

Vermont Community Broadband Board Meeting Monday, September 19, 2022 12:00pm – 4:00pm

AGENDA

Meeting is 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

- 12:00 1) Meeting Call to Order, Roll Call, & Approval of Agenda
- 12:05 2) Approval of September 6th Meeting Minutes
- 12:10 3) WCVT Maple USP Construction Grant Application – Q&A and Decision Executive Session if necessary (Board, Staff, CTC, WCVT, and partners)
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 4) NTIA Middle Mile Application (Christine)
Executive Session if necessary (Board, Staff, CTC)
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)
- 2:05 5) Subsequent Overbuild Hearing & Discussion – Presentation and Public Comment
- 2:50 6) Legislation Policy Proposals (Initial Discussion)
- 3:15 6) Staff Updates & Parking Lot
- 3:30 6) VCUDA Update
- 3:45 7) Public Comment
- 4:00 8) Confirm Next Meeting Oct 3 & Motion to Adjourn

Press inquiries; please contact Christine Hallquist, christine.hallquist@vermont.gov, 802-636-7853



Board Packet Executive Summary
September 19, 2022
Christine Hallquist, Executive Director
Phone – 802-636-7853
Email – christine.hallquist@vermont.gov

WCVT section of the Maple CUD Grant Application

Staff recommends that the Board approve the \$9,104,486 grant request from Maple Broadband to fund the balance of the addresses within the Maple Broadband CUD. On July 15, 2022 the Board approved the Maple request for the \$8.68 Million grant to construct the Non-WCVT section of the CUD, which was 180.6 miles and 1,789 addresses. Maple told the Board that WCVT would come in later with a plan to serve the rest of the addresses. This \$9.1 million grant would provide service to 2655 addresses on a 325.6-mile project. This completes the construction needed for the Universal Service Plan. This network would provide fiber over-lash to the existing WCVT copper network and would continue to be owned by WCVT. The grant cost would be \$3430 per passing, which is well below the statewide average of \$5156.

NTIA middle mile application

Staff, along with CTC, will provide an overview of the Middle Mile Grant application. Discussion of some aspects will require an executive session. The Board will have received a copy of the application prior to the Board meeting under separate confidential cover.

Subsequent overbuild policy

Staff has been working diligently with the CUDs and the private telecommunication carriers to develop a policy on overbuilds after the issuance of a grant. This draft policy has been thoroughly discussed by the CUDs. The draft was also circulated to all other wireline providers in the state. Comments submitted are attached to the Board packet. The Board agenda allows for public input at the Board meeting prior to a potential Board vote on the policy.

Legislative policy proposals

The Administration is now starting to discuss what legislation they are going to be seeking in the 2023 session and has requested that the VCBB keeps them informed of our proposals. We are going to be seeking input from the Board. Staff is looking at the following areas.

- Alignment of the definition of broadband with the BEAD Program – 100/20 Mbps vs the current 25/3 Mbps. Issues related to providing service at Multi-Dwell Units Support for the Middle Mile grant application which includes a statewide design
- Brainstorm of other legislative issues of interest to the Board

Vermont Community Broadband Board Draft Meeting Minutes
Meetings are being held virtually.
September 6th, 2022

I. Call To Order – 5:04pm

Roll call completed by

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

Christine Hallquist requested an Executive Session be added so that the VCBB Staff could provide an update on the statewide negotiations for the NTIA Middle Mile application. Dan Nelson added this item after the SoVT Construction Grant Application Discussion and made a motion to approve the updated agenda. Brian Otley seconded and the updated agenda was unanimously approved.

II. Approval of the August 22nd draft minutes

The Board discussed the August 22nd, 2022 draft Board Meeting minutes. Dan Nelson made a motion to approve the minutes. Brian Otley seconded and the motion was unanimously approved.

III. SOVT Construction Grant Application Discussion and Decision

Christine Hallquist provided an overview of the continued discussion from the August 22nd meeting around the public/private partnership in Southern Vermont between the SoVT CUD and Consolidated. Christine Hallquist shared that staff met with the applicants to talk through the remaining questions.

Eric Hatch provided an overview of the additional metrics that SoVT and Consolidated agreed upon around performance standards and consumer protection standards:

- Annual Relational Net Promoter Survey, Net Promoter Scores – to ensure ongoing customer satisfaction, Consolidated will conduct and share the results with the CUD, an Annual Relational Net Promoter Survey and the quarterly Net Promoter Score which is presented after each transaction with the customer. If the Fidium scores for the Southern Vermont CUD fall below the average NPS of other Vermont ISPs in its Annual Relational Net Promoter Survey for more than 2 years in a row, and assuming a statistically significant number of CUD respondents, Consolidated shall have 6 months to demonstrate a significant decrease in the gap in Consolidated’s score and the average NPS score of other Vermont ISPs over the same period to avoid default under the Network Operation Contract. For reference, Consolidated uses the Medallia NPS system.
- Minimum Performance Testing – Consolidated will conduct speed and latency tests pursuant to the FCC’s RDOF testing standards. These standards prescribe quarterly testing for both speed and latency. The RDOF testing standards specify measurement on 7

consecutive days at peak times (6pm to 12am) to demonstrate that 80% of their speed tests achieve 80% of their offered speeds and that network round trip latency is below 100 milliseconds. Testing results will be shared with the CUD and any failing tests will require Consolidated to remediate within 60 days to avoid default under the Network Operation Contract.

- Customer Service Credits – Consolidated will continue to offer customer credits against their monthly bill for downtime experienced, including weather events. The process will be included in all customer contracts but also will be added to the Fidium website in the FAQ section.
- Affordability – Consolidated participates in the FCC’s affordability program, and will commit to participating in future similar programs, in accordance with Schedule B, Section 3 of the Master Services Agreement.
- Net Neutrality – Consolidated currently shall abide by Vermont’s Net Neutrality Standards and will continue to abide by them, in accordance with Schedule B, Section 7 of the Master Services Agreement.
- Security Breach Notification – As specified in Schedule B, Section 4 of the Master Services Agreement, Consolidated currently abides by and will continue to abide by the applicable sections of Vermont’s Security Breach Notification Law (9 V.S.A. § 2430). Consolidated will notify the CUD (breach@sovtcud.net) of any Security Breach (as defined in Schedule B, Section 4) within the timeline specified in Schedule B, Section 4 of the Master Services Agreement.
- Downtime Notification – Consolidated will provide the CUD email notification (outage@sovtcud.net) whenever there is a material network outage in any part of the CUD’s covered towns, in accordance with Schedule B, Section 4 of the Master Services Agreement. Notification will occur within 12-hours of the outage.
- Public Meetings – Consolidated will attend at least one public meeting per calendar year to address the community and discuss its success, failures and plans for the future, including plans related to affordability. Consolidated will also attend any CUD town’s Selectboard meeting, upon CUD request.
 - Laura Sibilis asked how long Eric Garr will be with Consolidated and if the commitment to attend customer meetings only last as long as Eric is there? Eric Garr responded that it is a company commitment, and he doesn’t intend to go anywhere anytime soon.
- Current and Future Requirements – Consolidated and the CUD will adhere to and adopt any current and future requirements mandated by the VCBB pursuant to Act 71.
- Final Payment – The CUD may hold back 8% of final payment up to 6 months to ensure Consolidated and the CUD mutually agree Phase 2a (as defined in the forthcoming Grant Agreement and the CUD’s application for VCBB Construction Grant Funding) has been completed to the satisfaction of the contract and spirit of the parties’ relationship and consistent with the grant agreement and federal reporting requirements. Should mutual agreement not be met after 6 months, either party may be subject to default as defined

under the Network Operations Contract and will have 60 days to remediate to avoid default.

- Continuity Requirement – In accordance with Section 8 of the Master Services Agreement, Consolidated agrees to pass on these obligations in the event of any transfer of ownership to ensure consistent service for the CUD.

Brian Otley asked SoVT for clarification the severability clause and what happens if it is enacted. Eric Garr responded that they would go to another ISP and solicit service for their addresses, entering into an agreement with Consolidated to connect addresses in Phase 2A to this other ISP. Brian followed up by asking if the CUD would own the fibers, but none of the electronics and none of the drops that Consolidated will install. Eric confirmed that just the fiber would be owned by the CUD.

Laura Sibilia asked SoVT CUD and Consolidated several questions:

- Laura – In the event that the partnership with Consolidated fails, what prevents Consolidated from going back after those customers? Eric Hatch – If the partnership fails then it will be because the customers are not happy with Consolidated.
- Laura – How many service quality investigations have been filed against Consolidated in Vermont in the last 30 years? Eric Garr – in 2010 they had 1,400 Service Quality Complaints, in 2020 that dropped to 600, in 2021 it was down to 400. Laura clarified she was asking about investigations by the State, Eric needed to ask his team, but eventually responded that there have been 2 in the last 10 years.
- Laura – How many CUDs are we awarding funds to that are partnering with a provider that has had a service quality investigation opened by the State? Laura answered her own question, saying there are none.
- Laura – What increased level of public accountability is there for SoVT customers that other Consolidated customers do not have? Eric Garr – Performance reporting in Schedule C is not applied to other customers; Net promoter survey results from these customers will be shared with VCBB. He confirmed NPS is not required by RDOF, but the performance testing is.
- Laura – Where will maintenance be dispatched from? Eric Garr – There are garages in Brattleboro and Bennington.

Stan Macel stated VCBB Staff's recommendation is to award the grant for \$9,009,085.

Laura Sibilia stated she thinks this is a practical solution to a difficult problem but she is not satisfied there is enough accountability from Consolidated in this agreement, and that they have earned extra scrutiny.

After discussion Dan Nelson moved to vote. There were two yes votes from Dan Nelson and Brian Otley, and one no vote from Laura Sibilia. With a majority vote in favor the grant request was approved.

IV. NTIA BEAD Middle Mile Application Update

Dan Nelson invited the Board, VCBB Staff, and Vermont AOA representative Will Anderson into Executive Session to discuss the specifics of the application 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).

Dan Nelson confirmed that no action was taken in Executive Session.

V. Public Comment

One member of the public provided input:

- Eric Hatch expressed the discouragement that the SoVT Board is feeling in relationship to their project which they felt achieved the priorities of Act 71.

Stan Macel noted that Fred Schwacke sent written comments via email that were forwarded from staff to the board.

Laura Sibia confirmed the next meeting will be September 19th and noted she will have a hard stop at 4pm.

Dan Nelson made a motion to adjourn. Laura Sibia seconded, the motion was unanimously approved, and the meeting was adjourned at 6:13pm.

ACT 71 Construction Grant Review Sheet – WCVT Maple

SUMMARY SHEET

PLAN

Total Estimated Cost of Universal Service Plan: \$16,592,936

Total Miles Required: 771.86

Total # of eligible addresses: 3042

PROJECT

Cost of proposed project (amount of grant): \$9,104,486

Miles to be constructed: 325.6

Total # of eligible addresses: 1,575

Total Addresses passed: 2,655

**Towns with addresses to be served: Addison, Bridport, Panton,
Ferrisburg, New Haven, Waltham**

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)

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 Not applicable – over-lashing existing network
Additional other relevant capital and operational expenses. Yes No Not Applicable
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
Does the applicant account for all underserved addresses? _Yes _No
Will they serve them all directly? _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: _____\$103 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 _Not Applicable

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) Through Maple Broadband

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

ctc technology & energy

engineering & business consulting

To: Alissa Matthews, *Special Projects and Implementation Manager*
Vermont Community Broadband Board

From: Teles Fremin, P.E., *Deputy Chief Technology Officer*
Daniel Fortier, *Staff Engineer*

Re: Evaluation of WCVT application

Date: September 15, 2022

At the request of the Board, CTC has reviewed the application and all supporting documents submitted by Waitsfield and Champlain Valley Telecom (WCVT) for its universal service plan to provide service to all of its existing territory, including both non-communications union district (CUD) towns as well as towns that overlap with Maple Broadband's service area. These documents include maps, technical specifications, construction details, and financial information.

The project is expected to take six years to achieve universal service with a total of 6,203 locations passed in 21 towns and cost an estimated total of \$33,176,880. The total cost for the first two years of the project is \$16,592,936; WCVT is requesting funding for the first two years in the amount of \$9,104,486 and pledges to provide \$7,488,450 of its own funds to cover the remainder.

Results of application review

Based on our review, WCVT's application meets the specifications put forth in the Board's Application Requirements.

While certain items did not meet specifications, they did not affect the outcome of our evaluation as they were not applicable to the project as a whole. A summary of these items follows, and the full evaluation checklist is provided in Attachment A.

Outside plant (OSP) design requirements

Due to WCVT's specific design and construction methods, it is unable to provide design documents for this project at the time of application. However, it was able to provide detailed design documents for a recent build (Bolton Golf Course), along with other

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supporting documentation that adequately demonstrates its practices and standards and how it is able to meet the Board's OSP design standards.

Part 3, Loss testing in accordance with ANSI/TIA/EIA 526 standards

WCVT does not provide details as to how its testing meets American National Standards Institute (ANSI) standards. However, the description of how loss and attenuation will be determined and measured is in line with accepted industry standards and practices. WCVT meets this requirement.

Section 5a, Geographic redundancy

The scope of the provided example project does not cover geographic redundancy or connections to other networks. However, the provided supporting document "WCVT OSP DESIGN REQUIREMENTS" details an overall redundancy strategy along with connection points to other networks. WCVT meets this requirement.

Section 6a, Prior to closeout deliverables

Online and downloadable field engineering data

- WCVT does not currently have a public-facing repository for project documents but can create one if required. It has committed in writing to deliver all documentation as required upon request (see the "WCVT OSP DESIGN REQUIREMENTS" document). CTC feels that WCVT meets this requirement but leaves it to the discretion of the Board whether a document portal will be required.

Vermont Community Broadband Board

Policy Regarding Known or Probable Extensions or Upgrades to Broadband Service in in a Grantee's District Subsequent to a Grant Award

The Vermont legislature enacted Act 71 with the goal of delivering broadband availability to all Vermonters and Vermont addresses. It noted the goal of “achieving universal access to reliable, high-quality, affordable, fixed broadband” in its statement of purpose.¹ The Act established the Broadband Construction Grant Program to finance broadband projects of eligible providers that are part of a universal service plan, that is, they plan to deliver universal service to every address in their District.

Act 71 defines “served” as service of at least 25/3.²

Identifying locations that are served begins with the Interactive Broadband Map which is maintained and updated by the Vermont Department of Public Service. It is available online at: <https://publicservice.vermont.gov/content/interactive-broadband-map> The Department of Public Service updates this map annually using information voluntarily provided to it by internet service providers. The VCBB makes a single adjustment to this map to align our data with the Board approved definition that requires a wired connection of at least 25/3 to be considered served.

In order to achieve universal service, the legislature was aware that some overbuild of geographic areas that are currently served would be necessary. Between the date of when the PSD publishes its data and the issuance of a grant, additional construction by providers may result in new addresses being served. Act 71 8086(f) requires the Board to consider these new builds, as well as probable extensions or upgrades not reflected on the map. (See discussion below).

For the VCBB to consider as “served” any addresses that do not appear as served on the Interactive Broadband Map (as slightly adjusted as described above) it will require a provider to submit a signed statement that wireline service at a specified service speed (25/3 or higher) is available to those listed E-911 addresses. The VCBB will consider this data as part of its analysis pursuant to Act 71 paragraph 8086(f), as discussed further below, and in conjunction with its analysis of the business plan of a CUD. The Board will not adjust the published list of eligible addresses for grant funding outside the release of data by the Public Service Department.

Regarding probable extensions or upgrades, a provider must submit a signed statement identifying the addresses to be served, specified service speed and completion date. In considering the probability that the proposed extension or upgrade is completed on time, the VCBB staff will give weight to the provider's track record at providing service in a timely manner and the project's location in the project pipeline in determining the likelihood of probable builds.

¹ 30 V.S.A. § 8081.

² 30 V.S.A. § 8082(9).

Act 71 8086(f) Three-Prong Test

Act 71 provides that the Board may provide a grant to an eligible provider to deliver broadband service in a currently served area subject to a three-prong test, as described in paragraph 8086(f). That paragraph requires that:

- (1) The proposed project is a cost-effective method for providing broadband service capable of at least 100/100 speeds to nearby unserved and underserved locations;
- (2) Any overbuild is incidental to the overall objectives of the universal service plan required for funding under the Construction Grant Program; and
- (3) Before awarding the grant, the Board makes a reasonable effort to distinguish served and unserved/underserved locations within the area, including recognition and consideration of known or probable service extensions or upgrades.

The test requires the Board to evaluate whether the proposal is “cost-effective” (see prong 1). As part of this evaluation, the Board may consider the costs that the provider is proposing to charge customers (i.e., cost-effective to consumers), as well as costs to reach nearby un/underserved locations, bearing in mind the goal of universal service for the entire district.

The test also requires the Board to consider the “overall objectives” of the universal service plan. This term is not defined in the Act, but the Board considers this to include the business factors in providing universal service to the district, including a workable business plan, the necessity to reach all addresses in the district, and the necessity to build a network with resiliency, redundancy, and excess capacity in the area.

In considering whether to grant a Broadband Construction award to an eligible provider, the Board is tasked with distinguishing served and un/underserved locations, including considering known or probable builds. (See discussion above regarding builds not reflected on current maps). This analysis is necessarily a snapshot of a build at a defined point in time, performed when the Board is considering the grant application.

Known or Probable Service Extensions or Upgrades

Once a grant has been awarded, the grantee, the VCBB staff and/or the VCBB may become aware of known or probable service extensions or upgrades in the grantee’s proposed service area. Such service extensions or upgrades are to be expected as existing private providers in the area in question compete for business and upgrade their services. Given Act 71’s overarching goal to provide universal service and encourage the competitive market for broadband services in Vermont, we do not view such proposed extensions or upgrades as necessarily unwelcome.

Given that eligible providers who have successfully obtained grants under the Broadband Construction Grant program must develop detailed designs and plans for their networks, we do not believe that the existence of additional known or proposed service extensions or upgrades should necessarily upend grantees’ build plans. On the other hand, we think it makes sense from a business standpoint for a grantee provider to consider the known or proposed service extensions or upgrades and their likely effects on the grantee’s plans. Thus, we earlier described a method by which the VCBB can acknowledge known and probable builds. (See above).

Incidental Overbuild

The existence of additional building in a grantee's territory is likely to affect the amount of area that is considered "overbuild." VCBB staff has previously issued guidance regarding what it considers "incidental overbuild" at the time of a construction grant application using a general limit of twenty percent of overbuild as "incidental."³ We note that the twenty-percent guidance applies at the time of the application, and we realize that this percentage may change based on subsequent building by other providers. However, if possible, we urge grantees to strive to keep overbuild funded by grants to approximately twenty percent, and to follow previously-issued guidance regarding overbuild.

Further, grantees could use knowledge of other providers' additional known or proposed service extensions or upgrades to reconsider whether they may want to make changes to priorities or designs. In addition, if probable extensions or upgrades are actually built, this could affect the number of customers that a grantee obtains (the "take rate"), which could affect grantees' business plans. Thus, grantees are encouraged to consider information obtained subsequent to obtaining construction grants in order to fine-tune their build plans and business plans.

³ VCBB staff guidance described three Tests regarding incidental overbuild (described more fully in the Act 71 Construction Grant Additional Guidance for Phased Applicants, link below): 1. Necessary Route – "Straight Face Test"; 2. Percent of addresses currently served passed; and 3. Requirement for the success of the business plan. See <https://publicservice.vermont.gov/sites/dps/files/documents/Additional%20Construction%20Grant%20Guidance%20Document.pdf>

Comments of the Vermont Community District Association (VCUDA)
September 15, 2022

Vermont Community Broadband Board

Policy Regarding Known or Probable Extensions or Upgrades to Broadband Service in a Grantee's District Subsequent to a Grant Award

The Vermont legislature enacted Act 71 with the goal of delivering broadband availability to all Vermonters and Vermont addresses. It noted the goal of "achieving universal access to reliable, high-quality, affordable, fixed broadband" in its statement of purpose.¹ The Act established the Broadband Construction Grant Program to finance broadband projects of eligible providers that are part of a universal service plan, that is, they plan to deliver universal service to every address in their District.

Act 71 defines "served" as service of at least 25/3 Mbps.

Identifying locations that are served begins with the Interactive Broadband Map which is maintained and updated by the Vermont Department of Public Service. It is available online at: <https://publicservice.vermont.gov/content/interactive-broadband-map> The Department of Public Service updates this map annually using information voluntarily provided to it by internet service providers. The VCBB makes a single adjustment, annually, to this map to align our data with the Board approved definition that requires a wired connection of at least 25/3 to be considered served.

In order to achieve universal service, the legislature was aware that some overbuild of geographic areas that are currently served would be necessary. Between the date of when the PSD publishes its data and the issuance of a grant, additional construction by providers may result in new addresses being served. Act 71 8086(f) requires the Board to distinguish consider these new builds, as well as probable extensions or upgrades not reflected on the map. (See discussion below). However, equally important is the requirement of 8086(g): that CUDs be able to access the municipal revenue bond market, which implies CUDs must create commercially sustainable networks that can attract investment.

For the VCBB to consider as "served" any addresses that do not appear as served on the Interactive Broadband Map (as slightly adjusted as described above) it will require a provider to submit a signed statement that wireline service at a specified service speed (100/100 25/3 or higher) is available to those listed E- 911 addresses and the service and installation price needs to be uniform with the provider's typical subscription and installation rates. The VCBB must shall distinguish consider this data as part of its analysis pursuant to Act 71 paragraph 8086(f), as discussed further below, and in conjunction with its analysis of the business plan of a CUD. The Board will not adjust the published list of eligible addresses for grant funding outside the release of data by the Public Service Department.

Regarding probable extensions or upgrades, a provider must submit a signed statement identifying the addresses to be served, specified service speed at 100/100 mbps or more, the project cost, resulting subscription and installation fees, and completion date. A performance bond, payable to the town where the service is proposed in the amount of the project cost at the proposed completion date is also requested to further understand the provider's commitment to the proposed build. In considering the

Commented [VCUDA1]: The policy actually has two components and this made it appear there is a single issue. Group thought it was more clear without.

Commented [VCUDA2]: Align word with Act 71 language.

Commented [VCUDA3]: Rationale is to be at least equivalent to what a CUD is building.

Commented [VCUDA4]: The idea in adding this was that a performance bond is a higher level of surety and clarity that a project will happen at the scale and timeline proposed. A performance bond also protects the State and Town by allowing another approach to be implemented if the project fails to complete.

Comments of the Vermont Community District Association (VCUDA)
September 15, 2022

probability that the proposed extension or upgrade is completed on time, the VCCB staff will weigh the mapping submission, the signed statement and the existence of a performance bond, other aspects of Act 71 and other materials that may be relevant. The VCCB will also give weight to if the provider's alternative includes full universal availability and the provider's track record at providing service in a timely manner and the project's location in the project pipeline as compared to when a CUD could serve those customers in determining the likelihood of probable builds.

Act 71 8086(f) Three-Prong Test

Act 71 provides that the Board may provide a grant to an eligible provider to deliver broadband service in a currently served area subject to a three-prong test, as described in paragraph 8086(f). That paragraph requires that:

- (1) The proposed project is a cost-effective method for providing broadband service capable of at least 100/100 speeds to nearby unserved and underserved locations;
- (2) Any overbuild is incidental to the overall objectives of the universal service plan required for funding under the Construction Grant Program; and
- (3) Before awarding the grant, the Board makes a reasonable effort to distinguish served and unserved/underserved locations within the area, including recognition and consideration of known or probable service extensions or upgrades.

The test requires the Board to evaluate whether the proposal is "cost-effective" (see prong 1). As part of this evaluation, the Board may consider the costs that the provider is proposing to charge customers (i.e., cost-effective to consumers), as well as costs to reach nearby un/underserved locations, bearing in mind the goal of universal service for the entire district. The Board may also consider that including served areas in a CUD build plan can enable more revenues to be earned relative to construction costs and can therefore reduce the prices that are necessary to charge in the unserved / underserved areas as well as make a stronger business case for bond fund support as anticipated in 8086(g). These benefits make selective construction in served areas a cost-effective method to achieve the goals of the universal service plan.

The test also requires the Board to consider the "overall objectives" of the universal service plan. This term is not defined in the Act, but the Board considers this to include the business factors in providing universal service to the district, including a workable business plan, the necessity to reach all addresses in the district, and the necessity to build a network with resiliency, redundancy, and excess capacity in the area.

In considering whether to grant a Broadband Construction award to an eligible provider, the Board is tasked with distinguishing served and un/underserved locations, including considering known or probable builds. (See discussion above regarding builds not reflected on current maps). This analysis is necessarily a snapshot of a build at a defined point in time, performed when the Board is considering the grant application.

Comments of the Vermont Community District Association (VCUDA)
September 15, 2022

Known or Probable Service Extensions or Upgrades

Once a grant has been awarded, the grantee, the VCBB staff and/or the VCBB may become aware of known or probable service extensions or upgrades in the grantee's proposed service area. Such service extensions or upgrades are to be expected as existing private providers in the area in question compete for business and upgrade their services. Given Act 71's overarching goal to provide universal service and encourage the competitive market for broadband services in Vermont, we do not view such proposed extensions or upgrades as necessarily unwelcome.

Given that eligible providers who have successfully obtained grants under the Broadband Construction Grant program must develop detailed designs and plans for their networks, we do not believe that the existence of additional known or proposed service extensions or upgrades should necessarily upend grantees' build plans. On the other hand, we think it makes sense from a business standpoint for a grantee provider to consider the known or proposed service extensions or upgrades and their likely effects on the grantee's plans. Thus, we earlier described a method by which the VCBB can acknowledge known and probable builds. (See above).

Commented [VCUDA5]: We did not think this final comment was necessary.

Incidental Overbuild

The existence of additional building in a grantee's territory is likely to affect the amount of area that is considered "overbuild." VCBB staff has previously issued guidance regarding what it considers "incidental overbuild" at the time of a construction grant application using a general limit of twenty percent of overbuild as "incidental." We note that the twenty percent guidance applies at the time of the application, and we realize that this percentage may change based on subsequent building by other providers. However, if possible, we urge grantees to strive to keep overbuild funded by grants to approximately twenty percent, and to follow previously issued guidance regarding overbuild.

Further, grantees could use knowledge of other providers' additional known or proposed service extensions or upgrades to reconsider whether they may want to make changes to priorities or designs. In addition, if probable extensions or upgrades are actually built, this could affect the number of customers that a grantee obtains (the "take rate"), which could affect grantees' business plans. Thus, grantees are encouraged to consider information obtained subsequent to obtaining construction grants in order to fine-tune their build plans and business plans.

Commented [VCUDA6]: Per conversation with VCCB, we believe it was agreed that this section would be addressed at a later time and that it will be removed from this document.



New England Cable & Telecommunications Association, Inc.
53 State Street ● 5th Floor ● Boston, MA 02109
Tel: 781.843.3418

New England Cable & Telecommunications Association, Inc.

September 14, 2022

Stan Macel
General Counsel and Public Records Custodian
Vermont Community Broadband Board
112 State Street
Montpelier, Vermont 05620

RE: Vermont Community Broadband Board Draft Subsequent Build Policy

Dear Stan Macel,

On behalf of the New England Cable and Telecommunications Association (“NECTA”), thank you for the opportunity to provide feedback on the Vermont Community Broadband Board’s (“VCBB”) Draft Subsequent Build Policy which will be discussed at the VCBB’s September 19th open meeting. NECTA is a five-state regional trade association representing substantially all private telecommunications companies in Vermont, Connecticut, Massachusetts, New Hampshire and Rhode Island. In Vermont, our member companies include Comcast and Charter Communications. The high-speed networks built and maintained by our companies are future-proof and deliver gigabit speeds to more Vermonters than any other providers.

In response to the draft policy, NECTA would like to offer the following comments:

Incidental Overbuilding

First, the 20% threshold for incidental overbuilding under the VCBB’s grant program is an unreasonably high level that will divert critical funding away from unserved and underserved areas in Vermont. With limited resources available to achieve “universal service” throughout the state, the VCBB should encourage applicants to target their build-out in unserved and underserved areas to maximize the investment dedicated to the VCBB’s Broadband Construction Grant Program rather than directing these funds toward subsidizing competition in already served areas. While we understand that some incidental overbuilding may have to occur in order for proposed projects to reach unserved areas, those portions of project costs should be funded privately without state or federal funds. NECTA does not believe it is appropriate for the VCBB to be incentivizing business models that are likely to face financial challenges and could inevitably lead to ongoing government subsidies in order to sustain themselves. It is important to note that Act 71 does not define “incidental overbuilding” as 20%, rather the 20% figure was determined by the VCBB. Since the figure is not defined in statute, we would urge the VCBB to reconsider lowering that level.

As currently proposed, VCBB’s 20% overbuild in defining unserved areas is already more generous than the Federal Communications Commission’s (“FCC”) Rural Digital Opportunity Fund (“RDOF”) standard.

The FCC, in crafting its RDOF grant program, has focused its primary funds in Phase I on “wholly unserved” census blocks, with “partially served” to be deferred to a later time. Additionally, the Bipartisan Infrastructure Investment and Jobs Act’s (“IIJA”) Broadband, Equity, Access and Deployment (“BEAD”) Program, which is being administered by the National Telecommunications Information Agency (“NTIA”), only allows funding for projects in “unserved” and “underserved” locations but does not allow for funding to go toward incidental overbuilding¹. Like the FCC’s RDOF program and NTIA’s BEAD program, VCBB should focus on providing state and federal funding to completely unserved and underserved areas and require Communication Union Districts (“CUDs”) or project proponents to independently fund any network construction in areas already served. Given that Vermont will likely be receiving substantial BEAD funding for broadband deployment in the near future, it would be wise for the VCBB to draft a policy for all grant programs that is aligned and complies with the federal funding requirements of BEAD so an entirely new process does not have to be created in a few months for projects funded through the BEAD program.

Lastly, Vermont’s Department of Public Service (“DPS”) effectively used COVID-relief federal funds during the pandemic to create the COVID-19 Response Line Extension Customer Assistance Program (“LECAP”), that helped provide over 800 Vermonters with the financial support (over \$1,350,000 total according to DPS) to connect to broadband networks just beyond their current reach. It is therefore important that VCBB remain diligent in safeguarding the use of public funds through the Broadband Construction Grant Program to avoid efforts that would overbuild a LECAP-funded network, or any other state or federal grant funded areas (ex. FCC RDOF areas). In our view, allowing the overbuilding of any networks already funded by government dollars would be an egregious misuse of taxpayer funds and should be avoided at all costs.

Process for Transmitting Known or Probable Service Extensions or Upgrades

NECTA members do not plan to share proposed network build plans with the VCBB as this information is highly commercially sensitive. However, NECTA members are willing to share information with the VCBB on service availability as soon after projects are *completed or in progress* and *addresses become serviceable*. In order to share this information in a timely manner, the VCBB should create a formal process that will clarify timelines and transparency for when and how this information should be filed with the state.

NECTA would recommend that this process includes formal notification to existing internet service providers (“ISPs”) once an application from a CUD for a proposed project is received by the VCBB. This will allow existing ISPs to provide the VCBB with timely data about any served locations within the proposed project area that is not currently reflected in the DPS Interactive Broadband Map. Further, NECTA recommends that for the current Broadband Construction Grant Program and for all future broadband grant programs, that the VCBB establish a formal challenge process that will allow existing ISPs an opportunity to provide mapping data that demonstrates that an area is already “served” according to program definitions. This type of challenge process will ensure that proposed projects and funds are truly being targeted at the areas of highest need in Vermont. For example, many states, including neighboring New Hampshire, have established or are in the process of establishing a process under which the eligibility of a project area for funding is verified before funds are released. Under these processes, the agency administering a broadband grant program posts a public description of the proposal/application provided by the applicant as well as a map of the proposed project area. ISPs are

¹ BEAD NOFO: <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

then able to submit detailed information that identifies locations that overlap with their existing service areas. It is— important to note, a formal challenge process is also a requirement under the BEAD program, so the VCBB will be required to create a similar process in the near future for any projects that will be funded through that federal initiative.

The VCBB should also consider how the new FCC Broadband DATA Maps that are due to be released later this fall will inform the subsequent build-out policy and the awarding of funds under the Broadband Construction Grant Program. The new FCC maps will include the most up-to-date and granular data of served and unserved locations in each state and will be the basis for determining BEAD funding allocations to each state for purposes of broadband deployment. NECTA would encourage the VCBB to use the new FCC maps once published, along with a robust challenge process, as the core elements of determining the awarding of grants under the Broadband Construction Grant Program.

Lastly, NECTA would also request that the VCBB provide clarification on what criteria VCBB will use to determine the “weight to a provider’s track record at providing service in a timely manner and the project’s location in the project pipeline in determining the likelihood of probably builds.”

Thank you for your time and attention to these comments. I am available to answer any questions at your convenience.

Sincerely,

Timothy Wilkerson
President, NECTA



September 14, 2022

Via Email

Stan Macel, General Counsel
Vermont Community Broadband Board
112 State Street, Third Floor
Montpelier, VT 05620-2601

Re: VCBB Subsequent Build Policy

Dear Mr. Macel:

I am writing to provide you with comments on behalf of Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”) regarding the draft “Vermont Community Broadband Board Policy Regarding Known or Probable Extensions or Upgrades to Broadband Service in in *[sic]* a Grantee’s District Subsequent to a Grant Award” (“VCBB Subsequent Build Policy”). These comments are in addition to comments which are being provided by the New England Cable and Telecommunications Association on behalf of both Comcast and Spectrum Northeast, LLC.

The VCBB’s “Broadband Construction Program Request for Proposals”, issued January 18, 2022 and updated June 13, 2022, states:

The Board seeks proposals from Eligible Providers to provider Access to Broadband to Unserved and Underserved Locations included in a Universal Service Plan. The Board has identified each Unserved and Underserved location by street address and its E-911 site ID number. These locations are listed in the following spreadsheet: <https://publicservice.vermont.gov/content/2022-act-71-construction-grant-program-eligible-locations-updated-5-19-220> and the *[sic]* shown on the following map: <https://experience.arcgis.com/experience/4a4f2662978b48238be5915ce9c7a68f/>.

As outlined in Act No. 71, locations are considered “underserved” if the location only has access to broadband service capable of speeds of at least 4 Mbps download and 1 Mbps upload but less than 25 Mbps download and 3 Mbps upload.¹ Prior to awarding grants for the provision of broadband service, one of the responsibilities of the Vermont Community Broadband Board (“VCBB”) is to make a reasonable effort to distinguish served and unserved or underserved

¹ 30 V.S.A. §8082 (11)

locations within a geographic area, including recognition and consideration of known or probable service extensions or upgrades.²

We find it concerning the draft VCBB Subsequent Build Policy states, “The Board will not adjust the published list of eligible addresses for grant funding outside the release of data by the Public Service Department.” In order to carry out its responsibilities, pursuant to Act No. 71, we believe it is incumbent on the VCBB to maintain an accurate list of locations eligible for funding through the Act 71 Broadband Construction Program. In order for the list to be accurate, it should be updated whenever the VCBB receives notice from a provider regarding known or probable service extensions.

In a good faith effort to assist VCBB in determining locations that may already be served, earlier this year, Comcast reviewed the Unserved and Underserved data published by VCBB. Comcast identified 637 locations that were now serviceable because of Comcast’s recent construction efforts. Comcast provided this information via correspondence on July 1, 2022 and received no response by VCBB. With the information provided by Comcast, VCBB should update its list of locations eligible for funding, without having to wait for the Public Service Department to complete updates to the Interactive Broadband Map. This effort made by the VCBB would ensure the limited state funding is used for unserved areas of the state.

We appreciate the opportunity to provide comments regarding the draft VCBB Subsequent Build Policy. Please feel free to contact me at either melissa_pierce@comcast.com or 802-282-3432 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Melissa R. Pierce". The signature is written in a cursive, flowing style.

Melissa R. Pierce
Manager, Government & Regulatory Affairs

² 30 V.S.A. §8086 (f)(3)

From: [Kim Gates](#)
To: [Macel, Stan](#)
Cc: [Hallquist, Christine](#); [Fish, Robert](#)
Subject: RE: Draft Subsequent Build Policy from VCBB - Request for Comment
Date: Wednesday, September 14, 2022 2:14:28 PM
Attachments: [image002.png](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi,

Why was this draft only sent to me and not all eligible providers?

Per ACT 71, Franklin Telephone is an eligible provider and eligible for VCBB grants. Franklin Telephone has worked diligently to continually upgrade our network to meet the needs of our rural customers. Franklin Telephone's goal is to continue our fiber to the home build out. In the last two years, the Department of Public Service had very efficient grant programs that has helped with our FTTH. We are considering applying for the VCCB grants but the process is challenging. Your deployment map is outdated. Franklin's plan is for our entire service area have access to 25/3. This would be much easier to accomplish with VCBB grant funding.

Kimberly Gates

Franklin Telephone Co., Inc.
P.O. Box 96
Franklin, VT 05457
802-285-9911

From: Macel, Stan [mailto:Stan.Macel@vermont.gov]
Sent: Monday, September 12, 2022 2:59 PM
To: Macel, Stan
Cc: Hallquist, Christine; Fish, Robert
Subject: FW: Draft Subsequent Build Policy from VCBB - Request for Comment

Hi all –

Just a reminder that if you have comments to the attached draft policy we would love to get them by Wednesday in order to circulate them to our Board for next Monday's meeting.

Thank you,
Stan Macel

From: Macel, Stan
Sent: Thursday, September 1, 2022 12:22 PM
To: Macel, Stan <Stan.Macel@vermont.gov>
Cc: Hallquist, Christine <Christine.Hallquist@vermont.gov>; Fish, Robert <Robert.Fish@vermont.gov>
Subject: Draft Subsequent Build Policy from VCBB - Request for Comment

Hi All –

I am the General Counsel of the Vermont Community Broadband Board (VCBB), which, among other things, awards construction grants to CUDs and providers for building broadband networks in Vermont. You may be aware that the VCBB is drafting a policy on “subsequent build” -- that is, extensions or upgrades to broadband in a grantee’s district subsequent to a grant award. This was introduced at the last VCBB Open meeting, and I thought it would be useful to provide a copy of the document to you as an identified provider in Vermont.

The draft policy will be discussed at the September 19th VCBB open meeting. If you have specific comments, if you could please provide them to me by COB on Wednesday, September 14th so that I can incorporate them into my presentation to the Board. It would be especially helpful if you have suggestions about the best way to transmit the information about the builds. My email is stan.macel@vermont.gov.

Also please feel free to forward this to others in your organizations who may be interested in commenting.

Thank you,

Stan Macel
General Counsel and Public Records Custodian
Vermont Community Broadband Board
112 State Street
Montpelier, Vermont 05620
(802)- 636-7321



From: [Gordon Mathews](#)
To: [Macel, Stan](#)
Cc: [Hallquist, Christine](#); [Fish, Robert](#)
Subject: RE: Draft Subsequent Build Policy from VCBB - Request for Comment
Date: Wednesday, September 14, 2022 4:35:45 PM
Attachments: [image003.png](#)
[Subsequent_build_policy.docx](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good afternoon Stan,

Thanks for circulating this draft. Could you clarify the statement in attached draft that “The VCBB makes a single adjustment to this map to align our data with the Board approved definition that requires a wired connection of at least 25/3 to be considered served.”

Is this stating that the Board is using a different definition of “served” than the definition of “served” that’s included in Act 71 / 30 V.S.A. § 8082(9)? And if so, could you clarify what the Board-approved definition of “served” is?

Thanks very much,

Gordon Mathews

Vice President Legal & Regulatory Affairs
Vermont Telephone Co., Inc. / VTel Wireless, Inc.
354 River Street, Springfield, Vermont, 05156
Phone: 802-885-7712
Mobile: 802-289-2128
E-Mail: gmathews@vermontel.com

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From: Macel, Stan [mailto:Stan.Macel@vermont.gov]
Sent: Monday, September 12, 2022 2:59 PM
To: Macel, Stan <Stan.Macel@vermont.gov>
Cc: Hallquist, Christine <Christine.Hallquist@vermont.gov>; Fish, Robert <Robert.Fish@vermont.gov>
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Also please feel free to forward this to others in your organizations who may be interested in commenting.

Thank you,

Stan Macel
General Counsel and Public Records Custodian
Vermont Community Broadband Board
112 State Street
Montpelier, Vermont 05620
(802)- 636-7321



#	Priority	Item	Date entered	Assigned to	Resolution and date
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 October
23	1	Define audit criteria and post award grant reporting and review process for grantees/CUDs	8/8/22	CH	Team will finalize plan and share with Board in October
24	1	Invite to the Federal Delegation to future Board Meeting	8/8/22	CH	Tentative plan to attend a future meeting in October.
25	2	Host workshop for the CUDs on Uniform Guidance	8/8/22	CH	Team will finalize plan and share with Board in October
26	1	Establish policy to address issue of enforceability with any of the partners and the CUDs.	8/22/22	CH	Team will finalize plan and share with Board in October
18	1	Signature Authority of Executive Director	03/28/22	CH	Closed. Approved in July.
19	1	Policy around hiring staff	03/28/22	CH	Closed. Approved in July.
21	1	Invite to Doug Farnum to future Board Meeting	6/14/22	CH	Attended August 8 th meeting.
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.