



Colorado Senate Bill 152

Restrictions on Municipal or Community-Led Broadband Initiatives

**A brief written by NEO Connect
April 2016**

Colorado Senate Bill 152

In 2005 the Colorado Legislature passed Colorado Senate Bill 05-152 (SB-152) at the urging of the largest telecom providers. This took away local governments' ability to compete with the private sector within the broadband marketplace including high-speed Internet, telecommunication and cable services. In essence, the law prohibits the use of municipal or county funds to be used to improve local broadband infrastructure and service.

While this inexplicable limitation is in place, it is by no means insurmountable. Local governments can obtain exemption through a local ballot initiative to opt-out of SB-152. As of April 2016, approximately 60 municipalities, counties and school districts have held public elections to opt out of SB-152. All of the favorable opt outs have passed overwhelmingly. Some communities (Estes Park, Durango and Telluride) passed with over 90% voting in favor of opting out of this restrictive bill, giving local governments the authority to solve broadband infrastructure gaps within their communities.

Restrictions

SB-152 prohibits your town from:

- Investing in broadband services and/or infrastructure for homes and businesses.
- Providing broadband services to businesses and households.
- Creating a private/public partnership that would leverage government infrastructure to provide affordable and high-speed Internet service

What the Law Says

Municipalities and local government entities can build out telecommunications infrastructure to other government entities (town hall, county offices, police, fire, ambulance, E-911 centers, etc.) and quasi-government entities (schools, libraries and hospitals). The network may be used by service providers to provide services to end users (homes and businesses) as long as the service provider's use of the network is insubstantial compared to government use. The term "insubstantial" is not defined in the law. Additionally, the law prohibits governments in entering into Public-Private Partnerships that are substantial (again, this term is not further defined) to provide telecommunications and broadband services.

Out of Date

The fact that SB-152 was written into law in 2005 is evident in that it defines high-speed Internet as 256 kbps, versus current standards defining broadband as 25 Mbps download speed and 3 Mbps upload speed. The good news is that municipalities can indeed offer free Internet service in city libraries, parks and community centers. The bad news is that it cannot exceed service speeds of 256 kbps.

The bigger issue with the 2005 legislation is that it assumes that the private sector will provide adequate service – services that are good enough for businesses to compete and its citizens to thrive. As economic development is not (nor should it be) a top priority for private carriers or part of their own business case, many towns are under or unserved, requiring municipalities to build (or partner to build) a modern infrastructure.

How to Proceed

A simple yes or no referendum to secure voter approval allows a Colorado, town, city, county, etc. to move forward with their broadband aspirations. This includes investing in infrastructure as well as forging partnerships to deliver alternative broadband service

What an Opt Out Means

An opt-out from your voters puts the authority to decide next steps in the hands of local authorities. Communities can conduct a feasibility study to see what better broadband in their community would cost and what it could mean in terms of economic and social advancement. Local authorities can look into potential public-private partnerships or even sit down to negotiate with the region's current Internet providers. Local authorities can build infrastructure and provide broadband services to the public if desired.

Aspirations Differ

Most often towns that seek to opt out of SB-152 as merely step one in exploring options and determining the appropriate level of investment to meet community aspirations. Aspirations could be as grand as building your own network or as simple as a negotiating tool with private carriers. Many towns that “opt out” have no desire to build or manage a network, but they do want the freedom to do so if it is their only option. Opting out gives your community options.

The Importance of Broadband

The importance of higher speed Internet for businesses and households is only increasing, as are requirements for higher speeds and greater bandwidth. Businesses need higher speeds to compete, capture economic opportunities and drive efficiencies. Schools increasingly need higher speed Internet services to link students to anywhere in the world, with countless learning opportunities, preparing our region's workforce of tomorrow. Robust bandwidth is needed to fill the growing and expanding needs for emerging solutions in both healthcare and public safety, literally making better broadband a matter of life and death. And of course households are increasingly in need for better broadband for civic, engagement, home-based work, and even entertainment.

Why Opting Out is Necessary

Often opting out of SB-152, you are paving the way to pursue options for obtaining what is now considered basic infrastructure for business and life. On occasion the private sector will indeed invest and expand its broadband infrastructure. But in sparsely populated, geographically

challenging communities across Colorado, the business case for improvement and increasing service levels cannot be made by the private sector. At least, it will not be made without the possibility that competition could take them out of a marketplace entirely. Opting out of SB-152 sends a clear message that status quo for your community is not good enough and are the first step towards investigating remedies in the form of public investment, partnerships, etc.

Colorado Opt Outs

More than 60 communities have opted out of SB-152 since November 2015, with an average “yes” vote to opt out coming in at 80%. The vast majority of local governments who have opted out are not decided on providing broadband services themselves; they are merely serving their constituents by recognizing current gaps in service. How these challenges are addressed is a question for planning, strategies, negotiations, asset assessment, public-private partnership meetings, etc. With so many communities opting out, many are uncovering opportunities to work together, aggregate demand and share costs.

Ballot Initiative Example

The following is an example of what a ballot initiative would look like:

“Without increasing taxes, shall (insert different government entities) have the legal ability to provide any and all services currently restricted by Title 29, Article 27, Part 1, of the Colorado Revised Statutes, specifically described as “advanced service,” “telecommunications services” and “cable television services,” as defined by the statute, specifically including new and improved bandwidth services based on best available technologies, utilizing current and new community-owned infrastructure to any existing fiber optic network, either directly, or indirectly with public or private sector service providers, to potential subscribers that may include telecommunications service providers, and residential or commercial users within (government entity), and that said services may be provided by (government entity) alone or in partnership with other governmental, private or corporate, including nonprofit, entities?”

For more information, contact:

Diane Kruse
NEO Connect
970-309-3500

dkruse@NEOconnect.us

www.NEOconnect.us