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## Wireless Industry Battle Of The Bands

BY MARTHA BUYER  
DAILY RECORD COLUMNIST

In what may turn out to be the ultimate telecommunications grudge match between government and private firms, both governmental entities and representatives from cable, broadband and traditional phone companies are duking it out. State by state, municipality by municipality, the battle over who can — and should — be providing broadband wireless access, both in cities and rural areas is reaching a fevered pitch.

While the interests are different, and the stakes are high, the issues that widespread wireless broadband deployment raise are not dissimilar from those issues initially raised when local landline services were opened up to competition by the landmark Telecommunications Act of 1996.

### Economic Issues

The essence of the argument is, as always, economic. While the technologies are available to implement broadband access at affordable prices, the core of the dispute is that it's unfair to the incumbent (and embedded) telecommunications companies to be forced to compete with the government in this rapidly evolving and expanding market. Those on the other side argue that whoever can implement wireless broadband services quickest, easiest and of course, cheapest (with "free" being optimal) should do so.

According to a recent interview with FCC Commissioner Michael Copps, the U.S. currently ranks 13th (and falling fast) in overall broadband deployment worldwide. This lackluster showing is the result of a number of factors, the most critical of which is that, unlike many of the countries at the top of the list, including Korea, Japan and Norway, the United States has no national policy for broadband deployment.

The vacuum that this absence of direction on the broadband front has created has encouraged the development of a crazy quilt of rules and regulations governing who can provide broadband services, and how and where such services can be provided, which are based not on sound policy, but rather local politics and shrewd lobbyists. It has also prompted a great deal of fodder for the giant "idea bank," although in most states, no action has yet been taken.

### Legislative Action

As recently as the second week in March, legislators in 12 states have gone to the trouble of filing bills that would prevent municipalities from offering their own wireless broadband services. While most of these bills are pending, in Indiana, the first bill presented was defeated. However, there are two successor bills before the Indiana legislature.

Interestingly, in Pennsylvania, where the City of Philadelphia has been working to implement a wireless network, state legislation blocking such efforts was enacted, although the City of Philadelphia was exempted. So, if you're in Pittsburgh, the city will not provide wireless service, but if you're in Philadelphia, you'll be able to get it. This logic must be clear to someone, but it sure doesn't make sense for consumers.

About 100 years ago, a similar situation arose with respect to own-

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ership of electricity. Although it occurred on the other side of the border, the parallels are striking. In 1906, a provincial cabinet minister from London, Ontario, introduced a bill to create the Hydro-Electric Power Commission of Ontario (its successor is the current Ontario Hydro).

The minister, who adopted the phrase "power for the people," had to fight costly and unpleasant battles with corporate interests who sought to keep electricity, which at that time was a new utility, in private hands. Only through his actions was a public utility created that provided service to all Ontario cities and towns, and made it possible for affordable electric power to be widely available.

The actions of Minister Adam Beck literally changed the world of residents of rural Ontario by providing them with electricity that, absent Beck's actions, would have happened much later and at a much higher cost.

### Opposition To Government Ownership

The ILECs and others who oppose government ownership of wireless networks, along with their lobbyists who have successfully brought legislation to the floors of their respective state houses, base their argument on the fact that it's not fair to compete with government for business. While this argument rings true, it's also true that in many instances, these companies have provided services under monopoly conditions where they could — and do — charge, not necessarily what the cost plus a reasonable profit is, but in fact, the cost that the market will bear.

While to the best of my knowledge, New York has no such legislation pending, it wouldn't be beyond the scope of the incumbents in our state to try to put such a bill in front of the legislature. When the Philadelphia battle was at its most heated a month ago, a spokesperson from Verizon had the audacity to suggest that "government doesn't do service well."

Whether this claim is specious or not, anyone who has ever received less than optimal service from Verizon might find that this comment is nothing short of, with all due respect, hypocritical.

Further, as true competition (or arguably artificial competition) declines in New York, the incumbents — and primarily Verizon — will have even less incentive to provide good service.

The battle lines are drawn between what's best for consumers and what's best for providers. The question should be "who can provide the best service in the least amount of time for the best price?" Whoever answers that question, in any market, should be the winner. But legislation that bars governmental entities from entering a specific market or markets serves no one.

As is often the case with telecommunications law — or other technology law — stay tuned for further developments.

*Martha Buyer is an attorney concentrating in the practice of telecommunications law. Her clients range from Fortune 500 companies to small family-owned businesses where she has provided a range of telecommunications consulting and legal services, primarily geared to support corporate end-users working with carriers and equipment providers. Buyer can be contacted at [martha@marthabuyer.com](mailto:martha@marthabuyer.com).*