

MINUTES

SIXTY FOURTH MEETING

of the

BOARD OF DIRECTORS

of the

MASSACHUSETTS BROADBAND INSTITUTE

[OPEN SESSION]

May 11, 2020
Boston, Massachusetts

The Sixty Fourth Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”) was held on May 11, 2020, via Zoom video conference, 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 meeting was convened in accordance with the Executive Order signed by Governor Baker on March 12, 2020, suspending certain provisions of the Open Meeting Law.

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, Frederick Keator, 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, Carolyn Kirk and Don Dubendorf.

The following Mass Tech Collaborative staff was present: Michael Baldino, Carolyn Kirk, Jennifer Saubermann, Lisa Erlandson, Brianna Weirs, Cornell Robinson and Kelly Kleanthous.

The following individuals attended the meeting: Bill Ennen, Executive Office of Housing and Economic Development; Lindsay DeRoche, 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 3:01 p.m.

Agenda Item I Approval of Minutes

Following a period of brief discussion, and upon a motion duly made and seconded, with one abstention (Fred Keator) it was VOTED:

The Board of Directors of the Massachusetts Broadband Institute hereby adopts the Draft Minutes of the open session portion of the Sixty Third Meeting of the Board of Directors held on June 7, 2019, in Boston, Massachusetts, as the formal Minutes thereof.

Following a period of brief discussion, and upon a motion duly made and seconded, with one abstention (Fred Keator) it was VOTED:

The Board of Directors of the Massachusetts Broadband Institute hereby adopts the Draft Minutes of the executive session portion of the Sixty Third Meeting of the Board of Directors held on June 7, 2019, in Boston, Massachusetts, as the formal Minutes thereof.

Agenda Item II Report of the MBI Board of Directors Chairperson

The Report of the Chairperson was deferred.

Agenda Item III Last Mile Updates

Mr. Larkin and Mr. Baldino presented an update on the status of the 44 unserved Last Mile Towns in western and central Massachusetts. Mr. Larkin informed the Board that all Last Mile Towns now have a potential path forward. He stated that New Braintree, the only town that did not have a path forward, is considering a proposal submitted by Charter Communications to provide broadband service to the town. It was noted that there are 21 Last Mile towns that have completed their projects and have fully operational networks (including the nine partial cable towns) and another 9 Last Mile towns are in construction and have partially lit networks that are serving some subscribers.

The following key points emerged during the discussion of make-ready issues and the impact of the COVID-19 pandemic: (1) Mr. Larkin stated that while the COVID-19 pandemic was impacting make-ready in the towns, MBI was continuing to press forward; (2) Mr. Robinson noted that there was a strong push by MBI and the Executive Office of Housing and Economic Development (“EOHED”) to get as many towns out of make-ready and into construction as possible by the end of 2019; (3) Mr. Robinson discussed the causes and impacts of make-ready delays on the construction of broadband networks; (4) It was noted that the utilities have notified MBI of extensions to estimated completion dates in numerous Last Mile towns and that these extensions have cascading impacts on other projects that are lower in the “First In First Out” priority order; (5) Mr. Ennen discussed the emergence of issues associated with residual

make-ready work, which involves issues discovered on utility poles that require remediation after licenses have been issued; (6) Mr. Ennen cited the Town of Ashfield as an example of a town that has experienced significant delays, with make-ready work taking 22 months to complete, which has been compounded by extensive deficiencies identified by Westfield Gas and Electric (“WG&E”) and Sertex, the construction contractor, which have yet to be fully addressed; (7) Mr. Ennen noted that Sertex had already started construction and had to demobilize crews due to the need for residual make-ready work and will charge Ashfield for the demobilization costs; (8) The MBI Board was informed that a new approach has been implemented that will involve “ride outs” being done to identify residual make-ready issues before the last licenses have been issued to ensure that the licenses are “clean and green”; (9) It was noted that Last Mile towns have to start paying pole license fees on licenses that have been issued even if residual make-ready has been identified but not completed; (10) Some Board members expressed frustration that make-ready issues would be discovered after the work was supposed to be completed, with Mr. Nicolai stating this was just “sloppy work”; (11) Mr. Ennen and Mr. Robinson stated that from the utilities’ perspective, residual make-ready is a small percentage of make-ready work considering the volume of poles involved in these projects; (12) Mr. Robinson identified changes to protocols and practices that have been implemented in response to the COVID-19 pandemic, including Verizon prohibiting crews from doing work outside of their garage’s service territory, the discontinuance of joint assists for new pole sets, and the cessation of installation work by some providers; and (13) Mr. Ennen mentioned that many Last Mile towns have timed their borrowing based on estimated completion dates for make-ready work, which resulted in borrowing being initiated prematurely due to make-ready delays.

Mr. Larkin indicated that residual make-ready was an ongoing issue that would continue to be discussed, and then asked Mr. Baldino to provide an update on progress in meeting the forecasts in MBI’s Fiscal Year 2020 Operating Plan for the 44 unserved Last Mile towns. Mr. Baldino stated that MBI entered FY20 with 6 towns already fully operational, and as of right now another 6 towns had completed construction and have fully operational networks. He indicated that 9 towns have partially lit network resulting in a total of 21 towns with networks that are partially or fully lit and serving residents. Mr. Baldino indicated that the FY20 Operating Plan forecasted that 19 towns would be have fully operational networks with an additional 10 towns having partially lit network. Mr. Baldino identified and discussed the towns that will not be completed by the end of FY20 as initially forecasted – Warwick, Petersham, Otis, Hancock and the four WiValley towns – Florida, Hawley, Monroe and Savoy. He mentioned that the project in New Ashford finished ahead of schedule. Mr. Baldino addressed the issues that are unique to wireless projects and he noted that wireless projects seem to take longer than the initial schedules indicated. He also mentioned that the delay in Otis is actually a good news story because the delay was triggered by the expansion of the project to include residents in the Otis Wood Lands private development.

Ms. Dunlevy then asked for an update on Wi-Fi Hotspot Program. Mr. Baldino indicated that there are Wi-Fi hotspots live in approximately 15 towns. He indicated

that more hotspots will be installed within the next few weeks and that Hancock and Middlefield were the only towns that had not responded to the offer for a free Wi-Fi hotspot. Mr. Keator inquired about costs, and Mr. Larkin stated that cost is \$1,500 per hotspot. Mr. Baldino indicated that MBI and KCST have waived the \$700 wholesale monthly recurring charge for the 250 Mbps circuit through September 1, 2020 and that participating internet service providers have waived their charges as well for the same period. Mr. Baldino indicated that a decision on whether to extend the program will be made during the summer.

Agenda Item IV Flexible Grant Program – Grant Award – Fiber Connect Towns of Egremont and Monterey (motion item)

Mr. Baldino presented a recommendation to award a grant to Fiber Connect under the Flexible Grant Program to support broadband access for the Towns of Egremont and Monterey. He explained that Fiber Connect has existing networks that cover a portion of both towns and that Fiber Connect has agreed to extend their networks to achieve coverage levels that will meet or exceed 96% in each town. Mr. Baldino noted there are high levels of satisfaction expressed by Fiber Connect’s existing subscribers with the services being offered. Mr. Baldino reviewed the history of engagement with Fiber Connect and town officials. He noted that each town ultimately rejected a prior proposal submitted by Charter Communications. He also mentioned that each town issued its own RFP for broadband services and that Fiber Connect was the only respondent. Mr. Baldino emphasized that each town has communicated that Fiber Connect is their preferred broadband solution and that each town does not have any alternative options at this point in time.

Because of concerns about the financial robustness of Fiber Connect, MBI was prepared to apply the payment in arrears guidelines. Mr. Baldino stated that Fiber Connect expressed an unwillingness to proceed under these guidelines. MBI is recommending a modified milestone payment approach coupled with safeguards for the protection of the investment of public funds that mitigate the construction and operational risks.

Mr. Baldino reviewed the key elements of the term sheet that MBI negotiated with Fiber Connect, including: (1) A milestone payment structure tied to tangible and verifiable progress on each project with the payments being back loaded to incentivize completion of each project; (2) A long term commitment by Fiber Connect of at least 10 years to operate and maintain the networks and offer broadband service in each town; (3) Fiber Connect shall provide a security interest in network assets or other comparable protection if Fiber Connect breaches its contract commitments or experiences financial distress and files for bankruptcy; (4) The approval of MBI and each town shall be required if Fiber Connect seeks to assignment its rights, duties or obligations or transfer ownership or control of the company or its networks; (5) Fiber Connect shall meet a 51% presubscription requirement, including existing subscribers, in each town; (6) Fiber Connect

shall limit its construction activities to a defined set of projects; and (7) Fiber Connect has made a commitment to support affordable services for low income residents.

During the ensuing discussion Mr. Baldino clarified that the term sheet was approved by Fiber Connect and that MBI will execute one grant agreement with Fiber Connect that will cover the network extensions in both towns. Mr. Larkin noted that Fiber Connect is seeking foundation funding to subsidize low income incentives. It was suggested that Fiber Connect should offer a low income internet product at a set price point. There was a consensus that the term sheet represents an appropriate balancing of interests.

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 Board of Directors of the Massachusetts Technology Park Corporation (“MassTech”) authorize the MassTech Executive Director to (1) award a grant to Fiber Connect 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) to support expanded broadband access in the towns of Egremont and Monterey through an extension of Fiber Connect’s existing broadband networks in each town; and (2) expend funds that shall not exceed \$2,210,000 in the aggregate (up to \$1,070,000 for the project in Egremont and up to \$1,140,000 for the project in Monterey). This authorization should be contingent on the MassTech Executive Director executing a grant agreement with Fiber Connect that contains terms and conditions that generally comport with the grant request, as presented. The Board of Directors acknowledges that the milestone-based payment structure represents an exemption from the funding provisions in the Payment In Arrears Guidelines and finds that said exemption advances the public interest in expanding broadband access in the Commonwealth.

Mr. Larkin requested that the Board of Directors convene in executive session to discuss litigation strategy. Mr. Larkin, in his capacity as Chairperson, stated that he would call for a roll call vote of the Board of Directors to go into executive session to discuss strategy with respect to matters involving ongoing disputes and litigation in which the Mass Tech Collaborative is currently involved with KCST USA and Axia NetMedia Corporation. He stated that the purpose for meeting in executive session to discuss these matters is that discussion of the Mass Tech Collaborative’s strategy with respect to these matters in an open meeting may have a detrimental effect on the litigating position of the Mass Tech Collaborative.

A roll call vote was taken to go into executive session. Mr. Larkin, Dr. Clark, Mr. Cronin, Mr. Dubendorf, Ms. Dunlavy, Mr. Keator, Ms. Kirk, Mr. Nicolai and Commissioner Peterson voted in the affirmative to enter into executive session. All

members of the staff that were not needed for the litigation strategy discussion exited the videoconference.

The meeting proceeded in executive session at 4:27 p.m. The proceedings that occurred in executive session are addressed in a separate set of meeting minutes.

Mr. Larkin, in consultation with the members of the Board of Directors, determined that the executive session should conclude at 4:54 p.m. At that point the meeting proceeded in open session.

Mr. Baldino mentioned that the Board of Directors will need to convene in June to approve the Fiscal Year 2021 Operating Plan and Budget for MBI. He also noted that the grant award to Charter will be on the agenda if the New Braintree Selectboard approves the Charter proposal within the next few weeks.

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 4:57 p.m.

A TRUE COPY
ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes – Open Session Portion of the June 7, 2019 MBI Board of Directors meeting
2. Draft Minutes – Executive Session Portion of the June 7, 2019 MBI Board of Directors meeting
3. Presentation – MBI Update on Last Mile Towns
4. Approval Item/Presentation – Flexible Grant Program – Grant Award – Fiber Connect - Towns of Egremont and Monterey