

## **Broadband Deployment, Availability, and Adoption—Follow-up Report**

### **Purpose:**

Public Chapter 228 of 2017 directs the Commission to study, prepare, and deliver to the General Assembly by January 15, 2021, a report updating its 2017 Report on Broadband Internet Deployment, Availability, and Adoption in Tennessee.

### **Ongoing Research**

- Track future broadband legislation in the General Assembly.
- Use annually updated data from the Federal Communications Commission to track changes in broadband adoption and availability in Tennessee and produce new coverage maps.
- Track which municipal electric systems and electric cooperatives provide broadband in Tennessee and identify
  - whether they provide broadband throughout their service areas;
  - how providing broadband affects and interacts financially with other services provided by these utilities; and
  - any changes in oversight provided by the state and the Tennessee Valley Authority (TVA).
- Continue to identify and track broadband adoption programs in Tennessee and other states, including provider-led programs, the federal Lifeline program, and local programs.

### **Research Beginning January 2020**

- Review changes in technology for providing broadband.
- Review regulatory landscape for broadband providers, including any changes in TVA's pole attachment fee formula.
- Review progress of federal Connect America Fund programs.
- Determine whether implementation of Public Chapter 228 of 2017 has facilitated expansion of broadband access and adoption in Tennessee and whether stakeholders are satisfied with the
  - state grant and tax credit programs,
  - broadband-ready community program, and
  - electric cooperatives' authorization to provide broadband.

- Review broadband availability and adoption resources at community anchor institutions.
  - Determine whether all libraries are meeting the Tennessee State Library and Archives' technology guidelines.
  - Identify how many libraries offer hotspot lending programs and whether these programs have been effective at expanding access to broadband.
- Reconnect with stakeholders from initial project, in particular the Tennessee Department of Economic and Community Development, to determine whether state's broadband needs are being met, whether current policies should be continued, and whether additional policies should be considered to encourage broadband access and adoption.

### **Tentative Meeting Schedule**

- Spring 2020: Panel on broadband access and regulatory landscape
- Summer 2020: Panel on broadband adoption
- Fall 2020: Draft Report
- Winter 2021: Final Report



# State of Tennessee

## PUBLIC CHAPTER NO. 228

### SENATE BILL NO. 1215

By Norris, Bell, Yager, Ketron, Watson, Crowe, Gresham, Hensley, Niceley

Substituted for: House Bill No. 529

By Hawk, Casada, Swann, Marsh, Doss, Carter, Howell, Kevin Brooks, Calfee, Reedy, Powers, Eldridge, Holsclaw, Byrd, Gant, Travis, Hazlewood, Hicks, Sanderson, Weaver, Favors, Rudd, Lamberth, Tillis, Littleton, Timothy Hill, Sargent, Williams, Jerry Sexton, Mark White, Moody, Terry, Akbari, Rogers, Parkinson, Halford, Curcio, Crawford, Gravitt, Ragan, Staples, Camper, Alexander, Towns, Forgety, Hardaway, Dunn, Sparks, Faison, Dawn White

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 7; Title 7, Chapter 59, Part 3; Title 65, Chapter 25 and Title 67, Chapter 4, Part 20, relative to communications services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Broadband Accessibility Act."

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 3, Part 7, is amended by adding the following new sections:

#### **4-3-708.**

(a) The commissioner of economic and community development is authorized to establish and administer the broadband accessibility grant program, referred to in this section as the "program," for the purpose of promoting the deployment and adoption of broadband internet access services, referred to in this section as "broadband services."

(b) The program is funded through the Tennessee broadband accessibility fund, referred to in this section as the "fund," established as a separate account in the general fund. Subject to the availability of revenue at the end of each fiscal year, the commissioner of finance and administration is authorized to carry forward any amounts remaining in the fund or transfer any part of the fund to the revenue fluctuation reserve. Moneys in the fund shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the fund.

(c) The fund is subject to appropriations by the general assembly and gifts, grants, and other donations received by the department of economic and community development for the program or fund.

(d) The program is administered pursuant to policies developed by the department. The policies must provide for the awarding of grants to political subdivisions or entities of political subdivisions, corporations, limited liability companies, partnerships or other business entities that provide broadband services; cooperatives organized under the Rural Electric and Community Services Cooperative Act, compiled in title 65, chapter 25, or the Telephone Cooperative Act, compiled in title 65, chapter 29; and any other entity authorized by state law to provide broadband services.

(e) Grants must be awarded to promote the deployment and adoption of broadband services with minimum download speeds of ten megabits per second (10 Mbps) and minimum upload speeds of one megabit per second (1 Mbps) to locations without broadband services at these minimum speeds. Grants must be awarded

pursuant to criteria developed by the department of economic and community development, with priority given to projects that:

(1) Serve locations without access to download speeds of at least ten megabits per second (10 Mbps) and upload speeds of at least one megabit per second (1 Mbps);

(2) Propose to acquire and install infrastructure that supports broadband services scalable to higher download and upload speeds. However, this priority shall not take precedence over serving a greater number of locations or larger area;

(3) Serve locations with demonstrated community support, including, but not limited to, documented support from the political subdivision or the political subdivision receiving designation as a broadband ready community pursuant to § 4-3-709;

(4) Have not received funds or have not been designated to receive funds through other state or federally funded grant programs designed specifically to encourage broadband deployment in an area within a location without the minimum speeds as described in this subsection (e); and

(5) Will provide higher download and upload speeds of broadband service to the locations served.

(f) Notwithstanding subsection (e), the department may award a portion of grant funds to local libraries in this state for the purpose of assisting the libraries in offering digital literacy training pursuant to state library and archives guidelines.

(g) Moneys in the fund may be used by the department of economic and community development for the purpose of administering the program. However, the expenses incurred to administer the program must not exceed five percent (5%) of the total amount appropriated for the program in any fiscal year.

(h) For any year in which grants are distributed under the program, the department shall produce a report on the status of grants under the program, including progress toward increased access to and adoption of broadband services. The report must be provided to the governor, speaker of the house of representatives, and speaker of the senate and published on the department's website.

**4-3-709.**

(a)(1) A political subdivision may apply to the department of economic and community development for designation as a "broadband ready community" pursuant to guidelines established by the department. The guidelines for designation must include a requirement that the political subdivision has adopted an efficient and streamlined ordinance or policy for reviewing applications and issuing permits related to projects relative to broadband services. The ordinance or policy must contain the following:

(A) A single point of contact for all matters related to a project;

(B) A provision that all applications related to a project will be reviewed and either approved or denied within thirty (30) business days after the application is submitted; and

(C) An authorization that all forms, applications, and documentation related to a project may be signed by electronic means, where possible.

(2) A political subdivision shall not be designated a broadband ready community if the ordinance or policy:

(A) Requires an applicant to designate a final contractor to complete a project;

(B) Imposes an unreasonable fee for reviewing an application or issuing a permit for a project. A fee that exceeds one hundred dollars (\$100) is unreasonable for the purposes of this section;

(C) Imposes a seasonal moratorium on the issuance of permits for projects; or

(D) Discriminates among communications services providers or utilities with respect to any action related to a broadband project, including granting access to public rights-of-way, infrastructure and poles, and any other physical assets owned or controlled by the political subdivision.

SECTION 3. The Tennessee Advisory Commission on Intergovernmental Relations is directed to study and prepare a report updating its January 2017 Report on Broadband Internet Deployment, Availability, and Adoption in Tennessee, which shall be delivered to the General Assembly by January 15, 2021.

SECTION 4. Tennessee Code Annotated, Section 7-59-312(h), is amended by deleting the language "Tennessee broadband deployment fund, created pursuant to § 7-59-315" and substituting instead the language "Tennessee broadband accessibility fund, created pursuant to § 4-3-708".

SECTION 5. Tennessee Code Annotated, Section 7-59-315, is amended by deleting the section in its entirety.

SECTION 6. Tennessee Code Annotated, Section 65-25-102(3), is amended by deleting the subdivision and substituting instead the following:

(3) "Community utility services" includes broadband internet access and related services and telecommunications services, including, but not limited to, television communication services of any kind and by any means, television programming and decryption services, selling, leasing, both as lessor and lessee, servicing and repairing related equipment, including TV antenna dishes, and the furnishing for any purpose to itself or to others, including other cooperatives, information and data relative to its or their other purposes, including, if such is the case, the primary purpose. Nothing in this subdivision (3) permits a cooperative to provide cable service, as defined in § 7-59-303, or video service, as defined in § 7-59-303, without complying with the requirement to obtain a franchise as set forth in the Competitive Cable and Video Services Act, compiled in title 7, chapter 59, part 3;

SECTION 7. Tennessee Code Annotated, Section 65-25-104(a)(2)(A), is amended by deleting ", § 65-25-105(c)".

SECTION 8. Tennessee Code Annotated, Section 65-25-105(c), is amended by deleting the subsection.

SECTION 9. Tennessee Code Annotated, Section 65-25-127, is amended by deleting the section.

SECTION 10. Tennessee Code Annotated, Section 65-25-130(b), is amended by deleting the language "the services authorized by § 65-25-105 in a joint venture" and substituting the language "services through a cable joint venture".

SECTION 11. Tennessee Code Annotated, Section 65-25-134(a), is amended by deleting the subsection and substituting instead the following:

(a)(1) Notwithstanding § 7-59-316, every cooperative has the power and is authorized, acting through its board of directors, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge, or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, voice over internet protocol, telecommunications services, or any other like system, plant, or equipment within or without the service area of the cooperative in compliance with chapters 4 and 5 of this title and all other applicable state and federal laws, rules, and regulations. Notwithstanding § 65-4-101(6)(A)(vi) or any other provision of this code or of any private act to the contrary, to the extent that any cooperative provides any of the services authorized by this subdivision (a)(1), the cooperative shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of the services authorized by this subsection (a), including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the cooperative's provision of the services authorized by this subdivision (a)(1).

(2) Every cooperative has the power and is authorized, acting through its board of directors, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge, or otherwise dispose of any system, plant or equipment for the provision of broadband internet access, internet protocol-based video, video programming, or related or similar services, or any other like system, plant, or equipment within the service area of the cooperative in compliance with chapters 4 and 5 of this title and all other applicable state and federal laws, rules, and regulations, including, but not limited to, the requirement to obtain a franchise as set forth in § 7-59-304. Notwithstanding § 65-4-101(6)(A)(vi) or any other provision of this code or of any private act to the contrary, to the extent that any cooperative provides any of the services authorized by this subdivision (a)(2), the cooperative shall furnish the services on an area coverage basis, as defined in § 65-25-102, and shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other providers of broadband internet access, internet protocol-based video, video programming, or related or similar services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the cooperative's provision of the services authorized by this subdivision (a)(2). In the event that a cooperative acquires, merges with, or consolidates with another entity that provides any one (1) of the services authorized by this subdivision (a)(2) in a geographic location concurrent with or adjacent to the electric service area of the cooperative, then, subsequent to such transaction, nothing in this section prohibits the electric cooperative from providing the services authorized by this subdivision (a)(2) in the geographic service territory in which the acquired or merged entity was authorized to provide such services prior to the merger, acquisition, or consolidation.

(3) A cooperative that elects to provide services authorized by subdivision (a)(2) shall provide other providers of such services non-discriminatory access to locate their equipment for the provision of such services on infrastructure or poles owned or controlled by the cooperative, subject to the terms of any pole attachment agreements between the cooperative and the other provider, the American National Standard Electric Safety Code described in § 68-101-104, and the structural integrity of the infrastructure or pole.

SECTION 12. Tennessee Code Annotated, Section 65-25-134(b), is amended by deleting the subsection and substituting instead the following:

(b)(1) A cooperative providing any of the services authorized by subsection (a) shall not provide subsidies for such services and shall administer, operate, and maintain the electric system separately in all respects, including establishing and maintaining a separate fund for the revenues from electric operations, and shall not directly or indirectly mingle electric system funds or accounts, or otherwise consolidate or combine the financing of the electric system, with those of any other of its operations.

(2) A cooperative providing any of the services authorized by subdivision (a)(2) shall administer and operate such services as a separate subsidiary.

(3) Notwithstanding the limitations set out in this subsection (b), a cooperative providing the services authorized by subsection (a) is authorized to:

(A) Dedicate a reasonable portion of the electric plant to the provision of such services, the costs of which shall be allocated to such services in the separate accounting required under this subsection (b); and

(B) Lend funds, at a rate of interest not less than the highest rate then earned by the cooperative on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized under subsection (a); provided, that such interest costs shall be allocated to the cost of such services in the separate accounting required under this subsection (b).

SECTION 13. Tennessee Code Annotated, Section 65-25-134(e)(2), is amended by deleting the language "or to operate a cable system as defined by § 7-59-201, except as permitted by Acts 1999, ch. 430,".

SECTION 14. Tennessee Code Annotated, Section 65-25-134, is amended by adding the following as new, appropriately designated subsections:

( ) It is unlawful for a cooperative to use unfair or anticompetitive practices prohibited by applicable state or federal law. Such practices shall include, but are not limited to, predatory pricing, collusion, and tying.

( ) Any person who has been damaged as a result of a violation of this section may bring a civil action in chancery court for injunctive or declaratory relief against the violation.

SECTION 15. Tennessee Code Annotated, Section 67-4-2009, is amended by adding the following language as a new subdivision:

(9)(A) Subject to appropriations and the limitation in subdivisions (9)(C) and (D), there shall be allowed against the sum total of the taxes imposed by the Franchise Tax Law of 1999, compiled in part 21 of this chapter, and by this part, a credit equal to six percent (6%) of the purchase price of qualified broadband internet access equipment;

(B) For purposes of this subdivision (9), "qualified broadband internet access equipment" means new equipment placed into service by a service provider to provide broadband internet access services at minimum download speeds of twenty-five megabits per second (25 Mbps) and minimum upload speeds of three megabits per second (3 Mbps) to locations in a tier 3 or tier 4 enhancement county as determined under § 67-4-2109(a), and includes, but is not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, other electronic equipment, fiber optic and copper cables, transmission facilities, and related equipment and property used directly or indirectly to transmit broadband signals;

(C) The credit taken on any franchise and excise tax return, however, must not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before the credit is taken. Any unused credit may be carried forward in any tax period until the credit is taken. However, the credit may not be carried forward for more than fifteen (15) taxable years; and

(D)(i) The total amount of credit provided to all taxpayers under this subdivision (9) must not exceed five million dollars (\$5,000,000) for any calendar year;

(ii) If the total amount of credit claimed by all taxpayers for any calendar year exceeds the limitation in this subdivision (9)(D), the credit to be received by each taxpayer must be the product of five million dollars (\$5,000,000) multiplied by the quotient of the credit claimed by the taxpayer divided by the total of all credits claimed by all taxpayers;

(iii) For purposes of applying the limitation in this subdivision (9)(D), a taxpayer must submit an application for the credit allowed under this subdivision (9), in the form prescribed by the department, by October 15 following the calendar year in which the qualified broadband internet access equipment was placed into service. No credit must be allowed under this subdivision (9) to any taxpayer that fails to submit the application by October 15;

(iv) By December 15 following the October 15 deadline set forth in subdivision (9)(D)(iii), the department shall notify the taxpayer of the amount of the credit allowed; and

(v) At any time during the applicable limitations period set out in § 67-1-1501(b), the department is authorized to conduct audits or require the filing of additional information necessary to substantiate or adjust the amount of the credit taken by a taxpayer.

SECTION 16. This act shall take effect upon becoming a law, the public welfare requiring it, and Section 15 of this act shall apply to qualified broadband internet access equipment placed into service on or after the effective date of this act.

SENATE BILL NO. 1215

PASSED: April 10, 2017

  
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RANDY McNALLY  
SPEAKER OF THE SENATE

  
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BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 24<sup>th</sup> day of April 2017

  
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BILL HASLAM, GOVERNOR