

MINUTES

SIXTY SIXTH MEETING

of the

BOARD OF DIRECTORS

of the

MASSACHUSETTS BROADBAND INSTITUTE

[CONVENED AS A JOINT MEETING WITH THE EXECUTIVE

COMMITTEE OF THE BOARD OF DIRECTORS OF THE

MASSACHUSETTS TECHNOLOGY PARK CORPORATION]

November 18, 2020

Zoom Videoconference

The Sixty Sixth Meeting of the Board of Directors of the Massachusetts Broadband Institute (“MBI”), which was convened as a joint meeting with the Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation (“Mass Tech”), was held on November 18, 2020, via Zoom videoconference pursuant to notice duly given to the Directors and publicly posted on the Mass Tech Collaborative website with corresponding notice provided to the Office of the Secretary of State.

The following members of the MBI Board of Directors were present and participated: 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 Peter 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 members of the Mass Tech Collaborative Executive Committee were present and participated: Secretary of Housing and Economic Development Mike Kennealy (represented by Damon Cox of the Executive Office of Housing and Economic Development), Pam Reeve, Alexandra Drane, Anne Margulies and Julie Chen.

The following members of the Mass Tech Collaborative Staff were present: Carolyn Kirk, Stephanie Helm, Laurance Stuntz, Pat Larkin, Michael Baldino, Holly Lucas Murphy, Lisa Erlandson, Jennifer Saubermann, Brian Noyes, Brianna Wehrs, Kelly Kleanthous, Cornell Robinson and Cynthia Gaines.

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

Mr. Cox did a roll call of attendance for the Mass Tech Executive Committee, observed the presence of quorum of the Executive Committee, and called the meeting of the Mass Tech Executive Committee to order at 2:03 p.m.

Mr. Larkin then did a roll call of attendance for the MBI Board of Directors, observed the presence of a quorum of the MBI Board of Directors and the called the meeting of the MBI Board of Directors to order at 2:05 p.m.

Agenda Item I Approval of Executive Committee Minutes

After a period of discussion and upon a motion duly made and seconded, it was unanimously and without abstention VOTED by roll call:

The Executive Committee of the Board of Directors of the Massachusetts Technology Park Corporation, acting on behalf of the full Board pursuant to section three of Chapter Forty J of the General Laws of the Commonwealth, hereby adopts the Draft Minutes of the Two Hundred and Sixty Eighth Meeting of the Executive Committee, held on September 16, 2020, by Zoom videoconference, as the formal Minutes thereof.

Agenda Item II Approval of Massachusetts Broadband Institute Minutes

Following a period of brief discussion and upon a motion duly made and seconded, it was unanimously and without abstention VOTED by roll call:

The Board of Directors of the Massachusetts Broadband Institute hereby adopts the Draft Minutes of the Sixty Fifth Meeting of the Board of Directors held on June 16, 2020 by Zoom video conference, as the formal Minutes thereof.

Agenda Item III Report of the Chair of the Massachusetts Technology Collaborative Board of Directors

Mr. Cox delivered the report of the Mass Tech Chairperson. He opened the meeting by discussing updates on the COVID-19 situation in the Commonwealth, stating that cases in Massachusetts have been rising, causing the Phase 3 reopening guidelines to be dialed back. In response to a question about the budget from Ms. Chen, Ms. Saubermann stated that the Commonwealth's Fiscal Year 2021 budget is with the Senate.

Agenda Item IV Report of the Chair of the Massachusetts Broadband Institute Board of Directors

Mr. Larkin delivered the report of the MBI Chairperson. He provided an update on the status of the 53 unserved and partially served towns. Mr. Larkin indicated that there are now 21 towns which have completed projects with 6 additional unserved towns that will be completed with fully operational networks by the end of Calendar Year 2020. He noted that 10 more towns are

expected to be completed by the end of Fiscal Year 2021. He mentioned that some towns, such as Worthington, Middlefield and Wendell, will be completed ahead of schedule.

Mr. Larkin discussed the challenges associated with make ready work that has impacted project schedules, including residual make ready work that needs to be completed after pole licenses are issued and Covid-19 restrictions implemented by utilities. He indicated that substantial progress has made on make ready issues with the ongoing involvement of Lt. Governor Polito. He noted that all of the top priority Last Mile towns have been moved out of make ready and into construction. Mr. Larkin wrapped up his report by recognizing the contributions of a variety of partners to the success of the Last Mile Program, including Comcast, Charter, Westfield Gas & Electric and the Department of Telecommunications and Cable.

Agenda Item V Report of the Executive Director

Ms. Kirk delivered the report of the Mass Tech Executive Director. She presented a brief overview of MBI's internet connectivity initiatives that are being launched under the Governor's economic recovery plan. Ms. Kirk stated that Governor Baker had announced in his economic recovery plan that \$9.2 million was allocated to support access to the internet and devices. MBI's new programs are primarily focused on supporting the Commonwealth's workforce, with the needs of families with school-aged children being addressed by the Department of Secondary and Elementary Education. Ms. Kirk noted that MBI will be extending support for existing outdoor community wifi hotspots through June 30, 2021 for Last Mile Towns that do not have a completed broadband project. She indicated that MBI will offer eligible Last Mile Towns the opportunity to add an indoor community wifi hotspot at no cost to the towns. Ms. Kirk also mentioned that MBI will expand support for community wifi hotspots to Gateway Cities and the Outer Cape through a RFP that will be released soon. Through the RFP, MBI will ask providers to work with municipalities to identify appropriate locations for hotspots. This will supplement existing private provider initiatives, such as the Comcast Lift Zone Initiative.

Ms. Kirk explained the partnership with MassHire to address technology barriers being encountered by unemployed job seekers through subsidized internet access and devices as well as digital literacy tools. She discussed the involvement of Charter and Comcast to provide internet service that will be subsidized by MBI through June 30, 2021. MBI will also subsidize personal cellular hotspots with data plans from Verizon. Ms. Kirk indicated that many of the program details are still being finalized. She indicated that other populations, such as senior citizens may be reached through other initiatives that MBI could launch if funding is available after economic recovery initiatives are fully implemented. She noted that staff is working to fully roll out the MassHire program by the end of the year.

Ms. Kirk then provided an update on the work of the Manufacturing Emergency Response Team ("M-ERT"). She stated that 550 companies had come through the portal, and 50 made it through the gauntlet of the M-ERT, producing over 15 million Personal Protective Equipment ("PPE") items, including N95 masks, gowns, face shields, and swabs. She noted that the long term challenge remains to utilize a local supply chain instead of going back overseas when the pandemic ends. Ms. Kirk stated we are on track to produce 100 million items of PPE during the next year. Ms. Drane discussed the need for "emotional protective equipment" and the toll being taken on

frontline workers. She indicated that she would share articles on this topic with Ms. Kirk. Mr. Cox stated that Mass Tech's leadership on the M-ERT has been phenomenal. A discussion ensued about the potential impact of the incoming Biden Administration invoking the Defense Production Act and the challenges associated with addressing the shortage of gloves and getting manufacturers to pivot to produce gloves.

Agenda Item VI Consent to Change in Control of MassBroadband 123 Network Operator – KCST USA Stock Purchase by Local Linx

Ms. Kirk introduced the request that Mass Tech has received to approve a change in control of KCST USA, the MassBroadband123 network operator. She indicated that she felt it was important to inform the Mass Tech Executive Committee and MBI Board of Directors and seek their advice and guidance. She clarified that no formal action needs to be taken by either Board. She then requested that Ms. Saubermann present an overview of the situation and the potential path forward. Ms. Saubermann began by informing both Boards that Mass Tech has wrapped up all litigation related to the MassBroadband 123 network. She explained that United States Court of Appeals ruled against Mass Tech on the Axia parental guaranty and Mass Tech elected not to appeal that decision. As a result there is no longer a parental guaranty. Ms. Saubermann also noted that KCST came out of bankruptcy on October 30th and that Mass Tech and KCST negotiated stipulations that resolved certain outstanding financial matters.

Ms. Saubermann provided context and reviewed the key elements, issues and considerations associated with KCST's requested authorization for a change of control, which was formally submitted to Mass Tech on September 23rd. She explained that Mass Tech's consent is required under the Network Operator Agreement ("NOA"). A group of 3 employees and 2 other related partners have created a new entity called Local Linx, LLC and entered into a Stock Purchase Agreement for KCST USA that requires that the deal close by December 12th. Mass Tech has been working with KCST to obtain information in order to understand the impact of the change of control and has requested further documentation to evaluate the potential impact of this transaction. Ms. Saubermann indicated that Mass Tech is seeking input from the MBI Board and Mass Tech Executive Committee to inform Mass Tech's final decision regarding KCST's consent request. She clarified that under the terms of the proposed transaction, KCST USA, Inc. would become a wholly-owned operating subsidiary of Local Linx and that KCST would continue to operate the Mass Broadband 123 network and be bound by the existing terms and conditions of the NOA. During the ensuing discussion regarding the details of the transaction it was clarified that Local Linx would acquire KCST and Axia Connect Ltd and KCST will owe to Local Linx the \$15+ million shareholder loan currently owned to Bell Axia, but Local Linx's rights will be subordinated to those of Mass Tech under the NOA.

Mr. Baldino then discussed the status of the relationship between Mass Tech and KCST, stating that the network is operating effectively, revenue has gone up, and we have a positive working relationship with the KCST employees who will be the owners of Local Linx. Mr. Baldino stated that KCST has been proactive in implementing additional services and pricing to benefit customers and end users and cited the EDU+ Pilot Program and the Wi-Fi Hotspot Program for Last Mile Towns as examples of positive cooperation. He also noted that Mass Tech is reinstating the Integrated Planning Team ("IPT"), as required under the NOA, and are working with KCST on the 2021 annual operating plan and multi-year capital plan, that will be presented to the IPT. Overall it

is a positive dynamic. Mr. Baldino indicated that the financial and operational continuity concerns that Ms. Saubermann and Ms. Erlandson will discuss represent the key issues that should be resolved as part of the process issuing consent to the proposed transaction.

Ms. Saubermann and Ms. Erlandson then reviewed the impact of the change in control, the potential risks and benefits, and the key issues to be resolved. Mass Tech's due diligence process to evaluate the ability of the new entity to carry out the responsibilities of the NOA was discussed. The due diligence process includes information being gathered about the proposed organizational structure, updated financial statements and financial and cash flow projections and the status of key contracts, such as the Transitional Services Agreement with Bell Axia, that are required to ensure continuity of network operations.

Ms. Saubermann and Ms. Erlandson reviewed the potential risks associated with the proposed transaction, which include the potential for self-dealing; concerns that KCST's cash balance may not be sufficient to operate the network and the company declares bankruptcy again; and operational concerns associated with the fact that the Transitional Services Agreement with Bell Axia has not been executed and a new proposed construction and maintenance subsidiary may be created that could supplant existing KCST contractors. It was clarified that Mass Tech will not receive any fees from KCST if the network does not generate net income for KCST.

During the ensuing discussion, Ms. Erlandson clarified that Mass Tech has received the 2019 net operating income payment from KCST, which is subject to a reconciliation process to determine if correct amounts were paid. She indicated that KCST would receive a credit against future year's payments if it is determined that the 2019 payment was too high. Ms. Saubermann responded to an inquiry from Mr. Dubendorf and discussed efforts to understand the cost structure with affiliates, contractors and vendors. Ms. Reeve inquired about the governance structure and Ms. Saubermann stated that Local Linx has expressed a willingness to create a three member compensation committee that will have two independent members and will review executive compensation.

When asked about the risks if Mass Tech does not consent, Ms. Saubermann indicated that it could result in litigation, as well as the need to quickly transition to a new network operator. She noted that it was not clear if Holyoke Gas and Electric would still be able to step in and serve as the emergency network operator, if needed. Ms. Reeve inquired about Mass Tech's assessment of the KCST management team's capabilities and intentions. Ms. Erlandson and Ms. Saubermann responded and stated that KCST seems to want a positive relationship moving forward, they say all the right things and have recognized the importance of increased transparency. However there are still issues that need to be addressed. Ms. Saubermann also clarified the respective financial responsibilities of the parties under the NOA, as reformed by the arbitrator, which runs through August 2023.

Ms. Saubermann refocused the discussion on the key issues that still need to be resolved. She addressed the Transitional Services Agreement between KCST and Bell Axia that must be in place as required by the Plan of Reorganization that was approved by the Bankruptcy Court. It was noted that Bell Axia provides many of the core operational functions for the MassBroadband 123 network, such as the Network Operations Center. As noted earlier, the Transitional Services Agreement has not been executed. Ms. Saubermann then turned to the liquidity concerns,

particularly concerns about whether sufficient cash will be available to cover expenses after the \$1.25 million payment to Digital Connection under the Stock Purchase Agreement. She explained that Mass Tech is seeking a commitment letter from the bank that KCST is working with to secure a line of credit. Ms. Erlandson noted that the line of credit would satisfy Mass Tech's concerns. Ms. Saubermann addressed concerns about the negative impact on KCST's net income that could result from the fact that Local Linx owners will also be the management team at KCST and will be setting their own compensation. Since KCST does not financially benefit from network profitability, an increase in compensation is one way that Local Linx owners can see a benefit from the proposed transaction. Ms. Saubermann wrapped up by addressing concerns about self-dealing triggered by Local Linx's intent to create a construction and maintenance subsidiary that would provide services on the MassBroadband 123 network that would potentially replace services currently provided by Phoenix and Mass Network Services.

Ms. Saubermann described a path forward to providing consent that involves KCST providing the following information to the satisfaction of MassTech, we are recommending consent: (1) An executed Transitional Services Agreement between KCST and Bell Axia for the remaining period of the NOA with terms, and at amounts, equal to or better than those in the Plan of Reorganization, (2) Resolution of questions related to the repayment to Digital Connection; (3) Receipt of a commitment letter including the form of the credit line from Key Bank, if KCST's cash balance is used to pay the loan to Digital Connection; (4) Q1 and Q2 2020 financial statements as modified and with agreed upon line item detail accompanied by an Officer's Certificate; (5) Clarifications and corrections on certain expense projections included in the 2021 Annual Plan; and (6) Receipt of copies of agreements with current maintenance providers, Phoenix & Mass Network Services. Ms. Saubermann identified additional parameters that would be beneficial, including receipt of KCST's post transaction pro forma balance sheet, resolution of the 2019 payment reconciliation process, and a commitment by Local Linx to establish an Executive Compensation Committee with two independent board members.

Ms. Saubermann then indicated some new information had come to light since the creation of the presentation that was sent to the Boards. Specifically, the Transitional Services Agreement is in progress and should hopefully be signed by Bell Axia within four weeks. She informed the Boards that, in the meantime, Bell Axia is willing to sign a letter of intent stating they intend to execute an agreement with terms materially similar to those in the Plan of Reorganization. Ms. Saubermann also noted that there are more details on the line of credit to be provided by Key Bank that will involve a \$350,000 revolving five year line of credit that auto-renews. It was also noted that the \$1.25 million payment to Digital Connection will no longer be categorized as a loan repayment. The money will still be transferred to Digital Connection, and they will change the information attached to the Stock Purchase Agreement regarding disposition of Intercompany Liabilities. Ms. Erlandson noted that Local Linx is also exploring SBA loans.

Ms. Saubermann reviewed the relevant provisions from the NOA. A discussion ensued about the consent request with both Boards. The following key points and issues were raised; (1) there was a discussion of KCST's potential tax liability from the terms in the Stock Purchase Agreement; (2) Local Linx's potential long term interest in acquiring dark fiber and launching the construction and maintenance subsidiary was discussed; (3) the value to Mass Tech of having the right to approve KCST's annual plans and budget was recognized; (4) Ms. Saubermann indicated that if we do reject the consent request we would most likely end up in litigation; (5) concerns about

pricing on the MassBroadband 123 network were raised by members of the MBI Board of Directors and Mr. Baldino discussed KCST's efforts to revise pricing and services to address the needs of specific markets, starting with the educational sector and municipalities building their own fiber to the premises networks; (6) Ms. Erlandson mentioned that one of the roles of the Integrated Planning Team is to review network pricing and services; (7) Ms. Kirk noted that systemic issues associated with the MassBroadband 123 network can be addressed when Mass Tech issues a RFP for network operator services; (8) Mr. Nicolai concurred with the need to issue a network operator RFP and pursue a new financial deal structure; (9) members of both Boards emphasized the importance of the Transitional Services Agreement and the creation of a compensation committee with independent members; (10) Ms. Kirk emphasized the importance of addressing KCST cash flow concerns; and (11) Ms. Kirk noted that there is finally funding in the capital plan for the MassBroadband 123 network and that this will help cover the cost of planning for the future of the network.

Ms. Kirk noted that Ms. Saubermann has advised her that she has the authority as Executive Director to make a final decision on the consent request. She indicated that she wanted the advice and guidance of both Boards to help inform her decision. There was a general sense of both Boards that they agreed with the identification of the important open issues and the path forward laid out by Ms. Saubermann and Ms. Erlandson. Members of both Boards commended Ms. Saubermann and Ms. Erlandson for a well thought out presentation that addressed a complicated set of issues in an understandable manner.

There being no other business to discuss and upon motion duly made the Mass Tech Executive Committee voted by roll call vote to adjourn the Mass Tech Executive Committee meeting at 3:40 p.m.

There being no other business to discuss and upon motion duly made the MBI Board of Directors voted by roll call vote to adjourn the MBI Board meeting at 3:42 p.m.

A TRUE COPY
ATTEST: (Secretary)

DATE:

Materials and Exhibits Used at this Meeting:

1. Draft Minutes for the September 16, 2020, Mass Tech Collaborative Executive Committee Meeting
2. Draft Minutes for the June 16, 2020, Massachusetts Broadband Institute Board of Directors Meeting
3. Presentation- MBI Last Mile Update
4. Presentation- Overview of MBI's Economic Recovery Internet Initiatives
5. Presentation- Consent to Change in Control of MassBroadband 123 Network Operator – KCST USA Stock Purchase by Local Linx