



Task Force on Rural Internet, Broadband, Wireless and Cellular Service
House Bill 243 – Task Force on Rural Internet, Broadband, Wireless and Cellular Service –
Study and Extension

Task Force Report

January 2, 2019

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The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
The State House
Annapolis, Maryland 21401

The Honorable Michael E. Busch
Speaker of the House
The State House
Annapolis, Maryland 21401

Dear President Miller and Speaker Busch:

We are pleased to present to you the following report as required under Chapter 177 of the 2018 Laws of Maryland by the Task Force on Rural Internet, Broadband, Wireless and Cellular Service.

The Task Force met six times from May through November 2018, and discussed the various issues related to rural telecommunications. We voted to adopt this report in December 2018 and support its recommendations.

Broadband and internet connectivity are the keys to economic success for our rural communities. We thank you for the opportunity to serve the State of Maryland and to assist in improving the quality of life for all Marylanders.

Sincerely,

Members of the Task Force on Rural Internet, Broadband, Wireless and Cellular Service

Executive Summary

The Task Force on Rural Internet, Broadband, Wireless and Cellular Service conducted an assessment of connectivity to determine the challenges, issues and potential actions to address broadband access to the un-served and underserved in all rural areas of Maryland. Specifically, the Task Force discussed the current status of rural broadband, and potential legislative options including property taxes on commercial inventory, property tax credits, depreciation of broadband equipment, tax credits for broadband equipment, and sales tax exemptions.

The Task Force also studied legislation enacted in Tennessee, Arkansas, Missouri, and Indiana designed to facilitate the use of electric utility easements for telecommunication purposes. Other public entities such as public authorities and cooperatives were also discussed.

The Task Force on Rural Internet, Broadband, Wireless and Cellular Service offers the following recommendations:

- 1) Implement legislation that allows electric utility easements and rights-of-way to be used for broadband, following the model implemented by the State of Tennessee;
- 2) Impose limitations on damages in an eminent domain, trespass, unjust enrichment, or similar proceeding, where an electric utility easement or right-of-way is used for broadband;
- 3) Provide support for additional resources and a capital budget request for the Office of Rural Broadband within the Maryland Department of Housing and Community Development and the Governor's Office:
 - a. Consider guidelines, metrics and monitoring for the deployment of funds;
 - b. Future funding sources and assets should be considered in concert with the inventory of state assets to be completed by June 2020;
- 4) Work with the State's congressional delegation to increase federal grant funding or matching funds for rural broadband;
- 5) Oppose public policy that discourages private or public investment in rural broadband; and,
- 6) The Office of Rural Broadband should report annually to the Senate Budget and Taxation and Finance Committees and the House Appropriations, Ways and Means, and Economic Matters Committees the status of rural broadband deployment. Private Internet Service Providers should also be included in the status of broadband deployment.
 - a. The Office of Rural Broadband should prepare a county by county report of previously unserved customers and identify mechanisms for internet service providers to access state assets such as fiber, towers and public buildings.

Background and History

The Task Force on Rural Internet, Broadband, Wireless and Cellular Service was created in 2017 with the passage of House Bill 717 – Connecting Rural Maryland Act of 2017. During 2017, membership of the Task Force was established. Several meetings were held across the State. The Task Force issued a report on January 9, 2018. A copy of which can be found at: http://rural.maryland.gov/wp-content/uploads/sites/4/2018/01/2017_MSAR11269_Task-Force-for-Rural-Broadband-Report.pdf

During the 2018 Maryland General Assembly Legislative Session, the Legislature passed House Bill 243 – Task Force on Rural Internet, Broadband, Wireless and Cellular Service – Study and Extension which was signed into law by Governor Larry Hogan on April 24, 2018. In addition to expanding the scope of the task force’s activities to encompass all rural areas of Maryland instead of only specified rural counties and allowing the task force to continue its unfinished work and extending it by one year, the bill requires the task force to (1) submit additional findings and recommendations by November 30, 2018; (2) solicit input from local governments, Internet service providers, and wireless service providers on identifying unserved and underserved rural areas; and (3) examine how to access maps sufficient to educate the public and calculate costs for universal last-mile broadband coverage.

As a result of the Task Force’s work, the Legislature also passed House Bill 961- Rural Broadband Communication Services which was also signed by the Governor on April 24, 2018. Chapter 176 requires the Department of Housing and Community Development (DHCD) to complete an inventory and map of all State and local government assets that can be used to assist with the expansion of broadband service to unserved and underserved areas of the State by June 1, 2020. The bill also (1) specifies that nonprofit telecommunications services providers in rural and underserved areas of the State must be allowed to use the right-of-way or easement of specified State agencies for the installation of broadband communication infrastructure without being charged to do so and (2) repeals the termination date of Chapter 269 of 2006 (which, among other things, established the Rural Broadband Assistance Fund (RBAF) and Rural Broadband Coordination Board (RBCB)).

On June 27, 2017, Governor Hogan issued Executive Order 01.01.2017.14 which created the Office of Rural Broadband. The order highlighted the social and economic benefits of access to broadband as well as the public safety benefits of enhanced communication. In May of 2018, the Governor announced the hiring of Mr. Kenrick Gordon, P.E., to head the Office of Rural Broadband. Mr. Gordon comes to the office from the United State Department of Agriculture, Rural Utility Service Telecommunications Program where he served as a general field representative. Mr. Gordon was appointed to serve on the Task Force by the Chair.

Activities and Meetings

The Task Force met on the following dates and locations:

- May 21, 2018 at the Steppingstone Museum in Havre de Grace
- June 19, 2018 at the Maryland Department of Agriculture in Annapolis
- July 19, 2018 at the Maryland House of Delegates Building in Annapolis
- August 17, 2018 at the Maryland Association of Counties Summer Conference in Ocean City
- September 26, 2018 at the Rocky Gap Casino Resort in Cumberland
- November 9, 2018 at the Maryland House of Delegates in Annapolis

On September 5, 2018 at the Southern Maryland Electric Cooperative headquarters in Hughesville, the Rural Maryland Council co-hosted with the Federal Reserve Bank of Richmond a Rural Broadband and the Community Reinvestment Act Southern Maryland Roundtable. Approximately 30 people attended from various backgrounds including rural banking institutions, local economic development and elected officials and other interested parties.

The Community Reinvestment Act (CRA) is federal legislation enacted in 1977 with the intent of encouraging depository institutions to help meet the credit needs of surrounding communities, particularly low and moderate income neighborhoods. Federal regulatory agencies examine banking institutions for CRA compliance, and take this information into consideration when approving applications for new bank branches or for mergers or acquisitions.

The Federal Reserve Bank of Richmond will be updating CRA regulations to allow broadband investments made by lenders to qualify as CRA compliance. A representative of the Federal Reserve discussed how this regulatory change could help broadband expansion into rural and underserved communities. A representative of the Keystone Development Center, rural cooperative development agency funded through the United States Department of Agriculture, discussed rural cooperatives and examples of rural broadband cooperative across the county. There are plans to host two additional broadband and CRA roundtables in Western Maryland and the Eastern Shore.

Status of rural broadband in Maryland

A major issue for the Task Force to tackle was the scale of the problem. In the Task Force extension legislation (HB 243 from 2018), the Task Force authority was not only extended another two years but also to look at all rural areas of the state. Rural jurisdictions share common characteristics that set them apart from their suburban and urban counterparts, such as geographic isolation, lack of transportation, and lack of access to and availability of health care. The state definition of rural is articulated in the Annotated Code of Maryland, State Finance and Procurement § 2-207, and includes 18 of the 24 jurisdictions in Maryland including Allegany, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Kent, Queen Anne's, Somerset, St. Mary's, Talbot, Washington, Wicomico and Worcester. The Rural Maryland Council considers several areas such as north Baltimore County above the Urban-Rural Demarcation Line, or URDL, to be semi-rural. Montgomery County also attested that a small portion of its Agriculture Reserve, approximately 2,400 homes, lack sufficient density in order to attract a broadband provider.

Since the development of cell phones and satellite options and the conversion of copper landlines to Digital Subscription Lines (DSL), many homes today have some sort of basic access to the internet; over 98% of Maryland is covered. However, most of these connections are at lower speeds or face issues with delivery such as latency, which is a delay in the receiving or sending of telecommunications signals, or jitter, the time difference in packet inter-arrival time. Geological features such as trees, mountains and water, which occur regularly in rural Maryland, also complicate the delivery of telecommunications. Early on, **the Task Force determined that full internet access meant that Maryland homes received telecommunications at the Federal Communications Commission's standard of high-speed internet as 25 megabits per second download and 3 megabits per second upload.**

According to the Congressional Research Service, over 324,000 rural Maryland residents lack access to high-speed internet. In a study published in July 2013, 3.2% of Maryland's population lacks access to fixed broadband. However, of that figure almost 20% (19.2%) of that population resides in our State's rural areas. Further, this data pertains to speeds below the FCC standard of 25 mbps down/3 mbps up. **Using the FCC standard, only 64% of Marylanders have access to high-speed internet.** (FCC Fixed Broadband Deployment Data – Form 477)

Another complicating factor that must be considered is the residents' willingness and ability to pay for installation and monthly services. As a whole, rural Maryland has an older population than the rest of the State. Younger people leave rural Maryland to attain education and seek opportunities while retirees move into rural areas for the solitude and small-town lifestyle. These older residents often do not see the need for internet services or have the equipment, such as a computer, tablet or smart phone, needed to facilitate telecommunications. Lower-income residents also lack the income necessary to pay for monthly high-speed internet service.

In Fiscal Year 2018, the Rural Maryland Council awarded a Rural Maryland Prosperity Investment Fund grant to the Southern Maryland Minority Chamber of Commerce to conduct a broadband demand survey in Charles, Calvert and St. Mary's Counties. RMPIF funding assisted with confirming and quantifying the demand for broadband access in Southern Maryland; along

with supporting the identification of Southern Maryland locations that will potentially offer the best chance to acquire public and/or private funding to support bringing affordable and high-quality broadband services.

The survey results found:

- 11.2% of respondents reported not having access to broadband at home.
- Almost 72% of the respondents or someone in their home had home offices and connected remotely.
- 86% of the respondents indicated they are interested in switching service providers. The challenge is that most of the respondents do not have another viable choice.
- 77% of respondents are not satisfied with the speed of their current provider.
- Over 50% of the respondents are paying more than \$80 a month, just for Internet access. This high cost is being paid, despite the survey response indicating that over 40% of the respondents Internet access service doesn't meet the FCC definition of "broadband".

At this time, efforts are being coordinated between the Office of Rural Broadband, the Department of Housing and Community Development, the Rural Maryland Council and the Eastern Shore Regional GIS Cooperative to determine and identify these unserved rural Marylanders.

After discussions, the Task Force determined that the primary focus of government resources should be on the unserved, those residents that lack access to internet at the FCC standard of 25 mps download/3 mps upload. However, there still exists a large number of Marylanders who are unsatisfied with their internet service and often only have one provider in which to choose.

Broadband industry in Maryland

Another factor for the Task Force to consider was the current regulatory environment under federal and state law. The 1996 Telecommunications Act, signed by President Bill Clinton, amended the 1934 Telecommunications Act. The new Act's passage proposed to advance technology through regulatory models based on competition rather than monopoly. Service providers are not limited by artificial and now antique regulatory categories, but permitted to compete with each other in a robust marketplace that contains many diverse participants. **As such, the Task Force agreed to support the idea that competition leads to robust markets without unnecessary regulations that might limit consumer choice.**

There are many broadband providers in Maryland; however because of the expense required to reach low density areas, many areas lack competition. Often rural residents have no real choice due to limitations of geographic location. Many cable franchise agreements, agreements between local governments for access to public rights-of-way, often specify which areas will be served although most generally cover areas that have at least 20 homes per linear mile, some agreements go down as far as 15. In those areas below the prescribed density per linear mile, homeowners are often required to cover installation costs for broadband or cable services.

While large providers have declined to service rural areas with less than the prescribed density, some smaller providers have taken up the charge. Bloosurf in the Lower Shore and Declaration Networks in Garrett County recently were awarded Connect America Funds II (CAF II) from the Federal Communications Commission.

Other Concurrent Considerations

Small Cell regulation

Some discussion was held regarding introduced legislation in the 2018 Legislative Session regulating small cell telecommunications, SB 1188 – Wireless Facilities – Permitting and Siting. While ultimately unsuccessful, the small cell legislation would have created a regulatory scheme that dictated access to rights-of-way and permitting requirements, something that local jurisdictions objected to, but that many Internet Service Providers mentioned as barriers to broadband expansion.

First Net

In response to 9/11, the Middle Class Tax Relief and Job Creation Act of 2012 created the First Responder Network Authority (FirstNet) as an independent authority within the National Telecommunications and Information Administration to provide emergency responders with the first nationwide, high-speed, broadband network dedicated to public safety. In early September 2017, Governor Hogan decided to opt-in early which means AT&T will build the nationwide distributed network core and the radio access network (RAN) for the opt-in states like Maryland. FirstNet will provide broadband and LTE cellular service to first responders. The cellular service will provide prioritization, preemption and quality of service capabilities to public safety users during emergency events. DoIT acts as Maryland's Single Point of Contact (SPOC) and advocate for public safety to FirstNet.

Next Generation 911

Maryland's current 911 system was developed in the 1960s, and is thought by some to be outdated. Most 911 centers in Maryland cannot receive text messages or videos, nor can the operator determine a caller's location when the caller uses a cell phone. As a result, the Maryland General Assembly established the Commission to Advance Next Generation 9-1-1 Across Maryland to study emerging communications technologies and develop a strategy for implementation of Next Generation 9-1-1 services across the State. Efforts have been made to contact the Commission.

Potential Legislative Options and Recommendations

As noted in the earlier report released in January, with the low density of homeowners and the high cost of service delivery, internet service providers have been unwilling to service rural customers because of the lack of return on the service provided. **In order to meet the goal of universal service by 2022 as stated in the Governor's Executive Order, additional resources will be needed to expand broadband build-out.**

There exist several State funding options for broadband expansion: the Office of Rural Broadband, the Rural Maryland Prosperity Investment Fund and the Rural Broadband Assistance Fund.

The Office of Rural Broadband, co-housed within the Governor's Office and the Department of Housing and Community Development, has been building its capacity to service rural Maryland and has access to the Department's financing programs. Using a public/private model, the Office recently released a Request for Interest for Maryland's local governments to partner in broadband expansion plans.

In order to best use the limited resources at its disposal, the Office is looking to partner with County governments, or their identified partner, interested in solving the problem of delivering broadband to unserved rural residents and businesses. While the Office will assist with the project, the County and/or its Partner will be the project owner and will be responsible for the overall funding and implementation of the project. The Office understands that a Counties geography and population distribution may require creative options for ubiquitous broadband deployment. As such, the Office is technology neutral, any technology capable of meeting speed and latency requirements set forth in this document are permissible.

The Office is proposing to assist Counties and any Partner in developing competitive applications for Federal funding opportunities. The initial funding opportunity targeted is the upcoming United States Department of Agriculture (USDA) grant/loan pilot e-Connectivity program initiated by Congress in the 2018 Omnibus spending bill. The Omnibus bill specified that funding was restricted to areas where 90% of the households lacked speeds of 10 Mbps down and 1 Mbps up. The program is being managed by the USDA Rural Utilities Service, Telecommunications Program and is still under development by the USDA. Draft program regulations are expected to be released for public comment in late 2018. It is anticipated that a 50% grant, 50% low interest loan will be offered with applications to be received the first quarter 2019. Typically, USDA Telecommunications loan programs offer cost-of-money interest rates, currently about 3.25%, with maturity terms equivalent to the useful life of the equipment being financed, typically 18 years for fiber projects and 11 years for wireless projects. Federal regulation 2 CFR 200 governs the grant programs offered by USDA. One of the requirements of the regulation is that the grant recipient own the facilities constructed with grant funds. The USDA regulations regarding broadband loans have a similar requirement. The ownership requirement is expected to be included in the e-Connectivity Program.

The Rural Maryland Broadband Assistance Fund and the Rural Maryland Broadband Coordinating Council were recently reauthorized under HB 961 – Rural Broadband Communication Services in the 2018 Maryland General Assembly Legislative Session. The Rural Maryland Broadband Coordination Board, a nine-member interagency board, was established by statute in 2006 to review and approve all disbursements from the Rural Maryland Broadband Assistance Fund, which was also established in 2006 and is administered by the then Department of Business and Economic Development, now Maryland Department of Commerce. The law establishing the Board also requires the Rural Maryland Council to provide staff support to the Coordination Board as well as serve as one of its nine members.

The fund includes state and federal funds appropriated for rural broadband expansion. The Board last met during Fiscal Year 2010, and approved the distribution of \$1.5 million in state funds to the Maryland Broadband Cooperative, a nonprofit organization building large portions of the rural broadband backbone across the state. The Board encumbered those funds during the previous fiscal year as a match to the Cooperative’s Economic Development Administration (federal) grant, which funded a project to lay fiber through parts of Worcester County up through parts of Cecil County. At the end of FY 2010, the Broadband Assistance Fund had just under \$1.7 million in available funding remaining; however, those funds are also encumbered as matching funds for the EDA project, which was to be completed by September 2012. No funds have been appropriated to the Rural Maryland Broadband Assistance Fund since.

The Rural Maryland Prosperity Investment Fund includes a component to facilitate infrastructure development and includes broadband. Infrastructure improvement – from traditional public facilities like roads and sewage treatment plants to such increasingly important amenities as workforce housing – are vital to healthy, flourishing communities. For instance, about half of the State’s major sewage treatment facilities and 90 percent of small community waste water systems are located in rural areas, and many of these are experiencing difficult problems associated with aging collection and treatment infrastructure. Rural regional infrastructure projects would provide matching grants for projects that involve two or more units of local government and are related to broadband, water, wastewater, transportation, workforce housing, and commercial/industrial facilities up to 25 percent of the total project cost. Workforce housing is defined as housing targeted to 80 to 120 percent of median income of the community in which the employees work. Other potential projects could include GIS services to modernize and improve utility infrastructure data and renewable energy facilities such as biomass, solar or wind electricity or thermal heat generators.

Since the creation of RMPIF, the Council has awarded five broadband projects. Two projects facilitated the development of the Town of Denton’s network between local town agencies, the aforementioned Southern Maryland Broadband demand survey and two others. These two additional broadband projects have final reports due in December 2018. An award made in Fiscal Year 2017 was for a broadband extension from the Myersville Elementary School to the new Myersville library in Frederick County. The Town ran into issues with pole attachments which resulted in delays. In Fiscal Year 2018, Garrett Community Action Commission was awarded funds to install broadband in 200 low-income homes as a last mile project. A final report is expected to complete by the end of the year with minor delays reported.

Legislative Proposals Considered

The Task Force considered several legislative options focused on tax and regulatory policy as suggested by task force members.

Property Taxes

Commercial Inventory

In Maryland there is a tax on business owned personal property which is imposed and collected by the local governments. Responsibility for the assessment of all personal property throughout Maryland rests with the Department of Assessments and Taxation. Personal property generally includes furniture, fixtures, office and industrial equipment, machinery, tools, supplies, inventory and any other property not classified as real property.

There is no state tax on business personal property in Maryland; however some additional notes about Business Personal Property include.

- Caroline, Dorchester, Frederick, Garrett, Kent, Queen Anne's and Talbot counties do not levy personal property taxes on ordinary business.
- The remaining counties and the City of Baltimore levy taxes on the depreciated value of business personal property, which for most property is 10 percent annually to a minimum of 25 percent of original cost.
- Certain personal property, such as data processing computer equipment, depreciates more rapidly.
- Municipalities may also tax business personal property, and county rates may vary between incorporated and unincorporated areas.
- **Most counties and many municipalities offer full or partial exemptions for certain categories of property including manufacturing and research and development machinery and equipment, manufacturing and research and development inventory and commercial inventory.**

Wicomico County reduced the percentage of the assessed value of commercial inventory, subject to County property tax from 35% to 0% (phased in over a five year period). By eliminating the commercial inventory tax, the County is expected to be more competitive to other counties and neighboring states in attract new and retaining existing businesses.

Under the More Jobs for Marylanders Act, manufacturing equipment and equipment used for research and development are exempted from personal property taxes to incentivize the manufacturing industry.

Current state statute is covered under Tax-Property Article, §7-109 and §7-226 which specifies that except as provided in § 7-109, raw materials and manufactured products in the possession of a manufacturer are not subject to property tax.

Property Tax Credits

The State has enabled local governments to offer property tax credits to incentivize certain industries. Computer software, manufacturing and renewable energy (solar and wind) equipment are eligible for property tax credits.

Covered under Tax-Property Article, §9–227, the governing body of a county or municipal corporation may grant, by law, a property tax credit for up to 100% of the county or municipal property tax imposed on business personal property that is computer software. The Tax – Property Article, §9-111 includes a property tax credit under the Promoting extraordinary Innovation in Maryland Economy Program established under Title 6, Subtitle 9 of the Economic Development Article. These property tax credits are equal to 50% of the State, county, or municipal corporation property tax that is imposed on the eligible assessment of a qualified property.

Property Tax, Depreciation on equipment

Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property.

Most types of tangible property (except, land), such as buildings, machinery, vehicles, furniture, and equipment are depreciable. Likewise, certain intangible property, such as patents, copyrights, and computer software is depreciable.

Maryland Depreciation Rate List

Category A – 10% per annum

- All property not specifically listed

Category B – 20% per annum

- Mainframe computers originally costing \$500,000 or more.

Category C – 20% per annum

- Autos (unlicensed), bowling alley equipment, brain scanners, carwash equipment, heavy equipment (tractors, bulldozers), fax machines, hotel, motel, hospital and nursing home furniture and fixtures (room and lobby), MRI equipment, mobile telephones, model home furnishings, music boxes, outdoor Christmas decorations, outdoor theatre equipment, photocopy equipment, radio and T.V. transmitting equipment, rental pagers, rental soda fountain equipment, self-service laundry equipment, stevedore equipment, theatre seats, trucks (unlicensed), vending machines, x-ray equipment

Category D – 30% per annum

- Data processing equipment, canned software

Category E – 33 1/3% per annum

- Blinds, carpets, drapes, shades. The following applies to equipment rental companies only: rental stereo and radio equipment, rental televisions, rental video cassette recorders and rental DVDs and video tapes.

Category F – 50% per annum

- Pinball machines, rental tuxedos, rental uniforms, video games
- Category G – 5% per annum
- Boats, ships, vessels (over 100 feet)

Potential Legislative Proposals

Tax credit for broadband equipment

The State could offer a tax credit to private companies that purchase broadband equipment. Pennsylvania offers a 5% tax credit on broadband equipment purchases. Other examples include Idaho law and Pennsylvania law establishing tax credits for mobile telecommunications equipment.

Current Maryland tax credits offered:

- Business Tax Credits
- Aerospace, Electronics, or Defense Contract Tax Credit
- Apprentice Employee Tax Credit
- Bio-Heating Oil Tax Credit
- Biotechnology Investment Incentive Tax Credit
- Businesses That Create New Jobs Tax Credit
- Cellulosic Ethanol Technology Research and Development Tax Credit
- Clean Energy Incentive Tax Credit
- Community Investment Tax Credit
- Commuter Tax Credit
- Cybersecurity Investment Incentive Tax Credit
- Employer-Provided Long-Term Care Insurance Tax Credit
- Endow Maryland Tax Credit
- Enterprise Zone Tax Credit
- Film Production Activity Tax Credit
- Health Enterprise Zone Hiring Tax Credit
- Heritage Structure Rehabilitation Tax Credit
- Job Creation Tax Credit
- Maryland Disability Employment Tax Credit
- Maryland Employer Security Clearance Costs Tax Credits
- Maryland-Mined Coal Tax Credit
- One Maryland Economic Development Tax Credit
- Oyster Shell Recycling Tax Credit
- Preservation and Conservation Easements Tax Credit
- Qualified Farms Tax Credit
- Qualified Vehicle Tax Credit
- Qualified Veteran Employees Tax Credit
- Research and Development Tax Credits
- Wineries and Vineyards Tax Credit

Sales Tax Exemption

The Task Force discussed a potential sales tax exemption for broadband equipment. The State could eliminate the sales tax requirement on broadband equipment. One industry-funded

economic analysis shows that eliminating the sales and use tax on communications infrastructure would over three years:

- Generate over \$689 million in new economic activity in Maryland;
- Create 2,800 new private sector jobs paying 138,000,000 annually in wages;
- Generate \$9 million in new state and local taxes.

(Source: https://www.broadbandtax.org/downloads/BTI_KatzStudy_October-2012.pdf)

Proposed Broadband Equipment Exemption – Maryland

Section 1. [MD Tax-Gen Code § 11-210 \(2017\)](#) is amended to read:

(a) Production of bituminous concrete. -- The sales and use tax does not apply to a sale of:

- (1) machinery or equipment used to produce bituminous concrete; or
- (2) electricity, fuel, and other utilities used to operate that machinery or equipment.

(b) Production generally. -- The sales and use tax does not apply to a sale of:

- (1) tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site from the handling of raw material or components to the movement of the finished product, if the tangible personal property is not installed so that it becomes real property;
- (2) a melting, smelting, heating, or annealing coke oven, aluminum furnace, anode bake oven, electrolytic pot, cathode, refractory, or other material used in relining and rebuilding a furnace or oven; or
- (3) a foundation to support other machinery or equipment or an item required to conform to an air or water pollution law and normally considered part of real property.

(c) Production of baked goods. -- The sales and use tax does not apply to a sale of equipment that is used by a retail food vendor to manufacture or process bread or bakery goods for resale if:

- (1) the taxable price of each piece of equipment is at least \$ 2,000; and
- (2) the retail food vendor operates a substantial grocery or market business, as defined in § 11-206(a) of this subtitle, at the same location where the food is sold.

(d) Equipment for television or radio signals. -- The sales and use tax does not apply to the sale, on or after January 1, 2000 but before January 1, 2008, of machinery or equipment:

(1) that enables a television or radio station to originate and broadcast or to receive and broadcast digital signals; and

(2) that was or is purchased to comply with or to facilitate compliance with the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56.

(e) Machinery and equipment for energy star windows and doors. -- The sales and use tax does not apply to the sale of:

(1) machinery or equipment used directly and predominantly to produce Energy Star windows or Energy Star entry doors for residential real property; or

(2) electricity, fuel, and other utilities used to operate that machinery or equipment.

(F) MACHINERY AND EQUIPMENT USED IN THE DEPLOYMENT OF ADVANCED BROADBAND TECHNOLOGIES. -- THE SALES AND USE TAX DOES NOT APPLY TO MACHINERY AND EQUIPMENT PURCHASED OR USED BY A COMMUNICATIONS SERVICES PROVIDER IN THE DEPLOYMENT OF ADVANCED BROADBAND TECHNOLOGIES. AS USED IN THIS SUBPARAGRAPH:

(1) “ADVANCED BROADBAND TECHNOLOGIES” MEANS TANGIBLE PERSONAL PROPERTY CAPABLE OF BEING USED FOR OR IN CONNECTION WITH THE TRANSMISSION OF INFORMATION SUCH AS TEXT, VOICE, VIDEO, OR DATA AT A RATE, PRIOR TO TAKING INTO ACCOUNT THE EFFECTS OF SIGNAL DEGRADATION, THAT IS NOT LESS THAN FIFTY (50) MEGABITS PER SECOND IN AT LEAST ONE DIRECTION, INCLUDING, BUT NOT LIMITED TO, ASYNCHRONOUS TRANSFER MODE SWITCHES, DIGITAL SUBSCRIBER LINE ACCESS MULTIPLEXERS, CABLE MODEM TERMINATION SYSTEM, ROUTERS, SERVERS, MULTIPLEXERS, RADIOS, ANTENNAS, ANTENNA MOUNTS, FIBER, FIBER OPTICS, SOFTWARE, AND RELATED TANGIBLE PERSONAL PROPERTY.

(2) “COMMUNICATIONS SERVICES PROVIDER” MEANS A PERSON PRINCIPALLY ENGAGED IN THE BUSINESS OF DISTRIBUTING, PROVISIONING, TRANSMITTING, CONVEYING, RECEIVING OR ROUTING OF CABLE TELEVISION SERVICE, INTERNET ACCESS SERVICE OR TELECOMMUNICATIONS SERVICE.

Access to rights-of-way

Electric utilities in Maryland have the right to obtain, through contract or condemnation, easements/rights-of-way on public and private property. Collectively, Maryland's electric utilities own hundreds of thousands of rights-of-way, many in rural areas. Maryland law does not explicitly authorize access to private electric utility rights-of-way for broadband or other uses beyond the provision of electric service.

Some Maryland electric utilities have already installed fiber optic cable on their systems to facilitate communications between devices and enhance electric power reliability. This fiber was installed, and will continue to be installed, as part of the modern equipment used in the delivery of electric service. Allowing utilities to lease excess fiber and/or pole attachment rights for telecommunications, including broadband, without obtaining a separate easement, would add efficiency and bring immediate benefits. High-speed internet access to rural areas would become more economically feasible, as excess fiber already installed on the system could be tapped. Telecommunications providers could reach less densely-populated areas if they no longer bore the cost of running their own fiber the entire distance.

The Task Force recommends passing legislation similar to that of several other states that have attempted to solve the right-of-way problem. Tennessee, Arkansas, Missouri, and Indiana have enacted legislation to facilitate the use of electric utility easements for telecommunication purposes.

1) Electric Utility Easement Expansion

The Task Force proposes amending various sections of the Maryland Code, possibly including but not limited to the following, to specifically allow utility easements to be used for telecommunications purposes, and to specifically include fiber optic lines in the definition of telecommunication equipment.

- MD Public Utility Code § 5-202 – Actions affecting franchises
- MD Public Utility Code § 5-402 – Limitations
- MD Public Utility Code § 5-410 – Telecom and telegraph companies
- MD Public Utility Code § 7-103 – Electric companies - Powers
- MD Public Utility Code § 8-103 – Construction of lines and fixtures
- MD Public Utility Code § 8-106 – Construction of lines and fixtures and easements

2) Damages Limitation

The Task Force proposes adding language to the Maryland Code Real Property article § 12-104, and/or other sections, to limit the damages recoverable in an eminent domain, trespass, or unjust enrichment proceeding. Where preexisting equipment in an electric utility easement is used to facilitate telecommunications services, including broadband, the damages would be limited to compensation for the increased interference, if any, with the property owner's use and enjoyment of the property caused by any new physical attachments for the purpose of providing broadband

services. Such actual damages would be fixed at the time of the initial installation and would not be deemed to accrue over time. Evidence of revenues or profits derived by an electric utility or other corporation from providing telecommunications services, including broadband, would not be admissible for any purpose in such a proceeding.

Creation of an entity to assist last-mile homeowners

Members expressed interest in identifying solutions for last-mile homeowners. Examples mentioned included the Eastern Shore Virginia Broadband Authority and the creation of a rural cooperative of users, not to be confused with the Maryland Broadband Cooperative, a cooperative of member ISPs. The Maryland Broadband Cooperative provides the State's middle-mile solution effectively reducing costs of deployment.

The Eastern Shore Virginia Broadband Authority (ESVBA) is a public authority, formed by the Counties of Northampton and Accomack, to provide broadband services on the Eastern Shore of Virginia. The ESVBA is a public, not for profit company created under the Virginia Wireless Service Authorities Act, Chapter 54.1 §15.2-543.1.1 et seq. and by a resolution of the Counties of Northampton and Accomack. According to a report done by CTC Energy & Technology (CTC) on strategic last mile service on Virginia's Eastern Shore, CTC's engineers estimate that FTTP network infrastructure deployment would cost \$39.9 million in the first four years of deployment, provided the Authority can obtain and maintain a 36 percent subscriber take rate to operate cash positive. This cost would increase if demand is higher than anticipated in the model, because there are additional costs to connect each new customer.

The Virginia Wireless Service Authorities Act allows local governments, by resolution, to create an authority, a public body politic and corporate. Powers of the authority include: a term of 50 years; maintenance of an office; the ability to sue and be sued; acquisition, construction, operation and renovation a project; issuance of revenue bonds; ability to borrow funds; and fix, charge and collect rates.

A historical solution to rural infrastructure issues such as broadband has been the creation of a cooperative. Cooperative associations have been organized throughout history to carry out many different activities, often in response to economic and social stress. Cooperative organizations in the United States appeared very early, reflecting both the European heritage of early settlers and the basic need for cooperative solutions in rural conditions. The first recognized cooperative business in the United States was a mutual fire insurance company, founded in 1752 by Benjamin Franklin. It continues to operate today.

Task Force Membership

Legislative members of the Task Force:

- The Honorable George Edwards representing Western Maryland
- The Honorable Steve Waugh representing Southern Maryland
- The Honorable Adelaide Eckardt representing the Eastern Shore
- The Honorable Wayne Norman representing Frederick, Carroll and Harford Counties
- The Honorable Carol Krimm representing Western Maryland
- The Honorable Sally Jameson representing Southern Maryland
- The Honorable Johnny Mautz representing the Eastern Shore
- The Honorable Mary Ann Lisanti representing Frederick, Carroll and Harford Counties

Statutory members of the Task Force:

- Mr. Michael Leahy, Secretary of the Maryland Department of Information Technology
- Mr. Steve Pennington, representing the Maryland Secretary of Commerce
- Ms. Charlotte Davis, Executive Director, Rural Maryland Council
- Mr. Juan Alvarado, representing the Maryland Public Service Commission
- Mr. Guy Winterberg, representing the Tri-County Council for Western Maryland
- Mr. John Hartline, Executive Director, Tri-County Council for Southern Maryland
- Mr. Jack Wilson representing the Upper Shore Regional Council
- Mr. Scott Warner, Executive Director, Mid-Shore Regional Council
- Mr. Michael Pennington, Executive Director, Tri-County Council of Lower Eastern Shore of Maryland
- Ms. Heather Gramm representing a multicounty organization serving Frederick, Carroll or Harford counties

Gubernatorial appointees:

- Ms. Theresa Bethune, InfoPathways Inc.
- Mr. Drew VanDopp, Maryland Broadband Cooperative
- Mr. Brian Roche, Bay Country Communications
- Mr. Jonathan Favorite, Communications Electronics, Inc.
- Mr. Andrew Roscoe, Consolidated Broadband Systems
- Ms. Lisa McCabe, Cellular Telecommunications and Internet Association, CTIA
- Mr. Robert Scott Randall, Atlantic Broadband
- Mr. Robert Branson, Verizon

Chair appointees:

- Dr. Michael Scott, Eastern Shore Regional GIS Cooperative
- Mr. Tom Dennison, Southern Maryland Electric Cooperative, SMECO
- Mr. Patrick Mitchell, Maryland Broadband Cooperative
- Mr. Hugh Grunden, Easton Utilities
- Mr. Sean Looney, COMCAST
- Mr. Robert Behlke, Choptank Electric Cooperative
- Mr. Kenrick Gordon, Office of Rural Broadband