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Cc:	Christopher Mitchell
Subject:	Broadband Opportunity Council
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Attachments:	ILSR Comments to the BOC - June 10 2015.pdf

Please accept the attached comments from the Institute for Local Self-Reliance for the Broadband Opportunity Council Notice and Request for Comment [Docket No. 1540414365-5365-01].

Feel free to call with any questions or concerns.

Sincerely,
Lisa Gonzalez

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Lisa Gonzalez

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Attn: Broadband Opportunity Council
Docket No. 1540414365-5365-01

June 10, 2015
SUBMITTED VIA EMAIL

Comments of the
Institute for Local Self-Reliance
(ILSR)

The Institute for Local Self-Reliance's mission is to provide innovative strategies, working models and timely information to support environmentally sound and equitable community development. To this end, ILSR works with citizens, activists, policymakers and entrepreneurs to design systems, policies and enterprises that meet local or regional needs; to maximize human, material, natural and financial resources; and to ensure that the benefits of these systems and resources accrue to all local citizens.

We thank the Broadband Opportunities Council for offering us this opportunity to submit comments in response to the Notice and Request for Comments issued on April 29, 2015.[1] We offer the following suggestions on removing barriers and encouraging investment in next generation Internet networks.

I. Remove Barriers to Local Choice

Barriers to municipal networks from state governments, often enacted after extensive lobbying by incumbent operators to restrict competition, remain one of the single largest impediments to improved Internet access.[2] These barriers restrict the single most motivated entities from solving their own problems locally, which is the exact opposite dynamic as should be embraced. Though the BOC may not have any direct

[1] Federal Register, Vol. 80, No. 82, Wednesday, April 29, 2015, Notices pp. 23785-7.
[2] Community Networks Map, http://www.muninetworks.org/communitymap

method of opposing such barriers, it should recognize that these barriers are contrary to a pro-competition policy as encouraged by President Obama and FCC Chairman Wheeler. The power of the bully pulpit in this matter is significant as those seeking to restrict competition have a strong desire to remain in the shadows. Local governments should be able to decide for themselves the best means of expanding Internet access, whether by direct investment, partnerships, or other means.[1]

II. Prioritize Locally Accountable Networks

To solve the challenge of electrifying rural regions of America, federal policy focused on rural electric cooperatives. Expanding electricity to the entire country required private investment, thousands of municipally owned electric grids, and ultimately hundreds of rural coops. Municipalities and rural coops have remained rooted in the community and continue to provide reliable, low cost power. The private sector, which started with many small and independent operators, has largely consolidated in a few national firms and is often less responsive to local needs.[2]

For example, see the aftermath of recent natural disasters in New England where municipal operators not only tended to restore power more quickly but later investigation by the New York Times revealed that munis had not cut maintenance budgets in recent decades whereas the larger privately owned utilities had.[3]

Examining patterns of investment in rural America today show that locally rooted coops and local governments have invested in next-generation networks (often with funding from RUS) whereas the largest private sector telephone companies may offer DSL at best. In disbursing funds to expand Internet access, executive agencies should prioritize locally owned, publicly accountable networks to ensure those investments stand the test of time and maximize public benefits. Absentee owned networks simply have a lower return on investment when compared with locally rooted owners.

Because they are member-owned, cooperatives tend to make decisions with the best interest of their members (subscribers when discussing broadband Internet networks) in mind. Similarly, local private providers are embedded in the communities where they do business; they go to church with their customers and interface with customers while shopping. As a result, they directly feel the consequences and benefits of their business decisions. Unlike large corporate providers, whose primary motivation is to collect profits to appease shareholders, cooperatives and small local providers can deliver

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[1] Question E.18 on the Notice and Request for Comments.
[2] Question C.13 on the Notice and Request for Comments.
[3] http://www.muninetworks.org/content/connecticut-power-outage-shows-superiority-community-ownership and http://www.nytimes.com/2011/11/04/business/the-troubling-connecticut-power-failure.html?_r=2

"profits" beyond financial gain. The monetary profits tend to stay local and are reinvested one way or another in the community.

Additionally, cooperatives are especially resistant to consolidation into larger providers. By definition, cooperatives are complex business structures that require member approval for liquidation or sale. This provides additional assurance that any investment in cooperative infrastructure will continue to benefit the community directly for many decades. Though locally rooted private firms may have many of the benefits of coop in terms of local economic impact, they are more easily privatized and over time may be less likely to continue generating the same level of benefits for the local economy.

Lastly, local providers offer service and accountability far superior to large distant providers. Recently, several incidents have shed light on the damage these long-distant relationships can cause. Specifically, potential homebuyers have contacted the large incumbent provider to confirm that they could obtain a minimum level of service at the home they considered purchasing. In each instance the homebuyer needed a certain level of service to work out of their home and the incumbent confirmed repeatedly that it was available. After the new homebuyer took possession, however, they discovered that the home did not have access. In some instances access would require tens of thousands of dollars paid by the homeowner; in other instances there was no option.[4] The number of viral stories focusing on the poor customer service of national providers are simply too numerous to list.

III. Capital Support, Not Ongoing Subsidies

One of the other smart decisions in electrifying rural areas was to provide capital loans rather than ongoing operating subsidies. We believe that wherever possible, subsidies should be one-time infusions that result in financially sustainable networks. Such subsidies encourage more prudent fiscal management.

IV. Open Access

To the extent that networks are willing to operate on an open access basis, where multiple independent ISPs can use the same infrastructure to deliver services, they should be prioritized over closed networks. Particularly in rural areas, where meaningful competition is all but impossible in the foreseeable future, open access investments are likely to result in more choices and innovation.

[4] http://www.muninetworks.org/content/seths-tale-comcast-woe-perfectly-illustrates-many-internet-policy-problems

We are concerned that a blanket open access requirement might be counterproductive in limiting who would apply for funds but do feel that open access strategies should be prioritized and potentially open to a larger subsidy if necessary due to the greater challenges of this model.

V. Overbuilding vs. Underbuilding

For years, incumbent providers have successfully argued that overbuilding should not be allowed when federal grants or loans fund network deployment. This aversion to creating local choice is counterproductive to the President's goal to improve access by encouraging competition.[5]

The large incumbents have vilified overbuilding, claiming it places them at an unfair disadvantage. This is a hollow argument coming from companies owning billions in assets, possessing networks that extend across the nation, and that are already entrenched in communities that seek better connectivity. More often than not, incumbent providers that cry foul to overbuilding have already been approached by local officials and have declined requests to provide the community the services it needs to function in today's information economy. This is especially true in rural areas.[6]

In order for a network including unserved areas, which means the least economical to serve given present conditions, to be self-sustaining, particularly in regions that include large tracts of rural areas, urban or semi-urban cores where incumbent providers already offer services may need to be overbuilt. In Lake County, Minnesota, one of the largest FTTH stimulus projects undertaken due to the large geographic and sparsely populated region, the project began in one of the few town areas.[7] The economics of such a project demand this approach so revenue from the comparatively densely populated areas can help keep the network financially viable and help fund the less dense rural deployment.

When awarding federal grants and loans, entities that apply should not be discouraged or penalized for including some measure of overbuilding. The focus should be on the communities that need service and how to provide it, not on incumbent providers that are not meeting local needs or willing to serve rural areas.

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[5] Questions G.25 and G.26 on the Notice and Request for Comments.

[6] For an extensive discussion on overbuilding, see the Community Broadband Bits podcast episode #91, "To Overbuild or Underbuild? A Rural Policy Conundrum," http://www.muninetworks.org/content/overbuild-or-underbuild-rural-policy-conundrum-community-broadband-bits-podcast-91

[7] See ***All Hands on Deck : Minnesota Local Government Models for Expanding Fiber Internet Access***, Lisa Gonzalez and Chris Mitchell, September 2014, p.44, http://www.ilsr.org/all-hands-on-deck-mn/

VI. Adjust Policy That Denies RUS Loans in All Areas With Existing RUS Loans

The Rural Utilities Service has a policy that disallows loans to rural projects that serve a region where another RUS loan is already present.[8] The reasoning is likely based on refusing to fund another project that could put repayment of an existing project in jeopardy. However, conversations with people in rural areas have found that RUS has incorrectly told communities a loan was already active in the region when it was not. In other cases, a loan may have been for a telephone service initiated many years ago – this should not prevent a community from being able to build modern infrastructure because one provider received a loan for a different service 15 years previously.

In Sibley County, Minnesota, the RS Fiber Cooperative did not qualify for RUS funding for its fiber to the farm project. Upon further investigation, officials in Sibley County discovered that a small telephone company was in the process of repaying a RUS loan. The earlier loan interfered with the deployment, even though it was used to build out an inferior technology.[9]

In recent years, a community in Colorado had approached RUS with a request for a loan but was turned down for reasons that were not initially explained, as they could not get an answer from the local officials. After more than a year, they pushed harder to get an answer and were told that RUS had an active loan in the region, which was news to this community that could not find evidence of such a loan. After much more research, they found that RUS had years previously made a loan to a wireless company that had later gone bankrupt.

These are only two of many similar stories we have heard about confusion in working with federal programs. Whether it is paperwork requirements or the difficulty of getting answers to odd claims like this, we have regularly heard from local, rural entities that want to expand Internet access in rural areas that trying to get a federal loan or grant is simply not worth the challenge. The result is that federal programs become biased in favor of larger entities that can specialize in accessing the funds but may not be as committed to the best technical long-term solutions for a community.

VII. Tax Incentives Do Not Advance Community Buildout

Tax incentives are often touted as a means of expanding Internet investment. However, as most investment in high-speed rural networks has come from coops (both electric and

[8] Question E.20 on the Notice and Request for Comments.
[9] See ***All Hands on Deck : Minnesota Local Government Models for Expanding Fiber Internet Access***, Lisa Gonzalez and Chris Mitchell, September 2014, p.65, http://www.ilsr.org/all-hands-on-deck-mn/

telephone) and municipalities or partnerships involving these entities, tax incentives are extremely unlikely to advance rural investment.

Large firms have logical reasons to avoid investing their funds in rural regions – the ROI is too low relative to other opportunities. Oddly enough, we believe this may be in the long-term interest of those communities as it offers opportunities for rural coops to expand, municipal networks to deploy, and other locally rooted solutions to take form. The history of large incumbent telephone companies in rural areas is one of neglect and federal policy should focus on locally rooted entities that will ensure local needs are met, decade after decade.[10] However, tax incentive policies may induce the large firms to invest the minimum amount needed to meet the requirements, which would not serve the long-term interests of the community. Subsidies should be in a form that is available to cooperatives and local governments.

VIII. Reduce Paperwork and Reporting Requirements

We urge the federal government to differentiate between the smallest providers and larger providers in developing paperwork requirements. In particular, publicly owned providers (including coops) may not need the same level of rigorous oversight as private companies because publicly owned entities tend to operate in a more transparent manner and are already overseen by member-owners in coops or the democratic process in the case of local governments that have to stand for election regularly.[11]

Additionally, in rural areas where municipal providers and cooperatives serve fewer people and the population does not significantly fluctuate from year to year, information changes very little if at all. In communities with little change, municipal providers and cooperatives that already operate transparently should have the option to reduce the frequency of filing some types of forms.

Harlan Municipal Utilities is one of several municipal networks that have expressed concern over the intense reporting requirements and paperwork required at the state and federal level. While large providers like Comcast or AT&T have the resources to dedicate full time staff to the administrative reporting requirements, smaller providers find meeting the same requirements to be onerous.

> *"There is always some one in this building reporting on something," stated Doug Hammer.*[12]

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[10] ***Corporate Taxpayers & Corporate Tax Dodgers 2008 – 10***, Robert S. McIntyre, Matthew Gardner, Rebecca J. Wilkins, Richard Phillips, November 2011, http://www.ctj.org/corporatetaxdodgers/CorporateTaxDodgersReport.pdf .

[11] Question H.27 on the Notice and Request for Comments.

[12] Community Broadband Bits podcast episode #151, http://www.muninetworks.org/content/small-isps-and-paperwork-community-broadband-bits-episode-151

Hammer notes that, due to the small size of Harlan with only about 5,000 people, there are very few changes from year to year. Nevertheless, the municipal telecom utility must submit annual reports and, because the reporting requirements and forms change a fraction each year, the process is always time consuming.

IX. Anti-Monopoly Policy

As noted above, the firms with the most market power have tended to invest less in rural America whereas smaller, locally rooted entities have built next-generation networks.[13] Yet, the largest firms are often influential in setting the rules due to their ability to command vast armies of lobbyists at both the state and local levels. The Executive Branch should do everything it can to ensure firms cannot acquire too much market power and are prohibited from abusing it when they do.

As an example, Frontier Communications in Minnesota has engaged in a policy of sneaking early termination fees into the contracts of its telephone customers when a rival is beginning to create a network. When Frontier customers have tried to switch to the new market entrant, they have been told that they have to pay hundreds of dollars, which has significantly impacted the take rates of those in rural Minnesota that have invested in the very high capacity networks that Frontier chose not to.[14] These are abuses that local providers have trouble overcoming but Frontier surely would not like to be exposed publicly by federal agencies.

Similarly, Charter has engaged in what can only be described as blatant predatory pricing to run the city of Monticello out of the fiber business.[15] Predatory pricing is hard to prove in a court of law under current antitrust practice even with overwhelming evidence but again, federal agencies can shine a light on such practices that large firms will not want to defend. The example set by Charter's response to Monticello's has significantly chilled investment in next-generation networks in Minnesota by smaller entities that fear a predatory pricing response that would kill their business plan.

Large and powerful providers have the ability to influence adoption of rules and find ways to circumvent them. Most recently, in Central Missouri, the Co-Mo Cooperative is finishing deployment of a gigabit network in its territory with no public subsidies. CenturyLink, recipient of over $10 million in Connect America Funds, intends to overbuild a competitive network in those same areas. This reaction comes after years of ignoring local requests to improve services in the area.

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[13] http://www.muninetworks.org/content/10000-square-miles-connections-north-dakota

[14] See ***All Hands on Deck : Minnesota Local Government Models for Expanding Fiber Internet Access***, Lisa Gonzalez and Chris Mitchell, September 2014, p.56, http://www.ilsr.org/all-hands-on-deck-mn/

[15] http://arstechnica.com/tech-policy/2009/10/want-50mbps-internet-in-your-town-threaten-to-roll-out-your-own/

CentryLink argues that, due to the fact that Co-Mo works with a third party to offer VoIP, Co-Mo does not offer voice services.[16] This strategy is a way to use legal technicalities and flawed maps to their advantage but against the public interest. Large incumbent operators have a history of abusing these programs to further their own market advantage and maximize profits, which is another reason subsidy programs should favor locally rooted, and when possible, democratically accountable entities.

Encouraging real competition in this field requires more than removing a few barriers and hoping the market works out the kinks naturally. It requires ensuring that new market entrants are able to compete without being squashed by larger rivals that simply have more power to shape the rules and work the system. Some believe that it is enough to have the same rule apply to all – but that is not the right policy when entities are not similar. Good policy treats similar entities similarly, but does not impose the exact same rule on entities that are quite different.

X. Improve Reporting Maps and Include Rate Information

Though we believe existing reporting to be significantly flawed and largely gamed by the largest carriers, we have few words of wisdom to suggest how to fix it aside from demanding higher quality data. However, we believe that given the sophisticated methods of marketing and targeting that the largest firms use in customer acquisition, it should be reasonable to have them report, on a house-by-house basis, where access is really available. Additionally, we believe that any map of broadband access that does not include pricing data is seriously flawed and may not be particularly useful in crafting smart policy.[17]

XI. Executive Branch Should Produce Periodic Reports on Federal Subsidies to Expand Internet Access

Large providers receive billions in federal payments each year either in tax breaks, subsidies intended for infrastructure, or payments for Internet access in schools. Unfortunately, the total sum and distribution of those funds are not accessible to the American public. Accountability for how those funds are spent is also shrouded in mystery.[18] For example, a 2013 Huffington Post article discussing Georgia legislation to restrict municipal broadband investment addressed the issue of subsidies:

[16] http://www.muninetworks.org/content/co-mo-cooperative-facing-subsidized-centurylink-missouri
[17] Question H.28 on the Notice and Request for Comments.
[18] Question H.29 on the Notice and Request for Comments.

> *"They talk about [the companies] as if they are totally free market and free enterprise, but doesn't AT&T get some tax breaks?" [Rep. Debbie Buckner] asked. "Didn't Windstream get some stimulus money? Isn't that government money?"*
>
> *Indeed, phone and cable companies have been on federal welfare since their inception. A 2011 Institute on Taxation and Economic Policy study shows AT&T and Verizon receiving more than $26 billion in tax subsidies from 2008 through 2010. The FCC's 2012 report on Universal Service Fund subsidies shows nearly $3 billion in federal payments to AT&T, Verizon and Windstream.*[19]

The Executive Office should release a thorough report on an annual basis that documents the amount of public dollars awarded to, released to, and spent by private and public Internet service providers. This information should be widely distributed and made available online.

XII. Conclusion

The challenge of expanding high quality Internet access to everyone in the United States is significant but well within the grasp of communities, states, and the federal government. The above suggestions represent a number of ideas that will move us closer to the goal of universal, affordable, fast, and reliable Internet access.

Sincerely,

/s/

Christopher Mitchell,

Director, Community Broadband Networks Initiative, ILSR

[19] http://www.huffingtonpost.com/timothy-karr/georgias-internet-uprisin_b_2860657.html