WEST VIRGINIA CODE CHAPTER 31G ARTICLE 1A

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§31G-1A-1. Office of Broadband; Director of Office.

There is hereby continued an Office of Broadband, which shall be organized within the Department of Commerce under the authority of the Secretary of Commerce. The Office of Broadband shall be managed by a director, who shall report to the Executive Director of the Division of Economic Development.

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§31G-1A-2. Powers and duties of the Office of Broadband generally.

(a) The Office of Broadband shall have the following duties:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile, and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The office may request the assistance of the Legislative Auditor in gathering this data;

(3) Cooperate and assist in the expansion of electronic instruction and distance education services;

(4) Gather and report data regarding the adoption by broadband services, by speed, and by community, separately for residential and non-residential consumers;

(5) Gather and report data regarding prices charged for broadband services to residential and non-residential consumers, including, but not limited to one-time fees, monthly fees, termination fees, equipment fees, and other fees;

(6) Incorporate the goal of digital equality in its fulfillment of responsibilities, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy, and economy;

(7) Provide for the increased public awareness of issues concerning broadband services; and

(8) Report to the Joint Committee on Government and Finance of the West Virginia Legislature on or before December 30 of each year.

(b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is hereby granted the authority necessary and appropriate to carry out and effectuate the purpose and intent of this article, including, but not limited to, the authority to:

(1) Make and execute contracts, commitments, and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state and categorization of areas within the state;

(2) Acquire by gift or purchase, hold, or dispose of real or personal property in the exercise of its powers and performance of its duties as set forth in this article;

(3) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory duties;

(4) To oversee the use of conduit installed pursuant to §31G-3-2 of this code;

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(5) Make recommendations to the Legislature on bringing broadband service to areas of the state;

(6) Contract with and retain outside expert consultants to assist in the purposes of this article;

(7) Create guidelines for, and recommend to the Legislature, a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber;

(8) Create guidelines for, and recommend to the Legislature, a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber;

(9) Coordinate with the Consumer Protection Division of the Office of the Attorney General to provide for the following consumer protections:

(A) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber;

(B) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(C) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service; and

(D) A broadband operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber; and

(10) Perform any and all other activities in furtherance of the purposes of this article.

(c) In furtherance of the purposes of this article, the Office of Broadband is permitted to seek non-state funding and grants. The Office of Broadband may utilize funding and grants to support the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may additionally disburse such moneys to fund projects and initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

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§31G-1A-3. Mapping of areas within state.

(a) Based on its analysis of data, broadband demand, and other relevant information, the Office of Broadband shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specific designations of unserved areas of the state. With respect to unserved areas of the state, the Office of Broadband shall, to the extent it is able, map project areas with funding provided by public entities. For the purposes of this section, the term "unserved area" means an area lacking broadband internet service from at least one terrestrial broadband internet service provider offering all of the following in at least one service plan to residential consumers: (1) an actual downstream data rate of at least 25 megabits per second; and (2) an actual upstream data rate of at least three megabits per second; and (3) unlimited data usage without overage charges; and (4) unlimited data usage without "throttling" or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(b) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting estimated or actual downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. This map shall be known as the West Virginia Broadband Availability Map.

(c) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting the adoption of broadband services, separately by estimated or actual downstream data rate and upstream data rates, in a particular region, area, community, street or location. Any such mapping shall provide data separately for residential connections and non-residential connections. This map shall be known as the West Virginia Broadband Adoption Map.

(d) The mapping provided for in this section may be based on information collected or received by the Broadband Council and Office of Broadband, including, but not limited to, data collected from:

(1) State and federal agencies or entities that collect data on broadband services;

(2) Industry provided information;

(3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to §31G-1A-6 and §31G-1A-9 of this code; and

(4) Other data sources procured by or provided to the Office of Broadband or the Broadband Council.

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(e) Any entity that has received or hereinafter receives state or federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the Office of Broadband for use in mapping and shall furnish the location, type, and prices of any broadband services subscribed to by residential (and separately non-residential) consumers as a result of the installed infrastructure.

(f) The mapping and designations provided for under this section may be revised on a continuing basis by the office as warranted by the data and information provided.

(g) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband services may exclude from public accessibility and availability:

(1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services;

(2) Personal name and personal IP addresses connected with particular data rates; and

(3) Information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the Office of Broadband aware of such confidential designation: *Provided, however*, That unless the Office of Broadband determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

(h) All executive agencies which have permitting and/or regulatory approval authority over any project permitted or reviewed and approved pursuant to §17-2E-3 of this code shall cooperate with and provide all necessary information to the Office of Broadband to determine the feasibility and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps. AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant information can be included in a centralized GIS mapping system to be maintained by the Office of Broadband for utilization by the private sector when extending new fiber infrastructure pursuant to §17-2E-1 *et seq*. of this code. AREA mapping shall also include, but is not limited to, any areas already granted Finding of No Significant Impact ("FONSI"), categorical exclusions ("CATEX"), areas prior approved by the West Virginia State Historic Preservation Office ("SHPO"), and all West Virginia Division of Highways mapping for permits that include installation of infrastructure.

(i) If in analyzing the consumer-supplied speed data for an area of two square miles or more, the Office of Broadband finds that speeds supplied by a provider are less than 80% of the lowest speed tier advertised by the provider in more than 40% of the tests in that area in a calendar year, then the Office of Broadband shall notify the Consumer Protection Division of the Attorney General's Office, and shall transmit such records of any relevant speed tests in their custody to the Consumer Protection Division of the Attorney General's Office.

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§31G-1A-4. Collection of data.

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the Office of Broadband to make informed policy and legislative recommendations, the Office of Broadband may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the Office of Broadband shall not be deemed public information and is not subject to public release or availability pursuant to §29B-1-1 *et seq*. of this code.

(c) Any data collection program established by the Office of Broadband shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The Office of Broadband may establish guidelines and additional rules governing a data collection program through the legislative rulemaking pursuant to the provisions of §29A-3-1 *et seq*. of this code.

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§31G-1A-5. Protection of proprietary business information.

(a) Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 *et seq*. of this code: *Provided*, That the information is identified as or would reasonably be contemplated to be confidential information when submitted to the Office of Broadband.

(b) Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual, or agency other than officials or authorized persons of the state.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Executive Director of the Division of Economic Development, who is authorized to establish and administer appropriate security measures.

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§31G-1A-6. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Commerce may propose rules for legislative approval pursuant to the provisions of §29A-3-1 *et seq*. of this code.

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§31G-1A-7. Broadband Development Fund.

(a) The Broadband Development Fund is hereby created in the State Treasury. The fund shall be administered by the Secretary of the Department of Commerce and shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated to the fund by the Legislature, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in subsection (b) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq*. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq*. of this code: *Provided*, That for the fiscal year ending June 30, 2022, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(b) Monies of the Broadband Development Fund may only be expended for the following purposes:

(1) Expenses for the administration of the Office of Broadband;

(2) Line extension advancement and development projects, including expansion of existing fiber and cable networks;

(3) Major broadband project strategies, including new networks or major expansions of existing networks;

(4) GigReady incentive projects, including a state incentive for ISP and local governments and organizations to pool some of their federal American Rescue Plan Act allocations or other local funding;

And

(5) Wireless Internet Networks, including expansions or upgrades of existing fixed wireless networks.

(c) Except funds expended for the administration of the Office of Broadband, monies of the Broadband Development Fund may only be expended for projects authorized by subsection (b) of this section that have been certified to the Joint Committee on Government and Finance by the Director of the Office of Broadband or the Secretary of the Department of Commerce prior to making the expenditures.

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