

States with Municipal Pre-emption Issues	Legislative Reference	Explanations or commentary provided by MuniNetworks.org	
Alabama	<a href="#">Statute: Alabama Code § 11-50B-1 et seq.</a>	<b>Short Explanation:</b> Alabama has a variety of restrictions imposed on municipalities to prevent investment in community broadband networks. Among other barriers, it requires a referendum before offering cable services and requires each communications service (phone, Internet access, and television), to be self-sustaining in isolation from the others.	<b>Commentary:</b> Referendums are typically one-sided affairs where incumbents outspend community network advocates anywhere from 10:1 to 60:1. Local governments are typically prohibited from encouraging voters to take one side or the other. The requirement for self-sustaining singular services makes bundling (triple-play) more difficult and is unheard of among private providers.
Florida	<a href="#">Statute: Florida Statutes § 350.81</a>	<b>Short Explanation:</b> Florida imposes taxes uniquely on municipal telecommunications services. Additionally, Florida requires a plan to ensure the network breaks even within four years.	<b>Commentary:</b> Telecommunications networks require expensive up-front investments, especially for full fiber-to-the-networks, that are rarely able to break even so quickly. An approach that focuses solely on breaking even that quickly comes at the expense of building/operating a high quality network - technical support budgets are among the first to be cut when a network owner puts revenues above community needs. Further, such a one-size-fits-all approach is hardly appropriate for a state with such diversity among its cities.
Louisiana	<a href="#">Statute: La. Rev. Stat. Ann. § 45:884.41 et seq.</a>	<b>Short Explanation:</b> Louisiana requires a referendum as well as imputing a variety of costs and renders incumbent franchise obligations void until a variety of benchmarks are satisfied.	The Louisiana law (at RS 45:844.47) additionally forbids <u>any</u> public-private partnership. This was decisive in shutting down New Orleans public WiFi network and forcing them to give what the community had built and supported over to a private owner who subsequently got out of the business, abandoning the network. This provision strips the patina of ideology off such laws--it is intended to preserve the status quo ante and to protect the incumbents from <u>any</u> competition whatsoever. There is no "free enterprise" involved.
Michigan	<a href="#">Statute: Mich. Comp. Laws Ann. § 484.2252</a>	<b>Short Explanation:</b> Michigan requires communities to issue an RFP for a network and only build if they receive fewer than 3 qualified bids. If the community builds it, they must adhere to the terms of the RFP.	
Missouri	<a href="#">Statute: Mo. Rev. Stat. § 392.410(7) and Mo. Rev. Stat. § 71.970</a>	<b>Short Explanation:</b> Missouri cities and counties are barred from selling telecommunications services to the public though they may sell cable services after a successful referendum.	

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Nevada	<a href="#">Nevada Statutes § 268.086</a> and <a href="#">Nevada Statutes § 710.147</a>	<p><b>Short Explanation:</b> Nevada prohibits municipalities with populations greater than 25,000 and counties greater than 50,000 from offering telecommunications services.</p> <p><b>Commentary:</b> Banning broadband provision by the public sector forces communities to beg private companies to invest in needed infrastructure. Such policies encourage the private sector to invest in wealthy areas and ignore low-income areas.</p>	
New Hampshire	Attempts, but Not Currently restricted		<p>A recent in-depth article from the Keene Sentinel updates us on the status of New Hampshire's HB 286, which would expand bonding authority for local governments. New Hampshire law currently restricts bonding authority for Internet infrastructure to towns with no access to the Internet, but nearly all communities have at least some slow broadband access in a few pockets of town. <a href="http://www.muninetworks.org/tags-177">http://www.muninetworks.org/tags-177</a></p>
North Carolina	<a href="#">Statute: NC Statutes Chapter 160A, Article 16A [pdf]</a>	<p><b>Short Explanation:</b> With the exception of certain grandfathered networks, cities cannot provide communications services unless they comply with numerous onerous procedural and substantive requirements. For example, public entities must comply with a panoply of legal requirements that do not apply to them, inflate their rates to unattractive levels by adding phantom costs that unspecified private providers might pay if they provided comparable services, forgo use of popular methods of financing public projects, hold a referendum before providing services, and make commercially sensitive information available to inspection by private competitors.</p>	<p><b>Commentary:</b> Under rules like these, communities are left with all the disadvantages of both the public and private sector with no advantages from either. These laws are rigged to ensure the public cannot build a network, allowing existing providers to monopolize the community.</p>
Pennsylvania	<a href="#">Statute: 66 Pa. Cons. Stat. Ann. § 3014(h)</a>	<p><b>Short Explanation:</b> Communities may not provide broadband services unless the local telephone company has refused to provide the requested speed - regardless of the prices charged.</p>	<p><b>Commentary:</b> This is a de facto prohibition on community broadband networks - leaving communities at the mercy of existing providers who have little incentive to make prices affordable.</p>
Tennessee	<a href="#">Statute: Tennessee Code Ann. § 7-52-601 et seq</a>	<p><b>Short Explanation:</b> Tennessee places many administrative requirements in the way of communities that want to build broadband networks via public power utilities. They must complete an explicitly detailed process to meet a bar not set for private providers intending to offer like services.</p>	<p><b>Commentary:</b> In a state with the great legacy of the Tennessee Valley Authority, these burdens on publicly owned essential infrastructure are a disgrace to the great investments of those who came before us. This restriction harms communities that might otherwise be able to solve their own problems locally.</p>

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Texas	<a href="#">Statute: Texas Utilities Code, § 54.201 et seq.</a>	<b>Short Explanation:</b> Texas prohibits municipalities and public power utilities from offering telecommunications services to the public.	
Utah	<a href="#">Statute: Utah Code Ann. § 10-18-201 et seq.</a>	<b>Short Explanation:</b> Utah places many administrative requirements in the way of communities that want to build broadband networks. They must conduct feasibility studies to show the network will cash flow in the first year and that separate services will each cash flow separately. Wholesale-only networks are exempted from some of the above requirements.	Utah has some additional restrictions that cause significant headaches. Per Utah Code 10-18-302, "not more than 50% of the average annual debt service of all revenue bonds described in this section to provide service throughout the municipality or municipal entity may be paid from the revenues described in Subsection (3)(a)(ii)." Not being able to bond for more than 50% of the total cost of the network is crippling at best. One of the reasons UTOPIA has struggled so much is that the shared portions of the network ate up a significant chunk of the first round of money, yet that scale of project is required to effectively attract service providers. That UTOPIA
Virginia	<a href="#">Statute: VA Code § 15.2-2108.6, VA Code § 56-265.4:456-484.7:1, and VA Code § 56-484.7:1</a>	<b>Short Explanation:</b> Municipal electric utilities may offer telecommunications services (but not cable television) subject to a variety of reporting requirements and other hurdles not required of the private sector. Cable services may be only offered after showing the network will cash flow in the first year.	<b>Commentary:</b> Virginia's stringent requirements for a public entity to offer cable services are a de facto prohibition on publicly owned broadband networks (though BVU's OptiNet was grandfathered). By requiring unattainable cash flow requirements to offer cable services, communities are unable to build any modern high-speed broadband networks as they typically require the revenues generated by a triple-play offering.  In Virginia, two open access networks have been in operation for years despite the fact that the state was an early leader in making it difficult for local governments to get involved in telecommunications. nDanville (www.ndanville.net) is starting its third year of operation and has been very popular with businesses in the city of Danville, and The Wired Road (www.thewiredroad.net) has been in operation for eighteen months. Neither network has been challenged by incumbents because all services are provided by private sector companies, and the incumbents were all invited to use the networks. nDanville is owned and operated by the City, and The Wired Road is a regional authority with two counties and a small city (Galax) as the primary partners.

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Washington	<a href="#">Statute: Wash. Rev. Code Ann. § 54.16.330</a>	<b>Short Explanation:</b> Public Utility Districts may not provide telecommunications services directly to customers.	<b>Commentary:</b> The Washington approach of requiring a wholesale-only model severely limits community opportunities to build broadband networks because the wholesale-only model typically results in lower revenues than direct retail sales, which makes debt repayment more difficult.

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