



June 9, 2021

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Summary of Senate Omnibus Budget Amendment —Government-owned Broadband Networks

On June 8, 2021, the Ohio Senate Finance Committee made its final changes to and accepted the Omnibus Amendment. Included among the changes was new language that, if enacted, would prohibit the new construction of and limit the ongoing provision of broadband and other services provided by existing government-owned networks in the state of Ohio, including restricting such networks to solely providing service to unserved areas within the political subdivision's jurisdiction.

- A “government-owned network” is defined as a network owned or controlled by or operated in partnership with any political subdivision of the state that is constructed, operated, or used for the provision of broadband service on a wholesale or retail basis.
- An “unserved area” is defined as areas within the geographic boundaries of the political subdivision with a network that are without access to broadband at speeds that exceed 10 Mbps download/ 1 Mbps upload.[1]
- “Political subdivision” retains its meaning under 125.04 of R.C.: any county, township, municipal corporation, school district, conservancy district, township park district, park district created under Chapter 1545. of the Revised Code, regional transit authority, regional airport authority, regional water and sewer district, or port authority. “Political subdivision” also includes any other political subdivision described in the Revised Code that has been approved by the department of administrative services to participate in the department's contracts under this division.

Further, the language prohibits a political subdivision from using federal funds or public services revenues to fund or subsidize the construction, deployment, purchase, lease, or operation of broadband facilities or the provision of broadband service to subscribers. Unlike the language summarized above, which has some semblance of a backstop given its tie to “government-owned networks,” the language regarding funding is wholly unqualified.

What this could mean for broadband in Ohio:

- Political subdivisions, as broadly defined above, would be restricted from owning, operating, controlling, or partnering with a private entity (i.e., entering into a public-private partnership) to address its local broadband access needs.

- Communities with existing publicly owned networks would be prevented from offering service, except to areas that lack access to 10 Mbps download/ 1 Mbps upload. It is estimated that 98.28% of Ohio households have access to service at this speed threshold,[2] leaving only 1.72% of the population. Other uses of such networks would need to be abandoned and services terminated.
- Intergovernmental agreements for the provision of broadband services across multiple jurisdictions to address regional broadband access needs would be prohibited and too need to be abandoned.
- Ohio schools, port authorities, and others falling under the sweeping definition of political subdivisions would be prohibited from ongoing or future participation in the provision of broadband service to meet the needs of its users.
- Certain existing and already capitalized multi-jurisdiction/agency combined networks being used throughout Ohio for public safety, remote health care, regional economic development, and transportation initiatives would be required to cease operation due to the fact that all or many of the existing participating jurisdictions will be required to abandon their individual system components.

At a time when we are more dependent on broadband than ever, and when an unprecedented amount of federal dollars are available to communities for broadband, this language may have a significant impact on a community's ability to help address its local connectivity needs. We recommend that all entities considered a "political subdivision" in Ohio consider the impacts this language could or would have on their existing and/ or envisioned broadband service projects.

The full language pertaining to government-owned networks can be found here.

If you have questions, please contact Greg Dunn, Chris Miller, Lindsay Miller, Jessica Voltolini or another member of Ice Miller's Broadband and Telecommunications Team.

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[1] The language ties the definition of unserved area to that in H.B. 2, which defines an unserved area as that without "tier one broadband service" (broadband service capable of speeds of at least 10 but less than 25 Mbps download and at least 1 but less than 3 Mbps upload) or "tier two broadband service" (broadband service capable of speeds of at least 25 Mbps download and at least 3 Mbps upload).

[2] https://connectednation.org/ohio/wp-content/uploads/sites/15/2020/03/OH_Broadband_Availability_SpeedTier_2020_03_31.pdf.