

Broadband Legislation in West Virginia

Presentation By: Delegate Daniel Linville

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- The views expressed in this presentation are that of the presenter and do not necessarily represent the views of the West Virginia House of Delegates, the State of West Virginia...
- If you find fault with the opinions expressed or the intent of the legislation, I would be happy to speak with you:

Office Telephone: (304)340-3277

Email: Daniel.Linville@WVHouse.gov

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- If you find this presentation valuable and you agree with the opinions and intent, you can contact the Speaker's office:

Speaker's Office Telephone: (304) 340-3210

Email: Roger.Hanshaw@WVHouse.gov

Why is this so important?

- The Richmond Federal Reserve Bank published a summary of studies on the economic impact of broadband expansion and adoption, including the following: “a 10 percentage point increase in broadband access resulted in a 0.9 to 1.5 percentage point increase in annual per-capita growth.”
- It also cited a study by Purdue University, summarizing it as follows: “Benefit-cost ratios for expansion in each electrical cooperative’s footprint ranged from three to four, meaning every dollar spent on expansion would result in about three to four dollars in economic benefits to Indiana.”

Source: https://www.richmondfed.org/publications/community_development/community_scope/2020/comm_scope_vol8_no1

What (Really) Are the Challenges?

- Regulation (related to construction and deployment)
- Competition in the market
- Funding to meet the need

What have we been doing in WV?

- Our most recent pushes began in 2017 with HB3093, originally proposed by Delegate (now Speaker) Roger Hanshaw. This legislation accomplished the following:
- Created our Broadband Enhancement Council
- Revised prohibitive regulation regarding microtrenching
- Established, for the first time, our “Dig-Once” policy

2019

- In 2019, HB 2015 and SB3 established our Small Wireless Facilities Deployment Act, among several others.
- In 2019, we also passed legislation authorizing regulated electric utilities to run middle-mile fiber in the regulated electric space on utility poles for grid reliability, resiliency, and modernization, along with offering additional strands of fiber to competitive last-mile internet service providers.

2020

- In 2020, HB 4015 established the Vertical Real Estate Management and Availability Act
- This legislation makes suitable state-owned towers, tall buildings, and other suitable sites available to internet service providers and other communications providers to provide fixed wireless internet service and cellular coverage.

2021 – House Bill 2002

- A comprehensive regulatory overhaul of right-of-way access, make-ready costs and processes, deadlines, and more seeking to reduce the cost basis of deploying broadband service to the greatest degree possible.
- Overhauled and codified our mapping strategy and processes.
- Fair, Modest Consumer Protections

Construction and Rights of Way

- Regulatory Shot Clock – 60 Days to Approve or Deny, with the right to cure deficiencies (§17-2E-3)
- \$0 cost for access to rights-of-way for broadband expansion – no compensation required (neither monetary nor in-kind)
- As the ultimate agency tasked with providing permission to proceed, the Division of Highways shall create, maintain, and make available a checklist or flow chart of all necessary regulatory approvals by an agency

Pole Attachments

- Regulatory primacy taken by WV Public Service Commission for disputes regarding pole attachments
- Damages due for a pole owner accepting payment for make-ready while failing to complete the work
- Bars any agreements or enforcement of contractual provisions which would advantage one entity over another in positioning, spacing, or order in the communications space

Pre-Emption of Local Ordinances

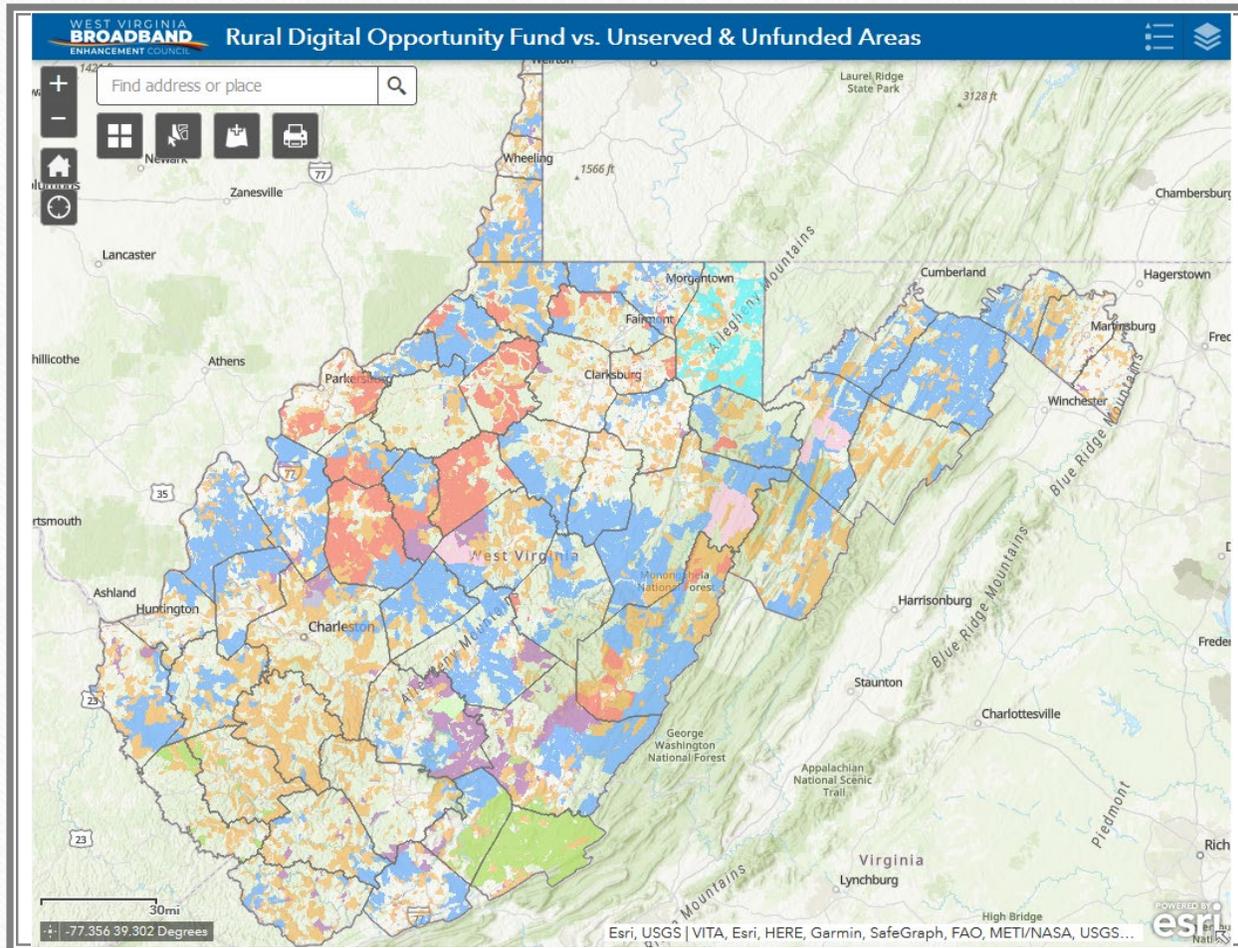
- As the FCC has done with over-the-air antennas, HB 2002 barred any ordinance or agreement from preventing installation of antennas and related telecommunications equipment by a property owner on their own property.
- Created Article 6 within Chapter 31G of the Code which will establishes a blanket preemption of any ordinance, to the extent such inhibits broadband installation.

Comparable Use

- As in cable television and telephone service, utility rights-of-way and easements are extended to telecommunications providers for broadband.
- Vastly expedites installation of lines which serve the same purpose as cable and telephone copper lines (VOIP, Streaming)
- No Franchise required

Mapping

- Required data reported by West Virginians to compile our GIS Mapping of availability.
- Required mapping of adoption utilizing that same underlying data as well as other data-sets
- Agreements in place with Ookla, the owners of speedtest.net, to receive all speed test data in the state of West Virginia that they conduct



Mapping

- Yellow areas: Unserved and Unfunded
- Various Colors: RDOF awarded census blocks
- Blank - Served

Redefining “Unserved”

- “Unserved” means an area lacking broadband internet service from at least one 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.
 - 2. An actual upstream data rate of at least three megabits per second.
 - 3. Unlimited data usage without overage charges.
 - 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.

Municipal Construction

Granted political subdivisions of the State the ability to install their own broadband network, or to partner with essentially any entity or combination of entities to achieve that goal, with similar language regarding the operation of a fiber network.

Utility Pole Replacement

- Charges the PSC with the promulgation of rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the older existing poles.

Consumer Protections

- As in cable and telephone service, if a subscriber's service is down for 24 hours or more through no fault of the subscriber, that subscriber is due a credit upon request.
- 30-days required notice of billing increases
- Data-driven notification of the West Virginia Attorney General if subscribers are unable to ever reach the market speeds to-which they subscribe.

Creation of the Office of Broadband

- West Virginia already has a Broadband Enhancement Council with appointed members and representatives of the general public coordinating projects and recommending policy, but the need has grown as have the opportunities.
- Working together with a full-time office and staff, grant coordination, mapping, measurement of success, and collaboration with federal and local counterparts is vastly increased.

Other Actions in 2021

- Broadband Loan Insurance Program allowed insurance for performance bonding to allow more providers to greater leverage the Rural Digital Opportunity fund and other similar programs.

In Summary

- Our efforts in legislation have largely had 3 primary goals, which we continue to refine and which we are constantly seeking to uncover new means to accomplish, those are:
 - Lowering the cost of construction
 - Speeding Deployment
 - Fostering a healthy competitive environment with low barriers to entry and better service, with as little red-tape as possible