

Municipal Broadband Authority: State Law, FCC, and beyond...

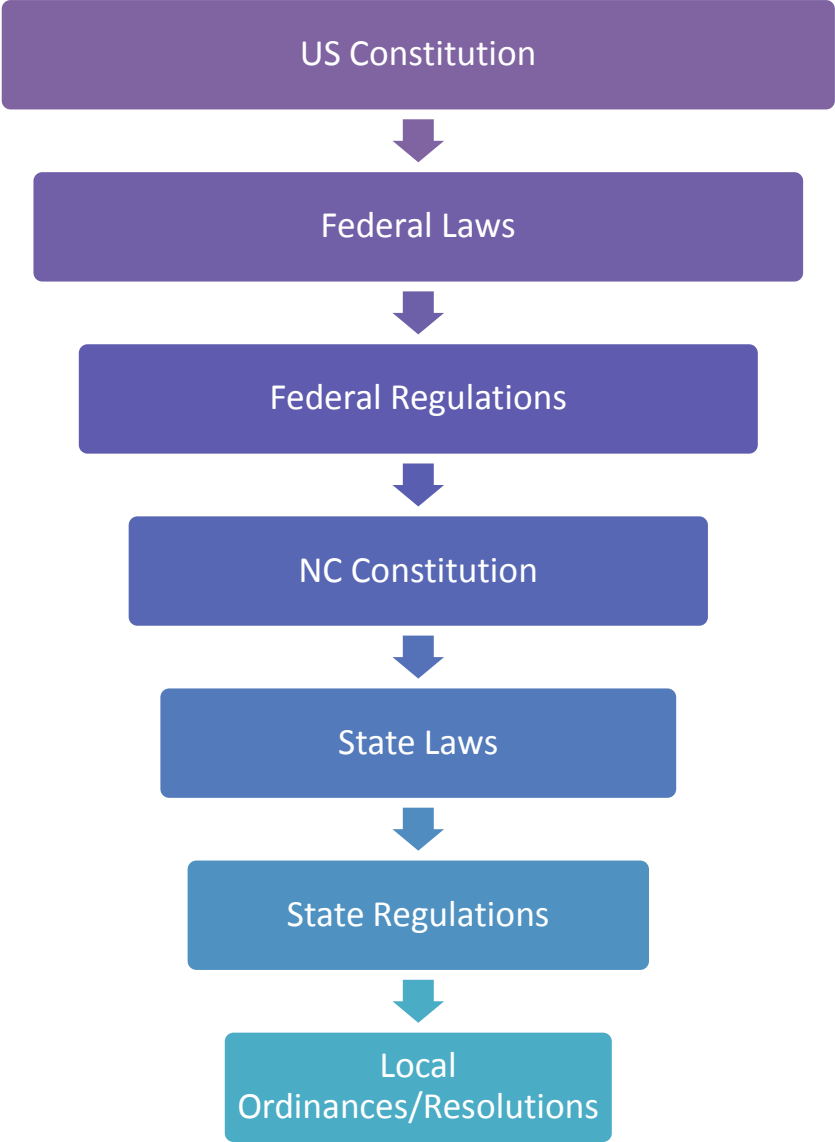
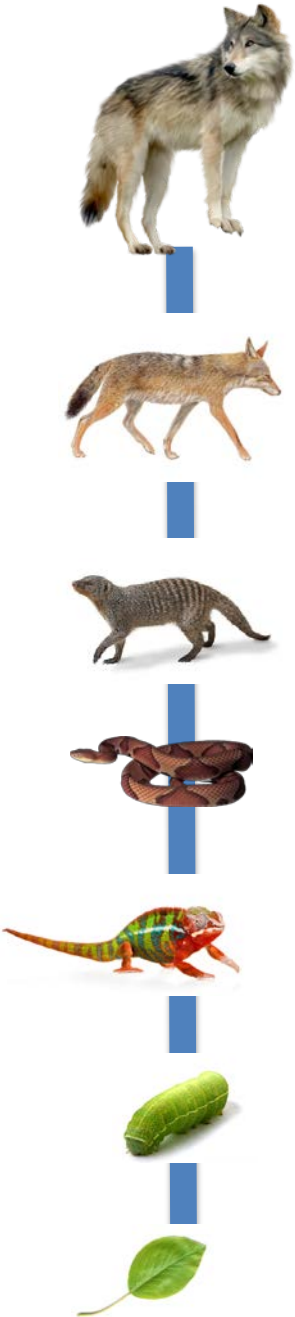


NCGFOA Summer Conference 2015

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Government “Food Chain”



Municipal Broadband Authority in NC

US Constitution



Federal Laws



Federal Regulations



NC Constitution



State Laws



State Regulations



Local
Ordinances/Resolutions

- 1971: Legislature authorizes municipalities to own/operate cable television systems

Municipal Broadband Authority in NC

§ 160A-311. Public enterprise defined.

As used in this Article, the term “public enterprise” includes:

...

(7) Cable television systems

§ 160A-312. Authority to operate public enterprises.

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens.

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- 2005: NC Supreme Court interprets this authority to include broadband

BellSouth Telecommunications, Inc. v. City of Laurinburg

- Laurinburg entered into lease agreement with ISP provider to provide internet to the city, county, school system, college, hospital, and other entities connected to City's fiber optics network
- Network only used for data transmission, not cable television programming
- Court relied on definition of cable television in G.S. 160A-319 (franchising statute) to hold that it included broadband services



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- 2006: Legislature (inadvertently) repeals statutory language relied on by Court

- **§ 160A-319. Utility franchises.**

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

(b) For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services.

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- 2006: Legislature (inadvertently) repeals statutory language relied on by Court
- 2011: Legislature significantly limits authority of municipalities to own/operate/lease/sell broadband

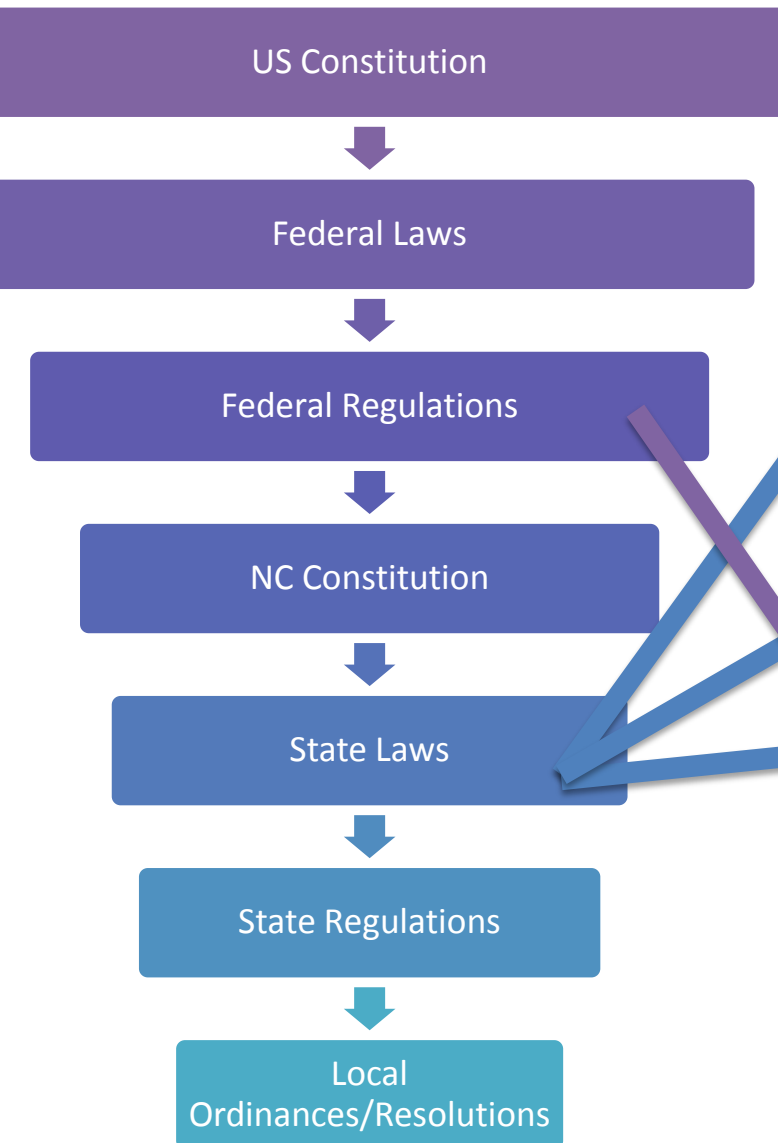
Level the Playing Field Legislation

- Applies to...
 - a city that provides cable, video programming, telecommunications, broadband, or high speed internet services
 - directly, indirectly, or through an interlocal agreement or joint agency
 - to the public
 - for a fee
 - using a wired or wireless network

Level the Playing Field Legislation

- No special treatment for municipal providers
- Equal Access to Infrastructure for Private Service Providers
- Limits on Issuing Debt
- Limits on Service Area
- Additional Process Requirements
- Required PPP Efforts
- Exceptions for
 - Unserved Areas (50% of households have no access to high speed internet service or only from a satellite provider)
 - Grandfathered providers

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- 2015: Federal Communications Commission (FCC) issues order stating that federal law prohibits most of the broadband limitations

FCC Order

- Wilson (Greenlight) petitioned FCC claiming that state law restrictions violated federal law
- FCC concluded that “level the playing field” legislation is a barrier to broadband infrastructure investment and competition
 - It found that most of the provisions in the state legislation are pre-empted by the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996

Where are we now?

Good Question



Where are we now?

- NC Attorney General has appealed FCC order to 4th Circuit Court of Appeals
 - FCC order was 3-2 decision
- “White House Announces High-Speed Internet Push for 27 U.S. Cities” (July 15, 2015)
- FCC order does not prohibit legislature from abolishing municipal broadband authority altogether
 - It is possible that the legislature already did this inadvertently
- Legislature introduced bills addressing broadband this session (H349, S615, H762)



What are municipalities doing?

