

Vermont Community Broadband Board Meeting Minutes
Meetings are being held virtually.
July 11th, 2022

I. Call To Order – 10:03am

Roll call completed by Patty Richards

Patty Richards, Chair (Remote)
Brian Otley (Present)
Holly Groschner (Present)
Dan Nelson (Present)
Laura Sibia (Present, joined at 10:18)
Christine Hallquist - Staff (Present)
Stan Macel – Staff (Present)
Robert Fish – Staff (Present)
Alissa Matthews – Staff (Present)

Patty Richards made a motion to approve the agenda, Holly Groschner seconded.

Holly Groschner highlighted the importance of item XIV Legal Analysis of Act 71 and the discussions that occurred around the Universal Service Plan policy during the July 1st meeting and suggested that decisions are tabled until all Board Members have a chance to discuss.

The Board and VCBB Staff discussed making changes to start that discussion once Laura Sibia arrived and then suggested moving

- item II. Approval of Minutes to the end of the meeting,
- item III. CVFiber Application Decision to 12:30,
- starting with item VI Approval of Executive Director Authority Policy.

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

II. Approval of Executive Director Authority Policy

Christine Hallquist reviewed the policy memo created in response to two items from the Board Meeting parking lot: Identifying the Executive Directors financial decision capacity and limitations in terms of dollars and the personnel hiring policy in terms of what permissions are needed from the Board. The following were discussed with noted changes:

Item 8. Ensure that positions and job specifications are prepared and reviewed as necessary for all personnel. Such completed descriptions will not require Board approval.

- Change to “Such completed descriptions that are approved in the budget will not require Board approval.”

Item 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.

- Change to “Administer the approved budget, including approval of non-budgeted items up to \$50,000.” and revisit if not sufficient over time.

Item 1. Identify the mission, objectives, and strategic priorities of the VCBB by periodically engaging in an ongoing planning process with the Board.

- Change to “Implement the mission, objectives, and strategic priorities of the VCBB.”

Responsibility:

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

Holly Groschner moved to adopt the Executive Authority Policy as amended, Patty Richards seconded, and the motion passed with four in favor. Laura Sibilia abstained.

III. Legal Analysis of Act 71 Issues – Executive Session

Patty Richards made a motion to go into Executive Session with VCBB Staff to discuss the Universal Service Plan Policy as it entails 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). Holly Groschner seconded, the motion was unanimously approved, and the Board and VCBB Staff went into Executive Session.

Patty Richards confirmed that no action was taken in the Executive Session.

IV. DVFiber Application Decision

Christine Hallquist introduced David Jones from DVFiber to provide a review of the details of the CUD’s Act 71 Construction Grant Application so the Board can ask additional questions.

David Jones explained that they plan to discuss the sequence and scope of the build plans and believe that it is all proprietary information and confidential and the CUD would prefer to discuss in Executive Session.

Patty Richards made a motion to invite DVFiber leadership and their partners from GWI, VCBB Staff and consultants from CTC into Executive Session as 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). Holly Groschner seconded, the motion was unanimously approved, and the meeting went into Executive Session.

Patty Richards confirmed that no action was taken in the Executive Session, and made a motion to approve DVFiber’s Construction Grant request for \$21,945,429. Holly Groschner seconded, and noted an overbuild in the application that is being considered a cost-effective method of reaching unserved and underserved addresses and the Board has verified that it is incidental to the Universal Service Plan through testimony and review of the application, having distinguished unserved and underserved areas, as well as, considering discussions the CUD has had with incumbent and small carriers. The motion passed with three in favor, Brian Otley was absent for the vote, and Laura Sibilia abstained due to a stated conflict of interest.

V. CVFiber Construction Grant Application Presentation

Christine Hallquist introduced Jerry Diamantides, Chair of CVFiber to provide a review of the

details of the CUD's Act 71 Construction Grant Application so the Board can ask additional questions.

Jerry Diamantides explained that an extensive presentation was provided on July 1st for the CUDs Phase 1 Construction Grant application and asked if there were any follow up questions.

Patty Richards asked if Jerry could summarize an assessment of competitive threats from private entities in the CUD territory and what level of communication the CUD is having with any of those private entities relative to their efforts of building. Jerry explained that the CUD is avoiding areas that are currently served or are in the process of being served and are keeping aware of new build by incumbents. He continued to explain that if existing commercial providers get there first, CVFiber will no longer prioritize that area, but added that having analyzed the situation on the business end it is clear how incumbents have cherry-picked the areas that they serve and stated that the reasoning for the volunteer effort of the CUDs is for the purpose of filling those gaps where it doesn't make business sense for the incumbents to exist.

Dan Nelson asked if the way the routes have evolved working with Washington Electric Co-op (WEC) have provided opportunities for customers or any other efficiencies. Jerry explained the CUD is working in partnership with WEC, and although there is not a fund sharing agreement, CVFiber recognizes their membership are in many cases the same people that will be future subscribers and through that partnership they have already been doing ride-outs and identifying make-ready requirements to ensure everything is in place and working towards the same goal to bring high-speed internet to the WEC membership that also happen to be residents in the CVFiber territory.

Holly Groschner asked if there are any incumbent telco carriers in the CUD besides Consolidated. Jerry shared that TDS, Comcast, Northfield Trans-Video, Kingdom Fiber, and WCVT will be the CUD's service provider also operating in the territory. Holly followed up asking if CVFiber has asked any of the other providers to collaborate in providing service in the District. Jerry explained that beyond pole applications the CUD has not yet had those discussions but would be open to the opportunity with TDS to try and find a win-win situation for instance, but reiterated that there is no clear path forward for that yet. Jerry explained CVFiber is designing to a full capacity that will allow for extensions throughout all of the member towns, but is only using grant funding to build to the underserved and if they need to share pole usage to get to those addresses they do but federal funds will not be used for any drops.

Patty Richards asked Jerry to speak about additional funds CVFiber will be using. Jerry explained that CVFiber town ARPA funds, they have nearly \$300,000 committed and are doing outreach for an additional \$300,000 from town match and other possible philanthropic grant opportunities to offset the cost of drops.

Holly Groschner made the motion to approve CVFiber's Construction Grant request for \$12,289,273, Patty Richards seconded, and the motion was unanimously approved.

VI. NEK Broadband Construction Grant Amendment Presentation

Christa Shute presented an overview of NEK Broadband's request for an Act 71 Construction Grant Amendment for an additional \$4,966,800 to build an additional 100 miles to serve 877

addresses, 634 which are underserved. Christa noted the purpose of the amendment was to include the contributions of town ARPA funds from Walden, Peacham, Groton, and Ryegate, along with 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.

Christa added that given questions from the July 1st Board Meeting, NEK Broadband did some additional map work and confirmed that besides the additional backhaul route that is in place, this additional build adds 2.8 miles of fiber overbuild for 25 addresses in order to reach 51 miles and 212 underserved addresses, which represents an additional 5% overbuild. Christa added that there are three providers, Consolidated, Tilson, and Kingdom Fiber and NEK Fiber is in conversations with each of those incumbents and can go into additional details in Executive Session.

Holly Groschner asked if NEK's Business Plan was contingent upon overbuilding the Tilson system. Christa explained that there are addresses in that are identified as future build if needed because there are a few addresses that were left off the Tilson build that still have a density that, in NEK Broadband's opinion warrants additional private build rather than requiring grant funding, but those addresses and other cabled addresses might require extensions that NEK will find a solution to and deal with in year three or four. Holly asked whether it would be beneficial for the VCBB to fund Tilson to reach those addresses now. Christa asked that the VCBB be careful in how funding is discussed, adding she would be happy to provide the legal argument but that NEK Broadband's interactions with Tilson should be explained in Executive Session.

Christa provided a legal response to Tilson's Appeal Letter included in the Board Packet, stating that the argument is fundamentally flawed because it assumes they are providing a Universal Service Plan for Danville and as a matter of law a Universal Service Plan is either one that is for the entire Communications Union District, and that is every address, or is for a municipality that is not part of a CUD or joined a CUD after June 1st, 2021 and Danville was a founding member of NEK Community Broadband and therefore is part of the Universal Service Plan that exists for the entire CUD, so if there is only one Universal Service Plan for the entire CUD then there can't by definition be two Universal Service Plans that need to be compared.

Patty Richards invited NEK Broadband, VCBB Staff and CTC into Executive Session as 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).

Patty Richards confirmed no action was taken in Executive Session. Laura Sibilia made a motion to approve NEK Broadband's Construction Grant Amendment request for \$4,966,800, Holly Groschner seconded, and the motion was unanimously approved.

VII. Tilson Appeal Presentation

Tim Schneider introduced Tilson Broadband, a small communications carrier out of Portland, Maine and provided an overview of the Letter of Appeal submitted to the VCBB, following the denial received in response to a Notice of Intent to Respond for an Act 71 Construction Grant on May 5th.

Holly Groschner stated that the definition of a Universal Service Plan is District-wide and asked if Tilson Broadband is in agreement that their plan would conflict with the existing Universal Service Plan of the CUD.

Tim explained that Tilson has not been able to review the CUD's Universal Service Plan as it is not a public document and only seems to have been reviewed in Executive Session, but they do have a copy of the Business Plan which was shared publicly on their website and as far as Tilson can tell it does not call for serving the community of Danville, at least in the near term. Tim continued by stating that Tilson does not believe there was a conflict as was suggested in the response from the VCBB Staff and NEK Broadband.

Holly Groschner asked that the VCBB correct the understanding of the reasoning for the denial, and that based on the Board reviewing NEK Broadband's Universal Service Plan, the Board made the determination that the proposal from Tilson does not present a Universal Service Plan and their application is in conflict with NEK's plan. Holly clarified that the CUD does not make the determination of the conflict, rather upon appeal the Board makes that determination.

Laura Sibilila asked if Tilson has reached out to the CUD to work together to achieve accountability and universality, and if not why the application is not coming in partnership with the CUD. Tim explained that Tilson has been able to work constructively with NEK Broadband on a number of issues but on this particular issue they have not been able to reach a consensus. Tim added the example that Tilson responded to an RFP to partner but that NEK was looking for someone to serve the entire CUD, Tilson has provided collaboration on make-ready that helped NEK move to the front of the line for some of their grant proposals like the one for funding in Concord, and they continue to be in close communication sharing build plans to avoid overbuilding and having constructive discussions on how to lease fiber and potentially share that backhaul.

Laura Sibilila asked if Tilson understands that in order to be an applicant within a CUD territory there has to be a Universal Service Plan for the entire CUD that doesn't conflict with the CUD. Tim responded that Tilson has a different legal interpretation of the Statute than what he heard provided by NEK Broadband but agreed that if that is also the Board's interpretation then it may be a dead end. Patty Richards added that the Statute requires applicants to either have a Universal Service Plan for the entire CUD or for a municipality that was not part of a CUD as of June 1st, 2021, and Danville is part of NEK Broadband's CUD, and the VCBB's goal would be for the small carrier to work through NEK Broadband.

Tim referenced that §8086 (e) clearly contemplates the possibility of conflicts between a CUD and a non-CUD, and doesn't know how to read the language consistent with the idea that there can't be two competing proposals for a District area, and more broadly is not sure what if any areas would be eligible for small communications providers within the State if they removed that and the Statute clearly contemplated that small communications providers could receive Act 71 grants. Laura Sibilila confirmed that they could receive grants for towns not in CUDs. Holly added that this reading had not been articulated clearly in that way before, and that Section §8086 (e) does invite the Board to decide whether there is a conflict and does leave a question of how there can be a conflict unless the applicant is eligible. Laura reiterated §8082 (12) and Patty added that the best path forward would be in working with the CUD.

Patty Richards made a motion to accept the recommendation from VCBB Staff to reject Tilson Broadband's appeal, Brian Otley seconded, and the motion was unanimously approved.

VIII. Otter Creek Pre-Construction Application Review and Q&A

Tony Ferraro, Chair of Otter Creek CUD presented a summary of the Pre-Construction Application for \$441,000 to cover staffing, consultants, Legal services to assist in negotiations with potential partners.

Patty Richards moved to approve the request. Laura Sibilia seconded, four members voted to approve, Holly Groschner abstained, and the motion carried.

IX. Maple Broadband Presentation and Q&A

Steve Huffaker presented an overview of Maple Broadband's updated Act 71 Construction Grant application.

Patty Richards invited Maple Broadband, VCBB Staff and CTC into Executive Session as 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 4:12pm while in Executive Session and the meeting was adjourned.