

# TACIR

The Tennessee Advisory Commission  
on Intergovernmental Relations

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## MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

25 May 2016

### Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 16 at 1:09 p.m., Chairman Mark NORRIS presiding.

| Present 18                             | Absent 6                         |
|--|----------------------------------|
| Mayor Tom Bickers                      | Representative Mike Carter       |
| County Mayor Ernest Burgess            | Mayor Brent Greer                |
| Mr. Charles Cardwell                   | Representative Harold Love Jr    |
| City Commissioner Betsy Crossley       | Representative Antonio Parkinson |
| Ms Paula Davis                         | Representative Charles Sargent   |
| Ms Christi Gibbs                       | Mr. Kenneth Young                |
| County Executive Jeff Huffman          |                                  |
| Mayor Kenny McBride                    |                                  |
| Mr. Iliff McMahan                      |                                  |
| Senator Randy McNally                  |                                  |
| Senator Mark Norris                    |                                  |
| Mayor Tom Rowland                      |                                  |
| Mayor Pro Tem Kay Senter               |                                  |
| Senator Jim Tracy                      |                                  |
| County Mayor Larry Waters              |                                  |
| Comptroller Justin Wilson <sup>1</sup> |                                  |
| Representative Tim Wirgau              |                                  |
| Senator Jeff Yarbro                    |                                  |
|  |                                  |

<sup>1</sup> Russell Moore represented Justin Wilson

## **1. Call to Order and Approval of the Minutes**

Chairman Mark NORRIS called the meeting to order at 1:09 p.m., dispensed with the calling of the roll, and requested approval of the minutes. Mr. MCMAHON moved approval, and Mr. CARDWELL seconded the motion, which passed unanimously

## **2. Commission Updates**

Executive Director Lynnis ROEHRICH-PATRICK asked the Commission to congratulate Assistant Commissioner of Administration Paula DAVIS, Tennessee Department of Economic and Community Development, on her reappointment to the Commission. Director ROEHRICH-PATRICK also asked the Commission to recognize Research Manager David LEWIS for 25 years of state service and congratulated Senior Research Consultant Bill TERRY for his induction into the College of Fellows of the American Institute of Certified Planners. Director ROEHRICH-PATRICK also asked the Commission to welcome Azubuike “Zubby” EZEADUM, who is interning with TACIR over the summer.

Chairman NORRIS said that, as Commissioners had already been informed, Executive Director ROEHRICH-PATRICK would be retiring later in the summer. He added that Deputy Executive Director Cliff LIPPARD would be taking her place on interim basis until the Commission’s leadership had an opportunity to discuss a permanent appointment with Dr. LIPPARD.

## **3. Fiscal Year 2015-16 Accomplishments**

Dr. LIPPARD summarized the Commission’s major accomplishments for the past fiscal year to be incorporated into the biennial report for fiscal years 2014-15 and 2015-16.

## **4. Legislative Update**

Dr. LIPPARD reviewed legislative action during the second session of the 109<sup>th</sup> General Assembly on issues related to past studies. The legislature passed or considered legislation on several issues related to the Commission’s work, some dealing directly with findings and recommendations from commission reports. The General Assembly also passed two pieces of legislation requiring new commission studies, a public chapter calling for a study of privilege taxes and a senate joint resolution calling for a study of legislative compensation. Committees and subcommittees of the legislature asked the Commission to study four additional bills pertaining to transitory vendors, trailer registration and fees, a franchise tax credit for certain shippers, and cybersecurity.

## **5. Work Program Amendment, New Research Plans**

Dr. LIPPARD presented five amendments to the work program for the Commission’s consideration. The first amendment, adding the two studies required by legislation enacted by the 109<sup>th</sup> General Assembly passed unanimously. Senate Joint Resolution 463 directs the Commission to study of legislative salaries, per diem reimbursement rates, mileage

reimbursement rates, and other expenses and compensation in Tennessee compared those in contiguous states. Public Chapter 1024, Acts of 2016, directs the Commission to study the professional privilege tax, considering the application of the tax, or its non-application as the case may be, to various occupations, businesses, and professions, including those not listed in Tennessee Code Annotated, Section 67-4-1702, and its application to both residents and nonresidents. The other four amendments, each of which would have added a study referred by just one legislative chamber, failed to receive a motion for consideration. The Commission also heard from Mr. Dick Farrar, a resident of Lincoln County and an advocate for metropolitan governments, who requested its assistance in bringing more attention to the benefits of consolidated city-county governments; the Commission took no immediate action on the request.

Following the presentation, Mayor BICKERS said that officials in Blount County had asked him whether the Commission would consider studying the impact, financial and otherwise, on counties of having to house a growing number of state prisoners in county jails. Following discussion, Chairman NORRIS asked staff to propose a response to Blount County's request, taking into account past reports on the subject by the Comptroller and the Commission.

## **6. Court Fee Study—Information from Past Surveys of Court Clerks**

Senior Research Associate Jennifer BARRIE briefly updated the Commission on its study of court fees, including information about the survey the staff sent to all the municipal and county clerks in the state to gather information on the types of fees, earmarks on those fees, and whether the revenues are being used as legislatively intended, as well as information about efforts to collect unpaid fees. Following her update, Ms. BARRIE introduced representatives from the Department of Safety and Homeland Security and the Administrative Office of the Courts to provide information about their recent surveys of court clerks about court fees:

- Roger Hutto, general counsel, Department of Safety and Homeland Security
- Linda Russell, special policy assistant, Department of Safety and Homeland Security
- Amanda Hughes, application support manager and court clerk liaison, Administrative Office of the Courts
- Ann Lynn Walker, information systems director, Administrative Office of the Courts

Mr. HUTTO discussed the Governor's Public Safety Subcabinet's action plan, which includes an item to improve collection of criminal fines and fees. He said the Commissioner of the Department of Safety and Homeland Security created a working group to develop the plan, which will provide recommendations to the 110th General Assembly. He said that TACIR staff is participating in the group. He then discussed the results from a survey of court clerks the department conducted in 2015. The survey results indicated that indigence and lack of resources were reasons fees were sometimes not collected. The majority of clerks responding

said they notified the state of nonpayment of court costs so drivers' licenses could be revoked in criminal cases; the number of revocations increase each year.

Senator YARBRO asked about the number of driver-license revocations and whether there is data to show that revocations have increased the collection rate. Mr. HUTTO said that anecdotal evidence indicates that it has increased collections but he does not have data. Since 2011, 170,000 licenses have been revoked for not paying criminal court costs.

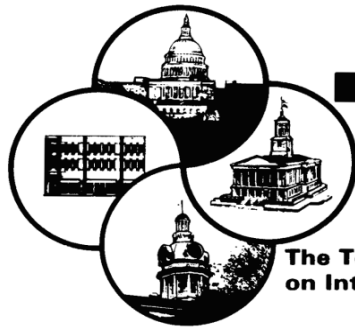
Ms. Amanda HUGHES and Ms. Ann Lynn WALKER discussed court fees, with Ms. WALKER saying that fees are complex and depend heavily on various charges and the factors of each case. She said that fees have gone up and that, anecdotally, as that has happened, collections have gone down. The Administrative Office of the Court has no authority to enforce collections, but they do train clerks and inform them of changes in the laws pertaining to court fees. The Office studied court fees in fiscal year 2011-12 in response to a legislative request. In the study, they asked what amounts they assessed and collected in that fiscal year; collection receipts did not include information about payment agreements. They found that civil collection rates are higher than criminal fee collection rates because civil fees are paid mostly up front when the cases are filed.

In response to questions, Ms. HUGHES said that people can still purchase and carry auto insurance after their license is suspended, but their rate may go up. She also said that fee increases are always done legislatively and that when counties pass resolutions imposing or increasing fees, the resolutions are based on state statutes. Most of the fees are disbursed to other agencies and funds.

Chairman NORRIS said that the actual amount of fees collected did not always match fiscal note projections and asked staff to compare with actual revenue with fiscal note projections. Mayor HUFFMAN asked whether staff is looking at distribution as well as collections; Chairman NORRIS replied yes.

Senator YARBRO asked staff to consider the effect of increasing fees on collection rates and how revoking driver licenses—taking away people's right to mobility—affects those people economically. Senator MCNALLY asked staff to see whether the law requires clerks revoke other licenses, such as professional licenses. Noting that the law was intended to get people on payment plans, he asked staff to review whether that has happened. He also suggested staff look at other states' public works programs for people who cannot pay.

**Chairman NORRIS adjourned the meeting at 3:12 p.m.**



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## MINUTES OF THE TENNESSEE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

26 May 2016

### Meeting Called to Order

The Tennessee Advisory Commission on Intergovernmental Relations met in Legislative Plaza Room 16 at 8:38 a.m., Chairman Mark NORRIS presiding.

| Present 17                             | Absent 7                         |
|--|----------------------------------|
| Mayor Ernest Burgess                   | Mayor Tom Bickers                |
| Mr. Charles Cardwell                   | Representative Mike Carter       |
| City Commissioner Betsy Crossley       | Mayor Brent Greer                |
| Ms. Paula Davis                        | County Executive Jeff Huffman    |
| Ms. Christi Gibbs                      | Representative Antonio Parkinson |
| Representative Harold Love Jr          | Representative Charles Sargent   |
| County Mayor Kenny McBride             | Mayor Larry Waters               |
| Mr. Iliff McMahan                      |                                  |
| Senator Randy McNally                  |                                  |
| Senator Mark Norris                    |                                  |
| Mayor Tom Rowland                      |                                  |
| Mayor Pro Tem Kay Senter               |                                  |
| Senator Jim Tracy                      |                                  |
| Comptroller Justin Wilson <sup>1</sup> |                                  |
| Representative Tim Wirgau              |                                  |
| Senator Jeff Yarbro                    |                                  |
| Mr. Kenneth Young                      |                                  |
|  |                                  |

<sup>1</sup> Linda Wesson represented Justin Wilson

## **7. Broadband Internet Deployment, Availability, and Adoption in Tennessee—Panel Discussion of Federal, State, and Local Regulatory Landscape.**

Before hearing from the panelists, Chairman NORRIS inquired of Assistant Commissioner DAVIS whether the Department of Economic and Community Development's (ECD) study on broadband access and availability was finished. Ms. DAVIS replied that it was not but that ECD looks forward to sharing the study with the Commission in the future. Senior Research Associate Matthew OWEN said that in addition to reviewing ECD's completed study, staff intends to study issues related to broadband subscribers, including consumer needs and factors affecting adoption, in preparation for the next meeting.

### **A. The first panel discussing the regulatory landscape for broadband internet service included representatives of broadband providers:**

- Henry Walker, attorney, Bradley, Arant, Boulton, Cummings, legal representative for several broadband providers, and former general counsel of the Tennessee Public Service Commission, predecessor agency to the Tennessee Regulatory Authority
- Mark Smith, attorney, Miller and Martin and legal counsel, Tennessee Valley Public Power Association, speaking on behalf of municipal utilities
- Steve Nicley, president, Tennessee Wireless Association
- Bruce Mottern, state government affairs manager, TDS speaking on behalf of the Tennessee Telecommunications Association
- Joelle Phillips, president, AT&T, Tennessee
- Andy Macke, vice president, external affairs, Comcast Cable Communications, Inc. speaking on behalf of the Tennessee Cable Telecommunications Association
- J. Richard Lodge, attorney, Bass, Berry and Sims and corporate counsel, Tennessee Electric Cooperative Association

Mr. WALKER said that Tennessee shouldn't have to pass new laws to expand broadband deployment. He said that if the Federal Communication Commission's (FCC) order reclassifying broadband from an unregulated information service to a regulated telecommunications service is upheld in court, then the Tennessee Regulatory Authority (TRA) would have jurisdiction over broadband under section 706(a) of the federal Telecommunications Act, which directs states and the FCC to encourage the deployment of telecommunications services by promoting competition in local markets. Mr. WALKER said that although state law generally restricts TRA's authority over broadband, it does not prevent TRA from exercising jurisdiction in accordance with federal law or FCC regulations.

Mr. WALKER said that if the FCC's reclassification is upheld, TRA should have authority to allow municipal utilities to provide broadband outside of their electric service areas in communities

that are determined to be unserved or underserved. He said that these utilities could be required to provide wholesale service to other broadband providers and that it isn't necessary to allow municipal utilities to provide service throughout the entire state.

In response to Representative WIRGAU's question about how to define unserved or underserved areas, Mr. WALKER said that TRA is best situated to make that decision because of its historical role in determining whether a community's needs are being met by the utilities TRA regulates. In response to Chairman NORRIS' question about whether TRA's shift from full-time to part-time commissioners would affect the agency's ability to make these types of determinations, he said that TRA staff still possess the expertise to do so. In response to Chairman NORRIS' question about whether his proposal's feasibility hinged on the outcome of ongoing legal challenges to the FCC's ruling, Mr. WALKER acknowledged that it does.

Mr. MOTTERN said that broadband providers have significant federal reporting requirements. He said that they submit information to the FCC twice per year about deployment (coverage area), speed, and adoption, that is used by the FCC for mapping broadband availability in the United States. He said that providers also submit confidential information to the FCC about service quality improvements, capital investment, participation in the lifeline program, and ability to provide emergency services.

Mr. MOTTERN said that, although broadband is generally not subject to state regulation, providers have significant reporting requirements to the TRA as well. He said that this includes Tennessee's telephone cooperatives, all of which have adopted the TRA's service standards, complaint process, and minority business plan rules despite not being required by law to do so. In response to a question from Representative LOVE, Mr. MOTTERN said that all of the Tennessee Telecommunications Association's members are currently in compliance with the state's minority-owned business plan rules.

Mr. MOTTERN said that for-profit providers pay franchise and excise taxes, property taxes, payroll taxes, federal income taxes, and sales taxes on equipment purchases. He said that telephone cooperatives pay the same taxes as for-profit providers except that they do not pay federal income taxes as long as 85% of their income comes from services provided to their members. Mr. MOTTERN said that providers also pay franchise fees to local governments for access to public rights of way and that these fees are equal to 5% of revenue from cable television services.

Mr. MOTTERN said that Tennessee Telecommunications Association's members pay higher property taxes than other internet providers because they are assessed at the 55% utility ratio. Cable companies are assessed at lower ratios, either 40% for real property or 30% for personal property. In response to Mayor ROWLAND's question about whether AT&T is also assessed at the 55% utility ratio for property tax purposes, Ms. PHILLIPS said that it is and that the higher rate hurts telephone companies. She said that AT&T is the second largest payer of property taxes in Tennessee and that it also is among the largest payers of franchise and excise taxes and sales taxes on equipment. She said that including sales and use taxes collected from customers, AT&T pays Tennessee more than \$280 million per year in taxes.

Mr. MOTTERN also said that the pole attachment rates charged by municipal utilities and electric cooperatives in Tennessee limit broadband providers' ability to expand service. He said that these rates are inflated because they are not subject to FCC guidelines. [Note: The FCC has adopted guidelines for pole attachment rates, but these guidelines apply only to poles owned by for-profit entities; 80% of poles in Tennessee are owned by municipal or non-profit entities.]

Mr. MOTTERN said that the Tennessee Telecommunications Association opposes the expansion of municipal broadband, especially in areas where the municipal utilities would be competing with telephone cooperatives and for-profit providers. He said that municipal utilities can take advantage of better financing terms for bonds and gain an advantage over other providers, especially those operating in rural areas. Mr. MOTTERN said that Tennessee could encourage non-discriminatory access to dark fiber and streamline access to rights of way. He said that permitting processes for building wired infrastructure across railroads, highways, and wildlife areas in particular can be time consuming and that building on federal land often results in significant delays.

Mr. MOTTERN said that Tennessee could encourage deployment by making appropriations to the state's Broadband Deployment Fund, established under Tennessee Code Annotated, Section 7-59-315. He said this fund could be used to support investment and maintenance as well as subsidize low-income subscribers. He said that income tends to correlate with adoption rates and that 95% of their subscribers subscribe to no more than 25 megabits per second. Mr. MOTTERN said that Tennessee could also promote digital literacy and broadband adoption by consumers.

In response to Mayor ROWLAND's question about whether the Tennessee Telecommunications Association's members accept federal funding, Mr. MOTTERN said that they have accepted grants and loans from the USDA's Rural Utility Service as well as American Recovery and Reinvestment Act funds, all of which come with financial, technical, build out, and reporting requirements. Mr. MOTTERN also said that the FCC issued an order on March 30, 2016, that will likely make Connected America Fund (CAF) support available to rate-of-return carriers, including the Tennessee Telecommunications Association's members. Previously the CAF program was available only to price-cap carriers, which tend to be larger telecommunications companies. He is optimistic that the new CAF funding will help rate-of-return carriers with deployment.

In response to Mayor ROWLAND's question about how long these build outs might take, Mr. MOTTERN said that depending on the final implementation of the CAF order, they might take six to ten years and that he was hopeful that they could begin in 2017. In response to Senator TRACY's question about whether the Tennessee Telecommunications Association is willing to work with the Department of Economic and Community Development, Mr. MOTTERN said that they are, though their ability to participate may depend on the final implementation of the new CAF order.



Mr. SMITH said that municipal broadband providers not only comply with the same FCC and TRA regulations as private providers but also comply with additional regulations that vary depending on whether they provide telecommunications services as authorized under Tennessee Code Annotated, Section 7-52-401 et seq., or broadband and cable services as authorized under Tennessee Code Annotated, Section 7-52-601 et seq. He said that although municipal providers cannot provide broadband and cable services outside of their electric service areas under Tennessee Code Annotated, Section 7-52-601 et seq., their territory is not restricted when they provide telecommunications services under Tennessee Code Annotated, Section 7-52-401 et seq.

Mr. SMITH said that in general, municipal broadband providers have three layers of oversight. At the local level, they are overseen by utility boards whose members are typically appointed by the mayor and approved by the legislative body. He said that city councils also have to approve bond issues for these providers regardless of whether they are providing telecommunications services or broadband and cable services. At the state level, they are overseen by TRA and the Comptroller's Office. At the federal level, they are overseen by the Tennessee Valley Authority (TVA) in addition to the FCC.

When deciding whether to provide broadband and cable services, Mr. SMITH said that a local utility board must submit a business plan to the Comptroller's Office for approval, and after the Comptroller's review of the business plan is received, a public hearing must be held. Following the hearing, if the local utility board decides to provide service, it must then receive approval by a two-thirds majority of the city council or by a simple majority vote in a referendum at the city council's option.

Regardless of whether a municipal provider is providing telecommunications services or broadband and cable services, Mr. SMITH said that it may not subsidize those services with revenue from electricity ratepayers. He said that TVA regulates retail electricity rates charged by these providers and in doing so oversees cost allocation among services for shared assets and employees. He said that the Comptroller's Office also reviews audits of municipal utilities to ensure that they are not using electric revenues to subsidize broadband, cable, or telecommunications services. Any loans from a municipal utility's electric operations to its broadband and cable or telecommunications operations are subject to TVA approval. The Comptroller's Office must also approve loans used for telecommunications operations but not those used for broadband and cable operations.

Mr. SMITH said that the territorial restriction on municipal broadband services prevents neighboring communities from benefiting from the investment that some municipalities have made in fiber infrastructure and that there is no regulatory reason for the restriction. In response to Mayor ROWLAND's question about the benefits of allowing Electric Power Board of Chattanooga (EPB) to provide broadband outside its electric service area, Mr. SMITH acknowledged his working relationship with EPB but said that separate from this relationship, he thought the utility's expansion would be beneficial. In response to Representative WIRGAU's question about whether enough regulations exist to protect taxpayers and prevent

local governments from overextending themselves, Mr. SMITH said that, as with all utilities, risk will always exist for municipal broadband providers but that it is currently not too great because of the combination of existing local, state, and federal oversight.

In response to Chairman NORRIS' question about whether Tennessee Code Annotated, Section 7-59-315(a)(b)(2), which declares the legislature's intent to deploy broadband services as quickly as possible in unserved areas through public investment, private investment, and public-private partnerships, is in conflict with regulations placed on municipal providers by Tennessee Code Annotated, Section 7-52-601 et seq., and Tennessee Code Annotated, Section 7-52-401 et seq., Mr. SMITH said the laws are supplementary and not in conflict.

Mr. NICLEY described the multi-step regulatory process that must be navigated to construct a tower for wireless broadband. After locating and securing access to a potential site, a wireless provider must adhere to the National Environmental Protection Act (NEPA), which requires that the provider receive approval from a state's historical preservation office as well as that state's tribal preservation office. In response to City Commissioner CROSSLEY's question about how the tribal preservation office approval process works, Mr. NICLEY said that the provider must ensure that construction on the proposed site will not disturb any ancestral holdings for any tribes in the state. If it is found that construction will cause a disturbance, the provider must go through an environmental assessment process to find a remedy or choose a different site for the tower. Mr. NICLEY said that providers must also comply with Federal Aviation Administration (FAA) regulations to ensure that towers do not interfere with commercial airspace. Mr. NICLEY said that complying with NEPA and FAA regulations takes between six and nine months.

Mr. NICLEY said that in addition to NEPA and FAA regulations, providers also have to comply with local zoning and planning regulations in communities and that these local regulations, can in effect, prohibit tower construction. In response to Chairman NORRIS' question about whether a municipality building its own towers would have to follow its own zoning regulations, Mr. NICLEY said that they would not but would have to adhere to NEPA and FAA regulations. He said that Metro-Nashville Government and the city of Brentwood have both built towers recently without complying with their own zoning and planning regulations.

In response to Representative LOVE's question about whether the towers built by Metro-Nashville were also used by private providers, Mr. NICLEY said that they are not. Metro-Nashville's towers are used for emergency services such as fire and rescue and by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation. Because of this, Metro-Nashville has not allowed private providers to co-locate transceivers on them.

Mr. MACKE said that policies that reduce operating costs, capital outlays, and risk would encourage the expansion of broadband services and urged consistency across federal, state, and local policies. Mr. MACKE said that the role of government-owned providers should be limited to unserved or underserved areas. Governments have several inherent advantages over private providers: They are not subject to permitting timelines for attaching cables to utility poles, repair their own infrastructure first after storms or outages, can market broadband

services to residents and businesses signing up for electric service, and have greater influence with local chambers of commerce.

Mr. MACKE said that encouraging adoption was an integral part of improving access to broadband. He said that Comcast's internet essentials program has helped 15,000 low-income residents get broadband service. In response to Representative LOVE's question about how the program has evolved, Mr. MACKE said that eligibility for it has gradually been expanded from families with school children receiving free and reduced-price lunches to families on other forms of public assistance. He said that in Nashville, the program is being expanded to include residents of public housing and will provide resources for training, equipment, and connectivity. In response to Representative LOVE's question about how much laptops cost as part of the program, Mr. MACKE said \$150.

Mr. MACKE said that the process for attaching cables to utility poles is an impediment to expanding broadband in Tennessee. He said that, unlike the state-issued franchise agreements that providers can obtain for any community in the state through a single application to TRA, pole attachment agreements must be negotiated individually with each of the 85 electric providers in Tennessee. Mr. MACKE said that obtaining permission for pole attachments from utilities as well as obtaining other permits from local governments can cause significant delays. He said that it took Metro-Nashville five months to issue permits needed for connecting Health Care of America's new downtown office building and that a timeline of 30 days would facilitate deployment. He said that burying cable underground was the only other option for expanding service but that this costs ten times as much as attaching to utility poles.

Mr. MACKE also said that the cost of pole attachments is significantly higher in Tennessee than in other states and that this creates another impediment to broadband expansion. He said that pole attachment rates in Tennessee are three times the national average and higher than any other state in which Comcast operates. He said that this results in Comcast paying \$10 million per year in additional fees that could otherwise be used for deploying broadband services and that rates in Tennessee have increased 35.5% since 2011. In response to Mayor ROWLAND's question about whether pole attachments vary across the state, Mr. MACKE said that they do and there appears to be no rhyme or reason why.

Mr. MACKE said that TVA's recently adopted pole-attachment-rate formula is in conflict with both the FCC's and the state's goal of expanding access to broadband and will likely cause these rates to double in the coming years. In response to a question from Chairman NORRIS, Mr. MACKE said municipal utilities and electric cooperatives subject to TVA's pole attachment regulations own 80% of the poles in Tennessee.

In response to Mr. YOUNG's question about whether reducing pole-attachment rates would allow providers to offer broadband service throughout Tennessee, including areas currently unserved or underserved, Mr. MACKE said that, although there isn't a direct one-to-one ratio, reducing rates would help. He surmised that providers could expand service in some locations if rates in Tennessee were lowered to even twice the national average but cautioned that there are too many variables affecting whether providers can expand service to say that reducing

pole attachment rates alone would allow them to serve the entire state. Mr. MOTTERN said that high rates are barriers to expansion and that rate negotiations with individual utilities in Tennessee can be difficult. He said that state public service commissions in other states review pole attachment rates and adopting a model for determining rates based on their cost would help.

Ms. PHILLIPS said that a model or formula like the one used by the FCC that provides an opportunity for pole owners to demonstrate costs as well as a mechanism for resolving disputes would be appropriate. She said that setting a specific rate would not take into account the differences in maintenance costs across the state based on topography and other factors and that reimbursement for pole maintenance is a legitimate concern for pole owners. Ms. PHILLIPS said that there was no reason that pole attachments should be more costly in Tennessee than in the rest of the nation. She said that resolving the pole attachment rate issue will become increasingly important as next-generation wireless deployments may rely on attaching transceivers to utility poles rather than to towers.

Mr. LODGE said that TVA's pole-attachment-fee formula was based on the Authority's statutory mandate to protect electric ratepayers and keep electric rates as low as possible. He said that TVA adopted the formula at its February 2016 board meeting and that it would be finalized by January 2017. Citing a 2014 opinion by the Tennessee Attorney General, he said that TVA's actions would preempt state regulation of pole attachment rates. Mr. LODGE also said that, although electric cooperatives are not allowed to provide broadband under state law, they do deploy infrastructure capable of providing customers with broadband services.

Ms. PHILLIPS said that most direct regulation of broadband providers, including merger review and data reporting requirements, occurs at the federal level. The FCC licenses and controls access to radio frequencies necessary for wireless broadband service by auctioning blocks of frequencies to providers. AT&T spent \$18 billion on these auctions in 2015. Ms. PHILLIPS said that wireless broadband service is important for connecting low-income customers and that the National Telecommunications and Information Administration reports that consumers increasingly access the internet through mobile connections rather than fixed connections regardless of income level. She said that wireless broadband is also important for connecting a variety of devices to the internet and allowing them to be monitored and controlled remotely.

Ms. PHILLIPS said that there is little if any direct regulation of broadband services at the state and local levels and that laws passed by the Tennessee General Assembly limit the state's jurisdiction to powers delegated to it by the federal government. For-profit broadband providers are regulated indirectly at the state and local levels through tax policies, zoning, and permitting.

Ms. PHILLIPS said that Tennessee's tax on equipment for providing broadband services purchased by providers is an impediment to broadband expansion. She said that approximately 20 states including North Carolina do not tax these purchases and that this would be a meaningful policy change for Tennessee because it would allow the capital that broadband providers set aside for deploying and maintaining networks to go farther. In response to Mayor

ROWLAND's question about whether eliminating the sales tax on equipment would allow AT&T to reduce rates, Ms. PHILLIPS said that it would depend on several factors. It could allow AT&T to reduce rates or deploy service in new areas. She said that Tennessee could choose to exempt providers from taxes on equipment purchased for deployments in unserved and underserved areas. Ms. PHILLIPS said that tax policy affects the amount of money providers can invest in deploying networks and that it is an important factor limiting the expansion of broadband access because of how capital intensive the business is. AT&T invested \$1.2 billion in the last three years in Tennessee alone and spends approximately \$1 billion per year with Tennessee vendors.

Ms. PHILLIPS said that zoning and permitting processes can slow deployment and increase costs. Some local governments require workers deploying fiber-optic cable to be licensed to work with low-voltage wiring, which increases the cost of deploying network infrastructure. AT&T has deployed more than 1.7 million strand-miles of fiber in Tennessee; fiber is important for wireless service as well as wired because it connects cell towers to the wider internet. She said that reducing delays in connecting fiber to wireless cell sites is also vital because AT&T plans to expand broadband deployment under the Connect America Fund using fixed wireless service.

Ms. PHILLIPS said that fees for accessing rights of way should be cost-based and, although owners should be compensated, they should not be allowed to replace general revenue with right-of-way fees; doing so would slow deployment. Ms. PHILLIPS said that although the complexity of broadband networks can make it difficult to share all infrastructure, sharing rights of way and other public infrastructure makes sense especially for the collocation of equipment needed to deploy the next generation of wireless service. In response to Representative WIRGAU's question about how AT&T determines to expand its broadband network, Ms. PHILLIPS said that, in general, AT&T looks at customer demand and growth determined in part by the types of other services that customers are buying and consider the presence of anchor institutions and other large users. As part of its obligations for receiving CAF support, AT&T has agreed to deploy broadband in approximately 80,000 locations that are not currently served according to the FCC and will provide service in the first 30,000 of these locations by the end of 2017. When determining which of these areas to serve first, AT&T considers existing fiber-optic cable and other infrastructure that can be leveraged to speed deployment and comply with CAF program regulations.

In response to Senator MCNALLY's question about whether fiber-optic cable will be replaced by a different medium for providing broadband service, Ms. PHILLIPS said that fiber is critical to several different network architectures. It is used for wireless broadband to connect cell towers with the wider internet and will continue to be significant but will also continue to evolve. New types of fiber are being developed, and even if fiber doesn't need to be replaced, other equipment does such as signal amplifiers; this is part of the reason that broadband is so capital intensive. Broadband providers must rebuild their networks every eight years, much more frequently than other types of utilities. Ms. PHILLIPS said that a light regulatory approach would encourage competition among providers to upgrade their networks.

Ms. PHILLIPS said that broadband availability should not be conflated with adoption. Half of Tennesseans who haven't adopted broadband have access to it, and the most common reasons individuals choose not to adopt broadband service include cost, lack of digital literacy, fear, and the perception that the internet is irrelevant to them. Ms. PHILLIPS said that the government should play a role in improving broadband adoption, in particular by promoting digital literacy.

In response to Representative LOVE's question about programs that could make broadband more affordable for low-income communities, Ms. PHILLIPS said that AT&T has a new program for participants in the federal Supplemental Nutrition Assistance Program. The federal Lifeline program has historically been available for voice service only, but there are benefits to expanding it to include mobile broadband so that low-income individuals and families can more easily take advantage of service subsidies even if they move residences frequently. Reducing the cost of devices is just as important as reducing the cost of service. AT&T has participated in the Digital Inclusion Fund as well as Computers for Kids, two programs that reduce the cost of obtaining computers for low-income families.

In response to Senator YARBRO's question about whether expanding access to broadband would lead to a more equitable distribution of economic development, Ms. PHILLIPS said that it is an issue of what comes first and that, unlike access to electricity in the twentieth century, it isn't clear that there is a causal relationship between broadband access and economic growth. But she said that there does appear to be a correlation between the two. Mr. MACKE said that broadband access is not a silver bullet, but that it is part of the puzzle for improving development.

In response to Senator YARBRO's question about whether significant regulatory changes or significant public investment are necessary to improve broadband access, Ms. PHILLIPS said that public money could be better invested in areas like education where there is lower risk and was reluctant to say that the government should be in the business of providing broadband. Ms. PHILLIPS said that alternatives should include more than just municipal expansion. Legislation introduced by Senator Mike Bell in 2016 would have authorized TRA to determine areas of the state that are unserved; municipal expansion in these areas would not be inappropriate. Mr. MACKE said that government's role should be to support private investment. Mr. MACKE said that local governments could also play a role in expanding broadband deployment by soliciting proposals from different providers for unserved and underserved areas. Incentives could be offered to defray the costs of deployment, but that these incentives would not have to extend to operation.

**B. The second panel discussing the regulatory landscape for broadband internet service included representatives of government agencies:**

- David Foster, utilities chief, Tennessee Regulatory Authority
- John Hutton, telecom consultant, Tennessee Regulatory Authority
- Ron Queen, manager of local finance, Office of State and Local Finance, Tennessee Comptroller of the Treasury

- Jean Suh, contract audit review manager, Division of Local Government Audit, Tennessee Comptroller of the Treasury
- Gary Harris, director, Office of State Assessed Properties, Tennessee Comptroller of the Treasury
- Barbara Sampson, assistant commissioner, Tennessee Department of Revenue
- Gary Jaeckel, municipal management consultant, Municipal Technical Advisory Service

Representatives of both the Tennessee Valley Authority (TVA) and the County Technical Assistance Service were invited but were unable to attend.

Ms. SAMPSON said that the principal taxes that businesses in Tennessee pay are property taxes, franchise and excise taxes, sales taxes, and business taxes. Internet providers do not pay business taxes or collect sales taxes on internet service because the federal Internet Tax Freedom Act (ITFA) prohibits state and local taxes on internet service. Internet providers pay franchise and excise taxes and property taxes because the ITFA does not prohibit state or local taxes on their income, net worth, or property nor does it prohibit states taxing internet providers' equipment purchases.

Ms. SAMPSON said that non-profit and government-owned entities are generally not subject to franchise and excise taxes in Tennessee, but state law requires municipally owned internet providers to make payments in lieu of taxes (PILOT) in place of franchise and excise taxes. In response to Chairman NORRIS' question about whether these PILOTs were included in the 1999 legislation authorizing municipalities to provide internet service, Ms. SAMPSON said that she did not know whether they were included in the original legislation, but they are currently part of the law.

Mr. JAECKEL, representing the Municipal Technical Advisory Service, said that cities are limited under current law to regulating access to rights of way, zoning, and permitting. In response to Mayor SENTER's question about whether pole attachment fees should be eliminated entirely, Mr. JAECKEL said that maintenance costs for poles are a valid concern and that the process of installing, maintaining, and replacing poles is not cheap. Costs vary based on topography, location, the communities served, and the quantity of poles, and municipal electric systems are not allowed to operate at a loss. Pole attachment rates in unserved and underserved areas are capped at 50% of the highest rate charged by the local municipal utility or electric cooperative as of January 1, 2008. [Staff Note: Under current law, limits apply only in areas designated by TRA as historically unserved in response to application by a municipality or county for authority to establish a joint venture with one or more providers to provide broadband in the area. Providers eligible for joint ventures include for-profit and non-profit providers statewide as well as municipal electric systems, but the latter only inside their electric service areas.]

Mr. JAECKEL said that only 51 of Tennessee's 394 cities operate a municipal electric systems and can therefore provide broadband service under current law. In response to a question from Chairman NORRIS, Mr. JAECKEL said that cities that lack municipal electric systems are also

interested in providing broadband services. In response to Representative WIRGAU's question about the drawbacks for cities that do not have the ability to provide service, Mr. JAECKEL said that in areas where deployment costs are high, private providers may be unable to make a business case for providing service. These cities view the lack of broadband access as a deterrent to economic development and an impediment to education. Representative LOVE said that access to broadband is not only a problem in rural areas but in urban areas as well, especially for low-income residents.

Mr. QUEEN said that the Comptroller's Office of State and Local Finance reviews broadband business plans submitted by municipal utilities that want to provide broadband services authorized under Tennessee Code Annotated, Section 7-52-601 et seq. The office determines whether a plan is feasible based on whether the utility's broadband operations will be self-sufficient. Regardless of whether a plan is determined to be feasible by the Comptroller's Office, the final decision whether to provide service is made at the local level.

Ms. SUH said that the Comptroller's Division of Local Audit reviews municipal audits prepared by public accounting firms to ensure that municipal utilities are not using electric revenues to subsidize broadband, cable, or telecommunications services. The Division of Local Audit determines whether the municipal audits adhere to Generally Accepted Accounting Principles, Generally Accepted Government Auditing Standards, and the Tennessee state audit manual.

Mr. HARRIS said that the Comptroller's Office of State Assessed Properties assesses all entities that are not assessed locally for property tax purposes. His office assesses 18 different types of companies, including those classified as utilities such as telephone companies. The 1,700 companies assessed by his office pay approximately \$257 million per year in property taxes that are passed through to cities and counties.

Mr. HARRIS said that Tennessee's Ad Valorem Tax Reduction Fund was established in 2000 to compensate telephone companies for the higher property taxes they pay relative to other internet providers such as cable companies. The fund is paid for by a tax on telephone companies' business customers. The Office of State Assessed Properties determines what each telephone company would owe if it were assessed at the lower commercial rates rather than the utility rate and distributes the difference between the two to each company from the fund. If the fund does not have enough money to compensate each company fully, then payments are distributed based on each telephone company's contribution to it. The fund paid out more than \$9 million this year. [Note: The fund has never had enough money to fully compensate telephone companies for their higher property tax rates.]

Mr. FOSTER said that, in contrast to its historical role in regulating telephone companies' rates, deployment, and quality of service, the TRA has only a limited role in regulating broadband providers. TRA does not regulate telephone cooperatives. TRA is responsible for granting franchise authority to providers either as cable companies or as competing telephone



companies. The process for certifying cable companies in Tennessee Code Annotated, Section 7-59-301 et seq., is narrowly construed against the TRA.<sup>†</sup> TRA has granted franchise authority to 19 companies under this law, and they tend to be large companies whose service areas cover large areas of the state. The state remits the franchise fees it collects from providers under Tennessee Code Annotated, Section 7-59-301 et seq., to local governments.

In response to Mr. WALKER's proposal from the first panel, Mr. FOSTER said that it was premature to speculate on what authority the FCC would ultimately grant to state public service commissions like TRA but that he would be surprised if regulatory authority over deployment, rates, or service quality were delegated to states. He said that TRA will carry out duties assigned to it but is not seeking expanded jurisdiction.

### **Meeting Adjournment**

Following the presentation, Chairman NORRIS requested that the remaining docket items—the annual update on fiscal capacity and approval of the annual infrastructure inventory report—be postponed until the next meeting, which the Commission set for August 30 and 31, 2016.

Chairman NORRIS adjourned the meeting at 11:42 a.m.

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<sup>†</sup> Tennessee Code Annotated, Section 7-59-302, reads in pertinent part, "It is the intent of this part to confer a limited role on the Tennessee regulatory authority . . . which will be ministerial and narrowly construed, except to the extent otherwise specifically provided for in this part, and no rulemaking authority is provided by this part."