



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

December 17, 2020

Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met virtually via GoToWebinar at 8:36 a.m., Vice Chairman Kevin Brooks presiding.

Present 18	Absent 7
Mayor Rogers Anderson	Representative Mike Carter
Assistant Commissioner Sammie Arnold	County Executive Jeff Huffman
Mayor Tom Bickers	Senator Jon Lundberg
Mayor Buddy Bradshaw	Representative Susan Lynn
Mayor Kevin D. Brooks	Mayor A. Keith McDonald
Mr. Calvin Clifton	Senator Katrina Robinson
Representative John Crawford	Senator Jeff Yarbrow
Deputy Commissioner Paula Davis	
Mayor Terry Frank	
County Clerk Mary Gaither	
Mayor Jill Holland	
Representative Harold Love Jr.	
Representative Antonio Parkinson	
Mr. Jeff Peach	
Mayor Larry Waters	
Senator Bo Watson	
Comptroller Justin Wilson ¹	
Senator Ken Yager	

¹ Lauren Spires represented Justin Wilson.

1. Call to Order and Approval of the Minutes

Vice Chairman BROOKS began the meeting at 8:36 a.m., telling the members that he had spoken with Chairman Mike Carter, who had received some positive health news and who asked Vice Chairman Brooks to pass along his appreciation for everyone's well wishes. Next, the minutes from the November 2020 meeting were accepted without objection, and Executive Director Cliff LIPPARD read the statement of necessity for a remote meeting.

2. Commission and Staff Update

Executive Director Cliff LIPPARD provided a commission and staff update, informing the members of an extension of the Commission's ongoing public infrastructure needs inventory project, which will study of the effects of social disruptions and economic downturns from the global pandemic on public infrastructure needs. Dr. LIPPARD then asked the members to congratulate Research Manager Mark McAdoo on his recent completion of the Tennessee Government Management Institute program and Senior Research Associate Tyler CARPENTER on his completion of the LEAD training program.

3. Public Chapter 228, Acts of 2017 (Status of Broadband Internet Deployment, Availability, and Adoption)—Draft Report for Review and Comment

Policy coordinator Dr. Matthew OWEN presented the draft report on Public Chapter 228, Acts of 2017, for review and comment. The Act directed the Commission to update its 2017 report on broadband deployment, availability, and adoption in Tennessee. Consistent with recommendations in the Commission's 2017 report, the Act also

- established a state grant program to help offset the cost of expanding coverage in unserved areas, while authorizing the program to grant funds to libraries to help facilitate broadband adoption;
- established a tax credit for broadband investment in tier 3 and tier 4 enhancement counties;
- removed barriers to entry for would-be providers by authorizing electric cooperatives to provide broadband within their electric service areas; and
- established a pathway for communities to signal providers that they have streamlined local permitting processes and removed regulatory barriers to broadband investment.

Dr. OWEN said that both broadband access and broadband adoption in Tennessee continue to increase. According to the latest data available from the Federal Communications Commission (FCC), approximately 93.7% of Tennesseans live in census blocks where at least one provider reported offering service with a capacity of at least 25/3 as of December 2019, compared with 88.3% in December 2015. Dr. OWEN noted that because the FCC data do not show whether everyone in these census blocks has access to service at the reported speeds, this represents the maximum extent of coverage. Regarding adoption, 58% of households in census blocks where at least one provider reported offering broadband subscribed to the service, according to the FCC's 2020 broadband progress report, which relies on December 2018 data. Four years earlier, the rate was only 40%.

In response to Representative John CRAWFORD's request for coverage maps with improved image quality, Dr. OWEN said that they would be provided. He added that staff intends to produce development district level maps that will provide a more focused picture of coverage in subsections of the state and hopefully be easier to read.

Dr. OWEN next presented the draft recommendation related to facilitating broadband adoption. He described some of efforts undertaken by local libraries and schools to improve broadband adoption in their communities, saying that the draft report also highlights recent funding for these efforts. He said that because of the role libraries and schools play in their communities and the importance of tailoring broadband adoption efforts to meet local needs, the draft report recommends that the state and local governments should continue to identify opportunities to increase funding for libraries and schools to assist their efforts to facilitate broadband adoption and short-term access in their communities—including support for digital literacy classes, devices, hotspots, and other efforts to make broadband available to those who either don't have or cannot afford service. For libraries, in particular, the state should continue to provide funding for broadband adoption efforts through the state's broadband grant program.

County Clerk Mary GAITHER noted that in Tipton County they have six buses parked in various locations across the county that provide hotspots that are being used for students. Dr. OWEN said that information can be included in the report. Vice Chairman BROOKS added that the parking lots of the Cleveland City Schools and the Cleveland Chamber of Commerce have been outfitted with WiFi access points to provide broadband access for families so that their children can complete assignments requiring the internet. Dr. OWEN said providers interviewed for the report have also said that WiFi access points they have deployed in their communities are helping students and others who need service get access to broadband.

Dr. OWEN next discussed the Tennessee Broadband Accessibility Grant program administered by the Tennessee Department of Economic and Community Development (ECD), which awards funding to offset the cost of expanding broadband in unserved areas. The program has awarded a total of more than \$44.3 million, helping fund 39 projects in communities that will result in 26,300 previously unserved homes and businesses receiving broadband. However, he said there are still at least 131,000 homes in census blocks where no provider reported 25/3 service as of December 2019 that won't receive broadband from existing state- or federally funded projects, according to TACIR staff estimates. Based on the median cost per location for projects in the first three rounds of the state grant program—approximately \$4,028 per location, including both the state's share and the applicant match—the total cost to cover these homes could be approximately \$529 million.

Because of the challenging economics of providing broadband in some unserved areas, Dr. OWEN said that filling the remaining coverage gaps will likely require a combination of public and private resources. Requirements to build out broadband to unserved homes and businesses included in each grant—which providers must meet to receive their full grant awards—help ensure that state funding spent through the program results in coverage expansions. While only one round of projects funded by the state grant program has been completed, projects in that round not only met but collectively exceeded their buildout

requirements. As a result, he said that the draft report recommends that the state should keep supporting efforts to expand broadband access in Tennessee by continuing to fund the broadband grant program and could consider increasing its annual appropriations to accelerate broadband expansion to more unserved areas.

Dr. OWEN said that in its discussion of other potential government incentives that could be established for broadband providers, the draft report emphasizes that the buildout requirements included in the state grant program help protect the state if projects fail and tie receipt of state funding directly to the expansion of broadband access. Moreover, ECD caps the state's share of project costs under the grant program at 50%. He said that while the exact structure of the grant program's requirements might not be transferrable to every state or local incentive, the goal of reducing risk to taxpayers is. The draft report recommends that the state and local governments should consider tying any new incentives for broadband providers directly to coverage expansions, while limiting the overall share of project costs that those incentives pay for.

Dr. OWEN last discussed the report's recommendation related to the territorial restrictions on municipal utilities and electric cooperatives providing broadband in Tennessee. He said that Public Chapter 228, Acts of 2017, authorized electric cooperatives to become retail broadband providers within their electric service areas, consistent with recommendations in the Commission's 2017 report. But electric cooperatives—like municipal utilities—remain subject to territorial restrictions that, with limited exceptions, prevent them from providing broadband outside of their electric service areas. Dr. OWEN said that even without the current territorial restrictions, cost will still be a barrier in some areas. The potentially high cost of building broadband networks introduces risks to which electric cooperatives and municipal electric systems are not immune. The draft report finds that who shoulders these risks is important.

Dr. OWEN said that like any other provider, electric cooperatives and municipal electric systems often take on debt to finance the construction of their broadband networks. For debts backed by electric system assets or revenues, if broadband revenue isn't enough to make debt payments, electric ratepayers shoulder the risk of repaying them. While the risks can be justified inside a cooperative's or utility's electric service area at least in part based on the benefits to electric ratepayers that can result from communications networks that support management of the electric grid, this dual justification doesn't exist for a cooperative or utility outside its electric service area.

State law prohibits electric cooperatives and municipal utilities from using their electric operations to subsidize their broadband operations. However, these provisions don't prevent cooperatives or utilities from pledging electric system assets and revenues to finance the construction of their broadband networks within their electric service areas. Because of the risks involved in broadband projects, Dr. OWEN said the draft report recommends that if the state were to eliminate or ease existing territorial restrictions on electric cooperatives and municipal electric systems, it should consider ways it can protect electric ratepayers, for example, by prohibiting these cooperatives and utilities from pledging, loaning, or otherwise using electric system assets or revenues to finance broadband projects outside their electric service areas.

In response to Mayor Jill HOLLAND's question about whether the draft report recommends that the electric cooperatives be authorized to go outside their service area to provide broadband service, Dr. OWEN responded that the draft report does not take a position on whether the state should or should not ease or eliminate the territorial restriction on electric cooperatives. He clarified that the draft recommendation says that if the state were to eliminate the territorial restriction, then it should consider ways it could protect electric ratepayers. Mayor HOLLAND then asked whether he said the broadband infrastructure would be attached to the existing utility poles. Dr. OWEN responded that whether wireline infrastructure is attached to utility poles can vary from project to project. He said that in areas where the construction of the network is above ground, it's very common for the fiber optic cable or other wireline infrastructure to be attached to utility poles.

In response to Assistant Commissioner Sammie ARNOLD's question about whether a 3-megabit per second upload speed is good enough to support two-way video, Dr. OWEN answered that the system or connection requirements recommended by a lot of the commonly used video conferencing platforms say that a 3-megabit per second upload speed should be fast enough. However, he said the report notes that there is at least one major university system that is recommending that its students have greater upload speeds. And he said providers have told TACIR staff that since the onset of the pandemic they have seen many of their customers choose to subscribe to faster service because of increased use at home. He said that the number of individuals sharing a connection at one time can also affect whether that connection is fast enough. He said that technology that can be scaled to accommodate faster speeds can help ensure that future broadband needs are met, and he said that the scalability of technology is one of the metrics ECD's staff takes into consideration when scoring grant applications.

Vice Chairman BROOKS observed that the report discusses the well-known limitations of the FCC's coverage data. He said that when Georgia created its own state broadband map it showed a 32% increase in the number of census blocks designated as unserved when compared with the FCC broadband map. He said many communities in our state could greatly benefit from a better mapping system, and he wondered whether a stronger recommendation for the state of Tennessee to create its own map would be pertinent and substantially helpful. Dr. OWEN replied that is something the state could do. He mentioned that staff spoke with Georgia officials about their mapping project, and he said having more detailed coverage data would be of benefit for the state. He said that although Congress has passed a law directing the FCC to improve the quality of its coverage data in a way that will show more specifically which locations have service and which don't, we are in limbo concerning when that map will be implemented, and the FCC has not been appropriated the funding yet to undertake the improvement. Once they get that data, we do not know at what level that data will be made available to the state. He said he could also provide more data for the final report on what mapping would cost the state and whether there are options for the state to do that in house or contract out with third parties.

Vice Chairman BROOKS said that he thinks the map is something the state could take on. He said this would help the legislature make decisions based on better empirical data. Mayor Tom BICKERS said that he agreed that we could include a recommendation in the report that the state create its own map, so we have more accurate information. County Clerk GAITHER

agreed with Vice Chairman Brooks and Mayor Bickers. She suggested that staff consider whether the providers could be required to report the locations where broadband is available and the speeds that are available.

Vice Chairman BROOKS asked whether the Commission should vote on adding the recommendation to the report or just make the recommendation verbally. Executive Director LIPPARD said he did not think it required a vote. Vice Chairman BROOKS asked whether there were any objections from the Commission. There were no objections.

4. Public Chapter 819, Acts of 2018 (Small Cell)–Final Report for Approval

Policy coordinator Dr. OWEN presented the final report on Public Chapter 819, Acts of 2018, for approval. Dr. OWEN said that because concerns related to the effect of small cells on community aesthetics are unlikely to diminish as the number of small cells increases, the report includes two recommendations: First, the report encourages local governments to both update existing ordinances that set aesthetic standards for their communities to ensure their requirements apply to small cells and include small cells in any new standards they adopt. Second, the report finds that the General Assembly could consider authorizing local governments to require colocation of small cells in areas with existing poles. Care would need to be taken to ensure this authority could not be used to block the deployment of small cells in situations where applicants can demonstrate that colocation is not feasible either for technical reasons or because of added costs, like limitations on colocation requirements adopted in Georgia. Regardless, some new poles will be necessary to improve wireless service given the limited distance traveled by some of the wireless signals used by providers. And because colocation will likely involve the use of electric utility poles, any colocation requirements should also ensure the continued authority of local power companies to protect the safety and reliability of the electric grid.

In response to Mayor Jill HOLLAND's question about whether current law authorizes local governments to regulate the aesthetics of small cells but prevents them from requiring that they be placed in certain locations or colocated on existing poles, Dr. OWEN said that she is correct. Public Chapter 819, Acts of 2018, authorizes local governments to set aesthetic standards for small cells provided that the standards are non-discriminatory, generally applicable, and don't preclude all deployment of small cells. However, local governments must allow small cell applicants to seek waivers that would authorize placement of new poles for small cells in areas where electric, cable, and other communications infrastructure is otherwise required to be underground; they cannot require that small cells be placed on specific poles or categories of poles, preventing them from requiring colocation on existing poles; and they cannot require that small cells or the poles supporting them be spaced a minimum distance apart.

Mayor Buddy BRADSHAW moved that the report be approved. Mayor Tom BICKERS seconded the motion. The Commission unanimously approved the report.

5. House Bill 971/Senate Bill 1075 (Local Revenue and Services)–Final Report for Approval

Senior Research Associate Michael MOUNT presented the final report for the Commission's approval. He presented language that was added to the report as requested by Mayor Keith

MCDONALD and Mayor Jill HOLLAND. Mayor Terry FRANK moved, and Mayor Tom BICKERS seconded, to approve the report, which passed unanimously.

6. Public Chapter 407, Acts of 2019 (Right to Shop)—Final Report for Approval

Senior Research Associate Jennifer BARRIE presented the final report addressing cost savings of right to shop programs for the Commission's approval. Ms. BARRIE explained that revisions were made to the draft report to address questions and concerns expressed by Commission members at the November meeting. She said detailed information was added to the report about resources and assistance available to consumers, the cost and challenges for states when implementing healthcare cost websites, and participation rates in other states' employee health plan incentive programs. The final report also emphasizes that healthcare is not a commodity and that quality is as important as cost.

The findings of the report remain the same, except for one additional sentence that was added highlighting the importance of consumer education and promotion of the tools. The final report found that shopping for healthcare services can result in some savings for consumers and insurers, and when price tools are combined with incentive programs, they have the potential to save more. But usage for both the tools and the incentive programs varies widely. A few states have implemented incentive programs for state or other government employee health plans or have required private plans to implement them. During interviews with Commission staff, stakeholders emphasized the importance of educating consumers about healthcare and promoting the tools to encourage their use. The data show that the programs produce cost savings, but there is not yet enough data to determine whether the savings are significant over the long term.

Mayor Jill HOLLAND moved that the report be approved. County Clerk Mary GAITHER seconded the motion. The Commission unanimously approved the report.

7. Senate Joint Resolution 593 (Multi-School System Counties)—Final Report for Approval

Research Associate Emma JOHNSON presented the final report for approval. The report was prepared in response to Senate Joint Resolution 593 of the 110th General Assembly, sponsored by Senator Haile, which directs TACIR to study the overall effects on public K-12 education of the laws relating to the sharing of resources among school systems in the same county. SJR 593 further notes that "the creation of new school districts has in the past created conflict regarding the ownership of existing school buildings and facilities." In response, the report also considers options for the transfer of school property to new city school systems.

Ms. JOHNSON summarized changes that were made to the report since the draft was presented at the September 2019 Commission meeting. Additions to the report include maps and tables showing school systems by county, the number and type of school systems by county, and grades served by school systems; information about a proposed new school building in Jonesborough; information on Tennessee statutes and case law pertaining to building transfer issues; clarifying language regarding student and taxpayer inequities; and, following an October 2020 meeting of the Commission's local government working group, language reiterating the need for a comprehensive review of the Basic Education Program funding formula. Ms. JOHNSON explained changes to the mixed drink tax revenue distribution statute TACIR

that occurred since the draft report was presented and said the report's recommendations, with the exception of the mixed drink tax recommendation that was removed, remain largely unchanged from the draft report.

Mayor Tom BICKERS moved to approve the report and Mayor Terry FRANK seconded the motion. The Commission voted to approve the report with only Representative Antonio PARKINSON abstaining.

8. Tennessee Valley Authority Payments in Lieu of Taxes—Update

Senior Research Associate Bob MOREO presented an update of issues potentially affecting the payment in lieu of taxes (PILOT) from the Tennessee Valley Authority (TVA), including the status of TVA's long-term wholesale power contracts with local distributors and that Memphis Light, Gas and Water (MLGW) is studying whether to leave the TVA system. This update was requested by the Commission when these issues were originally discussed as part of the Commission's January 2020 annual report. In addition, Mr. MOREO updated the Commission on the potential effects that COVID-19 may have on the PILOT.

Mr. MOREO said that, as of November 16, 142 of the 153* local power companies (LPCs) TVA serves had signed new 20-year agreements that include 3.1 percent credits for the LPCs, up from 131 at the time of the Commission's January 2020 report. [*Two companies merged in July 2020, reducing the total number of LPCs from 154 to 153.] These LPCs were responsible for 81.5% of TVA's revenue from sales of power to LPCs and 75% of total operating revenue in federal fiscal year 2020. The long-term partnership credits were valued at \$163 million in TVA's 2020 federal fiscal year, reducing the potential overall PILOT by \$8.1 million. Based on TVA's projected revenue for federal fiscal year 2021, Mr. MOREO said the credits this year could total between \$190 and \$200 million.

Mr. MOREO said that MLGW's current contract with TVA has a 5-year termination notice, and that MLGW has not agreed to a new 20-year partnership contract. The MLGW board approved an Integrated Resource Plan (IRP) in July 2020, which detailed several power supply alternatives that include the possibility of leaving TVA. However, Mr. MOREO explained that the Memphis City Council voted down a contract with the consultants MLGW chose to help it through the process of obtaining the bids necessary to make that decision, leaving MLGW unsure how to continue, adding that if MLGW continues to move towards a bidding process for power outside TVA, it will likely be 12 to 18 months before a decision can be made and the five-year TVA contract termination period would begin.

Mr. MOREO said that, without revenue from selling power to MLGW, TVA's PILOT for all its states could be reduced by nearly \$50 million, and because Tennessee's share of TVA's power sales would drop from 67% to 63%, Tennessee could see its PILOT amount reduced by nearly \$42 million. However, Mr. MOREO explained that a provision in Public Chapter 1035, Acts of 2010 (Tennessee Code Annotated, Section 67-4-3101), could restore some of that money, but how much will depend on how MLGW and its new suppliers structure their contracts. Mr. MOREO said that if MLGW chooses to leave TVA, federal fiscal year 2028 would potentially be the first year of significantly reduced revenue, resulting in possible lower PILOT amounts for 2029 and beyond.

Finally, Mr. MOREO discussed how COVID-19 (novel coronavirus disease) may affect the PILOT—stating that, while business activity has recovered somewhat since the initial outbreak, decreased demand for electricity is affecting TVA’s revenue, which reduces the PILOT amount. Mr. MOREO also said that in August 2020 the TVA Board approved a \$200 million Pandemic Relief Credit in federal fiscal year 2021 for its LPCs, their large commercial and industrial customers, and TVA’s directly served customers. With this credit and a slowly recovering economy, TVA is projecting FFY 2021 revenue will remain slightly below FFY 2020, meaning PILOT payments received in late 2021 and most of 2022 are likely to be similar to current amounts.

Mayor FRANK asked whether the provisions of Tennessee Code Annotated, Section 67-4-3101 would require legislative clarification or whether the application of this section is a matter for the Tennessee Department of Revenue to decide. Mr. MOREO responded that this section was originally intended to manage the situation of TVA leasing its facilities and then buying power back from that entity. Furthermore, he said that there has not been a situation where this section has been tested and that if it were to be applied then there could be questions; however, the process would be that TVA provides the PILOT to the Tennessee Department of Revenue and the department makes the decision on how to distribute the funds based on the state’s distribution formula.

Representative PARKINSON asked for the purpose of this update to the Commission. Mr. MOREO replied that was to provide information regarding issues that had the potential to affect the PILOT. Director LIPPARD added that the January 2020 report to the Commission had brought up these issues and that the Commission asked staff to monitor the evolving situation and then to provide an update on the status.

Vice Chairman BROOKS adjourned the meeting at 10:23 a.m.