

# California Anti-SLAPP Project

2903 Sacramento Street  
Berkeley, CA 94702

Mark Goldowitz, Director  
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November 9, 2006

Kim Szczurek  
Finance and Accounting Manager  
Truckee Donner P.U.D.  
11570 Donner Pass Road  
Truckee, CA 96161

RE: *Eagle Broadband v. Roy Thomas Mould*, Appellate Case No. No. H030169

Dear Ms. Szczurek:


Enclosed please find:

**AFFIDAVIT OF PAUL CLIFFORD REGARDING JUDGMENT DEBTOR EAGLE  
BROADBAND, INC.**

Also enclosed please find an additional copy for our records. Please file-endorse this copy and return it to us in the enclosed stamped, self-addressed envelope. A check in the amount of \$6 is also enclosed.

Thank you for your assistance in this matter. Please feel free to contact us should you have any questions.

Sincerely,

  
Jennie Romer

Enclosures

/jr

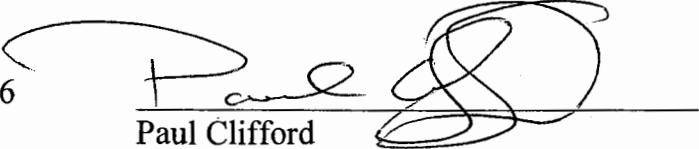
**AFFIDAVIT OF PAUL CLIFFORD REGARDING JUDGMENT DEBTOR  
EAGLE BROADBAND, INC.**

1. I, Paul Clifford, declare, I am an attorney at law duly licensed to practice before the courts of the State of California and am attorney for judgment creditor, Thomas Mould, sued as Doe 5 a/k/a benderanddundat, in Santa Clara County Superior Court action number 1-05-CV050179. I have personal knowledge of the facts contained in this affidavit, unless otherwise indicated, and, if called as a witness, I am competent to testify to those facts. The documents attached to this affidavit are true copies of what they purport to be.
2. On August 9, 2006, an order was entered in the above-referenced action awarding Doe 5, Thomas Mould, \$66,451.68 in attorneys fees and costs. A true copy of the abstract of judgment is attached hereto as Exhibit A. The full amount necessary to satisfy said judgment as of the execution of this affidavit is \$68,145.21.
3. Doe 5, Thomas Mould, desires the relief provided by California Code of Civil Procedure sections 708.710-708.795.
4. I am informed and believe that the judgment debtor, Eagle Broadband, Inc., is currently doing business with the Truckee Donner Public Utility District (TDPUD) with regard to TDPUD's Fiber-to-the-User broadband project. Attached hereto as Exhibit B is a true copy of an article from Wired Magazine, which article was downloaded from the TDPUD website and which discusses said project.
5. I am informed and believe that the judgment debtor's last known address is 101 Courageous Drive, League City, Texas 77573-3925. I am further informed and believe

that the judgment debtor's I.R.S Employer's Identification Number is 76-0494995.

I hereby declare that the above statements are true and correct. Signed under the penalty of perjury under the laws of the State of California, on the date set forth below, in Berkeley, California.

Dated: November 9, 2006

  
Paul Clifford

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, State Bar number, and telephone number):

Recording requested by and return to:

Mark Goldowitz # 96418  
2903 Sacramento Street  
Berkeley, CA 94702  
510/486-9123 x 301

ATTORNEY FOR  JUDGMENT CREDITOR  ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

STREET ADDRESS: 191 N. First Street

FOR RECORDER'S USE ONLY

MAILING ADDRESS:

CITY AND ZIP CODE: San Jose, CA 95113-1090

BRANCH NAME:

PLAINTIFF: Eagle Broadband, Inc.

CASE NUMBER:

1-05-CV050179

DEFENDANT: Does 1 to 25

FOR COURT USE ONLY

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS  Amended

1. The  judgment creditor  assignee of record applies for an abstract of judgment and represents the following:

a. Judgment debtor's

Name and last known address

Eagle Broadband, Inc.  
101 Courageous Drive  
League City, TX 77573-3925

b. Driver's license No. and state: n/a

Unknown

c. Social security No.: 76-0494995

Unknown

d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):

JUDGMENT DEBTOR IS THE PLAINTIFF IN THIS ACTION.

2.  Information on additional judgment debtors is shown on page 2.

4.  Information on additional judgment creditors is shown on page 2.

3. Judgment creditor (name and address): see attached

5.  Original abstract recorded in this county:

a. Date:

b. Instrument No.:

Date: October 2, 2006  
Mark Goldowitz

Mark Goldowitz

(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT OR ATTORNEY)

6. Total amount of judgment as entered or last renewed: \$ 66,451.68

10.  An  execution lien  attachment lien is endorsed on the judgment as follows:

7. All judgment creditors and debtors are listed on this abstract.

a. Amount: \$

8. a. Judgment entered on (date): August 9, 2006

b. In favor of (name and address):

b. Renewal entered on (date):

9.  This judgment is an installment judgment.

11. A stay of enforcement has

a.  not been ordered by the court.

b.  been ordered by the court effective until (date):

12. a.  I certify that this is a true and correct abstract of the judgment entered in this action.

b.  A certified copy of the judgment is attached.

Kiril Torre  
Chief Executive Officer/Clerk  
A. FLORESCA  
Deputy



This abstract issued on (date):  
OCT 30 2006

Attachment

3. Doe 5 a/k/a Thomas Mould  
c/o Mark Goldowitz, Esq.  
2903 Sacramento St.  
Berkeley, CA 94702

# TRUCKEE DONNER

## PUBLIC UTILITY DISTRICT

Telecommunications/Broadband

Article from Wired Magazine, Broadband

GO

11/12/2004

Wired News Wire service news & photos Animations Wired Magazine HotBot (the Web) Public Fiber Tough to Swallow By John Gartner Story location: <http://www.wired.com/news/technology/0,1282,64902,00.html> 02:00 AM Sep. 13, 2004 PT

Across the United States, towns and cities dissatisfied with data services provided by the private sector are now delivering high-speed connectivity to the doorstep, often at lower prices.

In the process, however, municipalities are facing increasingly fierce opposition from cable operators and telecommunications companies unhappy with the competition. In some cases, cable companies and telcos are fighting to bar utilities entirely from providing broadband in the future. During the past few years, public utilities across the United States began to expand their basic services from water, electricity and trash removal to include internet access, cable television and voice networks delivered over fiber optic networks. Municipalities say they are filling a void for a service essential to their community.

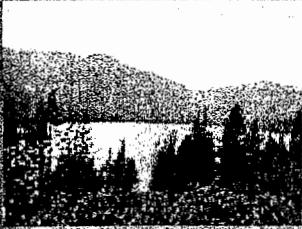
According to Alan Harry, director of telecommunications at the Truckee Donner Public Utility District <<http://www.tdpud.org/>> , having broadband access today can make or break a town's development.

"It's like the spread of communities in the 1800s. Those that were along the railroad grew, while the others died out," he said.

In Truckee, a mountain community near Lake Tahoe in California, USA Media Systems, recently acquired by Cebridge Connections <<http://www.cebridge.net>> , has a monopoly on broadband internet and cable TV access, according to Harry. Cable modem users there have often complained about the service provided by the company and satellite dish services were not a viable alternative because large snowfalls frequently block reception, he said.

The Truckee utility researched the feasibility of creating a fiber optic network, and spent four years obtaining the permits, funding and partners needed to launch an integrated service that combines cable TV, voice over IP, security services and high-speed internet access. The utility formed a partnership with a private company, Eagle Broadband, to deliver the services.

Construction on the project was supposed to start in October, but in



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September, Cebridge Connections filed an objection with the local permit authority. As a result, the permit authority is now reconsidering whether the city can go ahead with its plan.

Harry said the fiber-optic network, which will cost \$24 million, will provide faster internet access at 1.5 Mbps than DSL or cable modems (typically from 256 to 768 kilobits per second).

"We have a tremendous amount of people from Silicon Valley who want to work from their second home, and they demand fast access," he said.

Pete Abel, vice president of corporate communications at Cebridge Connections, said the company raised an objection about the Truckee fiber rollout because of concerns that its rates as an electricity customer would go up if the new service loses money. Abel said Cebridge reviewed the business plan and found it not to be financially viable.

"They are in effect outsourcing the cable services to a Texas company (Eagle Broadband) and passing it off to customers as their operation," Abel said. This arrangement amounts to unfair competition because Eagle Broadband receives "tax exempt public financing" that is not available to other cable and telecommunications providers, Abel said.

In addition to Truckee, municipalities in Jackson, Tennessee; Kutztown, Pennsylvania; Marietta, Georgia and a broad effort in Utah have all faced opposition from cable and telecommunications companies.

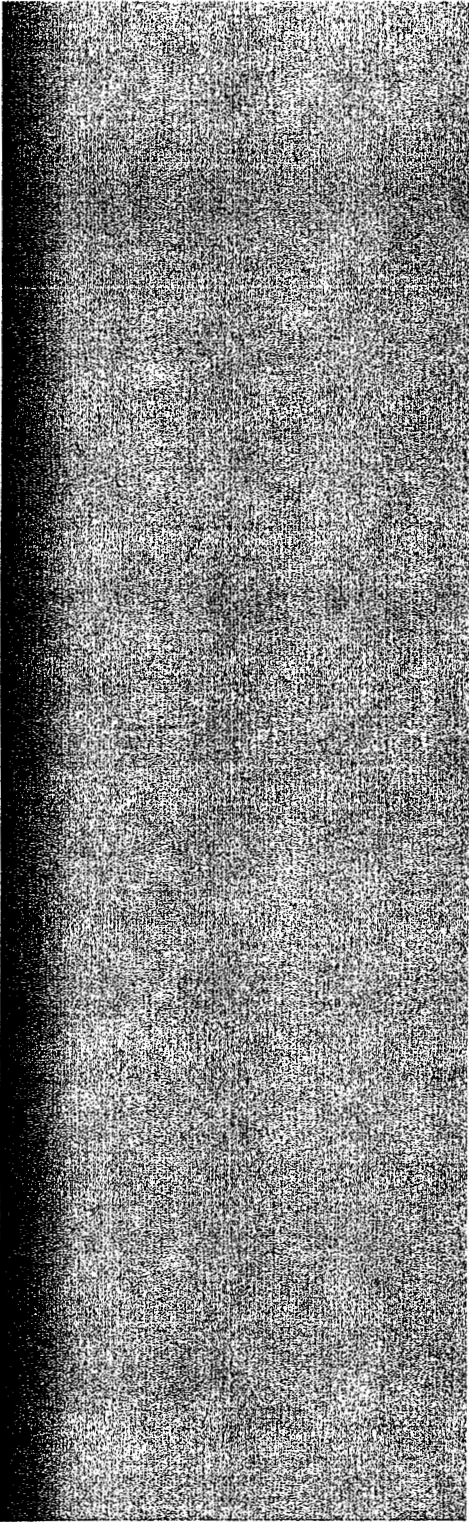
The largest municipally funded project is UTOPIA, < <http://www.utopianet.org>> the Utah Telecommunication Open Infrastructure Agency, which will spend \$340 million to deliver fiber to the home in 14 cities serving 140,000 residential and business customers.

"These are quite risky investments with other people's money," said Tom Lenard, vice president of research at Progress and Freedom Foundation < <http://www.pff.org>> , a free-market think tank. Lenard said that municipalities who provide services that haven't been attractive to the private sector are likely to lose money.

"All the empirical evidence has been that they are losing propositions," Lenard said. He said case studies of fiber-to-the-home projects in Ashland, Oregon and Lafayette, Louisiana, show that "telecom is a tough business" for private ventures who have more expertise than municipal agencies.

Kutztown Borough manager James Vettraino said his town's fiber-access project is on schedule to break even after seven years. Vettraino said there are currently 600 customers using data, video and voice services in the community.

"We wanted to have broadband throughout the community as an economic development tool for businesses, and we were not happy with the availability (at the time)," he said.



Vettrano said the incumbent cable TV provider, Service Electric, voiced opposition to the project at several town hall meetings. He said the cable provider also dropped prices to be more competitive in Kutztown while not changing rates in areas where it continues to have a monopoly.

Kutztown was the first community in Pennsylvania to offer fiber to the home for its residents, and a bill <<http://www.legis.state.pa.us/WU01/LI/BI/BT/2003/0/HB0298P0344.HTM>> in the Pennsylvania House could make it the last. The aim of the Government Competition Against Private Enterprise Act (HB298) is to "protect economic opportunities for private enterprise against unfair competition by government agencies" in services "beyond their government function."

The bill, which was drafted a few months after Kutztown began providing fiber to the home, is a direct result of the threat of competition to cable TV and telecommunications providers, according to Nicholas Giordano, a telecommunications strategist at consulting firm Affinity Group <<http://www.theaffinitygroup.net/affinity/site/default.asp>> .

Giordano, who previously worked for Pennsylvania's telecommunications department, said that data and video services providers have made it known to state legislators that they do not want to battle with municipalities for market share.

"It shows how threatened they are by that activity (in Kutztown)," he said.

Giordano said small municipalities might encounter difficulties in delivering fiber-based services because "they aren't familiar with managing these kinds of information systems." But he believes communities that are not receiving adequate broadband and cable service from the private sector should be able to fill the void themselves.

"Bandwidth is a necessity for the public good like water or electricity," he said. "You are not going to get a creative society (which) will be the engine of job growth in places where they can't have access to information."

Website design & maintenance by  
**NevadaPages Internet Services**

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