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ANOTHER DAY IN COURT: THE FCC, PREEMPTION & MUNICIPAL BROADBAND

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1. INTRODUCTION

On March 17th, the Federal Communications Commission (FCC) heads to court to defend its February 2015 decision to preempt laws in North Carolina and Tennessee that the agency deemed to be impediments to broadband deployment.[1] In the FCC's view, the laws at issue negatively impact the ability of municipalities to expand government-owned broadband networks (GONs) into surrounding areas. North Carolina and Tennessee subsequently sued, arguing that the FCC overstepped the bounds of its authority by disrupting their ability to oversee the activities of their political subdivisions.[2] The FCC argues in response that it has clear authority under section 706 of the Telecommunications Act to do so.[3]

AT A GLANCE

- On March 17, the FCC heads back to court to defend another controversial decision: preemption of two state laws – one in North Carolina, one in Tennessee – impacting municipal broadband. The FCC alleged that these laws unduly impeded broadband investment and deployment.
- North Carolina and Tennessee sued, arguing that the Commission overstepped its authority and undermined their ability to oversee their subdivisions.
- This Policy Briefing evaluates all of the issues implicated in this case and includes:
  - A brief overview of the events leading up to FCC preemption (sect. 2)
  - A summary of FCC arguments in favor of preemption (sect. 3)
  - A summary of arguments against preemption, including those put forward by North Carolina, Tennessee, other states, and groups representing state policymakers (sect. 4)
  - A discussion of why this case matters to defining FCC authority over broadband deployment generally and as it relates to state sovereignty (sect. 5)

Federal preemption of this kind – *i.e.*, of a state law, as opposed to a state regulation – is a rare and extraordinary step by a federal agency comprised of unelected officials. Consequently, courts are usually reluctant to uphold such action unless there is clear Congressional intent to allow for preemption. This case may thus hinge on whether the FCC has either misinterpreted or misapplied section 706. However, there are larger considerations in play. Foundational and well-established principles of federalism, rooted in the Constitution, devolve to the states nearly unfettered latitude to manage their internal affairs. GONs straddle these issues in a unique way. On the one hand, municipal broadband systems raise significant financial concerns that are increasingly of interest to and addressed by state legislators. Indeed, as discussed below, there are many reasons why a state

legislature has a compelling interest in addressing GONs. On the other hand, promoting robust broadband connectivity has emerged as a national imperative, and the current FCC has attempted to carve out an expansive and powerful role for itself in the name of this goal.

The stakes of this case are significant. Among other things, the outcome will provide some clarity about the reach of the FCC's section 706 authority. It will also determine the extent to which states can oversee GONs deployment within their borders. As discussed below, municipal broadband deployment is risky, costly, and rarely a sure bet. Since states are ultimately responsible for the financial entanglements of their subdivisions, curbing a state's ability to oversee these risky endeavors could yield negative outcomes for state residents. The following sections provide a brief overview of these and other issues implicated in the litigation.

2. THE BACKSTORY

The story of the FCC's historic preemption of two state GONs laws begins in 2010. In the Open Internet Order it released in December of that year, the FCC adopted a sweeping reinterpretation of section 706.[4] Previously, the Commission had interpreted that section as being a complement to other sources of its authority in the Communications Act. In other words, up until 2010 the FCC did not view section 706 as "constut[ing] an independent source of authority" to do much of anything.[5] The FCC ultimately reversed course in an effort to empower it with authority to adopt network neutrality rules. To that end, the FCC in 2010 articulated that its "present understanding" of section 706 "authorize[d] the Commission (along with state commissions) to take actions, within their subject matter jurisdiction and not inconsistent with other provisions of law, that encourage the deployment of advanced telecommunications capability by any of the means listed in the provision."[6] Although a federal appeals court subsequently rejected many of the FCC's proposed net neutrality rules, it did accept the Commission's new interpretation of section 706.[7]

Newly empowered with significant – some argue potentially limitless[8] – authority to engage in "actions" that encourage broadband deployment, the FCC in early 2014 explicitly signaled that it would be willing to use this new power to "preempt state laws that ban competition from community broadband."[9] In making its case, the FCC highlighted the GON in Chattanooga as an exemplar of a successful municipal broadband system.[10] The Commission argued that the municipal system there was built in part to stoke competition in the local broadband market, verbiage that echoed core parts of section 706[11] – *i.e.*, that the Commission "shall encourage the deployment on a reasonable and timely basis of [broadband] to all Americans…by utilizing…measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."[12] In furtherance of this perceived mandate, and notwithstanding significant data highlighting the riskiness of GONs and questions about the viability and replicability of the Chattanooga system,[13] the FCC Chairman was unequivocal in his support of preemption to bolster municipal broadband:

> "If the people, acting through their elected local governments, want to pursue competitive community broadband, they shouldn't be stopped by state laws promoted by cable and telephone companies that don't want that competition…I believe that it is in the best interests of consumers and competition that the FCC exercises its power to preempt state laws that ban or restrict competition from community broadband. Given the opportunity, we will do so."[14]

A month later, two municipal entities operating broadband networks – the city of Wilson, North Carolina, and EPB, the local utility in Chattanooga responsible for the GON there – answered the Chairman's invitation by filing petitions with the FCC that sought preemption of state laws they saw as impeding their ability to expand their systems.[15] After soliciting public feedback,[16] the FCC decided in

February 2015 to preempt the state laws, asserting that the laws obstructed infrastructure deployment and investment and were thus contrary to section 706's mandate.[17] Several months later, North Carolina and Tennessee sued the FCC.

3. ARGUMENTS IN FAVOR OF PREEMPTION

The various legal, regulatory, and public policy rationales in favor of FCC preemption can be found in the preemption order itself; the legal documents submitted by the Commission during the litigation; and the array of amicus briefs submitted by GONs advocates and others supportive of federal preemption in this context.

The primary legal rationale put forward by the FCC is that its actions are consistent with its new grant of authority under section 706. To justify its preemption, the FCC found the state laws at issue to be "barriers to infrastructure investment" and thus in "conflict with the federal policy set out in section 706."[18] Preempting the laws, in the Commission's view, would "remove barriers to *overall* broadband investment and promote *overall* competition in Tennessee and North Carolina."[19] In short, "removal of such barriers would likely result in more overall broadband investment and competition," and would thus be in keeping with the statutory exhortation arising from the FCC's reinterpretation of section 706.[20]

The FCC also sought to ground its efforts in traditional notions of federal primacy in regulating interstate commerce: "the issue before us concerns federal oversight of interstate commerce – "an area where there has been a history of significant federal presence" – not the inherent structure of state government itself."[21] More specifically, the Commission argues that the "nation's broadband infrastructure is a matter of interstate commerce, squarely in the purview of the federal government and governed by the Communications Act."[22] In its view, framing the state laws as impinging on interstate commerce places the issue beyond the realm of jurisprudence governing the near-plenary authority of states to oversee their political subdivisions.[23] As the Commission argues, failure to view the issue in this light would be contrary to core Constitutional principles of federal supremacy and would "allow states to use the shield of state sovereignty as a sword to defeat federal policy in interstate commerce."[24] (Interestingly, the U.S. Department of Justice declined to support the FCC in this case, a move that some argued was a tacit acknowledgement that the Commission's legal theories were faulty.[25])

Supporters of FCC preemption have offered additional arguments in favor. Many of these focused on non-legal arguments supportive of providing municipalities with broad, if not boundless, latitude to explore GONs without being burdened by state laws seeking to monitor these inquiries. Two leading GONs advocacy groups, for example, provided the reviewing court, the Sixth Circuit Court of Appeals, with "the larger context of the many state laws limiting municipal broadband entry."[26] In particular, these groups went to great lengths to argue that municipal broadband is, in fact, a worthwhile endeavor and that "the vast majority of municipal broadband network projects are successful."[27] By removing barriers to further GON deployment, these groups argue, the FCC has increased the likelihood that more successful municipal networks will be built, which will yield "cost savings, additional revenues, and a wide variety of non-financial benefits to the community."[28]

Most other supporters echoed these kinds of policy arguments. A major theme running through these arguments revolved around the importance of preserving "local Internet choice" – *i.e.,* that "[c]ommunities, through their local leaders, are best suited to choose the right approach for obtaining better, faster, cheaper broadband."[29] The perceived positive economic impacts of GONs, in this view, make broadband an essential service that must be treated "akin to water and electric utilities or other public conveniences, such as roads and highway."[30] Other arguments focused on the ability of GONs to plug gaps in broadband availability and otherwise deliver "broadband

abundance" by bolstering competition in local markets.[31]

4. Arguments Against Preemption

The main arguments against FCC preemption are that the Commission (1) exceeded its authority by attempting to undermine the ability of states to oversee their municipalities and (2) misinterpreted and misapplied section 706. Additional policy-related arguments related to the financial riskiness of GONs have also been made against the FCC.

The two challengers – the states North Carolina and Tennessee – filed separate briefs with the court, but both make very similar arguments. The primary argument against is that the FCC's actions constitute a "manifest infringement on State sovereignty."[32] More specifically, the states argue that the FCC's "actions usurps fundamental aspects of state sovereignty concerning the core function of state regulation of its political subdivisions," the most fundamental being that they possess "absolute discretion over the structure and maintenance of the cities within [their] borders, and the powers and authorities of such cities may be enlarged, abridged, or withdrawn entirely by" their legislatures.[33] Short of an explicit command by Congress to preempt or otherwise alter this dynamic, North Carolina argues that the Commission's actions should be overturned.[34] Tennessee is more absolute, arguing that the "federal government has no power to insert itself between a State and its subordinate entities."[35] This principle has deep roots in American case law, stretching back to the early 19th century.[36]

Beyond these core federalism arguments, the states also cite to the body of case law defining the parameters of federal preemption vis-à-vis state sovereignty. Both argue that the *Gregory* case's "clear statement" test is controlling: "[i]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'"[37] In the telecommunications space in particular, there is case law underscoring the fact that state legislatures have broad authority to adopt legislation impacting whether and how a municipality can or cannot offer communications services. The Supreme Court confirmed this power in its 2004 *Nixon* case, which upheld a Missouri law that prohibited municipalities from offering telecommunications services.[38] In its ruling, the Court found that relevant sections of the Communications Act precluding certain actions that impeded market entry were inapplicable to a state's subdivisions (*i.e.*, its municipalities), noting that Congress likely did not intend for the statute to support federal preemption in this particular context.[39] Both states cite to *Nixon* as establishing that the Communications Act lacks a clear statement regarding the authority of the FCC to "constrain[] traditional state authority to order its government."[40]

These sovereignty-related arguments were amplified and sharpened in supporting briefs filed by a coalition of states and national organizations representing state legislators. In addition to supporting the general right of states to monitor the activities of their subdivisions, these groups detailed the reasons why such oversight is reasonable in the case of GONs. A group of 11 states, for example, provided examples of some notable municipal broadband failures – including systems in Utah, Vermont, Tennessee, and Georgia – to demonstrate "how taxpayers are often left to pick up the pieces when municipal broadband networks fail" and that state laws requiring public engagement efforts like referenda and financial accountability measures "make[] perfect sense."[41] Groups representing legislators, governors, and other state officials echoed these arguments and underscored that the primary interest of states in the municipal broadband context is almost exclusively financial in nature.[42]

5. Why This Matters

The stakes of this case are significant because the outcome will impact two critical issues: (1) the ability of states to oversee GONs deployment in their borders and (2) the extent to which the FCC can use section 706 in support of ever more intrusive policymaking in

ostensible furtherance of broadband investment and deployment.

By attempting to frame GONs as essential inputs to long-term economic prosperity in the United States, proponents have long sought to marginalize the role of state-level officials, particularly state legislatures, in these discussions.[43] As a result, efforts by state legislatures to mediate the exploration of these high-risk and costly municipal projects, typically via legislation to govern the process by which these networks are approved and built, are often dismissed out of hand as intrusive encroachments of municipal authority.[44] Though this perspective attempts to position cities and metropolitan areas as primary drivers of economic development and innovation,[45] these particular arguments, variously framed around notions of local self-reliance and "cooperative localism,"[46] are unpersuasive with respect to GONs.

Contrary to what the FCC's actions might imply, state-level policymakers and policymaking bodies have important roles to play in bolstering broadband connectivity. GONs are expensive undertakings, costing anywhere from a few million dollars to several hundreds of millions of dollars. In some cases when a network faltered (*e.g.*, in Monticello, MN), local government stepped in with funding support to help steady the municipal system.[47] Other failed and failing systems (*e.g.*, in Burlington, VT) negatively impacted local credit ratings, which increase borrowing costs and strain local finances even more.[48] As these systems become more complex and ambitious, the costs associated with building and maintaining them rise inexorably, which raises the risk of costly – and potentially devastating – default by local government. Accordingly, states, which maintain ultimate responsibility for the financial health of the cities and towns in their borders, have a clear and compelling interest in overseeing the process by which GONs proposals are vetted and approved.

To date, 19 states have adopted laws impacting the ability of municipalities to deploy a GON. Only a few states (*e.g.*, Nebraska) have imposed outright bans. In most other instances, state legislatures created a road map for municipalities to follow when evaluating a GONs proposal. Many of these involve public participation of some sort – public hearings, referenda, or other activities meant to fully apprise citizens of their local government's intention to invest public resources in a GON. Numerous others require substantial economic and financial analyses to ensure that a particular municipal project does not become a burden on local residents and the state. The GON law in Florida is illustrative of this kind of approach.

After several failed municipal broadband projects in the early 2000s, Florida in 2005 adopted a law to guide the process by which localities considered and approved what proved to be extremely risky undertakings in the state.[49] The law detailed a straightforward vetting process for GON proposals, requiring public hearings, the preparation and discussion of detailed business plans, and financing details.[50] Rather than impede investment and deployment, this law, coupled with a generally deregulatory approach to advanced communications services, has spurred private deployment throughout the state. Florida is among the best served states in the country, home to robust intermodal competition among a range of wireline and wireless broadband providers.[51]

The outcome of this case will also help determine the actual contours of the FCC's authority under section 706. The Commission's decision to preempt, while nominally limited to state laws impacting existing municipal broadband networks, was revealing of how the Commission might apply section 706 going forward. In particular, the FCC put forward a rather open-ended reading of Congress's "unique level of…concern with broadband deployment," seeming to justify a liberal interpretation of what the amorphous phrase "other regulating methods" included in section 706 might mean.[52] Indeed, the FCC appears to view this provision as a catch-all that encompasses the array of "regulatory tools" that entities like the Commission have long availed themselves of in the regulation of telecommunications services.[53] If preemption is upheld, then the Commission would likely be

emboldened to view section 706 as akin to a blank check vis-à-vis shaping state-level responses to broadband deployment. If the FCC can preempt state laws impacting the ability of existing GONs to expand, what would stop it from preempting other laws – *e.g.*, state-set municipal debt limits; tax policies impacting broadband investment; state standards for managing rights-of-way; etc. – that arguably impact GONs or broadband deployment generally?

In short, whatever its motive, it appears that the FCC has overreached in its attempt to promote municipal broadband. The legal case against federal preemption in this context is robust and grounded in centuries-old notions of constitutional federalism. Moreover, the public policy case against this kind of FCC action is also compelling. Is it plausible to think that Congress intended to empower the FCC – five unelected individuals – with the authority to reshape the relationship between states and their subdivisions? Absent clear instruction from Congress, the courts have been consistent in overturning federal preemption that impacts state sovereignty, even in an era of increasing judicial deference to administrative agencies. Accordingly, it is unlikely that the FCC will prevail in court.

ENDNOTES

[1] *See State of TN; State of North Carolina v. FCC, et al*, Notice of Oral Argument, Nos. 15-3291/15-3555 (6th Cir. 2016), https://prodnet.www.neca.org/publicationsdocs/wwpdf/12916muni.pdf.

[2] *See infra,* section 3.

[3] *See infra,* section 4.

[4] *See In re Preserving the Open Internet,* 25 FCC Rcd. 17,905, 17,966-17,972 (2010) ("*2010 Open Internet Order*").

[5] *See In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 F.C.C.R 24,012, 24,047 (1998).

[6] *2010 Open Internet Order* at 17,969.

[7] *Verizon v. FCC*, 740 F. 3d 623, 649-650 (D.C. Cir. 2014)

[8] *See, e.g., Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, Statement of Commissioner Ajit Pai Approving in Part and Dissenting in Part, at 1, https://www.fcc.gov/article/fcc-15-101a5 ("When this proceeding ends, the FCC will issue a negative finding about the state of broadband deployment. And that's because such a finding is necessary to maintain the limitless regulatory authority over Internet service providers, and perhaps other online entities, that the Commission thinks it has under the Telecommunications Act of 1996.").

[9] *See* John Eggerton, *The Cable Show 2014: Wheeler-Open Internet Will Be Preserved…Or Else*, April 30, 2014, Broadcasting & Cable, http://www.broadcastingcable.com/news/washington/cable-show-2014-wheeler-open-internet-will-be-preservedor-else/130805 (quoting FCC Chairman Tom Wheeler).

[10] *See* Chairman Tom Wheeler, *Removing Barriers to Competitive Community Broadband*, FCC Blog, June 10, 2014, https://www.fcc.gov/news-events/blog/2014/06/10/removing-barriers-competitive-community-broadband ("*Removing Barriers*").

[11] *Id.*

[12] 47 U.S.C. § 1302(a)

[13] *See generally* Charles M. Davidson & Michael J. Santorelli, *Understanding the Debate over Government-Owned Broadband Networks: Context, Lessons Learned, and a Way Forward for Policy Makers*, ACLP at New York Law School (June 2014), *available at* http://www.nyls.edu/advanced-communications-law-and-policy-institute/wp-content/uploads/sites/169/2013/08/ACLP-Government-Owned-Broadband-Networks-FINAL-June-2014.pdf ("*Understanding the Debate*").

[14] *Removing Barriers.*

[15] *See, e.g.*, Sam Gustin, *Two Cities Asked the FCC to Bypass State Laws Banning Municipal Fiber Internet*, July 24, 2014, Motherboard, http://motherboard.vice.com/read/two-cities-

asked-the-fcc-to-bypass-state-laws-banning-municipal-fiber-internet.

[16] *See Pleading Cycle Established For Comments On Electric Power Board And City Of Wilson Petitions, Pursuant To Section 706 Of The Telecommunications Act Of 1996, Seeking Preemption Of State Laws Restricting The Deployment Of Certain Broadband Networks*, Public Notice, WCB Docket Nos. 14-115 and 14-116 (July 28, 2014), https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1072A1.pdf.

[17] *See In the Matter of City of Wilson, North Carolina Petition for Preemption of North Carolina General Statute Sections 160A-340 et seq.*, Memorandum Opinion & Order, 30 FCC Rcd. 2408 (rel. March 12, 2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0312/FCC-15-25A1.pdf ("*2015 Preemption Order*").

[18] *Id.* at ¶ 10.

[19] *Id.* at ¶ 4 (emphasis in the original).

[20] *Id.* at ¶ 5.

[21] *Id.* at ¶ 12 (quoting *United States v. Locke*, 529 U.S. 89, 107-08 (2000)).

[22] *See State of TN; State of North Carolina v. FCC, et al*, Brief of the FCC, at 19, Nos. 15-3291/15-3555 (6th Cir. 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-336270A1.pdf.

[23] *Id.* at 23.

[24] *Id.*

[25] *See, e.g.*, Margaret Harding McGill, *DOJ Silence Deafening In FCC's Broadband Fight With States*, Nov. 10, 2015, Law360, http://www.law360.com/articles/725770/doj-silence-deafening-in-fcc-s-broadband-fight-with-states.

[26] *See State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of Next Century Cities & The Institute for Local Self-Reliance, at 1, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/NCC-and-ILSR-amicus-brief-copy.pdf.

[27] *Id.* at 1-2.

[28] *Id.* at 2.

[29] *See State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of the Coalition for Local Internet Choice, at 5, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/CLIC-Amicus-Brief-copy.pdf.

[30] *See State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of the National Association of Telecommunications Officers and Advisors, at 3, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/NATOA-Amicus-Brief-copy.pdf.

[31] *See State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of the Internet Association, at 3, Nos. 15-3291/15-3555 (6th Cir. 2016),http://muninetworks.org/sites/www.muninetworks.org/files/TIA-Filing-copy.pdf.

[32] *See State of TN; State of North Carolina v. FCC, et al*, Brief of the State of Tennessee, at 4, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/2015-Petitioner-TN-copy.pdf ("*Tennessee Brief*").

[33] *See State of TN; State of North Carolina v. FCC, et al*, Brief of the State of North Carolina, at 8, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/2015-Petitioner-NC-copy.pdf ("*North Carolina Brief*").

[34] *See, e.g. id.* at 9 ("No preemption authority should be implied from ambiguous or equivocal statutory language because "[i]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Nixon v. Missouri Municipal League*, 541 U.S. 125, 141 (2004)).

[35] *Tennessee Brief* at 6.

[36] *Id.* at 9 (citing *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. 518, 638 (1819)).

[37] *North Carolina Brief* at 18 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (additional citations omitted)).

[38] *Nixon v. Mo. Mun. League*, 541 U.S. 125 (2004).

[39] *Id.* at 138.

[40] *North Carolina Brief* at 20 (citing *Nixon*, 541 U.S. at 130).

[41] *See State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of the States of Alabama, Arkansas, Arizona, Colorado, Florida, Idaho, Michigan, Ohio, South Carolina, Utah, and West Virginia, at 11, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/AL-AR-AZ-et-al-Amicus-Con-Local%20Choice-copy.pdf.

[42] *See State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of the National Governors Association, National Conference of State Legislatures, and Council of State Governments, at

18-20, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/Natl-Gov-Assn-NCSL-CSG-Amicus-Con%20Local-Choice-copy.pdf. *See also State of TN; State of North Carolina v. FCC, et al*, Amicus Brief of the American Legislative Exchange Council, at 23-29, Nos. 15-3291/15-3555 (6th Cir. 2016), http://muninetworks.org/sites/www.muninetworks.org/files/ALEC-Amicus-Con-Local-Choice-copy.pdf (making similar arguments).

[43] *See, e.g., Connecting America: The National Broadband Plan*, at 153, FCC (March 2010), https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf (calling on Congress to preempt state-level attempts to mediate GONs).

[44] *See, e.g.,* Olivier Sylvain, *Broadband Localism*, 73 Ohio St. L. J. 796 (2012) (describing state GONs laws as "getting in the way" and articulating a legal and public policy strategy for bolstering local authority to enter the broadband market as service providers)

[45] *See, e.g.,* BRUCE KATZ AND JENNIFER BRADLEY, THE METROPOLITAN REVOLUTION: HOW CITIES AND METROS ARE FIXING OUR BROKEN POLITICS AND FRAGILE ECONOMY (Brookings 2013) (arguing that "Cities and metropolitan areas are the engines of economic prosperity and social transformation in the United States." *Id.* at p. 1).

[46] *See* Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 Va. L. J. 959 (2007) (defining cooperative localism as "direct relations between the federal government and local governments" and arguing that such relationships are playing increasingly "significant role[s] in areas of contemporary policy as disparate as homeland security, law enforcement, disaster response, *economic development*, social services, immigration, and environmental protection, among other areas of vital national concern." *Id.* at 959 (emphasis added)).

[47] *Understanding the Debate* at 64-67.

[48] *Id.* at 18.

[49] *Id.* at 106-108.

[50] Fl. Stat. § 350.81, https://www.flsenate.gov/Laws/Statutes/2012/350.81.

[51] For a recent overview, *see Report on the Status of Competition in the Telecommunications Industry For 2014*, Florida Public Service Commission (2015), http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Telecommunication/TelecommunicationIndustry/2015.pdf.

[52] *2015 Preemption Order* at ¶ 135.

[53] *Id.* at ¶ 144.