

Dear Messrs Chairmen:

On behalf of my Office and the Secretariat of Public Safety and Homeland Security, I am writing to provide our review on expanding access to wireless cellular services in unserved and underserved areas of the Commonwealth, answer important components of an overall plan, and make recommendations for improving access per Clause 3 of Chapter 844 of the 2018 Acts of Assembly.

The Secretariats of Commerce and Trade and Public Safety and Homeland Security convened a group of stakeholders that included representatives from the Department of Housing and Community Development, the Virginia Economic Development Partnership, the Virginia Tobacco Region Revitalization Commission, and the Department of Emergency Management, industry representatives, and representatives of affected communities (see Addendum A) on Monday, September 24. This working group considered the following components: a definition of unserved and underserved areas, identification of barriers to access to wireless services in such areas, a proposed expedited review process for such areas, identification of ways to encourage industry to locate in such areas, and consideration of a lower fee for such an expedited review process.

Responses during the convened meeting and electronic communications to follow are the basis for this report and recommendations. To streamline the process, the working group amended the five components into three questions: 1) Define unserved levels of service areas in the Commonwealth; 2) Identify barriers of access to wireless services and ways to encourage industry to locate to such areas; and 3) How can localities further expedite the process and lower fees associated with that process?

*1. How do you define unserved levels of service areas in the Commonwealth?*

There is much debate over the difference between “unserved” and “underserved.” It is our recommendation that “unserved” areas should be defined consistent with the Federal Communication Commission's eligibility criteria for the Mobility Fund. The FCC’s Mobility Fund program will provide a total of \$4.5 billion over ten years to support the deployment of 4G LTE wireless service in unserved areas. In order to be eligible for Mobility Fund support, an area must be unserved by 4G LTE at 5 megabits per second or faster.

It is our recommendation that “underserved” areas should be defined as any specific geographic locations where 4G LTE mobile wireless service is not available even if 3G wireless service is available. Also, in areas served by fixed wireless service we recommend “underserved areas” to include anything less than the FCC definition of broadband at 25/3 Mbps connectivity.

Suggestions on how to determine unserved/underserved areas:

- Recognizing the inadequacy of currently-available maps, the Commonwealth should perform its own survey. With a small expenditure to reimburse expenses, and labor provided by interns, new data could be gathered about the availability and quality of wireless service along selected primary and secondary state roadways simply by having teams of interns drive the selected roadways and log signal strength along their route. This data would complement other available data and serve as a useful tool to validate existing programs and assertions regarding coverage.

*2. Identify barriers of access to wireless services and ways to encourage industry to locate to such areas:*

Low or no return on invested capital is an impediment to deployment. Fiber deployment or other backhaul in low population areas can be especially problematic because of the high ratio of cost for deployment per individual served and also less competition. Geography and terrain can make it difficult and costly to deploy in unserved areas. Additionally it's time consuming and expensive to access federal and state properties, i.e. national forests/parks, state forests/parks and military installations.

Suggestions on incentives for rural deployment:

- State grant funding (not a USF) that is technology neutral. Any fund disbursements must come through a competitive bidding process, and should focus on areas that do not receive funding from the FCC's Mobility Fund.
- The chief barrier to wireless service access in unserved areas is economic. Specifically, the potential return on investment for private capital expenditure does not justify the risk for a wireless service provider, or wireless infrastructure provider, to invest. The Virginia Telecommunications Initiative (VATI) fund provides the necessary capital to take the risk off the private sector and thus we recommend an increase in the appropriation level to the VATI fund to meet the demand in grant applications, so that areas in need of both broadband and wireless services can benefit.
- Educate government agencies on importance of wireless deployment. Possibly have CIT develop model zoning guidelines consistent with most recent laws and Federal Orders that will improve zoning processes.
- Access to local government structures without zoning at cost-based rates.
- Right of Way (ROW) fees eliminated or cost-based in compliance with the FCC's September 27, 2018 Declaratory Ruling.

*3. How can localities further expedite the process and lower fees associated with that process?*

The stakeholder group was not well aligned on this component. Because there were competing opinions on this component, we felt it was best to present both sides with no jointly-agreed-upon recommendation.

Localities Perspective

Localities were not aware of specific issues that warranted an expedited review process with lower fees for infrastructure to “unserved areas”. They caution that an expedited process with lower application fees may have the unintended effect of delaying the provision of service to unserved areas. This is because the technical nature of review requires an adequate level of analysis so that a locality can reasonably balance any siting concerns raised by constituents with the need to provide service. Additionally, Localities do not think that “deemed approved” language is appropriate or necessary and this issue was discussed and rejected by the General Assembly in the legislation that passed. Localities have the right to create their unique communities through the zoning process.

#### Industry Perspective

The service providers felt localities can elect to charge lower application fees than what is in state law. Currently, the law requires only “cost-based” fees for new structures that are larger than the small cell structures and must go through full zoning. In some jurisdictions, that can be over \$10,000. Localities could also choose to lower fees for access to ROW.

VDOT controls 80% of ROWs and current fees are \$1,000, \$3,000 or \$5,000 for new structures depending on height. Those fees are definitely better than the \$24,000 fee that was in place, but still far too high, especially compared to other states, which often do not charge a ROW fee at all. Those rates are especially troubling in rural areas given the per unit economics of rural deployment, i.e., spreading fees over much smaller potential customer base. There’s no state law capping ROW fees for new structures in non-VDOT controlled ROWs. Localities could choose to charge no ROW fee or implement a low fee for new structures to encourage deployment.

Finally, applications for new structures taller than 50 feet should be deemed approved no more than 90 days after filing (current law is 150 days). New, taller structures (more than 50 feet) are more likely to be deployed in more rural areas.

On behalf of Secretary Moran and myself, I appreciate the opportunity to share the working group’s recommendations. You’ll see similarities in the Governor’s forthcoming broadband plan and we plan to continue to look for ways to improve efficiency and enhance service.

Best regards,  
Brian Ball