



BB&K

BEST BEST & KRIEGER
ATTORNEYS AT LAW

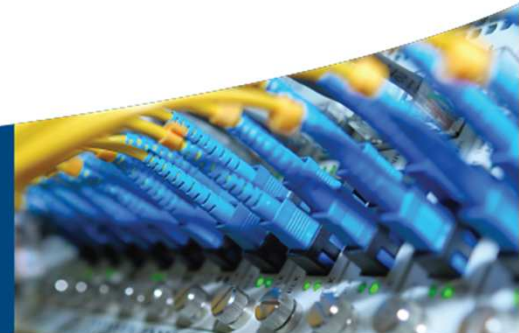
Telecommunications Policy in an IP World

IMLA Annual Conference
San Francisco CA
September 30, 2013

PRESENTED BY

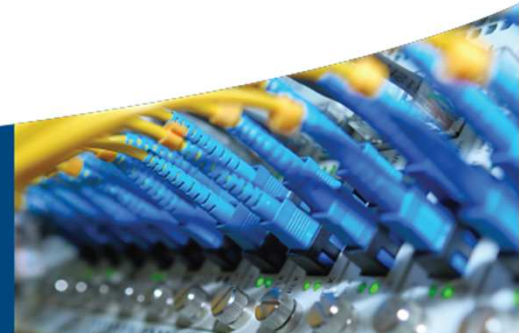
Nicholas Miller

Partner, Best Best & Krieger, LLP



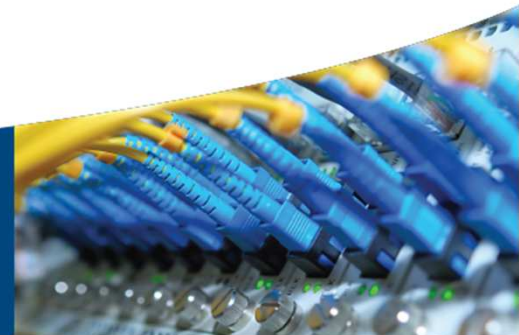
Outline

- What Principles Apply?
- The Traditional “Social Compact” in Telecommunications
- Does IP Technology Change the Analysis?
- The Issues and Local Governments



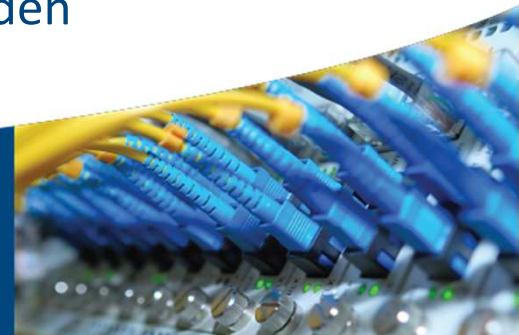
Principles for Local Governments in IP World

- Consumer protection
 - Protection Against Market Abuses
 - Minimal Externalities injuring third parties
 - monopoly power—unfair prices; unfair availability of services
 - Quality of Life of Community
- Economic Development
 - Fair opportunity to participate
 - Efficient use of community resources
 - Promote innovation
 - “Servicer of last resort”



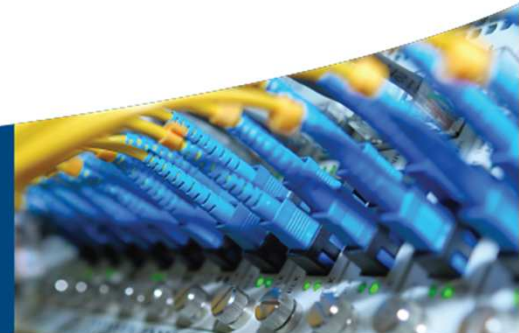
Principles for Local Governments in IP World

- Local Government as landlord/trustee
 - Largest landlord to industry
 - Right of Way is the most valuable resource held in public trust
- Local Government as user
 - “Anchor tenant”
 - Bulk Purchase--More with Less
 - Fair prices and services to reduce taxpayer burden



Some Basic Economics

- Government should support “efficient markets” -- prices = costs + reasonable return
 - Test is ease of market entry
 - Best evidence of problems is “value of service” pricing: vendor has power to segment market, charging discriminatory prices based on each consumer group’s value of service



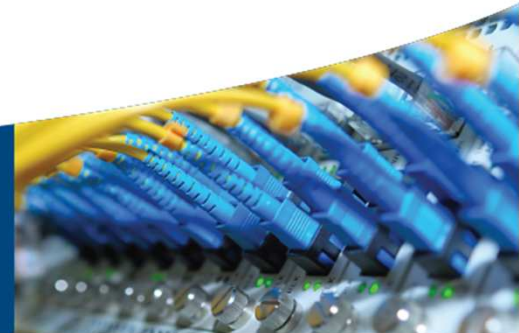
Some Lessons from History

- Telecommunications infrastructure creates substantial barriers to entry
 - Wireline: economies of scale
 - no competitive “last mile” infrastructure
 - Wireless: artificial scarcity
 - Limited spectrum
 - limited number of providers
- Telcos and Cable Operators behave like railroads: discriminate in prices, services, and areas served



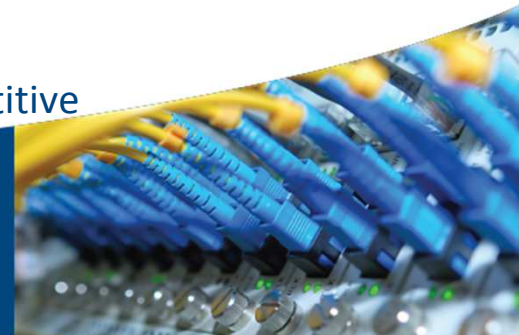
The Traditional “Social Compact”

- Essential (voice) services available to all
 - Universal availability
 - Long distance averaged within and between states
 - Subsidize where needed
 - REA loans
 - Operating subsidies to rural providers
 - Rate subsidies for low income households

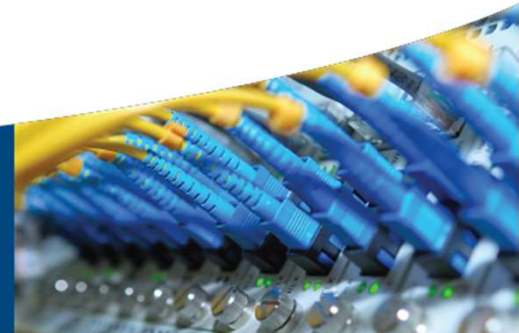


The traditional “Social Compact”

- Competition Where Possible—“Information Services”
- Regulation Where Needed—“Telecommunications Common Carriage”
 - Computer II: regulate transmission facilities (natural monopoly), not software and information services (competitive)
 - 1982 breakup of Bell System—ownership and control of local monopolies separated from competitive long distance and manufacturing businesses
 - 1996 Telecomm Act
 - As local facilities become competitive, forbear regulation; until then, competitive carriers must have access at regulated prices
 - “Information Services” (over last-mile facilities) are competitive

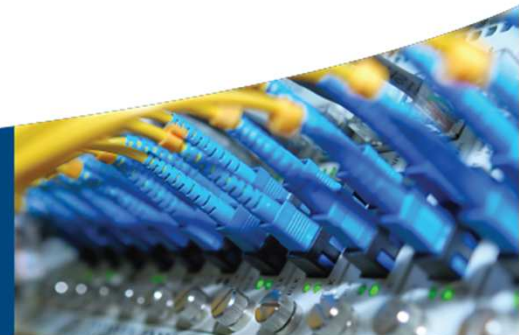


- Does New Technology Change the Analysis?
 - Analog to Digital Transmission Format
 - Switchboards to Computer Switches
 - Copper to Fiber Lines
 - NPSTN to Internet Protocol Networks



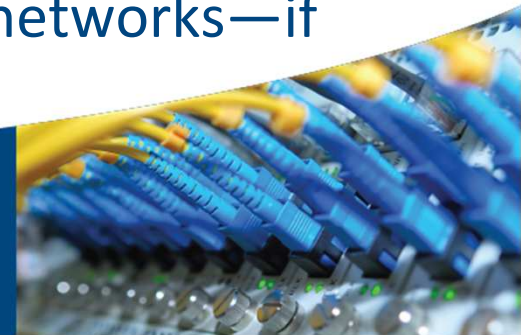
Short Answer: Same Principles; Same Problems

- Principles Don't Change with Technology Change
- Technology does change “cost structures”—so monopoly power may be
 - disrupted or
 - relocated within the supply chain



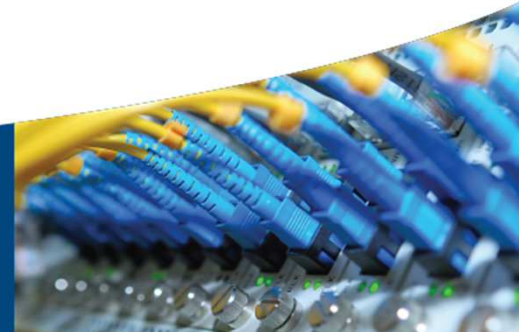
Fiber and Digital Cost Disruptions

- Fiber
 - reduces initial cost of construction, but only enough to support high density overbuilds
 - Increases scale economies--costs decline with increased data volume—increasing monopoly power of first builder
 - Artificial Data Caps
- Digitalization and Packet Switching
 - reduces costs of switching
 - allows multiple routing within and between networks—if interconnected



The Policy Struggle Today

- Propaganda vs. facts—
 - IP technology does not eliminate monopoly power;
 - Unrestrained monopoly power will harm your community
- Providers using 3 step strategy:
 - Use fiber/coax capacity to prevent overbuilds
 - Create artificial scarcity to drive discriminatory prices: data caps; refusal to serve
 - Claim “effective competition” to eliminate carrier obligations



Role for Local Governments

Local Government Interests

- Consumer Protection
- Economic Development

Strategy

- Oppose Data Caps
- Impose Build outs
- Universal Service
- Carrier of Last Resort
- Non Discrimination
- Joint Trenching
- Right of Way Management



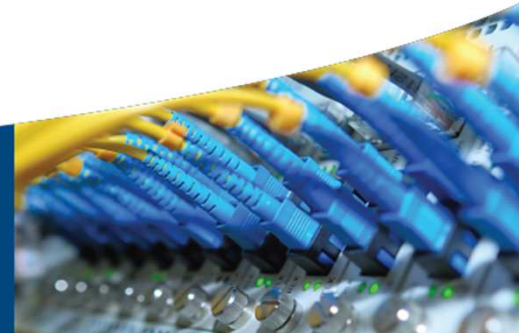
Role for Local Government

Local Government Interests

- Landlord/Trustee
- User

Strategy

- Fair rent paid by all users
- Authority to control siting
- Use Bulk Purchase Power
- Authority to Self-Provision
- Monitor FirstNet



Questions?

Nicholas Miller

Partner

Best Best & Krieger LLP

2000 Pennsylvania Ave NW

Washington DC 20006

202 370 5309

Nicholas.miller@bbklaw.com

www.bbklaw.com

