

Vermont Community Broadband Board Meeting Tuesday, September 6th, 2022 5:00pm – 6:30pm

AGENDA

Meeting is being held virtually.

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Note: there may be additional executive sessions as needed

- 5:00 1) Meeting Call to Order, Roll Call, & Approval of Agenda
- 5:05 2) Approval of August 22nd Meeting Minutes
- 5:10 3) SoVT Construction Grant Application - Questions & Possible Decision Executive Session if necessary (Board, Staff, CTC, SoVT, 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)
- 6:15 4) Public Comment
- 6:30 5) Motion to Adjourn

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

Vermont Community Broadband Board Draft Meeting Minutes
Meetings are being held virtually.
August 22nd, 2022

I. Call To Order – 12:04pm

Roll call completed by Patty Richards

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

Patty Richards made a motion to approve the updated agenda as circulated on August 19th, 2022. Holly Groschner requested the BEAD grants be discussed and Patty Richards suggested that be covered in the BEAD Timeline and Q&A. Dan Nelson seconded and the updated agenda was unanimously approved.

II. Approval of the August 8th draft minutes

The Board discussed the August 8th, 2022 draft Board Meeting minutes. Brian Otley made a motion to approve the minutes. Patty Richards asked that a note be added that when Board returned from discussions regarding item V the update on confidential negotiations with NWFX and Lamoille Fiber that the last paragraph end with the Board returned from Executive Session and Patty Richards confirmed that no actions were taken. The motion to approve the minutes as amended was unanimously approved.

III. SOVT Construction Grant Application

The VCBB, CTC, SoVT and Consolidated continued discussion from the August 8th meeting around the public/private partnership in Southern Vermont. Christine Hallquist shared that staff and CTC met with the applicants to talk through the remaining questions about meeting the Outside Plant Design Standards and confirmed that SoVT and Consolidated's approach meets or exceeds the standards even though they use a different design.

Teles Fremin from CTC added that the portion of the territory where SoVT's project is just a portion of Consolidated's network and so they have additional electronic and fiber capacity if upgrades are needed and to support that backbone and future growth.

Patty Richards asked Teles to provide an overview of the review now that the outstanding questions have been addressed. Teles responded that through a series of meetings with the partners all of CTC's questions were answered satisfactorily, the biggest being the Outside Plant Design Standards which Consolidated provided a written response and has been addressed and the other was based around ownership and how the contract was structured which CTC now has more clarity around. Teles added that there were a few other details provided and CTC now feels the partnership can fulfill the requirements and provide strong service in the area.

Laura Sibilila asked for clarification around the transactions between VCBB, SoVT and Consolidated to better understand the relationship. Teles responded that Consolidated is going to operate and maintain the network and they will also construct the network. The core electronics will be owned by Consolidated and upgraded for additional capacity and the newly constructed fiber will be owned by SoVT CUD.

Laura Sibilila followed up with a question about what sustainable accountability the CUD has the ability to ensure with Consolidated. Teles shared that Consolidated will be providing regular quarterly reporting to the CUD on the operations for the Universal Service Plan, following the reporting metrics and guidelines outlined in RDOF for this area where they are partnering. Laura then asked about payments to the CUD and the financing relationship. Teles confirmed that there is no payments of any kind from the CUD to Consolidated and no revenue share or profit share from Consolidated to the CUD.

Holly Groschner asked if CTC has reviewed the terms of the contract between Consolidated and the CUD and whether there were any downtime standards or any penalties for not meeting operating standards of any kind. Teles confirmed that neither were addressed in the contract.

Patty Richards asked CTC and Stan Macel if the contract addresses the Act 71 requirement regarding the assets funded through the grants going back to the state in the event of a default. Teles explain that electronics and things that are intermingled, Consolidated will retain ownership over and the fiber strands any anything that can be clearly separated is what SoVT CUD will retain ownership over. Stan Macel agreed with Teles' summary. Stan also added that in response to Holly's question about down times, that those provisions will be included in the final grant agreement. Holly elaborated on her question to confirm that those terms are not necessarily enforceable against Consolidated because it's not in their operating agreement and the condition's of the grant can be enforced against the CUD as long as the VCBB exists. Stan confirmed that that is possible.

Christine Hallquist also noted that in the grant agreement the VCBB will use the specifications that are now in place for the BEAD program but that the issue of enforceability with any of the partners and the CUDs has not been established and should be a policy discussion added to the parking lot.

Brian Otley commented about the very different arrangement of this partnership than the rest of models the VCBB has previously discussed. Brian then asked Teles if CTC feels they've fully gotten an amount of information on this operating agreement and partnership that is equivalent to what has been seen in some of the other CUD partnerships that have been evaluated. Teles confirmed and highlighted the performance metrics which have been stated, the standards which are different but acceptable, and the ownership aspects which are not an issue from a technical standpoint but more of how the Board determines what is appropriate.

Holly commented that she is not in support of approval because she feels the CUD does not have an adequate opportunity to meet the criteria in the Statute to hold Consolidated accountable with no opportunity to terminate, no timeline enforcement opportunity for build out. These criteria are incumbent upon the CUDs to meet the criteria of act 71 to ensure accountability for delivery of service. Christine Hallquist responded that because this is a conventional application, it is reimbursed upon completion and if Consolidated is not meeting the standards or criteria of the grant agreement they will not get paid.

Laura Sibilila expressed that her concerns about sustainability of the CUD and accountability for

these funds have not been addressed.

Rob Fish commented that in any and all of the grant agreements if there is non-compliance the VCBB would request the grantee and any partners or other eligible provider back in front of the Board and disallow the grant agreement and a reminder that they are not paid until this project is complete. Rob also made the point that SoVT has not yet accessed the pre-construction or capacity funds and so in terms of being able to have a staff person to take on the accountability and oversight role going forward there will be funds available.

Eric Hatch, chair of SoVT, responded that he feels they have built in accountability to the contract with their performance reviews where the company must respond to issues in front of the Board and any member towns. He feels that the proven product performs to system standards and it is very affordable and adhering to all federal guidelines. He added that he doesn't feel the VCBB has clearly stated what other performance metrics are required and asked for a standard that is followed and consistently applied for all CUDs. Eric also mentioned that there is a termination clause of severability if Consolidated is not adhering to standards and the CUD would be able to take the assets purchased on behalf of the State and deploy those with another provider.

Laura Sibilia raised the issue of the poor service quality track record of Consolidated and the CUDs plan for accountability with the incumbent ISP. Eric Hatch explained that the track record with the fiber product is much higher than with previous technology and in terms of sustainability and feels the court of public opinion will be able to provide more efficient accountability than building up a staff that would take a portion of profit share to possibly address the unknown issues in the future. Holly added that she does not feel that addressing the District Board is not a valuable enough penalty and asked the CUD to explore other potential remedies of comparable business contracts. Laura Sibilia offered assistance in determining standards that would ensure future accountability.

Christine Hallquist provided the report from CAPI that they have seen significant improvement since 2018 with two-thirds reduction in complaints in the last few years, and two escalations that were noted and have been addressed at the management level and host isolation issues being addressed for redundancy. Christine confirmed that the VCBB staff are recommending approval of this project proposal as it meets the requirements and would ensure more funds are available to address higher-cost areas.

Dan Nelson commented that Consolidated's image on the fiber front is stellar and as has been pointed out previously, many problems go away once they are able to upgrade and these incumbents are strapped with old copper which is not as supportable and there haven't been any grant dollars to remedy that and it doesn't make good financial sense for these incumbents to make these investments because the take rates aren't good enough and it's a quagmire that the state has been in for a long time. These challenges will exist with the other CUDs that are going to operate their own network and he wants to ensure the Board is being equitable across all areas.

Patty Richards requested holding the vote until Brian Otley returned from a 1:00pm commitment. She expressed that in her opinion this is a fairness issue and that SoVT has put in good faith a proposal in front of the Board that they worked hard to develop with Consolidated and there are many pros. She suggested that if there needs to be a little bit more specificity in the contract to get Board approval that can be addressed but it would be unfair to debate a policy and hold up the project for a month or two. She continued that in the meantime if there's more information that can be put in the contract to give the Board the assurance that Consolidated is going to be on the hook to make these towns and the consumers happy and serve them in an appropriate fashion then she

would delay this vote to the next meeting and give everyone time to address specifically these issues that have been raised today. Holly Groschner suggested the Board take on the homework of reviewing the grant agreements to see if they meet the accountability standards some of the Board is wishing to see. Christine Hallquist added that she is a proponent of good network design and that the VCBB has Outside Plant Design Standards to ensure that. Dan Nelson suggested that 10% of the payment is held for 6 months or a year following project completion and the final payment would be dependent on a confirmed level of service and performance.

Brian Otley returned at 1:26pm and Patty Richards made a motion to approve SoVT CUD's application for \$9,009,085 contingent on the establishment of consumer protection provision grant agreement standards and/or contract provisions that ensures long term accountability. There was no second and the vote was postponed to the next meeting.

IV. NTIA BEAD Middle Mile Application (Informational Discussion)

Christine Hallquist presented background on the VCBB's Middle Mile application and introduced Joanne Hovis from CTC who's team is helping to prepare Vermont's application. She explained that the VCBB Staff has requested CTC provide a statewide design that would provide resiliency and redundancy across all of the CUDs and several private ISPs and that this project could be supported through the IJA Middle Mile program and would leverage the other available funding for other uses.

Patty Richards invited the Board, VCBB Staff, and CTC 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).

Patty confirmed that no action was taken in Executive Session. Christine Hallquist requested to continue pursuing a Vermont Middle Mile application and the Board agreed that was acceptable.

V. Policy Presentation/Discussions (Initial Presentation and Discussion)

Stan Macel introduced the draft Subsequent Build Policy outlining how the VCBB will consider builds completed or proposed subsequent builds. This policy would address known or probable extensions or upgrades to broadband service in a grantee's district subsequent to receiving a grant award. As drafted, the policy would require a provider to submit a signed statement to the VCBB indicated any addresses that are served but do not appear as served in the interactive broadband map. Regarding probable extensions or upgrades, a provider would have to submit a signed statement identifying the addresses to be served, speed, and completion date. Staff noted that they were seeking input from interested parties and would circulate a revised policy at a later meeting. Holly Groschner asked whether the provider would submit information to the VCBB or to the CUD. Laura Sibilia suggested that the provider should submit information to the CUD, so that the CUD would be informed directly and could follow up with the provider. Staff was amenable to the change and planned to ask others for input, preferably written comments, as well.

Christine Hallquist suggested that ongoing policy developments in preparation to the next legislative session be added as a regular agenda item.

VI. BEAD Timeline and Questions & Answers (listed as item V on agenda)

Christine Hallquist agreed to update the Board on the BEAD timeline and other grant programs at

a future meeting.

VII. Staff Updates

Christine Hallquist provided a status update on Vermont's Workforce Development team, including the note that 35 technicians have been trained.

Rob Fish shared the news that temp positions to supplement staffing capacity should be posted soon and the team continues to work to fill the open staffing positions that were previously approved by the Board. He mentioned that the Broadband Project Developer position has been reshared with an extension made to the deadline to apply and the title reframed as a Community Economic Development Manager to cast a wider net.

The Creative Financing contracts to assist the CUDs with their additional funding needs are in process and Staff hope to have those finalized this week.

VIII. VCUDA Update

F.X. Flinn provided updates from VCUDA. He shared that VCUDA will be contracting with a company out of Connecticut to provide part time staffing support for the association and that it will be much needed assistance to help the CUDs move forward with current efforts.

IX. Public Comment

Seven members 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.
- Erik Garr echoed what Eric Hatch shared and commented that Consolidated knows improvements are needed and strongly feels the company has been working to address ongoing concerns and they are confident in their product and the partnership in Southern Vermont.
- Michele Guite shared concerns over the CUD structure and the costs associated with reaching rural addresses with any fiber, let alone the possibility of multiple strands from various companies.
- Jonathan Baker commented that it was a wise decision that the Google deal fell apart before it was too late and that NEK realized in the fall that they would not provide enough income to make a rural network work.
- Steve Whitaker commented that in his opinion the VCBB cannot fund a network that is not open access such as what is being proposed in SoVT with Fidium.
- F.X. Flinn provided input related to how ECFiber operates in relationship to open access networks.
- Fred Schwacke claimed he had not being involved enough in the decision making and reiterated concerns over consumer protection and accountability with the SoVT and Fidium deal.

X. Parking Lot and Meeting Schedule

Christine Hallquist shared the three remaining items in the Parking Lot:

- 1) Invite to the Federal Delegation to future Board Meeting
- 2) VCBB to define audit criteria and post award grant reporting and review process for grantees/CUDs.
- 3) VCBB's approach to mapping and strategy for challenging the FCC.

She confirmed that staff will try to address those items during September meetings. Holly Groschner asked to make sure that enforceability criteria in the grant agreements is shared with the Board.

Laura Sibia shared the idea of discussing opportunities to document the collective efforts across Vermont and that she will pull together her thoughts into a proposal to discuss at a future Board Meeting.

The Board discussed the tentative schedule for Board Meetings through September:

September 6th – rescheduled due to Labor Day, only 3 Board Members will be in attendance
September 19th – all Board in attendance

Patty Richards made a motion to adjourn. Laura Sibia seconded, the motion was unanimously approved, and the meeting was adjourned at 3:39pm.