

# Legislative Barriers Against Municipal Wireless (WiMax): And You Thought This Was About Technology?!



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Surely you didn't think that WiMax, wherein municipalities provide citywide broadband access, would stay out of the hands of legislators? Find out what social and government implications may have for this technology.

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Municipalities considering WiMAX have much bigger hurdles to overcome than mere technological challenges. They are also facing legislative barriers set up by states and funded by telecommunications companies – and, upcoming, on the federal level as well.

Over the past several years, an increasing number of cities – perhaps as many as a hundred, by now – have attempted to set up municipal wireless networks for their citizens. In some cases, this was because civic leaders felt the region was underserved; in others, the leaders felt that the offered services were too expensive and contributed to the "digital divide," keeping its citizens from getting jobs and training in the information economy.

But such efforts have been quashed in some states by legislation that, in at least some cases, appears to be due to lobbying by telecommunications companies, and which some proponents believe is a simple battle for turf. Typically, the legislation has to do with municipalities having an unfair advantage in competing with private enterprise.

The most well-known of these battles was in Philadelphia last year. The Wireless Philadelphia project negotiated a settlement with Verizon that would allow it to be exempt from State Bill 183, which otherwise prevented municipalities from setting up broadband systems for a fee, said Dianah Neff, Philadelphia's chief information officer.

Comcast and Verizon, the local cable and telecommunications providers in the Philadelphia area, appear to be stepping back from claiming a major role in that legislation. A Comcast spokesman did not want to discuss it, saying the company had not really taken a public stance. (Gerald Faulhaber, professor of business and public policy at the Wharton School, part of the University of Pennsylvania, in Philadelphia, agreed that the company was "not as aggressive as Verizon" though he did believe it had taken public positions).

"Verizon does not ban municipal networks," said Sharon Shaffer, manager of Verizon's media relations office. "In most cases, we can demonstrate that the market is competitive and enough providers can satisfy consumers' needs." The "landmark legislation" passed in Pennsylvania actually requires all local exchange carriers (LECs) to provide broadband services to all customers in their service territory by a certain date, she said.

But according to Neff, LECs such as Verizon had originally been required to provide high-speed broadband access to all homes in Pennsylvania by 2003, and the new law actually simply extended that to 2013. "They wanted to protect their investment in copper and the buildout of fiber," she said. "[The new law] was a stall tactic to allow them to do it on their timetable." The industry received \$4 million in subsidies to build out fiber across Pennsylvania – a fact that does not typically come up when telecommunications companies claim that municipalities have an unfair advantage, she said, adding that Wireless Philadelphia was not funded by taxpayers.

Shaffer and Neff also clashed in several other areas. For instance, Shaffer said the Pennsylvania bill had

been in the works for two years until Philadelphia suddenly noticed it ("I don't know why it wasn't on their radar screen"). Neff said the bill had been dormant for 18 months until Philadelphia announced its project, at which time the bill was brought out of committee late at night in the last two days of the legislative session. Some reported sources also indicated that the legislation had been toughened up at the eleventh hour.

What has received the most attention in the bill is "one paragraph in a multi-page document that indicates 'right of first refusal,'" Shaffer said. "If a municipality is interested in building its own network, it simply goes to the local exchange carrier that services the territory and makes their interest known. The company has 40 days to say yes, we would like to provide broadband services, or no, not at this time, in which case the municipality may move forward on their own."

## The Digital Divide... and Multiplication

But there is more to it than simply availability of services, Neff said, noting that Verizon's rates were out of the reach of its poorer citizens. "We're concerned when only 58 percent of our households have access to the Internet," she said, adding that while affluent neighborhoods have a 90% penetration, low-income areas have only a 10-15% penetration. The Wireless Philadelphia system charges \$10 and a standard household rate of \$20, which includes both indoor and outdoor wireless. In comparison, she said, Verizon charges \$14.95 per month, with a multi-month contract and a penalty clause, plus \$60 to provide non-fixed wireless, plus a requirement that people use its telephone system.

"A lot of our low-income households don't have phones," Neff said. "They have cellular prepaid cards." The Philadelphia project also includes free computers, training, and community portals through nonprofits and the school district.

A similar effort is going on in Madison, Wisconsin, where a bill passed a couple of years ago prohibits municipalities from providing Internet to its citizens unless no access is available, said Norm Stockwell, operations coordinator at WORT Community Radio and a spokesman for Madison Community Wireless Advocates. To work around the law - which has not yet been tested in court - the city, county, and state have formed an alliance called Wireless Wisconsin that will negotiate with vendors to provide service (an agreement with AOL fell apart in August after AOL pulled out of the wireless market).

To Stockwell's group, public wireless access is a basic right. "In the declaration of human rights in 1948, it talks about the right to communication," he said. "We think it's important for citizens, and developing citizenry, to have Internet access. Wireless is one way to begin to break down some of that digital divide."

There is, potentially, a legitimate reason to keep municipalities from setting up wireless networks that compete with private suppliers, and that is in the area of future technological advances and conflicts of interest, said Faulhaber. If another vendor wanted to come in later and provide fiber to the home - a technologically superior system to wireless - that vendor would need to get permission from the city to dig up the streets to lay the fiber. "If someone's offering something competitive and they need a license from you, are you going to give them a license?" he asked. "If [Philadelphia] didn't sit atop the licensing process, that wouldn't be a problem."

But Faulhaber is under no illusion that this is the legislators' motivation. "The legislators are doing what they're doing in response to lobbying pressure."

### NOTE

While the general belief is that rural areas are the ones most likely to lack high-speed telecommunications, in reality that is not the case, said Faulhaber. "We had a home in Sullivan County [in rural Pennsylvania], where there's more deer than people, and they had DSL up there." Such areas are often served by independent telephone companies, and they like offering DSL because "it's unregulated and highly profitable." Such companies tend to offer very aggressive pricing, but just within their own territories, he said.

According to a Web site set up by The Baller Herbst Law Group of Washington D.C., some 14 states had legislation in process by the end of 2004 to limit municipalities' ability to set up wireless networks, with 13 states having more legislation in process as of August 2005 - leading to a total of 22 states either have

such legislation or have some in process.

And that number is likely to increase. Telecommunications vendors, which have been in a largely reactive mode for the past few years, are now starting to become more proactive, Faulhaber said. "Companies like Verizon [which operate in multiple states], if they see [municipal wireless] in three states, they're going to start lobbying in all the states they're present in."

Now the battle is moving to the federal front, with two competing bills. One would make it illegal for any government to provide wireless Internet, and another would make it legal - "and override the patchwork of state laws that say they can't," said Stockwell.

The first bill, the so-called Preserving Innovation in Telecom Act, was introduced by Representative Pete Sessions (R-Texas) earlier this summer; the second, the Community Broadband Act, was introduced by Senators Frank Lautenberg (D-New Jersey) and John McCain (R-Arizona) in the Senate in June. Either of these bills, if passed, would settle the situation, one way or another. (Verizon's Shaffer said her company is not supporting the House bill, and described it as 'making it clear that municipalities must jump through hoops in order to build their own networks.')

Faulhaber hopes it doesn't come to that, and that the municipalities and vendors can come to more of an understanding. "I could imagine someone like Verizon adopting a more statesman-like process and saying, as long as there's no private sector firm, why not let the municipalities offer it? That would defang a lot of it. If I were in charge of Verizon's public affairs, I'd say, 'Let's not look like the anticompetitive bad guy.' And that's an easy thing to give away because there's not that many places with no broadband provision."

States with legislation by the end of 2004:

- Arkansas
- Florida
- Missouri
- Minnesota
- Nebraska
- Nevada
- Pennsylvania
- South Carolina
- Tennessee
- Texas
- Utah
- Virginia
- Washington
- Wisconsin

*Source: The Baller Herbst Law Group of Washington D.C.*

States with pending legislation as of August 2005:

- Colorado
- Florida
- Illinois
- Indiana
- Louisiana
- Michigan
- Nebraska
- Ohio
- Oregon
- Tennessee
- Texas
- Virginia
- West Virginia

*Source: The Baller Herbst Law Group of Washington D.C.*

## Additional Resources:

- <http://www.muniwireless.com> - general information on various municipal wireless projects
- <http://www.wirelessphiladelphia.com> - Wireless Philadelphia Web site
- <http://www.wisconsin.gov/state/core/wireless.html> - Wireless Wisconsin Web site
- [http://blog.case.edu/lsg8/2005/08/16/designing\\_a\\_metropolitan\\_strategy\\_for\\_wireless\\_in\\_cleveland](http://blog.case.edu/lsg8/2005/08/16/designing_a_metropolitan_strategy_for_wireless_in_cleveland) - Municipal wireless in Cleveland, Ohio
- [http://www.miamibeachfl.gov/wifi/wifi\\_main.asp](http://www.miamibeachfl.gov/wifi/wifi_main.asp) - Municipal wireless in Miami Beach, Florida
- <http://www.civitium.com/states.shtml> - list of municipal wireless legislation
- <http://baller.com/barriers.html> - more detailed information on municipal wireless legislation
- <http://www.informit.com/articles/article.asp?p=386973> - previous coverage on the Philadelphia situation
- <http://www.informit.com/articles/article.asp?p=393263> - previous coverage by the Wharton School

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