

# Vermont Community Broadband Board Meeting

## Monday, August 22, 12:00pm – 3:30pm

### AGENDA

Meeting is being held virtually.

[Click here to join the meeting](#)

Join by Phone; +1 802-828-7667,,389833626#

*Note: there may be additional executive sessions as needed*

*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)*

- 12:00 1) Meeting Call to Order, Roll Call, & Approval of Agenda
- 12:05 2) Approval of August 8<sup>th</sup> Meeting Minutes
- 12:10 3) SoVT Construction Grant Application - Responses to Questions & Board Decision
- Executive Session if necessary (Board, Staff, CTC, SoVT, and partners)  
*Premature general public knowledge would clearly place the public body, or a person involved at a substantial disadvantage (1 V.S.A. § 313(a)1)*
- 1:30 4) Policy Presentations and Initial Discussions
- a. Consideration for Builds Completed or Proposed Subsequent to the Publishing of Eligibility Maps (Subsequent Build Policy) (Initial Presentation and Discussion)
  - b. Other ongoing policy developments looking ahead to the legislative session (Board Input and Discussion)
- 2:30 5) Staff Updates
- 2:45 6) VCUDA Update
- 3:00 7) Public Comment
- 3:15 8) Parking Lot and Meeting Schedule
- 3:30 9) Motion to Adjourn

Press inquiries; please contact Christine Hallquist, [christine.hallquist@vermont.gov](mailto:christine.hallquist@vermont.gov), 802-636-7853

**Vermont Community Broadband Board Draft Meeting Minutes**  
**Meetings are being held virtually.**  
**August 8<sup>th</sup>, 2022**

**I. Call To Order – 12:03pm**

**Roll call completed by Patty Richards**

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

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

**II. Approval of the July 1st, July 11<sup>th</sup> and July 15th draft minutes**

The Board discussed the July 1st, 2022 draft Board Meeting minutes. Laura Sibia made a motion to approve the minutes. Holly Groschner seconded, and the motion was approved. Patty Richards and Dan Nelson, neither of whom were in attendance at that meeting, abstained.

The Board discussed the July 11th, 2022 draft Board Meeting minutes. Patty Richards made a motion to approve the minutes. Laura Sibia seconded, and the motion was unanimously approved.

The Board discussed the July 15th, 2022 draft Board Meeting minutes. Patty Richards made a motion to approve the minutes. Laura Sibia seconded, and the motion was unanimously approved.

**III. Intro to Deputy Secretary of Administration Douglas Farnham**

Christine Hallquist introduced Doug Farnham to the board in his role as the point of contact for the Broadband Equity Access Deployment (BEAD) program noting that Doug has been a valuable asset throughout the short operating history of the VCBB.

Doug introduced himself and gave a brief overview of the role of the Agency of Administration during the pandemic response which primarily focuses on administrative support for the deployment of the pandemic related federal funds. A component of this support is the relationship with Guidehouse as the contractor designated to assist with risk analysis and funding prioritization review. Doug recognized the tremendous effort employed by the VCBB to work with other areas of state government to ensure efficient and effective collaboration of construction and other efforts.

Holly Groschner requested a status update for the BEAD application to determine what the total amount of that application is projected to be at this juncture. Doug indicated that they have filed

the application for the digital equity access portion. This is the smaller portion of the funding that is for planning with that amount estimated at approximately \$500k. Doug noted that the Letter of Intent has also been filed to satisfy the first requirement for participation in the BEAD program.

Patty Richards inquired as to whether there is anything further that the VCBB can do to more effectively collaborate with the Agency of Administration so that they might leverage the partnership to the fullest extent. Doug indicated that because there are so many people throughout the state using federal funds in either new channels or non-traditional channels there is significant need for and opportunity to provide training to ensure funds are utilized in accordance with federal requirements. Doug has been working with the VCBB staff to arrange for trainings to be made available to the Communication Union Districts on various topics including uniform guidance. Doug indicated that this is a prudent step and he hopes that the board can emphasize the importance of these trainings for the subrecipients and strongly encourage participation in those trainings. Doug also indicated that there may be some additional trainings that VCBB staff could benefit from at the recipient level.

#### **IV. Update on Ongoing Investigation Involving ValleyNet and ECFiber**

At Holly's request, Christine gave a very brief overview of the concerns related to this investigation to identify how the findings could potentially impact the grant monies that have been previously awarded to ECFiber. Christine indicated that over 2/3rds of the expenses paid by ECFiber annually go to ValleyNet. Stan Macel provided further comment indicating that we do not currently know if those funds were involved and hope to learn more in executive session.

F.X. Flinn was given the opportunity to provide public comment on the investigation on behalf of ECFiber. F.X. gave a brief history of ECFiber, whereby he emphasized that the district started with volunteers and very little government support. As such, a robust accounting function with adequate controls in place was not fully developed at inception. As capacity grew, more professionals were hired at both ValleyNet and ECFiber. The professional growth contributed to better oversight of the accounting functions, thus leading to the discovery of the financial irregularities. F.X. further noted that the discovery of this issue is not expected to make a material difference in operations for ECFiber.

Christine Hallquist requested that the Board go into Executive Session to discuss additional details of this investigation. Patty Richards invited representatives from ValleyNet and ECFiber and VCBB Staff into Executive Session 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). Laura Sibia seconded, the motion was unanimously approved and the Board entered into Executive Session. Prior to commencing executive session it was noted that a pre-application for the construction grant has been submitted by ECFiber and that this issue also has bearing on our grant monitoring for existing preconstruction grants.

Patty Richards confirmed no action was taken in Executive Session. However, additional general commentary was provided by the Board expressing preliminary discussions that were had surrounding the need for implementing additional procedures prospectively to ensure federal grant dollars are being used appropriately. One such recommendation was to include requirements within the grant agreements that any contractor whose compensation makes up a material portion of that grant work be required to establish an adequate accounting function. The VCBB also acknowledges that additional support from the VCBB from a funding perspective

should be considered. The VCBB and its staff are also not immune from these requirements and Holly would like to revisit spending authority by the executive Director to ensure adequate controls are in place.

#### **V. Update on Confidential Negotiations- NWFiberworx and Lamoille FiberNet**

NWFiberworx and Lamoille FiberNet have reached a key turning point in their negotiations with Google Fiber.

Christine Hallquist requested that the Board go into Executive Session to discuss additional details of these confidential negotiations. Patty Richards invited representatives from NWFiberworx and Lamoille FiberNet and VCBB Staff into Executive Session 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). Laura Sibia seconded, the motion was unanimously approved and the Board entered into Executive Session.

#### **VI. SOVT Construction Grant Application**

Christine Hallquist gave a brief summary of the staff level review that has occurred, noting that the application is favorable. By building a partnership with Consolidated they have reduced the cost per address which frees up grant funds for other prospective grantees. Christine, speaking on behalf of VCBB staff, recommended that the Board approve the application.

Eric Hatch, chair of Southern Vermont, was given an opportunity to present to the Board and answer any questions that the Board might have. Eric was also joined by SoVT representatives Michael Corey and Sheila Kearns. Representatives Erik Garr, Brian Lim, Mary Ellen Player and Stacey Trudi from Consolidated were also in attendance, as was Jonathan Cooper from the Bennington County Regional Commission. The CUD is seeking \$9,009,085 in grant funding for Phase 2A of their universal service plan covering 1,300 unserved addresses. The total cost of phase 2A is expected to be \$12.3m with the \$3.3M portion not funded by the grant representing the cost of drops for each passing that will be funded by Consolidated. At the conclusion of phase 2 of their Universal Service Plan (targeted end of 2023) 99% of unserved addresses in the CUD will be covered. The grant dollars would be used to pay materials costs for wirecenter upgrades, core upgrades, aerial fiber, underground fiber and administrative costs.

Erik Garr presented information pertaining to the Consolidated (Fidium) portion of the partnership, inclusive of a discussion on upgrades to Consolidated's core infrastructure, improved call center experiences and more reliable installation and service windows. Consolidated is willing to provide regular updates to the VCBB on improvements in their processes and customer experiences. Eric Hatch further discussed accountability with Consolidated including expectations surrounding data breach notification, service outage notification, net neutrality requirements and quarterly performance reviews. Laura Sibia requested further detail regarding how the CUD plans to hold Consolidated accountable for these measures to which Eric Hatch explained that they view this arrangement as a partnership and not a transactional engagement meaning that the CUD succeeds when Consolidated succeeds and vice versa. Eric further believes that the fiber network is less problematic than a copper network.

Laura further inquired about the reasoning behind the decision the CUD made not to own the drops. Eric Hatch noted that there are several reasons for this based on the determined value of ownership. If Consolidated were to go bankrupt or receivership owning those drops would not harm or help the CUD. Another consideration is how the technology would age and if replacement

would need to be provided in the future anyway if the partnership changed. In their opinion, owning the drops does not provide them with any additional leverage.

Laura also inquired as to the organizations sustainability going forward to ensure accountability to the towns is maintained since the CUD is mostly a volunteer based organization. Eric Hatch noted that the CUD has discussed this but it is a work in process. They do plan to hire an executive director or similar position to assist with the work that needs to be done.

Holly noted that there is a termination provision in the 20 year contract with Consolidated referencing material breach but further explanation of materiality is not provided. Holly further asked if there has been discussion about the service standard, consistency of the rates, connection requirements and maintenance requirements? Eric Hatch indicated that they have had these conversations.

Additionally, Holly questioned the quarterly reporting process. Eric hatch noted that deliverables and tracking will likely be done by the executive director position that they plan to hire. After the construction period that onus would once again be on the CUD Board.

An additional area of concern noted by Holly was the take rate in the ACP Program. Sheila Kearns noted that one of the areas of confidence that they have in Consolidated is that they will conduct rollout meetings in each of the towns in which they are bringing Fidium, regardless of whether it is a CUD town or not. One of the major components of this is expected to be education about things such as the ACP program.

Patty requested additional information from Consolidated regarding their buildout in the same area and how much of that is funded through RDOF and what are your reporting requirements. Erik Garr indicated that the reporting requirements include a set of latency requirement, accountability for how they are treating the subsidy, produce financial audits, provide a proposal. The total RDOF commitment is approximately \$2M for Southern Vermont.

Patty further noted that part of ACT 71 includes a provision that requires the assets of the CUD belong to the CUD and if the CUD cannot perform than those assets revert to the State. Eric Hatch noted that this is not referenced in the contract but this is understood by both parties and the language in the contract is clear that the asset belongs to the CUD so the law will dictate the treatment of those assets. Christine and Holly both noted that this topic requires further discussion and review.

Laura further inquired as to whether there are any ongoing revenue or funding that goes towards the maintenance of the CUD. Eric Hatch indicated that there isn't. Laura's concern is that the requested award is being appropriately utilized for the entire district.

Teles Femin with CTC was asked to provide a summary of their review of the application and remaining questions. Teles noted that she is still unclear as to what is being constructed with the funding and how much of that ownership is with the CUD. Overall, there were not enough technical details in the application to allow confirmation of some of the work and CTC has requested more information.

No action was taken on the SoVT construction grant application. Additional discussion will take place in the next regularly scheduled meeting.

## **VII. VCUDA Update**

F.X. Flinn provided comments to summarize current updates for VCUDA. He reported that they have completed the first full round of the fiber optic buy. The total price of the buy was \$935,048. They are functionally ready for future large buys on behalf of the CUDs.

He would also like to provide opportunities for the CUDs to get together once or twice a month to hear from the VCBB Staff and compare notes with each other and ask questions.

VCUDA is still trying to find a replacement for Will Anderson's vacant position.

## **VIII. Public Comment**

There were no public comments provided during the meeting.

## **IX. Staff Updates**

Christine noted that staff attended the NTIA meeting and received positive feedback on the written narrative for the BEAD equity planning grant. Overall feedback was that the narrative was in good shape. One of the concerns of the NTIA is ensuring that staffing capacity is adequate. Holly noted that she would like to know more about this grant application before it is officially submitted. Christine will provide a summary of the submission in a bullet point format but it is on a very tight deadline and needs to be submitted by August 15<sup>th</sup>.

Rob noted that they are still working to fill the open staffing positions that were previously approved by the Board. The Broadband Project Developer position will have an offer going out this week. The other positions may require some temporary staffing until the full-time positions are approved.

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

## **X. Parking Lot**

- 1) Guidehouse Uniform Guidance training.
- 2) Procedural accountability for grant funds and fund usage for all grantees.

The next meeting will be scheduled for Monday August 22<sup>nd</sup>, 2022.

Patty Richards made a motion to adjourn. Laura Sibilgia seconded, the motion was unanimously approved, and the meeting was adjourned at 4:00pm.

## Vermont Community Broadband Board

### Policy Regarding Known or Probable Extensions or Upgrades to Broadband Service in in a Grantee's District Subsequent to a Grant Award

The Vermont legislature enacted Act 71 with the goal of delivering broadband availability to all Vermonters and Vermont addresses. It noted the goal of “achieving universal access to reliable, high-quality, affordable, fixed broadband” in its statement of purpose.<sup>1</sup> The Act established the Broadband Construction Grant Program to finance broadband projects of eligible providers that are part of a universal service plan, that is, they plan to deliver universal service to every address in their District.

Act 71 defines “served” as service of at least 25/3.<sup>2</sup>

Identifying locations that are served begins with the Interactive Broadband Map which is maintained and updated by the Vermont Department of Public Service. It is available online at: <https://publicservice.vermont.gov/content/interactive-broadband-map> 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.

In order to achieve universal service, the legislature was aware that some overbuild of geographic areas that are currently served would be necessary. Between the date of when the PSD publishes its data and the issuance of a grant, additional construction by providers may result in new addresses being served. Act 71 8086(f) requires the Board to consider these new builds, as well as probable extensions or upgrades not reflected on the map. (See discussion below).

For the VCBB to consider as “served” any addresses that do not appear as served on the Interactive Broadband Map (as slightly adjusted as described above) it will require a provider to submit a signed statement that wireline service at a specified service speed (25/3 or higher) is available to those listed E-911 addresses. The VCBB will consider this data as part of its analysis pursuant to Act 71 paragraph 8086(f), as discussed further below, and in conjunction with its analysis of the business plan of a CUD. The Board will not adjust the published list of eligible addresses for grant funding outside the release of data by the Public Service Department.

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.

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<sup>1</sup> 30 V.S.A. § 8081.

<sup>2</sup> 30 V.S.A. § 8082(9).

### 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.

The test requires the Board to evaluate whether the proposal is “cost-effective” (see prong 1). As part of this evaluation, the Board may consider the costs that the provider is proposing to charge customers (i.e., cost-effective to consumers), as well as costs to reach nearby un/underserved locations, bearing in mind the goal of universal service for the entire district.

The test also requires the Board to consider the “overall objectives” of the universal service plan. This term is not defined in the Act, but the Board considers this to include the business factors in providing universal service to the district, including a workable business plan, the necessity to reach all addresses in the district, and the necessity to build a network with resiliency, redundancy, and excess capacity in the area.

In considering whether to grant a Broadband Construction award to an eligible provider, the Board is tasked with distinguishing served and un/underserved locations, including considering known or probable builds. (See discussion above regarding builds not reflected on current maps). This analysis is necessarily a snapshot of a build at a defined point in time, performed when the Board is considering the grant application.

### 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. Given Act 71’s overarching goal to provide universal service and encourage the competitive market for broadband services in Vermont, we do not view such proposed extensions or upgrades as necessarily unwelcome.

Given that eligible providers who have successfully obtained grants under the Broadband Construction Grant program must develop detailed designs and plans for their networks, we do not believe that the existence of additional known or proposed service extensions or upgrades should necessarily upend grantees’ build plans. On the other hand, we think it makes sense from a business standpoint for a grantee provider to consider the known or proposed service extensions or upgrades and their likely effects on the grantee’s plans. Thus, we earlier described a method by which the VCBB can acknowledge known and probable builds. (See above).



## 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."<sup>3</sup> 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.

Further, grantees could use knowledge of other providers' additional known or proposed service extensions or upgrades to reconsider whether they may want to make changes to priorities or designs. In addition, if probable extensions or upgrades are actually built, this could affect the number of customers that a grantee obtains (the "take rate"), which could affect grantees' business plans. Thus, grantees are encouraged to consider information obtained subsequent to obtaining construction grants in order to fine-tune their build plans and business plans.

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<sup>3</sup> VCBB staff guidance described three Tests regarding incidental overbuild (described more fully in the Act 71 Construction Grant Additional Guidance for Phased Applicants, link below): 1. Necessary Route – "Straight Face Test"; 2. Percent of addresses currently served passed; and 3. Requirement for the success of the business plan. See <https://publicservice.vermont.gov/sites/dps/files/documents/Additional%20Construction%20Grant%20Guidance%20Document.pdf>

#	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 future meeting in September.
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 in September
24	1	Invite to the Federal Delegation to future Board Meeting	8/8/22	CH	Tentative plan to attend a future meeting in September.
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 <sup>th</sup> 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.
16	1	Provide Board with impact of Commitment letter	02/14/22	CH	Closed with material pre-purchasing proposal.
17	2	Statewide marketing collaboration with VCUDA	02/14/22	CH	Closed. VCUDA is not interested.
15	2	Provide Benchmarks for what telecom companies spend on Marketing	02/14/22	CH	Will research and present back on 3/14/22 Board meeting
1	1	Budget	10/18/21	CH	Completed. 2021 budget approved. 2022 will be presented in March.

2	1	Overbuild – what is the standard (20% of total served?)	11/1/21	CH	Completed. See Construction RFP Definition
3	2	Business Plans – what is the scope? Will they be updated before construction grants?	11/1/21	CH	Completed. The updated business plans will be included in the Construction RFP responses.
6	3	Fiber purchase – VCBB involvement? authorization? Status?	11/1/21	CH	Completed
7	1	Make Ready Construction – policy: part of §8085 grants or not?	11/1/21	board	Policy established. Make ready construction will be part of the construction grant program.
9	2	Revisiting timeline for VCBB – construction RFP & reporting timelines	11/22/21	RF	Completed. Part of the construction RFP. RFP approved by the Board on 01/03/22
10	2	Sequence assumptions for preconstruction and construction & reporting timelines	11/22/21	CH	Completed. Part of the Construction RFP. RFP approved by the Board on 01/03/22
11	2	DPS 2021 Map – Unserved	11/1/21	CH& board (LS)	Completed
12	1	Confidentiality. Grant Agreement Art 5 (state standard). Is the product of a grant a “public document” – e.g. will we post construction plans?	11/1/21	CH/Legal	The RFP and construction schedules will be public.
13	2	USP & contiguous CUD construction-policy	11/22/21	Board LS/HG	Completed. Addressed in the Construction RFP.
14		Legislative Consideration – Purchase of consolidated services/goods	11/29/21		Not needed.