

POLICY EXPRESSLY REQUIRED BY LAW

1. Project Readiness and Grant Accountability – Assurance.
2. Engineering Standards for Reliability, Resilience and Interoperability.
3. Recouping Grant Funds.
4. Transfer of Grant-Funded Assets.
5. Continuity of Service.
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POLICY NECESSARY TO PUBLIC INTEREST AND PURPOSE

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3. Low Income Inclusivity.
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5. Prioritization of On-Grid Locations.
6. Prioritizing Fiber Plant.
7. [Additional Recommendations]

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Vermont Community Broadband Board - Working Draft 1 July 12, 2023

VCBB Accountability Policies 2023

Ensuring accountability for the public interest obligations of receiving grant funding pursuant to Act 71

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Accountability Policies of the VCBB

Purpose: This set of policy statements of the VCBB intends to address its obligations to protect the public interest as anticipated by the Vermont Legislature in its passage of Act 71 (Chapter 91A of Title 30, Vermont Statutes Annotated), from the specific requirements of construction of a reliable broadband network to the broader objectives of municipal service. This set of policies addresses three questions:

1. What standards guarantee “public accountability for serving all Vermonters” applicable to the infrastructure built, in whole or in part, by the Vermont Community Broadband Fund?
2. What is the definition of accountability under Act 71 and who is held accountable?
3. How will the VCBB, or the State of Vermont, implement these policies to protect the public interest, and how can these accountability policies be enforced now and in the future?

Authority of the Board. The authority of the VCBB to enact this policy derives expressly and implicitly from 30 VSA §§8081, 8084, 8085, 8086, and 8089a.

Application of these Policies. The VCBB began awarding grants in 2021. These policies are intended to aggregate the obligations of the Community Broadband Fund grantees in one place and to clarify the policies of the VCBB. The obligation to hold grantees accountable for the public interest described in Act 71 is inherent in all grants issued by the VCBB under Act 71. Any exceptions or limitations to the application of these policies and the obligations for performance that they create are noted.

Accountability. These policies are designed to describe the scope of the public interest addressed by the legislature in Act 71, and clarify who is accountable for those results. The responsibility of the VCBB for administering the Community Broadband Fund requires that the VCBB plan for the intended public interest results and identify who will be accountable. Generally, those who receive distributions from the Community Broadband Fund will be accountable for the public interest the Fund is designed to deliver. The VCBB is accountable for ensuring that the Fund recipients are accountable for the public interest.

Duration and Transfer. Section 8089a of Title 30 expressly requires that the VCBB plan, by January 15, 2029, for the transfer of its legal obligations, including its obligation for the accountability of grant recipients or their successors, by recommending a designated State entity to assume such legal obligations or by recommending an extension on the statutory sunset clause applicable to the VCBB. While that recommendation is not made here, the VCBB recognizes accountability oversight is one of the legal obligations it must plan for.

Definitions. Unless defined in the policy statement or referenced standard, all terms in this policy statement have the meanings assigned to them in Act 71. The term “VCBB Board” is used throughout to indicate that the arbiter of application of this policy is a majority of the board of directors of the VCBB, appointed as provided in Act 71, unless such authority is expressly delegated to VCBB Staff or another designee.

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Act 71 Provision requiring Accountability	Current Practice: Grant Terms, RFP Certifications or Application Attestations	Proposed Board Policy
Express Accountability Requirements to Protect the Public Interest:		
Construction Grant Conditions- 8086(c)		
<p>(1) Payment schedule ensuring accountability And 8086 (d) (business plan) and (g) (sustainability requirement)</p> <p>Minor change: consistency of payment schedule for grantees</p>	<p><u>Maple Attachment B-Payment Section 4:</u></p> <ul style="list-style-type: none"> a. Provides for payment of 30% on execution b. Provides for performance payments of up to 30% upon submission and approval by Grant Manager of a detailed construction engineering design where x%=fiber miles included in the portion of the design c. 30% is reimbursable for approved expenses with remaining amount of this 30% to be issued on completion of first 50% of project miles d. Construction completion payment of 8% based on grant agreement re compliance at completion (all testing and submission of required reporting data) e. Final payments totaling 2% upon submission of 6 and 12 month post project reporting and all required data <p><u>SoVT Attachment B-Section 4</u></p> <ul style="list-style-type: none"> a. Provides for payment of 1.7% on execution b. 90% due on completion of project; c. Final 10% upon submission post-project reporting after 6 months <p>The Construction RFP requires applicants constructing private infrastructure to accept a maximum contract price and no payment until work is certified complete, whereas applicants building publicly owned infrastructure awards use an estimated price and provide for performance payments (see details above re Maple vs SoVT)</p>	<p><u>Project Readiness and Grant Accountability – Assurance.</u> The Board prefers to set a consistent grant disbursement program using incremental payments that are consistent among all grantees. Grant disbursements for construction grants require proof of project readiness and the financial preparedness of the grantee. (Construction and planning preparedness is the subject of grants under the Broadband Pre-construction Grant Program.) No grant funds shall be distributed without demonstration to VCBB staff of project readiness and financial preparedness, including acceptance of a viable business plan pursuant to Subsection 8086(d). Thereafter, grants shall be distributed according to the following (Maple) schedule:</p> <ul style="list-style-type: none"> - 30% on execution - 30% on VCBB approval of the total engineering design for the approved construction - After completion of 50% of the project fiber miles, up to 30% of the grant funding is available to reimburse verified construction costs - 10% upon compliance with testing of the approved network, proof of service and

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		<p>revised approved business plan, and documentation requirements.</p>
<p>(2) Adopt industry-accepted engineering standard promoting reliability, resiliency and interoperability</p> <p>Minor change: State a policy for the intended results of engineering standards</p>	<p><u>Attachment A-Section 4b. Detailed Design-Both SoVT and Maple</u> Requires compliance with Act 71 Outside Plant Design Standards; also restated in Section C (1) of Attachment A. Attachment A, 3(f) requires inclusion of industry-accepted standards for sustainability, redundancy or resiliency. These requirements are also listed at https://publicservice.vermont.gov/content/outside-plant-design-osp-requirements.</p> <p>NOTE: the above OPD provides guidance, but does not set specific standards.</p>	<p><u>Engineering Standards for Reliability, Resilience and Interoperability.</u> The VCBB requires that all Community Broadband Fund grant-funded networks meet engineering standards that ensure reliable and resilient networks for delivery of broadband speeds of at least 100/100 gbps per location and ensure the network as constructed shall meet availability requirements of 99.9% or greater. Grantees shall also comply with applicable ANSI standards, construction regulations, and electrical codes adopted by the State of Vermont, and the Outside Plant Design standards (OPD) set by the VCBB as published at the time of the grant approval and incorporated into the grant. OPD standards shall provide engineering guidance and numeric technical standards for network construction to achieve resiliency, reliability, interoperability and open architecture, including but not limited to standards for the minimum number and type of fiber strands,</p>

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		<p>fiber sparing, allowable loss budget, growth planning, designated power supply and backup, PON splitter and OLT port per location, and the minimum drop budget. Grantees shall provide accurate as-built documentation and specifications for each network incorporating grant-funded assets.</p>
<p>new policy related to engineering</p>		<p>See Open Architecture Policy at 8086(b)(7)</p>
<p>(3) Establish standards for recouping of grant funds and transferring ownership of grant-funded network assets if a grantee materially fails to comply with the terms and conditions of a grant See also 8086(c)(5)</p> <p>Change: Implement a policy for both recoupment and transfer that include more enforceability through a lien or assignment that can be subordinated at the discretion of the VCBB Board.</p>	<p><u>Attachment B-Payment Section 6-Both SoVT and Maple</u> If Grantee does not fulfill its obligations or violates the Agreement the State shall notify of the breach; 30 day cure period; State may set off and hold payments until cured. If no cure in 30 days, State may require grantee to immediately reimburse the State any portion of grant funds not expended or improperly expended, or retain any portion of grant or other funds due grantee equal to the reimbursement amount and may terminate with written notice <u>Attachment D-SoVT-Contractor Breach, Errors and Omissions</u> provision, any breach has to be corrected at no cost to the State</p>	<p><u>Recouping Grant Funds:</u> The VCBB is obligated by law to ensure each grantee is accountable for the expenditures authorized in the grant, and to provide a means for recoupment in the event of nonperformance. If at any time prior to distribution of up to 100% of grant funds, VCBB staff determine that a grantee fails to meet the terms and conditions of a grant, staff shall provide written notice to the grantee and to the VCBB Board identifying the subject nonperformance. There shall be a cure period of 30 days from the date of the notice during which time grant funds shall not be distributed to the grantee. Grantee’s failure to cure nonperformance may result in cancellation of the grant or recall of up to 100% of grant funds at the discretion of the VCBB Board and the sale of the network assets to another public network operator. The grantee may appeal staff decisions of grant noncompliance or nonperformance to the VCBB Board at a regularly scheduled public meeting within 60 days of the written notice.</p> <p><u>Transfer of Grant-Funded Assets.</u> The VCBB is obligated by law to ensure that the assets constructed by each grantee meet the public interest objectives of Act 71, including but not limited to universal service and continuous operation of the assets constructed using the Community Broadband Fund. The grantee is accountable for the public interest results set by the policies of the VCBB Board and Act 71. The VCBB is</p>

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		<p>obligated by law to provide a means to reclaim and transfer assets constructed using Community Broadband Funds if the terms of the grant are not met, including but not limited to the operation of the network in a manner that meets the public interest described in the VCBB's policies and Act 71.</p> <p>Therefore, prior to distribution of grant funds, the VCBB shall file a form UCC 1 with the Vermont Secretary of State, designating the name of the grantee, the miles of fiber and municipal location of the network construction, and specifying the State of Vermont as the lien holder subject to the terms of the grant and these accountability policies. It is the policy of the VCBB to subordinate its lien interest to the interest in title for purposes of securing financing that, in the discretion of the VCBB, is reasonably likely to meet the terms of the grantee's business plan and promote the sustainability of grant-funded network.</p> <p>The lien shall be released upon twenty years of operation of the network by grantee or such third party as the VCBB Board shall approve. The VCBB will summarize the grant terms and public interest accountability policies of the VCBB that attach to the operation of the network in the lien, and provide grantees with a form of agreement that provides the terms and effect of the lien. Should the VCBB exercise its rights under the lien, it shall have the right to transfer title to the network assets to a third-party public entity that is a communications union district or other public interest operator of broadband networks in lieu of recoupment of the grant funds. The grantee may appeal staff decisions of grant noncompliance or nonperformance to the VCBB Board at a regularly scheduled public meeting within 60 days of the written notice.</p>
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<p>(4) Establish a continuity of operations plan applicable to a network owned by a CUD that, among other things, contemplates the Board assuming operational control of a network if necessary to maintain uninterrupted broadband service</p> <p>See also 8086(h) – notice of default</p> <p>Change: Adoption of a Continuity Policy Requirement and notice of default.</p>	<p>TBD</p>	<p><u>Continuity of Service.</u> Reliability and interoperability are stated objectives of Act 71. The VCBB is obligated by law to provide an operations plan that assures operations of each network controlled by a CUD and funded by the Community Broadband Fund. Each grantee that is a CUD shall (a) annually prepare and submit to the VCBB a continuity plan that reasonably sets forth the operating requirements of the network, and (b) sign an agreement with the VCBB to allow the VCBB to assure operation of network assets in the event of a default on the obligations of the CUD or its operator of the network that threaten the continuity of service provided to customers, including but not limited to the right to designate a third party operator, at VCBB’s discretion, to ensure operation of the network for a reasonable fee until continuity of service is assured and the reliability/ availability standards adopted by the VCBB are met. It is the policy and obligation of the VCBB to take such reasonable steps as it determines necessary, at the grantee’s expense, upon ten days written notice from the date the VCBB Board determines that operation of the assets funded by the Community Broadband Fund do not deliver broadband service to the service area designated in the approved grant application that meet the VCBB availability/reliability standard of 99.9% or the VCBB receives notice of default pursuant to Subsection 8086(h). The VCBB Board shall receive any notices issued under Section 8086(h) of Title 30. The VCBB may consider consumer complaints of service outages received by the Department of Public Service as well as other third-party testing to determine continuity of service. Grantees shall prioritize service delivery during periods of default or bankruptcy, which obligation to operate shall survive the duration of the grant payout for a period of twenty years from the date of the grant award.</p>
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<p>(5) Prohibit the sale or transfer of grant-funded network assets without the prior written approval of the Board; See also 8086(c)(9)</p> <p>Change: Policy for Transfer required (Current certification is not likely to be binding or actionable, and does not set standard for approval of transfer)</p>	<p>The Construction RFP requires applicants to certify this requirement. See Eligibility Screening, Part 2, Section 6.</p>	<p><u>Authorized Ownership Transfers.</u> In order to ensure that ownership of grant-funded network assets are not sold, assigned or licensed without the written authorization of the VCBB Board, ownership of all assets constructed with grants of the Community Broadband Fund will be held in the name of the grantee and the assets shall be subject to a lien held by the VCBB or the State of Vermont (see VCBB policy 30 VSA 8086(c)(3)).The VCBB Board, in considering a request to transfer any interest in title to the assets , shall act on the request within 30 days by review of the transferee’s ability and agreement to meet the public interest obligations and surviving grant contractual obligations that apply to assets funded by the Community Broadband Fund. Such transfer shall be subject to a new lien of the VCBB or the State of Vermont securing its interest pursuant to its policy granted by the transferee. It is the policy of the VCBB to subordinate its lien interest to the transfer of an interest in title to the funded assets for purposes of securing financing that, in the discretion of the VCBB, is reasonably likely to meet the terms of the grantee’s or transferee’s business plan and promote the sustainability of grant-funded network. This obligation to receive approval of transfer of an interest in title (of any kind) and the lien shall be released upon twenty years of operation of the network by grantee or such third party as the VCBB Board shall approve.</p>
<p>(6) Allow an applicant to seek reconsideration of an adverse Board decision</p> <p>Change: Adoption of Appeal Policy Required</p>	<p>The Construction RFP provides for an appeal of an adverse Board decision within 30 days</p>	<p><u>Appeal.</u> Unless otherwise provided herein, it is the policy of the VCBB to hear an appeal by a grant applicant of any adverse decision of the VCBB (including but not limited to the Board) at the next regularly scheduled meeting of the VCBB Board that is at least 30 days, but not more than 60 days, from the date of such adverse decision.</p>

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<p>(7) Ensure project completion within a reasonable period of time and consistent with applicable federal law and guidance Minor change – extension process</p>	<p>Grant duration terms are reasonable and customary; RFP requires construction to be completed within 24 months</p>	<p><u>Completion Period.</u> It is the policy of the VCBB that grants made under the Community Broadband Fund will be completed, including all requirements made for final payment and compliance with all federal and state grant requirements, within 24 months of the date of the grant unless the term of the grant is extended by decision of the VCBB Board for cause.</p>
<p>(8) Comply with Administrative Bulletins No. 5 (Grant Agreements) and 3.5 (Contracts) No policy required</p>	<p>Attachment B Section 9 for both SoVT and Maple imposes Administrative Bulletin 5 provisions with respect to Subgranting; Attachment C , Standard State Provisions for Contracts and Grants is included in all VCCB Grant Agreements.</p>	<p>No VCBB policy is required. These State contract provisions are incorporated into VCBB grants as required by law. In the event that the State Provisions conflict with federal grant requirements, the VCBB staff will seek guidance from the Attorney General and will advise the grantee and the VCBB Board in writing of any deviations from state protocols.</p>
<p>8086(h)(1) Requires CUDs that borrow funds for the purposes of financing a broadband project to immediately provide written notice to the VCBB Board in the event the CUD becomes aware that it is at risk of financial insolvency or of defaulting on the payment of principal and interest</p>	<p>TO BE ADDED TO RFP/GRANT AGREEMENTS</p>	<p><u>Potential Default, Notice and Recommendations.</u> It is the policy of the VCBB to promptly provide written notice to the Governor, the Treasurer and the Joint Fiscal Committee upon receipt of such notice from a CUD, and to prepare recommendations and advice to ensure continued operability and potential transfer of title in the event that the potential default occurs and is not cured. The VCBB’s policy is that in the event that such default results in the transfer of title to the funded network assets, the VCBB will consider the transfer of title subject to its policies as if the CUD or grantee had requested the transfer of title.</p>
<p>Sunset Provisions (and Policy Implementation – 8089(a))</p>		
<p>TBD: Requirement: plan for transferring its assets, liabilities, and legal and contractual obligations to another appropriate State entity. The Board may include in its report a recommendation regarding the continued existence of the Board beyond its statutory sunset date.</p>	<p>This provision impacts who holds the right/obligation to oversee accountability and exercise contractual rights.</p>	

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Implied Accountability of the VCBB for the Public Interest		
Grant Evaluation Priorities 8086(b)		
<p>“The Board shall give priority...”</p> <p>Change: Policy statement for how to deal with Subsection (b) “priorities” is needed – as proposed.</p>	<p>Each of these is included in the Construction RFP, Project Prioritization Number (3) is also included in Attachment A, Section 4(f)-Retail Broadband Service requirement for no data caps, or throttled data for at least 5 years from date of award for SoVT and Section (B)(4)(g) for Maple</p> <p>In addition, as part of the Master Services Agreement between SoVT and Consolidated, Schedule C includes additional consumer protection measures and also incorporates the FCC’s affordability program.</p> <p>These provisions of Subsection 8086(b) require information to be collected in the grant process so that it can be considered. However, in order to “give priority” the VCBB would be required to consider Grant applications <i>against</i> each other. That has not been the reality of the grant process or the development of the CUDs.</p>	<p><u>Priority of Universal Service and Geographic Distribution of Funds.</u> The policy of the VCBB is to consider the priorities stated in Subsection 8086(b) in making its grant decisions, and to examine them across the grant program as a whole, not on a comparative basis. All construction grants require a Universal Service Plan. [8086(a)] In order to address the over-arching objective of Universal Service as well as to ensure geographic diversity of Community Broadband Fund allocations the policy of the VCBB is to reserve an allocation for each geographic area represented by CUDs existing as of June 30, 2021, and to review grant applications in the context of those allocations in the order they are presented and designated by the VCBB as project ready and consistent with VCBB policy. In its annual report to the legislature the VCBB shall report on the application of these priorities through analysis of the grant funds awarded.</p>
<p>(1)Leverage existing private resources and assets, with a high priority given to partnerships between a communications union district and a distribution utility;</p> <p>No specific policy required</p>		<p>No new policy required. No applications have been presented that address this priority. All grant projects require collaboration with distribution utilities and are subject to Public Utility Commission pole attachment rules.</p>
<p>(2) Demonstrate project readiness</p>		<p><u>Project Readiness.</u> Incorporated by reference into Board grant accountability policy at Subsection 8086(c)(1). Note that board policy incorporates a</p>

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<p>Policy implemented</p>		<p>viable business plan as part of the demonstration of project readiness.</p>
<p>(3) Provide broadband service that complies with the net neutrality and consumer protection standards of 3 V.S.A. 348 Change: This is an operations requirement that survives the grant payout.</p>	<p>[The status of the certification <i>process</i> by the Secretary of Administration proposed by 3 VSA 348 (2017) is unknown.]</p>	<p><u>Consumer Standards Certifications.</u> The policy of the VCBB, to meet the public interest in consumer protection and service standards, is to require certification of each grantee annually that it meets the service conditions described in Subsection 348(b). The grantee receiving Community Broadband Funds, and any owner of assets paid for in part by such funds, shall certify to the Secretary of Administration, with copy to the VCBB or its designee, the terms and conditions of 3 VSA 348(b) for a period of 20 years from the date of the grant award. [NOTE: this does not address maintenance/ customer response time, etc.]</p>
<p>(4)Support low-income or disadvantaged communities; Change: This is both a design and operations requirement that survives the grant payout.</p>	<p>No activity supports this objective</p>	<p><u>Low Income Inclusivity.</u> The policy of the VCBB is to implement Universal Service as required by the Act, including construction of broadband networks and provisioning of broadband service to all locations regardless of income or property value. No construction utilizing Community Broadband Funds shall avoid locations based on the actual or projected income of potential customers at such locations or to choose a design to overbuild existing service when an efficient design serving locations may be less profitable.</p> <p>The submission of proof of avoiding locations that are reasonably determined to be low income to the VCBB (or on its own investigation) may be grounds for violation of a grant agreement or disregard for the public interest obligations that survive the duration of the Community Broadband Grant for a period of _ years from the date of the grant award.</p>

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<p>(5) Promote geographic diversity of fund allocations.</p> <p>Change: See above (Policy statement for how to deal with Subsection (b)– as proposed.)</p>	<p>This priority is addressed by the regional allocation of grant funds by CUD.</p>	<p>SEE policy proposed at 8086(b): ...the policy of the VCBB is to reserve an allocation for each geographic area represented by the existing CUDs and to recognize and review grant applications in the context of those allocations as they are presented and designated by the VCBB as project ready and consistent with VCBB policy.</p>
<p>(6) Provide consumers with affordable service options</p> <p>Change: This is a policy that implements an operations priority and survives the grant payout.</p>	<p>This priority has not been addressed except by generalized certification in the application process.</p>	<p><u>Affordable Service Planning and Reporting.</u> It is the policy of the VCBB to require broadband service providers utilizing assets funded by the Community Broadband Fund to create an outreach and equity plan for the inclusion of low income households prior to the completion of funded construction, and to participate in and promote to all consumers any applicable subsidy programs available to reduce service costs to low income households served by the grantee. The grantee shall annually produce for the review of the VCBB an audited balance sheet and shall include (a) the rate tiers offered to consumers, (b) the total number of customers in each rate tier, (c) the number of customers for that reporting year receiving subsidies, and (d) the total amount of subsidies received for that reporting year. Within twelve months of generating revenue from broadband service utilizing assets funded by the Community Broadband Fund that exceed operating expenses by five percent, the participating service provider shall also include in its annual report a proposal for offering reduced rates to qualified customers. This obligation of the grant agreement shall survive the delivery of grant funds for a period of ___ years from the date of the grant award.</p>
<p>(7) Include public broadband assets that can be shared by</p>	<p>This priority is inherent in the growth and link budget standards stated in the OPD</p>	<p>No separate policy is required given the construction/engineering criteria. Consider, however,</p>

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multiple service providers and that can support a variety of public purposes		whether an operations policy that implements interoperability and shared infrastructure is advised?
Implied Accountability Requirements to Protect the Public Interest Legislative Findings and Intent		
Section 8081		
(1)... the Vermont Community Broadband Fund to support policies and programs designed to accelerate community efforts that advance the State’s goal of achieving universal access to reliable, high-quality, affordable, fixed broadband	The Construction RFP includes numerous accountability measures. These were incorporated into both the Maple and SoVT Grant Agreements at Attachment F; SoVT-Attachment G-1, respectively. Named Act 71 Attestations requirement from Construction RFP, Section (l)	In order to tackle the enormity of the objectives of Act 71, and to ensure acceleration of community broadband efforts, the VCBB has adopted the following policies for purposes of Construction Grant awards: (a) <u>Prioritization of On-Grid Locations</u> . In support of accelerating community efforts that advance the State’s goal of achieving universal access through support of grantees offering a universal service plan pursuant to Subsection 8086(a) and prioritizing the use of existing private resource pursuant to 8086(b) the policy of the VCBB is to prioritize grant funding for broadband service to locations that are served by the electric grid.
		(b) <u>Prioritizing Fiber Plant</u> . While the definition of fixed broadband under the Act, as amended, includes retail service by wire or radio that delivers service at speeds of at least 100/100 gbps, it is the policy of the VCBB to prioritize the funding fiber networks that use existing infrastructure, including the use of utility poles and power in the public right of way, and provide the highest standard of reliability, resilience and interoperability to accelerate the delivery of broadband service. Radio fixed wireless is an acceptable means of delivering broadband service where it meets the VCBB’s standards for accountability for the public interest, including but not limited to reliability, resiliency, and interoperability.

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		<p>VCBB Board will not accept self-certification by the applicant or grantee to establish accountability for the public interest obligations of construction and operation of assets paid for in whole or in part Community Broadband Fund.</p>
<p>(2) to establish the Vermont Community Broadband Board to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions.</p>		<p>The Agency of Administration of the State of Vermont, in its opinion regarding the Creation of Broadband Programs Using Federal Funds, dated March 13, 2023, has determined that new programs funded through the federally funded BEAD grants are subject to the policies and procedures of the VCBB Board. The VCBB Board will apply its existing policies as possible and develop new policies as required. Subgrant programs under BEAD or DEI federally funded programs will be subject to policy review by the VCBB Board.</p>