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Court Overturns Ruling Allowing Municipal Broadband to Grow.

MEMPHIS, Tenn. — A federal appeals court on Wednesday overturned a Federal Communications Commission ruling allowing city-owned broadband services to expand into areas overlooked by commercial providers.

The decision comes as part of a dispute between the FCC and two states, Tennessee and North Carolina, about expanding superfast internet service in their respective cities of Chattanooga and Wilson to surrounding areas.

Both states had passed laws preventing such expansion. The FCC last year voted 3-2 to override those laws. The states then asked the 6th Circuit Court of Appeals to review the FCC's ruling.

The appeals court said that the FCC's order pre-empted the state laws and "the allocation of power between a state and its subdivisions." The court said the FCC's action requires a "clear statement" of authority in federal law, but the law does not contain a clear statement authorizing pre-emption of Tennessee's and North Carolina's laws.

State lawmakers have argued that private broadband providers will have difficulty competing with service subsidized by local governments. Attorneys for Tennessee and North Carolina had argued the issue is one of state sovereignty.

In a statement, FCC Chairman Tom Wheeler said the commission is reviewing the ruling. It is not clear if the FCC will appeal.

Wheeler said the ruling "appears to halt the promise of jobs, investment and opportunity that community broadband has provided in Tennessee and North Carolina." He said the FCC has a mandate to make sure that people have access to the best possible broadband.

"The efforts of communities wanting better broadband should not be thwarted by the political power of those who, by protecting their monopoly, have failed to deliver acceptable service at an acceptable price," Wheeler said.

Tennessee Attorney General Herbert H. Slatery III said in a statement that he was pleased with the ruling. The case was not about access to broadband, but instead it was about preventing the federal government from exercising power over the states that it does not have, Slatery said.

"Today's decision preserves Tennessee's right to determine the authority and market area of a political subdivision organized under Tennessee law," Slatery said.

Chattanooga markets itself as the "Gig City" for the widespread availability of gigabit-speed internet service. Such service is about 50 times the national broadband average — or enough bandwidth to download an entire movie in about two minutes.

Chattanooga's utility provider, EPB, said in a statement that Tennessee has a "broadband gap" that is a problem for its residents. A survey of Tennessee residents and businesses by the state Department of Economic and Community Development found that about 13 percent do not have access to broadband internet service.

EPB and other municipal broadband providers had refrained from delivering services to a wider area while the appeal was pending.

"We will continue to work with the growing number of state legislators and grass-roots citizens interested in removing the barriers that prevent EPB and other municipal providers from serving our neighbors in surrounding areas who have little or no access to broadband," said David Wade, president of EPB.

The appeals court said its ruling was a limited one, and it does not address other issues debated in the case, including whether the FCC has any pre-emptive power at all under the Telecommunications Act of 1996.

"We do not question the public benefits that the FCC identifies in permitting municipalities to expand Gigabit Internet coverage," the ruling said.

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