

**Vermont Community Broadband Board Meeting Minutes**  
**Meetings are being held virtually.**  
**February 14, 2022**

**I. Call To Order – 9:03am**

**II. Roll call completed by Patty Richards**

Brian Otley (Remote)  
Holly Groschner (Remote)  
Dan Nelson (Remote)  
Patty Richards, Chair (Remote)  
Laura Sibilila (Remote)  
Christine Hallquist - Staff (Remote)  
Robert Fish – Staff (Remote)  
Stan Macel – Staff (Remote)  
Alissa Matthews – Staff (Remote)

**III. Review of Agenda**

Rob Fish noted that there would be a need for an executive session. Patty Richard added it to the end after public input.

**IV. Approval of Meeting Minutes**

The Board discussed the January 31<sup>st</sup>, 2022 draft Board Meeting minutes. Holly Groschner moved to approve the minutes. Dan Nelson seconded. The motion was approved.

**V. Material Default (materials included, discussion only)**

Stan Macel presented a summary of the steps that would be used to determine whether a material breach had occurred. Failure to meet Bond Covenants, major deviations from construction schedule targets, failure to meet performance measures, poor workmanship and safety practices were among the possible triggers discussed. Failure to meet financial obligations and bond covenants would be the only hard trigger and most of the other items are seen as indicators of material breach that need to be specifically defined.

Items discussed included:

- The VCBB staff bond covenants and/or financial agreements, failure to meet construction schedule or operational performance measures, poor workmanship, safety practices, audit findings, debarment.
- Patty Richards commented on the need to establish clarity around what “material” means for each item. These are indicators, not Threshold.
- Brian Otley questioned what action would be applied – Christine clarified that as outlined in “step 2”.
- Holly Groschner roll back to the bare bones of when the VCBB would take action. Some of these items are good practices that should be encouraged, but they do not rise to the level of material breach. Material breach should be for extreme

misrepresentations or failures that have the potential to undermine the core purpose of the grant. Holly also questions whether we have the authority to consider some of these minor items a material breach, Brian agreed.

- Laura Sibilia questioned how we protect the quality and integrity of these networks, but that is not necessarily a material breach issue.
- Holly described the need to establish baseline performance criterion that are enforceable and can hold these entities accountable. Measures cannot be vague, they need to be bright-line enforceable standards of egregious failures, not hand holding and watching every move of a CUD to determine when things are drifting towards material breach.
- Dan Nelson proposed having this be a judgment call by VCBB and not making these things automatic. There needs to be flexibility in the case of a CUD going awry but making good faith efforts at improving. It was reiterated that these failures need to be egregious.
- Holly suggested that we may be a little late to apply standards, and that if this is really going to be a remedial opportunity to the CUDs. She questioned if a CUD is not enforcing its rights under an operating agreement, can the VCBB be its successor in interest to enforce those rights? Somebody needs to have the right to enforce the agreement with the operator to a bare minimum standard.

VCBB Staff will follow up with CAPI, and VCUDA, CUDs, and EC Fiber to respond to a list of questions about the standards they have established with their operating partners and work to redraft.

#### **VI. Lamoille Broadband Pre-construction Grant amendment**

Christine Hallquist introduced the Lamoille Broadband Pre-construction Grant amendment request.

Val Davis explained their needs related to the amendment. It will require a no-cost budget change to add part-time staff and office expenses, reallocated from excess funding from a pole study. They will still conduct the pole study and results will be shared as public data.

There was a discussion of the protocol when a no-cost budget change amendment is being pursued by a grantee and whether that needs to be brought before the Board. Patty Richards questioned a threshold or standard for what levels of changes need to be brought before the Board. VCBB will come back with a policy recommendation.

Holly Groschner made the motion to approve the amendment as proposed. Dan Nelson seconded the motion. The motion was approved.

#### **VII. Maple Broadband Pre-construction Grant amendment**

Christine Hallquist introduced the Maple Broadband Pre-construction Grant amendment request including a \$635,000 budget increase.

Magna Dodge explained the request to increase funding to cover administrative costs for the full two years, \$200,000 in make-ready design costs, and marketing services that they have

received proposals that have come in at over \$315,000. Maple Broadband has no paid staff and so this marketing budget is needed to establish their brand and cover all related expenses.

Holly Groschner highlighted the importance of establishing the regulatory position as a provider to access federal subsidies for assistance.

Rob Fish clarified that bond banks penalties are only triggered when you have pension obligations and that otherwise there is no penalty for having employees.

Patty Richards asked if this request would put Maple Broadband near their allocation limit and Christine confirmed that it would not. She also asked if the marketing costs were reasonable compared to what is paid by other CUDs. Holly said this is an emerging area and there may be no examples to compare it to. Holly asked what percentage of a utilities budget is typically for marketing. Christine confirmed that it is usually a relatively little portion. Dan Nelson commented that he felt the cost were reasonable based on his experience.

Laura Sibia commented that this sets a high bar to sustain over time. Patty Richards added that if all CUDs take this approach it would be an almost \$3 million investment.

VCBB staff will connect with VCUDA to explore the possibility of providing separate funding specific for marketing and a statewide informational campaign.

Holly Groschner made a motion to approve Maple Broadband's request of an additional \$635,000 of PreConstruction funds. Patty Richards seconded the motion so the Board could take action. Dan Nelson, Holly Groschner, and Laura Sibia voted in favor, Patty Richards voted no. Three to one vote, the motion carries.

### **VIII. Pre-approval Letter of Commitment (materials included, discussion only)**

Rob Fish introduced the idea of a pre-approval commitment letter that would provide the certification that the CUDs are the presumed recipient of grant funds. These grant anticipation notes would be helpful when sourcing supplies and other contracts.

Holly Groschner raised concerns that this would be making a material representation to a 3<sup>rd</sup> party and that the language in the certification should be changed to "undersigned".

Dan Nelson said that he would support it provided it was a non-binding statement. Laura Sibia concurred.

### **IX. Parking Lot Review**

Christine Hallquist reviewed the remaining topics in the parking lot, including the bond market objectives for sustainability that will be a topic at the next Board meeting, the VCBB Dashboard that will be addressed in March, and material default that was discussed today.

Added from today's discussions were marketing expenses, pre-approval letter impacts, and statewide collaborative funding with VCUDA.

### **X. Staff Updates**

Rob Fish provided the update that 3 CUDs (Maple Broadband, NEK Broadband and WCVT for the town of Bolton) have completed the pre-application and will begin the full application process.

VCBB has been asked to provide testimony in regards to the \$51 million budget proposal for cell towers in House Energy & Tech Committee, and discuss housekeeping for S.166 in Senate Finance Committee. Christine Hallquist will be presenting that the legislature made a decision that the VCBB shall focus only on broadband at this point.

Rob Fish confirmed that a contractor for the Fiber Optics Engineer Services has been chosen and we are in negotiations and shared that two RFPs for outside legal services have been posted, and staff is continuing outreach for the Project Developer position and accepting additional applications.

## **XI. VCUDA Update**

Will Anderson provided an update for VCUDA. He discussed the material compliance policy and stated that the CUDs do not have an official stance on the material default standard but reiterated that clarity around how to comply is the priority. He will help to gather information about the standards of performance from the CUDs.

Will confirmed that there would likely be interest in a statewide strategy for marketing, however the economies of scale may only be effective if the CUDs all adopt similar strategies.

VCUDA considered the issue of incidental overbuild at their meeting last week and that they preferred to let it lie. Will brought up that under Act 74, it may be in the power of the VCBB and in the interest of CUDs to implement a policy where the applications are considered based on the treasury final rule instead of changing Act 71.

Rob Fish clarified that if the new federal Infrastructure Bill funding requirements conflict with Act 71 that Act 74 language may allow the VCBB the flexibility to make changes as necessary as it related to federal funding eligibility.

Will expressed the benefits from his perspective of the Letter of Commitment policy that would simplify the process of negotiating bulk purchase of supplies for the CUDs.

## **XII. Public Input**

Two members of the public provided input.

- Irv Thomae commented on the marketing conversation and that the biggest problem that ECFiber had was managing expectations. The CUDs will not have full control over all factors of how quickly it can deliver services.
- Ellie de Villiers stepped forward and introduced herself as a member of the Executive Committee of Maple Broadband. She shared that the logistics associated with providing affordable access while prioritizing unserved and underserved addresses will likely cause conflict with the 20% overbuild interpretation.

## **XIII. Executive Session**

Patty Richards made a motion to go into Executive Session 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). 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 and made a motion to adjourn. Dan Nelson seconded the motion. The meeting was adjourned at 11:54am.