

Vermont Community Broadband Board Meeting Minutes
Meetings are being held virtually.
October 17th, 2022

I. Call To Order – 12:05pm

Roll call completed by Patty Richards

Patty Richards, Chair (Remote)
Laura Sibilila (Remote)
Dan Nelson (Remote)
Brian Otley (Absent)
Holly Groschner (Absent)
Christine Hallquist - Staff (Remote)
Robert Fish – Staff (Remote)
Alissa Matthews – Staff (Remote)
Stan Macel – Staff (Remote)
Adam Bornstein – Staff (Remote)
Herryn Herzog – Staff (Remote)
Kristin Brynga – PSD Staff (Remote)

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

II. Approval of the September 19th and October 3rd Draft Minutes

The Board discussed the September 19th, 2022 draft Board Meeting minutes. Patty Richards made a motion to approve the minutes. Laura Sibilila seconded, and the motion was unanimously approved.

The Board discussed the October 3rd, 2022 draft Board Meeting minutes. Patty Richards made a motion to approve the minutes. Laura Sibilila seconded, and the motion was unanimously approved.

III. Staff Updates

Christine Hallquist introduced the VCBB's new staff,

- Herryn Herzog will be coordinating the VCBB's communication efforts with a strong reporting and legal background. Herryn shared that she is excited to combine many of her past experiences to lead the VCBB's outreach efforts and provide support to the CUDs.
- Adam Bornstein will be leading the creative financing efforts. Adam shared he is looking forward to assisting CUDs as they blend private and public funding pulling from his international and community finance experience.

Christine Hallquist then reviewed the updated VCBB Org Chart, highlighting the new and upcoming hires and the supervision structure. Laura Sibilila asked about any positions that have not been discussed yet. Christine confirmed that all of the positions and contracts have been previously shared and approved by the Board.

Alissa Matthews provided a brief summary of the Act 71 Funding Dashboard as of October 2022 and the dashboard that will show construction progress and service availability, and explained that the team is also working on collecting metrics related to progress made using the PreConstruction funds to add to the visualizations. Dan Nelson asked whether it would be possible to show progress over time so that in three years we can look back and show where we were compared to where we are. Alissa confirmed that is something that is set up to track in the maps and added that the GIS team is also thinking through options for visualizing future planned progress while still maintaining the confidentiality of these competitive projects. Patty Richards asked that these dashboards be included in all future Board Packets.

Stan Macel provided an overview of the Insurance-Related Best Practices for Broadband Construction Projects Guidance documents released by the Department of Financial Regulation (DFR) and Agency of Natural Resources (ANR). The DFR's guidance is meant to ensure contractors and subcontractors for broadband projects have the correct insurance coverage, including workers comp, employers' liability, general liability, auto coverage, and to ensure adequate coverage for the entire duration of the projects. He also explained that it encourages broadband service providers to contact the landowners of the projects that they're working on, as well as the Agency of Transportation for any right of way permits that they may need. The ANR guidance suggest that providers should remove waste materials from the work sites. The VCBB will be including these documents with paperwork for any grant recipients in the future.

Patty Richards emphasized the importance of this messaging and that we need to demand contractors follow these best practices in the rollout of broadband to avoid another catastrophe. Christine added that she has been meeting with construction companies in the region to have this discussion as part of the workforce development initiative and she called out the disincentive for safety and cleanup when the industry focuses on piece pay and will report back to the Board when she learns more. Patty reiterated the importance of communication and accountability on this issue.

Christine then reviewed the items on the parking lot, which include:

- VCBB's approach to mapping and strategy for challenging the FCC - tentative plan to present strategy at future meeting tentatively November 14th.
- Define audit criteria and post award grant reporting and review process for grantees/CUDs - team will finalize high-level plan and share with Board October 31st and then will continue working on more comprehensive audit program to share as we head into 2023.
- Invite to the Federal Delegation to future Board Meeting - tentative plan to attend a future meeting after the elections.
- 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.
- Finalize subsequent overbuild policy and will present plan on October 31st or November 14th.
- VCBB Organizational meeting to be scheduled for sometime in November.

IV. WCVT-nonCUD Construction Grant Application (Questions & Decision)

Christine Hallquist shared that she had completed a deep dive into the plan for WCVT- and then realized there were some discrepancies when reviewing the recommendation with the VCBB's consultants at CTC. After meeting with WCVT everything was cleared up and VCBB Staff recommends awarding funds for WCVT's project.

Roger Nishi, Vice President of Industry Relations at Waitsfield Champlain Valley Telecom (WCVT) presented highlights from the company's first phase proposal to serve addresses in towns that are not members of a CUD. He explained that VCBB staff has been working with WCVT to hold off on finalizing the grant agreement for the project approved at the beginning of the summer to serve the town of Bolton and instead treat all of WCVT's service area that are not members of any CUDs as one Universal Service Plan for efficiency purposes.

The entire Universal Service Plan will cover a total of 7,359 addresses, 3,221 that are under and unserved and will cost \$39,297,060 and WCVT is committed to investing \$26,348,817 with anticipated total grant funding of \$12,948,243 including plans to come back to the Board once BEAD funds are available. The current first phase of the project will cost \$14,232,036. The total grant request is for \$8,348,243, which represents the \$421,094 already committed for the Bolton project and an additional \$7,927,149 matched by WCVT's investment of \$5,883,793. This project application is for the entire town of Charlotte including 239 under and unserved addresses, as well as areas with a high percentage of under and unserved locations in the towns of Fayston, Hinesburg, Huntington, Richmond, St. George, Waitsfield, Warren and will include the previously approved project reaching all 271 under and unserved locations in the town of Bolton, reaching a total of 1,200 under and unserved addresses and building out 245 miles of fiber. WCVT will meet the same set of conditions in their non-CUD towns as they are in their Maple Broadband CUD area that also align with what is being required by Consolidated in the SoVT CUD.

Laura Sibilia asked if any of the towns that WCVT is applying to serve with this project are in any other CUDs or could be in the Chittenden County CUD that is being established. Roger explained that all of the towns that that are part of this request have not joined a CUD and through discussions with them they have expressed that they prefer WCVT building out the network. Laura then asked VCBB Staff which towns are looking to form a new CUD in November. Rob Fish clarified that the towns that are voting in November are Shelburne, South Burlington, Essex Junction, Essex, and Williston, and that there are several other towns that are considering joining once it is initially created, but they are not in WCVT's service area.

Laura then asked for more information about WCVT's plan and what was meant regarding some of the funding going towards addresses that WCVT is not clear on yet and asked Roger to restate that. Roger explained that 1,200 addresses were identified as unserved and underserved in this project area and 690 of those are in towns where the plan is to identify the most underserved areas and where the condition of the existing copper is poor and where WCVT can improve service the most and serve those addresses first. Christine interjected that this is WCVT's 24 month plan and the remaining addresses will be served when WCVT returns for additional funding, likely from BEAD funds, for a second phase of build out.

Laura asked in regards to the requirement of collaboration with a CUD or municipality if WCVT provided letters of support from any of the towns that are a part of the project. Roger confirmed that he had letters from most of the towns, except for Waitsfield and Fayston but that WCVT is working closely with those towns, WCVT's main offices are there and they would have no problem

getting those letters.

Laura asked what public entity would be holding WCVT accountable for building out their entire Universal Service Plan since this is one of the more unique applications in Vermont with no coordination with a CUD. Roger explained that this is a conventional grant and as such, the VCBB would be in close communication with WCVT as they build out these towns and WCVT will not receive payment for a town until construction is complete and verified by VCBB Staff and their consultants. Rob confirmed the grant would be entirely reimbursement based.

Patty Richards asked whether these funds going to WCVT would interfere with the amount of funds available to the CUDs. Rob confirmed that these funds available in these towns were calculated through the same formula used statewide and it would not impact the amount available to each CUD.

Dan Nelson asked for confirmation that none of these towns are in Maple Broadband's CUD, and Roger confirmed they are not. Dan then asked if any of this area is interwoven with previous fiber grants like BTOP. Roger confirmed those areas are considered served and not included in this project design but they were able to leverage small areas of fiber built in the past to reach other underserved areas. Dan also asked about the discrepancy in the total cost per mile and per passing and Christine explained it was a mistake on her part because she did her calculations just using the grant funded portion of the cost per mile and cost per passing.

Laura asked VCBB Staff about the two areas of the state where CUDs were not formed, but that we know one is forming in the Chittenden County area and wanted to understand that VCBB Staff have been considering the fact that the VCBB should not take an action that possibly weakens the development of another CUD and the public accountability that would come with that development. Rob explained that the Chittenden County CUD is forming with the understanding that the towns in WCVT's area are satisfied with WCVT's plan for universal service and not interested in joining a CUD.

Laura Sibia made a motion to approve the grant request contingent upon the submission of letters of support from the towns of Waitsfield and Fayston. Patty requested that the motion be amended to include the total amount of \$8,348,243 and to add the contingency that WCVT meet minimum service quality standards similar to SoVT CUD and those be incorporated into the grant agreement, and then seconded the amended motion.

Patty Richards tabled the motion on the table and made an administrative motion to rescind WCVT's previous \$421,094 grant approval for the town of Bolton so that just one grant agreement will be issued for nonCUD towns to be served by WCVT, Laura Sibia seconded, and the motion was unanimously approved.

Patty Richards returned to the previous motion on the floor and with no further discussion the motion as amended with contingencies was unanimously approved.

V. Non-ARPA Funded Grant Programs: Process and Potential Review

Rob Fish shared the proposal for Broadband Construction Financing RFP, a \$1.5M one-time appropriation from State General Funds that will focus on leveraging the VEDA Broadband Infrastructure Program, other USDA loans, or other innovative financing. The language in the appropriation prohibits the funds to be used for matching funds for grant programs, the funds are intended to be used in situations that require cash equity, limited to \$400,000 per CUD.

Rob explained that the second program would be a Public-Private Partnership Challenge Grant, a \$1.2M program that will be a single award from the VCBB's Northern Borders Regional Commission (NBRC) grant.

Patty Richards asked for more information about how these programs would be administered. Rob highlighted some key requirements from the Broadband Financing RFP that the VCBB Staff drafted, including information on the loan application and the specifics around the need for the funding, along with the terms of the loan and a process to hold the CUDs accountable. Rob explained the Community Broadband Public Private Partnership Challenge is a single competitive grant opportunity for the CUDs from the VCBB's NBRC grant, that staff would administer to help further or remove barriers to the completion of a Universal Service Plan and might allow for some innovative partnerships in terms of actually constructing the networks.

Laura Sibilia stated that she would not advocate for the Board to get involved in the fine details of programs like this but asked that the VCBB Staff increase the high-level communication and provide one-pagers that highlight the source of the funds, the purpose, a timeline, and the criteria that will be used by Staff in making decisions, along with an overview of where the funds are committed once the grants are awarded.

Dan Nelson agreed that it would not be effective for the Board to micromanage these smaller programs but agree with Laura and Patty that an overview would be helpful.

Rob asked for the Board to authorize Staff to finalize and release the Broadband Financing Program RFP, with commitment from Staff to provide the Board a program one-pager and follow up with the Board on the decision-making process.

Laura added more context in reflection on the BEAD (Middle Mile) application which required a tremendous amount of coordination and tremendous amount of partners that she was disappointed that the Board Members were not included as coordinating partners prior to that being submitted in terms of the level of specificity that others partners had.

Laura Sibilia made a motion to authorize the staff to finalize and release the Broadband Financing Program RFP and to follow up with a one-pager for the Board on the criteria and decision making process. Dan Nelson seconded, and the motion passed unanimously.

VI. Multi-Dwelling Units Policy Presentation & Discussion

Stan Macel presented an overview of the obstacles to obtaining broadband service in multi-dwelling units (MDUs), including apartment buildings, condos, trailer park groups, ski units, or any sort of building where there are several residents or a building complex, because it involves the owners, the ISP's, and the residents. He shared that in the past there have been some specific anti-competitive practices that MDU owners enter into with the ISPs, including revenue sharing agreements, exclusive wiring agreements, and exclusive marketing agreements, some at rates above the going market rate, they limit choices for the residents to obtain broadband service, and MDUs often don't have conduit or other infrastructure that allows broadband to be delivered easily to the residents.

He shared ways a few states have addressed the broadband access issue for MDUs based on the common practice for deals made between developers and large ISPs:

Connecticut enacted legislation in 2021 that any ISP would have the same right of access to an

occupied building afforded to any telecom service provider and it also requires new MDU's of three units or more to have minimum infrastructure requirement to support broadband access.

- Illinois enacted a law in 2021 that prohibits interference from an MDU owner with the rights of a resident to receive broadband service, restrictions exist – they can require payment and require coming at certain hours, but they cannot prohibit an ISP from entering into a unit.

Stan explained that these actions from other states give guidance for Vermont to consider in any sort of legislative action that Vermont may want to take. The VCBB Staff recommends that the legislature consider including language around prohibiting anticompetitive activity, ensuring rights of access to MDU use for competing ISPs, and requiring broadband infrastructure to be included in new MDU construction.

Laura Sibilia asked if this is an issue impacting Vermont CUDs. Christine confirmed that yes CUDs have raised this concern. Laura reiterated that it would be great to have presentations like this brought forward by the CUDs themselves, or at least with confirmed full support from all of the CUDs.

A discussion around the difference in opinion on the interpretation of the goals of Act 71 emerged between Staff and the Board and Patty Richards requested the discussion be moved to the organizational meeting to coalesce around a directive of Act 71 that is understood and agreed upon by all.

Patty Richards asked for clarity on the scale of the issue. Stan responded that this is neither a minor nor a major issue but does exist in various areas in different ways.

Patty asked if the situation can work the other way where there is an advantage to tenants where the landlord negotiated to have a reduced rate. Stan confirmed that is possible and the Staff does not recommend getting involved in those situations. Patty and Dan both asked for more information to understand the issues more thoroughly before continuing the discussion. Laura added that it is imperative for legislative requests to have a sense of the plan CUD's have for moving this and other legislative issues forward in the State House.

VII. VCUDA Update

Rob Vietzke provided an update for VCUDA. Rob shared that VCUDA is still working on their annual budget and that there may be opportunities to leverage resources as a group versus doing everything individually and they are trying to decide whether the current model of a minimalist subscription fee is still appropriate or if CUDs want to expand that. He shared that Equal Access to Broadband (EAB) presented to all of the CUDs and they discussed the importance of that to the rest of the work everyone is doing. Rob shared that VCUDA's legislation and policy working group that is exploring a list of items education and policy items where clarification is needed. He reported that there are only a few key legislative issues and the committee will coordinate with the VCBB on those. He also shared that a robust conversation about the timeliness of make-ready, licensing and permitting has evolved in addition to the pole availability issue.

Laura Sibilia encouraged the VCUDA working groups communicate regularly with VCBB Staff on any legislative requests.

VIII. Public Comment

There were no public comments provided.

IX. Schedule & Structure of Board Organizational Meeting for November

Patty Richards explained the intention is for an opportunity to check-in and focus on what is working and not working, frequency of Board Meetings, structural improvements, and the addition of the VCBB's interpretation for 'universal service' and ensuring alignment of VCBB goals with what was intended in Act 71 legislation. She requested it be a concise 2-hour agenda that is mostly administrative housekeeping in nature and there should be a plan to address other goals and policy work at a future Board meeting.

Staff committed to work on a doodle poll to schedule and continue the conversation between Board Members and Staff to help plan out the agenda.

X. Confirm Next Meeting & Motion to Adjourn

Patty Richards confirmed the next meeting will be October 31st and made a motion to adjourn. Laura Sabilia seconded, the motion was unanimously approved, and the meeting was adjourned at 2:29pm.