

RESOLUTION NO. 77-2021 (MS)

By Council Member Dunbar

A Resolution opposing provisions of the Ohio Senate Omnibus Budget Amendment which would effectively prohibit in the State of Ohio the new construction of public-owned broadband networks and negatively impact the ongoing provision of broadband services provided by public-owned networks, thereby harming the ability of Ohio's residents and businesses to participate in the 21<sup>st</sup> century digital economy; and declaring an emergency.

WHEREAS, the COVID-19 pandemic has clearly shown that broadband is an essential service for Ohioans in the 21st century, and is needed to support online school and work, access healthcare and medical information, conduct efficient business operations, and ensure that safety forces can communicate with one another for the protection of the public; and

WHEREAS, the Ohio Senate Omnibus Budget Amendment includes language that would modify Chapter 122 of the Ohio Revised Code (specifically to add Sections 122.4090, 122.4091, 122.4093, 122.4095, 122.4097, and 122.4098) (the "Public-owned Broadband Restriction Amendment") to prevent political subdivisions, including municipalities that currently operate broadband networks, from offering broadband service except to areas that do not have service of 10 Mbps download/1Mbps upload, which is akin to dial-up service; and

WHEREAS, the United States Federal Communications Commission (FCC) is the federal agency responsible for defining minimum broadband service, and the FCC has established that the minimum broadband service standard is 25 megabits per second download (25 Mbps) and three megabits per second (3 Mbps) upload; and

WHEREAS, while many Ohioans lack access to the minimum broadband standard established by the FCC, it is estimated that 98.28% of Ohio households have access to service at the threshold definition used in the Public-owned Broadband Restriction Amendment, leaving only 1.72% of Ohio's population "unserved" under that definition; and

WHEREAS, as a result of the overly restrictive definition of "unserved" in the Public-owned Broadband Restriction Amendment, political subdivisions would effectively be prohibited from operating public-owned broadband networks resulting in local governments being banned from providing service even to those Ohioans that fall below the FCC's minimum broadband service standard; and

WHEREAS, given the massive migration over the last fifteen months of Ohioans to high-speed broadband for educational, employment, medical, and other essential purposes, many experts argue that even the FCC's standard for minimum broadband service is antiquated, and that a 21st century digital economy demands much higher broadband speeds; and

WHEREAS, the Public-owned Broadband Restriction Amendment monopolizes an essential service in the hands of a small number of private companies, who have failed or refused

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to adequately provide affordable, reliable, and sufficient broadband service to many of Ohio's residents and business; and

WHEREAS, publicly-owned, high-speed, reliable broadband networks may be critical to ensure that Ohio's residents and businesses can receive affordable, reliable and sufficient broadband service to be able to fairly compete and prosper in today's economy, providing for: critical communication between public safety forces, including advanced-911 systems; the ability to attract and retain business and employment opportunities in our State; access to meaningful educational opportunities for all Ohioans; a level playing field where Ohioans from all socio-economic backgrounds can obtain the tools they need to succeed; enhanced security for the personal and business data of Ohioans is secure; access to high-quality medical services from anywhere; and advances in new technologies that will enable Ohio to become an active player in the global economy, particularly in areas like autonomous transportation, enhanced security protections and medical advancements; and

WHEREAS, certain existing and already capitalized multi-jurisdiction/agency combined networks being used throughout Ohio for public safety, remote health care, regional economic development, and transportation initiatives would be required to cease operation as a result of the Public-Owned Broadband Restriction Amendment; and

WHEREAS, Ohio schools, port authorities, and other entities falling under the sweeping definition of political subdivisions used in the Public-Owned Broadband Restriction Amendment would also be prohibited from ongoing or future participation in the provision of broadband service to meet the needs of their users; and

WHEREAS, the Public-Owned Broadband Restriction Amendment infringes upon the home rule authority of municipalities that use such authority to provide for the health, safety, and welfare of their residents; and

WHEREAS, the Public-Owned Broadband Restriction Amendment further prohibits political subdivisions, including those with already-established networks, from utilizing federal funds, including the funds being received by political subdivisions in Ohio under the American Rescue Plan, for public-owned broadband systems; and

WHEREAS, the Public-Owned Broadband Restriction Amendment was added to the Ohio Senate Omnibus Budget Amendment with no public discussion or debate and at the last minute, in an attempt to place the profits of a handful of companies ahead of the health, education, safety, and welfare of Ohioans; and

WHEREAS, the health, education, safety, and welfare of the residents of City of Cleveland Heights require the unfettered ability to provide affordable, reliable, and sufficient broadband services at levels that ensure the needs of its residents and businesses can participate in the 21st century digital economy and beyond; and

WHEREAS, this Council has determined that it is in the best interests of the City of its resident to oppose the Public-Owned Broadband Restriction Amendment contained in the Ohio

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Senate Omnibus Budget Amendment to the extent that it would restrict public- owned broadband networks.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights:

SECTION 1. This Council opposes the passage of the Omnibus Budget Amendment to the extent that it would modify Chapter 122 of the Ohio Revised Code (specifically to add Sections 122.4090, 122.4091, 122.4093, 122.4095, 122.4097, and 122.4098) to restrict publicly-owned broadband networks and services.

SECTION 2. The Clerk of Council is hereby authorized and directed to forward a copy of this Resolution to the Governor of Ohio, to the members of the Ohio House and Senate Conference Committee negotiating the State of Ohio's Biennial Budget.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to timely voice opposition to the Public-Owned Broadband Restriction Amendment. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN  
President of the Council

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AMY HIMMELEIN  
Clerk of Council

PASSED: June 21, 2021