

Vermont Community Broadband Board Meeting

Monday, April 1, 2024, 12:00pm to 4:00pm

Meeting Minutes

I. Meeting Call to Order, Roll Call, and Approval of Agenda

Patty Richards called the meeting to order at 12:03pm, noted that they moved the regular April meeting up to avoid a conflict with the eclipse on April 8, 2024. She completed roll call:

- Patty Richards (Remote)
- Laura Sibilila (Remote – joined at about 12:34)
- Brian Otley (Remote)
- Holly Groschner (Remote - joined at about 12:05)
- Dan Nelson (Remote – absent from 1:30-3:00)
- Christine Hallquist - Staff (Remote)
- Robert Fish – Staff (Remote)
- Toni Clithero – Staff (Remote)
- Heryn Herzog – Staff (Remote)
- Alexei Monsarrat – Staff (Remote – joined at about 12:10)

Ms. Richards made a motion to approve the agenda. Mr. Nelson seconded. Ms. Richards noted that Mr. Nelson has to leave from 1:30-3:00. The agenda was approved unanimously.

II. Public Comment

Lisa Birmingham, Lamoille FiberNet, wanted to thank VCBB staff for all the work on trying to pin down the available ARPA funds. She asks the Board to finalize the allocation of those funds.

Christa Shute, NEK Broadband, addressed the request by ECFiber for redistribution of \$10 million of ARPA funds. She doesn't object to additional ARPA funds being made available to ECFiber, but she does object to any funds that have been allocated to NEK Broadband being redistributed. She gave additional details to explain her reasoning.

Irv Thomae, ECFiber, wants to encourage the Board to focus on affordability, which is what ECFiber's request has to do with.

III. CVFiber Amendment Request

Alexei Monsarrat explained this was an amendment they had discussed at the last meeting regarding what CVFiber and NEK Broadband are working

together to do. Jennille Smith, CVFiber, explained that instead of reducing miles to ensure universal service, they would continue to promise to service the same 2101 addresses, however they will need additional time to serve those addresses. The grant amendment on the table now is to come up with a list of 2101 addresses, a revised list, and to extend the date by which they must serve those addresses to September 30, 2026.

Ms. Groschner asked whether APRA funds are obligated by grant agreement or by allocation. She asked Ms. Smith if this is a papered grant. Ms. Smith answered yes. Ms. Richards clarified that they are not asking for more funds, but an extension of time. Ms. Shute jumped in and said it's an extension of time and a modification of the network scope, retains same address number, and provides some flexibility in moving addresses in order to hit more addresses per mile.

Ms. Groschner asked why they aren't being presented with modified language for their grant agreement. Ms. Shute said they are, and it is in the Board packet. Ms. Groschner said she doesn't understand what the impact of the change would be. She also asked if this is triggering overlap and is concerned about what impact this has on the relationship between CVFiber and NEK Broadband.

Mr. Otley asked what the delta is between the original addresses and the new addresses. Ms. Smith answered that they are the same addresses, but suggested they go into executive session if they are going to go into any more detail.

Ms. Richards moved that they go into executive session under 1 V.S.A. s. 313 (a)(1)(A), which protects information concerning contracts where premature general public knowledge would clearly place the public body or person involved at a substantial disadvantage. Ms. Groschner seconded. It was approved unanimously (Ms. Sibilia was not present). They moved into executive session at about 12:20 and returned at about 1:08. Ms. Richards moved that they approve the requested amendment to the CVFiber grant to modify the award end date and to replace the network construction paragraph in its entirety as proposed on page two of the [Board Packet](#), noting that the changes do not affect the universal service plan of the grantee or the funding. Mr. Nelson seconded. The motion was approved unanimously.

IV. Grantee Policy Approval

Ms. Clithero explained the Grantee Agreement Policy has had some edits suggested by Ms. Groschner. Mr. Otley made a motion to adopt the policy in its current form as it reads in the Board Packet. Mr. Nelson seconded. The motion was approved unanimously.

V. ECFiber Request

Ms. Richards explained that F. X. Flinn, ECFiber, reached out to her on or about December 2023 asking for time at a Board meeting to talk about grant opportunities for ECFiber. Ms. Richards wants to present opportunities for CUDs to talk to the Board. She said they may make a decision or not after they listen to the request.

Mr. Flinn described ECFiber's request, which can be found in the [Board Packet](#). Ms. Richards asked Ms. Hallquist for a staff response to the request. Ms. Hallquist said they have \$3.8 million of ARPA funds, and the strategy is to keep \$2 million in reserve for contingency, which is very important because we need \$57 million for BEAD match. We were hoping to use infrastructure for the match, but NTIA has said we cannot do that. We are negotiating with them. Going back to the beginning, VCBB developed a formula to fund 60% of the CUDs. In summary, they have \$1.8 million available with a request for \$10 million. So, the only way to move forward is for the Board to direct staff to change the allocation formula, which leaves Northwest and NEK, it would have to come from their grants because they haven't been issued yet. That would have a big impact on NEK and Northwest. Ms. Hallquist recommends not granting this request based on fairness to the other CUDs.

Irv Thoma spoke about the request. He said ECFiber is 85% bonded debt and 15% grants. That means that their customers will have to pay a higher rate than in other CUDs because they have that debt. He says they are trying to do the best they can for their customers, especially their low-income customers. Ms. Richards said she applauds their accomplishments and efforts but doesn't know how they can change the allocation formula after the fact. She asked if they have applied for other grants. They applied with Northern Borders and did not get it. They got RDOF money. They are looking at other possibilities.

Ms. Groschner said she would like to walk through the slides in the Board packet and asked if "allocation" is the same as "obligation" under ARPA funding. The slides suggest there is a lot of money that is not obligated. Ms. Groschner disclosed that she is a select board member in a town that is served by ECFiber, so she will not be voting. She said she would have liked to see more affordability analysis in ECFiber's request.

Ms. Clithero explained that to be obligated there has to be a legal liability or an encumbrance, such as a signed grant agreement or a verbal approval of a grant. If it's allocated by policy, but there's not a grant agreement, there is not an obligation. There is about \$50 million allocated but not obligated. Ms. Hallquist said that money will be for NEK and Northwest.

Mr. Fish reviewed the slides explaining the ARPA amounts that are included in the [Board Packet](#). They also discussed how match will work for BEAD. Ms. Groschner asked if the Board's conditional approval of ARPA funds to CUDs for BEAD match constitute an obligation sufficient under ARPA (even if it's contingent upon BEAD approval?) The ARPA money has to be obligated by December 31, 2024. Board members would like to know from staff: is the use of ARPA dollars permissible for BEAD match, are ARPA dollars that are obligated with the contingency of BEAD funding truly obligated, BEAD status update and timeline.

Ms. Richards said she does not think it's fair to give the \$1.9 million ARPA money that's unallocated to ECFiber. It's up for grabs for all the CUDs. She is not ready to make a motion. Ms. Groschner said we have to make sure all the money that is allocated will get obligated by the deadline. Should come up with a plan by November 1, 2024. Ms. Clithero said the department has September 30, 2024, as the deadline. Ms. Richards asked staff to develop a plan B for the ARPA money.

VI. Budget Update for Q1 and Q2

Tom Malinowski, VCBF Financial Manager, presented the information contained on page 22 in the [Board Packet](#) with regard to the budget. Mr. Otley asked if Mr. Malinowski would give us an update on if we are ahead or behind budget. Mr. Malinowski said he would prepare that information for future presentations.

VII. Legislative Update

Gwynn Zakov gave an update on bills we are following. The first is H657. It should pass the House tomorrow. S181 is in the House Environment and Energy Committee. There was testimony last week from the State Auditor on S199 that was a little concerning. It's unclear when it will be picked up again, but we are monitoring it. It has had broad support.

VIII. VCUDA update

Rob Vietzke said VCUDA would like to participate in discussions around ARPA plans as described earlier in the meeting. He said they are also monitoring S199 because it is important to the CUDs. Several of the CUDs and VCUDA filed to intervene in the sale docket for the Consolidated change of ownership.

He also discussed BEAD match issues and how important it is for the CUDs. Ms. Hallquist said we are working with other states on this issue. Ms. Richards suggested working with CTC on this issue since they are working on it nationwide and they are already our consultants. Ms. Groschner suggested

staff come up with a written plan for how we are dealing with this and for VCUDA to give us feedback on it. Alexei Monsarrat gave an update on the latest curing we have done with the NTIA which will be posted on our website. We have been working with Vernonburg, CTC, and other states. Board members would like a statement from CTC about how Vermont is doing on this issue relative to what they're seeing elsewhere (Joanne Hovis).

IX. Parking Lot

Ms. Hallquist went through the Parking Lot document included in the [Board Packet](#).

X. Final Public Comment - none

XI. Agenda Item # 13 – Added

Ms. Richards made a motion to move into executive session at about 3:13 to discuss Board evaluation and personnel matters. (1 V.S.A. s.313(a)(3), authorizing a public body to hold an executive session to consider personnel matters). Ms. Groschner seconded. It was approved unanimously.

Action Items:

- Ms. Groschner asked if the Board's conditional approval of ARPA funds to CUDs for BEAD match constitute an obligation sufficient under ARPA? (even if the grant is contingent upon BEAD approval?)
- Is the use of ARPA dollars permissible for BEAD match, are ARPA dollars that are obligated with the contingency of BEAD funding truly obligated, BEAD status update and timeline.
- Ms. Groschner said we have to make sure all the money that is allocated will get obligated by the deadline. Should come up with a plan by November 1, 2024. (Sept. 30 department deadline)
- Ms. Richards asked staff to develop a plan B for the ARPA money for May meeting.
- Ms. Richards suggested working with CTC on this issue since they are working on it nationwide and they are already our consultants. Ms. Groschner suggested staff come up with a written plan for how we are dealing with this and for VCUDA to give us feedback on it.
- Board members would like a statement from CTC about how Vermont is doing on this issue relative to what they're seeing elsewhere (Joanne Hovis).
- From parking lot: Ms. Groschner would like to review the ARPA slides from today's meetings more slowly at a future meeting.
- More information on Ookla at a future meeting
- Change lien policy to recoupment policy

- Look at affordability policy in light of end of ACP – put that on parking lot
- Appeals process for adverse rulings and conflicts to be developed