



MEMORANDUM

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To: NWCCOG Membership
From: Nate Walowitz, Regional Coordinator, Jon Stavney Executive Director
Date: 3 April 2017
Re: Opting out of SB 152 Summary Memo

In meeting with the NWCCOG Council and individually with counties in the region where various regional and local broadband efforts continue, Nate and I have heard repeated concerns that the patchwork of jurisdictions which have and have not opted out of SB 152 threatens the potential for more uniform progress to each of these efforts. It also threatens to be an impediment to developing a regional transport network, which is Nate's current challenge. To address these concerns, we have developed this informational memo and gathered other useful documents from partner organizations to encourage each jurisdiction in the region to put an opt-out question to their voters at their next election opportunity.

Senate Bill 05-152 (SB 152) passed the Colorado Legislature in 2005, prohibiting local governments from involvement in any partnership, funding, provision, or other activities related to local broadband, telecom service, or infrastructure without a successful "opt out" vote from citizens.

Local governments have no franchise or regulatory powers over broadband (internet) service. A number of the most rural and isolated communities in the state have played an active role in broadband solutions for their communities since "opting out" of SB 152. This memo provides brief case studies of some of those efforts. Without a successful "opt out" vote, it could be argued that local jurisdictions are in violation of the law by such innocent acts as providing free public WiFi, or offering an incentive to a carrier/provider to provide expanded broadband service to a business district.

While private Internet Service Providers (ISPs or "providers") own extensive infrastructure across Colorado, throughout much of the NWCCOG region many rural communities have no service at all while in other cases, providers have failed to provide ubiquitous, high-quality broadband service even in the most densely populated mountain communities. In fact, in more than a few cases, a national service provider's own fiber passes by a municipality without serving that community! Across NWCCOG region, we have observed that the "missing link" to broadband service is far from an insurmountable challenge.

Improving Broadband is a vital Economic Development activity: Business and residential service must deliver the reliability, speed, and costs that communities need for communication, education and economic diversity. It is difficult to make money downtown when the credit card machine is off line. The State of Colorado Demographer, Elizabeth Garner, has seen a correlation between broadband service availability and economic development. Most local governments recognize that in today's world, a lack of reliable, robust broadband has a limiting effect on economic development, tourism and creates a significant competitiveness disadvantage to rural and mountain communities. More and more business activities and services – like parking stations connected to remote pay apps in Breckenridge – depend on a robust broadband network.

NWCCOG continues an ongoing Regional Role in Broadband: In 2013, at the urging of its membership, NWCCOG contracted to develop a regional broadband plan and Broadband Steering Committee was created. One of the recommendations in the Plan was to hire a Regional Broadband Coordinator (RBC) to consult and manage the recommended strategies. In 2014, Nate Walowitz was on-boarded as the RBC, and was tasked by the Broadband Steering Committee with morphing the strategic plan into a tactical plan that incorporated both local and regional objectives. The RBC position is funded by NWCCOG member dues with matching ongoing grants from DOLA.

The RBC has provided direct technical assistance and trusted “in-house” consulting to communities wishing to improve broadband, cellular and public safety communication; services for their constituents without additional fees. The RBC has written or reviewed RFPs, consulted, problem solved, and participated in many local plans since 2014 and acts as a translator in this complex field and a liaison between the private sector providers, communities, and State of Colorado government agencies. Based on NWCCOG's experience, DOLA and other Councils of Governments consider this Regional Broadband Coordinator/Broadband Director model to be essential to success in the complex, yet essential field of rural broadband.

Currently, NWCCOG's Regional Broadband Coordinator is providing technical assistance directly to 11 municipalities and 6 of the 7 counties which are actively involved in broadband planning or in various stages of broadband solutions. Most of those efforts are not contained within a single jurisdiction, but cross or have the potential to cross a number of municipal and county boundaries.

Without Uniform Opt-Out, Regional Efforts are Impaired: Today, nearly every county and numerous municipal governments in the NWCCOG region and most across Western Colorado are actively involved at one level or another in enhancing broadband services and infrastructure. One challenge has been that in many counties, not all towns have opted out, or the county has not opted out while a number of municipalities have. Even if a County already has opted out, all municipalities that want to control their broadband destiny must also opt out of SB 152. NWCCOG has supported efforts by the state legislature to repeal Senate Bill 152, which have not succeeded. It does not appear that any such effort will likely be passed into law any time soon. Therefore if jurisdictions want the option to be active in controlling their broadband destiny, the only foreseeable option is to put this question to voters.

The NWCCOG Regional Steering Committee has also tasked the RBC with developing a regional transport network for redundancy. The eventual network provider for the regional transport network will offer very competitively priced bandwidth if a network user so desires. In order to participate in the project, jurisdictions will be required to have opted out.

The Ballot Question is Painless: Ballot measures repealing Senate Bill 152 has met with overwhelming public support (See CML's comprehensive list on the NWCCOG website). Pitkin, Rio Blanco and Summit Counties and numerous municipalities have passed measures with voter support of at least 80% support. Jackson County passed their ballot measure by over a 60% margin.

There is a misperception that passage of SB 152 **requires** a local government to subsequently get involved in providing broadband services or becoming an internet service provider. It does not. Another misperception is that passage sets the expectation that improved services become the sole responsibility of local government (which could **require** overwhelming new public investment or additional taxation). Not so. Passage of a Senate Bill 152 opt out does not require an entity to do anything.

Indeed, some communities have made major investments in broadband while others have partnered with providers to meet the needs of their community with smaller investments that have significant impact on improved broadband services. Below are a few examples of how communities in the NWCCOG region have leveraged an opt-out to provide improvements to broadband service.

The region already has Success Stories:

Rio Blanco County (population 6,807) compared making broadband infrastructure to building county roads for the purpose of commerce and after opting out of 152, and was successful in passing a ballot measure by 80% to spend general fund dollars. To date, Rio Blanco County has invested close to \$20 million of local and DOLA funds, and that system enjoys a local participation rate of over 70%. Their goal is to provide fiber to every home in each of their municipalities, and wireless broadband services to all remote residences and businesses. They have partnered with cellular phone companies and the State of Colorado to utilize their tower sites to improve cell service and public safety communications across the county. The network is managed by a private network manager (selected by RFP) on behalf of the county. That company is responsible for attracting and managing local internet service providers to provide last mile services.

The Town of Red Cliff (population 263) opted out of Senate Bill 152, which enabled the town to construct the tower infrastructure above town, and partner with a wireless broadband provider to create a radio site at the ski area and deliver service to the town's tower using line of site microwave from nearby Ski Cooper. Red Cliff's isolated geographic location and small population made the business case for mainstream national providers impossible.

Pitkin County (population 17,379) In spite of renowned private wealth and public resources, Pitkin's geography limits access to reliable, affordable broadband services. The County began planning to improve broadband as early as 2010 with a ballot question asking voters if they could use their local television and FM translator funds, which they already owned and managed, for broadband services.

They are now in advanced planning stages to utilize those television and FM translator sites and a new “carrier class” middle mile microwave system to support public safety radio, county information technology, commercial broadband services. The concept is to allow private providers to utilize this network and infrastructure to expand service to a majority of the population throughout the Roaring Fork Valley, across remote portions of 4 neighboring counties. Technically, to become the beneficiaries of this work, those neighboring counties and municipalities need to also opt out of Senate Bill 152. All surrounding counties have voted to repeal SB 152 except Eagle County.

In Jackson County (population 1365, covering over 1,600 square miles) where Walden is the population center, the closest neighboring towns are more than 60 miles away. Since opting out of Senate Bill 152, and spending more than year convincing Walden to also opt out, the County Commissioners are on their second round of negotiations with a wireless internet provider. A Nebraska based wireless internet provider has stepped up to the plate and anticipates providing broadband services to much of the county by September of this year. The county happens to own a 190’ tower left over from managing a TV translator site. Their current land based internet provider is out of capacity and has repeatedly told the County that there is no business case to expand fiber and broadband services in Jackson County. The current provider cannot add a single customer to the network given current capacity. In the future, their Rural Electric Cooperative may provide fiber and other services, but today if Jackson County was not actively seeking broadband solutions and working with NWCCOG, most of their businesses and citizens would continue to be unserved.

The City of Glenwood Springs was actively involved in delivering internet services prior to the limitations of SB 152, though their citizens formally voted opt out in 2008. The city currently delivers internet services through an aging wireless infrastructure and has embarked on deploying fiber-to-the-home broadband services. The City is a direct market competitor to Comcast and CenturyLink in some parts of town, providing faster symmetric (up-load and download) broadband service for a lower price than Comcast or CenturyLink.

For more information on Opting Out, or other Broadband matters, please contact NWCCOG Regional Broadband Coordinator, Nate Walowitz at nwalowitz@nwccog.org.

The NWCCOG website has a variety of information about SB 152 repeal at <http://nwccog.org/programs/broadband/> .