

Vermont Community Broadband Board Draft Meeting Minutes
Meetings are being held virtually.
May 16th, 2022

I. Call To Order – 1:12pm

Roll call completed by Patty Richards

Patty Richards, Chair (Remote)
Brian Otley (Remote)
Laura Sibilia (Remote)
Holly Groschner (Remote)
Dan Nelson (Remote, joined at 1:54pm)
Christine Hallquist - Staff (Remote)
Robert Fish – Staff (Remote)
Stan Macel – Staff (Remote)
Alissa Matthews – Staff (Remote, audio only)

II. Review of Agenda

Patty Richards made a motion to approve the agenda. Holly Groschner seconded, and the motion was unanimously approved.

III. Approval of Meeting Minutes

The Board discussed the April 25th, 2022 draft Board Meeting minutes. Holly Groschner raised issues with section IX and Alissa Matthews confirmed that some unedited transcript was left in and will be corrected. Patty Richards made a motion to approve the amended minutes. Brian Otley seconded, and the motion was unanimously approved.

IV. Eligibility Screening Appeal Review – GoNetspeed (Otelco)

The Board considered an appeal from GoNetspeed dba Otelco in accordance with the appeal process outlined in the Construction Grant RFP. Otelco submitted a construction grant proposal to serve four of the same towns that are included within the Maple Broadband Universal Service Plan. Otelco does not have a formal relationship with Maple Broadband. Staff rejected the submitted proposal because it appears to conflict with and undermine the Maple Broadband Universal Service Plan. Maple Broadband has also represented that moving forward with the Otelco proposal would negatively impact their Universal Service Plan. The statutory basis for this decision is included in Act 71 § 8086(e) which states:

The Board shall not award a grant to an eligible provider who is not a communications union district unless the Board determines that the provider's universal service plan does not conflict with or undermine the universal service plan of an existing communications union district.

The RFP for the Construction Grant process includes further language stipulating the following:

The proposed project does not conflict with or undermine the Universal Service Plan of an existing Communications Union District. If a non-CUD eligible applicant is applying to provide service to a member town in a Communications Union District, a letter of collaboration from the Communications Union District(s) must be included in the application package. The Board reserves the right to offer consideration of projects without such letters upon notice to the

affected CUD, but it is the responsibility of the Applicant to justify how the proposed project does not undermine or conflict with the Universal Service Plan of an existing Communications Union District. The Board reserves the options to review or dismiss such applications.

Both Otelco and Maple Broadband were given the opportunity to present to the Board in defense of their positions. The Board also heard from the consultants at CTC who were asked to review the application and comment on any identified concerns.

Otelco Presentation

Richard Clark, President and CEO of GoNetspeed, provided a brief description of Otelco's intention to build within the towns of Shoreham, Whiting, Orwell and Cornwall. Maureen Hopkins, the associate general counsel for Otelco, gave a more in depth presentation on the Universal Service Plan and why it does not, in their view, conflict with or undermine the Maple Broadband Universal Service Plan. Included as part of that presentation was a discussion of the 2,270 addresses in the four towns that Otelco is proposing to provide with 100% fiber coverage within 24 months. Otelco represented that it is able to provide guaranteed speeds of up to 1 Gig symmetrical to every address with free installation and free customer equipment. It is Otelco's position that they can provide better service at a cheaper rate than Maple to customers within the four towns in question.

Questions from the Board to Otelco included:

- 1) What steps have been taken to resolve this conflict between the two parties prior to arriving at this appeal? What is the history of communication and negotiation between both parties on this issue? Is there a path forward for a partnership?

Answer: There has been three conversations since Fall 2020 with Maple Broadband, initiated by Maple Broadband, in regards to providing broadband to communities within Maple Broadband territory. Otelco was not originally interested because they do not have an appetite for building broadband in networks that they do not own and control.

Richard indicated that they can build within the next 24 months whereas it might be five years for Maple. The solution Richard sees is to bifurcate the geography to get broadband to consumers in the most efficient manner. They would need a 1:1 grant match to make their model work in those four towns. They would be building 100% of addresses in those towns.

- 2) What communications have **happened with the impacted towns?**

Answer: Richard has presented to the select boards of 6 of the 7 towns. Richard indicated they have letters of support from Whiting and Shoreham. He does not believe this support is considered an either or solution in the mindset of the towns. They are not distancing themselves from the CUD they just wanted options.

- 3) Is Otelco a small carrier?

Answer: Yes, per statute.

- 4) How is Otelco financing their development?

Answer: They have sufficient capital. They will spend \$200M this year building capital projects.

- 5) Is Otelco aware of the fact that the network, if it is subject to this granting agreement, cannot be transferred without VCBB approval?

Answer: Yes, PSD has always had to approve those transfers anyway. This is just another layer of approval. Maureen indicated they are aware of the Act71 requirements.

- 6) How will Otelco ensure public accountability without being part of the CUD?
Answer: As a private entity they already have accountability to the PSD. Any sale of assets requires regulatory approval. Consumer complaints are also dealt with through the PSD. They also indicated that they have done several public private partnerships in Maine and Alabama. There are periodic updates required for those partnerships and milestones that must be met.
- 7) How much did the public service board say you have to invest in your network?
Answer: \$500k for maintaining the network. Internet is not a regulated business.
- 8) When you are done building will all of your territories have fiber to all addresses?
Answer: Yes. 3900 locations. The 50% match requested is for the 4 towns in this plan only.
- 9) How much is underground versus aerial?
*Answer: 25-30% is underground with the remainder aerial.
(Steve Huffaker of Maple Broadband disagreed with the assessment of the buried portion of the network and Richard clarified that he agreed with Steve's assessment later in the meeting.)*
- 10) When you take funding like this there is the expectation of there being open access? Are you prepared for that?
Answer: It comes down to the definition of open access. From a practical standpoint it would be cost prohibitive for another ISP to come in and try to use those open access lines. The publicly funded part would be quarantined to meet this expectation.
- 11) When we are looking at the significant amount of public funds, how do you envision public accountability working in the model that you are proposing?
Answer: The consumer has the greatest public accountability. Otelco is open to discussing accountability provisions that the State would impose. They are very open to rational, practical and measurable regulations.
- 12) Has Otelco had any service quality complaints?
Answer: Typically there are a couple a year. It is a very small number. This has been the case since 2011 prior to acquisition. They can't speak to anything prior to 2011.
- 13) Are you willing to follow the guidelines in Act71 and Act79 to access these funds? Part of this legislation does map out that any entity that takes funds would be required to give the money back if they are not in compliance.
Answer: Yes, or they wouldn't be making the proposal. They count as a small carrier so are eligible. They are well versed in fulfilling reporting requirement. They are already filing about 500 reports a year for various regulatory agencies. Richard does not see any issues with the requirements for these grants.
- 14) Is the \$80 rate you are proposing the same as other markets you serve?
Answer: It is not the same for all states but would be consistent for all of Vermont customers. The rate indicated is based on getting the public funding from the VCBB. In Connecticut the price is lower because of competition. They are not the incumbent in Connecticut. Connecticut is the cheapest state for them to build network because there are no make ready costs.
- 15) The cost of funding under municipal bonds has historically been considerably less than private investment so how will you sustain rates that are below those who are municipally funded.

Answer: They will be building with equity not loans so there is no interest expense. They believe there is the same unpredictability regardless of the business model.

16) Could you raise the capital through private investment if necessary with funding coming at the end of the construction period?

Answer: Yes, they are more than willing to make funding contingent on delivering the service. They have the capital.

17) One of the grant requirements is addressing affordability. Can you speak to that?

Answer: They offer the federal discounted program which is a \$30 per month discount. It is not controlled by Otelco but they assist customers who are willing to provide the information to join the program.

18) ACT 71 is clear about municipalities that have joined a CUD not being eligible outside of the CUD. How would you rectify that?

Answer: They do not read Act71 as excluding towns based solely on CUD membership of those towns.

19) Is your definition of network ownership such that you have to own every element? What about a discounted lease rate?

Answer: The assets required to deliver service is the definition they are using to make their decisions. They do not lease assets for last mile or any other scenario. It is unlikely that a discounted model would work for both them and the lease owner in their opinion.

Maple Broadband Presentation:

Steve Huffaker and Ellie de Villiers gave a presentation regarding the business plan for Maple Broadband, inclusive of a discussion of the Otelco plan's impact on Maple Broadband's Universal Service Plan. They indicated that taking those four towns out of the CUD wouldn't end their program completely but would be a significant challenge. They indicated the ways in which Otelco's proposal undermines their Universal Service Plan include: decrease in revenues, increase in private debt requirements, potential loss of guarantor for private debt, curtailment of their ability to issue municipal bonds in larger increments, and reduction or elimination of their ability to provide subsidies to low-income residents. Overall, Maple represented that if Otelco were to build to those four towns it would significantly increase the risk of failure of their Universal Service Plan.

Questions to Maple Included:

1) Is the fundamental issue between Otelco and Maple a question of who owns the network?

Answer: Yes, that is correct.

2) Have you thought of using multiple providers for a more piecemeal approach?

Answer: When they began to explore an operating partnership with Otelco, they were excluded because they were not seen as stable because their acquisition was not complete. It was deemed a risky acquisition. Multiple providers also creates more complexity for the CUD.

3) Putting the ownership obstacle aside, is there an ownership model that would allow both parties to bring its capabilities and charter to bear and work together?

Answer: The challenge in the current universal service plan is that it is very difficult to work with multiple service partners. Otelco's requirement to own and operate the infrastructure does not work with the Maple business plan.

- 4) If the board were to find that it makes sense to agree to the Otelco proposal, what supports would Maple need from the board in order to be able to carry forward?
Answer: Additional grant funding might help but they would need to reevaluate their whole plan to have a full answer for that and will do so if it becomes necessary.
- 5) Was Middlebury College specific that they would withdraw their guarantee if the Otelco proposal leads to losing those four towns or is it just speculation?
Answer: Per Magna Dodge, the Maple Delegate from Cornwall, she has been the liaison discussing these issues with Middlebury College because their staff, faculty and students are all impacted now and will continue to be in the future. They have an interest in making sure broadband is improved in the broader community. She has not had a specific conversation on the full impact to the guarantee but they have spoke about the Otelco filing and she will follow-up with Middlebury College after the meeting.
- 6) Subsidizing rates question. If you had the Maple network setup as contemplated in the initial business plan, you would be net revenue positive and would be able to reduce rates for some households, is that correct?
Answer: Yes, that is correct and is part of their overall business plan. They also have to plan for a future where there might not be an Affordable Connectivity Program so they want to plan for what happens when that is no longer an option.
- 7) Is it the case that the agreement between Maple and WCVT has an exclusivity provision.
Answer: No, it does not.
- 8) For the four towns in question, are there delegates from those towns on the Maple Board?
Answer: Each town is allowed a delegate. Whiting has opted not to have one but that is their choice, not the choice of Maple.
- 9) Can you envision a model where you had two service providers? Two operator model. Other CUDs have done this.
Answer: They are really trying to keep the model simple. They have done a lot of work to keep it simple and adding another entity to the process creates complexity that they don't feel is of benefit to the CUD.
- 10) For Zone A and Zone C who are the incumbent providers?
Answer: WCVT, Otelco and Consolidated in different parts of the network.

CTC Review Discussion:

Teles Fremin from CTC discussed their review of the Otelco and Maple Universal Service Plans and determined that while there are impacts from the Otelco proposal, Maple's business model could still work. However, the Otelco proposal does bring some fragility to the Maple business model with the removal of those four towns. As part of their review, CTC outlined some of those challenges and they are in line with what Maple presented. Some challenges could potentially be mitigated by increasing Maple's ARPU, but then they would be providing a higher cost to their consumers. Additionally, if there are significant swings in construction and material costs it could impact the Maple business plan substantially. At a high level, Maple still has an operating model that could work if Otelco's proposal were to be approved, but it would have additional fragility if there are any impact swings or changes to the original plan and the original assumptions.

Board Comments Summary:

The Board concluded the appeals discussion for this meeting by expressing their views as follows:

- 1) Patty believes that Otelco's proposal conflicts and undermines Maple and they need to look at the greater good of the state. She would like both parties to go back to the table for negotiations and come up with a solution.
- 2) Holly noted that Otelco is an eligible provider and could be funded if it does not conflict or undermine that of Maple but does not believe they meet that standard currently.
- 3) Laura gave the definition of universal service plan under Act 71 § 8082 (12) "*Universal service plan*" means a plan for providing each unserved and underserved location in a communications union district or in a municipality that was not part of a communications union district prior to June 1, 2021 access to broadband service capable of speeds of at least 100 Mbps download and 100 Mbps upload." Based on this definition she believes Otelco cannot serve the towns in question because they are already part of a CUD.
- 4) Brian indicated that the Board's focus should be whatever gets Vermonters connectivity fastest and with the highest likelihood of long-term success within the constraints of legislation. However, they cannot make a decision that jeopardizes the Maple CUD.
- 5) Dan indicated that it seems like the proposal falls outside of the requirements for approval. He would like to see Maple and Otelco try to work out an agreement.

No action was taken to make a final ruling on the appeal. Instead, the Board gave both parties 3 weeks to work together to come up with a plan that works for both parties. The Board would like VCBB staff to be involved as well in order to help facilitate the discussions between the two parties. Otelco and Maple indicated they are both willing to have meaningful discussions to attempt to come to an agreement on a plan to works for both parties and is good for Vermont.

Holly motioned that we continue the agenda items from this meeting on 5/23/22 at the next regularly scheduled meeting. Patty seconded, the motion was unanimously approved.

Patty Richards made a motion to adjourn. Dan Nelson seconded, the motion was unanimously approved and the meeting was adjourned at 4:30pm.