

A GUIDE TO  
WEST VIRGINIA  
BROADBAND  
COOPERATIVES

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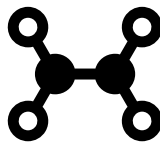
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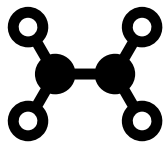
# INTRODUCTION

It is well understood that many parts of West Virginia lack access to basic internet services. Because bringing broadband into a rural area can be an expensive endeavor, most private companies have simply chosen not to serve many parts of the state. To help address this situation, the West Virginia legislature enacted West Virginia Code Chapter 31, Section 2, enabling the creation of broadband cooperative associations.

These new legal entities are intended to allow underserved communities the ability to band together, pool resources, and bring in the broadband service that they require. Broadband cooperatives can be used to build the necessary infrastructure to connect a community, operate an internet service on that infrastructure, or even to serve as a low-cost alternative to internet service providers operating on existing networks.

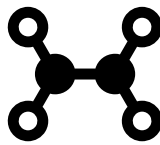
This toolkit is intended to provide a basic overview of broadband cooperatives for communities that are considering whether forming a broadband cooperative is right for them. Should a community decide that a broadband cooperative is a good fit, this toolkit is also intended to serve as roadmap of the first steps in the cooperative's creation.

***Please note:*** *This toolkit is provided for informational purposes only. It does not provide legal advice for any individual situation and should be used in conjunction with, and not as a substitute for, qualified legal counsel. This guide reflects the laws of the state of West Virginia as of the date it is written. As such, you should verify that the information contained in this guide remains current.*



# UNDERSTANDING COOPERATIVES





# DEFINING COOPERATIVES

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A cooperative is a private business that provides a service to, and is owned, operated, and managed by, its members. A cooperative is unlike a typical business in three ways: **Ownership**, **Control**, and **Benefits**.

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Most people get their internet from traditional Internet Service Providers (ISPs) like Suddenlink or Comcast. Although these companies offer service in many areas of West Virginia, much of the state remains unable to access high speed broadband internet. West Virginia's terrain, low population density, and lack of existing infrastructure make it too costly for ISPs to build and operate new broadband networks. Broadband Cooperatives have the ability to fill this gap and provide service in their communities. Before beginning the process of forming a Broadband Cooperative, it is important to understand what makes cooperatives different.

## OWNERSHIP

Internet service providers are typically large businesses that operate on a regional or even national scale. These businesses are generally owned by either an individual, a small group of partners, or wealthy stockholders. These owners do not live in the communities where their businesses operate and do not make decisions for the benefit of customers. Instead, traditional business owners make decisions to meet goals such as growing their business and making profits. In short, ownership is centralized.

### **Cooperatives provide an alternative and affordable model for West Virginia.**

In a cooperative association, as defined by W. Va. Code § 31G-2-1(1), **customers are members and members are owners of the business**. This means that ownership is not concentrated in one person or a small group of people, but is shared by every customer-member. Unlike the traditional business model, cooperative owners live in the communities they serve and are not driven solely by profit margins. Although cooperatives do seek to make a profit, the ultimate goal of a cooperative is to provide a mutual benefit for each of the members. For West Virginia Broadband Cooperatives, the benefit provided to members is reliable and affordable broadband service.

Cooperatives allow for a business that is anchored in the community. Common ownership is one of the main aspects of the cooperative structure and is essential to the success of the organization.

Because broadband cooperative owners will all live in the same communities and share the same broadband service, owners must be motivated by factors other than profits. In fact, profits in cooperatives are generally either returned to the members or used to lower the cost of the service provided. Member-owners work together for mutual success.

## CONTROL

Cooperatives approach control and decision-making differently than traditional businesses. In traditional for-profit corporations, a board of directors is tasked with making decisions. The board is elected by stockholders, who are typically a limited number of wealthy individuals. In contrast, cooperatives are democratic and offer equal voting rights to all members, ensuring everyone gets a voice in electing the board and making important decisions.

### **Unequal Voting Rights in a Traditional Business**

Let's suppose that a traditional for-profit corporation has 100 shares of stock. The corporation may start out with 25 stockholder-owners, each owning 4 shares of stock. When the stockholders vote to elect directors, each will have four votes — equal to their number of shares. Now suppose that Stockholder A purchases the 4 shares of stock that are owned by Stockholder B. The next time the stockholders vote, Stockholder A will have 8 votes, Stockholder B will have 0 votes (because she will no longer be a stockholder), and the remaining stockholders will still only have 4 each. This process could continue until Stockholder A owns 50, 75, or even 100 out of 100 shares of stock. In other words, Stockholder A could take complete control of the corporation. **This is not possible in a Broadband Cooperative.**

The second key aspect of the cooperative structure is equal control among members. A cooperative can choose whether it will issue stock to members or not. Regardless of which option the cooperative chooses, **each member has only one vote** — no matter how many shares of stock each member owns. This system prevents one member (or even small groups of members) from amassing the power to individually change the goals and policies of the cooperative. Cooperatives distribute the power — and the votes — evenly among the members to ensure that every customer is represented.

## BENEFITS

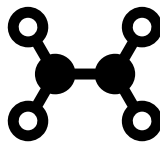
In a traditional business, customers receive no other benefit other than the service they purchase from the company. In contrast, **cooperatives exist to provide benefits to their members**. One of the most exciting benefits of cooperative membership is receiving the **service at cost**. Unlike traditional business, cooperatives do not mark-up the prices of their goods and services to increase profits. Cooperatives often provide services to members the lowest possible cost. Cooperatives are able to sustain this business practice because the owners are the customers. Rather than seeking large profits for the business, the owners benefit from keeping prices low.

It is important to remember that cooperatives are still a business. This means they must earn enough to cover their costs and keep some profits as a cushion for repairs and maintenance. However, they can keep prices reasonable because they do not need to make large profits to pay executives or increase the value of their stocks. Additionally, cooperatives can offer more packages and services than traditional companies. Traditional companies create service packages based on what will increase profits. Cooperatives can consider other factors, including what the community needs as well as what makes financial sense.

Membership in some cooperatives may also provide the benefit of **patronage refunds**. While this benefit is explained in more detail in the Membership Benefits section of this toolkit, these refunds reward members in proportion to their use of the cooperative service. Simply put, when the cooperative has a surplus of money, it may decide to return the money to its members. The amount of the refund each member receives is based on the amount the member used the service. In other words, those members who use the most of the service receive a larger refund. Not all cooperatives provide this benefit. This is especially true for newer cooperatives that can put surplus funds to better use by reinvesting in the cooperative or creating a cash reserve.

#### **WHAT BENEFITS CAN COOPERATIVES PROVIDE?**

- SERVICE AT COST
- PATRONAGE REFUNDS
- BUSINESS EDUCATION
- LEADERSHIP OPPORTUNITIES
- LOCAL ECONOMIC DEVELOPMENT



# GOVERNANCE

Cooperatives are collectively governed by members and are lead by directors and officers. Although each member has a responsibility to ensure the continued success of the cooperative, directors and officers have additional responsibilities. The levels of cooperative governance are more fully explained below.

## MEMBERS

Members are the foundation of the Cooperative. They are responsible for collectively governing the organization and ensuring its continued success. Members govern the cooperative by exercising their voting rights at meetings, electing a board of directors, and making decisions on major cooperative issues. Because cooperatives are collectively governed through the "one member, one vote" principle, members keep each other and the cooperative leadership accountable.

W. Va. Code Sections 31G-2-1-2 tell us that twenty or more "qualified persons" may form a cooperative association and that those "qualified persons" can be individuals, businesses, or subdivisions of the state (county, municipality, etc.). If any state subdivision or business wishes to be a member, W. Va. Code Sections 31G-2-5(b) clarifies that the individual representing the organization need only be an "individual, associate, officer or manager or member thereof, duly authorized in writing."

Members are also governed by the cooperative. Members should develop and require all members to sign a **membership agreement** upon joining the cooperative. This agreement should bind members to support the cooperative by exercising their rights and responsibilities as members. These rights and responsibilities include:

- ‡Attending and voting at meetings
- ‡Supporting the cooperative financially
- ‡Using the services provided by the cooperative
- ‡Acting in the best interest of the cooperative

## BOARD OF DIRECTORS

A board of directors is a small group of members who have been elected by the stockholders of the cooperative to handle the day to day management. They are tasked with ensuring the success of the cooperative by setting goals and creating the strategies for achieving them. A board of directors must also handle operational matters such as producing a budget, authorizing spending, and hiring and firing employees. West Virginia requires that a cooperative association have at least three directors on the Board but the cooperative can choose to have more. The members of

the cooperative should decide how many directors to have, and should base this decision on factors such as the total number of members and the responsibilities of the board.

Directors must be committed to seeing the cooperative succeed and have a legal duty to act in the best interest of the cooperative. Therefore, directors should be individuals who represent the members of the cooperative well. Before electing a board, the cooperative will need to create a set of rules and qualifications for directors. These rules and qualifications will be spelled out in the bylaws, which are explained in the Formation section of this toolkit. As an example, the cooperative may want to require directors to have been members of the cooperative for a specified number of years. Or, if a cooperative has a large membership that is spread out geographically, the cooperative may want to have directors that represent each region. What works for one cooperative may not work for another. The members of each cooperative will need to determine the best requirements for their particular circumstances.

The role of the Board of Directors may change over time. For example, the initial directors will be tasked with getting the cooperative off the ground. They will need to hire experts to conduct studies and will need to lay the plans for installing the broadband infrastructure. Directors a few years later may be tasked with setting rate structures and hiring employees, while directors ten years after that may only need to ensure smooth operations. The terms for directors will need to be determined by the members in listed in the bylaws. Each time new directors are elected, the expectations should be clearly defined.

## OFFICERS

West Virginia requires the board of directors to elect certain officers for the cooperative. Two members of the board of directors must be elected by the board to serve as the president and vice president of the cooperative. The board must also elect a secretary and treasurer but these positions do not need to be filled by members of the board of directors. The secretary and treasurer positions can be filled by one person, or the board can opt to have a bank serve the treasurer function. The cooperative should designate the roles of each of these officers in the bylaws. Below you will find a brief description of the general role of each officer.

### President

The President is the leader and public representative of the cooperative. The President is responsible for ensuring the cooperative follows its mission, policies, and procedures that are in place. This is done by directing the work of the board, chairing meetings, setting agendas, and appointing committees and assuring their proper functioning. The President is accountable to both the members at large and to the Board of Directors, and should make reports annually.

## Vice President

The Vice President assists the President and steps in when the President cannot fulfill all responsibilities. The Vice President is also generally responsible for keeping order at meetings.

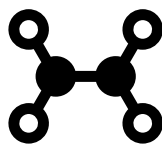
## Secretary

The Secretary records minutes at all meetings and is responsible for keeping all records and seals of the Cooperative.

## Treasurer

The Treasurer oversees the financial bookkeeping and keeps records of all income and expenses. The Treasurer also maintains the budget and makes regular reports to the Board.





# UNDERLYING LEGAL STRUCTURE

Before forming a West Virginia Broadband Cooperative, you will need to choose a legal structure. West Virginia Code Sections 31D, 31E, and 31F require that a cooperative select one of these options: a for-profit corporation, a nonprofit corporation, or a benefit corporation. Although not all states require this determination, West Virginia requires that cooperatives make this choice when they file **Articles of Incorporation**<sup>1</sup>. Before going further, let's discuss the basic characteristics of each structure. These explanations should only be used as a starting point in making this decision. As your cooperative evaluates the options, you should consult an attorney who can provide counsel on how each structure would or would not meet the needs of your unique cooperative.

## NONPROFIT CORPORATION

A **nonprofit** is a type of organization that is created to serve a public purpose or carry out a mission. Generally, nonprofits have no intention of making a profit. While nonprofits can and do have paid employees, there are no owners or corporate shareholders who seek to make money on the business.

It is important to note that **a nonprofit is not the same as a 501(c)(3)** charitable organization. The term "Nonprofit" defines general organizations created in West Virginia under West Virginia Code § 31E. These are organizations formed for the public good and not to create profits. The term 501(c)(3) refers to a special tax status granted by the IRS. Only some nonprofits can apply to the IRS to receive designation as 501(c)(3) organization. This designation exempts the organization from both state and federal income taxes and imposes additional requirements on the organization. Tax exemption for Broadband Cooperatives is discussed briefly below. The remainder of this section will discuss the basic characteristics of a nonprofit, as required by West Virginia Code § 31E.

### Formation & Ownership

Nonprofits do not have "owners" in the typical sense. Instead, a nonprofit is considered to be owned by the public. Nonprofits may have members but they are not required to do so. If a nonprofit decides to have members, it may have one class or multiple classes of members. Every member regardless class, is entitled to one vote. The bylaws can provide more votes or even deny voting rights to the members of any class. Nonprofits do not issue stock and do not pay dividends to members. Any excess funds held by the nonprofit must be reinvested in the organization or held as a reserve for future use.

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<sup>1</sup> Articles of Incorporation serve as the birth certificate of the cooperative.

## Management Structure

A nonprofit is required under West Virginia law to have a board of directors with at least 3 directors. These directors will be elected by the members who have voting rights. Any other requirements for directors will be set by the members and included in the organization's bylaws<sup>2</sup>. Directors are responsible for exercising all corporate powers. These include setting the goals of the nonprofit, authorizing activities, and managing the affairs of the nonprofit. The board of directors may appoint officers if the nonprofits allows for officers in its bylaws. There are no specific officer positions that are required under West Virginia law, other than that one officer must be tasked with preparing minutes of the director's and members' meetings and with authenticating records of the corporation.

## Tax Implications

As noted above, **nonprofits are not exempt from state or federal income taxes**. This means that nonprofits must file annual tax returns. Because nonprofits are corporations, they are taxed at the corporate tax rate. Under the newly enacted tax law, the federal corporate tax rate is 21%. The current West Virginia corporate tax rate is 6.5%. Because nonprofits do not split any profits among the members, members should not have tax liability on behalf of the nonprofit.

## Restrictions

Nonprofits may be formed for any legal purpose. There are no restrictions on the business activities of a nonprofit. However, nonprofits must not distribute profits to members or stakeholders. Nonprofits must reinvest profits in the purpose of the organization or hold excess funds as a reserve for future expenses. Like most business structures, nonprofits are required to keep meeting minutes from director and member meetings, accounting records, and any other pertinent business records.

## FOR-PROFIT CORPORATION

A for-profit corporation is one of the most common for-profit business models. For purposes of this discussion, we'll refer to this model simply as a "**corporation**." A corporation can be formed for any legal purpose and is regulated by subchapter C of the Internal Revenue Code and West Virginia Code §31D.

## Management Structure

In West Virginia, corporations must issue at least one class of stock. Due to this requirement, corporations are owned by stockholders. Stockholders must have at least one meeting annually and have various responsibilities including electing and removing directors. Owning stock also entitles stockholders to rights within the corporation. When corporations issue more than one class of stock, the rights granted with reach class of stock may differ. For example, the two typical

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<sup>2</sup> Bylaws are the rules for governing your cooperative, and are required by law. Bylaws set rules for things like the role of the board of directors, the responsibilities of officers, how to obtain or relinquishment membership, and the issuance of stock and patronage refunds. Under West Virginia law, the bylaws of a Broadband Cooperative must be approved a majority vote of the members or stockholders, and must conform with the powers granted to Broadband Cooperatives by WV Code Section 31G.



classes of stock are 'common stock' and 'preferred stock'. Holders of common stock generally have voting rights while holders of preferred stock do not. Holders of preferred stock, however, usually receive higher dividend payments because they have the right to be paid before holders of common stock. In a corporation, each share of stock that holds voting rights entitles the stockholder to one vote. For example, if an individual holds 51 shares of voting stock, that individual would have 51 votes.

Corporations must have a board of directors with at least 1 director. These directors are elected by the stockholders, but do not have to be stockholders themselves. The board of directors for a corporation is not required to have any specific number of meetings but generally hold regular meetings to effectively govern the business. The directors of a corporation also have the power to select officers who handle the day-to-day operations of the corporation. Like nonprofits, corporations do not need to have specific officer positions except that one officer must be tasked with preparing minutes of the directors' and shareholders' meeting and with authenticating records of the business.

### Tax Implications

Corporate taxation is sometimes referred to as "double-taxation." In this structure, the corporation files a state and federal tax return and any taxable income is taxed at the corporate rate. Under the newly enacted tax law, the federal corporate tax rate is 21%. The West Virginia corporate tax rate is currently 6.5%. After the income is taxed, the remainder can be paid out to members as dividends. Those members would then have to claim that income on their personal income taxes as dividends. This is what is referred to as the second layer of taxation.

### Restrictions

There are no restrictions on the activities or functions of a corporation, so long as its activities are legal. There are also no limits on a corporation's legal sources of income or the amount of such income. Corporations are required to keep meeting minutes from director and shareholder meetings, accounting records, and any other pertinent business records, including a list of shareholders.

## BENEFIT CORPORATION

A **benefit corporation** is a type of for-profit corporation.<sup>3</sup> In most respects, the benefit corporation is exactly the same as the for-profit corporation explained above. What makes a benefit corporation distinct is that a benefit corporation must have a purpose of creating a general public benefit. The benefit corporation must include this purpose in its articles of organization, and is legally held to providing this benefit.

### Management Structure

Because the general management structure of a benefit corporation is the same as a for-profit corporation, this section will only address the requirements that pertain specifically to benefit corporations.

Like for-profit corporations, benefit corporations must have a board of directors. However, the board of directors for the benefit corporation must be motivated by more than only increasing profits. When making decisions, the board of directors must consider the effect any action would have on the community, the local and global environment, and the ability of the benefit corporation to provide its public benefit.

### Tax Implications

Corporate taxation applies to benefit corporations in the same way it applies to a for-profit corporation. Please refer to page 13 for an explanation of corporate taxation.

### Restrictions

While there are no specific restrictions of the business activities of a benefit corporation, the benefit corporation must ensure that its activities allow it to provide its designated public benefit. In addition to the typical business records that a for-profit corporation must keep, a benefit corporation must file an annual benefit report with the West Virginia Secretary of State. This benefit report must discuss the ways in which the benefit corporation pursued any general and specific public benefits, the extent to which any public benefit was created, any circumstances that hindered the creation of the public benefit, and an assessment of the social and environmental performance of the benefit corporation.

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<sup>3</sup> As a note, a benefit corporation should not be abbreviated as a “B-corp.” A B-Corp is a distinct legal structure that is not applicable to West Virginia Broadband Cooperatives.

## COOPERATIVES AND TAX EXEMPTION

As noted above, nonprofits are not exempt from state or federal taxes. To be exempt from income taxes, nonprofits must apply for tax-exempt status from the IRS. The most common way that nonprofits become tax exempt is by applying for and receiving status as a charity under Internal Revenue Code 501(c)(3). This status is reserved for charitable, religious, educational, scientific, literary, and public safety organizations. Broadband cooperatives do not fall into any of these categories and, therefore, cannot become tax exempt as 501(c)(3)'s.

The good news is that there are many other types of tax exempt organizations. A Broadband Cooperative that selects nonprofit as its underlying structure may be eligible to receive tax exempt status as a 501(c)(12). **Organizations exempt under IRC 501(c)(12) include cooperative electric companies, cooperative telephone companies, and "like organizations."** Broadband Cooperatives have previously been successful in obtaining 501(c)(12) tax exempt status as a "like organization." One specific requirement that cooperatives should be aware of is that to qualify for and maintain exemption under IRC 501(c)(12), the cooperative must receive 85 percent or more of its income from members for the sole purpose of meeting losses and expenses each year. Because members will pay membership fees to use the broadband internet service provided by the cooperative, many broadband cooperatives will likely meet this requirement. Before applying for 501(c)(12) status, your cooperative should consult an attorney who is familiar with the process and requirements.

# MEMBERSHIP BENEFITS

The members of a broadband cooperative can receive certain monetary benefits for their participation in the cooperative. The two primary types of monetary benefits that members will receive are stock and patronage. Stock and patronage are discussed more in depth below. However, it is also important to note that members of a broadband cooperative are typically not involved in the organization for a financial gain. To a greater extent, members of a broadband cooperative participate in the organization in order to gain access to the service in remote areas or reduce the cost of existing broadband.

## STOCK

For-Profit cooperatives raise capital by issuing stock to members or nonmembers who want to support the cooperative and its mission to provide broadband access. Stocks are investments that represent an ownership share in the cooperative. When someone purchases stock in a cooperative, that person is called a shareholder because that person shares in the cooperative's profits.

West Virginia broadband cooperatives are permitted to issue one, or multiple classes of stock, a decision which must be elaborated on in the cooperative's articles of incorporation. If a cooperative chooses to issue only one class of stock, every stock will be of equal value and voting privilege as every other stock issued by the cooperative. In the articles of incorporation, a cooperative electing to issue one class of stock will need to state the total value of stock in the cooperative (number of shares x dollar value per share), the number of shares, and the dollar value of those shares.

Cooperatives can also elect to issue multiple classes of stock, and in doing so can issue classes of stock without voting privilege, or different rates and priorities of dividend payout. For example, West Virginia broadband cooperatives may issue preferred stock in addition to common stock in order to entice investment. A preferred is a stock that entitles the shareholder to a fixed dividend, whose payment takes priority over that of common-stock dividends.

A cooperative electing to issue multiple classes of stock will need to provide the total value of stock in the cooperative; and for each class of stock, the number of shares, the dollar value of those shares, and the powers, preferences, rights, qualifications, limitations or restrictions with respect to that class.

It is important to note that while cooperatives can limit the amount of stock that any one member may own, broadband cooperatives are already protected by the rule that any given shareholder may only cast one vote, regardless of the number of voting shares that the shareholder owns. This rule sets cooperatives apart from many other corporations and helps provide protection for the cooperative's members and end-users.

## PATRONAGE

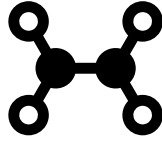
Patronage refers to monetary returns you may receive as member of a cooperative. Broadband cooperatives generate income by charging broadband customers for using the broadband system. Just as you receive a water bill from the local water authority, customers would receive a bill from

the broadband cooperative. Generally, income from the cooperative is used to cover operating expenses, including maintaining the infrastructure, hiring technicians, general office and administrative expenses, etc. Cooperatives may also be required by their bylaws or IRS regulations to save some of this income in a “reserve fund.” This fund essentially functions as rainy-day fund, helping to cover any unexpected expenses and generally ensuring that the cooperative remains solvent.

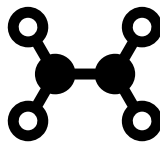
If the cooperative still has extra income after paying all expenses and allocating the required amount to the reserve fund, they can distribute this amount to cooperative members. The method for this distribution is included in the bylaws of the cooperative. For example, patronage can be distributed equally. Imagine if ABC Broadband Cooperative has 100 members and has extra income of \$100.00. ABC’s bylaws require that patronage is paid equally to all members. Each of ABC’s 100 members will receive a patronage amount of \$1.00.

As an alternative example, patronage can also be allocated according to use. This means members who use more of the cooperatives services, receive more in savings through patronage. Imagine that 40 members in the ABC Broadband Cooperative have teenagers. As a result, these 40 members use 75% of the internet services provided by the cooperative. The remaining 25% of the internet services (and thus income generated) is from the remaining 60 members. If patronage is allocated by use, the 40 members would share \$75 (receiving \$1.87 each). The remaining 60 members would share \$25 (receiving \$0.42 each).

It is important to remember that patronage refunds are generally minimal for broadband cooperatives. Additionally, it may take years for a cooperative to earn extra income that can be distributed as patronage. You should speak with an attorney when exploring the best patronage options for your cooperative.



# HOW TO CREATE A WEST VIRGINIA BROADBAND COOPERATIVE



## STEP 1: MEET THE MEMBERSHIP REQUIREMENT

If you are interested in forming a West Virginia Broadband Cooperative, you likely already have a small group of individuals spearheading the project. While it is a great first step to have this “core group” of leaders, there must be further efforts to get support from others in your community. A West Virginia Broadband Cooperative **must have at least twenty (20) members who are “qualified persons”** before it can form. Therefore, it is important to conduct community outreach and education to gain interest and properly inform potential members.

**West Virginia law defines “qualified persons” as:**

Any person “who is engaged in the use of internet services, either in an individual capacity, as a political subdivision of this state, or as a business.”

In recruiting potential members for a broadband cooperative, it is important to look across all sectors of the community to ensure that maximum community buy-in is achieved. Ideally, members should be recruited from education, healthcare, local government, economic development, public safety, libraries, business, telecommunications service providers and interested citizens.

Having members from across these sectors of a community is important for several reasons. First, understanding a community’s current demand for broadband services is central to the planning process, and each of these community members can provide the cooperative with unique insight into what the community’s current needs are.

Second, these community members can help increase the broadband demand in the community by committing to using more online services in each of their respective domains (businesses can offer free Wi-Fi, public offices can offer more online services). Increasing the broadband demand in a community makes investment and service from other internet service providers much more attainable.

Third, and perhaps most importantly, creating broadband infrastructure can be very expensive, but having the right cooperative members can help save substantial amounts of money, time, and effort. Specifically, local governments and public organizations already own significant amounts of infrastructure that reduce costs. Having local governments and school systems as members of

the cooperative allows for the use of existing rights of way, conduits, rooftops and access locations that would otherwise be prohibitively expensive.

Broadband internet access is extremely limited in West Virginia and many communities have become frustrated by the lack of reliable, fast service. While Broadband Cooperatives can provide communities with a resolution for this frustration, the cooperative structure is not well-known or accepted within the State. This is due, at least in part, to the fact that Broadband Cooperatives were not allowed in West Virginia until 2017. Although some West Virginians may be familiar with other types of cooperatives (like agricultural cooperatives, cooperative grocery stores, and electric cooperatives), the idea of a cooperative providing broadband internet service may seem unusual.

### THIS IS WHY COMMUNITY OUTREACH IS SO IMPORTANT!

Although it may not seem difficult to reach the 20-member requirement to form your cooperative, it could prove troublesome if your community does not believe in the potential for success. Community outreach and education helps you reach this requirement by familiarizing your community with the process and benefits of forming a West Virginia Broadband Cooperative. It also helps calm fears and answer any questions that may keep community members from joining the cooperative.

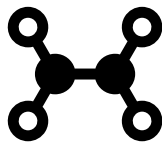
One of the most effective ways of community outreach is holding town hall meetings. In conducting these meeting, leaders should plan to provide comprehensive information about both broadband itself, and broadband cooperatives. These events should allow for question and answer sessions where community members can be more involved in discussions. Another method of community outreach is advertising. Advertisements for your cooperative can provide a more general summary of the broadband information but should include contact information where individuals can direct questions and concerns.

Although it could take a while, successful community outreach will help “qualified persons” feel comfortable enough to join your West Virginia Broadband Cooperative. Because West Virginia requires a Broadband Cooperative to have a minimum of 20 members before it can officially register as a business, this first step must be completed before moving on in the process.

#### What Types of Community Outreach Can Be Effective?

- \*TOWN HALL INTEREST MEETINGS
- \*SOCIAL MEDIA
- \*BILLBOARDS
- \*WORD OF MOUTH
- \*NEWSPAPER ADVERTISEMENTS
- \*RADIO ADVERTISEMENTS





## STEP 2: FORMATION

After reaching the twenty-member benchmark, you may be tempted to immediately fill out the official paperwork and register as a West Virginia Broadband Cooperative. However, before you register your cooperative, you should take the additional steps of writing bylaws and electing a board of directors. As explained below, each of these are important aspects of the formation process.

### SELECT UNDERLYING STRUCTURE

The first step in forming your cooperative is to select an underlying business structure. As discussed on page 9, West Virginia requires cooperatives to choose either the nonprofit corporation, for-profit corporation, or benefit corporation structure as the basis for its business. Which option the cooperative chooses will influence things such as its eligibility for federal grants and its ability to provide patronage refunds to members. Cooperatives should evaluate these factors and consult an attorney who can help explain the long-term impacts of each option before making a decision.

### WRITE BYLAWS

West Virginia requires a Broadband Cooperative to adopt bylaws within 30 days of registration. The bylaws form the basis of the governance of the cooperative and should be written with extreme care. While there is no upper limit on the number of members a cooperative may have at the time of registration, it is important to remember that each member should have a voice in the process of writing the bylaws. Because this can take time, it is best practice to draft the bylaws before registering as a cooperative.

#### What are bylaws?

Bylaws are the rules for governing your cooperative. Whether you choose a nonprofit or corporate structure, you will need bylaws. At the outset, the members of a cooperative will need to set rules for things like the role of the board of directors, the responsibilities of officers, how to obtain or relinquishment membership, and the issuance of stock and patronage refunds. Each of these rules will be contained in the bylaws. Under West Virginia law, the bylaws of a Broadband Cooperative must be approved a majority vote of the members or stockholders.

#### How do you create bylaws?

Before you begin drafting bylaws, your cooperative should speak with an attorney about the requirements and best practices for governing a cooperative association. You may wish to select a small group to work with the attorney to create the first draft of the bylaws. Each version should be submitted to the whole group for comment and consideration before revisions are made. An

attorney will help ensure that all legal requirements are met and will be able to explain the effect of each provision in the bylaws.

### What should be in bylaws?

Although you can find sample bylaws attached as Exhibit A of this document, your bylaws should be tailored to your specific cooperative. You should consult an attorney to determine the rules best suited to governing your organization.

Although bylaws will be specific to each cooperative, the basic components are as follows:

- Name and Purpose of Cooperative
- Membership
- Board of Directors
- Officers and Decision Making
- Committees (if applicable)
- General, Special, and Annual Meetings
- Employees
- Accounting Period
- Indemnification
- Process for Amending Bylaws

## FILE ARTICLES OF INCORPORATION

After you have drafted bylaws and elected a Board of Directors, you can *finally* take the last step in the formation of your West Virginia Broadband Cooperative by filing your Articles of Incorporation. Your Broadband Cooperative will not be officially formed until you take this step. Although this process is fairly simple, you may wish to retain an attorney to assist you.

### What are Articles of Incorporation?

Articles of Incorporation are formal documents that create the cooperative association. Articles of Incorporation must include certain information in accordance with state law. Once these Articles are filed with the West Virginia Secretary of State, the Broadband Cooperative will be an official business.

### How do you create Articles of Incorporation?

There are two ways your cooperative could go about creating Articles of Incorporation. The first and most commonly used option is to fill out the standard form provided by the West Virginia Secretary of State's Office. This makes the process incredibly simple because the form asks for all of the information that is required by state law. Your cooperative only needs to fill in the blanks. This option is preferred because it includes all necessary information and can be filed online or by mailing the completed form to the WV Secretary of State's Office. A version of this form can be found on the attached Exhibit B.

The other option is to draft Articles of Incorporation independently of the provided form. This would mean that your cooperative would need to type all of the required information into a word document and send it to the Secretary of State's Office. While this option is available, it is not preferred. It is much easier to ensure that your Articles include all of the necessary information by using the standard form.

### What should be in Articles of Incorporation?

West Virginia Code §31G-2-6 is the law that governs what information must be included in Articles of Incorporation for a West Virginia Broadband Cooperative Association. For an explanation of these items, please see the Articles of Incorporation instructions on the attached Exhibit B.

## REGISTER WITH THE WEST VIRGINIA TAX OFFICE

After registering with the Secretary of State, your cooperative must also register with the West Virginia Tax Office. If your cooperative files its Articles of Organization online, it will complete this registration at the same time. However, if your cooperative chooses to mail its Articles to the Secretary of State, it will need to complete the Business Registration Form separately, after the Articles have been processed and accepted. Please see Exhibit C for a copy of this form.

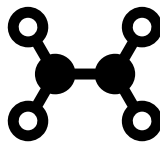
## ELECT A BOARD OF DIRECTORS

The next step your group should take is to elect a board of directors. West Virginia Broadband Cooperative Associations must have at least three Directors, but you may have decided to have more when you filed your Articles of Incorporation. The role of the directors is explained above in the Governance section of this toolkit.

### **CHECKLIST**

#### **Step 2: Formation**

- Select an Underlying Structure**
- Write Bylaws**
- File Articles of Incorporation with the WV Secretary of State**
- Register with the West Virginia Tax Office**
- Elect a Board of Directors**



## STEP 3: THE PLANNING PHASE

Before a Broadband Cooperative can begin installing and providing internet, it must complete detailed studies that consider economic, technological, geographic, and legal factors that could impact the project. Because there are several ways of providing broadband service, including aerial fiber, underground fiber, and wireless broadband, these studies are necessary to determine which options are geographically and economically feasible. The feasibility studies that need to be completed are explained in greater detail below.

### FEASIBILITY STUDIES

**A feasibility study is an assessment of the practicality of the proposed project. It answers 2 main questions:**

- 1. Will the idea work?**
- 2. Should you proceed with it?**

All communities that contemplate starting a broadband cooperative should conduct a feasibility study. When planned and executed correctly, feasibility studies allow communities to better understand the existing interest in broadband service and current gaps in broadband coverage. Feasibility studies also provide the data necessary to solicit bids for the construction and operation of broadband networks. If done right, a feasibility study proves very useful in helping to develop the roadmap forward. Like the communities they represent, feasibility studies may differ, but some common elements include:

- **Gap Analysis.** This elaborates on the areas in the community where broadband exists and the areas where residents remain unserved or underserved. It is an essential first step in understanding the community need.
- **Market research.** This should elaborate, with as much accuracy as possible, how important broadband is to the community residents and businesses. It should spell out how likely the community is to support the development effort and how likely the community is to purchase service at various price points.
- **Network Design.** At a minimum, this should include a complete inventory of structures to be served, locations where network equipment can be located and a layout of the paths fiber cables will follow. Additionally, an inventory of utility poles, rights of way, and other existing resources, will allow ISPs and contractors to provide accurate estimates of construction costs.
- **Detailed Project Costs.** This should ideally be broken down into sections to elaborate on the costs to both construct the proposed broadband network and the costs to operate an

ISP. The network costs portion should encompass all capital costs for the entire network with a narrative discussion of the assumptions and estimated costs. The ISP operation portion should not only include the equipment costs of operating an ISP, but also include the including the costs of keeping the network online and managing the business.

- RFP (Request for Proposal). An RFP is a document that an organization posts to elicit a formal bid from potential vendors, contractors, or ISPs for a broadband development project. This important document is the means of putting the community's vision for broadband access into action. It must provide enough detail for vendors to provide accurate bids on design, construction, network operation and provision of internet service (or any component of the project the cooperative wishes to outsource). If the RFP is not of sufficient quality, providers may elect not to bid, limiting your options.

It is important to note that hiring a firm to conduct a feasibility study does not necessarily ensure that the community will get the end product they hope for. Communities still need to be vigilant in finding the right company or person to draft the feasibility study. In general, communities should: 1) be skeptical of feasibility studies prepared by carriers and ISPs, 2) do their own homework researching the drafting company, 3) specify expected accuracy levels before drafting, 4) and ask for a second opinion from a professional before accepting a final product.

## FUNDING THE STUDIES

Feasibility studies must be conducted by experts, and are very time-consuming and detailed. This means that they will be costly. Because these studies must be conducted early in the process of building a Broadband Cooperative, the cost can be prohibitive if the Cooperative does not have available funding resources. There are two ways a Broadband Cooperative could fund this phase of the process: **applying for grants/loans and self-funding.**

### Applying for Grants/Loans

While some cooperatives may be eligible to receive grants or loans to fund the necessary feasibility studies, these funds can be very limited. This is because most federal grant and loan programs require that feasibility studies be completed prior to granting funds. However, there are still some options that cooperatives could explore.

Within West Virginia, cooperatives made up of local governments may apply for a Community Development Block Grant (CDBG) through the West Virginia Broadband Enhancement Council and the West Virginia Development Office. CDBG is a federal grant program offered by the U.S. Department of Housing and Urban Development. CDBG provides funding to states, and states can then award grants to local governments for development projects.

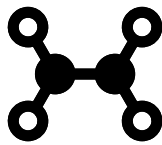
West Virginia has dedicated a substantial portion of its CDBG funding for the purpose of broadband expansion. Under this program, the West Virginia Development Office accepts applications from local governments each year and awards grants for broadband planning and deployment projects. These grants provide up to \$30,000 for project planning. For more

information on this program, please contact the West Virginia Office of Community Advancement and Development.

Cooperatives that are not eligible for CDBG funding do have other options when it comes to paying for the feasibility studies. Cooperatives may be able to find other grant programs to fund the planning phase through organizations like the Appalachian Regional Commission (ARC), the National Telecommunications and Information Administration (NTIA), and the U.S. Economic Development Administration (EDA). Because the availability of funds and requirements for these programs are subject to change regularly, cooperatives are encouraged to research each option individually upon reaching this stage.

### Self-Funding

Cooperatives also have the option to self-fund these feasibility studies. Some possible ways to do this would be applying for a bank loan or asking members to make a capital contribution. Although it may not be ideal, if your members are in the financial position to do so, this may be the quickest way to complete the feasibility studies.



## STEP 4: IMPLEMENTATION

Now that you have successfully completed all of the necessary steps to create a broadband cooperative in the West Virginia, it is time to actually implement the plan discussed above. Implementation consists of obtaining necessary permits, constructing fiber optic cable, entering into partnership agreements with ISPs, etc. Depending on the type of design, set up, and structure that you have chosen for your broadband cooperative, you may be in for quite an undertaking.

It is very important that you take your time throughout each part of the process in order to set your organization up for the best potential for success. Filing all of the formation documents, developing feasibility studies, obtaining funding, and obtaining partnerships to help with your organization are all important in their own way and all require a thorough understanding of West Virginia law. Therefore, you should obtain qualified legal counsel to help with each step discussed above. With that said, good luck with your future endeavor and we hope you found the information contained within this toolkit beneficial.

EXHIBIT A  
SAMPLE BYLAWS



**(For A West Virginia Broadband Cooperative – Not All Types of Broadband Cooperatives)**

**BYLAWS  
OF**

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These Bylaws (these “Bylaws”) of the \_\_\_\_\_ (the “Broadband Cooperative”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by a majority vote of the Board of Directors of the Broadband Cooperative in the State of West Virginia.

**ARTICLE 1  
NAME**

The Name of the Broadband Cooperative shall be \_\_\_\_\_.

**ARTICLE 2  
PURPOSE**

The Broadband Cooperative was established for the purpose of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**[For Nonprofit Broadband Cooperatives:** The mission and purpose of the Broadband Cooperative is to be organized exclusively for nonprofit purposes so that it will be eligible to maintain its tax status under Section 501(c)(12) of the Internal Revenue Code.]

**ARTICLE 3  
OFFICES**

**Section 1 Principal Office.**

The Principal Office of the Broadband Cooperative shall be located at \_\_\_\_\_  
\_\_\_\_\_ (the “Principal Office”).

**Section 2 Mailing Address.**

The Mailing Address of the Broadband Cooperative shall be \_\_\_\_\_  
\_\_\_\_\_ (the “Mailing Address”).

**Section 3 Change of Address.**

The designation of the county of the Broadband Cooperative’s Principal Office may be changed by amendment of these Bylaws.

**ARTICLE 4**  
**MEMBERSHIP**

**Section 1 Eligibility.**

Application for voting membership shall be open to any individual, political subdivision of this state, or business engaged in the use of internet services that supports the purpose statement in Article 2. Membership is granted after completion and receipt of a membership application and membership fee.

**[For Nonprofit Broadband Cooperatives:** When a member of an association established without capital stock has paid his or her membership fee in full, he or she shall receive a certificate of membership.]

**Section 2 Districts.**

Members shall be divided into districts and each district shall elect \_\_\_\_\_ ( ) board member to represent that district as outlined in Article 6. The number of board members to be elected by each district shall be \_\_\_\_\_ ( ).

**Section 3 Rights.**

Each member shall be entitled to one vote at a meeting of Members.

**Section 4 Resignation and termination.**

Any member may resign by filing a written resignation with the Secretary. Resignation shall not relieve a member of unpaid dues, or other charges previously accrued. A member can have their membership terminated by a majority vote of the membership.

**[For Nonprofit Broadband Cooperative:** Remove the remaining provisions of this Article.]

**Section 5 Stock Certificates.**

The shares of the Broadband Cooperative shall be represented by certificates, provided that the Board of Directors may provide by resolution that some or all of any or all classes or series of the stock of the Broadband Cooperative shall be uncertificated shares. Notwithstanding the adoption of such a resolution by the Board of Directors, every holder of stock represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate signed in the name of the Broadband Cooperative, by the President or any Vice President, and by the Secretary. Any or all of the signatures on the certificate may be by facsimile. The stock certificates of the Broadband Cooperative shall be numbered and registered in the share ledger and transfer books of the Broadband Cooperative as they are issued and shall bear the corporate seal.

**Section 6 Special Designation of Certificates.**

If the Broadband Cooperative is authorized to issue more than one class of stock or more than one series of any class, then the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Broadband Cooperative shall issue to represent such class or series of stock; provided, however, that, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Broadband Cooperative shall issue to represent such class or series of stock a written statement that the Broadband Cooperative will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**Section 7 Lost Certificates.**

The Broadband Cooperative may issue a new certificate of stock in place of any certificate thereto for issued and alleged to have been lost, stolen, or destroyed, and the Broadband Cooperative may require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to make an affidavit of that fact, and the Broadband Cooperative may require indemnity against any claim that may be made against the Broadband Cooperative on account of the alleged loss, theft, or destruction of any such certificate or the issuance of such new certificate.

**Section 8 Transfers.**

Transfers of shares shall be made on the books of the Broadband Cooperative upon surrender and cancellation of the certificates therefore, endorsed by the person named in the certificate or by his or her legal representative. No transfer shall be made which is inconsistent with any provision of law, the Articles of Incorporation for the Broadband Cooperative, or these Bylaws.

**Section 9 Record Date.**

In order that the Broadband Cooperative may determine the shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or to take action without a meeting, or to receive payment of any dividend or other distribution, or to exercise any rights in respect of any change, conversion, or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not be less than ten nor more than fifty days before the meeting or action requiring a determination of shareholders.

If no record date is fixed by the Board of Directors:

- (a) for determining shareholders entitled to notice of or to vote at a meeting, the record date shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held or other action taken;

- (b) for determining shareholders entitled to consent to corporate action without a meeting, the record date shall be the day on which the first written consent is delivered to the Broadband Cooperative in accordance with these Bylaws; and
- (c) for determining shareholders for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 10 Dividends.**

The Board of Directors may declare and pay dividends upon the outstanding shares of the Broadband Cooperative, from time to time and to such extent as the Board deems advisable, in the manner and upon the terms and conditions provided by law and the Articles of Incorporation Cooperative of the Broadband Cooperative.

**Section 11 Reserves.**

The Board of Directors may set apart, *out* of the funds of the Broadband Cooperative available for dividends, said sum as the directors, from time to time, in their absolute discretion, think proper as a reserve fund for any proper purpose. The Board of Directors may abolish any such reserve in the manner it was created.

**ARTICLE 5  
MEMBER MEETINGS**

**Section 1 Place of Meetings.**

Meetings of Members shall be held at the principal office of the Broadband Cooperative or at such place as may be determined from time to time by the Board of Directors of the Broadband Cooperative. Remote conference line and online conference room may be used as determined from time to time by the Board of Directors of the Broadband Cooperative.

**Section 2 Annual Meetings.**

Each year, the Broadband Cooperative shall hold an annual meeting of Members on such date and at such time as shall be determined from time to time by the Board of Directors, at which meeting Members shall elect a Board of Directors and transact any other business as may properly be brought before the meeting.

**Section 3 Special Meetings.**

Special meetings of the Members, for any purpose or purposes, may be called at any time by the President of the Broadband Cooperative or Members holding at least ten percent (10%) of the issued and outstanding voting stock of the Broadband Cooperative. **[If no voting stock is authorized, include a number of members required to call a special meeting i.e. at least 10 members.]** Business transacted at any special meeting shall be confined to the purpose or purposes set forth in the notice of the special meeting.

**Section 4      Notice of Meetings.**

Whenever Members are required to or permitted to take any action at a meeting, a written notice of the meeting shall be provided to each member of record entitled to vote at or entitled to notice of the meeting, which shall state the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each member entitled to vote at such meeting.

**Section 5      Quorum.**

Members may take action on a matter at a meeting only if a quorum exists with respect to that matter. Except as otherwise provided by law, a majority of the outstanding shares of the Broadband Cooperative entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members. Once a share is represented for a purpose at a meeting (other than solely to object to the holding of the meeting), it is deemed present for quorum purposes for the remainder of the meeting and the Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of sufficient Members to leave less than a quorum. The holders of a majority of the outstanding shares represented at a meeting, whether or not a quorum is present, may adjourn the meeting from time to time.

**Section 6      Proxies.**

Each member entitled to vote at a meeting of Members or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to vote for him or her by proxy, but no such proxy shall be voted or acted upon after one year from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. Except as otherwise provided herein or by law, every proxy is revocable at the pleasure of the member executing it by communicating such revocation, in writing, to the Secretary of the Broadband Cooperative.

**Section 7      Voting.**

If a quorum exists, action on a matter (other than the election of directors) is approved if the votes cast favoring the action exceed the votes cast opposing the action. Directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election (provided a quorum exists). Unless otherwise provided by law or in the Broadband Cooperative's Articles of Incorporation, and subject to other provisions of these Bylaws, each member shall be entitled to one vote on each matter, in person or by proxy, for each share of the Broadband Cooperative's capital stock that has voting power and that is held by such member. Voting need not be by written ballot.

**Section 8 List of Members.**

The officer of the Broadband Cooperative who has charge of the membership list of the Broadband Cooperative shall prepare and make, at least ten days before any meeting of Members, a complete list of the Members entitled to vote at the meeting, arranged alphabetically, and showing the address of each member and the number of shares held by each member. The list shall be open to the examination of any member for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days before the meeting, either at a place in the city where the meeting is to be held, which place must be specified in the notice of the meeting, or at the place where the meeting is to be held. The list shall also be produced and kept available at the time and place of the meeting, for the entire duration of the meeting, and may be inspected by any member present at the meeting.

**Section 9 Consent in Lieu of Meetings.**

Any action required to be taken or which may be taken at any meeting of Members, whether annual or special, may be taken without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all Members entitled to vote were present and voted. The action must be evidenced by one or more written consents, describing the action taken, signed and dated by the Members entitled to take action without a meeting, and delivered to the Broadband Cooperative at its registered office or to the officer having charge of the Minute Book. No consent shall be effective to take the corporate action referred to in the consent unless the number of consents required to take action are delivered to the Broadband Cooperative or to the officer having charge of its minute book within sixty days of the delivery of the earliest-dated consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous vote shall be given to those Members who have not consented in writing.

**Section 10 Conference Call.**

One or more Members may participate in a meeting of Members by means of conference telephone, videoconferencing, or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in this manner shall constitute presence in person at such meeting.

**Section 11 Annual Statement.**

The President and the Board of Directors shall present at each annual meeting a full and complete statement of the business and affairs of the Broadband Cooperative for the preceding year. The annual statement of the business and affairs of the Broadband Cooperative will be documented and posted in the Broadband Cooperative's annual letter to Members

**ARTICLE 6**  
**BOARD OF DIRECTORS**

**Section 1 Powers.**

All corporate powers shall be exercised by or under the authority of the Board and the affairs of the Broadband Cooperative shall be managed under the direction of the Board, except as otherwise provided by law. There shall be \_\_\_\_\_ ( ) Directors. This number of directors shall be effective on the day of the Annual Meeting of the Members.

**Section 2 Election and Term.**

Directors shall be elected by and from the Members to serve a five-year term, or, until their successors shall have been elected and shall have qualified. Directors shall be elected by a secret ballot at each annual meeting when there is competition for the Board seat(s) to be filled. If the nomination for a Board seat names only one person and is uncontested, the election may be made by the casting of a single vote.

Terms are to be staggered. In electing the initial Board, \_\_\_ ( ) director shall be selected for a one ( ) year term, \_\_\_ ( ) director shall be selected for a \_\_\_ ( ) year term, \_\_\_ ( ) director shall be selected for a \_\_\_ ( ) year term, \_\_\_ (1) director shall be selected for a \_\_\_ ( ) year term, \_\_\_ ( ) directors shall be selected for a \_\_\_ ( ) year term.

**Section 3 Qualifications.**

Any member shall be eligible to be nominated, elected, and remain a Director of the Broadband Cooperative provided that he/she:

- (a) Resides in the District from which he or she is elected, and has resided there for more than two hundred and forty (240) days during the last twelve (12) month period.
- (b) If a member is anything other than a natural person, the member may be represented by an individual, associate, officer or manager or member thereof, duly authorized in writing.

**Section 4 Nominations.**

Any \_\_\_ ( ) or more members who reside in any one District may nominate an eligible member for a Director position for that District. Such nominations shall be in writing, signed by said members, and shall be delivered to the Secretary at least fifty-six (56) days before the Annual Meeting of the Broadband Cooperative. The Secretary shall post such nominations in the principal office of the Broadband Cooperative at least thirty (30) days before the Annual Meeting.

**Section 5 Duties.**

It shall be the duty of the directors to:

- (a) perform any and all duties imposed on them collectively or individually by law or by these Bylaws;
- (b) appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents, and employees of the Broadband Cooperative;
- (c) supervise all officers, agents, and employees of the Broadband Cooperative to assure that their duties are performed properly;
- (d) meet at such times and places as required by these Bylaws; and
- (e) register their addresses with the Secretary of the Broadband Cooperative, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof.

**Section 6 Vacancies.**

Subject to the provisions of these Bylaws with respect to the filling of vacancies caused by the removal of Board members by the members, a vacancy occurring in the Board may be filled by the affirmative vote of a majority of the remaining Board members until the next regular or special meeting of the members, at which meeting the members must elect a director for the unexpired term, provided, however, that in the event the vacancy is not filled by the Board of Directors prior to the notice of the next meeting of the members, there shall be a nomination of a successor for the unexpired portion of the term in the same manner as provided for the election of directors in these bylaws. However, any successor, whether chosen by the Board or the members, must reside in the same District, if any, as the vacant directorship and have the same qualifications for office as set forth in Section 3. If a Board member duly elected by the membership moves his/her residence to another area of the Cooperative, he or she may continue to serve as Director for his/her former area until the next regular election for that area.

**Section 7 Removal of Directors.**

A director may be removed by a two-thirds (2/3) vote of all of the members voting, at any regular or special meeting of the members, when a quorum is present in person or by mail vote or if:

- (a) the Director is absent and unexcused from four (4) or more meetings of the board of directors in a twelve-month period. The President of the board is empowered to excuse directors from attendance for a reason deemed adequate by the President of the Board. The President of the Board shall not have the power to excuse himself or herself from the board meeting attendance;
- (b) the Director has been accused of a felony or of embezzlement.; or,

Upon the removal of a Director, the Director shall be notified in writing of such removal.



**Section 8 Board of Directors Meetings.**

**(a) Regular Meetings.**

The board of directors shall meet quarterly each calendar year at times and places fixed by the board. Board meetings shall be held upon four (4) days' notice by first-class mail, electronic mail, or facsimile transmission or 48 hours' notice delivered personally or by telephone. If sent by mail, facsimile transmission, or electronic mail, the notice shall be deemed to be delivered upon its deposit in the mail or transmission system. Notice of meetings shall specify the place, day, and hour of meeting. The purpose of the meeting need not be specified.

**(b) Special Meetings.**

Special meetings of the board may be called by the President, Vice President, or any three (3) other directors of the board of directors. A special meeting must be preceded by at least two (2) days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

**(c) Waiver of Notice.**

Any Director may waive notice of any meeting, in accordance with West Virginia law.

**Section 7 Manner of Meetings.**

**(a) Quorum.**

A majority of the Directors in office immediately before a meeting shall constitute a Quorum for the transaction of business at that meeting of the board. *Ex-Officio* Board Members shall not be included in determining the number needed to constitute a Quorum. No business shall be considered by the Board at any meeting at which a Quorum is not present.

**(b) Majority Vote.**

Except as otherwise required by law or by these Bylaws, the act of the majority of the directors present at a meeting at which a Quorum is present shall be the act of the Board.

**(c) Hung Board Decisions.**

On the occasion that Directors of the Board are unable to make a decision based on a tied number of votes, the President in the order of presence shall have the power to swing the vote based on his or her discretion.

**(d) Participation.**

Except as required otherwise by law or these Bylaws, directors may participate in a regular or special meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting, including in person, internet video meeting or by telephonic conference call.

**(d) Proxy.**

Board Members shall not be allowed to vote by written proxy.

**Section 8 Compensation for Board Service.**

Directors shall receive no compensation for carrying out their duties as directors. The board may adopt policies providing for reasonable reimbursement of directors for expenses incurred in conjunction with carrying out board responsibilities, such as travel expenses to attend board meetings.

**Section 9 Compensation for Professional Services by Directors.**

Directors are not restricted from being remunerated for professional services provided to the Broadband Cooperative. Such remuneration shall be reasonable and fair to the Broadband Cooperative and must be reviewed and approved in accordance with the board Conflict of Interest policy and state law.

**Section 10 Nonliability of Directors.**

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Broadband Cooperative.

**ARTICLE 7  
OFFICERS**

**Section 1 Officers.**

The Officers of the Broadband Cooperative (“Officers”) shall be a President, Vice President, a Secretary, and a Treasurer. The President, Vice President, Secretary, and the Treasurer and any additional Officers designated by the board shall constitute the Executive Committee. The board shall have the power to designate additional Officers who need not be Directors, with such duties, powers, titles, and privileges as the Board may fix, including such Officers as may be appointed in accordance with Article 7 Section 6.4. Any number of offices may be held by the same person, except that of the Secretary and the Treasurer may not serve concurrently as the President.

**Section 2 Election of Officers.**

The Officers, except those appointed in accordance with Article 7 Section 6.5, shall be elected by the board a term of four (4) years, and each shall serve at the discretion of the board until his or her successor shall be elected, or his or her earlier resignation or removal.

**Section 3 Removal of Officers.**

Subject to the rights of an Officer under any contract of employment, any Officer may be removed, with or without cause, (i) by the Board, at any regular or special meeting of the Board or (ii) by an Officer on whom such power of removal may be conferred by the board.

**Section 4      Resignation of Officers.**

Any Officer may resign at any time by giving written notice to the Broadband Cooperative. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any of the Broadband Cooperative under any contract to which the Officer is a party.

**Section 5      Vacancies in Office.**

A vacancy is any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office, provided that such vacancies shall be filled as they occur and not on an annual basis. In the event of a vacancy in any office other than the President or one appointed in accordance with Article 7 Section 6.5, such vacancy shall be filled temporarily by appointment by the President and the appointee shall remain in office for 60 days, or until the next regular meeting of the Board, whichever comes first. Thereafter, the position can be filled only by action of the Board.

**Section 6      Responsibilities of Officers.**

**Section 6.1    President.**

The President of the Board ("President") shall preside at all meetings of the board of directors, shall have general supervision of the affairs of the Broadband Cooperative, and shall perform such other duties as are incident to the office or are properly required of the President by the board of directors.

**Section 6.2    Vice President.**

The Vice President of the Board ("Vice President") shall exercise all the functions of the President during the absence or disability of the President. The Vice President shall have such powers and discharge such duties as may be assigned to him or her, from time to time, by the board of directors.

**Section 6.3    Secretary.**

The Secretary of the Broadband Cooperative ("Secretary") shall attend to the following:

**(a) Bylaws.**

The Secretary shall certify and keep or cause to be kept at the Principal Office of the Broadband Cooperative the original or copy of these Bylaws as amended to date.

**(b) Minute Book.**

The Secretary shall keep or cause to be kept a minute book as described in Article 10 Section 1.

**(c) Notices.**

The Secretary shall give, or cause to be given, notice of all meetings of the Board in accordance with these Bylaws.

**(d) Corporate Records.**

The Secretary shall hold all official documents and sign, along with the President, any contracts executed on behalf of the organization. Upon request, the Secretary shall exhibit or cause to be exhibited at all reasonable times to any Director, or to his or her agent or attorney, these Bylaws and the minute book.

**(e) Other Duties.**

The Secretary shall have such powers and perform such other duties incident to the office of Secretary as may be prescribed by the board or these Bylaws.

**Section 6.4 Treasurer.**

The Treasurer of the Broadband Cooperative ("Treasurer") shall attend to the following:

**(a) Books of Account.**

The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Broadband Cooperative, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any Director at all reasonable times.

**(b) Financial Reports.**

The Treasurer shall prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports. The Treasurer shall prepare a quarterly report of the organization's financial statements and account for all receipts and disbursements. The Treasurer shall prepare a full financial report of the Broadband Cooperative annually.

**(c) Deposit and Disbursement of Money and Valuables.**

The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Broadband Cooperative with such depositories as may be designated by the Board; shall disburse, or cause to be disbursed, the funds of the Broadband Cooperative as may be ordered by the Board; shall render, or cause to be rendered to the President and Directors, whenever they request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Broadband Cooperative; and shall have other powers and perform such other duties incident to the office of Treasurer as may be prescribed by the Board or these Bylaws.

**(d) Bond.**

If required by the Board, the Treasurer shall give the Broadband Cooperative a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his office and for restoration to the Broadband Cooperative of all its books, papers, vouchers, money, and other property of every kind in his possession or under his control on his death, resignation, retirement, or removal from office.

**Section 6.5 Additional Officers.**

The Board may empower the President to appoint or remove such other Officers as the business of the Broadband Cooperative may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board from time to time may determine

**ARTICLE 8**

**TRANSACTIONS BETWEEN THE BROADBAND COOPERATIVE AND DIRECTORS OR OFFICERS**

**Section 1 Transactions with Directors and Officers.**

**Section 1.1 Interested Party Transactions.**

Except as described in Article 8 Section 1.2, the Broadband Cooperative shall not be a party to any transaction:

- (a) in which one or more of its Directors or Officers has a material financial interest, or
- (b) with any Broadband Cooperative, firm, association, or other entity in which one or more Directors or Officers has a material financial interest.

**Section 1.2 Requirements to Authorize Interested Party Transactions.**

The Broadband Cooperative shall not be a party to any transaction described in Article 8 Section 1.1 unless:

- (a) the Broadband Cooperative enters into the transaction for its own benefit;
- (b) the transaction is fair and reasonable to the Broadband Cooperative at the time the transaction is entered into;
- (c) prior to consummating the transaction or any part thereof, the Board shall comply with the procedures set forth in the Conflict of Interest Policy.

**Section 1.3 Material Financial Interest.**

A Director or Officer shall not be deemed to have a "material financial interest" in a transaction:

- (a) that fixes the compensation of a director as a director or Officer;
- (b) if the contract or transaction is part of a public or charitable program of the Broadband Cooperative and it (1) is approved or authorized by the Broadband Cooperative in good faith and without unjustified favoritism, and (2) results in a benefit to one or more directors or their families only because they are in the class of persons intended to be benefited by the program; or
- (c) where the interested director has no actual knowledge of the transaction and it does not exceed the lesser of one percent of the gross receipts of the Broadband Cooperative for the preceding year of \$100,000.

**Section 2      Loans to Directors and Officers.**

The Broadband Cooperative shall not make any loan of money or property to or guarantee the obligation of any director or Officer; except that, however, the Broadband Cooperative may advance money to a director or Officer for expenses reasonably anticipated to be incurred in the performance of duties of such director or Officer, if in the absence of such advance, such director or Officer would be entitled to be reimbursed for such expenses by the Broadband Cooperative.

**Section 3      Interlocking Directorates.**

A contract or other transaction between the Broadband Cooperative and any Broadband Cooperative, firm, or association of which one or more directors are directors must follow the procedures set forth in the Conflict of Interest Policy.

**Section 4      Duty of Loyalty; Construction with Article 9.**

Nothing in this document shall be construed to derogate in any way from the absolute duty of loyalty that every Director and Officer owes to the Broadband Cooperative. Furthermore, nothing in this document shall be construed to override or amend the provisions of Article 9. All conflicts between the two articles shall be resolved in favor of Article 9.

**ARTICLE 9**

**INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS**

**Section 1      Definitions.**

For purpose of this Article 9:

**(a)      “Agent”** means any person who is or was a Director, Officer, employee, or other agent of the Broadband Cooperative, or is or was serving at the request of the Broadband Cooperative as a Director, Officer, employee, or agent of another foreign or domestic Broadband Cooperative, partnership, joint venture, trust, or other enterprise, or was a Director, Officer, employee, or agent of a foreign or domestic Broadband Cooperative that was a predecessor Broadband Cooperative of the Broadband Cooperative or of another enterprise at the request of the predecessor Broadband Cooperative;

**(b)      “Proceeding”** means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative; and

**(c)      “Expenses”** includes all attorneys’ fees, costs, and any other expenses reasonably incurred in the defense of any claims or proceedings against an Agent by reason of his or her position or relationship as Agent and all attorneys’ fees, costs, and other expenses reasonably incurred in establishing a right to indemnification under this Article 11.

**Section 2      Applicability of Indemnification Provisions.**

**Section 2.1      Successful Defense by Agent.**

To the extent that an Agent has been successful on the merits in the defense of any proceeding referred to in this Article 9, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against expenses actually and reasonably incurred by the Agent in connection with the claim.

**Section 2.2      Settlement or Unsuccessful Defense by Agent.**

If an Agent either settles any proceeding referred to in this Article 9, or any claim issue, or matter therein, or sustains a judgment rendered against him, then the provisions of Article 9 Section 3 through Article 9 Section 6 shall determine whether the Agent is entitled to indemnification.

**Section 3      Actions Brought by Persons Other than the Broadband Cooperative.**

This Article 11 Section 3 applies to any proceeding other than an action “by or on behalf of the Broadband Cooperative” as defined in Article 9 Section 4. Such proceedings that are not brought by or on behalf of the Broadband Cooperative are referred to in this Article 9 Section 3 as “Third Party proceedings.”

**Section 3.1      Scope of Indemnification in Third Party Proceedings.**

Subject to the required findings to be made pursuant to Article 9 Section 3.2, the Broadband Cooperative shall indemnify any person who was or is a party, or is threatened to be made a party, to any Third Party proceeding, by reason of the fact that such person is or was an Agent, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the proceeding.

**Section 3.2      Required Standard of Conduct for Indemnification in Third Party Proceedings.**

Any indemnification granted to an Agent in Article 9 Section 3.1 above is conditioned on the following. The board must determine, in the manner provided in Article 9 Section 5, that the Agent seeking reimbursement acted in good faith, in a manner he or she reasonably believed to be in the best interest of the Broadband Cooperative, and, in the case of a criminal proceeding, he or she must have had no reasonable cause to believe that his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner he or she reasonably believed to be in the best interest of the Broadband Cooperative or that he or she had reasonable cause to believe that his or her conduct was unlawful.

**Section 4.      Action Brought by or on behalf of the Broadband Cooperative.**

This Article 9 Section 4 applies to any proceeding brought (i) by or in the right of the Broadband Cooperative, or (ii) by an Officer or director, on the ground that the defendant

director was or is engaging in self-dealing (any such proceeding is referred to in these Bylaws as a proceeding “by or on behalf of the Broadband Cooperative”).

**Section 4.1 Scope of Indemnification in Proceeding by or on Behalf of the Broadband Cooperative.**

Subject to the required findings to be made pursuant to Article 9 Section 4.2, and except as provided in Sections 4.3 and 4.4, the Broadband Cooperative may indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding by or on behalf of the Broadband Cooperative, by reason of the fact that such person is or was an Agent, for all expenses actually and reasonably incurred in connection with the defense or settlement of such action.

**Section 4.2 Standard of Conduct for Indemnification in Proceeding on Behalf of the Broadband Cooperative.**

Any indemnification granted to an Agent in Article 9 Section 4.1 is conditioned on the following. The Board must determine, in the manner provided in Article 9 Section 4.5, that the Agent seeking reimbursement acted in good faith, in a manner he or she believed to be in the best interest of the Broadband Cooperative and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

**Section 4.3 Claims Settled Out of Court.**

If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of the Broadband Cooperative, with or without court approval, the Agent shall receive no indemnification for amounts paid pursuant to the terms of the settlement or other disposition unless such settlement is pre-approved by the Board. Also, in cases settled or otherwise disposed of without court approval, the Agent shall receive no indemnification for expenses reasonably incurred in defending against the proceeding unless pre-approved by the Board.

**Section 4.4 Claims and Suits Awarded Against Agent.**

If any Agent is adjudged to be liable to the Broadband Cooperative in the performance of the Agent's duty to the Broadband Cooperative, the Agent shall receive no indemnification for amounts paid pursuant to the judgment, and any indemnification of such Agent under Article 9 Section 4.1 for expenses actually and reasonably incurred in connection with the defense of that action shall be made only if both of the following conditions are met:

**(a)** The determination of good faith conduct required by Article 9 Section 4.2 must be made in the manner provided for in Section 4.5; and

**(b)** Upon application, the court in which the action was brought must determine that, in view of all of the circumstances of the case, the Agent is fairly and reasonably entitled to indemnity for the expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of expenses to be reimbursed.



**Section 5 Determination of Agent's Good Faith Conduct.**

The indemnification granted to an Agent in Article 9 Section 4.3 and Section 4.4 is conditioned on the findings required by those Sections being made by:

**(a)** the Board by a three-quarters majority vote of a quorum consisting of Directors who are not parties to the proceeding; or

**(b)** the court in which the proceeding is or was pending. Such determination may be made on application brought by the Broadband Cooperative or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed by the Broadband Cooperative.

**Section 6 Limitations.**

No indemnification or advance shall be made under this Article 9, except as provided in Section 2.1 or Section 5(b), in any circumstances when it appears:

**(a)** that the indemnification or advance would be inconsistent with the enabling statute, as amended, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

**(b)** that the indemnification would be inconsistent with any condition expressly imposed by a court in approving a settlement.

**Section 7 Advance of Expenses.**

Expenses incurred in defending any proceeding may be advanced by the Broadband Cooperative before the final disposition of the proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in Article 9.

**Section 8 Contractual Rights of Non-Directors and Non-Officers.**

Nothing in this Article 9 shall affect any right to indemnification to which persons other than Directors and Officers of the Broadband Cooperative, or any of its subsidiaries, may be entitled by contract or otherwise.

**Section 9 Insurance.**

The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent, as defined in this Article 9, against any liability asserted against or incurred by any Agent in such capacity or arising out of the Agent's status as such, whether or not the Broadband Cooperative would have the power to indemnify the Agent against the liability under the provisions of this Article 9.

## ARTICLE 10

### Corporate Records, Reports and Seal

#### **Section 1 Minute Book.**

The Broadband Cooperative shall keep a minute book in written form which shall contain a record of all actions by the Board, or any committee including (i) the time, date and place of each meeting; (ii) whether a meeting is regular or special and, if special, how called; (iii) the manner of giving notice of each meeting and a copy thereof; (v) the minutes of all meetings; (vi) any written waivers of notice, consents to the holding of a meeting of approvals of the minutes thereof; (vii) al written consents for action without meeting; (viii) all protests concerning lack of notice; and (ix) formal dissents from Board actions.

#### **Section 2 Books and Records of Account.**

The Broadband Cooperative shall keep adequate and correct books and records of account. "Correct books and records" includes, but is not necessarily limited to: accounts of properties and transactions, its assets, liabilities, receipts, disbursements, gains, and losses.

#### **Section 3 Bylaws.**

The Broadband Cooperative shall keep at its Principal Office, the original or a copy of the Bylaws as amended to date, that shall be open to inspection by the Directors at all reasonable times during office hours.

#### **Section 4 Maintenance of Annual Information Returns.**

The Broadband Cooperative shall at all times keep at its Principal Office a copy of its annual information returns for five years from their date of filing. These documents shall be open to public inspection to the extent required by the West Virginia Code.

#### **Section 5 Annual Report: Statement of Certain Transactions.**

The Board shall cause an annual report to be sent to each director within 120 days after the close of the Broadband Cooperative's fiscal year containing the following information:

- (a)** The assets and liabilities of the Broadband Cooperative as of the end of the fiscal year;
- (b)** The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (c)** The revenue or receipts of the Broadband Cooperative, both unrestricted and restricted to particular purposes, for this fiscal year;
- (d)** The expenses or disbursements of the Broadband Cooperative for both general and restricted purposes during the fiscal year;
- (e)** A statement of any transaction (i) to which the Broadband Cooperative, its parent, or its subsidiary was a party, (ii) which involved more than \$50,000 or which was one of a number of such transactions with the same person involving, in the aggregate, more than \$50,000,

and (iii) in which either of the following interested persons had a direct or indirect material financial interest (a mere common directorship is not a financial interest):

(1) Any Director or Officer of the Broadband Cooperative, its parent, or its subsidiary; or

(2) Any holder of more than ten percent (10%) of the voting power of the Broadband Cooperative, its parent, or its subsidiary.

The statement shall include: (i) a brief description of the transaction; (ii) the names of interested persons involved; (iii) their relationship to the Broadband Cooperative; (iv) the nature of their interest in the transaction, and; (v) when practicable, the amount of that interest, provided that, in the case of a partnership in which such person is a partner, only the interest of the partnership need be stated.

(f) A brief description of the amounts and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than \$10,000 paid during the fiscal year to any Officer or Director under Article 8 or Article 9.

**Section 6 Directors' Rights of Inspection.**

Every director shall have the absolute right at any reasonable time to inspect the books, records, documents of every kind, and the physical properties of the Broadband Cooperative and each of its subsidiaries. The inspection may be made in person or by the director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

**ARTICLE 11**

**EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

**Section 1 Execution of Instruments.**

The Board, except as otherwise provided in these Bylaws, may by resolution authorize any Officer or agent of the Broadband Cooperative to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Broadband Cooperative, and such authority may be general or confined to specific instances. Unless so authorized, no Officer, agent, or employee shall have any power or authority to bind the Broadband Cooperative by any contract or engagement or pledge its credit or to render it liable monetarily for any purpose or in any amount.

**Section 2 Checks and Notes.**

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Broadband Cooperative shall be signed by the President.

**Section 3 Deposits.**

All funds of the Broadband Cooperative shall be deposited from time to time to the credit of the Broadband Cooperative in such banks, trusts companies, or other depositories as the Board may select.

**ARTICLE 12  
FISCAL YEAR**

The fiscal year for the Broadband Cooperative begins on January 1st and ends on the 30th day of the December.

**ARTICLE 13  
DISSOLUTION**

**Section 1. Dissolution.**

Dissolution of this Cooperative may be made at any regular or special meeting of the members, when approved by a two-thirds (2/3) vote of all of the members voting, when a quorum is present in person or by mail vote. Dissolution proceedings shall then be commenced as a voluntary dissolution pursuant to the provisions of the laws of the State of West Virginia.

**Section 2. Distribution Upon Dissolution.**

**[For Nonprofit Broadband Cooperatives:** Upon dissolution of the Broadband Cooperative, all assets remaining after payment of the Cooperative's liabilities shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for public purpose.]

**ARTICLE 14  
AMENDMENTS**

Broadband Cooperative's Members may propose one or more amendments to the Bylaws from time to time. The proposed amendment must be adopted by vote of at least two thirds (2/3) vote of all of the members voting, at any regular or special meeting of the members, when a quorum is present in person or by mail vote.

**CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of for \_\_\_\_\_  
a West Virginia Broadband Cooperative; that these Bylaws, consisting of \_\_\_ pages, are the Bylaws of this  
Broadband Cooperative as adopted by the Board of Directors on \_\_\_ day of \_\_\_\_\_, 20\_\_; and that  
these Bylaws have not been amended or modified since that date.

Executed on \_\_\_\_\_ at \_\_\_\_\_, West Virginia.

\_\_\_\_\_  
Secretary

EXHIBIT B  
ARTICLES OF  
INCORPORATION

**WEST VIRGINIA ARTICLES OF INCORPORATION FOR A BROADBAND COOPERATIVE ASSOCIATION**

Form CBD-1  
Rev. 7/9/2019



West Virginia Secretary of State  
Business & Licensing Division  
Tel: (304)558-8000  
Fax: (304)558-8381  
Web site: [www.wvsos.gov](http://www.wvsos.gov)

**FILE ONE ORIGINAL**

(Two if you want a filed stamped copy returned to you.)

**FILING FEE: \$100 (profit)**

**\$25 (non-profit)**

**\* Fee Waived for Veteran-owned corporation**

Control # \_\_\_\_\_

The undersigned, acting as incorporators as governed by WV Code [§31G-2](#) of the amended Code which shall be perpetual, adopt the following Articles of Incorporation for a West Virginia Broadband Cooperative Association (broadband internet services).

1. The **name** of the **West Virginia Broadband Cooperative**

**Association** shall be: [Per WV Code, **the name must include the words** \_\_\_\_\_  
"cooperative," "co-operative" or "co-op" in the name and **the name MUST** \_\_\_\_\_  
**contain one of the required corporate name endings per §31D-4-401 of the** \_\_\_\_\_  
**West Virginia Code** (\*see attached instructions for the list of required \_\_\_\_\_  
**name endings**)]. This name is your official name and must be **used in its** \_\_\_\_\_  
**entirety** when in use **unless** a Trade Name (DBA) is registered with the Office \_\_\_\_\_  
of the Secretary of State, according to [Chapter 47-8](#) of the West Virginia Code.]

**CHECK BOX to indicate you've included one of the REQUIRED CORPORATE NAME ENDINGS (See instructions for name endings).**

2. The **address** of the **principal office** of the corporation will be:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Located in the **County** of (required):

County: \_\_\_\_\_

The **mailing address** of the above location, if different, will be:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

3. The **physical address** (not a PO Box) of the **principal place of business** in West Virginia, if any:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Located in the **County** of:

County: \_\_\_\_\_

The **mailing address** of the above location, if different, will be:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

4. The name and address of the **person (agent) to whom notice of process** may be sent, if any, will be:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

5. E-mail address where business correspondence may be received: \_\_\_\_\_

6. Web site address of the business, if any (ex: yourdomainname.com): \_\_\_\_\_

7. Do you own or operate more than one business in West Virginia?  Yes \* Answer a. and b. below.  No  Decline to answer

If "Yes"... a. How many businesses? \_\_\_\_\_ b. Located in how many West Virginia counties? \_\_\_\_\_

8. Will the West Virginia Broadband Cooperative Association apply for 501(c)(12) status as a utility cooperative with the IRS?

[If Yes, you will need to include specific language that is required by the IRS to be included in your Articles of Incorporation.]

Yes  No

9. The corporation is organized as (check one):  FOR PROFIT (Proceed to question #10.)

NON-PROFIT, NON-STOCK (Proceed to question #11.)

10. FOR PROFIT ONLY

a. If Organized with ONE class of stock (Indicate the amount and par value of capital stock issued. If not issuing capital stock, enter zero's "0".):

The total value of all authorized capital stock of the corporation will be \$ \_\_\_\_\_  
(number of shares x \$ value per share)

The capital stock will be divided into \_\_\_\_\_ shares at the par value of \$ \_\_\_\_\_ per share.  
(number of shares) (\$ value)

b. If Organized with MORE THAN ONE class of stock:

The total number of authorized shares of all classes of stock of the corporation will be: \_\_\_\_\_

The number of shares of each class that have a par value will be: \_\_\_\_\_

The par value of each share by class will be: \_\_\_\_\_

The number of shares that are to be without par value: \_\_\_\_\_

Please include a statement of the powers, preferences, rights, qualifications, limitations or restrictions in respect to a class of stock fixed:

c. If Organized WITHOUT capital stock:

The property rights and interest of each member shall be:  Equal  Unequal

If UNEQUAL:

Please state the general rules applicable to the classes of members whose property rights and interests are determined and fixed:

Please include provisions regarding the admission of new members who may be entitled to share in the property of the association with the old members:

11. a. The purpose for which this West Virginia Broadband Cooperative Association is formed is as follows (Describe the type of business activity to be conducted in the spaces provided below.):

➔ **Internet services** - Per §31G-2-1 of the WV Code, the association may be organized to "engage in any qualified activity in connection with any internet service; or 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." "Internet services" means providing access to, and presence on, the internet and other services. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless, or dedicated high-speed interconnects. "Qualified person" means a person who is engaged in the use of internet services, either in an individual capacity, as a political subdivision of this state, or as a business. "Qualified activity" means using internet services.



11. a. *Continued from page 2.*

➔  **Check here if applying for 501(c)(12) status.**

This West Virginia Broadband Cooperative Association is organized and operated on a cooperative basis for the purpose of providing a mutually desired service to members at cost. All income will be used to cover losses and expenses with any excess either being distributed to members or retained to cover future losses and expenses, as governed by the bylaws. The purpose of this association is to embody the cooperative structure through democratic control, subordination of capital, and operating at cost with a benefit to members.

b. Will the incorporation elect to be organized for purposes as a “Benefit Corporation” per West Virginia Code §31F? **ONLY applicable to "FOR PROFIT" corporations; "NON-PROFIT" corporations CANNOT elect this status.**

**Yes** [If "Yes," the corporation must be formed FOR PROFIT and the purpose(s) indicated in Section 10a. above must include a "general public benefit" as set forth in §31F-3-301(a) of the West Virginia Code. Per §31F-1-102(c), “general public benefit” means “a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation."].

**No** [Proceed to Section 12.]

12. The **names and addresses of the incorporators (members)** are:

**NOTE: West Virginia Broadband Cooperative Associations must list at least TWENTY (20) incorporators (members).**

	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____
11.	_____	_____	_____	_____	_____
12.	_____	_____	_____	_____	_____
13.	_____	_____	_____	_____	_____
14.	_____	_____	_____	_____	_____
15.	_____	_____	_____	_____	_____
16.	_____	_____	_____	_____	_____

*Continued on page 4.*

12. Continued from page 3:

	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
17.	_____	_____	_____	_____	_____
18.	_____	_____	_____	_____	_____
19.	_____	_____	_____	_____	_____
20.	_____	_____	_____	_____	_____

13.  Check this box to acknowledge that your bylaws will set out the **total number of Directors which shall not be less than 3.**

14. Is the organization a "veteran-owned" organization?

Effective **JULY 1, 2015**, to meet the requirements for a "veteran-owned" organization, the entity filing the registration must meet the following criteria per West Virginia Code [§59-1-2a](#):

1. A "veteran" must be honorably discharged or under honorable conditions, and
2. A "veteran-owned business" means a business that meets one of the following criteria:
  - o Is at least fifty-one percent (51%) unconditionally owned by one or more veterans; or
  - o In the case of a publicly owned business, at least fifty-one percent (51%) of the stock is unconditionally owned by one or more veterans.

Yes (If "Yes," attach Form DD214)   CHECK BOX indicating you have attached **Veteran Affairs Form DD214**

No

You may obtain a copy of your Veterans Affairs Form DD214 by contacting:

**National Personnel Records Center  
Military Personnel Records**  
1 Archives Drive  
St. Louis, MO 63138  
Toll free: 1-86-NARA-NARA or 1-866-272-6272  
Phone: 314-801-0800  
[www.archives.gov/veterans/military-service-records](http://www.archives.gov/veterans/military-service-records)

Per WV Code [59-1-2\(j\)](#) effective July 1, 2015, the **registration fee is waived** for entities that meet the requirements as a "veteran-owned" organization. See attached instructions to determine if the organization qualifies for this waiver. In addition, a "veteran-owned" entity will have **four (4) consecutive years of Annual Report fees waived** AFTER the organization's initial formation [see WV Code [59-1-2a\(m\)](#)].

15. The number of acres of land it holds or expects to hold in West Virginia is: \_\_\_\_\_

16. **Contact and Signature Information\*** (See below [Important Legal Notice Regarding Signature](#)):

a. Contact person to reach in case there is a problem with filing: \_\_\_\_\_ Phone: \_\_\_\_\_

b. Print name of person who is signing articles of incorporation: \_\_\_\_\_

c. **Signature of Incorporator:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**\*Important Legal Notice Regarding Signature:** Per West Virginia Code [§31D-1-129](#). **Penalty for signing false document.** Any person who signs a document he or she knows is false in any material respect and knows that the document is to be delivered to the secretary of state for filing is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail not more than one year, or both.

**Important Note:** This form is a public document. Please **do NOT provide any personal identifiable information on this form** such as social security number, bank account numbers, credit card numbers, tax identification or driver's license numbers.

Reset Form

Print Form



## INSTRUCTIONS FOR FILING ARTICLES OF INCORPORATION FOR A WEST VIRGINIA BROADBAND COOPERATIVE ASSOCIATION

### BEFORE YOU COMPLETE THE APPLICATION:

I. The corporate name you select will be approved **only** if it is available - that is, if the name is not the same as and is distinguishable from any other name which has been reserved or filed. If you prepare corporate papers without applying for and receiving a name reservation, you do so at your own risk. A telephone check on availability of a name is NOT a guarantee. You may apply for a name reservation in writing, accompanied by the applicable fee payable to the Secretary of State, mailed to the address at the top of the application. Once approved, the name will be held for 120 days.

### COMPLETING THE APPLICATION:

**Section 1.** Enter the exact name of the broadband cooperative association. The name **MUST** contain the following words in the name:

a) Per [§31G-2-1](#) of the WV Code, the name must include the words “cooperative,” “co-operative” or “co-op” in the name, **and**

b) words or abbreviations designating a corporation such as, “corporation” (corp.), “company” (co.), “incorporated” (inc.), “limited” (ltd.), or an **abbreviation of one of these terms**. Remember, the name that is on your certificate of incorporation is your official name and must be used in its entirety when in use unless you file a trade name (dba) registration with the Office of the Secretary of State. Failure to do so could result in a fine or imprisonment.

**Section 2.** The **principal office** may be located within West Virginia or another state. List the address of the principal office. You may change your principal office address by filing with the Secretary of State an application to appoint or change address, agent or officers [**Form AAO**] (fee \$15).

**Section 3.** A West Virginia domestic corporation may have a physical location as the **principal place of business** within the state. Give the street address, city, zip and county in WV, if any. You may change your principal office address by filing with the Secretary of State an application to appoint or change address, agent or officers [**Form AAO**] (fee \$15).

**Section 4.** Unless you name a person or business as “agent of process” who can receive service of a summons or complaint, legal process will go to the address listed in #2. You may change “agent of process” by filing with the Secretary of State an application to appoint or change address, agent or officers [**Form AAO**] (fee \$15).

**Section 5.** List an **e-mail address** (*yourname@domainname.com*) where you can receive important e-mail notifications (e.g., **Annual Report** notices).

**Section 6.** List the **web site address** (*domainname.com*) of the business, if any. DO NOT list a physical mailing address.

**Section 7.** Indicate whether or not you **own or operate more than one business in West Virginia**. If “Yes”...

a. List the **total number of businesses in West Virginia** in the space provided.

b. List the **total number of counties in West Virginia** in which the businesses conduct operations.

**Section 8.** If you plan to apply for **501(c)(12) status as a utility cooperative with the IRS**, check “Yes.” you will need to include specific language required by the IRS to be included in your Articles of Incorporation. That required language statement is provided under Section 11a. on page 3 of this application. Be sure to check the box next to “**Check here if applying for 501(c)(12) status**” under **Section 11a.** if this applies to your entity.

**Section 9.** Check **For Profit** if the corporation will be organized as a “for profit” corporation. Check **Non-Profit, Non-Stock** if the corporation will be organized as a “non-profit, non-stock” corporation.

**Section 10.** a. **If organized with ONE class of stock:** This statement sets the total value of all authorized capital stock, for which there will be one class, and how it is divided into shares with a set value per share. (*Calculation example:* 100 shares x \$10 per share = \$1,000 total value.) It does not necessarily reflect the money put into the corporation. The number of shares must be listed, but may be increased later. If not issuing stock, enter zero “0” in the fields.

b. **If organized with MORE THAN ONE class of stock:** This statement sets forth the total number of authorized shares of all classes of stock issued, the number of shares of each class that have a par value, the par value of each share by class, and the number of shares that are to be issued without par value. You must also include a statement of the powers, preferences, rights, qualifications, limitations or restrictions in respect to a class of stock fixed. Attach additional pages if necessary.

c. **If organized WITHOUT capital stock:** Indicate whether the property rights and interest of each member shall be “equal” or “unequal.” If “unequal,” you must state the general rules applicable to the classes of members whose property rights and interests are determined and fixed. You must also include provisions regarding the admission of new members who may be entitled to share in the property of the association with the old members.

**Section 11.** a. It is important to describe the **purpose(s)** [i.e., principal activity(ies)] to be conducted by the corporation clearly to insure you receive all the necessary information about registering with the required state agencies. Broadband cooperative associations may be organized to engage in any qualified activity in connection with obtaining or providing **internet services** [per WV Code [§31G-2-1](#)]. See the description under this question on the application for more information.

**501(c)(12) IRS Status:** If the corporation is applying for **501(c)(12) status through IRS**, check the box to confirm it will organize and operate on a cooperative basis for the purpose of providing a mutually desired service to its members at cost and to **include the 501(c)(12) status language in the Articles of Incorporation as required by the IRS.**

b. If “No,” proceed to Section 12. If “Yes,” and the **FOR PROFIT** incorporation elects to be organized for purposes as a “**Benefit Corporation**,” per West Virginia Code [§31F-3-301](#) (**NON-PROFIT corporations CANNOT elect this status**), the purpose listed in Section 11a. above must clearly state as one of its purposes the purpose of creating a “**general public benefit**.” You must indicate as one of its purposes stated in Section 11a. above the purpose of creating a “general public benefit” as set forth in §31F-3-301(a) of the West Virginia Code. A “general public benefit” means “a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.” [see West Virginia Code [§31F-1-102\(c\)](#)]. This purpose is in addition to its principal business purpose stated under §31D-3-302 of the West Virginia Code. It may also identify one or more “**specific public benefits**” that it is the purpose of the corporation to create. Per West Virginia Code [§31F-1-102\(e\)](#) “specific public benefit” means “a benefit that serves one or more public welfare, religious, charitable, scientific, literary or educational purposes, or other purposes or benefit beyond the strict interest of the shareholders of the benefit corporation, including:

- (1) Providing low-income or under served individuals or communities with beneficial products or services;
- (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;
- (3) Preserving or improving the environment;
- (4) Improving human health;
- (5) Promoting the arts, sciences or advancement of knowledge;
- (6) Increasing the flow of capital to entities with a public benefit purpose; and
- (7) Conferring any other particular benefit on society or the environment.”

**Section 12.** The incorporators are the persons who initially set up the corporation. There must be **at least three [3] incorporators for an agricultural association and at least twenty [20] incorporators for an internet services association.** They need not own shares in nor run the corporation.

**Section 13.** Check the box as indicated to acknowledge the corporation's bylaws will set out the **total number of Directors which shall not be less than three (3).**

**Section 14.** Check the appropriate box indicating whether or not the organization is "veteran-owned." Effective JULY 1, 2015, the following criteria must be met in order to qualify as a "veteran-owned" entity: (1) veteran must be "honorably discharged or under honorable conditions;" and (2) if a publicly-owned entity, at least fifty-one per cent (51%) of the stock must be unconditionally owned by one or more veterans [see WV Code [59-1-2a\(12\)-\(13\)\(A\)\(B\)](#)]. **If "Yes," you must provide proof by including with this application a copy of your Veteran Affairs Form DD214.**

**Section 15.** Enter the number of acres the company desires to hold in West Virginia. If your company holds more than 10,000 acres of land, you must submit a fee of 5¢ for each acre over 10,000.

**Section 16.** Per WV Code [§19-4-6\(j\)](#), the articles shall be signed and filed in accordance with the provisions of the business or nonprofit corporation laws of this state. Listing a contact person and phone number is optional, however, listing a person to contact in case of a problem with filing may help to speed the filing process along and avoid possible rejection of the document.

**ANNUAL REPORT NOTICE:**

WV Code [59-1-2a](#) requires every corporation (both *for profit* and *non-profit*) to file an **annual report and pay the annual report filing fee between January 1 and July 1** of each year following the calendar year in which the business was registered with the Office of the Secretary of State. **The \$25 annual report fee is waived for Veteran-owned entities for the following four (4) years after initial formation [see WV Code [59-1-2a\(m\)](#)].** Failure to file may result in revocation of the organization's legal authority to transact business in the state. Notification of the filing requirement will be sent, but the company is responsible for filing the annual report as required by WV Code. You may file the annual report online at <https://onestop.wv.gov>.

WV Code [§31F-5-501](#) requires every "benefit corporation," as described in Section 10b. above, to prepare an annual benefit report (**separate and unrelated to the Secretary of State Annual Report referenced above**) made available annually to each shareholder of the benefit corporation. See WV Code [§31F-5-501](#) for further information regarding the "Annual Benefit Report."

**FILING THE ARTICLES - ONE ORIGINAL REQUIRED - AND PAYING THE FEE**

**Send an additional original if you want a filed date-stamped copy returned to you at no additional cost.**

The filing fee will consist of paying a registration fee and excess acreage fee, if applicable.

If requesting a certified copy, an additional fee of \$15 per certified copy requested is required.

<p>Registration fee* _____</p> <p>Excess Acreage fee: + _____</p> <p>\$15 per certified copy: + _____</p> <p>Total fee: = _____</p>	<p>For Profit Corporation - \$100 / Non-Profit Corporation - \$25</p> <p>* <b>Veteran-owned</b> entity registration FEE WAIVED - \$0</p> <p>[Registration fee is waived for "veteran-owned" entity effective July 1, 2015 per WV Code <a href="#">59-1-2(j)</a>; <b>Be sure to attach the veteran proof of status Veteran Affairs Form DD214 when claiming "veteran-owned" status.</b>]</p>
---	---

\*\*\*\* Make your checks payable to West Virginia Secretary of State. \*\*\*\*

**TEXT ALERTS:** Stay up-to-date regarding filing deadlines and changes to business, charity, notary, private investigation, and security guard laws. To sign up, go to [www.wvsos.gov](http://www.wvsos.gov).

**CHARITABLE REGISTRATION:** If your company receives contributions, donations or grants, registration as a charitable organization may be required. Contact our office for more information or visit our web site at [www.wvsos.gov](http://www.wvsos.gov).

**DISSOLUTION:** A corporation is a legal entity which can only be dissolved through formal action by filing the necessary documents for dissolution - not by submitting a letter or making a phone call to the Secretary of State. To dissolve the business, a domestic corporation must file the **Articles of Dissolution (Form CD-6)** and pay the dissolution fee. You remain liable for all taxes, assessments, fines, penalties and interest until you receive a certificate of dissolution from the Secretary of State. Contact our office for more information.





## Filing Submission Instructions - Business Division

**IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING FORMS.**

Please follow the instructions included with the application. Failure to include any of the required information on the form may cause the filing to be rejected.

All forms may be downloaded from our web site [www.wvsos.gov](http://www.wvsos.gov).

SUBMIT THE COMPLETED APPLICATION WITH THE **CUSTOMER ORDER REQUEST** FORM TO ONE OF THE OFFICES BELOW. CHOOSE EXPEDITED OR STANDARD PROCESSING SERVICE. IF NOT USING THE CUSTOMER ORDER REQUEST FORM AND YOU ARE REQUESTING EXPEDITED SERVICE, YOU MUST INCLUDE THE WORD "EXPEDITE" AND THE LEVEL OF EXPEDITED SERVICE BEING REQUESTED (24-HOUR, 2-HOUR OR 1-HOUR) IN YOUR CORRESPONDENCE. BE SURE TO INCLUDE THE CORRECT ADDITIONAL EXPEDITED FEE. THIS FEE IS IN ADDITION TO THE REGULAR FILING FEE (*SEE FEES BELOW*).

CHOOSE ONE OF THE FOLLOWING PROCESSING SERVICES:

① **EXPEDITED SERVICE (24-hour, 2-hour and 1-hour; \*Requires standard filing fee plus additional expedite fee, see below)**

<u>Expedite Service</u>	<u>*Fee</u>	<u>EXPEDITED SERVICE requests may be submitted by:</u>
24-Hour	\$ 25.00	- E-mail to <a href="mailto:efilings@wvsos.gov">efilings@wvsos.gov</a>
2-Hour	\$250.00	- Fax
1-Hour	\$500.00	- Walk in delivery

② **STANDARD PROCESSING (5-10 business days)**

Standard filing fees apply. **STANDARD PROCESSING requests may be submitted by:**  
 - E-mail to [CorpFilings@wvsos.gov](mailto:CorpFilings@wvsos.gov)  
 - Fax  
 - Walk in delivery (drop off service only filed within 5-10 business days)

INCLUDE PAYMENT:

Be sure to enclose the correct filing fee with your filing. If paying by credit card, be sure to include the **e-Payment Authorization** form with your filing. **Your filing will be rejected if the payment is not included or if the e-Payment Authorization form is not included if paying by credit card.**

SUBMIT COMPLETED FILING TO ONE OF THE BUSINESS CENTERS BELOW:

**BUSINESS SERVICE CENTERS**  
*Standard and Expedited Filings*

**Charleston Office**

**One-Stop Business Center**  
 1615 Washington Street East  
 Charleston, WV 25311  
 Phone: (304) 558-8000  
 Fax: (304) 558-8381  
 Hours: Mon. - Fri. 8:30a - 5:00p EST

**Clarksburg Office**

**North Central WV Business Center**  
 200 West Main Street  
 Clarksburg, WV 26301  
 Phone: (304) 367-2775  
 Fax: (304) 627-2243  
 Hours: Mon. -Fri. 9:00a - 5:00p EST

**Martinsburg Office**

**Eastern Panhandle Business Center**  
 229 E. Martin Street  
 Martinsburg, WV 25401  
 Phone: (304) 356-2654  
 Fax: (304) 260-4360  
 Hours: Mon. - Fri. 9:00a - 5:00p EST



West Virginia Secretary of State  
 Business & Licensing Division  
 Tel: (304)558-8000  
 Fax: (304)558-8381  
 Website: [www.wvsos.gov](http://www.wvsos.gov)

Rev. 9/2018

**Customer Order Request** SUBMIT THIS COMPLETED FORM WITH YOUR FILING.

**STOP** **READ CAREFULLY BEFORE SUBMITTING** - Expedite service is **NOT AVAILABLE** for the following filings:  
 >> Tax Department filings including Sole Proprietorships, General Partnerships, and Associations  
 >> Dissolution or Withdrawal of Corporation, Voluntary Association or Business Trust

**Order Processing Requested\*:**      **\*\*\* Expedite Processing Requires Additional Fees \*\*\***

<input type="checkbox"/> <b>Standard Processing**</b> (Avg. processing turnaround 5-10 business days)  Email to: <a href="mailto:CorpFilings@wvsos.gov">CorpFilings@wvsos.gov</a>	<input type="checkbox"/> <b>24-HOUR Expedite***</b> (additional \$25.00 fee included)	<input type="checkbox"/> <b>2-HOUR Expedite</b> (additional \$250.00 fee included)	<input type="checkbox"/> <b>1-HOUR Expedite</b> (additional \$500.00 fee included)
---	--	---	---

Email to: [eFilings@wvsos.gov](mailto:eFilings@wvsos.gov)

\*\*"Processing" indicates the filing will be completed and registered in the Secretary of State registration database.  
 \*\*Standard Processing applications received by E-MAIL or FAX must include the e-Payment Authorization form with credit card information.  
 \*\*\*NOTE: Orders filed in person through any Secretary of State office location requesting the filing be processed will be assessed a 24-HOUR Expedite fee of \$25.00 per order.

Name of Entity: \_\_\_\_\_

Return filing to:  
(Return Address) \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Return Delivery Options:** Email or Fax options do not receive a copy via mail; must be ordered separately.

Email to: \_\_\_\_\_  Fax to: \_\_\_\_\_

Hold for Pick Up     Mail to Return Address above     FedEx: Acct # \_\_\_\_\_

Other (explain below): \_\_\_\_\_  UPS: Acct # \_\_\_\_\_

**Order Description** (include items being ordered and fee breakdown):

\* PLEASE NOTE: Original paperwork is kept by this office. Include a copy of the original filing if you want a file stamped copy returned to you at no extra charge. **Certified copy requests are an additional \$15 per certified copy being requested.**

Total Amount:

**Payment Method:**

<input type="checkbox"/> Check/Money Order	<input type="checkbox"/> Credit Card <span style="border: 1px solid red; padding: 2px;"><i>(Must attach e-Payment Authorization request form including payment information.)</i></span>
<input type="checkbox"/> Cash (Do Not mail cash)	<input type="checkbox"/> Pre-paid Acct #: _____ Attach signed pre-paid slip.





MAC WARNER  
Secretary of State  
State Capitol Building  
Charleston, WV 25305  
Phone: (304) 558-6000  
Web site: [www.sos.wv.gov](http://www.sos.wv.gov)

## 24-hour, 2-hour and 1-hour Expedite Service Guidelines

**IMPORTANT:** *To ensure expedited service, please mark “EXPEDITE” in a conspicuous place at the top of the service request. Please indicate method of delivery.*

### **24-HOUR EXPEDITE SERVICE**

The Secretary of State offers a 24-hour expedite service on most business organization filings processed by this office. If you choose to utilize this service, please enclose with your filing the additional expedite fee. Please note that this expedite fee is in addition to the standard fee charged on each filing and/or order. You must mark the document with your “**24-HOUR EXPEDITE**” request. If using a cover letter, note that you are requesting 24-hour expedited service, and include your telephone number and return information. Each filing will be returned by U.S.P.S. regular mail unless other arrangements are made. This office *does not* fax confirmation of a 24-hour expedite.

The fee for 24-hour handling is \$25.00 in addition to the usual fee for service. Please consult our fee schedules for the appropriate fee. If you require assistance, please contact this office.

**Time Constraints:** Under most circumstances, each filing submitted receives same day filing date and may be picked up in the office by the end of the same business day. Filings to be mailed the next business day if received by 2:00 pm of receipt date and no later than the 2nd business day if received after 2:00 pm. Expedite period begins when filing or service request is received in this office in acceptable fileable form.

### **2-HOUR EXPEDITE SERVICE**

The Secretary of State offers a 2-hour expedite service on most filings processed by this office. If you choose to utilize the 2-hour expedite service, please enclose with your filing an additional \$250.00 per filing and/or order. Please note that this expedite fee is in addition to the standard fee charged on each filing and/or order. Complete and submit the 2-hour customer order instruction form. If not using our order form, state clearly in your cover letter that you are requesting 2-hour expedited service and include your telephone number and return information. Attach the order form or cover sheet to the *top* of your filing and submit to this office. Each filing will be returned by U.S.P.S. regular mail unless other arrangements are made.

### **1-HOUR EXPEDITE SERVICE**

The Secretary of State offers a 1-hour expedite service on most filings processed by this office. If you choose to utilize the 1-hour expedite service, please enclose with your filing an additional \$500.00 per filing and/or order. Please note that this expedite fee is in addition to the standard fee charged on each filing and/or order. Complete and submit the 1-hour customer order instruction form. If not using our order form, state clearly in your cover letter that you are requesting 1-hour expedited service and include your telephone number and return information. Attach the order form or cover sheet to the *top* of your filing and submit to this office. Each filing will be returned by U.S.P.S. regular mail unless other arrangements are made.

**1-Hour and 2-Hour Time Constraints:** Each filing submitted for either 1-hour or 2-hour expedite receives same day filing date and will be acknowledged by fax or e-mail within expedite service time. Failure to indicate method of acknowledgement (fax or e-mail) or to provide a correct fax number or e-mail address may prevent the Secretary of State from acknowledging the filing of such documents. Filings may be picked up within the expedite service period. Filings to be mailed will be mailed out no later than the next business day following receipt. Expedite period begins when filing or service request is received in this office in fileable form.

**The Secretary of State reserves the right to extend the expedite period in times of extreme volume, staff shortages or equipment malfunction. These extensions are few and will rarely extend more than a few hours.**



West Virginia Secretary of State  
Business & Licensing Division  
Tel: (304)558-8000  
Fax: (304)558-8381  
Website: [www.wvsos.gov](http://www.wvsos.gov)

Rev. 11/2017

## e-Payment Authorization

USE BLACK INK ONLY - DO NOT HIGHLIGHT

This document contains confidential financial information and will be properly shredded after payment has been processed by this office. Electronic storage of payment information is only permitted by signed authorization below which may be retracted at any time by written request by the authorized party.

**Service Type:**  Fax  E-mail  Mail

**Payment by Card** (card holder name and billing address required below)

**Card Type:**  Visa  Mastercard  Discover  American Express

**Credit Card Number:**

15 individual digit input boxes followed by a **V Code\*** input box.

\* 3-digit number on back of VISA, MasterCard and Discover cards.  
4-digit number on front right side of American Express card.

**NOTICE:** For security and verification purposes, all credit card payments must include the 3- or 4-digit CVV2 code (V Code) number located on the credit card. Failure to include this code will result in the rejection of your filing or service request.

**Credit Card Expiration Date:** Month:  Year:

**Amount to Charge Card:** USD \$

**Order Information** (required)

**Entity Name:**

**Card Holder Information:**

Name as it appears on the account

Billing Address

City  State  Zip Code

Telephone  Ext.

**Payment Information Storage Authorization** (optional)

I authorize the Secretary of State to store this payment information for future payment transactions processed by Secretary of State:

Date

Authorized Signature

**Payment Authorization** (required)

I authorize the Secretary of State to bill an amount not to exceed the following to be charged to the above listed account(s):

Date

Authorized Signature

Reset Form

**Not to Exceed Amount:** USD \$



EXHIBIT C  
STATE TAX  
REGISTRATION

Register online at [business4.wv.gov](http://business4.wv.gov).

Remote sellers do not use this form. Remote sellers should register at [mytaxes.wvtax.gov](http://mytaxes.wvtax.gov)

If you are making changes to a business **already registered** with the WV State Tax Department, do not use this form. Go to [mytaxes.wvtax.gov](http://mytaxes.wvtax.gov) or submit **BUS-RBL**.

Delays issuing your business license may occur if you fail to submit ALL the pages of this form, fail to complete all required sections, or do not include all required supporting documentation. Handwritten forms may take longer to process.

**PART 1**

**SECTION A: REASON FOR SUBMITTING THIS APPLICATION** Choose only one.

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> <b>NEW BUSINESS</b><br>You do not currently have a business license issued by the WV State Tax Department for any of your business activity at any location. | <input type="checkbox"/> <b>EXISTING BUSINESS OPENING NEW LOCATION</b><br>You have a business license issued by the WV State Tax Department for at least one location but are opening an additional business location. | <input type="checkbox"/> <b>WITHHOLDING ONLY (skip page 2)</b><br>You only have employees in WV and will not engage in purposeful revenue generating activity in this state. |
|---|--|--|

**SECTION B: BUSINESS IDENTIFICATION**

1. LEGAL NAME OF ENTITY		FEIN (SSN For Sole Proprietor)	
2. DBA (Complete Schedule DBA for additional DBAs and trade names)			
3. PHYSICAL ADDRESS OF BUSINESS NAMED ABOVE No Post Office Boxes			
CITY		STATE	ZIP
COUNTY		IF IN WV, IS THE BUSINESS WITHIN CITY LIMITS	<input type="checkbox"/> NO <input type="checkbox"/> YES
4. MAILING ADDRESS			
CITY		STATE	ZIP
5. EMAIL ADDRESS		Website	
6. WILL YOU HAVE WEST VIRGINIA EMPLOYEES? <small>If yes, answer 6A and 6B</small>	<input type="checkbox"/> NO <input type="checkbox"/> YES	6A. DATE YOU WILL BEGIN WITHHOLDING WV INCOME (MMDDYYYY)	6B. NUMBER OF EMPLOYEES SUBJECT TO WV INCOME TAX
7. DATE BEGINNING BUSINESS IN WV (MMDDYYYY)		8. TAXABLE YEAR END FOR FEDERAL TAX PURPOSES (MM)	9. ESTIMATED ANNUAL GROSS INCOME
			10 BUSINESS PHONE

**SECTION C: BUSINESS ACTIVITY**

11. DESCRIPTION OF BUSINESS ACTIVITY In detail, explain what your business will do or is doing in WV.			
12. NAICS CODES (6 digits preferred) <small>Provide the North American Industry Classification System Codes that represents your business activity. For help, See page <b>Worksheet 1</b> in the <b>Instructions</b>.</small>	PRIMARY NAICS	SECONDARY NAICS	ADDITIONAL NAICS



B 2 9 2 0 1 9 0 1 W

# WV BUS-APP PART 1 continued

Delays issuing your business license may occur if you fail to submit ALL the pages of this form, fail to complete all required sections, or do not include all required supporting documentation.

## SECTION C : BUSINESS ACTIVITY CONTINUED

13. GENERAL ACTIVITY - Select all that apply. Must select at least one. Certain activities require additional documentation as noted. If you only have employees in WV and will not engage in purposeful revenue generating activity in West Virginia, leave this page blank. See Instructions for more information.

SALES AND SERVICES - Sell tangible personal property, provide services or conduct maintenance work from a WV location or to Customers in WV. If yes, which of the following goods, services, or maintenance work do you provide?

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> BEER- Will you hold a license to sell beer to licensed beer distributors or retailers  | <input type="checkbox"/> WINE- you will sell wine to licensed wine distributors or retailers or WV registered wine suppliers. | <input type="checkbox"/> CONSTRUCTION- make alterations, repairs, improvements, and decorations to real property and structures that constitute capital improvements. For further information on what constitutes a capital improvement, consult TSD-310. |
| <input type="checkbox"/> WINE/LIQUOR - As a retailer, will you hold a license to sell liquor and/or wine by the bottle? (Not sold in clubs, bars, or restaurants)   | <input type="checkbox"/> You will sell alcohol as a private club, bar, or restaurant  | <input type="checkbox"/> NON-RESIDENT CONTRACTOR<br>Must be properly bonded and file an itemized listing of equipment and materials brought into West Virginia for use in contracting activity.   |
| <input type="checkbox"/> MANUFACTURING  |   | <input type="checkbox"/> COLLECTION AGENCY<br>Attach <b>CAB-1</b> . Must be properly bonded   |
| <input type="checkbox"/> SOFT DRINK PRODUCTS BOTTLER  | <input type="checkbox"/> SOFT DRINK PRODUCTS WHOLESALER   | <input type="checkbox"/> SOFT DRINKS PRODUCTS CROWN MANUFACTURER (bond required)  |
| <input type="checkbox"/> SOFT DRINKS RETAILER purchases from a bottler or wholesaler <b>without excise tax paid</b>   | <input type="checkbox"/> SOFT DRINKS RETAILER purchases from a bottler or wholesaler <b>with excise tax paid</b>              | <input type="checkbox"/> TELEMARKETING to WV residents<br>Attach form <b>TLM</b> and <b>Corporate Surety Bond</b> . Must be properly bonded   |
| <input type="checkbox"/> FIREWORKS<br>Must be licensed by the State Fire Marshal  |   | <input type="checkbox"/> EMPLOYMENT AGENCY<br>Attach letter from the Commissioner of labor  |
| <input type="checkbox"/> DRUG PARAPHERNALIA<br>Attach forms <b>DRUG 1</b> and <b>DRUG 2</b> . Pay Additional Fee.   |   | <input type="checkbox"/> MAKE CONSUMER OR SUPERVISED LOANS<br>Attach <b>BUS-CSL</b>   |
| <input type="checkbox"/> TRANSIENT VENDOR-Sell tangible personal property to consumers at retail level and do not maintain an established place of business in West Virginia<br>Attach <b>TVL-1</b> . \$500 bond or certified check required. |   | <input type="checkbox"/> PRENEED CEMETERY<br>Attach <b>CEM-1</b> and <b>CEM-B</b>   |
| <input type="checkbox"/> RENTAL   |   | <input type="checkbox"/> OPERATE NATURAL GAS STORAGE  |
| <input type="checkbox"/> SCRAP METAL DEALER OR RECYCLER   |   | <input type="checkbox"/> PROVIDE ELECTRIC POWER   |
| <input type="checkbox"/> SOLID WASTE  |   | <input type="checkbox"/> PUBLIC UTILITIES regulated by the PSC  |
|   |   | <input type="checkbox"/> OTHER SALES, SERVICE, OR MAINTENANCE NOT LISTED.   |

TOBACCO PRODUCTS

Mark all products you will sell (must select at least one):

Mark which describes you (must select at least one)

- CIGARETTES     OTHER TOBACCO PRODUCTS     E-CIGARETTE LIQUIDS     MANUFACTURER     WHOLESALER     RETAILER

NATURAL RESOURCES- hold title to or economic interest in severing, reducing to possession and producing for sale, profit or commercial use, any natural resource product (unless only for royalties) A permit from Department of Environmental Protection also required

- TIMBERING  
Requires Division of Forestry permit     COAL - producer     COAL - processor     NATURAL GAS     LIMESTONE     SANDSTONE     OIL     OTHER RESOURCES

FUEL - purchase, import, export, refine, or transport motor fuel in WV meant for sale or profit.  
Attach **WV/MFT-APP**

COMMON CARRIER - operate aircraft, watercraft or locomotives that transport freight or passengers within West Virginia.

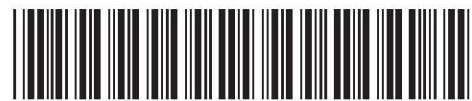
HEALTHCARE - provide health care services (only includes ambulances, practitioners, hospitals, nursing home care, and x-rays)

MEDICAL CANNABIS - grow/produce or dispense medical cannabis     GROWER OR PRODUCER     SUPPLIER OR DISTRIBUTOR     DISPENSARY  
Requires license from Office of Medical Cannabis

FARMING

USE COMMERCIAL WEIGHING OR MEASURING DEVICES  
Must register with Division of Labor

OTHER/ACTIVITY NOT LISTED



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11. a. *Continued from page 2.*

➔  **Check here if applying for 501(c)(12) status.**

This West Virginia Broadband Cooperative Association is organized and operated on a cooperative basis for the purpose of providing a mutually desired service to members at cost. All income will be used to cover losses and expenses with any excess either being distributed to members or retained to cover future losses and expenses, as governed by the bylaws. The purpose of this association is to embody the cooperative structure through democratic control, subordination of capital, and operating at cost with a benefit to members.

b. Will the incorporation elect to be organized for purposes as a “Benefit Corporation” per West Virginia Code §31F? **ONLY applicable to "FOR PROFIT" corporations; "NON-PROFIT" corporations CANNOT elect this status.**

**Yes** [If "Yes," the corporation must be formed FOR PROFIT and the purpose(s) indicated in Section 10a. above must include a "general public benefit" as set forth in §31F-3-301(a) of the West Virginia Code. Per §31F-1-102(c), “general public benefit” means “a material positive impact on society and the environment taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation."].

**No** [Proceed to Section 12.]

12. The **names and addresses of the incorporators (members)** are:

**NOTE: West Virginia Broadband Cooperative Associations must list at least TWENTY (20) incorporators (members).**

	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____
9.	_____	_____	_____	_____	_____
10.	_____	_____	_____	_____	_____
11.	_____	_____	_____	_____	_____
12.	_____	_____	_____	_____	_____
13.	_____	_____	_____	_____	_____
14.	_____	_____	_____	_____	_____
15.	_____	_____	_____	_____	_____
16.	_____	_____	_____	_____	_____

*Continued on page 4.*



**PART 2 : UNEMPLOYMENT COMPENSATION**

**SECTION G: UNEMPLOYMENT COMPENSATION**

COMPLETE THIS SECTION TO REGISTER FOR AN UNEMPLOYMENT COMPENSATION ACCOUNT.

All new businesses are required to complete this section, even if they have no employees in West Virginia

1. Reason for applying:

- New Business
- Additional Location
- Purchased Business
- Out of State Business, registering for Withholding Only
- West Virginia business, with NO employees

2. Name, street address, telephone number and person to contact where payroll records are maintained:

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone Number \_\_\_\_\_

Contact Person \_\_\_\_\_

3. Date first employee started work in West Virginia:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

4. Number of employees working in WV:

\_\_\_\_\_

Number of employees working in other states: \_\_\_\_\_

5. Date first wages paid in West Virginia:

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

6. If the reason for registering is due to the purchase of a business, merger reorganization or change of legal entity, provide the following information; including percent of assets acquired (if needed, attach additional explanation of the transaction):

- a. Percentage of assets acquired from former business: \_\_\_\_\_%
- b. Date former business was acquired by current business: \_\_\_\_/\_\_\_\_/\_\_\_\_\_
- c. Unemployment compensation number of former business, if known: \_\_\_\_\_
- d. Predecessor signature: \_\_\_\_\_

7. Have you or do you expect to employ at least ONE worker in 20 different calendar weeks during calendar year?

- YES  NO

If YES, what is the earliest month and year this will occur?

Month \_\_\_\_\_ Year \_\_\_\_\_

8. Have you or do you expect to have a quarterly payroll of \$1,500.00?

- YES  NO

If YES, what is the earliest quarter and year this will occur?

Quarter \_\_\_\_\_ Year \_\_\_\_\_

9. FOR EMPLOYERS OF DOMESTIC HELP ONLY: Have you or do you expect to have a \$1,000 quarterly payroll of domestic workers (housekeepers, baby sitters, etc.) in any year?

- YES  NO

If YES, indicate the earliest quarter and calendar year.

Quarter \_\_\_\_\_ Year \_\_\_\_\_

10. For Agricultural operations only: Have you or will you have 10 or more workers for 20 weeks or more in any calendar year or have you paid or will you pay \$20,000 or more in wages during any calendar quarter?

- YES  NO

If YES, indicate the earliest quarter and calendar year.

Quarter \_\_\_\_\_ Year \_\_\_\_\_

11. Are you liable for Federal Unemployment Tax?  YES  NO If YES, in what year did you become liable? \_\_\_\_\_

12. CERTIFICATION: This report must be signed by owner if business operated as an individual proprietorship, by all members if business is operated as partnership, joint venture or limited liability company; or by an authorized officer of an incorporated business.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_

**GOVERNMENT ENTITY OR A FEDERAL EXEMPT NON-PROFIT ORGANIZATION**

COMPLETE THIS PART IF YOU ARE EITHER A GOVERNMENT ENTITY OR A FEDERAL EXEMPT NON-PROFIT ORGANIZATION. PLEASE FURNISH A COPY OF EXEMPTION LETTER WITH THIS APPLICATION.

1. If you are a non-profit organization with a 501-C3 exemption, have you or do you expect to employ four or more workers in West Virginia in 20 different calendar weeks during a calendar year?  YES  NO If YES, what is the earliest month and year the 20th week will occur?

Month \_\_\_\_\_ Year \_\_\_\_\_

2. Elect options for unemployment compensation coverage: CONTRIBUTIONS \_\_\_\_\_ REIMBURSEMENT \_\_\_\_\_

**DO NOT WRITE IN THIS SECTION (OFFICE USE ONLY)**

STATE ID NUMBER:	LIABLE DATE:
EFFECTIVE DATE:	PROVISION:



B 2 9 2 0 1 9 0 4 W