

Proposed Board Policy	VCBB Staff Comments	CCI Comments	WCVT Comments	SoVT Comments	ECFiber Comments	NEK Broadband	Otter Creek	Lamoille Fibernet CUD
Express Accountability Requirements to Protect the Public Interest: Construction Grant Conditions- 8086(c) (Express Board mandate to establish policies and grant conditions)								
<p>(1) <u>8086 (1) Payment schedule ensuring accountability and 8086 (d) (business plan) and (g) (sustainability requirement):</u></p> <p>Minor change: consistency of payment schedule for grantees 8086(c) (1)-Reflect payment schedules that ensure maximum accountability:</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 	<p>Staff and NEK in alignment, revert to existing language in Maple schedule</p> <p>Note: The designs are done by area with each having a certain number of miles, making the total design implication here unworkable</p> <p>Purpose of different schedules was to distinguish between grants to a private entity such as WCVT as opposed to an ISP (such as CCI) partnering with with a CUD</p>					<p>Keep existing language or work with CUDs to develop a schedule that meets cashflow requirements</p>		

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<ul style="list-style-type: none"> - 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 revised approved business plan, and documentation requirements. 								
<p>(2) <u>Adopt industry- accepted engineering standard promoting reliability, resiliency and interoperability</u></p> <p>Minor change: State a policy for the intended results of engineering standards:</p> <p><u>Engineering Standards for Reliability, Resilience and Interoperability.</u> The VCBB requires that all Community Broadband Fund grant-funded networks meet engineering standards that ensure reliable and resilient networks for delivery of broadband speeds of at least 100/100 mbps 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</p>		<p>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 tandards may not be an improvement and may saddle the state with additional costs, and</p>	<p>Construction standards have already been developed. The design and engineering of the network have been reviewed by staff and consultants and approved for compliance before grants are approved. There is no need to revisit this topic at this time. Doing so could jeopardize progress on future planned jobs.</p>	<p>"99.9%" for "availability" seems arbitrary and ambiguous and is unreasonable; requiring "Open Architecture" severely limits, if not blocks entirely, options for CUDs to solve the rural broadband problem that Act 71 looks to solve.</p>				

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<p>regulations, and electrical codes adopted by the State of Vermont, and the Outside Plant Design standards (OPD) set by the VCBB as published at the time of the grant approval and incorporated into the grant. OPD standards shall provide engineering guidance and numeric technical standards for network construction to achieve resiliency, reliability, interoperability and open architecture, including but not limited to standards for the minimum number and type of fiber strands, 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>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.</p>						
<p><u>(3) 8086(c)(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> 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</p>		<p>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</p>	<p><u>State statutes do not authorize the placement of liens</u> on CUD property. Bn Further, federal grants have never placed such covenants on grant funded property. WCVT believes that placing liens on property does nothing to</p>	<p>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</p>	<p>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</p>	<p>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</p>	<p>Same as Lamoille</p>	<p>The imposition of liens on grant-funded assets on day-one, warrant further exploration to minimize unnecessary burdens</p>

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<p>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 grantor recall of up to 100% of grant funds at the discretion of the VCBB Board and the sale of the network assets to another public network operator. The grantee may appeal staff decisions of grant noncompliance or nonperformance to the VCBB Board at a regularly scheduled public meeting within 60 days of the written notice.</p> <p><u>Transfer of Grant-Funded Assets.</u> The VCBB is obligated by law to ensure that the assets constructed by each grantee meet the public interest objectives of Act 71, including but not limited to universal service and continuous operation of the assets constructed using the Community Broadband Fund. The grantee is accountable for the public interest results set by the policies of the VCBB Board and Act 71. The VCBB is 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</p>		<p>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.</p>	<p>ensure continuity or service and can only hinder the ability to raise capital or secure loans. In the event of a business failure, the law already provides that the property will revert to the state. Rather than focusing on restrictive liens, the VCBB should focus on ensuring continued service.</p>	<p>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</p>	<p>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.</p>	<p>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</p>		

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<p>public interest described in the VCBB's policies and Act 71. Therefore, prior to the initial distribution of grant funds, the VCBB shall file a form UCC 1 with the Vermont Secretary of State, designating the name of the grantee, the miles of fiber and municipal location of the network construction, and specifying the State of Vermont as the lien holder subject to the terms of the grant and these accountability policies. It is the policy of the VCBB to subordinate its lien interest to the interest in title for purposes of securing financing that, in the discretion of the VCBB, is reasonably likely to meet the terms of the grantee's business plan and promote the sustainability of grant-funded network. The lien shall be released upon twenty years of operation of the network by grantee or such third party as the VCBB Board shall approve. The VCBB will summarize the grant terms and public interest accountability policies of the VCBB that attach to the operation of the network in the lien and provide grantees with a form of agreement that provides the terms and effect of the lien. Should the VCBB exercise its rights under the lien, it shall have the right to transfer title to the network assets to a third-party public entity that is a communications union district or other public interest operator of broadband networks in lieu of recoupment of the grant funds. The grantee may appeal staff decisions of grant noncompliance or</p>				<p>penalized with higher monthly bills and a slower rollout with zero benefit to anyone</p>		<p>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.</p>		

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nonperformance to the VCBB Board at a regularly scheduled public meeting within 60 days of the written notice.								
<p>(4) <u>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</u> See also 8086(h) – notice of default</p> <p>Change: Adoption of a Continuity Policy Requirement and notice of default:</p> <p>Continuity of Service. 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</p>						<p>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.</p> <p>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</p>		

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<p>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>compliance within a certain time frame and that failure to do so may result in allowing the VCBB to assure operation of network assets.</p>		
<p><u>(5) Prohibit the sale or transfer of grant-funded network assets without the prior written approval of the Board; See also 8086(c)(9)</u></p>			<p>See Comments re (3)</p>	<p>See Comments re (3)</p>	<p>See Comments re (3)</p>	<p>See Comments re (3)</p>	<p>See Comments re (3)</p>	<p>See Comments re (3)</p>

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<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><u>Authorized Ownership Transfers.</u> In order to ensure that ownership of grant-funded network assets are not sold, assigned or licensed without the written authorization of the VCBB Board, ownership of all assets constructed with grants of the Community Broadband Fund will be held in the name of the grantee and the assets shall be subject to a lien held by the VCBB or the State of Vermont (see VCBB policy 30 VSA 8086(c)(3)). The VCBB Board, in considering a request to transfer any interest in title to the assets , shall act on the request within 30 days by review of the transferee’s ability and agreement to meet the public interest obligations and surviving grant contractual obligations that apply to assets funded by the Community Broadband Fund. Such transfer shall be subject to a new lien of the VCBB or the State of Vermont securing its interest pursuant to its policy granted by the transferee. It is the policy of the VCBB to subordinate its lien interest to the transfer of an interest in title to the funded assets for purposes of securing financing that, in the discretion of the VCBB, is reasonably likely to meet the terms of the grantee’s or transferee’s business plan and promote the sustainability of grant-funded network.</p>								

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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.								
(6) Allow an applicant to seek reconsideration of an adverse Board decision Change: Adoption of Appeal Policy Required: <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.				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.				
(7) Ensure project completion within a reasonable period of time and consistent with applicable federal law and guidance Minor change – extension process: <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								

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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								
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8086(h)-CUD Insolvency								
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: Potential Default, Notice and Recommendations 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.								

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Implied Accountability of the VCBB for the Public Interest Grant Evaluation Priorities 8086(b)								
<p>“The Board <u>shall</u> give priority...”</p> <p>Change: Policy statement for how to deal with Subsection (b) “priorities” is needed – as proposed: <u>Priority of Universal Service and Geographic Distribution of Funds.</u></p> <p>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</p>	Remove reference to June 30, 2021 to avoid excluding Chittenden CUD							

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<p>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: No new policy required: No applications have</p>								

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<p>been presented that address this priority. All grant projects require collaboration with distribution utilities and are subject to Public Utility Commission pole attachment rules.</p>								
<p>(2) Demonstrate project readiness Policy implemented: <u>Project Readiness</u>. Incorporated by reference into Board grant accountability policy at Subsection 8086(c)(1). Note that board policy incorporates a viable business plan as part of the demonstration of project readiness.</p>								
<p>(3) Provide broadband service that complies with the net neutrality and consumer protection standards of 3 V.S.A. 348 Change: This is an operations requirement that survives the grant payout: <u>Consumer Standards Certifications</u>. The policy of the VCBB, to meet the public interest in consumer protection and service standards, is to require certification of each grantee annually that it meets the service</p>			<p>The subcommittee should look more into the criteria and what is a reasonable indicator of service and also is enforceable.</p>					

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<p>conditions described in Subsection 348(b). The grantee receiving Community Broadband Funds, and any owner of assets paid for in part by such funds, shall certify to the Secretary of Administration, with copy to the VCBB or its designee, the terms and conditions of 3 VSA 348(b) for a period of 20 years from the date of the grant award. [NOTE: this does not address maintenance/customer response time, etc.]</p>								
<p>(4) Support low-income or disadvantaged communities; Change: This is both a design and operations requirement that survives the grant payout: <u>Low Income Inclusivity.</u> The policy of the VCBB is to implement Universal Service as required by the Act, including construction of broadband networks and provisioning of broadband service to all locations regardless of income or property value. No construction utilizing Community</p>	<p>The overall statutory context encompasses this issue to a certain extent.</p>							

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<p>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.</p> <p>Change: See above (Policy statement for how to deal with Subsection (b)– as proposed.)This priority is addressed by the regional allocation of</p>								

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<p>grant funds by CUD.(SEE policy proposed at 8086(b): The policy of the VCBB is to reserve an allocation for each geographic area represented by the existing CUDs and to recognize and review grant applications in the context of those allocations as they are presented and designated by the VCBB as project ready and consistent with VCBB policy.</p>								
<p>(6) Provide consumers with affordable service options</p> <p>Change: This is a policy that implements an operations priority and survives the grant payout: <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</p>	<p>Please change the highlighted phrase to the following:</p> <p>To clarify that the provider has the discretion to take other actions which in any given year may be a higher immediate priority and/or essential to meaningful rate reductions in the future, staff recommends changing the requirement of a proposal for reducing rates in the annual report to an evaluation concerning the</p>							

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<p>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</p>	<p>same. By requiring the evaluation, the subject of rate reduction and the provider's reasons for or against delivering such reduction are a required consideration.</p>							

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_____ years from the date of the grant award.								
(7) Include public broadband assets that can be shared by multiple service providers and that can support a variety of public purposes: No separate policy is required given the construction/engineering criteria. Consider, however, whether an operations policy that implements interoperability and shared infrastructure is advised?								
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Implied Accountability Requirements to Protect the Public Interest Legislative Findings and Intent								
(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: 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:

Prioritizing Fiber Plant.

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 mbps, 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. VCBB Board will not accept self-certification by the applicant or grantee to establish accountability for the public interest

<p>obligations of construction and operation of assets paid for in whole or in part Community Broadband Fund.</p>								
<p>(2) to establish the Vermont Community Broadband Board to coordinate, facilitate, support, and accelerate the development and implementation of universal community broadband solutions:</p> <p>The Agency of Administration of the State of Vermont, in its opinion regarding the Creation of Broadband Programs Using Federal Funds, dated March 13, 2023, has determined that new programs funded through the federally funded BEAD grants are subject to the policies and procedures of the VCBB Board. The VCBB Board will apply its existing policies as possible and develop new policies as required. Subgrant programs under BEAD or DEI federally funded programs will be subject to policy review by the VCBB Board.</p>	<p>To clarify the primary role of the federal BEAD requirements, staff recommends adding the following phrase to the highlighted text:</p> <p>“,subject to any applicable federal BEAD conditions,”</p> <p>And at the end of the second highlighted portion:</p> <p>“in the context of any applicable federal BEAD conditions.”</p>							

Sunset Provisions (and Policy Implementation – 8089(a))	
<p>TBD: Requirement: plan for transferring its assets, liabilities, and legal and contractual obligations to another appropriate State entity. The Board may include in its report a recommendation regarding the continued existence of the Board beyond its statutory sunset date.</p>	<p>This provision impacts who holds the right/obligation to oversee accountability and exercise contractual rights.</p>