

King



85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-3165  
www.commerce.state.mn.us  
651.296.4026 FAX 651.297.1959  
An equal opportunity employer

October 13, 2008

Commissioner Dana B. Badgerow  
c/o Information Policy Analysis Division  
Minnesota Department of Administration  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN. 55125

Request for Advisory Opinion on Applicability of the Open Meeting Law to the  
Ultra High-Speed Broadband Taskforce

Dear Commissioner Badgerow:

In the 2008 session the Minnesota Legislature established the Ultra High-Speed Broadband Taskforce. (Laws of Minnesota for 2008, chapter 212-S.F. No. 1918)

The governor was directed to convene an Ultra High-Speed Broadband Task Force to make recommendations to the governor and the legislature regarding the creation of a state ultra speed broad band goal and a plan to implement that goal.

This request for an advisory opinion is submitted at the request of Richard King, chair of the taskforce.

Sincerely,

Alberto Quintela Jr.  
Staff Attorney  
Department of Commerce  
651 297-2117, phone  
651 284-4106, fax

cc: ✓ Richard King, Thomson Reuters  
Karen Janisch, General Counsel to Governor Tim Pawlenty  
Diane Wells, Department of Commerce



85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-3165  
www.commerce.state.mn.us  
651.296.4026 FAX 651.297.1959  
An equal opportunity employer

**October 13, 2008**

Commissioner Dana B. Badgerow  
c/o Information Policy Analysis Division  
Minnesota Department of Administration  
200 Administration Building  
50 Sherburne Avenue  
St. Paul, MN. 55125

**RE: REQUEST FOR OPEN MEETING LAW OPINION**

The Minnesota Legislature created the Ultra High Speed Broadband Task Force in Chapter 212, Laws of Minnesota for 2008.

The Ultra High Speed Broadband Task Force requests an opinion from the Commissioner of Administration as to whether the Open Meeting Law applies to the Broadband Taskforce.

In the event that the Open Meeting Law is deemed to apply, the Task Force also has questions related to how this Task Force can meet some of the apparent requirements.

The term *broadband* commonly refers to high-speed Internet access. Broadband can provide the technical capability to access a wide range of resources, services, and products. Broadband is generally a faster connection to the Internet than dial-up service.

The Federal Communications Commission defines broadband service as data transmission speeds exceeding 200 Kbps (thousand bits per second).

While there is no hard definition, "ultra" high speed is considered to be broadband speeds above 100 Mbps (million bits per second).

In general, telephone companies, cable companies and wireless broadband providers are capable of delivering broadband speeds of at least 1 Mbps. Telephone and cable companies are beginning to deploy broadband in the 25 Mbps and 40 Mbps range, respectively.

The ability to share increasing amounts of information at greater and greater speeds, increases productivity, facilitates commerce, and helps drive innovation.

The Legislature established a task force to gather data to put forth a comprehensive state-wide ultra high-speed broadband goal. The Task Force consists of a total of 23 members, with seventeen members representing higher education, K-12, libraries, health care, counties, cities, citizens, labor, the commissioner of the Department of Commerce, the commissioner of the Department of Employment and Economic Development and a representative of the Office of Enterprise Technology and six members representing telephone companies, cable providers and wireless providers.

The Task Force must deliver a report by November 1, 2009 to the Governor and the Legislature containing recommendations for the development of a comprehensive statewide plan designed to achieve a state ultra high-speed broadband goal that the Task Force considers appropriate.

The report is to include recommendations for: broadband needs by 2015; policies and necessary actions; public/private cooperation; strategies; financing methods; financial incentives; security; vulnerability; redundancy; costs; economic development opportunities; and, benefits to educational, healthcare and government institutions and also community-based organizations.

The Task Force has no decision-making authority. All of the recommendations in the report will be made to the Governor and the Legislature, who will decide what, if any, action to take. If such action takes the form of legislation, then the Task Force report and recommendations, and any proposed legislation contained therein, will be thoroughly vetted through the legislative hearing process.

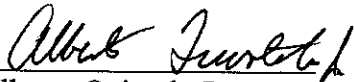
The Task Force held its initial meeting on August 15, 2008 at a private company with facilities made open to the public and scheduled its second meeting on September 19, 2008 for the same location. However, after a complaint was received by the Governor's office, the meeting was held at the State Office Building in St. Paul, Minnesota.

Based on the above, the Task Force submits the following request and clarification on the Open Meeting Law.

1. Does the Open Meeting Law apply to the Ultra High Speed Broadband Task Force created by Chapter 212, Laws of Minnesota for 2008?
2. If the Open Meeting law applies is the Task Force required to meet in a public building or does the Task Force have the option of conducting its meetings in a private location that is made accessible to the public?
3. Since the Task Force doesn't have a primary office like many other public bodies (city councils, school boards, state agencies), how can the Task Force meet the requirements of Minn. Stat. 13D.04 regarding Notice of Meetings and 13D.01 regarding votes to be kept in a journal? Can a web site be used to meet the meeting notice and journal requirements?

4. The 23 member Task Force has nine members from Greater Minnesota for whom travel to meetings may, at times, be more onerous (winter weather conditions, scheduling conflicts due to extended travel times). If a quorum of members is present at the meeting place, may videoconferencing or teleconferencing be used to allow members who are not present to (1) listen to the meeting; (2) provide comments; and/or (3) vote on motions/recommendations being considered at the meeting?
  
4. May the Task Force create working groups of less than a quorum of the Task Force to meet outside of the public meetings to discuss distinct issue areas and to bring recommendations and draft language to the full Task Force at a public meeting for consideration and discussion?

Respectfully submitted



Alberto Quintela Jr.  
Staff Attorney  
Department of Commerce  
85 7<sup>th</sup> Place East  
St Paul MN 55101-2198  
651 297-2117