

States ride broadband wave

July 1 2010, By Will Wilson

Colorado is one of a number of states where state and local governments are prohibited by law from directly providing broadband service, for example, free municipal wireless connections. So a recommendation in the Federal Communication Commission's National Broadband Plan has state officials scrambling. Released in March, the plan calls for Congress to ensure that state and local governments don't pose any barriers to making broadband available. If approved, the action could override the state laws.

"The worst thing that could happen in the state of Colorado is for a law like that to be rolled back, and we don't have accompanying policies in place," says John Conley, executive director of the state's [Statewide Internet Portal](#) Authority. To deal with that and other possible federal actions, Colorado has formed a broadband council to review the plan, as well as state policy, and deliver guidance to state lawmakers in the coming year.

Colorado's situation reflects the dynamically changing broadband environment in the United States today and the efforts of state officials not only to keep up with the changes in the plan, but to get out ahead of them. And since March, the [FCC](#), its plan and other factors shaping the landscape of broadband in the nation have been on a wild ride.

What's at stake, states recognize, is the potential of broadband to improve the delivery of health care, public safety, education and other services -- and to make their workers and businesses competitive in a global economy. According to a new report released June 21 by the Pew

Center on the States, "Bringing America Up to Speed: States' Role in Expanding Broadband," states -- with an infusion of \$7.2 billion in federal stimulus funds and guidance from the FCC's broadband plan -- have stepped up efforts to ensure universal access to fast, reliable [broadband connections](#) and to give their residents the skills and resources they need to understand the benefits of broadband and get the most out of it.

Three weeks after the release of the plan, however, a federal court ruling, *Comcast v. FCC*, effectively undermined the FCC's authority to regulate many aspects of broadband, including oversight of management of Internet service providers and enforcement of a range of objectives, such as network neutrality, which prohibits providers from restricting all forms of content. "The effect of the Comcast decision," says Austin Schlick, general counsel for the FCC, "made their services unregulated and unregulatable under the current legal framework."

Perhaps worried that Congress would step in to set its own standards, a group of providers, including Verizon, AT&T and Comcast, banded together to voluntarily impose net neutrality on themselves, developing guidelines to manage their networks. Net neutrality advocates have said that such an agreement, while nice, is no substitute for clear rules.

The court decision also casts some of the National Broadband Plan's recommendations into doubt. For one thing, it could upset the FCC's plan to reform the Universal Service Fund, which now guarantees funding for universal telecommunications services to everyone, to also provide broadband to all Americans, according to FCC Chairman Julius Genachowski.

The ruling also threatens, he says, the plan's recommendations that would protect consumers and promote competition by ensuring transparency in broadband access services, safeguard the privacy of

consumer information, facilitate access to broadband services by persons with disabilities, protect against cyber-attacks, ensure next-generation 911 services for broadband communications and preserve a free and open Internet.

In all of these areas, states have direct and indirect interests as well. For example, the funding for a broadband plan proposal to expand E-rate, a grant program that enables many schools and libraries to be connected to the Internet, could be in question. "Over the years, we have done very well with that program to get Internet to our schools," says Craig Orgeron, strategic services director at Mississippi's Department of Information Technology Services, who waits along with officials from other states to see how broadband's regulatory limbo will affect the E-Rate program and other areas.

After the ruling, the FCC voted June 17 to begin the process of reclassifying broadband as a telecommunications service like traditional phone lines, over which the FCC has more clearly delineated regulatory authority. Genchowski, though, has called for an approach that would scale back some of this authority that he has said would be inappropriate for broadband -- such as regulating Internet content -- an approach similar to the FCC's regulation of wireless telephone.

But U.S. Congressman Lee Terry, a Republican from Nebraska and a proponent of broadband for revitalizing economies in rural areas, argues that Congress needs to step in and decide the next steps for broadband and broadband regulation. He says that the FCC is "usurping the congressional role in broadband planning."

He is not alone; more than half of Congress, including members of both parties, has expressed concern about the new reclassification plan. In one of several congressional letters sent to the FCC before its vote, more than 70 House Democrats urged, "the significant regulatory impact of

reclassifying broadband service ... should not be done without additional direction from Congress."

That could slow the process, however. Harold Feld, legal director for Public Knowledge, a public interest group focused on digital rights, notes, "Democrats and Republicans are fairly far apart on what sort of action they'd like to see." It took 20 years, he says, for Congress to act when similar FCC authority over cable television was in question.

"I don't know what the shakeout will be," says Barbara Esbin, a senior counsel with law firm Cinnamon Mueller who spent more than a decade with the FCC in the Media Bureau and the Cable Services Bureau. "But if I were a state regulator or broadband director, I would be watching this very closely."

Right now, state officials like Colorado's Conley are hoping just to get some clarity. Conley, the go-to person when others in the state have questions related to state or national broadband issues, says he is disconcerted by the murkiness that currently shrouds some important national broadband matters. "If someone asks me what you have to do to meet the net neutrality requirement, I don't know," he says. "And I don't know where to look."

BROADBAND PLAN MOVES AHEAD

Although the federal ruling casts uncertainty on aspects of FCC authority over broadband, it does not affect many of the recommendations in the FCC's broadband plan. Indeed, the FCC and other agencies already have begun implementing some of the suggestions, including changing regulations regarding utility pole attachments and taking steps to auction broadband spectrum..

For states, perhaps the most significant recent development has been the

announcement of a new round of National Telecommunications and Information Administration grants for broadband mapping and planning activities, funded out of the \$350 million the Recovery Act had designated for states to map the availability, speed and location of broadband services. The new grants, in addition to the \$100 million already granted for state mapping, cover three additional years beyond the initial two that the first round of grants had covered and expand funding to include state task force planning work and programs to increase computer ownership and Internet use.

"The NTIA broadband mapping program has allowed us to take a more centralized approach and to take more resources in the state to focus on broadband," notes Stuart Freiman, Broadband Program Manager for the Rhode Island Economic Development Corp. For Freiman, the gamut of state actions suggested by the plan and supported by this planning grant -- everything from improving Internet adoption and digital literacy to using broadband to bolster education and integrate broadband applications across state public safety agencies -- "have created a fantastic opportunity for states to deal with issues they maybe haven't addressed in the past or have ignored because they thought it was being taken care of."

In all, the FCC has more than 60 action items from the plan slated for 2010 implementation. But one of the most prominent measures, auctioning off some new airwaves to commercial providers for broadband applications, has erupted in a dispute over whether a dedicated public emergency broadband network should be owned by government or private carriers.

Public safety officials, as well as a number of state and local government groups, including the Council of State Governments and the National Governors Association, argue that these airwaves should be dedicated to a public emergency broadband network. Paying for a public safety

network might be difficult, however, and the FCC has suggested that such a network could be constructed less expensively on existing public safety airwaves and supplemented by empowering public safety agencies to take over commercial bandwidth in emergency situations. Congress weighed these arguments in a public hearing June 17 as it considers legislation to build a national public safety broadband network.

STATES WIELD INFLUENCE

One of the FCC's first actions relating to the plan, to reduce the cost and time it takes broadband providers to access the country's 49 million utility poles that the FCC regulates, was influenced by existing programs in some states. FCC general counsel Phoebe Yang says the move was modeled after attachment guidelines in Connecticut and New York, which regulate their own poles, that can halve the number of days the process might take in other states. When the FCC implements these new rules, those poles still regulated by those other states will lag behind.

By informing the FCC of similar best practices, as well as challenges without current solutions, states will continue to play a crucial role in developing many of the federal regulations that will tumble out in the coming months and years. "We'd love to have input on the infrastructure issues, particularly around the impact of the plan's recommendations on traditional wire line carriers. We rely on the states to communicate that to us. Nothing is self-effectuating. Nothing is pre-decided," Yang says, noting that there are numerous issues, such as broadband adoption by those with disabilities, where the front lines are at the state level.

States also are moving ahead to use their authority to modernize policies and bolster broadband availability. On June 15, Gov. Pat Quinn made Illinois the latest state to revamp its telecommunications law, overhauling obsolete standards from a 1985 law written in the days before widespread cell phone and broadband adoption. State officials say the

new law will stimulate greater private investment in [broadband](#) and wireless technologies.

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