S 1294 IS

109th CONGRESS
1st Session

S. 1294

To amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services.

IN THE SENATE OF THE UNITED STATES

June 23, 2005

Mr. LAUTENBERG (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Telecommunications Act of 1996 to preserve and protect the ability of local governments to provide broadband capability and services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Community Broadband Act of 2005'.

SEC. 2. COMMUNITY BROADBAND CAPABILITY AND SERVICES.

Section 706 of the Telecommunications Act of 1996 (47 U.S.C. 157 note) is amended--

(1) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

'(c) LOCAL GOVERNMENT PROVISION OF ADVANCED TELECOMMUNICATIONS CAPABILITY AND SERVICES-

'(1) IN GENERAL- No State statute, regulation, or other State legal requirement may prohibit or have the effect of prohibiting any public provider from providing, to any person or any public or private entity, advanced telecommunications capability or any service that utilizes the advanced telecommunications capability provided by such provider.

'(2) ANTIDISCRIMINATION SAFEGUARDS- To the extent any public provider regulates competing private providers of advanced telecommunications capability or
services, it shall apply its ordinances and rules without discrimination in favor of itself or any advanced telecommunications services provider that it owns.

'(3) SAVINGS CLAUSE- Nothing in this section shall exempt a public provider from any Federal or State telecommunications law or regulation that applies to all providers of advanced telecommunications capability or services using such advanced telecommunications capability.; and

(2) by adding at the end of subsection (d), as redesignated, the following:

'(3) PUBLIC PROVIDER- The term 'public provider' means a State or political subdivision thereof, any agency, authority, or instrumentality of a State or political subdivision thereof, or an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), that provides advanced telecommunications capability, or any service that utilizes such advanced telecommunications capability, to any person or public or private entity.'.

END
STATEMENT OF SENATOR JOHN MCCAIN ON THE INTRODUCTION OF
THE COMMUNITY BROADBAND ACT OF 2005
JUNE 23, 2005

MR. McCAIN. Mr. President, I am pleased to join in sponsoring the Community
Broadband Act of 2005. In the simplest of terms, this bill would ensure that any town, city, or
county that wishes to offer high speed Internet services to its citizens can do so. The bill also
would ensure fairness by requiring municipalities that offer high speed Internet services do so in
compliance with all federal and state telecommunications laws and in a non-discriminatory
manner.

This bill is needed if we are to meet President Bush’s call for “universal, affordable access for
broadband technology by the year 2007.” When President Bush announced this nationwide goal
in 2004, the country was ranked 10th in the world for high speed Internet penetration. Today, the
country is ranked 16th. This is unacceptable for a country that should lead the world in technical
innovation, economic development, and international competitiveness.

Many of the countries outpacing the United States in the deployment of high speed Internet
services, including Canada, Japan, and South Korea, have successfully combined municipal
systems with privately deployed networks to wire their countries. As a country, we cannot
afford to cut off any successful strategy if we want to remain internationally competitive.

I recognize that our nation has a long and successful history of private investment in critical
communications infrastructure. That history must be respected, protected, and continued.
However, when private industry does not answer the call because of market failures or other
obstacles, it is appropriate and even commendable, for the people acting through their local
governments to improve their lives by investing in their own future. In many rural towns, the
local government’s high speed Internet offering may be its citizens only option to access the
World Wide Web.

Despite this situation, a few incumbent providers of traditional telecommunications services have
attempted to stop local government deployment of community high speed Internet services. The
bill would do nothing to limit their ability to compete. In fact, the bill would provide them an
incentive to enter more rural areas and deploy services in partnership with local governments.
This partnership will not only reduce the costs to private firms, but also ensure wider deployment
of rural services. Additionally, the bill would aid private providers by prohibiting a municipality
when acting as both “regulator” and “competitor” from discriminating against competitors in
favor of itself.

Several newspapers have endorsed the concept of allowing municipalities to choose whether to
offer high speed Internet services. USA Today rightfully questioned in an editorial, “Why
shouldn’t citizens be able to use their own resources to help themselves?” The Washington Post
editorialized that the offering of high speed Internet services by localities is, “… the sort of
municipal experiment we hope will spread.” The San Jose Mercury News stated that a ban on
localities ability to offer such services is “bad for consumers, bad for technology and bad for
America’s hopes of catching up to other countries in broadband deployment.” Finally, the
Tampa Tribune lectured Federal and State legislators, “don’t prohibit local elected officials from providing a service their communities need.”

My home state of Arizona boasts the largest approved municipal broadband system in the United States, for example. The City of Tempe’s wireless system will serve all of the city’s forty square miles and a population of 159,000, including the campus of Arizona State University. Citizens will have Internet access from anywhere at any time, and police, fire, water and traffic services personnel will use the system to enhance their efficiency.

In addition to Tempe, several Native American tribal governments offer high speed Internet access services to their citizens. This bill would ensure that such offerings could continue to assist Indian country and their ability to connect to the Internet.

Mr. President, our country faces some real challenges. We need to find ways to use technology to help our citizens better compete. We need to help our businesses capitalize on their ingenuity so that they can become more internationally competitive. That is why we need to do all we can to eliminate barriers to competition and create incentives for the delivery of high speed Internet services for public suppliers of broadband services, private suppliers of broadband services, and public-private partnerships as well.

Mr. President, I hope my colleagues will join us in sponsoring the Community Broadband Act of 2005.
Broad-Based Groups Band Together to Support Community Broadband Choices

Washington, DC—For the first time, groups representing local governments, the high tech industry, and consumer organizations have banded together to promote community broadband choices and the right of communities to provide broadband internet services to their citizens. In a letter sent to Capitol Hill today, the groups urged Members of Congress to support legislation that will ensure that local governments are not prevented from providing broadband networks to their residents and businesses.

The groups--which collectively represent hundreds of high tech companies, thousands of cities and counties, and numerous consumer groups--share a common commitment to extend the reach of broadband services throughout the country. Referring to President Bush’s priority to have universal affordable access to broadband technology by 2007, the letter states, “We believe that community broadband networks provide an essential catalyst for market competition, economic development, and universal, affordable Internet access for all Americans.”

“Without universal access to broadband, our nation’s children will continue to fall behind in the technological literacy so essential to our future. Empowering local government will also benefit rural and high-cost areas and will speed deployment throughout the country, lessening the gap between the United States and other nations,” the letter states.

The coalition of more than 40 local, state and national organizations is working to promote community broadband choices. Across the country, municipalities--often in direct partnership with the private sector--are entering the broadband field in response to the growing demand for broadband access to the internet. In Brooklyn, NY, for example, small businesses have had difficulty obtaining reasonably priced broadband services. Service to many rural areas has also been painfully slow. When private companies offer their services only in areas where there is a high concentration of potential customers, or if they are not providing sufficiently robust bandwidth capacity, municipalities should be able to step in and offer these services. Additionally, cities and towns should also be able to offer free or low-cost broadband services where the private sector has failed to make these services affordable to all residents and businesses.

“Community broadband is not incompatible with private sector competition,” the letter states. In comparing the current effort to ensure internet service in the 21st century with 19th century efforts to bring electricity to rural areas, the letter finds that “the choice should continue to be
made by local leaders who are directly accountable to their communities, using open and competitively neutral processes, and should not be foreclosed by state or federal law.”

Members of the coalition have been working to oppose efforts by states to restrict municipal governments from offering broadband to their constituents. Already, 13 states have adopted restrictions on future public broadband projects. Regardless of whether broadband is included in the congressional effort to reauthorize the Communications Act or in separate legislation, the coalition wants to ensure that municipalities retain a free hand in the process.

Groups and companies signing on to the letter (including media contacts, where available) include:

American Association of Law Libraries
American Electronics Association (AeA)
American Public Power Association, Desmarie Waterhouse, 202-467-2900
Association of Research Libraries
Association for Communications Technology Professionals in Higher Education
Champaign Urbana Wireless Network
EDUCAUSE
Eyapaha Institute
Fiber to the Home Council, Joe Savage, 503-635-3114
Free Press, Ben Scott, 202-265-1490, bscott@freepress.net
Information Technology Association of America
Internet2
Intertribal Entertainment
League of California Cities
MIGIZI Communications
The Media Access Project, Harold Feld, 202-454-5684, hfled@mediaaccess.org
National American Indian Development Corporation
National Association of Telecommunications Officers and Advisors, Libby Beaty, 703-519-8035
National Association of Counties
National League of Cities, Sherry Conway Appel, 202-626-3003, appel@nlc.org
Native American Public Telecommunications
Native Airspace
Native Laboratories
Native Media and Technology Network
Native Networking Policy Center
One Economy
Power Line Communications Association
Public Knowledge
Public Technology Institute
Red Crow Creations
Rural Broadband Coalition
Soar Records
Southern California Indian Center
TeleCommUnity, Michael Bracy, 202-331-2958
Tropos Networks, Jay Roberts, 212-924-2582, jay@mediafirstpr.com,
United PowerLine Council
US Conference of Mayors, Elena Temple, 202-861-6719, etemple@usmayors.org
United Telecom Council
Utah Telecommunication Open Infrastructure Agency (UTOPIA), Maura Carabello, 801-537-0900
American Library Association, Bernadette Murphy, 202-628-8410

Consumers Union, publisher of *Consumer Reports*, issued a similar letter of support today.
Contact, Matthew Hartwig, 202-462-6262

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June 23, 2005

Dear Senator:

The undersigned trade associations, public interest organizations, local government organizations, Tribal governments, and private companies share a common commitment to enhancing the availability of broadband services throughout the country. As you may know, President Bush has established a priority for universal affordable access to broadband technology by 2007. We believe that community broadband networks provide an essential catalyst for market competition, economic development, and universal, affordable Internet access for all Americans. We thus support legislation that will ensure that local governments are not inhibited from providing broadband networks to their residents and businesses.

In just the past few years, the United States has fallen to 16th among industrialized nations in deploying broadband services. In many areas of the United States, small businesses have difficulty obtaining reasonably priced broadband services. Many countries outpacing us, including Canada, Japan, and South Korea, have successfully combined municipal systems with privately deployed networks to wire their countries. Despite this situation, a handful of incumbent providers have been attempting to stop further local government deployment of community broadband services.

A century ago, incumbent suppliers of electricity sought to prevent the public sector from offering electricity for many of the same reasons incumbent broadband providers argue against community broadband deployment and services. As today, incumbents back then sought to limit competition by arguing that local governments didn’t have the expertise to offer something so complex as electricity. They argued that their own businesses would suffer if they faced competition from cities and towns. Local community leaders recognized that their economic survival depended on wiring their communities. They understood that it would take both private investment and public investment to bring electricity to all Americans. Just as municipal electric systems proved critical to making access to electric service universal in the 20th Century, municipal networks can make broadband access universal in the 21st Century—as long as they have the freedom to do so.

In addition to promoting economic development, community broadband offers opportunities for enhanced educational opportunities. Without universal access to broadband, our nation’s children will continue to fall behind in the technological literacy so essential to our future. Empowering local government and tribal governments will also benefit rural and urban areas and will speed deployment throughout the country, lessening the gap between the United States and other nations.

Community broadband is not incompatible with private sector competition. Municipalities across the nation already promote broadband networks in a number of
different ways, while others are considering their own approach. Some may wish to complement wireline and cable networks while others may want to serve as anchor tenants for new private networks. The choice should continue to be made by local leaders who are directly accountable to their communities, using open and competitively-neutral processes, and should not be foreclosed by state or federal law.

Because of the benefits it will bring to citizens and the technology sector, Congress should ensure that municipal entities and Tribal governments may continue to offer a wide variety of broadband services. We look forward to working with you to bring broadband services to all Americans.

Sincerely,

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American Library Association
American Public Power Association
Association of Research Libraries
Association for Communications Technology Professionals in Higher Education
Champaign Urbana Wireless Network
EDUCAUSE
Eyapaha Institute
Fiber to the Home Council
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Information Technology Association of America
Internet2
Intertribal Entertainment
League of California Cities
MIGIZI Communications
The Media Access Project
National American Indian Development Corporation
National Association of Telecommunications Officers and Advisors
National Association of Counties
National League of Cities
Native American Public Telecommunications
Native Airspace
Native Laboratories
Native Media and Technology Network
Native Networking Policy Center
One Economy
Power Line Communications Association
Public Knowledge
Public Technology Institute
Red Crow Creations
Rural Broadband Coalition
Soar Records
Southern California Indian Center
TeleCommUnity
Tropos Networks
United Power Line Council
U.S. Conference of Mayors
United Telecom Council
Utah Telecommunication Open Infrastructure Agency (UTOPIA)