



October 12, 2013

Mr. David Corliss
City Manager
The City of Lawrence
6 E 6th St.
PO Box 708
Lawrence, KS 66044

Re: Response to WideOpenWest Holdings, Llc.¹

Dear Dave,

We were very excited to find out that Lawrence's out of state cable provider (currently under the ownership of WideOpenWest Holdings, Llc) has taken an interest in our proposed broadband expansion project here in Lawrence. It is not often that a project in a community as small as Lawrence gets the full attention of such a large conglomerate. We welcome their constructive involvement in the common carrier fiber network and would enjoy having an opportunity to work with their engineering, management and customer service teams.

If WideOpenWest wants to constructively engage with our community, they would be welcome as a partner in the project. As a retail or a wholesale partner WideOpenWest would be able to use the proposed infrastructure to offer Internet services that are up to 200x as fast as the 50 Mbps service the referenced in Debra Schmidt's May 21st letter¹. By working with Wicked to make the system successful, WideOpenWest would be helping to provide Lawrence residents with choices for ultra-high-speed broadband service (defined as 25 Megabits Per Second [Mbps] and above).

Here at Wicked Broadband we feel that choices are important. Right now Lawrence residents have no choices for ultra-high-speed broadband (defined as 1 Gigabit Per Second [Gbps]) and most residents have only have one choice for high-speed broadband. That single choice is WideOpenWest.

Lawrence got into this undesirable situation because the predecessors of modern cable operators like WideOpenWest were granted an **exclusive** franchise to construct cable systems in cities like the City of Lawrence.

Cable companies like to gloss over this fact, but it was only after almost 20 years of protection from competition that these franchises became non-exclusive.

As a result of two decades of government protection, high up-front capital costs and a regulatory environment that favors incumbent cable providers over potential competitors, WideOpenWest enjoys a natural monopoly on high-speed broadband in Lawrence. By their own admission, they provide service to "30,000 customers in Lawrence"¹. Since Lawrence has a total of 34,970 households², WideOpenWest's admits to controlling at least 85% of the local market. Since some residents don't subscribe to broadband at all, their actual market penetration may be even higher. By any meaningful definition of the term, this level of market dominance makes WideOpenWest a monopoly.

¹ Debra Schmidt, Letter to David Corliss, May 21, 2013.

² "American FactFinder". United States Census Bureau. Retrieved 2012-07-06. <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>



As we enter this public discussion of how to bring truly innovative broadband service to Lawrence, it is important to understand that **companies that control monopolies without price regulation will go to almost any length to preserve their highly lucrative monopolies.** Ms. Schmidt makes this clear when she states, “The City should anticipate legal challenges to any further subsidies directed only to CWC.”¹, she is implying that **WideOpenWest will file a lawsuit against the City of Lawrence to prevent competition in the local marketplace.**

This is a typical tactic for monopolies and duopolies to prevent fiber-optic networks from being built:

“In 2004 the Lafayette utilities system decided to provide a fiber-to-the-home (FTTH) service. The new network, called LUS Fiber, would provide everyone in Lafayette with a very fast open Internet connection; the plan was also to use the system to bring down electricity costs by allowing people to monitor and adjust their electricity usage.

Perhaps predictably, there was immediate push-back from the local telephone company, BellSouth, and the local cable company, Cox Communications. Huval faced a deluge of efforts to stop the public utility service from serving its public. The private carriers, he said, “tried to pass laws to stop us from doing it, passing laws to make it more difficult for us to do it, suing us.” BellSouth even forced the town to hold a referendum on the issue, in which the people voted 62 percent in favor of the project. But the fight was not over. “Then those private companies sued us again, then they found someone to sue us on their behalf.” Finally, after weathering five civil lawsuits opposing the idea of a city's offering fiber communications to its residents, in February 2007 the Louisiana State Supreme Court voted 7– 0 in favor of the project. “That opened the doors for [LUS Fiber] to be able to afford to borrow money for the project, which we did.”³

The questions we'd encourage City leaders to ask are:

- Why is it that Lawrence has several grocery store chains, dozens of hotels and hundreds of restaurants, but only one high-speed broadband provider? How is that a competitive market?
- Is the current situation good for our citizens?
- Are Lawrence residents getting the same value for their dollar as Google Fiber customers in neighboring Olathe or AT&T customers in Austin, TX⁴ or Comcast customers in Provo, UT⁵?
- How can we address the problem at a minimum cost to taxpayers?
- Does the City want to set a precedent of caving in to the out-of-state cable monopoly?
- Isn't it the City's duty as manager of the right-of-way to ensure Lawrence has a competitive market for high-speed broadband services?

Wicked Broadband's proposed solution is to build a common carriage, open-access fiber-optic network which any wholesale provider can access at a fixed cost. Our target wholesale cost is \$25/address/month. If WideOpenWest, AT&T, Dawn Fiber Llc, Kansas Broadband, Verizon, Sprint, T-Mobile or Mercury Wireless want to provide service, they are welcome to do so at a low, fixed rate. Using the proposed infrastructure these companies can provide service that is several orders of magnitude faster than their existing infrastructure at a fixed, non-discriminatory cost.

³ Crawford, Susan P. (2013-01-08). Captive Audience (Kindle Locations 4749-4754). Yale University Press. Kindle Edition.

⁴ Albanesi, Chloe, “AT&T to Roll Out Gigabit Internet in Austin, Texas, pcmag.com, October 1, 2013,

<http://www.pcmag.com/article2/0,2817,2425075,00.asp>

⁵ Buckley, Susan, Fierce Telecom, “Google Fiber now faces Comcast's 250 Mbps offering in Provo”, August 29, 2013,

<http://www.fiercetelecom.com/story/google-fiber-now-faces-comcasts-250-mbps-offering-provo/2013-08-29>



This approach does not provide preferential treatment to any single player. It actually encourages competition by providing a level playing field and giving all comers equal access to state-of-the-art infrastructure. It opens up the market to a host of retailers who can compete to provide the best service at the lowest price.

Importantly, it is also the best use of the right-of-way. If one follows WideOpenWest's logic to its conclusion, every broadband provider in the market should build a network that terminates at every address in the market. Want a competitive local broadband market with ten competing companies? Each every pole, every house, and every utility easement would have ten separate fiber lines, ten separate splice cases, ten separate hand-holes and ten separate outdoor enclosures. Clearly this type of duplicate infrastructure is not in the best interests of the citizens of the City of Lawrence. Can you imagine how angry grandma would get if the various data providers dug up her petunias ten separate times?

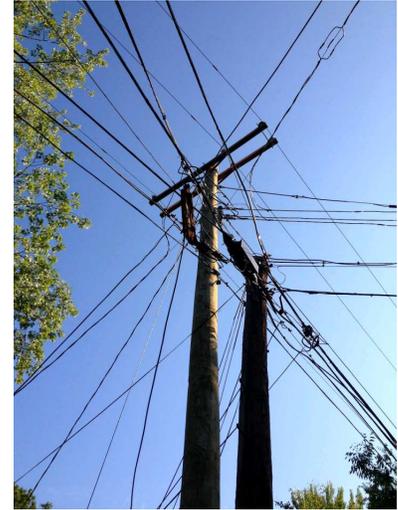


Figure 1: WideOpenWest would want multiple wires per home

In response to some of WideOpenWest's other claims:

1. "the City must question if there really is market demand for such service in Lawrence"

We've proven that there is market demand for this service in Lawrence. 10% of the pilot neighborhood paid \$10 each to pre-register for a service that isn't built yet from a company that most residents have never heard of. Clearly there is a lot of pent up demand for the type of service Wicked Broadband is offering. In Google's Kansas City project Analyst Sanford C. Bernstein thinks "Google is seeking to differentiate its offer in ways that make it at least plausible that it will reach penetrations well in excess of 30% of homes passed."⁶

2. "wireless carriers (like AT&T, Verizon and Sprint) and satellite companies (like Direct TV and Dish Network) also provide alternative choices for phone, internet and video services."

First we'd like to clarify that Wicked does not provide video or phone service, so we don't compete against Dish or Direct TV.

Secondly, Wicked would like to point out that wireless data services ARE NOT comparable to high-speed broadband services. **Wireless** data will never be capable of providing the type of ultra-high-speed broadband that Wicked has proposed and residents are demanding. This is due to limitations of physics and spectrum allocation. According to Susan Crawford, President Obama's former Special Assistant for Science, Technology and Innovation Policy "wireless access cannot be a direct substitute for high-speed wired services (other than the legacy DSL services, which have already become irrelevant)."⁷

The wireless data market is a separate market from the terrestrial broadband market and shouldn't be used as an example of competitive service. Wireless services are priced differently, marketed differently and managed differently. The most important of these differences is that wireless data providers are exempt

⁶ Baumgartner, Jeff, Multichannel News, "Google Fiber Has 'Good Shot' at Profitability: Analysts", May 28, 2013, <http://www.multichannel.com/distribution/google-fiber-has-%E2%80%98good-shot%E2%80%99-profitability-analysts/143523>

⁷ Crawford, Susan P. (2013-01-08). Captive Audience (Kindle Locations 4698-4699). Yale University Press. Kindle Edition.



from network neutrality rules. This gives carriers carte blanche to discriminate against companies and technologies that the carrier doesn't approve of.

To illustrate these differences, let's take AT&T Wireless's public pricing for their "DataPro 3GB for Smartphone 4G LTE" plan⁸ and look at what it would cost to use it like a terrestrial high-speed broadband connection. A Netflix Super HD 3D video stream consumes 12 Mbps of bandwidth. A 90 minute movie would consume approximately 11 GB (Giga Bytes) of data. AT&T's published pricing indicates that each GB of data cost \$10, so your first 90 minutes of video would cost \$110.

If your kids watched 1 ½ hour of Netflix at this resolution every day in October, your monthly bill would be **\$3,410**. By comparison, this same amount of data would cost **\$49.98** using Wicked's "TinMan" service.

WideOpenWest saying that wireless broadband provides competition to high-speed terrestrial broadband is like saying Lawrence High Varsity Basketball provides competition to KU Men's basketball. They aren't in the same league, heck, they aren't even playing the same sport.

3. "the provision of subsidies, concessions and benefits to one telecommunications competitor over another violates both the letter and the spirit of [47 U.S.C § 253]."

If WideOpenWest is willing to pay the City of Lawrence 5% of its broadband revenue, provide **100% completely free Internet service** to low income families, provide **100% completely free Internet service** to government agencies and not-for-profit companies, allow access to their network on an open-access common-carrier basis at a low fixed price (we are aiming for a wholesale price of \$25/address/month), and build comprehensive WiFi coverage that offers residents access to the City of Lawrence, Douglas County, USD497 and Public Library networks **100% free of charge**, we would propose that the City of Lawrence provide them the same incentives we have requested. This would include access to existing fiber, a waiver on the first \$20,000 in broadband franchise fees each year, access to right-of-way and a \$500,000 grant or forgivable loan to match a \$500,000 investment on the part of WideOpenWest.

As a matter of fact, if WideOpenWest is willing to commit to all of that in writing and behave in a non-impeding, constructive and cooperative manner (i.e. not tangle the whole thing up in delaying litigation, slow rolling contracts, deliberately sabotaging the rollout), we'll match the City's \$500,000 and WideOpenWest's \$500,000 with another \$500,000 in funding to bring the total project budget to \$1.5 Million and expand the pilot to 1,500 homes passed. The resulting network would be jointly owned and managed by Wicked Broadband and WideOpenWest.

Of course we'd want the City to obtain a firm contractual commitment from WideOpenWest to putting forth its best effort to raise another \$10M in equity and \$20M in debt to complete a city-wide fiber-to-the-home network in the next six years. Wicked Broadband is willing to make this commitment and would expect WideOpenWest to do the same. Since WideOpenWest was able to sell \$1.02 Billion in bonds to finance its purchase of Knology in 2012⁹ and already has extensive fiber-optic infrastructure in the community, we don't expect the company will have difficulty securing this funding.

⁸ "DataPro 3GB for Smartphone 4G LTE" plan pricing retrieved October 12, 2013 11:48 AM CDT,

<http://www.att.com/shop/wireless/services/datapro3gb-smartphone4gte-sku5470232.html>

⁹ Mead, Charles, Bloomberg, "WideOpenWest Sells \$1.02 Billion of Debt to Finance Knology Deal", July 12, 2012,

<http://www.bloomberg.com/news/2012-07-12/wideopenwest-sells-1-02-billion-of-debt-to-finance-knology-deal.html>



We would love to be a retail provider and full partner in an open-access common-carrier network, provided the network is built and operated in good faith and that the wholesale price is on the order of \$25/address/month.

If WideOpenWest is not willing to provide these benefits and operate its network on this basis, then they can't complain about unfair treatment. Wicked Broadband is providing extensive benefits to the City of Lawrence and its residents as part of the proposed project. If WideOpenWest wants equal treatment, they need to provide equal benefits.

4. "The City should review the history of CWC and Freenet"

We agree with WideOpenWest on this point. The City should look at what we've accomplished here in Lawrence. Our project has been enormously successful in accomplishing its original goal; providing free service for low-income families. After 8 years of operations we continue to provide **100% completely free** service to a host of low income families and non-profits. We have done so for more than half a decade and will continue to do so as a matter of principle.

Our company also provides **100% completely free** WiFi Internet service to all of Massachusetts St. from 650 Massachusetts to the Douglas County Courthouse.

While other municipal WiFi networks took millions of dollars in direct subsidies and failed, our organization has received **not one penny in direct municipal subsidies** and we are still here providing high quality services. We've made the project successful with access to a few water towers, attachments to light poles that were un-utilized and excess fiber that had no immediate use. We *pay* for our pole attachments and power consumption, the same as the other providers.

We are even obligated to pay additional fees that other providers are exempt from. In addition to providing free service for low income families, free video feeds to all of the City's water tower sites and free WiFi service to the entire downtown corridor we are obligated to pay 5% of our gross broadband revenue to the City of Lawrence, something that neither AT&T nor WideOpenWest has been willing to do.

If the City looks deeper it will see that we are unlike other providers in other ways too. Profit is not and has never been our top priority. It is at most a distant fifth following:

- Our commitment to low income families and not-for-profits in our community
- Constant improvement of our infrastructure and quality of service
- Building an open network that is free of bandwidth caps, usage restrictions and corporate surveillance
- Innovating by developing, adopting and deploying new technologies

As a result, our service is consistently better reviewed by our members and where we have fiber-optic infrastructure, it is much faster, more reliable and less expensive than other services.

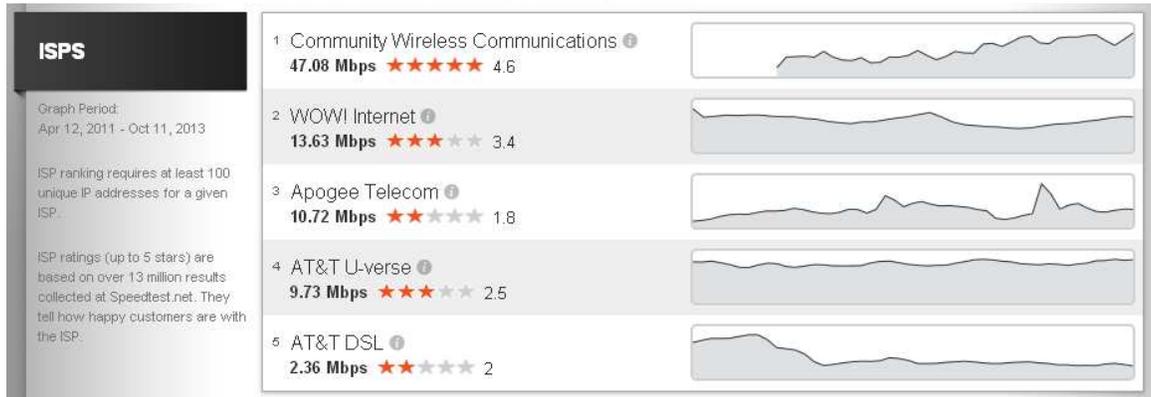


Figure 1: Download Comparison for Lawrence Kansas.¹⁰

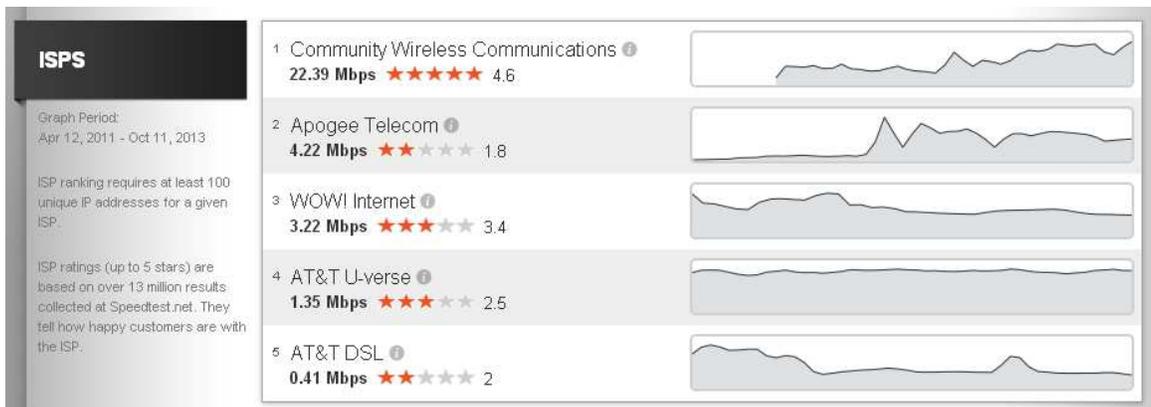


Figure 3: Upload Comparison for Lawrence Kansas.¹⁰

I'd also encourage the City of Lawrence to examine WideOpenWest with the same level of scrutiny shown to Wicked. In the past three years WideOpen west has gone from “200 employees”¹¹ in 2010 to “102 local employees”¹¹, while increasing the rates customers pay. Wages that used to circulate in the local economy are now being exported.

Lawrence’s key economic engine is the rent, retail and utilities paid by the families of University of Kansas students while they attend college. If our community is going to thrive and survive long term, we need to act to make sure those funds continue to circulate here in Lawrence. If we export our rent to out-of-state landlords, our retail dollars to out-of-state enterprises and our utility payments to out-of-state utility companies like WideOpenWest we are going to end up with a community that has slower growth and less dynamism than surrounding communities.

Wicked is not going to presume to tell the City of Lawrence what to do like Ms. Schmidt does when she writes “the City should reject the Application in its entirety”¹. Our goal is simply to obtain material support for an innovative project that, if implemented, will benefit the City of Lawrence enormously. We are open to compromise and are willing to work with any organization that has a goal of improving data access for the citizens of Lawrence.

¹⁰ Netindex.com Results Retrieved October 12, 2013 1:05 PM <http://netindex.com/download/4,2292/Lawrence/>

¹¹ Fagan, Mark, LJWorld.com “Sale of Sunflower Broadband complete”, October 16, 2010, <http://www2.ljworld.com/news/2010/oct/16/sale-sunflower-broadband-complete/>



We'd encourage City leaders to carefully weigh the benefits and the costs of our proposed project and made a decision on the merits of the proposal.

Sincerely,

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