

**VCBB Draft of 12/12/2022**

**Vermont Community Broadband Board**

**Policies Regarding Mapping and Service Data and Overbuild**

Policy Objectives:

- This policy specifies the data which the VCBB may consider in making decisions about grants to an eligible provider or Communications Union District (“CUD”).
- This policy also describes how the VCBB may evaluate changes to proposed eligible addresses to be funded by a grant .
- This policy recognizes the broader goals of Act 71 in establishing universal service through acceleration of community broadband solutions and the VCBB’s role in supporting the long-term sustainability of grant funded projects.

**SECTION 1: BACKGROUND**

The Vermont legislature enacted Act 71 with the goal of achieving universal access to reliable, high-quality, affordable, fixed broadband through acceleration of community broadband solutions.<sup>1</sup>

Act 71 defines “served” as a location that has access to broadband service capable of speeds of at least 25 Mbps download and 3 Mbps upload.<sup>2</sup> Location is further defined as an E-911 business or residential address connected to the electric power grid.<sup>3</sup>

The Act established the Broadband Construction Grant Program to finance broadband projects of eligible providers that are part of a universal service plan-- that is, they plan to deliver universal service to every unserved and underserved address connected to electric utility service in their District.

**DATA**

The VCBB, and, by extension, CUDs and other eligible providers, need mapping data for two purposes:

1. To determine the set of addresses that must be included in a universal service plan, and;
2. To determine the set of addresses that are eligible for construction grant funding.

Identifying locations and the current services available to them begins with analysis of the most current Interactive Broadband Map data, which is maintained and updated by the Vermont Department of Public Service (“PSD”). It is available online at: <https://publicservice.vermont.gov/content/interactive->

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<sup>1</sup> 30 V.S.A. § 8081.

<sup>2</sup> 30 V.S.A. § 8082(9).

<sup>3</sup> 30 V.S.A. § 8082(7).

[broadband-map](#). The Department of Public Service updates this map data annually around mid-November using information voluntarily provided to it by internet service providers.

The PSD's data set is based on as-constructed data voluntarily reported from providers. These providers may have incentives to report data that is not yet complete, especially since the PSD updates its maps only once a year and there are no penalties for reporting incorrect data. Furthermore, E-911 addresses may be added (or subtracted) due to construction, expansion, or other physical changes.

In order to serve the two purposes listed above, the VCBB may be informed by additional data when considering construction grant applications. The Board must perform certain required analyses in connection with construction grant applications to meet the requirements of 30 VSA Sections 8086(f) and (g).

### **Act 71 8086(f) Three-Prong Test**

Act 71 provides that the Board may provide a grant to an eligible provider to deliver broadband service in a currently served area subject to a three-prong test, as described in paragraph 8086(f). That analysis pre-supposes that the Board be informed about the reported current services at each address. While the PSD data set is a useful starting point for such analysis, the Board must be able to consider other facts.

Section 8086(f) notes that the Board may provide grants to currently served areas provided that they meet the following three requirements:

- (1) The proposed project is a **cost-effective method** for providing broadband service capable of at least 100/100 speeds to nearby unserved and underserved locations;
- (2) Any **overbuild is incidental** to the overall objectives of the universal service plan required for funding under the Construction Grant Program; and
- (3) Before awarding the grant, the Board makes a **reasonable effort to distinguish served and unserved/underserved locations within the area**, including recognition and consideration of known or probable service extensions or upgrades.

**Prong One** requires the Board to evaluate whether the proposal is a "cost-effective" method for reaching nearby unserved and underserved locations. In other words, the Board must determine whether the proposal to build in a served area is an effective use of grant funds to reach nearby areas that are not served, keeping in mind the goal of universal service and the need for a sustainable business plan. This analysis underscores the importance to the Board of having an accurate snapshot at the time that it considers a grant regarding locations that are actually served, unserved, and underserved.

**Prong Two** requires the Board to find that any overbuild is incidental to accomplishing the overall objectives of the universal service plan. "Incidental" is not further defined in the Act, but the Oxford Dictionary defines incidental as 1. accompanying but not a major part of something; or 2. liable to happen as a consequence of (an activity). Thus, the Board must find that the overbuild is not a major part of the objectives of the universal service plan, or that it is liable to happen as a consequence of the build.

**Prong Three** requires the Board to make a reasonable effort to distinguish served and unserved/underserved locations within the area. Act 71 does not further define the Board’s responsibility in this area, nor does it provide authority for the VCBB to compel accurate data submission from providers. We interpret this provision to mean that the VCBB make a reasonable effort to recognize and consider known or probable service extensions or upgrades in its consideration of a grant, and to inform the applicant of any such known or probable extensions. The VCBB can “make a reasonable effort” by considering mapping data as described in the Data Policy section below.

### **8086(g) test**

Act 71, in Section 8086(g), declares “It is the intent of the General Assembly that a broadband project financed under this Program demonstrates an economically sustainable business model that ultimately will be eligible for financing in the private or municipal bond market.”

In the construction grant process, this intention is addressed via the requirement that the Board determine that each eligible applicant have an Act 71 Compliant Business Plan for the proposed Universal Service Plan before the award of a construction grant. The business plan shall include, but is not limited to: high-level engineering and design plans, market analysis, take-rate assumptions, and as relevant, cash flow positive date, loan payoff date, financing models, pro forma financial projections, estimated construction costs, ideal operational models, and an evaluation of risks including labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses. This requirement applies to all eligible applicants.

## **SECTION II: DATA POLICY**

The VCBB shall adopt the following data policy:

- 1) It shall use as a starting point the most recently released as-constructed PSD data.
- 2) By policy, the VCBB focuses exclusively on wired connections. Any address in the PSD data where the only service that meets or exceeds 25/3 Mbps is wireless shall be:
  - a) a mandatory inclusion in a universal service plan and;
  - b) deemed an eligible address for the purposes of receiving construction grant funding and not subject to any overbuild restrictions.
- 3) When considering a grant application, the VCBB may consider factual as-built information provided by applicants or providers that corrects or supplements the PSD data.
- 4) The VCBB must make a reasonable effort to recognize the cost of reevaluating data, construction plans and business models each time new information becomes available.

### **SECTION III: OVERBUILD POLICY (For VCBB Construction Grant-Funded Activities)**

*The VCBB is committed to providing eligible applicants that commit to a universal service plan with every opportunity to be commercially and technically successful. This may include instances of competition with existing providers under certain parameters that comport with the factors of 30 VSA 8086(f).*

Any overbuild must meet the 3-prong test:

1. Any overbuild must be a cost-effective method of reaching nearby un/underserved areas;
2. Any overbuild must be incidental to accomplishing the overall objectives of the universal service plan. Overall objectives include the business factors in providing universal service to the district, including a workable business plan, the necessity to reach all unserved and underserved addresses in the district that are connected to the electric grid, and the necessity to build a network with resiliency, redundancy, and excess capacity in the area; and
3. In analyzing overbuild, the Board must make a reasonable effort to distinguish served/underserved/unserved areas within a district, including analyzing the data from the PSD maps and any data presented by applicants, providers or those similarly situated that contradicts, augments, or otherwise conflicts with that data.

Inclusion of funding in a construction grant for such overbuilds shall be based on reasoned interpretation of the as-built data as described in Section II above. The VCBB shall document its findings of the situation at the time of the grant in the award documentation in accordance with 8086(f).

In order to meet the criteria above, the Board provides applicants with the following guidelines regarding incidental overbuild:

1. Point-to-Point Fiber that must run through served areas to serve unserved or underserved locations or is a cost-effective alternative is incidental to the objectives of the overall service plan.
  - a. Examples include mainline access, trunk routing, diverse trunk routing to create a fiber ring, network hub integration, and routes necessary enroute to or supporting delivery of service to unserved and underserved locations.
  - b. Addresses along these routes, or within reach of a splitter designed to serve unserved or underserved addresses, would also be incidental overbuild.
2. Grant applicants must be prepared to demonstrate why such overbuild is incidental to the overall universal service plan, which should include an analysis demonstrating how the overbuild is a cost-effective way to reach nearby unserved and/or underserved locations and/or an analysis of how the overbuild is incidental to the overall universal service plan.
3. A fiber line that does not serve any underserved addresses and has drops is considered overbuild (except as covered by point 1 above.).
4. the most cost-effective method to connect unserved or underserved areas is not overbuild.

5. In all cases of overbuild, incidental or otherwise, current, or subsequent, the CUDs must account for the potential presence of competition in their business and construction plans.
6. Nothing in these guidelines precludes a CUD from using funds from other sources outside of the construction grant program to equip and serve drops in any area in the CUD's district, CUDs will need to accurately track the use of funds from other sources to clearly delineate where grant funds vs. non-grant funds are spent in the district.

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