Wireless Service Authorities and the The Virginia Wireless Service Authority Act

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1. What is the Virginia Wireless Service Authority Act?

The Virginia Wireless Service Authorities Act (Code of Virginia, §15.2-5431.1 et seq.) was enacted by the Virginia General Assembly in 2003. The Act enables counties, cities and towns in Virginia to form their own Wireless Service Authorities to provide certain communications services, including but not limited to, high speed data and Internet access services.

2. What is a Wireless Service Authority?

Wireless Service Authorities are separate, legal entities from the localities that form them. They are similar to other local or regional authorities (waste and water authorities, regional jail authorities, economic or industrial development authorities, etc.). Just like other local authorities, Wireless Service Authorities are public bodies that can enter into contracts, sue and be sued, borrow money, and issue debt to finance their projects. As declared by the legislature, each Wireless Service Authority is an instrumentality of the locality "exercising public and essential governmental functions to provide for the public health and welfare..."

3. Can multiple localities join to form a single Authority?

Yes, any locality can form its own Wireless Authority, or join with other localities to create a regional authority. There is no limit on how many jurisdictions can join together to form a Wireless Services Authority.

4. Why form a Wireless Service Authority?

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- ***Financing:*** Wireless Service Authorities can borrow money and issue revenue bonds that do not constitute debt of the local governing body, to finance their projects. In 2007, the Virginia General Assembly added wireless broadband equipment and infrastructure to the definition of projects that may be entered into under the provisions of the Virginia Public-Private Education Facilities and Infrastructure Act (PPEA), and projects that can be financed through the Virginia Resources Authority.

- ***Flexibility:*** In most instances, a Wireless Service Authority has the flexibility to provide services that the locality cannot provide on its own. Virginia localities are generally prohibited from providing Internet broadband services, with limited exceptions, including certain localities with "service gaps" who successfully petition the State Corporation Commission, and municipal providers of electricity. Wireless Service Authorities under provisions of the Act do not appear to be subject to these limitations or conditions, and have wide discretion to acquire, construct, improve, enlarge, operate or extend any project providing qualifying communications services under the Act.

- ***Facilities:*** Wireless Service Authorities can own and operate their own facilities. In addition, they are authorized under the Act to access state-owned lands for the placement of their facilities. A provision was added to state law in 2008 that requires the Commonwealth to lease available space on state tower facilities to qualifying Internet service providers in underserved areas. A Wireless Services Authority could presumably qualify for such access if it meets these conditions.

5. Is a Wireless Service Authority limited to providing "wireless" services?

No, Wireless Service Authorities have wide discretion under the Act to provide "qualifying communications services", which include, but is not limited to high speed data and Internet access service (but excludes cable television or video programming). In fact, an Authority created under the Act could choose not to utilize any wireless technologies, and opt for DSL or fiber, for example. Furthermore, the term "wireless" does not even have to be in the Authority's name.

6. Is an Authority required to own and operate the broadband network?

No. Wireless Service Authorities have wide discretion to both directly own and operate systems that provide qualifying communications services to customers or to partner with the private sector for the deployment, operation and maintenance of the system. For example, a Wireless Service Authority could essentially serve as a financing entity in a public-private partnership with a private provider of Internet services.

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7. How is a Wireless Service Authority created?

In order to form a Wireless Service Authority, the locality (or localities in the case of a joint or regional authority) is required to hold a public hearing on the matter. The governing body must then adopt a formal resolution and file articles of incorporation, which must be approved by the State Corporation Commission. If all the requirements have been met, then the SCC will issue a Certificate of Incorporation or Charter to the Authority.

8. Who controls the Authority?

The Act requires that each Wireless Service Authority have a board of five members to control the Authority, any number of which can be members of the local governing body if they choose. A board of supervisors creating an Authority can opt to have the number of Authority board members equal to the number of members on the board of supervisors. The Authority board must then appoint a chairman, secretary and treasurer. The Act also allows the board to adopt by-laws to govern the conduct of its meetings and internal business.

9. Are Wireless Services Authority subject to the Virginia Freedom of Information Act?

Yes. Since they are public bodies under Virginia law, Wireless Service Authorities generally are subject to the Virginia Freedom of Information Act (FOIA), which requires meetings to be noticed and open to the public, and requires disclosure, upon a citizen's request, of its records that cannot otherwise be excluded from FOIA. There are, however, exclusions from FOIA specific to Wireless Service Authorities. These exclusions relate to certain proprietary information and trade secrets, as well certain meetings that involve negotiations under the Virginia Public Procurement Act.

10. What are issues that typically need to be addressed in a contract between an Authority and an Internet Service Provider?

a. It depends largely on the business model

The contractual relationship between an Authority and any service provider will vary from project to project and from region to region, based on the needs and goals identified, and the approach or business model chosen to achieve those goals. The business model will dictate many of terms and conditions that should be addressed. For example:

- Is the Authority or a private or non-profit entity to be the service provider?
- Who will own the actual network equipment and facilities?

- Is government (public safety, schools, libraries, governmental administration) to provide the "anchor tenants" or primary customers, or are private residences and business the intended market for the services (or both)?
- What funds will be used to finance the project, and what are the applicable procurement laws and regulations?

b. Regardless the business model, there are certain issues that will probably need to be addressed in the contract:

- **Technologies to be deployed** (Wi-Fi, Wi-Max, licensed v. unlicensed radio spectrum, DSL, fiber, broadband over power lines, etc.)
- **Financing** (How will deployment be financed? If a public-private partnership, how will the risks and start up costs be shared?)
- **Service levels** (desired Internet upload/download speeds, system reliability, customer service, etc.)
- **Coverage goals** (geographic/by population)
- **Network deployment goals and timeline**
- **Accountability/Enforcement** (how to measure network performance and ensure compliance)
- **Access to public facilities/rights-of-way** (communications and water towers, public buildings, attachments to utility poles, use of rights-of-way, etc., and any applicable federal and state laws)
- **Siting of communications towers** (compliance with applicable local zoning ordinances, and applicable state and federal regulations)
- **Co-location arrangements on private towers**
- **Radio frequency interference** (provisions to prevent and resolve interference of a wireless network with local government and emergency communications, for example)
- **Subscriber rates.** Are the services to be free or subsidized to subscribers, or fee-based and market driven?
- **Marketing strategy and responsibility**
- **Digital Divide/Inclusion issues** (including possible FCC "E-rate" subsidies for schools and libraries)
- **Liability/Insurance coverage for personal injury or property damage**
- **Dispute Resolution process**
- **System Continuity** (what to do if service provider is no longer able to operate the network)
- **Contract default and enforcement provisions**

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	Broadband Authority §15.2-5431.1 et seq.	Economic/Industrial Development Authority §15.2-4900 et seq.	Local Governing Body	Water/Waste Authority §15.2-5100 et seq.
Sell/Lease broadband infrastructure facilities it owns (towers, land, dark fiber, etc.)	✓	✓	✓	✓ (fiber conduit)
Own and operate a broadband network	✓	✓ (In limited circumstances)	✓ (In limited circumstances)	
Finance public/private broadband projects, issue debt, etc.	✓	✓		
Use state –owned or controlled land for broadband projects	✓			
Contract directly with private providers to deliver broadband to residents and businesses	✓			

✓ Limited circumstances include localities with electricity distribution system as of March 1, 2002 (§15.2-2620), situations requiring a formal SCC petition process, findings, and regulation (§ 56-484.7:1), and situations where the network only serves local government (§15.2-1500).

Jeffrey Gore, Hefty & Wiley,P.C. (jeff@heftywiley.com)