

## BROADBAND IN COLORADO: WHY IT MATTERS TO MUNICIPALITIES

THE PROMISE OF FAST, AFFORDABLE BROADBAND services can lead to significant benefits for Colorado; however, the municipal role in spurring deployment of these networks faces significant hurdles.

Like most states, there are a variety of levels of broadband service available throughout Colorado. In some places, only dial-up connections to the Internet are available. Thanks to the passage in 2008 of Senate Bill 215, Colorado will begin to follow through on a piece of Gov. Bill Ritter's Colorado Promise. We are in the initial phases of a statewide mapping project to determine where broadband exists in Colorado and where it does not. Hopefully, this project will also identify the different levels of service available throughout the state. The results of that study, expected in the fall, should generate a statewide discussion on whether policy changes are necessary in Colorado to further spur broadband deployment to unserved and underserved areas.

We should not, however, be content to wait until 2010 to take action. The recently adopted federal stimulus bill provides more than \$7 billion for broadband deployment to unserved and underserved areas throughout the United States. The competition for these dollars will begin well in advance of any policy discussions Colorado may have addressing the results of the mapping project. Then again, why should municipal governments care?

### A municipal role in broadband deployment

A City offer wireless broadband? Build fiber optics for public use? Apply for a stimulus grant to serve the public with broadband? Why? Is it doable? Isn't it expensive? And is this an appropriate role for government?

These questions have been asked for years as hundreds of community broadband projects have been studied, planned, and deployed. And now, with the availability of broadband stimulus money under the American Recovery and Reinvestment Act, many local governments are taking their digital futures into their own hands.

### Why broadband matters

Broadband networks facilitate a wide range of community goals: small business empowerment, job creation, increased tax revenues and property values, innovation, and other forms of economic development. Indeed, the business case for community broadband investment goes far beyond easily quantifiable factors to include such benefits as environmental sustainability, education, quality of life, community development, and other factors that will be impacted by the next generation of communications infrastructure.

Multiple studies suggest that for every dollar invested in broadband in America, the return to the U.S. economy in just a few years is between three and 10 dollars. And as the new stimulus law

recognizes, we create jobs building communications networks, operating them, and enabling Americans to operate their businesses over them. Broadband networks attract businesses of all sizes; enable workforce preparation; integrate local economies into the national and global economy; enhance home-based businesses; and increase a locality's image as a cutting-edge and desirable place to live and work.

We are beginning to see a connection between sustainability and fiber networking. Some studies indicate that communication technology's carbon reduction impact is 10 times more than its own carbon emission. The strategic use of communications contributes to energy efficiency and innovation by allowing people to work and interact remotely and by reducing the transport of goods.

A number of projects are under way to demonstrate the importance of communications infrastructure to sustainability. San Francisco is working with the Clinton Global Initiative and Cisco's Connected Urban Development project to realize the potential of high-speed communications networks to reduce the need for travel and thereby reduce carbon dioxide emissions. The City's market research suggests that the availability of very-high speed broadband would increase telework enough to dramatically reduce the number of hours, miles, and gallons of gas that commuters spend each year. The time savings alone represents 11 million hours saved

per year — an incalculable boon with respect to quality of life and productivity. Vehicle operations costs would be reduced by an aggregate \$80 million per year. Just as importantly, carbon dioxide emissions would decrease by 146 million pounds per year.

Broadband is also regarded as the platform upon which Americans engage in political discourse — the 21st century equivalent of the town square and the printing press. Who can doubt the impact of the Internet now, after the Obama campaign revolutionized politics by using technology to raise funds, communicate with supporters, reach out to potential supporters, and, perhaps most importantly, enable Americans to reach out and organize themselves on important community matters.

Even as there is growing consensus nationally that broadband is a key driver of economic competitiveness, the communications industry is not meeting our growing demand for bandwidth and speed in an affordable manner. The U.S. has slipped to 16th in the world in per capita penetration as of May 2007, compared to a ranking of fourth just six years ago. We face a broadband monopoly or duopoly of incumbent cable and telephone companies, with the possibility of no broadband in many rural areas. DSL and cable modem service are not universally available, and even where they are frequently fail to meet business and educational needs. Small and medium businesses cannot compete without affordable, high-speed access. Many businesses will not locate in areas without very high speed access. Home-based businesses fail to grow because of slow Internet speeds. Lack of fast, affordable broadband also precludes development of the collaborative, distributed work that is a hallmark of the emerging global economy.

The calls for greater broadband deployment come not only from local governments and community organizations, but also from organizations as diverse as major universities, the U.S. Chamber of Commerce, AARP, Google, and major equipment manufacturers such as Nortel and Cisco. These organizations recognize that our nation's position as an economic leader requires networks that enable growth applications such as teleconferencing, telecommuting, and

distance learning — and that existing communications networks will not meet these needs.

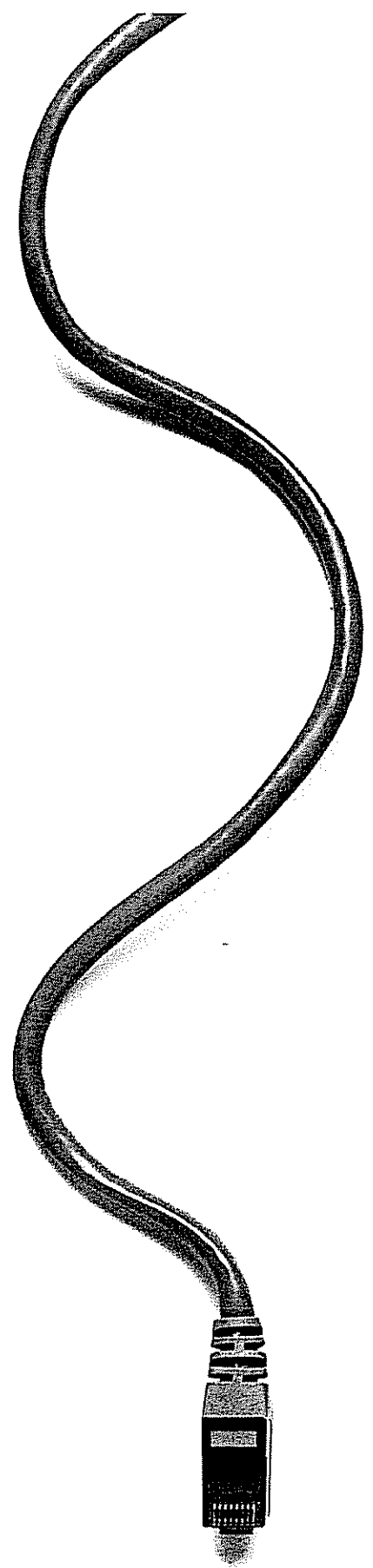
In this environment of insufficient bandwidth, local broadband initiatives are not only appropriate, they can be essential. Community broadband initiatives primarily seek to address economic development issues — an entirely appropriate government activity. Indeed, absent industry investment and federal leadership, local government intervention is absolutely necessary to stimulate broadband deployment.

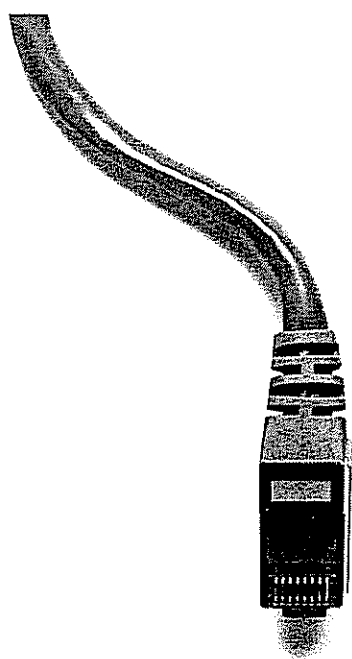
There is strong support in Congress and among the public for local broadband initiatives — the stimulus law specifically provides for local governments and community groups to apply for stimulus grants to build innovative communications networks. Just as importantly, the private sector innovators and entrepreneurs value community broadband as an important mechanism for network expansion.

But local government broadband initiatives are frequently opposed by incumbent industries that fear true competition. The incumbent monopolist phone and cable companies argue that community broadband is antimarket and doomed to failure. These counterfactual attacks on community broadband efforts are attacks on the rights of communities to chart our own future course and develop our economy, and in Colorado, have led to a statutory hurdle to municipal authority.

### The statutory hurdle

With support of large communications providers, Colorado passed Senate Bill 152 in 2005, which placed a significant roadblock in front of any local government efforts to invest in broadband deployment. Essentially, local governments are prohibited from investing in these networks, even in the case of public-private partnerships where the customer interaction is through a private sector partner, unless the project is approved by local voters. While problematic, a well-planned project should arguably not have a problem receiving voter approval. However, one of the unintended consequences of the legislation was its failure to anticipate the federal stimulus dollars, and the intent of the federal government





to send those dollars to communities with "shovel ready" projects.

Colorado communities are disadvantaged compared to other local governments if we can only represent that our ability to spend these dollars is contingent upon a public vote. To be sure, private sector entities can also apply for broadband stimulus dollars, but there is no guarantee that stimulus dollars received by the private sector will result in broadband deployment in your jurisdiction. Moreover, smaller companies that might have a better chance of obtaining stimulus dollars if it was in connection with a public-private partnership may not be able to compete with their counterparts in states that do not impose these local government restrictions on broadband deployment.

Despite the fact that this legislative hurdle exists and may shut the door on federal stimulus dollars, local governments should still be planning for the long term. Community broadband represents the efforts of local jurisdictions to take our economic futures into our own hands. Colorado municipalities should be working with our citizens and our private sector providers (to the extent they are interested in working with us) to improve the broadband landscape in our communities. Our collective futures depend on it.

#### FEATURE

### VOTE REQUIREMENT IN SB 05-152

*By Geoff Wilson, Colorado Municipal League general counsel*

THE 2005 LEGISLATION COMMONLY REFERRED TO AS "SB-152" is codified at § 29-27-101 to 304, C.R.S., and generally requires an election before a local government may take various actions to provide Internet access service, cable television service, or telecommunications service to the public. The statute also requires "regulatory parity" between public and private providers of such services.

SB 05-152 affects direct or indirect provision of various telecommunication services by the government through means that include, but are not limited to, partnerships, joint ventures, sale and lease-back arrangements, or through authorities or instrumentalities acting on behalf of the government.

The centerpiece of this law is its requirement for an election on the question of local government providing telecommunication services. Much of the statute concerns various exemptions from this requirement.

For example, SB 152 provides that the law does not limit the authority of local governments to enter into agreements permitting private telecommunication service providers to lease space on government property for the placement of telecommunications equipment. Arrangements between municipalities and private telecommunication providers for placement of equipment such as cell phone antenna arrays are common. With this provision, no election is required in connection with such agreements.

The statute also does not apply to government provision of various telecommunication service to citizens for governmental or intergovernmental purposes, including for use by persons "accessing government services." Governments commonly provide a variety of telecommunication services to citizens using its buildings and facilities; no election is required for this to continue. Furthermore, SB 152 makes clear that no election is required in order for governments to operate internal communications networks and to utilize such networks in cooperation with other governmental entities.

Should local governments wish to sell insubstantial amounts of "excess capacity" on their networks, they may do so without an election, provided that the sale and use is made on an evenhanded, "competitively neutral" and "nondiscriminatory" basis.