



American Public Power Association

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The Honorable Edward G. Rendell  
225 Main Capitol Bldg.  
Harrisburg, PA 17120

Dear Governor Rendell:

The American Public Power Association (APPA) respectfully requests that you veto House Bill 30. This legislation will do little to spur broadband deployment in Pennsylvania, will decrease competition for advanced communications services, and hurt consumers.

APPA is the national service organization that represents the interests of more than 2,000 publicly-owned, not-for-profit electric utilities across the United States, including 35 municipal electric utilities in Pennsylvania. Approximately 75 percent of public power systems in the U.S. are located in cities with less than 10,000 residents. Many of these public power systems were established largely due to the failure of private utilities to provide electrical service to smaller communities, which were viewed as unprofitable. In these cases, communities formed public power systems to do for themselves what they viewed to be of vital importance to their quality of life and future economic prosperity. Today, hundreds of public power systems are meeting the new demands of their communities by providing broadband services where there are none and facilitating competition where service is inadequate or too expensive.

You recently honored one APPA's members in Pennsylvania, the Borough of Kutztown, with a *Governor's Award of Local Government Excellence* for developing a ground-breaking and highly successful fiber-to-the-home (FTTH) system. The Kutztown fiber system has brought a full range of advanced communications services to the Borough, spurred the private sector to accelerate the introduction of new services, and fostered competition that has saved the community hundreds of thousands of dollars a year.

HB 30 poses a direct threat to Kutztown's FTTH system and will reduce competition in Pennsylvania's communications marketplace by making it extremely difficult for new entrants, especially municipal electric systems and municipalities. APPA believes there are several problems with the legislation that are sufficient to warrant a veto.

First, Sec. 3014(H)(2) of the bill would only allow municipalities to provide advanced telecommunications or broadband services if a local exchange telecommunications company either declined to provide the data speeds that the municipality requested or failed to honor a commitment to provide such data speeds within fourteen months. While this provision would probably not prevent a municipality from developing a fiber-to-the-home system such as Kutztown's, it would likely preclude municipalities from deploying broadband-over-power line (BPL) or wireless technologies that would compete with the lower bandwidth digital subscriber line (DSL) offerings of incumbent local exchange telecommunications companies.

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In this respect, Sec. 3014(H) (2) is contrary to the competition, broadband deployment, and universal service policies embodied in federal communications law as well as inconsistent with the Federal Communications Commission's (FCC) policy of encouraging the rapid deployment of BPL and wireless technologies nationwide, particularly in rural and low income areas.

By insulating local exchange telecommunications carriers from competition from BPL and wireless services, thus giving such carriers free rein to charge whatever monopoly prices they wish, HB 30 would put Pennsylvanians at a disadvantage compared to residents of other states that honor the FCC's pro-competitive policies.

Second, responding to Philadelphia's concern that the general ban on municipal entry in Sec. 3014(H) (1) could derail the City's WiFi initiative, the Pennsylvania Legislature hastily passed a last-minute amendment that was apparently intended to allow municipalities to introduce advanced telecommunications and broadband services up to January 1, 2006, and then "grandfather" any such services after that date. At least, that is how those supporting the amendment understood it.

In its haste, however, the legislature used language that fails to reflect the amendment's intent. Instead of making the general prohibition in Sec. 3014(H) (1) effective as of January 1, 2006, the amendment would make the general prohibition effective immediately and make only the grandfather provision in Sec. 3014(H) (3) effective as of January 1, 2006. The Legislature apparently failed to appreciate that, as written, its amendment would immediately ban municipalities from introducing the new services that would be grandfathered as of January 1, 2006.

Lastly, the grandfather provision in Section 3014(H) (3) is so vague and ambiguous that it is likely to result in burdensome, time-consuming, and costly delays. The grandfather provision states that a municipality can continue to provide services "of the same type and scope as were being provided on the effective date of this section." According to the proponents of this language, this provision should be read to allow a city that serves even a single WiFi customer on January 1, 2006, to provide similar services to all residents in the city after that date. But what does "similar services" mean? If a municipality were providing WiFi on January 1, 2006, could it upgrade its technology to WiMax, BPL, or fiber? If it were providing only Internet access service on January 1, 2006, could it provide higher level services, such as VoIP or video programming, as the bandwidth capacity of

WiFi grew? With what geographic restrictions, if any, would it have to comply? The list of unanswered questions goes on and on.

In summary, HB 30 is a thoroughly bad law that merits a veto. APPA respectfully urges you to do so, and, at the same time, to make clear to all concerned that you will only sign a bill that reflects a consensus among all major stakeholders, including Pennsylvania's municipalities. Recently, when Louisiana Governor Kathleen Babineaux Blanco did just that, representatives of industry and municipalities in good faith negotiated compromise legislation, Act No. 736, which worked for all concerned. The same result could occur in Pennsylvania.

Sincerely,



Alan H. Richardson  
President & CEO

AHR/DM/GFT