

MINUTES

FIFTY NINTH MEETING

of the

BOARD OF DIRECTORS

of the

MASSACHUSETTS BROADBAND INSTITUTE

[OPEN SESSION]

June 15, 2018

Westborough, Massachusetts

The Fifty Ninth Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”) was held on June 15, 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 Acting Executive Director Phil Holahan, Don Dubendorf, Fred Keator, Secretary for Administration and Finance Michael Heffernan (represented by Sean Cronin of the Division of Local Services), Paul Nicolai and DTC Commissioner Karen Charles Peterson.

The following MassTech staff was present: Michael Baldino, Brett Campbell, Marybeth Dixon, Lisa Erlandson, Phil Holahan and Jennifer Saubermann.

The following individuals attended the meeting: Brian Allen, Town of Princeton; Richard Bisk, Town of Princeton; Chris Lynch, Matrix Design Group; Nina Nazarian, Town of Princeton 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 10:05 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. Mr. Lynch indicated that he would be taking photographs during 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 Eighth Meeting of the Board of Directors held on December 12, 2017, 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 provided an update on the status of last mile projects being managed by MBI and the Executive Office of Housing and Economic Development (“EOHED”). He informed the Board that Comcast will complete the nine-town Broadband Extensions project in August. He also noted that Charter has completed construction in West Stockbridge but has encountered make-ready delays in Hinsdale and Lanesborough. Mr. Larkin noted that the cable company projects sponsored under the first round of private provider grants are making progress – Charter and Comcast have executed cable television license agreements with some of the towns and are pursuing make-ready work.

Mr. Larkin provided a brief overview of the status of the twenty two projects being funded through EOHED’s Last Mile Infrastructure Grant Program. He noted that Alford is the first municipal broadband network to be completed under the EOHED program. He indicated that most towns are at the design or make-ready stage of their project. Mr. Larkin clarified that the EOHED grant award amounts track the previously approved MBI allocations for each town. He reminded the Board that towns participating in the EOHED program are paying approximately two-thirds of the project costs. He noted that some towns have rejected a private provider solution in favor of a municipally owned network. Mr. Larkin reiterated that MBI is deferring to town judgments on the best path forward to achieving broadband access.

Mr. Larkin concluded his status report with an overview of the towns that are still exploring options. He mentioned that Florida, Hawley, Monroe and Savoy are considering wireless network proposals from WiValley and Redzone Wireless with preliminary indications of a preference for WiValley. Mr. Larkin responded to a question from DTC Commissioner Peterson and explained that Royalston has achieved positive results from its wireless pilot project and that customers are able to access broadband speeds that exceed the minimum standard of 25 Mbps download and 3 Mbps upload speeds. He also cautioned that towns like Monroe have very challenging topography for wireless networks. Mr. Larkin informed the Board that Crocker is no longer aligned with Fujitsu and is establishing partnerships with other companies. He indicated that Tolland and Sandisfield seem to be most interested in exploring a proposal from Crocker. Mr. Larkin stated that the next step with Crocker would involve the development of an Action Plan. He concluded by mentioning the status of Monterey (still working with Fiber Connect) and New Marlborough (reviewing proposals from their own RFP for broadband service with the goal of bringing a recommendation to their Selectboard within the next week).

Ms. Dixon presented the proposed Fiscal Year 2019 budget and operating plan for the MBI. She discussed the main programmatic assumptions for the Last Mile Program and the Broadband Extensions Program that informed the development of the budget. The budget reflects financial assistance expenditures of approximately \$8.9 million in FY19. Ms. Dixon mentioned that the budget for the operation of the MassBroadband 123 middle mile network assumes that Holyoke Gas and Electric will continue to be available to serve as the emergency network operator and that the initial round of expenditures will be made to implement a multi-year capital plan to upgrade network equipment. Ms. Dixon also reviewed anticipated FY19 project outcomes and the FY19 financial statements.

The following key points were made during the ensuing discussion: (1) MassTech believes that there are still funds remaining under the parental guaranty and Mr. Holahan noted that the U.S. Appeals Court addressed the methodology to be utilized to track expenses by Axia that may be attributed to the parental guaranty; (2) Concerns were expressed by MBI Board members about the ability of MBI to manage its existing programs with a substantially smaller staff; and (3) It was clarified that MBI has assumed that all unserved towns will at least be at the stage of submitting pole license applications or executing a cable television license agreement, depending on the nature of 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 “Institute”) does hereby approve the Fiscal Year 2019 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 2019 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).

Mr. Larkin and Mr. Baldino presented a recommendation to approve a grant award to Comcast 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 Worthington. Mr. Baldino explained that three broadband connectivity options were presented at a Worthington Town Meeting and that the Comcast proposal was the only option that passed, albeit by a narrow margin. Mr. Larkin discussed the new 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.

Mr. Baldino explained that there is uncertainty regarding the exact level of coverage that Comcast will be able to obtain because Comcast has yet to do any field work in Worthington. He clarified that Comcast’s objective is to achieve 96% coverage even though the Flexible Grant Program allows for lower coverage levels with the town’s consent. He explained that the proposed approach to deal with the coverage uncertainty will involve MBI making \$20,000 of the grant amount available to Comcast to support the field work and initial design and engineering work. Comcast will present preliminary coverage maps to Worthington and the Selectboard will decide whether to move forward with the project. Mr. Baldino noted that the \$20,000 payment to Comcast will not be deducted from the town’s allocation if the town decides not to move forward with 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 “Institute”) does hereby delegate to the MassTech Executive Director the authority to negotiate and 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 Comcast that shall not exceed \$2,213,809 for a privately owned and operated broadband network that shall provide access to broadband service to the Town of Worthington (“Town”) and shall consist of two components:**
 - Up to \$1,070,000, which represents the full amount of the Massachusetts Broadband Institute (“MBI”) allocation from the Massachusetts Broadband Incentive Fund for a**

last mile broadband solution for the Town of Worthington; and

- **Up to \$1,143,809 in additional state bond funds to be provided by the Executive Office of Housing and Economic Development (“Supplemental Funding”)**
2. **The terms relating to the structure of the grant payments and associated conditions, which may include a planning grant component, shall be established by the MassTech Executive Director in consultation with the Chair of the MBI Board of Directors, provided that the amount of the planning grant shall only be counted against the Town’s allocation if the project proceeds with Comcast;**
 3. **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.**
 4. **The expenditure of grant funds pursuant to this award, other than a planning grant, 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 Comcast and the Town.**

The grant award to Comcast and associated authorizations shall be subject to review and approval by the MBI Board of Directors.

Mr. Larkin presented a preview of the Payment in Arrears Guidelines that were developed by MBI staff and EOHEd that provides a framework to fund broadband projects proposed by private providers that have not demonstrated robust experience, financial resources and/or creditworthiness. Mr. Holahan noted that the guidelines were developed in response to a request from the Baker/Polito Administration to relax MBI’s standards in order to find solutions for the remaining unserved towns. Mr. Larkin and Mr. Holahan emphasized that MBI would defer to town judgments on their willingness to assume the risks associated with a particular project. Mr. Holahan also indicated that the guidelines leave room to determine the proper risk mitigation measures that go beyond the requirement that grant payments be withheld until construction of the broadband network is completed and the network is operational.

Mr. Dubendorf and Mr. Nicolai expressed concerns about conditioning payment on the requirement that at least 50% of all passed customers are receiving service. Mr. Larkin indicated that MBI’s goal was to utilize the requirement as a proxy for operational

sustainability. Some concerns were expressed about the extent to which MBI would be deferring to town judgments and the risks associated with potentially funding a poorly designed and built network. Mr. Nicolai noted that a town may need to undertake short-term borrowing as a result of the payment in arrears approach.

Mr. Larkin provided a preview of the broadband project in the Town of Petersham, which would be the first project to be funded under the payment in arrears guidelines, if approved by the Board. Mr. Larkin provided a high-level overview of the Petersham broadband network that would be designed, built and operated by Matrix Design Group. He noted that Petersham would be responsible for paying for make-ready work for the project and would be reimbursed through the MBI grant. He also noted that the town has an option to purchase the network from Matrix. Mr. Larkin clarified that the town will own the pole licenses. Mr. Baldino indicated that the issue of liability and indemnification is unclear if the town assigns the licenses to Matrix.

Mr. Lynch, an employee of Matrix Design Group, was granted permission to address the Board and discuss the status of the Petersham project. He discussed efforts to confirm that the agreement between Petersham and Matrix complies with state law and he clarified that the town will own any new poles that are erected. Mr. Lynch explained that the actual number of utility poles for the project far exceeded the estimate developed by the MBI. He indicated that the project had achieved a pre-subscription rate in excess of 67% and he noted that construction of the network is scheduled to be completed in December 2018. Mr. Lynch clarified that Matrix will maintain the utility poles owned by the town but that the town will be responsible for paying annual pole license fees and the cost of maintaining the required surety bonds. He indicated that Petersham will charge a MLP fee.

At the conclusion of the discussion, there was a consensus that a revised version of the Payment in Arrears Guidelines should be presented for approval at the next Board meeting that would substitute the requirement that at least fifty percent of passed customers are receiving service with a requirement that the project achieve at minimum pre-subscription take rate of 51% of potential customers supported by a cash deposit for each pre-subscription.

Three representatives of the Town of Princeton presented the town's request that MBI award a grant to the town to reimburse a portion of the make-ready costs incurred by the town – Richard Bisk, Selectboard Chair; Brian Allen, Municipal Light Department Manager; and Nina Nazarian, Town Administrator. The Princeton representatives made the following key points during their presentation to the Board: (1) lack of internet access is the primary concern of town residents, many of whom use cell service to access the internet; (2) the largest business in the town is the post office; (3) 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; (3) town officials reconsidered their options when MBI released the initial private provider solicitation and Charter and Comcast submitted proposals to serve the town; (4) the town initiated the cable television licensing process and selected Charter; (5) the town began submitting pole license applications to Verizon in 2015; (6) the town is requesting reimbursement for \$200,000 of

the approximately \$710,000 in make-ready costs incurred by the town; and (7) Charter incurred unexpected costs for make-ready work on an additional 286 poles in order to achieve the necessary clearances at a cost of approximately \$91,000; (8) in order to avoid slowdowns on the project the additional make-ready was performed by Princeton and billed to Charter; and (9) the methodology used to calculate Princeton's requested grant amount involved deducting the benefit that Princeton achieved by going from 96% coverage to 100% coverage.

Mr. Larkin clarified that Princeton's professional services allocation of \$640,000 was not utilized for the grant award to Charter. Mr. Baldino indicated that MBI has received a request from Charter for reimbursement of the additional \$91,000 in make-ready costs that they incurred. Ms. Nazarian indicated that she was not aware on any understanding on the part of Charter that MBI would reimburse Charter for the cost of the additional make-ready work. She clarified that any grant funds that Princeton would receive from MBI would go into the town's general fund. She also indicated that Princeton has a preference for receiving grant funds before the end of FY18.

[Mr. Cronin departed the meeting.]

Mr. Lynch was provided with an opportunity to discuss make-ready issues encountered by Matrix in Petersham. He indicated that the issuance of pole licenses from Verizon and National Grid has been slow but make-ready costs have fallen within Matrix's projections. Mr. Lynch mentioned that Petersham has to install two new pole lines or underground conduit to reach certain portions of the town. He indicated that Petersham is amenable to the payment in arrears approach. He also clarified that pre-subscriptions required a \$250 deposit.

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, Mr. Dubendorf, Mr. Holahan, Mr. Keator, 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 and members of the public left the room. The meeting proceeded in executive session at 12:15 p.m. and continued in executive session until 12:49 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.

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 12:50 p.m.

A TRUE COPY

ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes – Open Session of the December 12, 2017 MBI Board of Directors meeting
2. Presentation – MBI Status Report
3. MBI FY19 Budget and Operating Plan Approval Memo
4. MBI FY 19 Budget and Operating Plan
5. Approval Item – Flexible Grant Program Award – Comcast – Town of Worthington
6. Memo – Payment in Arrears Guidelines
7. Discussion Draft of Payment in Arrears Guidelines
8. Handout - Town of Princeton Letter to Peter Larkin (dated December 1, 2017)