WEST VIRGINIA BROADBAND ENHANCEMENT COUNCIL

Broadband Cooperative Associations

A Basic Guide to the Formation of Broadband Cooperative Associations in West Virginia, Available Resources and Frequently Asked Questions I August 2017

Photo courtesy of: West Virginia Department of Commerce
Introduction

The West Virginia Broadband Enhancement Council (WVBEC) was formed in 2016 to provide for and oversee the development of plans, processes and procedures for extending broadband access into underserved and unserved areas of the state.

The WVBEC also seeks to empower West Virginia residents and businesses with resources that provide guidance for obtaining broadband services in these communities. One such avenue is the formation of a Broadband Cooperative Association (BCA).

What is a Cooperative?

Cooperatives (co-ops) are formed in response to an economic need, such as providing marketing, processing, bargaining, manufacturing, and purchasing services not currently available, or available only at excessive cost. Cooperatives are a type of corporation; a State-chartered business organized and operating under its laws.

What are the Benefits?

The cooperative is a business owned and controlled by the people who use its services. Cooperatives are controlled by a board of directors (elected by member-owners). They derive equity from member-owners, operate for the benefit of member-owners, and allocate earnings to members based on use.

Co-ops are popular in emerging industries, such a rural broadband, because they use the power of local markets to satisfy the limited needs of a local community that might not otherwise be served by larger companies in the same low-cost way.
Additional Resources

The West Virginia Broadband Enhancement Council (WVBEC) has compiled the following resources regarding the formation of a Broadband Cooperative Association within the State of West Virginia. The WVBEC will partner with the West Virginia Development Office (WVDO) and other agencies and organizations to support the development of broadband cooperatives.

Note: Additional resources will be added as they are developed.

West Virginia Secretary of State

The formation of a Broadband Cooperative Association requires the preparation and filing of Articles of Incorporation for a Cooperative Association with the West Virginia Secretary of State’s Office. Articles of Incorporation are available through the West Virginia Secretary of State’s Office, Business Licensing Division, and are attached to this document.

Visit the Secretary of State’s Office at the website below for more information or click here to review the Articles of Incorporation. For more information, visit or call:

- West Virginia Secretary of State’s Office I https://www.sos.wv.gov.
- Phone I 304-558-8000

Mountain State Justice, Inc.

Mountain State Justice, Inc. (MSJ) is a nonprofit legal services organization that advises and represents workers and/or consumers in forming cooperative businesses in West Virginia. MSJ also provides legal education and outreach services to support cooperative development via the West Virginia Co-op Collaborative—a network of co-op development service providers and co-op members. For more information, visit or call:

- Mountain State Justice, Inc. I https://mountainstatejustice.org
- Phone I 304-344-3144
U.S. Department of Agriculture

Generally, cooperatives are designed to increase access to a service and to minimize the cost of that service for the consumers who are the members. Cooperatives are common within the agricultural industry and are emerging as a viable solution to the provision of broadband in rural areas.

The U.S. Department of Agriculture provides numerous guides to broadband cooperative development, such as those provided here:

- Cooperative Essentials, click here.
- How to Start a Co-op PowerPoint, click here.
Forming a Broadband Cooperative Association

Co-ops are popular in emerging industries, such as rural broadband, because they use the power of local markets to satisfy the limited needs of a local community that might not otherwise be served by larger companies in the same low-cost way.

Following are common questions associated with this process. Click here to review the portions of the West Virginia Code cited in the answers below.

Frequently Asked Questions

Q. What is broadband?

A. Broadband is a high-speed Internet connection which can carry large amounts of data at once. The Federal Communications Commission (FCC) defines broadband by data rates of 25 megabits per second (Mbps) downstream and 3 Mbps upstream.

Broadband provides higher speed of data transmission for online video, streaming media, interactive websites and secure business applications. Broadband is always on and does not block phone lines when in use.

Q. What is a Broadband Cooperative Association ("BCA")?

A. Any business or non-profit corporation organized under applicable law for the purpose of obtaining broadband services within a region or community. In short, a BCA is a membership organization comprised of individuals who have a common interest in doing the same type of business or in purchasing a similar type of good or service.

A BCA divides its revenues among its members in order to reward those members for doing business together in the cooperative. Each member of the
BCA has a vote on the policies and priorities of the organization to ensure that the BCA remains focused on serving the needs of its members.

Q. **Why did the W.Va. Legislature think BCAs are important?**

A. As a predominately rural state, West Virginia still has many cities, towns, and other concentrated population areas which are unserved or underserved by broadband access. The lack of affordable, accessible broadband service necessitates consideration of alternative means and methods of providing these services.

Q. **Why should I consider organizing a BCA?**

A. Generally, cooperative associations, or co-ops, are designed to increase access to a service and to minimize the cost of that service for the consumers who are the members. The top priority for a BCA is always to spend whatever is needed to ensure access to good Internet services. If a BCA runs a budgetary surplus, it distributes that surplus back to the members as dividends as a reward for using the cooperative association. This helps keep rates low and provides financial support for BCA members.

Co-ops are popular in emerging industries, such as rural broadband, because they use the power of local markets to satisfy the limited needs of a local community that might not otherwise be served by larger companies in the same low-cost way.

Co-ops raise capital by issuing stock to members or nonmembers who want to support the co-op, which is ideal for rural and slow-growth markets where a business like a rural broadband company may not be able to generate the high returns on investment that are typical for other stockholders and investors. BCAs can cost-effectively convert existing infrastructure into capital for broadband expansion.

Q. **I’m interested in forming a BCA. How do I get started?**

A. Identify the underserved area where you wish to offer broadband services through a co-op. Identify community leaders – private citizens and/or
businesses leaders – who want access to better Internet in that area and are willing to collect a list of customers who wish to incorporate a cooperative.

Seek assistance from organizations, government, and partners willing to organize a BCA membership meeting; establish a team; and pursue a plan for exploring the BCA. This would include developing a business plan, incorporating and operating the BCA. The team should include a knowledgeable business planner, lawyer, and accountant who are available to provide advice as needed.

Q. **How can I get funding to start the BCA process?**

A. Broadband planning grants offered by the West Virginia Development Office through the Community Development Block Grant (CDBG) program are designed to enable local governments to conduct the assessments needed to develop effective strategies for the construction of broadband infrastructure.

Other grant funding sources include the Community Connect Program through the U.S. Department of Agriculture (USDA), the Appalachian Regional Commission (ARC) and the U.S. Economic Development Administration (EDA).

Q. **Who and how many people may organize a BCA?**

A. A minimum of 20 people who want to purchase Internet services from a BCA are required. Pursuant to the applicable law, those persons must be engaged in the use of Internet services, either in an individual capacity or as a business. These persons are considered “qualified persons.”

Q. **Who may be a member of a BCA?**

A. Under the terms and conditions of the bylaws adopted by the BCA, only qualified persons may be admitted as members.
Q. **What are the terms of membership?**

A. The terms of membership are designed and developed by the by-laws written and adopted by the BCA. Under the terms and conditions prescribed in the bylaws adopted by it, a BCA may only admit as members, or issue common stock to, persons engaged in the use of Internet services either as individuals or as business entities.

One association may become a member or stockholder of any other association or associations organized under West Virginia law or similar laws of any state. For more information, please refer to [W.Va. Code § 31G-2-5](#).

Q. **What powers will a BCA have in providing Internet services to a community?**

A. As a business entity, a BCA will have many powers to do all things necessary, suitable, or proper in accomplishing its purpose of providing Internet services to a community.

In the pursuit of those goals, and BCA may: engage in using or providing any Internet service; or in any activity in connection with the purchase, providing or use by its members of Internet services; or in the financing, directly, through the association of any qualified activities.

In addition, the BCA may conduct business in much the same form as any other business entity in the state such as borrow money, make payments to members, execute promissory notes, become a surety or guarantor, purchase and own stock and capital interests, borrow money and any other form of obligation, establish reserves and invest in ownership of real or personal property, and exercise privileges granted by the laws of this state to ordinary corporations. For more information, please refer to [W.Va. Code § 31G-2-4](#).

Q. **Generally, how do you form a BCA?**

A. After forming the team and developing the initial governing documents, each BCA must file its Articles of Incorporation with the West Virginia Secretary of State, Business Licensing Division, and register with other appropriate government agencies like any new business.
The Articles of Incorporation must set forth such things as the name of the BCA, the purpose for which it is formed, the place where business will be transacted, the number of incorporators and directors, rules as to capital stock or property rights and interests of members, and stock classes.

The articles of incorporation may also contain provisions managing, defining, limiting, or regulating the powers and affairs of the BCA, the directors, the stockholders or the members.

The Articles of Incorporation shall be signed and filed in accordance with law. Under certain circumstances, the articles of incorporation may be amended. For more information, please refer to W.Va. Code §§ 31G-2-6, 7.

A copy of the West Virginia Articles of Incorporation form is at the end of this document. To visit the website which has a fillable Article of Incorporation pdf form, click here.

**Q. Is a BCA required to have bylaws?**

**A.** Yes. Each BCA must, within 30 days after its incorporation, adopt for its government and management a code of bylaws not inconsistent with the powers granted to BCAs by law. For information on what may be adopted as bylaws, please refer to W.Va. Code § 31G-2-8.

It is advisable to develop articles, bylaws, membership certificates, accounting practices, and related documents, in a single, coordinated process to ensure a strong foundation for a BCA.

**Q. What are the key components of the government and management of a BCA, as expressed in its bylaws?**

**A.** The key components will vary depending on the needs of the BCA. An effective set of governing documents may be easily developed in consultation with your team who can evaluate and advise the group about the risks and benefits of various approaches. The bylaws are to be developed by the membership of the cooperative through a collaborative planning process.
The bylaws govern the management of the organization as it relates to policies, voting, compensation structure, maintenance of BCA accounting, and election and removal of officers.

A BCA is managed by a board of not less than three directors, elected by the members. For further information, please refer to W. Va. Code § 31G-2-10.

Q. **Is a BCA required to hold meetings?**

A. Yes. In its bylaws, each BCA shall provide for one or more regular meetings annually. Other meetings may be called under certain conditions, and notice of these meetings is required to be mailed to each member under certain conditions. If the bylaws permit, such notice may also be by Class I legal advertisement in compliance with applicable law. For more information on meetings, please refer to W.Va. Code § 31G-2-9.

Q. **Who are the directors and officers of a BCA?**

A. A BCA shall be managed by a board of directors of not less than three directors, elected by the members or stockholders. The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and a treasurer who need not be directors of the BCA. For more information regarding the duties of directors and officers, please refer to W.Va. Code §§ 31G-2-10, 11.

Q. **Is a bond required for a BCA?**

A. Yes. Every officer, employee, and agent handling funds or negotiable instruments or property of or for any BCA is required to execute and deliver adequate bonds for the faithful performance of his or her duties and obligations.
Q. Can a BCA issue stock?
A. Yes. A BCA has the power to issue one or more classes of stock, or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value. Different stock may have full or limited voting powers, depending upon how such rights are expressed in the articles of incorporation. There are limits on stock issuance, transfer, and ownership, as well as other issues involving such stock, which may be found in W.Va. Code § 31G-2-13.

Q. Can an officer or director of a BCA be removed?
A. Yes. Under certain circumstances, any member may seek the removal of an officer or director. For more information, please refer to W.Va. Code § 31G-2-14.

Q. Can a BCA execute a marketing contract?
A. Yes. A BCA may take and execute marketing contracts pursuant to the provisions of W.Va. Code § 31G-2-16.

Q. Does a BCA have any reporting requirements?
A. Yes. In addition to any other requirements, a BCA must prepare an annual report on forms provided by and filed with the West Virginia Secretary of State.

Q. Can a BCA enter into contracts or agreements with other associations?
A. Yes. Upon resolution adopted by its board of directors, any BCA can enter into all necessary and proper contracts and agreements with any other cooperative corporation or associations, formed in any other state, for a more economical carrying on of its business or any part thereof. For more information, please refer to W.Va. Code § 31G-2-22.
Q. **Where can I find more information about forming a BCA?**

A. The West Virginia Development Office can provide information which may assist in further understanding the procedure for forming a BCA.

For more information, call 304-558-4010, or email:

- Kelly Workman: Kelly.A.Workman@wv.gov
- Tony O'Leary: Tony.M.Oleary@wv.gov

**DISCLAIMER:** The information provided herein is for general guidance on forming a Broadband Cooperative Association (BCA) and is not legal advice. Not all the information here is complete. For more details or legal advice about what action to take, please contact an attorney competent in this area of the law.

The West Virginia Broadband Enhancement Council makes no representation as to the accuracy of the information contained herein and accepts no responsibility for any damages arising out of the use or misuse of this information. It is every individual's responsibility to contact a competent attorney and other qualified professionals before undertaking any business enterprise.