

AT THE CONTINUATION OF THE REGULAR MEETING OF RAPPAHANNOCK COUNTY BROADBAND AUTHORITY HELD ON THURSDAY, JULY 22, 2021 AT 6:00 P.M (CONTINUED FROM THE REGULAR MEETING HELD MONDAY JULY 19, 2021) AT THE RAPPAHANNOCK COUNTY COURTHOUSE, 250 GAY STREET, WASHINGTON, VIRGINIA.

CALL TO ORDER

Vice Chair Christine Smith reconvened the July 19, 2021 at 6:00 P.M. and noted for the record that Chair Donehey was joining the meeting electronically via Zoom

Authority Board Members present: Vice Chair Christine Smith; I. Ronald Frazier, Christopher Parrish, Keir A. Whitson. Chair Debbie Donehey stated that, for personal reasons, she was joining the Meeting electronically and was located at Berkley Springs, West Virginia.

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

Vice Chair Smith acknowledged Rappahannock County residents in attendance and joining the meeting via Zoom. Vice Chair Smith requested review of the original agenda and prioritizing of the items listed.

Mr. Frazier identified two addendum items since this was a continued meeting (from July 19, 2021). Vice Chair Smith concurred and noted there was still action required regarding the language regarding 80-foot towers¹. Ms. Smith also moved to amend the original agenda as follows:

- Discussion of potential broadband funding, including whether or not the Authority would sign a Letter of Intent (to apply for a VATI grant) before July 27, 2021 be designated item number 1,
- Item number 2 - Staffing issues, particularly selection of a procurement officer for the Authority Board,
- Item 3 - Designation of legal counsel be item number 3, which would require agenda item number 3 from three from the original agenda be re-designated item number 4:
- Item 4 - RFI RCBA proposal review,
- Item 5 - Regional Partnership Opportunities, and
- Item 6 - Short towers.

Mr. Whitson suggested swapping item 2 with item 3, and accommodation of comments from the Zoom audience early in the discussion. Chair Smith amended her motion to flip flop Item 2 with Item 3. (See above.) Mr. Whitson seconded the amended motion. No vote was taken.

¹¹ Amendment to Chapter 170, Zoning Ordinance, Regarding Short Towers for Broadband or Public Safety.

DISCUSSION

Potential Broadband Funding Methods – Vice Chair Smith introduced this topic and asked Chair Donehey if she wanted to lead the discussion. Chair Donehey referred to the upcoming VATI applications deadline and potential use of ARPA² funds to meet matching grant requirements. She indicated there were a number of participants attending the meeting via Zoom connection and expressed her concern they be afforded an opportunity to air their interests in this discussion topic. Vice Chair Smith returned to the discussion of Authority Board’s decision re: submitting a letter to the Department of Housing and Community Development indicating its intent to submit a VATI application by the September deadline. Vice Chair Smith referred to this item as one of particular urgency for the Authority Board to consider.

Chair Donehey explained that the intent letter was really a form letter prepared by DHCD, a copy of which had previously been posted on BoardDocs. She indicated her belief that there was no downside to approving the letter easily as it committed the Authority Board to nothing, but rather secured its place to submit a VATI application later, if it chose to do so. She then moved for the Board to approve the letter for submittal to DHCD. Mr. Whitson seconded the motion.

Mr. Frazier clarified that the “unit of government” blank in the document would be filled with “Rappahannock County Broadband Authority”. Vice Chair Smith clarified that the RCBA would be signing on its own behalf—not as a party to a partnership. She also indicated that the letter would strike “local provider” and “private provider”, which were optional information and which appeared in three locations in the form letter. Mr. Frazier asserted that the description of the project area should be: “broadband service for the unserved and underserved areas within Rappahannock County” and the point of contact for the letter should be Mr. Curry. Mr. Whitson requested the first paragraph be clarified to read: “the Rappahannock County Broadband Authority’s intent to (submit an application for broadband service) which would replace the word “may”. Secretary Bond suggested, as DHCD designated areas of broadband service as either “served” (those receiving signal of 25/2 Mbps) and “unserved” (those not receiving this threshold signal speed) that the term “unserved” be used for the description of project area, in order to be consistent with DHCD language.

Vice Chair Smith raised the issue of who should be named as point of contact for the letter, and Chair Donehey volunteered her name for that blank, with the County’s Library Road address, rather than her personal residence. Vice Chair Smith concluded the editing of the intent letter to include that the letter was for the 2022 VATI application and that this notice was not binding on the entity represented by the undersigned. Mr. Frazier moved to direct the RCBA Chair to send

² American Rescue Plan Act of 2021 Pub L. No. 117-2. This Act is also called the COVID-19 Stimulus Package. It is a \$1.2 trillion economic stimulus bill passed by 117th Congress and signed into law March 2021.

the letter, as edited, per previous comments to the DHCD. Mr. Whitson seconded the motion which carried unanimously.

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

Nay:

Abstain:

Legal Counsel – Mr. Whitson advised the Authority he had contacted three potential law firms that specialize in local government representation: Greehan, Taves & Pankak (Woodbridge); Hefty, Wiley & Gore, (Richmond) and Litten and Sipe Harrisonburg). Mr. Whitson said he had also met with Tom Daily³, a strategic advisor in telecom regulation and policy and former senior counsel for Verizon.

Mr. Whitson said he had spoken with Sharan Pandak⁴ of the above firm and determined she was both knowledgeable about the issues he described facing Rappahannock County in developing its broadband network, and she was available on short notice to assist the County, including review of any memorandum of understanding for a regional partnership the Authority might be considering in the near future. Mr. Whitson was unable to determine if either of the other two firms could assist the County on short notice. Mr. Whitson reported a very favorable impression of Ms. Pandak, including her interest in working with local governments, her ability to ensure efficiency in providing legal services by assigning routine work to less-expensive associated, and her experience working on regional agreements for broadband contracts. He quoted her billing rate as \$300 per hour and her associates' rates as \$230 per hour. Any work done by the firm's paralegal would be at \$150 per hour. He said his discussion with Ms. Pankak included whether it would be preferable for the Authority to hire her on a retainer or pay by the hour. He also discussed controlling costs for long term projects, such as setting a fee cap for attorney's fees for specific phase of the project. Based on the above division of labor and ability to shift routine work to associates, working at a lower hourly rate, Ms. Pandak recommended the Authority consider the hourly-rate option.

He further indicated all of the above firms could provide procurement functions and advise the Authority on contract issues. Mr. Frazier added that he was familiar with Ms. Pandak and described her as very knowledgeable.

Chair Donehey commended Mr. Whitson on completing all the above homework on options for hiring legal counsel for the Authority. She moved to have the Authority hire Sharan Pandak as

³ Mr. Daily is not licensed to practice law in the Commonwealth of Virginia, but has a lot of legal experience in telecommunication matters in this jurisdiction.

⁴ Ms Pandak was former county attorney for Louisa, Prince William, and Orange Counties. She is currently general counsel for the Washington Counsel of Governments.

its legal counsel and engage her services on an hourly basis. Mr. Whitson seconded the motion, which passed unanimously.

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

Nay:

Abstain:

Mr. Curry asked who would be authorized to contact Ms. Pandak to request legal services outside of an Authority meeting? Mr. Frazier said it was important to understand that this attorney would be representing the entire Authority. Mr. Frazier added that he didn't see a reason why the Chair or the Vice Chair could not request legal services as authorized by the Authority. Mr. Curry explained that the Library Board, for example, has a kind of layered approach under a certain dollar amount the President or the Library Director can order up legal counsel. However, if it is higher than a certain amount then it requires approval of the whole body. He also pointed out that the Authority has no money at present, but that may change after August 3. Mr. Whitson then suggested, in light of Mr. Curry's comments, that the Authority ask Ms. Pandak not to send it a bill right away.

Vice Chair Smith then suggested the Authority work out some constraints and authorized points of contact with Ms. Pandak. She moved that Ms. Pandak only be engaged to work on specific tasks that had been voted for and approved by a majority of Authority Board members. Mr. Whitson seconded the motion, which passed unanimously.

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

Nay:

Abstain:

Mr. Curry asked if the Board intended that its actions would authorize Ms. Pandak to work with the Authority on the VATI application. Discussion by Mr. Whitson and Vice Chair Smith clarified that the Board's action was only to select Ms. Pankak as the Authority's counsel and to specifically limit her engagement on any future work until voted on by a majority of Authority Board members, before asking for her services.

Mr. Whitson volunteered to communicate to Ms. Pandak. the Authority Board's actions from this meeting any future requests for services voted on by the Board. However, further discussion concluded, for consistency's sake, it would be preferable for Chair Donehey to be the POC for communication with Ms. Pandak. Mr. Whitson volunteered his services to assist Chair Donehey in defining scope of work for her services and the like. Vice Chair Smith reiterated that Chair Donehey would be the POC with Ms. Pandak and was only authorized to engage her services for items specifically approved by a majority of the Board.

Mr. Parrish asked, if the Board found itself where its “back was against a wall” and needed legal counsel, that it would be required to call away a meeting before Chair Donehey would be authorized to request her services? Vice Chair Smith replied affirmatively, stating that such a requirement (for Board approval) would be prudent and legal services should not be directed by any one individual. Mr. Whitson suggested the Board, at this meeting, could look ahead and define the scope of work for Ms. Pandak that gives some wiggle room as to tasks within it. That way, he said, the Board would not have to run in for a meeting for every task needing legal services.

Designation of Procurement Officer – After Vice Chair Smith’s introduction of this next agenda item, Mr. Whitson suggested that once the Board settled on next steps for this process, it could seek a brief opinion from Ms. Pandak on how we approach this process and what would be required of this position under state procurement laws and under that make a decision on designating procurement officer. Mr. Parrish stated he thought it would be premature to designate a procurement officer at this time. Vice Chair Smith suggested the Board keep this item on the agenda as a reminder that the time is coming for deciding who would be a good choice for this position.

Mr. Whitson stated he would start keeping a running list of possible tasks for Ms. Pandak and then at the close of the meeting, once the Board had come up with a laundry list of legal items, then it could cast a vote on what the Board was going to task her to handle. The first item would be selection of a procurement officer and how that should be approached. Mr. Parrish suggested the ISP the Board decided to go with might offer services of a procurement officer. Mr. Frazier objected that that would be like offering the fox the keys to the henhouse.

Mr. Frazier said he would not mention what happened to the County with the radios. Vice Chair Smith responded that what happened with the radios happened to the Board of Supervisors, not the Broadband Authority Board. But, she concurred, that when considering a large project, it would be wise to have a procurement officer working it.

Request for Information #2021-01 Proposal Review⁵ – Vice Chair Smith introduced RFIRCBA #2021-01 and indicated that representatives from Shentel, All Points Broadband, were participating in the meeting via Zoom, and Mr. Clint Hyde of Madison Gigabit Internet was present in person. In addition a representative from Rappahannock Electric Cooperative, Mark Ponton, was also participating. Vice Chair Smith thanked all of these participants for showing up at the meeting and asked Mr. Hyde to proceed with the first presentation.

⁵ Copies of all three following responses to this RFI are public records and on file at the County Administrator’s office.

Clint Hyde, Madison Gigabit Internet, Madison County - Mr. Hyde reminded the Authority Board that he had met with some of them in the past 2-3 years. He explained his response to the above-noted RFI was based in his interpretation that the County was looking for something like a consultant/engineering option, rather than a lets-go-build-something-now request for information. He clarified that he would not be able to support the County in its VATI application, based on the requirements of the grant application and the short timeframe and deadline required for a full response. Mr. Hyde said he had written two VATI applications for Madison County before and it took him over 90 days to complete the first one.

Mr. Hyde suggested the County might want to consider developing a plan for the next year. In such case, he noted, the content he included in his RFI response, including photos and descriptions, were aimed at introducing ideas that would be useful to apply for a proposal for next year's VATI application. Mr. Hyde speculated that the budgets for telecommunications development in Virginia would probably be the same next year as for this one. He said he was unsure how the proposed \$700 million would become available.

Mr. Hyde acknowledged he was more familiar with Madison County than Rappahannock, but both counties had difficulties developing their broadband network in the highly-uneven terrain. He reminded the Authority Board that he had already made a presentation of his system operations at Graves Mountain as an example of how small telecommunication projects could be deployed. While he used both wired and wireless connections for this project, Mr. Hyde pointed out how more fiber could be incorporated in such projects if more funds were available. He also acknowledged that fiber networks involved a one-time installation, while wireless networks that relied on radio signal transmissions required continual upgrading to approach the speeds required by VATI. Mr. Hyde also pointed to a project he is considering developing at Belle Meade School on Route 231 which will use both radio and fiber solutions. He could, he said, use the radio transmission at Belle Meade to serve as a center point for coverage to many more homes in the area.

Mr. Parrish asked if his fiber feeds were above ground. No, he replied, Rappahannock Electric can pull fiber on its poles. They are experts at that, he said, but poles don't always go along a road and easements are a problem. If you go underground and use Virginia Department of Transportation rights of way, there are no easement problems. Mr. Hyde opined that underground fiber deployment was best for these reasons, although both systems would have to use radio signals to get around difficult terrain features. He suggested the County could benefit from an overall engineering analysis for the entire county which would help it figure out where it could use fiber and where it needed to develop radio connectivity. Then the County could apply for VATI money based on more concrete figures on costs involved.

Mr. Hyde entertained some questions from the Board about potential problems with deploying fiber underground and avoiding rocks and effects of frost heave. When he concluded, Vice Chair Smith thanked him for his response to the RFI. She assured him she had read his response and learned a lot of things from it.

Chair Donehey thanked him and added that Mr. Hyde had been an invaluable resource of engineering and practical information in numerous presentations and comments to the Broadband Committee. She noted that providing a reliable internet service down Route 231 is a huge issue and that Mr. Hyde's knowledge of these issues would be very valuable to the Authority. She also thanked him for sharing his expertise with the Authority and his offer to work with it in the future.

Dan Meenan – Shenandoah Telecommunications – Mr. Meenan next made a presentation of Shentel's response to the RFI via Zoom. He reminded the Authority Board that he had previously made a presentation on Shentel's Rural Development Opportunity Fund (RDOF) grant project in Rappahannock. Accompanied by PowerPoint slides⁶, Mr. Meenan reviewed a number of points he had included in this previous presentation. He noted that Shentel is a 118-year old company, headquartered in Edinburg, Virginia. The company delivers broadband, cable TV, and telephone services in Virginia and West Virginia. He assured the Authority Board that Shentel not only had been operating successfully for over 100 years but continued to be exceptionally financially strong.

With respect to broadband, Mr. Meenan told the Board Shentel had two broadband delivery mediums: Glo Fiber to the Home, offering speeds up to two gigabits per second. Shentel launched this business just over two years ago to introduce competition to certain densely populated areas within Shentel's service area. He also described Shentel's Beam Fixed Wireless product, which launched eight or nine months previously. Beam is focused on rural areas and offers broadband signals ranging from 25 Mbps to 100 Mbps.

Shentel, Mr. Meenan continued, was active in the RDOF auction and successfully earned the right to provide broadband service to approximately 895 homes in southern region of Rappahannock County. The broadband service Shentel's grant application proposed was primarily a fixed wireless system relying on construction of 12 small cell towers.

Shentel, according to Mr. Meenan, met with the Federal Communications Commission in April 2021 to discuss its long form application for final FCC approval of its RDOF plan. However, based on the above RFI, Mr. Meenan said Shentel now understands that the County is looking for more of a fiber-based network or fiber-to-the-home (FTTH). He said he and his team went

⁶ The undersigned Secretary requested a copy of these slides from Mr. Meenan following the meeting. An attachment containing these slides is available with these minutes. The Secretary made an identical request for slides from Mr. Carr of All Points Broadband. Mr. Carr did not respond to this request.

back and “ran the numbers” for a fiber optic network to these same 895 homes. As part of Shentel’s RFI response, Shentel suggests that, to transmit Glo Fiber To The Home, to these homes it would require approximately 100 miles of fiber for this network at a resulting cost of \$6.3 million. These numbers indicate there would be an approximately \$7 thousand cost for hooking up each home to this fiber network. What Mr. Meenan said he was submitting to the Rappahannock County Broadband Authority is a plan wherein Shentel would cover \$1.34 million, plus the RDOF subsidy. The net remaining contribution by the County or State would be \$4.475 million.

Mr. Meenan reiterated Shentel’s commitment to partner with Rappahannock County on the VATI application.

Chair Donehey thanked Mr. Meenan for his presentation and indicated her support for a FTTH solution for the 895 Rappahannock homes in the Shentel area of interest because it obviated the need to build any more towers. She asked about the numbers Shentel quoted for its RDOF award. Mr. Meenan explained that the RDOF monies listed on its slides represented present value of the award which would be paid out over a 10 year period. Under terms of the RDOF grant, Shentel would be required to complete 98% of its proposed plan within the first six years.

Chair Donehey was interested if Shentel had had any discussions with Rappahannock Electric Cooperative regarding use of its power poles in this area for fiber optic wire. Mr. Meenan said Shentel had talked with REC about this idea and about forming a partnership with REC for this work in the above-described target area, but that REC had not yet responded with its pricing information, so Shentel’s proposal in response to the County’s RFI did not assume a partnership with REC. That doesn’t mean such an arrangement might be worked out in the future, Mr. Meenan explained, only that it was not in the figures he was presenting to the Authority Board at this meeting. Mr. Meenan further explained that if REC were involved in Shentel’s FTTH plan the capital expenses would likely go down, but the operational expenses would likely go up.

In response to further questions, Mr. Meenan stated that Shentel’s commitment to partner with the County in a VATI application would only be for its 895-home target area. Mr. Frazier asked if Shentel would have a problem if Rappahannock County decided to work with other ISPs to bring universal broadband to the rest of the County. Mr. Meenan said Shentel wouldn’t have a problem with the County working with other ISPs outside its RDOF area but that Shentel probably wouldn’t find it the best use of capital to have two companies competing in the same project area.

Vice Chair Smith referred back to an earlier slide showing a \$6 million cost for Shentel’s project. Mr. Meenan explained that, under terms of its plan, the County and/or State would be responsible for \$4.7 million of this total. Vice Chair Smith next asked Mr. Meenan about his

experience with VATI applications in the past. Mr. Meenan acknowledged that he, personally, had never applied for a VATI grant, but that his company had a “whole host of people” who did have vast experience with the VATI process. Vice Chair Smith thanked Mr. Meenan for his presentation.

Jimmie Carr, CEO of All Points Broadband – Mr. Carr introduced himself and Mark Ponton from REC, which he said was partnering with All Points in its broadband plans. He thanked the Broadband Authority for the opportunity to elaborate a bit further on his company’s response to the RFI submitted previously. He reiterated that All Points Broadband, in partnership with REC and other partner utilities, was committed to bringing fiber to the home broadband service to unserved areas in Virginia. Mr. Carr listed projects in which All Points was involved in Culpeper, Fauquier, Loudoun, and a number of other counties. He said if Rappahannock County were to select All Points for its partner for the VATI process, it would be part of a broader regional partnership. All Points in partnership with REC, he explained, was always going to work in what he called “whole of jurisdiction” projects which are designed to provide broadband access to 100% of the remaining unserved locations in the counties with which it partners.

Mr. Carr explained that the project he proposed for Rappahannock County’s consideration was tailored to meet the requirements of the American Rescue Plan Act. He said his projects were all designed to be as competitive as possible for purposes of meeting VATI grant competition. He told the Broadband Authority that in the last VATI selection cycle, All Points received the single highest state support per passing of any other project in the district program.

All Points, he continued, is a Virginia-based company focused on rural markets. It operates in four states: Virginia, West Virginia, Kentucky, and Maryland. He claimed All Points was the largest rural-facing ISP of its kind in the mid-Atlantic. In the past three years All Points was named (in numerous business publications) one of America’s best privately-held companies. In the past six months, All Points received more than \$51 million from state and federal grants and electric utility investors in projects in its jurisdictions. All Points announced a couple weeks ago that its lead sponsor Searchlight Capital, a major global investor, which is also one of the most active investors in fiber to the home projects in the US.

Mr. Carr told the Board that All Points had performed a preliminary analysis of the conditions on the ground in Rappahannock County. Company field survey teams determined there are approximately 2,300 locations that lack wired broadband access in the County. This figure includes the 895 homes identified by Shentel as part of its RDOF target area. He said All Points also had competed in the RDOF auction and hoped that final approval for all successful applicants would come in the fourth quarter of 2021.

According to Mr. Carr, the remaining 1,400 locations that are not within Shentel's RDOF area are eligible for VATI and ARPA funds. He then referenced the All Points proposal for providing service to these locations along with its response to the RFI criteria. He indicated that All Points had a comprehensive approach for the County that included becoming part of its described regional partnership. If Rappahannock County elects to participate in this regional partnership, All Points was prepared to finalize its network design and complete the VATI application in time to meet that program's September 14, 2021 deadline. He reiterated that All Points had a proven path for achieving FTTH access for all unserved locations in the counties with which it partners. He also referenced earlier comments by several Authority Board members who recognized this was a unique time for broadband in terms of the amounts of funding available from state and federal sources. He said telecommunication policy-makers and grant writers are encouraging jurisdictions to "think big" and that All Points believed there would never be a better opportunity to finally (sic) close the digital divide than the one (we) have today.

Mr. Whitson raised six questions:

(1) Referencing All Points project in Virginia's Northern Neck and a lot of other work All Points has taken on in the Commonwealth, Mr. Whitson asked what All Points could offer to reassure the Authority Board that it would be able to accomplish all that Mr. Carr's proposal covered and that All Points had all the people and equipment and general resources to get the job done.

(2) Referencing his understanding that Akre Capital Management, Mr. Whitson asked Mr. Carr to confirm that Akre Capital no longer has any shareholding interest in All Points Broadband.

(3) Referencing this somewhat new regional approach (to broadband network development) Mr. Whitson wanted to know why Mr. Carr believed Rappahannock County should join the regional plan.

(4) Referencing further this regional approach, Mr. Whitson wanted to know, if Rappahannock County entered into a regional agreement, would that arrangement preclude existing ISPs from staying in the market to serve their customers.

(5) Referencing All Points projects in Kentucky, Mr. Whitson asked Mr. Carr to elaborate on the background of that project as he didn't see how it "fit" with All Points' declared primary focus on rural broadband development.

(6) Referencing Shentel's RDOF target area, Mr. Whitson asked for a brief explanation of the Shentel RDOF area and does Shentel's project mean that mean that All Points' proposed infrastructure project for Rappahannock County would skip over that area. Would there be any path for All Points to provide service in that area?

Mr. Carr responded to questions (1) and (2) above: Regarding resources and capital management he explained that, recognizing All Points was taking on a lot of projects, it took steps to secure a new equity partner. All Points announced in July 2021 that it had taken on Searchlight Capital as its lead equity sponsor. He stated that Akre Capital no longer had any interest direct or indirect with All Points Broadband. That transaction, he explained, required approval from various state and federal regulators, so All Points could not close that transaction until all these regulatory approvals are obtained. He assured the Authority Board that Akre Capital would be divesting 100% of its interest in All Points.

(3) In regards to the regional model, Mr. Carr referenced the preference incorporated in the VATI application for “whole-of-jurisdiction” solutions to achieving universal broadband access. The scoring criteria, he explained, reflected this preference. He said DHCD was encouraging people to come together in regional groups to apply for funds. In the past, he explained there had been a scoring point increase awarded to regional project applications. He also stated that, because All Points had so many projects underway, including ones with REC and other counties neighboring Rappahannock County, it could offer better economies of scale. So it would be to the County’s advantage to be part of something larger, particularly when it came to the VATI scoring process.

(5) As for All Points operating in Kentucky, Mr. Carr explained that an opportunity to expand into that state came up a few years ago through an acquisition there and All Points took advantage of it.

(4) Regarding the question on regional approach, Mr. Carr said that if Rappahannock County agreed to partner with All Points, one of the first things it would do is to work with the County to determine the best approach (for providing broadband access) for all of the County. That could be a wireless approach with Shentel through RDOF in its area, or the County could come up with another approach. He reiterated, without explaining, that All Points’ role is” to work with the County to come up with the best solution, consistent with the resources it has”. He assured the Board that All Points would “enter into any engagement with that in mind and a willingness to find the best solution for Rappahannock County”.

As for the regional approach and whether it would preclude local ISPs from staying in the Rappahannock County market, Mr. Carr responded: There is a free and vibrant market place in America. As for any incumbent provider there is nothing All Points would do or ask the County to do to stop someone’s ongoing business.

Mr. Frazier interjected to ask if the Board should be in closed session because it appeared to him as if the Board was in a negotiation process and did not have legal counsel. He also said he had a question in the regional memorandum regarding a regional approach to the VATI application

process as well as in the RFI package which included the language: “Each Participating Locality agrees that, for so long as it is a party to this Memorandum, it shall not participate in any activity or course of conduct that is inconsistent with or competitive with the Initiative and will devote its broadband-related attention and resources to the Initiative”⁷. Mr. Frazier wondered why in the world would somebody like the County or this Broadband Authority agree to something like that when we don’t even know what the “Initiative” is? It’s like we are basically signing a check and giving it to someone. We wouldn’t do that with our own money, he said.

Mr. Carr responded that if All Points proceeded with a project in Rappahannock County, both All Points and REC would devote substantial resources and incur substantial expenses to prepare a successful VATI application. All Points asks, if the Board selects All Points as its partner for a VATI process, All Points wants to know that the County is committed to that partnership. Under this approach, he continued, the County is not obligated to make any financial commitment. Once the plan is completed and the proposal submitted, the Authority Board would be able to decide whether or not it was interested in moving forward.

Mr. Frazier replied that it appeared that All Points was going to ask for \$170,000 with \$50,000 from the County pretty quickly. Mr. Carr explained that that was an example from a previous agreement. Mr. Frazier pointed out that the documents All Points had provided to the Authority Board included a great deal of protective language for the company and very little protection for Rappahannock County. Mr. Frazier reiterated his concern that the Board did not have legal counsel present to provide guidance. He also pointed out that All Points’ projected a 24-month commitment to provide broadband access in Culpeper County and other counties in the valley, and wondered where Rappahannock County would be in those projections? Mr. Frazier reminded the Board and Mr. Carr that everyone was being affected by supply shortages and asked if All Points had 36-months worth of fiber optic wire available to build out these systems, according to these projected commitments.

Mr. Carr assured the Board that All Points had relationships with suppliers to secure current materials and allocations of future materials. He stated he believed he had sufficient supplies and other resources necessary to perform on all existing 24- and 36-month commitments.

Mr. Frazier said one thing he did not see in the submittals by All Points was a price similar to what other providers responded. He said he had watched the meeting from Warren County and noted that, geographically, Rappahannock County was larger than Warren County, but only had one-sixth the population. He speculated that this disparity would make it more expensive to string fiber and only have one-sixth the capability to give All Points and REC a return on their

⁷ This language quoted by Mr. Frazier appears in paragraph 6. a) under the heading GOOD FAITH COMMITMENT TO INITIATIVE of the document submitted by All Points Broadband for the Authority Board’s consideration as part of its responses to the referenced RFI.

investment. He asked Mr. Carr if he had those numbers? Mr. Carr assured him that if the County wanted to commit to a partnership with All Points then the company would commit to get the design work done and get the price information requested and bring it back to the County before the County would be required to make any financial commitment.

Mr. Frazier asked for confirmation that All Points would require the County to sign the proposed commitment before it would work on all of the above. Mr. Carr replied affirmatively. Mr. Frazier pointed out that, (under the proposed arrangement) while the County would be part of the agreement, it would not know all of what was in the agreement and would also not be able to work with any other providers. Mr. Carr affirmed that, if the County wanted All Points to perform all of the work (design plan, VATI application) on a substantially speculative basis, then All Points would ask that the County be committed to work in good faith with All Points exclusively for the whole jurisdiction. All Points, he said, couldn't have another partner. Mr. Frazier wanted to know if this exclusivity would preclude the Board of Supervisors from approving tower construction for another ISP?

Mr. Whitson offered the clarification that the commitment language which was the subject of Mr. Frazier's questions referred solely to the VATI application process. He repeated Mr. Frazier's question that, under terms that All Points was presenting, could another ISP come to the Board of Supervisors and ask for approval for an 80-foot tower for its broadband network?

Mr. Carr said, yes (to the above question) and assured the Authority Board that All Points did not intend to interfere with the County's land use decisions. Mr. Frazier remained concerned that Mr. Carr's assurances on this matter were not in writing and that the Board still did not have a clear definition of the "Initiative" referred to in the documents submitted by All Points. Mr. Whitson offered the clarification that All Points would come back to the County with its plan in September and if the County was scared away and didn't like what it saw, then it could go back to square one. Mr. Carr agreed with this clarification.

Board members proceeded with a discussion of what questions it would like to have its attorney address, including definitions of key words and entities such as County, Broadband Authority, and School System—all of which have the authority to spend money on behalf of the County -- vis-à-vis the terms and conditions proposed by All Points. Mr. Whitson stated that these questions were precisely the kinds of things within the previously discussed scope of work for the Board's attorney and offered to contact her as soon as the following morning to enlist her assistance with the questions and concerns raised in the previous discussions. +

Vice Chair Smith asked me Carr what his experience was with VATI cycles, concerns, issues, expectations and so forth. Mr. Carr assured her that he was intimately involved with the program when it was initiated five years ago. He reiterated his earlier successes that in the last VATI

selection cycle, All Points received the single highest state support per passing of any other project in the district program and had received the highest award of any telecommunications program in the State's history for its Northern Neck project. That combined regional project, to told the Board, covered 10,000 homes. Vice Chair Smith asked what was the price tag on a project like that? She clarified she as interested knowing the cost to the county and the final breakout for the service, and then what was the cost to the consumers.

Mr.Carr replied that in the case of the Northern Neck project, the counties ended up paying 5% of the total project cost, which was approximately \$3.5- \$4 million. Mr. Carr opined that this was a very good outcome, but said he could not promise that this success was repeatable. The service plans he was able to provide began with 100Mbps down and 100 Mbps up for \$59.99 per month. This project covered five jurisdictions.

Vice Chair Smith asked if, under the regional approach, what assurance would Rappahannock county have that it would get the same attention as the larger counties? Mr. Carr assured her that "location is location" regardless of the county it is in.

Further Board Authority discussion concerned how All Points Broadband prioritized its projects in terms of the order of partnership formation. Mr. Carr also explained All Points organized its work according to a logical construction sequence that would light up as many homes as quickly as possible in any given project. Would All Points start in one location and branch off the fiber backbone already in place, rather than skipping around in its network construction? Mr. Carr confirmed this approach and emphasized that, under VATI program rules, all construction and hookups were required to be completed by 2025 . He told the Board that their construction model in the Northern Neck had been copied by CVEC's Firefly Broadband, which was the best from of flattery. He also said his company had successfully met VATI challenges from 4-5 counties.

Chair Donehey asked how All Points network access plan would deal with a household that has inconsistent 25/3 service. Would the All Points plan extend to this household? Mr. Carr replied that All Points would identify all served and unserved households and design a network for service to unserved households.

Chair Donehey pointed out that the County was trying to make sure all school children have good internet speeds for out of classroom learning. She wondered about additional funding beyond VATI that might be out there and wanted to know if All Points could be of assistance in finding additional funding sources to be applied to the County's share of the project costs? Mr. Carr repeated that All Points Broadband was committed to providing universal coverage and would work with the County on finding other funding resources to make that happen. There are a lot of unknowns, he emphasized, and no guarantees. He said if he were in the County's

position he would be looking to select a partner who understands the County's needs and interests and philosophy and would help guide it through the process.

Mr. Carr observed that the Board was struggling with understanding the minutiae of how the process works. To be successful, he stated, the Board needed to "think big" and select a partner that could help it navigate the processes and get there and go forward, whether with All Points or someone else. In response to a query about deadlines, Mr. Carr said All Points was asking counties participating in its projects to make a decision to join by the end of the month. He said the Broadband Authority could reach out to him with any questions.

Mr. Whitson said he would add the Board's questions concerning the draft memorandum of understanding to the scope of work previously approved, informally, for referral to the Board's attorney.

Chair Donehey thanked Mr. Carr for his presentation and information.

Before concluding the Zoom presentation, Vice Chair Smith asked for clarification on whether All Points would be competing with Shentel in the RDOF area. Mr. Carr responded that, as he saw it, there was another capable ISP offering service in that area. If he were the County, he said, he would look for what was the best solution to providing broadband for the rest of the County. Vice Chair Smith pressed him as to whether the All Points MOU would preclude the County's working with Shentel in that area. Mr. Carr non-responded by saying there were 6-7 weeks to get the VATI application together and if the Board wanted All Points to be its partner it would work with the Board to come up with a solution that makes sense in other parts of the County.

Mr. Whitson offered his perspective on the opportunity All Points was offering. He started out by saying this occasion offered an opportunity for the County to broaden its perspective, without losing what it was proud of as maintaining its rural character, including no stoplights in the County. He continued by saying he considered, as a member of the Broadband Authority, that he would have failed as a representative for the interests of the County if he walked away from the regional solution for providing broadband to Rappahannock and leave the County's students, families, seniors, and businesses with an antiquated and cobbled-together broadband system. He said that decision would stand as the wrong kind of symbol and one that would be of what could have been. He urged the Board to take seriously the opportunity to take part in the regional plan that comes with no financial commitment in the near term. This suggested to him that it was a good way to go.

Vice Chair Smith agreed with him and reminded the Board that the County was always emphasizing preserving the viewshed and fiber to the home solution would completely eliminate that issue.

Mr. Parrish noted that All Points Broadband proposal said that it would do all the research and other work in order to present its plan for Phase 1 of a universal broadband plan for the County, the end of which the County could bow out at completely no cost to it. I fail to see, he commented, any downside to letting All Points continue do all this research for the County and then the Board could decide whether it wanted to be All Points' partner or not. He pointed out by following this course of action the County would lose nothing monetarily but would gain a great deal in terms of insight and opportunity. Mr. Frazier added that the County would not know the price) involved until this work is done. And then, Mr. Parrish added, if we don't like (the price) the County could go on somewhere else, if it wants to.

Some discussion followed about discussing the All Points proposal in closed session. Mr. Curry explained that procedure was not right at this point because the Board was not negotiating on expenditure of public funds, which would need to be in closed session. Mr. Whitson added that the Board had until the end of the month to decide and already had legal counsel available for guidance, whom he could engage as early as the following morning. He said he felt the Board was in a good position to do a thorough due diligence review of the MOU, and anything else, attached to it, including word-smithing, and how to define terms. This help might make a stronger position for Rappahannock County as a part of the multi-county regional partnership.

Chair Donehey observed that the preceding discussion had been very beneficial and said she thought everyone on the Authority Board agreed that the citizens of Rappahannock County should have as good broadband service as that of others in other counties. She said she wouldn't feel she had been doing her job if she didn't support giving Rappahannock residents a chance to get fiber to the home. There are a lot of unserved addresses, she noted, and a lot of kids have had to go to others' houses and businesses all over the County to get their schoolwork done last year. It's hard, she said, to forego this potential opportunity to serve them. She agreed it would be prudent to have legal counsel review the MOU and attached issues before the Board signed anything. When I look at the benefits of fiber to the home, it's future proof (won't have to upgrade every year), and family proof (attract and keep families in the County). She also pointed out that if the Rappahannock County schools knew that there was fiber coming they could look for additional funding. Fiber to the home would benefit the County's fire rescue service, offer telehealth possibilities, assistance to home-based businesses – all while protecting the County's viewshed, vistas and historic heritage. She signaled her concurrence with the Board's informal consensus that to have Mr. Whitson request legal counsel review the MOU. We want, she concluded, to offer fiber to the home to as many residents in the County as soon as possible.

There was additional discussion among Board members concerning the need to understand better the non-compete language in the proffered MOU as well as other issues that had surfaced earlier in the meeting's discussion.

Mr. Whitson asked Mr. Carr what was his deadline for the Board's decision regarding entering into a regional agreement. Mr Carr identified Friday, July 30, 2021 as All Points' deadline. Mr. Whitson then suggested the Board continue its continued meeting to July 30th. He moved for Board's approval for him to contact the Board's attorney, the next morning, and instruct her to review the draft of the regional MOU and provide a legal opinion on the extent and ramifications of the exclusivity clause and the extent to which the Good Faith clause precludes the County from pursuing other options, in light of the RDOF area, the reviewing the question of procurement officer and whether the Board needed one in this context and how it would execute that, and other details such as the definition of "county."

Vice Chair Smith seconded the motion which passed unanimously.

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

Nay:

Abstain:

In ensuing discussion, Board members expressed the desire to meet and discuss the attorney's findings on each of these enumerated issues. The Board discussed re-convening on July 29th to confer with counsel present and make a final decision on the MOU.

Vice Chair Smith moved to the next agenda item –

Amendment to Chapter 170, Zoning Ordinance, Regarding Short Towers for Broadband or Public Safety⁸ - Discussion ensued about the timing of the amended ordinance, whatever urgency was attached to the decision, and when it would be up for decision by the Board of Supervisors. Mr. Frazier moved to have the Broadband Authority recommend adoption of the proposed amended ordinance regarding 80-foot towers to the Board of Supervisors. Mr. Whitson seconded the motion, which passed unanimously.

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

Nay:

Abstain:

⁸ This item had been on the Board of Supervisors' previous agenda. The BOS tabled action on this item, pending discussion and review of the RFI by the Broadband Authority Board, and its subsequent recommendation to the BOS re: action on this amendment as to whether it needed to be modified or adopted as written, or not adopted at all.

Open Board Discussion – Mr. Whitson declared he was “discussioned-out” and then reiterated the previous Board consensus of its intention to schedule a continuation of the meeting after he had met with legal counsel on the items in the above motion. He then moved to adjourn, which was seconded by Vice Chair Smith and passed unanimously.

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

Nay:

Abstain:

The Rappahannock County Authority Board meeting adjourned at 8:37 p.m.

Respectfully submitted,

Margaret Bond, Secretary

DRAFT