

MINUTES

Special Meeting of the Board of Directors of the Eastern Shore of Virginia Broadband Authority

June 18th, 2015

Board members in attendance were: Steve Miner, Pete Lalor, Elaine Meil and Katie Nunez.

ESVBA management participating in the meeting who were in attendance: Nicholas Pascaretti and Leah Hoopes (Secretary)

Members of the public attending were:
Keith Montgomery and Bob Nichols

Steve Miner called the meeting to order at 2:08 pm.

Mr. Miner stated that there were two major pending issues from the last meeting. First that Mr. Pascaretti was to meet with DNG Group, and second that Mr. Pascaretti was going to check with the ESVBA's legal counsel regarding DNG's proposal. Mr. Pascaretti informed the BOD that he met with DNG since the last meeting. Mr. Miner told the public present at the meeting to feel free to ask questions. Mr. Pascaretti informed the BOD that legal counsel stated that any agreement with special terms for a single provider would have to be through a Public Private Partnership. Mr. Miner asked if some available options be white boarded. Mr. Montgomery gave the BOD an update regarding DNG's progress. Mr. Miner asked if DNG's coverage is based on census blocks or tracts. Mr. Miner asked Mr. Montgomery if DNG is looking to leverage federal assets and resources as part of DNG's build out plan on the Eastern Shore. Mr. Montgomery states they think that USF funds in 2016 may be available and that DNG would like to be eligible for them and petition for these funds. Mr. Montgomery stated that Mr. Nichols met with the FCC and the FCC has encouraged DNG to reapply for funding. Ms. Nunez asked about the recent power outages and Mr. Montgomery stated that they use battery back-up. Mr. Miner stated that his goal of the meeting is to determine what options there are for complete broadband coverage on the Eastern Shore. Note, several options were discussed and white boarded. Please see attached. Mr. Pascaretti informed the BOD that while the

ESVBA has some excess IP bandwidth, that they currently only provide dedicated IP access and cannot use this contracted IP bandwidth for use by others. Mr. Pascaretti stated that the ESVBA may have to develop a new IP product that is not dedicated but oversubscribed. Mr. Lalor voiced some concern regarding the importance of any PPEA and that the ESVBA should be careful. Ms. Meil asked if DNG is favorable to a PPEA and Mr. Nichols stated that yes they would work within the PPEA guidelines. He voiced concern regarding the length of time of the PPEA process.

CLOSED SESSION

Motion to enter into closed session according to Section 2.2-3711 of the Code of Virginia of 1950, as amended ;) Paragraph 7: Consultation with legal counsel and briefings by staff members, consultants, or attorneys pertaining to actual or probably litigation, and consultation with legal counsel employed or retained by the Authority regarding specific legal matters requiring the provision of legal advice by counsel. Paragraph 34: Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6 made by Mr. Lalor, seconded by Ms. Meil. The following board members were present Mr. Lalor, Mr. Miner, Ms. Meil and Ms. Nunez and voted affirmative.

After closed session, the Chair reconvened the meeting. Motion was made by Ms. Nunez, seconded by Ms. Meil that the Board had entered the closed session for that purpose as set out in Paragraph 7 and Paragraph 34 of Section 2.2-3711 of the Code of Virginia of 1950, as amended. Roll call vote taken Vote was that no other business discussed than as advised in Paragraph 7 and 34. The following board members were present Mr. Lalor, Mr. Miner, Ms. Meil, and Ms. Nunez and voted affirmative.

MOTION

Mr. Lalor moved to have the letter from Steve Durbin published on the ESVBA website with the Minutes. Ms. Nunez seconded. Motion passed unopposed.

Under Old Business from the May meeting, Mr. Pascaretti asked that the BOD consider oversubscription be allowed on the ESVBA's WISP EVPL pricing model and that the MRC for the user network interface at the tower end be eliminated with the caveat that any oversubscription issues are strictly those of the service provider.

MOTION

Mr. Lalor moved to adopt the modified WISP EVPL Network Pricing Model with an effective date of July 1st, 2015. Ms. Nunez seconded. Motion passed unopposed.

ADJOURNMENT

Ms. Nunez moved to adjourn at 4:04pm. Mr. Lalor seconded. Motion passed unopposed.

These minutes were approved at the July 16th, 2015 meeting of the Board of Directors of ESVBA.

Elaine K. Neil, Vice Chairman
Presiding Officer

Copy teste:

Leah Hoopes
Leah Hoopes, Secretary

1) Public PRIVATE PARTNERSHIP (100%)

a) ES&BA includes

b) unsolicited proposal by vendor

2) Stay the course and ^{max} modify the existing program

3) Extend fiber to outlying areas

4) #3 + install towers

5) FTTH (GPON) most expensive ALL ES&BA

6) WISP EAPL: change pricing

7) IP New Product Post test

Jun 17

to npascaretti

Nick,

Please accept this in follow up to our discussion last week. As I understand the question, the Authority has been approached by a provider who has offered to ensure 100% broadband coverage on the Eastern Shore, provided that the Authority adds infrastructure to certain areas, waive its normal fees for approximately 18 months, and provide additional special pricing for other services/areas. I am concerned that there is no legal authorization for the Authority to undertake the proposed arrangement without either providing identical terms to all providers, or going through a procurement process under the VPPA or PPEA.

As a public entity, rates set by the Authority should be uniform for all providers for comparable services and comparable areas. Therefore, providing special rates for a specific provider is likely impermissible. If it is a matter of incentivizing providers to build into certain areas, I believe the Authority could adopt a rate schedule providing special pricing to *all providers* who build into the underserved areas and provide service, because this approach does not favor a particular provider over another. There is precedent for this with other public authorities providing various utility services to underserved areas, so I believe this would be a viable option for the Authority, however, as I understood from our conversation, special pricing alone might not sufficiently incentivize the provision of service in certain underserved areas.

Another option would be to receive solicited or unsolicited proposals under the PPEA for a project or projects designed to achieve 100% coverage on the Eastern Shore. This would be a more involved process, involving notice to neighboring or "affected" localities, development of competing project concepts, opportunities for public input, etc., however, this approach would have the benefit of enabling the Authority to offer greater incentives to a particular provider or providers, in exchange for mechanisms for enforcement of the providers' coverage and service commitments. Depending upon the particulars of how a solicitation or proposal is structured, what party will own the infrastructure, and other considerations, there may be concerns under federal telecommunications law which would have to be addressed as the concept is developed. Unless the Authority decides to construct and operate the proposed facilities itself, I do not believe an RFP or Invitation to Bid under the Virginia Public Procurement Act would be of much utility in these circumstances, and the PPEA process would be more appropriate.

In summary, I do not believe that the Authority can offer any specialized pricing or incentives to a particular entity unless identical terms are offered to all similarly situated providers, or unless the Authority engages in one of the procurement methods authorized under Virginia law. I would be happy to discuss options further with the Authority if the members so desire.

Best,

Steve

Stephen V. Durbin

Attorney

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