

MINUTES

SIXTY THIRD MEETING

of the

BOARD OF DIRECTORS

of the

MASSACHUSETTS BROADBAND INSTITUTE

[OPEN SESSION]

June 7, 2019
Boston, Massachusetts

The Sixty Third Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”) was held on June 7, 2019, at the Massachusetts Technology Collaborative (“Mass Tech Collaborative”), 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 Mike Kennealy (represented by Peter Larkin of the Executive Office of Housing and Economic Development), David Clark, Carolyn Kirk, Linda Dunlavy, Paul Nicolai, Secretary of the Executive Office for Administration and Finance Michael Heffernan (represented by Sean Cronin of the Division of Local Services), Karen Charles Peterson and Don Dubendorf (10:53 a. m. arrival).

The following Mass Tech Collaborative staff was present: Michael Baldino, Brian Noyes, Marybeth Dixon, Carolyn Kirk, Cynthia Gaines, Jennifer Saubermann, Cornell Robinson, and Brianna Weirs.

The following individuals attended the meeting: Lindsay DeRoche, Massachusetts Department of Telecommunications and Cable.

Peter Larkin observed the presence of a quorum of the MBI Board of Directors and called the meeting to order at 10:30 a.m.

Agenda Item I Approval of Minutes

Following a period of brief discussion, and upon a motion duly made and seconded, with three abstentions (Karen Charles Peterson, Sean Cronin and David Clark) and one amendment (by Karen Charles Peterson, pg. 4: 1st full paragraph, add words “General Counsel” after “Acting”) it was VOTED:

The Board of Directors of the Massachusetts Broadband Institute hereby adopts the Draft Minutes of the Sixty Second Meeting of the Board of Directors held on April 12, 2019, in Worthington, Massachusetts, as the formal Minutes thereof.

Agenda Item II Report of the MBI Board of Directors Chairperson

Mr. Larkin provided a presentation updating the status of last mile towns, indicating which towns have networks that are fully and partially operational. He noted that New Braintree was the only outstanding town without an identified path to broadband access. Mr. Nicoli requested a discussion about New Braintree, and Mr. Baldino provided an update. Mr. Baldino stated that MBI released a solicitation to commission a high-level design and cost estimate for a fixed wireless network that could achieve coverage of at least 96% in New Braintree. Proposals were received and MBI is preparing to make an award. Mr. Baldino explained that MBI intends to utilize the results of the wireless study as a launching pad to engage with the New Braintree Selectboard. He indicated that the intent is to show New Braintree what can be done for them with just their MBI allocation of \$720,000.

A substantial discussion ensued about prior efforts that have been unsuccessful in generating interest from local officials in New Braintree. Mr. Baldino clarified that MBI will never force a community to adopt a particular broadband plan. Commissioner Peterson then stated there is a policy question to be debated and that it is too early to consider abandoning efforts to generate interest from New Braintree. Mr. Cronin asked if residents are interested in a solution even if the town fathers do not express interest. He indicated that residents could go to a town meeting with a warrant article to push the issue. Mr. Robinson noted that MBI receives sporadic inquiries about broadband access from New Braintree residents. Mr. Larkin indicated that he has reached out to Comcast and Charter to gauge their interest in submitting a proposal for New Braintree under the Flexible Grant Program.

Agenda Item III Award for Charter for Sandisfield

Mr. Larkin presented a recommendation to award a grant to Charter under the Flexible Grant Program to support broadband access for the Town of Sandisfield. Mr. Larkin reviewed the key grant terms and clarified, in response to a question from Dr. Clark, that the only difference from prior grant awards for cable company projects relates to the allocation of financial responsibility for the funding gap (the amount that the grant request exceeds the MBI allocation for the town). Ms. Kirk stated that the town will be responsible for 60% of the funding gap (instead of 50%) due to the relatively higher public investment required for this project. Mr. Baldino noted that the town will execute a contribution and assessment agreement with the Commonwealth to pay back the town's share of the project costs through annual local aid assessments. Mr. Larkin stated that the cost to be borne by the town is significantly less than the contribution that would have been required to build a municipally-owned broadband network.

Following a period of brief discussion, and upon a motion duly made and seconded, it was unanimously and without abstention 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 Comcast 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 \$2,607,800 for a privately owned and operated broadband network that shall provide access to broadband service to the Town of Sandisfield (“Town”) and shall consist of two components:**
 - Up to \$1,230,000 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 \$1,377,800 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 sixty percent of the Supplemental Funding amount to the Commonwealth; and**
 - Execution of a cable television license agreement by Charter and the Town.**

Agenda Item IV Award for Comcast for Tolland

Mr. Larkin and Mr. Baldino presented a recommendation to award a grant to Comcast to support broadband access for the Town of Tolland. Mr. Baldino highlighted the aspects of the proposed grant award that differ from prior awards for cable company projects, including: (1) the town will be financially responsible for 60% of the funding gap for the same reasons cited for the Charter-Sandisfield project; (2) due to concerns about potentially high make-ready costs, MBI and Comcast have agreed that Comcast will be reimbursed for make-ready costs up to a cap of \$627,760, thereby allowing all parties to benefit from any make-ready savings; (3) extraordinary make-ready costs, defined as costs that exceed the cap by more than 10%, will be borne by the town; (4) MBI will pay for a “red pole” analysis that will identify utility poles that may be

targeted for pole replacements; and (5) MBI and the town will share the cost of constructing communications infrastructure (most likely new utility poles) along a route of approximately 3.1 miles that will connect the center of town to neighborhoods in North Tolland. It was noted that the 3.1 mile infrastructure gap was unknown to Comcast at the time the company submitted its proposal. Ms. Kirk observed that the final group of unserved towns would present challenges and commended the staff for generating creative solutions for Tolland.

[Mr. Dubendorf arrived at 10:53 a.m.]

Following a period of brief discussion, and upon a motion duly made and seconded, it was unanimously and without abstention 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 Comcast 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. The MassTech Executive Director shall be authorized to expend up to \$2,280,412 to support the development of a privately owned and operated broadband network that will be owned and operated by Comcast and shall provide access to broadband service to the Town of Tolland (“Tolland Broadband Project”)**
- 2. Funding for the Tolland Broadband Project shall consist of the following components:**
 - A grant to Comcast to implement the Tolland Broadband Project at an amount that shall not exceed \$1,497,652 plus properly documented costs incurred by Comcast for make-ready work for said project;**
 - A grant to the Town of Tolland to support the installation of utility poles along a route of approximately three miles to support broadband access for the residents of North Tolland, with a preliminary estimated cost of approximately \$150,000;**
 - Procuring the services of a contractor that will perform a “red pole” analysis of utility poles in the Town of Tolland, with a preliminary estimated cost of approximately \$5,000;**
- 3. MassTech shall apply the full amount of the MBI allocation from the Massachusetts Broadband Incentive Fund for a last mile broadband solution for the Town of Tolland (\$830,000) with the balance of additional state bond funds to be provided by the Executive Office of Housing and Economic Development (“Supplemental Funding”)**

- 4. The expenditure of grant funds to Comcast and the Town of Tolland 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 sixty percent of the Supplemental Funding amount to the Commonwealth; and**
 - **Execution of a cable television license agreement by Comcast and the Town of Tolland.**

Ms. Dunlevy then asked for an update on the towns that are pursuing a municipally-owned broadband solution through grants that are being administered by the Executive Office of Housing and Economic Development. Ms. Kirk recommended waiting until the next meeting to get an update from Bill Ennen, who is serving as the project manager for these towns. Ms. Dunlevy expressed particular concern about towns, such as Heath, that are facing substantial make-ready costs overruns.

Agenda Item V Fiscal Year 2020 Operating Plan and Budget

Mr. Baldino presented the Fiscal Year 2020 MBI operating plan and budget. He reminded the Board that the Broadband Extensions Program was completed and resulted in Comcast extending broadband access in 9 underserved towns to at least 96%. Mr. Baldino discussed the plan for the remaining unserved last mile towns. He identified the key assumptions that inform MBI's projected last mile activities, which he noted are subject to change based on external factors that are beyond MBI's control. Mr. Baldino reviewed the portfolio of grants that MBI manages and highlighted projects, such as the WiValley fixed wireless project, that require a high degree of oversight and engagement by MBI staff.

Mr. Baldino led a discussion about the projected last mile outcomes, which include: (1) all unserved towns will be under contract for a broadband access project; (2) 29 of the 44 unserved towns will have broadband networks that will be serving residents (19 networks will be fully operational and 10 networks will partially lit); and (3) MBI staff will continue to engage with utilities to optimize make-ready schedules, to the extent practicable, through coordination, prioritization and implementation of innovative strategies.

Mr. Baldino reviewed the status of the MassBroadband 123 middle mile network. He noted that the network is operating under the network operator agreement with KCST that was reformed by the arbitrator last year. Mr. Baldino indicated that this resulted in a major shift in the allocation of financial benefits and burdens. He explained that bond funds will be used to cover network operating costs to third party vendors (pole attachment fees and railroad license fees, for example), other Mass Tech Collaborative costs related to the operation of the network, and certain capital improvement costs. He also noted that KCST will receive 90% of the network revenue. Mr. Baldino stated that MBI will seek to continue to improve its relationship with KCST, including establishing regular channels of communication and identification of mutually beneficial revenue generation opportunities. An extensive discussion ensued regarding

utilization of the network and the pricing structure. Mr. Baldino noted that the improved communication and level of cooperation with KCST, which recently included approval of a new dark fiber deal, provides a better environment to address matters, such as the pricing of network services.

After the presentation and discussion of the operating plan, Ms. Dixon and Ms. Kirk presented MBI's budget. Ms. Kirk explained the revised approach to budgeting that she has instituted at the Mass Tech Collaborative and she shared her expectation that each division should operate on a breakeven basis. She noted that each division's budget has been deconstructed to separate out and create transparency around core operating expenses. Ms. Kirk also mentioned that she is working with the finance staff on the development of a fund balance policy. At this point, Mr. Nicolai asked for a clarification of the legal budget and the allocation between litigation and program support. It was agreed that the motion to approve the budget, including litigation costs, would be taken up after the discussion of litigation strategy in executive session.

Mr. Larkin, in his capacity as Chairperson, stated that he would call for a roll call vote of the MBI Board of Directors to go into executive session to discuss strategy with respect to the to the ongoing litigation with G4S Technology and KCST USA/Asia NetMedia. Mr. Larkin indicated that the purpose for meeting in executive session to discuss these matters is that discussion of MassTech's strategy with respect to these matters in an open meeting may have a detrimental effect on MassTech's litigating position.

A roll call vote was taken to go into executive session. Mr. Larkin, Dr. Clark, Mr. Cronin, Mr. Dubendorf, Ms. Dunlavy, Ms. Kirk, Mr. Nicolai, and Commissioner Peterson voted in the affirmative to enter into executive session. All staff that were not needed for the litigation strategy discussion left the room. The meeting proceeded in executive session at 11:30 a.m. and continued in executive session until 12:10 p.m. After the conclusion of the executive session the meeting proceeded in open session. The proceedings that occurred in executive session are addressed in a separate set of meeting minutes.

Mr. Nicoli made a motion on the budget to reduce legal fees from \$325,000 to \$200,000, to encourage settlement of the bankruptcy. Ms. Charles Peterson seconded the motion. Mr. Dubendorf and Ms. Dunlevy opposed the motion and stated their concerns about imposing handcuffs on Ms. Kirk's ability to appropriately oversee the litigation strategy.

Following a period of brief discussion and upon a motion duly made and seconded, with Mr. Dubendorf and Ms. Dunlavy opposed to the legal fees amendment, it was VOTED:

The Board of Directors of the Massachusetts Broadband Institute (the "Institute") does hereby approve the Fiscal Year 2020 Budget and Operating Plan for the Institute (the "Plan"), as presented, and does hereby recommend that the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation ("MassTech") take final action to approve the Plan as part of MassTech's Fiscal Year 2020 consolidated budget. The Plan is approved in full satisfaction of the requirements of subsection (g) of section 6B of Chapter 40J of the

Massachusetts General Laws. The Board, subject to final review and approval of the Plan by the Executive Committee of the MassTech Board of Directors, hereby authorizes the Chair to submit the Plan for final approval to the Secretary of Housing and Economic Development and the Secretary of Administration and Finance as required by said subsection (g).

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 12:15 p.m.

A TRUE COPY

ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes – April 12, 2019 MBI Board of Directors meeting
2. Presentation – MBI Update on Last Mile Towns
3. Approval Item/Presentation – Flexible Grant Program – Charter – Broadband Service for the Town of Sandisfield
4. Approval Item/Presentation – Flexible Grant Program – Comcast – Broadband Service for the Town of Tolland
5. Fiscal Year 2020 Operating Plan and Budget for the Massachusetts Broadband Institute