

Vermont Community Broadband Board (VCBB)

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VCBB Response to Report from State Auditor Office

Executive Summary: The Vermont Community Broadband Board (VCBB) welcomes the oversight and feedback provided in the March 21 report *Universal Broadband in Vermont: Managing Risks* from the State Auditor's office. Vermont's universal broadband service buildout is one of the biggest infrastructure projects in state history, and it is the Auditor's responsibility and duty to oversee a project of this scale. The report effectively identifies areas for improvement, while also highlighting the progress VCBB is making toward mitigating potential risks and advancing the state goal of universal broadband service.

VCBB has been actively engaging with the Auditor since late last year and generally agrees with the results of the investigation. As a new organization, VCBB appreciates the outside look into the processes we are developing and the challenges ahead for the VCBB and Vermont policymakers. Below are VCBB's responses and elaboration on each of the risks identified in the report.

Risk 1. Some CUDs Face a Potential Construction Funding Gap in Calendar Year 2024 Which Could Halt Construction Mid-stride if Additional Funds Are Not Identified

- VCBB is meeting with each CUD to build contingencies for this risk.
- There are multiple plans and opportunities to address any gaps. To highlight just a few of them:
 1. **NTIA Middle Mile Program.** If awarded, this federal grant will provide Vermont with \$117M and cover the construction of much of the Middle Mile infrastructure that needs to be built by the CUDs to complete their universal service plans.
 2. The **Northern Borders Regional Commission** issued their RFP for the **Catalyst Program**. All CUDs are being encouraged to apply for this funding which will help with the funding gap. If a CUD receives the grant, it will arrive in early fall mitigating risks associated with the potential gap. The grants are up to \$3M.
 3. **USDA Connect Communities.** USDA is currently accepting applications for grants to build community-oriented, high-speed internet networks for people in rural areas. The Department is making up to \$79 million in grants available federally under the Community Connect program.

Risk 2. CUDs May Struggle to Access Needed Construction Materials

- In Fall 2021, the state facilitated an agreement between the CUDs, the Vermont Community Foundation, and the Vermont State Employees Credit Union in which the CUDs obtained a Letter of Credit allowing them to prepurchase over 2,000 miles of fiber optic cable. Lead times for the purchase of eligible, domestically produced, fiber optic cable are currently as high as 52 weeks. Prices for purchase in 2022 were 30-40% higher on average than the prices the CUDs accessed with this deal, saving over \$2 million.
- The VCBB has continued this approach through the PrePurchase of Specified Lead Time Materials grants. The VCBB set aside \$4M for this effort, which can be used to access fiber and other long lead time materials. VCBB recognizes that the long lead times on fiber optic construction materials is a national challenge and continues to engage with partners to mitigate this risk.

Risk 3. Construction May be Slowed by a Lack of Qualified Construction Workers

- VCBB is mitigating this risk by staying ahead of other states with our Workforce Development Plan, which has been in the works since September 2022. Maintaining this advantage is key to addressing both the materials and the labor challenges every state will be experiencing considering the amount of federal money going into fiber broadband expansion.
- VCBB has been holding ongoing meetings with the electric utilities, who are helping provide necessary resources through third-party contractors.

Risk 4. The Tension Between the VCBB Supporting the CUDs and Ensuring They are Viable Risks Allowing Any Weaknesses in CUD Business Plans to Persist and Deepen

- VCBB's job is to encourage the CUDs to be both dynamic and pragmatic in their construction and business plans. This pragmatism may require the CUDs to adjust build plans, pursue partnerships, or even pursue mergers with other CUDs. Every CUD has already shown the ability to make hard choices and shift plans as circumstances change. VCBB and the CUDs accept that a tension inherently exists.
- Our Executive Director, who has a track record of turning around businesses and making them successful, monitors and meets with each CUD. These meetings ensure that contingency plans are in place to cover all conceivable challenges.

Risk 5. Reliance Upon CUDs with Varying Levels of Expertise and Capacity May Delay Broadband Service to Some Vermonters, Lead to Increased Spending, and Establish Inequitable Policies and Access

- The VCBB has worked hard alongside the CUDs to ensure that they now have robust staffs in place with high levels of expertise.
- The CUDs have always made decisions with the assistance of experienced consultants. Capacity and expertise for the CUDs were the focus of both the

Broadband Innovation Grant program and the PreConstruction Grant Program. Now that most CUDs have progressed past their initial start-up phase, additional scrutiny and requirements have been implemented to ensure Construction Grant funds are only awarded to grantees with adequate oversight in place.

- **Bullet one: affordability-** ACP participation is required as a gating criterion for grantees. VCBB is aggressively seeking additional grant funds (FCC Challenge) and waivers (BEAD) with the purpose of increasing public funding and therefore decreasing cost of monthly service to customers. VCBB is also actively leading on Vermont's digital equity efforts.
- **Bullet two: CUD self-attestations** – Act 71 charged the VCBB with monitoring, developing, and funding the CUDs' capacity, so the VCBB is well aware of the status of these efforts. From the early stage of CUD development, corroborative inquiry, along with the CUDs' presentations and interviews with VCBB's Board and the compiled knowledge of VCBB staff working to build these groups from their inception, were and are valid and necessary tools to assess capacity, financials, reporting adequacy, and guide judgments of funding awards.
- As the CUDs have matured, they have been required to provide the VCBB with confirmation of Financial and Monitoring Controls in compliance with the provisions of their grant agreements. Additionally, internal control assessment is included within the proposed Compliance review Framework that the VCBB is developing. Further, in 2022 most grantees exceeded the \$750,000 expenditure threshold, requiring a Single Audit be performed. As such, internal control review will be performed as part of the Single Audit process with all Single Audits undergoing review by the VCBB once complete. If any findings should be presented, a corrective action plan will be required, and a Decision Management Letter will be issued by the VCBB with corrective actions reviewed for appropriate remediation.
- **Bullet three: CUD flexibility** – VCBB was created to support CUDs and ensure the oversight and accountability objectives of Act 71, but VCBB was not designed to formally regulate. Under State Law, CUDs are independent municipal organizations governed by a representative body, and our programs respect that CUD decisions reflect the will of the communities they serve.
- **Bullet four: take rates** – VCBB's aggressive work on digital equity is intended to lower barriers to accessing broadband service across demographic and geographic differences. Every Vermonter deserves access to broadband; take rates should ultimately reflect need as digital equity work progresses.
- **Bullet five: CUD reports** – VCBB is standardizing grant reporting and implementing a new grant management system. VCBB also just made an offer to a candidate to fill the position of Director of Regulatory Compliance and Grant Management to further focus on this issue.

Risk 6. With the Exception of the Early VCBB Fiber Purchase, CUDs Have Not Been Partnering for Procurement of Goods and Services, Risking Higher Costs and Inferior Outcomes

- The Fiber purchase is not the only example of CUDs working together or the VCBB providing shared services. VCBB has made available shared legal and regulatory assistance and has provided support for VCUDA to convene the CUDs bi-weekly to share notes and best practices. VCBB is also currently in the process of implementing a suite of shared services to provide additional expertise and cost efficiencies to the CUDs.

Risk 7. Statutory Confidentiality Provisions Shield Some CUD Decision-making from the VCBB, Policymakers and Residents of the Member Municipalities Despite Receiving Tens of Millions in Public Funds

- CUDs have never withheld any decision-making information from the VCBB. The CUDs have been forthcoming with information and have always released confidential documents to the VCBB upon request and with assurances of maintained confidentiality as allowed under law.
- CUDs follow Vermont's open meeting law and public records law, just like any other public body. CUDs are not afforded any additional confidentiality provisions beyond the standard public records exemptions.
- The design of the CUDs is far more transparent and provides far more accountability than past models of broadband internet buildout, where private providers had no disclosure requirements.

Risk 8. Lack of Affordability Definitions and Requirements Threaten to Reduce Service Connections, Undermine CUD Business Plans, and Create Regional Inequities

- VCBB is aggressively seeking additional grant funds (FCC Challenge) and waivers (BEAD) with the purpose of increasing public funding and therefore decreasing cost of monthly service to customers. The unserved areas in CUDs are expensive to serve, and that is why they remain unserved. Every \$50 million in grants that Vermont secures can cut customer costs by \$10/month.
- VCBB is monitoring and leading on affordability and digital equity issues, and there may be a need for legislative action in the future.

Risk 9. The Firm the VCBB Employs to Evaluate CUD Business Plans Has Also Consulted for a CUD and Does Not Appear to be Prohibited from Consulting for Others, Raising Conflict of Interest Risks

- In the summer of 2021, CTC did two small projects for a CUD. CTC has declined any work for CUDs since becoming a contractor for the VCBB and will not bid on future individual CUD work while retained by VCBB.

Risk 10. BEAD's Irrevocable Letter of Credit Requirement is Not Designed for New and Small Telecommunications Entities

- VCBB agrees this a major threat inherent within the National Telecommunications and Infrastructure Administration (NTIA)'s BEAD requirements. As it currently stands, the Letter of Credit requirement makes it incredibly difficult for small ISPs or public entities to participate in the BEAD program.
- The VCBB is investigating every possible avenue to resolve this issue, including aggressively pursuing waivers and exemptions with the NTIA. VCBB has yet to receive clarity from the NTIA, and waivers will not be issued until there is an actual proposal submitted. VCBB has also engaged financial institutions to learn about the viability of providing such letters.
- VCBB has engaged our congressional delegation and other states' broadband offices and has provided feedback to the NTIA that funds would be better directed toward serving individuals with broadband than purchasing letters of credit.
- For Vermont's Middle Mile Program application, VCBB worked with the State Treasurer and the legislature to provide the NTIA with substantive, but not technical, compliance to the requirement in the form of a properly condition escrowed account. It is possible that this solution could satisfy the NTIA for the BEAD program. VCBB will keep the legislature updated as we gain more clarity on possible solutions.

Conclusion

The VCBB recognizes the urgency of getting every Vermonter connected. We appreciate the work of the Auditor's office and will be incorporating their feedback into our processes, oversight, and planning.

Please do not hesitate to reach out with any further questions or clarifications. Thank you for your time and attention to this matter.