

**MINUTES**

***SIXTIETH MEETING***

of the

**BOARD OF DIRECTORS**

of the

**MASSACHUSETTS BROADBAND INSTITUTE**

September 5, 2018

Westborough, Massachusetts

The Sixtieth Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”) was held on September 5, 2018, at the Massachusetts Technology Collaborative (“MassTech”), 75 North Drive, Westborough, Massachusetts, pursuant to notice duly given to the Directors and publicly posted on the MBI website with corresponding notice provided to the Office of the Secretary of State.

The following members of the MBI Board of Directors attended the meeting: Secretary of Housing and Economic Development Jay Ash (represented by Peter Larkin of the Executive Office of Housing and Economic Development), Massachusetts Technology Collaborative Interim Executive Director Carolyn Kirk, Don Dubendorf, Secretary for Administration and Finance Michael Heffernan (represented by Sean Cronin of the Division of Local Services), Paul Nicolai (arrived at 11:27 a.m.) and DTC Commissioner Karen Charles Peterson.

The following MassTech staff was present: Michael Baldino, Lisa Erlandson, Phil Holahan, Carolyn Kirk, Kelly Kleanthous, Brian Noyes and Jennifer Saubermann.

The following individuals attended the meeting: John Blum, Town of Petersham; Chip Bull, Town of Petersham; Bill Ennen, Executive Office of Housing and Economic Development; Chris Lynch, Matrix Design Group; and Joe Tiernan, Department of Telecommunications and Cable.

Mr. Larkin observed the presence of a quorum of the MBI Board of Directors and called the meeting to order at 11:08 a.m.

Mr. Larkin reviewed the legal requirements governing public participation at an open meeting of a public body. He stated that: (1) After notifying the Chair, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the Chair as to the number, placement and operation of equipment used so as not to interfere with the

conduct of the meeting. At the beginning of the meeting the Chair shall inform other attendees of any recordings. (2) No person shall address a meeting of a public body without permission of the Chair, and all persons shall, at the request of the Chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the Chair, a person continues to disrupt the proceedings, the Chair may order the person to withdraw from the meeting and if the person does not withdraw, the Chair may authorize a constable or other officer to remove the person from the meeting.

### **Agenda Item I      Approval of Minutes**

Following a period of brief discussion, and upon a motion duly made and seconded, it was unanimously VOTED:

**The Board of Directors of the Massachusetts Broadband Institute hereby adopts the Draft Minutes of the open session portion of the Fifty Ninth Meeting of the Board of Directors held on June 15, 2018, in Westborough, Massachusetts, as the formal Minutes thereof.**

### **Agenda Item II      Report of the MBI Board of Directors Chairperson**

The report of the Chairperson was waived.

### **Agenda Item III      Discussion and Action Items**

Mr. Larkin and Mr. Ennen provided an update on the status of last mile projects being managed by MBI and the Executive Office of Housing and Economic Development (“EOHED”). Highlights from Mr. Larkin and Mr. Ennen’s updates include: (1) an event was held in Pelham to celebrate the completion of the Broadband Extensions Program, which resulted in Comcast extending their network to over 1,300 additional premises and achieving coverage levels that met or exceeded 96% in each of the nine participating towns; (2) Comcast signed a cable television license agreement with the Town of Montgomery; (3) the Charter broadband upgrade and expansion project in Hinsdale, Lanesborough and West Stockbridge is nearing completion but progress has been slowed by make-ready delays; (4) Charter has signed cable television license agreements with three towns there were the subject of awards under the first round of private provider grants; (5) Westfield Gas & Electric was a winning bidder in the Connect America Fund Phase II (“CAF II”) auction and will receive approximately \$10 million over 10 years to support municipally-owned networks in approximately 20 towns; and (6) the weekly make-ready conference calls and quarterly summits continue to be convened and have yielded positive results (the acceleration of make-ready work in Shutesbury was cited as an example).

During the ensuing discussion, Mr. Dubendorf expressed frustration with the make-ready process that is resulting in public funds being utilized to upgrade or replace privately owned utility poles and reward utility companies for deferred maintenance on these poles. He suggested that the MBI Board should consider adopting a policy statement on this matter that could be presented at a future make-ready summit. Mr. Dubendorf also observed that

the CAF II support is great news for the unserved towns. Mr. Larkin clarified that Otelco and Crocker are also winning CAF II bidders for census blocks in unserved towns. Mr. Ennen noted that the Federal Communications Commission provides a significant degree of latitude in how CAF II funds can be spent. He indicated that the towns will have flexibility to decide how best to apply the CAF II funds, including the option to reduce debt service obligations.

[Paul Nicolai arrived at 11:27 a.m.]

Mr. Larkin presented for approval the Payment in Arrears guidelines that were drafted by staff earlier in the year for projects involving private providers that do not possess robust balance sheets, financial resources, creditworthiness and/or experience. He reminded the Board that the guidelines were previewed at the last meeting on June 15<sup>th</sup> and that staff had updated the guidelines to incorporate the feedback from that meeting. As such, staff amended the draft guidelines to include a requirement for a certification that at least 51% of all potential customers to be passed by the network have pre-subscribed to take broadband service and have paid a pre-subscription deposit. In response to a question from Ms. Dunlavy, Mr. Larkin clarified that MBI would recognize as valid pre-subscription campaigns that were conducted prior to approval of the guidelines by the Board.

Following a period of brief discussion, and upon a motion duly made and seconded, it was unanimously VOTED:

**The Board of Directors of the Massachusetts Broadband Institute (the “MBI”) does hereby approve Payment in Arrears Guidelines, as presented, for terms and conditions associated with grant payments to support broadband connectivity projects that would be undertaken by private providers that are unable to demonstrate desired levels of experience, financial resources and/or creditworthiness. Said guidelines include, but are not limited to, a requirement that the full grant amount be payable in one lump sum after completion of construction of the broadband project and satisfaction of related requirements specified in the guidelines.**

Mr. Larkin presented a recommendation to approve a grant award to the Town of Petersham to support the development of a broadband network that will be designed, constructed, owned and operated by Matrix Design Group. Mr. Larkin reviewed the history and background of the Petersham broadband project and described the key characteristics of the proposed network. He noted that Petersham executed a broadband services agreement with Matrix in October of 2017. He highlighted important provisions in that agreement, including the town’s option to purchase the network, the obligation of the town to pay for make-ready work and transfer the pole licenses to Matrix, and the contractual right that Matrix obtained to permissively assign the agreement to a special purposed entity formed by Matrix.

Mr. Larkin reviewed the material grant agreement terms that are being proposed by staff, including: (1) the grant agreement will be executed with Petersham and the grant funds

will be paid directly to Petersham; (2) the Payment in Arrears guidelines will be applied; and (3) specific provisions have been included to address the operational risk associated with the project – (i) Matrix must provide the town with a security interest in the network assets, including fiber and network equipment; (ii) in the event of an assignment, Matrix must either provide a parental guaranty or a performance or financial guaranty bond approved by MBI; and (iii) the town must agree to enforce its contractual rights if Matrix breaches the broadband services agreement or allow MassTech to step into the town’s shoes and enforce the agreement.

The following key points were raised during the ensuing discussion: (1) Mr. Larkin emphasized that MBI will be relying on the certifications submitted by Petersham and further, that MBI did not perform any due diligence on the project; (2) the Board members concurred with the suggestion of Mr. Nicolai that the motion should be amended to add a preamble that clarifies that the Board’s approval of the grant award is based solely on the representations, determinations and request made by the Town of Petersham regarding this project; (3) in response to a question from Mr. Cronin, Mr. Larkin explained that the grant funds are being paid to the town to primarily offset make-ready costs incurred by the town; (4) Mr. Bull, a representative of Petersham, indicated that the grant funds will only be applied to assets that the town will own or control, including pole licenses, the hut that will house certain network equipment, and certain trenched fiber; (5) Mr. Bull represented to the Board that the town complied with all Chapter 30B municipal procurement requirements; (6) Mr. Cronin suggested that Matrix pay MLP fee revenues to the town on a monthly basis, rather than quarterly; (7) Mr. Blum, another representative of the Town of Petersham, inquired whether MBI had reviewed the broadband services agreement that the town executed with Matrix. Mr. Larkin responded and emphatically reiterated that MBI did not review the agreement, did not perform and legal, technical or financial due diligence and is deferring to the town’s judgement, determinations and request for grant funding; (8) in response to a question from Mr. Baldino, Mr. Lynch, an employee of Matrix, confirmed that Matrix still intends to establish a limited liability corporation that will hold the network assets and that will assume all responsibilities under the broadband services agreement; (9) Mr. Lynch indicated that the establishment of a LLC by Matrix will facilitate the transfer of network infrastructure to Petersham if the town exercises its option to purchase the network; and (10) Mr. Bull informed the Board that make-ready costs have significantly exceeded MBI’s estimates due to the fact that the actual number of poles exceeded MBI’s estimates.

Following a period of brief discussion, and upon an amended motion duly made and seconded, it was unanimously VOTED:

**The Board of Directors of the Massachusetts Broadband Institute (the “MBI”), based solely on the representations and determinations made by the Town of Petersham regarding the proposed broadband project and upon the request of the Town of Petersham, does hereby recommend that the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation (“MassTech”) authorize the MassTech Executive Director to execute a grant agreement with the Town of Petersham (“Town”) for an award under the Flexible Grant Program Notice of Funding Availability for Innovative**

**Approaches to Provide Broadband Service to Unserved Towns in Western Massachusetts (NOFA No. 2018-MBI-01) and to expend funds in accordance with the following conditions and parameters:**

- 1. A grant award to the Town that shall not exceed \$880,000 for a privately owned fiber-to-the-premises broadband network that shall provide access to broadband service to the Town and shall be designed, constructed and operated by Matrix Design Group, Inc.**
- 2. The final amount of the grant award shall be subject to the review and approval of the Secretary of the Executive Office of Housing and Economic Development.**
- 3. The grant agreement with the Town shall incorporate the provisions of the Payment in Arrears Guidelines, as approved by the MBI Board of Directors.**

After the motion was approved, Mr. Bull noted that it has been a long process to get to this point and thanked everyone involved for their support. Mr. Larkin then went on to the next item on the agenda and explained that he is withdrawing the proposed grant award to WiValley from the agenda. He explained that negotiations with the project participants (WiValley and the Towns of Florida, Hawley, Monroe and Savoy) are ongoing and that material changes to the Action Plan and grant agreement had recently been received by MBI and were under review. He explained that MBI has attempted to move expeditiously in response to the sense of urgency expressed by the participating towns. Mr. Larkin provided a brief overview of the current state of the proposed WiValley project.

Mr. Larkin presented a recommendation to approve a grant award to Charter Communications under the Flexible Grant Program. The grant award would support the buildout of a network that would provide broadband service for the residents of the Town of New Marlborough. He indicated that Charter is expected to achieve at least 96% coverage of residential premises on public roads. Mr. Larkin noted that the grant amount requested by Charter exceeds the amount of the MBI allocation for New Marlborough. He reviewed the funding mechanism that has been developed by the Division of Local Services that will allow the Commonwealth to close funding gaps for cable provider projects. He explained that the Commonwealth will commit to the supplemental funding provided that the town executes a separate agreement agreeing to repay half of the supplemental funding amount to the Commonwealth over a ten year period through “cherry sheet” reductions. Ms. Kirk noted that the gap funding approach reflects the creativity that has been applied to facilitate broadband projects involving, large, well-capitalized, financially stable cable companies. In response to a question from Ms. Dunlavy, Mr. Larkin clarified that Charter will complete the buildout within twelve months of the completion of make-ready work on the project.

Following a period of brief discussion, and upon a motion duly made and seconded, it was unanimously VOTED:

**The Board of Directors of the Massachusetts Broadband Institute (the “MBI”) does hereby recommend that the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation (“MassTech”) authorize the MassTech Executive Director to execute a grant agreement with Charter Communications for an award under the Flexible Grant Program Notice of Funding Availability for Innovative Approaches to Provide Broadband Service to Unserved Towns in Western Massachusetts (NOFA No. 2018-MBI-01) and to expend funds in accordance with the following conditions and parameters:**

- 1. A grant award to Charter that shall not exceed \$3,150,000 for a privately owned and operated broadband network that shall provide access to broadband service to the Town of New Marlborough (“Town”) and shall consist of two components:**
  - Up to \$1,710,000, which represents the full amount of the MBI allocation from the Massachusetts Broadband Incentive Fund for a last mile broadband solution for the Town; and**
  - Up to \$1,440,000 in additional state bond funds to be provided by the Executive Office of Housing and Economic Development (“Supplemental Funding”)**
- 2. The final amount of the grant award shall be subject to the review and approval of the Secretary of the Executive Office of Housing and Economic Development.**
- 3. The expenditure of grant funds pursuant to this award shall be contingent upon satisfaction of the following conditions:**
  - Execution of an agreement between the Commonwealth (currently anticipated to be represented by EOHEd) and the Town relative to the obligation of the Town to repay fifty percent of the Supplemental Funding amount to the Commonwealth; and**
  - Execution of a cable television license agreement by Charter and the Town.**

Mr. Larkin presented a recommendation to award a \$100,000 grant to the Town of Princeton to reimburse a portion of the make-ready costs incurred by the town. Mr. Larkin reminded the Board that local officials from Princeton attended the last Board meeting and presented their request for funding. He noted that the town initially approved borrowing for construction of a municipally-owned broadband network and spent a considerable amount of money on make-ready work in furtherance of that objective. However, town officials reconsidered their options when MBI released the initial private provider solicitation and Charter and Comcast submitted proposals to serve the town, which ultimately led to the awarding of a cable franchise to Charter. Mr. Larkin indicated that the recommended grant of \$100,000 recognizes that the town acted in good faith in authorizing the make-ready work

while also acknowledging that the town benefitted from selecting Charter, which resulted in 100% coverage, no additional town investment and the elimination of operating risk.

During the ensuing discussion, Mr. Baldino responded to a question from Mr. Dubendorf and clarified the utility poles are being utilized by Charter and that Charter's grant request to MBI would have been higher if the make-ready work had not already been performed by the town. Board members were assured by Mr. Larkin and Ms. Kirk that the Princeton situation is unique and that the grant award, if approved, will not set a precedent because there are no other towns in a similar situation. Some Board members questioned the equities of approving the grant to Princeton. It was noted that the proposed award amount of \$100,000 represents reimbursement for less than 15% of the make-ready costs incurred by Princeton. The proposed resolution with Princeton was contrasted with the contingency fund for make-ready cost overruns incurred with municipally-owned broadband projects that are being funded by EOHED.

Following a period of brief discussion, and upon a motion duly made and seconded, it was unanimously VOTED:

**The Board of Directors of the Massachusetts Broadband Institute (the "MBI") does hereby recommend that the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation ("MassTech") authorize the MassTech Executive Director to execute a grant agreement with the Town of Princeton in an amount that shall not exceed \$100,000 to reimburse the Town for costs incurred for make-ready work that was performed on utility poles prior to MBI's issues of the Request for Proposals for Last Mile Grants to Provide Broadband Service to Unserved Towns in Western Massachusetts (RFP No. 2017-MBI-02), which resulted in a grant award to Charter Communications to provide broadband service to the Town.**

There being no other business to discuss and upon a motion duly made and seconded, it was unanimously and without abstention voted to adjourn the meeting at 12:28 p.m.

A TRUE COPY

ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes – Open Session of the June 15, 2018 MBI Board of Directors meeting
2. Presentation – MBI Status Report
3. Presentation – MBI Approval Items
  - a. Payment In Arrears Guidelines
  - b. Flexible Grant Program – Grant Award – Town of Petersham

- c. Flexible Grant Program – Grant Award – WiValley – Towns of Florida, Hawley, Monroe and Savoy
- d. Flexible Grant Program – Charter – Town of New Marlborough
- e. Grant Award – Town of Princeton – Reimbursement for Make-Ready Costs