

**AT THE CONTINUATION OF THE REGULAR MEETING OF RAPPAHANNOCK COUNTY BROADBAND AUTHORITY HELD ON THURSDAY, JULY 29, 2021 AT 6:00 P.M (CONTINUED FROM THE REGULAR MEETINGS HELD MONDAY JULY 19, AND THURSDAY, JULY 22, 2021) AT THE RAPPAHANNOCK COUNTY COURTHOUSE, 250 GAY STREET, WASHINGTON, VIRGINIA.**

**CALL TO ORDER**

Chair Donehey reconvened the July 22, 2021 meeting at 6:00 P.M

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

**Others present:** Garrey W. Curry, Jr., FOIA Officer; Margaret Bond, Secretary, Sharon Pandak, Legal Counsel to the Broadband Authority Board.

**PLEDGE OF ALLEGIANCE**

Chair Donehey led attendees in the Pledge of Allegiance.

**MOMENT OF SILENCE**

Chair Donehey requested that attendees observe a moment of silence

**ADOPTION OF AGENDA**

Mr. Frazier moved to amend the published agenda to add a closed session for the Board. In discussion Mr. Parrish suggested the Board consider Ms. Pandak's findings on the matters requested by the Board in its July 22, 2021 meeting and hold a closed session for further discussion, if necessary, at the end of the meeting. Ms. Smith seconded the motion and suggested the agenda items be listed as: Comments by Board Counsel, Public Comment, Selection of an ISP, and Open Discussion. The motion carried unanimously.

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

Nay:

Abstain:

**Counsel's Comments – Sharon E. Pandak<sup>1</sup>**

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<sup>1</sup> Partner, Greehan, Taves & Pandak, PLLC. See further biographical details and qualifications in BBA Meeting Minutes of July 22, 2021.

In introducing Attorney Pandak, Chair Donehey reviewed the Board's discussion of Ms. Pandak's experience and qualifications as presented by Mr. Whitson, who had interviewed her as a potential candidate for selection as the Board's legal counsel. Ms. Pandak then addressed the Board by updating this discussion with a conversation she had had recently with Mr. Whitson who asked her, on behalf of the Broadband Authority Board, to look at a draft memorandum of understanding proposed by All Points Broadband in its response to the Board's June 2021 RFI in which the Board sought to identify a private partner for a VATI grant application<sup>2</sup>.

Ms. Pandak told the Board she and her associate, Michael Connolly, had looked at the Phase I the Regional Memorandum of Understanding prepared by APB and the Individual MOU it also submitted. Ms. Pandak observed that timing for an application for a VATI grant was critical as the deadline for submitting such a document was September 14, 2021. As she understood it, Ms. Pandak said that VATI grant projects were required to be completed in 18 months from the date the County signed a contract with a private partner, identified in the grant application.

The Regional MOU under consideration included All Points Broadband, Dominion Power, Shenandoah County Electric Cooperative and several other counties. At this point, Rappahannock Electric Cooperative was not a named party. However, Ms. Pandak pointed out that REC knows about the MOU and a letter in the RFI response by APB indicated that company's intention to be involved in another phase of their project in Hanover County.

Ms. Pandak explained that the Regional MOU comprised three phases. The first phase, which the Board had for immediate action presented the least risk to the Authority and the County to participation in the overall project and the most choices for continuation or rejection of a future partnership with APB. Going forward with approval of participation in Phase I of the Regional MOU, according to Ms. Pandak's analysis, would still allow the Authority/County time to assess the ultimate package. There is no monetary commitment required of the Authority in Phase I and the Authority could still back out of any further involvement with APB at any time.

If the Authority Board approved Phase I and ultimately decided to proceed to Phase II of this MOU, Ms. Pandak continued, it would lose some of the options such as no financial commitment or opportunity to work with another ISP. Phase III would set out definitive monetary sums required by APB to meet costs as projected in Mr. Carr's previous presentation. It would also lock in a timeline for project completion.

Ms. Pankak next addressed Section 6 of the Non-Compete Clause. This Clause required the Broadband Authority not to participate in any activity competitive to APB, while it was part of the Regional Agreement. According to Ms. Pandak, APB had already rejected any suggestion

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<sup>2</sup>Ms. Pandak provided a comprehensive written analysis of the questions the Authority Board requested her to review. A copy of this document is included as an attachment with these minutes.

that this paragraph be deleted for its arrangement with Rappahannock County. Thus, if the Broadband Authority entered into this Regional MOU, it could not engage with other ISPs in the County. However, the Authority could terminate its involvement with the Agreement and then it would be free to work with other ISPs in the County. As Ms. Pandak explained it, the Board of Supervisors could not engage with other County ISPs, either, under terms of this Regional MOU.

As for the Individual MOU, if the Board approved it, it would commit the Broadband Authority to a partnership arrangement with APB and it would not have the option to withdraw at a later time. Under the Individual MOU, the Broadband Authority would lose its flexibility to change its mind as the VATI application and subsequent project processes proceeded. Ms. Pandak concluded her comments by reminding the Board that time was of the essence in its decision to approve the Regional or Individual MOU.

Mr. Parrish noted that in Phase I there was no obligation by the Broadband Authority, but if it continued to Phase III there would be a definitive agreement which it would be committed to for completion of the project. However, he pointed out, APB was unwilling to provide a copy of the terms of Phase III, so the County could determine how much money it would be obligated to commit to APB's plan.

Further discussion by the Board included recognition that, even if the County committed to a non-compete provision, existing ISPs such as Piedmont Broadband and Shentel could still do business in the County. Members speculated that this existing business might give APB an incentive to poach customers.

Mr. Frazier considered that the County could lose opportunities to seek or work with other potential partners while it is tied up with APB. He expressed his concern that there might be other ISPs out there waiting for the County to issue a request for proposals, and the Broadband Authority might miss them by jumping to APB's MOU too soon. He also stated that he didn't see how APB could deliver on its proposed plan and that it had not bound itself to anything at this point either. Ms. Pandak pointed out that no one else had come to the Broadband Authority with a written agreement to form a partnership to apply for a VATI grant. If the Broadband Authority withdrew at this juncture, she explained, it would be out of the process because there probably would not be enough time to get a VATI application submitted by the eminent deadline. Mr. Frazier also expressed his concern that the Authority should have more detailed information from APB on its financial requirements of the County and its ability to meet milestones of performance. If you sign the Agreement now, he speculated, the Authority could not negotiate with any other ISPs.

Mr. Frazier brought up the fact that the County Public Schools also had access to pots of money to get school kids broadband. He wanted to know if the Agreement's Non-Compete Clause

precluded the Broadband Authority from using any money provided by the schools to help hook up kids to other broadband services. Ms. Pandak stated that, under terms of the Regional Agreement the Broadband Authority could not assist with information or any other help to anyone other than APB to assist school children with broadband access.

Mr. Whitson stated that APB said it would help localities find other grant money for broadband. Ms. Pandak agreed such terms might offer comfort to rural counties, but was not a commitment by APB to do anything.

Vice Chair Smith raised concerns regarding the role of the County Board of Supervisors and actions taken by the County Broadband Authority. Would decisions made by the Broadband Authority bind the hands of the Board of Supervisors? For example, Vice Chair Smith said, Shentel will be receiving RDOF money for its broadband network plans for 895 homes in southern Rappahannock County. It is likely to come to the Board of Supervisors with requests for permits and special exceptions for cell towers. Would the Regional MOU impact the Board of Supervisors' review of the Shentel documents?

Ms. Pandak stated that paragraph 6 of the MOU does not refer to the Board of Supervisors – only the Broadband Authority. However, she cautioned, it would be impolitic for the Board of Supervisors to operate as if it were a different entity from the Broadband Authority, if both bodies consist of the identical membership.

Chair Donehey opened the meeting to members of the public.

### **PUBLIC COMMENT**

Stephanie Ritter, Wakefield District – Ms. Ritter said she had poor internet access and so did many students in Rappahannock County. Access to high-speed broadband is inequitable throughout the County at present. She saw the opportunity for the County to be served with fiber to the home as one way to provide equal access to broadband for all residents and urged the Broadband Authority members not to miss out on this opportunity to take the first step toward achieving that objective by approving Phase I of the All Points Broadband MOU.

Dr. Robin Bolt, Rappahannock County Public Schools – Dr. Bolt pointed out that the Broadband Authority has the authority to sign the MOU presented by All Points Broadband. She said Rappahannock County has a lot of potential for accessing additional funding streams to pay for the plan proposed, including educational grants.

Dr. Bolt also told the Authority Board she thought it unlikely that Rapp County would ever have an opportunity to leverage so many different funding streams from so many different agencies again. The Rappahannock County Public Schools are committed to partnering with the County to maximize the potential funding streams available. She also said RCPS can and are well-poised to help apply for additional funds through available competitive grants and applicable education-related programs.

Dr. Bolt further stated that the County and RCPS cannot apply for additional funding sources until we better understand the plan for moving forward. RCPS she said, strongly recommended working toward a

better understanding of a fiber-to-the-home approach so that “we can all work together to build this level of infrastructure for our families with school-aged children”.

She concluded that the digital-divide has become so much more prominent in light of the pandemic, and the need for working families to have reliable internet for both work and school has never been more necessary.

Ann Calloway, Wakefield District – Ms. Calloway told the Board she lives across the street from Stephanie Ritter. Her broadband service, she said, was too poor to allow her to work from home. In particular, she said when the Virginia court system started using WebX, she was unable to use it all with the existing broadband speeds she experienced. Ms. Calloway also advised the Board that her experience was representative of single moms in the county, some of whom are talking about relocating to the Valley to get better internet access. She said she was unable to do remote learning at her home because she could only get the audio signal of the lessons broadcast over the internet. She echoed the earlier speakers’ comments that the Broadband Authority could approve Phase I of the MOU and it would not lock it in to a contract with All Points, but would give the County the chance to explore the possibility of bringing good broadband service to all residents. “I don’t know why we wouldn’t do it,” she concluded.

Demaris Miller, Hampton District – Ms. Miller referenced previous speakers who pointed out why political pressure on the County to sign up with All Points Broadband is huge. She said she was skeptical of All Points, she continued, it doesn’t know Rappahannock County well and the costly problems of developing a universal internet network in the County. That’s why, she opined, Comcast did not even respond to the RFI.

All Points Broadband, Ms. Miller stated, was new here and cobbled together ISPs to make their proposal to the County. All Points, she pointed out, does not have a performance record for the Authority Board to reference. She also cited alternative costs for the County to be considering at this juncture and referenced the County’s fire rescue services as important as internet access. She said she understood what it’s like not to have good internet access, but though the DOVID monies (American Rescue Plan Act funds) could be used for other things the County needed at this point such as fixing up County government buildings.

In Ms. Miller’s opinion, going with the Phase I of the Regional MOU would not present a prohibitive risk. However, she concluded she did not like the idea that the whole County would be dependent on an internet access network built one ISP.

Don Maxwell, Flint Hill – “Fools rush in where angels fear to tread,”<sup>3</sup> he told the Authority Board. Deadlines, he said, make us nervous. We all agree we need better internet, he said, the question is, how are we going to achieve it? Mr. Maxwell referenced the 20% matching funds required for the County to provide to the All Points Broadband plan. How many millions of dollars is that? He queried. Satellite internet is coming to Rappahannock County, which represents a new technology available for meeting broadband access. Even if All Points Broadband starts to build out its network today, when it’s done, he said, the technology will be obsolete. Why should we be satisfied with a covered wagon, when we have rocket science?, he said.

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<sup>3</sup> This phrase is attributed to the English writer Alexander Pope (1688-1744) in his poem, “An Essay on Criticism”, written in 1711. This same poem included other famous quotations, such as “To err is human; to forgive divine.”

Mr. Maxwell also objected to the characterization of ARPA money as “free.” There is no free money, he said, it’s our money. According to Mr. Maxwell there are stakeholders in every industry who get legislators to pass laws that spend our money and benefit some more than others. In the proposed plan, All Points gets 80% of the funds and the County has to come up with 20%. That’s “crony capitalism”, he opined.

Bob Ryan, Scrabble – Two years ago, Mr. Ryan told the Authority Board, the Broadband Committee was talking about improving broadband in the County. Now we have the opportunity to tap into money for providing good broadband access for our school kids. Education is the number one priority. The plan All Points is proposing presents no risk at this stage to the County to explore. We should not lose out on this opportunity.

Mark Anderson, Piedmont District – Don Maxwell opened the door on ‘crony capitalism’. As he understood it, by accepting the public money, Rapp County is favoring one private business over others – that’s crony capitalism. Sometimes a public body has to do this: pick one winning company in order to get the public service our constituents need. Mr. Anderson referenced Ayn Rand in Atlas Shrugged who warned about businesses who use their “pull” with government to win out over other companies trying to compete fairly in the marketplace – hope that is not the case here. According to Mr. Anderson, the key personnel at APB seem to include too many lawyers and not enough engineers. However, there are some obvious benefits to Rapp County from the APB proposal. An engineered broadband deployment plan for universal coverage would cost around \$175,000. APB will do this as part of their VATI application. Alan Zuchslag, he reminded the Board, and others have said that high speed fiber to the home adds \$20,000 to the resale value of a home. Yet many homeowners could not or would not pay \$15,000 or \$20,000 to connect to the road. APB and this proposal will make this affordable for many more.

Steve Hensley, Stonewall Hawthorne – Mr. Hensley asked if the proposed fiber to the home network would string fiber optic wire on poles, or underground. Mr. Whitson indicated that All Points plan would entail primarily using REC poles for its network. Mr. Hensley then explained that, in certain areas in the County, REC lines are too low to accommodate modern farm equipment. Adding cable to the REC poles at their current height and separating it from existing cables, would end up having the fiber lines too low for some farmers to drive their equipment under safely. The County needs to think, he said, about what expense REC would incur if the fiber network required higher poles.

Mr. Hensley pointed out that, as for putting the fiber optic network underground, Virginia Department of Transportation already has a lot of buried phone lines, but the rocky soil in the County makes it difficult to bury lines everywhere the network needs to go. When Starlink comes in, he wondered, what is going to happen if enough of the County chooses that medium of broadband delivery that it becomes financially unfeasible for All Points to complete its system?

Page Glennie, Stonewall-Hawthorne – Mr. Glennie noted that All Points Broadband did not provide a cost estimate for its project, whereas Shentel did. If one extrapolated out Shentel’s cost of covering 895 homes to all the rest of the homes and business in the County, Mr. Glennie estimated the cost would be \$61.9 million. How much, he asked, will the County have to invest and who would be accountable for cost overruns? If execution of a universal solution in the County is a problem, will the State “claw back” its grant money?

Mr. Glennie also speculated as to why other ISPs, such as Comcast, did not respond to the County's RFI. Probably, he said, because Comcast did not believe there was an economical way it could provide universal coverage. Other observations leading to Mr. Glennie's concern about the County signing the Regional MOU included: All Points Broadband is a new company, versus Shentel which has already built fiber networks and has been in business over 100 years. Mr. Glennie thought the County should not confine its support to one partner only, i.e. All Points Broadband. Further, he cautioned the Broadband Authority should not be rushed into making a risky decision to partner with All Points and instead should take the time to get answers on all the costs involved.

Robert Yowell, Piedmont District - Mr. Yowell operates a computer business called Runamuck Systems. He told the Board some of his clients have reached out to Comcast to get fiber to the home and were quoted tens of thousands of dollars to get connected to that system. He was concerned that many homeowners could not afford a fiber to the home connection and that such a fiber system was not possible to be installed in the timeframe required by the VATI grant. He also was concerned that All Points would build out the regional system it described on a first-come-first-served basis and that residents in Rappahannock County would be at the end of the queue.

Mr. Yowell was adamantly opposed to the County borrowing money it might need for its percentage of the project total. He wanted assurance that the County could pay for its share of these costs before it signed on with any ISP for a universal broadband network. If the County, he said, missed the opportunity to apply for a VATI grant now, there might be more money available later and there would be another opportunity for it to obtain all the funds it needed for such a system.

Deke Deakins, Hampton District – Mr. Deakins objected to the characterization that Rappahannock County school kids could not get an education without broadband access. All of us, he said, got here without the freakin' internet. The County residents would be better served to stop worrying about teaching critical race theory in the schools and teach kids now how to read.

Mr. Deakins addressed the Regional MOU and expressed concern that there would be a lot of hidden costs in the network All Points proposed to build out. Further, he pointed out, the County would lose control of how the broadband system would be implemented in the County if it signed on to the Regional MOU.

Don Lock, Jackson District – Mr. Lock pointed out that there would always be unanswered questions in considering building a new broadband network. The County would not want to be in a position that it gave up an opportunity to build something new and find itself 20 years behind its neighbors with only dial-up service when everyone else has high speed internet. Other options at this time? Crickets. He strongly suggested the Authority Board move forward with the All Points plan.

Todd Summers, Piedmont District – Mr. Summers expressed his support for the All Points regional approach to bringing broadband to Rappahannock County. He reminded the Board he had spent over two years on the Broadband Committee studying the problem of how to provide universal high-speed broadband to County residents and what that could mean for growth in the County. He cited the need to maintain a robust fire rescue volunteer force. A good broadband network would help attract young people to the County and provide a large pool of potential volunteers for the existing fire-rescue teams.

And, he pointed out, if the County can continue to rely on volunteers for this service, then it would not have to budget for the cost of hiring fulltime EMT personnel.

Roy Olson (District Unknown) – According to Mr. Olson the broadband grant application proposed “looks like a no-brainer”. The FCC he said has \$80 billion to build out phone and broadband systems in the US and the US has north of \$30 trillion in debt. (sic) The Starlink subsidy is now operational. That system is immediate and readily available. It takes 40 minutes to set up. That’s a smarter way to go. No risk to the county or its citizens. Fewer customers, he opined, will be willing to pay for fiber to the home than for Starlink. He said Starlink is the way the County should go and save its money for other things.

These comments ended the Public Comment session.

### **CLOSED SESSION**

Vice Chair Smith moved to authorize a closed session for the County Broadband Authority Board to discuss:

“Consultation with legal counsel regarding specific legal matters requiring the provision of legal advice – proposed Phase One Memorandum of Understanding, proposed Memorandum of Understanding for Broadband Partnership both with All Points Broadband Partners and others, and related advice, pursuant to VA Code Secs. 2.2-3711.A.8.”

Mr. Frazier seconded the motion. In following discussion, Mr. Whitson objected to discussing these matters in closed session. “The public,” he said, “should be included in these discussions. The motion failed in roll call vote:

Aye: Frazier and Smith,

Nay: Donehey, Parrish, and Whitson

Abstain:

### **ISP DISCUSSION**

The Authority Board next took up discussion of selection of an ISP partner for purposes of applying for a VATI grant. Mr. Frazier raised his concern about the effect of a Rappahannock County Broadband Authority action on the Rappahannock County Board of Supervisors. Ms. Pandak reiterated that if the Broadband Authority votes in favor of partnering with All Points Broadband, that would make the Authority a party to the partnership, not the Board of Supervisors. Mr. Frazier then moved to strike the language in the All Points MOU that referenced “county” and replace it with “Rappahannock County Broadband Authority”. Ms. Pandak suggested further clarification be added to the signature line on the MOU to read: “Rappahannock County Broadband Authority for the geographic region of the County and not on behalf of the County Board of Supervisors which is a unit of government of the County”. Mr. Frazier then amended his motion to include this suggested language in the MOU. Mr. Parrish seconded the motion. The motion failed.

Aye: Frazier and Parrish.

Nay: Donehey, Smith, and Whitson



Abstain:

In further discussion of the MOU Mr. Parrish voiced his caution approval for the All Points plan. Involvement by the County in the Regional MOU would be an opportunity to see the most return for investment. Starlink is good, he said, but – at the rate it is providing for connections to its satellite system-- some people will have to wait 1.5 years to get hooked up. Mr. Parrish then moved for the Authority Board to approve the Regional MOU presented by All Points Broadband. Chair Donehey seconded the motion.

Vice Chair Smith expressed her dismay that the Board was required to make a decision on this matter with so little time to get all the information it needed. She reminded the Authority Board that the Department of Housing and Community Development at assured it there would be sufficient time to publish an RFI and consider all the responses and their implications before it had to make a decision on selecting an ISP partner. However, she expressed, she didn't feel there had been enough time to make these decisions deliberatively. She said she did not know All Points as a company, but that Shentel was a company she had more faith in. The Broadband Authority, she said, had been formed to deliver broadband to the County – not overburden the taxpayer in the process. She concluded that she had serious concerns about the ability of the County to execute and pay for the broadband plan All Points proposed. We need, she said, to investigate and understand what we can truly afford to do and it would be better to wait to be sure we can pay for what we decide to do when the bull comes due.

Mr. Frazier reminded the Broadband Authority Board that when Shentel first presented its plan to hook up 895 homes and businesses in its RDOF target area it presented all the costs to the County up front. He also reminded the Board that Piedmont Broadband had presented its plan to expand its wireless network and was planning to use its own money entirely to upgrade its system. Mr. Frazier expressed his strong concern that, under the All Points plan, the County would be using government money to put these two companies out of business. The only upsides of the All Points plan, he said, is that it would cut the number of Broadband Authority meetings required in half.

Mr. Whitson said that signing up and working through Phase I (of the Regional MOU) would provide the Board with a lot of the answers it was wrestling with, and then the Board could figure out what it wanted to do vis-à-vis moving forward to the subsequent phases. He reminded the Board that it had cast a wide net when it published its RFI in June and that only All Points Broadband had given the Board a credible response. He also speculated that, between the VATI and ARPA grants, the County might not have to use any of its money to put up its share of the costs. Chair Donehey agreed with the point that the Board would be able to learn more about the details of the All Points plan as it worked through Phase I. Then, she said, it would be set to

decide whether or not to move forward to Phase II or terminate the agreement with All Points.  
The subsequent vote on approving and signing the Regional MOU was as follows:

Aye: Donehey, Parrish, and Whitson

Nay: Frazier

Abstain: Smith

Chair Donehey moved to adjourn and Vice Chair Smith seconded the motion which carried unanimously.

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

Nay:

Abstain:

The Rappahannock County Authority Board meeting adjourned at 7:55 p.m.

Respectfully submitted,

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Margaret Bond, Secretary