

# US telco: 'Public broadband is illegal'

## Judge: 'Pull the other one'

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Like dozens of other communities across America, the tiny town of Monticello, Minnesota wants to build a fiber-optic broadband network. In September of last year, its citizens approved the project via referendum, with 74 per cent of voters giving the nod. But thirteen months later, its fiberlicious dream is still on hold, thanks to a lawsuit from the incumbent phone company.

Monticello - population 12,000 - had no intention of using tax dollars to finance the network. It issued bonds. But with its May lawsuit, TDS Telecom - which is also building a fiber network - argued that the city has no statutory authority to do such a thing.

Christopher Mitchell - a kind of public network watchdog for a non-profit known as Institute for Local Self Reliance (ILSR) - has seen this before. "You get these lawsuits in almost every community that tries to do this," he tells *The Reg*. "The phone and cable companies perceive it as a direct attack. They don't want competition."

Thankfully, the tactic rarely works. Yesterday, Judge Jonathan Jasper, of Minnesota's 10th District Court, shot down the TDS lawsuit, ruling that Monticello does indeed have the authority to build its own bond-funded network. TDS is still mulling whether to appeal.

According to Christopher Mitchell - who heads ILSR's "Telecommunications as Commons Initiative" - fifty or sixty US communities have launched their own public fiber projects, from Lafayette, Louisiana to Burlington, Vermont. "Vermont is known as liberal and Lafayette is on of the most conservative cities in the United States," he says. "So it runs the gamut."

Of all the phone and cable lawsuits brought against these projects, Mitchell doesn't know of one that's actually succeeded in quashing a public network. But he says that such suits often work as a delay tactic: "Lawsuits are destructive because they waste time, disrupting business plans, and put a city behind on its debt payment schedule."

Many suits claim that public networks put the taxpayer at risk. But in the case of Monticello, tax dollars weren't touched. TDS argued that Minnesota law did not specifically authorize the city to issue revenue bonds for broadband. "It was very clear that the statute authorized a telephone network or a cable network," Mitchell says. "But TDS alleged that the law did not allow them to offer internet service."

The statute does allow the city to issue bonds for "other public convenience." And Judge Jasper has confirmed that fiber-optic broadband does indeed qualify as "other public convenience."

"The [Monticello fiber-optic] project is similar to the express grant of authority given to cities to construct a telecommunications system and the goal of the project fulfills the expressed legislative intent to bolster telecommunications services," the judge wrote in his decision. "The project is not different in character from other utilities the municipality is authorized to build through the issuance of bonds."

TDS tells us it has 30 days to appeal, as it continues to lay its own fiber. "This decision does not impact our current work in the city of Monticello," the company says. "We will continue to move forward with our construction plan to complete our fiber network by the end of the year."

"We are confident our technical expertise, dedicated employees and long-term experience will prove to be a solid competitive advantage for TDS as we move forward bringing advanced communications services and innovative new products to the citizens of Monticello."

Meanwhile, the city of Monticello's fiber funds are sitting in escrow - where they'll stay until TDS runs out of appeals. ®