

**KIRTON | McCONKIE**

How to Build Your  
Gigabit Network:  
Lessons from  
Municipal Success  
Stories

February 3, 2015  
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## FCC Decision

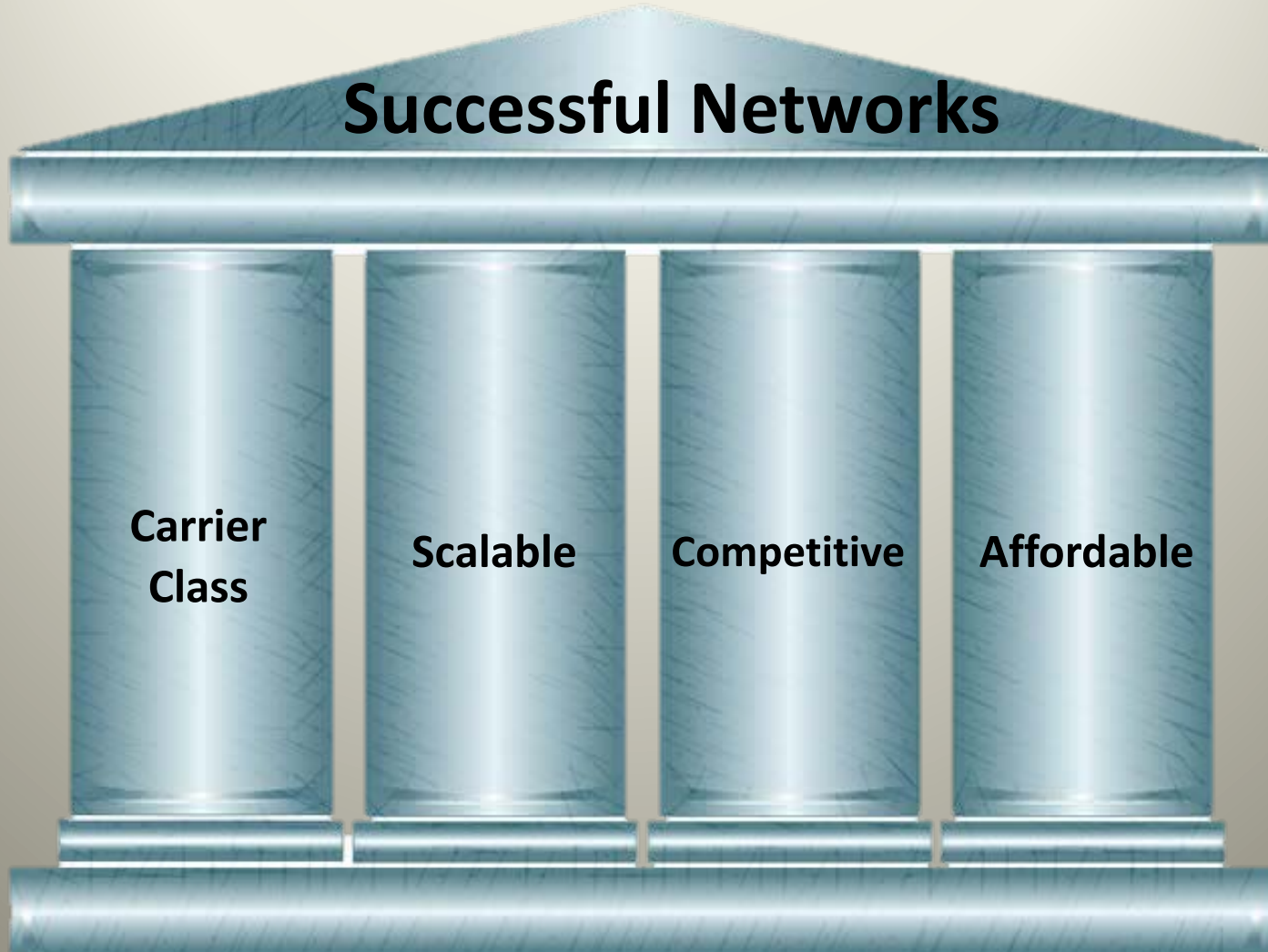
- FCC will vote against restrictions on municipality-supported networks in Chattanooga, Tenn., and Wilson, N.C.
- Limited to pre-empting laws of North Carolina and Tennessee
- FCC is likely to find that “certain provisions of the state laws are barriers to broadband investment.” and that the FCC has authority to act under Section 706 of the Telecommunications Act of 1996

## FCC Continued

- FCC distinguishes its action from the 2004 Supreme Court decision in *Nixon v. Missouri Municipal League*, which upheld states' authority to limit competition by municipalities.
- Anchored in the Interstate Commerce Clause, or power of Congress (and by delegation, the FCC) to regulate interstate commerce.

## FCC Continued

- Once states have granted that authority, they may not impose on community providers regulatory burdens that act as barriers to infrastructure investment and competition.
- FCC likely to act at its open meeting on Thursday February 26, 2015.



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