

Vermont Community Broadband Board (VCBB)
Grantee Agreement Indications of Failure and Remediation Process
Board Approved 04.01.2024

(1) **Purpose:** To fulfill the VCBB’s statutory obligation to establish policies, grant terms and grant conditions that establish a process for reviewing and developing remediation commitments when a Grantee either fails to comply with grant conditions or gives an indication that it might not be able to comply with a grant condition based on normal grant reviews processes performed by the VCBB and its staff. The remediation process described in section (3) precedes, and attempts to avoid, progressing a Grantee that is failing or trending toward failing to meet grant conditions to the Recoupment and Transfer of Ownership Policy, noted in section (5).

(2) **Indications of Failure to Comply with Grant Conditions:** If it becomes reasonably foreseeable for a Grantee that it may not be able to comply with a material grant condition, the Grantee must promptly inform VCBB staff in writing. Such notification may be made by email to VCBB Staff and should be included in any routine reporting to grant management staff at the VCBB. Upon such notice or upon an initial failure to comply with grant conditions as determined by VCBB staff, the VCBB will assess whether the issue of concern may be remediated by the Grantee. VCBB may request that the Grantee promptly provide additional information as requested. VCBB may request Grantee to promptly submit a proposed remediation plan to the VCBB. The VCBB may accept, reject, or modify the remediation plan and facilitate collaboration on the remediation plan with the Grantee and other stakeholders. The remediation plan should prioritize continuity of service to customers wherever possible.¹ The remediation process precedes, and attempts to avoid, progressing a Grantee that has failed to meet grant conditions to be further assessed under the Recoupment and Transfer of Ownership Policy. In the event of a significant breach or breaches of a grant agreement, VCBB may, at its discretion, decide to skip a remediation process and recommend review against the Recoupment and Transfer of Ownership policy instead.

(a) Initial Failure to Comply with Grant Conditions. An initial failure to comply with grant conditions is one which violates an expressed grant condition or conditions and/or prevents the VCBB from being able to properly assess a Grantee’s grant performance due to a lack of information, transparency, or ability to verify information provided. Examples of such failures include but are not limited to:

- Repeated, material adverse audit findings.
- Repeated failure to timely and accurately file any required financial reports and forecasts for the reporting period in question.
- Failure to comply with state Bulletin 5.0 or the federal Uniform Guidance, 2 C.F.R. Part 200 Subpart D.
- Recurring, unexcused non-performance of construction milestones.

¹ See 30 V.S.A. §8086(c)(4).

- Failure to provide timely and accurate documentation of locations that have been connected and offered broadband service.
- Failure to comply with or to support verification of compliance with construction standards.
- Failure to seek advance approval of sale or transfer of grant funded network assets (8086 (c) (5)).
- Failure to notify VCBB of the termination of an operating agreement with a critical operating partner to the grant agreement in the absence of a substantially similar replacement operating partner or plan and associated transition plan. The VCBB will be given notice of the substantially similar replacement operating partner or plan and associated transition plan as soon as practical.

(3) Remediation Policy. The VCBB will use specific facts to determine whether the potential material failure to comply may be remediated by the Grantee. The VCBB may ask the Grantee to promptly submit additional information, including possibly a proposed remediation plan, to the VCBB within 60 days of such request or such time frame as may be necessary. The VCBB may accept, reject or modify the remediation plan in coordination with the Grantee. The VCBB may facilitate collaboration on the remediation plan with the Grantee and other stakeholders. The remediation plan should prioritize continuity of service to customers wherever possible.

(4) Remediation. Grantees that successfully fulfill the requirements of the remediation plan developed in collaboration with VCBB are deemed remediated.

(5) Failure to Repair through Remediation. Grantees who fail to or refuse to repair grant condition failures through the remediation plan developed in collaboration with VCBB will have their grant project escalated to the steps enumerated in the Recoupment and Transfer of Ownership Policy.

(6) Force Majeure and Excused Delays. Grantee shall notify the VCBB of circumstances materially impacting grant compliance, including anticipated or actual delays in construction. Such delays may temporarily excuse performance. In such instances, Grantees shall submit and implement a remediation plan.