
March 30, 2015

TENNESSEE / NORTH CAROLINA MUNICIPAL BROADBAND DECISION

Overview

- On Feb. 26, 2015, the FCC preempted certain challenged provisions of Tennessee and North Carolina law restricting municipal provision of broadband service.
- FCC found that the state laws are barriers to broadband infrastructure investment and thwart competition contrary to section 706 of the Telecommunications Act of 1996.
- Petitioners: Electric Power Board of Chattanooga, Tennessee, and Wilson, North Carolina.

Section 706(a) of the Telecommunications Act

- Directs the FCC to encourage the deployment of advanced telecommunications capabilities on a reasonable and timely basis to all Americans

“by utilizing, in a manner consistent with the public interest, convenience, and necessity ... measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.”

Section 706(b) of the Telecommunications Act

- January 2015 *Broadband Progress Report* concluded that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion.

If the FCC reaches this conclusion, Sec. 706(b) requires it to “take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”

EPB, Chattanooga, TN

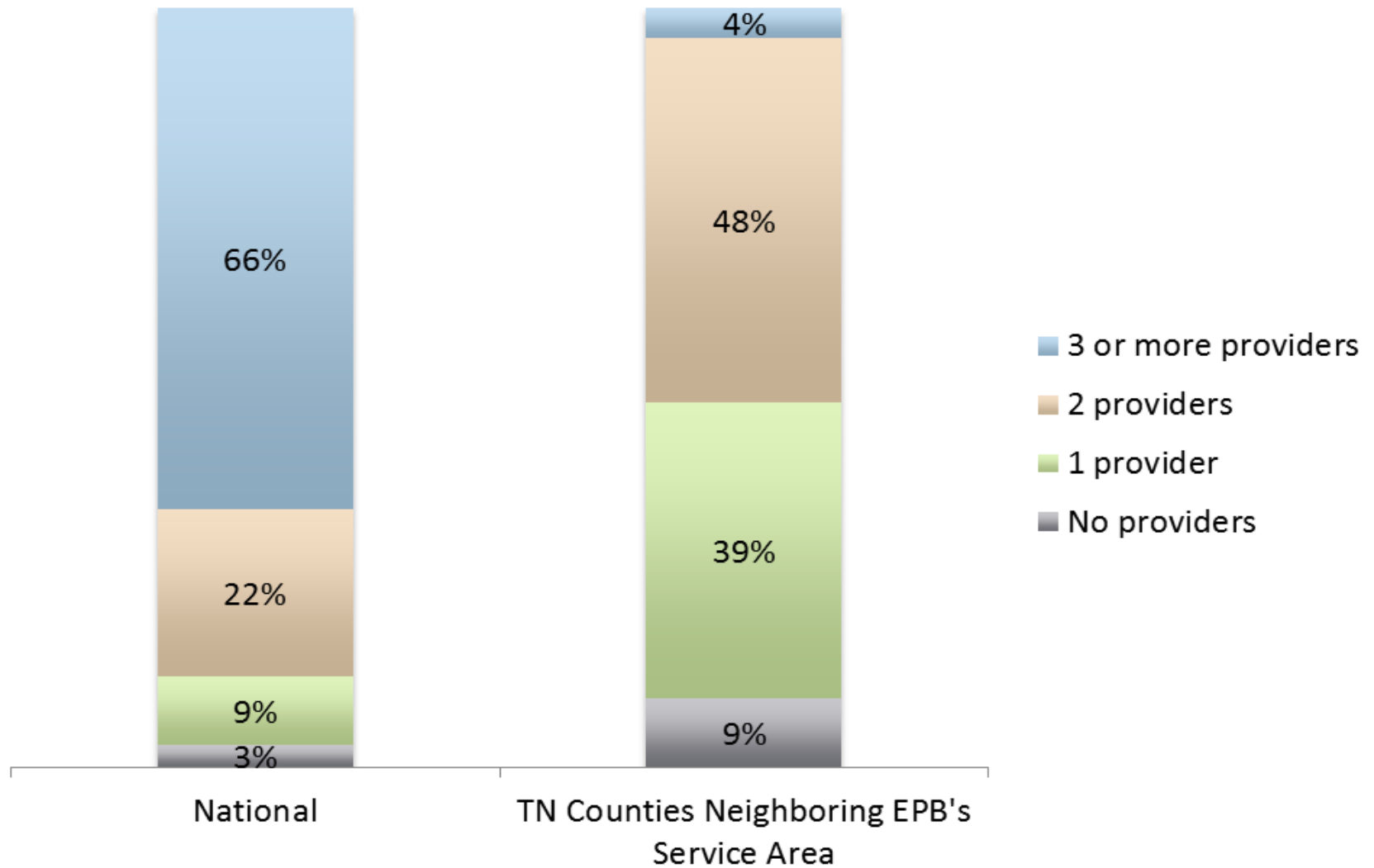


- Electric Power Board (EPB) offers voice, video, and high speed broadband service with speeds up to 1 Gbps to 170,000 customers.
- EPB began developing fiber optic system in 1996 to meet future electrical needs and serve additional customers.
- In 2010, EPB became the first broadband provider in the nation to offer 1 Gbps services to all of its customers.

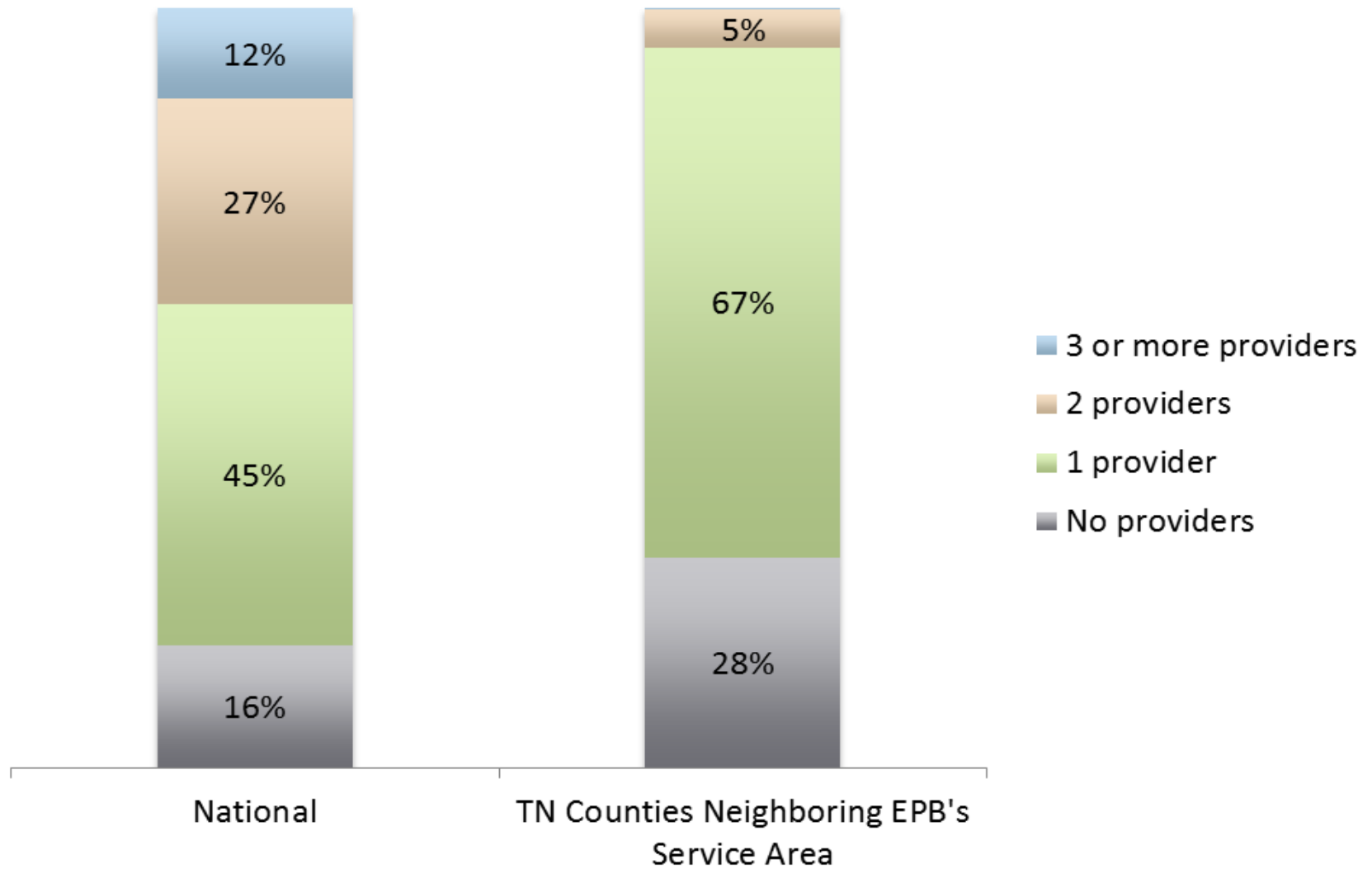
Tennessee Law

Geographic restriction that has prevented municipal electric systems like EPB from offering Internet or video outside of their respective electrical service areas.

Housing units with access to multiple providers at 3 Mbps / 768 kbps



Housing units with access to multiple providers at 25 Mbps / 3 Mbps



Wilson, North Carolina

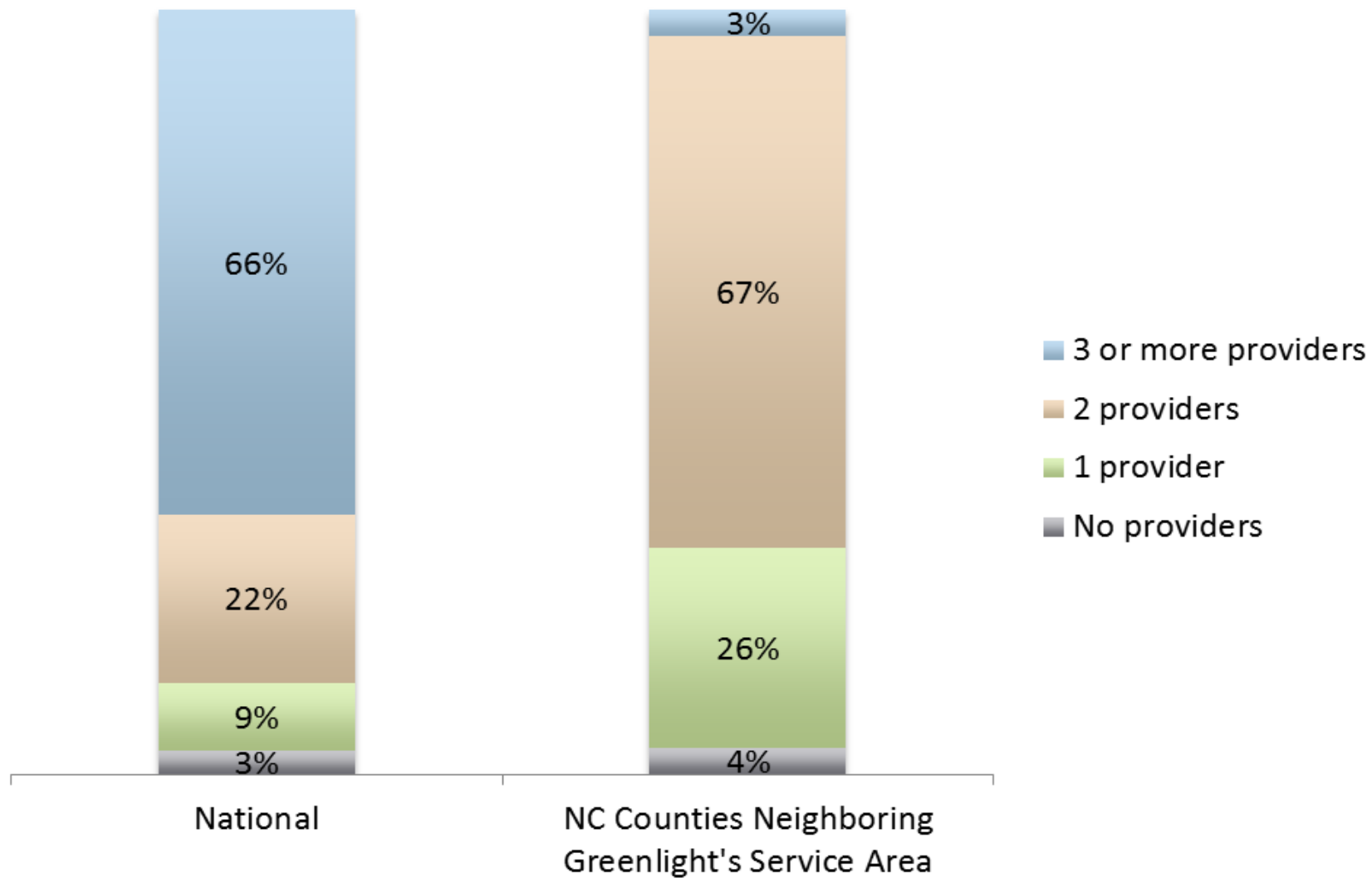


- Wilson, NC, offers electrical service in six counties in NC
- In 2005, Wilson built a fiber backbone connecting city-owned facilities.
- Wilson launched broadband service under trade name Greenlight in 2008.
- In 2013, Wilson began offering residential 1 Gbps service

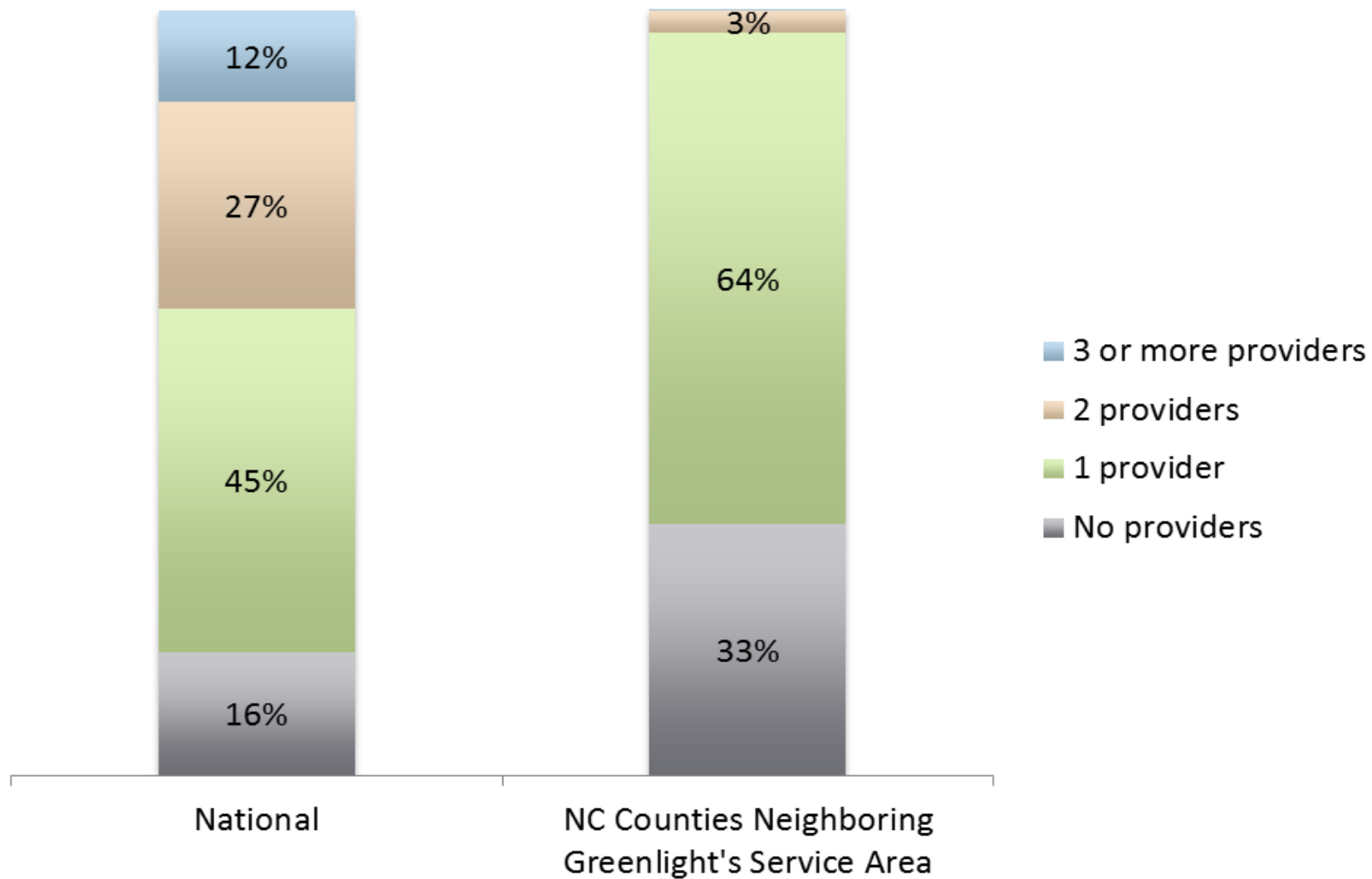
North Carolina Law

- Bill enacted in 2011 that the record suggests was “largely sponsored and lobbied for by incumbent providers”
- Includes what the FCC concludes are:
 - Measures to raise economic costs of municipal broadband, including a geographic restriction (Wilson can only provide service in Wilson County)
 - “Level playing field” obligations
 - Measures to impose delay

Housing units with access to multiple providers at 3 Mbps / 768 kbps



Housing units with access to multiple providers at 25 Mbps / 3 Mbps



Benefits of EPB's and Wilson's Broadband Service

- Economic benefits and job creation
- Better broadband service at reduced cost
 - Existing providers reduced or stabilized rates and improved service in response to entry
- *Other:* Improvements for schools and libraries, health, and public safety

Conclusion Under Section 706

FCC concluded that preemption meets the standard for action under section 706 because it will remove barriers to overall broadband infrastructure investment and promote overall competition in the telecommunications market in Tennessee and North Carolina.

Factors Relevant to Section 706 Analysis

- FCC explained that EPB and Wilson provide service because pre-existing service did not meet community needs
- Private providers in Chattanooga and Wilson improved services and reduced rates (or halted rate increases) in response to municipal entry
- FCC rejected objections in the record, including “level playing field” and “crowding out” arguments and claims that EPB, Wilson, and others are likely to fail.

Analysis of State Laws

- FCC analyzed the specific impact of the challenged TN and NC laws
- Concluded that the TN geographic restriction and most challenged portions of the NC law serve as barriers to broadband infrastructure investment and competition

Example: NC Measures to Raise Economic Costs

- Territorial restriction prohibiting expansion
 - Limited exemptions that “do not provide a meaningful way for municipalities to expand”
- Payments in lieu of taxes equivalent to what a private-sector provider would pay
- Imputation of (i) the cost of capital available to private communications service providers in the same locality and (ii) all taxes and regulatory fees that would apply to a private competitor, and prohibition on charging below that cost



FCC evaluated these restrictions, “level playing field” obligations, and measures to impose delay holistically.

FCC Authority to Preempt Under Section 706

- FCC concluded that section 706 authorizes it to preempt state laws that specifically regulate broadband provision by the state's political subdivision, where those laws stand as barriers to broadband investment and competition.
 - A different question would be presented if the FCC asked to preempt state laws that withhold authority to provide broadband altogether.
- The laws at issue “serve as state-law communications policy regulations, as opposed to a core state function in controlling political subdivisions.”

FCC Intergovernmental Advisory Committee View

“Communities should have the right and discretion to promote the deployment of broadband networks in any way they deem appropriate, whether that be providing service, creating public/private partnerships or developing incentives for private sector investment.”

- FCC Intergovernmental Advisory Committee

Thank you