

Vermont Community Broadband Board Meeting February 28, 12:00pm

AGENDA

Meetings are being held virtually.
Join by video <https://bit.ly/3JPhnxP>
Join by Phone; +1 802-828-7667,,389833626#

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|-------|---|
| 12:00 | 1) Meeting call to order |
| 12:05 | 2) Approval of the February 14, 2022 minutes |
| 12:10 | 3) Bond Bank presentation & Q&A |
| 1:10 | 4) Material Default discussion and motion |
| 1:30 | 5) Letter of Commitment discussion and motion |
| 1:50 | 6) Staff updates <ul style="list-style-type: none">• Legislative Updates• Grant Programs• Contracts |
| 2:10 | 7) VCUDA update |
| 2:35 | 8) Public Input |
| 2:45 | 9) Parking Lot |
| 2:55 | 10) Executive Session - <i>Confidential discussion. Premature general public knowledge would clearly place the public body, or a person involved at a substantial disadvantage (1 V.S.A. 313)</i> |
| 3:25 | 11) Motion to adjourn |

Press inquiries; please contact Rob Fish, Robert.fish@vermont.gov 802-522-2617

Vermont Community Broadband Board Draft Meeting Minutes
Meetings are being held virtually.
February 14, 2022

I. Call To Order – 9:03am

II. Roll call completed by Patty Richards

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

III. Review of Agenda

Rob Fish noted that there would be a need for an executive session. Patty Richard added it to the end after public input.

IV. Approval of Meeting Minutes

The Board discussed the January 31st, 2022 draft Board Meeting minutes. Holly Groschner moved to approve the minutes. Dan Nelson seconded. The motion was approved.

V. Material Default (materials included, discussion only)

Stan Macel presented a summary of the steps that would be used to determine whether a material breach had occurred. Failure to meet Bond Covenants, major deviations from construction schedule targets, failure to meet performance measures, poor workmanship and safety practices were among the possible triggers discussed. Failure to meet financial obligations and bond covenants would be the only hard trigger and most of the other items are seen as indicators of material breach that need to be specifically defined.

Items discussed included:

- The VCBB staff bond covenants and/or financial agreements, failure to meet construction schedule or operational performance measures, poor workmanship, safety practices, audit findings, debarment.
- Patty Richards commented on the need to establish clarity around what “material” means for each item. These are indicators, not Threshold.
- Brian Otley questioned what action would be applied – Christine clarified that as outlined in “step 2”.
- Holly Groschner roll back to the bare bones of when the VCBB would take action. Some of these items are good practices that should be encouraged, but they do not rise to the level of material breach. Material breach should be for extreme misrepresentations or failures that have the potential to undermine the core purpose of the grant. Holly also questions whether we have the authority to consider some of these minor items a material breach, Brian agreed.

- Laura Sibia questioned how we protect the quality and integrity of these networks, but that is not necessarily a material breach issue.
- Holly described the need to establish baseline performance criterion that are enforceable and can hold these entities accountable. Measures cannot be vague, they need to be bright-line enforceable standards of egregious failures, not hand holding and watching every move of a CUD to determine when things are drifting towards material breach.
- Dan Nelson proposed having this be a judgment call by VCBB and not making these things automatic. There needs to be flexibility in the case of a CUD going awry but making good faith efforts at improving. It was reiterated that these failures need to be egregious.
- Holly suggested that we may be a little late to apply standards, and that if this is really going to be a remedial opportunity to the CUDs. She questioned if a CUD is not enforcing its rights under an operating agreement, can the VCBB be its successor in interest to enforce those rights? Somebody needs to have the right to enforce the agreement with the operator to a bare minimum standard.

VCBB Staff will follow up with CAPI, and VCUDA, CUDs, and EC Fiber to respond to a list of questions about the standards they have established with their operating partners and work to redraft.

VI. Lamoille Broadband Pre-construction Grant amendment

Christine Hallquist introduced the Lamoille Broadband Pre-construction Grant amendment request.

Val Davis explained their needs related to the amendment. It will require a no-cost budget change to add part-time staff and office expenses, reallocated from excess funding from a pole study. They will still conduct the pole study and results will be shared as public data.

There was a discussion of the protocol when a no-cost budget change amendment is being pursued by a grantee and whether that needs to be brought before the Board. Patty Richards questioned a threshold or standard for what levels of changes need to be brought before the Board. VCBB will come back with a policy recommendation.

Holly Groschner made the motion to approve the amendment as proposed. Dan Nelson seconded the motion. The motion was approved.

VII. Maple Broadband Pre-construction Grant amendment

Christine Hallquist introduced the Maple Broadband Pre-construction Grant amendment request including a \$635,000 budget increase.

Magna Dodge explained the request to increase funding to cover administrative costs for the full two years, \$200,000 in make-ready design costs, and marketing services that they have received proposals that have come in at over \$315,000. Maple Broadband has no paid staff and so this marketing budget is needed to establish their brand and cover all related expenses.

Holly Groschner highlighted the importance of establishing the regulatory position as a provider to access federal subsidies for assistance and for establishing awareness in the new market.

Rob Fish clarified that bond banks penalties are only triggered when you have pension obligations and that otherwise there is no penalty for having employees.

Patty Richards asked if this request would put Maple Broadband near their allocation limit and Christine confirmed that it would not. She also asked if the marketing costs were reasonable compared to what is paid by other CUDs. Holly said this is a developing area and there may be no examples to compare it to. Holly asked what percentage of a utilities budget is typically for marketing. Patty and Christine confirmed it was relatively little. Dan Nelson commented that he felt the cost were reasonable based on his experience.

Laura Sibilias commented that this sets a high bar and the Board discussed that if all CUDs take this approach it would be an almost \$3 million investment.

VCBB staff will connect with VCUDA to explore the possibility of providing separate funding specific for marketing and a statewide informational campaign.

Holly Groschner made a motion to approve Maple Broadband's request of an additional \$635,000 of PreConstruction funds. Patty Richards seconded. Three to one vote, the motion carries.

VIII. Pre-approval Letter of Commitment (materials included, discussion only)

Rob Fish introduced the idea of a pre-approval commitment letter that would provide the certification that the CUDs are the presumed recipient of grant funds. These grant anticipation notes would be helpful when sourcing supplies and other contracts.

Holly Groschner raised concerns that this would be making a material representation to a 3rd party and that the language in the certification should be changed to "undersigned".

Dan Nelson said that he would support it provided it was a non-binding statement. Laura Sibilias concurred.

IX. Parking Lot Review

Christine Hallquist reviewed the remaining topics in the parking lot, including the bond market objectives for sustainability that will be a topic at the next Board meeting, the VCBB Dashboard that will be addressed in March, and material default that was discussed today.

Added from today's discussions were marketing expenses, pre-approval letter impacts, and statewide collaborative funding with VCUDA.

X. Staff Updates

Rob Fish provided the update that 3 CUDs (Maple Broadband, NEK Broadband and WCVT for the town of Bolton) have completed the pre-application and will begin the full application process.

VCBB has been asked to provide testimony in regards to the \$51 million budget proposal for cell towers in House Energy & Tech Committee, and discuss housekeeping for S.166 in Senate Finance Committee. Christine Hallquist will be presenting that the legislature made a decision that the VCBB shall focus only on broadband at this point.

Rob Fish confirmed that a contractor for the Fiber Optics Engineer Services has been chosen and we are in negotiations and shared that two RFPs for outside legal services have been posted, and staff is continuing outreach for the Project Developer position and accepting additional applications.

XI. VCUDA Update

Will Anderson provided an update for VCUDA. He discussed the material compliance policy and stated that the CUDs do not have an official stance on the material default standard but reiterated that clarity around how to comply is the priority. He will help to gather information about the standards of performance from the CUDs.

Will confirmed that there would likely be interest in a statewide strategy for marketing, however the economies of scale may only be effective if the CUDs all adopt similar strategies.

VCUDA considered the issue of incidental overbuild at their meeting last week and that they preferred to let it lie. Will brought up that under Act 74, it may be in the power of the VCBB and in the interest of CUDs to implement a policy where the applications are considered based on the treasury final rule instead of changing Act 71.

Rob Fish clarified that if the new federal Infrastructure Bill funding requirements conflict with Act 71 that Act 74 language may allow the VCBB the flexibility to make changes as necessary as it related to federal funding eligibility.

Will expressed the benefits from his perspective of the Letter of Commitment policy that would simplify the process of negotiating bulk purchase of supplies for the CUDs.

XII. Public Input

Two members of the public provided input.

- Irv Thomae commented on the marketing conversation and that the biggest problem that ECFiber had was managing expectations. The CUDs will not have full control over all factors of how quickly it can deliver services.
- Ellie de Villiers stepped forward and introduced herself as a member of the Executive Committee of Maple Broadband. She shared that the logistics associated with providing affordable access while prioritizing unserved and underserved addresses will likely cause conflict with the 20% overbuild interpretation.

XIII. Executive Session

Patty Richards made a motion to go into Executive Session where premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage (1 V.S.A. Section 313). Dan Nelson seconded the motion. The Board approved the motion and went into executive session.

XIV. Motion to Adjourn

Patty Richards confirmed that no action was taken in the Executive Session and made a

motion to adjourn. Dan Nelson seconded the motion. The meeting was adjourned at 11:54am.

DRAFT

Vermont Community Broadband Board Draft Special Meeting Minutes
Meetings are being held remotely.
January 18, 2022

I. Call To Order – 8:12am

II. Members in Attendance

Dan Nelson (Remote)
Patty Richards, Chair (Remote)
Holly Groschner (Remote)
Laura Sibiliala (Remote)
Brian Otley (Absent)
Christine Hallquist - Staff (Remote)
Robert Fish – Staff (Remote)
Stan Macel – Staff (Remote)
Alissa Matthews – Staff (Remote)

III. Executive Session

Christine Hallquist made the request to hold an Executive Session.

Patty Richards made a motion to go into Executive Session, to discuss confidential negotiations, where premature general public knowledge would clearly place the public body or a person involved at a substantial disadvantage (1 V.S.A. Section 313.1). Dan Nelson seconded the motion. The Board approved the motion

Patty Richards made the motion to invite VCBB staff and guest Sean Kio the Executive Director of NW Fiberworx into the Executive Session.

The Board approved the motion and went into Executive Session.

At 9:28am the Board lost quorum. No action was taken in the Executive Session and the meeting ended at 9:29am.

Material Default/Material Failure to Comply

Questions for Grantees

February 16, 2022

I. Act 71 calls for Board to establish standards for material failure to comply

Act 71 states: The Board shall establish policies and standard grant terms and conditions that ...Establish standards for recouping grant funds and transferring ownership of grant-funded network assets to the State if a grantee *materially fails to comply* with the terms and conditions of a grant.¹ The VCBB's goal is to avoid material breach if at all possible, by considering only fundamental or essential contractual terms to be material, and allowing a period for a grantee to cure any problems with such material terms. This policy would be in the unlikely situation that a grantee materially failed to comply with any material term or condition of a grant that was not corrected within a defined time period.

We propose a 30-day correction period. The Construction Grant terms have a 30-day correction period. **Questions - What constitutes a material breach**

A material breach is a breach of a **fundamental or essential term** of the grant. VCBB staff seeks help from potential grantees or other interested parties in determining what would constitute a fundamental or essential term. We have identified the topics below as areas that, if problems arise and are not corrected within a correction period, could lead to material breaches:

- Bond covenants/financial agreements. When would breach of bond covenants/financial agreements be considered a material breach? Would a standard when there is a breach of bond covenants *in conjunction with* a lender accelerating the debt, or bond holders taking legal action to accelerate repayment or other steps to protect their bond positions, be a workable standard?
- Construction schedule. Failure to meet a construction and connection schedule requires a discussion between the grantee and the VCBB. When would non-conformance to construction schedules be considered a material breach? What type of qualifications to the schedule breach could be added to the standard to determine that it is material? For instance, would a certain time delay (such as 3 months, 6 months, or other time period), absent mitigating circumstances, constitute a material breach?
- Performance measures. When a grantee fails to meet its operational performance measures over an extended period, this could result in a material default with the VCBB as it jeopardizes the grantee's long-term business performance. What are the specific operational performance measures that could be used to determine materiality? For example, what factors should be used for, e.g., determine whether the following breaches are material:

¹ 30 V.S.A. § 8086(c)(3).

- Poor connections speeds over time
- Excessive latency over time
- Poor customer relationships (based on customer service issues including extended wait times, abandoned calls/chats. Extended email response times, or poor customer satisfaction survey results)
- Workmanship. What performance measures could be used to determine whether poor workmanship/housekeeping would constitute a material breach?
- Safety practices. Are there specific indicators that could be used to determine whether poor safety practices would constitute material default?
- Audit findings. Would the fact that an auditing firm found material findings in an audit (e.g., serious issues concerning internal controls or the integrity of financial statements) be sufficient grounds to constitute material default?
- Financial statement and internal controls discrepancies. What indicators could be used to determine whether serious issues concerning internal controls or the integrity of financial statements would constitute material default?
- Debarment. What indicators could be used to determine whether a grantee's (or subgrantee's) debarment constitutes a material default?
- Others. Are there other indicators that should be used to determine material default?

VCBB staff welcomes comments on the proposed policy. Please submit comments by February 25, 2022 via email to Stan Macel, General Counsel of the VCBB, at stan.macel@vermont.gov.

#	Priority	Item	Date entered	Assigned to	Resolution and date
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
16	1	Provide Board with impact of Commitment letter	02/14/22	CH	Present findings at 2/28/22 meeting
17	2	Statewide marketing collaboration with VCUDA	02/14/22	CH	Will research and present back on 3/14/22 Board meeting
8	2	Policy on “Material Default” see §8086(c)(2)	11/1/21	board	We will be presenting language for Board approval at the 02/28/22 meeting.
5	3	VCBB Dashboard – to be shared monthly to show progress. What are the milestones?	11/1/21	CH	VCBB has created an RFP for software. We will present a proposal in March.
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.