

Vermont Community Broadband Board Meeting

July 11, 10:00am – 4:00pm

AGENDA

112 State Street, 3rd Floor,
Giga Conference Room Montpelier, VT
Meeting is also being held virtually.

[Click here to join the meeting](#)

Join by Phone; +1 802-828-7667,,389833626#

*Note: there may be additional executive sessions as needed
Premature general public knowledge would clearly place the public body,
or a person involved at a substantial disadvantage (1 V.S.A. § 313(a)1)*

- 10:00 1) Meeting Call to Order, Roll Call, & Approval of Agenda
- 10:10 2) Approval of the July 1, 2022 draft minutes
- 10:15 3) CVFiber Application Decision
- 10:45 4) DVFiber Application Decision
- 11:15 5) NEK Broadband Amendment Decision
- 11:30 6) Approval of Executive Director Authority Policy
- 11:45 7) Tilson Appeal Presentation

12:00pm – 1pm LUNCH BREAK

- 1:00 8) Otter Creek Pre-Construction Application Review and Q&A
Executive Session if necessary (Board & Otter Creek)
*Premature general public knowledge would clearly place the public body,
or a person involved at a substantial disadvantage (1 V.S.A. § 313(a)1)*
- 1:45 9) Maple Broadband Presentation and Q&A
Executive Session if necessary (Board, CTC, & Maple Broadband)
*Premature general public knowledge would clearly place the public body,
or a person involved at a substantial disadvantage (1 V.S.A. § 313(a)1)*
- 2:30 10) Staff Updates
- 2:45 11) VCUDA Update
- 3:00 12) Public Input
- 3:15 13) Parking Lot
- 3:20 14) Legal Analysis of Act 71 Issues – Executive Session – Continued
confidential attorney-client communications made for the purposes of
providing professional legal services to the Board (Presentation by
General Counsel) *Premature general public knowledge would clearly
place the public body, or a person involved at a substantial disadvantage
(1 V.S.A. § 313(a)1)*
- 4:00 15) Motion to adjourn

Press inquiries; please contact Rob Fish, Robert.fish@vermont.gov 802-522-2617

Vermont Community Broadband Board
Board Packet Executive Summary
July 11, 2022
Christine Hallquist, Executive Director
Phone – 802-636-7853
Email – christine.hallquist@vermont.gov

CVFiber Construction Grant Request

VCBB staff is recommending the Board approve the \$12,289,273 Construction Grant request from CVFiber. This amount is CVFiber’s allocation after removing the \$6 million of construction funds the Board already approved. CVFiber’s application, Business Plan and Executable Project plan is comprehensive, realistic and well researched. They are conservative in the take-rate assumptions with an overall estimate of 40.6%. The cost per passing is \$3919. The cost per paying customer is \$9667. We estimate the state overall average per passing is \$7226 with the cost per paying customer estimate of \$14,323.

CV Fiber is planning on receiving an additional \$1,000,000 in matching funds through town ARPA commitments. The Construction and accompanying Executable Project Plan is detailed and realistic. CVFiber has done an extensive amount of outreach to their towns and the public.

DVFiber Construction Grant Request

VCBB staff is recommending the Board approve the \$21,586,088 Construction Grant request from DVFiber to serve addresses in Stamford, Readsboro, Whitingham, Halifax, and Marlboro.

DVFiber’s take-rates are reasonable considering their marketing plan as it builds. DVFiber has proposed slowing down their construction schedule if take-rate assumptions are not met. VCBB Staff have some additional questions about DVFiber’s plan, especially in relationship to the details of their overbuild areas, but overall the project plan is comprehensive and sound with High-Level Design that assures every location can be served affordably and a strong partner in GWI to help them achieve their mission.

NEK Broadband Construction Grant Amendment Request

VCBB Staff has reviewed the NEK Grant Amendment request and recommends that Board approve this request. This \$4,966,800 request supplants the previous \$15,899,039 grant that was approved by the Board earlier. This brings the total Phase One request to \$20,865,889. As the Board saw previously. NEK Broadband has done an excellent job putting together their Business Plan, Construction Plan and Executable Project Plan.

Phase one of the project is building their backbone of 300 miles. This amendment will provide the opportunity for and additional 629 under and unserved addresses to be added to the original grant that would serve 1479 under and unserved addresses resulting in a total of 2118 addresses.

This amendment will serve the towns of Peacham, Groton, Ryegate and Walden to the list in the original application that included the towns of Newark, Sutton, Burke, Lyndon, Kirby, Concord, Waterford and Barnet.

NEK Broadband is using conservative take rates;

- 15% for cabled areas
- 30% for medium density areas (15 to 20 passings per mile)
- 45% for low density areas

Otter Creek PreConstruction Grant Amendment Request

VCBB Staff has reviewed the Otter Creek PreConstruction Grant and recommends approval by the Board for the request of \$421,936.

These funds will be used over and 18-month period to continue the work of developing a partnership with an existing ISP to implement a Universal Service Plan. Based on the current guidance of OCCUD’s business plan, should OCCUD successfully partner with an Incumbent Local Exchange Carrier additional preconstruction expenses such as make-ready and detailed engineering will be avoided.

The following is a breakdown of this PreConstruction Budget:

	Description	Amount
1	Full Time Project Manager 2,652 hrs over 18 mo @ \$120/hr	\$318,240
2	Legal Expenses for Negotiating agreement(s) with provider(s).	\$50,000
3	Accountant	\$12,510
4	Technical Support for Website	\$2,400
5	Operational Expenses	\$21,850
6	Strategic Partnership Development support	\$36,000
	Total	\$441,000

OCCUD consists of 18 member towns, which include:

- Benson
- Brandon
- Castleton
- Chittenden
- Fair Haven

- Goshen
- Hubbardton
- Mendon
- Pawlet
- Pittsford
- Poultney
- Rutland City
- Rutland Town
- Shrewsbury
- Sudbury
- Wells
- West Haven
- West Rutland

Maple Broadband Construction Grant Request

VCBB staff is reserving judgment on whether the Board should approve the \$8,686,000 Construction Grant request from Maple Broadband pending additional analysis from CTC. Maple Broadband has addressed some concerns raised regarding its initial application and Business Plan, including reducing its take-rate assumptions based on competition in the area and slowing down the construction timeline to allow time for additional revenue to accrue. Maple Broadband has been working with CTC to revise its proposal and CTC has requested additional information from Maple regarding its plans. It is possible that Maple Broadband may be able to provide some or all of this information at the meeting on Monday. This information will help inform the staff's decision about whether to recommend approval.

Vermont Community Broadband Board Draft Meeting Minutes
Meetings are being held virtually.
July 1st, 2022

I. Call To Order – 12:12pm

Roll call completed by Brian Otley

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

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

Laura Sibiliala clarified with the rest of the Board Members present that today's presentations from CUDs are informational, and decisions will be reserved for the July 11th meeting.

II. Approval of the June 14, 2022 draft minutes

The Board discussed the June 14th, 2022 draft Board Meeting minutes. Laura Sibiliala made a motion to approve the minutes. Holly Groschner seconded, and the motion was unanimously approved.

III. CVFiber Construction Grant Application Presentation

Jerry Diamantides, Chair of CVFiber presented an overview of their application for phase one which will cover approximately 400 miles and 3000 eligible locations. Jerry provided some background on the CUD, its leadership, the hiring of Jennille Smith, DVFiber's Executive Director, additional plans to hire more staff, along with administrative support from Central Vermont Regional Planning Commission. Jerry also mentioned qualifications of their consultants and contracts with NRTC, Mission Broadband, and KGP, and the value of the professional skills of their volunteers.

Jerry explained that CVFiber have excluded highly served areas to avoid significant overbuild and target the unserved and underserved addresses within the CUD using the ARPA funds.

Holly Groschner asked Jerry to confirm that the project will address the concept of universal service which requires the CUD to have a plan to serve all locations and the map accounts for 100% coverage, if it were to be built out. Jerry clarified that the high-level design map was showing where CVFiber is going to spend ARPA funds, but the design includes the potential for 100% build out to the entire population.

Jerry explained that CVFiber is continuing outreach for town ARPA match funds along with working with NRTC and other partners to seek additional grant funds to ensure affordability of subscription fees. He also mentioned their strong partnership with WCVT, WEC, VELCO, and VCUDA, especially ECFiber and NEK Broadband to share strategies and leverage resources.

Jerry highlighted that CVFiber has already pre-purchased 302 miles of fiber, 400 miles of materials, make-ready for over 2,000 poles, and they completed their entire high-level design, along with detailed design for 5 of their 24 distribution areas that will be constructed by next spring.

Christine Hallquist shared that the staff review found the proposal to be sound, their take-rates are conservative and the cost per passing and cost per customers is about half of the state average.

Brian Otley asked for Jerry to walk through the Universal Service Plan again. Jerry used a donut-hole analogy to describe the areas of Montpelier, Barre, Barre City, and a separate smaller area of Northfield that already have fiber. The design includes capacity to extend into those areas since they are member towns, but construction deployment using ARPA funds will be focused on the unserved and underserved areas first.

Laura Sibilila asked how realistic winter build plans were. Jerry explained that they don't plan to build much in the winter, they will build as long as they can this year and will be able to do installations through the winter. Laura then asked what CVFiber's process for getting commitment with member towns for participation and what have the challenges been. Jerry responded that attendance at Board meetings have been great, but really the surveys they have done are telling of how much interest and need exists for this service. Laura also asked if CVFiber is tracking volunteer time. Jerry confirmed there aren't direct logbooks, but they would be able to provide documentation of how much time has been spent as volunteers if needed.

Laura asked how communications will be managed around outages and if CVFiber has had discussions about those issues with their operator and specifically who will be responsible. Jerry confirmed that their operator's emergency response team would contact with Jerry and Jennille immediately upon an outage and CVFiber would be included in addressing the problems and finding solutions. Jennille Smith added that CVFiber is also designing to prevent outages by adding robust backup generators and they have already started thinking about requirements for a maintenance RFP to be issued to supplement what exists with WCVT because the reliability of the network is very important.

Laura Sibilila noted that CVFiber's application stated that their operator will hold the customer data in confidence and can only use it for the purposes of providing service, and asked if there had been any discussion about what type of entities that would be shared with in terms of providing service and if CVFiber would be notified in the event of any kind of breach of or loss of data. Jerry responded that notices of and responses to breaches is part of their contract and that there's no selling of the customer data or leveraging of customer information and WCVT does that internally for themselves now and CVFiber has been adamant about that same level of confidentiality.

Holly Groschner highlighted how it seems CVFiber is taking on operational roles and asked if that is correct. Jerry explained that there is no intention of it being a turnkey operation, they have an extremely active executive committee, and their Board wants to ensure control of decisions as stewards of this resource. Holly then acknowledged the thoughtfulness CVFiber has brought to scoping the various roles and the commitment of the volunteers and asked if Jerry was still a paid consultant because the activism that it takes to monitor these contracts going forward may not be suitable for volunteer work. Jerry said he was paid when he managed the pole inventories in 2021 but since becoming Chair he has not and disagreed because he feels it depends on the level of oversight and they have consultants designing the network and managing construction, and Jennille, the Executive Director will have direct oversight over all of the contracts. He continued that it really are the procedures that the Board have put in place to keep things moving. Ray Pelletier added that there are no shortcuts to the process and there is intent to hire an operations manager to oversee the contracts with WCVT and ensure performance standards and provide service but they are not running the operation. He added that the statute allows for the officers to be paid, and even though CVFiber's Chairs have not been yet, he

would be in support of it.

Teles Fremin from CTC asked about some discrepancies between the business model and the financial spreadsheet. Jerry explained both are living documents and will continually shift until there are as-builts and a subscriber list. Teles shared that after reviewing the proposal, CTC sent questions and the responses provided by CVFiber answered all of their remaining questions.

Holly Groschner stated that with the clarification on the universal Service Plan, her remaining question would be related to overbuild and may make sense to revisit at the July 11th meeting. Laura Sibia added a question of how CVFiber is addressing the amount of construction activity that's going on in the state right now. David Healy responded that they used the most current data provided by the Public Service Department and they are paying attention to where fiber is being run and have deliberately put some of the distribution areas later in the pipeline. Jerry added that all the designs are field checked and if there is new information there they use it.

Brian Otley confirmed that no Executive Session was needed.

IV. DVFiber Construction Grant Application Presentation

Steven John, Chair of DVFiber introduced the team and provided a brief history of the organization, sharing that David Jones has been consulting as the project manager, they are recruiting an Executive Director, they currently have contracts for professional services from RISI and are relying on Brattleboro Development Credit Corporation for administrative assistance, grants management and accounting.

Steven shared an overview of DVFiber's policies for procurement and financial management and the CUD's priorities of affordability, net neutrality and cyber security, as well as reliability and resiliency. He continued by highlighting Act 71 qualifications including their partnership with GWI and cooperation with Green Mountain Power, Jacksonville Electric, VPPSA, and CCI to accomplish make-ready, and shared their progress to date with a complete high-level design and efforts to build an inventory of fiber and equipment.

Steven confirmed that DVFiber is building to VCBBS established Outside Plant Design Standards to assure capacity and can provide eNNI connectivity to third-party providers to reach any customer location, along with the ability to lease middle mile dark fiber to commercial and carrier customers, when it improved financial sustainability and is beneficial to DVFiber customers.

Steven then shared DVFiber's Act 71 compliant business plan updates including additional towns, broadband availability statistics, and restructured the financial model to reflect planned construction sequence and improve revenue and cost assumptions after incorporating anticipated grant funding.

Steven explained that GWI can average 30 miles per month for construction, so DVFiber hopes to exceed 600 miles of construction over the 24-month project period and will build the backbone first and then the laterals for security and redundancy purposes.

Holly Groschner asked for clarification on the business plan and whether the grant request will carry DVFiber through the 24 months, or how the pieces will all come together. Steven shared that the plan is to connect customers as the construction goes and they anticipate that there's going to be some other funding available through the broadband infrastructure bill. Holly raised concern about the timing and the amount of funding available through IJA, and recognized they hadn't shared any maps that illustrate the complete plan for the District. Steven said they would share

more about the business plan and high-level design maps in Executive Session. Steven also addressed the fact that Winhall and Londonderry are also in Southern Vermont CUD and shared they do have a design to reach those areas but it will come down to who will get there first, and more affordably.

Christine Hallquist commented on the fact that DVFiber needs over \$34 million to complete this plan and only has access to around \$21 million currently and VCBB will work with the CUDs to pace construction but a bridge loan may be necessary based on timing. Rob Fish added that VCBB are also encouraging CUDs to try to access the bond market sooner and will soon have consultants to assist with other creative financing options.

Laura Sibilgia asked about what the CUD has discussed in terms of outages and data breaches and communications in response. Steven shared that they have metrics in their Statement of Work to measure and hold GWI accountable regarding operations and customer service. David Jones added that GWI is committed to customer data privacy, and GWI has been a leader in establishing customer data privacy laws in Maine where they are based.

Laura Sibilgia reminded the group that there is not the ability to regulate Internet Service Providers and the CUD model and the agreements that the CUD's are making with these operators are really critical in terms of things like privacy, understanding how citizens and customers will become aware that there is an outage, how long the outage might last, or that there has been some sort of loss of data.

Christine Hallquist requested that the Board go into Executive Session to discuss additional details. Holly Groschner made a motion to go into Executive Session, inviting DVFiber leadership and their partners from GWI, CTC and VCBB Staff. Brian Otley seconded, the motion was unanimously approved and the Board entered into Executive Session.

Brian Otley confirmed that no action was made in Executive Session.

V. NEK Broadband Construction Grant Amendment Presentation

Christa Shute presented an overview of NEK Broadband's request for an Act 71 Construction Grant Amendment.

Grant Amendment Request Overview

Construction Grant Allocation: \$30,958,003

Town ARPA Matching Fund Allocation: \$4,953,280

Construction Grant Awarded: \$15,899,089

Grant Amendment Request: \$4,966,800

Additional Miles of Construction: 100

Premises Passed: 877 (634 eligible)

Additional Funding: Town ARPA Funds from 4 towns

Christa explained that the purpose of the amendment was to include the contributions of town ARPA funds from Peacham, Groton, Ryegate, Walden, and supplemental spurs that secures sufficient labor from GMP to address capacity constraints from the smaller utilities, by prioritizing additional areas in GMP territory including portions of Danville, Peacham, Groton,

Waterford, Concord, Lunenburg, Lyndonville, and St. Johnsbury, and will be served off of the backbone being built through Lyndon.

Holly Groschner asked for Christa to confirm whether this is a change to the plan and what the ask is for the amendment. Christa reiterated that the request is for an additional \$5 million in grant funds for the additional mileage and drops in these areas, but the business plan has not changed, just the amount out of their total allocation and priority build during this portion of the project, and the acknowledgement of the additional town ARPA matching funds to supplement builds in those areas. Holly then asked how NEK has dealt with what has seemed like unwillingness from towns to fund spurs and drops where the household may not need assistance. Christa confirmed that their presentation to the towns outlined the build plan, and how the match program can assist in towns getting service faster, and did not focus on the funds contributing to drops but rather contributing to the routes through those towns.

VI. Legal Analysis of Act 71 Issues – Executive Session

VCBB Board decided to move this discussion to the end of the agenda, during item X.

VII. Staff Updates

Christine Hallquist shared that VCBB Staff are going to aggressively pursue the Middle Mile Program from IJA. CTC, with their familiarity of the CUD structure and current projects will be helping to plan for that statewide design and application.

Rob Fish provided an update that two consultants are being considered focused on the creative financing initiative to assist CUDs in accessing additional resources. He also shared that unfortunately the person the VCBB made an offer to for the Broadband Project Developer position has withdrawn from consideration and the team is going back to the drawing board to fill that capacity gap.

Rob also mentioned that Chittenden County is organizing to form a Communications Union District and VCBB Staff have met with and will continue to meet with other towns so they can use the tools at their disposal and prepare for voting in their towns this coming November.

Laura Sibia asked who is leading the CUD effort in the Chittenden County area and Rob confirmed that the Regional Planning Commission is leading the effort he is assisting in the process.

VIII. VCUDA Update

F.X. Flinn provided an update from VCUDA. He shared that he has been working to reconcile the fiber deliveries and payments and expressed how important enabling that process and making that deal last fall because even with delays in the initial deliveries Vermont is still going to have everything ordered by the end of the year which should put CUDs out in front of other entities just getting started.

He shared that there hasn't been much success in trying to put something together in terms of collective auditing services or collective financial advisor services, one reason being because the CUDs are all at very different stages of maturity and are taking different approaches to how their economic model is going to work.

Laura Sibia asked FX if the State could do anything to help, referrals from the Treasures Office

or something like that. F.X. responded that he has not pursued that but would be willing to join a call to see what options might be.

F. X. reported that VCUDA is actively looking to hire a new program coordinator and the Board is waiting to hear back from a couple of expressions of interest but is concerned with the amount of capacity needs across the State, VCUDA, and within the CUDs.

IX. Public Comment

There were no comments from the public.

X. Legal Analysis of Act 71 Issues – Executive Session

Brian Otley called the Board into the Executive Session to discuss confidential attorney-client communications made for the purposes of providing professional legal services to the Board (Presentation by General Counsel). Premature general public knowledge would clearly place the public body, or a person involved at a substantial disadvantage (1 V.S.A. § 313(a)1).

The meeting lost quorum at 4:01pm and the meeting was adjourned.

DRAFT

ACT 71 Construction Grant Review Sheet – CVFiber

SUMMARY SHEET

PLAN

Total Estimated Cost of Universal Service Plan: \$55.2M

Total Miles Required: 1084

Total # of eligible addresses: 5311

PROJECT

Cost of proposed project (amount of grant): \$18,289,273

Miles to be constructed: 405

Total # of eligible addresses: 1809

Total Addresses passed: 3634

**Towns with addresses to be served this phase: Calais, Moretown, Marshfield,
East Montpelier, Plainfield**

Public Ownership: Yes

CHECKLIST

Business Plan

Note: The business plan is a stand-alone document. Do not refer to documents elsewhere.

Is the Plan Act 71 Compliant? (PASS/FAIL)

Does the business plan include a Universal Service Plan? Yes No

Does the business plan include the following?

High-level design plans Yes No Conversion of Existing Network

Market analysis Yes No N/A Existing ISP

Take-rate assumptions Yes No

Cash flow positive date (as relevant) Yes No Not Applicable

Expected loan payoff date(s) Yes No Not Applicable

Financing models Yes No Not Applicable (fully funded)

Pro forma financial projections Yes No

Estimated construction costs Yes No
Ideal operational models Yes No Existing Model

Does the Business Plan evaluate the following risks:

Labor needs and availability Yes No
Supply-chain contingencies for equipment and materials Yes No
Make-ready work Yes No
Additional other relevant capital and operational expenses. Yes No
Contract management including safety/house-keeping Yes No Existing Record

What is expected for a HLD? A high-level design consists of a route map. Addresses passed and interconnection points for backhaul. The HLD should also show the planned phases of construction. We understand that these phases may adjust over time.

High Level Design Route Map

- Proposed Construction Phases
- OLT/Distribution Areas (DA)
- Span Routes
 - o Backbone Route (that can be part of the span route)
- Passings by Type – (underserved or served/ not on grid)
 - o ESite ID, E911 Address, Current level of Service, Phase
- Interconnection Points for Backhaul
 - o Location

What is necessary for the spreadsheet: All addresses in the plan with the current level of service. Must include ESite ID, E911 address, Phase

Overview:

Provided an estimated cost for Universal Service Plan: Yes No
Provided cost breakdown for proposal project within that plan: Yes No
Community Match: Yes No How much? \$1,000,000
Estimate Ratio of VCBB funding to other funding – Universal Service Plan - (Goal – minimum 60/40 for private) 60/40
Cost per passing to be constructed or upgraded for addresses included Universal Service Plan: \$3918
Certification of Acceptance of Conditions: Yes No
Provided list of subcontracts: Yes No
Act 71 Compliant Business Plan: Yes No

Universal Service Plan: (PASS/FAIL)

Demographics of community: Yes No
Map showing the phases of the universal service plan: Yes No
Who owns the infrastructure public private
Does the applicant account for all underserved addresses? Yes No

Will they serve them all directly? Yes No

If not, did they include letters of commitment or other supporting materials for the remaining addresses? Yes No

Will all addresses in a community be served via this proposal? Yes No

Are there other funding sources? Town Bonds NTIA Grant USDA ReConnect (Pending)

Evidence of Community Engagement and Support? Yes No

Project Description

Narrative and map showing the project proposed for funding. The map should show the route and current level of wireline service at each address (showing cable lines or fiber lines is acceptable) to be served in the phase to be funded with this grant proposal.

Retail Price: _____ \$102.95 _____ Concerns? None _____

Reasonably detailed budget: Yes No

Plan for monitoring the network: Yes No

Spreadsheet detailing all locations (ESite ID, E911 Address, Current level of Service, Phase (if applicable), and overbuild rationale for any addresses currently served. Yes No (Attachment)

Act 71 Criteria

Evidence of collaboration? Yes No

Steps to address resiliency and ensure redundancy? Yes No

Is the project designed to provide service to unserved and underserved? Incidental overbuild is at or under 20% and the proposal passes the overbuild "tests" - Yes No

Sustainability – If more than a single phase, does the business plan support achieving universal service? Yes No

Affordability – Has the applicant certified it is participating in the Affordable Connectivity Program or the equivalent? Yes No

Technical and Security Approach Yes No

Attachments:

Act 71 Compliant Business Plan Yes No

Letters of Support Yes No (required for nonCUD)

Documentation of Community Match Yes No Not applicable

Response to Service Quality Complaints: Yes No Not applicable

Operating agreements: Yes No Not applicable

Maps, Spreadsheets and High-Level Network Design: Yes No

ACT 71 Construction Grant Review Sheet – DVFiber

SUMMARY SHEET

PLAN

Total Estimated Cost of Universal Service Plan: \$63M

Total Miles Required: 993

Total # of eligible addresses: 7567

PROJECT

Cost of proposed project: \$34,200,000

Amount of grant request: \$21,945,429

Miles to be constructed: 668

Total # of eligible addresses: 4887

**Towns with addresses to be served this phase: Stamford, Readsboro,
Whitingham, Halifax, and Marlboro**

Public Ownership: Yes

CHECKLIST

Business Plan

Note: The business plan is a stand-alone document. Do not refer to documents elsewhere.

Is the Plan Act 71 Compliant? (PASS/FAIL)

Does the business plan include a Universal Service Plan? Yes No

Does the business plan include the following?

High-level design plans Yes No Conversion of Existing Network

Market analysis Yes No N/A Existing ISP

Take-rate assumptions Yes No

Cash flow positive date (as relevant) Yes No Not Applicable

Expected loan payoff date(s) Yes No Not Applicable

Financing models Yes No Not Applicable (fully funded)

Pro forma financial projections Yes No
Estimated construction costs Yes No
Ideal operational models Yes No Existing Model

Does the Business Plan evaluate the following risks:

Labor needs and availability Yes No
Supply-chain contingencies for equipment and materials Yes No
Make-ready work Yes No
Additional other relevant capital and operational expenses. Yes No
Contract management including safety/house-keeping Yes No Existing Record

What is expected for a HLD? A high-level design consists of a route map. Addresses passed and interconnection points for backhaul. The HLD should also show the planned phases of construction. We understand that these phases may adjust over time.

High Level Design Route Map

- Proposed Construction Phases
- OLT/Distribution Areas (DA)
- Span Routes
 - o Backbone Route (that can be part of the span route)
- Passings by Type – (underserved or served/ not on grid)
 - o ESite ID, E911 Address, Current level of Service, Phase
- Interconnection Points for Backhaul
 - o Location

What is necessary for the spreadsheet: All addresses in the plan with the current level of service. Must include ESite ID, E911 address, Phase

Overview:

Provided an estimated cost for Universal Service Plan: Yes No
Provided cost breakdown for proposal project within that plan: Yes No
Community Match: Yes No How much? \$24,652
Estimate Ratio of VCBB funding to other funding – Universal Service Plan - (Goal – minimum 60/40 for private) 55/45
Cost per passing to be constructed or upgraded for addresses included Universal Service Plan: \$5829
Certification of Acceptance of Conditions: Yes No
Provided list of subcontracts: Yes No
Act 71 Compliant Business Plan: Yes No

Universal Service Plan: (PASS/FAIL)

Demographics of community: Yes No
Map showing the phases of the universal service plan: Yes No
Who owns the infrastructure public private

Does the applicant account for all underserved addresses? Yes No

Will they serve them all directly? Yes No

If not, did they include letters of commitment or other supporting materials for the remaining addresses? Yes No

Will all addresses in a community be served via this proposal? Yes No

Are there other funding sources? Town Bonds NTIA Grant USDA ReConnect (Pending)

Evidence of Community Engagement and Support? Yes No

Project Description

Narrative and map showing the project proposed for funding. The map should show the route and current level of wireline service at each address (showing cable lines or fiber lines is acceptable) to be served in the phase to be funded with this grant proposal.

Retail Price: _____ ??? _____ Concerns? _____

Reasonably detailed budget: Yes No

Plan for monitoring the network: Yes No

Spreadsheet detailing all locations (ESite ID, E911 Address, Current level of Service, Phase (if applicable), and overbuild rationale for any addresses currently served. Yes No (Attachment)

Act 71 Criteria

Evidence of collaboration? Yes No

Steps to address resiliency and ensure redundancy? Yes No

Is the project designed to provide service to unserved and underserved? Incidental overbuild is at or under 20% and the proposal passes the overbuild "tests" - Yes No

Sustainability – If more than a single phase, does the business plan support achieving universal service? Yes No

Affordability – Has the applicant certified it is participating in the Affordable Connectivity Program or the equivalent? Yes No

Technical and Security Approach Yes No

Attachments:

Act 71 Compliant Business Plan Yes No

Letters of Support Yes No (required for nonCUD)

Documentation of Community Match Yes No Not applicable

Response to Service Quality Complaints: Yes No Not applicable

Operating agreements: Yes No Not applicable

Maps, Spreadsheets and High-Level Network Design: Yes No



AUTHORITY OF THE EXECUTIVE DIRECTOR

OBJECTIVE

The role of Executive Director has been defined in ACT 71. This policy is to define the relationship between the Executive Director and the VCBB Governing Board (“Board”).

POLICY

The Executive Director is responsible for carrying out the objectives of the Board and those defined in ACT 71.

1. Identify the mission, objectives, and strategic priorities of the VCBB by periodically engaging in an ongoing planning process with the Board.
2. Work closely with the CUDs and towns to build engagement around achieving the goal of Universal Service.
3. Develop grant processes that ensure participants can sustainably meet the goals of ACT 71.
4. Establish and follow communication protocols with the Towns and CUDs to ensure they have the processes and programs in place to be successful.
5. Develop long-range financial plans, grant management plans, and work plans and budgets, and provide periodic reports on revenue, expenses and other key measures that are necessary to ensure success.
6. Coordinate with the legislature, Administration and the NTIA on legislation and regulatory matters to be proposed, supported, or opposed.

Organization and Resource Management

7. Review activities of the VCBB and the CUDs and determine the structure best suited to carry out its objectives within the limitations of the budget, legislative and regulatory constraints.
8. Ensure that positions and job specifications are prepared and reviewed as necessary for all personnel. Such completed descriptions will not require Board approval.
9. Develop or approve standards and qualifications for use in recruitment of personnel, and select, appoint, promote, and responsibly manage personnel. The Executive Director and staff have the authority to hire budgeted positions

without further approval from the Board. Hiring decisions will be reported to the Board. Non-budgeted positions will be presented to the Board for approval. Staff has the authority to modify job descriptions and job titles within the approved position to facilitate recruitment as well as to comply with existing state positions.

10. Ensure that staff members receive the adequate training and exposure to carry out their duties effectively.
11. Work with the state agencies to ensure personnel are adequately compensated and this is reflected in the Budget.
12. Fully understand and administer the State personnel and administrative policies along with ensure compliance to all Federal grant requirements.
13. Authorize and approve travel expenses of personnel on company business within the limitations of the budget and within established policy. Such travel and expenses shall comply with state travel requirements.
14. Select and appoint consultants to provide advice and assistance within the limitations of the budget and advise the Board of actions taken. The selection of consultants working in areas which affect the functions of the Board requires Board approval.
15. Participate in national, regional, state and local meetings which further the best interests of the VCBB, the CUDs and participating towns.
16. Serve as the authorized spokesperson for the VCBB.
17. Administer the approved budget, including approval of non-budgeted items up to \$250,000. The Executive Director will inform the Board of any non-budgeted items that exceed \$50,000.

RESPONSIBILITY

The CEO shall report to the Board on how these delegations are being carried out. The CEO may delegate any of the foregoing legal authorities to the appropriate personnel while continuing to take responsibility.

June 24, 2022

Vermont Community Broadband Board

112 State Steet Montpelier, VT 05620-2601

RE: Tilson Broadband Appeal

Dear Vermont Community, Broadband Board,

By this letter, Tilson Broadband appeals the Vermont Community Broadband Board staff's decision to deny Tilson Broadband the opportunity to apply for Act 71 Construction Grants. In this appeal, Tilson Broadband respectfully requests that the Board comply with Act 71's requirement that the Board, and not a CUD, determine whether a non-CUD Eligible Provider's universal service plan conflicts with that of the CUD. Tilson Broadband asserts that the available evidence shows that its Universal Service Plan for the Town of Danville does not conflict with that of NEK Broadband, and offers an approach to empirically evaluate whether such conflict exists.

I. Background

On May 5, 2022, Tilson Broadband submitted its Notice of Intent to Respond to the Board's RFP for Act 71 Construction Grants for the Town of Danville. In its Notice of Intent, Tilson described a Universal Service Plan that would expand its existing FTTH network to all on grid un/underserved addresses in Danville, Vermont, a total of 663 additional premises, of which 449 are unserved. As required by the Board's RFP, the Notice included preliminary cost estimates, summarized Tilson's current service offerings (starting at \$69.95 for 500 MBps symmetrical service), and described Tilson's track record of rapidly deploying fiber networks in Vermont and across the country.

Though Danville is within the territory of NEK Broadband, the Notice asserted that Tilson Broadband's Universal Service Plan did not conflict with NEK's Universal Service Plan, which did not currently include plans to provide service Danville. The proposed plan would extend the Tilson Broadband network, while preserving additional state funds for additional grants within NEK's service territory. Any other solution for Danville would require overbuild of Tilson

broadband's existing facilities, incurring greater capital cost without adding unserved or underserved locations for that added cost.

On May 13th, the staff of the Board notified Tilson Broadband that it was "unable to deem [the] Universal Service Plan as eligible" and thus Tilson Broadband would not be permitted to submit an Act 71 Grant Proposal. The staff based its rejection on its interpretation of Act 71, Section 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.

In the denial letter, staff observed that while Tilson had "made a plausible business case for the ability of Tilson and the CUD to [o]perate in the area" Tilson had failed to demonstrate that its proposed Universal Service Plan would "not conflict with or undermine the CUD's Universal Service Plan." As evidence for this, staff observed that 1) the Board had approved NEK's Universal Service Plan on April 25, 2022, and that NEK Broadband had provided written testimony "stating that Tilson's Universal Service Plan would negatively impact NEK Broadband's Universal Service Plan." Therefore, Staff concluded that it "must" conclude that Tilson's proposal violated Section 8086(e).

Tilson Broadband appeals the staff decision.

II. Act 71 requires that the Board, not the Communications Union District, determine whether proposal would conflict with or undermine the CUD's Universal Service Plan.

The plain language of Act 71 requires that the Board "determine" that a proposed Universal Service Plan conflicts with or undermines the Universal Service Plan of the CUD. Act 71 does not define a process for how the Board should make this determination, but dictionary definitions of "determine" describe a process that involves some application of decision-making or reasoning: e.g. "to settle or decide by choice of alternatives of possibilities," and "to find out or

come to a decision about by investigation, reasoning, or calculation.”¹ Under the approach adopted by Staff, the Board does none of these things.

Instead under this approach, the CUD, not the Board, determines whether an Eligible Provider’s plan will “conflict with or undermine” a CUD’s universal service plan. In the Denial Letter, Staff asserted that Section 8086(e) required that the Board deny Tilson’s application because 1) NEK had a board-approved Universal Service Plan, and 2) NEK provided written testimony stating that Tilson’s proposal would “negatively impact” its Broadband Plan. Tilson Broadband was not provided with NEK’s written testimony supporting its assertion of a negative impact, so it cannot conclude whether this assertion was supported by analysis or reasoning. But staff, acting on behalf of the Board, did not determine that a conflict existed, and instead delegated this determination to the CUD.

If the Legislature had intended for the CUDs to prevent an Eligible Provider from submitting a grant application simply by asserting the existence of a conflict, it would not have required that the Board “determine” whether such conflict exists.

III. Tilson Broadband’s Pre-Application demonstrates why an independent determination by the Board is required.

Simply relying on a CUD’s assertion of a conflict denies the Board the ability to conduct fact finding that would reveal whether a conflict actually exists. This inquiry might include, for example, the CUD’s actual timeline for providing service to unserved locations, or whether the CUD’s Universal Service Plan complies with Act 71’s requirements related to overbuilding in that community and appropriately accounts for the impact of competitive offerings. The Board requires and reviews this information with regard to specific Act 71 project grants, but NEK has not submitted such an application for Danville.

Contrary to staff’s assertion, NEK has not provided, and the Board has not approved, a detailed Universal Service Plan that covers the Town of Danville. In the April 25, 2022 meeting referenced by staff, the Board approved a grant of \$15.9 million for an NEK project that would

¹ Determine, Merriam-Webster, <https://www.merriam-webster.com/dictionary/determine>; *State v. Perrault*, 2017 VT 67, ¶ 13, 205 Vt. 235, 243 (a court “may look to dictionary definitions to determine the plain and ordinary meaning of the language”)

provide service to 1,479 eligible addresses in the towns of Newark, Sutton, Burke, Lyndon, Kirby, Concord, Waterford, Barnet, Wheelock, and East Haven. However, this project represented less than 10% of the total eligible address in NEK member communities, and 15% of the \$106 million in grant funds NEK has stated it expects to receive.² While NEK provided the Board a high level estimate of the cost to provide service to eligible addresses in all of its member communities, the Board's RFP process appropriately only requests detailed information regarding the specific project phase for which an applicant requests funding, not its entire build plan.³

Publicly available information on NEK's plan to serve all unserved locations in its member communities is limited, but the available information suggests NEK's planning for Danville is not complete. NEK's June 2021 Business Plan is the only publicly available document describing its plans to provide service to unserved locations in its member communities. The Business Plan did not model the cost of extending service to Danville. The Business Plan explains this omission as follows:

There were five towns with considerable densities that were saturated with service or where FTTH service is already committed or funded. Those densities or committed demand points were removed from the scope completely, even if NEK will have to build a route through them. The rural or uncommitted demand points (those that were not planned for fiber connections) of these towns are still included. The five towns are Newport City, Craftsbury, Lunenburg, Danville, and St. Johnsbury.⁴

The Business Plan also does not list Tilson Broadband or its service offerings in its competitive analysis, even though Tilson Broadband currently provides service within NEK's footprint at higher speeds and lower prices than NEK.⁵

² "NEK Broadband Awarded Nearly \$16M Construction Grant" (June 8, 2022) <https://nekbroadband.org/nek-broadband-awarded-nearly-16m-construction-grant>.

³ Act 71 Construction Program RFP at 14 ("The full proposal requests information regarding the specific project phase of the Universal Service Plan for which the Applicant is requesting funding and additional information related to other design and process concerns per Act 71.")

⁴ NEK Community Broadband Broadband Business Plan Prepared by NRTC Broadband Solutions June 24, 2021 (Edited for Public Distribution July 21, 2021) (emphasis added).

⁵ *Id.*

Under Act 71, any Board-approved Universal Service Plan for Danville would need to account for the presence of Tilson Broadband's existing FTTH network and service offerings. Any provider other than Tilson Broadband seeking to serve the unserved locations in Danville will almost certainly need to overbuild Tilson Broadband's existing network, likely resulting in higher costs per location than extending Tilson's network. NEK has not indicated when or if it intends to apply for a grant to serve Danville, but Act 71 Section 8087(f) requires that, prior to approving a grant in a geographic area currently served, the Board find that "the proposed project is a cost-effective method for providing broadband service" and that "any overbuild is incidental to the overall objectives of the universal service plan required for funding under this Program." It is unclear whether the Board has conducted any such analysis regarding NEK's Universal Service Plan for Danville.

IV. The Board should determine whether a conflict exists by evaluating the impact of removing the contested area from the CUD's universal service plan.

Act 71 requires that the Board determine whether a provider's Universal Service Plan conflicts with or undermines that of an existing CUD, but the Act is silent on how to make such a determination. For purposes of evaluating whether an Eligible Provider may submit an application, the Board should determine whether the CUD's universal service plan would remain economically viable if the contested area was removed. If the Board determines that CUD's Universal Service Plan for the remaining communities remains viable, the Eligible Provider could submit a full Act 71 grant application, which would include detailed information regarding its costs and business plan, as required by the RFP and the Act.

Analyzing this impact should be a relatively straightforward modeling exercise based on the information the Board already requires that CUDs submit regarding their Universal Service Plans. In such an analysis, the Board (with the assistance of its consultant) would evaluate the impact on the CUD's Act 71 compliant business plan of assuming that the CUD would not serve the contested area and not receive Act 71 funds allocated for such area. If this analysis showed that removing the contested area had a material negative impact on the CUD's business plan, the Board would determine there was a conflict and bar the eligible provider from submitting an Act 71 grant application. Absent a material negative impact, the eligible provider could submit an application.

Allowing Eligible Providers to submit an application could provide a number of additional benefits to the Board, even if the Eligible Provider was not ultimately awarded a grant. First, it could allow the Board to compare competing applications for a single area. This competition would likely yield stronger proposals, and allow the Board to compare and contrast alternative approaches, funding requests, and service offerings, before awarding a grant. Second, it would create meaningful incentives for CUDs and the Eligible Provider to collaborate to serve the contested area in a mutually beneficial way. The current approach, in which CUDs can prevent an Eligible Provider from receiving Act 71 funds simply by asserting that a conflict exists, does not encourage collaboration by CUDs.

Tilson Broadband welcomes the opportunity to present its appeal to the Board, and answer questions regarding its universal service plan for Danville and its existing service offerings. We look forward to working collaboratively with the Board and NEK to extend our network to provide universal service in the Northeast Kingdom.

Respectfully submitted,

A handwritten signature in black ink that reads "Kate Rush". The signature is written in a cursive, flowing style.

Kate Rush

VP, Corporate Development

Tilson

207-416-5404

krush@tilsontech.com

ACT 71 Construction Grant Review Sheet – Maple Broadband

SUMMARY SHEET

PLAN

Total Estimated Cost of Universal Service Plan: \$35,200,000

Total Miles Required: 595

Total # of eligible addresses: 5898

PROJECT

Cost of proposed project (amount of grant): \$8,686,000

Miles to be constructed: 200.3

Total # of eligible addresses: 1184

Total Addresses passed: 1789

Public Ownership: Partial

Business Plan

Note: The business plan is a stand-alone document. Do not refer to documents elsewhere.

Is the Plan Act 71 Compliant? (PASS/FAIL)

Does the business plan include a Universal Service Plan? Yes No

Does the business plan include the following?

High-level design plans Yes No Conversion of Existing Network (WCVT area)

Market analysis Yes No N/A Existing ISP

Take-rate assumptions Yes No

Cash flow positive date (as relevant) Yes No Not Applicable

Expected loan payoff date(s) Yes No Not Applicable

Financing models Yes No Not Applicable (fully funded)

Pro forma financial projections Yes No Not applicable

Estimated construction costs Yes No
Ideal operational models Yes No Existing Model

Does the Business Plan evaluate the following risks:

Labor needs and availability Yes No
Supply-chain contingencies for equipment and materials Yes No
Make-ready work Yes No
Additional other relevant capital and operational expenses. Yes No
Contract management including safety/house-keeping Yes No Existing Record

What is expected for a HLD? A high-level design consists of a route map. Addresses passed and interconnection points for backhaul. The HLD should also show the planned phases of construction. We understand that these phases may adjust over time.

High Level Design Route Map

The WCVT owned area does not have a map because WCVT is replacing its copper infrastructure and extending its lines to reach the underserved.

- Proposed Construction Phases
- OLT/Distribution Areas (DA)
- Span Routes
 - o Backbone Route (that can be part of the span route)
- Passings by Type – (underserved or served/ not on grid)
 - o ESite ID, E911 Address, Current level of Service, Phase
- Interconnection Points for Backhaul
 - o Location

What is necessary for the spreadsheet: All addresses in the plan with the current level of service. Must include ESite ID, E911 address, Phase

Overview:

Provided an estimated cost for Universal Service Plan: Yes No
Provided cost breakdown for proposal project within that plan: Yes No
Community Match: Yes No How much? \$335K
Ratio of VCBB funding to other funding (Goal – minimum 60/40 for private) unknown until WCVT plan is available _____
Cost per address to be constructed or upgraded: \$3418 _____
Certification of Acceptance of Conditions: Yes No
Provided list of subcontracts: Yes No Not applicable
Act 71 Compliant Business Plan: Yes No

Universal Service Plan: (PASS/FAIL)

Demographics of community: Yes No
Map showing the phases of the universal service plan: Yes No

Who owns the infrastructure _public _private This is a mix – WCVT existing footprint will continue to be privately owned

Does the applicant account for all underserved addresses? _Yes _No

Will they serve them all directly? _Yes _No This is a mix – WCVT existing footprint will continue to be privately owned

If not, did they include letters of commitment or other supporting materials for the remaining addresses? _Yes _No

Will all addresses in a community be served via this proposal? _Yes _No

Are there other funding sources? _Town _Bonds _Applicant contribution

Evidence of Community Engagement and Support? _Yes _No

Project Description

Narrative and map showing the project proposed for funding. The map should show the route and current level of wireline service at each address (showing cable lines or fiber lines is acceptable) to be served in the phase to be funded with this grant proposal.

Retail Price: _____\$90 for 100/100 _____ Concerns? _____None _____

Reasonably detailed budget: _Yes _No

Plan for monitoring the network: _Yes _No

Spreadsheet detailing all locations (ESite ID, E911 Address, Current level of Service, Phase (if applicable), and overbuild rationale for any addresses currently served. _Yes _No (Attachment)

Act 71 Criteria

Evidence of collaboration? _Yes _No

Steps to address resiliency and ensure redundancy? _Yes _No

Is the project designed to provide service to unserved and underserved? Incidental overbuild is at or under 20% and the proposal passes the overbuild “tests” - _Yes _No

Sustainability – If more than a single phase, does the business plan support achieving universal service? _Yes _No

Affordability – Has the applicant certified it is participating in the Affordable Connectivity Program or the equivalent? _Yes _No

Technical and Security Approach _Yes _No

Attachments:

Act 71 Compliant Business Plan _Yes _No

Letters of Support _Yes _No (required for nonCUD)

Documentation of Community Match _Yes _No _Not applicable

Response to Service Quality Complaints: _Yes _No _Not applicable

Operating agreements: _Yes _No _Not applicable

Maps, Spreadsheets and High-Level Network Design: _Yes _No

#	Priority	Item	Date entered	Assigned to	Resolution and date
18	1	Signature Authority of Executive Director	03/28/22	CH	Will bring for approval at next meeting scheduled in July.
19	1	Policy around hiring staff	03/28/22	CH	Will bring for approval at next meeting scheduled in July.
21	1	Invite to Doug Farnum and the Federal Delegation to future Board Meeting	6/14/22	CH	Tentative plan to attend a future meeting in August.
22	3	VCBB's approach to mapping and strategy for challenging the FCC.	6/14/22	CH	Tentative plan to present strategy at future meeting in August.
20	3	Recommendation for designation of an entity for Digital Equity & Affordability Office	03/28/22	CH	Closed. This is being addressed by the Governor's office per a directive from the NTIA. This falls into the responsibility of the VCBB as a subset of the IJA program.
8	2	Policy on "Material Default" see §8086(c)(2)	11/1/21	board	Closed. Issue has been resolved through legislation.
5	3	VCBB Dashboard – to be shared monthly to show progress. What are the milestones?	11/1/21	CH	Closed. Stone Environmental has presented its proposal and the software platform meets the needs.
16	1	Provide Board with impact of Commitment letter	02/14/22	CH	Closed with material pre-purchasing proposal.
17	2	Statewide marketing collaboration with VCUDA	02/14/22	CH	Closed. VCUDA is not interested.
15	2	Provide Benchmarks for what telecom companies spend on Marketing	02/14/22	CH	Will research and present back on 3/14/22 Board meeting
1	1	Budget	10/18/21	CH	Completed. 2021 budget approved. 2022 will be presented in March.
2	1	Overbuild – what is the standard (20% of total served?)	11/1/21	CH	Completed. See Construction RFP Definition
3	2	Business Plans – what is the scope? Will they be updated before construction grants?	11/1/21	CH	Completed. The updated business plans will be included in the Construction RFP responses.

6	3	Fiber purchase – VCBB involvement? authorization? Status?	11/1/21	CH	Completed
7	1	Make Ready Construction – policy: part of §8085 grants or not?	11/1/21	board	Policy established. Make ready construction will be part of the construction grant program.
9	2	Revisiting timeline for VCBB – construction RFP & reporting timelines	11/22/21	RF	Completed. Part of the construction RFP. RFP approved by the Board on 01/03/22
10	2	Sequence assumptions for preconstruction and construction & reporting timelines	11/22/21	CH	Completed. Part of the Construction RFP. RFP approved by the Board on 01/03/22
11	2	DPS 2021 Map – Unserved	11/1/21	CH& board (LS)	Completed
12	1	Confidentiality. Grant Agreement Art 5 (state standard). Is the product of a grant a “public document” – e.g. will we post construction plans?	11/1/21	CH/Legal	The RFP and construction schedules will be public.
13	2	USP & contiguous CUD construction-policy	11/22/21	Board LS/HG	Completed. Addressed in the Construction RFP.
14		Legislative Consideration – Purchase of consolidated services/goods	11/29/21		Not needed.