

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2002

BY DELEGATES LINVILLE, CAPITO, HOLSTEIN, FERRELL,
MILLER, RILEY, BARNHART, SYPOLT, STATLER, ROWAN,
AND REED

[Introduced February 10, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to repeal §31G-1-6, §31G-1-7, §31G-1-9, and §31G-1-12 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §17-2E-2, §17-2E-3, §17-2E-5, §17-2E-6, §17-
3 2E-7, §17-2E-8, and §17-2E-9 of said code; to amend and reenact §24D-1-1, §24D-1-2,
4 §24D-1-9, §24D-1-15, §24D-1-16, §24D-1-21, and §24D-1-26 of said code; to amend and
5 reenact §31G-1-2 and §31G-1-4 of said code; to amend and reenact §31G-4-1 and §31G-
6 4-2 of said code; to amend said code by adding thereto two new sections, designated §17-
7 2E-10 and §17-2E-11; to amend said code by adding thereto a new article, designated
8 §31G-1A-1, §31G-1A-2, §31G-1A-3, §31G-1A-4, §31G-1A-5, §31G-1A-6, §31G-1A-7,
9 §31G-1A-8, §31G-1A-9, and §31G-1A-10; to amend said code by adding thereto a new
10 section, designated §31G-3-3; and to amend said code by adding thereto a new article,
11 designated §31G-6-1 and §31G-6-2 of said code, all relating to providing statutory
12 framework to support, encourage, and expedite the expansion of broadband throughout
13 the state of West Virginia; modifying the definition of “telecommunications carrier”;
14 establishing requirements for agreements between the Division of Highways and an entity
15 seeking to install telecommunications facilities; providing for in-kind contribution as a
16 required term of agreement; establish process for Division of Highways to approve or deny
17 application; requiring the Division of Highways provide a consolidated checklist or flow
18 chart of all state or federal regulatory requirements; requiring notice to the Office of
19 Broadband of a telecommunication entity’s intent to seek construction in division’s right-of
20 way; allowing a utility to apply to share trench with telecommunications carrier; providing
21 the Office of Broadband the authority to issue certificates of compliance to the Division of
22 Highways and applicant; requires Office of Broadband create, seek approval for, and
23 update a formula or matrix to determine fair market value and in kind compensation for
24 carriers use of rights of way or telecommunications facilities owned by the Division of
25 Highways; providing Division of Highways the authority to allow carriers the use of excess
26 telecommunications facilities; allowing Division of Highways to transfer or assign

27 ownership of in-kind compensation or excess telecommunications facilities to another
28 state agency upon approval by Governor; requiring that telecommunications facilities who
29 share trench share responsibility of compensating Division of Highways; allowing Division
30 of Highways to require a carrier bear joint and several liability; requiring agreements to
31 provide that two or more carriers sharing obligations must allow Division of Highways to
32 review or audit those agreements; providing rulemaking authority to Division of Highways;
33 establishing additional requirements for Division of Highways related to broadband
34 installation, permitting, pathways, access, and contractor requirements; adding broadband
35 telecommunications to Chapter on cable television and cable television system act for
36 certain purposes; defining “broadband” or “broadband service” and “broadband operator”;
37 establishing requirements for broadband operators related to installation and construction;
38 requiring broadband operators to indemnify the state for installation, operation, and
39 maintenance; establishing requirements for broadband operator related to easement;
40 providing requirements for broadband operators to restore interrupted service; requiring
41 broadband operator to credit subscribers for interruptions in service of more than 24 hours;
42 establishing that broadband providers may not deny access based upon certain factors;
43 providing that broadband service is not a utility or subject to utility regulation; defining
44 “applicable codes” and “underserved area”; providing he Broadband Enhancement
45 Council and actions of the same be subject to review and approval of the Office of
46 Broadband; provide Broadband Enhancement Council report to the Office of Broadband
47 on or before December 1 annually; creating the Office of Broadband within the Economic
48 Development Office and under the Department of Commerce; creating the position of, and
49 requirements for, the Director of the Office of Broadband; establishing the powers and
50 duties of the Office of Broadband; requiring the Office of Broadband report annually to the
51 Joint Committee on Government and Finance; requiring the Office of Broadband to map
52 broadband in the state and establish an interactive public map; requiring certain executive

53 agencies to cooperate and provide information to the Office of Broadband regarding AREA
54 maps; requiring Office of Broadband Report to the Joint Committee on Technology
55 regarding AREA maps at specified times; allowing Office of Broadband to retain outside
56 expert consultants; providing authority to Office of Broadband to educate public on
57 broadband service issues; allowing Office of Broadband to establish a voluntary data
58 collection program; providing that information collected in program not subject to the
59 Freedom of Information Act; establishing, by Office of Broadband, requirements of data
60 collection program to be submitted to the Legislature; requiring the Office of Broadband to
61 create guidelines for voluntary donation of rights away and similar structures to facilitate
62 broadband development; allowing Office of Broadband to create guidelines and
63 recommend to legislature an easement program to facilitate broadband service; allowing
64 Office of Broadband to seek funding and grants; establishing process to protect proprietary
65 business information provided to the Office of Broadband; excluding proprietary business
66 information from production under the Freedom of Information Act; providing criminal
67 penalties for unauthorized disclosure of confidential and proprietary information; providing
68 rulemaking authority to the Office of Broadband; establishing requirements for
69 municipalities regarding installation of conduit; defining “applicable codes”; providing for
70 preemption of West Virginia Code and Code of State Rules over ordinances or private
71 agreements relating to installation of broadband equipment; and requiring broadband
72 operators receiving public funds to testify, upon request, under oath before the Legislature.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAY

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-2. Definitions.

1 In this article, unless the context otherwise requires:

2 (1) "Broadband conduit" or "conduit" means a conduit, innerduct, or microduct for fiber
3 optic cables that support facilities for broadband service.

4 (2) "Broadband service" has the same meaning as defined in §31G-1-2 of this code.

5 (3) "Council" means the Broadband Enhancement Council.

6 (4) "Direct bury" means the burying of telecommunications wire or cable directly into the
7 ground by means of plowing or direct insertion without the opening of a trench and without the
8 installation of conduit or innerduct.

9 (5) "Division" means the Division of Highways.

10 (6) "Longitudinal access" means access to or the use of any part of a right-of-way that
11 extends generally parallel to the traveled right-of-way.

12 (7) "Permit" means an encroachment permit issued by the commissioner of the division
13 under the authority of this code, and pursuant to the Accommodation of Utilities on Highway Right-
14 of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or
15 equivalent policy, as may be currently enforced by the division, that specifies the requirements
16 and conditions for performing work in a right-of-way and where such work involves the creation
17 or opening of a trench for the installation of telecommunications facilities in a right-of-way.

18 (8) "Right-of-way" means land, property, or any interest therein acquired or controlled by
19 the division for transportation facilities or other transportation purposes or specifically acquired for
20 utility accommodation.

21 (9) "Telecommunications carrier" means a telecommunications carrier:

22 (A) As determined by the Public Service Commission of West Virginia; ~~or~~

23 (B) That meets the definition of telecommunications carrier with respect to the Federal
24 Communications Commission, as contained in 47 U.S.C. §153; or

25 (C) Any entity engaged in the installation, operation, construction, hanging, or laying of
26 telecommunications facilities.

27 (10) "Telecommunications facility" means any cable, line, fiber, wire, conduit, innerduct,

28 access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving
 29 equipment, power equipment, or other equipment, system, or device that is used to transmit,
 30 receive, produce or distribute a signal for telecommunications purposes via wireline, electronic,
 31 or optical means.

32 (11) "Utility" has the meaning ascribed to it in §17-2A-17a of this code.

33 (12) "Wireless access" means access to, and use of, a right-of-way for the purpose of
 34 constructing, installing, maintaining, using, or operating telecommunications facilities for wireless
 35 telecommunications.

**§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits;
 agreements; compensation; valuation of compensation; telecommunications
 facilities construction and installation in rights of way.**

1 (a) Before obtaining a permit for the construction or installation of a telecommunications
 2 facility in a right-of-way owned or controlled by the division, a telecommunications carrier, an
 3 applicant or other entity seeking to install such telecommunications facilities must enter into an
 4 agreement with the division consistent with the requirements of this article.

5 (b) Before granting a permit for longitudinal access or wireless access to a right-of-way,
 6 the division shall:

7 (1) First enter into an agreement with a telecommunications carrier, an applicant or other
 8 entity seeking to install such telecommunications facilities that is competitively neutral and
 9 nondiscriminatory as to other telecommunications carriers, applicants or other entities seeking to
 10 install such telecommunications facilities; and

11 (2) Upon receipt of any required approval or concurrence by the Federal Highway
 12 Administration the division ~~may~~ shall issue a permit granting access under this section: *Provided*,
 13 That the division shall comply with all applicable federal regulations with respect to approval of an
 14 agreement, including, but not limited to, 23 C.F.R. §645, 23 C.F.R. §710.403 and 23 C.F.R.
 15 §710.405. The agreement shall be approved by the Commissioner of Highways in order to be

16 effective and, without limitation:

17 (A) Specify the terms and conditions for renegotiation of the agreement;

18 (B) Set forth the maintenance requirements for each telecommunications facility;

19 (C) Be nonexclusive; and

20 (D) Be for a term of not more than 30 years; and

21 (E) Provide for in-kind contribution as authorized herein.

22 (c) Unless specifically provided for in an agreement entered into pursuant to subsection
23 (a) of this section, the division may not grant a property interest in a right-of-way pursuant to this
24 article.

25 ~~(d) A telecommunications carrier shall compensate the division for the use of spare conduit
26 or related facilities owned or controlled by the division as part of any longitudinal access or
27 wireless access granted to a right-of-way pursuant to this section. The compensation must be,
28 without limitation:~~

29 ~~(1) At fair market value: *Provided*, That because the social, environmental, and economic
30 benefits from such use of state highway rights-of-way is of overwhelming value to the citizens of
31 this state and is in the overall public interest, the division shall establish the fair market value for
32 purposes of this article at \$0 in monetary compensation;~~

33 ~~(2) Competitively neutral;~~

34 ~~(3) Nondiscriminatory;~~

35 ~~(4) Open to public inspection;~~

36 ~~(5) Determined based on the geographic region of this state, taking into account the
37 population and the impact on private right-of-way users in the region; and once determined, set
38 at an amount that encourages the deployment of digital infrastructure within this state; and~~

39 ~~(6) Paid with in-kind compensation.~~

40 ~~(e) The division may consider adjustments for areas the division, in conjunction with the
41 council, determines are underserved or unserved areas of the state and may consider the value~~

42 ~~to such areas for economic development, enhancing the transportation system, expanding~~
43 ~~opportunities for digital learning, and telemedicine.~~

44 ~~(f) For the purpose of determining the amount of in-kind compensation a~~
45 ~~telecommunications carrier must pay the division for the use of spare conduit or excess conduit~~
46 ~~or related facilities of the division as part of any longitudinal access or wireless access granted to~~
47 ~~a right-of-way pursuant to this section, the division may:~~

48 ~~(1) Conduct an analysis once every five years, in accordance with the rules, policies, or~~
49 ~~guidelines of the division, to determine the fair market value of a right-of-way to which access has~~
50 ~~been granted pursuant to this section; and~~

51 ~~(2) Determine the fair market value of the in-kind compensation based on the incremental~~
52 ~~costs for the installation of conduit and related facilities~~

53 ~~(d) Nothing in this article shall be construed to impose any additional requirement for~~
54 ~~inclusion, including in-kind or monetary compensation, in a permit application or agreement~~
55 ~~required prior to submitting an application pursuant to §17-2E-3(a) of this code other than those~~
56 ~~requirements already required under the National Environment Policy Act or the National Historic~~
57 ~~Preservation Act or any other federal regulation unless, in the opinion of the applicant, such is~~
58 ~~advantageous to facilitating the project.~~

59 ~~(e)(i) After an agreement has been executed and a unified, complete, single permit~~
60 ~~application has been received that is completed in accordance with the division's requirements~~
61 ~~for such applications as set forth in the division's rules, the division shall have 60 days to either~~
62 ~~approve or deny the application. A denial shall be in writing and must expressly state the~~
63 ~~substantive legally required reasons therefor. The carrier may correct any deficiencies and~~
64 ~~resubmit the application which shall be reviewed and either approved or denied within 30 days of~~
65 ~~the resubmittal: *Provided*, That any denial of any resubmittal shall be in writing and must expressly~~
66 ~~state the substantive legally required reasons. If the division fails to notify the applicant of approval~~
67 ~~or denial within 60 days, or fails to notify the applicant of approval or denial after 30 days following~~

68 any resubmittal, then such application or resubmittal shall be deemed approved: *Provided*, That
69 after the division's approval of a permit application, and notwithstanding any other provision of
70 this code to the contrary, the division shall have no more than 14 days to issue a specific district
71 level construction authorization for the approved project.

72 (ii) The division shall create, maintain, and provide a consolidated checklist or flow chart
73 of all state or federal regulatory requirements, including but not limited to permits, agency required
74 reviews, agency required approvals, and agency required forms, that may apply to any broadband
75 project, whether buried or aerial. The division shall annually update such checklist or flow chart
76 for accuracy and completeness by coordination with each state or federal agency having required
77 regulatory action in the permitting process.

78 ~~(g)~~ (f) The provisions of this article shall not apply to the relocation or modification of
79 existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial
80 telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation
81 of telecommunications facilities within rights-of-way for state highways shall be in accordance with
82 the provisions of §17-4-17b of this code.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

1 (a) Upon application for a permit for construction and installation in the division's right-of-
2 way for any utility or meeting the requirements for such applications set forth in §17-2E-3(d) of
3 this code, the applying telecommunications carrier or utility shall notify, by email, the ~~council~~ Office
4 of Broadband and all other telecommunications carriers on record with the council of the
5 application. Other telecommunications carriers have 15 calendar days to notify the applicant of
6 their interest to share the applicant's trench. This requirement extends to all underground
7 construction technologies.

8 (b) If no competing telecommunications carrier or utility provides notice of interest to share
9 the applicant's trench within 15 calendar days of notice of the project, the carrier or utility applying
10 for the permit shall ~~affirm that fact to the division prior to being issued a permit~~ provide written

11 certification in accordance with §17-2E-5(g).

12 (c) If a competing telecommunications carrier or utility provides notice of interest to share
13 the applicant's trench, an agreement between the two (or more) telecommunications carriers or
14 utilities shall be executed by those entities within 30 days of the notice of interest, outlining the
15 responsibilities and financial obligations of each, with respect to the installation within the right-
16 of-way. The financial obligations of each carrier shall be based on the proportionate sharing of
17 costs between each carrier for joint trenching or trench sharing based on the amount of conduit
18 or innerduct space or excess conduit that is authorized in the agreements entered into pursuant
19 to this article. If the division use a trench, it shall also pay its proportional share unless it is utilizing
20 the trench as in-kind payment for use of the right-of-way, or the division has otherwise determined,
21 in its sole discretion, that including the division in the apportionment of costs is not warranted. A
22 copy of the executed agreement shall be provided to the division.

23 (d) Should a dispute arise between the initial applying telecommunications carrier or utility
24 and a competing telecommunications carrier or utility, including a failure to execute an agreement
25 required by subsection (c) of this section, the dispute shall be adjudicated by the Public Service
26 Commission. All disputes brought to the Public Service Commission under this article shall be
27 adjudicated within 45 days.

28 (e) If two or more telecommunications carriers or utilities are required or authorized to
29 share a single trench, each carrier or utility in the trench must share the cost and benefits of the
30 trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This
31 requirement extends to all underground construction technologies.

32 ~~(f) The commissioner of the division shall promulgate rules governing the relationship~~
33 ~~between the telecommunications carriers, as hereinafter provided in this article~~

34 ~~(g)~~ The provisions of this section do not apply to the following projects:

- 35 (1) Projects where the total length of the trench is less no more than 1,000 feet in length;
36 (2) Projects that use the direct bury of cable or wire facilities;

37 (3) Projects that are solely for the service of entities involved in national security matters
38 or where the disclosure or sharing of a trench location would be against federal policy; or

39 (4) made available for lease to competing telecommunications carriers on a
40 nondiscriminatory basis at rates established by the rules of the Federal Communications
41 Commission Projects where the telecommunications carrier or utility installs an amount of spare
42 conduit or innerduct equal to what is being installed for its own use and which ~~is~~ shall be given to
43 the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease
44 to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on
45 the basis of the cost of the installation thereof, to other telecommunications providers; and, the
46 revenues derived from such sale, less any costs associated therewith, shall be remitted to the
47 telecommunications carrier or utility that installed such spare conduit or innerduct established by
48 the rules of the Federal Communications Commission in a manner consistent with all applicable
49 state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify
50 the council and the Office of Broadband of the location and capacity of such spare conduit and
51 innerduct upon completion of the project, and the council shall make such information publicly
52 available for competing telecommunications carriers.

53 (g) The Office of Broadband is responsible for ensuring compliance with this section and
54 will provide the division and the applicant with certification of compliance at such time as the
55 applicant has met all of the requirements of this section.

§17-2E-6. In-kind compensation.

1 (a) The Office of Broadband shall develop a matrix, formula or method for determining the
2 fair market value and in-kind compensation for carriers' use of the division's rights of way and
3 spare conduit and other telecommunications facilities owned or under the control of the division.
4 The Office of Broadband shall:

5 (1) Submit the matrix, formula or method it develops to the regional office of the Federal
6 Highway Administration and the Division of Highways for review and approval within 90 days of

7 the amendment and reenactment of this article during the regular session of the Legislature in
8 2021; and

9 (2) Update the matrix, formula or method it develops every five years.

10 (b) In developing the matrix, formula or method the council shall consider the following:

11 (1) Applicable federal law;

12 (2) Neutrality and nondiscrimination toward all carriers;

13 (3) The West Virginia Open Governmental Meetings Act;

14 (4) Consideration of the geographic regions of this state, the population, and service needs
15 of each region;

16 (5) Principles that encourage the deployment of digital infrastructure within this state; and

17 (6) Consideration of the underserved or unserved areas of the state and the value to such
18 areas for economic development, enhancing the transportation system, expanding opportunities
19 for digital learning, and telemedicine.

20 ~~(a)~~(c) The in-kind compensation paid to the division under an agreement entered into
21 pursuant to this article may include, without limitation:

22 (1) Conduit or excess conduit;

23 (2) Innerduct;

24 (3) Dark fiber;

25 (4) Access points;

26 (5) Telecommunications equipment or services;

27 (6) Bandwidth; and

28 (7) Other telecommunications facilities as a component of the present value of the
29 trenching.

30 ~~(b)~~ (d) The division Office of Broadband shall develop the matrix, formula or method to set
31 the value any of in-kind compensation based on fair market value at the time of installation or
32 review, and may also consider any valuation or cost information provided by the

33 telecommunications carrier: Provided, That notwithstanding any provision of the Code of West
 34 Virginia to the contrary, because the social, environmental, and economic benefits from such use
 35 of state highway rights-of-way is of overwhelming value to the citizens of this state and is in the
 36 overall public interest, the division shall establish the fair market value for purposes of this article
 37 at \$0 in monetary compensation.

38 ~~(c) In-kind compensation paid to the division may be disposed of if both of the following~~
 39 ~~conditions are met:~~

40 ~~(1) The telecommunications facility received as in-kind payment has not been used within~~
 41 ~~10 years of its installation; and~~

42 ~~(2) The commissioner of the division determines that the division does not have an~~
 43 ~~immediately foreseeable need for the telecommunications facility.~~

44 ~~(d) Upon determining that it is appropriate to dispose of the telecommunications facility,~~
 45 ~~the division shall determine its current fair market value. The division shall offer the provider or~~
 46 ~~providers who made the in-kind payment the option to purchase any telecommunications facility~~
 47 ~~obtained from such provider. If the provider or providers do not purchase the telecommunications~~
 48 ~~facility, it shall be offered for public auction in the same manner as the division auctions excess~~
 49 ~~rights-of-way~~

50 ~~(e) Any in-kind compensation may be used only for state purposes. Notwithstanding the~~
 51 ~~provisions of subsections (c) and (d) of this section, the division may, upon written approval of the~~
 52 ~~Governor, transfer or assign the ownership, control, or any rights related to any in-kind~~
 53 ~~compensation received by the division to any other state agency~~

§17-2E-7. Multiple carriers in a single trench. Use of telecommunications facilities owned
or controlled by Division of Highways.

1 ~~(a) If the Division of Highways enters into an agreement with two or more~~
 2 ~~telecommunications carriers, a consortium or other entity whose members, partners or other~~
 3 ~~participants are two or more telecommunications carriers, or, if the Division requires or allows two~~

4 ~~or more telecommunications carriers to share a single trench, the agreements entered into~~
 5 ~~pursuant to this article shall require that the telecommunications carriers share the obligation of~~
 6 ~~compensating the Division of Highways on a fair, reasonable and equitable basis, taking into~~
 7 ~~consideration the proportionate uses and benefits to be derived by each telecommunications~~
 8 ~~carrier from the trench, conduits, and other telecommunications facilities installed under the~~
 9 ~~agreements.~~

10 (b) ~~The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways~~
 11 ~~from requiring every participating telecommunications carrier to bear joint and several liability for~~
 12 ~~the obligations owed to the Division of Highways under the agreements.~~

13 (c) ~~Any agreement requiring two or more telecommunications carriers to share the~~
 14 ~~obligation of compensating the Division of Highways shall provide the Division the right to review~~
 15 ~~and audit the records and contracts of and among the participating carriers to ensure compliance~~
 16 ~~with §17-2E-7(a) of this code~~

17 The division may enter into an agreement and issue a permit consistent with the
 18 requirements of §17-2E-3 of this code and §17-2E-6 of this code to allow any carrier to use excess
 19 telecommunications facilities owned or controlled by the division: *Provided*, That this section shall
 20 be subject to the provisions of the Vertical Real Estate Management and Availability Act and no
 21 excess telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et*
 22 seq. of this code shall be governed by the provisions of this section.

§17-2E-8. Existing policies. Disposal of in-kind compensation; excess telecommunications facilities.

1 (a) ~~The requirements set forth in this article do not alter existing rules, policies, and~~
 2 ~~procedures relating to other utility facilities within a right-of-way or for accommodating utility~~
 3 ~~facilities or other facilities under the control of the Division of Highways.~~

4 (b) ~~The Division of Highways may consider the financial and technical qualifications of a~~
 5 ~~telecommunications carrier when determining specific insurance requirements for contractors~~

6 ~~authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair~~
7 ~~telecommunications facilities with longitudinal access or wireless access to the right-of-way.~~

8 ~~(c) If the Division of Highways authorizes longitudinal access, wireless access, or the use~~
9 ~~of, and access to, conduit or related facilities of the Division for construction and installation of a~~
10 ~~telecommunications facility, the Division may require an approved telecommunications carrier to~~
11 ~~install the telecommunications facility in the same general location as similar facilities already in~~
12 ~~place, coordinate their planning and work with other contractors performing work in the same~~
13 ~~geographic area, install in a joint trench when two or more telecommunications carriers are~~
14 ~~performing installations at the same time and equitably share costs between such carriers.~~

15 ~~(d) The placement, installation, maintenance, repair, use, operation, replacement, and~~
16 ~~removal of telecommunications facilities with longitudinal access or wireless access to a right-of-~~
17 ~~way or that use or access conduit or related facilities of the Division shall be accommodated only~~
18 ~~when in compliance with this code and Division of Highways rules, policies and guidelines.~~

19 ~~(e) Access to a right-of-way must be administered in compliance with the~~
20 ~~Telecommunications Act of 1996, 47 U.S.C. §151, et seq., as amended~~

21 Upon written approval of the Governor, the division may transfer or assign the ownership,
22 control, or any rights related to any in-kind compensation or excess telecommunications facilities
23 owned or controlled by the division to any other state agency.

§17-2E-9. Rule-making authority. Multiple carriers in a single trench.

1 ~~The Commissioner of the Division of Highways may promulgate rules pursuant to the~~
2 ~~provisions of §29A-3-15 of this code as may be necessary to carry out the purpose of this article,~~
3 ~~and as may have been specifically delineated within this article~~

4 (a) If the division enters into an agreement with two or more telecommunications carriers,
5 applicants or other entities seeking to install such telecommunications facilities, or a consortium
6 or other entity whose members, partners or other participants are two or more
7 telecommunications carriers, applicants, or other entities seeking to install such

8 telecommunications facilities, or, alternatively, if the division requires or allows two or more
9 telecommunications carriers, applicants or other entities seeking to install such
10 telecommunications facilities, to share a single trench, then, the agreement or agreements
11 entered into pursuant to this article shall require that the telecommunications carriers, applicants
12 or other entities seeking to install such telecommunications facilities, share the obligation of
13 compensating the division on a fair, reasonable and equitable basis, taking into consideration the
14 proportionate uses and benefits to be derived by each telecommunications carrier, applicant, or
15 other entity from the trench, conduits, and other telecommunications facilities installed under the
16 agreements, if in-kind compensation is rendered pursuant to §17-2E-6 of this code.

17 (b) The provisions of subsection (a) of this section do not prevent the division from
18 requiring every participating telecommunications carrier to bear joint and several liability for the
19 obligations owed to the division under an agreement.

20 (c) Any agreement requiring two or more telecommunications carriers to share the
21 obligation of compensating the division shall provide the division the right to review and audit the
22 records and contracts of and among the participating carriers to ensure compliance with
23 subsection (a) of this section.

§17-2E-10. Existing policies.

1 (a) The requirements set forth in this article do not alter existing rules, policies, and
2 procedures relating to other utility facilities within a right-of-way or for accommodating utility
3 facilities or other facilities under the control of the division, other than the notice requirements for
4 utilities set forth in §17-2E-5 of this code: *Provided*, That the Division of Highways shall require
5 that:

6 (i) Conduit of sufficient size and capacity reserved for installation of broadband internet
7 cabling such as fiber must be installed upon, beneath, or otherwise attached to the structure of
8 bridges during construction, repair, or other projects that present an opportunity to do so;

9 (ii) In all instances where compliance and/or permitting with or from federal regulators,

10 and/or assertions provided by federal regulators is incumbent upon the State of West Virginia due
11 to enforcement primacy of any federal regulation, any future conduit or fiber installation shall not
12 unnecessarily require permitting, nor be unreasonably delayed by any required permitting; and

13 (iii) To the extent allowable by law, make state owned natural watercourses and drainages
14 categorically approved as potential pathways for broadband conduit rights of way, and create a
15 streamlined procedure for applicants to achieve state approval for such use, and pre-identify
16 locations where such use as right of way would qualify for federal nationwide permitting.

17 (b) The division may consider the financial and technical qualifications of a
18 telecommunications carrier when determining specific insurance requirements for contractors
19 authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair
20 telecommunications facilities with longitudinal access or wireless access to the right-of-way.

21 (c) If the division authorizes longitudinal access, wireless access, or the use of, and access
22 to, conduit or related facilities of the division for construction and installation of a
23 telecommunications facility, the division may require an approved telecommunications carrier to
24 install the telecommunications facility in the same general location as similar facilities already in
25 place, coordinate their planning and work with other contractors performing work in the same
26 geographic area, install in a joint trench when two or more telecommunications carriers are
27 performing installations at the same time, and equitably share costs between such carriers.

28 (d) The placement, installation, maintenance, repair, use, operation, replacement, and
29 removal of telecommunications facilities with longitudinal access or wireless access to a right-of-
30 way or that use or access conduit or related facilities of the division shall be accommodated only
31 when in compliance with this code and Legislative rules promulgated by the division.

32 (e) Access to a right-of-way must be administered in compliance with the
33 Telecommunications Act of 1996, 47 U.S.C. §151, et seq. as amended.

34 (f) The commissioner shall establish a policy to provide for installation of conduit on
35 bridges during construction, repair or other projects where installation thereof is not restricted or

36 unreasonably hindered by federal regulation.

37 (g) The commissioner shall establish a policy to report all current and future
 38 telecommunications facilities installed within rights-of-way owned by the division to the Office of
 39 Broadband.

§17-2E-11. Rule-making authority.

1 The commissioner of the division may promulgate rules pursuant to the provisions of
 2 §29A-3-1 et seq. of this code as may be necessary to carry out the purpose of this article.

CHAPTER 24D. CABLE TELEVISION AND BROADBAND

TELECOMMUNICATIONS

ARTICLE 1. CABLE TELEVISION AND BROADBAND TELECOMMUNICATIONS
SYSTEMS ACT.

§24D-1-1. Legislative findings.

1 The Legislature finds that television and broadband telecommunications ~~is~~ are an
 2 important source of information and entertainment affecting the welfare and economy of the state,
 3 and that cable television services and broadband internet have become widespread, often
 4 providing the only access to quality television signals in many areas of the state. The Legislature
 5 finds that it is in the public interest to establish uniform standards within the State of West Virginia
 6 for the issuance, renewal and transfer of cable television franchises; to establish uniform
 7 standards for the provision of cable and broadband internet service; to establish uniform
 8 procedures for the investigation and resolution of complaints concerning cable service; and to
 9 establish just, reasonable and nondiscriminatory rates and charges for the provision of cable and
 10 broadband internet service to the extent that the service is not subject to effective competition.
 11 The purpose of the article is to promote such goals by all available means not in conflict with
 12 federal law, rules or regulations

§24D-1-2. Definitions.

1 As used in this chapter:

2 (1) "Applicant" means a person who initiates an application or proposal.

3 (2) "Application" means an unsolicited filing for a cable franchise.

4 (3) "Basic cable service" means any service tier which includes the retransmission of local
5 television broadcast signals.

6 (4) "Broadband" or "broadband service" means any service providing advanced
7 telecommunications capability with the same downstream data rate and upstream data rate as is
8 specified by the Federal Communications Commission and that does not require the end-user to
9 dial up a connection, that has the capacity to always be on, and for which the transmission speeds
10 are based on regular available bandwidth rates, not sporadic or burstable rates, with latency
11 suitable for real-time applications and services such as voice-over Internet protocol and video
12 conferencing, and with monthly usage capacity reasonably comparable to that of residential
13 terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal
14 Communications Commission updates the downstream data rate and the upstream data rate the
15 council will publish the revised data rates in the State Register within 60 days of the federal
16 update.

17 (5) "Broadband operator" means any person or group of persons: (A) Who provides
18 broadband service and directly or through one or more affiliates owns a significant interest in the
19 broadband system; or (B) who otherwise controls or is responsible for, through any arrangement,
20 the management and operation of a broadband system.

21 ~~(4)~~ (6) "Cable franchise" or "franchise" means a nonexclusive initial authorization or
22 renewal thereof issued pursuant to this chapter, whether the authorization is designated as a
23 franchise, permit, order, contract, agreement or otherwise, which authorizes the construction or
24 operation of a cable system.

25 ~~(5)~~ (7) "Cable operator" means any person or group of persons: (A) Who provides cable
26 service over a cable system and directly or through one or more affiliates owns a significant

27 interest in the cable system; or (B) who otherwise controls or is responsible for, through any
28 arrangement, the management and operation of a cable system.

29 ~~(6)~~ (8) "Cable service" means: (A) The one-way transmission to subscribers of video
30 programming or other programming service; and (B) subscriber interaction, if any, which is
31 required for the selection of video programming or other programming service.

32 ~~(7)~~ (9) "Cable system" means any facility within this state consisting of a set of closed
33 transmission paths and associated signal generation, reception and control equipment that is
34 designed to provide cable service which includes video programming and which is provided to
35 multiple subscribers within a community, but does not include: (A) A facility that serves only to
36 retransmit the television signals of one or more television broadcast stations; (B) a facility that
37 serves only subscribers in one or more multiple unit dwellings under common ownership, control
38 or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a
39 public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code,
40 except to the extent that those facilities provide video programming directly to subscribers.

41 ~~(8)~~ (10) "Commission" or "Public Service Commission" means the Public Service
42 Commission of West Virginia.

43 ~~(9)~~ (11) "County commission" means the commissioners composing the county
44 commission in pursuance of section nine, article IX of the Constitution of this state within whose
45 jurisdiction there exists a cable or broadband system or where such cable or broadband system
46 is hereafter constructed, operated, acquired or extended.

47 ~~(10)~~ (12) "Facility" includes all real property, antennas, poles, supporting structures, wires,
48 cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used
49 by a cable or broadband operator in providing service to its subscribers.

50 ~~(11)~~ (13) "Franchising authority" means a municipality, a county commission or the Public
51 Service Commission empowered by federal, state or local law to grant a cable or broadband
52 franchise.

53 ~~(42)~~ (14) "Institution of higher education" means an academic college or university
54 accredited by the north central association of colleges and schools.

55 ~~(43)~~ (15) "Municipality" means any municipal corporation duly chartered in the State of
56 West Virginia within whose jurisdiction there exists a cable or broadband system or where such
57 cable or broadband system is hereafter constructed, operated, acquired or extended.

58 ~~(44)~~ (16) "Other programming service" means information that a cable or broadband
59 operator makes available to all subscribers generally.

60 ~~(45)~~ (17) "Person" means an individual, partnership, association, joint stock company,
61 trust, corporation or governmental agency.

62 ~~(46)~~ (18) "Proposal" means a filing solicited by the franchising authority for a cable or
63 broadband franchise.

64 ~~(47)~~ (19) "Public, educational or governmental access facilities" means: (A) Channel
65 capacity designated for public, educational or governmental uses; and (B) facilities and equipment
66 for the use of that channel capacity.

67 ~~(48)~~ (20) "Public place" includes any property, building, structure or water to which the
68 public has a right of access and use.

69 ~~(49)~~ (21) "School" means an academic and noncollege type regular or special education
70 institution of learning established and maintained by the Department of Education and the arts or
71 licensed and supervised by that department.

72 ~~(20)~~ (22) "Service area" means that geographic area for which a cable or broadband
73 operator has been issued a cable or broadband franchise.

74 ~~(24)~~ (23) "Video programming" means programming provided by, or generally considered
75 comparable to programming provided by, a television broadcast station.

**§24D-1-9. Cable or broadband system installation, construction, operation, removal,
general provisions.**

1 (a) A cable franchise or broadband operator shall be construed to authorize the

2 construction or operation of a cable or broadband system: (i) Over public rights-of-way; and (ii)
3 through easements, which are within the area to be served by the cable or broadband system
4 and which have been dedicated for compatible uses.

5 (b) The technical specifications, general routes of the distribution system and the schedule
6 for construction of the cable system are subject to the approval of the franchising authority.

7 (c) In installing, operating and maintaining facilities, the cable or broadband operator shall
8 avoid all unnecessary damage and injury to any trees, structures and improvements in and along
9 the routes ~~authorized by the franchising authority~~ utilized for the system.

10 (d) The cable or broadband operator shall indemnify and hold the state, county and
11 municipality harmless at all times from any and all claims for injury and damage to persons or
12 property, both real and personal, caused by the installation, operation or maintenance of its cable
13 or broadband system, notwithstanding any negligence on the part of the state, county and/or
14 municipality, their employees or agents. Upon receipt of notice in writing from the state, county
15 and/or municipality, the cable or broadband operator shall, at its own expense, defend any action
16 or proceeding against the state, county and/or municipality in which it is claimed that personal
17 injury or property damage was caused by activities of the cable or broadband operator in the
18 installation, operation or maintenance of its cable or broadband system.

19 (e) The cable operator shall provide a cable drop and basic cable service at no cost to any
20 school or institution of higher education within its service area if service is actually being delivered
21 within a reasonable distance from the school or institution of higher education which may request
22 service.

23 (f) The cable operator shall be required to designate at least 10 percent but not more than
24 three of all of its channels for public, educational or governmental use.

25 (g) Upon termination of the period of the cable permit or of any renewal thereof, by
26 passage of time or otherwise, the cable operator shall remove its facilities from the highways and
27 other public places in, on, over, under or along which they are installed if so ordered by the

28 franchising authority and shall restore the areas to their original or other acceptable condition or
29 otherwise dispose of its facilities. If removal is not completed within six months of the termination,
30 any property not removed shall be deemed to have been abandoned and the cable operator shall
31 be liable for the cost of its removal.

32 ~~(h) The use of public highways and other public places shall be subject to~~

33 (1) All applicable state statutes, municipal ordinances and all applicable rules and orders
34 of the commission governing the construction, maintenance, and removal of overhead and
35 underground facilities of public utilities.

36 (2) For county highways, all applicable rules adopted by the governing body of the county
37 in which the county highways are situated; and

38 (3) For state or federal-aid highways, all public welfare rules adopted by the secretary of
39 the Department of Transportation.

40 (i) ~~(h)~~ In the use of easements dedicated for compatible uses, the cable or broadband
41 operator shall ensure:

42 (1) That the safety, functioning and appearance of the property and the convenience and
43 safety of other persons is not adversely affected by the installation or construction of facilities
44 necessary for a cable or broadband system;

45 (2) That the cost of the installation, construction, operation or removal of facilities is borne
46 by the cable or broadband operator or subscribers, or a combination of both; and

47 (3) That the owner of the property is justly compensated by the cable or broadband
48 operator for any damages caused by the installation, construction, operation or removal of
49 facilities by the cable or broadband operator.

50 (4) An "easement dedicated for compatible uses" is a public or private easement for
51 electric, gas, telephone or other utility transmission.

§24D-1-15. Procedures for restoring interrupted service and improving substandard service.

1 (a) Each cable or broadband operator, for the purpose of restoring interrupted service and
 2 improving substandard service, shall be able to receive calls hours a day, seven days a week,
 3 and shall have one or more qualified persons as may be necessary to repair the cable or
 4 broadband system, facilities and equipment owned by the cable or broadband operator and
 5 located on a subscriber's premises, including, but not limited to, cable or broadband receiving
 6 equipment and directly associated equipment.

7 (b) Each cable or broadband operator shall restore interrupted service not later than 24
 8 hours after being notified by a subscriber that service has been interrupted, unless:

9 (1) Service cannot be restored until another company repairs facilities owned by such
 10 company and leased to, or required for the operation of, the cable service;

11 (2) The interruption was caused by an act of nature; or

12 (3) The cable operator is unable to restore service within 24 hours due to extenuating
 13 circumstances. In the event of such extenuating circumstances, the cable or broadband company
 14 shall restore service as soon as feasible. ~~and~~ A cable operator shall then submit a written notice
 15 to the commission indicating that service has been restored and explaining the nature of the
 16 extenuating circumstances.

§24D-1-16. Credit or refund for interrupted service.

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

5 (b) The commission may promulgate rules establishing a viewing time reliability standard
 6 for cable operators and requiring such companies to file with the commission information on
 7 service interruptions not caused by subscribers.

§24D-1-21. Rights of individuals.

1 A cable television or broadband system operator may not deny service, deny access, or

2 otherwise discriminate against subscribers, channel users, or any other citizens on the basis of
 3 age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other
 4 speech protected by the 1st Amendment to the United States Constitution, or country of natural
 5 origin.

§24D-1-26. Cable television ~~and broadband industry~~ industries not regulated as a utility.

1 No provision of this article may be construed to grant the commission the power to regulate
 2 the cable television industry or the broadband industry as a utility.

**CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION
 POLICIES.**

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-2. Definitions.

1 For the purposes of this article:

2 (1) “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical
 3 codes adopted by a recognized national code organization or local amendments to those codes:
 4 Provided, That notwithstanding any other provisions of these applicable codes, the Code of West
 5 Virginia and/or the West Virginia Code of State Regulations, variances for the installation and
 6 maintenance of broadband service infrastructure on utility poles, if these are agreed upon
 7 between infrastructure owners, shall be allowed.

8 ~~(4)~~ (2) “Broadband” or “broadband service” means any service providing advanced
 9 telecommunications capability with the same downstream data rate and upstream data rate as is
 10 specified by the Federal Communications Commission and that does not require the end-user to
 11 dial up a connection, that has the capacity to always be on, and for which the transmission speeds
 12 are based on regular available bandwidth rates, not sporadic or burstable rates, with latency
 13 suitable for real-time applications and services such as voice-over Internet protocol and video
 14 conferencing, and with monthly usage capacity reasonably comparable to that of residential

15 terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal
16 Communications Commission updates the downstream data rate and the upstream data rate the
17 council will publish the revised data rates in the State Register within 60 days of the federal
18 update.

19 ~~(2)~~ (3) "Council" means the Broadband Enhancement Council.

20 ~~(3)~~ (4) "Downstream data rate" means the transmission speed from the service provider
21 source to the end-user.

22 ~~(4)~~ (5) "Internet protocol address" or "IP address" means a unique string of numbers
23 separated by periods that identifies each computer using the internet protocol to communicate
24 over a network.

25 ~~(5)~~ (6) "Upstream data rate" means the transmission speed from the end-user to the
26 service provider source.

27 ~~(6)~~ (7) "Unserved area" means ~~a community that has no access to broadband~~ an area
28 lacking broadband internet service from at least one broadband internet service provider offering
29 all of the following in at least one service plan to residential consumers:

30 (A) an actual downstream data rate of 25 megabits per second; and

31 (B) an actual upstream data rate of three megabits per second; and

32 (C) unlimited data usage without overage charges; and

33 (D) unlimited data usage without "throttling" or reduction of downstream or upstream data
34 rate due, in whole or in part, to the amount of data transferred in any period.

35 (8) "Underserved" means an area lacking broadband internet service from at least two
36 broadband internet service providers offering all of the following in at least one service plan to
37 residential consumers:

38 (A) an actual downstream data rate of 100 megabits per second; and

39 (B) an actual upstream data rate of 25 megabits per second; and

40 (C) unlimited data usage without overage charges; and

41 (D) unlimited data usage without “throttling” or reduction of downstream or upstream data
 42 rate due, in whole or in part, to the amount of data transferred in any period.

§31G-1-4. Powers and duties of the council generally.

1 (a) The council shall, with the supervision of, and subject to the review and approval of
 2 the Office of Broadband:

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

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

8 (3) Explore the potential for increased use of broadband service for the purposes of
 9 education, career readiness, workforce preparation and alternative career training; and

10 (4) Explore ways for encouraging state and municipal agencies to expand the
 11 development and use of broadband services for the purpose of better serving the public, including
 12 audio and video streaming, voice-over Internet protocol, teleconferencing and wireless
 13 networking; ~~and~~

14 ~~(5) Cooperate and assist in the expansion of electronic instruction and distance education~~
 15 ~~services.~~

16 (b) In addition to the powers set forth elsewhere in this article, the council is hereby
 17 granted, with the coordination, supervision and approval of the Office of Broadband, ~~has and may~~
 18 ~~exercise the following powers authority necessary or appropriate to carry out and effectuate the~~
 19 ~~purpose and intent of this article, as enumerated herein: The council shall have the power and~~
 20 ~~capacity to~~

21 ~~(1) Provide consultation services to project sponsors in connection with the planning,~~
 22 ~~acquisition, improvement, construction or development of any broadband deployment project~~

23 ~~(2)~~ (1) Promote awareness of public facilities that have community broadband access that

24 can be used for distance education and workforce development;

25 ~~(3)~~ (2) Advise on deployment of e-government portals such that all public bodies and
 26 political subdivisions have homepages, encourage one-stop government access and that all
 27 public entities stream audio and video of all public meetings;

28 ~~(4)~~ (3) Make and execute contracts, commitments and other agreements necessary or
 29 convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to
 30 assist in the mapping of the state and categorization of areas within the state;

31 ~~(5)~~ (4) Acquire by gift or purchase, hold or dispose of real property and personal property
 32 in the exercise of its powers and performance of its duties as set forth in this article; and to

33 ~~(4)~~ (5) Receive and dispense funds appropriated for its use by the Legislature ~~or other~~
 34 ~~funding sources or solicit, apply for and receive any funds, property or services from any person,~~
 35 ~~governmental agency or organization~~ to carry out its statutory duties.

36 ~~(7) to oversee the use of conduit installed pursuant to section two of article three of this~~
 37 ~~chapter; and to~~

38 ~~(8) Perform any and all other activities in furtherance of its purpose~~

39 (c) The council shall ~~exercise its powers and authority to~~ advise and make
 40 recommendations to the Legislature Office of Broadband on bringing broadband service to
 41 unserved and underserved areas, as well as to propose statutory changes that may enhance and
 42 expand broadband in the state.

43 (d) The council shall report to the Office of Broadband ~~Joint Committee on Government~~
 44 ~~and Finance~~ on or before ~~January~~ December 1 of each year. The report shall include the action
 45 that was taken by the council during the previous year in carrying out the provisions of this article.
 46 The council shall also make any other reports as may be required by the Legislature or the
 47 Governor.

§31G-1-6. Mapping of areas within state.

1 [Repealed]

§31G-1-7. Retention of outside expert consultant.

1 [Repealed]

§31G-1-9. Collection of data.

1 [Repealed]

§31G-1-12. Grants.

1 [Repealed]

ARTICLE 1A. OFFICE OF BROADBAND.

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

1 (a) There shall be created an Office of Broadband which shall be organized within the
2 Economic Development Office under the authority of the Secretary of Commerce. The Office of
3 Broadband shall be given a dedicated annual appropriation within the state budget.

4 (b) The Director of the Office of Broadband shall have a minimum of a baccalaureate
5 degree in a relevant field of finance, economics, or technology, and shall have a minimum of 10
6 years of experience in the broadband industry.

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

1 (a) The Office of Broadband shall:

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

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

7 (3) Cooperate and assist in the expansion of electronic instruction and distance education
8 services.

9 (b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is
10 hereby granted, has and may exercise the powers necessary or appropriate to carry out and
11 effectuate the purpose and intent of this article, as enumerated herein. The Office of Broadband

12 shall have the power and capacity to:

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

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

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

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

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

24 (6) Perform any and all other activities in furtherance of its purpose.

25 (c) The Office of Broadband shall exercise its powers and authority to advise and make
26 recommendations to the Legislature on bringing broadband service to unserved and underserved
27 areas, as well as to propose statutory changes that may enhance and expand broadband in the
28 state.

29 (d) The Office of Broadband shall report to the Joint Committee on Government and
30 Finance of the West Virginia Legislature on or before January 1 of each year. The report shall
31 include the action that was taken by the Office of Broadband during the previous year in carrying
32 out the provisions of this article. The Office of Broadband shall also make any other reports as
33 may be required by the Legislature or the Governor.

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

1 (a) Based on its analysis of data, broadband demand, and other relevant information, the
2 Office of Broadband shall establish a mapping of broadband services in the state. The council
3 shall publish an annual assessment and map of the status of broadband, including specific

4 designations of unserved and underserved areas of the state. With respect to unserved and
5 underserved areas of the state, the Office of Broadband shall, to the extent it is able, map project
6 areas with funding provided by public entities.

7 (b) To the extent possible, and subject to limitations contained in subsection (f) of this
8 section, the Office of Broadband shall additionally establish an interactive public map reflecting
9 estimated or actual downstream data rate and upstream data rate in a particular region, area,
10 community, street or location. Any such mapping may only specify data rates at a particular street
11 address or physical location, and shall not make public the IP address or the name of the specific
12 individual at such location. Such mapping may also contain data concerning capacity, based upon
13 fiber count. This map shall be known as the West Virginia Broadband Availability Map.

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

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

18 (2) Industry provided information;

19 (3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to
20 §31G-1A-6 and §31G-1A-9 of this code; and

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

23 (d) Any entity that has received or hereinafter receives state or federal moneys, and which
24 has used those moneys to install infrastructure used for broadband services, shall furnish detailed
25 information concerning the location, type, and extent of such infrastructure to the Office of
26 Broadband for use in mapping.

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

29 (f) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband

30 services may exclude from public accessibility and availability:

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

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

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

40 (g) All executive agencies which have permitting and/or regulatory approval authority over
41 any project permitted or reviewed and approved pursuant to §17-2E-3(d) of this code shall
42 cooperate with and provide all necessary information to the Office of Broadband to determine the
43 feasibility and federal allowability of creating Advanced Regulatory Environment Analysis (AREA)
44 maps. AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant
45 information can be included in a centralized GIS mapping system to be maintained by the Office
46 of Broadband for utilization by the private sector when extending new fiber infrastructure pursuant
47 to Chapter 17, Article 2E of this code. AREA mapping shall also include, but is not limited to, any
48 areas already granted Finding of No Significant Impact (“FONSI”), categorical exclusions
49 (“CATEX”), areas prior approved by the West Virginia State Historic Preservation Office (“SHPO”),
50 and all West Virginia Division of Highways mapping for permits that include installation of
51 infrastructure. The Office of Broadband shall report to the legislature’s interim Joint Committee on
52 Technology within 180 days following the amendment and reenactment of this article during the
53 Regular Session of the Legislature in 2021, and shall regularly report on AREA mapping to the
54 legislature’s interim Joint Committee on Technology annually during the November interim
55 session of following years.

§31G-1A-4. Retention of outside expert consultant.

1 (a) In order to assist the Office of Broadband with the highly technical task of categorizing
2 the areas of the state, the Office of Broadband may retain outside expert consultants to assist in
3 the purposes of this article. The experts may assist the Office of Broadband to map the state on
4 the basis of broadband availability, to evaluate and categorize data, to assist in public outreach
5 and education in order to stimulate demand and to provide other support and assistance as
6 necessary to accomplish the purposes of this article. To the extent necessary to carry out the
7 provisions of this article, any expert consultants retained by the Broadband Council shall also be
8 made available to the Office of Broadband whether through the direction of the Broadband Council
9 or transfer of existing agreements to the Office of Broadband. All work products, reports, and
10 correspondence between the Broadband Council and any expert consultants shall be provided to
11 the Office of Broadband.

12 (b) The retention and contracting of all expert consultants shall be transparent, including
13 specifically, making publicly available any contracts, retention agreements, payments and
14 invoicing for services.

§31G-1A-5. Public awareness and education.

1 In order to implement and carry out the intent of this article, the Office of Broadband may
2 take such actions as it deems necessary or advisable in order to increase awareness of issues
3 concerning broadband services and to educate and inform the public.

§31G-1A-6. Collection of data.

1 (a) In order to ascertain, categorize, analyze, map, and update the status of broadband in
2 the state, as well as to enable the Office of Broadband to make informed policy and legislative
3 recommendations, the Office of Broadband may establish a voluntary data collection program.
4 The program may include voluntarily submitted data from internet service providers, including any
5 home or region data rate meters utilized by the provider. The program may also utilize and collect
6 voluntarily submitted data rate information submitted by any person reflecting the person's

7 personal data rate at a particular IP address. This personal data rate may be based upon a web-
8 based test or analysis program.

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

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

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

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

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

19 (d) The Office of Broadband may establish guidelines and additional rules governing a
20 data collection program through the legislative rulemaking process, pursuant to the provisions of
21 §29A-3-1 et seq.

§31G-1A-7. Voluntary donation and easement programs.

1 (a) The Office of Broadband shall create guidelines for, and recommend to the Legislature
2 a means of implementing a voluntary donation program to allow for pipeline, railroad, and other
3 similar structures and rights-of-way in the state to be donated to the state for use by public or
4 private entities to facilitate broadband service and availability through placement of fiber.

5 (b) The Office of Broadband shall create guidelines for, and recommend to the Legislature
6 a means of implementing a program to allow for an easement program to be established to allow
7 public or private entities to facilitate broadband service and availability through placement of fiber.

§31G-1A-8. Grants.

1 In furtherance of the purposes of this article, the Office of Broadband is permitted to seek
2 non-state funding and grants. The Office of Broadband may utilize funding and grants to support

3 the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may
4 additionally disburse such moneys to fund projects and initiatives in furtherance of the
5 enhancement and expansion of broadband services in this state, and the other purposes of this
6 article.

§31G-1A-9. Protection of proprietary business information.

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

7 (b) Trade secrets or proprietary business information obtained by the council or the Office
8 of Broadband from broadband providers and other persons or entities shall be secured and
9 safeguarded by the state. Such information or data shall not be disclosed to the public or to any
10 firm, individual or agency other than officials or authorized persons of the state. Any person who
11 makes any unauthorized disclosure of such confidential information or data is guilty of a
12 misdemeanor and, upon conviction thereof, may be fined not more than \$5,000 or confined in jail
13 not more than one year, or both fined and confined.

14 (c) The official charged with securing and safeguarding trade secrets and proprietary data
15 for the Office of Broadband is the Secretary of Commerce, who is authorized to establish and
16 administer appropriate security measures. The Office of Broadband shall designate two additional
17 persons to share the responsibility of securing trade secrets or proprietary information. No person
18 will be allowed access to trade secrets or proprietary information without written approval of a
19 minimum of two of the three authorized persons specified above.

§31G-1A-10. Legislative rule-making authority.

1 In order to implement and carry out the intent of this article, the Secretary of the

2 Department of Commerce, at the direction and recommendation of the Office of Broadband, may
3 propose rules for legislative approval, pursuant to the provisions of §29A-3-1 et seq. of this code.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.

§31G-3-3. Conduit installation or fiber installation by municipalities.

1 (a) Notwithstanding any other provision of this code, a political subdivision of the State of
2 West Virginia may:

3 (1) Contract with any entity to make payment necessary for that entity to install conduit,
4 fiber or broadband facilities as defined in §31G-1-2 of this code throughout that political
5 subdivision; or

6 (2) Acting as a political subdivision, install such conduit, fiber, or broadband facilities as
7 defined in §31G-1-2 of this code throughout that political subdivision; or

8 (3) Partner with:

9 (i) Any nonprofit organization; or

10 (ii) Cooperative association; or

11 (iii) Another political subdivision; or

12 (iv) With any private corporations, company, or person; or,

13 (v) With any public-private partnership; or

14 (vi) Any combination of such entities;

15 to install such conduit or fiber throughout that political subdivision; and,

16 (4) Additionally, any political subdivision of the State of West Virginia may partner with any
17 of the previously mentioned entities, or any combination of the same, which operate a network
18 operations center, to operate a fiber network: *Provided*, That, such network must be open for
19 access to all carriers and content providers in a manner:

20 (i) Which is consistent with all applicable state and federal law; and

21 (ii) Which is neutral and nondiscriminatory, making all services offered available to all
22 carriers and content providers on the same terms.

23 (b) All work performed must be in accordance with all applicable codes, as defined in
 24 §31G-1-2 of this code.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

1 As used in this article, the following terms are defined as follows:

2 (1) “Applicable codes” means the same as set forth in §31G-1-2(1) of this code.

3 ~~(4)~~ (2) “Attacher” means any person, corporation, or other entity, or the agents or
 4 contractors of such seeking to permanently or temporarily fasten or affix any type of equipment,
 5 antenna, line or facility of any kind to a utility pole in the right of way or its adjacent ground space.

6 ~~(2)~~ (3) “Attachment Application” means the application made by an Attacher to a Pole
 7 Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall
 8 include:

9 (A) Proof of insurance; or

10 (B) An indemnification agreement prepared by the Pole Owner.

11 ~~(3)~~ (4) “Make Ready Costs” means the costs incurred by an Attacher associated with the
 12 transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User,
 13 undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-
 14 Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses
 15 to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be
 16 necessary to accommodate an Attacher’s attachment.

17 ~~(4)~~ (5) “Pole Owner” means a person, corporation or entity having ownership of a pole or
 18 similar structure in the right of way to which utilities, including without limitation, electric and
 19 communications facilities, are located or may be located whether such ownership is in fee simple
 20 or by franchise.

21 ~~(5)~~ (6) “Pre-Existing Third Party User” means the owner of any currently operating
 22 facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

1 (a) Upon approval of an Attachment Application, an Attacher may relocate or alter the
2 attachments or facilities of any Pre-Existing Third Party User as may be necessary to
3 accommodate an Attacher's attachment using Pole Owner approved contractors; provided,
4 however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party
5 User's facilities that causes or would reasonably be expected to cause a customer outage without
6 first providing 45 days prior written notice to the Pre-Existing Third Party User, in order to permit
7 the Pre-Existing Third Party User to relocate its facilities on its own.

8 (b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or
9 rearrange their facilities within forty-five days from receipt of notice of relocation or alteration of a
10 Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a
11 customer outage, an Attacher may undertake such work.

12 (c) Within 30 days of the completion of any relocation or alteration, an Attacher shall send
13 notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all
14 poles or other structures on which such relocations or alterations were made. The as-built reports
15 shall include a unique field label identifier, and an address or coordinates.

16 (d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or
17 structure owner(s) may conduct an inspection within 14 days at an Attacher's expense. An
18 Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing
19 Third Party User and pole or structure owner for the inspection. If any such relocation or alteration
20 results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to
21 conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User
22 shall, within seven days of the inspection, notify an Attacher of such failure to conform.

23 (e) In a notice, the Pre-Existing Third Party User may elect to either:

24 (1) Perform the correction itself and bill the Attacher for the actual, reasonable and
25 documented costs of the correction, or

26 (2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-
27 inspection corrections performed by the Attacher must be completed within 30 days of such
28 notification.

29 (f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing
30 Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold
31 harmless the owner or owners of all poles or other structures on which such relocation,
32 rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers,
33 directors and employees of such owner or owners and their affiliates, each being deemed an
34 Indemnitee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or
35 forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending
36 against the same, payment of any settlement or judgment therefor and reasonable attorney's
37 fees, that are actually and reasonably incurred by an Indemnitee, by reason of any claim by an
38 affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing
39 Third Party User arising from such relocation, rearrangement or alteration.

40 (g) All work performed must be in accordance with applicable codes as set forth in §31G-
41 1-2(1) of this code: the National Electrical Safety Code and other generally accepted safety codes
42 Provided, That the variances to applicable codes as set forth in §31G-1-2(1) of this code and to
43 private agreements as set forth in §31G-6-1 of this code shall apply to this section.

**ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE
RESTRICTIONS; REPORTING REQUIREMENTS FOR WEST VIRGINIA
PROJECTS RECEIVING FEDERAL OR STATE FUNDING.**

§31G-6-1. Pre-emption in favor of broadband services.

1 Notwithstanding any other provision of the West Virginia Code and/or the West Virginia
2 Code of State Regulations, any ordinance of any political subdivision, corporation policy,
3 individuals agreement, organizational policy, Home Owners Associations, or similar entity or

4 organization seeking to regulate or prevent exterior installation of antennas and related equipment
5 and/or private agreements regarding pole attachment spacing, positioning, or order by or between
6 any Investor Owned Utility (“IOU”) and any Incumbent Local Exchange Carrier (“ILEC”) and/or
7 Competitive Local Exchange Carrier (“CLEC”) which would serve to provide broadband service
8 are hereby pre-empted to the extent necessary in favor of such broadband installation.

§31G-6-2. Reporting Requirements.

1 Reporting, under oath, from executives of companies receiving federal or state funding for
2 broadband expansion in the State of West Virginia may be required at the directive of the Senate
3 Committee on Transportation and Infrastructure, the House Committee on Technology and
4 Infrastructure and/or the Joint Interim Committee on Technology.

NOTE: The purpose of this bill is to create the statutory framework to support, encourage, and expedite the expansion of broadband throughout the State of West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.