

Vermont Community Broadband Board Meeting Minutes

Meetings are being held virtually.

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January 31, 2022

I. Call To Order – 12:03pm

II. Roll call completed by Patty Richards

Brian Otley (Remote- joined at 12:26pm)
Holly Groschner (Remote)
Dan Nelson (Remote)
Patty Richards, Chair (Remote)
Laura Sibia (Remote)
Christine Hallquist- Staff (Remote)
Stan Macel- Staff (Remote)
Kristin Brynga- PSD Staff (Remote)

III. Review of Agenda

There was no motion to make changes to the agenda and Patty proceeded with the meeting as indicated.

IV. Approval of Meeting Minutes

There were no changes to the January 18th, 2022 draft Board Meeting minutes. Holly Groschner moved to approve the minutes. Patty Richards seconded. The motion was approved.

V. State Legislative Updates and Action

Stan Macel presented an update on the proposed amendments to Act 71 by which changes to the language would be made regarding distribution of a CUD's assets in the case of dissolution. These changes affect 30 V.S.A 8086(c) and section 7. Through discussion with the CUDs, state officials and professionals in the bond market it was noted that one or both of these provisions as written may make it difficult for CUDS to access the bond market. Further, creditors want assurances that they will be able to obtain a CUD's assets through liens before entering into finance agreements. This necessitates the proposed changes which would make a CUD's assets subject to receivership by a court-appointed receiver in the event of a dissolution. Stan noted two options for changes including assets reverting to the State with

language included to specify that the reversion is “subject to any outstanding bondholders’ or creditors’ liens”. The second option removes reversion to the State and instead subjects the reversion to a receivership by a court-appointed receiver.

Christine noted that they had reached out to several individuals for comment including Jim Anderson, Capital Advisor for ECFiber, VCUDA, Eli Emerson and Paul Giuliani, EC Fiber’s bond lawyers. Through those discussions, one concern raised by VCUDA was a lack of statutory definition to define “material failure” as included in the Act 71 language. Stan believes that the board has the ability to define “material failure” and Patty indicated that the board will need to make a policy definition for this in a future meeting.

Holly questioned the authority of the court to appoint receivership for municipal entities. This has not yet been confirmed. Christine proposed making the recommended changes conditional upon confirmation of court authority.

Public comment regarding the impact of proposed changes were taken from Christa Schute, Will Anderson, Irv Thomae, Ann Manwaring and Magna Dodge.

Following public comment, Staff recommended that the board approve changes to only section 8086(c) with the receivership option and leave the Section 7 language as is. Holly made a motion to recommend the Staffs’ proposed language change to section 8086(c) that allows for receivership as a result of a CUD’s failure to meet its financial obligations. Patty seconded the motion. The motion was approved conditional to confirmation of judicial authority for receivership.

Action items coming out of this were:

- The board will make a policy definition for “material failure”.
- Staff will further review the language in section 7 to determine if further changes are warranted.
- Based on these discussions Staff will confirm judicial authority for receivership.

Stan Macel gave an update to the Board on S.166 which proposes to require the Public Utility Commission (PUC) to revise its rules to include enhanced consumer protection provisions related to the cleanup of utility construction sites. Minor changes to the original proposed changes were indicated with the hearing postponed to next week. No action needs to be taken by the board regarding these changes.

Stan Macel gave an update to the Board on S. 222 which was approved by the Senate on January 12, 2022 and signed by the Governor allowing electronic-only meetings through January 15, 2023. The Board understands that this bill applies to the Board and all CUDs, and unanimously agreed to remain entirely remote until there is agreement that it is safe to resume in person meetings.

Stan Macel gave an update on S.167 which proposes an extension of the date to achieve statewide access to 100/100 Mbps from the end of 2024 to the end of 2029. This update is only for the Board's information currently with no Board action required.

Stan Macel noted that Christine attended the House Energy and Technology Committee hearing to discuss critical communication expansion programs and broadband investment aspects of the Governor's proposed budget. June Tierney and Clay Purvis from the PSD discussed the communication program at the same meeting, and the committee had many questions. A follow-up meeting will be scheduled in the coming weeks to continue the discussion and hear Christine's testimony regarding broadband investment.

VI. Update on Act 71 Construction Grant Program RFP

A pre-application came in from Maple Broadband. That application required some changes and the CUD is working to make those changes so there is nothing to bring to the Board currently.

VII. Review of Responses to NTIA Questions

Christine presented a draft of comments on the National Telecommunications and Information Administration's (NTIA) Request for Comment on the Infrastructure Investment and Jobs Act Implementation. These comments are intended to provide guidance to the NTIA in its efforts to "help meet the President's goal to close the digital divide". Christine presented all 36 questions and their respective responses to the Board and each was discussed with proposed revisions identified. Christine will make the necessary changes. The comments need to be officially submitted by February 4th, 2022. Christine will provide a revised draft to the Board for review prior to submission. This is a combined document for PSD and VCBB. If there are any disagreements in proposed answers for the final submission, the document can be filed separately from the PSD comments.

VIII. Overview of Regulatory Requirements for CUDS

Stan Macel gave an Overview of Regulatory Requirements for CUDs with emphasis on the complexities involved with both federal and state requirements. Compliance with these requirements is required to successfully apply for grants through a variety of programs. In addition, their activity is also regulated at the federal level by the FCC. They are subject to various quarterly and yearly filings as well as requirements to have certain policies. Additionally, the CUDS must register with the Secretary of State and are subject to State reporting requirements.

IX. Consideration of RFPs for Legal Services

The Board discussed the two RFPs for legal services for 1) Regulatory Assistance and 2)

Contract Negotiations. Holly noted that the Board also needs legal representation to facilitate discussion with the CUDs' legal counsel to ensure requirements under Act 71 are being fully met. Patty indicated that the Regulatory and Contract Attorney decisions do not need to be approved by the Board but that Staff has authorization from the Board to proceed with the process. Christine and Stan can determine what functions are best to outsource or keep in house and draft the RFPs accordingly. Patty also authorized Holly to provide assistance to the Staff with drafting these RFPs.

X. Staff Updates

Christine gave the staff updates in regard to workforce development. The Vermont Business Roundtable is applying for a Good Jobs Challenge Grant and they are including the Fiber Technicians as part of that grant. Training has been set up for fiber technicians in March, April and May. The March program is already full but there is expected still be additional need.

Christine also noted that in order to fill immediate needs they are working with the Communication Workers of America (CWA). The CWA has indicated that there are retired technicians that retired early from Fairpoint that want to go back to work. These are highly skilled and talented technicians and they may be able to fulfill some of the immediate needs for this expertise. Christine has also reached out to Canadian contractors for the summer as well. Christine has also been working with the Congressional Delegation to figure out how to make it easier to bring in these Canadian Workers this summer.

The GIS project is up and running. Alissa is running this project. They have reached out to the AOT to figure out how to roll our needs into the AOT schedules to coordinate when they are digging up the roads so that we can get conduit buried.

The Board expressed its condolences to Rob Fish and his family on the unexpected passing of his father. The Board authorized Christine to provide a memorial gift or other show of support to Rob's family on behalf of the Board.

XI. VCUDA Updates

Will Anderson provided an update for VCUDA. Will noted that a discussion had emerged as a result of the Act 71 changes discussed previously in the meeting, that centers around the ability for a CUD that is having financial trouble to merge with another CUD to avoid the dissolution process. Currently the only avenue to accomplish this merger would be for towns to leave one CUD and join another one by one. This presents a potential problem with financing with the transition of assets. Will has requested that the Board consider a policy change that would make it easier for CUDs to merge should the need arise. Laura, encouraged Will to look at this as needing a legislative change because a CUD is created based on statute. She encouraged the VCBB counsel, VCUDA counsel and Legislative Counsel to meet to discuss this further. Holly also brought up the question as to whether the governing board of the failing CUD could vote to transfer its responsibilities and assets to another CUD. That transfer of assets would have to go before the VCBB. Holly

recommends more exploration and further discussion with legal counsel on this topic.

Regarding the proposed RFPs for Regulatory Assistance and Contract Negotiation, Will questioned what the mechanism for funding would be as not all CUDs would need to leverage these resources. He questioned how these resources be distributed. Christine indicated that there is money in the VCBB budget for regulatory expertise so the VCBB is not intending to charge the CUDs for this work.

Will also has recently drafted RFPs for accounting and auditing services across the state. They are under review and Will was wondering if this falls under shared services that the VCBB should be collaborating with VCUDA on. Christine indicated that they will work with Will to determine the best answer for that situation.

Will discussed the labor strategy. He indicated that the Make Ready process could use some additional support from the VCBB. The utilities across the state have three pre-qualified contractors each who perform Make Ready work. Some of these are known to the CUDs and some utilities have not disclosed these agreements which precludes the CUDs from being able to also contract with them for Make Ready work. Will questioned whether there is any way for the VCBB to assist with this problem. The other issue he noted is that there could be a much higher rate of poles that are damaged or derelict than disclosed and that the utilities have not done much work to remedy this. Christine suggested that this be put on the next agenda for the VCUDA meeting so that Christine can learn more about this and provide further feedback and support.

XII. Public Input

The Board heard public input during the discussion of proposed changes to Act 71 as noted in that section. In addition, the following individuals had further public input during the public input section of the meeting.

Roger Nishi

- 1) Roger provided public comment on NTIA Comment #19 and #24 regarding funding community owned networks as stated. He questioned whether the VCBB can make those statements given that Act 71 includes other providers under its eligible carriers definition. Christine will make note of that and review further. Holly indicates that the solution should follow the statute where eligible providers would be required to have a community provider in tow. Patty indicated that we should retool this language in the NTIA comments.
- 2) Roger also indicated that the timeline in the application process indicates that the grant application can be submitted 10 business days before a board meeting which could create a situation that would require the applicant to submit the full application the same day the pre-application is approved to get approval by the end of the same month.

Steve Huffaker

- 1) Steve raised a question regarding the scope of the contract negotiation RFP. Maple

Broadband has an existing agreement with Waitsfield and Champlain Valley Telecom and if this agreement was considered within scope there could be consequences to opening the agreement which could also have implications for the overall Maple Broadband Build Plan. Holly indicated that the intent is to provide assistance, not to completely revise existing agreements.

- 2) Steve indicated they revised their Build Plan to account for incidental overbuild requirements in the RFP. While doing this they discovered that only about 28% of their subscribers would be qualifying. They would need about 1,000 or more subscribers to gain access to the bond market. If the only funding they receive is from VCBB grants with the noted caveat, they will not be able to access the bond market until after construction is complete. Steve wants the board to be aware of this as it may be a problem for other CUDs as well. Christine indicated that she will review further and Staff will make a recommendation to the board on this issue. Patty inquired as to whether Steve had considered joining with another CUD but he indicated that at the current time the only possibility would be with Otter Creek. Laura indicated that she would be in favor of providing additional support for those discussions.

Will Anderson

- 1) Will indicated that in regard to Steve's comments about Otter Creek, he is willing to help facilitate those discussions. Otter Creek is working on an RFP to establish a construction partner currently so now might be a good time to have those discussions. Another possible solution in regard to overbuild, is the new Treasury final rule for ARPA which has broadened the restrictions for overbuild. The new language allows the funds to be used anywhere the need for faster and more reliable internet connection can be demonstrated. This isn't part of the current RFP or Act 71 but using some of the Treasury language would allow for greater flexibility.

XIII. Executive Session

Patty Richards made a motion to go into Executive Session, to discuss confidential negotiations, where premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage (1 V.S.A. Section 313.1). Dan Nelson seconded the motion. The Board approved the motion and went into executive session.

XIV. Motion to Adjourn

Patty Richards confirmed that no action was taken in the Executive Session. Dan Nelson made a motion to adjourn. Brian Otley seconded the motion. and the meeting was adjourned at 4:04pm.