



Board Packet Executive Summary

October 17, 2022

Christine Hallquist, Executive Director

Phone – 802-636-7853

Email – christine.hallquist@vermont.gov

WCVT grant application for non-CUD towns

WCVT submitted a comprehensive proposal to provide 100/100 Mbps service to via a phased approach to all addresses in their service territory outside of those towns within Maple Broadband. Staff is awaiting a final clarification from WCVT on some conflicting data. Staff does not expect the correction to impact its overall recommendation of support for the proposal, but will issue a final recommendation following at meeting with WCVT at 12:30 Friday afternoon. WCVT has an excellent reputation and track record in Vermont. The PSD gives the company high marks for their customer support. Based on the numbers we have, and a grant request of \$8,348,243, this project will provide fiber optic service to 2,490 passings (addresses) with 1,200 underserved addresses. The grant cost would be \$3353 per passing, which is well below the statewide average of \$5156. The fiber miles for this project are 245, which equates to a cost of \$34,076 per mile, well below the state average of \$55k/mile.

Non- ARPA Funded Grant Programs.

Presentation to the Board of two legacy grant programs that are not funded using ARPA. The first program is to assist the CUDs in leveraging financing. The second program is funded by Northern Borders Regional Commission to promote public-private partnerships to further the goal of a universal service plan.

Multi-Dwelling Units policy presentation and discussion

Accessing Multi-Dwelling Units is a challenge all CUDs will face. Many of the condos, housing developments, multi-family properties have exclusivity agreements with a single provider that limit the choice of residents. General Counsel, Stan Macel, has been researching how the issue has been addressed in other states and will present several potential legislative approaches to ensuring equal access to high-speed broadband for these locations.

Organizational meeting

At the last (October 3, 2022) the Board requested an Organizational meeting to discuss Board/Staff processes moving forward. Please bring in your November availability. I am hoping we can avoid the week of 11/7 as I am going to be vacation in South Lake Tahoe visiting my daughter.

Vermont Community Broadband Board Meeting

Monday, October 17th, 2022 12:00pm – 4:00pm

AGENDA

Meeting is being held virtually.

[Click here to join the meeting](#)

Join by Phone; [+1 802-828-7667](tel:+18028287667), [494812198#](tel:+18028287667)

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 19th & October 3rd Meeting Minutes
- 12:10 3) Staff Updates
- New Staff Intro
 - Updated VCBB Org Chart
 - Act 71 Funding Dashboard Review
 - Guidance Document - Insurance-Related Best Practices for Broadband Construction Projects
 - Parking Lot
- 12:45 4) WCVT-nonCUD Construction Grant Application - Questions & Decision Executive Session if necessary (Board, Staff, CTC, WCVT)
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)
- 2:00 5) Non ARPA Funded Grant Programs: Process and Potential Review of RFP for Broadband Construction Financing RFP (\$1.5M program) and Discussion of Public-Private Partnership Challenge Grant (\$1.2M program single NBRC grant)
- 2:30 6) Multi-Dwelling Units Policy Presentation & Discussion
- 3:00 7) VCUDA Update
- 3:15 8) Public Comment
- 3:30 9) Schedule & Structure of Board Organizational Meeting for November
- 4:00 10) Confirm Next Meeting Oct 31st & 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.
September 19th, 2022

I. Call To Order – 12:18pm

Roll call completed by Patty Richards

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

Patty Richards asked to add an Executive Session for VCBB Directors only after Item III and made a motion to approve the updated agenda. Holly Groschner seconded, and the updated agenda was unanimously approved.

II. Approval of the September 6th draft minutes

The Board discussed the September 6th, 2022 draft Board Meeting minutes. Dan Nelson noted a mistake in the comment provided by Eric Hatch and Alissa Matthews revised the language to read, “Eric Hatch commented that SoVT had a debrief and is very excited and appreciative of all of the work and support provided from the Board and VCBB Staff to get to this milestone for their CUD.”

Dan Nelson made a motion to approve the updated minutes. Laura Sibia seconded, and with three votes in favor the motion was approved. Patty Richards and Holly Groschner were not in attendance and abstained from the vote.

III. WCVT Maple Broadband USP Construction Grant Application Q&A and Decision

Christine Hallquist provided an overview of the public/private partnership in Addison County between the Maple Broadband CUD and Waitsfield and Champlain Valley Telecom (WCVT). Christine shared that they are requesting \$9,104,486 to build out 325.57 fiber miles to serve a total of 2,655 passings within the towns of Addison, Bridport, Panton, Weybridge, and Bridport; and portions of Ferrisburgh, New Haven, and Waltham.

Steve Huffaker presented an overview of the Maple Broadband CUD and its relationship to Waitsfield and Champlain Valley Telecom (WCVT):

- 20 member towns in Addison County with 17,319 E-911 addresses; 5,898 un/underserved
- The CUD has an operating agreement with WCVT
 - WCVT is responsible for universal service in its ILEC territory and Maple Broadband is responsible elsewhere in the USP
- Total Cost for Maple Broadband USP - \$51.8M; \$16.6M for WCVT area

- Throughout the USP there will be consistent fiber cable type and strand counts, termination method, pole attachment method, use of Calix platform, and active and passive cabinet manufacturer.
- Maple Broadband and WCVT have agreed that if and when needed they will loan in-stock product to each other to accommodate project schedules.
- Network management agreement key performance indicators include:
 - Voice Network Trouble Report Rate
 - Troubles cleared within 24 hours
 - Calls answered within 20 seconds
 - Installation appointment met
 - Broadband Trouble Report Rate
 - Network Uptime
- WCVT will provide the following service for Maple Broadband:
 - Start-up business operations support
 - Federal ACP program training and support
 - Construction materials warehousing and management
 - Network design support
 - Network hub construction
- Transparency
 - Regular Maple Broadband/WCVT business planning meetings
 - Regular WCVT presentations to the Maple Broadband Governing Board
 - Regular WCVT construction reporting



Semi-Annual Governing Board Progress Report

July 1, 2022

	Maple Broadband	WCVT
First year of operation	2020	1904
Fiber network launch date	2022 (tentative)	2012
Employees	0	68
Funding	Grants, loans, subscriber revenues	Grants, loans subscriber revenues
Unserved addresses	714	161
Underserved addresses	2306	2716
Total addresses	9488	7831
	Maple Broadband	WCVT / Maple Broadband
Addresses passed, Q1/Q2 2022	0	0
Addresses passed, Q3/Q4 2022		
Addresses passed, Q1/Q2 2023		
Addresses passed, Q3/Q4 2023		
Addresses passed, Q1/Q2 2024		
Addresses passed, Q3/Q4 2024		
Addresses passed, Q1/Q2 2025		
Addresses passed, Q3/Q4 2025		
Addresses passed, Q1/Q2 2026		
Addresses passed, Q3/Q4 2026		

Roger Nishi provided an overview of updates in WCVT's portion of Maple Broadband's USP:

- 80 installations to-date in the Maple Broadband towns
- 22 miles of fiber placed in "Big Hollow" which includes the area around Starksboro, another 16-18 miles remain to be built to serve 340 customers when complete
- Pole applications are complete and exchanges are being engineered
- WCVT recently met with GMP on Maple Broadband and WCVT connection point
- Early in 2023 WCVT will complete mainline construction in Addison, Bridport, Panton, and Weybridge, and customers will be added as splitter cabinet locations are tested

Following the presentation, Patty Richards opened the floor for questions from Board Members.

Laura Sibilia:

- 1) It is noted that by working with Maple WCVT, they will be more than doubling the number of addresses its servicing. Is this correct?
 - a. Steve: Yes, that is correct.
- 2) Has WCVT ever had a service quality investigation by the PSD?
 - a. Roger: None that he is aware of.
- 3) What level of increased accountability does a Maple CUD customer have from your regular customer?
 - a. Roger: All customers will receive the same care and service that they bring to their current WCVT customers. As they add customers, keeping their quality of service is a priority.
- 4) Please speak to the sustainability of your CUD and your executive director. How will that position and that community representation be maintained.
 - a. Steve: There is accountability on the part of WCVT as it relate to their needs. Each delegate from the 20 towns attends the monthly board meetings and it is not unusual that they entertain questions as to when WCVT will build in their town. Other issues and concerns may be brought up as well and those are funneled to WCVT. The WCVT responses are reported back to the governing board. WCVT already seems to have a good reputation in the community.
 - b. Steve: Their mandate is to ensure all subscribers in their member towns have service. In the early years they will be focused on deployment and revenue flow. As time goes on that funding focus will shift into the municipal bond market. He thinks that by the 10 year mark all buildout will be completed. They will still be the custodians after that and will manage at that level.
- 5) Let's say that WCVT is sold to a hedge fund or investment fund and all of a sudden there are lots of problems. How will the CUD handle this.
 - a. Steve: Terms of management agreement addresses that eventuality. The way they are building their network, there are two islands of CUD presence. As part of their build the two islands will be interconnected via infrastructure that's not provided by WCVT. They want to own the totality of their subscribers in a single discreet network at which point they can move on to seek another operator.
- 6) Does the CUD have any engagement as part of your agreements with WCVT on rate increases? Are there any expectations on notification, presentation of documentation, etc.
 - a. Steve: No, there is no notification language for rate increases or changes.

- b. Roger: All customers will be provided with the same notice regardless of if they are in Maple territory or not. WCVT will also be providing updates to Maple and is willing to put written provisions in the contract.

Holly Groschner:

- 1) In the staff review it was noted that the rate charge was \$103 for 100 megabytes square. What is the base rate and is this same for Maple as other WCVT customers?
 - a. Roger: WCVT is constantly reviewing their rates and they want to condense some packages and they are looking to bring those rates down.
 - b. Steve: Maple is not in lock step with WCVT. They need to have satisfactory take rates so they can meet their overall business objectives.
- 2) Maple has made a separate application for funding and other CUDs have made other applications with a commercial provider. Why is this system not part of the Maple system in the agreement and instead included as private infrastructure?
 - a. Roger: It's something that is part of Federal Universal Service funding and in the operations of their service area, all those customers are counted as part of the funding that they receive at the federal level. So if Maple were to come in and were to overbuild WCVT and say they were separate from WCVT and those customers went away, that universal service funding could be reduced at the federal level. Now it's all in a state of flux now, but it's important for WCVT to maintain the current footprint and customers to at least keep the funding as it comes in today at those levels. He can't speak to the future on that, but that's the main intent and it makes for a system in which they're not competing for the same customers in an area that is just extremely difficult to serve and high cost in nature.
- 3) In the staff summary it suggested that 1100 of the addresses passed are not eligible. How are they not eligible if they are copper lines?
 - a. Roger: They have short enough loop distance so that they can get speeds of 25/3. They could include these in incidental overbuild but have not done so to date because the overall build is much more than the funding they are requesting. These are customers that are close enough to the OLTs or they can be brought up to speeds greater than 25/3.
- 4) The Board does not have a copy of the agreement between WCVT and Maple. What are the enforcement standards, penalty provisions and what does it look like if the parties decide to part ways. The Board expects there to be performance criteria that is outside of the control of the VCBB.
 - a. Roger: The gist of the agreement is that WCVT needs to build at the same or a quicker pace than Maple. That is something that as an incumbent provider, they will ensure that they build at the pace that meets the needs of Maple. There are penalties and remedies for accountability but they don't expect those to ever come into play.
 - b. Steve: They have used some of the tariff language from the PUC in their agreement to ensure WCVT delivers on the expectations.
- 5) Are there plans that are below \$103 that provide adequate service to customers?
 - a. Roger: 25/25 is \$79.95 and 10/10 is \$72.95

Patty:

- 1) Would you consider some performance standards similar to what was voted on by the Board for Southern Vermont and CCI? If we have created a standard for one grantee than shouldn't we do that for all?
 - a. Steve: Not fully aware of those provisions so can't comment.
 - b. Roger: The things included in those provisions are what WCVT does on a regular basis anyway. There is nothing in those provisions that Roger finds insurmountable or objectionable.
 - c. Laura: There is no record of poor performance for WCVT, in contrast to CCI. There is also a plan for the CUD to continue into the future to maintain the connection and that accountability. This creates a significant difference between this application and the one with CCI.
- 2) Patty wants to note that it is WCVT applying and not Maple.
 - a. Steve: When this was originally discussed, the general indication at the time was that it was the CUDs responsibility to submit the application. The application is a huge undertaking so WCVT took the lead on it. This approach was the result of some of Maple's challenges to get that application work done.

Brian noted that he is in full agreement with the discussion and it appears to be consistent with previous discussions the Board has had on enforceability.

Patty Richards made a motion to approve WCVT's request for \$9,104,486 contingent on an agreement between WCVT and Maple Broadband CUD on consumer protection provisions at least equal to or more stringent than what was approved in the Southern Vermont grant application and the inclusion of provisions regarding advance notification of rate changes. The motion was amended to also require that those provisions must be produced in writing and are subject to staff review. Laura Sibilgia seconded, and the amended motion was unanimously approved.

IV. VCBB Executive Session

Per Board Chair request, the Board entered into Executive Session to discuss personnel matters where general public knowledge would clearly place the public body, or a person involved at a substantial disadvantage (1 V.S.A. § 313(a)3).

Patty Richards confirmed that no actions were taken in Executive Session.

V. NTIA BEAD Middle Mile Application Update

Christine Hallquist provided an overview of the status of Vermont's Middle Mile application that would improve statewide resiliency and redundancy and shared that CTC, the consultants helping to prepare the application are present to share the maps. Christine noted that with various partners, pieces are still coming together but a draft of the narrative will be ready to send to the Board and June Tierney, Commissioner of the Department of Public Service for review by Wednesday September 21st. Christine made the point that the main goal of any additional federal grants the VCBB applies for will be focused on increasing affordability since the more money the VCBB receives in grant funding, the lower the end price will be for Vermont customers. She explained that the cost for the CUDs to provide service is all driven by the average revenue per unit (ARPU)

so the VCBB Staff have aggressively gone after this opportunity for a \$100 million Middle Mile Grant and have found tremendous support from different Vermont Agencies recognizing its importance. Christine explained that the project is taking advantage of this once-in-a-lifetime opportunity to build a highly reliable and redundant statewide network including the CUDs along with ISPs like FirstLight, Consolidated, Vtel, and Waitsfield Champlain Valley Telecom as partners to put in their route needs, plan for Interstate connections, and provide in-kind match.

Christine then requested any additional details and questions be addressed in Executive Session as this is a very competitive grant and partners are still in negotiations.

Holly Groschner commented that she cannot understand why CUDs would have objections except for the idea that some federal funding would be spent on Middle Mile that could be used for incumbent carriers and because of that she expressed concern about going into executive session to discuss this public application if talking about the VCBB's approach to this federal funding.

Christine provided clarification that any discussions we have in Executive Session will be solely about the route map being negotiated between partners and the business information provided by private telecom carriers through signed NDA's. Christine confirmed everything else would be public and added that the CUDs are supportive, but with the challenging timeline of the application there will be more details to continue working on once initially submitted.

Holly Groschner commented that there is a requirement in Act 71 that the VCBB do a State Plan and asked if this helps the VCBB consolidate that effort. Christine confirmed that this is leveraging funding to come up with a statewide design, but not all carriers have participated in the planning so far. Laura Sibia corrected the statement that the statewide plan is required to the fact that it is allowed. Laura read the language in Act 71, "the Board shall have the power to contract for comprehensive statewide fiber optic engineering design to identify strategies that maximize fiber optic buildout efficiency and ensure resiliency and interoperability of all existing fiber optic network built with public or ratepayer funds and that takes into consideration all proposed publicly funded fiber optic projects, the development of which shall not be required or impede the dispersement of grants under this chapter."

Patty Richards made a motion and Dan Nelson seconded and Patty invited the Board, VCBB Staff, and CTC consultants 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 Richards confirmed that no action was taken in Executive Session.

VI. Subsequent Overbuild Hearing, Discussion & Public Comment (1:06 into meeting)

Stan Macel provided an overview of the Subsequent Overbuild DRAFT Policy:

- Act 71 defines "served" as service of at least 25/3. Identifying locations that are served begins with the Interactive Broadband Map which is maintained and updated by the Vermont Department of Public Service. 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.
- 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.

- **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.
- **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.
 - **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.
 - Stan noted that he believes that incidental overbuild is really a separate issue and proposes that that language be removed from the final policy once enacted.

Additional questions and comments were provided by the Board and during a public comment session and were inclusive of the following:

- 1) **New England Cable Telecom Association:** The 20% number is too high and they also questioned the challenged process.
 1. Stan: 20% is consistent with other state policies and FCC policies. This was approved as part of the proposal that was put out for the construction grant program and grantees were held to this standard.
 2. Stan & Christine: There is no current state policy for challenges. VCBB does not control the maps. Those are controlled by the PSD. The VCBB does not have a challenge process because they are not responsible for those maps.
- 2) **Laura Sibilia:** Laura questioned the mission of the VCBB as noted in the policy. Her position is that it is not the VCBB's job to connect every single address. The job of the VCBB is to assist the CUDs in providing universal service
 1. Stan: We can propose some additional language to further clarify the VCBB's role to provide universal community-based solutions.

- 3) Holly Groschner: Holly has 12 comments to provide clarification on the policy. She finds the memo circular and unclear. Some of the comments are more about form and those do not need to be discussed by the board and will be sent to Stan separately. However, some of the more substantial items she wanted to acknowledge were:
 1. Who is a provider?
 2. What is the methodology by which a provider gives information to the VCBB? There must be a request for response.
 3. 20% of what? It isn't clear whether that addresses or funding.
 4. The memo implies that the Board is in favor of competition, however, that has not been explicitly discussed.
- 4) Dan Glanville (Comcast): Restated that the comments reflected in their September 14th 2022 filing do outline the specifics of their position with regard to this matter. It did identify some 637 locations that will be serviceable as a result of their builds in recent months. That information was also provided in greater detail on a July 1st, 2022 letter that was sent into the board as well.
- 5) Rob Vietzke (VCUDA): VCUDA feels that the policy draft is a good start and the questions that they sent over to staff were to strengthen it and provide some clarity.
 1. They do think that the overall broad intent of ACT 71 could come through more clearly.
 2. There should be more clarification on the way that the information from providers is gathered. They could also provide a performance bond to the VCBB or the towns that you are servicing to provide further assurance that the projects will be completed as expected.
 3. Service prices and installation prices. Will these be in line with other providers?
- 6) Clay Purvis (PSD Director of Telecommunications): He had a discussion with the VCBB about the mapping and subsequent builds. This is an issue that is difficult to address on a continuous basis because the process is quite involved. It can be difficult to get the information from the providers in order to update the maps. This makes it difficult to update it throughout the year rather than only once.
- 7) Rick Rothammer (Stowe Cable Systems): They would like to be on the record as opposing the 20% overbuild funding. Competition in low density areas will make it challenging to provide service in those areas.

VII. Legislation Policy Proposals (initial discussion)

Christine Hallquist explained that Staff see this as an opportunity for the Board to provide input as the Administration has asked the VCBB to provide an update in terms policy to address during the next legislative session. Christine shared that one of the issues that VCBB Staff have been discussing which have been shared in weekly updates is in relationship to multi-dwelling units and low-income housing held by private providers that have exclusive contracts with a telecom provider and this creates a problem for universal service. As a national problem, the VCBB

reached out to other states and found that a number of them including Illinois and Indiana have passed legislation or are in the process like Connecticut and Staff recommend developing language modeled off of states that have successfully addressed this issue.

Staff also wants to consider replacing the current availability of service standard of 25/3 with 100/20 as being considered served to align with the upcoming BEAD program. Patty Richards asked if that will increase the number of underserved and expressed concerns that it could make it more difficult for the CUDs to reach their goals to serve the underserved.

Laura Sibilia asked whether there have been any discussions related to the Vermont Universal Service Fund. Christine responded that the staff are working closely with the administration to develop a budget in alignment with the state's budget process that will then be brought to the Board for approval. Laura highlighted that the VCBB should work to better understand the commitment and source of funding to cover VCBB budget.

Patty Richards confirmed that the purpose of this initial discussion was to request the Board gather thoughts relative to potential legislative changes. Holly Groschner added the thought that it might be time to start thinking about the use of funding for subsidies for service and to add a placeholder to think about affordability.

VIII. Staff Updates & Parking Lot

Christine Hallquist noted that updates were mostly covered in other discussion and in the weekly updates to the Board.

IX. Confidential Contract Negotiations and effects on NEK business plan

Christa Shute shared that NEK Broadband applied for a \$21.5 million ReConnect Round 3 grant that was rejected but after feedback from USDA-RD Staff, the CUD has been encouraged to reapply during ReConnect's Round 4 grant period for which applications are due November 2nd. She explained that there are items related to NEK Broadband's confidential negotiations with other parties and the CUD's strategy in regards to a grant application and she would like to discuss those items with the Board.

Patty Richards made a motion, and Holly Groschner seconded to move into Executive Session and invited the Board, Staff, and NEK Executive Director 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 that no action was taken during Executive Session.

X. Public Comment

There were no public comments provided.

XI. VCUDA Update

Rob Vietzke provided an update for VCUDA, stating that the biggest change includes him being an addition to the team and while he has past broadband experience he is still learning the various details about each CUD and welcomes outreach from anyone wanting to know more. Rob reported that VCUDA received another \$250,000 worth of fiber and delivered it to the CUDs from the shared cooperative buying program. He explained that a major focus this month was on the

subsequent overbuild policy subcommittee and VCUDA will be discussing a strong letter of support for the middle mile proposal at the VCUDA meeting Tuesday. He also commented that there has been lots of activity across the state with several CUDs transitioning from pre-construction to construction.

XII. Confirm Next Meeting & Motion to Adjourn

Patty Richards confirmed the next meeting will be October 3rd and made a motion to adjourn. Laura Sabilia seconded, the motion was unanimously approved, and the meeting was adjourned at 4:03pm.

DRAFT

Vermont Community Broadband Board Draft Meeting Minutes
Meetings are being held virtually.
October 3rd, 2022

I. Call To Order – 12:02pm

Roll call completed by Patty Richards

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

Patty Richards made a motion to approve the agenda as posted, Brian Otley seconded, and the agenda was unanimously approved.

II. Approval of the September 19th Draft Minutes

The Board Packet did not include the September 19th, 2022 draft Board Meeting minutes so the item was postponed to the next meeting.

III. NTIA BEAD Planning, Digital Equity Planning, & Middle Mile Grants Update & Timeline

Christine Hallquist provided an overview of the status of Vermont’s NTIA grant applications and timelines. Staff and CTC finalized the application for the Middle-Mile grant and submitted Friday September 30th. The Middle Mile application was a major effort coordinating between the CUDs and private telecom providers for a \$114M statewide network \$67M requested in federal funds matched by a combination of private and public cash and in-kind funding totaling approximately \$47M. Christine shared that regardless of the outcome of the application the VCBB sees the design as a worthwhile effort for all of the partners to continue working towards.

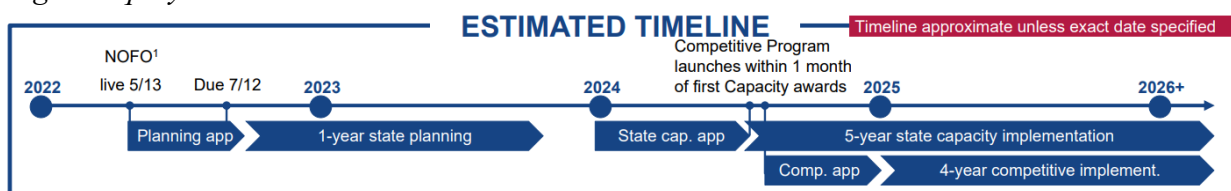
Holly Groschner asked if there are criteria for providers to participate and for elaboration on how the special purpose vehicle will work. Christine responded that more work on the specific terms are needed to be determined over the next few months but the basis is that the resulting network will be managed by a new Special Purpose Vehicle (SPV). Patty Richards asked for further clarification as more details are figured out so everyone can be at the same level of understanding.

Laura Sibia asked who would own the assets if the application is successful. Christine responded that the SPV would own the assets, a separate legal entity with a board made up of members with one member one vote or ownership share for the purpose of constructing, owning, and operating the network composed of the CUDs and private partners providing Indefeasible

Rights of Use (IRUs) to their networks. There are more CUDs than private companies participating, meaning there will be majority public ownership.

Christine shared that the Digital Equity Planning Grant had been announced and the VCBB is still awaiting the official award letter which will start the clock on the 1 year the state has to develop a 5-year plan that will be used to apply for Digital Equity Capacity Grant for program implementation likely to start in 2024. The NTIA will open a competitive program for partners and non-government entities for 4-year implementation projects around that same time.

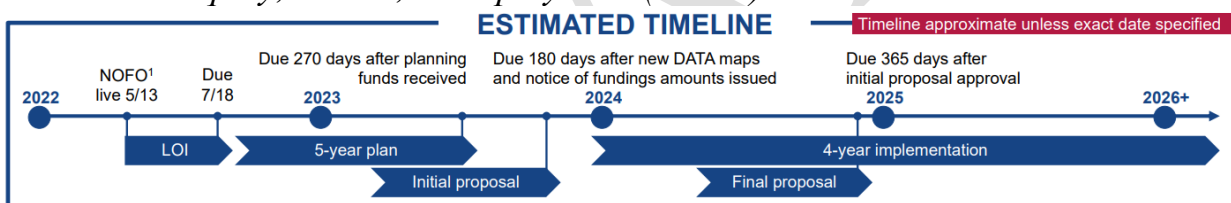
Digital Equity



Christine explained that the planning process will be a major public facing statewide effort with cross-sector engagement and will include a detailed analysis of what is holding people back from connectivity that will need to tie into the FCC’s challenge process.

Christine then discussed the status of the infrastructure program which also starts with a 5-year plan once awarded and the VCBB already has a good start based on the 10-year telecommunications plan and all of the planning work the CUDs have been doing.

Broadband Equity, Access, & Deployment (BEAD)



Patty Richards asked given all of this additional work what the plan is for getting everything done. Christine explained that there are approved positions that have been a struggle to get in place based on the state’s hiring process and so the VCBB will rely on consultant efforts to get us started and bring additional staff up to speed once those positions are finalized. Holly Groschner asked to see an updated org chart in addition to the budget at the next meeting.

IV. NEK ReConnect Letter of Support

Christa Shute shared that NEK Broadband applied for a \$21.5 million ReConnect Round 3 50% grant and 50% loan to serve an area where there are less than 6 people per square mile. That application was rejected but after feedback from USDA-RD Staff, the CUD has been encouraged to reapply during ReConnect’s Round 4 grant period for which applications are due November 2nd. One of the necessary items needed is a Letter of Support from the VCBB that confirms there is an allocation of funding available to the NEK to complete the rest of the full project. They will be reapplying for a 100% grant, using a 25% loan from VEDA for the required match. The application window is very short and closes November 2nd.

Patty Richards confirmed with Christine Hallquist that all of the numbers contained in the letter

match up to what the VCBB has record of. Patty also asked Christa to update the language from unserved road milage to account for underserved and unserved addresses, and also to spell out the ACP acronym.

Holly Groschner asked if the VCBB Staff had reviewed the priorities of the ReConnect program against those of the VCBB's grant programs to make sure there's no misalignment between the funding obligations. Christine responded that the only difference was the ability to fund RDOF areas, and Christa elaborated that the areas are going to be kept separate and that in the RDOF areas where ReConnect can't fund, NEK will deconflict it or create affiliate agreements dependent on the final negotiations that occur.

Holly Groschner made a motion to authorize the VCBB Chair, Patty Richards, and the VCBB Executive Director, Christine Hallquist, to sign the letter of support for the NEK Broadband ReConnect 4 application as presented with modification to the amount in the final sentence to reflect the final application number, and to reflect the minor edits stated earlier by Patty. Laura Sibilia seconded and the motion was unanimously approved.

V. Leverage Local ARPA Match Program Proposal

Rob Fish shared an overview of the proposed plan that would leverage additional Town ARPA contributions to broadband projects, celebrating the fact that over \$2M in Town ARPA funds have already been committed. He shared that this program would not impact current allocations to CUDs and explained that match funds would come from both re-allocation of unused dollars from towns with no plans by the deadline originally set by the VCBB and from the VCBB Staff seeking additional private and philanthropic funding in order to encourage those with projects moving forward to contribute additional funds.

Rob shared that there are very few areas of the state without a plan at this point, announcing that five towns in Chittenden County are undergoing a business plan right now and are voting to create a new CUD in November to put more areas of the state with some public oversight, TDS has shared plans for their areas in Ludlow and their territory in southern Windsor County, and ECFiber is also interested in areas not served by TDS, other funding has come from NBRC for the town of Fletcher, and then there's scattered areas that still have funding where according to the maps 100% are served by Vtel.

Rob commented that he has shared the proposal with the CUDs and most are in support. He noted that ECFiber has some challenges leveraging the funds since so much of the territory is built out already but mentioned the ARPA funds can also be used to address affordability, not just infrastructure.

Rob reemphasized that the original \$16M that had been set aside for match by September 30th had already been allocated back out to the CUDs and that this would be additional funds and making use of some of the ARPA money that potentially won't be used before the federal deadline.

Patty Richards asked if VCBB Staff had reached out to the remaining individual towns to ensure they were aware of the VCBB's programs and the possibility of losing funds if they don't act. Rob confirmed he hasn't yet but agreed to communicate with them to make sure there is clarity around participation.

Laura Sibilgia asked for clarification on her understanding that VCBB allocated and held funding in anticipation for towns to participate in the Act 71 grant programs, and any of those towns that have not joined a CUD or started working with a provider for a universal service plan by a certain date will be reallocated to match funds that are contributed by other towns. She suggested the deadline being pushed to the end of the year or as late as possible.

Holly Groschner asked for further clarification beyond what Laura stated and questioned what the original September 30th deadline was, and why that passing doesn't mean the opportunity is done. Rob stated that September 30th was the original deadline from the matching program and the program isn't done because more funds are needed and this would be an opportunity to leverage remaining ARPA funds from the towns. Holly asked to see a visual of the whole picture of the money that has been allocated and what portion of the pie that this reallocation and the possible matching funding represents. She also asked what the total amount the VCBB would be looking to set aside for this proposed match program. Rob answered that there was \$2M that had already been contributed we would be looking to match and we expect about \$2.3M in funds to be reallocated and the VCBB would raise an additional \$2M to encourage more town contributions so the total available for the proposed plan would be \$4-\$5M.

Holly Groschner asked the VCBB Staff to make sure that if this program moves forward that there are checks in place and that the use of the matching funds are reviewed by the VCBB. Rob confirmed that we would document how they are spent and make sure they align with Treasury guidelines.

Patty Richards asked how much funding the Board would be reallocated. Rob restated that we would be matching current and future Town ARPA contributions to broadband infrastructure from a reallocation after a deadline has been clearly communicated with those towns, the second source would be private or philanthropic funds raised by the VCBB, and the final option would be to match up to \$2M with BEAD funding, so if a cap was set now it would be \$4.3M. Holly Groschner suggested saying it is up to \$5M based on qualifications.

Patty Richards made a motion for the VCBB to set aside up to \$5M to match Town ARPA funds that are spent on broadband contingent on the 16 towns with unused funds get getting written confirmation or written notice of the opportunity and the deadline for when the funds will be reallocated. Holly added an amendment that the projects are consistent with Act 71 guidelines and then seconded and the amended motion was unanimously approved.

Rob added the clarification that the \$100,000 cap mentioned in the proposal would be looking forward, not applicable to what was already contributed.

Holly asked that the dashboard of what has been awarded be added to the next agenda.

VI. Legislation Policy Proposals (initial discussion)

Christine Hallquist explained that the VCBB Staff have been working closely with the Department of Public Service to come up with a revised budget format for the FY23 budget and the proposed FY24 budget that will be submitted to the Administration according to the state's timeline of October 11th and then those will be presented to the Board in November.

Additionally, Rob and Christine asked the Board to provide input in terms of policy

recommendations to address during the next legislative session for VCBB Staff to communicate to the Administration. Christine shared that one of the issues that VCBB Staff have been discussing which have been shared in weekly updates is in relationship to multi-dwelling units and Stan Macel had worked on a policy related to that. Another is to adjust the underserved speed requirements to align with BEAD to 100/20.

Laura Sibilia stated she is uncertain about changing the definition of underserved but also reiterated her concern over the status of the Vermont Universal Service Fund, and encouraged the VCBB to confirm the amount currently allocated to the VCBB and what is needed and to keep an eye on that discussion and communicating the impact of any movement of those funds.

Holly Groschner asked how adjusting the definition of underserved impacts the program and the business plans that the CUDs have been working on and the VCBB has already approved. Rob and Christine clarified that the number will already be adjusting when the new PSD maps coming out this month and that the maps will need to be analyzed more closely but the VCBB would not plan to change the funding allocation. Patty Richards expressed concern that changing the definition would increase the number of addresses the CUDs would need to serve by over 1,000 or 1,300 addresses. Holly expressed concern over changing the standards before we have been able to get a full picture of the level of success based on the original standards and data. Laura asked that if the VCBB wants to address a change in the definition of underserved that Staff come with a clear outline of who it would benefit and how. Rob added that the VCBB would want an official position from VCUDA as well.

Patty recommended if anything gets proposed to the legislature that it's very narrowly defined and straightforward and to focus most of the energy around defending what currently exists.

VII. Staff Updates & Parking Lot

Christine Hallquist noted that updates were mostly covered in other discussion and in the weekly updates to the Board.

Christine reviewed the five items from the parking lot:

- VCBB's approach to mapping and strategy for challenging the FCC - tentative plan to present strategy at future meeting tentatively October 31st or possibly November
- Define audit criteria and post award grant reporting and review process for grantees/CUDs - team will finalize plan and share with Board October 17th
- Invite to the Federal Delegation to future Board Meeting - tentative plan to attend a future meeting in October
- Host workshop for the CUDs on Uniform Guidance - team will finalize plan and share with Board in November
- Establish policy to address issue of enforceability with any of the partners and the CUDs - team will finalize plan and share with Board on October 31st

Holly asked that the discussion on the subsequent overbuild policy be added to the parking lot. Patty added that she would also like to have an organizational meeting in November and would like that added to the parking lot.

VIII. VCUDA Update

Rob Vietzke provided an update for VCUDA. The Association has moved their bi-weekly meeting to Tuesday so that it doesn't conflict with the VCBB meetings. He noted that he will work with the members to formalize an opinion on the underserved definition. He shared that the VCUDA annual meeting would be held in November and they are working on an updated budget and will be interested in how VCUDA and VCBB can collaborate and they will have officer meetings. He also shared that many of the CUDs are starting to make a lot of progress and have been more active on social media. Lastly, he mentioned some growing concern over pole availability and that it is impacting make-ready schedules.

Laura Sibilia made a point to welcome Rob and remind VCUDA that the VCBB is there to support the CUDs and to be sure to communicate needs and shared congratulations on progress.

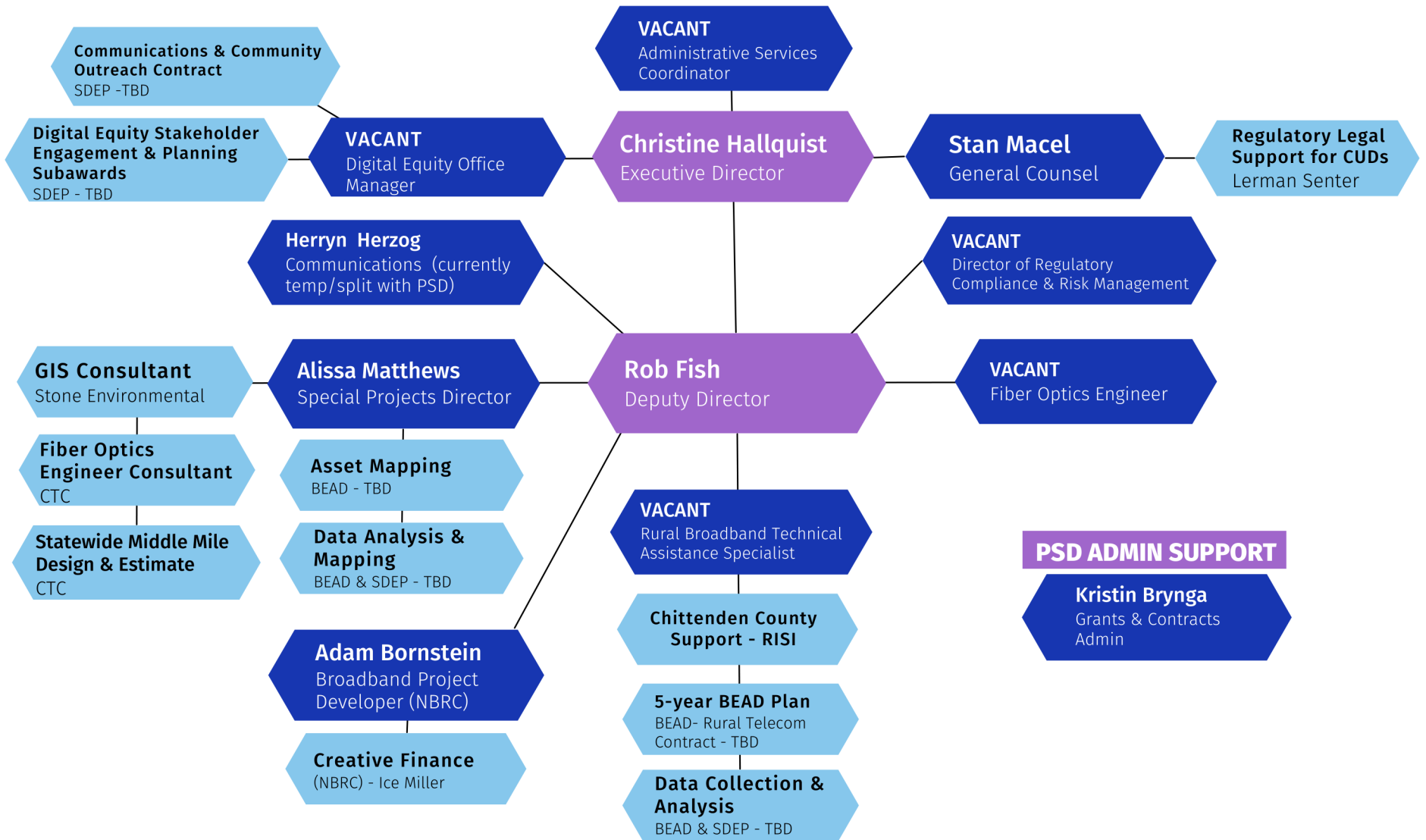
IX. Public Comment

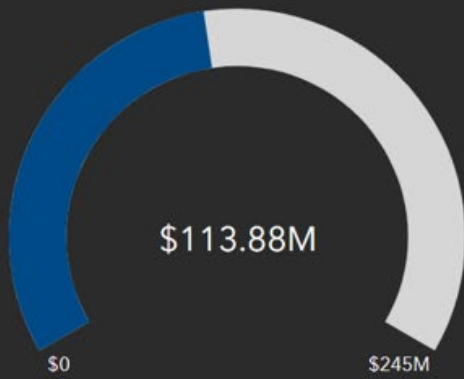
There were no public comments provided.

X. Confirm Next Meeting & Motion to Adjourn

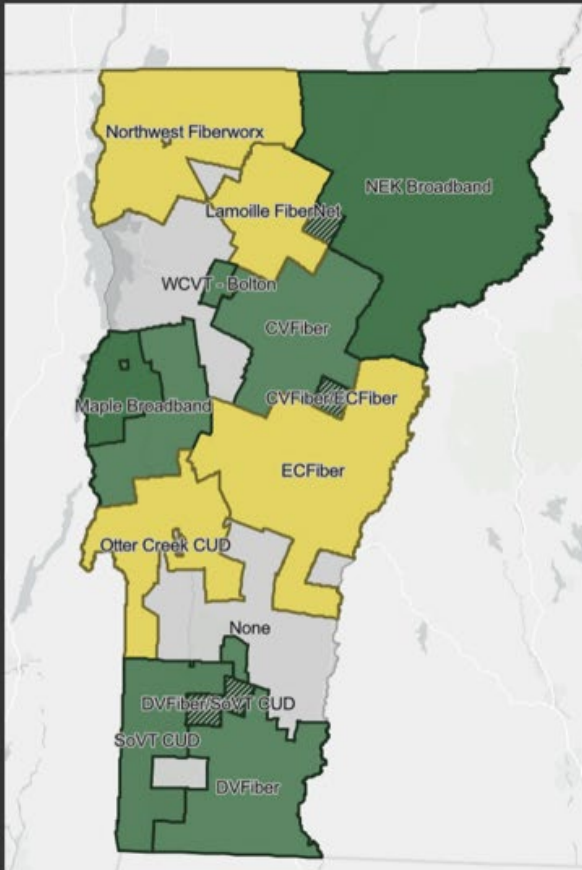
Patty Richards confirmed the next meeting will be October 17th and made a motion to adjourn. Holly Groschner seconded, the motion was unanimously approved, and the meeting was adjourned at 1:41pm.

VCBB STAFF & CONTRACT SUPPORT





Total Investments



VCGI, Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, NPS Powered by Esri

\$82.32M

Total Awarded for Construction Grants

\$22.31M

Total Awarded for Pre-Construction Grants

\$9.24M

Total Awarded for Pre-Project Materials



Project Miles Funded



Eligible Addresses Funded

Act 71 Construction Grants to Date

CVFiber
\$12,289,273.00

DVFiber
\$21,945,429.20

Maple Broadband
\$8,686,000.00

NEK Broadband
\$20,865,889.00

SoVT CUD
\$9,009,085.00

WCVT - Bolton
\$421,094.00

Maple Broadband/WCVT
\$9,104,486.00

Act 71 Pre-Construction Grants to Date

CVFiber
\$2,804,667.00

DVFiber
\$4,111,318.00

ECFiber
\$2,841,130.00

Maple Broadband
\$2,974,200.00

NEK Broadband
\$6,670,000.00

Lamoille FiberNet
\$1,193,885.00

Northwest Fiberworx
\$1,275,028.25

Otter Creek CUD
\$441,000.00

Act 71 Pre-Project Materials Funding

CVFiber
\$6,000,000.00

DVFiber
\$1,108,800.00

Maple Broadband
\$781,284.00

NEK Broadband
\$1,353,915.00

Guidance for Broadband Service Providers

Purpose

The purpose of this document is to share best practices related to broadband construction projects with respect to:

- Standard insurance requirements;
- Measures to ensure that adequate coverage is in force for the duration of construction projects;
- Recommendations for mitigating liability risk through safe cleanup practices at worksites and proper disposal of solid waste as established in 24 V.S.A. § 2201.

The information provided in this guidance does not, and is not intended to, constitute legal or insurance advice; instead, it is for general informational purposes only. Additionally, this guidance may not constitute the most up-to-date legal or insurance information. Neither the Department of Financial Regulation, the Agency of Natural Resources, nor any of their employees, make any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information.

Standard Insurance Requirements

Broadband providers should always consult with their legal counsel and insurance agents who are knowledgeable in this area to ensure that policy forms and coverage limits are appropriate for each project. Generally, at least the following insurance coverages are recommended:

- Workers Compensation Insurance
- Employers Liability Insurance
- Commercial General Liability Insurance
 - Including but not limited to project operations, products/completed operations, contractual liability, independent contractors, personal and advertising injury
 - Additional insured status on the sub-contractors Commercial General Liability policy with notice of cancellation provided
- Commercial Automobile Liability Insurance



Providers should require contractors and subcontractors to maintain the same insurance coverage and minimums as recommended by their legal counsel and insurance agents. Also, providers should require contractors and subcontractors to furnish them with copies of their Certificates of Insurance (COI). If available, the COI's should include a clause stating that the provider will be notified in writing at least ten (10) days prior to cancellation or nonrenewal of the subcontractor's policy.

Broadband providers and contractors should also refer to other agencies including but not necessarily limited to the Vermont Agency of Natural Resources (ANR), the Vermont Community Broadband Board (VCBB), the Vermont Agency of Transportation (AOT), and the Vermont Department of Labor (DOL) for the required insurance coverages and minimum limits of insurance. When available, these agencies should be named as additional insureds.

Measures To Ensure Adequate Coverage For the Duration Of The Project

Providers should be certain that the contractors and subcontractors have insurance policies that cover the duration of the construction project. Providers should require proof of insurance (copies of the COI's) when contracts are renewed and if the contract extends beyond the expiration date of the current policy. When available, the providers and contractors should be named as additional insureds.

Considerations for Communicating with Landowners and State Agencies

Prior to beginning any project, please contact local landowners and refer to the Agency of Transportation's (AOT) for Right-Of-Way guidance. Special attention should be given to nearby crops and animals. Providers should contact the appropriate agencies to ensure that all permits have been obtained.

Mitigating Liability Risk Through Safe Cleanup Practices At Worksites and the Proper Disposal of Solid Waste Established in 24 V.S.A. § 2201

Please see the attached Vermont Agency of Natural Resources' Recommendations for Mitigating Liability Risk Through Safe Cleanup Practices and Proper Disposal of Solid Waste.



Vermont Agency of Natural Resources' Recommendations for Mitigating Liability Risk Through Safe Cleanup Practices and Proper Disposal of Solid Waste

Per Vermont Statute [24 V.S.A. § 2201](#) "A person shall not throw, dump, deposit or cause or permit to be thrown, dumped or deposited any solid waste as defined in [10 V.S.A. § 6602](#), refuse of whatever nature, or any noxious thing in or on lands or waters of the State outside a solid waste management facility certified by the Agency of Natural Resources."

Broadband Contractors, like any other person or business must remove all waste materials from a work/installation site and dispose of properly and/or recycle them as required by law. Waste materials may include but are not limited to, wood treatment chemicals, pesticides, herbicides, wire, leftover construction materials/supplies, and associated packaging.

For example: Any chemicals, pesticides, herbicides or other hazardous waste or materials from a regulated generator must adhere to the [Vermont Hazardous Waste Regulations](#) for proper management and disposal; and any solid wastes like construction materials or packaging must adhere to the management and disposal standards of the [Vermont Solid Waste Management Rules](#).

Leftover wire must be disposed of at a regulated [solid waste facility](#) or recycled through appropriate metal recyclers like [salvage yards](#).

Cardboard is a mandated recyclable and is banned from disposal by [state law](#). It must be recycled through appropriate facilities.

Other packaging materials may also be considered [mandated recyclables](#).



#	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 November 14 th meeting.
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 October 31.
24	1	Invite to the Federal Delegation to future Board Meeting	8/8/22	CH	Will invite delegation to 10/31 meeting.
25	2	Host workshop for the CUDs on Uniform Guidance	8/8/22	CH	Team will finalize plan and share with Board – tentative to host in early November
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 October 31st
27	1	finalize subsequent overbuild policy	10/03/22	SM	
28	1	VCBB organizational meeting	10/03/22	CH	Schedule for early November
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.

Additional Grant Programs

Board Action Requested:

1. Authorize the Staff to finalize and release the RFP for the Programs without further review outside of comments provided to staff in this session. *Note: While not recommended, Staff is prepared to walk the Board through the RFP for the Broadband Finance Program today and the Public Private Partnership Challenge next meeting.*
2. Delegate to the Staff the ability to approve grant requests for the Broadband Financing Program and report decisions to the Board at the next Board Meeting.
3. The final decision on the Public Private Partnership Challenge will come before the Board in Executive Session due to the sensitivity of such discussion.

BACKGROUND

The following two programs were created before the creation of the VCBB but were transferred to the VCBB upon its creation. Staff chose not to launch these programs until the Act 71 Construction Program was underway.

Broadband Financing Program (General Funds)

In 2020, the General Assembly appropriated \$1,500,000 in General Funds for the purpose of supporting the efforts of the Communications Union Districts (CUDs) to secure financing necessary to advance broadband projects.

Sec. B.1100 FISCAL YEAR 2021 ONE-TIME GENERAL FUND APPROPRIATIONS (a) In fiscal year 2021, funds are appropriated from the General Fund as follows:

(6) To the Department of Public Service: \$1,500,000 to be awarded as grants to communications union districts. These grants shall be used to provide cash equity to secure loans to finance broadband projects, including the 10 percent of project costs required to secure financing through the Broadband Expansion Loan Program administered by the Vermont Economic Development Authority. A communications union district may not receive more than \$400,000 in awards under this appropriation.

Community Broadband Public-Private Partnership Challenge Grant (Northern Borders Regional Commission)

The VCBB will issue a Request for Proposals to promote public-private partnerships between a Vermont Communications Union District and a broadband service provider or other private entity through a single \$1.25M award. The proposal will require the deployment of 100/100 Mbps symmetrical broadband service within a Universal Service Plan. The applicant must make case that the funds will further the completion of a CUD Universal Service Plan and/or remove an impediment to the completion of such a plan, or reduce the overall cost of deploying to all addresses in that Universal Plan. The grant agreement with the winning CUD will allow reimbursement for the broadband service provider partner's actual costs, including up to 3% for administration for the CUD. The agreement will require deployment to all listed award locations within 24 months of the award date.



**Vermont Community
Broadband Board (VCBB)**
112 State Street
Montpelier, VT 05620-2601

Contact: Robert Fish, Deputy Director
802-522-2617
robert.fish@vermont.gov

BROADBAND FINANCING PROGRAM REQUEST FOR PROPOSALS (DRAFT)

ISSUE DATE: DRAFT

RESPONSES WILL BE ACCEPTED ON A ROLLING BASIS

OVERVIEW

The Vermont Community Broadband Board ("Board") invites proposals from Eligible Providers for funds to finance the broadband projects that are part of a Universal Service Plan. Service providers must achieve speeds of at least 100/100 Mbps symmetrical at all on-grid underserved and unserved locations within their Universal Service Plan.

BACKGROUND

In 2020, the General Assembly appropriated \$1,500,000 in General Funds for the purpose of supporting the efforts of the Communications Union Districts (CUDs) to secure financing necessary to advance broadband projects.

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DEFINITIONS AND EXPLANATIONS

“Communications Union District” is an organization of two or more towns that join together as a municipal entity to build communication infrastructure together. The entity is organized and governed by [Title 30: Public Service, Chapter 82: Communications Union Districts](#) in Vermont Statutes.

“Secure Financing” means to serve as the cash match, cash equity, or down payment on a loan to be used for furthering the expansion of broadband in the Communications Union District.

“Access to Broadband” means constructing a broadband network capable of providing Internet access at speeds of at least 100/100Mbps where the broadband network passes the location, has sufficient capacity to serve the location at the required speed, and can be connected to the location if a customer contracts to receive the service.

“Universal Service Plan” means a plan for providing each on-grid unserved and underserved location in a Communications Union District or in a municipality that was not part of a Communications Union District prior to June 1, 2021 Access to Broadband service capable of speeds of at least 100 Mbps download and 100 Mbps upload.

“Act 71 Compliant Business Plan” means a business plan for the proposed Universal Service Plan. For the purposes of this grant, an actionable business plan is a document that a financial institution would find sufficient basis on which to provide financial support. The business plan shall include, but is not limited to: high-level engineering and design plans, market analysis, take-rate assumptions, and as relevant, cash flow positive date, loan payoff date, financing models, pro forma financial projections, estimated construction costs, ideal operational models, and an evaluation of risks including labor needs and availability, supply-chain contingencies for equipment and materials, make-ready work, and any other relevant capital and operational expenses. This requirement applies to all eligible applicants.

FUNDING AVAILABLE

The total amount of funding available for the Program is \$1.5M. The maximum grant available is for \$400,000. Applicants are recommended to apply for only the amount necessary to secure funding. Grants will be award on a first come, first served basis.

RFP OVERVIEW

The Board seeks proposals from Communications Union Districts (CUDs) seeking financing to supplement grant funding earmarked for the construction of broadband infrastructure at speeds of at least 100/100 Mbps to all underserved addresses in the District.

Applicants shall be subject to transparency and reporting requirements including, but not limited to, reporting, tracking, and documentation of incurred costs, and access to records in accordance with the State of Vermont Agency of Administration's Bulletin No. 5 ("Bulletin 5"), available at https://aoa.vermont.gov/sites/aoa/files/Bulletins/Bulletin_5_eff12-26-14.pdf.

Communication Regarding this RFP: All communications concerning this RFP should be sent by email to ycbb.grants@vermont.gov. All submitted questions will be distributed, along with answers from the Board, to all Communications Union Districts.

The Board reserves the right to revise any part of this RFP at any time. The Board will post any changes to its website. It is the responsibility of the Applicant to check the Board's website for revisions to the RFP.

Written Application: The Board shall evaluate all applications based on the information provided in the application process.

Other Considerations: The Board reserves the right to conduct additional research into the Applicant and the source of financing before deciding on an application. The Board also reserves the right to work directly with applicants to revise submitted materials to better achieve the goals of the state.

Timeline: Staff will review Applications within 5 business days.

Term of Agreement: Any agreement resulting from this RFP will be for a term equal to the life of the finance secured as a result of funding provided under this program and commence on the execution of an agreement between the Applicant and Board that shall be in accordance with [State of Vermont Agency of Administration Bulletin No. 5](#).

ELIGIBILITY

- (A) The Board will only consider applicants from Communications Union Districts.
- (B) The Board has previously approved a Universal Service Plan for the District.
- (C) The Board has previously approved an Act 71 Compliant Business Plan.
- (D) The CUD has a pending financing application for an Act 71 compliant project requiring support.

PROJECT PRIORITIZATION

Upon the determination that the Applicant is eligible for consideration, the Staff as delegated by the Board shall give priority to broadband projects and applicants that meet the following criteria:

- (A) Necessity of the Financing – Is the use of this non-federal funding source necessary to

ensure the financing is obtained?

(B) Ability of the Funds to Lower Overall Borrowing Costs – Will obtaining this funding lower the cost of financing the network?

(C) Funds Leveraged – How much will this investment leverage?

APPLICATION PROCESS OVERVIEW

Applicants must provide the following information as a single PDF. The materials must be submitted electronically to vcbb.grants@vermont.gov.

APPLICANT INFORMATION

1. Official name and full contact information for the Applicant
2. The name, address, and a complete contact info for the Communications Union District.
3. Unique Entity Identifier (UEI).
4. Date of the Approval of an Act 71 Construction Grant OR Date of Approval of the Universal Service Plan and Act 71 Compliant Business Plan if the Applicant has yet to receive funding. These plans may also be attached, but this will delay the decision making process on the application.
5. Amount of the Request
6. Date a decision is required by secure the financing

FINANCING INFORMATION

1. Name and contact information of the program and/or financial institution the CUD is applying to for financing.
2. Total amount of amount to be financed and the terms of the financing.
3. Planned use of funds.
4. How will this grant reduce the overall cost of borrowing or allow the CUD to leverage an unexpected opportunity?
5. What alternatives were explored and why this financing is the preferred option?
6. Impact if the financing is not secured.

PERFORMANCE

Timeline: The Applicant is required to secure the financing within 60 days of the provision of a grant from the VCBB.

Provision of Funds: The Board will distribute funds awarded only upon submission of a completed application for financing.

Notification of Approval of Financing: The Applicant will be obligated to notify the VCBB when any financing secured by the program is secured and provide a copy of the financing paperwork for inclusion in the grant file.

Notification of Missed Payments: The Applicant will notify the VCBB within 30 days of any missed payments.

Notification of Discharge of Loan: The Applicant shall notify the VCBB within 30 days of the discharge of the loan.

PROPOSAL REVIEW AND SELECTION

Method of Award: Awards will be made in the best interest of the State. All other considerations being equal, priority will be given first to those projects that align with the goal and priorities outlined in this Request for Proposals. Qualitative determinations will be made regarding community need and community impacts. Scoring will not be numerical.

Selection without Further Discussion: The Board delegates to the Staff the right to select a proposal without further discussion. Therefore, it is important that each proposal be submitted in the most complete and accurate manner possible.

Rejection of Proposal: The Board reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received, and to accept any portion of a proposal if deemed in the best interest of the State and in accordance with the applicable provisions of law.

Negotiations with Applicants: Upon completion of the evaluation process, the Board may select one or more Applicants with which to simultaneously negotiate grant agreements. In the event the Board is successful in negotiating with one or more Applicants, the Board will issue a notice of award. In the event the Board is not successful in negotiating a grant agreement with a selected Applicant, the Board reserves the option of negotiating with another Applicant or choosing not to issue an award.

Grant Award: The grant of an award to an Applicant is at the discretion of the Board based on its judgment that the proposal submitted will promote the general good of the State and is in accordance with Vermont law.

Appeal Process: If an application is rejected, the Applicant can appeal the decision. The Applicant must submit an appeal letter to the VCBB within 7 days of the rejection to the Governing Board. The letter must explain why the Applicant disagrees with the decision and provide documentation detailing as to why the Applicant thinks it should have been

approved. Grounds for appeal shall include evidence of at least one of the following:

- The proposal was reviewed on the basis of criteria other than those appearing in the RFP.
- The Staff or the Board decision was influenced by members who failed to disclose conflicts of interest.
- The rejection decision was made based on erroneous information or calculations.

TERMS AND CONDITIONS

Binding Offer: A proposal submitted in response to this RFP shall constitute a binding offer, until approval by the Board of a finalized agreement to be drafted in accordance with Bulletin 5. Acknowledgment of this condition shall be indicated by the signature in the Transmittal Letter of the Applicant or an officer of the Applicant legally authorized to execute contractual obligations.

Use of Funds: Funds remitted by the VCBB are for use in payment for the approved financing and are restricted for the purposes of the grant. Applicants shall not include payments by the VCBB in general operating revenues or for other purposes other than performance of the grant

Limited Liability: The Board assumes no liability with respect to this RFP or any matters related thereto. All prospective Applicants and their assigns and successors, by their participation in the RFP process, shall indemnify, save and hold the Board and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known and unknown, foreseen and unforeseen, arising from or out of this RFP and/or any subsequent acts related thereto, including but not limited to the notification of an Applicant to the Board and any action brought by an unsuccessful prospective Applicant .

Agreement Cancellation: The Board reserves the right to cancel any agreements resulting from this RFP, for cause, as will be defined in the Terms and Conditions of the final agreement.

Agreement Modification: The agreement may be modified to comply with administrative, judicial or legislative decisions.

Governing Law: The laws of the State of Vermont shall govern in connection with this RFP and the formation, performance, and the legal enforcement of any resulting contract or agreement.

Proposal Ownership: All deliverables submitted as a response to this RFP shall become the property of the Board and the State of Vermont. After an agreement has been executed, it is expected that all submitted responses may be reviewed by any person unless subject to confidentiality or other legal restrictions. The Board reserves the right at its sole discretion to

use any or all information/material presented in reply to this RFP, including the right to destroy any information. Disqualification of an Applicant does not eliminate this right.

Warranty: As a condition of delivery of the grant funds, Applicant warrants to the Board that the facts and estimates provided in its response to the Request for Proposal are, to the best of Applicant's knowledge, correct and true;

News Releases: News releases pertaining to this RFP, grant award, or the project shall not be made without prior documented approval from the Board.

Equal Opportunity: Any Applicant submitting a proposal shall be an Equal Opportunity Employer. During the duration of the performance of the grant agreement, the selected Applicant (s) will be expected to comply with all federal, state, and local laws respecting nondiscrimination in employment.

Funding: All Grant awards are subject to the availability of funding.

Payment: Payment will be made on a performance schedule to be detailed in the grant agreement.

DRAFT

Memo

To: Vermont Community Broadband Board (“VCBB”) Grant Applicants

From: Stan Macel, General Counsel

Date: October 12, 2022

Re: Broadband Issues Regarding Multi Dwelling Units

Providing broadband service to multi-dwelling units – MDUs – raises unique challenges and issues in both urban and rural areas. MDUs, also known as multi-tenant buildings, multiple tenant environments, and multiple unit dwellings, can include apartment buildings, mobile home developments, condominiums, ski developments and public housing units.

There are obstacles for residents of MDUs in obtaining competitive broadband service. Internet Service Providers (ISPs) need to access building conduits, install wiring to individual units, and make repairs once wiring has been installed. The relationship includes not only ISPs and unit owners or tenants, but also the premises owners or controlling parties (MDU owners). The FCC has adopted some regulations to address these issues, but obstacles still remain. As a result, several States have recently enacted or proposed legislation addressing some of these challenges. This memo briefly discusses the regulations of the FCC and two States and proposes possible regulatory actions for Vermont.

The Issue

Common practices of broadband ISPs and MDU owners in MDUs include the following:

- *Revenue sharing agreements* – contracts between MDU owners and ISPs where the owner receives consideration from the ISP in return for giving the ISP access to the building and its tenants. These can be above-cost, graduated, or exclusive.
- *Exclusive wiring agreements* -- service providers enter into agreements with MDU owners to obtain the exclusive right to use the wiring in the building. This includes a subset called sale-and-leaseback agreements, in which an ISP sells its wiring to the MDU owner and then leases back the wiring on an exclusive basis.
- *Exclusive marketing arrangements* -- arrangements between MDU owners and ISPs that gives the ISP, usually in exchange for some consideration, the exclusive right to certain means of marketing its service to tenants.

FCC Regulations

In February 2022 the FCC released an Order banning certain broadband revenue sharing agreements and requiring providers to clearly disclose marketing practices to tenants of multi dwelling units (MDUs). See “Improving Competitive Broadband Access to Multiple Tenant Environments, GN Docket No. 17-142, FCC 22-12 (February 11, 2022). These regulations ban ISPs from entering into graduated or exclusive revenue sharing agreements with a building owner and require providers to disclose exclusive marketing arrangements they have with building owners. It also clarifies that existing rules prohibit sale-and-leaseback arrangements that prohibit alternative providers.

The FCC previously had rules in place prohibiting landlords from giving service providers exclusive access to a MDU¹, but those regulations did not prohibit all types of exclusivity. For example, the FCC ruled in 2007 that its rules do not necessarily block exclusive wiring arrangements, as long as competing providers may access buildings.

It is unclear how far the FCC regulations actually go in addressing many of the issues posed for MDU residents in obtaining competitive broadband service. As a result, some States have enacted legislation to address some of these issues. Below is a discussion of recent legislative activity in two States, Connecticut and Illinois.

Connecticut Legislation

Effective July 1, 2021, Connecticut enacted Public Act No. 21-159, (from House Bill No. 6442), “[An act concerning Equitable Access to Broadband.](#)” Act 21-159 is a broad Act that addresses broadband grants and service generally (not unlike Act 71 in Vermont), and contains a providing addressing MDUs in one part. The Act provides that ISPs shall have the same right of access to an occupied building as that afforded to certified telecommunications service providers. It also contains a provision that new buildings be required to include a minimum infrastructure requirement to support broadband Internet access service. Thus, the Act gives each broadband provider the same right of access to an “occupied building” as telecommunications service providers have under current law. Under the Act, an “occupied building” is a building or a part of a building that is rented, leased, hired out, arranged or designed to be occupied, or is occupied (1) as the home or residence of at least three families

¹ See Promotion of Competitive Networks in Local Telecommunications Markets et al., WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd 22983, 22985, para. 1 (2000); Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 20235, 20236, para. 1 (2007), aff’d, National Cable & Telecommun. Ass’n v. FCC, 567 F.3d 659 (D.C. Cir. 2009); Promotion of Competitive Networks in Local Telecommunications Markets, WT Docket No. 99-217, Second Report and Order, 23 FCC Rcd 5385, 5386, para. 5 (2008); see also Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, MB Docket No. 07- 51, Second Report and Order, 25 FCC Rcd 2460 (2010).

living independently of each other; (2) as the place of business of at least three businesses conducting business independently of each other, or (3) by any combination of at least three independent families and businesses. It includes trailer parks, mobile manufactured home parks, nursing homes, hospitals, and condominium associations. In effect the Act requires, among other things, an occupied building's owner to allow wiring to provide broadband service in the building if: (1) a tenant requests services from the broadband provider; (2) the entire cost of the wiring is assumed by the provider; and (3) the provider indemnifies and holds the owner harmless for any damages caused by the wiring.

Illinois Legislation

Illinois has enacted a law that prohibits interference by an MDU owner with the rights of a tenant or lawful resident to receive cable, video or related service, including internet and other broadband service. [220 ILCS 5/21-1201](#). The law prohibits owners of MDUs (and their agents) from unreasonably interfering with the right of any tenant or lawful resident to receive services, including internet or other broadband services, provided over the holder's facilities subject to specific requirements. The owner may require just and reasonable compensation from the holder for its access to and use of such property to provide installation, operation, maintenance or removal of such services. The law also prohibits any additional payment, penalty, charge or surcharge for providing access, though owners can require that facilities conform to standards and can require indemnification for access.

Wholesale Deals

One model that some providers use is wholesale service to MDUs. ISPs negotiate with MDU owners to offer service to all units in a building or complex. The cost of the service is generally significantly discounted from the retail rate, and often the MDU owner then includes the reduced-cost service as part of the rent charged to residents. These arrangements do not preclude a resident from obtaining competing broadband service, but since the (discounted) cost of service is included in the rent, residents are dis-incentivized from using another provider. This type of arrangement appears to benefit residents by providing internet access at a wholesale price. The drawbacks are that the residents do not receive any benefits from opting out of service or obtaining services from other providers. Based on the overall benefits of wholesale deals, the VCBB does not believe that legislative action to address wholesale deals are warranted at this time.

Conclusion

Based on the legislative activity some other States, Vermont may want to consider legislative action to supplement the regulations of the FCC and ensure the rights of MDU residents to be able to receive competitive broadband services. Legislation could address the following:

- **prohibiting anti-competitive activity** such as revenue-sharing agreements, exclusive wiring agreements, and exclusive marketing agreements.

- ensuring that competing ISPs have a **right of access** to MDUs.
- requiring that newly built MDU buildings include broadband **infrastructure** to support broadband Internet access service from multiple providers. This shall include a requirement that when conduit is installed in a building or a neighbor, an additional empty tube is also installed.