

LEGISLATIVE OVERSIGHT & INVESTIGATIONS COMMITTEE

Minutes of the 2nd Meeting of the 2022 Interim

July 14, 2022

Call to Order and Roll Call

The 2nd meeting of the Legislative Oversight & Investigations Committee was held on Thursday, July 14, 2022, at 1:00 PM, in Room 129 of the Capitol Annex. Senator Danny Carroll, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Danny Carroll, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Jason Howell, Morgan McGarvey, Michael J. Nemes, Wil Schroder, Reginald Thomas; Representatives Lynn Bechler, John Blanton, Ken Fleming, Joni L. Jenkins, Steve Riley, and Scott Sharp.

Guests: John Hicks, State Budget Director, Office of State Budget Director; Sandy Williams, Executive Director, Kentucky Infrastructure Authority; and DJ Wasson, Chief of Staff, Public Protection Cabinet.

LRC Staff: Gerald W. Hoppmann, Committee Staff Administrator; Committee Analysts William Spears, Jacob Blevins, Joel Thomas, Jeremy Skinner, Shane Stevens, Chris Hall, Ryan Brown, Taylor Johnston, McKenzie Ballard; and Ashley Taylor, Committee Assistant.

Minutes for June 16, 2022

Upon motion by Representative Blanton and second by Representative Nemes, the minutes for the June 16, 2022, meeting were approved without objection.

Staff Report: Broadband In Kentucky

Legislative Oversight staff members Joel Thomas and Jeremy Skinner presented the staff report “Broadband In Kentucky,” which provided a background and a review of broadband development nationally and in Kentucky. Included in the presentation was a discussion of the methodology, findings, and recommendations of the report. Staff’s full presentation is available on the Legislative Oversight and Investigations Committee Webpage.

In response to a series of questions from Senator Howell related to the administration of the KentuckyWired project and the requirements for quarterly reporting by Accelecom, Mr. Thomas and Skinner explained that the Kentucky Communications Network Authority (KCNA) is administrating the KentuckyWired project. Accelecom is the wholesaler partner regarding 50 percent of the network and is responsible for providing quarterly reports to KCNA. Mr. Thomas also noted that, while KCNA is responsible for overall administration of the KentuckyWired middle-mile, the Kentucky Infrastructure Authority (KIA) and its newly created Office of Broadband Development is responsible for considering broadband best practices. Mr. Thomas confirmed that Accelecom facilitates the last-mile connection of the KentuckyWired middle-mile to internet service providers and business customers.

In response to a question from Representative Bechler regarding staff's use of the term "should consider" in recommendations, Mr. Thomas noted that the language was used for two reasons. First, with respect to employing national best practices, there are multiple sources that the agency might use and, while the report notes best practices from the PEW Research Center, there are other sources such as the Benton Institute or the Brookings Institute that might prove equally useful. Second, with respect to Recommendation 3.2, Mr. Thomas noted that the statutory language related to the promulgation of regulations for the broadband deployment fund is permissive, so the recommendation only suggests additional regulations.

Representative Bechler asked for the total amount of money spent on broadband in Kentucky. Mr. Skinner and Thomas both stated that trying to account for dollars spent outside of what is tracked in the state's accounting system would be difficult, but that staff could provide a figure for the KentuckyWired project since it is tracked in the accounting system. Representative Bechler also requested staff to provide a best estimate of Kentucky tax dollars spent on broadband deployment to date.

Senator Carroll called Kathryn Robertson, Director of Business Development for Accelecom and Rich Lockard, Chief Revenue Officer for Accelecom to the testimony table.

In response to a question from Senator Carroll regarding the overall purpose and role of Accelecom, Ms. Robertson stated that Accelecom is contracted with the state of Kentucky to sell KentuckyWired excess capacity to internet service providers (ISPs) to help bring last-mile service to residents, as well as directly to some enterprise businesses. Last-mile enterprise services are focused on businesses that are not able to obtain the broadband service they need in their current location or those who would save substantially by switching to Accelecom. She explained that Accelecom sales to businesses that have a very high need of connectivity and that they sell to local ISPs, which in turn, sell to residential customers. Ms. Robertson noted that Accelecom does not sell directly to residential customers.

In response to a question from Senator Carroll, Mr. Lockard explained that Acelecom is investing additional money from private funds to expand and construct more fiber out to businesses that have high capacity needs and to expand the network out to neighborhoods that are underserved. Once Acelecom expands broadband infrastructure out to underserved neighborhoods, a local ISP can then provide the last-mile of infrastructure to connect homes to the internet via the KentuckyWired network. This lowers the cost for the local ISPs. Mr. Lockard said that Acelecom is approaching various businesses in Kentucky which currently have high costs associated with using broadband or have poor broadband speeds. Acelecom is using the KentuckyWired network to provide more capacity at a more affordable rate for these businesses.

In response to a question from Representative Blanton, Ms. Robertson stated that Acelecom does not have a residential division. She explained that to service residential neighborhoods, Acelecom partners with local ISP's. This allows ISP's to then connect to Acelecom's network, which lowers costs for the ISPs.

In response to Representative Blanton's concern that Acelecom was "cherry picking" higher-paid companies, which might drive up the cost to residential customers, Ms. Robertson clarified that Acelecom was not "cherry picking" businesses. Rather, Acelecom is focusing on businesses who do not have service or do not have enough service to meet their needs. Mr. Lockard explained that when Acelecom expands their middle-mile infrastructure to reach an underserved region, it lowers the cost for local ISP's and the savings get passed along to residential customers. Since Acelecom has direct access to the KentuckyWired infrastructure, they are able to offer much higher speeds and cheaper access than other national or global middle-mile internet providers. He noted that the cost Acelecom sets for its customers is governed by market value.

Senator Carroll asked for further clarification on how Acelecom ended up with 50 percent of KentuckyWired network, yet there are still local utility companies who do not yet have access to the network. Ms. Robertson and Mr. Lockard explained that local utility companies typically provide their residential and business customers internet access by contracting with a national company for middle-mile access. Acelecom is providing those local utilities the opportunity to connect to existing KentuckyWired infrastructure middle-mile at a large savings from what they are paying the national companies. Mr. Lockard said their competitors are the national companies, not local utilities. Ms. Robertson commented the faster Acelecom can grow and acquire customers, the faster Kentucky will have a return on its KentuckyWired investment.

Senator Howell asked whether Acelecom provides service to businesses that are already being served by other internet providers. Ms. Robertson responded that Acelecom has provided service to businesses that were previously being served by another provider and used a local health department as an example. She restated that by being serviced by

Accelecom and connecting to the KentuckyWired network, local ISP's are able to offer their customers more bandwidth at a much lower cost.

Senator Howell asked if there is a set fee schedule or if prices are negotiated on a one by one basis in relation to contracts and ratings set with local ISP's. Mr. Lockard stated Accelecom is not regulated like a local utility company, but they have developed a "unified program" for ISP's and local utilities. It will negotiate fee-schedules to provide more cost effective offers to potential customers than they are receiving from national providers. He further noted that those rates can be modified during contract negotiations on a case-by-case basis or to conform to market conditions.

In response to a question from Senator Howell regarding types of things that govern prices, Mr. Lockard explained that it is typical in the industry to sell "price per bandwidth purchased." He further noted that when Accelecom contracts directly with a "high-end user" business to provide that business with internet access, its impact on local ISP profit is negligible.

Ms. Robertson addressed Senator Howell's earlier question regarding the lack of quarterly reporting from Accelecom by noting that required reporting is strictly financial and is intended to let KCNA know how much money to expect. She offered to include a narrative detailing Accelecom's work each quarter. Senator Howell requested them to break it down by contracts with ISP's and with businesses directly. He said that he would be more interested in what is being done on rollout more than on revenue. Ms. Robertson stated she heard the legislators' concerns about being uninformed regarding what is going on, so in the near future legislators will receive personalized reports that detail work in their districts. Mr. Lockard stated that the reports will include contracts by ISP's and businesses, purchases from ISP's, as well as agreements with municipal providers or local utilities for payment of facilities and partnering with local loops.

In response to a question from Senator Carroll regarding why quarterly reporting has not occurred despite being required since 2017, Ms. Robertson stated she has only held her position for 4 months, but was told that the hold-up was due to disagreements regarding quarterly reporting format and content.

In reference to Senator Howell's comment that he was more interested in what is being done on rollout more than on revenue, Representative Nemes commented that there are districts in Kentucky that are very concerned about cost, not just whether certain regions are being served. He noted that he does not want the message conveyed to Accelecom that cost is not an issue, because it is the most important issue in his area.

Senator Thomas stated that he is very pleased to hear that Accelecom is providing the lowest cost possible to the end user based upon competitive rates with main content providers. Ms. Robertson and Mr. Lockard agreed that the dollars invested in

KentuckyWired first-mile infrastructure will save the customer a considerable amount of money for services.

Ms. Robertson and Mr. Lockard confirmed Representative Bechler's understanding that Acelecom is providing last-mile services directly to businesses and ISP's but not to residential customers.

In response to a question from Representative Bechler, requesting clarification of the financial relationship between Acelecom and KCNA and asking if Acelecom was a subsidiary of KCNA, Mr. Lockard explained that Acelecom is not a subsidiary but that they have a wholesaler agreement with KCNA. The agreement is a public document and it could provide further clarification on their relationship. Representative Bechler asked for a list to be provided of the ISP's with whom Acelecom has partnered. Ms. Robertson said she would provide a list to the committee.

In response to a question from Senator Howell regarding prior negotiations and delays regarding quarterly reporting, Ms. Robertson stated Acelecom had been negotiating with their parent company Macquarie Capital. She said that she was not sure who was involved in those delays but that she would find out and provide that information to the committee.

Senator Carroll called John Hicks, State Budget Director, and Sandy Williams, Executive Director for the Kentucky Infrastructure authority to the testimony table. Mr. Hicks commended LOIC staff on the quality of the broadband report and noted that it provided a good historical record of the events that have taken place around the public policy of getting broadband out to as many Kentuckians as possible. In particular, Mr. Hicks noted that staff had done an excellent job of characterizing the legislation passed specifically related to HB 315, noting that the bill was one of the most specific pieces of broadband legislation passed in the country.

Mr. Hicks noted that the federal government is about to provide a large influx of funding to states, specifically for the purpose of lowering the capital cost of providing broadband service to underserved areas of Kentucky. Kentucky is now at a nexus point where things are moving forward with funding. As an example, he discussed the \$300 million discussed in the staff's presentation from the American Rescue Plan Act, \$89 million of which has been awarded to 47 projects covering about 36 counties, including some dollars for fiscal courts.

Mr. Hicks then addressed the findings and recommendation of the staff report, stating that he found the staff's recommendations and findings to be solid. He agreed with the staff report finding regarding the importance of a statewide strategic broadband plan and explained that the strategic plan mandated by HB 315 will allow the state to better meet federal requirements for infrastructure funding. Mr. Hicks also agreed with the staff

finding that there is not currently an accurate map of broadband and underserved areas for the state, but noted that they plan to create one in the near future.

In response to LOIC staff recommendations regarding regulations and policies related to the National Telecommunications Information Administration (NTIA), Mr. Hicks noted that the NTIA is responsible for the \$42.5 billion that the Infrastructure Investment and Jobs Act has appropriated to states for broadband. He noted that they are in communication with that agency monthly. These dollars will be appropriated to states based on a map of underserved areas that the Federal Communications Commission (FCC) is currently working to complete. Outside entities have estimated Kentucky could get as much as \$700 million of these funds, and HB 315 dictates where these dollars will be spent. Regions with no service will come first, then unserved, and finally underserved.

Mr. Hicks explained that Kentucky will be operating from three pots of federal dollars: American Rescue Plan Act Funds (ARPA), Coronavirus Capital Projects Fund, and the Infrastructure Bill. The Infrastructure Bill requires a five-year action plan before that money will be allocated. Kentucky will receive a planning grant in order to create that five-year action plan.

In response to a question from Senator Carroll, Mr. Hicks clarified that the KentuckyWired project and Accelecom's work as a wholesaler for excess fiber and the large amount of federal funding on the horizon are separate matters. KentuckyWired created a middle-mile infrastructure to serve state government and post-secondary education institutions. The system was intentionally built with excess capacity so that companies like Accelecom could come in and lower the cost to local ISP's. Separate from that, the federal dollars that are starting to flow are going to be used for those local ISP's to connect underserved areas. Kentucky is in a position where there is the opportunity for ISP's to choose which middle-mile vendor to use.

In response to a question from Senator Carroll, Mr. Hicks stated that the broadband deployment fund first-round applications were nearly complete. They are currently in the process of finalizing the grant agreement terms and conditions. Once signed, they can start their construction and implementation and will receive reimbursements for expenses related to their awards.

In response to a question from Representative Blanton, Mr. Hicks explained KentuckyWired's purpose was to bring service to a combination of both unserved businesses and residential areas. The idea was to have an open-access middle-mile network that other providers could utilize to bring broadband to unserved areas. The question of whether the ISP chooses to serve a residence or business is up to that ISP.

Representative Blanton questioned how much the state of Kentucky has invested in the KentuckyWired project as a whole and how much of that total was for penalties and

finer. Mr. Hicks said he came to respond to the report so he does not have that information with him but he will provide it to the committee.

Representative Nemes questioned whether there was inherent unfairness regarding Accelecom acting as a wholesaler for the KentuckyWired network, which was built with taxpayer dollars, and acting as a private internet service provider by selling service directly to some businesses. Mr. Hicks explained that the concept of selling excess fiber bandwidth from the KentuckyWired project to ISPs was part of the original goal of the project. The goal was to make available to ISPs the middle-mile infrastructure that the state had invested in order to lower the ISPs costs, so it would be commercially feasible for them to provide service to underserved areas. This is why the broadband infrastructure was built with excess bandwidth. Mr. Hicks noted that, with respect to Accelecom selling directly to a business, sometimes there are market failures where it is not economically feasible for a local ISP to provide service to some locations.

Representative Nemes also asked whether allowing the wholesaler to become the retailer and the wholesaler harms the interest of the legislature to provide last-mile service. Mr. Hicks responded that it is a “but for” question of where an ISP would provide that service. Representative Nemes responded that his fear is that Accelecom may not have an interest to provide services to those in need in Kentucky, whereas the co-ops have an interest in getting services to local communities.

In response to a question from Senator Carroll, Mr. Hicks said he believes there is potential for Kentucky to see increased profit from the KentuckyWired project and the wholesaler agreement with Accelecom as increasing amounts of federal dollars become available.

Senator Carroll transitioned to the topic of tornado relief funds and noted the calls he has been receiving of unmet needs within Western Kentucky. He noted that the Public Protection Cabinet would be providing a brief update on how these funds have been spent, following up on the terms of legislation that was passed during the session, and providing an update on where things now stand financially.

DJ Wasson, Chief of Staff for the Public Protection Cabinet introduced herself for the record. She explained that the Public Protection Cabinet is in charge of administering the Team Western Kentucky Tornado Relief Fund, which consists of private donations. As of July 6th, 2022 the fund contains just under \$52 million, which can be used by those impacted by the tornadoes for life necessities but cannot be used for administrative costs. Ms. Wasson noted that there was no application process for these initial assistance payments because many people did not have access to internet or their documentation and were in immediate need. As a result, other verified sources were used for identification.

Ms. Wasson shared that the Public Protection Cabinet has issued payments focused on three programs. First, the cabinet made 81 payments directly to families who lost loved ones in the amount of \$10,000 per deceased person for funeral assistance. Second, the cabinet focused on uninsured homeowners and renters to provide them with an additional 20 percent of the amount they were awarded by the Federal Emergency Management Agency (FEMA). Third, the cabinet worked with insurance companies to identify home owners and renters who had been awarded a claim. The cabinet then made payments to those individuals (maximum of \$2,500) to help cover their deductible.

Ms. Wasson stated that the cabinet also committed funds in response to a proposal submitted by three non-profit entities. They include the Habitat for Humanity, Fuller Center for Housing, and Homes and Hope. These entities are set to build 300 homes for those affected by the storm through an application process. She noted that Habitat for Humanity and the Fuller Center for Housing uses those funds as a mortgage down payment, while Homes for Hope uses the money for building supplies. The cabinet has also committed funding for the Graves County Grain Assistance Program. This is to help defray the cost of farmers having to transport their grain to other areas since the local grain elevator was destroyed during the tornado. There is an online application process where individuals can apply for funds of 50 cents per net bushel.

The final program Ms. Wasson discussed was local long-term recovery groups that submitted proposals to address the unmet needs of those affected by the tornado. She stated that \$12 million has been allocated to each long-term recovery group for essentials for living such as furniture, appliances, and vehicles. Ms. Wasson noted that there is still funding available and proposals are still being accepted. She shared contact information for those that would like to see if they are eligible for any of the funding programs.

Senator Carroll commented on concerns from his district of Marshall County. They have reported waiting on funding to start building. Ms. Wasson stated that, as soon as their applications are complete, the funding becomes available. She also said that she had heard some questions regarding how affected areas can access funding so her office has reached out to all mayors and county judge executives to provide them with contact information.

In response to a question from Senator Carroll, Ms. Wasson noted that of the \$51 million of the tornado relief funds, roughly \$10.8 million has been paid out and \$31.25 million has been committed. The remaining dollars will be used to fund proposals that are still being submitted. She noted that the function of the long-term recovery groups is to connect people to available resources.

In response to a question from Senator Carroll regarding underinsured homeowners, Ms. Wasson stated that some additional funds are paid out in addition to the amount paid by the Insured Homeowner and Renter Assistance program. Some of the money dedicated can assist with increased costs due to inflation. Ms. Wasson confirmed Senator Carroll's

assertion that there has been a limit placed on such spending per family, but that the cabinet is currently discussing if the limit needs to be increased. Ms. Wasson agreed to look into expanding what is being offered to those underinsured homeowners, related to the remaining \$10 million.

Senator Thomas noted that according to the financial numbers provided, there are still \$9.9 million of unallocated funds available.

Senator Howell shared appreciation for all that Ms. Wasson and the cabinet has done and will do to help those affected by the tornado. He questioned if there is anything being done to address the 2022 Grain Crop. Ms. Wasson explained that the cabinet used the 2021 delivery to the Mayfield Grain Company as a verifiable way to calculate the assistance payments that will be used for the 2022 Grain Crop. The cabinet will document use of those payments using delivery slips. To date the cabinet has 115 applications. They have started reviewing those and plan to send out payments over the next week.

In response to a question from Senator Carroll about whether the cabinet was able to coordinate efforts of so many relief organizations so that fraud does not occur, Ms. Wasson stated that they have weekly coordination meetings with local case managers and other entities helping with the relief efforts to avoid duplication and fraud as much as possible. She noted that the discernment payments that have already been made were verified through various sources. She also noted that, for those payments currently being made, the cabinet has put controls in place to avoid fraudulent claims.

In response to a question from Senator Carroll regarding what is included in the budget offices mandated reports, Mr. Hicks used the example of the \$200 million that the General Assembly allocated to the Safe Fund. He explained that his office is responsible for roughly \$170 million of those funds and that he provides monthly reports to the Interim Joint Committee on Appropriations and Revenue. Those reports detail who received the funds, how much was spent, and for what purpose. Mr. Hicks also discussed reporting related to the \$30 million that went to the Kentucky Department of Education, the \$9 million administered by the University of Kentucky, regarding damage to the Princeton facility and the funds that went to the Department of Military Affairs, Division of Emergency Management. The division manages the agreements with recipients and controls disbursement of funds. In response to a question from Senator Carroll regarding whether a fund has been established, Mr. Hicks explained that in the accounting system the funds are established as the legislature appropriated. For example, the legislature created the SAFE fund, but then allocates monies using the accounting system as appropriated to various purposes and locations. The OSBD considers this process as the establishment of a fund.

In response to a question from Senator Carroll, Ms. Wasson shared the most significant need she is seeing is the need for new homes, housing repairs, and certain essential things within the home.

She responded in the affirmative to Senator Carroll's question of whether the cabinet is working with the Department of Insurance. She stated that they not only work with the department to verify claims and payments, but also to discuss issues such as whether a payment was enough to cover inflated costs.

Senator Carroll expressed thanks to Mr. Hicks and the Public Protection Cabinet for all of the work they have completed. He mentioned that he would like to have them come to the Western Kentucky Caucus to address questions as things move into the latter phases.

Senator Carroll stated that the co-chairs are still discussing new study topics. For now though, a study of Child Protective Services as it relates to foster care has been assigned to staff. Once the other topics have been decided, they will be discussed at the next meeting.

Upon motion by Senator Howell and Second by Representative Nemes the Broadband In Kentucky staff report was adopted with a roll-call vote of nine yes votes and zero no votes.

Co-Chair Carroll adjourned the meeting.