

Broadband Advisory Council

Annual Report

12-20-2019

Broadband Advisory Council

Introductory Background

The Broadband Advisory Council was established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council's purpose is to advise the Governor on policy and funding priorities to expedite deployment and reduce the cost of broadband access in the Commonwealth. The Council was created from a recommendation by the Broadband Roundtable, established by Governor Kaine in 2007, and was codified during the 2009 legislative session (HB2423). The Council's duties include:

- Monitor the broadband-based development efforts of other states and nations in areas such as business, education, and health;
- Advise the Governor, Secretary of Technology (now Secretary of Commerce & Trade), and the General Assembly on policies and strategies related to making affordable broadband services available to every Virginia home and business;
- Monitor broadband-related activities at the federal level;
- Encourage public-private partnerships to increase the deployment and adoption of broadband services and applications;
- Annually report to the Governor and the Joint Commission on Technology and Science on the progress towards the goal of universal access for businesses and on the assessment of Commonwealth broadband infrastructure investments and utilization of Council-supported resources to promote broadband access;
- Periodically review and comment on the quality, availability, and accessibility of state-maintained or funded broadband resources and programs, including but not limited to: Virginia Resources Authority Act funding of the "Online Community Toolkit"; the Center for Innovative Technology's mapping and outreach initiatives; investments made through programs administered by the Department of Education, Department of Housing and Community Development, Department of Public Rail and Transportation, and the Tobacco Indemnification and Community Revitalization Commission; and
- Monitor regulatory and policy changes for potential impact on broadband deployment and sustainability in the Commonwealth.

The Broadband Advisory Council is comprised of 17 members: 4 delegates, 3 senators, 3 Secretaries including the Secretaries of Commerce and Trade and Agriculture and Forestry, and representatives from Virginia Cable Telecommunications Association (VCTA), Virginia Telecommunications Industry Association (VTIA), Virginia, Maryland and Delaware Association of Electric Cooperatives, a wireless service authority, Center for Rural Virginia, Virginia Chapter of WISPA, and local government. Appointments still need to be made to fulfill the representation of the third Secretary, Virginia, Maryland and Delaware Association of Electric Cooperatives, and a wireless service authority. The council members are:

Delegate Kathy Byron (Chair)
Senator Frank Ruff (Vice Chair)
Senator Ryan McDougle

Senator Glen Sturtevant
Delegate James Leftwich
Delegate Emily Brewer
Delegate Paul Krizek
Secretary Bettina Ring
Secretary Brian Ball
Ray LaMura, VCTA
Dumont Walton, VTIA
Kristie Helmick Proctor, Center for Rural Virginia
James Carr, Virginia Wireless Internet Service Providers (WISPA)
Rosemary Wilson, Local Government Representative (Virginia Beach)

Staff: Chuck Kirby (CIT), Caroline Luxhoj (CIT), Jean Plymale (CIT), Jeff Sharp (DLS)

Summary of 2019 Meetings

May 22, 2019 Meeting

The Broadband Advisory Council met on May 22, 2019 in Virginia Beach, Virginia.

The Council received an update from Department of Legislative Services (DLS) regarding broadband-related legislation from the 2019 General Assembly session. Below is a summary of broadband legislation from the 2019 legislative session.

Passed

HB 2541 -Del. Byron

Office of Telework Promotion and Broadband Assistance; Broadband Advisory Council; expiration. Extends the expiration of the Office of Telework Promotion and Broadband Assistance from July 1, 2019, to July 1, 2021. The bill also repeals the expiration of the Broadband Advisory Council, and alters and expands from 14 to 17 its total membership. This bill is identical to SB 1618(Sen. Edwards).

HB 2141 -Del. Thomas

Local services districts; broadband and telecommunications services. Authorizes a local governing body, with respect to a service district, to contract with a nongovernmental broadband service provider who will construct, maintain, and own communications facilities and equipment required to facilitate delivery of last-mile broadband services to unserved areas of the service district, provided that the locality documents that less than 10 percent of residential and commercial units within the project area are capable of receiving broadband service at the time the construction project is approved by the locality.

HB 2691 -Del. O'Quinn

Electric utilities; provision of broadband services. Requires the State Corporation

Commission to establish pilot programs under which Dominion Energy and Appalachian Power may submit a petition to provide or make available broadband capacity to nongovernmental Internet service providers in areas of the Commonwealth that are unserved by broadband. The costs of Dominion Power and Appalachian Power's proposals are each capped at \$60 million annually. The provision of such broadband capacity is declared to be in the public interest. The measure authorizes the utilities to recover the net costs of the pilot program from customers through a rate adjustment clause. The measure authorizes such utility to own or lease broadband capacity equipment. The measure requires the Commission to conduct proceedings to determine whether an area is unserved by broadband.

Failed

HB 1755 -Del. Carter

Broadband services; prohibited features. Prohibits a provider of broadband services from offering or renewing services to consumers within any locality in the Commonwealth in which certain media is throttled, blocked, or prioritized on the basis of its content, format, host address, or source.

HB 2573 -Del. LaRock

Utility easements; pole attachments. Declares that a public service company that has acquired a prescriptive easement that is used to provide electrical service is deemed to have the right to grant to a provider of broadband or other telecommunications services the right to attach its wires and appurtenant facilities to the public service company's poles, subject to the conditions that the public service company not charge pole attachment fees for five years and that the public utility and telecommunications service provider equally share the costs of making the poles ready.

SB 1317 -Sen. Edwards

Incentives for telecommunications companies; provision of wireless broadband services. Directs the Tobacco Region Revitalization Commission to award at least \$10 million per year in grants to cover expenditures for the purchase and installation of wireless and broadband equipment to rural service areas in the Commonwealth. The bill defines "rural service areas" as any locality with a mean broadband download speed of less than 10 megabits per second, and a mean broadband upload speed of less than one megabit per second. The bill also establishes a sales tax exemption, which would be phased in over four years, for property sold or leased to a telecommunications company and used directly in the rendition of its public service.

SB 1711 -Sen. Carrico

Broadband service providers; fiber optic broadband lines; railroad crossings. Establishes a procedure by which a broadband service provider may obtain approval to place its fiber

optic broadband lines across a railroad right-of-way. The measure provides that a broadband service provider may submit to the railroad company a notice of intent to construct, accompanied by a specification exhibit and a standard crossing fee of \$800; if the railroad does not claim within 35 days that special circumstances exist or that the required specification exhibit is inadequate or incomplete, the broadband service provider is deemed to have authorization to commence placing the fiber optic broadband line across the railroad's right-of-way. The measure provides that a railroad company that believes that special circumstances exist may file a petition for relief with the State Corporation Commission. The bill requires the Commission to adopt regulations prescribing the terms and conditions for a crossing.

SJ 311 -Sen. Boysko

Study; Department of Housing and Community Development; permitting processes for broadband deployment and renewable energy construction projects; report. Requests the Department of Housing and Community Development to study the permitting processes in the Commonwealth for broadband deployment and renewable energy construction projects.

The Council also received an update from the Department of Housing and Community Development (DHCD) regarding the Virginia Telecommunications Initiative (VATI) program. At the time of this meeting, the 2019 VATI program received 31 applications requesting a \$10.3 million in funding from 25 localities partnering with 17 different internet service providers. These applications leveraged \$13.2 million in private and local spending. The program awarded \$4.9 million, connecting 14,923 Virginia residents, businesses, and community anchor institutions.

The Council heard presentations regarding the Transoceanic Cables in Virginia Beach, as well as the Hampton Roads Regional Connectivity Ring. The Regional Connectivity Ring is a 103.11 mile dark fiber, open access ring, which will serve as the foundation for smart region development and digitally-empowered communities. Five Southside cities collaborated together and funded the 30% design for the Regional Connectivity Ring. Design for the Ring is set to be complete by May 2020 and construction is set to be complete by July 2021.

September 18, 2019 Meeting

The Council met again on September 18, 2019 in Richmond, Virginia. Lancaster County presented on Lancaster's efforts to expand broadband and the challenges that they and other rural localities face in regards to broadband.

DLS presented on railroad crossing legislation from other states. Below is a summary of that legislation.

Minnesota Statute

237.045 RAILROAD RIGHTS-OF-WAY; CROSSING OR PARALLELING BY UTILITIES.... Subd. 6.Standard crossing fee.

(a) Unless otherwise agreed by the parties or determined under section 237.04, a utility that crosses a railroad right-of-way, other than a crossing within a public right-of-way, must pay the railroad a one-time standard crossing fee of \$1,250, adjusted as provided in paragraph (e), for each crossing. Except as otherwise provided in this subdivision, the standard crossing fee is paid in lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse the railroad for direct expenses incurred by the railroad as a result of the crossing. No other fee or charge may be assessed to the utility by the railroad.

(b) In addition to the standard crossing fee, the utility shall also reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing...
<https://www.revisor.mn.gov/statutes/cite/237.045>

Nebraska Statute

86-164. Telecommunications carrier; placement of line, wire, or cable across railroad right-of-way; application; petition; hearing; order; standard crossing fee; expenses; agreement

....(3)(a) Except as provided in subsection (4) of this section or as otherwise agreed to by all parties, if a telecommunications carrier places a line, wire, or cable across a railroad right-of-way pursuant to this section, it shall pay the railroad carrier, owner, manager, agent, or representative of the railroad carrier a one-time standard crossing fee of one thousand two hundred fifty dollars for each applicable crossing. In addition to the standard crossing fee, the telecommunications carrier shall reimburse the railroad carrier for any actual flagging expenses associated with the placement of the line, wire, or cable.

(b) The standard crossing fee shall be in lieu of any license fee or any other fees or charges to reimburse the railroad carrier for any direct expense incurred...
<https://nebraskalegislature.gov/laws/statutes.php?statute=86-164>

North Dakota Statute

Chapter 49-09.1 Railroad Right of Way Crossings

49-09.1-05. Crossing fee -Flagging expense. 1. Unless otherwise agreed by the parties, a utility that crosses a railroad right of way, other than a crossing within the public right of way, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. 2. The crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or charges to reimburse the railroad for the direct

expenses...

<https://www.legis.nd.gov/cencode/t49c09-1.pdf#nameddest=49-09p1-05>

South Dakota Statute

49-16A-100.5. Standard crossing fee--Flagging expense.

Unless otherwise agreed by the parties, a utility that crosses a railroad right-of-way, other than a crossing within the public right-of-way, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or charges...

https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=49-16A-100.5

The Council also received updates from DHCD regarding the VATI and GO Virginia programs, and from the Chief Broadband Advisor regarding progress Virginia has made towards meeting Governor Northam’s broadband vision. At the time of this meeting, the 2019 VATI program received 39 applications requesting \$43.6 million in funding from 55 localities partnering with 23 different internet service providers. These applications leveraged \$58 million in private and local spending and represent an estimated total passings of 55,370 Virginia residents, businesses, and community anchor institutions. Below is a summary of VATI awards to date (at the time of this meeting).

2017 VATI	
Locality/Coapplicant	Award
Albemarle County/Century Link	\$118,400
Augusta County/Lingo	\$278,880
Bland County/WVVA.net	\$192,141
Gloucester county/Cox	\$193,094
Greenville County/Telpage	\$162,334
Total	\$944,849

2018 VATI	
Locality/Coapplicant	Award
Albemarle County/Comcast	\$473,366
Mecklenburg County/Buggs Island Telco	\$217,173
Spotsylvania County/Comcast	\$167,260
Total	\$857,799

2019 VATI	
Locality/Coapplicant	Award
Albemarle County Broadband Authority/CVEC	\$301,748
Amherst County/SCS Broadband	\$127,073
Bedford County/Blue Ridge	\$1,040,000
Botetourt County/CBEC	\$758,998
Clarke County/Comcast	\$209,513
Floyd County/Citizens	\$348,018
Giles County/Gigabeam	\$589,444
Halifax County/SCS Broadband	\$231,108
Louisa County/SCS Broadband	\$233,905
IDA of Russell County/iGo	\$455,581
Fluvanna County/CVEC (Letter of Intent)	\$641,967
Total	\$4,937,355

All minutes can be found at <https://www.commonwealthconnect.virginia.gov/BAC>.