

Access to Justice—One Fiber Optic Cable at a Time

BY JOHN VAUGHT



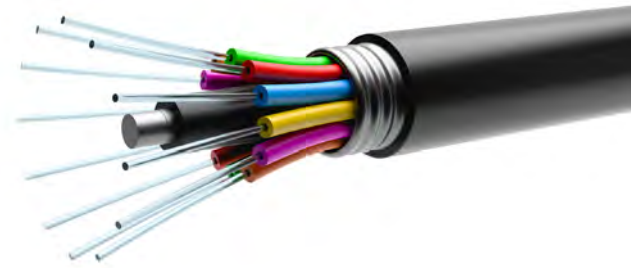
This is the second of three articles in which I discuss the CBA's efforts to bring broadband infrastructure (BBI) to practitioners in greater Colorado. I won't repeat my first article,¹ but I do want to remind members why the CBA is so deeply involved in bringing BBI to this state: The practice of law is no longer pursued with manila folders and 17-inch pleadings. Today's legal communication and research are done over the Internet, and non-metro-area attorneys cannot thrive without the ability to communicate electronically in their practices. As a result, many young lawyers are opting not to practice in Internet-deprived areas.

Just as many lawyers in rural Colorado were without electricity in the 1940s, and without landline telephones until well into the 1960s, many present-day out-state attorneys lack a reliable and speedy Internet connection. We as a professional association must work collectively to solve this problem. If we allow it to persist,

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the number of practitioners in these areas will continue to dwindle, compounding the problem of access to justice in rural Colorado.

The Federal Communications Commission defines broadband as the ability to download at 25 Mbps and to upload at 3 Mbps. Much of Colorado's "access" falls well below these FCC standards—and some locales offer no access at all. As I discussed in my October article, broadband is commonly available in what is known as the "middle mile" via fiber-optic cable that runs along major highways, interstates, and rail lines. The challenge is to entice the private sector to connect this backbone or "middle mile" to residential areas and businesses. This



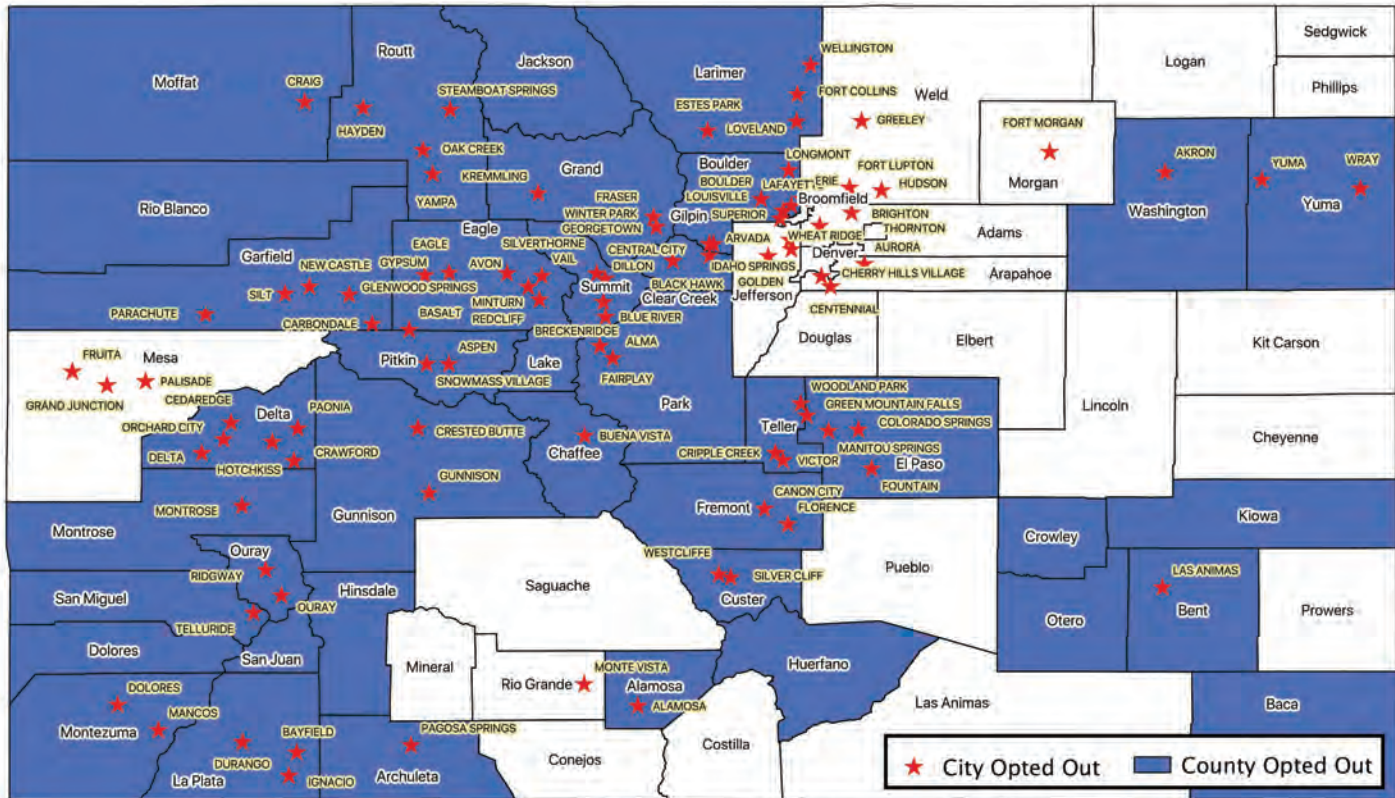
connection, known as the "last mile," makes high-speed service possible.

Presently, with one exception, the private sector decides if this connection will be made based on a return-on-investment analysis. That one exception is if a county or other governmental entity opts, by general election, to take over the connection process that ties the critical "last mile" to the "middle mile," and thus to the rest of the national system.

Associated with my duties as CBA president, I have traveled to bar associations throughout Colorado to encourage local bar members to petition county governments to shoulder the financial burden of connecting the last mile. Specifically, individuals or associations must approach their local city councils and county commissions to request an election to fund middle and last mile infrastructure. To date, 141 municipalities and counties have decided, via a local vote, to opt out of Senate Bill 152² and authorize their elected officials to invest in broadband infrastructure to help establish these connections. (See the accompanying map.) In some cases, however, entities have opted out but have taken no further action. To help you communicate with your county commissioners, the CBA has posted contact information for each county on its website.³ Call or write—political activism is what it will take, whether as an individual or as a local bar.

Further, a recent development could facilitate access to other "low-hanging fruit" that would instantly improve broadband access in rural Colorado. During and after World War II, agencies such as the Rural Electric Association (REA) shouldered the load to bring electricity to every county by stringing copper wiring on poles across America. Easements were negotiated with local farmers and ranchers to facilitate the process. As the years progressed, the REA (and others) upgraded their wiring—eventually to fiber optic cable, which is capable of carrying broadband electrons. In many cases,

LOCAL GOVERNMENTS REPEALING PROHIBITION ON PUBLIC INVESTMENT IN BROADBAND



Source: CCI and Colorado Municipal League (map rev. Nov. 16, 2018).

however, easements (understandably) did not specifically address broadband transmissions. The REA now wants to use its new or upgraded cables to transmit broadband bandwidth in addition to conventional electricity. The REA contends there is no “taking” in transmitting a few additional electrons to current flowing through the fiber-optic cable. Farmers, on the other hand, contend a new party—not a party to the easement—will be making money by use of the easement, and must compensate the farmers. While both arguments have merit, if each easement in Colorado is subject to individual renegotiation, the process will take decades to resolve and all benefits available from underutilized fiber-optic capacity owned by the REA will be lost.

To address this on a statewide basis, Colorado Counties, Inc. (CCI), the statewide association of counties, will promote legislation this session to “[p]ermit the installing of new communications

infrastructure within the existing electric service provider’s easement to carry network traffic not associated with the control and management of the electrical network.”⁴ CCI adopted this position unanimously, following the lead of Indiana, Tennessee, and Missouri, and is now seeking bill sponsors. If adopted, this legislation will amend all easements to allow, without additional compensation, for the transmission of broadband over existing cable and subsequently improve transmission lines.

While the CBA will remain on the legislative sidelines for the moment, it is likely that we will be asked to take a position on this critical proposed legislation. While our concern will be for a process fair to both sides (easement holder and landowner), the CBA will, nonetheless, favor a means of prompt resolution and favor the expansion of broadband service.

The bottom line is that this is not a partisan issue. It is about professionalism, and the oath

we lawyers took when we were admitted to practice law in this state to promote access to justice. Let’s make it happen.

NOTES

1. Vaught, “Expanding Broadband Connectivity in Colorado: Why It Matters and How to Help,” 47 *Colorado Lawyer* 4 (Oct. 2018).
2. Senate Bill 152, passed in 2005 as a result of the lobbying efforts of the private sector, has created a substantial barrier to infrastructure expansion in Colorado. It bars the use of tax revenue to fund the ownership and placement of infrastructure to support broadband. To sidestep this barrier, Colorado municipalities and counties must elect to override the restrictions of SB 152 to allow their local governments to appropriate taxpayer dollars to build their own infrastructure. See *id.*
3. www.cobar.org/For-Members/Committees/Legislative-Policy-Committee/Legislative-Matters.
4. CCI Meeting Minutes, November 13, 2018.



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