

TESTIMONY OF
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Mr. Chairman and distinguished members of the Committee, I'd like to thank you for the opportunity to testify before you today.

My name is Don Berryman, and I'm President of EarthLink's Municipal Networks Division. EarthLink is a public company headquartered in Atlanta, Georgia, we are the nation's largest independent Internet Service Provider. We are proud to provide Internet access to more than 5.3 million customers throughout the Country.

EarthLink Municipal Networks was created to design, develop and implement new and revolutionary wireless broadband services relying on cutting edge Wi-Fi technologies. We will provide affordable high-speed wireless Internet access to the citizens, first responders, and employees of municipalities throughout the nation – and we will do so at EarthLink's cost, at EarthLink's risk and without encumbering cities with the cost of the network.

President Bush captured the promise of this technology in June 2004, when he stated:
“Imagine if you're the head of a chamber of commerce of a city, and you say, our city is a great place to do business or to find work. We're setting up a wi-fi hot zone, which means our citizens are more likely to be more productive than the citizens from a neighboring community. It's a great opportunity.”

EarthLink agrees. WiFi Networks ARE a great opportunity for consumers, municipalities and entrepreneurs. And, I respectfully urge the members of this Committee to embrace policies, such as those embodied by S.1294, the Community Broadband Act, authored by Senators McCain and Lautenberg that give this new technology a chance, and reject those policies that stifle this innovative opportunity before it gets a chance to compete.

Municipal WiFi Network Case Study – The Philadelphia Story

EarthLink was recently selected by Wireless Philadelphia to develop and implement what will be the nation's largest municipal WiFi network. Much of my testimony will examine the specifics of our agreement with Wireless Philadelphia, but let me also emphasize, that Philadelphia is only one example of the many localities EarthLink is working with across our nation.

- EarthLink will deploy and manage a 135 sq. mile wireless network providing broadband Internet to the entire City and County of Philadelphia. Powered by the equivalent of just 600 light bulbs, 135 square miles will be lit by the promise of affordable broadband access.
- EarthLink will build, own and manage the wireless network, at no cost to the City, while providing Wireless Philadelphia a revenue share to fund its operation. And, EarthLink has guaranteed network upgrades on an ongoing basis. This is not a case of “taxpayer funded” competition, and will not lead to taxpayer funded bailouts. Nor is it funded by tax-free bonds. EarthLink is bearing the risk of constructing this network.
- EarthLink's partnership with Wireless Philadelphia will help bridge the Digital Divide, subsidizing affordable high speed Internet access to low-income households in overlooked neighborhoods.
- This network will serve all the citizens of Philadelphia by providing a competitive alternative to current Broadband and dial-up Internet services – at retail rates at or below the common price of premium dial-up Internet access, with a special rate of about half that for low income households.
- The initial service offering will be a symmetric One Megabit per second (1 Mbps) service, which is about fifty times as fast as a dial-up connection. It's nearly as fast as a typical DSL line for downloads, and is actually faster than most of today's broadband services when uploading data. Once we have the initial service deployed, we expect to offer higher tiered services up to several times that fast, and we will upgrade the network over time so that ever higher speeds are enabled as new technology becomes available.

- EarthLink supports Open Access to third-party Internet service retailers and “Net Neutrality.” So, the project will provide opportunities for many local companies to resell broadband access service that they purchase at competitive wholesale rates. As the third broadband entrant in this market, we embrace competition as a way to make use of our network more attractive. And the same is true for “Net Neutrality.” We view this as the best way to ensure that our platform is viewed as the most consumer and innovation friendly platform.
- Earthlink, after approval by the Philadelphia City Council, plans to break ground on a 15 square mile Proof of Concept area in April and be fully deployed by spring 2007.

This agreement catapults Philadelphia into a worldwide leadership position in technology and will enable officials to meet the needs of their residents as well as enhance the visitor, tourism and business climate of that great City. But, EarthLink is already taking the Philadelphia Story on the road! EarthLink has (or soon will) proposed that we UNwire municipalities – at our cost – across America, including:

- Anaheim, California;
- Milwaukee, Wisconsin;
- Portland, Oregon;
- Arlington, Virginia;
- Minneapolis, Minnesota;
- Long Beach, California;
- San Francisco, California;
- Honolulu, Hawaii.

Bringing Municipal WiFi to Rural America

We believe that the EarthLink approach of partnering private sector expertise and capital with municipalities should also be harnessed to expand broadband options in small cities and rural areas across America. EarthLink is developing a “Network Alliance” program with just this goal in mind.

Local entrepreneurs know best the local consumer and business needs for broadband access and services. EarthLink’s Network Alliance program will aid these local businesses in partnerships providing:

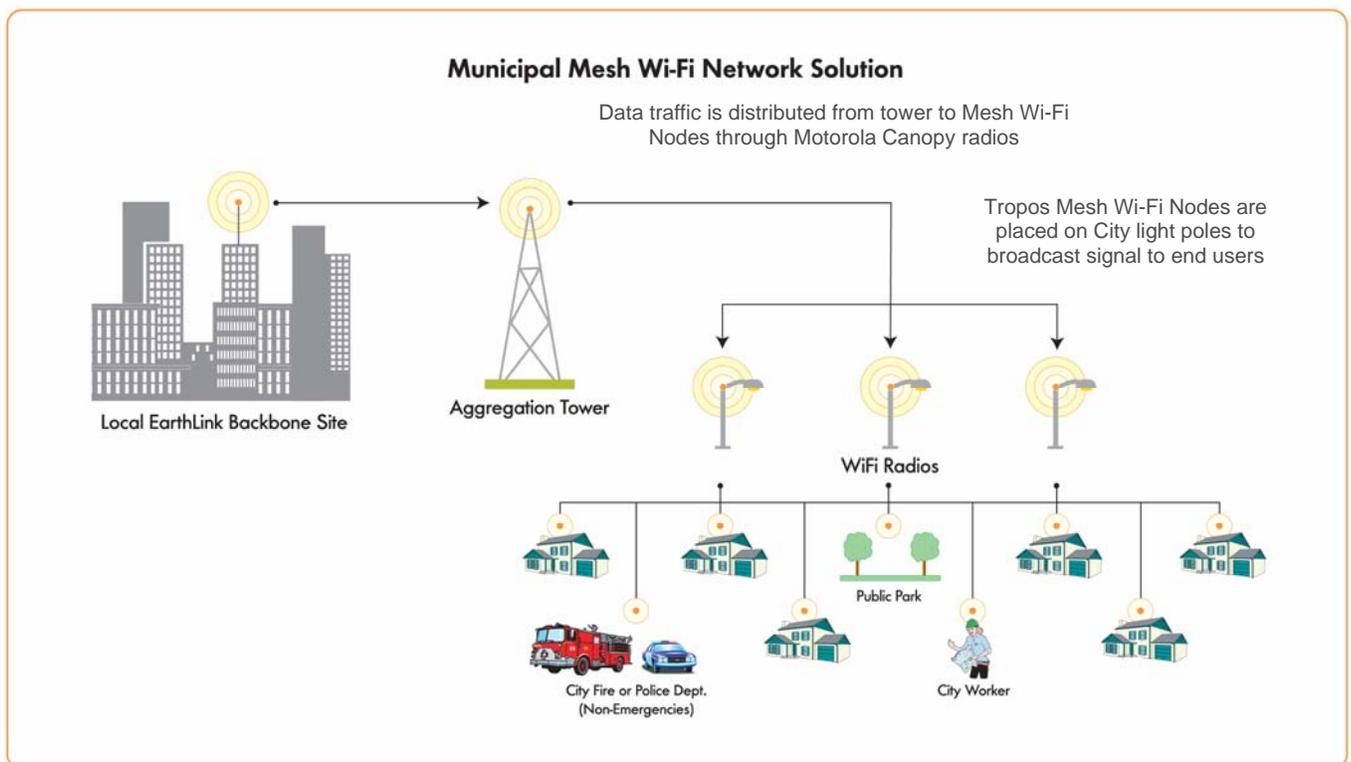
- EarthLink’s technical expertise in network design, deployment and specifications;
- EarthLink’s volume pricing for equipment and services – so even the smallest companies will get the best prices; and
- EarthLink’s ordering, billing and other back-office services – so these local businesses can put full focus on building out networks and signing on customers.

EarthLink’s Network Alliance program is being finalized over the next several weeks, and we hope to soon begin beneficial partnerships with local entrepreneurs who share EarthLink’s vision of broadband competition throughout America.

Municipal WiFi Networks – Technology Overview

Municipal Wireless service is a new use of WiFi technology (Short for *wireless fidelity*) that is already extremely widespread and proven. WiFi is based on a technical protocol that allows many users to share access to a network without blocking each other. Because of its robustness, WiFi has been a tremendous economic success, finding its way into millions of hands and homes. Because of this widespread adoption, volume pricing makes it far less expensive to build a new broadband service using WiFi than with any other technology. And because radio waves don't discriminate and the equipment is affordable, access to this technology can be consistently available to everyone. The low cost of this technology and its wireless mobility aspect enable WiFi-based broadband networks to reach new audiences not served by traditional fixed broadband Internet services. (A photograph of a WiFi antenna is attached to my testimony.)

To provide the Committee with some of the background of how the municipal wireless technology will work, the diagram below highlights the multiple technologies involved:



Building a robust wireless network is not a simple or intuitive exercise. The Municipal Wireless network is a relatively new idea and there are many possible approaches to building one. EarthLink won't claim to have the only formula for a successful network, and there are bad approaches as well as good ones. But, Municipal Wireless is a model that can work, and deliver cost-effective broadband service to consumers without a significant risk to municipalities or their taxpayers.

Consumer Security & Encryption

As WiFi HotSpots have proliferated over the past few years, the need for robust encryption and security protocols has become increasingly apparent. This is especially important in light of the rising rate of Identity Theft by more and more sophisticated means. Unfortunately, most WiFi HotSpots are not designed to use native security, and early efforts at defining encryption standards for WiFi networks resulted in poorly designed protocols which provided little protection and would have been useless in a public access network. There are, of course, several simple methods such as Virtual Private Networking that an Internet user can employ to keep their data well protected, but most users still don't feel the need to use them.

Fortunately, members of the IEEE and the WiFi Alliance have responded to these concerns by creating robust new standards for wireless network security, and the networks EarthLink builds will be designed around these options right from the start. The WPA and WPA2 standards that our networks enable will allow any user with the appropriate client software to surf the net with complete confidence in their security. And EarthLink will be, to the best of our knowledge, the first wireless Internet company to provide secure client software to all users for free – even users in public parks and community centers where we will charge no access fees.

Open Access & Federal Legislative Proposals

EarthLink has long recognized that consumers are not best served by exclusive-access Internet networks. We believe that consumers are best served by an Open Access model – where network owners offer fair, reasonable and non-discriminatory wholesale rates to others who seek to bring customers to that network. EarthLink's municipal networks will follow the letter and spirit of that commitment. Any qualifying ISP will get the same low wholesale rate, and we welcome them to bring consumers to our network. And, we welcome the competition that ensues – it will ultimately deliver the best service and experience to consumers.

In 1993 and in 1996, the Committee faced similar issues at the beginnings of the commercial wireless business.

When the FCC licensed only two cellular carriers in each market, wireless resale had to be mandated through regulation. But after this Committee enacted spectrum auctions and opened up additional spectrum for PCS service, we were able to see the third, fourth, and fifth wireless carriers enter the market. And as that happened, wireless resale went from something that had to be mandated to a service every facility-based carrier provides. Indeed, the FCC allowed the mandatory wireless resale rule to expire in November 2002.

The same will hold true for “Net Neutrality.” It is undisputable that the reason the Internet has been a transformative engine for economic growth and innovation is that the Internet is an open communications platform. As Vint Cerf, the father of the Internet, told this Committee last week, the open Internet allowed companies like EarthLink, Google, Yahoo!, e-Bay, and Amazon to grow from an entrepreneur’s dream to successful Internet businesses. Small companies and entrepreneurs can use the Internet to prove the worth of their ideas without having to convince a bureaucrat at a cable or telephone company of their economic merit – or having to pay a “success” fee to those network duopolists.

As a network investor and operator, EarthLink rejects the argument by the telephone and cable duopolists that networks must be closed and applications subject to a “success tax” in order to promote network investment. We embrace “Net Neutrality” because it is both consumer friendly and economically right. We will succeed by adding users and by providing our (and our wholesale customers’) users better service, not by throttling web-based innovation and business models. When EarthLink and our local government partners expand the number of facilities-based networks providing Internet access, the marketplace can better police and ensure “Net Neutrality.”

The Community Broadband Act, S.1294, introduced by Senators Lautenberg and McCain appropriately recognizes the fact that local governments need the flexibility to develop the broadband solutions that work best for their citizens.

I recently testified before the Pennsylvania State Senate as they examined legislation that established a cut-off date for municipal broadband systems. Unfortunately, the “shot clock” approach taken by the Pennsylvania state legislature could have forced a variety of unintended consequences as local governments rushed to decide among the technical options before fully examining all approaches. This is but one practical example of the potential problems with a one-size-fits-all approach taken at the state level to dictate solutions to local officials.

This Committee proved a fundamental lesson more than a decade ago when you examined the beginnings of the commercial wireless industry – namely, that encouraging competitive alternatives is not only possible, but it is also the best answer to the most difficult policy questions. As such, I respectfully suggest that this Committee take all steps it can to encourage the growth of Municipal Wireless networks.

Conclusion

Thank you for your time today and for inviting me to share our views as this Committee undertakes its comprehensive review of our nation’s telecommunications laws and policies. I look forward to answering any questions.