

**AT A MEETING WORK SESSION OF THE RAPPAHANNOCK COUNTY  
BROADBAND AUTHORITY HELD ON WEDNESDAY JULY 14, 2021 AT 6:00 P.M. AT  
THE RAPPAHANNOCK COUNTY COURTHOUSE, 250 GAY STREET,  
WASHINGTON, VIRGINIA.**

**CALL TO ORDER**

Chair Donehey called the meeting to order at 6:00 P.M.

**Authority Board Members present:** Debbie P. Donehey; Christine Smith; I. Christopher Parrish, Keir A. Whitson and Ronald L. Frazier.

**Others present:** Garrey W. Curry, Jr., FOIA Officer; Margaret Bond, Secretary.

**PLEDGE OF ALLEGIANCE**

Ms. Donehey led attendees in the Pledge of Allegiance.

**MOMENT OF SILENCE**

Ms. Donehey requested that attendees observe a moment of silence

**ADOPTION OF AGENDA**

Mr. Whitson moved to adopt the Agenda as presented. Vice Chair Smith seconded the motion. The motion to adopt the Agenda carried unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

**PUBLIC COMMENT PERIOD**

Rich Shoemaker, Jackson District – Mr. Shoemaker introduced himself as a consultant and previous owner of Piedmont Broadband. He informed the Authority Board that Piedmont Broadband did not submit a formal proposal or response to the previously-issued request for information RFI. He referred, instead, to a letter he submitted in lieu of a detailed response. He asked that the Board allow Mr. Richard Pate, now the owner of Piedmont Broadband, time during the upcoming Board meeting scheduled for Monday, July 19, 2021 to present his plan. Mr. Shoemaker declared that Mr. Pate’s plan would solve the broadband problems in the County at low cost. Mr. Shoemaker reminded the Authority Board that Piedmont Broadband already had

property rights to the majority of the hilltops in Rappahannock County for establishing transmission towers to expand its wireless broadband network. He indicated that if the Broadband Authority would be able to identify specific spots where the County has trouble receiving adequate broadband signal that would help Piedmont resolve the problem very quickly. He also reminded the Board that Mr. Pate had his own money to invest for expanding the Piedmont Broadband network and would not require additional grant monies at this time.

Chair Donehey thanked Mr. Shoemaker for his presentation and extended her congratulations to him for the successful transfer of Piedmont Broadband business to Mr. Pate.

Finding no further public members wishing to address the Authority Board, Chair Donehey closed the Public Comment session.

### **REGULAR AGENDA ITEMS**

RFI Review – Chair Donehey announced the first item on the Regular Agenda was review of the request for information (RFI) which the Board had previously distributed to 13 selected internet service providers (ISPs).

Mr. Frazier raised a point of order at this item. He reminded the Authority Board that it had not developed a “score sheet” for evaluating responses to the RFI. He asked what process the Board was going to use to compare RFI responses. He also asked who is the Broadband Authority’s procurement officer. Chair Donehey advised him that the Authority Board had not yet appointed a procurement officer, but that such appointment would be part of the Board’s discussion that night. She also assured Mr. Frazier that the Board would procure the services of an attorney to review all RFI responses before the Board would make a decision on which one(s) to accept.

Chair Donehey said it was her intention for the Authority Board members to take home copies of the RFI responses the Board had received by close of its deadline and be prepared to discuss them at the Board’s upcoming meeting Monday, July 19<sup>th</sup>.

Mr. Frazier asked how many responses to the RFI came in by the original due date? Chair Donehey replied that the Board received two responses: DataStream and Shentel.

Mr. Frazier then referred to an email he had sent previously to all the Authority Board members disputing Chair Donehey’s authority to unilaterally extend the original deadline for receiving RFI responses. He stated that the Board was not empowered to ratify such a change in deadline date after it had been implemented.

There followed much back-and-forth discussion on this point of the deadline change. Mr. Frazier expressed his opinion that the Board could not extend the deadline on the authority of one person and his concern that if the Board did not reject all the responses that came in after the original date that the Board would end up in some kind of legal mess. Mr. Whitson weighed in to explain that the Board had not received any responses by the first, published deadline, so Chair Donehey

contacted all the Broadband Authority members to solicit their input on making an administrative decision to extend the deadline. Mr. Frazier said the Authority Board as a whole needed to convene in a public meeting to make this deadline change decision. “We did not do that,” he stated. Mr. Frazier reiterated his concern that if one ISP felt it had been left out by not making the first deadline and the Board proceeded to consider responses that had come in after that date, then the Board could be in trouble.

Chair Donehey reiterated that she had contacted all four other Board members after no responses had come in by the first deadline regarding extending the deadline. She then explained that she subsequently personally contacted by telephone all 13 ISPs whom the Board had previously invited to submit RFI responses to inquire why or if they had intended to submit a response. She further explained that she was concerned that the original invitations the Board had sent by email to these ISPs may not have reached to appropriate person in the ISPs organization to apprise them of the RFI. Chair Donehey indicated she had received feedback to this effect from one ISP. She further stated that she advised each of the ISPs that the deadline for responding would be extended because the Authority Board was not going to be meeting to review responses until the following Monday. She assured the Board that every one of the ISPs received this updated information at the same time.

Mr. Parrish interjected to asked if the Authority could issue a request for proposals (RFP) instead. He conjectured that companies may not have participated in the RFI because they were waiting for the RFP to come out.

Mr. Frazier pointed out that the Authority Board did not have an RFP to publish because it hadn't prepared one. He also said that if the Board wanted to follow on with an RFP, it needed to come up with a scoring schedule so the members would know how to evaluate the proposals fairly. He suggested that an RFP would allow the Board to make clear it had the right to do business with as many ISPs at it wished. “I think we are going to run into legal problems with what we have here,” he said.

There was some additional discussion about administrative deadlines and statutory deadlines, with Mr. Whitson, Mr. Frazier and Mr. Parrish offering different analyses and courses of action and comments on past Board actions. Mr. Whitson urged the Board to focus on moving forward and not laterally. Mr. Frazier worried that the Board's actions over the RFI deadline made members look like a “bunch of Keystone Cops”. Mr. Parrish expressed his opinion that it would be a good idea for the Authority Board to acquire legal counsel to help answer the questions under discussion.

Vice Chair Smith suggested redesignating Agenda Items, particularly C.1, RFI Review to be moved to C.2 Open Board Discussion, and that Item C.1 to be designated procedural discussion and an action item. She then moved that the Broadband Authority extend the RFI deadline to Friday, July 16 at 4 p.m., and that the Authority Board review all submissions at the Monday,

July 19<sup>th</sup> meeting. She requested Mr. Curry contact all interested parties and advise them of this new Board deadline, Addendum #2, for submitting responses to the RFI. Mr. Parrish seconded the motion, which passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

As a follow on administrative mater, Mr. Curry said he would make copies of all submissions available to the public at the same time in his office. However, he said, he would not be in his office at the time of this deadline expiration. Chair Donehey volunteered to be at the Rappahannock County administrative offices at that time in Mr. Curry's stead to make copies available to the public, if requested.

Vice Chair Smith moved that Chair Donehey be authorized to review any additional submissions to the RFI and make copies available to the Authority Board members and members of the public at the same time in Mr. Curry's office on Friday, July 16 at 4 p.m. Mr. Parrish seconded the motion which passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

### **OPEN BOARD DISCUSSION**

Mr. Frazier asked the Board to make room on the agenda for its July 19<sup>th</sup> meeting to allow Mr. Pate from Piedmont Broadband to make a presentation. Chair Donehey suggested the Board discuss whether the Board would want to bring any other ISPs with whom the Board may want to do business to make oral presentations at a special Board session or at Public Comment session, so that the members could ask questions. Mr. Parrish suggested the Board should hear from everybody it possibly could. By consensus it was agreed to consider Piedmont Broadband's presentation at the next Board meeting.

Mr. Frazier renewed discussion of hiring legal counsel to help the Board with many of the questions raised in its earlier exchanges. Chair Donehey segued the discussion to the Authority Board's consideration to asking the Board of Supervisors (BOS) to vote to appropriate \$50,000 for hiring personnel, including legal counsel and some sort of staff assistant for the Authority. She reiterated that if the BOS agreed to contribute this sum, the PATH Foundation had agreed to donate another \$50,000<sup>1</sup> and an anonymous donor had already agreed to match these amounts with an additional \$50,000. She said there is no deadline for use of these funds, which could be

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<sup>1</sup> The Path Foundation letter pledging this \$50,000 is posted on BoardDocs, attached to the Board of Supervisors' agenda for its meeting in July 7, 2021. The BOS sent the letter back to the Broadband Authority Board for discussion and recommendation on action by the BOS.

used for operational expenses. It would also require signatures from Authority Board Treasurer, Debbie Knick and Chair Donehey before any check could be written.

Mr. Parrish moved for the Authority Board recommend to the Board of Supervisors that it allocate \$50,000 to be placed into a Broadband Authority checking account for operational expenses to include legal expenses and to be joined by \$50,000 from PATH and another \$50,000 from an anonymous donor. In the event both of these additional sums (from PATH and anonymous donor) do not materialize, the Board of Supervisors' obligation to allocate \$50,000 would be rescinded. Mr. Whitson seconded the motion.

Vice Chair Smith stated that it was her opinion that it is good practice for the agenda to include items on action the Board intends to take in the course of a meeting --regardless whether they are good actions or bad action--so that people will know what the business the Authority will be transaction in the course of the meeting. She said it is a very positive thing that the Board is reviewing these financial arrangements, this item is not on the agenda.

Mr. Curry, as FOIA Officer, reviewed the Authority Board By-Laws, particularly Article 8 and other procedural and statutory guides for ensuring proper notice of meeting items on the agenda. If an item were to be added after the agenda was posted it would have to be by unanimous vote.

Vice Chair Smith stated, in light of these comments, that the Board needed to amend the agenda first, because it's an action item. Mr. Curry added that, while (Vice Chair Smith's) suggestion was not in the rules, it was probably in accord with best practices (for meeting agendae).

Mr. Parrish then said he would withdraw his motion. Mr. Frazier followed with a motion to amend the agenda to add an action item C.4. to include discussion and possible action concerning the potential PATH grant and matching funds from Rappahannock County through the Board of Supervisors. Vice Chair Smith seconded the motion, which passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

Mr. Parrish then reasserted his previous motion (above). Mr. Whitson seconded it, and the motion passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

The next matter the Authority Board took up was hiring legal counsel. It was the consensus of the members that the Authority Board needed to procure the services of an attorney versed in contract law and procurement processes. Mr. Whitson moved to amend the agenda to include an

an item authorizing specific discussion regarding possible hiring of legal counsel for the Broadband Authority. Vice Chair Smith seconded the motion which passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

Mr. Whitson suggested the Board authorize a member to work with Mr. Curry to identify appropriate legal counsel. He pointed out that Mr. Curry, in the course of his services as County Administrator has been exposed to a lot of different types of legal counsel: jail, library, and other. He suggested the Board needed to get billing rates and fee arrangement details and qualifications

Mr. Frazier asked if Ms. Pandak<sup>2</sup> was involved in advising the Rappahannock Library? Mr. Curry affirmed she was and suggested the Board reach out to Hefty, Wiley, and Gore<sup>3</sup> as well. Mr. Whitson said he would contact her about representing the Authority Board. Mr. Frazier then moved to authorize Mr. Whitson to contact the named la firms about representing the Authority Board. Mr. Parrish seconded the motion which passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

Mr. Curry suggested the Authority Board include the action item of securing a procurement officer for the Board on its next agenda. Chair Donehey said she would add this item to the agenda for Monday, July 19.

Chair Donehey advised the Board she had been in contact with Mr. Daily from Warren County. That County is working on a regional approach and would be having a Board of Supervisors meeting Tuesday, July 20. She said she was going to meet with supervisors Daily and Kullers that coming Friday and would advise the Authority Board at its Monday meeting on the outcome of this conversation.

Chair Donehey also reported on her phone call with Dr. Robin Bolt to Mr. Jack Kennedy of Wise County. She said they are taking a regional approach with schools on the educational side that includes states like Kentucky, Tennessee, and Virginia to get Starlink service to students in rural America. She said Dr. Bolt was impressed with what Starlink offered, particularly as her experience with satellite internet was based on what she got through Hughesnet. There is the possibility that Dr. Bolt will continue to work with Mr. Kennedy to see if a similar program is suitable for Rappahanock school children. According to Mr. Kennedy, participants in this

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<sup>2</sup> Sharon E. Pandak is a principle in the firm: Greehan, Tave, & Pankak, PLLC, located, 4004 Genesee Place, Suite 201, Woodbridge, Virginia 22192

<sup>3</sup> Hefty Wiley & Gore, 100 West Franklin Street, Suite 300, Richmond, Virginia 23220.

Starlink beta program are getting 150/20 Mbps with a latency of 25 milliseconds. Wise County is working with grants and other ways of subsidizing eligible households, based on SNAP recipients, but making the service available to all the adults at the homes served.

Chair Donehey reminded the Broadband Authority that Governor Northam was scheduled to make an announcement in Abington, VA regarding broadband funding. She added that Commonwealth Connect indicated there would be a lot more money coming into the VATI coffers. Commonwealth Connect, she said, is urging VATI applicants to go for the highest speeds they could get because there is going to be a lot of VATI money out there.

At this juncture, Mr. Bob Ryan raised his hand (Zoom) to address the Authority Board. According to Mr. Ryan the Authority Board mentioned some of the most critical elements of what it had to decide: What are you going to do with all the money flowing in? He speculated people might think it should go for satellite broadband and everyone would put up a dish.

[Verbatim] Mr. Ryan reminded the Board he had previously submitted a letter to the Board that time was of the essence. We have, he said the opportunity with all the various proposals and various things for fiber. . . is everyone in Rappahannock going to have a high-speed fiber connection? Let's make a friendly wager, he continued, what is the best way that we know and throughout local providers have been and certainly are struggling and is a method of providing broadband to everyone who needs it as we have seen in the pandemic, the lack of education. What is the purpose of broadband? So we can play games in our car going down 211 approaching Sperryville? Or we can make an agenda for a date night driving to Culpeper? No, it is communication of information and critically for education. If we do not educate our young people and have the resources, whether it is the library or the schools or broadband, we have failed as leaders. So, what can we do to accomplish that goal as quickly as possible and it is by expanding and supporting the system. which Mr. Ryan said he believes is the short term solution. Yes, having dishes in trees sounds weird, he said. But if we can replace the trees of Piedmont Broadband with small transmitters on small antennas which are available now, we support as community and we get most – not some – most of our fellow citizens on the internet and on broadband for themselves and for their children as soon as possible.

Mr. Parrish moved to adjourn. Mr. Whitson seconded the motion which passed unanimously.

Aye: Donehey, Smith, Parrish, Whitson, and Frazier.

Nay:

Abstain:

The meeting adjourned at 6:55 p.m.

Respectfully submitted,

\_\_\_\_\_Margaret Bond, Secretary

DRAFT