

From: Patricia Carroll <>
Sent: Wednesday, August 19, 2020 1:52 PM EDT
To: Jack Belcher <>; James Schwartz <>; John Bayliss <>; Holly Hartell <>; Richard Archambault <>
Subject: FW: Thanks for supporting our efforts to enhance broadband for Arlington Public School students during the pandemic
Attachment(s): "VCTA Memo_Re__APS_Resources_to_Low-Income_Students.docx"

FYI.
Thanks for your help thus far!!!!

Patricia B. Carroll
Legislative Director
Arlington County
2100 Clarendon Blvd, Suite 302 Arlington, VA 22201 703-228-3101

From: Ray LaMura <>
Sent: Wednesday, August 19, 2020 1:23 PM
To: Mark Schwartz <>; ; Patricia Carroll <>;
Cc: Mike Edwards <>; Heidi Cook <>
Subject: RE: Thanks for supporting our efforts to enhance broadband for Arlington Public School students during the pandemic

EXTERNAL EMAIL: This email originated from outside Arlington County.

CAUTION: This external email also contains file attachments. Do not open files that you are not specifically expecting to receive, even from known senders.

Good Afternoon Mr. Schwartz!

Attached please find a memorandum from the VCTA addressing our opinion relating to Arlington Public School's efforts to enhance broadband service to students in your community.

Regards, Ray

Ray LaMura | President
VCTA-Broadband Association of Virginia
1111 East Main Street, Suite 802
Richmond, Virginia, 23219



From: Mark Schwartz <>
Sent: Monday, August 17, 2020 12:43 PM
To: Ray LaMura <>
Cc: Patricia Carroll <>
Subject: Thanks for supporting our efforts to enhance broadband for Arlington Public School students during the pandemic

Mr. LaMura: See the attached letter.

Best,

Mark Schwartz

Mark Schwartz
County Manager
Arlington, Virginia



MEMORANDUM

TO: Arlington County and Arlington Public Schools

FROM: Virginia Cable Telecommunications Association

DATE: August 19, 2020

RE: Provision of Educational Resources to Low-Income Students' Homes

Under Virginia law, localities are generally prohibited from providing telecommunications service,¹ except for under two circumstances: (i) the locality, either alone or with other localities, has formed an authority under the Wireless Service Authorities Act;² or, (ii) the locality provides communications service pursuant to § 56-484.7:1.³ These restrictions, however, appear to be limited to localities offering “qualifying” services.

“Qualifying communications service” is defined as “a communications service, which shall include but is not limited to, high-speed data service and Internet access service, *of general application*, but excluding any cable television or other multi-channel video programming services.”⁴ This definition implies that a locality-offered communication service that is *not* of general application (and thus not competing in the market with private companies) would not be bound by the restrictions of the Wireless Service Authorities Act or require regulation by the State Corporation Commission.

The purpose of this memorandum is for the Virginia Cable Telecommunications Association (“VCTA”) to express its view that under Virginia law, Arlington County (“ArCo”) and/or Arlington Public Schools (APS) are not prohibited from installing Wireless Access Points

¹ Va. Code § 15.2-1500.B (generally prohibiting localities from offering telecommunications equipment or services for sale or lease, “Except as provided in § 15.2-2160 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56...”). Va. Code § 15.2-2160 allows for “Any locality that operates an electric distribution system may provide telecommunications services....” The provision does not appear to apply to ArCo or APS.

² Ch. 54.1, Title 15.2. See also *Petition of Declaration Networks Group, Inc. Seeking State Corporation Commission investigation of, and sanctions against, Eastern Shore of Virginia Broadband Authority*, SCC Case No. PUR-2018-00200, Final Order (September 12, 2019).

³ Article 5.1, Ch. 15, of Title 56. See also *Application of the City of Salem for a Certificate of Public Convenience and Necessity to Provide Local Telecommunications Service*, SCC Case No. PUC-2003-00069, Final Order (July 30, 2003) (approving the request of the City of Salem to provide high-speed broadband internet). To VCTA’s knowledge, neither Arlington County nor Arlington Public Schools have formed the necessary entities to provide a “qualifying communications services” under the Wireless Service Authorities Act or § 56-484.7:1.

⁴ Va. Code § 56-484.7:1 (emphasis added). This definition is incorporated by reference in the Wireless Service Authorities Act.

(“WAPs”) in certain low-income housing developments in order to facilitate limited broadband internet connection that would allow APS students to connect with school resources and other educational materials while APS conducts mandatory remote schooling because of the COVID-19 health emergency.

This memorandum assumes the following: (i) that ArCo and/or APS have the authority within their own governing statutes and regulations to install, operate, and maintain this WAP equipment; (ii) that ArCo and/or APS already have lawful access to the property where the WAPs will be installed and maintained (such as a license or easement from the owner).⁵

The VCTA understands that neither ArCo nor APS propose that its WAPs providing high-speed broadband would be used for any purpose beyond allowing APS students to attend virtual classes, as well as research, complete, and submit homework assignments during the ongoing COVID-19 emergency. Thus, in VCTA’s view, the proposed communication service to be provided by ArCo/APS would not be of “general application” and it would therefore be unnecessary for ArCo/APS to form a Wireless Service Authority or seek approval from the State Corporation Commission to install, operate or maintain *limited* high-speed internet access for students to access necessary educational materials remotely while APS schools are closed to in-person learning because of the ongoing COVID-19 health emergency.

In order to demonstrate that its proposed limited internet service is not of “general application,” ArCo/APS should impose reasonable administrative and technological restrictions on the service. Reasonable restrictions should include, at a minimum:

- 1) That this program be limited to the duration of the ongoing COVID-19 emergency and expire whenever APS lifts its policy of mandatory remote schooling.
- 2) Limiting access to parents, guardians, or other child educational providers who attest that the internet access will be used for the educational purposes of a child in APS;
- 3) In order to clarify the purpose and limited nature of the program, ArCo should lease its dark fiber to APS, in accordance with § 15.2-1500 (B) and (C). APS, in turn, would provide this limited internet access as part of its distance learning initiative(s);
- 4) ArCo/APS should impose reasonable restrictions on websites/information that can be accessed utilizing this limited service. APS is already required to draft and maintain “Acceptable Internet use policies for public and private schools.”⁶ Public Libraries have a similar requirement.⁷

⁵ The use of eminent domain to provide communications services presents other issues that will not be the subject of this memorandum. *See e.g.* Va. Code § 15.2-2160.E (“No locality providing such services shall acquire by eminent domain the facilities or other property of any telecommunications service provider to offer cable, telephone, data transmission or other information or online programming services.”).

⁶ Va. Code § 22.1-70.2.

⁷ Va. Code § 42.1-36.1.

These restrictions could be implemented by a sign-on screen in which the user certifies their compliance with these terms and conditions.

With these reasonable restrictions in place, students, parents and other child educational providers would have comparable wireless internet access to that of a student at a school or public library. This would effectively extend necessary ArCo/APS educational and distance-learning resources to low-income students' homes during the ongoing COVID-19 health emergency, rather than constitute a competitive internet service available to the public.

This would appear to be an issue of first impression, but the VCTA does not object to the provision of educational resources to APS students' homes utilizing ArCo/APS dark fiber during the ongoing COVID-19 health emergency, so long as reasonable restrictions are in place, as noted above.

VCTA and its members strongly support efforts to provide low-income students with access to reliable, high-speed internet. To that end, VCTA and its members have partnered with several localities to provide service to low-income residents during the ongoing COVID-19 emergency. VCTA continues to believe that it would be faster and less expensive for ArCo/APS to partner with VCTA members to provide high-speed internet to low-income students utilizing existing infrastructure and programs. However, VCTA is open to alternative methods by which students can access educational materials.



OFFICE OF THE COUNTY MANAGER

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August 17, 2020

Mr. Ray LaMura
Executive Director
Virginia Cable Television Association
1111 East Main Street, Suite 802
Richmond, Virginia 23219

Dear Mr. LaMura:

My staff has briefed me on the video meeting you had last week to discuss Arlington's use of its dark fiber network to connect low income Arlington students to the Internet, via Wi-Fi, during a state or locally declared emergency or during a time of mandatory distance learning.

As Delegate Sullivan mentioned during the meeting, Arlington County wants to supplement the work that Comcast is doing to ensure that all Arlington Public Schools (APS) students have access to the internet while they are participating in full-time distance learning. Our proposal is for Arlington County to provide wireless internet connections to students who qualify for free or reduced lunch only during a state- or locally-declared emergency or when students are required to attend school virtually.

While we appreciate the work that Comcast is currently doing and are fully supportive of the partnership between Arlington and Comcast to deploy Comcast Internet Essentials to APS students, the fact remains that as of the writing of this letter, less than 100 of the 4800 eligible households in Arlington have been connected. During a call with APS on that same day, while Comcast representatives did have a plan for marketing the service to eligible households, adoption of the service remains well below expectations. Clearly further action is needed to ensure that Arlington students will have access by the time school starts on September 8th. There is no reason for Comcast to bear this burden alone when Arlington County stands ready to help.

Further, the County has growing concerns about the sufficiency of the Comcast Essentials 25/3 product for multi-student households. At the initial launch of the partnership, return to school was forecast to be a hybrid model with some level of in-person instruction supplemented with at home learning. In that model, significantly less Internet bandwidth would have been needed for simultaneous online learning interactions. With the adoption of full-time distance learning for the Fall term, and the foreseeable future, 3 Mbps of upload is now expected to be insufficient for multi-student households and households with parents working remotely – all of whom will now be placing full-time demand on the family's Internet connection throughout the day.

We were heartened to hear from Comcast and others on the call that you think Arlington County and APS already have the authority to directly provide broadband services to students through Wi-Fi installations, and that localities in the Commonwealth are already doing so. We take this to mean that you support localities' efforts to supplement the industry's provision of broadband to students during the pandemic, and that you will not mount any legal challenges to localities for implementing any such broadband programs for students. With that support in mind, Arlington will continue to explore all possible ways it can, alongside Comcast, ensure that students will have access to broadband internet during the upcoming school year.

We thank you for your time and look forward to action during the Special Legislative Session beginning Tuesday to codify the authority you noted. Enhancing broadband connectivity for our students during the emergency is an issue of equity, and an important tool to help our children and their families face the unprecedented challenge of the pandemic.

We look forward to your continued support in this effort.

Sincerely,

DocuSigned by:

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Mark J. Schwartz
County Manager

CC: Governor Ralph Northam
Members of the Arlington Legislative Delegation
Arlington County Board members
Arlington County School Board members
Arlington County Schools Superintendent Duran
Jack Belcher, Arlington County, Director of Technology Services
Raj Adusumilli, Assistant Superintendent, Information Services
Michelle Gowdy, Executive Director, Virginia Municipal League
Steve MacIsaac, Arlington County Attorney
MinhChau Corr, Arlington County Deputy County Attorney
Mike Edwards, Vice President, Kemper Consulting