

**MINUTES**

***FIFTY SEVENTH MEETING***

of the

**BOARD OF DIRECTORS**

of the

**MASSACHUSETTS BROADBAND INSTITUTE**

**[OPEN SESSION]**

September 26, 2017  
Westborough, Massachusetts

The Fifty Seventh Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”) was held on September 26, 2017, 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), David Clark, Tim Connelly, Don Dubendorf, Linda Dunlavy, Fred Keator, Secretary for Administration and Finance Kristen Lepore (represented by Sean Cronin of the Division of Local Services), Paul Nicolai and Karen Charles Peterson.

The following MassTech staff was present: Michael Baldino, Tim Connelly, Ed Donnelly, Phil Holahan and Brian Noyes.

The following individuals attended the meeting: 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 12:30 p.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. No recordings were made of the meeting.

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

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

**The Board of Directors of the Massachusetts Broadband Institute hereby adopts the Draft Minutes of the open session portion of the Fifty Sixth Meeting of the Board of Directors held on July 25, 2017, in Lee, Massachusetts, as the formal Minutes thereof.**

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

The report of the Chairperson was delivered by Mr. Larkin. He provided an overview of the status of the partially served and unserved towns in north central and western Massachusetts. Mr. Larkin used a color-coded map to identify the towns that are participating in the Broadband Extensions Program, Private Sector Provider RFP and other private provider initiatives, and the Last Mile Infrastructure Grant Program that is managed by the Executive Office of Housing and Economic Development (“EOHED”). He informed the Board that Comcast is experiencing challenges with make-ready work but still expects to complete the buildout for the nine broadband extensions towns by the end of 2018. Mr. Larkin also noted that Charter is experiencing similar problems with make-ready work for the three town project involving Hinsdale, Lanesborough and West Stockbridge. He mentioned that MBI officials have met with state regulators and utilities to discuss make-ready issues. Mr. Larkin also informed the Board that two towns that participated in the Private Sector Provider RFP have awarded cable franchises (Princeton has awarded a cable franchise to Charter; Montgomery has awarded a cable franchise to Comcast). He wrapped up the discussion by mentioning the progress being made with the Last Mile Infrastructure Grant Program. He indicated that EOHED has distributed the initial tranche of grant funds to many towns that are pursuing municipally owned networks.

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

Mr. Donnelly presented a proposed Action Plan that lays out a process for engagement with Frontier Communications and three towns (New Marlborough, Sandisfield and Tolland) that conducted a joint procurement for broadband service. He reviewed the procurement process undertaken by the towns and the key elements of Frontier’s proposal, which would require the three towns to make a binding commitment to pay Frontier up to \$15.5 million over 15 years in return for Frontier’s commitment to design, build, own and operate a fiber-to-the-home broadband network that will cover 100% of the premises in each

town. Mr. Donnelly noted that Frontier increased its request for public funding after Monterey dropped out of procurement. He explained that the towns are negotiating directly with Frontier and each town would need to negotiate a broadband services agreement with Frontier and award a cable franchise to Frontier.

Mr. Donnelly reviewed the key elements of the Action Plan and noted that MBI will publicly post the Action Plan to determine if any other private providers would be willing to offer a proposal that meets or exceeds the proposal made by Frontier. He mentioned that the Action Plan clarifies the responsibilities of each town to identify and complete all legal, regulatory and approval requirements. Mr. Donnelly clarified that MBI will share the Action Plan with Frontier and the towns after vetting it with the MBI Board of Directors and the Executive Committee of the MassTech Board of Directors.

Mr. Donnelly discussed the potential benefits to the towns of moving forward with the Frontier proposal, including: (1) the towns will not bear any responsibility for operating the network; (2) Frontier will offer voice and video services to residents; (3) subscribers will receive the same services and upgrades as existing subscribers in the region (within a 100 mile radius of the towns). An extensive discussion ensued regarding potential risks associated with having broadband access funded through property tax bills if all residents are required to pay a fee for the right to access a free baseline level of internet service. Mr. Nicolai expressed concerns about treating broadband access in the same manner as fire and police and the potential for the towns to ask for additional state subsidies in the future. Mr. Cronin indicated that the proposed method of funding each town's obligations will not have cherry sheet consequences. It was clarified that Frontier will pass every house in each town, but it will be up to each resident to decide whether to take service, although the Town will be responsible to pay a \$35 monthly fee to Frontier for each premise regardless of whether the residents avail themselves of internet service.

Ms. Dunlavy observed that the towns have decided to tax themselves. Mr. Cronin concurred and observed that it is a policy question for each town's residents to determine if they want to tax themselves to cover the cost of internet access. Mr. Cronin also discussed the hybrid debt exclusion process that has been defined in a model home rule petition. Mr. Nicolai expressed concerns about operating and capital costs being covered by the same fee. Mr. Holahan clarified that the towns will need a home rule petition if they want to make a 15 year binding commitment to Frontier.

As the discussion continued, Dr. Clark addressed a question about network capacity raised by Commissioner Peterson. Dr. Clark explained that the concern with fiber-to-the-home networks is whether the provider will have sufficient backhaul capacity to meet peak demands on the network. Commissioner Peterson suggested that the grant agreement with Frontier should address backhaul, particularly since demand will grow over time, as smart home devices and applications become more prevalent. Dr. Clark also cautioned about the potential for a provider to throttle down speeds to subscribers. As the discussion concluded, Mr. Dubendorf expressed his general support for the type of framework proposed by Frontier.

Mr. Donnelly presented a proposed Direction Statement that MassTech would execute with Crocker Communications. He began by focusing on the differences between the Frontier and Crocker proposals, including: (1) Crocker will not offer video services; (2) Crocker will have a partner, Fujitsu Network Communications, that will be responsible for designing and constructing the networks; and (3) Crocker will not commit to the amount of the per premise monthly fee until the cost of make-ready and construction is finalized. Mr. Donnelly indicated that a participating town would have the option to opt out if the monthly per premise fee comes in higher than the town is willing or able to pay. He noted that the town will also have the option to redesign the project to a lower coverage level in order to bring down the amount of the monthly per premise fee. Mr. Donnelly indicated that the benefits to a town of the Crocker proposal are similar to the benefits that would inure from the Frontier proposal.

Mr. Holahan noted that Crocker has yet to approach any towns with their proposal. He also clarified that none of the towns that Crocker may approach have conducted a procurement for broadband service. Mr. Holahan explained that the Direction Statement will inform a town of the steps that need to be taken if a town is interesting in pursuing the Crocker proposal. Mr. Donnelly responded to a question from Mr. Cronin and indicated that the list of potential towns that Crocker reaches out to might be revised based on the fact that some towns in the pipeline for a grant from the EOHED may be reevaluating their options. Mr. Donnelly also noted that the Crocker Direction Statement will be publicly posted.

Mr. Connelly introduced the Flexible Grant Program discussion and noted that he is very pleased with the work of the MBI team to come up with creative options for the remaining unserved towns. Mr. Donnelly provided an overview of the proposed Notice of Funding Availability (“NOFA”) for the new Flexible Grant Program. He explained that the Flexible Grant Program would be put in place for the second round of private provider grants. Mr. Donnelly noted that the NOFA reflects a more flexible approach that is intended to solicit creative proposals. He indicated that MBI will work on a collaborative basis with providers and towns that expressly indicate their willingness to consider private provide proposals. Mr. Donnelly clarified that MBI will consider proposals that involve state and municipal funding as well as proposals that provide for coverage levels below 96% (if a town indicates its willingness to consider lower coverage levels). Mr. Larkin noted that the proposed approach will require the MBI Board to waive the 96% coverage requirement in the Last Mile Policy.

During the ensuing discussion, Mr. Connelly and Mr. Holahan emphasized that the MBI Board of Directors and the Executive Committee of the Massachusetts Technology Collaborative Board of Directors will likely be in the position of considering proposals submitted by companies with marginal finances, resources and credit worthiness. Mr. Dubendorf concurred that the MBI will face difficult decisions with regard to broadband solutions for the remaining unserved towns. In response to a question from Ms. Dunlavy, Mr. Larkin noted that the approach in the NOFA has been vetted with members of the western Massachusetts legislative delegation and that there was support for soliciting riskier proposals.

Mr. Keator expressed concerns about the risks of MBI potentially lowering its standards by opening up the process to consider proposals from the least credible companies. He suggested that prior to soliciting proposals, the MBI should meet with the remaining unserved towns to determine each town's interests, what funding (if any) they can invest, and what type of solution they are willing to accept. Mr. Donnelly noted that the towns that currently have a pathway forward represent approximately 87% of the unserved households and will achieve essentially ubiquitous coverage. He indicated that the remaining towns are the most challenging and that it is appropriate to consider lower coverage levels as part of the solution. Mr. Dubendorf noted that towns often make decisions that result in partial coverage and access to essential services, such as public water and sewer.

As the discussion drew to a close, Mr. Larkin informed the MBI Board of Directors that Carolyn Kirk would provide an update before the end of the year on the status of state bond funding for last mile towns. It was also clarified that the proposed motion does not constitute an authorization to award grants or expend funds.

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 (“MBI”) hereby takes the following actions and recommends that corresponding action be taken by the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation (“MassTech”):**

- 1. Endorses the publication of the Notice of Funding Availability for the Flexible Grant Program, as presented and as may be amended from time to time by the MassTech Executive Director.**
- 2. Waives the provision of the Last Mile Program Policy\*\* that for a project to be eligible for grant funding from MBI it must propose at least 96% residential coverage. This waiver only applies to those projects under the Flexible Grant Program where a town has expressly indicated its approval of a project offering less than 96% coverage.**

**\*\* The Last Mile Program Policy states in relevant part: “A town is eligible for up to its construction allocation if its project meets or exceeds the goals of the Last Mile Program Policy: The network must be sustainable, attain at least 96% residential coverage of the town residents and the network must offer speeds capable of providing the FCC standard definition for broadband of 25/3 mbps (megabits per second) speeds to each customer. This policy is independent of any technology a town utilizes for its project.”**

Mr. Larkin discussed the schedule of MBI Board of Directors meetings for Calendar Year 2018 and proposed that the Board meet on a quarterly basis. There was general support for a quarterly meeting schedule, although Mr. Nicolai urged the Board to meet on a

monthly basis until the litigation with G4S and Axia is resolved and a business plan for the MassBroadband 123 network is developed. Mr. Dubendorf noted that he is a member of an ad hoc advisory group that monitors the litigation and advises Mr. Holahan in his role as MassTech General Counsel.

[Mr. Cronin left the meeting.]

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. Mr. Connelly, Mr. Dubendorf, Ms. Dunlavy, 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 left the room. The meeting proceeded in executive session at 1:59 p.m. and continued in executive session until 2:22 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 2:23 p.m.

A TRUE COPY  
ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes – Open Session of the July 25, 2017 MBI Board of Directors meeting
2. Presentation – Update on MBI Broadband Extensions Program and Last Mile Towns and Private Provider Activities
3. Motion – Approval of Publication of Notice of Funding Availability for the Flexible Grant Program
4. Draft Action Plan – Frontier Communications Proposal to the Towns of New Marlborough, Sandisfield and Tolland
5. Draft Direction Statement – Joint Proposal by Crocker Communications and Fujitsu Network Communications
6. Draft Notice of Funding Availability for the Flexible Grant Program