

Vermont Community Broadband Board Meeting Monday, September 11th, 2023, 12:00pm – 4:00pm

Revised Draft Minutes

I. Meeting Call to Order, Roll Call, & Approval of Agenda

Patty Richards called the meeting to order at 12:01 and completed roll call.

- Patty Richards, Chair (Remote)
- Laura Sibilia (Remote)
- Brian Otley (Remote)
- Holly Groschner (Remote)
- Dan Nelson (Remote)
- Christine Hallquist - Staff (Remote)
- Robert Fish – Staff (Remote)
- Toni Clithero – Staff (Remote)
- Steven Zubkoff – Staff (Remote)
- Herryn Herzog – Staff (Remote)
- Lucy Rogers – Staff (Remote)
- Chance Payette – Staff (Remote)
- Alexei Monsarrat– Staff (Remote)
- Kristen Brynga– Staff (Remote)
- Alissa Mathews– Staff (Remote)

Patty Richards made a motion to approve the agenda Seconded by Brian. No further discussion.
Unanimously approved by Patty, Laura, Holly, Brian and Dan.

II. Approval of Minutes (August 14 and August 25th Special Meeting)

Patty Richards noted that Brian was not present for the August 14th meeting and asked him to abstain. Patty made the motion to approve the minutes for August 14th, seconded by Holly. The board voiced concerns around language, narrative, framing and consistency in sections 4 & 5. Patty withdrew her motion and Laura will work on changes until the next meeting on October 9. Dan was not present for the August 25th meeting and will abstain. Patty made the motion to approve the minutes for the August 25th meeting, seconded by Laura. No further discussion *Voted in favor of the motion by Patty, Laura, Brian, and Holly. Dan abstained.*

III. Lamoille FiberNet Construction Grant Application

Staff recommended approval of the Lamoille Fibernet (“LFN”) Construction Grant in the amount of \$13,588,636. Christine Hallquist advised that LFN had written a letter agreeing to comply with the VCBB’s future policies. The Board stated all applications should be consistent. Using the language “Subject to future policies being developed by the VCBB related to accountability.” Language under the second condition regarding a future plan for sustainability of the CUD should be considered. Lisa Birmingham, Chairperson of Lamoille FiberNet (LFN), addressed questions from the VCBB Board regarding the CUD’s sustainability plan.

Patty made a motion to grant Lamoille FiberNet’s Construction Grant in the amount of \$13,588,636, conditioned on and subject to future policies developed by the VCBB based on accountability and development of a sustainability plan within one year or prior to Phase 2 construction grant application, whichever comes first, and upon the execution of an operator agreement consistent with the grant requirements.

Patty granted Holly's proposed amendment to read *"a motion to grant Lamoille FiberNet's Construction Grant in the amount of \$13,588,636. The approval is conditioned on and subject to future policies developed by the VCBB related to accountability. As well as development of a sustainability plan as described in the letter from Lamoille Fibernet, within one year or prior to Phase 2 construction grant application, whichever comes first. And execution of an operator agreement consistent with the grant requirements. Holly seconded the amended motion. No further discussion. Voted unanimously by Patty, Laura, Holly, Brian and Dan.*

IV. Otter Creek Construction Grant Application

Staff recommended the approval of the Otter Creek Construction Grant in the amount of \$9,952,273 and Christine turned it over to Laura Black, chair of the Otter Creek Communication Union District (OCCUD) Board for presentation and questions from the VCBB Board. Laura started with a brief history and description of the 17 town CUD. She then proceeded to explain their relationship with Lamoille Fibernet and how this helped to negotiate an agreement for a 20-year contract with Consolidated Communications. The board asked about the similarities or differences between the two contracts between Consolidated and Otter Creek versus the contract between Consolidated and Lamoille Fibernet. Laura Black responded that the only difference in the contract was around construction terms regarding liquidated damages assessed on the double funding of what was left for the final 2% and Otter Creek cannot not do that on the out of territory area.

Following Otter Creek's presentation, Patty made a motion to grant Otter Creek's Construction Grant in the amount of \$9,952,273, conditioned on and subject to future policies developed by the VCBB related to accountability. As well as development of a sustainability plan as described in the letter from Otter Creek, within one year or prior to Phase 2 construction grant application, whichever comes first. And execution of an operator agreement consistent with the grant requirements. Seconded by Holly. No further discussion. Patty, Holly, Brian and Dan voted in favor; Laura opposed. Motion approved on a 4 – 1 vote.

V. BEAD Initial Proposal Volume 1 – Board Approval

Lucy Rogers led discussion concerning the BEAD Initial Proposal Volume 1 and requested Board approval for submission to the NTIA, having conducted the 30-day public comment with any board input.

Patty made a motion to approve the BEAD Initial Proposal Volume 1 as presented in the Board Packet, with the understanding that there will be some additional language explaining the Fixed Wireless challenge process by staff. Seconded by Laura. No further discussion. Unanimously approved by Patty, Laura, Holly, Brian and Dan.

VI. BEAD Initial Proposal Volume 2 – Board review

Lucy explained the status of the Board's approvals of the BEAD application deliverables, including VCBB's August 28, 2023, submission of Vermont's Five-Year Plan, the Board's recent approval of Volume One of Vermont's Initial Proposal, and the ongoing review of Volume 2. Next steps for Volume 2 include a public comment period from September 15th to October 15th. On affordability, the board suggested some options to consider instead of staff's proposed \$45.00 flat fee, Staff and Vernonburg will continue to write a draft that may allow for more flexibility and still adhere to NTIA guidance. The Board asked if the Sunset Provisions in the Act 71 language would conflict with the BEAD plan. Lucy answered that she would look into that question. *Patty closed. No further discussion and no action taken by the VCBB board.*

VII. Ex parte communications

Patty Richards provided a written recommendation regarding the issue of documents being sent out after the Board packet has been circulated. Patty summarized the memo which was included in Board packet. Patty noted that based on a review of online material as well as discussions with VCBB legal counsel (Toni Clithero), adding new information to Board meetings is allowable but it was recommended that it be done on a limited basis and only when necessary. Patty noted sending out information and documents after a board packet has been circulated is discouraged. Changes to the agenda may be made but action items requiring a vote should be avoided unless it is an emergency or necessary situation. The board discussed the memo and what they would like to see happen regarding sending information after a board packet was circulated. It was suggested to move public comment to the start of the meeting. *Patty made a motion that the Board approve her memorandum regarding how to handle late submission of documents by staff with two changes. The first change was to include an exception for emergency items from staff that require action. The second was an exception for documents from the public that relate to an item on the agenda proposed for action. All documents from staff and the public must be submitted through the Executive Director. Attempts to submit documents to individual Board members would not be allowed. The Board also approved the practice of having public comment at the beginning and end of the meeting, Laura seconded. No further discussion. Motion was approved by Patty, Holly, Laura and Dan.*

VIII. Governmental Affairs

A general concept discussion around Legislative representation. There are several issues that representation would help as some are not going to be resolved easily, and the board would like to see a contract for a Government Affairs person on a year-to-year basis. This person would be accountable to the Executive Director of the VCBB. Christine stated we may have staff that would be willing and able to conduct this type of work. Christine also mentioned staff would have to check on grant requirements to see if we could contract this work out or if we would have to use staff. Christine reported BEAD funding could not be used and would have to investigate other funding. Patty asked if board members had thoughts of any entities or people that would be good, please pass those on to Christine and copy the board. *No further discussion. No action taken.*

IX. VCUDA Updates

With a new Policy coordinator helping out Committees are flourishing. Legislatively, the Policy and legislative committee are talking about some technical corrections and other things that we deferred last year, but the restoring the 20 million dollars, the revenue changes that are being discussed, including the Vermont Universal Service Fund and the Consumer Protection bill and its impact on broadband is high on the list for that group. The Finance Committee issued an RFP over the last month and has selected and hired an individual to help lead the development of the shared services programs that are funded by the Northern Borders Grant. VCUDA advised the CUDS "were happy" with BEAD Volume 1, particularly the attempt to put some more rigorous process around determining addresses served by wireless and how that would be done. VCUDA and most of the CUDs signed a letter to Secretary of Commerce Raimondo and the NTIA, about the letter of credit calling on the NTIA to reconsider the arbitrary requirements for the letter of credit.

X. Public Comment

Irv Thomae commented about the affordability discussion earlier in the meeting and wanted to thank Board members for questioning the flat fee as unrealistic. He does not want to see Vermonter's expectations raised on a number that may not be sustainable. He also commented about service drop being more expensive on mobile homes versus regular homes due to National Electric code that requires utilities to be delivered to a mobile home in conduit versus an overhead drop.

F.X. Flinn, chair of ECFiber, explained their 21 towns served by their business. The method to develop their top line revenue to cover all costs and expenses. The determination was \$100 per customer with at least 6 customers per mile. Currently, they are at 5 customers per mile with an average price of \$104 per customer. We would not be able to go forward with the \$45.00 in place. He would also like feedback from the Board on his and Irv's comments.

Paul Fixx, chair of NEK Fiber, is also concerned with the \$45.00 affordability amount. The BEAD document seems to mention \$75.00, which NEK believes they could sustainably meet with some of their own affordability programs. Paul also mentioned they have a working group that's very carefully looking at possibilities to provide their own affordability program and will try to share some outline of where that might go so that the BEAD proposals might allow independently stood up programs rather than a firm price.

Ellie de Villiers expressed support of Irv's comment about possibly not including a specific target value in the version for public comment. She also pointed out that the affordable connectivity program ("ACP") is projected to run out next year. She agreed that staff should take this up and discuss it with the stakeholders.

XI. Parking Lot

With the Boards approval of the ex parte discussion, that item will be closed. We are adding 2 more items:

1. Is the request to produce an overlay of the BEAD timelines and the grant requests in the upcoming work of the Board.
2. Staff will produce an update to the Board on BEAD versus ARPA requirements.
3. An action item for Governmental Affairs
4. Accountability Policies: Patty confirmed ongoing meetings of working groups. Laura asked if the Sunset Provision could be allowed more time for development as they are trying to create a review process for the board to evaluate reporting recommendations to the Legislature. The board determined a first draft will be due October 9th. Lucy added the next BEAD item for the Board is a vote in November, but some time could be set aside in October to have a conversation and then vote on Volume 2 in November. Staff mentioned a review may also be needed regarding Digital Equity. *The Board confirmed there will not be a special meeting in September.*

XII. New Staff Introductions

Christine introduced the three newest members of the VCBB staff including Chance Payette, Alexei Monsarrat, and Steven Zubkoff.

XIII. Confirm Regular Meeting 10/9 & Motion to Adjourn

No special meeting for the month of September. The next scheduled VCBB Board meeting is Monday, October 9th from 12:00 to 4:00. Patty made a motion to adjourn at 3:46. Motion approved unanimously by Patty, Holly, Laura, Brian, and Dan.