

**MINUTES**

***FIFTY FOURTH MEETING***

of the

**BOARD OF DIRECTORS**

of the

**MASSACHUSETTS BROADBAND INSTITUTE**

**[OPEN SESSION]**

March 28, 2017

Westborough, Massachusetts

The Fifty Fourth Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”) was held on March 28, 2017, 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 Jay Ash (represented by Peter Larkin of the Executive Office of Housing and Economic Development), Tim Connelly, Don Dubendorf, Frederick Keator, Secretary for Administration and Finance Kristin Lepore (represented by Sean Cronin of the Department of Revenue’s Division of Local Services), Paul Nicolai and Karen Charles Peterson (represented by Joe Tiernan of the Department of Telecommunications and Cable).

The following Mass Tech Collaborative staff was present: Chris Andrews, Michael Baldino, Tim Connelly, Ed Donnelly, Phil Holahan and Brian Noyes.

The following individuals attended the meeting: Lindsey DeRoche, Department of Telecommunications and Cable; Bill Ennen, Executive Office of Housing and Economic Development; Cheryl Handsaker, Town of Charlemont; Carolyn Kirk, Executive Office of Housing and Economic Development; Chris Lynch, Matrix Design; Larry Parnass, Berkshire Eagle; Charley Rose, Town of Worthington; David Talbot, Berkman Klein Center for Internet and Society at Harvard University.

Mr. Larkin observed the presence of a quorum of the MBI Board of Directors and called the meeting to order at 12:32 p.m.

Mr. Rose from the Town of Worthington indicated that he intended to make audio recordings of the meeting. 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. Larkin welcomed Mr. Nicolai as the newest member of the MBI Board of Directors.

**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 Third Meeting of the Board of Directors held on February 27, 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 deferred.

**Agenda Item III      Discussion and Action Items**

Mr. Larkin provided an update on the status of the private provider RFP and presented a motion to implement grants awarded pursuant to the RFP. Mr. Larkin discussed the status of MBI's review of proposals submitted by private providers in response to the RFP, which in some instances have been revised and updated at MBI's request. He indicated that Charter and Comcast have been qualified under the RFP and he noted that the qualifications of the other RFP respondents are still being reviewed by MBI. Mr. Larkin explained that Frontier Communications appears to meet the threshold criteria established in the RFP and will be evaluated even though Frontier applied to a separate RFP released by a four town consortium in southern Berkshire County. Mr. Donnelly stated that MBI intended to review Frontier's proposal and will request additional information from Frontier, as needed. He mentioned that the four town consortium is currently negotiating directly with Frontier Communications.

As the discussion continued, Mr. Connelly noted that MBI has made considerable progress in reducing the cost of private provider proposals, increasing the number of towns covered by a private provider proposal and addressing the severability of towns within particular proposals. He indicated that Comcast has made its four town proposal severable. Mr. Larkin noted that Charter has expressed a strong interest in achieving a critical mass of towns and has designated Princeton as the only severable town within its seven town proposal. Mr. Connelly clarified that the Commonwealth is prepared to offer a broadband solution to the ten towns identified by Comcast and Charter at no cost to each town. A substantial discussion ensued regarding the level of interest among unserved towns to accept a private provider solution.

Mr. Holahan reviewed the proposed motion and indicated that the request for a delegation of authority to the Executive Director will allow MBI to move as quickly as possible to reach a deal with Comcast and Charter. He emphasized the need for flexibility based on the fact that the towns to be covered and the corresponding grant amounts are not finalized and are expected to evolve over time. Mr. Holahan also highlighted the role of the Secretary of the Executive Office of Housing and Economic Development (“EOHED”) in approving the amount of each grant award, which will ensure that MBI does not overcommit on grant awards. Mr. Holahan also discussed potential delays in the construction of broadband networks resulting from make ready work on utility poles and the cable television licensing process, which can take at least seven months to complete. He indicated that MBI will explore opportunities to accelerate broadband projects and will seek the approval of the EOHED Secretary to forward fund make ready work, where appropriate.

Mr. Holahan mentioned that the Town of Princeton is well along into their cable franchising process and has received proposed revisions to their cable television licensing agreement from Comcast and Charter. Mr. Holahan indicated that MBI could share these agreements with other towns. Mr. Larkin responded to a question from Mr. Keator and clarified that the proposed motion does not place a cap on the amount of the private provider grants to be awarded by the Executive Director. Mr. Larkin mentioned that the grant amount will vary from town-to-town and in some instances a town’s professional services allocation may also be needed to induce a private provider to build and operate a network in certain towns. Mr. Connelly noted that the professional services allocation is available for private provider grants in instances where the town does not intend to pursue a municipally-owned broadband network. In response to questions about the sufficiency of available bond funds, Mr. Larkin stated that the Baker-Polito Administration is committed to bringing a broadband solution to all unserved towns in western Massachusetts.

Mr. Nicolai proposed an amendment to the motion to expand the Executive Director’s delegation of authority to move forward with grant awards to any private provider qualified by MBI under the RFP. The MBI Board, upon a motion duly made and seconded, voted to amend the motion as proposed by Mr. Nicolai. Following a further period of discussion, and upon a motion duly made and seconded, it was unanimously and without abstention VOTED to approve the following amended motion:

**The Board of Directors of the Massachusetts Broadband Institute (“MBI”) does hereby recommend that the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation (“MassTech”) delegate to the MassTech Executive Director the authority to negotiate and execute a grant agreement with each provider that has been qualified under RFP for Last Mile Grants to Provide Broadband Service to Unserved Towns in Western Massachusetts (RFP No. 2017-MBI-02). The initial list of qualified providers consists of Charter Communications and Comcast. The Executive Director may augment this list from time to time as additional providers are qualified by MassTech.**

**Each grant agreement shall provide for the expenditure of funds from the Massachusetts Broadband Incentive Fund to support broadband service availability through privately owned and operated networks and in a manner that does not require a municipal capital contribution. The MBI Board of Directors acknowledges that the list of unserved towns that will be covered under this RFP will evolve over time based on negotiations with the providers.**

**The MBI Board of Directors further recommends that the following conditions and parameters be placed on the delegation of authority to the MassTech Executive Director:**

- 1. Where a town has been identified in more than one grant application, only one provider may be awarded a grant to serve the town;**
- 2. Each grant award shall only include town(s) that elect to participate in this grant program through an affirmative vote of each town’s Selectboard;**
- 3. The MassTech Executive Director and the Special Advisor to the Secretary of the Executive Office of Housing and Economic Development shall jointly recommend the amount of each grant award, which shall be subject to the review and approval of the Secretary of the Executive Office of Housing and Economic Development. The MBI Board acknowledges that negotiations with prequalified providers are ongoing and therefore the final grant amounts are subject to modification;**
- 4. Each grant award shall be conditioned on execution of a cable television license agreement by the provider and each participating town; and**
- 5. If approved by the Secretary of the Executive Office of Housing and Economic Development, the MassTech Executive Director may structure the grant payments to forward fund costs associated with make ready work on utility poles that are needed for each network for the purpose of accelerating broadband deployment in unserved towns.**

**6. The MassTech Executive Director shall provide timely updates to the MBI Board of Directors and the MassTech Executive Committee on grants awarded pursuant to his delegated authority.**

Mr. Donnelly provided a brief update on the status of the Broadband Extensions Program. He reviewed the history of the program and he informed the Board that Comcast is making good progress in extending broadband service to at least 96% in each of the nine partially served towns. He reviewed specific steps that Comcast has undertaken and he noted that Comcast may be able to complete the project at least 6 ahead of schedule if make ready work is completed expeditiously. Mr. Donnelly also presented the updated premise counts based on the reconciliation process that MBI completed with Comcast and he highlighted that Comcast will exceed its coverage requirements and cover more premises in many of the towns without any additional cost to MBI or the towns. It was noted that the feedback from the towns has been positive. It was clarified that installation costs and drop lengths are governed by each town's cable television license agreement with Comcast as supplemented by Comcast's general business practices.

Carolyn Kirk presented proposed modifications to the Last Mile Grant Program for unserved towns in western Massachusetts. Ms. Kirk provided background and context for the proposed modifications to the Last Mile Grant Program and summarized the key themes that emerged from testimony provided by representatives of 17 communities at a public hearing held in February in Worthington. She indicated that unserved towns are looking for faster progress, are seeking direct access to the construction and professional services allocations, and in many instances have expressed a desire to work directly with Westfield Gas & Electric. Ms. Kirk noted that the unserved towns are now in a position to evaluate their options in a transparent manner and choose a path forward. She noted that EOHEd will respect each town's determination. She indicated that the Last Mile Grant Program is for towns that want to build a municipally-owned network.

Ms. Kirk explained that the Last Mile Grant Program will be administered by EOHEd and modeled on the MassWorks grant program, which is an EOHEd program that provide grants to municipalities for certain types of infrastructure projects. She noted that the grant program will provide a structured process that will allow towns to access their construction and professional services allocations. She mentioned that the Last Mile Grant Program will build on the strong foundation established by MBI in leading towns through the readiness process while leveraging EOHEd's speed of execution. Ms. Kirk reviewed the elements of the grant application and the parameters for grant awards. She characterized the awards as block grants that will be tied to project milestones. She emphasized that towns are still paying two-thirds of the project cost and still need a "green light" letter. Ms. Kirk also noted that EOHEd will want to know that each town has considered the full cost of pursuing a municipally-owned network.

During the ensuing discussion, Board members inquired about the sufficiency of funding for the Last Mile Grant Program and private provider grants. Ms. Kirk reiterated

Mr. Larkin's earlier statement that the Baker-Polito Administration is committed to bringing a broadband solution to each unserved town in western Massachusetts. She acknowledged that the extent of any funding gap will become clearer as each unserved town makes a decision and she referenced the need to go the "extra mile" for the most challenging towns. Ms. Kirk also clarified that each town that pursues a municipally-owned broadband network will bear the risk of long-term sustainability of the network.

Ms. Kirk indicated that MBI's role going forward would involve oversight of the MassBroadband 123 middle mile network, awarding and administering private sector provider grants, implementing the MBI-Assist Program, and providing EOHEd with subject matter expertise. In response to a question about the technical expertise of the grant program review committee, Ms. Kirk indicated that MBI staff may be asked to serve on the committee that reviews grant applications after the program is transitioned to EOHEd. Mr. Ennen noted that many of the towns pursuing a publicly owned network intend to use Westfield Gas & Electric as their owner's project manager. Differing opinions were expressed on whether all unserved towns had the expertise to make complex technical and financial decisions about a broadband network. However, there was broad agreement that each town is responsible for its decision and the associated risks.

Ms. Kirk reviewed each element of the proposed motion and clarified that EOHEd needs the Mass Tech Collaborative's/MBI's authorization to access the MBI bond funds to cover the Last Mile Grant Program awards. She indicated that the authorization to expend up to \$20 million for Last Mile grants represents an outer limit for EOHEd grant awards and that EOHEd will only draw down on the bond authorization to fund grant awards that are finalized through fully executed grant agreements. Ms. Kirk noted that her expectation is that EOHEd will not expend the full \$20 million but clarified that the Comptroller requires that EOHEd demonstrates that the full amount of funding that could potentially be needed is secured. She suggested that it would not be appropriate to limit funding on a town-by-town basis to the existing allocations. Ms. Kirk explained that some towns are seeing project costs that are materially higher than the desktop cost estimates previously developed by Cartesian.

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 ("MBI") hereby recommends that the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation ("MassTech") take the following actions:**

- 1. Approve the establishment of the Last Mile Grant Program for Municipally Owned Broadband Solutions ("Grant Program"), as generally presented to the MBI Board of Directors at its March 28, 2017 meeting;**

- 2. Delegate to the Secretary of the Massachusetts Executive Office of Housing and Economic Development (“EOHED”), who also serves as Chairperson the MassTech Board of Directors, the authority to implement the Grant Program, including authority to execute and administer grant agreements under the Grant Program with unserved towns in western Massachusetts who wish to build and operate municipally owned broadband networks; and**
- 3. Authorize the expenditure of up to \$20,000,000 from the Massachusetts Broadband Incentive Fund for grants awarded under the Grant Program, provided that payment of any grant funds shall be made only with the approval of the Secretary of EOHED and the Secretary of the Executive Office for Administration and Finance.**

After the motion was approved, Ms. Kirk discussed next steps for the Last Mile Grant Program. She indicated that the goal is to announce the grant program in early April. Ms. Kirk mentioned that EOHED will process grant applications on a rolling basis and will strive to complete the review process for each grant application within two weeks.

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 a matter involving ongoing disputes in which the Mass Tech Collaborative is currently involved. He indicated that the purpose for meeting in executive session to discuss this matter is that discussion of the Mass Tech Collaborative’s strategy with respect to this matter 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, Mr. Connelly, Mr. Cronin, Mr. Dubendorf, Mr. Keator, Mr. Nicolai and Mr. Tiernan voted in the affirmative to enter into executive session. All staff that was not needed for the litigation strategy discussion left the room. The meeting proceeded in executive session at 2:05 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 MBI Board of Directors, determined that the executive session should conclude at 2:50 p.m. At that point the meeting proceeded in open session. 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 2:51 p.m.

A TRUE COPY  
ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes – February 27, 2017 MBI Board of Directors meeting
2. Proposed Motion – Private Provider Grants to Charter and Comcast
3. Presentation and Motion – Proposed Last Mile Grant Program for Municipally-Owned Broadband Solutions
4. Presentation – Private Provider RFP Update
5. Slide – Broadband Extensions Program Update