

Vermont Community Broadband Board
Accountability Policy
Affordability of Broadband Service for Grant-Funded Networks
Revised 4-25-24 and May 1, 2024 Post Conference Draft

1. Purpose: The VCBB adopts this policy to fulfill the Legislative directive of affordable universal broadband service and to meet the VCBB’s statutory obligation to establish policies that provide broadband planning and construction grant criteria, that among other criteria, provide consumers with affordable broadband service options.¹ The VCBB’s policy seeks to balance VCBB’s grantees’ sustainable business plans with their grant obligations to provide affordable broadband service.² While thousands of pages of federal and state statutes and regulations have attempted to address the delivery of affordable broadband service, no clear definition of affordability has emerged as practical and applicable -- especially to the unique service territories, business conditions and populations of rural locations like Vermont. The VCBB does not define affordability as an economic measure at the intersection of the retail price of broadband service and the average disposable income of low-income households. The goal of the VCBB’s affordability policy is to establish accountability measures to ensure that grantees periodically evaluate the balance between sustainability and affordability, and to allow the VCBB to evaluate the accountability of grantees to whom it has entrusted public funding to make service on their grant-funded networks economically inclusive.

2. Affordability Policies:

a. Grant Conditions to Include Affordability: The policy of the VCBB is to include obligations to perform practices and provide service options that promote affordability, as enumerated below, in its grant awards or agreements. Practices and service terms to promote affordability stated in each grant apply to all locations in the grantee’s service territory in which grant funds are used for construction.

b. Construction and Design: VCBB awards grants for the construction of broadband networks serving all Vermont locations regardless of resident income or property value. Funded network designs must therefore achieve universal service and progress the construction of the grant-funded network without regard to property value or household income.

¹ The authority of the VCBB for this policy is derived from 30 VSA §8084(a)(6)(F) (the VCBB granted powers necessary and convenient including to “develop policies... that promote access to affordable broadband service plans”). See also 30 VSA §8085(c) (planning grant accountability) and 30 VSA §8086(b) (construction grants shall provide for “affordable service options”).

² Federal funding under the Broadband Equity Access and Development Program (BEAD) was authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021), also known as the Bipartisan Infrastructure Law. By design of the BEAD program, the State of Vermont, through the VCBB, has received approval of a plan for implementation of BEAD in Vermont (VT-BEAD). BEAD’s criteria for affordable service and sustainable business practices vary from those described in Act 71. The Board seeks to set an affordability policy that can be met by projects funded under either source. There may also be future funding to which this affordability policy applies if administered by the VCBB.

i. Inclusive design. Locations developed as low-income housing will be served by the grantee's construction unless already served. Routes shall not be designed to avoid serving less profitable locations unless no efficient and economically reasonable route is available; overbuilding allowed by the terms of the grant agreement or the Act is not an exception to this policy.

ii. Prioritizing On-Grid and Year-Round Locations. The VCBB's affordability policy prioritizes grant investment in serving habitable year-round locations, and with respect to ARPA-funded projects, those that are identified as E911 addresses served by the electric grid.³ For purposes of this policy, habitable year-round structures are (a) accessible by vehicles licensed for public road use, (b) served by a potable water source, (c) closed to the elements with doors and windows, and (d) served by an operable heat source.

c. Affordability Planning: In making grant awards, the VCBB will consider whether the construction plan and business model of the grantee/applicant reflect feasible steps to efficiently build and install broadband service and that minimizes the cost of retail service to the consumer, including but not limited to grantee's network design, bulk cost reductions, revenue reinvestment, and public funding.⁴ In order to define affordable service on a grantee basis for the grant-funded network, grantee's business model must document and incorporate the annual income range of consumers in the grantee's service area, project average service pricing and range of pricing, and project grant-funded network take rates and revenues. The construction plan and business model is approved by the board of the VCBB as part of the grant award, and thereafter shall be periodically reviewed for consistency with this policy, the approved model, and for accuracy of the assumptions in the model.⁵

d. Affordability in Operations: The affordability best practices described in this subsection 2.d, referred to as Grantee Affordability Initiative (GAI), are to be implemented by the grantee (where necessary, in coordination with the network operator) within twelve months of offering service to any customer on a grant-funded network. The GAI includes grant conditions that promote retention of low income consumers in the grantee's service area, an objective of publicly funded broadband to meet both affordability and digital equity objectives.⁶ VCBB GAI grant conditions specifically include:

i. Cost of Service and Net Income. Annual evaluation of grantee's cost to provide service on the grant-funded network, the net income, after debt service, and grantee's

³ 30 VSA §8082(7).

⁴ Under VT-BEAD, subgrantees must demonstrate a commitment to reinvest revenue into increasing efficiency and ensuring that rates remain affordable over the lifetime of the funded network or 20 years, whichever is greater. By way of example, this commitment could be demonstrated through a business plan that limits the network's profit in favor of reinvestment, or through a commitment to a stable or decreasing price for service throughout the life of the funded network or 20 years, whichever is greater.

⁵ The standards and review of the construction design are subject to a separate VCBB policy which is meant to be read to be compatible with this affordability policy.

⁶ The VCBB does not require grantees to measure or monitor the disposable income of customers or to mandate service selections based on income.

plan to use net proceeds to sustain or lower rates, especially as prudent for income-qualified consumers.

ii. **Digital Equity Plan.** Development of a digital equity plan with a three-year forecast to be updated annually, that reports the average household income and change in population in the service area,⁷ the take rate of the grantee's broadband service, and the implementation of a digital education outreach initiative (provided directly or indirectly) for consumers in the provider's service territory or district including, for example, technical skills development, budgeting for digital services, support in useful applications, and advice for safe use of web-based resources.

iii. **Government Subsidy Services.** Prompt enrollment by the grantee or its operator and active participation in any material government-funded subsidy programs that reduce consumer cost of broadband applicable to the grantee's service area, such as costs of installation, service, equipment or devices, including (a) public promotions to qualified consumers of any subsidy programs in which the provider is participating by the most effective means reasonably designed to reach consumers in the funded network service area, (b) coordination with key community institutions and social service agencies to promote affordable and subsidized service plans, (c) training of grantee's customer service representatives to integrate subsidies and low-cost service offerings in all sales communications, and (d) incorporate information regarding public subsidy eligibility in customer late payment notices and service termination communications.⁸ For purposes of this subsection 2.d.iii., "material government-funded subsidy programs" are those for which 10% or more of the consumers in the grant-funded network area may qualify, or those that would reduce service or installation cost to current or potential eligible customers by 20% or more.

3. Annual Report: It is the policy of the VCBB to monitor grantee's progress of achieving affordable service on networks funded by grants awarded by the VCBB. As a condition of each grant, Grantees will produce for the review of the VCBB a report for each calendar year by or before October 1 that demonstrates performance of the GAI.⁹ The annual report must be delivered with a request for confidentiality (to protect proprietary information) and include the information required at subsection 2.c, and 2.d, and the following numeric data for the reporting period for the (wholly or partially) funded network:

(a) the rate tiers offered to consumers,

⁷ Using the most recent income and population statistics used by the State of Vermont (generally based on the most recent U.S. Census Bureau report).

⁸ Regarding low-income qualified consumers: The VCBB anticipates that public broadband subsidy programs will identify qualifications for consumers that use existing benchmarks such as federal programs based on household-income qualifications. To reduce risk associated with maintaining confidential consumer information and to ensure equitable treatment among consumers, the VCBB recommends that grantees that choose to develop and implement an income-based subsidy use an objective measure established in an existing subsidy program administered by a third party, such as by proof of participation in specified state or federal low-income subsidies.

⁹ Other annual and periodic reporting requirements are the subject of the draft Annual Reporting Policy, with which this requirement is intended to be integrated and compatible.

(b) the total number of customers accessing the funded network in each rate tier during the reporting year and the number of terminations during the period (customer churn),

(c) the number of customers that received subsidized service (if any) during the reporting year, by subsidy program,

(d) the number of customers receiving subsidies, if any, that terminated service during the reporting year (subsidy churn),

(e) the average cost to customers of initiating and installing service with and without any applied subsidization,

(f) the average cost to the grantee (or its network operator), if any, to subsidize or defer customers charges for installation and initiation of service in the reporting year,

(g) the total amount of service subsidy payments received by or due to the provider for the grant-funded network during the reporting year, and

(h) the total documented annual costs to produce the AIM and the GAI.

The numeric reporting measures (a) through (h) are referred to as the “Affordability Impact Measurements” (AIM). Notwithstanding the confidentiality statement, the AIM and the GAI data may be aggregated and used anonymously to demonstrate and report the impact of publicly funded network infrastructure and affordability measures.

4. Enforcement. This policy is intended to endure past current Act 71 funding and apply under future funding such as VT-BEAD and other sources administered by VCBB. This policy is intended to be applied to all funded grants except to the extent that a provision of this policy conflicts with the requirements of the funding program (including but not limited to the VT-BEAD affordability requirements). A grant recipient or eligible grant recipient may request the Board determine whether a provision of the policy conflicts, as written or applied, with the requirements of the funding program, and the Board will promptly determine whether the particular provision of the policy conflicts and should either not apply or be modified. If the grant recipient or eligible grant recipient is aggrieved by the Board’s decision, the Board will direct Staff to seek guidance from the National Telecommunications and Infrastructure Administration (NTIA) and, if necessary, conform its decision to that guidance. Among its obligations to review contradictions or conflicts, the Board may determine, on its own initiative or at the request of a grant recipient pursuant to Section 4.a, that the cost of producing the AIM and/or the GAI is an operational expense of such magnitude that it contradicts the purpose of the policy.

The VCBB or its successor may determine, upon review and deliberation, whether a grantee or its provider has failed to meet the obligations of this affordability policy and determine the applicable remedies available under the terms of the grant for the breach of the grant agreement.

a. Design Review and GAI Administration. At any time during or after construction of a broadband network funded by a grant awarded by the VCBB, the VCBB, upon its own investigation, or upon a complaint of a third party, may take necessary steps to receive credible information to determine grantee’s compliance with this policy. The Chair of the VCBB or the executive of its successor, may determine whether information of non-compliance is sufficient to hold a hearing before the full board (or its successor) to determine

whether the grantee is in violation of a grant agreement, including but not limited to this affordability policy.

b. Service Complaints. The VCBB, upon its own investigation, or upon a complaint of a third party, may receive credible information of the lack of affordability or cost-effectiveness of services offered by a grantee, including but not limited to complaints received by the Vermont Department of Public Service, Consumer Affairs and Public Information Division (CAPI), which is charged with hearing consumer complaints regarding utility services. The Chair of the VCBB, or the executive of its successor, may determine whether such information is sufficient to hold a hearing before the full board to determine whether grantee is in violation of a grant agreement, including but not limited to this affordability policy.

5. Duration. This policy applies to all network projects that are the subject of a grants awarded by the VCBB and the conditions of this affordability policy are applicable to each grant for a period from the date of the grant agreement to December 31, 2034, or for ten years after the year in the grant is closed out, ending on December 31 of that year, whichever is longer.