STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 66-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the "State of Emergency Declaration"), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency, and to perform and exercise other functions, powers, and duties that are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Executive Orders 7-20, 10-20, 11-20, 12-20, 17-20, 23-20, 26-20, 31-20, 46-20, 54-20, 57-20, 59-20, and 63-20 suspended certain provisions and sections of statute that strict compliance therewith would prevent, hinder, or delay necessary action in coping with the emergency; and

WHEREAS, there has been an additional statutory regulation identified that is preventing the state from best coping with the emergency and assisting the citizens of West Virginia; and

WHEREAS, the West Virginia Economic Development Authority may financially assist certain projects in West Virginia through the insurance fund created under W. Va. Code § 31-15-8 (the "WVEDA Insurance Fund") to insure the payment or repayment of all or any part of the

principal of and interest on any form of debt instrument entered into by an enterprise, public body or authority of the state with a financial institution, which debt instruments are to be solely for capital costs relating to providing broadband service to a household or business located in an unserved or underserved area; and

WHEREAS, on February 28, 2020, the Federal Communications Commission (the "FCC") adopted a Public Notice: Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Rural Digital Opportunity Fund Auction, initiating the pre-auction process for Phase I of the Rural Digital Opportunity Fund ("RDOF") auction, under which auction the FCC will award up to $16 billion over ten years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks, which bidding for such auction is expected to begin on October 22, 2020; and

WHEREAS, according to the FCC, West Virginia has more than 121,000 initial eligible locations for the RDOF, and the amount available for West Virginia projects is approximately $766,000,000 in total support; and

WHEREAS, the WVEDA Insurance Fund may be utilized by broadband providers in order for those providers to be able to obtain letters of credit as required by the FCC for RDOF funding of projects; and

WHEREAS, without utilizing the WVEDA Insurance Fund to assist broadband providers to obtain the letters of credit required for application to RDOF, we have been advised that such broadband providers would not be eligible to apply for RDOF funding in order to install broadband services to eligible unserved high-cost census blocks throughout West Virginia, and without utilizing the WVEDA Insurance Fund in this manner, the State will have lost the opportunity to leverage approximately $766,000,000 in FCC RDOF funding; and

WHEREAS, the WVEDA Insurance Fund contains certain regulatory provisions which, if not suspended, would prevent, hinder, or delay necessary action in coping with the emergency by preventing the State from leveraging this WVEDA Insurance Fund to assist broadband service providers pursue RDOF funding that will be used to install broadband services throughout West

Virginia's high cost census blocks to improve access to telehealth, distance learning, and other vital services that are more safely available by remote delivery over adequate internet networks; and

WHEREAS, the nature and duration of the current emergency are uncertain, but the COVID-19 pandemic and its effects are likely to remain with us for the foreseeable future, and improved access to telehealth, distance learning, and other vital remote services will remain necessary as this State, our Nation, and the entire world continue to adapt and respond to the pandemic and its effects in the weeks, months, and years to come; and

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provision of Chapter 15, Article 5, Section 6 of the Code of West Virginia, hereby **DECLARE** and **ORDER** that, the following statutory regulation is to be suspended for the duration of the State of Emergency for the sole purpose of removing certain regulatory caps on assistance that may be provided through the WVEDA Insurance Fund:

1. In the discretion of the West Virginia Economic Development Authority who shall issue additional guidance, in consultation with the Governor's Office, regarding eligibility and other requirements for applicants seeking assistance through the WVEDA Insurance Fund, created under W. Va. Code § 31-15-8, the requirement that each project utilizing the fund is strictly limited to $10 million in assistance and the requirement that use of said fund is strictly limited to $50 million (W. Va. Code § 12-6C-11(h)).

[*Signature Page Follows*]

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this Third day of September, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-eighth year of the State.

GOVERNOR

By the Governor

SECRETARY OF STATE