

# Marquette Benefits and Social Welfare Law Review

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Volume 24  
Issue 1 *Fall*

Article 2

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9-1-2022

## Creating Broadband Equity in Rural Wisconsin

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### Recommended Citation

Brian T. Coe, *Creating Broadband Equity in Rural Wisconsin*, 24 Marq. Ben & Soc. Welfare L. Rev. 1 (2022).

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# CREATING BROADBAND EQUITY IN RURAL WISCONSIN

By: **Brian T. Coe\***

## ABSTRACT

Over 430,000 people throughout the state of Wisconsin currently do not have access to the internet. This "digital divide" is even more prominent in rural communities where broadband is either too slow, too expensive, or simply not available. Wisconsin state law currently restricts local governments from providing this vital utility to their residents. The purpose of this Comment is to help readers understand the impact of Wisconsin law surrounding local government public broadband programs, and how they can be changed to offer a more equitable menu of internet access to rural communities. This Comment will discuss the restrictive statutes that encourage anti-competition in the broadband market, and the reasons why these laws are still on the books. This Comment will also analyze the social impact of these statutes through the lens of education and healthcare in rural Wisconsin. Finally, the Comment suggests solutions which result in significant alterations to current law in order to achieve equitable and universal access to broadband.

## TABLE OF CONTENTS

INTRODUCTION.....	3
<b>I.    BROADBAND, WISCONSIN LAW, AND FEDERAL           GUIDANCE.....</b>	<b>4</b>
A. Broadband and Its Providers .....	5
B. Wisconsin Statutes.....	7
C. Federal Guidance in <i>Nixon v. Missouri Municipal             League</i> .....	8
<b>II.   WISCONSIN STATUTES SECTIONS 66.0422 AND 196.204           FAVOR INCUMBENT PROVIDERS TO THE DETRIMENT           OF WISCONSINITE HEALTH AND EDUCATION .....</b>	<b>10</b>
A. Wisconsin Law Imposes Roadblocks on Muni- cipal Broadband.....	11
B. Incumbent Providers Lobby for Unfair Re- strictions.....	13
C. Societal Impact of the Digital Divide .....	17
1. Wisconsinite Health and Remote Care....	18
2. Rural Students are Left Behind.....	20
<b>III.  THE WISCONSIN STATE LEGISLATURE MUST REPEAL           WISCONSIN STATUTES SECTIONS 66.0422 AND 196.204 TO           ENSURE EQUITABLE BROADBAND ACCESS FOR ALL           WISCONSINITES .....</b>	<b>23</b>
A. Repealing the Laws Lifts Unfair Restrictions .....	24
B. Allowing Municipal Broadband is a Long-Term So- lution to Equitable Broadband Access .....	25
CONCLUSION.....	29

## INTRODUCTION

Many of today's senior generations recount the time they had to travel "uphill, both ways!" to get to work and school every day. The exaggeration is more than inter-generational banter, but a comparison to the lengths society has come to providing today's students with more efficient services like cheap, accessible transportation. Current youth might one day recount their own version of "uphill, both ways" where they spent hours of their day travelling to the top of a hill, searching for a spot to get internet service, and completing work before the signal goes weak. While that example may seem absurd, it's the story for many in rural Wisconsin where 1 in 4 students do not have broadband access at home.<sup>1</sup> Ninety-five percent of teachers across the United States presently use internet resources to teach their students,<sup>2</sup> so the reality of these children's "up hill, both ways" broadband story highlights the lengths the influence of the internet has come in the last several decades, and the resource inequity that necessarily falls from it.

Some rural communities have responded to the lack of broadband access by attempting to create their own local municipal

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<sup>1</sup> Marisa Wojcik, *A Rural Wisconsin Educator Sees Life Speed Up and Simplify with Broadband*, PBS Wis. (Oct. 26, 2021), <https://pbswisconsin.org/news-item/a-rural-wisconsin-educator-sees-life-speed-up-and-simplify-with-broadband/>.

<sup>2</sup> David Nagel, *How Teachers Use Technology in the Classroom*, THE JOURNAL (May 8, 2019), <https://thejournal.com/articles/2019/05/08/how-teachers-use-technology-in-the-classroom.aspx>.

broadband service.<sup>3</sup> Wisconsin law, however, helps incumbent internet companies quash these efforts and eliminate competition.<sup>4</sup> This Comment argues that Wisconsin's restrictive statutes must be repealed to allow local municipalities to offer low-cost public broadband to their community. Part I of this Comment will provide an overview of definitions and data important to contextualize the Wisconsin conversation on broadband accessibility. Part I will also review the state's restrictive municipal broadband laws as outlined in Wisconsin Statutes sections 66.0422 and 196.204, as well as the 2004 U.S. Supreme Court case *Nixon v. Missouri Municipal League*. Next, Part II of this Comment will identify that Wisconsin law promotes anti-competition and negatively impacts rural Wisconsin residents. This section's focus will be on the role of broadband accessibility specifically in rural health and education. Finally, Part III of this Comment suggests that the Wisconsin legislature must repeal the sections of Wisconsin Statutes sections 66.0422 and 196.204 that restrict municipalities from offering public broadband to their constituents.

## I. BROADBAND, WISCONSIN LAW, AND FEDERAL GUIDANCE

Current statistics, definitions, and trends in broadband accessibility outline the bleak status of internet deployment in rural Wisconsin. Broadband accessibility inequities became glaringly obvious since COVID-19 exposed the "digital divide" in Wisconsin and across the nation.<sup>5</sup> However, the issue is not new. This section will first lay the foundation for defining broadband, and identify the stakeholders for its deployment. This section will then describe

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<sup>3</sup> Peter Cameron, *Got Lousy Internet, Wisconsinite? Here's A Big Idea To Improve It*, BADGER PROJECT (Aug. 12, 2020), <https://thebadgerproject.org/2020/08/12/got-lousy-internet-wisconsinite-heres-a-big-idea-to-improve-it/>.

<sup>4</sup> *Id.*

<sup>5</sup> See generally, Peter Cameron, *Wisconsin's rural students face a digital divide as some return to screens instead of school*, WIS. WATCH (Aug. 25, 2020), <https://wisconsin-watch.org/2020/08/wisconsin-rural-students-face-digital-divide/>.

current Wisconsin statutes that govern whether local governments may provide broadband to their communities. Wisconsin Statute section 66.0422 does several things to restrict local efforts to build public broadband, namely by mandating feasibility reports and restrictions on competition.<sup>6</sup> In addition to this, Wisconsin Statute section 196.204 prohibits local governments from subsidizing their own public broadband.<sup>7</sup> This section will include a brief mention and explanation of the arguments in the U.S. Supreme Court case *Nixon v. Missouri Municipal League* and how it impacts municipal public broadband projects.

### A. BROADBAND AND ITS PROVIDERS

Broadband itself must be defined before we can critique the laws and policy surrounding it. The FCC describes broadband as “high-speed internet access [that] allows users to access the internet and internet-related services at significantly higher speeds than those available through ‘dial-up’ services.”<sup>8</sup> Internet speed is quantified in bits-per-second or “bps,” such as Kbps (thousand) or the much faster Mbps (million).<sup>9</sup> Broadband service is offered in many platforms -- including digital subscriber line (DSL), cable modem, fiber, wireless, and satellite. DSL, cable, and wireless all provide similar speeds at around 1-1.5 Mbps.<sup>10</sup> Fiber achieves speeds up to tens or hundreds of Mbps, while satellite trails behind at only 80-500

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<sup>6</sup> WIS. STAT. § 66.0422(2)(c) and (3d) (2019–20).

<sup>7</sup> WIS. STAT. § 196.204(2m)(a) (2019–20).

<sup>8</sup> *Getting Broadband Q&A*, FED. COMM. COMM’N (Feb. 2020), <https://www.fcc.gov/consumers/guides/getting-broadband-qa>.

<sup>9</sup> *Id.*; *Broadband Speed Guide*, FED. COMM. COMM’N (Sept. 2022), <https://www.fcc.gov/consumers/guides/broadband-speed-guide>; *How Fast is Broadband?*, BROADBAND USA: NAT’L. TELECOMMUNICATIONS & INFO. ADMIN. (Sept. 2022) <https://broadbandusa.ntia.doc.gov/about-us/frequently-asked-questions/how-fast-broadband>.

<sup>10</sup> *Types of Broadband Connections*, FED. COMM. COMM’N (June 23, 2014), <https://www.fcc.gov/general/types-broadband-connections>.

Kbps.<sup>11</sup> DSL, cable, and fiber all rely on physical infrastructure of wires and nearby facilities in order to provide internet access and achieve intended speeds.<sup>12</sup> Currently, the FCC recommends a speed of 25 Mbps for a household, and 25 Mbps for students.<sup>13</sup> Most of Wisconsin's rural residents have an advertised speed of at least 10 Mbps, while the actual speed each user experiences is lower most of the time.<sup>14</sup>

In almost every inch of the populated United States there are “incumbent” internet providers that are already established in an area to provide some type of internet service. These private companies, such as Comcast and AT&T, build facilities, infrastructure, and sell their service to users. It is very costly to build broadband facilities and install higher-speed cables or fibers to reach remote households.<sup>15</sup> Consequently, many in rural areas go without access to high-speed internet.<sup>16</sup> The solution in some municipalities is to use public funds to start their own broadband service. However, incumbent providers lobby against these efforts to protect their commercial influence in rural communities. When municipalities broadband projects begin to emerge, these incumbents lobby state legislatures, arguing that public providers would harm the market and distort prices.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Henry Redman, *Newly public federal data shows Wisconsin's internet disparities*, WIS. EXAMINER, (June 25, 2021) <https://bit.ly/3Ft3DH6>; *Broadband Speed Guide*, FED. COMM. COMM'N (Feb. 2020), <https://www.fcc.gov/consumers/guides/broadband-speed-guide>; *Household Broadband Guide*, FED. COMM. COMM'N (Feb. 2020), <https://www.fcc.gov/consumers/guides/household-broadband-guide>.

<sup>14</sup> Dale Knapp & Jack Votava, *Broadband in Rural Wisconsin: Identifying Gaps, Highlighting Successes*, FORWARD ANALYTICS, 5 (Nov. 2020), <https://www.forward-analytics.net/wp-content/uploads/2020/11/2020-FA-Report-Broadband-in-Rural-Wisconsin.pdf>.

<sup>15</sup> *Id.*; see also Amie Alexander, *Utility Law—All Hands on Deck: Bringing Broadband Home to Rural Arkansas*, 40 U. ARK. LITTLE ROCK L. REV. 401, 402 (2018).

<sup>16</sup> Alexander, *supra* note 15, at 401.

<sup>17</sup> Olivier Sylvain, *Broadband Localism*, 73 OHIO ST. L.J. 795, 798 (2012).

## B. WISCONSIN STATUTES

Wisconsin Statutes describe how municipal broadband may be created. In 2003, the Wisconsin legislature passed 2003 Act 278, codified as Wisconsin Statute section 66.0422. Part of the law effectively shields incumbent broadband providers from local competition, and subsection (2) of the statute starts with a blanket prohibition that municipal governments cannot “enact an ordinance or adopt a resolution authorizing the local government to construct, own, or operate any facility for providing video service, telecommunications service, or broadband service” for the public unless several conditions have been met.<sup>18</sup> Under these conditions, the municipality must hold a public hearing and give three notices of that hearing.<sup>19</sup> The municipality is also required to compile and make public a feasibility report at least thirty days ahead of any public hearing.<sup>20</sup> The feasibility report is a study that estimates “the total costs of, and revenues derived from, constructing, owning, or operating [a broadband] facility.” In addition, the report must include a three-year cost-benefit analysis for the facility.<sup>21</sup>

A municipality can avoid the restrictions in subsection (2) by instead satisfying all the provisions of subsection (3d). Wisconsin Statute section 66.0422(3d)(a) requires that a municipality asks the private telecommunication companies already established in their region, known as incumbent broadband providers, whether they provide or intend to provide broadband to the area within the next nine months. If the incumbent provider responds that they are planning to provide broadband in the next nine months, then the

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<sup>18</sup> WIS. STAT. § 66.0422(2) (2019–20).

<sup>19</sup> WIS. STAT. § 66.0422(2)(a)–(b) (2019–20).

<sup>20</sup> WIS. STAT. § 66.0422(2)(c) (2019–20).

<sup>21</sup> *Id.*; see also *Draft Bill* L.R.B. 3352, (Wis. 2003) [https://docs.legis.wisconsin.gov/2003/related/drafting\\_files/wisconsin\\_acts/2003\\_act\\_278\\_sb\\_272/02\\_sb\\_272/03\\_3352df.pdf](https://docs.legis.wisconsin.gov/2003/related/drafting_files/wisconsin_acts/2003_act_278_sb_272/02_sb_272/03_3352df.pdf).



municipality must fall back to dealing with the requirements in subsection (2).<sup>22</sup>

The restrictions on municipal government market entry in section 66.0422 are accompanied by a different law which controls the pricing of public broadband services. Wisconsin Statute section 196.204(2m) states that local municipal broadband must be priced “to exceed its total service long-run incremental cost.”<sup>23</sup> The price to users cannot be below the culmination of “equivalent charges for all taxes, pole rentals, rights-of-way, licenses, and similar costs” associated with the broadband service.<sup>24</sup> This means that the broadband product users receive cannot be priced lower than the total cost to create the product. When drafting a fiscal analysis of this law, the Wisconsin Department of Administration concluded that “long-run incremental cost studies are complex and may require consultants to be hired, especially if complaints are filed.”<sup>25</sup> They make it clear that cost studies increase costs for public broadband projects. Ultimately, these Wisconsin statutes restrict competition in the broadband market by (1) creating roadblocks for municipalities to build public broadband projects and (2) by restricting public services from competing with incumbent providers.

### C. FEDERAL GUIDANCE IN *NIXON V. MISSOURI MUNICIPAL LEAGUE*

The United States Supreme Court offers us some guidance surrounding municipal broadband provider projects. The Telecommunications Act of 1996, a federal law codified as 47 USCS section 253, authorized the preemption of state and local laws that

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<sup>22</sup> WIS. STAT. § 66.0422(3d)(a)–(c) (2019–20).

<sup>23</sup> WIS. STAT. § 196.204(2m)(a) (2019–20).

<sup>24</sup> WIS. STAT. § 196.204(2m)(b) (2019–20).

<sup>25</sup> *Fiscal Estimate Narratives*, L.R.B. 03-3352/1, WIS. DEP’T OF ADMIN. (Oct. 15, 2003), [https://docs.legis.wisconsin.gov/2003/related/drafting\\_files/wisconsin\\_acts/2003\\_act\\_278\\_sb\\_272/02\\_sb\\_272/03\\_3352fepscorg.pdf](https://docs.legis.wisconsin.gov/2003/related/drafting_files/wisconsin_acts/2003_act_278_sb_272/02_sb_272/03_3352fepscorg.pdf).

“prohibit . . . *any entity* to provide any interstate or intrastate telecommunications service.”<sup>26</sup> Essentially, the FCC may preempt state laws that prohibit telecom services. The next year, the Missouri state legislature enacted a statute that prohibited any “political subdivision,” such as a municipality, from providing telecommunications services to the public.<sup>27</sup> Local municipal organizations in Missouri responded to this restrictive law by petitioning the Federal Communications Commission (FCC) to find the Missouri law preempted under the Telecommunications Act of 1996. The FCC refused, saying that the phrase “any entity” was not meant to include political subdivisions like that of a local government.<sup>28</sup> The issue was brought to the U.S. Supreme Court in 2004. The Court sided with the state of Missouri and the FCC and held that the mention of “any entity” in 47 USCS section 253(a) should be understood to mean “any *private* entity”. Additionally, the Court reasoned that it would be “strange” to “free public entities from state or local limitations.”<sup>29</sup> Therefore, state legislatures have the power to limit or restrict municipal public broadband projects as they see fit.

This decision by the Supreme Court in *Nixon v. Missouri Municipal League* solidified the ability of states to prevent municipal broadband projects. In his dissent, Justice Stevens disagreed with the majority that there is even a question of whether “any entity” includes political subdivisions. He believed that Congress clearly meant that no State or local law shall prohibit “*any* entity, public or private, from entering the telecommunications market.”<sup>30</sup> Stevens noted that Congress had already narrowed the language in the 1996 Act to exclude utilities owned by the State, and even heard testimony in committee on “public utilities’ unique potential to promote

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<sup>26</sup> 47 USCS § 253(a) (emphasis added).

<sup>27</sup> *Nixon v. Mo. Mun. League*, 541 U.S. 125, 129 (2004).

<sup>28</sup> *Id.* at 130.

<sup>29</sup> *Id.* at 133.

<sup>30</sup> *Id.* at 143–44.

competition, particularly in small cities, towns, and rural communities underserved by private companies.”<sup>31</sup> Stevens believed that Congress’ purpose was to promote competition, and that the majority’s interpretation of section 253 goes against that purpose.<sup>32</sup> While the decision in *Nixon*, did not prohibit municipalities from starting public broadband projects, it did open the door for individual states to prohibit them as they see fit. As of 2020, twenty-six states have laws that explicitly restrict or prohibit public broadband.<sup>33</sup>

## II. WISCONSIN STATUTES SECTIONS 66.0422 AND 196.204 FAVOR INCUMBENT PROVIDERS TO THE DETRIMENT OF WISCONSINITE HEALTH AND EDUCATION

The need for broadband access is more than just getting faster internet into people’s homes. High-speed internet directly impacts nearly every aspect of modern day life. This section will first discuss how Wisconsin law promotes anti-competition in the broadband market, and how the consequences ultimately fall to the consumer. Wisconsin Statutes sections 66.0422 and 196.204 effectively enable incumbent telecom companies to snuff out public broadband projects. The second part of this section will identify the way in which incumbent providers influence Wisconsin lawmakers. Lastly, this section will explain that, because of the lack of proper broadband, Wisconsin’s rural communities are greatly disadvantaged in both health and education.

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<sup>31</sup> *Id.* at 144.

<sup>32</sup> *Id.* at 142, 148.

<sup>33</sup> Kyle Johnson, *The Evolving Challenges of Expanding Broadband to Rural America and Its Effect on Education*, 25 PUB. INT. L. REP. 123, 129 (2020).

### A. WISCONSIN LAW IMPOSES ROADBLOCKS ON MUNICIPAL BROADBAND

As noted, Wisconsin Statutes section 66.0422 creates a significant roadblock for local governments looking to implement public broadband projects. This statute requires municipalities to conduct public hearings, feasibility reports, and a cost-benefit analysis -- all of which can be time consuming and expensive.<sup>34</sup> Rural governments have smaller budgets and need to minimize costs by laying off workers and restructuring government functions to avoid cutting public services.<sup>35</sup> Reports and analyses are expensive, impose needless delay, and can become redundant and tell the local government facts they already know.<sup>36</sup> Because of their tighter budgets, rural communities may struggle to pay the costs associated with expensive reports and analyses, deterring them from entry into the broadband market.

To avoid the roadblocks of hearings and reports, a municipality has the option of reaching out to incumbent providers to ask if they are planning on providing broadband service to the municipality's area. If the provider says yes, then the municipality must conduct the public hearings and reports anyway.<sup>37</sup> The roadblocks seem to be a facially acceptable way to ensure a project's success. Of course, a government should be sure that the broadband project is desired by their constituents and likely to succeed long-term. Nonetheless, the mandatory nature of these roadblocks in Wisconsin are aimed to prevent local broadband projects from competing with

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<sup>34</sup> WIS. STAT. § 66.0422 (2019–20).

<sup>35</sup> Alison Felix & Jason Henderson, *Rural America's Fiscal Challenge*, FED. RES. BANK OF KAN. CITY, 5–6 (2010), <https://www.kansascityfed.org/documents/119/mse-Rural%20America's%20Fiscal%20Challenge%20.pdf>.

<sup>36</sup> John T. Cobb, *Broad-Banned: The FCC's Preemption of State Limits on Municipal Broadband and the Clear Statement Rule*, 68 EMORY L.J. 407, 422 (2018); Eric Null, *Municipal Broadband: History's Guide*, 9 ISJLP 21, n.15 (2013).

<sup>37</sup> WIS. STAT. § 66.0422(3d)(a)–(c) (2019–20).

incumbent providers through political pressure and scare tactics.<sup>38</sup> The mandate gives incumbents ample time to stall public projects by lobbying local legislators and instilling doubt in the public. By requiring that a local government reach out to private incumbent providers, the incumbent is put on notice that a municipality is looking to move into their area of service, and gives them the opportunity to interact with the government “for the sake of wasting time.”<sup>39</sup> Put simply, if a municipality notifies their private competitor that they intend to compete with them, then the municipality does not have to submit the costly bureaucratic homework and prove the project is feasible. The two do not seem related. If the state legislature intends for subsection (3)(d) to protect taxpayers by mandating feasibility reports and hearings, giving municipalities the option to avoid reports by warning their competitors does not ensure the municipal project is any more feasible. It just gives the private company opportunity to step in and kill the project.<sup>40</sup>

Further, Wisconsin law makes it difficult for public broadband projects to compete with incumbent internet providers. Wisconsin Statute section 196.204 requires a municipal broadband project to set the price of their service at a number that exceeds the cost to produce it, unless they meet several requirements, including that they “[do] not compete with more than one provider of broadband service.”<sup>41</sup> The pricing restriction limits the local government’s ability to subsidize their public service. Effectively, if there is already a

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<sup>38</sup> *Principles on Municipal/Government Owned Networks*, AM. LEG. EXCH. COUNCIL (May 5, 2017), <https://alec.org/model-policy/municipal-telecommunications-private-industry-safeguards-act/>; See also Rick Barrett & Kelli Arseneau, *With poor data, deficient requirements and little oversight, massive public spending still hasn’t solved the rural internet access problem*, MILWAUKEE J. SENTINEL (Jul. 14, 2021), <https://www.jsonline.com/in-depth/news/2021/07/14/weve-spent-billions-provide-broadband-rural-areas-what-failed-wisconsin/7145014002/>.

<sup>39</sup> Jeff Stricker, *Casting a Wider ‘Net: How and Why State Laws Restricting Municipal Broadband Networks Must Be Modified*, 81 GEO. WASH. L. REV. 589, 619 (2013).

<sup>40</sup> Cobb, *supra* note 36; see also Null, *supra* note 36.

<sup>41</sup> WIS. STAT. § 196.204(2m) and (2m)(c)(3) (2019–20).

broadband provider in the area, anyone that signs up for public broadband cannot receive it at a price lower than it takes to create the service. Municipalities are boxed-in to using retained earnings or other sources of revenue from the service itself, rather than gathering funding from other municipal funds.<sup>42</sup> Wisconsin's broadband expansion is administered by the Wisconsin Public Service Commission.<sup>43</sup> In some states, public services are funded from revenue other than what is collected directly from the service itself.<sup>44</sup> Public transportation, for example is funded by tax revenue from fuel or sales taxes.<sup>45</sup> Given that rural communities are often building their broadband infrastructure from the ground up, they simply do not have the ability to "foot the bill" for overhead costs associated with these public broadband projects without pulling from other sources as they do with other public services.

## B. INCUMBENT PROVIDERS LOBBY FOR UNFAIR RESTRICTIONS

Incumbent providers would prefer to not compete with local government broadband projects.<sup>46</sup> Instead, they are protective over their territory and autonomy over who and where to expand their services.<sup>47</sup> Restrictive state laws, such as the ones in Wisconsin, are

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<sup>42</sup> Hannibal Travis, *Wi-Fi Everywhere: Universal Broadband Access as Antitrust and Telecommunications Policy*, 55 AM. U. L. REV. 1697, n.399 (2006).

<sup>43</sup> *State Broadband Plan*, PUB. SERV. COMM. OF WIS. (2021), <https://psc.wi.gov/Documents/broadband/WisconsinBroadbandPlan2021.pdf>.

<sup>44</sup> *Why and How to Fund Public Transportation*, ARIZ. PIRG EDUC. FUND 12 (2009), <https://uspigredfund.org/sites/pirg/files/reports/Why-and-How-to-Fund-Public-Transportation.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> Elizabeth Warren, *Here's how we get broadband Internet to rural America*, WASH. POST (Aug. 27, 2019), [https://www.washingtonpost.com/opinions/elizabeth-warren-heres-how-we-get-broadband-internet-to-rural-america/2019/08/27/ad63c4e-c5c8-11e9-9986-1fb3e4397be4\\_story.html](https://www.washingtonpost.com/opinions/elizabeth-warren-heres-how-we-get-broadband-internet-to-rural-america/2019/08/27/ad63c4e-c5c8-11e9-9986-1fb3e4397be4_story.html) [<https://perma.cc/HG9B-ZL49>].

<sup>47</sup> *Id.*; see also Stricker, *supra* note 39, at 598.

inspired by a legislative model proposed by the American Legislative Exchange Council (ALEC). ALEC argues that the broadband market is sufficiently competitive, and that private providers have expanded broadband “to nearly every corner of the United States.”<sup>48</sup> In contrast, they claim that public projects fail due to a lack of long-term resources.<sup>49</sup> ALEC’s model includes four prongs, most of which are adopted into Wisconsin statutes. They are (1) no cross subsidization, (2) deliberative process, (3) no advantages not afforded to private providers, and (4) transparency.<sup>50</sup> The organization first suggests that local governments should be prohibited from “cross-subsidizing” the broadband project by pulling from other municipal taxes, funds or sources of revenue.<sup>51</sup> They believe that this would protect taxpayers from being “harmed or disadvantaged.”<sup>52</sup> Second, ALEC argues that municipalities should hold hearings and conduct in-depth inquiries to ensure that taxpayers are completely aware of the risk of public broadband.<sup>53</sup> In this deliberative process, governments should prioritize private providers and look to build private broadband infrastructure. If the local government does not secure a private contract or public-private partnership to provide broadband services, then they must undergo a substantial deliberative process of hearings and feasibility studies before beginning their own broadband project.<sup>54</sup> Third, public broadband projects should not be given any advantages that private providers do not have.<sup>55</sup> ALEC wants equal public and private broadband regulation, private access to

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<sup>48</sup> *Principles on Municipal/Government Owned Networks*, *supra* note 38.

<sup>49</sup> *Id.*

<sup>50</sup> Cobb, *supra* note 36, at 416; *see also Principles on Municipal/Government Owned Networks*, *supra* note 38.

<sup>51</sup> Cobb, *supra* note 36, at 416.

<sup>52</sup> *Principles on Municipal/Government Owned Networks*, *supra* note 38.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*; *see also Principles on Municipal/Government Owned Networks*, *supra* note 38.

<sup>55</sup> *Principles on Municipal/Government Owned Networks*, *supra* note 38.

public broadband infrastructure.<sup>56</sup> Fourth and last, ALEC wants the public broadband project to make all their records public and demonstrate that the project's revenue exceed their costs.<sup>57</sup> On one hand, ALEC argues that government-owned broadband projects typically fail because of a lack of resources. On the other, they list policy proposals that restrict and limit the available resources municipalities can use to implement public broadband projects. Their model is touted as a way to maintain a competitive marketplace by "leveling the playing field."<sup>58</sup> In reality, it tilts that playing field in favor of large incumbent providers.

Incumbents themselves are the most aggressive proponents for these restrictive laws, several of which are deeply involved in this policy fight. Private providers lobby governments to restrict competition, and keep broadband prices high.<sup>59</sup> Up until 2018, two of Wisconsin's two major internet providers, AT&T and CenturyLink, were high-level sponsors of ALEC.<sup>60</sup> The original 2003 Act 278, which contained Wisconsin Statute section 66.0422 and several pieces of section 196.204, were sponsored by Wisconsin legislators who were members of ALEC.<sup>61</sup> Among them were Wisconsin legislators Ted Kanavas and Phil Montgomery, the latter of which led ALEC's Telecommunication Task Force's Subcommittee on Competition and was named "Legislator of the Year" in 2005.<sup>62</sup> Lobbying efforts against municipal broadband infect state legislators that pass ALEC's model laws. From 2003 to 2004, for example, private broadband providers

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Warren, *supra* note 46.

<sup>60</sup> David Armiak, *AT&T Drops ALEC for Hosting Hate Speech*, CTR. FOR MEDIA & DEMOCRACY (Nov. 30, 2018), <https://www.prwatch.org/news/2018/11/13428/att-drops-alec-hosting-hate-speech>.

<sup>61</sup> Mary Bottari, *ALEC Bills in Wisconsin*, CTR. FOR MEDIA & DEMOCRACY (Jul. 14, 2011), <https://www.prwatch.org/news/2011/07/10880/alec-bills-wisconsin>.

<sup>62</sup> *Id.*



spent over five million dollars in lobbying fees to successfully pass similarly restrictive laws in Pennsylvania.<sup>63</sup> As of 2020, twenty-six states have implemented laws that restrict or prohibit municipal broadband, many of which are due to strong lobbying efforts from private broadband providers.<sup>64</sup> While a majority of states restrict municipal broadband, a poll by Pew Research shows that an overwhelming majority of the public -- seventy-percent -- believe local governments should be able to build their own broadband networks even if there is already existing broadband available.<sup>65</sup> The lobbying efforts by private incumbents are strong, but do not reflect the will of the people.

The federal government hands down grants in an attempt to help expand broadband throughout the United States.<sup>66</sup> Three of the largest incumbents in Wisconsin in 2020, CenturyLink, Frontier Communications and AT&T were awarded about \$572 million combined to build out broadband expansions at 230,451 locations.<sup>67</sup> The money often has an expectation attached, that the companies will build-out infrastructure to reach more underserved or unserved people.<sup>68</sup> Instead, government subsidies go to providers who, in turn, use the funds to expand speeds in places where there is a higher density of people, rather than rural areas without access at all.<sup>69</sup> Building

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<sup>63</sup> Mikhail Guttentag, *A Light in Digital Darkness: Public Broadband after Tennessee v. FCC*, 20 YALE J. L. & TECH. 311 (2018).

<sup>64</sup> Johnson, *supra* note 33.

<sup>65</sup> Monica Anderson & John Horrigan, *Americans have mixed views on policies encouraging broadband adoption*, PEW RSCH. CTR. (Apr. 10, 2017), <https://www.pewresearch.org/fact-tank/2017/04/10/americans-have-mixed-views-on-policies-encouraging-broadband-adoption/>.

<sup>66</sup> Barrett & Arseneau, *supra* note 38.

<sup>67</sup> *Id.*

<sup>68</sup> *Connect America Fund Phase II FAQs*, FED. COMM. COMM'N (Dec. 30 2019), <https://www.fcc.gov/consumers/guides/connect-america-fund-phase-ii-faqs>.

<sup>69</sup> *Id.*; Barret & Arseneau, *supra* note 38; Kathryn A. Tongue, *Municipal Entry into the Broadband Cable Market: Recognizing the Inequities Inherent in Allowing Publicly Owned Cable Systems to Compete Directly against Private Providers*, 95 NW. U. L. REV. 1099, 1138 (2000-2001).

the physical infrastructure for broadband expansion is expensive,<sup>70</sup> and companies are looking to maximize their profits.<sup>71</sup> Private companies see the enhancement of existing connectivity in densely populated areas as a better investment than building completely new infrastructure for the “last mile” in rural areas.<sup>72</sup> After receiving federal grants, both CenturyLink and Frontier stated that they “may not have reached” the build-out requirements attached to the grant.<sup>73</sup> Failure to meet the requirements of the funding could bring fines against the private providers, but the federal government does not appear to be enforcing any penalties.<sup>74</sup>

### C. SOCIETAL IMPACT OF THE DIGITAL DIVIDE

The digital divide is clear in America’s Dairyland. In 2021, about 26% of Wisconsin’s nearly six million residents live in a rural community.<sup>75</sup> Many of these remote towns and villages either struggle to reach high-speed broadband, or go without internet access altogether. Wisconsin disappointingly ranks 36<sup>th</sup> out of 50 states in broadband accessibility, with more than 430,000 rural Wisconsinites living without sufficient broadband access.<sup>76</sup> For example, the rural town of Franklin in Jackson County, Wisconsin, is home to about 450 residents, some of which have a download speed of less than 5.0

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<sup>70</sup> Patrick Gray, *Disconnected: The State of Rural Broadband*, 25 DRAKE J. AGRIC. L. 403, 412 (2020).

<sup>71</sup> Warren, *supra* note 46.

<sup>72</sup> Sylvain, *supra* note 17, at 797; see also Lynne Holt & Mary Galligan, *State & Federal Policies to Accelerate Broadband Deployment: A Policy Checklist*, 17 COMMLAW CONSPLECTUS 141, 163 (2008); see also Tongue, *supra* note 69.

<sup>73</sup> Barrett & Arseneau, *supra* note 38.

<sup>74</sup> *Id.*

<sup>75</sup> *State Data: Wisconsin*, U.S. DEP’T OF AG. ECON. RSCH. SERV. (updated Jan. 5, 2022), <https://data.ers.usda.gov/reports.aspx?StateFIPS=55&StateName=Wisconsin&ID=17854>.

<sup>76</sup> Knapp & Votava, *supra* note 14.

Mbps.<sup>77</sup> This falls far below the 25 Mbps that is deemed “reliable broadband access.”<sup>78</sup> Racial minorities, elderly persons, and those with lower incomes and levels of education are even less likely to have broadband in their homes.<sup>79</sup> These vulnerable populations have a hard time accessing vital services. In fact, many in rural areas face the challenge of travelling long distances just for routine healthcare.<sup>80</sup> This lack of rural broadband, worsened by inaction from incumbent internet providers, has a daunting impact on the health of Wisconsin’s vulnerable residents and the education Wisconsin’s youth.

### 1. WISCONSINITE HEALTH AND REMOTE CARE

Shortages in healthcare providers and geographic barriers contribute to rural communities suffering from lack of quality care.<sup>81</sup> As of 2020, twenty-percent of people in the United States lived in rural regions, yet these communities had only eleven-percent of the nation’s doctors.<sup>82</sup> It is difficult to draw young physicians to geographically isolated rural communities, so the Wisconsin legislature enacted a grant program in 2013 that gives financial assistance to medical graduates who commit to practice in medically underserved areas.<sup>83</sup> As of 2019, The Wisconsin Department of Health Services still

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<sup>77</sup> *Wisconsin Broadband Map*, PUB. SERV. COMM’N OF WIS.: WIS. BROADBAND OFF. (last visited Jan. 8, 2023) <https://maps.psc.wi.gov/apps/WisconsinBroadbandMap/>; see also Town of Franklin website, 77.

<sup>78</sup> Knapp & Votava, *supra* note 14.

<sup>79</sup> Brittney Crock Bauerly, et al., *Broadband Access as a Public Health Issue: The Role of Law in Expanding Broadband Access and Connecting Underserved Communities for Better Health Outcomes*, 47 THE J. OF L., MED. & ETHICS 39, 40 (2019).

<sup>80</sup> Holt & Galligan, *supra* note 72, at 152.

<sup>81</sup> Bauerly, *supra* note 79, at 40.

<sup>82</sup> Peter Jaret, *Attracting the next generation of physicians to rural medicine*, ASS’N OF AM. MED. COLLS. (Feb. 3, 2020).

<sup>83</sup> Jessie Gibbons, *Wisconsin’s Primary Care Shortage*, WIS. LEG. REF. BUREAU 4 (Apr. 2020), [https://docs.legis.wisconsin.gov/misc/lrb/wisconsin\\_policy\\_project/primary\\_care\\_shortage\\_3\\_5.pdf](https://docs.legis.wisconsin.gov/misc/lrb/wisconsin_policy_project/primary_care_shortage_3_5.pdf).

listed at least fourteen counties that needed to add anywhere from 3 to 21 primary care physicians to no longer have a shortage.<sup>84</sup> Additionally, rural communities naturally have a high aging population, low education levels, and a greater travelling distance to goods and services.<sup>85</sup> In some places like the cities of Dodgeville or Lancaster, patients might have to drive 45 minutes just to meet with their primary physician.<sup>86</sup> Even worse, twenty counties do not have a practicing OB-GYN, and some are without a single psychiatrist within a two-to-three hour drive.<sup>87</sup>

More vulnerable patients, such as the elderly and persons with disabilities, suffer from the geographic isolation in rural areas. In Wisconsin, 16.5% of residents are aged 65 and older, and almost one-third of that population lives with a disability.<sup>88</sup> Rural parts of the state tend to have older populations and are more likely to have residents with chronic disease that require regular monitoring.<sup>89</sup> Of the 46 counties listed as “rural” by the Wisconsin Office of Rural Health, roughly 20% of residents are over 65 years old.<sup>90</sup> In places like the rural Price County, the large elderly population is scattered

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<sup>84</sup> *Number of Primary Care Physician FTEs Needed to Remove Shortages for the Resident Population*, WIS. DEP’T OF HEALTH SERVS. 1 (Sept. 2019), <https://www.dhs.wisconsin.gov/publications/p0/p00460.pdf>.

<sup>85</sup> Katherine Porter, *Going Broke The Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969, 978-79 (2005).

<sup>86</sup> Will Cushman, *What obstacles complicate health care for rural Wisconsinites?*, THE CAP TIMES (Apr. 29, 2019), [https://captimes.com/news/local/health-med-fit/what-obstacles-complicate-health-care-for-rural-wisconsinites/article\\_4e637bbf-07fa-563c-a660-25695a4943ba.html](https://captimes.com/news/local/health-med-fit/what-obstacles-complicate-health-care-for-rural-wisconsinites/article_4e637bbf-07fa-563c-a660-25695a4943ba.html).

<sup>87</sup> *Id.*

<sup>88</sup> *Demographics of Aging in Wisconsin*, WIS. DEP’T OF HEALTH SERVS. (updated Jul. 8, 2021), <https://www.dhs.wisconsin.gov/aging/demographics.htm>.

<sup>89</sup> Johanna D. Hollingsworth, *Is There a Doctor in The House?: How Dismantling Barriers to Telemedicine Practice Can Improve Healthcare Access for Rural Residents*, 62 HOW. L.J. 653, 663-64 (2019).

<sup>90</sup> *WISH: Urban and Rural Counties*, WIS. DEP’T OF HEALTH SERVS. (updated Nov. 30, 2020), <https://www.dhs.wisconsin.gov/wish/urban-rural.htm>; *Demographics of Aging in Wisconsin*, *supra* note 88.

and has trouble travelling long distances to obtain in-person treatment.<sup>91</sup> Provider shortages and geographic barriers can also mean less time for doctors to actually connect with their patients about their health and catch preventable diseases.<sup>92</sup> Healthcare workers in Price County argue that easier doctor visits for these vulnerable residents, through remote care, “could save lives.”<sup>93</sup>

Internet access can help bridge health disparities through remote care. Providers are beginning to use telecommunications technology to deliver healthcare and health education remotely, a practice known as telehealth.<sup>94</sup> With broadband, telehealth allows doctors to help patients manage chronic conditions, provide remote diagnoses, and facilitate general care for remote patients more easily. Instead of traveling long distances to the nearest metropolitan area for consultations with a specialist, patients can seek the opinion of a doctor from the comfort of their own home.<sup>95</sup> In certain studies, telemedicine reduced emergency room visits by 40% and hospital admissions by 63% due to remote home health monitoring.<sup>96</sup> Broadband has shown to be a vital resource that connects rural people to lifesaving care.

## 2. RURAL STUDENTS ARE LEFT BEHIND

Rural education suffers from the lack of broadband. In the United States, nearly 1 in 5 students attends a rural school.<sup>97</sup> Rural

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<sup>91</sup> Barrett & Arseneau, *supra* note 38.

<sup>92</sup> Shamane Mills, *CDC: Leading Causes Of Preventable Death Impact Rural Residents More*, WIS. PUB. RADIO (Dec. 27, 2019), <https://www.wpr.org/cdc-leading-causes-preventable-death-impact-rural-residents-more>.

<sup>93</sup> Barrett & Arseneau, *supra* note 38.

<sup>94</sup> Bauerly, *supra* note 79.

<sup>95</sup> Alexander, *supra* note 15; *see also* Bauerly, *supra* note 79.

<sup>96</sup> Holt & Galligan, *supra* note 72, at 178.

<sup>97</sup> Neal Morton, *Rural schools have a teacher shortage. Why don't people who live there, teach there?*, HECHINGER REP. (Apr. 13, 2021), <https://hechingerreport.org/rural-schools-have-a-teacher-shortage-why-dont-people-who-live-there-teach-there/>.

schools are different from urban or suburban schools in that they are geographically isolated, have small population sizes, and are classified as “high need.”<sup>98</sup> The geographic isolation that makes it hard for rural residents to access medical care also poses a problem for education. Schools in remote communities have severe teacher shortages -- most prominent in the areas of special education, reading intervention, preschool, and infant/toddler care.<sup>99</sup> Some districts have been forced to hire short-term substitutes to patch the gaps, or place teachers in subjects that they may not even be qualified to teach. Consequently, inconsistent or underqualified staffing harms students’ ability to learn, and can even cause them to come out of school not knowing important concepts like basic math.<sup>100</sup>

The teacher shortage is prevalent in rural Wisconsin. Class sizes are rising, teachers are expected to pick up extra duties for little pay, and long-term substitutes are used to patch staffing gaps -- a situation that some have called “crisis mode.”<sup>101</sup> On top of the teacher shortage, rural school districts experience a very low level of broadband accessibility. Research shows that roughly half of Wisconsin school districts that serve fewer than five hundred children report “significant problems” with students accessing the internet at home.<sup>102</sup> Even worse, nearly 25% of students live without broadband

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<sup>98</sup> *Rural Schools*, TEACH.COM, <https://teach.com/careers/become-a-teacher/where-can-i-teach/types-of-schools/rural/#:~:text=What%20is%20a%20Rural%20School,size%2C%20population%20density%20and%20location>, (last visited Feb. 20, 2022).

<sup>99</sup> Daniel Showalter, et al., *Why Rural Matters 2018-2019*, RURAL SCH. & CMTY. TRUST, 35 (Nov. 2019), <https://files.eric.ed.gov/fulltext/ED604580.pdf>.

<sup>100</sup> Emma García Elaine Weiss, *The teacher shortage is real, large and growing, and worse than we thought*, ECON. POL. INST. (Mar. 29, 2019), <https://files.eric.ed.gov/fulltext/ED598211.pdf>; see also Emily Hanford, *Schools in poor, rural districts are the hardest hit by nation’s growing teacher shortage*, AM. PUB. MEDIA (Aug. 28, 2017), <https://www.apmreports.org/story/2017/08/28/rural-schools-teacher-shortage>.

<sup>101</sup> Steven Potter, *Wisconsin’s Rural Schools in ‘Crisis Mode’*, IN THESE TIMES (Jan. 13, 2022), <https://inthesetimes.com/article/educator-drains-in-wisconsins-rural-schools>.

<sup>102</sup> Knapp & Votava, *supra* note 14, at 3.

at all.<sup>103</sup> In the wake of COVID, the Green Bay School District distributed mobile hot spots to some households in order to enhance at-home learning.<sup>104</sup> Administrators noticed that many families had broadband, but were unable to support more than a one or two devices. Families with two parents and more than one child living in the home could not work and learn at the same time. As one Green Bay school administrator puts it, “It’s important to have equitable access to internet service so that people have equitable opportunities in their lives.”<sup>105</sup>

Nonetheless, education is vital for workforce preparation and propelling local innovation.<sup>106</sup> Evident from educational pivots during the COVID pandemic, broadband can enable distance learning and provide educational resources when teachers and students are not physically in the same place.<sup>107</sup> Even where there are sufficient educators in a school, learning in a more general sense is transitioning online.<sup>108</sup> Internet resources allow for a more personalized learning experience to suit each child’s diverse learning style and enables students to communicate with teachers and peers for help outside the classroom and access online research tools.<sup>109</sup> Access to modern resources is not equal. Rural schools and school districts where students do not have reliable broadband in their home are left at an

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<sup>103</sup> *Id.*

<sup>104</sup> Jeff Bollier & Haley BeMiller, *Northeast Wisconsin races to improve rural broadband after pandemic exposes ‘horrible’ internet speeds*, GREEN BAY PRESS-GAZETTE (Feb. 24, 2021), <https://www.greenbaypressgazette.com/story/news/2021/02/24/lack-high-speed-internet-rural-northeast-wisconsin-gets-urgency/4381197001/>.

<sup>105</sup> *Id.*

<sup>106</sup> Holt & Galligan, *supra* note 72, at 157.

<sup>107</sup> *Id.* at 152; *see also* *Distance learning*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/distance%20learning>.

<sup>108</sup> Bauerly, *supra* note 79, at 40.

<sup>109</sup> *See Use of Technology in Teaching and Learning*, U.S. DEPT OF EDUC., <https://www.ed.gov/oii-news/use-technology-teaching-and-learning>; *see also* Johannes Bauer, et. al., *Overcoming Michigan’s homework gap: The role of broadband Internet connectivity for student success and career outlooks*, MICH. STATE UNIV., 20 (Sep. 22, 2020).

educational disadvantage.<sup>110</sup> Data shows that students with access to broadband had roughly 0.40-point higher GPAs and were 6-8% more likely to graduate high school compared to students with no access.<sup>111</sup> Overall, online resources increase educational productivity, accelerate the rate of learning, and better utilize teacher time.<sup>112</sup> The reality is that rural communities both in Wisconsin and across the nation are at risk of falling behind in education and workforce preparation because of their inability to be online.

Internet connectivity is not just leisure and recreation. It is an issue that impacts the lives of thousands of vulnerable people across the state. Both the American Legislative Exchange Council and Wisconsin legislators are putting these communities at risk. Wisconsin Statutes sections 66.0422 and 196.204 deepens the digital divide in the state and limits the ability of local governments to provide broadband to their residents, which leaves rural students without quality education, and vulnerable residents without quality healthcare.

### **III. THE WISCONSIN STATE LEGISLATURE MUST REPEAL WISCONSIN STATUTES SECTIONS 66.0422 AND 196.204 TO ENSURE EQUITABLE BROADBAND ACCESS FOR ALL WISCONSINITES**

Broadband is a vital public service. This section suggests that Wisconsin Statutes sections 66.0422 and 196.204 should ultimately be repealed. Repealing these laws lifts the restriction on municipal broadband projects and allows local communities to more easily compete with large incumbents to provide broadband to the underserved. This section will then raise some of the most prominent

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<sup>110</sup> Bauerly, *supra* note 79, at 40.

<sup>111</sup> Bauer, *supra* note 109, at 8, 26.

<sup>112</sup> *Use of Technology in Teaching & Learning supra* note 109.



arguments against repealing municipal broadband restrictions and discuss how they ultimately fail.

#### A. REPEALING THE LAWS LIFTS UNFAIR RESTRICTIONS

Internet access is deployed unevenly across Wisconsin, which creates great inequities for rural residents. To fix this, the Wisconsin State Legislature should repeal both Wisconsin Statutes sections 66.0422 and 196.204 and allow public projects to more fairly compete with private telecom companies. Section 66.0422 requires a municipality to jump through hoops by mandating detailed reports and hearings before moving forward with a project. Subsection (3)(d) even states that a municipality can only avoid these hoops if they reach out to incumbent providers and ask if they are going to be servicing that area.<sup>113</sup> Currently, private incumbents are not required to have public hearings and feasibility studies. They instead private revenue that they can use to lobby state legislators to help protect their monopolies in local markets. Municipalities, on the other hand, are in the business of providing public service to their residents, not creating a profit.<sup>114</sup> By eliminating Wisconsin Statute section 66.0422, the municipality achieves two major things. First, they do not have to be held to the state's tedious feasibility and public hearings requirements. Local governments would be able to propose and implement projects as they see fit, without the costly delay of state-mandated reports. Of course, a municipality may very well choose to compile a plan or report in a way that best reconciles the concerns of their government and constituents. Second, they would not need to give the private telecom company a warning that they are planning to provide public broadband. This would take the head-start

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<sup>113</sup> WIS. STAT. § 66.0422(3)(d) (2019–2020).

<sup>114</sup> Mickey Edwards, *The Difference Between Business and Government*, THE ATLANTIC (June 13, 2010), <https://www.theatlantic.com/politics/archive/2010/06/the-difference-between-business-and-government/58085/>.

warning away from the private incumbents who might seek to lobby the government and impose needless delay on the project. These both lower the barriers of entry that a local government faces when starting public broadband deployment.

The legislature must also repeal Wisconsin Statutes section 196.204. This section prohibits municipal projects from being subsidized if they compete with more than one incumbent provider.<sup>115</sup> It improperly prohibits cross-subsidization by requiring funding to be sourced from only the project itself.<sup>116</sup> Repealing section 196.204 would allow public broadband programs to subsidize the service for underserved subscribers. A local government would be free to take funds from various non-broadband funding pools to help offset the cost of broadband, as many governments do with services like transportation.<sup>117</sup> This would allow the municipality to price the broadband product itself at a lower price than it takes to actually produce the broadband, ensuring the product itself is affordable to the user. Broadband is a public service,<sup>118</sup> so laws surrounding the deployment of this service must be written in favor of the public, not big telecom corporations. These restrictive laws should be repealed so the public has equitable access to broadband.

#### **B. ALLOWING MUNICIPAL BROADBAND IS A LONG-TERM SOLUTION TO EQUITABLE BROADBAND ACCESS**

There are, of course, arguments opposing the loosening of restrictions on municipal broadband projects. Restrictionists in this area worry that public broadband would cause unfair competition with incumbent providers and distort market prices.<sup>119</sup> They argue

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<sup>115</sup> WIS. STAT. § 196.204(2m)(c)(3) (2019–2020).

<sup>116</sup> See WIS. STAT. § 196.204(2m) and (2m)(c)(3) (2019–2020).

<sup>117</sup> *Why and How to Fund Public Transportation*, *supra* note 44.

<sup>118</sup> Barrett & Arseneau, *supra* note 38.

<sup>119</sup> Sylvain, *supra* note 17.

that these projects will function as private telecom companies, while pushing costs onto taxpayers and avoiding natural market forces.<sup>120</sup> It is true that property owned by local governments is generally exempt from taxation.<sup>121</sup> This means that the physical fibers, facilities, and towers that would need to be installed by a municipality would be exempt from taxation as well. Unlike these private telecom companies, municipalities are looking to fill the broadband gap that incumbent providers have determined is not profitable enough to fill themselves.<sup>122</sup> Other public services such as fire departments and public schools do not pay taxes.<sup>123</sup> Because the municipal project is a public service that is not seeking to maximize profit,<sup>124</sup> it should not be subject to business taxes as private companies are. Additionally, the price mechanism would certainly be affected by competition. Without restrictions on subsidization, rural citizens could receive broadband at a much lower price than they may have been charged by private companies. Private companies would need to respond by lowering their prices in rural areas. Where there may be only one incumbent telecom company in a remote area, residents would then have the option of staying with their current provider or switching to the public program. Aside from price, competition would benefit broadband expansion, as research shows that private internet providers invest in broadband infrastructure when they sense incoming competition.<sup>125</sup>

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<sup>120</sup> *Id.*

<sup>121</sup> *Property Tax Overview*, WIS. DEP'T OF REVENUE (2019), <https://www.revenue.wi.gov/DORReports/ProTax.pdf>.

<sup>122</sup> See Sylvain, *supra* note 17, at 806.

<sup>123</sup> Individual employees pay an income tax, but the department or district does not. See *What are Government Entities and Their Tax Obligations?* IRS (Mar. 29, 2022) <https://www.irs.gov/government-entities/federal-state-local-governments/government-entities-and-their-federal-tax-obligations>.

<sup>124</sup> Edwards, *supra* note 114.

<sup>125</sup> Sylvain *supra* note 17, at 838.

One failed solution to address the inadequacies of broadband access is government handouts which do not address the causes of the digital divide. Private broadband providers claim that they can expand broadband accessibility to “low density” rural areas if the government subsidizes their efforts to do so.<sup>126</sup> The companies want government funding through grants and tax breaks in exchange for loose promises to expand services, but they do not want to be held to the government’s regulation.<sup>127</sup> In 2017, AT&T, who already receives these handouts in Wisconsin,<sup>128</sup> went as far to say that “utility regulation over broadband can only inhibit incentives for network investment.”<sup>129</sup> Gov. Evers hands out millions in government handouts to private companies, who in turn used the money to enhance their product in high-density locations and maximize their own profits.<sup>130</sup> In his plan to expand broadband access in 2021, he argued to quadruple Wisconsin’s funding of broadband expansion, including two-hundred million dollars for private providers and forty million in subsidies for low-income consumers.<sup>131</sup> Telecom advocates themselves concede that the model of throwing money to private providers is not fit for rural issues. USTelecom, a trade group representing the interests of AT&T, Verizon, and CenturyLink wrote in 2018 that “private-led investment model” only works well in “reasonably populous areas.”<sup>132</sup> Clearly, the investment model is not working. Throwing money at the problem in hopes that these private

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<sup>126</sup> Jon Brodtkin, *ISPs say they can’t expand broadband unless gov’t gives them more money*, ARS TECHNICA (Aug. 16, 2018), <https://arstechnica.com/tech-policy/2018/08/isps-want-to-be-utilities-but-only-to-get-more-money-from-the-government/>.

<sup>127</sup> *Id.*

<sup>128</sup> Barrett & Arseneau, *supra* note 38.

<sup>129</sup> Brodtkin, *supra* note 126.

<sup>130</sup> Barrett & Arseneau, *supra* note 38.

<sup>131</sup> Rick Barrett, *Evers pitches \$200 million in broadband spending, subsidies for consumers*, MILWAUKEE J. SENTINEL (Jan. 13, 2021), <https://www.jsonline.com/story/money/2021/01/13/evers-pitches-200-million-broadband-spending-consumer-subsidies/4149601001/>.

<sup>132</sup> Brodtkin, *supra* note 126.

companies will do the right thing and serve the underserved does not achieve anything. Instead, Wisconsin needs legislative action to ensure everyone has access to broadband.

The best way for Wisconsin to close the digital divide between rural communities and the rest of the state is by lifting the statutory restrictions on municipal broadband. It is a long-term solution that has wide popular support.<sup>133</sup> While private incumbents complain that municipal projects would have an unfair advantage and distort the broadband market, they acquiesce when told to provide internet to rural communities themselves.<sup>134</sup> At best, the Wisconsin administration has tested a failed solution by giving financial resources to incentivize private providers to expand service. These providers either did not expand or are expanding far too slow to meet the needs of all Wisconsinites.<sup>135</sup> Instead of patching the problem with money, the Wisconsin State Legislature should repeal Wisconsin Statutes sections 66.0422 and 196.204. Doing so goes farther than futile government handouts. This solution would put accessibility and expansion decisions in the hands of the communities who need it, and give them the power to handle it as they feel is best. Broadband is,<sup>136</sup> and must be administered like a public service by local governments. Unlike futile funding by the state, this solution would take the shackles off the municipality's ability to subsidize broadband and provide a low-cost service to their constituents. Repealing Wisconsin Statutes sections 66.0422 and 196.204 is a long-term solution that must be taken to ensure equitable access for all.

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<sup>133</sup> Anderson & Horrigan, *supra* note 65.

<sup>134</sup> Sylvain, *supra* note 17; Barrett & Arseneau, *supra* note 38.

<sup>135</sup> Sylvain, *supra* note 17; Barrett & Arseneau, *supra* note 38.

<sup>136</sup> *State Broadband Plan*, *supra* note 43.

## CONCLUSION

The lack of broadband in rural Wisconsin has a detrimental effect on the lives of rural Wisconsin residents. Deep inequities exist where isolated communities do not have access to sufficient health care or education. The lack of broadband most literally puts some residents' lives at risk when there is not a single medical provider within almost an hour's drive, and residents have no broadband for online appointments. Students without internet are less prepared for the workforce in rural Wisconsin where there are not enough teachers for every classroom. Private internet providers do not see any economic incentive to expand service in rural communities, yet they are the ones that hold the power to do so. Local governments are effectively prohibited from creating broadband for their constituents, as Wisconsin law presents substantial roadblocks in the form of bureaucratic delay, funding restrictions, and barriers to competition. These unacceptable roadblocks are created by private corporations and serve an unjust purpose -- to protect private corporations and hurt local governments.

The digital divide can be fixed, but not through futile government handouts to large private providers. To create long-term and lasting change, the Wisconsin State Legislature must repeal Wisconsin Statutes sections 66.0422 and 196.204. This solution would lift the bureaucratic delay, funding restrictions, and barriers to competition that prevent municipalities from starting their own broadband projects. Local governments know their residents' needs best, and should have the power to make decisions on broadband access without relying on big corporations. To repeal Wisconsin Statutes sections 66.0422 and 196.204 would create a path to equitable broadband access for every Wisconsinite.