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by Geoff Daily, July 25, 2008 10:04 AM

Incumbents Be Warned: Don't Mess with Muni-Broadband

A constant thorn in the side of progress towards a full fiber nation is the tendency of incumbents to react to municipal projects litigiously.

Most recently I read this [great article](#) about what's happening in Monticello, MN, where an effort by the city to deploy fiber is now being met with a lawsuit by the incumbent, Bridgewater Telephone, who claim the city can't use tax-exempt bonds to go into direct competition with the private sector.

This issue weighs heavily on my thoughts as I write this from Lafayette, LA, where a protracted legal battle took multiple years to resolve; only now Lafayette Utility Systems seems poised to realize tremendous success with the much-anticipated launch of the first phase of its residential full fiber deployment in January.

Here's the thing about this practice. I can see why incumbents think having to battle a municipal entity is unfair as cities have access to money private companies generally don't, plus they can work through permitting and rights-of-way issues more readily. But let's consider this a little more closely.

First off, I want to cite a [post](#) of mine entitled "In the End, The Users Always Pay" in which I argued that it doesn't matter how the fiber's getting out there, in the end the money to pay for that deployment is coming out of our pockets. It's an important concept to remember in these discussions.

Second, I want to put this out there, which is better: competition or progress? These legal arguments by incumbents claim municipal broadband threatens competition, but I'd argue that these lawsuits threaten progress as they're derailing community-driven efforts to upgrade infrastructure.

Third, no one should have the right to determine what's best for a city other than the people who live in it. There seems to be an undercurrent in these lawsuits that cities are wasting their money on fiber, that the incumbents don't think anyone wants or needs it, but in my mind that's not their decision to make. We can't have private companies determining what we need and don't need.

Now this takes us into why incumbents should think twice before using the legal system as a default response to community-driven demand for fiber: they can't win.

Think about it. In the article above about Monticello it reports that 74% of the public voted for fiber. Down here in Lafayette the number was above 60%. Now imagine what these numbers could translate into in terms of take rates. By fighting municipal broadband, incumbents are simultaneously raising awareness about it, improving its chances for success.

Plus, communities deploying fiber are often already not totally satisfied with the service incumbents are delivering, which means fighting public opinion not only boosts municipal efforts it harms public perception of the incumbent. Making this worse are situations like in Monticello where, according to that article, the city first approached the incumbent about deploying fiber but were stonewalled. While I don't know the details of those conversations, I do know that as a businessman if you came and told me more than half the city wants new service and that you're going to build it if I don't, then I can't see how I could say no. And by not either moving forward or getting out of the way, they're clearly blocking progress and the public knows it.

But there are even deeper levels to the risks incumbents incur by fighting the push for fiber.

Take Lafayette. While they had to spent a ton of money in court fighting for the right to deploy fiber, once they were finally able to get started building they discovered that over the years the cost of network components has dropped dramatically, therefore making the project even more viable than it would've been if they had been allowed to start on it from day one. So because they were sued they saved money in the long-run.

And now that Lafayette has some momentum behind it, the incumbents are starting to get worried that they're about to lose a lot of customers, so they've begun pumping millions of dollars into the community in an effort to stave off these losses. Yet while this is great for the city of Lafayette, I wonder if it's foolish for the incumbents. They're going to lose some number of customers right off the bat just because of how much public support was behind this project. Plus they have to face down the fact that LUS will be able to offer a far superior network to anything the incumbents have. So they're having to invest in incremental upgrades to their infrastructure just to hope that they can hold on to the customers they already have.

Now, I can understand why incumbents have a tendency to turn to litigation. They don't want to see new entrants, especially if competition isn't level. Their livelihood is at stake so they're going to do everything they can to maintain the status quo.

But by doing so, they risk turning public opinion even further against them and increasing public awareness about the municipal effort while simultaneously potentially saving cities money and then having to invest more of their own just to retain the customers they already have.

To be honest, without qualifying whether or not the competition municipal broadband introduces is fair, suing these efforts just doesn't make any sense from a business perspective.

So I say to all incumbents - Be forewarned! By suing municipal broadband, you may just be making it stronger.

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