



SB05-152 Opt-Out Kit: A Local Government Blueprint for Improving Broadband Service in Your Community

May 2017

Introduction

In order to compete in today's economy, communities across the state have become increasingly dependent on Internet access – and especially high-capacity (“broadband”) access - for business development and operations. The availability of broadband has also become a necessity for quality of life and desirability of a community, providing residents access to things like online education and distance learning opportunities, telemedicine and entertainment content (movies, music, etc.). Broadband has become so critical, in fact, that many now regard it as a basic infrastructure need - on par with roads, water systems and energy grids.

Unfortunately, numerous communities across Colorado still lack adequate Internet connectivity. The reasons vary, but more often than not these areas are too sparsely populated, too remote or in regions where the topography (mountainous terrain, etc.) makes expanding service difficult and expensive for telecommunication providers. These communities are “upside down” from a traditional business model standpoint, and providers are unable or unwilling to connect these areas, leaving them at an economic disadvantage from their more urbanized neighbors.

While local governments often play a direct role in economic development efforts, cities and counties historically have not been directly involved in the delivery of retail telecommunication services. However, the increasing demand for broadband service – often driven by economic development concerns - has forced many local government officials to reexamine their role in the provision of broadband services.

In the last few years, a growing number of local governments have started looking at investing public dollars in broadband infrastructure improvements (usually fiber optic cable lines or cell towers) in order to attract Internet providers and enhance economic development efforts in their region. The Department of Local Affairs has also heard these community concerns, and has expanded its existing broadband planning grant program to include funds for local government investments in “middle mile” broadband infrastructure.

SB 152 and Statutory Prohibitions on Local Government Broadband Infrastructure

One of the biggest impediments to local governments enhancing broadband infrastructure is a law passed in 2005, which has since been commonly referred to as “Senate Bill (SB) 152” (SB05-152, attached to this memorandum and codified in article 27 of title 29, C.R.S.). SB 152 prohibits most uses of municipal or county money for infrastructure to improve local broadband service, without first going to a vote of the people. The hurdles put in place by this statute are not insurmountable; indeed, in the past few years 68 municipalities and 28 counties have placed measures on the ballot to override the prohibitions in SB 152. These measures have passed handily in virtually every jurisdiction - with the support of citizens who are frustrated and want timely action on broadband service in their communities.

Continued dissatisfaction over a lack of adequate broadband is resulting in more and more jurisdictions considering going to the ballot with SB 152 questions. During the last few years, CML and CCI have been meeting with local government officials, economic development professionals, state agency representatives and telecommunication experts from jurisdictions whose voters have approved SB 152 questions at the ballot. This opt-out kit is designed to help interested local government officials and staff to frame the issue as they consider their own ballot questions and work toward improving broadband service in their communities.

SB 152 Frequently Asked Questions (FAQ's)

What does a SB 152 election accomplish?

SB 152 requires that an election be held before a local government may “engage or offer to engage in providing” various telecommunication services. The term “providing” is given an expansive definition in the statute, which restricts both the direct and “indirect” provision of service (“indirect”, in turn, is given its own, broadly restrictive definition). Fortunately, through a successful SB 152 election, a local community can clear away this legal impediment to a wide variety of local broadband initiatives.

It is important to point out that the vast majority of local governments who have passed SB 152 questions (or are considering going to the ballot in the near future) are **not** interested in hooking up homes and businesses and providing actual broadband services themselves. By and large, these jurisdictions are working to enhance local broadband infrastructure in order to *attract* private sector service providers who would otherwise be unwilling or unable to serve their communities. The local broadband initiatives in the jurisdictions passing SB 152 questions to date usually involve some form of public-private partnerships between local governments, economic development agencies and the industry.

Is referring a SB 152 question to the ballot expensive?

No more so than any other referred measure. Most jurisdictions have referred their questions when the municipality or county was *already* having an election. Accordingly, the addition of the SB 152 issue did not significantly increase costs. In a coordinated election, a particular jurisdiction’s costs would be affected by the terms of the IGA regarding election cost allocation between the county and participating local governments.

Are there any restrictions on referring SB-152 ballot measures in odd-numbered year coordinated elections?

Apparently not. A wide number of locally-referred questions have been submitted to voters in coordinated elections conducted in odd-numbered years in Colorado. Local governments have regularly referred TABOR questions and home rule charter amendment ballot questions to the voters in odd-numbered years, and this practice is explicitly authorized in C.R.S. § 1-41-103. Additionally, the Attorney General issued an opinion in 1999 (No. 99-8 AG Alpha No. HE CS AGAWD) which concluded that local governments may refer ballot questions on term limits in odd-numbered years as well. Odd-year ballot questions dealing with issues outside of TABOR, charter amendments and term limits are less common, but have been referred fairly regularly by local elected

officials over the years without challenge. The language in SB 152 (specifically C.R.S. § 29-27-201(1)) requires that “Before a local government may engage in providing...telecommunications service, or advanced service, an election shall be called on whether or not the local government shall provide the proposed...service.” This authorizing language is broad in nature, and does not appear to limit the ballot question to the general election ballot. Again, local government officials are advised to consult with legal counsel in the development of these ballot questions.

What sort of election specifics does SB 152 require?

Not many. SB 152 specifies four requirements for ballot questions in a SB 152 election. (See: C.R.S. § 29-27-201(2))

The ballot:

- (1) Shall pose the question as a “single subject”,
- (2) Shall include a description of the “nature of the proposed service,”
- (3) Shall include a description of “the role that the local government will have in the provision of the service,” and
- (4) Shall include a description of the “intended subscribers of such service.”

How have other jurisdictions addressed these requirements?

A review of the ballot questions put forth by local governments so far (included below) shows a clear preference for broad “anything and everything” type authority. Industry representatives have complained from time to time that such local ballot language has lacked the specificity required by the statute. This notion has never been tested in court. One might also argue that a “broad authority” question that describes the nature of the service proposed, along with potential future build-outs or applications, is not fatally flawed by its inclusion of the latter. Furthermore, courts have been traditionally hesitant to reverse the will of the voters, if evident. Obviously, the development of local SB 152 ballot language should be done in close consultation with legal counsel.

What about the “single subject” requirement?

The term “single subject” is not defined in SB 152. Nonetheless, the ballot questions submitted by local governments thus far seem comfortably within the single subject standard applied to statewide *ballot initiatives*, in cases such as In the Matter of the Ballot Title and Submission Clause for 2013-2014 #129, 333 P.3d 101 (Colo. 2014). Local government officials are urged to consult with legal counsel.

Are there any additional election requirements that distinguish a SB 152 question from other matters routinely referred to the ballot by a county or municipality?

No (but again, please confer with your legal counsel). As always, attention should be paid to the requirements of the Fair Campaign Practices Act (Section 1-45-117, C.R.S.), which forbids use of public funds for advocacy in elections. This restriction is a prudent consideration in planning any campaign for a successful SB 152 election.

Does voter approval of a county SB 152 ballot question have the effect of authorizing the provision of such services by municipalities within that county?

No. SB 152 requires voter approval by each jurisdiction participating in the provision of covered services.

Does opting out of SB 152 bind local taxpayers to provide local funds?

No. Opting out of SB 152 simply removes the local prohibition on expending public funds to provide service and allows local jurisdictions to explore and develop plans for their communities. If any jurisdiction gets to the point where they are looking to invest public funds they must follow their own guidelines for doing so.

Does a jurisdiction need to approve a SB 152 ballot question in order to qualify for broadband infrastructure grant funds from the Department of Local Affairs (DOLA)?

It depends. DOLA's broadband grant program provides funding for regional planning and "middle mile" infrastructure projects (i.e., projects that do not provide "last mile" connections to customers). The guidance in DOLA's broadband grant policies suggests that each jurisdiction must determine whether it is in compliance with the statutory restrictions set forth in SB 152. DOLA requires any grantee to be in compliance with any applicable laws and regulations. DOLA itself will not make that determination, nor does the awarding of a grant confer any certainty or acknowledgment of compliance on DOLA's part to the grantee. DOLA's broadband grant policy guidelines can be found at: <http://dola.colorado.gov/demog-cms/content/dola-broadband-program>.

Sample Local Government Ballot Language for SB 152 Elections

County Questions**Rio Blanco County (Passed Fall 2014)**

“Without increasing taxes, shall the citizens of Rio Blanco County, Colorado, authorize the Board of County Commissioners of Rio Blanco County, Colorado, to provide to potential subscribers including telecommunications service providers, residential and commercial users within Rio Blanco County, all services restricted since 2005 by Title 29, article 27 of the Colorado Revised Statutes, including “telecommunication services,” “cable television services,” and “advanced services” which is defined as high speed internet access capability in excess of two hundred fifty six kilobits per second both upstream and downstream (known as “broadband”) including any new and improved bandwidth services based on future technologies, utilizing the existing community owned fiber optic network and/or developing additional infrastructure, either directly or indirectly with public or private sector partners?”

San Miguel County (Passed Fall 2014)

“Without increasing taxes, shall San Miguel County, Colorado, have the legal ability to provide any or all services currently restricted by Title 29, article 27, Part 1, of the Colorado Revised Statutes, specifically described as “advanced services,” “telecommunication services,” and “cable television services,” as defined by the statute, including, but not limited to, any new and improved high bandwidth services based on future technologies, utilizing community owned infrastructure including but not limited to any existing fiber optic network, either directly, or indirectly with public or private sector service providers, to potential subscribers that may include telecommunications service providers, and residential or commercial users within San Miguel County?”

Yuma County (Passed Fall 2014)

“Without increasing taxes, shall the citizens of Yuma County Colorado re-establish their counties’ right to provide all services and facilities restricted since 2005 by Title 29, Article 27 of the Colorado Revised Statutes, described as “Advanced Services,” “Telecommunication Services,” and “Cable Television Services,” including providing any new and improved broadband services and facilities based on future technologies, utilizing existing or new community owned infrastructure including but not limited to the existing fiber optic network, either directly or indirectly with public or private sector partners, to potential subscribers that may include telecommunications service providers, residential or commercial users within the boundaries of Yuma County?”

Clear Creek County (Passed Fall 2015)

Without increasing taxes by this measure, shall citizens of the County of Clear Creek, Colorado, authorize their board of county commissioners to provide any or all services currently restricted by Title 29, Article 27, Part 1, of the Colorado Revised Statutes, specifically described as high speed internet access ("advanced service"), "telecommunications service," and "cable television service," as defined by the statute, including, but not limited to, any new and improved high bandwidth services based on future technologies, either

directly or indirectly with public or private sector partners or providers, to potential subscribers including, without limitation, other service providers and residential, commercial and governmental users within Clear Creek County? Yes - For authorization to provide high speed internet access ("advanced") service, telecommunications service, and cable television service. No - Against authorization to provide high speed internet access ("advanced") service, telecommunications service, and cable television service.

La Plata County (Passed Fall 2015)

Without increasing taxes, shall La Plata County, Colorado be authorized to reestablish the right to provide high-speed services, and/or cable television services (all as defined in § 29- 27-102, Colorado Revised Statutes) to residents, businesses, schools, libraries, nonprofit entities and other users of such services, either directly or indirectly with public or private sector partners?

Ouray County (Passed Fall 2015)

Shall Ouray County, without increasing taxes by this measure, be authorized to provide all services and facilities as permitted by Title 29, Article 27 of the Colorado Revised Statutes, described as "advanced services", "telecommunications services" and "cable television services", including providing any new and improved broadband services and high-speed internet services and facilities, based on current or future technologies, and utilizing existing or future county owned or leased infrastructure, fiber optic connections and networks, either directly or indirectly, including use of county wireless connections in county facilities without charge to members of the public, with or without public or private partners, for the benefit and use of residents and visitors to Ouray County and to potential residential and commercial subscribers in Ouray County?

Washington County (Passed Fall 2015)

Pursuant to the authority granted by C.R.S. Section 29-27-101 to 304 titled "competition in utility and entertainment services" shall Washington County be authorized to provide high-speed internet services, (advanced services), telecommunications services, and/or cable television services to residents, businesses, schools, libraries, nonprofit entities and other users of such services either directly or indirectly with public or private sector partners as those terms are defined in the aforementioned statutes within the unincorporated boundaries of Washington County, Colorado?

Larimer County (Passed November 2016)

Without increasing taxes, shall the citizens of Larimer County Colorado re-establish Larimer County's right to provide any and all services and facilities restricted since 2005 by Title 29, Article 27 of the Colorado Revised Statutes, described as "Advanced Services" (high-speed internet), "Telecommunication Services," and "Cable Television Services," including but not limited to any new and improved broadband services and facilities based on future technologies, utilizing existing or new community owned infrastructure including but not limited to the existing fiber optic network, either directly, or indirectly with public or private sector partners, to potential subscribers that may include telecommunications service providers, residential or commercial users within the boundaries of Larimer County?

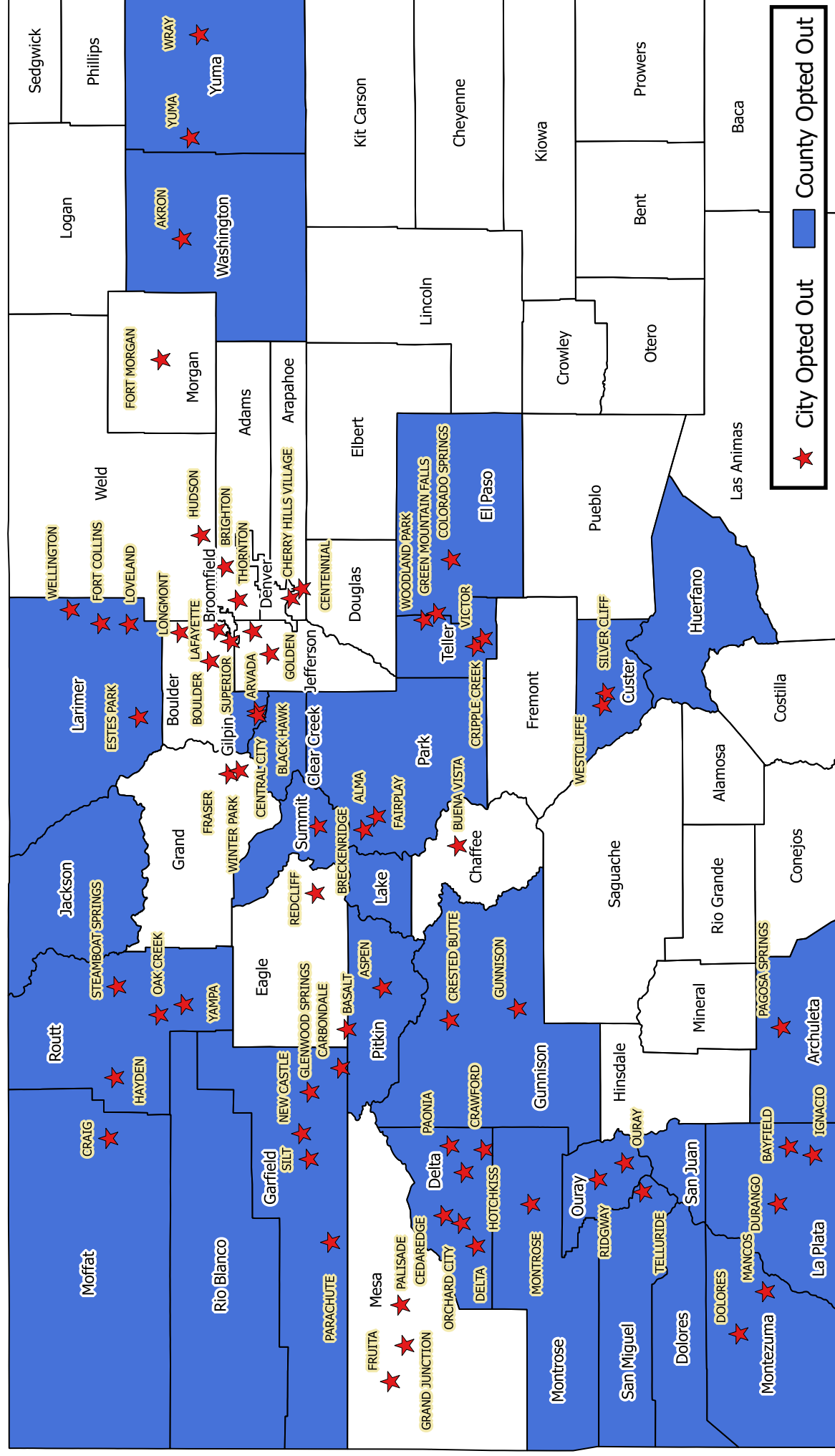
Municipal Questions

SPRING 2015		
GRAND JUNCTION	CITY OF GRAND JUNCTION REFERRED MEASURE 2A SHALL THE CITY OF GRAND JUNCTION, WITHOUT INCREASING TAXES BY THIS MEASURE, BE AUTHORIZED TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNER(S), HIGH-SPEED INTERNET SERVICES (ADVANCED SERVICE), TELECOMMUNICATIONS SERVICES AND/OR CABLE TELEVISION SERVICES AS DEFINED BY § 29-27-101 TO 304 OF THE COLORADO REVISED STATUTES, INCLUDING BUT NOT LIMITED TO ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICE(S) BASED ON FUTURE TECHNOLOGIES, TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, WITHOUT LIMITING ITS HOME RULE AUTHORITY?	PASS, 75%- 22%
ESTES PARK	WITHOUT INCREASING TAXES, SHALL THE TOWN OF ESTES PARK REESTABLISH THE TOWN'S RIGHT TO PROVIDE ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING, BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE TOWN AND THE SERVICE AREA OF THE TOWN'S LIGHT AND POWER ENTERPRISE?	PASS, YES: 1652 NO: 136
FALL 2014		
BOULDER	SHALL THE CITY OF BOULDER BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET SERVICES (ADVANCED SERVICES), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY §§ 29-27-101 TO 304, "COMPETITION IN UTILITY AND ENTERTAINMENT SERVICES," OF THE COLORADO REVISED STATUTES, WITHOUT LIMITING ITS HOME RULE AUTHORITY?	PASS, 17512- 3551
CHERRY HILLS VILLAGE	SHALL THE CITY OF CHERRY HILLS VILLAGE, WITHOUT INCREASING TAXES BY THIS MEASURE, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO LOCAL GOVERNMENTS BY THE COLORADO GENERAL ASSEMBLY AND FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO PROVIDE HIGH-SPEED INTERNET, INCLUDING IMPROVED HIGH BANDWIDTH SERVICES BASED ON NEW TECHNOLOGIES, TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NON-PROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, AS EXPRESSLY PERMITTED BY ARTICLE 27, TITLE 29 OF THE COLORADO REVISED STATUTES?	PASS, 2362- 613
RED CLIFF	SHALL THE TOWN OF RED CLIFF BE AUTHORIZED TO PROVIDE CABLE TELEVISION, TELECOMMUNICATIONS AND/OR HI-SPEED INTERNET SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, EITHER DIRECTLY OR INDIRECTLY THROUGH PUBLIC OR PRIVATE SECTOR PARTNERS?	PASS, 56-24

WRAY	WITHOUT INCREASING TAXES, SHALL TH CITIZENS OF WRAY, COLORADO RE-ESTABLISH THEIR CITY'S RIGHTS TO PROVIDE ALL SERVICES AND FACILITIES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES,' TELECOMMUNICATIONS SERVICES' AND 'CABLE TELEVISION SERVICES,' INCLUDNG PROVIDING ANY NEW AND IMPROVED BROADBAND SERVICES AND FACILITIES BASED ON FUTURE TECHONOLOGIES, UTILIZING EXISTING OR NEW COMMUNITIY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERICAL USERS WITHIN THE CITY?	PASS 3167- 2461
YUMA	WITHOUT INCREASING TAXES, SHALL TH CITIZENS OF YUMA, COLORADO RE-ESTABLISH THEIR CITY'S RIGHTS TO PROVIDE ALL SERVICES AND FACILITIES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES,' TELECOMMUNICATIONS SERVICES' AND 'CABLE TELEVISION SERVICES,' INCLUDNG PROVIDING ANY NEW AND IMPROVED BROADBAND SERVICES AND FACILITIES BASED ON FUTURE TECHONOLOGIES, UTILIZING EXISTING OR NEW COMMUNITIY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERICAL USERS WITHIN THE CITY'S UTILITY SERVICE AREA?	PASS, 71%- 29%
SPRING 2014		
MONTROSE	REFERRED MEASURE "A" WITHOUT INCREASING TAXES, SHALL THE CITIZENS OFTHE CITY OF MONTROSE, COLORADO, RE-ESTABLISH THEIR CITY'S RIGHT TO PROVIDE ALL SERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OFTHE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCED SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO POTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE CITY?	PASS 3969- 1396
FALL 2013		
CENTENNIAL	BALLOT QUESTION 2G	PASS

	SHALL THE CITY OF CENTENNIAL, WITHOUT INCREASING TAXES, AND TO RESTORE LOCAL AUTHORITY THAT WAS DENIED TO ALL LOCAL GOVERNMENTS BY THE STATE LEGISLATURE, AND TO FOSTER A MORE COMPETITIVE MARKETPLACE, BE AUTHORIZED TO INDIRECTLY PROVIDE HIGHSPEED INTERNET (ADVANCED SERVICES), TELECOMMUNICATIONS SERVICES, AND/OR CABLE TELEVISION SERVICES TO RESIDENTS, BUSINESSES, SCHOOLS, LIBRARIES, NONPROFIT ENTITIES AND OTHER USERS OF SUCH SERVICES, THROUGH COMPETITIVE AND NON-EXCLUSIVE PARTNERSHIPS WITH PRIVATE BUSINESSES, AS EXPRESSLY PERMITTED BY ARTICLE 29, TITLE 27 OF THE COLORADO REVISED STATUTES?	76%- 24%
FALL 2011		
LONGMONT	BALLOT QUESTION 2A: WITHOUT INCREASING TAXES, SHALL THE CITIZENS OF THE CITY OF LONGMONT, COLORADO, RE-ESTABLISH THEIR CITY'S RIGHT TO PROVIDE ALLSERVICES RESTRICTED SINCE 2005 BY TITLE 29, ARTICLE 27 OF THE COLORADO REVISED STATUTES, DESCRIBED AS "ADVANCES SERVICES," "TELECOMMUNICATIONS SERVICES" AND "CABLE TELEVISION SERVICES," INCLUDING ANY NEW AND IMPROVED HIGH BANDWIDTH SERVICES BASED ON FUTURE TECHNOLOGIES, UTILIZING COMMUNITY OWNED INFRASTRUCTURE INCLUDING BUT NOT LIMITED TO THE EXISTING FIBER OPTIC NETWORK, EITHER DIRECTLY OR INDIRECTLY WITH PUBLIC OR PRIVATE SECTOR PARTNERS, TO PROTENTIAL SUBSCRIBERS THAT MAY INCLUDE TELECOMMUNICATIONS SERVICE PROVIDERS, RESIDENTIAL OR COMMERCIAL USERS WITHIN THE CITY AND THE SERVICE AREA OF THE CITY'S ELECTIC UTILITY ENTERPRISE? Y/N	PASS: YES 60.82% (13238), NO 39.18% (8529)
FALL 2009		
LONGMONT	BALLOT ISSUE 2C-- AUTHORIZATION TO ALLOW THE CITY TO PROVIDE TELECOMMUNICATIONS SERVICES, ADVANCED SERVICES AND CABLE TELEVISION SERVICES TO RESIDENTIAL AND COMMERCIAL USERS WITHIN THE SERVICE AREA OF THE CITY'S ELECTRIC UTILITY ENTERPRISE	FAIL, YES 44%, NO 56%

Local Governments Repealing Prohibition on Public Investment in Broadband



Tips for Getting Your Question on the Ballot and Passing It

Passing a local ballot question on SB 152 takes planning and coordination. If done properly, it is an effective way to educate the public and build widespread support and buy-in for future broadband deployment efforts.

- Start early, and find a champion in your local government agency (elected official, IT staff, etc.) or the community (economic development professionals, chambers of commerce, etc.). Consider forming a citizen and/or business coalition group to carry out grass roots messaging and education about the ballot measure and the need to remove the restrictions in SB 152. This group becomes very important once the ballot issue is placed on the ballot since **government resources cannot be used to promote ballot questions**. Fair Campaign Practices Act (Section 1-45-117, C.R.S.)
- Hold work sessions with the elected officials who will ultimately refer the question to the ballot. Make sure they understand the issues, the benefits to the community and the opposition that may be voiced. Attempt to identify potential opposition early on in the process.
- Make sure you are coordinating with your municipal/county attorney and municipal clerk/county clerk and recorder on the timing of ballot preparation and any associated deadlines for submittal of ballot questions for inclusion on the ballot.
- Get the message to the voters. SB 152 is a complicated and often confusing piece of legislation and it will take time to decode its intricacies for the voting public. Keep in mind that there will be only a limited amount of time for the local government agency to tell its story to their voters before the election.
- Marketing/Promotional Materials & Outreach
 - Develop core messaging that is succinct and effective (example: “Take Back Our Local Choice”)
 - Create a website to direct voters to for more information and educational materials
 - Allow citizens to sign up for e-mails that provide updates on the broadband efforts
 - Place op-ed articles in local publications (see samples below)
 - Compile a list of events and meetings where elected officials can meet voters and educate them on the ballot measure.
- Don’t “overpromise” on what an SB 152 opt-out question will do for your community. Opting out of the local government prohibition on providing indirect or direct service is only the **first step** to improving broadband service in your community.

What is fiber-optic broadband?

Fiber-optic broadband cable can run underground or in the air on existing poles. Pulses of light allow very reliable connections and can quickly carry large amounts of data over long distances. Fiber-optic cable is a dedicated internet connection and is not shared with cable services. Fiber-optic network speeds are typically 100 megabits to 10 gigabits per second, compared to 20 to 100 megabits per second for a typical cable internet connection, or 3 megabits per second or less for traditional copper phone service.

Does Dolores County own existing fiber?

Yes, Dolores County owns 5.5 miles of fiber.

Are other Colorado cities exempt from SB 152?

Voters in many Colorado towns, cities, and counties have exempted themselves from SB 152, passing measures that affirm their local choice to decide how broadband services develop in these communities.

Exemptions have been approved in:

- Archuleta County
- Bayfield
- Durango
- Ignacio
- La Plata County
- Mancos
- Silverton
- San Juan County
- Telluride



This ballot item is:

If voters approve this ballot item, Dolores County would be exempted from a state law that otherwise purports to limit local governments from improving broadband capabilities. With this exemption, the county would be permitted to establish business partnerships with private companies to increase access to high-speed broadband internet, opt to provide this service itself, or develop a combined strategy to benefit residents and business users.

This ballot item is not:

This ballot item would not prevent any private business, including existing broadband providers, from initiating or continuing to provide these services. Dolores County has no plans to create a public broadband utility. Passage of this measure would allow the county to explore a variety of options to make assets available to serve the broadband needs of residents, students and businesses.

November 2016 BALLOT QUESTION Exemption from SB 152

Voters residing in the Dolores County will be asked Measure 1A:

Without increasing taxes, shall Dolores County, Colorado be legally authorized to provide any or all services and facilities currently restricted by Title 29, article 27 of the Colorado Revised Statutes, described as “advanced services”, “telecommunications services”, and “cable television services”, as defined by the statute, including, but not limited to any new and improved broadband services and high-speed internet services and facilities, based on current or future technologies, and utilizing existing or future county owned or leased infrastructure, including county wireless connections in county facilities and fiber optic connections and networks, either directly or indirectly, with or without public or private partners, to potential subscribers, which may include telecommunications service providers, and residential and commercial users within Dolores County?”



SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS

www.swccog.org

970-779-4592

This information about SB 152 has been paid for by Southwest Colorado Council of Governments. It is not intended to urge a vote for or against this item.

Would you like the opportunity for....
Better and More Affordable Internet Access? A Level Playing Field for Local Businesses? A More Connected and Vital Community?

Exemption outcomes could include:

Better Access to high speed broadband services for residents and businesses alike.

Intensified Innovation by local businesses and entrepreneurs.

Affordable Internet Access, as Dolores partners with internet service providers and key institutions to more efficiently expand internet service.

A Cleaner Environment, as high speed internet reduced commuting needs and promotes high tech green jobs.

A More Connected Community, with new avenues for public engagement in local decision-making and new opportunities for connected social spaces and creative networking.

Improved Quality of Life, as local residents have better access to information in work and at home, allowing more free time to enjoy all that the surrounding area has to offer.

Tell me more about Colorado Senate Bill 152...

Colorado Senate Bill 05-152 (SB 152) is a measure passed by the Colorado Legislature in 2005. Its intent was to limit governments from competing with the private sector. Among other provisions, it requires local governments to secure voter approval before entering into the broadband partnerships or business. Without such approval, the law limits the ability of Colorado local governments to provide a wide spectrum of services, including:

- free Internet service in city libraries, parks and community centers;
- leveraging government infrastructure and partnering with private businesses to provide affordable and high-speed Internet service throughout the entire community;
- direct provision of broadband services by municipal governments where needed.

How would an exemption from SB 152 benefit Dolores County?

A voter-approved exemption from SB 152 would restore local independence and ability to evaluate all possibilities for next-generation broadband services in Dolores County.

An exemption supports local choice and options, allowing citizens to make the best decisions based on the needs of our own community, without raising taxes.

How Can I Vote?

Ballot drop-off is located at:
Dolores County Building
409 N. Main St.
Dove Creek, CO 81324

Voters may mail ballots to:
Dolores County Clerk
409 N. Main St.
Dolores, CO 81324

Ballots must be received by Election Day—
Tuesday, November 8, 7:00 pm.

Sample Local Elected Official Op-Ed Pieces on SB 152 Ballot Questions

Gaiter: Broadband No Longer a Luxury

From luxury to necessity. It's hard to not think of using the internet to do the everyday things we do: shopping, reading the news, paying bills, watching TV or emailing a friend. With the explosion in the use of the internet, and the things it's allowed us to do, the need for higher speed has also become more necessary than ever.

High-speed internet services (broadband) are not the "luxury" they were as recently as a decade ago; today they're as common as electricity. If you live in a highly-urbanized area, you might have some broadband services, although many lament these services are not sufficient. If you're in a rural area, these services might not exist at all.

Over the last several years, I've worked with internet providers and residents to explore what can be done to improve services to make internet service more dependable, faster and consistent for Larimer County residents.

However, in 2005 the Colorado Senate passed a law — Colorado Senate Bill 152 — which limits what local governments may do to improve services. Under this law, Larimer County can't let local providers use county-owned infrastructure that might be in place to enhance internet speed and service. Fortunately, the law does allow citizens of local communities to vote to exempt themselves from the constraints of this legislation.

We've watched the Colorado communities of Wellington, Estes Park, Loveland and Fort Collins ask voters to have their communities exempted from SB 152. After those communities exempted themselves from this law, their gaps in internet services are now being addressed. However, there is still a large service gap outside of and between those communities. We've had excellent conversations with the aforementioned communities on how Larimer County can help with their efforts and fill in those gaps. We hope Larimer County citizens will give us permission to move forward on those efforts.

This November, Larimer County will have an item on the ballot to ask citizens for permission to become exempt from SB 152 and join our local municipalities and internet providers in improving these services. If passed, we want to begin a study to understand the best way to provide these services. We would also seek to partner with the private sector, while looking for grants to help provide these service improvements.

These are the first steps to provide high-speed internet service county-wide, although it might be several years to fruition.

The ballot language for this item asks voters to allow Larimer County to provide high-speed internet, television and telecommunication services. The wording is a function of the way the initial law was passed. However, it's Larimer County's goal to work with our partners to provide those services and for Larimer County to perhaps provide some infrastructure to provide those services.

Many of you are most likely reading this column online, so you already know how important internet services are. We are asking for the support of all Larimer County residents — both in and out of city limits — in restoring the ability to provide high-speed broadband to all county residents.

Lew Gaiter is the Larimer County commissioner representing District 1.

Estes Park Board of Trustees Unanimously Request a Special Election Regarding Provision of Broadband Services

On Tuesday, 11-Nov, the Estes Park Board of Trustees unanimously requested a special election regarding provision of broadband internet services. The request for a special election originated with a resolution adopted by the Estes Park Economic Development Corporation (EDC) last August. The resolution urged the Town of Estes Park to hold an election asking voters whether, without raising taxes, the Town's right should be re-established, to directly or indirectly provide telecommunications services like broadband internet. The resolution resulted from an extensive investigation by the Competitive Broadband Committee of the Estes Park EDC into how to achieve a key goal in the Town's 2014 Strategic Plan: "to encourage optimal use of the Platte River Power Authority and Town's fiber infrastructure."

Why is this important? To have a strong economy, Estes Park must have access to competitive broadband service. This is true because of how important the internet has become in our economic and social lives. The availability of competitive broadband already determines where businesses locate, where travelers visit, and where people choose to live. The economic and social importance of access to competitive broadband will only increase over time. "Competitive broadband" means the level of internet service that is currently available in large US cities in terms of speed, cost, and reliability. Competitive broadband in the Estes area would help keep our schools, businesses, and homes competitive in our region and nationally.

Colorado Senate Bill 152 took away our local government's right to decide the best way for the Town to help provide competitive broadband service. Senate Bill 152 blocks local government's involvement in directly or indirectly providing broadband service. Senate Bill -152 applies to Estes Park because, with the Platte River Power Authority, the Town already indirectly provides

broadband service through its involvement in the fiber optic infrastructure used for local broadband service.

Given Senate Bill 152, an election is the only way to restore local authority and free local governments from the bills' restrictions. So, to achieve the Town's goal of "optimal use of the Platte River Power Authority and Town's fiber infrastructure," we must have an election to take back our Town's right to decide the best way to help provide competitive broadband.

There have been many different and successful approaches to local government involvement in providing competitive broadband services, and many are indirect like Estes Park's involvement currently. One purpose of the recent U.S. Department of Commerce, Economic Development Administration \$300,000 grant award to the Town of Estes Park and Estes Park EDC is to develop options for a state of the art, Valley-wide, broadband service that will allow our businesses, citizens, and guests to participate in and compete in the global marketplace.

Recently, there has been widespread Colorado involvement with the issues of broadband, the economic development impact of broadband, and Senate Bill-152. Estes Park is not alone in dealing with these issues. Earlier, Longmont, Centennial, and Montrose voters resoundingly approved taking back the right of local government to decide on broadband issues. In last Tuesday's election, 5 municipalities, Boulder, Cherry Hills Village, Red Cliff, Yuma and Wray, and 3 counties: Rio Blanco, San Miguel, and Yuma voted overwhelmingly, with 70 to 80 percent voter approval, to take back the right taken away by Senate Bill 152.

In summary, Estes Park must have access to competitive broadband to remain economically competitive. Senate Bill 152 took away the Town's right to directly or indirectly provide broadband service. The proposed election is the only way to take back the right that Senate Bill 152 took away so that the Town can pursue optimal use of its fiber optic infrastructure, and so that we have access to state of the art, Valley-wide, competitive broadband service.

Six Broadband Questions Every Local Government Official Should Be Asking

- 1) **What is the current average download/upload capacity in our community?** The State of Colorado maintains a map showing advertised download/upload speeds around the state. The map is a useful tool, allowing the user to isolate his/her search by jurisdiction if needed. However, much of the data in the map is based on vendor reporting and may or may not be completely accurate. You can access the map at <http://maps.co.gov/coloradobroadband/>. This website also features an online Internet speed test with which you can test and verify the upload/download speed of the Internet connections in your county.

Understanding the speed of a connection is only a part of the equation, though. It is also critically important to understand what *technologies* are providing that bandwidth and speed. In other words, you need to understand the underlying physical transport – is it wireless, fiber optic, copper or coaxial? If it is wireless, is it terrestrial or satellite? While the latter may have great coverage, there are simple physical characteristics that render certain technologies unsuitable for real time voice, data or telepresence. Each type of system has its strengths and weaknesses; each needs to be assessed in light of local needs, capabilities, and constraints.

- 2) **What are the key institutions in the community and what are their service needs?** It is important to identify key institutions (schools, colleges, hospitals, libraries, local governments, etc.) and determine both their existing broadband capabilities and service needs going forward. As you assess how to proceed, can you create successful public-private partnerships with local providers who have proven to be reliable community partners? Or are you in a situation where the local providers need to be encouraged to more aggressively deploy the latest technologies?
- 3) **Who are the key telecommunication providers in the region? And what is the best way to talk to these providers?** Most areas of the state have a mixture of local providers as well as larger statewide carriers (CenturyLink, Comcast, TDS, AT&T, Verizon, etc.). Understanding what services these different carriers provide (phone, video, Internet, etc.), their service areas and the costs of coverage is critical not only to gaining an understanding of the broadband potential in your community but to ensuring that your area is adequately and sustainably served.

- 4) **What are the needs of business and industry in your community?** Each business owner has a unique set of needs and these will drive varying Internet capacity needs (both upstream and downstream). These might include video conferencing, virtual private networks (VPNs), voice over Internet protocol (VoIP), ability to share schematics (some in 3D), and traditional online needs like credit card and payroll processing. Remember, your local businesses may have less interest in how fast they can download a movie and more interest in how fast they can upload the customized software they have developed for a client on the East Coast. Economic development groups have identified broadband infrastructure and services as an essential component in the Colorado Blueprint. <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=OEDIT%2FOEDITLayout&cid=1251595201237&pagename=OEDITWrapper>
- 5) **Is your network “future-proof?”** Given the rapidly evolving technical advancements in the high-tech industry, it is difficult to predict what the “next big thing” is going to be. Planning for enhanced future capacity and adaptability is absolutely essential to the long-term success of your local economic development efforts. Most industry experts agree that fiber optic cable will have a life of 30-50 years. None of the experts are predicting that fiber will become obsolete during its useful life. What will be change over its useful life is the electronics that are used to “light” the fiber optic cable. We expect improving technology will increase the amount of data that can be transported across a single fiber with the new technology. These changes can be phased in as the electronics reach their end of life.
- 6) **How can I aggregate demand among key anchor institutions and employers?** A key approach for any community is to determine how much demand the anchor institutions and employers currently have. Knowing this information provides the community with leverage when working with providers and potential carriers to get what the community needs. It also allows a community to “speak with one voice” when confronting the complexities of broadband deployment and establish a better understanding of the economics of the telecommunications environment.

Reprinted from CCI's “What Every Commissioner Needs to Know About Broadband” (2011)

Additional Resources

Colorado Department of Regulatory Agencies – Broadband Fund

<https://www.colorado.gov/dora-broadband-fund>

Rio Blanco County: Plan Your Own Project – A Broadband Blueprint

<http://www.rbc.us/401/Plan-Your-Project-Blueprint>

Colorado Department of Local Affairs – Broadband Program

<https://www.colorado.gov/pacific/dola/broadband-program>

Colorado Broadband Portal

<http://broadband.co.gov/>

Colorado Broadband Data and Development Program

<http://www.oit.state.co.us/broadband>

Northwest Colorado Council of Governments Memorandum on Opting Out of SB 152

<http://nwccog.org/wp-content/uploads/2017/03/SB-152-Opt-Out-MEMO-April-2017-NWCCOG-1.pdf>

National Association of Counties Podcast: Innovations in Rural Broadband Delivery

<http://www.naco.org/resources/innovations-rural-broadband-delivery>

Access and Inclusion in the Digital Age: A Resource Guide for Local Governments

[http://nationalresourcenetwork.org/en/Document/306284/Access and Inclusion in the Digital Age A Resource Guide for Local Governments](http://nationalresourcenetwork.org/en/Document/306284/Access%20and%20Inclusion%20in%20the%20Digital%20Age%20-%20A%20Resource%20Guide%20for%20Local%20Governments)

Glossary

Backhaul: The portion of a broadband network in which the local access or end user point is linked to the main Internet network.

Bandwidth: bandwidth refers to how fast data flows through the path that it travels to your computer; it's usually measured in kilobits, megabits or gigabits per second.

Broadband: broadband comes from the words "broad bandwidth" and is used to describe a defined high-speed connection to the Internet. A broadband connection lets you instantly connect to the Internet or your corporate network at speeds many times faster than a dial-up connection.

Cable modem: refers to the type of broadband connection that brings information to homes and businesses over ordinary television cable lines.

Dark fiber: optical fiber that is not lit or not activated for use.

DSL: stands for digital subscriber line; it refers to the type of broadband connection that brings information to homes and businesses over ordinary copper telephone lines.

Downstream speed: refers to the speed at which data flows from the information server to your computer.

ISP: Internet Service Provider. A company that offers customers access to the Internet.

Last mile: refers to the connectivity to the home, business, or to a "node" where additional Internet connectivity can occur.

Kbps: Stands for Kilobits per second, or thousands of bits per second. For example, most analog modems transmit at 56 Kbps or 28.8 Kbps.

Mbps: Stands for Megabits per second, or millions of bits per second. This is a measurement of how much data can be transmitted through a connection. For example, 6.0 Mbps is 200 times faster than a 28.8 Kbps analog modem.

Middle mile: any carrier-to-carrier wholesale communications infrastructure with a single point of demarcation that does not connect directly to end users or to end-user facilities and that may include interoffice transport, backhaul, Internet connectivity, or special access. Middle mile infrastructure can range from a few miles to a few hundred miles. They are often constructed of fiber optic lines, but microwave and satellite links can be used as well.

Satellite: refers to the type of broadband connection where information is sent from and arrives at a computer through satellite dishes

Upstream speed: refers to the speed at which data flows from your computer to the information server

Wireless: refers to the type of broadband connection where information is sent from and arrives at a computer through transmission towers

(Source: Broadband 101: The Unofficial Dictionary, produced by Nevada County, California)

The Knowledge Now series features practical research on timely topics from the Colorado Municipal League.

BROADBAND: THE VOTERS HAVE SPOKEN, WHAT'S NEXT?

The nation is experiencing a major evolution in communications that is pulling in municipal government as a key player. High-speed Internet connectivity is transforming from a rarity into a necessity. The demand for high-speed connections from businesses and residents is driven by the large amounts of data transfer needed to support Internet video, business transactions, health care facilities, schools, and online gaming. And we want it everywhere we go. We want it on our PCs, laptops, and phones.

Are we seeing broadband Internet emerge as the new public utility? Are we experiencing the same public demand seen a century ago for universal telephone service, resulting in government action? The answers to these questions are beginning to unfold in Colorado and across the country. Broadband infrastructure is expensive to build and often the

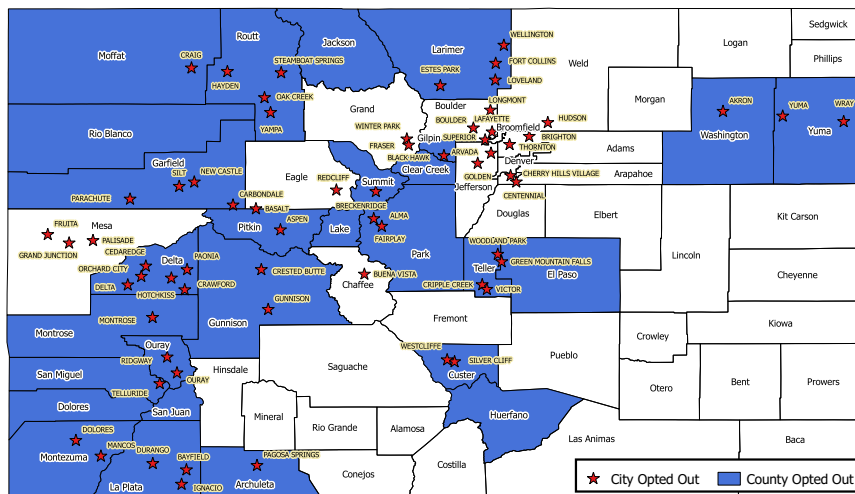
returns are not there to create a business model that will “pencil out” for a private provider. Yet, in 2005, the Colorado legislature passed a law excluding local government from entering the broadband market. SB 05-152 does provide an escape hatch for municipal residents: They can vote to exempt their municipal or county government from that restriction. To date, voters in 65 cities and towns have done just that — a list expected to continue to grow in the future.

A just released 2017 study from the National League of Cities finds that municipalities establish broadband networks for a wide range of reasons, including “increased residential property values, increased commercial business activity, and to spur viable employment options in isolated communities. Broadband opens doors to education, healthcare, recreation and business growth.” Closer to home, Fort Collins Deputy City Manager Jeff

Mihelich notes that universal broadband service provides a community with an economic advantage in attracting and retaining talent and providing for merchant services and cloud based businesses. As it formulates a broadband service plan, the City of Fort Collins is pursuing four objectives: network buildout reaching all residents, timely implementation, competitive market pricing, and outstanding customer service.

Voters' voices have been loud and clear in elections allowing municipal government in Colorado to provide broadband service. All 65 cities and towns that have asked have been given permission. The vote is in. Municipal government gets the green light. What happens next? This Knowledge Now provides examples from four Colorado municipalities with four different approaches to next steps after the vote.

Local Governments Repealing Prohibition on Public Investment in Broadband



Map Revision: November 9, 2016



Map by Trent Pingenot

IMPLEMENTING A FIBER MASTER PLAN

By Eric Eddy, Centennial assistant to the city manager

In November 2013, 76 percent of Centennial residents voted in favor of ballot question #2G, repealing certain parts of the SB 05-152 restrictions placed on all local governments in Colorado. The passing of this ballot question allows the City to indirectly provide services through competitive and nonexclusive partnerships with private businesses. Since that time, the City of Centennial has worked to implement its Fiber Master Plan, culminating in the installation of a City-wide, carrier-grade, competitively-neutral, dark fiber backbone.

Centennial's efforts began by cataloguing the existing City-owned fiber through an asset inventory. Simultaneously, the City examined potential partnership opportunities to benefit stakeholders through a series of meetings with community anchor institutions, such as fire districts, law enforcement, schools, and libraries. In

addition, meetings took place with incumbent providers, private businesses, and residents. The information gathered was presented to city council as an analysis of options. Ultimately, this led to council direction to develop a Fiber Master Plan, which would guide the implementation and next steps of the installing the fiber backbone.

A consultant firm was hired to conduct a strategic planning and feasibility study, focusing on the data gathered in the opportunity analysis resulting in the development of the Centennial Fiber Master Plan. Additional public outreach was conducted with anchor institutions and private businesses to discuss next steps of the plan execution. Council considered a range of alternatives, from doing nothing to implementing City-owned fiber-to-the-home. Ultimately, the council-adopted Fiber Master Plan identified the City's goal

as developing a City-wide dark fiber backbone to enable competition throughout Centennial.

In late 2016, the City began construction of its dark fiber backbone, with the first phase connecting the City's Public Works Yard with the City offices. Additional construction will be ongoing throughout 2017 and into 2018. This dark fiber will be available to the private sector and others on a competitively-neutral basis, eventually enabling competition and ensuring the City maintains control over its destiny into the future.

There is no one-size-fits-all framework for Colorado municipalities when it comes to fiber and related efforts. Each municipality should consider its strengths and weaknesses and develop a defined strategy and policy to address community goals.

OUR GOAL IS BECOMING A GIGABIT COMMUNITY

By Glen Black, Delta community development director

For several years, the City of Delta has been looking for ways to bring affordable high-speed broadband to the area.

Affordable broadband was identified as the key economic development factor for Region 10 communities during a USDA Stronger Economies Together training process and report. That report just confirmed what we already knew from the many requests for better Internet service from local businesses and residents.

Inadequate broadband has retarded business growth. Economic development efforts have been hampered by a lack of high-speed broadband according to several potential businesses that would not consider locating in Delta after determining lack of broadband.

If there was any doubt about public demand, it was laid to rest by the results of Delta's SB 05-152 exemption election that passed with a 71 percent "yes" vote. Citizens told the City to get

involved in bringing better service to the community.

One of the first steps the City took was working with Eagle-Net Alliance to try and bring fiber to Delta. Eagle-Net is an intergovernmental entity operating under a federal grant to provide broadband connections for schools, libraries, and government facilities. Unfortunately it was unable to complete its Delta project.

Delta then took the bull by the horns in forming a cooperative effort through the state's Region 10 partners, including Delta County, City of Montrose, and the Delta Montrose Electric Association (DMEA) in phase one of a regional approach with sights set on Delta becoming a gigabit community. The Region 10 partnership is building the middle-mile backbone that will spread broadband availability throughout Delta via both underground and aerial infrastructure. Work has been progressing rapidly, the infrastructure for phase one is expected to be completed by mid-year.

Funding such an ambitious project requires millions of dollars and has only been possible through major grants from the Colorado Department of Local Affairs and the Economic Development Administration, along with significant contributions from DMEA, Region 10, the El Pomar Foundation, and participating local governments.

Once the backbone is up and running, the final step is the last-mile connections to hook up businesses and residences. DMEA has created a for-profit company (Elevate Fiber), which is an ISP provider for fiber connections from the middle mile to the end user. This cooperative construction of broadband infrastructure has stimulated renewed interest from private Internet service providers looking to provide last mile connections. What a great result this will be for consumers — high speed broadband in a competitive environment.

TURNING ON THE NEXTLIGHT™

By Scott Rochat, Longmont Power & Communications public relations and marketing specialist

Longmont's community-owned fiber-optic network, NextLight, is due to complete network construction this year, achieving a vision that has been more than 20 years in the making for Longmont Power & Communications.

It began in 1996 with a proposed upgrade to the electric substation communications connections. In a white paper to city council, Longmont Power & Communications (LPC) noted that fiber-optics could offer the speed and reliability needed — and that with additional fibers, the resulting loop could be the core of a citywide broadband network.

The 17-mile loop was built in 1997. But creating a network to provide services took longer. LPC first looked for a private partner, reaching an agreement with Adesta Communications in 2000. But in 2001, Adesta filed for bankruptcy, starting the process over.

In 2005, Senate Bill 152 barred local governments from involvement in telecommunications with limited exceptions. A community could vote to exempt itself, and Longmont ultimately did so in 2011, emphasizing that the measure would re-establish a local right that had been taken away and that no tax dollars would be used to build the network. That year, opponents spent nearly \$420,000, but the measure passed with about 60 percent in favor.

By 2013, a business plan was ready and another vote approved up to \$45.3 million in bonds for the build. The initial timeline called for a six-phase build out, with construction starting August 2014. By October, the NextLight name was unveiled, reflecting Longmont's history of providing electric power for itself since 1912. Now, light through fiber would be the "next light." This time, no private partner took part.

When the first service areas opened in November 2014, signup requests quickly overwhelmed the call center and the installation schedules. By spring, a new schedule accelerated construction to answer the demand.

One significant driver has been the Charter Member rate, which offers a \$49.95-per-month symmetrical gigabit connection to residential users who sign up quickly. With that incentive, average take rates are consistently above 50 percent in areas that have been through the Charter Member process.

Some of the key lessons learned have included:

- Be open to changing design and procedures during construction. There will always be new factors and technologies to consider.
- Start early in securing access agreements with multi-dwelling units and similar managed properties.

- All municipal personnel are potential marketers. Make them excited about this!
- Carefully assess the impacts on those outside the utility, including permitting agencies and locating firms.
- Building a brand new utility encompasses myriad details. For Longmont, that included new billing software, significant time on website updates and social media, space for a call center and other added employees, new policies and SOPs for details such as online piracy, and specialized tax and federal filing requirements.

Even after the initial build out, the network will grow with Longmont, providing a powerful tool for homes and businesses alike. Even with so much accomplished, NextLight's story has only just begun.



MEETING TODAY'S BROADBAND EXPECTATIONS

By Vince O'Connor, Steamboat Springs information services manager

Steamboat Springs' efforts to improve Internet broadband service began before city council sent a SB 152 exemption ballot question to voters in 2015. Frustration with Internet speeds had been mounting among residents and the business community as existing networks had been tapped out. This was of special concern as commerce in today's economy and future business development are dependent on reliable, high-speed Internet connections. Steamboat's many visitors have also have come to expect the availability of high-speed Internet service.

Citing the need for faster broadband, the City joined forces with the Steamboat Springs School District, the Yampa Valley Medical Center, and Yampa Valley Electric Association to form the Northwest Colorado Broadband Consortium. The voters approved the SB 152 exemption giving

the City the green light to improve broadband service. The consortium set to work to better serve local government needs and bring superior bandwidth to the entire community by providing the backbone for the local system. A Wyoming company brought in the initial fiber pipeline from Denver, and efforts continue to create redundancy to the initial pipeline. The consortium is the middle-mile provider and is laying fiber optic underground and stringing wire overhead throughout the city, with 60 percent completion on the main trunk line and lateral lines.

The multimillion dollar project has been financed through a combination of private funds, local government dollars, and a Colorado Department of Local Affairs grant. Project completion is expected sometime next year.

The plan always has been for the City to be the middle mile and hand-off to

private businesses for the actual hook-ups for end users. The public backbone network is open to all private Internet providers to tap into and provide consumer service connections.

As the system is being built out, the results are dramatic — better service for lower cost. Businesses and residents will see a many-fold increase in Internet speeds available. The system provides municipal government with enough bandwidth to satisfy not only its internal demands, but to meet the needs of the city's many visitors by offering free WiFi at several hotspots located throughout the city from which anyone can access the Internet from their phones or laptops.

Through this community cooperative venture residents, businesses, and local governments will all come out ahead.

STATE PLAYING A BIG ROLE SUPPORTING BROADBAND

By Rachel Harlow-Schalk, Colorado Department of Local Affairs Division of Local Government deputy director

The Colorado Department of Local Affairs (DOLA) broadband initiative began as a result of growing demand from rural Colorado to plan for and resolve community broadband service needs. DOLA recognizes that provision of high-speed broadband services can play a critical role in enhancing local government operations and community development efforts.

In 2015, DOLA kicked off its \$20 million initiative within the Energy and Mineral Impact Assistance Fund (EIAF) to improve broadband in rural Colorado by working with communities and state partners. While the dollars are no longer set aside for just broadband grants, local governments still can apply for funds through primary EIAF grant program. Funding is offered for regional

broadband plans, sub-plans for counties and municipalities, and middle-mile infrastructure projects.

- Applications for planning grants may be submitted at any time. Such applications shall be reviewed by the EIAF Advisory Committee and approved administratively.
- Applications for infrastructure (middle-mile) projects are made through the regular cycles of the Energy Mineral Impact Program, with three application deadlines per year.
- Applications for both planning and infrastructure are subject to review and comment by the Office of Information Technology, Office of Economic Development and International Trade, and the relevant Council of Governments.

The most successful grant applications are those that are developed and coordinated prior to submittal in consultation with local government's respective regional manager.

The scope of a successful application will define a regional or countywide/municipal area that examines current assets, gaps in services, applicable matching funds to the grant, and a demonstrable effort to cooperate with private-sector partners on the implementation. All middle-mile grant funded projects must be included in a regional or sub-plan prior to funding. This program does not fund last mile infrastructure.

Contact your DOLA regional manager for more information at dola.colorado.gov/regmanagers.

Rio Blanco County Stays Relevant with Broadband

By Masha Zager / Broadband Communities

Colorado became a hotbed of community broadband activity several years ago when dozens of cities and counties began voting to override restrictive state legislation and take control of their broadband destinies. In November 2016 alone, 26 localities held broadband referenda; all 26 referenda passed, most of them by wide margins.

Rio Blanco County, a rural county in northwestern Colorado with a population of less than 7,000, held an override vote in 2014 and is now connecting customers to Rio Blanco Broadband, a network that will deliver fiber or wireless broadband access to nearly all premises. However, its story began much earlier, in 1999, when the school district in Meeker, the county seat, linked its buildings with fiber. Once the school network was up and running, the town of Meeker, the local library and the county hospital all requested to use the school district's dark fiber – and the Meeker Metropolitan Area Network (Meeker MAN) was born. “It ran for a decade and a half, and we had an abnormal amount of IT cooperation,” says Blake Mobley, who was the IT director of the school district during that period.

In 2014, when the county decided to implement a modern broadband system, it recruited Mobley to be the county IT director because of his experience with the Meeker MAN. “It was the perfect storm,” Mobley says. “There was grassroots desire for broadband, the county commissioners were on board, the county had money to proceed and I had some experience with broadband.”

The county set a goal of obtaining the fastest internet access it could for as many people as it could and offering it at Google-type pricing (\$70 for gigabit service). Formulating the policy goal in this way – rather than setting goals in terms of economic development or return on investment – was the first unique aspect of the project.

Mobley explains, “One way a project can fail is if you set a publicly stated goal, such as return on investment, the number of years it takes to get your money back or a specific take rate. As soon as you make a public statement like that, you can be held up as an example of failure. So we chose a different approach: Our goal was to build a modern infrastructure so the community would have an option. ... We had to look at this as a purchase, not an investment.” The county's website explains that broadband isn't about “getting ahead as a community” as much as “maintaining relevancy as a community.”

Getting Started

The county published a broadband plan in June 2014 calling for fiber to the home in the two towns of Meeker and Rangely and wireless broadband (at least in the short term) for the remaining one-third of county residents who live far from any population centers. A referendum in November 2014 gained 82 percent approval, and the county allocated money from its general fund to start the project. The following month, the Colorado Department of Local Affairs (DOLA) set aside money for networks that would connect community anchor institutions, and Rio Blanco County was one of two counties awarded first-round funding.

The county originally intended to find a single partner that could build and operate the network and deliver services to residents. This approach might have worked for a larger municipality, but as it turned out, Mobley says, “there wasn’t really a single company that could do all this in a small market.” After some rethinking, Rio Blanco County decided to split up the project and work with several private partners.

Constructing the Network

First, the county decided to contract directly with several construction partners. In July 2015, it hired Circle H Construction to build fiber to the curb in the towns of Meeker and Rangely. That construction project is nearly finished. The county also entered into an IRU, or long-term lease, for two strands of fiber between Meeker and Rangely, which are about 60 miles apart. The link between the two cities enables them to share a middle-mile connection.

In spring 2016, the county contracted with Centerline Solutions to design and engineer the rural wireless network. With help from a second DOLA grant, construction of the wireless network began a few months later with the building of several new towers and the repurposing of several existing county towers. A final construction phase, which will include more than 20 small towers to reach the most remote parts of the county, is still pending approval by the commission and possible state support. “It’s a modular solution,” Mobley says. “We may change the implementation timeline and approach.”

The towers will support fixed wireless broadband with a 25 Mbps/5 Mbps top speed offering, using Cambium equipment operating on either unlicensed or lightly licensed frequencies. In addition, the towers are already being used by private carriers to improve cellular reception, and eventually they will be used for emergency communications as well.

Another task the county took on was to create data centers in Rangely and Meeker. An empty building in Rangely became the central office and network operations center; the remodeling of the

courthouse in Meeker will make room for a data center in 2017. Calix equipment is being used in the central office and at customer premises.

It Takes a Community

To build the fiber drops, operate and maintain the network, obtain wholesale internet bandwidth and recruit and manage retail service providers, the county turned to the Colorado Fiber Community (CFC). CFC is a consortium that consists of project manager OHIvey, Blue Tail Consulting and Beehive Broadband, a Utah ISP, along with several (mostly local) design and construction partners.

The county wanted to give customers a choice of retail service providers, so CFC approached the two fixed wireless broadband providers in the county, Local Access Internet and Cimarron Telecommunications, and invited them to deliver services on Rio Blanco Broadband. Both jumped at the chance. Says Paul Recanzone of CFC, “We’ll allow as many providers as the market will support, but at the moment, that’s two. ... A handful of others in Colorado were interested, but we have indicated to them what the market conditions are, and they will wait.”

The retail providers were trained to install optical network terminals (ONTs) at customer premises and are now adding customers in Meeker and Rangely. In part because they already had wireless customers in the two towns and had name recognition, they achieved a 67 percent take rate right out of the gate with little or no marketing.

Though the two retail service providers are off to a strong start, CFC is aware that open-access networks are vulnerable to sudden exits of service providers. (For example, the Utah open-access network UTOPIA lost several service providers in its early years.) Keeping that experience in mind, Beehive Broadband, the CFC partner that serves as network operator, is prepared to step in as a backup service provider if necessary to ensure that customers won’t be stranded.

CFC’s role as wholesaler of internet services transformed the economics of broadband in the county. Neither of the two retail service providers had the market power to buy backhaul or wholesale services at competitive rates. CFC (through Beehive Broadband) supplies internet backhaul to the retailers at about one-fifth the price the retailers pay as independent WISPs. Because CFC can also acquire other services at reasonable rates, the retailers should soon be able to offer such services as voice, IPTV and home security.

Mobley says that CFC may not need to continue supplying wholesale services as the system matures (though it will continue to operate the network). He comments, “It’s definitely our goal to get to

that more common model of open access where the network is the transport layer and the value-added resellers [retailers] can go out and secure their own services.”

Sharing the Profits

The county’s agreement with CFC is an unusual one based on profit sharing. According to Recanzone, CFC subtracts certain operational costs from the revenue stream each month and then keeps 40 percent of the remainder, remitting the other 60 percent to the county.

To make matters more complicated, the county wants to own the drop cables and ONTs – which is important if it ever needs to replace the network operator – but CFC is responsible for incurring the \$1,100 per customer cost to purchase and install this infrastructure. So, at present, the county’s revenue share is applied toward repayment of CFC’s installation expenses, which will continue until the repayment is complete.

According to Recanzone, CFC did everything possible, and then some, to minimize startup costs, and it reached operational breakeven after only four months, in October 2016. It has already begun applying the county’s share of profits to accruals for the drop infrastructure, and it expects to apply its own share to debt service for the next five years or so. (No one ever said building rural broadband was easy.)

Support for Anchor Institutions

Because the public anchor institutions in Meeker had a long history of cooperating on the Meeker MAN, Mobley wanted to replicate that spirit of cooperation on the Rio Blanco Broadband network – not just in Meeker but countywide. Rather than run a single strand of fiber to each community anchor institution, Rio Blanco Broadband ran four strands to each and aggregated the fibers in the data center. It also reserved half the data center space for these institutions to use as they chose, rent free. “There was no way they could afford anything like this,” Mobley says, “but our added cost to implement it was a very small percentage of the total cost.”

The anchor institutions have a range of options in using these resources. For example, Mobley says, they could create private networks to link multiple facilities, locate core switches in the data centers, share resources (such as firewall equipment) with other institutions or trade space with an institution in the other data center to locate backup equipment.

In addition, the anchor institutions will be able to purchase engineering, maintenance or technical expertise from Rio Blanco Broadband. Mobley expects most of the public anchor institutions in the county to take advantage of these opportunities.

Economic Development

Even without specific economic development goals for the network, county officials are keenly aware of its potential to attract, retain and support businesses. Fiber was laid several miles beyond the town limits of Meeker and Rangely to connect businesses outside the towns, and Mobley says it could be extended farther if the county can obtain funding to do so (or if profit-sharing remittances from the current network become available). “I see the network as a negotiating tool,” says Katelin Cook, the county economic development director. “If getting fiber to the door will seal the deal, we’ll do everything in our power to do that.”

Cook says the county hopes to encourage economic diversification by attracting individuals and small businesses that are location neutral and attracted by Rio Blanco County’s quality of life. Data centers and data backup facilities are also good candidates for recruitment. In partnership with the Chamber of Commerce, Cook is helping companies already located in the county explore how they can use the network to enhance their businesses.

Rio Blanco County is already showing up on site selectors’ lists. Cook says that, before even starting a formal marketing program, she has fielded inquiries from about a dozen companies. “For me, that’s exciting,” she says. “We’re now being seen as a viable business option.”

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NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



SENATE BILL 05-152

BY SENATOR(S) Veiga, and Mitchell;
also REPRESENTATIVE(S) Jahn, Crane, Harvey, Kerr, and Sullivan.

CONCERNING LOCAL GOVERNMENT COMPETITION IN THE PROVISION OF
SPECIFIED COMMUNICATIONS SERVICES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 29, Colorado Revised Statutes, is amended BY
THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 27
Competition in Utility and Entertainment Services

PART 1
COMPETITION IN UTILITY
AND ENTERTAINMENT SERVICES

29-27-101. Legislative declaration. (1) THE GENERAL ASSEMBLY
HEREBY FINDS AND DECLARES THAT IT IS THE POLICY OF THIS STATE TO
ENSURE THAT CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE,
AND HIGH SPEED INTERNET ACCESS, OTHERWISE KNOWN AS ADVANCED
SERVICE, ARE EACH PROVIDED WITHIN A CONSISTENT, COMPREHENSIVE, AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

NONDISCRIMINATORY FEDERAL, STATE, AND LOCAL GOVERNMENT FRAMEWORK.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THERE IS A NEED FOR STATEWIDE UNIFORMITY IN THE REGULATION OF ALL PUBLIC AND PRIVATE ENTITIES THAT PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE.

(b) MUNICIPAL ORDINANCES, RULES, AND OTHER REGULATIONS GOVERNING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IMPACT PERSONS LIVING OUTSIDE THE MUNICIPALITY.

(c) REGULATING THE PROVISION OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE BY A LOCAL GOVERNMENT IS A MATTER OF STATEWIDE CONCERN.

29-27-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADVANCED SERVICE" MEANS HIGH-SPEED INTERNET ACCESS CAPABILITY IN EXCESS OF TWO HUNDRED FIFTY-SIX KILOBITS PER SECOND BOTH UPSTREAM AND DOWNSTREAM.

(2) "CABLE TELEVISION SERVICE" MEANS THE ONE-WAY TRANSMISSION TO SUBSCRIBERS OF VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE, AS WELL AS SUBSCRIBER INTERACTION, IF ANY, THAT IS REQUIRED FOR THE SELECTION OR USE OF THE VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE.

(3) "LOCAL GOVERNMENT" MEANS ANY CITY, COUNTY, CITY AND COUNTY, SPECIAL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

(4) "PRIVATE PROVIDER" MEANS A PRIVATE ENTITY THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(5) "SUBSCRIBER" MEANS A PERSON THAT LAWFULLY RECEIVES

CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE. A PERSON THAT UTILIZES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDED BY A LOCAL GOVERNMENT FOR LOCAL GOVERNMENTAL OR INTERGOVERNMENTAL PURPOSES AND IS USED BY PERSONS ACCESSING GOVERNMENT SERVICES IS NOT A SUBSCRIBER FOR PURPOSES OF THIS ARTICLE.

(6) "TELECOMMUNICATIONS SERVICE" HAS THE SAME MEANING AS SET FORTH IN SECTION 40-15-102 (29), C.R.S.

29-27-103. Limitations on providing cable television, telecommunications, and advanced services. (1) EXCEPT AS PROVIDED IN THIS ARTICLE, A LOCAL GOVERNMENT SHALL NOT:

(a) PROVIDE TO ONE OR MORE SUBSCRIBERS CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE ANY FACILITY FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS.

(2) FOR PURPOSES OF THIS ARTICLE, A LOCAL GOVERNMENT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE IF THE LOCAL GOVERNMENT PROVIDES THE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS:

(a) DIRECTLY;

(b) INDIRECTLY BY MEANS THAT INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING:

(I) THROUGH AN AUTHORITY OR INSTRUMENTALITY ACTING ON BEHALF OF THE LOCAL GOVERNMENT OR FOR THE BENEFIT OF THE LOCAL GOVERNMENT BY ITSELF;

(II) THROUGH A PARTNERSHIP OR JOINT VENTURE;

(III) THROUGH A SALE AND LEASEBACK ARRANGEMENT;

(c) BY CONTRACT, INCLUDING A CONTRACT WHEREBY THE LOCAL GOVERNMENT LEASES, SELLS CAPACITY IN, OR GRANTS OTHER SIMILAR RIGHTS TO A PRIVATE PROVIDER TO USE LOCAL GOVERNMENTAL FACILITIES DESIGNED OR CONSTRUCTED TO PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR INTERNAL LOCAL GOVERNMENT PURPOSES IN CONNECTION WITH A PRIVATE PROVIDER'S OFFERING OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(d) THROUGH SALE OR PURCHASE OF RESALE OR WHOLESALE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE FOR THE PURPOSE OF PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE TO ONE OR MORE SUBSCRIBERS.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF A LOCAL GOVERNMENT TO LEASE TO A PRIVATE PROVIDER PHYSICAL SPACE IN OR ON ITS PROPERTY FOR THE PLACEMENT OF EQUIPMENT OR FACILITIES THE PRIVATE PROVIDER USES TO PROVIDE CABLE TELEVISION, TELECOMMUNICATIONS, OR ADVANCED SERVICES.

PART 2 CONDITIONS FOR PROVIDING SERVICES

29-27-201. Vote - referendum. (1) BEFORE A LOCAL GOVERNMENT MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE, AN ELECTION SHALL BE CALLED ON WHETHER OR NOT THE LOCAL GOVERNMENT SHALL PROVIDE THE PROPOSED CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(2) THE BALLOT AT AN ELECTION CONDUCTED PURSUANT TO THIS SECTION SHALL POSE THE QUESTION AS A SINGLE SUBJECT AND SHALL INCLUDE A DESCRIPTION OF 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. THE BALLOT PROPOSITION SHALL NOT TAKE EFFECT UNTIL SUBMITTED TO THE ELECTORS AND APPROVED BY THE MAJORITY OF THOSE VOTING ON THE BALLOT.

29-27-202. Exemption for unserved areas. (1) A LOCAL GOVERNMENT SHALL BE EXEMPT FROM THE REQUIREMENTS OF THIS PART 2

AND MAY ENGAGE OR OFFER TO ENGAGE IN PROVIDING CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCE SERVICE IF:

(a) NO PRIVATE PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE PROVIDES THE SERVICE ANYWHERE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT;

(b) THE GOVERNING BODY OF THE LOCAL GOVERNMENT HAS SUBMITTED A WRITTEN REQUEST TO PROVIDE THE SERVICE TO ANY INCUMBENT PROVIDER OF CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT; AND

(c) THE INCUMBENT PROVIDER HAS NOT AGREED WITHIN SIXTY DAYS OF THE RECEIPT OF A REQUEST SUBMITTED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1) TO PROVIDE THE SERVICE OR, IF THE PROVIDER HAS AGREED, IT HAS NOT COMMENCED PROVIDING THE SERVICE WITHIN FOURTEEN MONTHS OF THE RECEIPT OF THE REQUEST.

PART 3 COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS

29-27-301. General operating limitations. (1) A LOCAL GOVERNMENT THAT PROVIDES CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE UNDER THIS ARTICLE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, RULES, AND REGULATIONS GOVERNING PROVISION OF SUCH SERVICE BY A PRIVATE PROVIDER; EXCEPT THAT NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT THE JURISDICTION OF THE PUBLIC UTILITIES COMMISSION WITH RESPECT TO MUNICIPAL UTILITIES.

(2) (a) A LOCAL GOVERNMENT SHALL NOT MAKE OR GRANT ANY UNDUE OR UNREASONABLE PREFERENCE OR ADVANTAGE TO ITSELF OR TO ANY PRIVATE PROVIDER OF CABLE TELEVISION SERVICES, TELECOMMUNICATIONS SERVICES, OR ADVANCED SERVICES.

(b) A LOCAL GOVERNMENT SHALL APPLY WITHOUT DISCRIMINATION AS TO ITSELF AND TO ANY PRIVATE PROVIDER THE LOCAL GOVERNMENT'S ORDINANCES, RULES, AND POLICIES, INCLUDING THOSE RELATING TO:

(I) OBLIGATION TO SERVE;

(II) ACCESS TO PUBLIC RIGHTS-OF-WAY;

(III) PERMITTING;

(IV) PERFORMANCE BONDING WHERE AN ENTITY OTHER THAN THE LOCAL GOVERNMENT IS PERFORMING THE WORK;

(V) REPORTING; AND

(VI) QUALITY OF SERVICE.

29-27-302. Scope of article. (1) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AUTHORIZE ANY LOCAL GOVERNMENT TO:

(a) PROVIDE, DIRECTLY OR INDIRECTLY, CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE; OR

(b) PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE A FACILITY FOR THE PURPOSE OF PROVIDING, DIRECTLY OR INDIRECTLY, CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE.

(2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO A LOCAL GOVERNMENT PURCHASING, LEASING, CONSTRUCTING, MAINTAINING, OR OPERATING FACILITIES THAT ARE DESIGNED TO PROVIDE CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, OR ADVANCED SERVICE THAT THE LOCAL GOVERNMENT USES FOR INTERNAL OR INTERGOVERNMENTAL PURPOSES.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO APPLY TO THE SALE OR LEASE BY A LOCAL GOVERNMENT TO PRIVATE PROVIDERS OF EXCESS CAPACITY, PROVIDED:

(a) SUCH EXCESS CAPACITY IS INSUBSTANTIAL IN RELATION TO THE CAPACITY UTILIZED BY THE LOCAL GOVERNMENT FOR ITS OWN PURPOSES; AND

(b) THE OPPORTUNITY TO PURCHASE AND THE OPPORTUNITY TO USE SUCH EXCESS CAPACITY IS MADE AVAILABLE TO ANY PRIVATE PROVIDER IN

A NONDISCRIMINATORY, NONEXCLUSIVE, AND COMPETITIVELY NEUTRAL MANNER.

(4) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT EITHER THE AUTHORITY OF THE STATEWIDE INTERNET PORTAL AUTHORITY CREATED IN SECTION 24-37.7-102, C.R.S., TO CARRY OUT ITS MISSION OR TO INTEGRATE THE ELECTRONIC INFORMATION DELIVERY SYSTEMS OF LOCAL GOVERNMENTS INTO THE STATEWIDE INTERNET PORTAL AS DEFINED IN ARTICLE 37.7 OF TITLE 24, C.R.S.

29-27-303. Enforcement and appeal. (1) BEFORE AN INDIVIDUAL SUBSCRIBER OR A PRIVATE PROVIDER THAT COMPETES WITH A LOCAL GOVERNMENT IN THE GEOGRAPHIC BOUNDARIES OF THE LOCAL GOVERNMENT MAY FILE AN ACTION IN DISTRICT COURT FOR VIOLATION OF THIS ARTICLE, THAT PERSON SHALL FILE A WRITTEN COMPLAINT WITH THE LOCAL GOVERNMENT. THE FAILURE BY THE LOCAL GOVERNMENT TO ISSUE A FINAL DECISION REGARDING THE COMPLAINT WITHIN FORTY-FIVE DAYS SHALL BE TREATED AS AN ADVERSE DECISION FOR PURPOSES OF APPEAL.

(2) AN APPEAL OF AN ADVERSE DECISION FROM THE LOCAL GOVERNMENT MAY BE TAKEN TO THE DISTRICT COURT FOR A DE NOVO PROCEEDING.

29-27-304. Applicability. THIS ARTICLE SHALL APPLY TO CABLE TELEVISION SERVICE, TELECOMMUNICATIONS SERVICE, AND ADVANCED SERVICE AND TO THE PURCHASE, LEASE, CONSTRUCTION, MAINTENANCE, OR OPERATION OF ANY FACILITY FOR THE PURPOSE OF PROVIDING SUCH SERVICE, FOR WHICH A LOCAL GOVERNMENT HAS NOT ENTERED INTO AN AGREEMENT OR OTHERWISE TAKEN ANY SUBSTANTIAL ACTION PRIOR TO MARCH 1, 2005, TO PROVIDE SUCH SERVICE OR PURCHASE, LEASE, CONSTRUCT, MAINTAIN, OR OPERATE SUCH FACILITIES.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO