

Vermont Community Broadband Board Meeting
Tuesday, July 28, 2023, 8:00am – 12:00pm
AGENDA

Meeting is being held virtually.

[Click here to join the meeting](#)

Join by Phone; [+1 802-828-7667, 494812198#](#)

Note: there may be executive sessions as needed

8:00 1) Meeting Call to Order, Roll Call, Approval of Agenda

8:05 2) Accountability Policy – *Patty Richards*

10:45 3) Public Comment

11:00 4) Executive Session - Confidential Executive Director Review – *Patty Richards* -
*“the appointment or employment or evaluation of a public officer or employee,
provided that the public body shall make a final decision to hire or appoint a
public officer or employee in an open meeting and shall explain the reasons for
its final decision during the open meeting” 1 V.S.A. § 313(a)(3)*

Note: A new breakout room will be created.

11:55 5) Parking Lot – *Christine Hallquist*

12:00 6) Confirm Next Regular Meeting 8/14, & Motion to Adjourn

Press inquiries: please contact Herryyn Herzog, herryyn.herzog@vermont.gov (802) 522-3396.

From: [Rob Vietzke](#)
To: [Patty Richards](#)
Cc: [VCBB - Info](#); [Fish, Robert](#); [VCUDA Execs & Reps](#)
Subject: VCUDC Comments on Policy Draft
Date: Tuesday, July 25, 2023 11:17:53 AM
Attachments: [VCUDA July 25 VCBB Letter.pdf](#)

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Dear Patty and VCBB Team,

VCUDA is pleased to provide comments on the draft policies discussed in last week's VCBB Meeting.

Since the meeting, CUD representatives met several times and have had a number of 1-1 conversations. The complexities of reaching consensus on these complicated issues did not allow us to finalize specific comments by today. However, we were able to begin the process of understanding perspectives and potential solutions.

We look forward to coming to the table with the VCBB Board, Staff and CUD's to complete these policies in the coming months.

Best,

Rob



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Patty Richards, Chair

Vermont Community Broadband Board

July 25, 2023

Dear Patty,

As a follow up to the VCBB's Tuesday, July 18th meeting and discussions about draft policies, the Vermont Communications Union Districts Association has had several group discussions this week that led us to better understand many complexities and differing opinions about the draft. It is our belief that extensive conversations are required to better match the auditors' findings, the Board's grant administration authorities and Act 79's creation of the bottom-up CUD structure for accountability across Vermont. We agree that this work is important and ideally would have been completed some time ago. It is also true that we now understand that we have more work to do to set a framework that sets policies for VCBB areas of responsibility and a framework for CUD responsibilities. We also believe this will take substantial conversation to coalesce on an approach, which would be the wrong singular priority for the Board, the Staff and the CUDs with the pending BEAD planning deadlines. It is essential we collectively have our best minds working on BEAD and that the collaboration is positive, even as this policy discussion proves to be more complicated.

Much of our limited strategic capacity has been consumed by this draft since its release and we have now missed two critical weeks in shaping Vermont's program for BEAD with deadlines fast approaching. **To be clear, reaching a workable framework is unquestionably important, but proper implementation of the BEAD program is strategic and immediate.** A failure to have our best minds across our teams fully engaged, together, in strategic discussions about the formation of the BEAD program could lead to irrevocable mistakes in the competitive process for the upcoming \$229M program and Vermont's Broadband future. While we continue to work on these processes, it is also critical we recognize the fixed BEAD timeline and the criticality of submitting a fully developed Volume II plan.

Our strong suggestion is that the Board task a working group including CUDs, Staff and Board Members to engage with each other and work through these policies as a team with a goal of



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presenting a draft later this year or early in 2024. This timeline necessarily allows us to prioritize BEAD in August, September, and October when it must command the majority of Board, Staff and CUD attention. During this time, the Board, the Staff and the CUDs must prioritize joint strategic discussion on the myriad of policy issues in BEAD, how the remaining ARPA funds support BEAD, and any necessary legislation required to allow BEAD implementation to complement, and not undermine, Vermont's universal service strategies.

This prioritization and parallelization of effort assures that BEAD is planned to complement existing Act 71 programs and that it achieves the ambitious goal of universal service with world class fixed broadband. This approach also assures the most efficient and strategic use of limited people and funds and assures that policies then set by the Board can support both ARPA and BEAD programs.

While BEAD must take some attention in the coming weeks, we can still get the working groups underway and begin to hear each others' concerns in anticipation that we will be able to fully engage in this once the BEAD Volume 2 proposal is crafted, reviewed, and submitted. We are ready and eager to engage in this properly prioritized and strategic approach.

Best,

Robert P Vietzke, Program Director



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Supplemental Discussion support:

In reviewing the draft policies, the CUD's identified a number of areas where the draft policies are likely to create problems for one or more CUD. While the specifics of the problematic language differ from CUD to CUD and from section to section, CUDs consistently had material concerns about the prescriptive nature of some recommendations and the likely resulting unintended consequences. There were three larger themes that emerged:

1. There are areas in the draft where the language is imprecise and could be interpreted as leading to major policy changes or new material regulatory approach for the VCBB and future grants. These may not have been intended but need to be clarified. We can readily detail these areas in the working group(s) as they are established. We would urge the Board to take the time to listen to the experts among the CUDs with direct Broadband operations, finance and policy experiences to adjust this language and assure it does not create legal problems and unintended consequences in haste to complete this policy task.
2. Act 71 recognizes the role of CUDs in ensuring accountability and does not place sole responsibility for accountability on the VCBB. We think the VCBB should hear from CUDs how they are fulfilling their responsibilities. Act 71 and 79 place a significant portion of public accountability at the municipal level with the CUD and not with the State or the VCBB. We would like the Board's policy to acknowledge the multi-layer solution created in Act 79 and Act 71, where the Board issues and manages infrastructure grants, the CUDs own public property and maintains public accountability, and the CUDs engage with private sector partners to accomplish work.

The legislation is clear that CUDs exist to address market failure and recognizes the market has failed in different ways in different places in Vermont. The intent of Act 71 recognized a bottom up and grass roots solution adopted by the state as the strategy for solving the rural broadband crisis after the success demonstrated by ECFiber following



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2015's Act 41 and 2019's Act 79. Together, the legislature placed the municipal CUD entity at the center of many activities and accountability requirements necessary to adapt to those local realities. That is the plan and design of Act 79 and Act 71. It is important therefore for the VCBB to consider its role in setting policies accordingly and to avoid overreaching beyond its role as the granting agency into a role of regulator or administrator.

In "Findings and Intent" of Act 71, the legislature was clear about the role that CUDs play in leading public accountability:

"(13) Communications union districts (CUDs) were created by the State to coordinate and implement creative and innovative solutions in their respective territories, particularly where existing providers are not providing adequate service that meets the needs of their residents and businesses while **ensuring public accountability.**

(14) CUDs are thus positioned to be the unofficial "provider of last resort" for broadband and **ensure public accountability for serving all Vermonters within their respective service territories.**"

While it is implicit in all government functions that the public trust must be supported, there is nothing in the legislation that says the VCBB's authority supersedes the accountability requirements placed on the CUD municipality. Instead, the legislation establishes the VCBB to coordinate and facilitate, to provide resources, to provide grants, to facilitate partnerships in support of the CUDs and their autonomous operations. In this context, the VCBB could play a critical role in helping the CUDs develop policies, but many of the draft policies as written, particularly in the "implied responsibility" portion of the draft, are misplaced at the State level and would be more appropriately implemented at the CUD level. Nonetheless, we welcome the VCBB's support, in its development and support role to help us craft policies that support Vermonters.



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3. While it is certain that both the CUDs and the VCBB have their own separate responsibilities to ensure accountability to the public interests of Vermonters, VCUDA believes that grant accountability should be about ensuring specific outcomes (ie: broadband availability) rather than setting rules that constrain the paths to achieve those outcomes. We are concerned that there are instances where the draft appears to move beyond grant accountability and into long term regulation and operational management. The current draft does not assume VCBB's time-limited role, does not recognize where federal preemption may apply, and does not include other Vermont agencies that may have more appropriate mandates for long term regulatory responsibility.

4. Given the volume of work before us to implement the requirements that are set in the Law, the additional areas of "implied accountability" proposed may not be timely. We would strongly encourage the VCBB to focus on fulfilling its explicit responsibilities before reaching into new areas that are not explicitly supported.

We look forward to engaging more deeply with the Board and Staff as we review these draft policies and begin to sort through the appropriate roles for the state and the CUDs as directed by Act 71.

From: [Lisa Birmingham](#)
To: [Richards, Patty](#)
Cc: [Jeff Tilton](#); [Hallquist, Christine](#); [Clithero, Toni](#); [Rogers, Lucy](#); [Fish, Robert](#); [programcoordinator](#); [Laura Black](#); [Elijah Emerson](#)
Subject: Lamoille FiberNet Letter and Comments on VCBB Draft Policies
Date: Monday, July 24, 2023 12:58:04 PM
Attachments: [LFCUD Letter to VCBB Policy Changes.pdf](#)
[VCBB ACCOUNTABILITY POLICIES - FOR BOARD REVIEW - LFCUD comments.pdf](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

On behalf of Lamoille FiberNet Communications Union District, attached please find our cover letter and comments to the proposed draft policies. I did not copy the VCBB Board members individually, just Patty, as instructed. I assume the submissions will be included in the Board packet for Friday's special meeting.

As a courtesy and for efficiency, I am also copying a few others.

Thank you,

Lisa

Lisa Nolen Birmingham
Interim Executive Director
Lamoille FiberNet Communications Union District
director@lamoillefiber.net
802-696-9025

Please note this communication and any response will be maintained as a public record and may be subject to disclosure under Vermont Public Records Act.



Via Email

July 24, 2023

Patty Richards, Chair
Vermont Community Broadband Board Members and Staff

Thank you for the opportunity to comment on the proposed VCBB Accountability Policies Draft.

The VCBB Draft Policies represent a huge, thoughtful, and necessary undertaking. That the proposals raise multiple concerns is not surprising. The tight turnaround to comment on such sweeping changes adds to our concern. We have done our best to respond constructively and ask that you consider this our initial comments. We have referred several substantive questions to our legal counsel and will supplement our response as the process allows. Accordingly, LFCUD supports VCUDA's recommendation to develop working groups. We appreciate the effort and look forward to collaborating.

We also want to express our alignment with Otter Creek CUD's comments and request to continue reviewing construction grants.

Finally, for additional context, LFCUD offers the following general comments:

Shared Accountability; Accountability Overtime. The Draft Policies are silent as to CUDs' role in ensuring accountability. Like VCBB, CUDs play a critical role ensuring public accountability and contractual accountability. Section 1 of Act 71 (Findings and Intent) refer to the CUD's role in ensuring public accountability¹: So, while VCBB must establish certain standards and policies to administer the grant program and advance Act 71 goals, VCBB is not the sole source for accountability. In fact, once networks are constructed and the grant performance period has run, CUDs should be responsible for the ongoing network operations and performance and customer service. Moreover, CUDs are already empowered to ensure business partner accountability and are structured to ensure public accountability. Of course, the attorney general and other Vermont authorities, not to mention federal agencies, also have jurisdiction over certain matters.

Legislative Intent. Several of the Draft Policies seem to go beyond what is authorized by statute or necessary address the objectives. Some recommendations are prescriptive and could be interpreted as regulating ISPs, or at least the ISPs associated with CUDs. Other recommendations, such as the imposition of liens on grant-funded assets on day-one, warrant further exploration to minimize unnecessary burdens.



Public Private Partnerships. Act 71 also encourages public private partnerships and prioritizes partnerships that leverage private assets. Act 71 also recognized and deferred to CUDs' existing authority to come up with grassroots solutions, rather than prescribing a statewide solution or single model.

After three years diligently exploring different partnerships and business models, our ten-town Board unanimously voted to enter into a public private partnership. We have spent the last seven months negotiating a robust and resilient partnership; we were on the cusp of filing our construction grant application. These draft policies create sufficient regulatory uncertainty, that if adopted as drafted, both LFCUD and our partner are questioning the prudence of proceeding. If we change course, we will also lose the time and incur more costs, and delay bringing broadband to our unserved and underserved constituents. These seem unnecessary and avoidable outcomes.

Like OCCUD, Lamoille believes we have addressed the numerous concerns and requirements. We remain hopeful that we will be able to submit our construction grant and share how we have addressed the Act 71 goals and priorities and the risks identified by the State Auditor and satisfied the RFP construction grant criteria and ensured accountability for the long-term, for the benefit of our communities.

Thank you for your consideration.

Respectfully submitted,

Jeff Tilton
Jeff Tilton
Chair

Lisa Nolen Birmingham
Lisa Birmingham,
Interim executive Director

c.

C. Hallquist
T. Clithero, Esq.
E. Emerson, Esq.
L. Black, OCCUD
LFCUD Governing Board

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.
6. Authorized Ownership Transfers.
7. Anticipated Default, Notice
8. Appeal.
9. Completion Period.
10. Sunset and Transferability

POLICY NECESSARY TO PUBLIC INTEREST AND PURPOSE

1. Priority of Universal Service and Geographic Distribution of Funds.
2. Consumer Standards Certifications.
3. Low Income Inclusivity.
4. Affordable Service Planning and Reporting.
5. Prioritization of On-Grid Locations.
6. Prioritizing Fiber Plant.
7. [Additional Recommendations]

VCBB Staff Contact: Toni Clithero, Esq.

7-6-2023

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

Table of Proposed Accountability Policies - July 12, 2023

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.

Table of Proposed Accountability Policies - July 12, 2023

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)		
(1) Payment schedule ensuring accountability And 8086 (d) (business plan) and (g) (sustainability requirement)	<p><u>Maple Attachment B-Payment Section 4:</u></p> <ol style="list-style-type: none"> Provides for payment of 30% on execution 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 30% is reimbursable for approved expenses with remaining amount of this 30% to be issued on completion of first 50% of project miles Construction completion payment of 8% based on grant agreement re compliance at completion (all testing and submission of required reporting data) 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> <ol style="list-style-type: none"> Provides for payment of 1.7% on execution 90% due on completion of project; 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 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

Minor change:
consistency of payment
schedule for grantees

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		<p>revised approved business plan, and documentation requirements.</p> <p>LEF CUD: The RFP sets up two grant structures; two payment structures are acceptable. CUDs should be able to negotiate stricter standards, or comparable standards depending on Phasing, subject to VCBP approval.</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></p> <p>Requires compliance with Act 71 Outside Plant Design Standards; also restated in Section C (1) of Attachment A.</p> <p>Attachment A, 3(f) requires inclusion of industry-accepted standards for sustainability, redundancy or resiliency.</p> <p>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 VCBP 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 (megabits) 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 VCBP 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>LFUCUD: Current OPD and CTC review of proposals is adequate to ensure that reliable, resilient networks with interoperability are being designed and constructed.</p> <p>For purposes of determining qualifications for a construction grant, engineering and network experts should develop any new standards. Standards borrowed from different regulatory (telecom) schemes, such as “availability requirements of 99.9%,” could be problematic.</p> <p>Any new standards should <i>promote the goals</i>, not prescribe specific architecture. One size will not fit all; solutions vary and evolve. Applicants should have the burden to demonstrate that how their chosen architecture and network maintenance strategy is consistent with industry standards for reliability, resiliency and interoperability at day one and over time. A testing regime to release final funds, that confirms implementation on day-one, is also reasonable. Performance of the network overtime should be the responsibility of CUDs,</p>
new policy related to engineering		<p>See Open Architecture Policy at 8086(b)(7)</p> <p>LFUCUD – Act 71 does not require (or mention) open architecture. Open architecture is unnecessary to achieve interoperability. Any open architecture</p>

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		standard should be optional. See comment below re: 8086(b) (7) (prioritizing public assets).
(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)	<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	<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.
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.		LFCUD Recouping Funds - circumstances may vary; not all circumstances – especially in a construction project – can be resolved in 30 days; recommend reasonable time periods and criteria – such as 30 days to cure or develop a remediation plan. Adequate process to ensure all are treated fairly and expeditiously. <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

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		accountable for the public interest results set by the policies of the VCB Board and Act 71. The VCB is
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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 VCB's policies and Act 71.</p> <p>Therefore, prior to distribution of grant funds, the VCB 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 VCB to subordinate its lien interest to the interest in title for purposes of securing financing that, in the discretion of the VCB, 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 VCB Board shall approve. The VCB will summarize the grant terms and public interest accountability policies of the VCB 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 VCB 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 VCB Board at a regularly scheduled public meeting within 60 days of the written notice.</p>
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LFCUD – Asset Transfers. This section seems to be

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		<p>doing much more than developing standards for transferring ownership of grant-funded assets during the performance period of the grant. Imposing a lien day one – for twenty-years – seems like an outsized solution. <i>We have referred to our legal counsel for recommendations.</i></p> <p>Standards would answer questions such as</p> <ul style="list-style-type: none"> - What “failures” warrant asset transfer? - What should be the objectives of an asset transfer? Maintaining continuity? Maintaining continuity? Local control? - What due process is required? - What rights do CUDs or their communities which voted to create them have in the process? - Should CUDs be able to designate another CUD or local authority such as a county planning commission. Should such designation be subject to VCBB approval or community approval? - How long after the grant performance period may the VCBB exercise authority to transfer assets ?
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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>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>
<p>Change: Adoption of a Continuity Policy Requirement and notice of default.</p>		

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		<p>LFUCUD: This section is limited applicability to “a network owned by CUDs.” Similarly, 8086(h) applies only to CUDs that have borrowed funds.</p> <p>That said, the required continuity plan should be developed in concert with CUDs (impacted municipalities) and should consider under what circumstances VCBB control is necessary. The proposal suggests the VCBB which is not a quasi-judicial body or a regulator, may take over a municipally-owned network based on its assessment of consumer complaint or service quality, 15 years from now. This seems to stretch the intent of the legislation. <i>We have referred this to our legal counsel.</i></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>Authorized Ownership Transfers. 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>LFCUD: We assumed the prohibition was aligned with F.A.R. standards for prohibiting sale of federal assets prior to completion of performance. Other federal grant programs may provide guidance or less onerous options. Also, 20 year lien seems unnecessary to achieve the objective. <i>We have referred this to our</i></p>
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		<i>legal counsel.</i>
(6) Allow an applicant to seek reconsideration of an adverse Board decision	The Construction RFP provides for an appeal of an adverse Board decision within 30 days	<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. IFCUD: Reconsideration, not an appeal, is appropriate process; VCBB is not a quasi judicial body.

(7) Ensure project completion within a reasonable period of time and consistent with applicable federal law and guidance Minor change – extension process	Grant duration terms are reasonable and customary; RFP requires construction to be completed within 24 months	<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.
(8) Comply with Administrative Bulletins No. 5 (Grant Agreements) and 3.5 (Contracts) No policy required	<u>Attachment B</u> 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 VCBB Grant Agreements.	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.

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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	TO BE ADDED TO RFP/GRANT AGREEMENTS	<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.
Sunset Provisions (and Policy Implementation – 8089(a))		
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.		This provision impacts who holds the right/obligation to oversee accountability and exercise contractual rights. LFCUD: CUDs have independent responsibilities that will survive.

Implied Accountability of the VCBB for the Public Interest	
Grant Evaluation Priorities 8086(b)	

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<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; No specific policy required – 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>LFCUD: We assume private resources include existing infrastructure, operational capacity and expertise which is put to use in support of a construction grant, whether a distribution utility, existing provider or other third party.</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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Policy implemented		viable business plan as part of the demonstration of project readiness.
<p>(3) Provide broadband service that complies with the net neutrality and consumer protection standards of 3 V.S.A. 348</p> <p>Change: This is an operations requirement that survives the grant payout.</p>	<p>[The status of the certification process by the Secretary of Administration proposed by 3 VSA 348 (2017) is unknown.]</p>	<p>Consumer Standards Certifications. The policy of the VCB, 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 VCB 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.</p> <p>[NOTE: this does not address maintenance/ customer response time, etc.]</p> <p>LFCUD: Priorities are aspirational; this specific priority (section 348) is an optional certification program that an ISP adheres to certain standards. Should an applicant commit to complying that should be a plus. If an applicant does not commit, then the VCB can deprioritize the grant. The proposal converts it into a compliance obligation akin to a regulation. It is unclear whether VCB has authority to require compliance as a condition of a grant</p>

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<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 on-grid 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>
<p>(5) Promote geographic diversity of fund allocations. 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>

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(6) Provide consumers with affordable service options	This priority has not been addressed except by generalized certification in the application process.	<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>Change: This is a policy that implements an operations priority and survives the grant payout.</p>		<p>LFCUD: For purposes of a construction grant, Applicants that demonstrate a commitment to address affordability in a concrete fashion should be given priority.</p>
		<p>To provide guidance for applicants, VCBB can identify examples of activities or commitments that would advance affordability. Applicants could research and reveal current prices and fees in their footprint, commit to participating in ACP or other</p>

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		<p>similar programs; commit to developing policies or programs to serve need-based residents and organizations; engage in community outreach and partner with local stakeholders to promote ACP enrollment, digital literacy, and digital equity.</p> <p>Prescribing activities and affordability outcomes] – such as directing creation of programs or reports seem to be grant conditions – not priorities to assess applications. Such conditions may add risk and strain rural business models.</p> <p>The VCBB can develop independent policy and program addressing digital equity and affordability, and should do so through BEAD and subsequent digital equity grants.</p>
(7) Include public broadband assets that can be shared by	This priority is inherent in the growth and link budget standards stated in the OPD	No separate policy is required given the construction/engineering criteria. Consider, however,
multiple service providers and that can support a variety of public purposes		<p>whether an operations policy that implements interoperability and shared infrastructure is advised?</p> <p>LFCUD: Interoperability and shared infrastructure are two different concepts. VCBB should seek input from experts if it moves forward with a separate policy.</p>
Implied Accountability Requirements to Protect the Public Interest		
Legislative Findings and Intent		
Section 8081		

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<p>(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</p>	<p>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.</p> <p>Named Act 71 Attestations requirement from Construction RFP, Section (i)</p>	<p>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:</p> <p>(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.</p>
		<p>(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.</p>
		<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</p>

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		Community Broadband Fund.
(2) to establish the Vermont Community Broadband Board to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions.		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.

From: [Eric Hatch](#)
To: [Richards, Patty](#)
Cc: [VCBB](#); [Vermont CUD Association](#); [Sheila Kearns](#); [Michael Corey](#); [Callie Fishburn](#); [Jonathan Cooper](#)
Subject: 2023 VCBB Accountability Policies - Comments from SoVt CUD
Date: Tuesday, July 25, 2023 11:56:40 AM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To: Patty Richards, Chair VCBB

I write to you as Chair of the Southern Vermont CUD (SoVt CUD) on proposed amendments to the "VCBB Accountability Policies." As these proposed revised rules do not pertain to our 2022 SoVt CUD agreement, it gives us a unique voice and perspective on their impact and their unintended consequences for Act 71 fulfillment. Our CUD is on track to be the first CUD in the state to complete its Universal Service Plan (estimated to be year-end 2024) and also on track to complete 99% of fiber coverage of that Plan *by the end of this year*. While our experience and partnership differs from most CUDs, it need not differ for those other CUDs considering the same public/private partnership model.

It is with this earned experience that our CUD is troubled by several additions proposed to the Accountability Policies, so much so that we believe that if such policies were in place in 2022, our partnership with Consolidated Communications, or any other private, established service provider, could not have come to fruition. And had no partnership been possible, the hundreds (soon thousands) of unserved and underserved in our District would not have high-speed fiber that they have today. Thus, the changes proposed are very impactful and not in a way to promote the goals of Act 71 but rather to regulate which is an overreach of the mandates prescribed to the VCBB in statute.

Specifically, we have concerns with the following:

Section 2 - Industry Standards: adding to what are already outlined and established industry standards, a seemingly arbitrary number of "99.9%" for "availability" is included. Availability can be defined, interpreted and measured in countless ways and as such, is not a provision that is reasonable, let alone affordable, to put into contract. Further, requiring "Open Architecture" severely limits, if not blocks entirely, options for CUDs to solve the rural broadband problem that Act 71 looks to solve.

Section 3 - Recouping Costs: the provision of a 30-day cure to any term or condition, large or small, at risk of losing 100% of the grant funding is draconian and a vague condition that will not invite private investment. While recouping state funding is vital, this provision is too open-ended and too open for misuse.

However, the most concerning provision is the VCBB's proposal to put a 20-year lien on a CUD's assets. Recouping assets is spelled out in several existing grant terms. Adding a 20-year lien will probably scare off any private investor not desperate for funding (particularly publicly traded entities). Our CUD could not have formed any partnership with an established, reputable service provider with such a demand. Our partnership has shared public network assets with our partner's shared private assets that cannot be divided or partitioned and thus even a temporary lien, let alone a two-decade long one, would not be accepted. Without the ability for the CUD to form creative, cost-effective partnerships and networks, our consumers will be the ones penalized with higher

monthly bills and a slower rollout with zero benefit to anyone.

Section 6 - Appeal: A CUD should be able to appeal major decisions, such as revoking funding, to a third-party entity. The VCBB should have its own check on major decisions otherwise the appeal process is an exercise in futility.

Priority Section 7 - Include Multiple Service Providers: We question why this should be a policy for VCBB. Earlier policy statements indicated the need for CUDs to follow best industry practices and this shared provider provision does not adhere to that. If CUDs want private investment, coming to a partnership with this provision will deter providers, not attract them.

Section 8081 Item 1b: The text "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." is confusing as it provides no clarification on who will also measure accountability, in addition to the certification of the CUD and who pays for that additional requirement.

In summary, this CUD feels the VCBB Board is focusing much of its time on control and regulation that will drive private investment away from CUDs who wish to go that route, rather than looking to see what models are proving to be successful and learning lessons from them to further the goals of Act 71. Our CUD has much to offer based on our experience of having gone through the grant allocation process, working with private investment and most importantly, providing universal access faster and for less cost less than most, if not all other CUDs. Lastly, I am sure CUDs will accept these conditions if passed as proposed - they have little other recourse. As a CUD that can comment freely, without the onus of having to go before the Board for major funding, it is imperative that we do so lest unserved and under-served Vermont residents potentially lose out on material private investment that will get them the fiber access they rightfully deserve.

With kind regards,

Eric Hatch
Chair, Southern Vermont CUD

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

From: [F. X. Flinn - ECFiber Chair](#)
To: [Richards, Patty](#)
Cc: [Fish, Robert](#); [Clithero, Toni](#); [VCUDA](#)
Subject: ECFiber comments regarding VCBB policy discussion
Date: Tuesday, July 25, 2023 10:41:52 AM
Attachments: [VCBF Grant Clawback Concerns.docx](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

The East Central Vermont Telecommunications District fully supports the VCUDA letter and examples sent to you this week. We participated in the development of that statement and look forward to having representatives from our CUD participate in discussions leading to written policies for the administration of the Vermont Community Broadband Fund monies.

I also want to call your attention to a document we sent recommending a written policy for the VCBB to adopt back in the autumn of 2021, and then copied again to Stan Macel on Jan 18, 2022. Prepared by the renowned municipal law and finance attorney, the late Paul Giuliani, it specifically and neatly addresses the question of when the Board could deem construction grants beyond clawback.

This suggestion was not taken up and was not addressed in the materials presented last week, so we ask that it be considered as part of the effort to get policy on paper.

F. X. Flinn

Chair, Governing Board (Town of Hartford Delegate)
East Central Vermont Telecommunications District (dba ECFiber)

e: chair@ecfiber.net | m:802-369-0069

he/him; Like kd lang and B. B. King,

I go by my initials, which are for Francis Xavier

Act 71 Section 8086:

...

(c) The Board **shall establish policies** and standard grant terms and conditions that:

(1) reflect payment schedules that ensure maximum accountability;

(2) adopt an industry-accepted engineering standard that promotes network reliability, resiliency, and interoperability;

(3) **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;**

(4) establish a continuity of operations plan applicable to a network owned by a communications union district that, among other things, contemplates the Board assuming operational control of a network if necessary to maintain uninterrupted broadband service;

(5) prohibit the sale or transfer of grant-funded network assets without the prior written approval of the Board;

(6) allow an applicant to seek reconsideration of an adverse Board decision;

(7) ensure project completion within a reasonable period of time and consistent with applicable federal law and guidance; and

(8) comply with Administrative Bulletin No. 5, the Agency of Administration's policy for grant issuance and monitoring, and Administrative Bulletin 3.5, the Agency of Administration's policy for procurement and contracting procedures, as appropriate, and any other requirements of federal law and guidance, if applicable.

ECFiber Comments regarding 8086(c)3

With respect to recouping grant funds or transferring ownership of grant funded assets, the VCBB needs to recognize that these provisions create a material impediment to the ability of CUDs to issue municipal revenue bonds, which is a primary goal of Act 71 as stated in 8086(g):

(g) It is the intent of the General Assembly that a broadband project financed under this Program demonstrates an economically sustainable business model that ultimately **will be eligible for financing in the private or municipal bond market.**

Certainly, in the case of the East Central Vermont Telecommunications District (d/b/a ECFiber), the chance that grants from the Vermont Community Broadband Fund may include a provision of that sort is already leading us to include this disclaimer in our 2021 Series A bond offering:

Grants: The District intends to apply to the Vermont Community Broadband Board for an award of Vermont Community Broadband Fund preconstruction and construction grants-in-aid.

Upon receipt, the proceeds of such grants shall be expended by the District to acquire capital assets to be used in its telecommunications plant. The enabling statute under which Fund-based grants are made by the Board (No. 71 of the Acts of 2021) provides that the Board shall “establish standards for recouping grant funds and transferring grant-funded network assets to the State if a grantee materially fails to comply with the terms and conditions of a grant.”

In order to protect the operational integrity of its telecommunications plant in the event grant recoupment and asset possession is sought, the District intends to construct and maintain grant-funded network assets in such a manner that neither their removal nor any grant recoupment liability will have a substantial or material impact on the continued operation of the District’s telecommunications plant.

This will create complications in execution and may negatively impact the ability to market the bonds at the same attractive rates our existing bonds, which sell at a premium, enjoy.

After conferring with our counsel, Paul Giuliani, we would like to propose that the VCBB adopt the following with respect to 8086(c)3:

For purposes of 30 VSA 8068(c)(3), it shall be conclusively presumed that a grantee has fully complied with all grant terms and conditions if:

- a. the grantee is not in default of issued and outstanding telecommunications plant project notes or bonds secured by a pledge of net revenues derived from the operation of its telecommunications system;

or

- b. the grantee provides the Board with five years of audited financial statements demonstrating surplus cash from system operations equal to 1.25 of the amount that would be needed for debt service on notes or bonds secured by a pledge of net revenue in a principal amount of fifty percent of grants awarded to the grantee, using a 30-year term at an interest rate of 4.00%, with principal payments deferred for the first three years of the issue, to determine debt service amount.

If adopted, this would immediately exempt ECFiber from 8086(c)3. In the future, it would allow CUDs fully funded out of grants who don’t need to access the municipal revenue bond market to show that their operations are sufficient to cover the debt service that would be required if half their grant funding had come from municipal revenue bonds.

To put it simply, if a CUD enjoys access to the municipal bond market, or has met the preconditions necessary to access it, it has achieved ‘going concern’ status and ought to be free of any construction grant restrictions.

VCBB Draft Accountability Policies – Consolidated Communications’ Comments

No organization has done more to bring best in class fiber internet service to more Vermonters than Consolidated Communications. We have invested more than \$94 million dollars, building high speed fiber internet service to more than 119,000 homes—5% (nearly 6,000 addresses) of which were unserved or underserved before we invested our own capital to serve them. This is like one extra CUD worth of unserved/underserved customers now served at little cost to the State, or approximately 10% of the problem the VCBB is attempting to address.

Part of this investment included our new product, Fidium Fiber, the best and most affordable broadband product in the state—often half the price of service from smaller providers (See the affordability Exhibit at the end of these comments). While we know we are not perfect, our improvement is clear in the numbers. Our PUC complaint volume is down 75% over the last 5 years, and our Net Promoter Score, a reliable industry service benchmark, sits at 50 in an industry that often averages in the low single digits.

In three months’ time, Southern Vermont CUD will be the first CUD in the state to be completely built. An amazing feat considering the headwinds we faced during the entire project. Through this build we will be delivering service to over 7,000 homes 16 months from grant award, a level of performance that far exceeds that of any other provider in Vermont, giving the residents of the Southern Vermont CUD the best and most affordable broadband services in the State.

In light of all this progress, it was extremely difficult to watch the most recent VCBB meeting and read the new proposed requirements.

The proposed policy requirements, if enacted, would significantly limit our ability to invest in Vermont. The result will be higher costs to deploy broadband which would require more money than the state has available. This will not only leave portions of the state unserved but would leave served customers facing high prices and lower quality of service. As observed by the state auditor, The VCBB has financed 5 broadband startups which face significant risks--it is unlikely all 5 will succeed.

This is unfortunate, since we are about to bring forth two less risky proposals which will solve the underserved problem for over 6,000 additional Vermonters in the next two years—including a contribution of nearly \$14 million of our own capital to help achieve universal broadband service. Our model is exposed to none of the risks in the State Auditor's report and these grants represent sound public policy to meet the needs of Vermonters. This investment will not happen if the Consolidated grants are subject to the proposed policy requirements.

Through the introduction of the proposed accountability policy, the VCBB is vastly exceeding its statutory authority. The policies it seeks to impose with respect to service quality appear to be an attempt to make the VCBB the broadband regulatory agency. The problem is, the VCBB was not established to support this role. The VCBB, unlike other regulatory agencies, has no administrative rules and is not a quasi-judicial body. It has no way to allow for due process of those that are aggrieved by an action of the state or another party. The statutory role of the Vermont Community Broadband Board is clear, they are to "...coordinate, facilitate, and accelerate the deployment and implementation of Universal Community Broadband solutions" (30 VSA §8081). The VCBB exists to assist the CUDs in the deployment of high-quality, affordable, universal broadband service. All policies of the VCBB must be consistent with this statutory charge. The Board has no authority to go further and insert themselves as the regulatory authority for broadband. To the extent the VCBB implements policies that either hinder the CUDs efficient and accelerated deployment, or worse,

completely stop broadband deployment in portions of Vermont, the Board is acting in direct conflict with the duties assigned to it by the Vermont legislature.

Through its proposed policies, the VCBB also seeks to establish a lien on CUD property. This is an unquestionable overreach. Act 71 provides that in the event a CUD dissolves that CUD property becomes the property of the State. This is a specific and appropriate way to ensure that public assets remain in the public domain in the event of a CUD collapse. Going beyond this is not permitted by statute and is also unnecessary.

The authorizing statute provides the power to create policy in two very specific areas:

The Board shall...have the power to...(E) develop policies or recommend to the General Assembly programs that promote a strong communications workforce in Vermont; (F) develop policies or recommend to the General Assembly programs that promote access to affordable broadband service plans;

There is nothing in the authorizing statute that suggests the Board should or is even able to retain an interest in CUD infrastructure. It is not one of the two areas where the legislature indicates the VCBB should create policy. It is quite different from the statutory mechanism to acquire CUD property. The proposed policy will chill any private investment (either from financial institutions or private broadband providers). It is just bad policy.

Finally, and perhaps most egregiously, the VCBB seeks through this proposed policy to mandate network architecture and design. Current state design standards are NOT industry accepted, which gives us concern that any changes to those standards may not be an improvement and may saddle the state with additional costs, and bespoke networks out of step with best practice. There are no federal requirements at all for design standards. The clear requirements are 100/100 speeds with low latency.

The state is right to demand this result, but not to mandate the design to get there. Any design recognized by the industry and demonstrated effective at achieving both the speed and latency required, without any clear demonstration that a particular design does not meet those standards it should be accepted. Fidium's network design is a clear prima facie case of successful design that already meets these performance standards and should be accepted based on current performance. Requiring design changes to an expertly designed network currently performing is wasteful and is not a set of changes CCI will support.

Ultimately, the Board's role should be to review each proposal on its merits and the potential impact the proposal could have on the deployment of universal, affordable, high-quality broadband services. The members should reject any proposal that hinders, rather than promotes, the deployment of broadband and should similarly reject any effort to expand the role of the board beyond that which was decreed by the legislature. The Board is not a regulatory agency of the state with all the processes and procedures that come with the creation of these arms of government. It should not seek to become one through provisions attached to a grant program

The proposed policies do not appear to take into account the needs of any particular CUD. Consolidated has been engaged in months of discussion with its partner CUDs regarding contract terms that address many of the issues the board is concerned about. The pronouncement of the VCBB policies and the application of them to the projects with Consolidated's partner CUDs are prepared to submit is devastating to the future viability of these projects. The CUDs themselves, not the Board, are in the best position to understand and protect CUD interests. The Board should allow the CUDs flexibility to negotiate terms that are favorable to

the CUD and that focus on the CUD's needs, as opposed to the desire of a few on the Board to treat particular partners in an unfavorable manner.

We do see a path forward, despite the chilling effect of the current proposal. Consolidated plans to listen carefully to the upcoming meeting on Friday, July 28th, and we expect the VCBP to re-affirm the guidance they provided to the CUDs in the April 10th meeting, which was to keep going and not let this policy debate get in the way of progress. We then plan to submit two grant proposals which have been painstakingly negotiated with two different CUDs. These proposals include substantial capital contributions from Consolidated, they are in the best interest of residents of the two CUDs and they advance the goals of Act 71. We ask that the Board evaluate and approve these plans without future conditions from this current policy debate, which will take considerable time to settle. In other words, evaluate these grants on the merits, and don't hold them up with a lengthy policy debate.







Last point, which maybe should be the first, is that the turnaround time of 7 days for such a substantial set of changes raises due process questions. At no time has the VCBP reached out to discuss these issues, nor shared any preview of their thinking with us or as far as we are aware, any of the CUDs, the constituents the Board has been appointed to serve. We are willing to discuss the proposals, but not in the context of the two grants we are submitting. A fair path forward would be to debate these policies in the context of the BEAD program, which would allow all bidders a level playing field, rather than changing the rules in midstream.

Sarah Davis
Vice President, Legislative and Regulatory – Consolidated Communications
7/25/2023

A handwritten signature in black ink, appearing to read 'Sarah Davis', written over a horizontal line.

Affordability Exhibit (taken from CUD websites on July 1)

On average, CUD residents outside of SOVT CUD always pay more and often pay double what SOVT customers pay for fiber broadband

							Average Non-SOVT prices	+\$ (%) more than SOVT
2 GIG	\$85 yr. one \$95 outyears	NA		\$199			\$199	+\$114 (134% more yr 1) +\$104 (109% more in outyears)
1 Gig	\$70 yr. 1 \$95 outyears	\$134	\$249.95	\$129	\$119.95	\$130	\$152.58	+\$82.50 (118% more yr1) +\$75.58 (61% more in outyears)
500 M			\$134.95	\$99			\$116.98	
300 M		\$104				\$90	\$97	
250 M	\$60 yr. 1 \$85 After 1 year		102.95				\$102.95	+\$42.95 (60% more yr 1) +17.95 (20% more in outyears)
100 M				\$79	\$89.95		\$84.48	
75 M		\$72				\$75	\$73.50	
50 M	\$35 year one \$50 After 1 year		79.95		\$69.95		\$74.95 (\$75.18 average of all budget tiers)	+\$40.18 (115% more yr 1) +25.18 (50% more out years)
Phone	\$15	\$25	NA	\$29	\$24.95	19.99	\$24.74	+\$9.76 (65% more)
Other Terms	Free Installation	\$99 installation \$30 phone instl.		\$99 installation	\$149 installation		\$69.40	
One Year Cost For A Gig+Phone	\$1,020 (yr1) \$1,320 (outyears)	\$2,037	\$2,988 (no phone)	\$1995	\$1887.80	\$1799.88	\$2,133.536	+\$1,113 (109% more yr 1) +\$813 (62% more in outyears)
One Year Cost for budget tier +phone	\$600 (yr1) \$780 (outyears)	\$1,293	\$959.40 (no phone)	\$1395	\$1287.80	\$1139.88	\$1,215.02	+\$615 (103% more yr 1) +435 (56% more in outyears)

From: [Eric Hatch](#)
To: [Richards, Patty](#)
Cc: [VCBB](#); [Vermont CUD Association](#); [Sheila Kearns](#); [Michael Corey](#); [Callie Fishburn](#); [Jonathan Cooper](#)
Subject: 2023 VCBB Accountability Policies - Comments from SoVt CUD
Date: Tuesday, July 25, 2023 11:56:40 AM

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

To: Patty Richards, Chair VCBB

I write to you as Chair of the Southern Vermont CUD (SoVt CUD) on proposed amendments to the "VCBB Accountability Policies." As these proposed revised rules do not pertain to our 2022 SoVt CUD agreement, it gives us a unique voice and perspective on their impact and their unintended consequences for Act 71 fulfillment. Our CUD is on track to be the first CUD in the state to complete its Universal Service Plan (estimated to be year-end 2024) and also on track to complete 99% of fiber coverage of that Plan *by the end of this year*. While our experience and partnership differs from most CUDs, it need not differ for those other CUDs considering the same public/private partnership model.

It is with this earned experience that our CUD is troubled by several additions proposed to the Accountability Policies, so much so that we believe that if such policies were in place in 2022, our partnership with Consolidated Communications, or any other private, established service provider, could not have come to fruition. And had no partnership been possible, the hundreds (soon thousands) of unserved and underserved in our District would not have high-speed fiber that they have today. Thus, the changes proposed are very impactful and not in a way to promote the goals of Act 71 but rather to regulate which is an overreach of the mandates prescribed to the VCBB in statute.

Specifically, we have concerns with the following:

Section 2 - Industry Standards: adding to what are already outlined and established industry standards, a seemingly arbitrary number of "99.9%" for "availability" is included. Availability can be defined, interpreted and measured in countless ways and as such, is not a provision that is reasonable, let alone affordable, to put into contract. Further, requiring "Open Architecture" severely limits, if not blocks entirely, options for CUDs to solve the rural broadband problem that Act 71 looks to solve.

Section 3 - Recouping Costs: the provision of a 30-day cure to any term or condition, large or small, at risk of losing 100% of the grant funding is draconian and a vague condition that will not invite private investment. While recouping state funding is vital, this provision is too open-ended and too open for misuse.

However, the most concerning provision is the VCBB's proposal to put a 20-year lien on a CUD's assets. Recouping assets is spelled out in several existing grant terms. Adding a 20-year lien will probably scare off any private investor not desperate for funding (particularly publicly traded entities). Our CUD could not have formed any partnership with an established, reputable service provider with such a demand. Our partnership has shared public network assets with our partner's shared private assets that cannot be divided or partitioned and thus even a temporary lien, let alone a two-decade long one, would not be accepted. Without the ability for the CUD to form creative, cost-effective partnerships and networks, our consumers will be the ones penalized with higher

monthly bills and a slower rollout with zero benefit to anyone.

Section 6 - Appeal: A CUD should be able to appeal major decisions, such as revoking funding, to a third-party entity. The VCBB should have its own check on major decisions otherwise the appeal process is an exercise in futility.

Priority Section 7 - Include Multiple Service Providers: We question why this should be a policy for VCBB. Earlier policy statements indicated the need for CUDs to follow best industry practices and this shared provider provision does not adhere to that. If CUDs want private investment, coming to a partnership with this provision will deter providers, not attract them.

Section 8081 Item 1b: The text "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." is confusing as it provides no clarification on who will also measure accountability, in addition to the certification of the CUD and who pays for that additional requirement.

In summary, this CUD feels the VCBB Board is focusing much of its time on control and regulation that will drive private investment away from CUDs who wish to go that route, rather than looking to see what models are proving to be successful and learning lessons from them to further the goals of Act 71. Our CUD has much to offer based on our experience of having gone through the grant allocation process, working with private investment and most importantly, providing universal access faster and for less cost less than most, if not all other CUDs. Lastly, I am sure CUDs will accept these conditions if passed as proposed - they have little other recourse. As a CUD that can comment freely, without the onus of having to go before the Board for major funding, it is imperative that we do so lest unserved and under-served Vermont residents potentially lose out on material private investment that will get them the fiber access they rightfully deserve.

With kind regards,

Eric Hatch
Chair, Southern Vermont CUD

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.

From: [Christa Shute, NEK ED](#)
To: [VCBB](#)
Subject: Fwd: NEK Broadband comments on Accountability Policy
Date: Tuesday, July 25, 2023 11:58:27 AM
Attachments: [NEK Broadband comments on VCBB Accountability Policy July 25 2023.pdf](#)

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----- Forwarded message -----

From: **Christa Shute, NEK ED** <director@nekbroadband.org>
Date: Tue, Jul 25, 2023 at 11:57 AM
Subject: NEK Broadband comments on Accountability Policy
To: Richards, Patty <Patty.Richards@partner.vermont.gov>
Cc: <Toni.Clithero@vermont.gov>, Fish, Robert <Robert.Fish@vermont.gov>, Hallquist, Christine <Christine.Hallquist@vermont.gov>, Executive Committee <execs@nekbroadband.org>, Rob Vietzke <Rob@vcuda.org>

Patty,
Please accept these comments on the VCBB proposed Accountability Policy.
Christa

Christa Shute
Executive Director
802-793-7077





Patty Richards, Chair
Vermont Community Broadband Board

July 25, 2023

Dear Patty,

NEK Broadband supports the comment submission from VCUDA. In addition we offer the following comments on the presented accountability process.

NEK Broadband strongly endorses the accountability policy that has been laid out and presented. There are some areas in which the policy has morphed into implementation where we believe that coordination with the CUDs is almost mandatory in order to not be counter productive.

The first critical area is liens. We believe that liens are justified and we need to ensure they are done correctly. It is very true that there can be stacked financing. It is very true that we don't want grant funded assets sold. The key is to implement liens in a way that enhances and does not preclude or hinder financing. From the proposed policy: *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.* This means that every loan would have to be evaluated and approved by the VCBB. As a municipality we should have more autonomy and allow the financial markets to judge the risks. The existence of your subordinated lien in and of itself will mean that a loan would not be made for the purposes of accessing the asset through a default. Therefore, it is reasonable to set a series of specific conditions for subordination that are reasonably easy to meet rather than having the VCBB, which may or may not have at any given time the appropriate expertise, make the financing decisions of our municipality. **Recommendation: Meet with CUDs contemplating bond financing, private placement financing, or bank financing and their financial advisors and lending institutions to understand the best mechanism to put this lien in place.**

The second critical area is continuity of service. Again, we agree that continuity of service is critical and that ensuring continuity means identification of issues early enough in the process. We support the concept of a continuity plan that puts contingencies in place if certain parameters are met (or not met). Signing over our operations to the VCBB threatens our autonomy as a municipality and could hinder our ability to execute contingency plans. **Recommendation: A grant term in which the CUD agrees that if the continuity of service plan presented is deemed inadequate to protect consumers that the CUD agrees to bring**



the plan into compliance within a certain time frame and that failure to do so may result in allowing the VCBB to assure operation of network assets.

The third critical area is timing of grant funding distribution. We support the distribution of funds according to the Maple Broadband and NEK Broadband schedule - specifically that *30% is reimbursable for approved expenses with the remaining amount of this 30% to be issued on completion of the first 50% of project miles.* There are two issues with the proposed "policy" language: (1) cashflow issue where it takes more upfront funds to get to the first 50% of the miles and (2) the shift from approved expenses to "verified construction costs". If a line item is approved in the grant then it is an approved expense and should be eligible. Preferred recommendation: leave as is. Secondary recommendation: work with CUDs on a schedule that will meet cashflow requirements.

In conclusion, we support the accountability policy recommendations as a valid form of contractual grant control to ensure that public funds serve the public interest. We agree with the position of VCUDA that some of these measures need detailed discussion so that the consequences are well understood. NEK Broadband believes that collaboration is best accomplished through conversation. NEK Broadband also strongly believes that we all, including every VCBB Board member, need to be laser focused on creating a strong implementation program for BEAD in a short time. This is a complicated program and it is important for us all to continue educating ourselves on the nuances rather than simply relying on others. The programmatic design of BEAD IS POLICY not just staff implementation.

NEK Broadband greatly appreciates the work that you do and the importance of your roles in our state's history of bringing broadband to all.

Sincerely,

A handwritten signature in blue ink, appearing to read "Christa Shute".

Christa Shute
Executive Director

A handwritten signature in blue ink, appearing to read "Paul Fixx".

Paul Fixx
Chair