

October 25, 2012

Virginia:

AT A REGULAR MEETING of the Nelson County Broadband Authority Board at 6:00 p.m. in the Board of Supervisors Room located on the second floor of the Nelson County Courthouse.

Present: Constance Brennan, Central District – Vice Chair
Larry D. Saunders, South District
Allen M. Hale, East District
Stephen A. Carter, County Administrator
Candice W. McGarry, Secretary
Phillip D. Payne, IV County Attorney
Andrew Crane, Information Systems Technician

Absent: Thomas D. Harvey, North District
Thomas H. Bruguere, Jr. West District – Chair

I. Call to Order

Ms. Brennan called the meeting to order at 6:12 pm, with three (3) members present to establish a quorum and Mr. Harvey and Mr. Bruguere being absent.

II. Public Comments

There were no persons wishing to be recognized for public comment.

III. Consent Agenda

Members briefly discussed the annual cost of approximately \$1,400 related to becoming a member of VACoRP Risk Management and Mr. Carter noted that it provided coverage for liability claims and property loss. Mr. Carter then confirmed that the Authority has the funds for this and would have to have this type of coverage regardless.

Mr. Hale then moved to approve the Consent Agenda and Mr. Saunders seconded the motion. There being no further discussion, Members voted unanimously (3-0) by roll call vote to approve the motion and the following resolutions were adopted:

A. Resolution – **R2012-08** Minutes For Approval

RESOLUTION-R2012-08
NELSON COUNTY BROADBAND AUTHORITY
APPROVAL OF MEETING MINUTES
(July 10, 2012 and July 26, 2012)

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RESOLVED, by the Nelson County Broadband Authority that the minutes of said Authority's meeting conducted on **July 10, 2012 and July 26, 2012** be and hereby are approved and authorized for entry into the official record of the Broadband Authority's meetings.

B. Resolution – **R2012-09** Adoption of VACoRP Risk Management Member Agreement

**RESOLUTION R2012-09
NELSON COUNTY BROADBAND AUTHORITY
RESOLUTION TO ADOPT THE MEMBER AGREEMENT TO JOIN
THE VIRGINIA ASSOCIATION OF COUNTIES (VACoRP)
GROUP SELF INSURANCE RISK POOL**

WHEREAS, the Nelson County Broadband Authority desires to protect against liability claims and property losses and to provide for payment of claims or losses for which the authority may be liable; and

WHEREAS, the Virginia Association of Counties Group Self Insurance Risk Pool, aka VACoRP, has been established pursuant to Chapter 27 (§ 15.2-2700 et seq.) and Title 15.2 of the code of Virginia; and

WHEREAS, it is desirable for the Nelson County Broadband Authority to join the Virginia Association of Counties Group Self Insurance Risk Pool in order to provide a method of risk sharing for liability claims and property losses;

NOW, THEREFORE, BE IT RESOLVED that the governing body of the Nelson County Broadband Authority hereby agrees to the member agreement entitled "Member Agreement for Virginia Association of Counties Group Self Insurance Risk Pool" which creates a group fund to pay liability claims and property losses of the counties and other local agencies joining the Group, and we acknowledge we have received a copy of the pertinent Plan and supporting documents.

BE IT FURTHER RESOLVED that Thomas H. Bruguere, Jr., Chairman is authorized to execute the member agreement to join the Virginia Association of Counties Group Self Insurance Risk Pool and to act on behalf of the Nelson County Broadband Authority in any other matter relative to the Group.

IV. New/Unfinished Business

A. Correction to Rates, Fees, and Charges – Dark Fiber Lease Rates (R2012-10)

Mr. Carter noted that when the NCBA approved the rates in July it was determined after the fact that there was a correction to be made in the rate section for Dark Fiber leases. He added that this was an ambiguous rate as it did not note the lease period; which was supposed to be on an annual basis. He then noted that the intent of the matter of correction was to insert the lease rates as annual for these rates. He concluded by noting that he had conferred with Phil Payne and he had advised that the Authority did not have to go back to public hearing in order to address this and it would merely be a correction.

Members and staff briefly discussed these rates and it was confirmed by Mr. Carter that a Lessee of Dark Fiber would pay more for a shorter term lease. He noted that this gave an incentive for longer

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leases and that staff did not anticipate any short term ones. Members and staff then reviewed and confirmed as correct the pricing for terms as stated in the proposed resolution.

Mr. Hale then moved to approve resolution **R2012-10** Correction to Resolution R2012-07 Authorization to Rates, Fees, and Charges and Mr. Saunders seconded the motion.

Members and staff discussed and confirmed that this resolution **R2012-10** corrected resolution **R2012-07** containing the Authorized Rates, Fees, and Charges.

There being no further discussion, Members voted unanimously (3-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION-R2012-10
NELSON COUNTY BROADBAND AUTHORITY
CORRECTION TO RESOLUTION R2012-07
AUTHORIZATION TO RATES, FEES, AND CHARGES**

RESOLVED, by the Nelson County Broadband Authority that resolution R2012-07, Authorization Of Rates, Fees, and Charges adopted on July 26, 2012, be corrected to read as follows:

Dark Fiber Leases:

The NCBA will have a limited number of fibers available for dark fiber leasing *at an annual* rate of \$1250 per leased fiber per mile for durations longer than 60 months. Leases for 60 months or less will be priced *at an annual rate of* \$1550 *per leased fiber per mile*. Fiber will not be leased for periods of less than 24 months. These leases will be subject to prior allocation for other uses and are made at the discretion of the NCBA board.

BE IT FURTHER RESOLVED, that the corrected copy of Resolution **R2012-07** be attached hereto.

Corrected Copy of Resolution R2012-07:

**RESOLUTION R-2012-07 (Corrected)
NELSON COUNTY BROADBAND AUTHORITY
AUTHORIZATION OF RATES, FEES AND CHARGES**

WHEREAS, the Nelson County Broadband Authority (the Authority) has established rates, fees and charges for the operation and use of the Authority's broadband network (fiber and tower installations); and,

WHEREAS, the Authority is authorized by Title 15.2, Chapter 54.1, Virginia Wireless Service Authorities Act, (§15.2-5431.1 et seq) of the Code of Virginia to fix rates, fees and (other) charges (which shall include, but not be limited to a penalty not to exceed 10 percent on delinquent accounts, and interest on the principal); and,

WHEREAS, the rates, fees and charges that the Authority has established were duly advertised in accordance with and pursuant to the provisions of §15.2-5431.25 (A) and (B) of said Code and Act; and,

WHEREAS, the Authority conducted a public hearing on July 10, 2012 to receive input from citizens, all of the users of such facilities; the owners, tenants, or occupants of property served or to be served

thereby; and all others interested, on the proposed establishment of rates, fees and chargers that were adopted on April 26, 2012 by the Authority as preliminary pursuant to Resolution R2012-05 (a copy of which is attached hereto) in accordance with said Code and Act (as referenced herein).

NOW, THEREFORE, BE IT RESOLVED by the Nelson County (Virginia) Broadband Authority that the rates, fees and charges, as were preliminarily adopted on April 26, 2012 pursuant to Resolution R2012-05, are hereby authorized as final and shall be effective immediately and are delineated, as follows:

Local Access Rates (Rates for Providers to Utilize the Network for Transport to an End User):

Circuit Size	Monthly Cost
0-10 mbps	\$270
>10-25	\$300
>25-50	\$340
>50-100	\$500
>100-250	\$718
>250-500	\$920
>500-1000	\$1040
>1000 mbps	Priced Individually
Point to Point Connections on Network priced at 160% of Local Access Rates (e.g. between two facilities on our network as between Tye River Elementary and the High School would be 160% of the rate between the High School and the central office).	

Non-recurring charges (NRC) are those costs incurred in connection with the installation of the fiber drop and ONT. The customer will be responsible for the payment of these costs on the following terms.

NRC not exceeding \$1500 will be discounted as follows:

<u>Term of Contract</u>	<u>Discount</u>
12 months	none
24 months	10%
36 months	20%
48 months	35%
60 or more months	50%

The undiscounted balance of NRC together with any NRC in excess of \$1500 may be amortized over the term of the original contract.

Colocation Charges for Providers within NCBA shelters:

Quantity	Monthly Cost
2 RU	\$75.
One-half rack	\$200.
Full Rack	\$350.

All rentals are based on a space available basis. Rental will include access to one 20 amp, 120 volt circuit. Redundant DC power (-48 volt) will be available as well. The Colocation charges include up to

20 amps of DC power. Additional DC power, subject to availability, will be priced at \$6.25 per amp in 10 amp increments.

Tower Access:

Location on Tower	Price per Month per Customer
Top thirty feet in 10 foot sections	\$275 per antenna for first three antennas (includes cables and ancillary equipment such as tower mounted amplifiers) \$150 per additional antenna installed by the same lessee.
Next thirty feet in 10 foot sections	\$175 per antenna for first three antennas (includes cables and ancillary equipment such as tower mounted amplifiers) \$90 per additional antenna installed by the same lessee.
Remaining access in 10 foot sections	\$50 per antenna (includes cables and ancillary equipment such as tower mounted amplifiers)

All tower access charges are in addition to a site access fee of \$200 per month. Site access fee entitles lessee access to electric power (contracted for by lessee) and ground space for cabinet (10 square feet). Shelter colocation charges and local transport charges are additional as are lease space for placing shelters, generators or other equipment. Items not specifically addressed will be priced on an individual basis.

Preference will be given to providers wishing space higher on the towers. The NCBA may limit the size of antennas or duration of leases for antennas located below the top 80 feet.

Tower leases will be accepted based on maximum allowable loading of a tower. If, in the sole discretion of the NCBA, an analysis of the structural integrity of the tower is deemed necessary, then the costs of the analysis will be borne by the lessee.

These rates apply to towers operated by the NCBA. Rates for towers leased by the NCBA may be subject to approval by the lessor.

Dark Fiber Leases:

The NCBA will have a limited number of fibers available for dark fiber leasing at an annual rate of \$1250 per leased fiber per mile for durations longer than 60 months. Leases for 60 months or less will be priced at an annual rate of \$1550 per leased fiber per mile. Fiber will not be leased for periods of less than 24 months. These leases will be subject to prior allocation for other uses and are made at the discretion of the NCBA board.

Increase in Rates:

Rates are firm for a contract or lease term which does not exceed five years.

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For contract and lease terms exceeding five years, payments shall be adjusted every year commencing with the first annual anniversary of the lease Commencement Date and thereafter on the subsequent anniversaries of that date (the Adjustment Date). Such adjustments shall be for the purpose of reflecting the increase, if any, in the cost of living. The adjustment, if any, shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for the South, Size D-Nonmetropolitan (less than 50,000) (the "Index").

The Index published as of the most recent month prior to the Adjustment Date shall be compared with the Index twelve (12) months immediately preceding. On the Adjustment Date the annual payment shall be increased by the percentage equal to the change, if any, in the Index between the two specified months. The Adjusted payment shall then become the new Base payment for the following twelve month period and be used to calculate the next annual payment adjustment.

Penalty and Interest:

Any sum due NCBA and unpaid by the due date shall be assessed a 10% penalty and carry interest at the rate of 12% *per annum*.

B. Broadband Infrastructure Project Update

Mr. Carter requested that this item be considered after Item C. in order to accommodate Mr. Payne's attendance.

Mr. Carter reported the following:

The local broadband project is proceeding to completion. Denoted herein below is a current summary of project activities.

1. **Fiber Optic Network Construction:** 99.99% complete pending any necessary restoration of excavated areas.
2. **Tower Construction:** One tower complete (CVEC location in Colleen); construction of two towers (Afton at Rockfish VFD and Martin's Store at CVEC Sub-Station) are in process and projected to be completed by not later than the end of November (possibly by mid-November); forth tower at Massies Mill continues to be pending a final location, however, an alternative using a County owned site is being confirmed and once confirmed week of 10-22) work will begin immediately to initiate the approval and construction completion requirements.

Mr. Carter noted that the Board had expressed concerns over the prospective Massie's Mill site property owner's requested considerations so staff has endeavored to see if Icon could incorporate the High Top tower into a relay situation from the Massies Mill school site. He noted that the line of site from there to High Top was not ideal; however a tower at the old school site could see the tower at Wintergreen and then back to the Martin's Store tower site. He added that the tower would be located at the Massies Mill collection site or at the Community Center site; which would be coming back to the County. He added that they would have to do an environmental review, go through the Planning Commission review, and Board approval and staff was trying to move ahead because of the March 2012 project deadline.

3. **Network Electronics:** Calix in conjunction with County staff has begun installation of network electronics. 85%-95% of installations from Colleen to Lovingston (NOC) have been completed. Pending is completion of Lovingston to Afton installations, which will be done once the two Rt. 151 towers are completed (i.e. by end of November).

Mr. Carter added that there were no issues at this point with the electronics. He noted that there will be an ongoing relationship with Calix because there will be warranties on the Calix equipment. He added that the Network Operator uses Calix gear and may mitigate the time needed to be spent with them after installation.

4. **Internet Service Providers:** A large regional ISP (Lumos) has completed co-location within the NC/NCBA NOC and is currently reviewing ISP/IRU agreements. A second fiber network entity with a large ISP membership (Mid-Atlantic Broadband) will also co-locate in the NC/NCBA NOC pending contract completion (Co-Location and IRU agreements have been submitted to MBC); this will enable multiple ISPs to contract with NCBA to provide services albeit when such ISPs may do so is presently indeterminate. Another ISP (Cogent) contacted the County the week of 10-15 to discuss becoming an ISP on the local network but this discussion was not determinant of next steps.

Mr. Carter noted that Lumos would sign an IRU agreement because they were using the NOC as a regeneration point for their signal. He added that this would be the case with MBC as they would also use this as a regeneration point. Mr. Carter then noted that staff was hopeful that their member Service Providers would come in and want to provide services in the county. He then explained that how much fiber would be used by providers was dependent upon the technology that they used to disseminate their signal and this would be determined as it went along. Mr. Carter then explained that one fiber could be dropped to an access point and then the Service Provider could split the fiber to build it out to customers. He added that another technology required one fiber to go to one location. Mr. Andrew Crane in attendance concurred with this explanation. It was then noted that ISPs would pay a lease amount to use the network.

Mr. Crane then noted that if a Service Provider served a customer, the rate schedule allowed them to pay for the amount of broadband going over the fiber or bandwidth. Mr. Carter reiterated that the rates were based on bandwidth and based on using a single fiber strand per Mr. Crane.

Mr. Hale noted that Lumos and now possibly Cogent would pay the NCBA for what part of the network they were using; however they would not necessarily be providing services in the County. Mr. Carter confirmed that they would be paying to be connected to the network and it was likely that they would provide services to businesses. He added that Lumos was more interested in business customers at this point but he was hopeful that once in place, the MBC members would come in to provide services to individuals and residences.

Mr. Hale then inquired as to whether or not they have made a commitment to provide services to anyone and Mr. Carter noted that service provision was not guaranteed if they signed the Service Provider Agreements. Ms. Brennan then noted that the network was open for anyone to come in and provide services.

Mr. Carter then reiterated that the Network Operator was also a service provider and that they have expressed interest in providing services in the County. He added that there were no wireless providers on board yet, but that Ntelos and Verizon have shown some interest in using the towers.

Mr. Carter then confirmed that all service would be limited to the vicinity of the backbone until someone came in and used the towers. He added that the local wireless provider has said he wants to use the network for backhaul and not to provide services at this point.

Mr. Carter then reiterated that the next task was to get providers in to provide services. He added that it was the County's and the Authority's responsibility to build the network and serve only the Community Anchor Institutions; however it was the Board's goal to serve as many as possible.

Mr. Saunders then confirmed that there were no dates to tell people as to when they could get a network connection. Mr. Carter then reported that he was cautious about putting out information to the public until more tangible information was available. He noted that the Network would be operational next week for County services and once agreements were in place things would begin. He added that how the Service Providers would market it and to who was undetermined at this point.

It was noted that the Towers would be operational by the end of November and providers could come in and provide services then. Ms. Brennan then questioned the options for wireless services if no one came in and Mr. Carter noted that staff would have to change focus and try to recruit them in. He followed this up with that the focus had been on construction at this point.

Mr. Saunders noted that it was a matter of next steps and they had to do one thing at a time before moving on to the next thing. He then noted that staff has done a good job of fulfilling the County's grant responsibilities.

5. **Network Operator:** A contract has been submitted to Blue Ridge Internet Works and is in process to be finalized. NC/NCBA is waiting for BRINW to submit comments, revisions, etc. or to execute the agreement such that services can commence as immediately as possible. The BOS and NCBA have given consensus review of the decision to work with BRINW.

Mr. Carter reiterated that Blue Ridge Internetworks was a member of MBC but that they would have to find an affordable path here. He added that they would compete at a lower cost point than Lumos and hopefully would provide services to residential customers. He noted that the preference was to have them in place prior to the ISPs offering services. He added that the Network Operator Agreement documents were in their hands and it was all happening at the same time with the timetable being ASAP.

6. **Outside Plant Services:** NC/NCBA will move forward with a contract with Harrisonburg, VA based Computer Cabling and Technology Services (CCTS) for provision of OSP services. An agreement is pending completion but is in process.

Mr. Carter noted that they would be doing installations etc. on the network. He noted that an RFP had been issued and a company in Harrisonburg would be offered a contract. He added that this same company provides services to Blue Ridge Internetworks; however it had been decided to keep these services separate.

7. **Community Anchor Institutions:** All of the CAIs have had installations completed with the exception of two CAIs located on the Rt. 151 Corridor (i.e. Rockfish River Elem. School, Afton Family Medicine). These installations will be completed in conjunction with the completion of the Rt. 151 towers and with the final installation of network electronics by Calix and County staff.

Mr. Carter reported that there were 13 CAIs in total and most have indicated that they would switch over to the County network once they were able to do so. He noted that the drops were in but that all may not be able to connect right away due to current service contract obligations.

8. **County Related:** The County has signed an agreement with Lumos to provide phone and internet services to the Courthouse and satellite offices. Internet services will begin on 10-30. Phone services will begin on 12-1 (approximate) pending receipt of additional equipment, which is on order.

Mr. Carter advised that the County would be switching from using T1s and the service should be much better and cost the same or less.

9. **Rates, Fees, etc.:** The broadband network's rates, fees, charges, etc. were approved by the NCBA in July 2012. A correction to the rate for dark fiber leases will be completed by the NCBA on 10-25 (to provide for the fee to be on an annual basis i.e. per mile per year), as the rate as approved was both unclear and intended to be per year and not per month. Otherwise, the rates approved in July will remain in effect until amended in accordance with the requirements of the Code of VA (with the understanding that that evaluation of the current rates will be ongoing).

Mr. Carter reiterated that the approved rates were vetted by providers and the consultants and that they were a starting point. He added that these may be revised downward as an incentive but it was uncertain at this point.

10. **Subscriber ISP Costs:** Subscriber costs to businesses and residents within the County are not determined/known at present. The ongoing concern is the network will have slow incremental growth until competition among ISPs and a contract with WISP(s) can be established, which may also entail an overall revision to the network's current rates and fees.

11. **NTIA Compliance:** The County anticipates full compliance with NTIA grant requirements.

Following Mr. Carter's report, Ms. Brennan asked if staff could make a sheet listing who the County and or Authority had contracts with for what services. Mr. Carter noted he would and that the project was very complex and staff was working on it daily in addition to the construction.

**C. Nelson County Lease of Broadband Network to Nelson County Broadband Authority
(R2012-11)**

This item was considered prior to Item B. in order to accommodate Mr. Payne's attendance.

Mr. Payne addressed the Board and stated that the Federal Grant requires the County to own the project and that the granting agency was aware that the Authority would run the system. He added that they had technical hurdles in between and that the Federal Interest must be protected in the event of some failure. He noted that in order to protect the Federal Interest, they require the jurisdiction to execute a Security Agreement and to file a Covenant in land records. He then reiterated that the County did not have the power to run the network and chose the creation of an Authority option for flexibility purposes. He added that in order to do business, the Authority needed to enter into agreements with Service Providers.

Mr. Payne then advised that the solution was to first have the County approve the Covenant and Security Agreement that established the Federal Interest securing their 80% contribution and then next was to lease the hard assets to the NCBA. Mr. Payne noted that at a later date, they would have to execute another Security Agreement with the lists of hardware, their serial numbers and price etc. but that the stop gap was the proposed broad based Security Agreement and Covenant. Mr. Payne then summarized that the NCBA needed to get through this two- step process so that the NCBA could start leasing to providers for Dark Fiber or Service Provision.

Mr. Carter then clarified that the Security Agreement and Covenants would be considered at the subsequent Board of Supervisors meeting. Mr. Payne then agreed and noted that the Authority had to agree to the Lease Agreement and then the Board of Supervisors could approve the other three documents; with the two documents being recorded to protect the Feds interest. Mr. Payne then thanked Judy Bentley of Icon for reminding him of this responsibility.

Mr. Hale then moved to approve resolution **R2012-11** Authorization to Execute Lease Agreement with Nelson County – Broadband Network. Mr. Saunders seconded the motion and there being no further discussion, Members voted unanimously (3-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION-R2012-11
NELSON COUNTY BROADBAND AUTHORITY
AUTHORIZATION TO EXECUTE LEASE AGREEMENT
WITH NELSON COUNTY - BROADBAND NETWORK**

WHEREAS, pursuant to the Virginia Wireless Services Authority Act, Chapter 54.1 of the Code of Virginia, the Nelson County Broadband Authority was established to provide managerial and operational oversight of the Nelson County Broadband Network; and

WHEREAS, the proposed lease agreement provides the legal vehicle by which the Authority can perform its intended functions,

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BE IT HEREBY RESOLVED, by the Nelson County Broadband Authority that the Chairman, Thomas H. Bruguiera, Jr. is hereby authorized to execute the proposed lease agreement on behalf of the Nelson County Broadband Authority providing for its lease of the Nelson County Broadband Network.

V. Other Business (As May Be Presented)

Introduced: NCBA Board Membership

Mr. Hale inquired as to when other people will be appointed to the NCBA Board and Mr. Carter noted that perhaps the following summer once the network was up and running. Mr. Hale noted that would be his preference and Mr. Carter advised that it was preferable that the Board of Supervisors remain on the NCBA Board at least until the major decisions were made. Members then agreed that would be appropriate.

Introduced: Advisory Board Minutes:

Ms. Brennan inquired as to if there were minutes available from the Advisory Board meetings and Mr. Carter noted that there were but they were located on the internal project website called the Wiki. He noted that he could provide the Board with a password to access these.

VI. Adjournment

AT 6:55 pm, Mr. Saunders moved to adjourn and Mr. Hale seconded the motion. There being no further discussion, Members voted unanimously by voice vote to approve the motion and the meeting adjourned.