Broadband Progress Report, Federal Communications Commission (Jan. 29, 2016) at para. 103.

# EXHIBIT 53

Why does

# BROADBAND

matter?

Broadband is the link that ties your community together and connects it to the world. It doesn't matter if your community is in an urban center or a remote plain; high-speed Internet access is the tool that will help your community members and institutions thrive.



## Education



K-12 schools **spend** more than **\$7 billion a year** on textbooks



Going digital can **save** schools as much as **\$600 per student** per year

Broadband helps schools reallocate funds to resources and activities that **enrich student learning**.

## Telehealth



Hospitals without electronic health records will spend **\$371 billion** more



Telehealth reduces hospital admissions by **25 percent** and

Broadband enables **quick access to emergency services** so that first responders can **save lives**.

## Community



Communities with adoption rates below 80 percent have **2,000 fewer businesses** than their counterparts



Broadband access can increase home values by an average of **3.1 percent**

Broadband is a pillar for **community sustainability and growth**.

**Want to learn more about how broadband can help your community?**

BroadbandUSA provides technical assistance, resources and support to get your community connected.

Visit our website to learn more: <http://www.ntia.doc.gov/broadbandusa>

Contact us today at: [BroadbandUSA@ntia.doc.gov](mailto:BroadbandUSA@ntia.doc.gov) | 202-482-2048



**BROADBANDUSA**  
CONNECTING AMERICA'S COMMUNITIES

# EXHIBIT 54

1 Sponsored by: Councilmembers Derek Young, Dave Morell, Douglas G. Richardson,  
2 Marty Campbell, and Pam Roach  
3 Requested by: Pierce County Council  
4  
5  
6  
7

## 8 **RESOLUTION NO. R2019-74**

9

### 10 **A Resolution of the Pierce County Council Declaring Broadband to Be** 11 **Essential Infrastructure; Expressing Council Intent to Direct** 12 **Resources to Advance Broadband Internet Access within** 13 **Pierce County; and Identifying Actions for Further Evaluation** 14 **by the Council.** 15 16 17

18 **Whereas**, the term “broadband” commonly refers to high-speed internet access  
19 that is always on and significantly faster than traditional dial-up access; and  
20

21 **Whereas**, the Federal Communications Commission (FCC) defines broadband  
22 internet access as twenty-five megabytes per second downstream and three megabytes  
23 per second upstream (25/3 Mbps); and  
24

25 **Whereas**, by 2020, with an estimated four billion people worldwide connected to  
26 the internet, using over twenty-five million different applications, over fifty trillion  
27 gigabytes of data generated, and continuous technological innovations and  
28 advancements, future demand for access to high-speed internet will not only continue to  
29 increase exponentially, but become synonymous with a modernized standard of living;  
30 and  
31

32 **Whereas**, community broadband networks are essential for education,  
33 healthcare, market competition, consumer choice, economic development, and  
34 universal, affordable internet access; and  
35

36 **Whereas**, the economic health of municipalities depends on public and private  
37 investment to connect their communities; and  
38

39 **Whereas**, Pierce County wishes to promote broadband access at gigabit speed  
40 (1000 Mbps) in the urban area and at least 100 Mbps in the rural area as it believes  
41 speeds at these levels are necessary to fully access the capabilities and services  
42 needed and desired by citizens, institutions, and businesses within the community; and  
43  
44



1       **Whereas**, pursuant to the 2017 Pierce County Budget, the Pierce County  
2 Council requested a review and analysis of Countywide connectivity and access to high-  
3 speed internet; and

4  
5       **Whereas**, the Pierce County Broadband and Access Evaluation was completed  
6 by the Performance Audit Committee and its contractor, Magellan Advisors, in April  
7 2019; and

8  
9       **Whereas**, the evaluation identifies several goals and initiatives and a series of  
10 specific recommendations and action steps for Pierce County to prioritize, incentivize  
11 and advance the buildout of a Countywide broadband network; and

12  
13       **Whereas**, it is imperative to both the prosperity of individual residents and the  
14 overall economic success and future vitality of Pierce County to have reliable,  
15 affordable, high-speed internet access available throughout all of Pierce County; and

16  
17       **Whereas**, the Pierce County Council finds that it is in the public's interest to  
18 prioritize County resources to advance a Countywide broadband network to make  
19 reliable, affordable, high-speed internet available to all Pierce County residents;

20 **Now Therefore**,

21  
22       **BE IT RESOLVED by the Council of Pierce County:**

23  
24       Section 1. The Pierce County Council hereby declares that wireline and wireless  
25 communications providing abundant capacity which supports high-speed, advanced  
26 digital communications, referred to generically as "broadband" – forms the basis of an  
27 essential 21st Century infrastructure in our digital world and economy. It is vital to the  
28 economic development and quality of life for the residents, businesses and institutions  
29 of Pierce County and throughout Washington. The desired access speeds are at least  
30 one gigabit per second in the urban area and at least 100 megabytes per second in the  
31 rural area.  
32



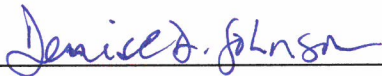
1        Section 2. The Pierce County Council declares its intent to direct resources to  
2 advance broadband access within Pierce County and identifies the following high  
3 priority items for action by the Council within 90 days of the passage of this Resolution:  
4

- 5 • Procurement of services by the Office of the Pierce County Council to support the  
6 development of a broadband strategic plan. (Broadband Strategic Plan)  
7
- 8 • Initiate a broadband stakeholder process to solicit the opinions, needs, and expertise  
9 of community members, business, broadband providers, institutions, and other  
10 stakeholders. (Stakeholder Engagement)  
11
- 12 • Revise existing County policies, standards, and code to remove barriers to  
13 broadband delivery. (Broadband Friendly Policies and Standards)  
14

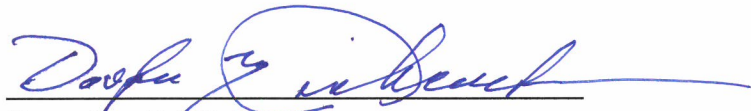
15  
16        ADOPTED this 2<sup>nd</sup> day of July, 2019.  
17

18 ATTEST:

PIERCE COUNTY COUNCIL  
Pierce County, Washington

19  
20  
21  
22 

23 **Denise D. Johnson**  
24 Clerk of the Council  
25



**Douglas G. Richardson**  
Council Chair





# EXHIBIT 55



## RESOLUTION NO. 39577

1 BY REQUEST OF COUNCIL MEMBERS BLOCKER, IBSEN, MCCARTHY, AND  
2 WOODARDS

3 A RESOLUTION directing the City Manager to hire an independent third-party  
4 consultant or consultants to audit, analyze, and establish a reasonable  
5 methodology for cost allocation between Tacoma Power and Click!  
6 Network and evaluate the expansion of Click! Network; authorizing the  
7 execution of professional services agreements, as necessary, which outline  
8 the scope and deliverables; and authorizing the use of up to \$100,000,  
9 budgeted from the City Council Contingency Fund, to pay the costs  
10 associated therewith, pending reimbursement from Click! Network.

11 WHEREAS, on December 15, 2015, the City Council approved Resolution  
12 No. 39347, which required Tacoma Power to develop a business, financial, and  
13 marketing plan to provide Click! Network (“Click!”) customers with retail cable  
14 television, voice, and internet services, and

15 WHEREAS, following a nine-month review, the Click! Engagement  
16 Committee (“Committee”) described the community benefits of an enhanced Click!  
17 telecommunications system and an outline of the features of such a system, and

18 WHEREAS, on September 28, 2016, pursuant to Resolution No. U-10879  
19 (“Resolution”), the Tacoma Public Utility Board (“Board”) approved the Click!  
20 “All-In” Business Plan (“Plan”), and

21 WHEREAS, since its inception in 1996, Click! has been part of Tacoma  
22 Power’s telecommunications system and was initially financed with Tacoma  
23 Power electric revenues, and

24 WHEREAS, since that time, the internal cost allocation between Click! and  
25 Tacoma Power has changed significantly and, over time, Tacoma Power has  
26 substantially increased the cost allocation borne by Click!, and



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WHEREAS the most recent shift in cost allocation is supported by an accountant assessment which relies predominantly upon the cost-accounting recommendations of Tacoma Power, and

WHEREAS this dramatic change in cost allocation has spurred scrutiny as to the financial viability and prospective legality of Click!, has been the key driver underlying the debate over the future of Click!, and has encouraged considerable public scrutiny as to the veracity and appropriateness of the current accounting assumptions and methodology implemented by Tacoma Power, and

WHEREAS the concerns raised about the current cost allocation methodology and the implications of said methodology on the Plan are significant and must be resolved prior to making a final decision on the Plan, and

WHEREAS, at the October 25, 2016, City Council Study Session, Council Member McCarthy shared a Council Consideration Request directing the City Manager to hire an independent third-party consultant or consultants to audit, analyze, and establish an independent cost allocation methodology between Tacoma Power and Click! and evaluate the expansion of the telecommunications system contemplated by the proposed Plan in the context of an evolving telecommunications industry, and, further, to authorize the use of up to \$100,000 of City Council Contingency Funds for said purposes, and

WHEREAS the purpose of the proposed audit is to provide the City Council with the best analysis and information available for its deliberations on the proposed Plan, and to encourage the public's confidence in both the process and underlying assumptions of the Plan, and



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WHEREAS Ordinance No. 22569 requires an affirmative vote of not less than six members of the Council in order to withdraw moneys from the City Council Contingency Fund; Now, Therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

Section 1. That the City Manager is hereby directed to hire an independent third-party consultant or consultants to audit, analyze, and establish a reasonable methodology for cost allocation between Tacoma Power and Click! Network, and evaluate the expansion of Click! Network.

Section 2. That the City Manager is hereby authorized to execute professional services agreements, as necessary, which outline the scope and deliverables necessary to perform the work described in Section 1.

Section 3. That the use of up to \$100,000, budgeted from the City Council Contingency Fund, is hereby authorized to pay the costs associated with the work authorized herein, pending reimbursement from Click! Network.

Section 4. Concurrent with the third-party consultant review requested by the City Council, Tacoma Public Utilities staff will complete the more detailed

CITY OF TACOMA  
CITY COUNCIL MEETING  
REMOTE BROADCAST CAPTIONING  
TUESDAY, MARCH 26, 2019

Services provided by:  
QuickCaption, Inc.  
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\* \* \* \* \*

This text is being provided in a rough draft format.  
Communication Access Realtime Translation (CART) is provided in  
order to facilitate communication accessibility and may not be  
totally verbatim record of the proceedings.

\* \* \* \* \*

that with revenue from the internet.

That's essentially what we're faced with today.

We have the service provision in cable that is dramatically changing.

We heard from several people tonight that talked about cutting the cord.

That's the phenomenon we're wrestling with by being the retail provider.

>> Mayor Woodards: Council Member Blocker.

>> K. Blocker: Thank you mayor and director flowers for your detailed description of the history where we got to the place where today.

My question is for our city attorney.

We've mentioned that we are currently in litigation with individuals or groups that feel as though the City of Tacoma, our utilities is subsidizing the rates for Click!

Can you explain to the public where we are at with that litigation and how it may impact the City of Tacoma and the general fund budget?

>> The lawsuit was filed in 2018.

The plaintiffs ratepayers that will the city power department has been subsidizing the Click! loss tot's tune of \$21 million -- loss to the tune of \$21 million if they're entitled to interest on those amounts which could be as high

as 12%.

They'd be asking for \$128 million.

Our reserve account is roughly \$35 million.

If we were hit with judgment, if we lose the appeal, they'd be asking for that money immediately.

We'd have to raise property taxes or essentially drain the general fund or layoff general fund staff, police, fire, legal department, finance.

>> K. Blocker: Thank you for that.

Based off your professional judgment, that will is not a risk that we want to take which is why we move towards the direction of working with a private entity?

>> The council in early 2018, they abandoned the all-in plan that because that would have required more public funds it provide the services and that was a substantial risk to all of city services if they were to be added on top of potential judgment that is out there.

Outstanding right now if we don't win the appeal.

>> And just one more question, people have raised concerns about the City of Tacoma not performing audit we've heard from deputy -- sorry, Director Flowers that we've done our own internal analysis but we planned to hire an outside consultant at that do an audit for us.

Is that correct?

Why didn't we move forward with that process?

>> As Director Flowers talked about a little bit, that came about the at the same time as the board passed two resolutions.

One recommending a third party lease and one recommending the all-in plan.

Both came to council.

Following a review, there was a request to look at number to analyze and review not necessarily an audit because as a subfund, it doesn't have its own financials per se.

You can't look at it like a separate enterprise fund, at the point that the all-in plan was abandoned and we were going to pursue the review of the 12 policy goals and public/private partnership, the idea of doing an audit didn't make any sense so at that point it was ended because we'd gone flew the moss Adams.

>> K. Blocker: If we were to do an audit at this point, what impact would it have object judgment that's been come down from the courts?

>> Well, we're still appealing that particular ruling.

Doing an independent audit of the finances today would potentially provide more information for the plaintiffs to use against the city and against Tacoma Power related to their allegations that we're illegally subsidizing the funds.



The audit could show we're not allocating enough Tacoma Power costs to the Click! customers and we're possibly using more power funds than we originally thought we were.

>> K. Blocker: It could hurt our case and put us at more risk.

>> Yes, more risk on the city.

>> K. Blocker: Thank you.

>> Mayor Woodards: Council Member Hunter.

>> L. Hunter: Thank you.

I want to also appreciate the questions of my colleagues here because I think that with those questions, you've been able to provide some clarity Director Flowers to some of the concerns we've heard here this evening.

I appreciate the work that you've been doing since arrived eight months ago and I appreciate the works of the TPU board of directors and in my first year here, steep learning curve of many aspects.

But the number of times that we've had mutual board meetings where we've been together ask analyzed and reviewed and gone over this, this has not been a capricious process.

What I want to do is just to point out that this, as has been said, Click! has been operating as a public and private partnership since its inception.

We have other examples where we have valuable assets that

# EXHIBIT 56

HOME

[Print Friendly](#)

The City Utility tax refers to a tax on public service businesses, including businesses that engage in telecommunications, supply of electricity and natural gas, and solid waste collection. Utility tax is a gross receipts tax that is measured on the value of products or services, gross proceeds of sales, or gross income of business.

The tax is in lieu of the business and occupation (B&O) tax but is consistent with B&O tax. Utility tax is calculated on the gross income from activities. This means there are no deductions from the Utility taxable income for labor, materials, or other costs of doing business.

### **How to Report**

The Utility tax is reported and paid monthly. Monthly returns are due by the end of the month following the close of the tax period.

Communications/electricity/solid waste collection businesses with gross income of less than \$20,000 per month, as indicated by billings and/or charges to or for service to Tacoma customers, may request to report and pay the Utility tax quarterly.

If your business gross income is less than \$20,000 per month and you would prefer to report on a quarterly basis send an email to [taxinfo@cityoftacoma.org](mailto:taxinfo@cityoftacoma.org) with your City Account Number and request to change your filing frequency. Change in filing frequency can only be done at the start of a quarter (January, April, July, October).

### **Tax Classifications & Rates**

All business activity is reported under a certain tax classification and each classification has its own tax rate.

### **Deductions and Exemptions**

There may be deductions or exemptions available for the following types of businesses that engage in public service businesses. The information can be found in the Tacoma Municipal Code Subtitle 6A. Please follow the link below for more information.

Communications [TMC 6A.40.090](#)

Electricity and Solid Waste Collection [TMC 6A.50.060](#)

## Utility Tax

### **Telephone/Cellular Phone Charges**

The utility tax is levied on the utility company, however, many companies will include the City tax on their customers bill. An explanation of some local charges that may be on your phone bill can be found [here](#).

## Tax Classifications

Business income is reported under a tax classification depending on the type of business activity. If you conduct multiple activities, it may be necessary to report under several B&O tax classifications. Review the definitions of [tax classifications](#). If you need assistance, [contact us](#).

## Tax Rates

<b>Business &amp; Occupation Tax Classification</b>	<b>Prior to 2003</b>	<b>2003 - current</b>
Retailing	0.00153	0.00153
Wholesaling	0.00102	0.00102
Service & Other Apportionment	0.0042	0.004
Manufacturing	0.0011	0.0011
International Investment Services	0.00165	0.00055
Retail Service	N/A	0.004

<b>Utility Tax Classification</b>	<b>Prior to March 2016</b>	<b>Current</b>
Telephone Business	6.0%	7.5%
Cellular or Pager	6.0%	7.5%
Natural Gas	6.0%	7.5%
Cable Service	8.0%	8.0%
Franchise Fee (Cable)	5.0%	5.0%
PEG Fee (Cable)	1.0%	1.0%
Solid Waste Collection	8.0%	8.0%
Electricity	6.0%	7.5%
Water	8.0%	8.0%



## RESOLUTION NO. 39236

1 BY REQUEST OF MAYOR STRICKLAND

2 A RESOLUTION providing for the submission of a proposition to the electors of  
3 the City of Tacoma, at the General Election to be held on November 3,  
4 2015, authorizing the City to levy an additional 1.5 percent earnings tax on  
5 utility companies, and a levy lid lift of \$0.20/\$1,000 in assessed value over  
6 a period of ten years, for the sole purpose of funding repair and  
7 maintenance improvements for residential and arterial streets, freight  
8 access, and bike and pedestrian mobility in the City of Tacoma; setting  
9 forth the ballot proposition; requiring an annual progress report; and  
10 directing the City Clerk to transmit to the Pierce County Auditor a certified  
11 copy of this resolution.

12 WHEREAS the City Council has identified infrastructure improvement as  
13 one of its Strategic Goals, and

14 WHEREAS adequate and dedicated funding to preserve and maintain City  
15 streets continues to be a significant challenge for the City, and

16 WHEREAS the City Council and Council-appointed task forces have  
17 consistently identified the issue of sustainable, dedicated funding for basic  
18 maintenance of City and neighborhood streets and road safety upgrades, pothole  
19 repairs, repaving of streets and arterials, safety improvements at intersections,  
20 sidewalks and crosswalks near schools, and bridged maintenance and safety  
21 repairs as a top priority, and

22 WHEREAS RCW 35.22.280 permits first-class cities to levy a tax on the  
23 privilege of conducting utility businesses such as electrical energy, natural gas,  
24 or telephone business, and RCW 35.21.870 limits imposition of such taxes to a  
25 rate of six percent in the absence of approval by a majority of the voters of the  
26 City, and



1           WHEREAS RCW 84.55.050 provides for the levy of regular property taxes  
2 in an amount exceeding the limitations specified in Chapter 84.55 RCW if such  
3 increased levy is authorized by a proposition approved by a majority of the voters  
4 at the general election held within the taxing district (a “levy lid lift”), and  
5

6           WHEREAS RCW 84.55.050 further provides that the proposition may limit  
7 the time period and purpose for which the increased levy is to be made and that,  
8 unless otherwise stated in the proposition, subsequent levies shall be computed as  
9 if the proposition had not been approved and the City had made levies at the  
10 maximum rates which would otherwise have been allowed, and  
11

12           WHEREAS, if approved by the voters, the funds raised by a 1.5 percent  
13 increase in the utility earnings tax and levy lid lift of \$0.20/\$1,000 in assessed  
14 value over a period of ten years would be used exclusively to finance Citywide  
15 street maintenance improvements and safety upgrades, and  
16

17           WHEREAS the City Council deems it necessary to submit to the qualified  
18 electors a proposed tax increase of 1.5 percent earnings tax on utility companies,  
19 and a levy lid lift of \$0.20/\$1,000 in assessed value over a period of ten years, to  
20 generate total revenues of \$130,000,000, for the sole purpose of funding street  
21 maintenance improvements and safety upgrades as described herein, and  
22

23           WHEREAS transparency and accountability of how funds are spent, the  
24 budgets of the projects, leverage of funds achieved and demonstration of  
25 progress made are critical to delivering the improvements promised to voters,  
26 and



**CITY OF TACOMA  
PROPOSITION NO. 3**

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The Tacoma City Council adopted Amended Resolution No. 39236 concerning levy rate and gross earnings tax increases for street improvements. If passed, Proposition No. 3 would authorize the City to increase the City’s regular property tax levy by \$0.20 per \$1,000 of assessed value for collection for ten years beginning in 2016, and levy an additional 1.5% earnings tax on natural gas, electric, and phone companies for ten years, beginning 2016, to fund street repair, maintenance and safety improvements for residential streets, arterials, and freight access, including resurfacing, pothole repair, pedestrian safety improvements, school crossing beacons, and sidewalk improvements.

Should this proposition be approved?

Yes. . . . .

No . . . . .

Section 3. That, prior to August 4, 2015, the City Clerk shall send to the Pierce County Auditor, as *ex officio* supervisor of elections, a certified copy of this resolution, together with a proposition substantially in the form set forth above, for the November 3, 2015, General Election.

Section 4. That, should the voters approve this proposition, the City Manager is directed to work with the Public Works Department to deliver an annual progress report to the public through the Transportation Commission so that citizens may easily understand the improvements made and budget and leverage achieved, among other indicators, important for transparency and accountability of these public resources.

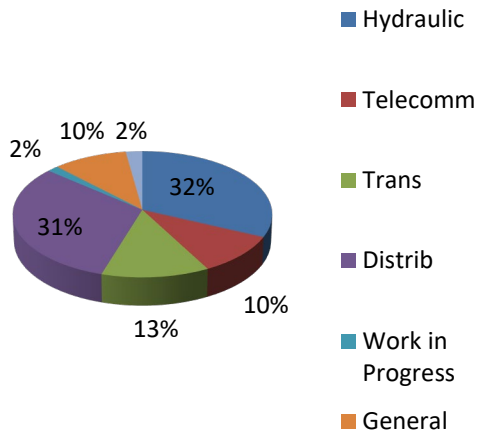
Section 5. That the City Manager is directed to bring forward an ordinance establishing dedicated and restricted funds to ensure that any revenue



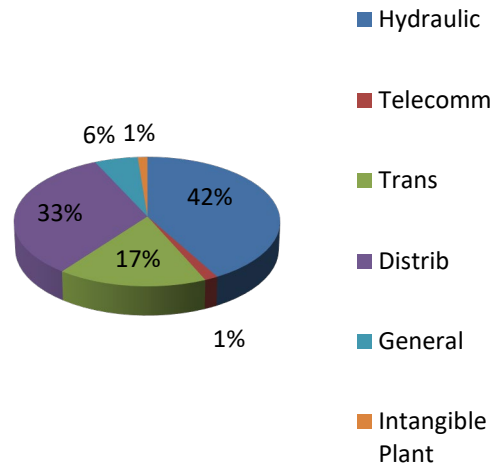
Additions to Intangible Plant in 2018 were \$1.6 million which primarily included an IT service management tool. Additions to Hydraulic Plant in 2018 were \$6.4 million, which mainly included replacement for generation breakers at Cushman, the boat ramp at Mossyrock, security upgrade at Alder Park, and replacements of hydro exciters, hydro governors, turbines, and generators.

Transmission additions were \$11.8 million, which included Pearl Cushman upgrades, Henderson Bay Tower replacement, and replacements of circuits, high-voltage switches, and other devices. Distribution additions were \$31 million, which included construction of Taylor substation, LED street lights, addition and replacement programs for new services, pole and cable, road related additions and replacements, distribution transformers and meters and devices. Regional Transmission additions were \$11.5 million, which primarily included EMS Hardware and Software. Additions to General Plant were \$6.5 million, which included the permanent decant facility, pay station kiosks, Voice Solutions system, security system in the administration building and parking lots, and other servers and systems. Click! additions were \$2.1 million, which included aerial and underground coax cables, enhancements and replacements of network infrastructure, and upgrades of security and network.

**2017 UTILITY PLANT**



**2017 PLANT ADDITIONS**



Additions to Hydraulic plant in 2017 were \$22.8 million, which included the Cowlitz license implementation and the hydro governor and exciter replacement program. Distribution plant additions were \$17.9 million, which included addition and replacement programs for new services, pole and cable, road related additions and replacements, distribution transformers and meters and devices. Transmission plant additions were \$9.2 million, which included Potlatch system ring bus, substation additions and replacements, Henderson Bay tower replacement, Pearl Cushman upgrade and protection and controls additions and replacements.

CITY OF TACOMA, WASHINGTON  
DEPARTMENT OF PUBLIC UTILITIES  
TACOMA POWER

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

	YEAR ENDED DECEMBER 31,	
	2018	2017 (As Restated)
<b>OPERATING REVENUES</b>		
Sales of Electric Energy .....	\$411,393,120	\$401,631,506
Other Operating Revenue .....	18,539,960	18,192,038
Click! Network Operating Revenue .....	25,358,403	26,519,861
Total Operating Revenue .....	455,291,483	446,343,405
<b>OPERATING EXPENSES</b>		
Operations		
Purchased and Interchanged Power .....	134,618,445	135,822,340
Generation .....	16,241,304	23,118,677
Transmission .....	29,394,316	27,562,757
Distribution .....	15,781,781	19,675,524
Other .....	20,140,445	20,077,132
Maintenance .....	31,200,935	30,074,370
Telecommunications Expense .....	22,791,699	25,309,470
Administrative and General .....	43,716,689	43,377,927
Depreciation .....	53,869,012	57,231,313
Taxes .....	21,486,970	20,755,847
Total Operating Expenses .....	389,241,596	403,005,357
Net Operating Income .....	66,049,887	43,338,048
<b>NON-OPERATING REVENUES (EXPENSES)</b>		
Interest Income .....	3,719,705	2,251,477
Contribution to Family Need .....	(100,000)	(100,000)
Other .....	1,776,333	(1,534,389)
Interest on Long-Term Debt (Net of AFUDC) .....	(18,834,946)	(18,209,650)
Amortization of Debt Premium .....	1,615,670	4,132,856
Total Non-Operating Expenses .....	(11,823,238)	(13,459,706)
Net Income Before Capital Contributions and Transfers .....	54,226,649	29,878,342
Capital Contributions		
Cash .....	8,771,749	8,806,311
Donated Fixed Assets .....	618,713	149,323
BABs and CREBs Interest Subsidies .....	3,824,135	3,687,700
Transfers		
City of Tacoma Gross Earnings Tax .....	(34,384,956)	(34,141,875)
<b>CHANGE IN NET POSITION</b> .....	33,056,290	8,379,801
<b>TOTAL NET POSITION - BEGINNING OF YEAR</b> .....	830,375,494	821,995,693
<b>TOTAL NET POSITION - END OF YEAR</b> .....	\$863,431,784	\$830,375,494

*The accompanying notes are an integral part of these financial statements.*

**CITY OF TACOMA, WASHINGTON  
DEPARTMENT OF PUBLIC UTILITIES  
TACOMA POWER**

**NOTES TO FINANCIAL STATEMENTS  
YEARS ENDED DECEMBER 31, 2018 AND 2017**

**NOTE 1 OPERATIONS**

**OPERATIONS OF TACOMA POWER** - The Light Division, doing business as Tacoma Power (Tacoma Power or the Division), is a division of the City of Tacoma, Washington (the City), Department of Public Utilities (the Department) and is included as an enterprise fund in the Comprehensive Annual Financial Report (CAFR) of the City. The Department consists of Tacoma Power, Tacoma Water and Tacoma Rail and is governed by a five-member Public Utility Board (the Board) appointed by the City Council. Certain matters relating to utility operations, such as system expansion, issuance of bonds and setting of utility rates and charges, are initiated and executed by the Board, but also require formal City Council approval. Tacoma Power owns and operates the City's electrical generation and distribution facilities and telecommunication infrastructure. Tacoma Power serves approximately 178,000 of retail customers and has 813 employees. Tacoma Power is organized into six business units: Generation, Power Management, Transmission and Distribution, Rates, Planning and Analysis, Click! Network, and Utility Technology Services.

**GENERATION** operates four hydroelectric generating projects (Cowlitz, Cushman, Nisqually and Wynoochee) and the associated recreational facilities, fish hatcheries and other project lands.

**POWER MANAGEMENT** manages the power supply portfolio, markets bulk and ancillary power supply services, schedules and dispatches division-owned generation and contract power supplies and performs power trading and risk management activities. Revenues and the cost of electric power purchases vary from year to year depending on the electric wholesale power market, which is affected by several factors including the availability of water for hydroelectric generation, marginal fuel prices and the demand for power in other areas of the country.

**TRANSMISSION AND DISTRIBUTION** plans, constructs, operates and maintains the transmission and distribution systems including substations, the underground network system, supervisory control and data acquisition (SCADA) systems, revenue metering facilities and all overhead transmission and distribution systems. Electricity use by retail customers varies from year to year primarily because of weather conditions, customer growth, the economy in Tacoma Power's service area, conservation efforts, appliance efficiency and other technology.

**RATES, PLANNING AND ANALYSIS** plans for and manages the retail rate process, financial planning, analysis and modeling, budget strategies, the capital program and risk management.

**CLICK! NETWORK** plans, constructs, operates and maintains a hybrid fiber coaxial (HFC) telecommunications network that supports the operation of Tacoma Power's electrical transmission and distribution system, provides retail cable TV and wholesale high-speed Internet services to residential and business customers, and data transport services to retail customers.

**UTILITY TECHNOLOGY SERVICES (UTS)** maintains communication networks, operational and informational technology systems, and related equipment and infrastructure to optimize utility operations and improve reliability and service quality. This includes a Project Management Office that establishes and leads Tacoma Public Utilities Information Systems project governance process and implements project portfolio management tools. UTS is responsible for all matters related to Tacoma Power's compliance with North American Electric Reliability Corporation (NERC) Reliability Standards, maintains overall responsibility for the NERC Reliability Standards and manages Tacoma Power's Internal Reliability and Compliance Project.

CITY OF TACOMA, WASHINGTON  
DEPARTMENT OF PUBLIC UTILITIES  
TACOMA POWER

TAXES AND EMPLOYEE WELFARE CONTRIBUTIONS  
FOR THE YEAR 2018

**FEDERAL**

Power Social Security (FICA) .....	\$7,250,486	
Total .....		\$7,250,486

**STATE OF WASHINGTON**

Retail Sales and Use Taxes .....	4,084,377	
Power Utilities and Business Operations Tax .....	14,439,066	
Power State Employment Security .....	159,282	
Total .....		18,682,725

**COUNTY**

Lewis County - In Lieu of Taxes .....	1,593,920	
Mason County - In Lieu of Taxes .....	191,704	
Pierce County School Support - Eatonville .....	7,000	
White Pass School Support .....	127,074	
Mossyrock School Support .....	110,491	
Morton School Support .....	3,105	
Lewis County Fire Protection District .....	11,123	
Pierce County Fire Protection District .....	22,271	
Pierce County Drainage District .....	19,480	
Thurston County .....	2,051	
Total .....		2,088,219

**MUNICIPALITIES**

City of Tacoma Power Gross Earnings Tax .....	32,417,495	
Click!Network Gross Earnings Tax/Franchise Fees ....	3,122,181	
City of Fife Power Franchise Fee .....	1,256,990	
City of University Place Power Franchise Fee .....	1,182,082	
City of Lakewood Power Franchise Fee .....	1,090,176	
City of Fircrest Power Franchise Fee .....	269,940	
City of Steilacoom Power Franchise Fee .....	5,770	
Total .....		39,344,634
TOTAL TAXES .....		\$67,366,064

Taxes as a % of Operating Revenues of \$ 455,291,483 .. 14.80%

**EMPLOYEE WELFARE CONTRIBUTIONS**

Power Industrial Insurance and Medical Aid.....	\$1,387,904	
Power City of Tacoma Pension Fund .....	10,298,298	
Power Medical/Life Insurance .....	17,553,605	
TOTAL EMPLOYEE WELFARE CONTRIBUTIONS .....		\$29,239,807

# EXHIBIT 57

## AMENDMENT NO. 7 TO ISP ADVANTAGE AGREEMENT

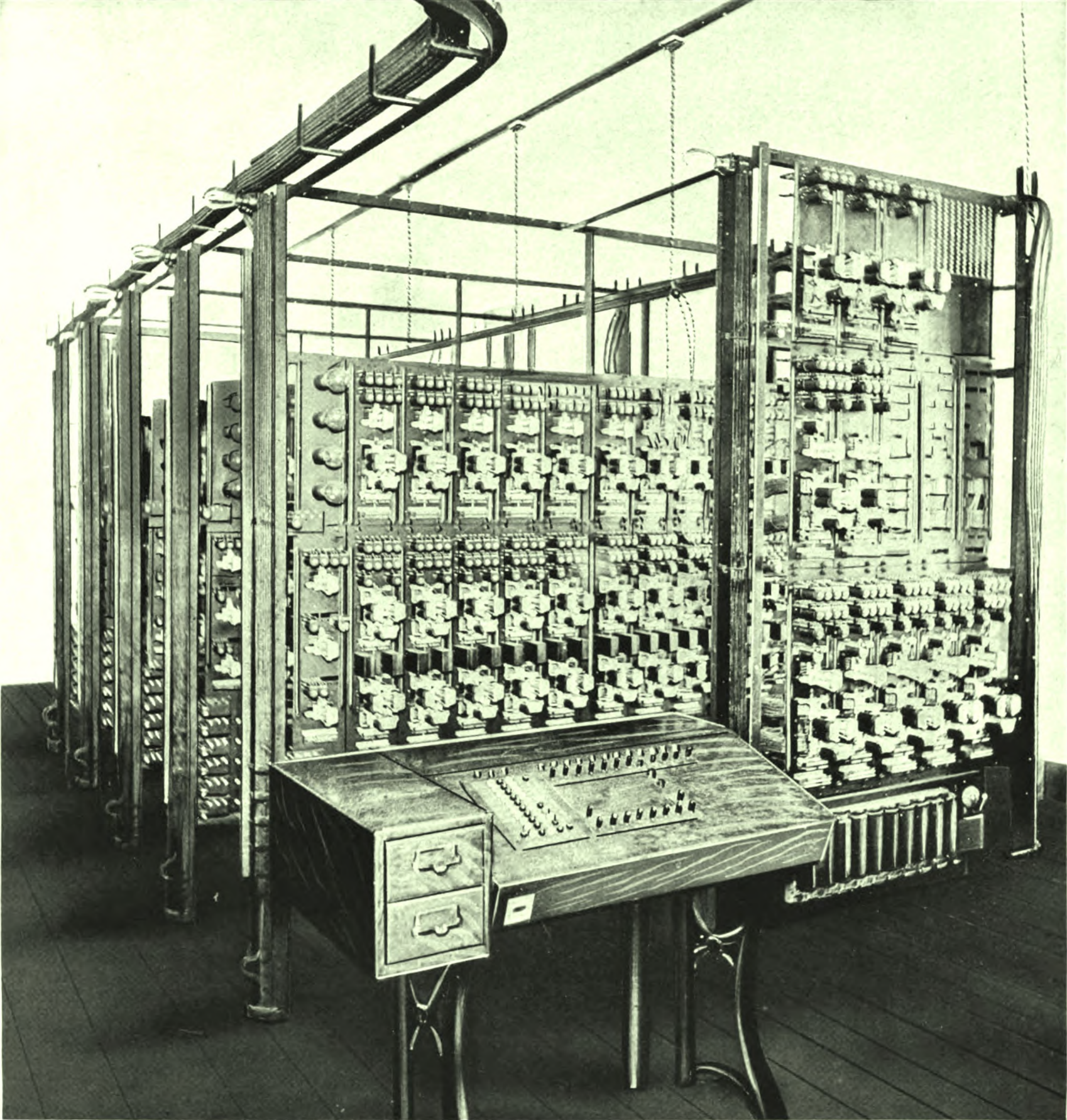
### Click! Network Role and Responsibilities

- A. Install, operate and maintain the Network equipment to make FTTP technology operational
- B. Notify ISP of new FTTP deployments and anticipated release dates
- C. Release all new FTTP addresses to ISP upon completion
- D. Determine the make and model of the ONT, which shall be capable of data, telephony, and video services. Models that are appropriate for outdoor mounting, indoors mounting, requiring powering and non-AC powered, and Wi-Fi capable shall be made available
- E. Purchase, own and install ONT equipment in End User premises or in a common connection location such as a communications closet where wiring can be extended directly to End User premises
- F. Provide dynamic and static IP address space
- G. Provision ONT according to the Fiber Service Plan indicated on ISP installation order
- H. Retain sole ability to provision and surveil the Network and ONT equipment. The provisioning platform cannot partition the End Users on the Network between ISPs, and therefore Click! Network shall bear no responsibility for any costs associated with the development of such functionality.
- I. Receive telephone calls or trouble tickets from ISP or End Users experiencing trouble with Fiber Service; perform troubleshooting
- J. Perform service call to correct trouble
- K. Assume no liability for the merchantability or functionality or reliability of any ISP provided services such as telephony and any other value-added services such as 911, E911, etc. over the FTTP Network that are not directly provided by Click! Network to the ISPs
- L. Fiber Service Plans are best effort services and therefore advertised speeds are not guaranteed
- M. Bill ISP for Fiber Service Plans, as per the Agreement, on a monthly basis.

### ISP Role and Responsibilities

- A. Establish up to three packages as defined in the Fiber Service Plans section above
- B. Establish standard, published, non-promotional retail rates for the Fiber Service Plan packages ("Retail Rate Schedule")
- C. Provide the Retail Rate Schedule for the Fiber Service Plans to Click! Network
- D. Promote and market Fiber Service Plans only in locations where Click! Network has constructed FTTP and Fiber Service Plans are made available
- E. If End User Subscriber is a data service only Subscriber, then ISP shall specify the type of ONT required on the installation order.
- F. Establish installation, move, and disconnection appointments for End Users in the online appointment scheduling application
- G. Coordinate with Click! Network for completion of installation and repair orders as necessary
- H. Open and transmit a trouble ticket to Click!, refer End User or transfer call to Click! Network for troubleshooting and repair of Network or ONT related trouble
- I. Remit payment to Click! Network, as per the Agreement, on a monthly basis. ISP remains solely responsible for all charges billed to it by Click! Network whether or not it collects those charges from End Users.

# EXHIBIT 58



# *Telephones: 1907*

United States. Bureau of the Census, William Mott Stuart, Thomas Commerford Martin, Franklin H. Reed



DEPARTMENT OF COMMERCE AND LABOR  
BUREAU OF THE CENSUS  
E. DANA DURAND, DIRECTOR

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SPECIAL REPORTS

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TELEPHONES: 1907



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1910

# CONTENTS.

## CHAPTER I.

### INTRODUCTION.

	Page.
Classes of telephone systems included.....	11
Period covered.....	12
Limitations of the statistics.....	12
Systems or lines.....	13

## CHAPTER II.

### DEVELOPMENT OF THE INDUSTRY—STATISTICAL.

Comparison with prior censuses.....	14
Table 1.—All systems and lines—Comparative summary: 1880 to 1907.....	14
Table 2.—All systems and lines, exclusive of independent farmer or rural lines—Comparative summary: 1880 to 1907.....	14
Telephone and telegraph systems.....	15
Table 3.—Comparative summary—Telephone and telegraph systems: 1907 and 1902.....	15
Development, by states and geographic divisions.....	16
Table 4.—All systems and lines—Comparative summary, by states and territories and geographic divisions: 1907 and 1902....	16
Table 5.—All systems and lines—Per cent of increase in wire, stations, and messages, by geographic divisions: 1902 to 1907....	18
Table 6.—All systems and lines—Number of stations or telephones in states having over 200,000 stations or telephones in 1907: 1907 and 1902.....	18
Table 7.—All systems and lines—Per cent distribution of miles of wire, stations, and messages, by geographic divisions: 1907 and 1902.....	18
Development of the Bell and other systems.....	19
Table 8.—All systems and lines, classified as Bell and independent (non-Bell) systems—Comparative summary: 1907 and 1902.	21
Table 9.—All systems and lines, exclusive of independent farmer or rural lines, classified as Bell and independent (non-Bell) systems—Comparative summary: 1907 and 1902.....	21
Table 10.—All systems and lines, classified as Bell and independent (non-Bell) systems, and independent stations connected with the Bell system—Number of stations or telephones, by states and territories and geographic divisions: 1907..	22
Relative development of commercial systems and of mutual systems and independent farmer or rural lines.....	23
Table 11.—Commercial systems, mutual systems, and independent farmer or rural lines—Comparable items: 1907 and 1902....	24
Table 12.—Rural lines, classified as commercial, mutual, and independent farmer or rural—Number of lines, miles of wire, and number of stations or telephones, by geographic divisions: 1907 and 1902.....	24
Table 13.—Rural lines—Number of lines, miles of wire, and number of stations or telephones in the six states leading in number of stations or telephones in 1907, with rank of states: 1907 and 1902.....	25
Table 14.—Commercial and mutual systems combined—Comparative summary, by geographic divisions: 1907 and 1902.....	25
Table 15.—Commercial systems—Comparative summary, by geographic divisions: 1907 and 1902.....	26
Table 16.—Mutual systems—Summary, by geographic divisions: 1907.....	26
Table 17.—Independent farmer or rural lines—Summary, by geographic divisions: 1907.....	27
Table 18.—States having 10,000 or more telephones on independent farmer or rural lines—Total number of telephones and number on independent farmer or rural lines: 1907.....	27
Systems under construction in 1907.....	27
Table 19.—Telephone systems under construction: 1907.....	27
Telephones in Alaska, Hawaii, and Porto Rico.....	27
Table 20.—Telephone systems in Alaska, Hawaii, and Porto Rico—Comparative summary: 1907 and 1902.....	28

## CHAPTER III.

### PHYSICAL EQUIPMENT.

Exchanges.....	29-33
Table 21.—Commercial and mutual systems combined—Number of exchanges, by states and territories and geographic divisions: 1907 and 1902.....	29
Table 22.—Commercial and mutual systems combined—Per cent of increase in number of public and private exchanges, by geographic divisions: 1902 to 1907.....	31
Table 23.—States and territories grouped according to major per cent of Bell or independent (non-Bell) public exchanges: 1907 and 1902.....	31
Switchboards.....	32
Table 24.—Commercial and mutual systems combined—Kind, number, and capacity of subscribers' switchboards: 1907 and 1902.....	32
Table 25.—Commercial and mutual systems combined—Drops or jacks in use, by kind of switchboard: 1907.....	32
Power-plant equipment.....	33
Table 26.—Commercial and mutual systems combined—Exchange or central office power-plant equipment: 1907 and 1902.	33

# TELEPHONES.

## CHAPTER I.

### INTRODUCTION.

*Classes of telephone systems included.*—The extensive use of the telephone has developed a number of different business methods for the organization and conduct of the industry. This census report covers all commercial and mutual or cooperative telephone systems, and also all independent farmer or rural lines that were in operation in the United States during any part of the year ending December 31, 1907; but does not include private lines used exclusively for communication between different rooms or departments of manufacturing or mercantile establishments, hotels, or private residences, systems operated for the benefit of Federal, state, and municipal governments, or those owned or leased by steam or electric railroads and operated by them for their own exclusive use. The companies for which statistics were collected have been divided into the following two classes:

(1) The American Telephone and Telegraph Company, and its subsidiary companies, commonly known as the "Bell system."

(2) Companies and systems operated independently of the Bell system and denominated "independent (non-Bell)" throughout this report.

All of the Bell companies have been considered as commercial, and the statistics for the entire system were obtained from the central office of the parent company at Boston, Mass.

The independent companies are divided into the following three classes:

(a) Commercial systems operated primarily for revenue.

(b) Mutual systems, or cooperative associations and companies, operated not primarily for revenue, but for the convenience of the patrons, who are assessed to pay expenses of maintenance, operation, and extensions. Many systems doing business on the mutual basis are organized as incorporated companies under the laws of the states in which they operate.

(c) Independent farmer or rural lines, which have no regular exchanges or centrals of their own, but which may or may not be connected with the exchange of a Bell or of a commercial or mutual system.

The term "independent," as used in connection with farmer or rural lines, does not relate to the distinction between Bell and independent (non-Bell) systems, but rather to a distinction between the farmer or rural lines and the lines owned by commercial and

mutual companies. The practice of establishing short telephone lines connecting two or more houses in the rural districts has increased very rapidly during the past ten years. Frequently these lines have no distinctive names, and their existence is known only to the persons in their immediate vicinities. They are extended gradually as other persons desire to be connected and, if they are in the neighborhood of a telephone exchange, it frequently happens that arrangements are made for exchange service. The extension of the farmer lines by additions or consolidations leads gradually to the establishment of exchange systems and the formation of mutual or commercial systems. This method of development makes it difficult to establish a line of demarcation between farmer or rural lines and mutual systems and between mutual and commercial systems.

Some companies operate on a combined commercial and mutual basis. This is due to the fact that the lines were constructed under a mutual arrangement and that later additional subscribers were taken on a revenue basis. In such cases if the assessment income for the census year exceeded the revenue income, the companies are classed as mutual; but if the revenue income exceeded the assessment income, they are classed as commercial.

A statistical line of demarcation between the independent farmer or rural lines and the small mutual systems can not be established with a degree of accuracy that will enable a comparison of the statistics for 1907 with those for 1902. At the census of 1902 the statistics obtainable for these small lines were rather incomplete, and practically all of the farmer or rural lines that operated switchboards were counted, without regard to size or amount of business, either as commercial or as mutual companies. The fact that a switchboard was operated was found to be of little assistance in establishing the line of separation, and therefore for the census of 1907 a different policy has been adopted. In this report there are included in the class of independent farmer or rural lines systems operated on a combined mutual and revenue basis, where the combined income and assessments for the full census year amounted to less than \$1,000, and small systems owned by individuals or firms and apparently operated for revenue having an income of less than \$500 for the full year.

The contract agreements for exchange facilities between different companies or between companies and farmer or rural lines are made to meet local conditions. In some cases the company owning the exchange obtains virtual ownership or control of the connecting lines; in some a fixed rental per month or year is paid to the owning company; while in some the compensation depends upon the number of stations connected, and in others it depends upon the number of messages transmitted. In making the census report the actual ownership of each line is used, so far as possible, to determine whether to include it as a member of the Bell system or as one of the several forms of associations operated independently of the Bell system. The statistics for the Bell system, therefore, represent only the lines and stations reported by the company as owned by it or by its subsidiary companies. In addition, however, the American Telephone and Telegraph Company (Bell system) reported the number of stations on the lines that have contract agreements for service at its various exchanges.

At the census of 1902 great difficulty was experienced in securing a satisfactory enumeration of the small independent commercial and mutual telephone companies and systems and of the independent farmer or rural lines. Therefore a special effort was made at the present census to enumerate all lines of this character. In the first instance a card index was prepared containing the names and addresses of all telephone companies and independent farmer lines known to the Census Bureau. The basis of this index or list was the reports made at the census of 1902. But in order to make it complete other sources of information were utilized; the postmasters throughout the country were required to furnish the names and addresses of all telephone companies and of the owners of individual farmer or rural lines operating in their cities or immediate vicinities; state officials were requested to furnish lists of the telephone companies in their respective states, and fairly complete lists were received from most of the states; county officials were requested to furnish lists of the names and addresses of the owners of farmer or rural telephone lines in their respective counties, and a great deal of information was obtained from them; all of the independent telephone associations were requested to furnish the names and addresses of their members, of any other companies in the same neighborhood, and of the proprietors of near-by independent farmer or rural lines known to them; and the names and addresses of telephone companies were obtained from the city directories for all cities having a population of 50,000 or over, and from lists kindly furnished by the publishers of Telephony's Directory of the telephone industry.

Blank schedules soliciting the statistics required for the census were mailed to all the companies and to representatives of each of the independent farmer or rural lines named on the lists prepared from these

sources, and in addition each company or person addressed was requested to give the names and addresses of all connecting farmer or rural lines and of all other companies or lines in the vicinity. Many additional names were secured by this means. The preliminary lists prepared from these various sources contained in the neighborhood of 35,000 names, a total which, of course, included quite a large number of duplications that had to be eliminated from the perfected card index. The Census Bureau, however, not yet satisfied that it had a complete list, divided the United States into eighty-four enumeration districts for making a personal canvass, and assigned one or more special agents to do the work in each district. They were given the names and addresses of all the telephone companies and of the proprietors of the independent farmer or rural lines located in their respective districts, and they were instructed not only to secure reports from each company or line whose name they had, but also to make careful inquiry for any other companies and lines in operation in the district during any portion of the year 1907.

It is believed that as a result of these efforts, returns were secured from practically every company or line that was in operation during any portion of the census year.

*Period covered.*—The statistics cover the year ending December 31, 1907, or the business year of each company which most nearly conforms to that calendar year. All statistics taken for a fixed date, such as cash on hand, number of telephones or stations, and wire mileage, are reported as of the last day of the business year covered by the report taken for each company. When possible, comparative data for the census year ending December 31, 1902, and for prior censuses are presented in connection with the data for 1907.

Since during the year 1907 many companies were organized and many systems were installed, and a number abandoned or absorbed by other companies, the statistics do not represent a full year's operation for every company reported. As the census can not be taken instantaneously and the number of telephones in operation changes daily, the numbers given in the annual reports of many companies do not agree with the number reported to the census for the date on which its report was obtained. These conditions should be considered in comparing the census figures with those compiled for other purposes.

*Limitations of the statistics.*—As small commercial systems owned by individuals and firms, many mutual systems, and the farmer or rural lines generally have no statistics concerning capitalization, and as many could furnish no data in regard to income and expenses, number of employees, salaries, wages, and some other subjects that are covered in the reports of the larger companies, it is impossible to compile for the entire industry totals showing all of the detail called for by the inquiries of the census schedule. In fact, the number

of telephones and the miles of wire are the only facts that could be collected for a great many of the independent farmer or rural lines and the small mutual systems. Statistics of capitalization, income, expenses, number of employees, salaries, wages, and other features presented in the detailed tables have been secured only for the commercial companies and the more important mutual systems. Therefore the statistics on these subjects do not represent all of the interests operating the 12,999,369 miles of wire and the 6,118,578 stations or telephones reported for all classes of companies, systems, and lines.

In the cases of some companies which keep no account books from which exact statistics concerning their incomes and expenses during the year could be obtained, estimates have been resorted to for approximate data. The employees of some of the smaller companies and systems do not devote their entire time to the telephone business, and so the wages reported by these companies are necessarily much lower than the wages reported by companies whose employees are paid for a full term of service.

The telephone companies do not limit their operations to the state, county, or city in which their principal offices are located, but extend their lines irrespective of the political subdivisions of the country. In compiling the statistics it is impossible, in many instances, to assign to each state the amount of capital, income, expenses, salaries, and wages that are incident to the operation of the wires and telephones within its limits. As a rule, the total for all items of this character is credited to the state in which the general office is located, but an exception is made in the case of the American Telephone and Telegraph Company, which segregated the statistics so as to assign to each state a portion of each item commensurate with the equipment located in it.

*Systems or lines.*—Throughout this report the designations "company," "system," and "line" are frequently used as synonymous terms. They represent

a statistical unit, the connotation of which varies slightly to meet the requirements of the different methods of bookkeeping of the various companies and the practice of the office in the compilation of the data. There is an increasing tendency to bring independent telephone lines under one ownership and direct their operations from a central office. The industry is constantly undergoing changes in this respect. New companies are being organized and old systems consolidated or reorganized. On the whole these changes increase the number of cases in which several lines are considered as a single system.

As a rule, distinct ownership marks the separation of the statistical units, and all exchanges and lines operated under the same ownership are counted as a single system. Where several lines are combined under one ownership, or several properties have been brought under one management by purchase or stock control, they are counted as one system. The subsidiary companies of the American Telephone and Telegraph Company are, of course, counted as separate units, as are the subsidiary companies of some other large companies which furnished separate reports for their subsidiary companies. Each independent farmer or rural line and each independent commercial or mutual company, however small, also is counted as a separate system. The "number of lines" in the tabulation therefore represents consistently the number of separate ownerships, without regard to the character of the ownership, and does not represent the number of circuits or pole lines.

Since the meaning of the terms "system" and "line" is not always the same, the number is no indication of the magnitude of the interests nor is it a true guide as to the number of exchanges. The process of consolidation may have resulted in an actual decrease in the number of companies, but at the same time the number of exchanges, miles of wire, number of telephones, and amount of business transacted may have increased.

TELEPHONES.

TABLE 11.—COMMERCIAL SYSTEMS, MUTUAL SYSTEMS, AND INDEPENDENT FARMER OR RURAL LINES—COMPARABLE ITEMS: 1907 AND 1902.

	NUMBER OF SYSTEMS OR LINES.			MILES OF WIRE.			NUMBER OF STATIONS OR TELEPHONES.			PER CENT OF TOTAL.					
	1907	1902	Per cent of increase.	1907	1902	Per cent of increase.	1907	1902	Per cent of increase.	Number of systems or lines.		Miles of wire.		Number of stations or telephones.	
										1907	1902	1907	1902	1907	1902
All systems and lines.....	22,971	9,136	151.4	12,999,369	4,900,451	165.3	6,118,578	2,371,044	158.1	100.0	100.0	100.0	100.0	100.0	100.0
Commercial systems.....	4,901	3,157	55.2	12,418,042	4,779,571	159.8	5,426,973	2,225,981	143.8	21.3	34.6	95.5	97.5	88.7	93.9
Mutual systems and independent farmer or rural lines.....	18,070	5,979	202.2	581,327	120,880	380.9	691,605	145,063	376.8	78.7	65.4	4.5	2.5	11.3	6.1
Mutual systems.....	368	994	(1)	95,033	70,915	(1)	125,956	89,316	(1)	1.6	10.9	0.7	1.4	2.1	3.8
Independent farmer or rural lines..	17,702	4,985	(1)	486,294	49,965	(1)	565,649	55,747	(1)	77.1	54.6	3.7	1.0	9.2	2.4

<sup>1</sup> Increase or decrease not comparable.

Table 12 gives the statistics for the rural lines, by classes and by geographic divisions, for the censuses of 1907 and 1902. The classes comprise the rural lines owned by the commercial systems, together with all mutual systems (which are practically without exception rural lines), and all independent farmer or rural lines.

TABLE 12.—RURAL LINES, CLASSIFIED AS COMMERCIAL, MUTUAL, AND INDEPENDENT FARMER OR RURAL—NUMBER OF LINES, MILES OF WIRE, AND NUMBER OF STATIONS OR TELEPHONES, BY GEOGRAPHIC DIVISIONS: 1907 AND 1902.

DIVISION.	Census.	NUMBER OF LINES.				MILES OF WIRE.				NUMBER OF STATIONS OR TELEPHONES.			
		Total.	Commer- cial lines.	Mutual systems.	Inde- pendent farmer or rural lines.	Total.	Commer- cial lines.	Mutual systems.	Inde- pendent farmer or rural lines.	Total.	Commer- cial lines.	Mutual systems.	Inde- pendent farmer or rural lines.
United States.....	1907	124,847	106,777	1,368	17,702	1,591,240	1,009,913	95,033	486,294	1,464,773	773,168	125,956	565,649
	1902	21,577	15,598	994	4,985	259,306	138,426	70,915	49,965	266,968	121,905	89,316	55,747
North Atlantic.....	1907	19,749	18,391	15	1,343	180,445	141,259	6,687	32,499	164,932	112,601	8,725	43,606
	1902	1,151	947	119	85	18,069	14,152	2,985	932	18,706	12,499	4,656	1,551
South Atlantic.....	1907	5,201	4,221	15	965	87,207	47,207	7,456	32,857	64,149	25,542	12,273	26,334
	1902	1,195	674	73	448	17,824	7,629	4,549	5,646	11,268	3,822	3,995	3,451
North Central.....	1907	83,566	71,876	316	11,374	1,086,263	701,485	75,142	309,636	1,057,043	562,545	99,272	395,226
	1902	18,069	13,186	712	4,171	205,000	108,475	57,837	39,348	226,606	100,856	77,004	48,746
South Central.....	1907	9,926	7,195	13	2,718	146,548	71,827	2,925	71,796	115,905	41,143	3,603	71,159
	1902	958	634	69	255	13,889	6,564	3,699	3,626	7,829	3,546	2,492	1,791
Western.....	1907	6,405	5,094	9	1,302	90,464	48,135	2,823	39,506	62,744	31,337	2,083	29,324
	1902	204	157	21	26	3,864	1,606	1,845	413	2,559	1,182	1,169	268

<sup>1</sup> Mutual companies reported 12,378 party lines.

<sup>2</sup> Mutual companies reported 9,258 party lines.

The wire mileage and the number of telephones of the commercial rural lines are included in the wire mileage and the number of telephones given in other tables for the commercial systems. The statistics for the mutual systems and for the independent farmer or rural lines present in full the number of systems, the wire mileage, and the number of telephones for each class. Mutual systems reported 12,378 party lines in 1907 and 9,258 party lines in 1902, and the statistics for these lines would be analogous in the main to those for the rural lines owned by the commercial systems and to those for the independent farmer and rural lines. However, they would not include the total wire mileage and the total number of telephones reported for the mutual systems, as many of the tele-

phones are on single lines. Hence, as in the report for the census of 1902, the total number of mutual systems is used as the basis of comparison.

From Table 12 it appears that the greatest development of the rural telephone service of the country has been reached in the North Central states. By the end of 1907 these states contained 68.3 per cent of the wire and 72.2 per cent of the telephones employed in the rural service. While larger percentages of increase during the past five years are shown for other geographic divisions, the amounts involved are not so large.

Table 13 compares the statistics for the six states in which rural lines have had the greatest development.



## RESOLUTION NO. 2013

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANACORTES CONCERNING THE DEVELOPMENT OF A FIBER-OPTIC-BASED INTERNET NETWORK

**Whereas** the City of Anacortes has constructed a fiber optic network linking the Water Treatment Plant, the Wastewater Treatment Plant, and the various pump stations and other facilities that support the water and wastewater utilities for the purpose of telemetry and control of utility systems;

**Whereas** the City of Anacortes has connected that telemetry fiber network to other city facilities, including City Hall;

**Whereas** more than 1500 residents have responded to a City survey and shown overwhelming support for the City to move forward with a municipal fiber network;

**Whereas** the City published a Request for Qualifications for Internet Service Providers interested in leveraging a future City-owned fiber optic network to supply Internet access to residential and commercial customers within the city;

**Whereas** the Federal Communications Commission has recently repealed rules requiring "net neutrality," i.e., the principle that Internet service providers should treat all data on the Internet the same, not discriminating or charging differentially by user, content, website, platform, application, type of attached equipment, or mode of communication;

**Whereas** the City has accepted a \$205,000 grant (Interlocal #262) from Skagit County through the Port of Skagit to support a countywide fiber optic network, wherein the Port agreed not to offer dark fiber leases or internet services west of the Swinomish Channel;

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Anacortes:

**Section 1. Findings.** The City Council finds that:

1. Information technology generally, and internet access specifically, plays an enormous role in our community today, and its impact to how we live, work, learn, and play, will continue to grow throughout the 21<sup>st</sup> century.
2. Businesses, and some residents, have an *existing* need for internet access at symmetric gigabit or higher speeds.
3. Businesses, residents, and the City will have an ever-growing need for high-speed, low-latency internet access in the future, given expected technological developments, e.g., ultra-high-resolution streaming television, ultra-high-resolution medical imaging, Smart Cities Initiatives, Internet of Things, 5G wireless, and self-driving vehicles.

4. Businesses and residents currently have few options for internet access, with most options at various performance tiers available from only a single provider.
5. World-class technology infrastructure, such as fiber-optic-based internet, helps communities attract invaluable human talent and capital, economic investment; create jobs; expand educational opportunities; improve telemedicine options, advance public safety, and position the community to take advantage of future technological innovation.
6. Fiber optic networks are widely considered “future proof” because they transmit signals at the speed of light and are constrained only by the electronics that manage the system.
7. Redundancy and resiliency of a fiber network is a critical part of making the City attractive to investment and economic development.
8. Fiber optic internet access is currently provided by private entities in the City of Anacortes but is prohibitively expensive due to the high cost of deploying infrastructure and lacks a redundant loop to the Internet backbone.
9. Private investment in capital-intensive technology infrastructure tends to converge around major metropolitan areas and population centers and is unlikely to occur organically in small cities like Anacortes.
10. A City-owned fiber-optic-based network would promote competition among Internet service providers that can both provide low-cost connectivity options for those with low incomes and offer commercial and residential stakeholders connectivity options superior to existing choices.
11. There is value in public ownership of critical infrastructure and utility services, like fiber-optic-based internet.

**Section 2. Objectives.** In implementing the directives below, the City Council intends that the City will accomplish the following objectives:

1. Offer “future proof” fiber-optic-based internet access to City residences and businesses.
2. Increase the resiliency of fiber-optic-based internet access throughout the County.
3. Provide affordable access to fiber-optic-based internet access to City residences and businesses.
4. Improve opportunities for economic development that utilizes and requires reliable and resilient fiber-optic-based networks.
5. Improve quality of life and property values for residents that would connect to fiber-optic-based internet, especially as the need grows for higher-bandwidth internet connections.

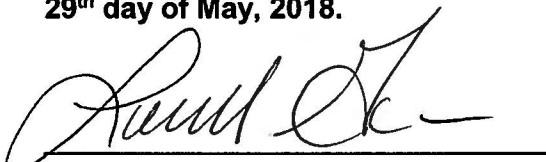
**Section 3. Directives.** The City Council authorizes and directs the preparation of a business plan to implement the following:

1. Build a redundant loop of fiber-optic-based internet access for the city.
2. Build a fiber-optic-based network throughout the city capable of delivering symmetrical internet and other network services.

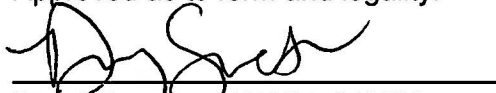


3. Consider lease of dark fiber to other entities and businesses that require additional capacity or resiliency.
4. Ensure net neutrality for all internet access provided by the City.
5. Track revenues and expenses for the fiber optic system on its own balance sheet.
6. Operate the fiber optic system in a self-sustaining way without unreimbursed subsidy from general fund revenues.
7. Prioritize build out of the network within the City and its urban growth area, with intent to ultimately expand to serve the remainder of Fidalgo Island.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ANACORTES on this 29<sup>th</sup> day of May, 2018.**

  
LAURIE M. GERE, MAYOR

Approved as to form and legality:

  
Darcy Swetnam, WSBA #40530  
City Attorney

ATTEST:

  
Steve D. Hoglund, City Clerk/Treasurer

# **CUSTOMER SIGN-UPS**

## **Through Early November 2019**

### **CENTRAL BUSINESS DISTRICT**

31 small business pre-orders

### **RESIDENTIAL CUSTOMERS**

193 orders

### **POINT-TO-POINT ETHERNET TRANSPORT**

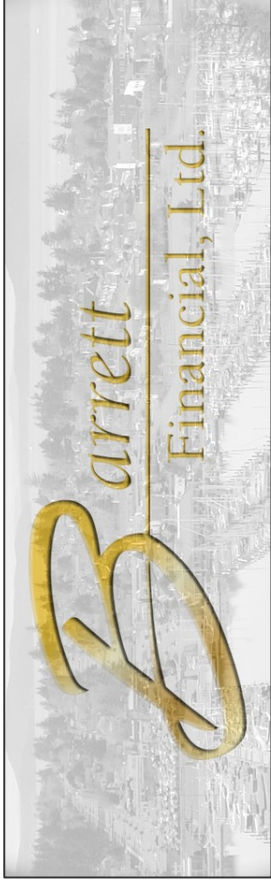
NoaNet – 1 Gbps, 5-year term, begins July 1, 2020

### **DARK FIBER LEASE INQUIRY**

Three circuits, term to be determined

# CUSTOMER SIGN-UPS

Through Early November 2019



**FIRST EXTERNAL CUSTOMER**

**1 Gbps INTERNET SERVICE**

**FIRST DAY OF SERVICE: Oct 25, 2019**

# ACTIVE NETWORK STATUS

Through Early November 2019

	<u>Specified</u>	<u>Ordered</u>	<u>Deployed</u>	<u>Configured</u>
<b>GPON Optical Line Terminal</b>	✓	✓	✓	50%
<b>Core Layer 3 Router</b>	✓	✓	✓	✓
<b>Application Servers</b>	✓	✓	✓	✓
<b>Console Server</b>	✓	✓	✓	✓
<b>Customer Premise Equipment</b>				
Residential Internet	✓	✓		
Business class Internet	✓	✓		
Dedicated Internet Access				
Ethernet circuits				

# MISCELLANEOUS

## Through Early November 2019

### **INTERCONNECTION WITH CITY OF MOUNT VERNON**

*City of Mount Vernon will bring fiber to CoA Water Treatment Plant*

*Will allow CoA to connect Skagit County sites in Anacortes to sites in Mt Vernon*

*CoA Public Safety access to Spillman Technologies through CoA fiber*

*Will allow CoA to connect to upstream Internet providers with presence in Mt Vernon*

*Will allow CoA to connect sites in Anacortes to sites in Mount Vernon*

### **SECOND UPSTREAM INTERNET CONNECTION WITH WAVE**

*Blue Heron reservoir to Water Treatment Plant fiber complete*

*Makes CoA's Internet service more reliable*

## FAQs

### Access - Anacortes Fiber Internet - Frequently Asked Questions

**Q: When will Access Fiber Internet be available in my neighborhood?**

A: Currently, we are scheduled to perform installations in the Central Business District in January 2020. Old Town is tentatively planned for Q1 of 2020 and our M Ave pilot area (24th to 32nd St.) in Q3 of 2020 as the attempt to cover the entire footprint of the city by 2023. While no other neighborhoods are scheduled yet, we are accepting orders city-wide.

**Q: If I place an order now, do I have to get service or face a fee?**

A: No. Placing an order now allows us to see where service is in high demand, and which plan is most popular. This helps us to plan and forecast more accurately as we grow our network. When we enter a neighborhood with several awaiting orders we will first contact the customers to confirm the order and the service requested. There is no penalty for changing your mind before an installation date is agreed upon and scheduled.

**Q: Do I need to rally my neighbors to get service to my neighborhood in Anacortes?**

A: We are already planning to make Access Fiber Internet available to every home and business in Anacortes, so you don't have to canvas your neighborhood. That being said, when all other factors are equal, a neighborhood that has far more orders than an equivalent neighborhood may get connected earlier.

**Q: How do I get billed?**

A: Residents that currently receive a utility bill will see Fiber Internet as a new line item on their existing account bill. Customers that don't currently have a utility billing account with the city of Anacortes will have one created.

**Q: How do I pay my bill?**

A: You can pay online at the city of Anacortes Online Payment page or in person at City Hall.

**Q: Will my bill go up after a promotional introductory period?**

A: No. Prices were established and approved by Anacortes City Council. Rates do not fluctuate and would only change with direct action from City Council through their usual public proceedings.

**Q: How much will I be charged in taxes on my bill?**

A: Since Internet alone is an information service, it is not taxed, therefore we do not have to charge any taxes on your service. No really. No taxes.

**Q: Is there a fee to have Fiber Internet connected at my home or business?**

A: There is a one-time Installation fee of \$100 after a representative has performed a walk through and an installation has been scheduled, which will appear on your first bill.

**Q: What does the installation process look like?**

A: In general, installation looks a bit like a traditional cable or DSL Internet installation. If you are in a location where the fiber is connected to telephone poles we would drop a line to your building, penetrate a wall to get the fiber inside, and terminate the fiber in the home. If you are in an area where utilities are underground, we bore or trench to the home and then follow the same steps as an aerial installation.

**Q: Will my router work with the Fiber Internet service?**

A: Yes, however routers that are more than a couple years old may not meet the newer WiFi standard which would limit your WiFi Internet performance. If desired, we can provide a router that we manage for an additional monthly cost of \$10.

**Q: What about modems?**

A: With Fiber Internet, an Optical Network Terminal (ONT) is roughly equivalent to a cable modem. This device transfers your Internet signal from the optical domain to the electrical. At installation, we will place an ONT inside the home or business. If you have a City Managed WiFi plan, the ONT will be integrated with router technology in order to provide a WiFi signal. If you do not have a City Managed WiFi plan, we will place a basic ONT in the site which can be connected to your router via an ethernet cable. There is no fee for the latter ONT device.

**Q: Why would I want a Managed WiFi plan?**

A: With a Managed WiFi plan, we will provide a high-end router at installation that our department can prepare and troubleshoot. Additionally, customers on a Managed WiFi plan that have larger floor plans will be issued a WiFi extender to ensure wireless coverage throughout the home, at no additional expense. If you provide your own router and have a connection issue that is determined to be outside of our network and hardware, we will not be able to troubleshoot a router or other equipment we have not issued.

**Q: If I want to provide my own router, how much should I expect to pay for a decent one?**

A: Routers range widely in price and specifications, but you can expect to spend anywhere between \$50-\$300.



**Q: If I start on one service plan, may I move to another plan without penalty?**

A: Yes, customers may change plans to accommodate their usage. Billing will be prorated.

**Q: How long do I have to keep the service?**

A: Residential customers will be on a month to month contract that they may cancel at any time without penalty. Business customers must pay for service for an initial 12 month period before their contract becomes month to month.

**Q: Do you cap or limit my data usage?**

A: No. There are no data caps on our service.

**Q: When can I cancel my former service?**

A: We recommend that you keep your existing service provider until Fiber Internet service has successfully been installed, in order to prevent any gaps in service.

**Q: If I rent or lease a property do I need to get permission from my landlord to get Fiber Internet service?**

A: Yes, we will contact the property owner on your behalf in order to get permission to install fiber.

**Q: If I live in a condo that gets a bulk-rate contract to provide service to all the units and is paid by the condo association, will Anacortes Fiber do the same?**

A: We can provide a bulk contract so that all of the bills are paid by the condo association, however we do not offer a discount. We are confident in our competitiveness, since our service is already a great price for the speed and we feel that bulk-rate discounts would not be fair to other residents.

**Q: What makes Fiber Optic Internet so great?**

A: Fiber Optic Internet infrastructure is future-proof, because once data hits the fiber optic cable it is moving at the speed of light.

**Q: My email is through my current Internet provider. Will Anacortes Fiber provide my new email?**

A: Anacortes Fiber Internet does not offer email accounts, but there are numerous options (Gmail, Yahoo, Outlook, Zoho, etc.) that offer free email services.

**Q: Won't 5G make Fiber Optic Internet obsolete?**

A: 5G may be great for mobile data, however it will rely on fiber optic infrastructure to the 5G towers and will be used in conjunction with fiber rather than replace it.

**Q: Is everyone in Anacortes required to get Internet from the city?**

A: No. Access will be available to businesses and residents in Anacortes, but service is not mandated.

## Have More Questions?

**Contact Us**

**Phone:** (360) 588-8361

**Email:** [broadband@cityofanacortes.org](mailto:broadband@cityofanacortes.org)

**Visit:** City Hall 904 6th St. Anacortes, WA 98221

# EXHIBIT 59

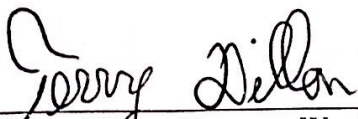
1 I Terry Dillion declare as follows:

2 I am over the age of 18, a resident of Tacoma, Washington.

3 I declare under penalty of perjury under the laws of the State of Washington that the  
4 forgoing is true and correct.

- 5 1. That the Email attached hereto as Exhibit A, is a true and correct copy of an email I sent  
6 to Mitchell Shook on June 20, 2019.
- 7 2. That Exhibit B is a true and correct copy of my resume
- 8 3. That, by definition, Click! is a network that provides telecommunication products, and  
9 CATV is one of those telecommunication products.
- 10 4. That Telecommunication is the transmission of signs, signals, messages, words,  
11 writings, images and sounds or information of any nature by wire, radio, optical or other  
12 electromagnetic systems. Telecommunication occurs when the exchange of information  
13 between communication participants includes the use of technology. It is transmitted  
14 through a transmission media, such as over physical media, for example, over electrical  
15 cable, or via electromagnetic radiation through space such as radio or light. Such  
16 transmission paths are often divided into communication channels which afford the  
17 advantages of multiplexing. Since the Latin term communication is considered the social  
18 process of information exchange, the term telecommunications is often used in its plural  
19 form because it involves many different technologies.

20 Signed at Tacoma, Washington this 26<sup>th</sup> day of June 2019

21  
22   
23 Terry Dillon, Tacoma, Wasington

**From:** [Terry Dillon](#)  
**To:** [mitch@advancedstream.com](mailto:mitch@advancedstream.com)  
**Cc:**  
**Subject:** Re: response...  
**Date:** Thursday, June 20, 2019 9:48:05 AM

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Coax cable, fiber cable, coax/ fiber redundant rings and satellite dish farms are Telecommunication network infrastructure mediums (physical material).

Outside plant nodes, residential/business modems, settop boxes, routers, servers, switches, sonet multiplexers, digital cross connect systems, network interface units are Telecommunications network infrastructure electronic transport devices which connect to the chosen infrastructure medium (see above).

TV channels, DS1's, DS3's, OC1's, OC3's, residential/business broadband services (Internet), 10 Mb/s Ethernet, 50 Mb/s Ethernet, 100 Mb/s Ethernet, 1 Gb/s Ethernet are revenue generating Telecommunication services which are carried on electronic transport infrastructure devices (see above) across the chosen physical medium (see above).

Click! Network has multiple Telecommunication networks; Acorn (Power), I-net (COT), cable modem, cable television, business data services, broadband services (ie, direct services to COT Library system, etc.), internal LAN.

Click! Network is a Telecommunication Network selling Telecommunications services is a Telecommunications Network!

P.S. - The Washington "Utilities" commission regulates CenturyLink, which is a Telecommunications company. The reason the UTC regulates them is they consider CenturyLink a Utility.

Sent from my iPad

On Jun 20, 2019, at 6:49 AM, <[mitch@advancedstream.com](mailto:mitch@advancedstream.com)> <[mitch@advancedstream.com](mailto:mitch@advancedstream.com)> wrote:

Here is the sort of nonsense they are throwing at me...  
Now I have sort all this out for the Judge by Monday..  
Mitch

**Mitchell Shook**  
Founder - CEO  
Advanced Stream Broadband  
P.O. Box 7641  
Tacoma, WA 98417  
Office (253) 627-8000  
[Mitch@Advancedstream.com](mailto:Mitch@Advancedstream.com)  
<[Shook Opposition Reply.pdf](#)>

## Summary

A seasoned telecommunications professional skilled in management and technical disciplines. Major strengths in network management, organization, planning and supervision. Additional skills as a technical instructor, internal auditor, network security specialist, and a telecommunications technician. A dependable, thorough, and well-organized leader who communicates effectively and is a strong team player.

## Business Experience

*Retired*

2012 To Present

### **Click! Network Tacoma, WA**

*Network Operations Manager*

2004 – 2012

- Member of the Click! Network senior leadership team.
- Assembled organization; hired, supervised and mentored staff.
- Supervised and directed engineering staff responsible for Internet, broadband, video, INET and business data networks design, implementation and maintenance.
- Managed multiple Click! Networks; Cable modem Termination System (CMTS), Hybrid fiber Coax (HFC), Institutional (INET), Element Management System (EMS), Fiber Optic Cable, Synchronous Optical, Metro Ethernet.
- Management of Click! video headend facility.
- Responsible for Network Operations Center.
- Answerable for network and service quality assurance.
- Developed and maintained highly reliable, redundant Internet bandwidth Architecture.
- Accountable for annual capital and expense budgets.
- Internet, broadband, video, business data service customer interface and sales and marketing support.
- Internet, broadband, video, business data network vendor acquisition and management.
- Acquisition and growth of Internet and broadband carrier partnerships.
- Primary administrative and technical interface for City departments; City of Tacoma IT, Tacoma Police, Tacoma Fire, Tacoma Library System, etc.
- Technical and support interface for ISP (Internet Services Providers) and MSA (Master service Agreement) partners.
- Responsible for administration of Communications Assistance for Law Enforcement Act (CALEA) requests.
- Representative on Click! Networks new product development team.

*Broadband Services Manager*

1998 – 2004

- Assembled organization, hired staff and produced and maintained budget.
- Directed engineering staff responsible for Internet, broadband network design, implementation and maintenance.
- Supervised broadband services technicians responsible for installation and maintenance of business Internet, broadband digital networks and associated customer services.
- Managed extensive Internet Protocol Metropolitan Area Network.
- Answerable for 7x24 Internet/broadband network surveillance.
- Accountable for annual capital and expense budgets.
- Customer interface, sales and marketing support.
- Broadband services vendor acquisition and management.
- Development and growth of Carrier partnerships.
- Member of broadband product development team.
- Charter member Tacoma Technology Consortium.

**Century Communications Gig Harbor, WA**

*Circuit Design Engineer*

1997 – 1998

- Access carrier, special services, broadband and private line circuit design.
- Customer and marketing circuit design interface.
- Management of the facility equipment database.
- Provided technical assistance to employees as it relates to the circuit design function.

**U S WEST Communications Seattle, WA**

*Network Executive Staff; Internal Auditor, Manager*

1995 – 1997

- Performed internal operational audits for Network organization.
- Reviewed departmental compliance with policies and procedures.
- Evaluated existing business controls and their use.
- Recommended additional controls when appropriate.
- Determined extent to which company assets were protected and safeguarded.
- Audit findings and recommendations successfully supported process change
- Acted as a catalyst for continuous improvement.

*Business and Government Services Center, Manager*

1995

## Terry Dillon

---

- Supervised 24 technicians responsible for maintenance of broadband digital services in Washington, Oregon, and Colorado.
- Direct customer interface to remedy service problems.
- Acted as customer advocate with staff, engineering, and line management.
- Successfully facilitated occupational/management conflict resolution teams.

### *Network Executive Staff; Network Security Specialist, Manager* 1992-1995

- Administered corporate Information Asset Protection policy for 14 state Network organization and approximately 25,000 employees.
- Developed and implemented Information Asset Protection awareness program.
- Directed network security programs.
- Conducted regional network element and intellectual property security reviews.
- Advised network employees on network element and intellectual property security.

### *Digital Systems Operations Center; Field Work Group Manager* 1990 – 1992

- Effectively supervised 18 technicians.
- Conditioned and maintained 130 subscriber loop carrier systems.
- Arranged and supported broadband digital systems at customer premise locations.
- Provisioned 3,500 broadband carrier service orders annually.
- Managed the U S WEST-Boeing broadband network, annual revenue \$20M.
- Successfully managed broadband digital equipment for 16 central offices.

### *Digital Systems Operations Center; Provisioning and Restoration Manager* 1988 -1990

- Supervised 15 technicians and 3 clerks responsible for center.
- Successfully processed 7,000 broadband service orders per year.
- Facility Alarm Surveillance manager for Western Washington.
- Responsible for test equipment acquisition and inventory control for center.
- Organizational training coordinator.

### *Technical Course Development / Instruction, Manager* 1985 –1988

- Developed and delivered technical courses on broadband digital transmission system.
- Actively interfaced with internal, client, and vendor groups to successfully plan and deliver current technical training.
- Delivered first course offering and trained other technical instructors.
- Determined if local course development was cost justified; if not, arranged for vendor training.



## Terry Dillon

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### **Pacific Northwest Bell Tacoma / Seattle, WA** 1979 – 1985

#### *Facility Maintenance Center Field Technician*

- Installed and maintained first Fiber Optic transmission systems in Washington State.
- Accountable for extensive broadband digital network.
- Conditioned and sustained various digital technologies including broadband, pair-gain, asynchronous/synchronous fiber optic, digital cross connect systems and fiber optic cable termination equipment.
- Provisioned and maintained customer circuits; voice, toll grade, low speed data, high capacity broadband circuits and central office trunking.
- Responsible for multiple vendor environments.
- Member of the Communications Workers of America.

### **Pacific Telephone San Francisco Bay Area, CA**

1967 – 1979

#### *Digital Network Center Field Technician*

- Installed, provisioned and maintained inter-office and last mile broadband digital communications systems and services.
- Member of the Communications Workers of America.

# EXHIBIT 60

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# Contents

## Part A Overview

<b>About NBN Co</b>	<b>3</b>
Who we are	3
<b>Delivering on our commitment</b>	<b>4</b>
<b>Board and Management message</b>	<b>6</b>
<b>FY19 Key achievements</b>	<b>10</b>
<b>Our future focus</b>	<b>12</b>
Customer experience strategy	14
Business segment strategy	20
<b>Lifting Australia's digital capability</b>	<b>22</b>
Maintaining progress and meeting future expectations	22
Australia's data demand	24
Australia's data usage	26
Driving penetration through industry collaboration	28
Future technology roadmap	29
<b>Social and economic benefits</b>	<b>34</b>
Commitment to underserved areas	38
Commitment to regional Australia	39
<b>Building a high-performing workforce</b>	<b>40</b>
Diversity and inclusion	41
Health, Safety and Environment (HSE)	42
<b>Board of Directors and NBN Co Management team</b>	<b>44</b>

## Part B Plan Summary

<b>Plan summary</b>	<b>46</b>
<b>Operational and financial forecasts</b>	<b>48</b>
Ready to connect and activations	49
Revenue and ARPU	50
Operating expenses and subscriber payments	51
Cost per Premises	52
Peak funding and sensitivities	54
Sources of funding	54
Long-term financial outlook	55
Subsidiaries	55
<b>Risk management</b>	<b>56</b>
<b>Additional footnotes</b>	<b>60</b>
<b>Glossary</b>	<b>62</b>

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# About NBN Co

## Who we are

**NBN Co is the company building and operating the nation's wholesale, local access broadband network. By providing access to fast, reliable and affordable broadband services, NBN Co is helping Australian homes and businesses realise the social and economic benefits that high-speed broadband can unlock.**

NBN Co's purpose is to lift the digital capability of Australia.

NBN Co is accountable to the Commonwealth Government and is working to deliver a National Broadband Network that meets the government's Statement of Expectations<sup>1</sup>, 24 August 2016.

The Company is working to complete the network build and ensure that all Australians have access to fast broadband as soon as possible, at affordable prices, and at least cost to taxpayers.

In addition to building and maintaining a network that is resilient and secure, NBN Co is committed to delivering access to peak wholesale download speeds of at least 25 megabits per second (Mbps) to all premises, and at least 50Mbps to 90 per cent of the fixed-line premises<sup>2</sup>. NBN Co will ensure that upgrade paths are available for the network's multi-technology mix as required.

As the network wholesaler, NBN Co provides access to all Retail Service Providers (RSPs) on a non-discriminatory basis. This approach is intended to level the playing field in the Australian telecommunications industry, enhancing competition and providing greater choice for customers<sup>3</sup> across the country. It is through RSPs that customers connect to the **nbn**<sup>TM</sup> network for access to high-speed internet.

NBN Co is delivering high-speed broadband to customers across Australia over an area of more than seven million square kilometres. The Company is committed to working with Delivery Partners, RSPs and stakeholder groups to help more Australians use the network to drive positive benefits for themselves and their communities.

1 <https://www.communications.gov.au/publications/nbnstatementofexpectations>

2 This will be achieved at the end of co-existence, which refers to the period where there are active Telstra services running over the parts of the legacy Telstra network that NBN Co has acquired from Telstra.

3 Final downstream customers to NBN Co's Retail Service Providers (RSPs).

---

## Delivering on our commitment

1

NBN Co's purpose

2

What are NBN Co's goals?

---

To lift the digital capability of Australia

Complete the build by 30 June 2020<sup>1</sup>

Enhance the network capability over time to meet the growing and diverse needs of Australian homes and businesses

<sup>1</sup> NBN Co's build completion commitment is that all standard installation premises in Australia are able to connect to the **nbn™** access network as at the build completion date. This excludes premises in future new developments which will be an ongoing activity for the Company beyond the build completion date. It also excludes a small proportion of premises defined as 'complex connections' - which includes properties that are difficult to access, culturally significant areas and heritage sites - where connection depends on factors outside of NBN Co's control such as permission from traditional owners, and where network construction to allow such premises to connect will be an ongoing activity of NBN Co beyond the build completion date.

### 3 What are NBN Co's priorities?



Ensure all Australians have access to **high-speed, resilient and secure broadband**



Keep NBN Co a great place to work, **underpinned by a customer-led culture**



Deliver a customer experience that drives **satisfaction, use and network preference**



Develop a product and pricing portfolio that **addresses our customers' diverse needs**



Strengthen relationships with government, industry and community to **optimise customer benefits**



Build capabilities for the future and grow profitability to **enable re-investment to benefit our customers**

### 4 Supported by

**6,400<sup>1</sup>**  
NBN Co staff

**More than 100**  
Retail Service  
Providers selling  
services over the  
**nbn<sup>TM</sup>** access  
network

1. This figure includes NBN Co employees and contractors.

## Board and Management message

**Construction of the nbn™ access network is one of the largest infrastructure projects ever undertaken in our nation's history, one that aims to lift Australia's digital capability by fundamentally changing the way we learn, do business and connect with each other.**

To date, NBN Co and its Delivery Partners have rolled out more than 280,000 kilometres of fibre-optic cable across Australia, and re-purposed and upgraded existing Hybrid Fibre Coaxial (HFC) and copper technologies, bringing fast broadband at scale to many parts of metropolitan Sydney, Melbourne, Brisbane, Adelaide and Perth. The company has built a Fixed Wireless network comprising some 2,200 towers and approximately 13,000 cells, providing coverage of approximately 250,000 square kilometres, as well as launching two satellites which overlook seven million square kilometres of this great continent.

Building this vast piece of critical network infrastructure has been a complex task. As we continue to improve the way we roll out the network and run the business, we must constantly balance a range of objectives for our company, the telecommunications industry, and the connectivity goals of our nation.

Firstly, we must meet the Statement of Expectations from the Commonwealth Government to complete the build, connect Australian homes and businesses to this network, and deliver a high quality, fast broadband experience. We forecast to achieve a 3.2 per cent return on the Commonwealth's investment of \$29.5 billion.

Secondly, we need to work with the telecommunications industry to create the right conditions that will allow us all to thrive and prosper in the long term. For NBN Co, this means reaching a positive annual cash flow, anticipated to be from FY23, so we can continue to reinvest in our network, our business and our products as technology and customer needs change in the decade ahead.

And most importantly – we need to ensure that we deliver the best possible experience for customers once they are connected to services over the nbn™ access network and increasingly incorporate online experiences into their daily lives.

Ten years since the formation of the National Broadband Network was first announced, we can proudly say that we have made extraordinary progress, but with lots of heavy lifting still ahead, as we strive to meet these objectives.

### Progress

Over the last 12 months we have seen improving customer service yield good results. We have improved the connection and service quality of our HFC network, scaled the rollout of our Fibre-to-the-Curb (FTTC) network, launched wholesale products designed for businesses that are capable of delivering Gigabit speeds<sup>1</sup>, and put in place better wholesale pricing options so more customers can experience higher speeds with reduced congestion during busy hours.

We have also continued to meet our construction targets with FY19 being the company's single biggest year for build and activations. On 30 June 2019, almost 10 million homes and businesses were made Ready to Connect (RTC) with more than 5.5 million premises connecting to a service over the nbn™ access network. This produced record revenue of \$2.8 billion in FY19. If NBN Co's revenue continues to grow beyond \$5 billion annually as forecast, it will underwrite our future investments into customer experience and a high-speed, resilient and secure network that can help enable Australia's digital needs.

Of course, as we edge closer to making 11.5 million homes and businesses ready to connect by the end of June 2020, we know we still have much work to do.

These construction and operational objectives will always be critical to our success, and connecting homes and businesses as quickly and seamlessly as possible remains core to what we do. But providing access to quality and affordable services that our customers – the people living in Australian homes and working in Australian businesses – need and deserve will be what drives us through the next phase of our evolution.

## Customer led

Over the period of this Corporate Plan, we will continue to work in collaboration with our Retail Service providers (RSPs), the industry, regulators and the government to better understand customers' needs and their experience with our services. We have made strong progress over the past financial year but recognise that there is always more to do to delight customers, address negative consumer sentiment, and in doing so enhance overall customer satisfaction.

Certain things are not completely within the control of NBN Co and require us to work closely with the telecommunications industry to help ensure that the products we deliver to the market meet the expectations of all Australians – from entry-level broadband customers to business enterprises. This we are committed to do, to produce the best possible customer experience we can.

We will also continue to focus on the future, to keep up with the latest technological trends and innovations to ensure our network can be enhanced and upgraded in a cost-effective and timely manner to meet the growing and diverse connectivity needs of Australian homes and businesses.

1 Regardless of the retail service you purchase, the actual wholesale speeds delivered by the **nbn**<sup>™</sup> Enterprise Ethernet product will be less than 1000 Mbps due to equipment and network limitations. Your experience, including the speeds actually achieved over the **nbn**<sup>™</sup> network, depends on some factors outside our control (like your equipment quality, software, and how your service provider designs its network). If your service provider has not selected a bandwidth in the highest of three classes of service available for **nbn**<sup>™</sup> Enterprise Ethernet, the speeds you experience may be affected by contention on the **nbn**<sup>™</sup> network, particularly in busy periods.



# EXHIBIT 61

light, heat, or power for hire; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"Electrical company" includes any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever (other than a railroad or street railroad company generating electricity solely for railroad or street railroad purposes or for the use of its tenants and not for sale to others), and every city or town owning, operating or managing any electric plant for hire within this state. "Electrical company" does not include a company or person employing a cogeneration facility solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical company, state or local public agency, municipal corporation, or quasi municipal corporation engaged in the sale or distribution of electrical energy, but not for sale to others, unless such company or person is otherwise an electrical company.

"LATA" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Private telecommunications system" means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. "Private telecommunications system" does not include a system offered for hire, sale, or resale to the general public.

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

"(~~Telephone~~) Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any (~~telephone line or part of telephone line used in the conduct of the business of affording telephonic communication~~) facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.

(~~"Telephone line" includes~~) "Facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any (~~telephone~~) telecommunications company to facilitate the (~~business of~~

affording telephonic communication)) provision of telecommunications service.

~~((“Telegraph company” includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any telegraph line or part of telegraph line used in the conduct of the business of affording for hire communication by telegraph within this state.~~

~~“Telegraph line” includes conduits, poles, wire, cables, cross-arms, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated or owned by any telegraph company to facilitate the business of affording communication by telegraph:))~~

“Telecommunications” is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

“Water system” includes all real estate, easements, fixtures, personal property, dams, dikes, head gates, weirs, canals, reservoirs, flumes or other structures or appliances operated, owned, used or to be used for or in connection with or to facilitate the supply, storage, distribution, sale, furnishing, diversion, carriage, apportionment or measurement of water for power, irrigation, reclamation, manufacturing, municipal, domestic or other beneficial uses for hire.

“Water company” includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That it shall not include any water system serving less than sixty customers where the average annual gross revenue per customer does not exceed one hundred twenty dollars per year.

“Cogeneration facility” means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of the sequential generation of electrical or mechanical power and useful heat from the same primary energy source or fuel.

“Public service company” includes every gas company, electrical company, ~~((telephone))~~ telecommunications company, ~~((telegraph company))~~ and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

The term “service” is used in this title in its broadest and most inclusive sense.

NEW SECTION. Sec. 3. Telecommunications companies may petition to be classified as competitive telecommunications companies under section 4 of this act or to have services classified as competitive telecommunications

Sec. 17. Section 80.36.030, chapter 14, Laws of 1961 and RCW 80-36.030 are each amended to read as follows:

Such ~~((telegraph or telephone))~~ telecommunications company may appropriate so much land as may be actually necessary for its telecommunications line ~~((of telegraph or telephone))~~, with the right to enter upon lands immediately adjacent thereto, for the purpose of constructing, maintaining and operating its line and making all necessary repair. Such ~~((telegraph or telephone))~~ telecommunications company may also, for the purpose aforesaid, enter upon and appropriate such portion of the right-of-way of any railroad company as may be necessary for the construction, maintenance and operation of its ~~((telegraph or telephone))~~ telecommunications line: PROVIDED, That such appropriation shall not obstruct such railroad of the travel thereupon, nor interfere with the operation of such railroad.

Sec. 18. Section 80.36.040, chapter 14, Laws of 1961 and RCW 80-36.040 are each amended to read as follows:

Any ~~((telegraph or telephone corporation or))~~ telecommunications company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary telecommunications lines ~~((of telegraph or telephone))~~ for public traffic along and upon any public road, street or highway, along or across the right-of-way of any railroad corporation, and may erect poles, posts, piers or abutments for supporting the insulators, wires and any other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: PROVIDED, That when the right-of-way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of right of eminent domain, as provided by law: PROVIDED FURTHER, That where the right-of-way as herein contemplated is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such ~~((telegraph or telephone))~~ telecommunications lines can be erected thereon.

Sec. 19. Section 80.36.050, chapter 14, Laws of 1961 and RCW 80-36.050 are each amended to read as follows:

Every railroad operated in this state, and carrying freight and passengers for hire, or doing business in this state, is and shall be designated a "post road," and the corporation or company owning the same shall allow ~~((telegraph and telephone))~~ telecommunications companies to construct and maintain ~~((telegraph and telephone))~~ telecommunications lines on and along the right-of-way of such railroad.

In case of the refusal or neglect of any railroad company or corporation to comply with the provisions of this section, said company or corporation shall be liable for damages in the sum of not less than one thousand

dollars nor more than five thousand dollars for each offense, and one hundred dollars per day during the continuance thereof.

Sec. 20. Section 80.36.060, chapter 14, Laws of 1961 and RCW 80.36.060 are each amended to read as follows:

Any person who wilfully and maliciously does any injury to any (~~telegraph or telephone~~) telecommunications property mentioned in RCW 80.36.070, is liable to the (~~corporation or~~) company for five times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

Sec. 21. Section 80.36.070, chapter 14, Laws of 1961 and RCW 80.36.070 are each amended to read as follows:

Any person who injures or destroys, through want of proper care, any necessary or useful fixtures of any (~~telegraph or telephone corporation or~~) telecommunications company, is liable to the (~~corporation or~~) company for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures or destroys the subaqueous cable of a (~~telegraph or telephone corporation or~~) telecommunications company, subjects its owners to the damages hereinbefore specified.

No (~~telegraph or telephone corporation or~~) telecommunications company can recover damages for the breaking or injury of any subaqueous (~~telegraph~~) telecommunications cable, unless such (~~corporation or~~) company has previously erected on either bank of the waters under which the cable is placed, a monument indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings and termini of the cable.

Sec. 22. Section 80.36.080, chapter 14, Laws of 1961 and RCW 80.36.080 are each amended to read as follows:

All rates, tolls, contracts and charges, rules and regulations of (~~telephone and telegraph~~) telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any (~~telephone or telegraph~~) telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient.

Sec. 23. Section 80.36.090, chapter 14, Laws of 1961 and RCW 80.36.090 are each amended to read as follows:

~~((telephone company or telegraph))~~ telecommunications company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

No ~~((telephone company or telegraph))~~ telecommunications company subject to the provisions of this title shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by ~~((either telephone or telegraph))~~ telecommunications between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys at law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other ~~((telephone companies, telegraph))~~ telecommunications companies, railroad companies, and street railroad companies.

Sec. 28. Section 80.36.140, chapter 14, Laws of 1961 and RCW 80.36.140 are each amended to read as follows:

Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any ~~((telegraph company or telephone))~~ telecommunications company for the transmission of messages by ~~((telegraph or telephone))~~ telecommunications, or for the rental or use of any ~~((telegraph line, telephone line or any telegraph))~~ telecommunications line, instrument, wire, appliance, apparatus or device or any ~~((telephone))~~ telecommunications receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance or device, or any ~~((telephone))~~ telecommunications extension or extension system, or that the rules, regulations or practices of any ~~((telegraph company or telephone))~~ telecommunications company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force, and fix the same by order as provided in this title.

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any ~~((telegraph company or telephone))~~ telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any ~~((telegraph company or telephone))~~ telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate

# EXHIBIT 62

## MASTER COMMUNICATIONS SERVICES AGREEMENT

THIS MASTER COMMUNICATIONS SERVICES AGREEMENT ("Agreement") is made and entered into this 17th day of November, 2008, by and between City of Tacoma, Department of Public Utilities, Light Division, d.b.a. and herein after called Click! Network, 3628 South 35th Street, Tacoma, Washington 98407-9192 ("Service Provider") and CenturyTel Long Distance, LLC, a Louisiana limited liability company doing business in the State of Washington, with offices located at 8102 Skansie Avenue, Gig Harbor, Washington, 98332 ("Customer")

### WITNESSETH:

**WHEREAS**, Service Provider owns and operates communications facilities and is in the business of providing dedicated transport services; and

**WHEREAS**, Customer desires Service Provider to provide such communications services to Customer; and

**WHEREAS**, Service Provider desires to provide dedicated transport services to Customer on Service Provider facilities pursuant to certain terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties hereby mutually agree as follows:

### ARTICLE 1 - DEFINITIONS

**1.1** The terms used in this Agreement shall have their normal or common meaning, except that the following terms shall have the following meanings for the purpose of this Agreement:

(a) Acceptance or Accepted. Customer will be deemed to have given its "Acceptance" or to have "Accepted" a Circuit on the earliest date of: (i) when testing pursuant to Article 3.0 of Appendix 1 has been successfully completed; (ii) when Customer puts the Circuit into revenue producing service; (iii) five (5) business days past the scheduled due date for Customer's notifying Service Provider of Circuit Acceptance, if no such notice has been provided and no notice of non-acceptance has been provided; and (iv) in the event of an expedited order, the scheduled due date for Customer's notifying Service Provider of its Acceptance if no such notice has been provided and no notice of non-acceptance has been provided.

(b) Access Service Request ("Service Request" or "ASR") shall mean the capacity order for Service, executed by Customer and Service Provider, which delineates the type of Service, quantity of Circuits, location served, Point of Termination, protocols, Circuit term, requested Start of Service Date and other information necessary for the Service Provider to provide Service to the Customer. A blank ASR form is attached hereto as Exhibit A.

(c) Agreement. "Agreement" shall mean this Master Communications Services Agreement, including the attached Schedules, Appendices and Exhibits.



- (d) Chronic Trouble. "Chronic Trouble" shall mean a situation in which a particular Circuit has experienced the same type of Trouble twice or more within a thirty (30) day period, for which trouble tickets have been opened, and the Trouble is found not to be on the Customer's side of the Point of Termination.
- (e) Circuit. "Circuit" shall mean the individual telecommunications facility included as part of the Service.
- (f) Emergency Maintenance. "Emergency Maintenance" shall mean maintenance which if not accomplished promptly by Service Provider, could result in a serious degradation or loss of service to the Customer or the End User.
- (g) End-User. "End User" shall mean a user to whom Customer will provide telecommunications services utilizing, in part, the telecommunications Services provided by Service Provider to Customer under this Agreement.
- (h) Interconnection Facilities. "Interconnection Facilities" shall mean all local access facilities between Customer's Point of Presence, the local exchange carrier's central office, the long-distance carrier's point of presence and the End-User sites.
- (i) Mid-Span Meet Interconnection Arrangement. "Mid-Span Meet Interconnection Arrangement" shall mean a method of facilities interconnection in which Service Provider and Customer connect their respective outside plant facilities at a common cable splice point(s). Service Provider and Customer shall each be responsible for providing, controlling, operating and maintaining their respective optronic, electronic and other equipment necessary to support this method of interconnection.
- (j) Network. "Network" shall mean the telecommunications network of one of the Parties, as the context of the provision requires or as contemplated under this Agreement.
- (k) Network Interface. "Network Interface" shall mean the point of connection between communication facilities and terminal equipment. The network interface or demarcation point shall be located on the subscriber's side of the terminal equipment.
- (l) Network Interface Unit. "Network Interface Unit" shall mean a semi-intelligent device that serves as the point of physical and logical demarcation between the Customer and their end user business premise. It also allows the carrier to conduct an automated loopback test, which tests the integrity of the electrically-based, twisted pair, local loop.
- (m) On Net Services. "On-Net Services" shall mean those services that connect two locations served by Service Provider's network and will include termination at an End User's premises. On-Net Services are provided entirely by Service Provider.
- (n) Planned Service Outage. "Planned Service Outage" shall mean any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to the Network as described in Appendix No. 2.

Customer's and End Users' reasonable rules regarding access to its/their Premises, provided, such rules are provided to Service Provider in advance.

**7.3** Notwithstanding any provision of this Agreement to the contrary, if Customer provides its own telecommunications equipment, Service Provider shall have no obligation to install, maintain or repair such Customer equipment.

**7.4** Neither Party shall adjust, align, or attempt to repair the other Party's telecommunications equipment except as expressly authorized in advance in writing by the other Party. Neither Party's telecommunications equipment shall be removed or relocated by the other Party.

**7.5** Except as provided in Article 12.1, Service Provider shall be liable for any loss or damage to Customer's and/or End-User's telecommunications equipment arising from Service Provider's gross negligence, intentional act, or unauthorized maintenance, within the reasonable control of Service Provider, its employees or agents. In the event of any loss or damage to the telecommunications equipment for which Service Provider is liable, Service Provider shall reimburse Customer and/or End-User for the reasonable cost of repair or replacement thereof within ninety (90) days after receipt by Service Provider of a written request for such reimbursement and a determination of responsibility by Service Provider.

**7.6** Except as provided in Article 12.1, Customer shall be liable for any loss or damage to Service Provider's telecommunications equipment arising from the negligence, gross negligence, intentional act, or unauthorized maintenance or other cause, including theft, by Customer or their contractors, employees or agents. In the event of any loss or damage to the telecommunications equipment for which Customer is liable, Customer shall reimburse Service Provider for the reasonable cost of repair or replacement thereof within thirty (30) days after receipt by Customer of a written request for such reimbursement.

**7.7** Service Provider's telecommunications equipment shall remain the sole and exclusive property of Service Provider or its assignee, and nothing contained herein shall give or convey to Customer (and/or Customer's End Users) any right, title or interest whatever in such telecommunications equipment, which shall at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. When Customer's equipment is installed along with Service provider's equipment, then both shall prominently affix identifying plates, tags or labels on such telecommunications equipment showing Customer's and Service Provider's ownership thereof. Neither party shall tamper with, remove or conceal such identifying plates, tags or labels.

## **ARTICLE 8 - WARRANTIES AND NETWORK STANDARDS FOR ON-NET SERVICES**

**8.1** Service Provider represents and warrants to Customer that it has the right to provide Customer the Service specified herein, and that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

**8.2** The Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms.

**8.3** Service Provider represents and warrants to Customer that all Service rendered by it hereunder shall be designed, produced, installed, furnished and in all respects provided and maintained in conformance and compliance with applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and it shall be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities.

**8.4** The Parties agree that if any Party, in its sole discretion, determines that an emergency action is necessary to protect its own Network, that Party may block any transmission path over its Network by the other Party where transmissions do not meet the requirements of Telcordia Technical Publications and Appendix No. 1. The Parties further agree that none of their respective obligations to one another under this Agreement shall be affected by any such blockage except that the Party affected by such blockage shall be relieved of all obligations to make payments for charges relating to such Service which is so blocked and that no Party shall have any obligation to the other Party for any claim, judgment or liability resulting from such blockage.

**8.5** Service Provider represents and warrants to Customer that (i) the Service provided over its Network hereunder shall meet the service standards set forth in Appendix 1, other than for reasons of Planned Service Outages (scheduled maintenance) or reasons set forth in Articles 12 and 16 hereof; and (ii) the Circuits connecting two locations shall have a physically diverse serve and protect path (except with respect to laterals off the backbone and building entrances). In the event the standard established in the prior sentence is not met in a given month, upon written request of Customer, Service Provider will investigate the circumstances in order to isolate and remedy the cause.

**8.6** The warranties and remedies set forth in this Agreement constitute the only warranties and remedies with respect to this Agreement. SUCH WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

## **ARTICLE 9 – INTERCONNECTION OF FACILITIES**

**9.1** Service Provider and Customer shall interconnect their respective networks utilizing a Mid-Span Meet Interconnection Arrangement at the CenturyTel hand hole vault at the east side of the Narrows Bridge. The purpose of such interconnection shall be for the exchange of access traffic between the Parties. Such traffic exchanges will occur at transmission speeds that shall include, but may not be limited to, 10/100/1000 Megabit Ethernet services determined by the parties to supply the initial capacity for the Mid-Span Meet Interconnection Arrangement. In general, the transmission capacity established for the Mid-Span Meet Interconnection Arrangement shall be available to and shared by the Parties on an equal basis. Each Party shall have the authority to designate carrier facility assignments (CFAs) on its respective share of such transmission capacity. If one Party should require the use of additional transmission capacity beyond its initial allocation of fifty percent (50%) of the available capacity, said Party must submit a notice of such requirement to the other Party. In the event that such a notice of a requirement for additional transmission capacity is submitted, such additional capacity shall be installed and made available to the party requiring additional capacity within sixty (60) days from the submittal of such notice. At

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**SERVICE PROVIDER**

City of Tacoma, Department of Public Utilities,  
Light Division, d.b.a. Click! Network

By: *Cynthia Welshorn*  
Its: *General Manager*  
Date: *11/20/08*

**CUSTOMER**

CenturyTel Long Distance, LLC

By: *Jin Shi*  
Its: *General Mgr*  
Date: *11/17/08*

Approved as to form and legality:

*Ward Gause*  
Assistant City Attorney

Approved:

*Bob Biles*  
Bob Biles, Finance Director or Designee

## APPENDIX NO. 1 SERVICE STANDARDS

### 1.0 INTERFACE REQUIREMENTS

#### 1.1 10BT Interface Requirements

The Network Interface and Customer Interface will be at an Ethernet port set at a maximum of 10 million bits per second (Mbps) or commonly called 10Megs of bandwidth. This is a standard electrical hand off. Optical hand-off can be accommodated on an individual case basis (ICB) and may require additional cost.

#### 1.2 100BT Interface Requirements

The Network Interface and Customer Interface will be at an Ethernet port set at a maximum of 100 million bits per second (Mbps) or commonly called 100Megs of bandwidth. This is a standard electrical hand off. Optical hand-off can be accommodated on an individual case basis (ICB) and may require additional cost.

#### 1.3 1000BT (GigE) Interface Requirements

The Network Interface and Customer Interface will be at an Ethernet port set at a maximum of 1000 million bits per second (Mbps) or commonly called 1000Megs of bandwidth. This is a standard electrical hand off. Optical hand-off can be accommodated on an individual case basis (ICB) and may require additional cost.

### 2.0 TRANSMISSION PERFORMANCE SPECIFICATION

2.1	Availability Objective per month:	10BT - 99.9%
		100BT - 99.9%
		1000BT - 99.9%

### 3.0 SYSTEM ACCEPTANCE CRITERIA

- 3.1 End-to-end system performance is performed with Ethernet test equipment. We run three RFC – 2544 compliant industry standard tests identified below.
- 3.2 Throughput – the actual amount of useful and non-redundant information which is transmitted or processed; the end result of a data call. It may only be a small part of what was pumped in at the other end. The relationship of what

- (i) Electronic Restoration. In the event of an electronic failure, Service Provider shall use its best efforts to restore service within 2 hours of arrival of maintenance personnel on site.
  - (ii) Cable Restoration. In the event of a cable failure, Service Provider shall begin cable restoral within two (2) hours after the faulty cable is identified. Service Provider shall use its best efforts to restore the cable no later than four (4) hours after failure.
- 2.6 Service Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact for Customer to report to Service Provider system Troubles.
- 2.7 Equipment Spares. Service Provider will provide all maintenance spares plus repair and return Service of defected parts. In general, Customer will not provide equipment storage space in Customer facilities over and above storage space available in Service Provider's equipment racks.
- 2.8 Scheduled Maintenance.
  - 2.8.1 Scheduled routine maintenance will be performed during specified Customer maintenance windows and will be coordinated between Service Provider and Customer.
  - 2.8.2 Maintenance which may place the system in jeopardy or require system down time will normally be performed during the "Maintenance Window" of 12:00 midnight and 6:00 a.m. or a time mutually agreed to by Customer and Service Provider. Jeopardy and down time must be requested from the Customer surveillance system operations, 72 hours prior to the requested maintenance time unless otherwise agreed to by Customer.
  - 2.8.3 Service Provider maintenance personnel will notify Customer prior to beginning scheduled maintenance work and must receive concurrence, which shall not be unreasonably withheld, to proceed. Service Provider personnel will notify Customer upon completion of scheduled maintenance work and receive concurrence that all Service is fully operational.
  - 2.8.4 Customer shall have the right to be present during Service Provider equipment testing, and during scheduled and non-scheduled maintenance and repair activity. Customer will notify Service Provider in advance of such requests.

## APPENDIX NO. 3

### ORDERING PROCEDURES FOR ON-NET SERVICES

1. Building Lists

Service Provider shall provide building list, including LEC COs and IXC POPs, to Customer's Access Management group on a quarterly basis. Building lists shall include buildings that are considered on the Service Provider's network (On-Net), and also include planned building addresses. Building list information will include street addresses, names of buildings, city and state, end office CLLI. Service Provider will provide information to Customer in a mutually agreeable format.

2. Ordering Vehicle

If an electronic format is available to transmit Access Service Requests (ASR) from Customer to Service Provider, this vehicle will be used. If an electronic format is utilized, Service Provider will follow any OBF standards for use thereof. If an electronic format cannot be utilized, Customer will transmit ASR to Service Provider via facsimile. Facsimile information will be provided to Customer and updated as needed.

3. Contacts and Escalation

Service Provider will provide a complete list of contacts for the On-Net service provided to Customer. In addition, Service Provider will provide an escalation list to Customer for purposes of escalation to the Network Service Assurance (NSA) and/or escalation to Click! Network's management structure.

4. Service Order Intervals

As used in this paragraph 4, use of "shall" and "will" with respect to the performance of Service Provider shall mean "use its best efforts to".

4.1 ASR Issuance - Upon receipt of an ASR from the Customer, Service Provider will provide a response to Customer pertaining to any corrections or clarifications required to process the ASR. This will be completed by the Service Provider by the end of the next business day following the receipt of the ASR.

4.2 Firm Order Commitment (FOC) - Service Provider will provide a firm order commitment to Customer within three (3) business days of receipt of a complete and accurate ASR. If the order is considered off-net, then the service provider will provide a firm order commitment within two (2) business days from the time of receipt of the off-net providers FOC or pending order commitment (POC). The firm order commitment will provide any necessary service intervals as well as a committed Start of Service Date.

4.3 Design Layout Record (DLR) - Service Provider will provide DLR information within three (3) business days of the due date or Start of Service Date that was provided to Customer in the FOC. If the order is considered off-net, then the service provider will provide DLR information within four (4) business days from the time of receipt of the off-net providers DLR. The interval of providing off-net DLR information will be based on off-net providers intervals. If the in-service date requested by the Customer is less than five (5) business days and a complete and accurate ASR has been received by the Service Provider, DLR issuance will be negotiated between Customer and Service Provider.

5. Installation Intervals

Ethernet 10/100

The standard installation interval, if equipment is installed and capacity is available, for all On-Net services Ethernet 10/100 will be established at fifteen (15) business days. It is understood between Customer and Service Provider that Service Provider will provide service on an individual case basis based on the requirements and expectations of the Customer.

Ethernet 1000

The standard installation interval for Ethernet 1000 On-Net services will be thirty (30) business days depending on availability of equipment. It is understood between Customer and Service Provider that Service Provider will provide service on an individual case basis based on the requirements and expectations of the Customer.

Off-Net Services

Off-net services terms and conditions, including intervals, FOC, and DLR will be negotiated on an individual case basis (ICB) dependent upon the standard intervals of 15 and 30 business days depending if both end locations are LIT with Ethernet, have enough capacity and whether or not construction is required.

Expedite Fees

If a shorter installation interval is required that is less than the standard 15 or 30 business days, Service Provider will make reasonable efforts to meet the expected Start of Service Date, and if Service Provider cannot meet expected Service date, then Service Provider will make reasonable efforts to negotiate in good faith the earliest Start of Service date possible with Customer. An expedite fee may be incurred by the Customer anytime the Customer wants the service installed on a date prior to the standard 15 and 30 business day due date. All expedite requests for service will incur a one-time five hundred-dollar (\$500.00) fee.



## APPENDIX NO. 4

### **ETHERNET TRANSPORT SERVICES SERVICE DESCRIPTIONS FOR ON-NET AND OFF-NET SERVICES**

#### **1.0 ETHERNET 10/100/1000**

Ethernet Transport Service is a shared service. It is VLAN configurable which allows the customer's data to be tagged so that it is segregated from all other data. The end user can also further use encryption to keep the data private and secure. The Customer must educate the end user that their VLAN configuration and any other configuration or encryption is part of their allowed bandwidth. The amount of configuration will decrease the allowable maximum bandwidth on throughput.

We, like other service providers implement over subscription on our transport service rings relative to the amount of bandwidth provisioned on the service ring. The rationale behind this industry practice is that typically an end user does not fully utilize the amount of bandwidth requested; also Ethernet protocols help manage traffic flow across a network. We monitor the bandwidth usage on the network. We have thresholds set on our network management platform to alert us when usage reaches a designated threshold. We then take appropriate actions to prevent impact to end users.

#### **2.0 ETHERNET 1000 – PRIVATE**

Ethernet Transport Service can be provided at a dedicated private level of service. It is VLAN configurable which allows the customer's data to be tagged so that it is segregated from all other data. The end user can also further use encryption to keep the data private and secure. The private arrangement ensures the only user of this dedicated service is by the end user. Therefore, the cost is greater to dedicate a portion within the network for these private Ethernet 1000BT customers. These services are offered on an (ICB) individual case basis and due date determined based on ordering equipment and possible construction and any upgrades required in our network to provide the service.

#### **3.0 POINT-TO-POINT**

Ethernet Transport Services are available between Customer-designated locations on a point-to-point basis. Service may be ordered between the Customer's POP and End User (EU) location, between two Customer POP's, or between two EU locations.

#### **4.0 OFF-NET SERVICES**

Two Point Service allows for two Customer designated locations to be connected by one shared or dedicated transport service. The service terminated at both locations must be the same speed/capacity. This connection is maintained and monitored by Click!. The MSA only bills for the circuit and is the point of contact for the end user.

APPENDIX NO. 5

**ETHERNET TRANSPORT SERVICE PRICING**

**1. MONTHLY RECURRING SERVICE FEES and NON-RECURRING SERVICE FEES**

**1a. Service Included**

Ethernet 10/100/1000 Shared

Ethernet 1000 Private

Terms are 1 - 5 years

**1b. Monthly Recurring Fee**

These rates are also found in a separate Wholesale Pricing Sheet.

Ethernet 10BT	12 month	24 month	36 month	48 months	60 months
Monthly	\$ 700.00	\$ 665.00	\$ 603.00	\$ 595.00	\$ 560.00

monthly fee is per leg; 3 or more legs is ICB

Tiering below 10BT is possible with VLANs by customer and MSA

Ethernet 100 BT	12 month	24 month	36 month	48 months	60 months
Monthly	\$ 950.00	\$ 902.50	\$ 855.00	\$ 807.50	\$ 760.00

monthly fee is per leg; 3 or more legs is ICB

Tiering above 100BT is ICB

GigE Shared	12 month	24 month	36 month	48 months	60 months
Monthly	\$ 2,880.00	\$ 2,808.00	\$ 2,400.00	\$ 1,875.00	\$ 1,550.00

monthly fee is per leg; 3 or more legs is ICB

GigE Private	12 month	24 month	36 month	48 months	60 months
Monthly	\$ 3,200.00	\$ 3,120.00	\$ 2,592.00	\$ 2,000.00	\$ 1,700.00

monthly fee is per leg; 3 or more legs is ICB

**1c. Non-Recurring Charge (Installation)**

The install fee covers all year terms.

ETHERNET	10BT	100BT	1000BT
SHARED	\$250.00	\$250.00	\$750.00
PRIVATE	N/A	N/A	\$1,000.00

**1d. Volume Discounts:**

Volume Discounts will be issued as a percentage off of the total monthly recurring bill. These discounts will be calculated manually in the form of a monthly credit. "Customer" must inform "Provider" on a monthly basis what volume has been achieved for these credits.

<b>1e. Monthly Recurring Amount</b> (At the end of monthly billing cycle)	<b>Additional Percentage Discount</b>
\$5,001 to 10,000	2%
\$10,001 to \$15,000	3%
\$15,001 to \$20,000	4%
\$20,001 +	5%

## MASTER SERVICES AGREEMENT II-A

This Master Services Agreement II-A (the "Agreement") made and effective this 6th day of November, 2002 ("Effective Date") sets forth the mutual agreement between the City of Tacoma, Department of Public Utilities, Tacoma Power Division doing business as "Click! Network" (hereafter referred to as "Service Provider") and Integra Telecom of Washington, Inc. an Oregon Corporation its principal place of business 20435 72<sup>nd</sup> Ave S, Suite 150, Kent, Washington, 98032-2358 (hereafter referred to as "Customer").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1. SCOPE OF SERVICE

- a. Customer wants Service Provider to provision dedicated transport services to End Users on Service Provider facilities pursuant to certain terms and conditions set forth in this agreement and as more specifically set forth in Appendix No. 3. The parties hereby mutually agree that the Service Provider owns and operates communications facilities and is in the business of providing dedicated transport services.
- b. Service Provider agrees to provide to Customer and Customer agrees to accept and pay for the telecommunications services described in this Agreement consisting of providing Customer access to Click! Network's telecommunications system, (which, including without limitation all Equipment as defined below is hereinafter referred to as the "System"), upon the terms and conditions described herein and pursuant to the specific service orders in the form attached hereto as Exhibit B hereto (the "Services").
- c. Following the Effective Date, Click! Network will work with Customer to coordinate the engineering, site survey, System configuration, and other services that are necessary in order to provide Customer access to the Services (such activities collectively the "Engineering and installation Services"). Engineering and Installation Services shall be provided up to the date that the Service testing is completed based on Click! Network's customary testing procedure and the Service is available to the Customer (such date, the "Service Acceptance Date")
- d. Customer shall order Service from Service Provider by following the "Ordering Procedures For On-Net Services" set forth in Appendix No. 2. The applicable non-recurring and recurring charges shall be as set forth in Appendix No. 4. If the Service Provider accepts the ASR, each such ASR shall form part of this Agreement, subject to all terms and conditions herein. Service to On-Net locations shall include normal maintenance, inspection, repair and testing as provided in Section 5 and 6 herein.
- e. The payment for the cost of any special interface equipment or facilities necessary to achieve compatibility, if required because of End-User equipment, between telecommunications equipment of Service Provider and facilities of the

## MASTER SERVICES AGREEMENT II-A

End-User shall be at Customer's expense unless otherwise agreed. Service Provider may, but shall not be required, to provide any such equipment.

### 2. TERM

- a. The term of this Agreement shall commence on the date this Agreement is made and entered into, terminating five (5) years thereafter. This Agreement shall be automatically renewed in successive one-year periods unless terminated by written notice by one of the Parties at least sixty (60) days prior to the end of the five-year term or subsequent one-year term. Provided, however, that in the event the period of time for a particular Service or Services to be provided by Service Provider to Customer pursuant to the ordering provisions described in Appendix No. 2 herein extends beyond the effective date of termination, such Services(s) shall remain in effect for the agreed upon time of Service, subject to all of the terms and conditions of this Agreement as if it were still in effect with respect to such Service or Services.
- b. With respect to each Circuit provided to Customer under this Agreement, the term shall be as specified in the ASR for each Circuit but in no event less than one (1) year for both On-Net and Off-Net Circuits, unless otherwise agreed. If no term is specified in an ASR, it shall be one (1) year.

### 3. RATES AND CHARGES

- a. Subject to section 3.c. hereof, Customer will pay Service Provider the charges in the amounts set forth in Appendix No. 4 for services rendered at various times after the Effective Date as follows:
  1. Rates and charges with respect to the Engineering and Installation Services shall commence on the Effective Date. As compensation for the Services provided by Service Provider, Customer shall pay the recurring and non-recurring rates and charges set forth herein and/or in the ASR beginning on the Start of Service Date. Customer agrees to pay the undisputed monthly charges for the Services, at the address provided for herein, on or before thirty days (30) after the invoice is mailed. The Parties shall provide one another with reasonably requested information for bill validation including, but not limited to, the number of circuits and charges for each dedicated transport Service. The Parties will cooperate to enable Service Provider to provide its billing information in a diskette format. Service Provider represents that the rates and charges are in compliance with all laws and governmental regulations. Service Provider shall bill for all services rendered within one hundred eighty (180) days of the scheduled billing date. Service Provider will not apply late fees to the delayed billing amounts if the delay was the fault of the Service Provider.
  2. Undisputed charges remaining unpaid as of the date that is 30 days from the date of any invoice shall be considered past due amounts. Integra Telecom will not be assessed a late charge until 45 days after date of invoice described in this paragraph. Past due amounts owed by Customer to Click! shall be assessed a late charge of the lesser of one and one half percent (1 1/2%) or the maximum rate permitted under the applicable

**MASTER SERVICES AGREEMENT II-A**

level, the customer must then revert to individual contracts at the retail rate for 6 months before the customer can then renegotiate for the variable master service agreement pricing incentives and is not guaranteed that the incentives would remain the same.

- f. The customer may always do business with Click! Network. The customer has the choice to meet the requirements of the variable master service agreement or to purchase circuits at direct retail rate with individual retail contracts.
- g. Pricing Incentive (Table-1) Example. Full retail rates apply on all circuits if designated revenue levels are not met.

**TABLE-1: PRICING INCENTIVES**

<b>Wholesale Rate</b>	<b>% Monthly Discount</b>	<b>Time Period</b>	<b>Required Monthly Revenue</b>	<b>Required Total Revenue (set point)</b>
\$140.00	N/A	0 – 90 days	\$700.00	\$2,525.00
\$120.00	N/A	0 – 90 days	\$1,540.00	\$3,465.00
\$120.00	N/A	Over 90 days	\$1,540.00	\$3,465.00
\$120.00	2%	One-time	\$3,080.00	\$10,000.00
\$120.00	3%	2 months	\$6,160.00	\$31,500.00
\$120.00	5%	One-time	\$12,320.00	\$50,800.00
\$120.00	7%	2 months	\$24,640.00	\$100,000.00
\$120.00	10%	One-time	\$37,000.00	N/A
\$120.00	15%	N/A	\$50,000.00	N/A
\$90.00	N/A	1 year	\$55,000.00	N/A
\$90.00	N/A	Ongoing	\$59,500.00	N/A

When the customer successfully produces revenue amounts above the threshold levels represented in the table, Click! Network may allow the customer an audience to negotiate for additional incentives. Click! Network is not required to provide additional incentives above the discounts listed in the pricing table in this Master Service Agreement - II.

MASTER COMMUNICATION SERVICES AGREEMENT CONTRACT AMENDMENT  
NO. 2

The Master Service Agreement II-A between Integra Telecom of Washington, Inc. an Oregon Corporation and the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Click! Network) dated November, 2002 is hereby amended as follows:


4. EQUIPMENT AND EQUIPMENT INSTALLATION RESPONSIBILITIES is amended to add subsection (i) on a second interconnection to read as follows:
- i. Service Provider and Customer shall interconnect their respective networks utilizing an agreed upon arrangement. The purpose of the interconnection shall be for the exchange of access traffic between the Parties. Such traffic exchanges will occur at transmission speeds of 10 megabits or above as determined by the Parties over an initial OC-3 connection. If Customer requires additional transmission capacity to serve additional end users, such capacity shall be requested by Customer and mutually agreed upon. Capacity shall be installed and made available by Service Provider within sixty (60) days from the submittal of such notice. Service Provider and Customer shall each be responsible for upgrading and enhancing their own networks as related to such requested additional transmission capacity, and each shall be responsible for the costs associated with the upgrade or enhancement of its own network. Customer also shall be responsible for any expedite fees or other extraordinary costs incurred by Service Provider for supplying such additional transmission capacity, if that capacity is needed within a time frame earlier than 60 days.

All the rest and remainder of said agreement of November 2002, shall remain in full force and effect.

Agreed this 17 day of May 2005

City of Tacoma  
Department of Public Utilities  
Tacoma Light Division  
Click! Network

Integra Telecom of Washington, Inc.

 BY: Dana A. Toulson  
Name: Dana A. Toulson  
Title: General Manager  
Address: 3628 S. 35<sup>th</sup> St.  
Tacoma, WA 98409

BY: Mark Bloch  
Name: MARK BLOCH  
Title: Senior Vice President  
Address: 20435 72<sup>nd</sup> Ave S.  
SUITE 150  
Kent WA 98032

Approved as to form & legality

S. S. Karavites  
Sr. Assistant City Attorney

**MASTER COMMUNICATION SERVICES AGREEMENT CONTRACT AMENDMENT  
NO. 1**

**APPENDIX NO. 5**

**DEDICATED TRANSPORT SERVICE PRICING 06/01/03**

**1. PRICING INCENTIVES**

- g. Pricing Incentive (TABLE-1) Example. Full retail rates apply on all circuits if the minimum designated revenue levels are not met.

**TABLE-1: PRICING INCENTIVES AND VOLUME DISCOUNTS**

<b>Monthly Recurring Amount</b>	<b>Monthly Percentage Discount</b>
\$0 - \$700 (Revenue Level)	N/A
\$701 - \$5000	N/A
\$5,001 - \$10,000	4%
\$10,001 - \$15,000	5%
\$15,001 - \$20,000	6%
\$20,001 - \$25,000	7%
\$25,001 - \$35,000	10%
\$35,001 - \$45,000	12%
\$45,001 - \$50,000	15%

- h. Wholesale pricing by circuit type example (TABLE-2) – rates must be confirmed at time of order and by Click! Network on an Individual Case Basis (ICB).

**TABLE-2: WHOLESALE MONTHLY AND INSTALL PRICING BY CIRCUIT TYPE**

<b>Circuit Type</b>	<b>Wholesale Monthly Rate</b>	<b>Install (Lit) Building</b>	<b>Install (Non-Lit) Building</b>	<b>COMMENTS</b>
DS-1	\$140.00	\$375.00	ICB	Rate applied for new MSA-II partner
DS-1	\$120.00	\$375.00	ICB	Rate applied if revenue level met
DS-3	\$1,068.75	\$650.00	ICB	Rate applied for new MSA-II partner
DS-3	\$900.00	\$650.00	ICB	Rate applied if revenue level met
OC-3	\$2,208.75	ICB	ICB	Rate applied for new MSA-II partner
OC-3	\$1,860.00	ICB	ICB	Rate applied if revenue level met
OC-12	\$7,125.00	ICB	ICB	Rate applied for new MSA-II partner
OC-12	\$6,000.00	ICB	ICB	Rate applied if revenue level met
OC-48	\$17,812.50	ICB	ICB	Rate applied for new MSA-II partner
OC-48	\$15,000.00	ICB	ICB	Rate applied if revenue level met



# EXHIBIT 63



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Jeff Lueders, Cable Communications & Franchise Services Manager, CMO/MCO  
 Tanisha Jumper, MCO  
**COPY:** City Council and City Clerk  
**SUBJECT:** Ordinance – Cable TV Franchise Agreement with Rainier Connect North, LLC – City Council meeting 12/10/19  
**DATE:** November 20, 2019

**SUMMARY:**

The purpose of the memo is to request that the City Council review and consider for approval the Ordinance regarding a Cable TV Franchise Agreement between Rainier Connect North, LLC, and the City of Tacoma. Given the current transition with Click and the fact that the Cable TV Franchise-like agreement with Click is expiring at the end of 2019 (December 31), Staff and Outside Counsel have reviewed the situation and determined this is the best course of action. We then engaged in negotiations with Rainier Connect and their Counsel and have come to terms on this agreement. We are requesting your approval of this Ordinance.

**STRATEGIC POLICY PRIORITY:**

- Ensure all Tacoma residents are valued and have access to resources to meet their needs - This agreement enables another Cable TV Provider to enter the community and in doing so creates a competitive marketplace and allows our residents and businesses to have a choice, it also allows the City of Tacoma to continue to collect Franchise and PEG Fees per Federal Law which go directly into our Communications efforts.
- Foster a vibrant and diverse economy with good jobs for all Tacoma residents – This agreement allows another Cable TV provider into the community to offer their services, creating a competitive marketplace, and additional jobs in the community.
- Cultivate a vibrant cultural sector that fosters a creative, cohesive community – Through the negotiated terms of this agreement we will continue to provide Educational and Government Access channels in HD and the funding provided will allow for continued programming efforts such as Art town, Business Matters, and CityLine, which provide ample opportunities for the creative sectors of our community to share information about what they are doing.
- Assure outstanding stewardship of the natural and built environment - Through this agreement we regulate the proper use of the City’s Right of Way and in doing so protect residents and businesses.

**BACKGROUND:**

The City of Tacoma has been fortunate to have two Cable TV Providers over the past 20 years (Comcast and Click). With Click’s departure it is necessary for the City of Tacoma to have a Cable TV Franchise with the new provider, Rainier Connect North, LLC.

The Government Performance and Finance Committee considered this request for Ordinance at their November 5, 2019 meeting and approved this to be brought forward to the entire City Council for consideration and approval.



**ISSUE:**

This new 20 year agreement coincides with the IRU that Rainier Connect North, LLC is signing with the City of Tacoma/Tacoma Public Utilities to lease the TPU Commercial Network. This agreement preserves all of our rights as set forth in Federal Law under the Cable Act, State Law, and Municipal Code (Title 16A).

**ALTERNATIVES:**

If the City of Tacoma did not agree to a Cable TV Franchise Agreement with Rainier Connect North, LLC, we would then be in conflict with Federal Law Requirements. In addition, we would lose annual revenue of approximately \$992,032 in Franchise Fees and EG Fees.

**RECOMMENDATION:**

Staff recommends approval of this request for Ordinance for a Cable TV Franchise Agreement between the City of Tacoma and Rainier Connect North, LLC. The approval of this Ordinance will allow the seamless transition from Click to Rainier Connect North, LLC, for Cable TV Services which will allow the City of Tacoma to continue to Regulate our Right of Way protecting our Residents and Businesses along with continuing to receive Franchise Fees and EG Fees which allow the continued operation of the communications office.

**FISCAL IMPACT:**

Franchise Fee Revenues are based on a 5% gross earnings and an additional 1% for PEG Fees, which is directly impacted by the number of cable TV customers. PEG fees directly support capital purchases related to cable TV communication related infrastructure.

**REVENUES:**

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
1431 – MCO & TV Tacoma	638140	4315351	\$820,000
1431 - PEG	638500	4315750	\$172,032
<b>TOTAL</b>			<b>\$992,032</b>

**FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$992,032**

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED?** Yes

# EXHIBIT 64

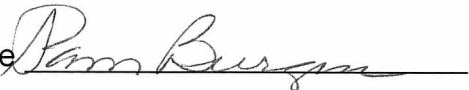

ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 1

Site A - Location: 1111 Altheimer St.  
Site Z - Location: 1102 Tacoma Ave S. – Main Branch  
**Circuit: KFFN.000867..CKNW (not part of VLAN cloud)**  
Service to be installed: 1,000Mbps IP (Internet Protocol) + HSRP (Hot Standby Routing Protocol at Main branch); BURST up to 10Gig @ \$2.00/Meg after initial 1Gig – based on 95<sup>th</sup> percentile  
Term: 60 months (5 Years)  
Monthly Charges: \$2,350.00 (Billing by Journal Entry)  
Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)  
Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402  
Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature  Date: 3/10/16  
Customer Signature  Date: 2/20/16

Confidential

ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 2

Site A - Location: 1102 Tacoma Ave S. – Main Branch

Site Z - Location: 1102 Tacoma Ave S. – Main – Transport Only  
**Circuit: KFFN.000868A..CKNW**

Service to be installed: 10Gig Port, Transport only in VLAN cloud; Upgrade from 1,000Mbps transport only


Term: 60 months (5 Years)

Monthly Charges: \$2,250.00 (Billing by Journal Entry)

Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)

Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402

Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature 

Date: 3/10/16

Customer Signature 

Date: 2/26/16

Confidential

ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

**SERVICE ORDER NO. 3**

Site A - Location: 1102 Tacoma Ave S. – Main

Site Z - Location: 215 S. 56<sup>th</sup> St. - Moore Branch  
**Circuit: KFFN.000868B..CKNW**

SPECIAL NOTE: Moore branch is the designated back up branch in case of a major event. The second port of the 2-port switch will be provisioned as the main branch and turned down or set as agreed so that the port can be turned up in a 24 hour time period in case of a major event.

Service to be installed: 1,000Mbps Transport only in VLAN cloud; Upgrade from 100Mbps transport only

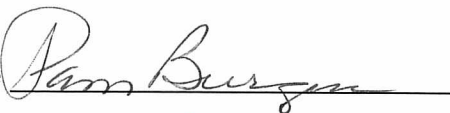
Term: 60 months (5 Years)

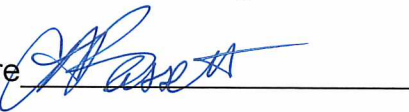
Monthly Charges: \$950.00 (Billing by Journal Entry)

Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)

Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402

Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature  Date: 3/10/16

Customer Signature  Date: 2/26/16

Confidential

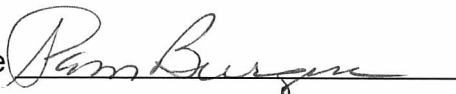
ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 4

Site A - Location: 1102 Tacoma Ave S. – Main  
Site Z - Location: 765 S. 84<sup>th</sup> St. – Fern Hill Branch  
**Circuit: KFFN.000868C..CKNW**  
Service to be installed: 1,000Mbps Transport only in VLAN cloud; Upgrade from 100Mbps transport only  
Term: 60 months (5 Years)  
Monthly Charges: \$950.00 (Billing by Journal Entry)  
Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)  
Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402  
  
Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature 

Date: 3/10/16

Customer Signature 

Date: 2/26/16

Confidential




ATTACHMENT 1


Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 5

Site A - Location: 1102 Tacoma Ave S. – Main  
Site Z - Location: 212 Browns Point Blvd NE – Kobetich Branch  
**Circuit: KEFN.000868D..CKNW**  
Service to be installed: 1,000Mbps Transport only in VLAN cloud; Upgrade from 100Mbps transport only  
Term: 60 months (5 Years)  
Monthly Charges: \$950.00 (Billing by Journal Entry)  
Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)  
Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402  
Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature  Date: 3/10/16

Customer Signature  Date: 2/20/16

Confidential

ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 6

Site A - Location: 1102 Tacoma Ave S. – Main

Site Z - Location: 3722 N. 26<sup>th</sup> St. – Wheelock Branch  
**Circuit: KFFN.000868E..CKNW**

Service to be installed: 1,000Mbps Transport only in VLAN cloud; Upgrade from 100Mbps transport only

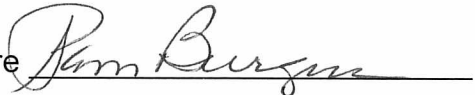
Term: 60 months (5 Years)


Monthly Charges: \$950.00 (Billing by Journal Entry)

Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)

Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402

Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature  Date: 3/10/16

Customer Signature  Date: 2/26/16

Confidential

ATTACHMENT 1

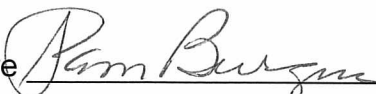
Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)


SO Date TBD

**SERVICE ORDER NO. 7**

Site A - Location: 1102 Tacoma Ave S. – Main  
Site Z - Location: 3523 East G St. - Mottet Branch  
**Circuit: KFFN.000868F..CKNW**  
Service to be installed: 1,000Mbps Transport only in VLAN cloud; Upgrade from 10Mbps transport only  
Term: 60 months (5 Years)  
Monthly Charges: \$950.00 (Billing by Journal Entry)  
Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)  
Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402

Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature  Date: 3/10/16

Customer Signature  Date: 2/20/16

Confidential

ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 8

Site A - Location: 1102 Tacoma Ave S. – Main  
Site Z - Location: 3411S. 56<sup>th</sup> St. – South Tacoma Branch  
**Circuit: KFFN.000868G..CKNW**  
Service to be installed: 100Mbps Transport only in VLAN cloud; Upgrade from 10Mbps transport only  
Term: 60 months (5 Years)  
Monthly Charges: \$950.00 (Billing by Journal Entry)  
Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)  
Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402  
Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature  Date: 3/10/16

Customer Signature  Date: 2/26/16

Confidential

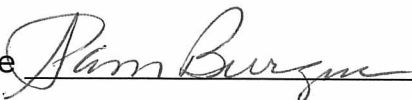
ATTACHMENT 1

Contract No. Tacoma Public Library 16-01  
(Original contract dated 01-08-08)

SO Date TBD

SERVICE ORDER NO. 9

Site A - Location: 1102 Tacoma Ave S. – Main  
Site Z - Location: 7001 6<sup>th</sup> Ave. - Swasey Branch  
**Circuit: KFFN.000868H..CKNW**  
Service to be installed: 1,000Mbps Transport only in VLAN cloud; Upgrade from 100Mbps transport only  
Term: 60 months (5 Years)  
Monthly Charges: \$950.00 (Billing by Journal Entry)  
Non-Recurring Charges: N/A (Covered in previous intermediate upgrade - ICB)  
Billing Name: Tacoma Public Library  
Billing Point of Contact: Sue Calhoun  
Phone: 253.292.2001 X1210  
Billing Address: 1102 Tacoma Ave S. Tacoma WA 98402  
Site Contact: Stephen Hjelmstad  
Phone: 253.292.2001 X1520

Click! Signature 

Date: 3/10/16

Customer Signature 

Date: 2/26/16

Confidential

Contract No. Tacoma Public Library 07- 01

BROADBAND SERVICES AGREEMENT

*(12)* This Broadband Services Agreement (the "Agreement") made and effective this 5 day of January, 2008 sets forth the mutual agreement between the City of Tacoma, Department of Public Utilities, Light Division doing business as "Click! Network" ("Click! Network") and **Tacoma Public Library**, its principal place of business at 1102 Tacoma Ave S., Tacoma, WA 98402 (hereafter referred to as "Customer").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICE

- a. Click! Network agrees to provide to Customer and Customer agrees to accept and pay for the telecommunications services described in this Agreement consisting of providing Customer access to Click! Network's telecommunications system, (which, including without limitation all Equipment as defined below is hereinafter referred to as the "System"), upon the terms and conditions described herein and in Exhibit A hereto (the "Services").
- b. Following the Effective Date, Click! Network will work with Customer to coordinate the engineering, site survey, System configuration, and other services that are necessary in order to provide Customer access to the Services (such activities collectively the "Engineering and Installation Services"). Engineering and Installation Services shall be provided up to the date that the Service testing is completed based on Click! Network's customary testing procedure and the Service is available to the Customer (such date, the "Service Acceptance Date).

2. TERM

This Agreement shall remain in full force and effect for a minimum period of 36 full calendar months following the Service Acceptance Date (such period including the first partial month, if any, and such full calendar months, the "Initial Term"). Customer shall be liable for charges at the times and in the manner described in section 3 hereof from and after the Effective Date. At the end of the Initial Term, this Agreement shall continue in effect on a calendar month-to-month basis upon the terms and conditions set forth in this Agreement, until terminated pursuant to Section 9 hereof (such period during which Service is provided following the Initial Term is referred to herein as the "Extended Term")

and the Initial Term and the Extended Term together are referred to herein as the "Term").

### 3. RATES AND CHARGES

- a. Subject to section 3.b. hereof, Customer will pay Click! Network the charges in the amounts set forth in Exhibit A for services rendered at various times after the Effective Date as follows:
  - i. Rates and charges with respect to the Engineering and Installation Services shall commence on the Effective Date.
  - ii. Rates and charges with respect to Service shall commence on the Service Delivery Date.
  - iii. The Customer agrees to pay Click! Network the charges described in section 3.a. and other amounts payable hereunder within thirty days from the date of invoice in accordance with the instructions contained in such invoice. Charges remaining unpaid as of the date that is 30 days from the date of any invoice shall be considered past due amounts. Past due amounts owed by Customer to Click! Network shall be assessed a late charge of the lesser of one and one half percent (1 1/2%) or the maximum rate permitted under the applicable laws of the State of Washington per calendar month (or any partial month) on the past due amount balance.
- b. In the event of billing disputes, the Customer shall notify Click! Network in writing, providing the bill date, the amount in dispute with applicable taxes and an explanation for the dispute. The Customer shall pay all charges not disputed within the period specified above. No charges may be disputed more than one year after the date such charges are invoiced. The parties will cooperate in good faith to resolve any such disputes within a sixty-day period after the dispute is submitted to Click! Network. If the dispute is not resolved during this period, then the parties shall resolve the dispute as outlined in paragraph 12.f.
- c. In addition to the amounts described in section 3.a. and 3.b. Customer will pay all applicable value added, sales, use, excise and other taxes, duties, imposts, fees or charges (collectively "Taxes") levied or imposed on it by a duly constituted and authorized taxing or other governmental authority with respect to the Services or Customer's use of the System or Click! Network's Equipment whether or not such amounts are required to be collected by Click! Network under applicable law. In addition, Click! Network will invoice and Customer will pay all state, local and federal taxes and franchise, tariff, and agreement fees (if any), imposed upon Click! Network with respect to its activities contemplated under this

Agreement in the event that any authority with jurisdiction imposes a tax on any aspect of the transactions contemplated hereunder including but not limited to taxes imposed pursuant to Chapter 82.29A of the Revised Code of Washington, Customer agrees to be responsible for and pay such tax, and Customer agrees to indemnify, and save harmless Click! Network from and against such taxes or other Taxes and any penalties and interest thereon or costs associated with any attempts to collect the same.

#### 4. EQUIPMENT AND EQUIPMENT INSTALLATION RESPONSIBILITIES

- a. All equipment owned by Click! Network as of the Effective Date and equipment purchased by Click! Network after the Effective Date that is not sold to Customer pursuant to a specific invoice specifically describing such equipment resale shall remain the sole and exclusive property of Click! Network (all such equipment, the "Equipment"), its lessors or assigns, and nothing contained herein shall give or convey to Customer any right, title or interest whatever in Click! Network Equipment, which shall at all times be and remain personal property, notwithstanding that it may be or become attached to or embedded in realty. Click! Network shall be entitled, at any time, to affix to Click! Network Equipment a label indicating the interest of Click! Network or any lessor or assignee of Click! Network.
- b. No Liens. Customer will use reasonable efforts to ensure that any party using the Services through it takes reasonable care of Click! Network Equipment at each location and does not sell it, keep it, encumber it, allow it to become subject to a mechanics or other lien, use it as security for any loan or allow it to be seized in satisfaction of a debt of Customer.
- c. No Removal. Customer will use reasonable efforts to ensure that Click! Network Equipment at each location is not removed or caused to be removed by any person, other than Click! Network or any persons authorized by Click! Network or without Click! Network's prior written consent, from the place at which it is installed without Click! Network's prior written permission or, after notice to Click! Network, pursuant to court order.
- d. Proper Environment. Customer shall use reasonable efforts to keep Click! Network's Equipment at each location in the proper environment as specified and described by Click! Network to Customer.
- e. Click! Network and/or its contractor will perform all installation associated with the Services to connect the System to the Customer's equipment located at Customer's premises. In addition to the undertaking to pay the charges set forth in section 3.a.i. with respect to the period from the Effective Date to the Service Acceptance Date, Customer will also be



liable for and will reimburse Click! Network for all costs incurred by Click! Network with respect to its Engineering and Installation Services during such period, including the costs of materials, supplies, and equipment used or included in the installation activity relating to Customer's premises, other than Equipment that is actually removed pursuant to section 9.d.2. hereof. This cost will not exceed \$750.00. Nothing in this section 4.e. will require Customer to pay Click! Network for costs incurred directly by Customer during the period up to the Service Acceptance Date. Customer agrees to pay Click! Network for its costs incurred with respect to Click's connection installation which will extend to a premise termination interconnect cabinet or rack owned and supplied by Click! Network located in Customer- provided and designated telecommunications room or other agreed upon location. Customer shall provide a duct system into his/her premises to the designated telecommunications room or other agreed upon location. Customer agrees to exercise due care and caution to protect Click's equipment from the weather, vandalism and other potential problems. Customer shall be liable for any loss or damage to Click! Network Equipment at any location arising from Customer's negligence, intentional act, unauthorized maintenance or other cause within the reasonable control of Customer, its employees or agents. Click! shall be liable for any loss or damage to Customer's Equipment at any location arising from Click!'s negligence, intentional act, unauthorized maintenance or other cause within the reasonable control of Click!, its employees or agents. In the event of any loss or damage to either party's equipment for which the other party is liable, the party shall reimburse the other party for the lesser of (i) the reasonable cost of repair or (ii) the actual cost of replacement.

- f. Customer will only connect to the System using industry standard equipment, which complies and is compatible with the service specifications set forth in applicable technical publications. Notwithstanding the undertaking of Customer in the prior sentence, if, in Click! Network's reasonable opinion, the technical integrity of the System or the Services being provided over the System to Customer or any other third party is being jeopardized or is likely to be jeopardized as a result of the connection of any Customer premises equipment to the System by Customer or by any other activity for which Customer is responsible, Click! Network may suspend the provision of the affected Service to any connection so affected. Following remedial action by Customer satisfactory to Click! Network, Click! Network will reinstate the Service provided through that connection as soon as possible.
- g. Premises Security. On or before the Service Acceptance Date, Customer and Click! Network shall reach agreement on guidelines relating to site security and password protection.

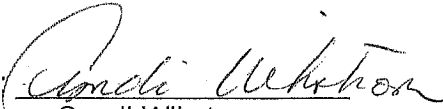
- h. Click! Network may from time to time issue technical instructions on the use of the System and Service to ensure the proper functioning of the Services or the protection of the System from damage or deterioration. Technical instructions will be observed by Customer.
- i. Where Click! Network Equipment is to be installed at a location, Customer shall, at its own expense:
  - 1. Obtain all necessary consents for the installation and use of Click! Network Equipment in the building, including consents for necessary alterations to buildings;
  - 2. Ensure that any floor loading limits will not be exceeded;
  - 3. Provide suitable accommodations, foundations and an environment to meet the environmental specification for Click! Network Equipment as agreed between Customer and Click! Network, including all necessary trunking, conduits and cable trays;
  - 4. Provide suitable electric power and any other utilities needed by Click! Network to install, test and/or maintain Click! Network's Equipment;
  - 5. Provide a suitable and safe working environment for Click! Network's personnel, including an environment safe from environmental hazards; and
  - 6. Take up or remove, in time to allow Click! Network to carry out installation as scheduled, any fitted or fixed floor coverings, ceiling tiles, suspended ceilings and partition covers, and carry out afterwards any making good or decorator's work required.
- j. Click! Network shall provide Customer with such information as is necessary for Customer to meet these obligations as part of the planning process for installation of Click! Network's Equipment.
- k. Customer shall provide Click! Network or other persons authorized by Click! Network with access (on both a routine and emergency basis) to each Customer location within the normal business hours (or as otherwise agreed) of each such location for the implementation of all services contemplated to be provided by Click! Network including without limitation the Service. After the Service Acceptance Date for a connection, Customer will provide Click! Network reasonable access to the Customer premises where any Click! Network Equipment is installed. Click! Network shall not be responsible for any faults on the System or any failure to perform the provisions of this Agreement to the extent that Click! Network, in good faith, requires access, and any such faults or failures or the continuation thereof are a result of the failure of Customer to provide access to the place at each location where Click! Network Equipment is installed supporting the failing Service or connection.


g. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute one and the same agreement.

**IN WITNESS WHEREOF**, the parties have, through their authorized representatives executed this Agreement effective as of the date first above written:

City of Tacoma  
Department of Public Utilities  
Light Division d/b/a Click! Network

Tacoma Public Library  
1102 Tacoma Ave S  
Tacoma, WA 98402

BY:   
Name: Cyndi Wikstrom  
Title: General Manager  
Address: 3628 South 35<sup>th</sup> Street  
Tacoma, Washington 98409

BY:   
Name  
Title:  
Address:

Date: 2/11/08

Date: 1/5/08

Approved as to form & legality:

  
Assistant City Attorney

# EXHIBIT 65

[Menu](#)

# ARIN IPv4 Free Pool Reaches Zero

**Posted: Thursday, 24 September 2015**

On 24 September 2015, ARIN issued the final IPv4 addresses in its free pool. ARIN will continue to process and approve requests for IPv4 address blocks. Those approved requests may be fulfilled via the [Wait List for Unmet IPv4 Requests \(/resources/request/waiting\\_list.html\)](/resources/request/waiting_list.html), or through the [IPv4 Transfer Market \(/resources/transfers/index.html\)](/resources/transfers/index.html).

Exhaustion of the ARIN Free Pool does trigger changes in ARIN's Specified Transfer policy (NRPM 8.3 (</policy/nrpm.html#eight3>)) and Inter-RIR Transfer policy (NRPM 8.4 (</policy/nrpm.html#eight4>)). In both cases, these changes impact organizations that have been the source entity in a specified transfer within the last twelve months:

"The source entity (-ies within the ARIN Region (8.4)) will be ineligible to receive any further IPv4 address allocations or assignments from ARIN for a period of 12 months after a transfer approval, or until the exhaustion of ARIN's IPv4 space, whichever occurs first."

Effective today, because exhaustion of the ARIN IPv4 free pool has occurred for the first time, there is no longer a restriction on how often organizations may request transfers to specified recipients.

In the future, any IPv4 address space that ARIN receives from IANA, or recovers from revocations or returns from organizations, will be used to satisfy approved requests on the Waiting List for Unmet Requests. If we are able to fully satisfy all of the requests on the waiting list, any remaining IPv4 addresses would be placed into the ARIN free pool of IPv4 addresses to satisfy future requests.

ARIN encourages customers with questions about IPv4 availability to contact [hostmaster@arin.net](mailto:hostmaster@arin.net) (<mailto:hostmaster@arin.net>) or the Registration Services Help Desk at +1.703.227.0660.

<https://access.ripe.net/?originalUrl=https%3A%2F%2Fwww.ripe.net%2Fpublications%2Fnews%2Fabout-ripe-ncc-and-ripe%2Fthe-ripe-ncc-has-run-out-of-ipv4-addresses>

# The RIPE NCC has run out of IPv4 Addresses

Today, at 15:35 (UTC+1) on 25 November 2019, we made our final /22 IPv4 allocation from the last remaining addresses in our available pool. We have now run out of IPv4 addresses.

Our announcement will not come as a surprise for network operators - IPv4 run-out has long been anticipated and planned for by the RIPE community. In fact, it is due to the community's responsible stewardship of these resources that we have been able to provide many thousands of new networks in our service region with /22 allocations after we reached our last /8 in 2012.

## Recovered IPv4 Addresses and the Waiting List

Even though we have run out, we will continue to recover IPv4 addresses in the future. These will come from organisations that have gone out of business or are closed, or from networks that return addresses they no longer need. These addresses will be allocated to our members (LIRs) according to their position on a new waiting list that is now active.

While we therefore expect to be allocating IPv4 for some time, these small amounts will not come close to the many millions of addresses that networks in our region need today. Only LIRs that have never received an IPv4 allocation from the RIPE NCC (of any size) may request addresses from the waiting list, and they are only eligible to receive a single /24 allocation.

LIRs that have submitted an IPv4 request can see their position on the waiting list in the LIR Portal. A [new graph](https://www.ripe.net/manage-ips-and-asns/ipv4/ipv4-waiting-list) (<https://www.ripe.net/manage-ips-and-asns/ipv4/ipv4-waiting-list>) has also been published that shows the number of requests on the waiting list and the number of days that the LIR at the front of the queue has been waiting.

## Call for Greater Progress on IPv6

This event is another step on the path towards global exhaustion of the remaining IPv4 addressing space. In recent years, we have seen the emergence of an IPv4 transfer market and greater use of Carrier Grade Network Address Translation (CGNAT) in our region. There are costs and trade-offs with both approaches and neither one solves the underlying problem, which is that there are not enough IPv4 addresses for everyone.

Without wide-scale IPv6 deployment, we risk heading into a future where the growth of our Internet is unnecessarily limited - not by a lack of skilled network engineers, technical equipment or investment - but by a shortage of unique network identifiers. There is still a long way to go, and we call on all stakeholders to play their role in supporting the IPv6 roll-out.

# IPv4 Waiting List

ARIN's free pool depleted in [September 2015](#)

(<https://www.arin.net/vault/announcements/2015/20150924.html>). The IPv4 Waiting List is one of several ways an organization may request IPv4 addresses from ARIN. Other available options are to [transfer resources](#) ([/resources/registry/transfers/](#)), or request IPv4 addresses from pools reserved specifically for micro-allocations ([NRPM 4.4](#) ([/participate/policy/nrpm/#4-4-micro-allocation](#))) or Dedicated IPv4 block to facilitate IPv6 Deployment ([NRPM 4.10](#) ([/participate/policy/nrpm/#4-10-dedicated-ipv4-block-to-facilitate-ipv6-deployment](#))).

## Waiting List Process

If an IPv4 Waiting List request meets current policy requirements, the organization will be placed on the IPv4 Waiting List for their approved block size. The qualifying organization must specify the smallest block size they would be willing to accept to fulfill their request. Receipt of IPv4 space in any amount via IPv4 Waiting List, 8.3 Specified Recipient Transfer, or 8.4 Inter-RIR Transfer removes the organization from the IPv4 Waiting List.

As IPv4 addresses become available, typically through revocations due to non-payment, they will be used to fill requests on a first-approved basis, subject to the size of each available address block.

Please note the following:

- An organization may only have one request on the IPv4 Waiting List at a time.
- Once a request is added to the IPv4 Waiting List, the smallest acceptable block size may be adjusted by the requestor at any time, however the maximum block size cannot be changed. To request a larger block, the organization must close their existing IPv4 Waiting List ticket and submit a new request for the larger block. The new request will be added to the IPv4 Waiting List in the order in which it is approved.
- If an organization declines to accept a block that becomes available, ARIN will consider the request fulfilled and will remove the request from the IPv4 Waiting List.
- Organizations must be current on all fees at the time a block becomes available. Organizations with an existing ARIN billing account will be notified of any past due fees and may remain on the IPv4 Waiting List, but will not be eligible to receive IPv4 addresses.

- If an organization's account is revoked for non-payment, their ticket will be removed from the IPv4 Waiting List. If the account is later reinstated and returned to good standing with ARIN, the organization must submit a new request, and the new request will be added to the IPv4 Waiting List in the order in which it is approved.
- Per [ARIN policy \(/participate/policy/nrpm/#4-1-8-arin-waitlist\)](/participate/policy/nrpm/#4-1-8-arin-waitlist), when an organization's IPv4 Waiting List request has been filled, the organization must wait 90 days after receiving said distribution before applying for additional space. This restriction applies to all organizations unless a waiver is requested and granted in accordance with policy requirements.
- Per [ARIN policy \(/participate/policy/nrpm/#4-1-8-arin-waitlist\)](/participate/policy/nrpm/#4-1-8-arin-waitlist), any IPv4 address space distributed from the waitlist cannot be transferred to another organization for 60 months. After 60 months, the space can be transferred.
- When an organization is notified that an IPv4 block is available, ARIN's Financial Services will request a [Registration Services Agreement \(RSA\)](/about/corporate/agreements/rsa.pdf) and/or [registration fees \(/resources/fees/fee\\_schedule/\)](/resources/fees/fee_schedule/) when applicable.

Additional information and instructions for submitting an IPv4 request for placement onto the IPv4 Waiting List can be found on the [Request IPv4 Addresses page \(/resources/guide/ipv4/request/\)](/resources/guide/ipv4/request/).

## Waiting List Status Report

The table below represents the current state of the Waiting List for Unmet Requests. This list is provided in chronological order beginning with the oldest waiting list request. The wait listed date column represents the date and time that the request was placed on the waiting list.

This table is **not** indicative of the order in which requests will be filled. That order depends entirely upon the order, size, and quantity of IPv4 address blocks that ARIN receives and places back into its IPv4 inventory. For some example scenarios, visit the [How Waiting List Requests Work \(/resources/guide/ipv4/waiting\\_list/scenarios/\)](/resources/guide/ipv4/waiting_list/scenarios/) page.

### Status Report for the IPv4 Waiting List

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**Request's Position on Waiting List:** 1

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**Date and Time Added to Waiting List:** Thu, 02 May 2019 11:28:26 EDT

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**Maximum Approved Prefix Size:** /22

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**Minimum Acceptable Prefix Size:** /22

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# How Waiting List Requests Work

## ARIN Board Suspends Waiting List Issuance Policy

**07 February 2019:** We will continue to accept and process IPv4 requests according to NRPM 4.1.8, and organizations may be added to the waiting list while waiting list issuance is suspended. All future IPv4 address space issued under this policy is subject to the outcome of pending policy review.

**Details are available in the [recent announcement \(/announcements/20190207\\_waitlist/\)](/announcements/20190207_waitlist/).**

When a block of IPv4 addresses becomes available, ARIN examines the oldest request on the waiting list to determine whether or not the newly available block can fill it. ARIN then continues to the next oldest request as necessary. Waiting list request fulfillment is determined by the size of the available block(s) and the approved maximum and specified minimum acceptable block sizes for each organization. A table showing the current status of the waiting list is available on the [IPv4 Waiting List page \(/resources/guide/ipv4/waiting\\_list/\)](/resources/guide/ipv4/waiting_list/).

Below are some example scenarios to help illustrate how the waiting list works in practice.

## Scenario 1: Single Block Fills a Single Request

### IPv4 Waiting List: Scenario 1

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**Request's Position on Waiting List:** 1

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**Date and Time Added to Waiting List:** Mon, 03 Aug 2015 12:51:06 EDT

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**Maximum Approved Prefix Size:** 16

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**Minimum Acceptable Prefix Size:** 17

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**Request's Position on Waiting List:** 2

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**Date and Time Added to Waiting List:** Mon, 10 Aug 2015 15:04:56 EDT

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**Maximum Approved Prefix Size:** 20

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**Minimum Acceptable Prefix Size:** 22

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# IPv4 address exhaustion

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**IPv4 address exhaustion** is the depletion of the pool of unallocated IPv4 addresses. Because the original Internet architecture had fewer than 4.3 billion addresses available, depletion has been anticipated since the late 1980s, when the Internet started experiencing dramatic growth. This depletion is one of the reasons for the development and deployment of its successor protocol, IPv6. IPv4 and IPv6 coexist in the Internet.

The IP address space is managed globally by the Internet Assigned Numbers Authority (IANA), and by five regional Internet registries (RIRs) responsible in their designated territories for assignment to end users and local Internet registries, such as Internet service providers. The main market forces that accelerated IPv4 address depletion included the rapidly growing number of Internet users, always-on devices, and mobile devices.

The anticipated shortage has been the driving factor in creating and adopting several new technologies, including network address translation (NAT), Classless Inter-Domain Routing (CIDR) in 1993, and IPv6 in 1998.<sup>[1]</sup>

The top-level exhaustion occurred on 31 January 2011.<sup>[2][3][4][5]</sup> All RIRs have exhausted their address pools, except those reserved for IPv6 transition; this occurred on 15 April 2011 for the Asia-Pacific (APNIC),<sup>[6][7][8]</sup> on 14 September 2012 for Europe, Middle East and Central Asia (RIPE NCC), on 10 June 2014 for Latin America and the Caribbean (LACNIC),<sup>[9]</sup> and on 24 September 2015 for North America (ARIN),<sup>[10]</sup> and on 21 April 2017 for Africa (AfrinIC). ARIN and RIPE have exhausted their entire pool.<sup>[11]</sup> These RIRs still allocate recovered addresses or addresses reserved for a special purpose. Individual ISPs still have pools of unassigned IP addresses, and could recycle addresses no longer needed by subscribers.

## Contents

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### IP addressing

### Address depletion

### Mitigation efforts

### Exhaustion dates and impact

- Regional exhaustion

  - Impact of APNIC RIR exhaustion and LIR exhaustion

- Notable exhaustion advisories

### Post-exhaustion mitigation

- Reclamation of unused IPv4 space

- Markets in IP addresses

- Transition mechanisms

### Long-term solution

### See also

### References

### External links

## IP addressing

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Every node of an Internet Protocol (IP) network, such as a computer, router, or network printer, is assigned an IP address for each network interface, used to locate and identify the node in communications with other nodes on the network. Internet Protocol version 4 provides  $2^{32}$  (4,294,967,296) addresses. However, large blocks of IPv4 addresses are reserved for special uses and are unavailable for public allocation.

The IPv4 addressing structure provides an insufficient number of publicly routable addresses to provide a distinct address to every Internet device or service. This problem has been mitigated for some time by changes in the address allocation and routing infrastructure of the Internet. The transition from classful network addressing to Classless Inter-Domain Routing delayed the exhaustion of addresses substantially. In addition, network address translation (NAT) permits Internet service providers and enterprises to masquerade private network address space with only one publicly routable IPv4 address on the Internet interface of a main Internet router, instead of allocating a public address to each network device.

## Address depletion

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While the primary reason for IPv4 address exhaustion is insufficient capacity in the design of the original Internet infrastructure, several additional driving factors have aggravated the shortcomings. Each of them increased the demand on the limited supply of addresses, often in ways unanticipated by the original designers of the network.

### Mobile devices

As IPv4 increasingly became the *de facto* standard for networked digital communication and the cost of embedding substantial computing power into hand-held devices dropped, mobile phones have become viable Internet hosts. New specifications of 4G devices require IPv6 addressing.

### Always-on connections

Throughout the 1990s, the predominant mode of consumer Internet access was telephone modem dial-up. The rapid increase in the number of the dial-up networks increased address consumption rates, although it was common that the modem pools, and as a result, the pool of assigned IP addresses, were shared amongst a large customer base. By 2007, however, broadband Internet access had begun to exceed 50% penetration in many markets.<sup>[12]</sup> Broadband connections are always active, as the gateway devices (routers, broadband modems) are rarely turned off, so that the address uptake by Internet service providers continued at an accelerating pace.

### Internet demographics

The developed world consists of hundreds of millions of households. In 1990, only a small fraction of these had Internet access. Just 15 years later, almost half of them had persistent broadband connections.<sup>[13]</sup> The many new Internet users in countries such as China and India are also driving address exhaustion.

### Inefficient address use

Organizations that obtained IP addresses in the 1980s were often allocated far more addresses than they actually required, because the initial classful network allocation method was inadequate to reflect reasonable usage. For example, large companies or universities were assigned class A address blocks with over 16 million IPv4 addresses each, because the next smaller allocation unit, a class B block with 65,536 addresses, was too small for their intended deployments.

Many organizations continue to utilize public IP addresses for devices not accessible outside their local network. From a global address allocation viewpoint, this is inefficient in many cases, but scenarios exist where this is preferred in the organizational network implementation strategies.

Due to inefficiencies caused by subnetting, it is difficult to use all addresses in a block. The host-density ratio, as defined in RFC 3194, is a metric for utilization of IP address blocks, that is used in allocation policies.

## Mitigation efforts

Efforts to delay address space exhaustion started with the recognition of the problem in the early 1990s, and the introduction of a number of stop-gap refinements to make the existing structure operate more efficiently, such as CIDR methods and strict usage-based allocation policies.

The Internet Engineering Task Force (IETF) created the Routing and Addressing Group (ROAD) in November 1991 to respond to the scalability problem caused by the classful network allocation system in place at the time.<sup>[14][1]</sup>

IPv6, the successor technology to IPv4, was designed to address this problem. It supports approximately  $3.4 \times 10^{38}$  network addresses.<sup>[15]</sup> Although as of 2008 the predicted depletion was already approaching its final stages, most providers of Internet services and software vendors were just beginning IPv6 deployment at that time.<sup>[16]</sup>

Other mitigation efforts and technologies include:

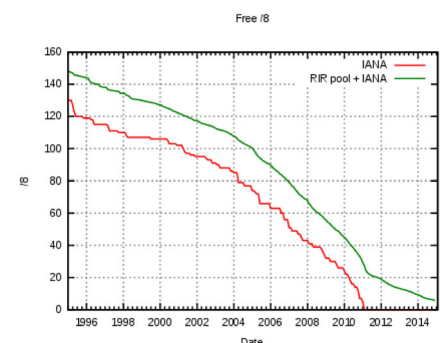
- use of network address translation (NAT)<sup>[17]</sup> which allows a private network to use one public IP address and permitting private addresses in the private network;
- use of private network addressing;<sup>[18]</sup>
- name-based virtual hosting of web sites;
- tighter control by regional Internet registries on the allocation of addresses to local Internet registries;
- network renumbering and subnetting to reclaim large blocks of address space allocated in the early days of the Internet, when the Internet used inefficient classful network addressing.<sup>[17]</sup>

## Exhaustion dates and impact

On 31 January 2011, the last two unreserved IANA /8 address blocks were allocated to APNIC according to RIR request procedures. This left five reserved but unallocated /8 blocks.<sup>[6][19][20]</sup> In accord with ICANN policies, IANA proceeded to allocate one of those five /8s to each RIR, exhausting the IANA pool,<sup>[21]</sup> at a ceremony and press conference on 3 February 2011.

The various legacy address blocks with administration historically split among the RIRs were distributed to the RIRs in February 2011.<sup>[22]</sup>

APNIC was the first regional Internet registry to run out of freely allocated IPv4 addresses, on 15 April 2011. This date marked the point where not everyone who needed an IPv4 address could be allocated one. As a consequence of this exhaustion, end-to-end connectivity as required by specific applications will not be universally available on the Internet until IPv6 is fully implemented. However, IPv6 hosts cannot directly communicate with IPv4 hosts, and have to communicate using special gateway services. This means that general-purpose computers must still have IPv4 access, for example through NAT64, in addition to the new IPv6 address, which is more effort than just supporting IPv4 or IPv6. The demand for IPv6 is expected to become pervasive over three to four years.<sup>[23]</sup>



Exhaustion of IPv4 addresses since 1995

# EXHIBIT 66

**ORDINANCE NO. 3148**

**AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES LIGHT DIVISION, D.B.A. CLICK! NETWORK AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.**

WHEREAS, City of Tacoma, Department of Public Utilities Light Division, dba. Click! Network (the “Franchisee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”), and

WHEREAS, the City Council has the authority to grant Franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1 Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City of Puyallup, a Washington municipal corporation (hereinafter the “City”), hereby grants to City of Tacoma, Department of Public Utilities Light Division, dba. Click! Network, its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 40 herein.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities for a telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Puyallup, as approved pursuant to City permits issued pursuant to this Franchise. Public “Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which,

#### Section 4 Location of Telecommunications Network Facilities.

Section 4.1 Franchisee is maintaining a telecommunications network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Public Works Engineering and Construction Standards and subject to the City's applicable permit requirements. The City reserves the right to prescribe the location of Franchisee's Facilities within the Franchise Area and the time and manner of Franchisee's activities through the permitting process. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation ("WSDOT") regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

#### Section 5 Relocation of Telecommunications Network Facilities.

Section 5.1 Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new Rights-of-Way and



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046

Tacoma, Washington 98402-2176  
(253) 798-7777  
FAX (253) 798-7509  
1-800-992-2456

May 20, 2005

Diane R. Lachel  
Government and Community Relations Manager  
Click! Network  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192

Dear Ms. Lachel:

Enclosed is a copy of the recorded version of Ordinance No. 2004-43 for your records. The 12-digit number below the bar code is the recording number that was assigned by the Office of the Pierce County Auditor at the time of recording.

If you have any questions, please contact me at (253) 798-6065.

Sincerely,

*Patricia K. Face, for*

Denise D. Johnson  
Clerk of the Council

c: Jerry West (w/recorded Proposal)

Enclosure





1 FILE NO. 80-A

PROPOSAL NO. 2004-43

2 Sponsored by: Councilmember Shawn Bunney

3 Requested by: County Executive

4  
5  
6 **ORDINANCE NO. 2004-43**

7  
8 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL FINDING THE PROPOSED NON-**  
9 **EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO THE CITY OF**  
10 **TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT**  
11 **DIVISION, FOR A TELECOMMUNICATIONS NETWORK IN PIERCE**  
12 **COUNTY TO BE IN THE PUBLIC INTEREST; SETTING FORTH**  
13 **TERMS AND CONDITIONS ACCOMPANYING THE GRANTING OF THE**  
14 **TELECOMMUNICATIONS FRANCHISE; PROVIDING FOR THE**  
15 **REGULATION OF CONSTRUCTION, OPERATION, MAINTENANCE,**  
16 **AND USE OF THE NETWORK; PRESCRIBING REMEDIES FOR THE**  
17 **VIOLATION OF THE PROVISIONS OF THE FRANCHISE; AND**  
18 **AUTHORIZING THE COUNTY EXECUTIVE TO ENTER INTO THE**  
19 **FRANCHISE AGREEMENT.**

20  
21 WHEREAS, The City of Tacoma, Department of Public Utilities,  
22 Light Division, doing business in the State of Washington, has  
23 applied for a non-exclusive telecommunications franchise to  
24 construct, operate, and maintain telecommunications facilities  
25 upon, in, under, across, along, and over certain County roads,  
26 highways, and other County property in Pierce County, Washington as  
27 hereinafter set forth; and

1           WHEREAS, Said application came on regularly for hearing before  
2 the Pierce County Council on the date set forth below under the  
3 provisions of Chapter 36.55, Revised Code of Washington and Chapter  
4 12.34, Pierce County Code; and

5  
6           WHEREAS, It appears to the Council that notice of said hearing  
7 has been duly given as required by law and that it is in the public  
8 interest to grant the Franchise; NOW, THEREFORE,

9  
10           BE IT ORDAINED by the Council of Pierce County:

11  
12           Section 1. The Pierce County Council hereby finds that the  
13 Telecommunications Franchise, a copy of which is attached hereto  
14 and incorporated herein as Exhibit "A" to the City of Tacoma,  
15 Department of Public Utilities, Light Division, is in the public  
16 interest.

17  
18           Section 2. The Pierce County Council hereby authorizes the  
19 County Executive to enter into the attached franchise agreement,  
20 authorizing the City of Tacoma, Department of Public Utilities,  
21 Light Division to construct, operate, and maintain a  
22 telecommunications facilities system in, across, under, upon,  
23 along, and over County roads, rights-of-way, highways, and County  
24 property in Pierce County, Washington as described below:

1 All County roads lying within Townships 19 North through  
2 22 North, inclusive, of Range 1 West, Willamette  
3 Meridian, and all County roads lying within Townships 15  
4 North through 22 North, inclusive, of Ranges 1 East  
5 through Range 9 East, Willamette Meridian, and lying  
6 within the boundaries of Pierce County, Washington.

7  
8 PASSED this 4th day of December, 2004.

9  
10 ATTEST:

PIERCE COUNTY COUNCIL  
PIERCE COUNTY, Washington

11  
12 Kate Kennedy for  
Denise D. Johnson  
13 Clerk of the Council

Harold G. Moss  
Councilmember Harold Moss  
Council Chair

14 Approved As To Form Only:

PIERCE COUNTY EXECUTIVE

15  
16 [Signature]  
Deputy Prosecuting Attorney

[Signature]  
John W. Ladenburg  
Approved  Vetoed   
17 this 6 day of DEC,  
18 2004.

19 Date of Publication of  
20 Notice of Public Hearing: November 24 + December 1, 2004

21 Effective Date of Ordinance: December 26, 2004

ARTICLE II - FRANCHISE

Section 1. Grant of Broadband Telecommunications Franchise.

A. Grant of Franchise. Subject to obtaining any permits as might be required under the County's Charter or Code or other applicable Laws (and subject to Grantee obtaining any additional necessary agreements, approvals or authorizations from any entity which owns poles or any other third party rights), the County hereby grants on a non-exclusive basis as provided in Pierce County Code 12.34.420 authorization for Grantee to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Facilities within the Rights-of-Way in unincorporated Pierce County for the purposes of providing Services to Persons located within or without the limits of the County. Exhibit I represents the initial phase of the location of the network which grantee intends to install. Any work performed pursuant to the rights granted under this Franchise may, at the County's option, be subject to the prior review and approval of the Director of Public Works and Utilities. During the term of this Franchise, the location of Facilities installed by Grantee or its designee shall be disclosed, in writing, to the County by Grantee within ten days before its installation, removal, or relocation. Such disclosures shall be incorporated in Exhibit I by way of a modification to this Franchise Agreement and shall not change except upon submittal of a revised Exhibit I, and a written request for a modification

1                   **ARTICLE XV - PERMITS, INITIAL SERVICE AREA AND**  
2   **CONSTRUCTION STANDARDS**

3  
4   **Section 1.    Initial Service Area and General Standards.**

5   A. Permits.   Grantee shall comply with Section 12.34.600 of the  
6       Pierce County Code.   In addition thereto, Grantee shall apply  
7       for a construction Permit prior to beginning any work in a  
8       Public Way or Right-of-Way generally including the opening of  
9       any street in County and shall comply with Chapters 12.04 and  
10      12.32 of the County Code.   No work, other than emergency  
11      work, shall commence without such Permit pursuant to the  
12      Pierce County Code Section 12.34.710.   Emergency repairs  
13      shall be made immediately with notice to County no later than  
14      the next business day.   Grantee shall further comply with  
15      Sections 12.34.700, 12.34.705, and 12.34.715 of the Pierce  
16      County Code which generally apply to construction standards,  
17      construction codes, utility Right-of-Way permits and  
18      applications.

19   B. Network Planning.   The Grantee and the County shall make  
20      reasonable good faith efforts to advise each other of plans  
21      and programs, both long and short range, for the placement of  
22      Facilities in Rights-of-Way, and other Public Property which  
23      might affect the other party or require its coordination.

24   C. Limited Access.   The County reserves the right to limit or  
25      exclude Grantee's access to a specific route, public right-  
26      of-way or other location when there is inadequate space, a  
27      pavement cutting moratorium, unnecessary damage to public

1 **Section 11. Authorization.**

2 The undersigned respectively represent and warrant that its  
3 signatory is duly authorized and empowered to sign this Franchise  
4 Agreement.

5  
6 IN WITNESS WHEREOF, the parties hereto have caused this Franchise  
7 Agreement to be executed as of the 31 day of January,  
8 2004

COUNTY OF PIERCE

By [Signature]  
Its COUNTY EXECUTIVE

12 Attest:

13 [Signature]  
14 Steven J. Klein  
15 Superintendent, Tacoma Power

16 Attest:

17 [Signature]  
18 Mark Crisson  
19 Director of Utilities

\_\_\_\_\_  
Grantee  
By \_\_\_\_\_  
Its \_\_\_\_\_  
Dated \_\_\_\_\_

Approved As To Form & Legality:

[Signature]  
Chief Asst. City Attorney



# Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1046  
Tacoma, Washington 98402-2176  
(253) 798-7777  
FAX (253) 798-7509  
1-800-992-2456

## PIERCE COUNTY COUNCIL PUBLIC MEETING NOTICE

PROPOSAL NO. 2004-43, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL FINDING THE PROPOSED NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION, FOR A TELECOMMUNICATIONS NETWORK IN PIERCE COUNTY TO BE IN THE PUBLIC INTEREST; SETTING FORTH TERMS AND CONDITIONS ACCOMPANYING THE GRANTING OF THE TELECOMMUNICATIONS FRANCHISE; PROVIDING FOR THE REGULATION OF CONSTRUCTION, OPERATION, MAINTENANCE, AND USE OF THE NETWORK; PRESCRIBING REMEDIES FOR THE VIOLATION OF THE PROVISIONS OF THE FRANCHISE; AND AUTHORIZING THE COUNTY EXECUTIVE TO ENTER INTO THE FRANCHISE AGREEMENT.

**MEETING DATE:** Tuesday, December 14, 2004

**TIME:** 5 p.m.

**\*PLACE:** County Council Chambers, Room 1045  
County-City Building  
930 Tacoma Avenue South  
Tacoma, Washington

**CONTACT:** Steve Gross, Deputy Legal Counsel, (253) 798-7579 or the Council Office at (253) 798-7777.

This proposal is scheduled for final consideration at this meeting. The Council encourages public participation. Public testimony will be taken. Written comments are welcome as well.

\* Each year the Council holds at least one evening meeting in each Council District.

Council meetings are audio recorded. Audio equipment is available for the Hearing Impaired. Please contact the Receptionist for assistance.

Dated: November 19, 2004



*AB sent to  
the attached  
on 11/22/04  
DS*