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BROADBAND STATUTES AND RECENT LEGISLATION

Statutes

Forty-three states and the District of Columbia have at least one statute related to broadband technology. While some states merely provide definitions of broadband for various purposes, states have also endeavored to expand access to high-speed Internet through broadband technology and to improve existing broadband service. The various avenues by which states have been involved in the implementation of broadband are outlined below.

Definitions

States provide definitions of “broadband” in statute for various purposes, including:

- Public utility regulation;
- Infrastructure projects;
- Regulation by municipalities; and
- Intrastate communications.

In KSA 2017 Supp. 66-2005, Kansas defines “broadband network” as a connection that delivers services at speeds exceeding 200 kilobits per second in both directions. Hawaii similarly defines “broadband service” as a service that consists of the capability to transmit at a rate not less than 200 kilobits per second in either the upstream or downstream direction, but it adds a requirement that the service also provide either access to the Internet or computer processing, information storage, or protocol conversion.

Funding

Fifteen states¹ have established statutory funds to be used for financing broadband deployment. States have funded broadband deployment through special financing districts, assessments, surcharges, grants, bonds, municipal tariffs, and loans, as described below.

Arizona established the Statewide E-rate Program Fund and requires all school districts and charter schools that receive e-rate funding to establish an e-rate fund, which may be used to reimburse the school district or charter school for broadband Internet and telecommunications costs.

¹ Arizona, Colorado, Delaware, Florida, Idaho, Iowa, Louisiana, Maine, Nebraska, North Carolina, Tennessee, Utah, Virginia, West Virginia, and Wisconsin.

California authorizes any infrastructure financing district funding to be used for broadband.

Colorado increased the amount the Public Utilities Commission is authorized to collect of a surcharge deposited into the State Advanced Services Fund and requires deposits into the Broadband Infrastructure Grant Account for grants for infrastructure projects to provide broadband universal service; the Account requires a specified amount of moneys collected be used to support programs designed to increase adoption rates for broadband service for residents of publicly supported communities. It also provides applicants and challenging parties the opportunity to demonstrate broadband service in a project area. Colorado also created a Broadband Public Housing Account to facilitate last-mile broadband access to unserved areas.

Delaware requires certain regulatory assessments be paid directly to the Delaware Broadband Fund.

Iowa provides that the treasurer of the State may issue and sell bonds for public broadband.

New Hampshire allows municipalities to issue broadband infrastructure bonds and to charge broadband access tariffs; tariffs are placed into a fund that may be used to repair, expand, or replace broadband infrastructure.

North Carolina allows counties to provide grants to unaffiliated qualified private providers of high-speed Internet access service for the purpose of expanding service in unserved areas for economic development in the county.

Tennessee authorizes telecommunications joint ventures to provide broadband services to areas that have been determined to be historically unserved.

Utah created a Rural Broadband Service Account. It provides for grants to assist providers that want to deploy rural broadband service.

Public Ownership and Operation

Some states authorize governmental entities to construct and operate their own broadband infrastructure. Other states encourage public-private partnerships in expanding broadband service.

California authorizes community services districts to construct, own, improve, maintain, and operate broadband facilities and to provide broadband services until a private person or entity can acquire and operate facilities at a comparable cost and quality of that offered by the community services district. California also regulates fiber optic cables and broadband placement on state highways.

New Jersey authorizes local units of government to construct, own, or operate broadband telecommunications infrastructure to provide service *via* a wireless community network.

North Carolina regulates the provision of broadband services by cities.

Florida encourages development of broadband through the establishment of carrier-neutral, public-private Internet traffic exchange points.

Kentucky enables public-private partnerships among broadband providers and relevant governmental entities to encourage the deployment and adoption of advanced broadband services.

Wisconsin provides that local governments must meet a number of requirements before enacting an ordinance or adopting a resolution authorizing the local government's construction, ownership, or operation of any facility for the purpose of providing broadband service to the public.

Coordination and Leadership

The majority of current state law on the topic of broadband is related to the creation of councils, offices, authorities, development programs, and leadership positions within state government for the purpose of increasing broadband access throughout the state. Common features of these types of statutes include:

- Creating a state office or designating a state officer responsible for developing a statewide broadband plan;
- Declaring it is the policy of the State to encourage and support the deployment of broadband service in areas where the service does not exist;
- Creating legislative commissions, study groups, and councils with the goal of identifying ways to improve access to high-speed Internet; and
- Allowing governmental entities to build infrastructure necessary to improve broadband service.

Economic Incentives

Some states have developed economic incentives, such as funding priorities, tax exemptions, and tax credits, to encourage enhanced broadband services.

Kentucky has an incentive program to give highest funding priority to those projects that most effectively provide broadband service to the greatest number of unserved Kentucky citizens and at the lowest cost. Funding is disallowed for projects planned in locations where broadband service already exists, unless necessary to provide service to a previously unserved area.

Mississippi exempts sales of equipment to telecommunications enterprises that is used in the deployment of broadband technologies from tax and extends the *ad valorem* tax exemption for equipment used in the deployment of broadband technologies by telecommunications enterprises.

Idaho provides a tax credit for qualified broadband expenditures.

Indiana exempts certain tangible personal property used to provide broadband service from the state gross retail tax. Indiana also permits counties to establish infrastructure development zones in which broadband equipment is exempt from property taxation; such exemptions are not allowed when the facilities or technologies are used in a location where wireline broadband service is already provided.

Montana provides state matching funds for special construction of school networks.

Regulations

States that have established broadband policies have often further defined the expected treatment of broadband service by way of regulation in statute.

Arkansas and **Texas** have both authorized Broadband Over Power Lines (BPL), a system for delivering broadband over existing electric utility infrastructure. Arkansas permits persons, whether affiliated or unaffiliated with an electric utility, to own, construct, maintain, and operate a broadband system and provide broadband services on an electric utility's electric delivery system. Texas permits affiliated and unaffiliated entities to own or operate all or a portion of such BPL systems.

Kentucky, Nevada, North Carolina, and Oklahoma exempt broadband service providers from regulation by public utility authorities.

Some states have comprehensive regulatory frameworks for broadband providers in statute, as summarized below.

Georgia created the Advanced Broadband Collocation Act; provides for streamlined processing of applications for collocation or modification of certain wireless facilities; requires that such applications be reviewed for conformance with site plan and building permit requirements, including zoning and land use conformity; and requires a local governing authority to make its final decision concerning such applications within a specified number of days.

Hawaii requires the State and the counties to approve, approve with modification, or disapprove all broadband-related permits within a specified number of business days of submitting a permit application and a fee; provides that if no action is taken on the next business day, the application will be deemed approved; and relates to cable installation, tower construction, placement of broadband equipment in the road rights-of-way, undersea boring, or the landing of an undersea communications cable.

Indiana provides for the establishment by counties of infrastructure development zones in which natural gas, broadband and advanced services, and water infrastructure are exempt from property taxation; allows certain electric customers to petition for rate discounts; authorizes a utility that provides electric or gas service to petition to recover transmission, distribution, and storage improvement costs; and provides for coordination of public right-of-way use for transportation infrastructure improvement projects.

Maine established a state broadband policy and requires development of target prices and competitively neutral discounts to customers in areas where services are more expensive than the average metropolitan rates; it also requires the ConnectME Authority to develop target prices for broadband services and establish discounts in rural areas.

Tennessee established the Broadband Business Certainty Act of 2006 with a stated goal to ensure that Tennessee provides an attractive environment for investment in broadband technology by establishing certainty regarding the regulatory treatment of that technology.

Vermont requires electric or gas utility companies to allow communications service providers access to their infrastructure for the installation and maintenance of communications facilities. It specifies the communications service provider is responsible for any costs that the electric or gas utility company incurs to obtain easements or other property rights necessary for the installation and operation of communications facilities.

Virginia requires state agencies to lease or convey an interest in a State-owned communication tower or site to qualified providers of wireless broadband service to deploy broadband Internet service in areas that are not receiving adequate broadband service.

Recent Legislation

In 2017, 22 states introduced 32 bills pertaining to broadband; 12 bills were enacted and 4 bills failed, and the remaining bills were pending as of August 2017. Of the 12 bills enacted, 3 bills related to funding, 5 bills related to coordination and leadership, 5 bills related to incentives, and 1 bill related to regulations. A summary of the enacted bills follows.

Colorado HB 1174 creates an exception for rural counties from the limitations on the establishment of a local improvement district to fund the construction of a telecommunications service improvement for advanced service, provides that a rural county may establish a local improvement district only in an unserved area to contract with a telecommunications service provider or an advanced service provider to fund the construction of an advanced service improvement, and provides definitions.

Indiana HB 1626 relates to broadband adoption. It urges the legislative council to assign a committee to the topic of rural broadband service in the state.

Kentucky HB 343 creates the Kentucky Communications Network Authority and its board; requires rural telecommunications representation on the board; and oversees the growth and maintenance of KentuckyWired, the commonwealth's open-access broadband network.

Maryland HB 1169 establishes the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service. It also authorizes the chair of the Task Force to appoint additional members as deemed necessary; requires the Task Force to study and make recommendations on ways counties can work together to obtain federal assistance to improve communications services and accessibility; and requires the Task Force to report its specified findings and recommendations to the governor and the General Assembly on or before the specified date.

New Hampshire HB 238 creates a committee to study broadband access to the Internet. The committee is required to explore means to expand the adoption of wireless and wired broadband technologies into rural areas with low adoption rates.

New Mexico HR 96 urges the congressional delegation to ensure the State is granted no less than its *pro rata* share of any federal stimulus funding and request the establishment of a broadband task force to study all proposals submitted for broadband stimulus funding.

New Mexico SB 308 amends the Rural Telecommunications Act of New Mexico to update the State Rural Universal Service Fund provisions and establish a broadband program administered by the Public Regulation Commission to facilitate the expansion of broadband service in rural areas.

New Mexico SB 53 enacts sections of the New Mexico Telecommunications Act to provide for Public Regulation Commission jurisdiction over incumbent local exchange carriers and their investment in telecommunications and broadband infrastructure.

Nevada SB 53 revises the duties of the Director of the Office of Science, Innovation and Technology to include, without limitation, developing a strategic plan for the use of broadband services in the state, applying for state and federal funding to expand broadband services in the state, expanding telehealth services to increase access to health care in the state, expanding fiber infrastructure in the state for the benefit of public safety, and for other purposes.

Oregon HB 2091 authorizes the Public Utility Commission to use universal service fund moneys to encourage broadband service availability, to provide support to telecommunications carriers that provide both basic telephone service and broadband service, and for other purposes.

Vermont SB 34 establishes a Rural Economic Development Initiative to promote and facilitate community economic development in the small towns and rural areas of the state.

West Virginia HB 3093 provides loan insurance for commercial loans used for the expansion of broadband service to unserved or underserved areas and establishes the Broadband Enhancement Council. It creates the Broadband Enhancement Fund and requires the establishment of a mapping of broadband services in the state. The council is required to publish an annual assessment and map of the status of broadband including, specifically, designations of unserved and underserved areas of the state.